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Humanitarian protection as a European public good:

The strategic role of states and refugees

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Abstract

The recent surge of refugee arrivals in Europe has accentuated the malfunctioning of the Common European Asylum System: Non-coordination between nation states and a failed common protection of refugees were the main outcomes of the so-called „refugee crisis". This paper builds on public good and policy compliance literature in order to explain the failure of European countries to provide humanitarian protection to refugees. A sequential game-theoretical model serves to demonstrate the strategic interaction between member states and refugees in European asylum policy. The analysis demonstrates that although both actors benefit from a functioning European asylum system, they also have few incentives to contribute to the public good. States aim to reduce their individual refugee-burden, and refugees seek protection in their preferred destination country. The findings suggest that an effective provision of refugee protection requires both member states and refugees to mutually contribute to the public good.
Keywords: asylum policy, European Union, public good, refugees, responsibility-sharing

Introduction

From the wars in the former Yugoslavia in the 1990s to the so-called 'refugee crisis' in 2015, humanitarian tragedies in Europe's neighbourhoods have repeatedly sparked political divisions between European states regarding the responsibility of hosting refugees. In an effort to provide humanitarian protection and to improve immigration control, European states communitarised their asylum policies in the Common European Asylum System (CEAS) (Geddes, 2008; Vink, 2013). However, the recent increase in refugee arrivals has highlighted the persistent malfunctioning and shortcomings of European asylum policy (Niemann and Zaun, 2017). The great number of secondary movements of refugees and their 'waving through' by states illustrate that states shirk the assigned protection responsibility of the Dublin Regulation and refugees do not comply with the rules set by the Dublin Regulation. Despite the dramatic political events during the 'refugee crisis', which resulted in high demands for international coordination and an increased interest in policy reforms from both northern and southern member states, non-coordination and the policy status quo are the main outcomes (Scipioni, 2017).

In this article, we theoretically explain why the common European provision of humanitarian protection persistently fails despite the communitarisation of asylum policy. Building on previous studies, we conceptualise humanitarian protection of refugees as a European public good that requires international coordination in order to overcome collective action problems (Betts, 2009; Suhrke, 1998; Thielemann and Armstrong, 2013). Refugee protection is the international obligation of states; however, the costs are higher for countries that host more refugees than others. As a result, there are incentives for states to free-ride on the protection efforts of others. We go beyond this literature by incorporating insights from the compliance literature in order to develop a model, in which humanitarian protection is provided by an interaction between states and refugees. We argue that solely analysing public good provision from the narrow perspective

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of state contributions ignores the strategic choices of refugees and their role in shaping policy outcomes. Our extension of the classic public-good model theorises the private benefits of refugees in addition to the public good. While states are motivated to minimise their burden of refugee admission, refugees are motivated to maximise their life prospects. The game-theoretical formalization in our analysis substantiates our theoretical model by demonstrating that effective European asylum policy requires mutual contribution to the public good by both its policy target groups. This study contributes to the understanding of the refugee crisis by viewing member states and refugees as strategic actors and analysing their interactions.

Humanitarian protection as a European public good

The provision of humanitarian protection has been commonly conceptualised as an international or global public good (Suhrke, 1998). In the context of the EU, there is a functionalist and a normative reasoning for why refugee admission is a common European public good. The functionalist argument contends that the establishment of the internal market and the border-free Schengen area necessitates the coordination of asylum policies among member states (Niemann and Speyer, 2018). The normative argument assumes that humanitarian protection is a jointly held normative and legal obligation that commits states to receive refugees. The EU sees itself as a normative power that defends liberal values and human rights. Shirking the responsibility of refugee protection therefore risks undermining the legitimacy of the EU (Bauböck, 2017).

More formally, a public good is a good that has non-excludable and non-rivalrous properties. As such, countries benefit from its provision independent of their own contribution to it. The provision of humanitarian protection supports a number of public benefits, such as securing human rights and solidarity norms (Betts, 2003), contributing to greater stability of the international order (Cronin, 2003; Suhrke, 1998), enhancing security and stability (Thielemann,

2006), avoiding deflection of refugees from one country to another (Hatton, 2015) and avoiding damaging unilateral state actions (Thielemann et al., 2010, 15-16). The (non-)provision of refugee protection by a state creates both positive and negative externalities for neighbouring states. When one state provides protection, other states have lower costs while still benefiting from the public good (positive externalities). Conversely, when a country shirks its responsibility to provide humanitarian protection, other countries bear a larger proportion of the protection obligation (negative externalities). Indeed, research shows that restrictive admission policies reduce the number of asylum applications, but they also cause spill-over effects in neighbouring states by increasing their number of applications (Barthel and Neumayer, 2015; Hatton, 2009). Since public goods are non-excludable, states have incentives to free ride instead of contributing themselves. The result of this collective action problem is an under-provision of humanitarian protection. For this reason, scholars discuss a potential race-to-the-bottom of national asylum standards meant to deter refugees (Czaika, 2009).[1] The free-riding in asylum policy produces various negative externalities, such as even more unpredictable refugee arrival patterns and unilateral state actions such as border controls.

The recognition of the public good character of humanitarian protection materialised in the communitarisation of European asylum policies in order to reap the collective benefits through integration. Scholars contest whether or not the establishment of the CEAS resulted in a more effective solidarity among states or if it facilitated their ability to shirk responsibility (Vink, 2013). On the one hand, the harmonisation of national asylum policies prevented a race-to-the-bottom in asylum standards (Toshkov, 2013) and guaranteed that every person has the right to file a request for protection. Europeanisation led to an overall convergence of national asylum

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[1] However, despite continuous efforts by states to interpret the Geneva Convention in a restrictive sense, there is no systematic evidence for a race-to-the-bottom in asylum standards (Toshkov and de Haan, 2013; Zaun, 2017).

policies to a formalisation of asylum institutions in south-eastern European states and to an improvement of protection standards (El-Enany and Thielemann, 2011; Kaunert and Léonard, 2012; Zaun, 2017). On the other hand, the allocation rules defined in the Dublin Regulation in particular led to member states taking unilateral efforts to deter refugees (Thym, 2016; Trauner, 2016). Furthermore, the current system is inefficient. This is apparent in the significant gap between Dublin requests and actual Dublin transfers, with most requests not resulting in the relocation of a refugee (EC, 2016). Irregular entry and the onward migration of refugees through Europe, so-called secondary movements, remain a persistent feature of the European asylum regime, despite efforts to prevent 'asylum shopping' and 'secondary movements' (Thielemann, 2008).

Following the standard public good theory, the communitarisation of asylum policy should result in the provision of the public good. The standard theory provides no explanation for secondary movements nor why the CEAS fails to provide humanitarian protection. What is more, the classic theory would expect small states to free ride on the efforts of large states (Olson and Zeckhauser, 1966). However, this is not what we observe in reality, given that small European states host particularly large shares of refugees (Thielemann and Armstrong, 2013). The ineffectiveness of the CEAS to assign and implement clear responsibilities and to avoid irregular secondary movements throughout Europe is the starting point for our explanatory model on European asylum policies and their failure to provide the public good of humanitarian protection.

Non-Cooperation in European asylum policy

How does the existing literature explain the ineffectiveness of the CEAS and failing reform efforts? Trauner (2016) argues that the EU is trapped because applying the Dublin Regulation overburdens the southern states and ignoring it overburdens the northern states. Biermann et al.

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(2017) argue that states with a low number of refugees have no interest in the reform of a system that serves them well. By analysing the establishment of asylum institutions in the 2000s, Parkes (2010, 69) describes how northern member states mobilise their interests in the European Council (EC) to block most attempts to deepen the CEAS. Similarly, Zaun (2017) explains the reform gridlock through the differences in volume of the refugee intake of EU member states, which explains why most states prefer the status quo over further communitarisation. According to Scipioni (2017) and Thielemann (2018), the absence of effective responsibility-sharing mechanisms[2] explains why states choose non-cooperation in times of high refugee arrivals. In sum, the unequal distribution of the number of refugees creates opposing interests regarding a possible reform of the Dublin Regulation and explains why Europe fails in the effective provision of humanitarian protection as a European public good. The common perspective is therefore that cooperation could be achieved if there was effective responsibility-sharing. Thus, the provision of humanitarian protection depends solely on the willingness of states to cooperate. The behaviour of refugees, as an essential policy target group, is largely absent from the analysis. The migration literature calls for an adequate theorisation and analysis of migrants' agency (e.g. Triandafyllidou, 2017). Some scholars implicitly acknowledge the agency of refugees, yet the strategic behaviour of refugees is only analysed when it comes to destination choices (e.g. Neumayer, 2004; Hatton 2009) and not in analyses of policy outcomes. A notable exception is Noll (2003) who considers refugees to be a relevant policy actor but subsequently does not include them in his game-theoretical model, which limits interactions to those that occur between states. No approach thus far explicitly analyse European asylum policy as a strategic interaction

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[2] We use the term 'responsibility-sharing' for mechanisms aiming at an equitable distribution of costs and responsibilities in refugee protection. Alternatively, the term 'burden-sharing' is in use. Since these two terms are interchangeable, we prefer to use responsibility-sharing over burden-sharing in order to avoid any normative charges of humanitarian protection as a burden and an implicit state-centered perspective implied by the term (Mitsilegas, 2014, 186).

between states and refugees.

Given this gap in the literature, we incorporate compliance concepts that stem from public policy literature in order to better understand the strategic role of refugees in the provision of the public good. Policies can only achieve their objectives if a broad array of actors comply with those policies or behave in ways that are consistent with the enunciated objectives of the policy (Gofen, 2015; Weaver, 2014). Inadequate compliance at the aggregated level of individuals, organisations or states can be conceptualised as policy failure. Compliance is unlikely when positive incentives and/or negative sanctions are insufficient or too uncertain to ensure compliance (Weaver, 2014) Hence, it is important to incorporate both the willingness and capacities of actors to comply when designing policies.

The compliance literature stresses the importance of individuals' motivation that is, self-interest, solidarity and expressive values (Weaver, 2014). Governments can attempt to implement specific 'motivators' in order to stimulate compliance, such as sanctions, material rewards and normative appeals (Alford, 2009, 65-67). Given the limited influence of enforcement or sanctions, the policy compliance of individuals is increasingly stimulated with instruments that take into consideration the motivations of individuals' non-compliance (Gofen, 2015). However, stimulating the compliance of refugees with the rules of the CEAS, with mechanisms other than enforcement or sanctions, for example, by taking their self-interest into consideration, was never prominent on the political agenda. This is because the chosen instruments that ensure compliance depend on the social construction of the target groups, that is, on their political influence and on whether the groups are considered valued and important or disapproved of and feared (Schneider and Ingram, 1993; Weaver, 2014). As a generally negatively constructed policy target group, it is unlikely that refugees are treated as a target group whose self-interest and incentives should be

taken into account (Sager and Thomann, 2017). This is reflected, for example, in the often expressed opinion that refugees are not genuinely in need of protection if they exert or desire any rational choice (Crawley and Skleparis, 2018). However, the compliance of refugees as main target group of the CEAS is essential to ensure the functioning of the system.

The need for compliance from all actors in order to provide a public good could be incorporated in the public good theory by an extension of the 'joint-product model'. This model theorises that the private benefits of states from refugee protection are excludable and rival, in addition to the public good (Betts, 2003). We extend this model by incorporating the private benefits of refugees. Refugees' preferences are important because they can explain the wide disparities in the numbers of refugees in European countries as well as so-called secondary movements of refugees. States have limited capacities to influence the preferences and destination choice of refugees (Thielemann, 2006, 2012). It therefore seems plausible that refugees and states play games with each other (Noll, 2003, 249) and that refugees only contribute to the public good if they can derive private benefits.

Rational strategies of states and refugees

The theoretical insights discussed in the previous sections serve as the basis for the formal model of European asylum policy. Before building the game-theoretical model, we compile a list of the underlying assumptions of the actors involved, i.e. states and refugees. These assumptions will allow us to define behavioural options and their payoffs. Conceptualising humanitarian protection as a public good assumes that all actors benefit from its provision. Participating states benefit from the public good by securing the border-free Schengen area and the legitimacy of the European Union, upholding human right standards and enhancing security and public order (see

Section *2*).[3] Refugees benefit from orderly access to protection, the defence of human right standards and the preservation of an open Schengen-area. States and refugees share a common aversion to a situation with irregular migration, security threats and undermined human rights. Accordingly, the first assumption is that:

Assumption A1: All actors (i.e. states and refugees) benefit from the provision of humanitarian protection as a public good.

States

In this section, we substantiate the assumption that states primarily perceive refugees as a burden to their economy and society, as well as a threat to political stability. While Western Europe welcomed refugees with open arms during the cold war as a signal of its superiority over the Communist regimes in the East (Loescher, 1989), today, states commonly perceive refugees as costs and denounce them for abusing too liberal protection regimes (Hatton, 2012; Lavenex, 2001). Suhrke (1998, 401) argues that many countries fear hosting too many refugees because they can threaten a society's political regime, its cultural identity, the socio-economic order and possibly national security. An increased 'securitisation' of migration discourses strengthens the perception of refugees as a threat (Hammerstad, 2014). Furthermore, popular opposition to refugee admission is common in European countries (Bansak et al., 2017) and public discourses associate refugees with economic burden (Baker et al., 2008). Higher numbers of refugees increase the likelihood of extremist violence against refugees (Koopmans, 1996) and the electoral fortune of radical-right parties (Hangartner et al., 2019). Therefore, states aim to minimise the number of refugees they accept in order to avoid social and political costs (Thielemann et al., 2010).

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[3] The estimated economic damage of the end of Schengen is between 471bn and 1.43 Trillion Euro for the years 2016 to 2025 (Böhmer et al., 2016).

Several observable implications follow the assumption that states perceive refugees as a burden. Although international law obliges states to provide protection to refugees, they apply various strategies to reduce the number of refugees they accept.[4] States have no interest in implementing overly liberal asylum policies that would increase their attractiveness as an asylum destination (Toshkov, 2013). In line with this expectation, countries across Europe tightened the access to asylum since the 1990s (Bernhard and Kaufmann, 2018; Hatton, 2005; Thielemann, 2005). States established the Dublin Regulation with the primary aim of reducing the numbers of asylum applications (Thielemann, 2008). Many member states opposed the further communitarisation of asylum policies when they expected a rise of asylum applications as a result of it (Zaun, 2017). States often pass the responsibility of refugee admission to other countries by allowing or assisting refugees to transit into neighbouring countries and leniently implementing immigration control (Eule, 2017; Schuster, 2003). Overall, the evidence suggests that countries aim to reduce their individual contribution to the public good and to free ride on the contributions of other countries, resulting in the following assumption:

Assumption A2: States perceive refugees as a burden to be minimised.

Refugees

This section develops the assumption that refugees have preferences about their destination country based on their perceived gains from protection in that country. We define refugees as humanitarian migrants in need of protection independent of their legal status.[5] On their flight, refugees often have specific ideas about where and how to find protection. Exogenous criteria,

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[4] All European countries signed the Geneva Convention of 1951 that outlaws the return of refugees to a country where they face serious threats to their life or freedom.

[5] We define refugees as migrants seeking humanitarian protection because this group represents the actual target group of asylum policy and because it covers the different legal statuses of refugees throughout the state-refugee interaction. Moreover, also persons who do not fulfill the criteria for humanitarian protection have rational preferences about their destination based on their expected utilities.

such as social networks, language links or labour market opportunities, influence the attractiveness of countries more than national asylum policies (e.g. Holzer and Schneider, 2002; Neumayer, 2004). Restrictive asylum policies exert a negative impact on refugee numbers but remain a minor factor in comparison with structural determinants (Hatton, 2017; Neumayer, 2004). Overall, push-factors in the countries of origin and structural determinants in the destination countries limit the impact of asylum policies on refugees' choice of destination (Thielemann, 2012). The empirical literature suggests that refugees aim to file an asylum request in the country where they see the best opportunities for their future.

Several observable implications follow the assumption of country preferences, starting with the unequal distribution of refugees across European states (Thielemann and Dewan, 2006). While according to the Dublin Regulation, the peripheral countries of first entry should be responsible for most asylum requests, in reality, prominent northern European destination countries, such as Germany or Sweden, receive similar numbers of requests as peripheral countries such as Greece or Italy.[6][7] This pattern is only plausible if refugees systematically undertake secondary movements and do not comply with the Dublin Regulation. The prevalence of secondary movements within Europe is also observable in the EURODAC database, which registers asylum seekers in all CEAS member states.[8] Empirical research demonstrates that people seeking asylum have prevalent aspirations to engage in secondary movements (Costello, 2012; Guild et al., 2014;

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[6] Asylum requests in 2015 were 476,510 in Germany and 162,450 in Sweden, compared to 83,540 in Italy and 13,205 in Greece (Eurostat 2018).

[7] The assignment of responsibility in the Dublin system is based on a hierarchy of criteria (Peers 2016: 295-305). While the country of first-entry rule is not first on the list, it is however, the most common assignment for irregular entries to the EU.

[8] Official reports recognize the persistence of secondary movements: 1. Council of the EU, Decision 2015/1523 Establishing Provisional Measures in the Area of International Protection for the Benefit of Italy and Greece. 2015. Online: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015D1523&from=EN 2. European Commission. Sixth Report on Relocation and Resettlement. Communication from the Commission to the European Parliament, the European Council and the Council. 2016. Online: http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160928/sixth_report_on_relocation_and_resettlement_en.pdf

Valenta et al., 2015). Brekke and Brochmann (2015) show that refugees often aim to avoid registration in the country of first entry and often do not change their aspirations to engage in secondary movements after they become registered in the country of first entry. The literature finds that the choice of secondary movement primarily depends on the same factors that determine the choice of destination country, such as labour market opportunities and general integration prospects in the state of residence (Rossi and Vitali, 2014; Schuster, 2011). Consequently, the prevalent absconding of refugees is a major reason for the inefficiency of Dublin transfers and backing out or refusal is common in established refugee relocation programs (EC, 2016, 6). The self-relocation of refugees is an essential feature of the European asylum system.

An increasing amount of literature examines the potential private benefits of humanitarian protection for refugees in their country of destination. This literature underlines the rationality of refugees' preferences. If refugees are distributed randomly without taking their preferences into account, their integration chances are hampered. As evidence from Switzerland suggests: Refugees placed in a linguistic region that corresponds with their language skills have substantially greater integration perspectives (Auer, 2017; Bansak et al., 2018). Similar findings emanate from Sweden where the placement of refugees in structurally weak regions had a negative effect on their economic integration prospects (Aslund et al., 2010). We can therefore assume that access to the resources of the destination country, such as family relations, linguistic ties and job opportunities, provides important private benefits to refugees. In sum, a broad range of empirical studies confirm the general idea that refugees have rational preferences about the country where they want to seek protection and that they are willing to accept substantial risks and costs to submit an asylum request in that country. These considerations yield the assumption that refugees make informed choices about their preferred destination country based on

motivations to maximise their future life prospects:

Assumption A3: Refugees have preferences about their destination country based on their perceived benefits of protection.

The provision dilemma of humanitarian protection

Based on these assumptions for states and refugees, we model the provision dilemma of humanitarian protection as a European public good. Previous work demonstrates that European asylum policy resembles a prisoner's dilemma (Noll 1997, 2003) or a Rambo/suasion game (Biermann et al. 2017). Whereas the former stresses that the mutual interaction of rational states undermines the provision of humanitarian protection, the latter proposes that asymmetrical power relations between states incentivizes less affected states to defect cooperation. Both game theoretical perspectives results in the under-provision of the public good in European asylum policy. The Rambo game is however not suitable to model interactions between states and refugees since it does not allow for the joint production of the public good by these two actors. In the following, we thus model a prisoners' dilemma and expand the standard two-actor state-centric model to a three-player game including refugees. First, we formalise the incentive structures for the players and then we model how states and refugees interact within the CEAS.

Incentive structures

Following the assumptions A1 and A2, we assume that states benefit from the provision of humanitarian protection, but also bear the costs of receiving refugees and thus aim to minimise the number of refugees they provide protection to. Building on Hatton (2017), we apply a quadratic value function and linear costs for receiving each refugee:

$$V_i = S(r_{i,})_i - p(r_i)_i$$

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with $S(r_i)_i = \alpha_i r_i - \psi_i r_i^2 + \lambda_i r_{-i}$ and $p(r_i)_i = p_i r_i$, where $\alpha_i < \lambda_i$ and $r_i, r_{-i} \geq 0$, $r_i + r_{-i} = N$

States, indexed by i, gain value $V(r_{i,})$ from the protection of refugees $S(r_i)$, minus fixed costs of reception. $p_i(r_i)$. α_i represents the benefit if a country receives a refugee itself, while $-\psi_i$ reflects diminishing tolerance with increasing numbers. λ_i represents the benefit if another country receives the refugee (which is preferred, since α is smaller than λ). In appendix A1, we derive the socially optimal shares for two countries with a state-centred perspective. For country 1, the number of refugees to be accepted (r_1) depends positively on $\alpha_1, \psi_2, \lambda_2, p_2$ and negatively on $\alpha_2, \psi_1, \lambda_1$ and p_1 (and vice versa for country 2). Humanitarian protection has public good characteristics: all countries reap its benefits but can maximise the individual utility by not accepting refugees and by shirking its responsibility to other countries (proof see appendix A2).

We now go beyond previous models based on the value functions of states by including refugees and their preferences. According to assumption A1, refugees gain utility by staying in any country that provides protection, but they have a strong preference to seek protection in their favoured country (assumption A3). We adhere to Djajic (2014) in assuming that an expected income, which varies among different locations, determines the utility function. The variety of parameters determining the preferences is condensed to a coefficient ε that leads to higher expected income and thus a stronger preference for one country. We have

$$V_R = U(c_i(w_i, \varepsilon)) \text{ and } V_N = \sum_{i=1}^{N} V_R^i$$

with $i = 1, 2$ depicting different countries and N the total number of refugees.

We have $c_i = w_i \varepsilon + A_0$ and $c_{-i} = w_{-i} + A_0$, whereby w_i and w_{-i} are fixed and A_0 describes an asset the refugee holds (see Djajic, 2014). Introducing ε allows us to account for heterogeneous preferences of refugees: ε determines the characteristics each refugee associates

with one country, based on personal and structural reasons, network effect, language and culture. The characteristics and associated expectations may not be reasonable from an objective point of view. Nevertheless, they determine the expected utility and thus the rational behavior given these preferences. We assume that $\varepsilon \sim f_\varepsilon$, where f_ε is a probability density function of the random variable ε.

From the refugees' perspective the social optimum in the two-country world, r_1^N is the share of refugees ωN, where $w_1 \varepsilon > w_2$ (see also appendix A3). The share for country 1 increases if $\omega N > r_1^*$, because $\frac{\partial V_N}{\partial r_1} > 0$.

Let us now assume that all refugees arrive in one country (country of first entry, typically a peripheral country at the external border of the EU). A refugee arriving in country 1 would be indifferent to staying in country 1 or moving to country 2 if

$$E(c_2) = (1 - \theta)(w_2 \varepsilon) + \theta w_1 + A_0 - p_{ill} = w_1 + A_0 = E(c_1)$$

where p_{ill} depicts the costs for the journey and θ represents the probability of being transferred back to country 1. We assume $A_0 > p_{ill}$, thus a refugee can afford an irregular journey.[9] A refugee would travel to country 2 if $\varepsilon > \bar{\varepsilon}$ with

$$\bar{\varepsilon} = \frac{(1 - \theta)w_1 + p_{ill}}{(1 - \theta)w_2}$$

The higher (lower) the expected income in country 2 (country 1), the lower θ and p_{ill}, the lower $\bar{\varepsilon}$ and thus the higher the share of refugees ηN[10] that aim to travel from country 1 to country 2.

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[9] Crossing the EU's internal borders bears low costs compared with crossing its external borders.
[10] We have: $r_1^N = N \int_{\bar{\varepsilon}}^{\infty} f_\varepsilon \, d\varepsilon = (1 - F(\bar{\varepsilon}))N = \eta N$

The model demonstrates that humanitarian protection has public good characteristics: Countries benefit by free-riding that allows to reduce their share of refugees (proof see appendix A4). Refugees with $\varepsilon > \bar{\varepsilon}$ will travel to country 2, independent of the allocation following the social optimum. All actors will maximise their private utilities instead of contributing to the public good.

An application to the Dublin Regulation

We will now employ this model to analyse the current European asylum policy in the context of the Dublin Regulation, the primary instrument of the EU to solve the public good dilemma. We use a sequential game to formally determine the benefits for each actor depending on the other actor's decisions. In the following, we use the notation R for refugee and N for the total number of refugees, E depicts a country of first entry and D the preferred country of destination.

As above, the provision of the public good (humanitarian protection) depends on the contribution of all actors. We depict the set of actions for the actors as $S_A =$ (Accept (A), Not Accept (NA)) who will choose their strategy in a fixed order. States can accept their responsibility as protective state and undertake the corresponding actions (registration and procedure of asylum request) and thereby contribute to the public good. Or, they can choose non-acceptance, which implies that they encourage secondary movements and the 'waving through' of refugees to other countries or request transfers to another country. The contributing behaviour of a refugee to the provision of the public good signifies the acceptance of a country as the protective state. Non-contribution, on the other hand, represents the non-acceptance of a country as a protective state and the preference to seek protection in another country. This occurs through the avoidance of registration and/or an irregular secondary movement.

The Dublin Regulation typically assigns the protection responsibility to the country of first entry. Only if two countries assume the role of E by margins that follow the optimal share, the benefits/costs would be optimally allocated from a state-centred social perspective. However, as discussed in section 1, some countries are prone to being rather E and others are prone to being rather D. To model this asymmetry, we assume the most extreme case, where all refugees arrive in one country (E). We then have $r_E = N$ and $r_D = 0$. Accordingly, the costs and utilities that correspond to the value functions of the actors are given by

$$V_E = \alpha_E N - \psi_E N^2 - p_E N$$

$$V_D = \lambda_D N$$

$$V_R = U(c_E)$$

The allocation of responsibilities does not take refugees' preferences into account. We assume that all refugees prefer to seek protection in country (D), thus $\bar{\varepsilon} \to 0$. Thus, R enters E and would have to stay there, but strongly prefers to seek protection in D. As a rational actor, R does not accept the responsible state E as host. Instead, R moves on to D for a cost of p_{ill}. D can either assume responsibility for R or it can attempt to transfer R back to E. We denote the probability of a successful transfer by θ.[11] For R the benefit of potentially being able to stay in D is higher than the benefit of staying in E and saving the costs of a secondary movement (thus $\varepsilon > \bar{\varepsilon}$). Hence, maximising private utilities means that R moves to D, where D aims to transfer R back to E. As a result, the dominant strategy for players R and D is to not accept, while E would be indifferent.

To align the model more closely with the functioning of the CEAS, we include additional assumptions. In particular we denote higher reception costs in the case of a refugee transfer by

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[11] Given the low numbers of successful Dublin transfers (see p.5), one can assume θ to be low.

p_i', due to additional costs including coordination and transportation costs, which accrue to the country that becomes responsible for the asylum request. With a given transfer probability of θ, the utilities change to:

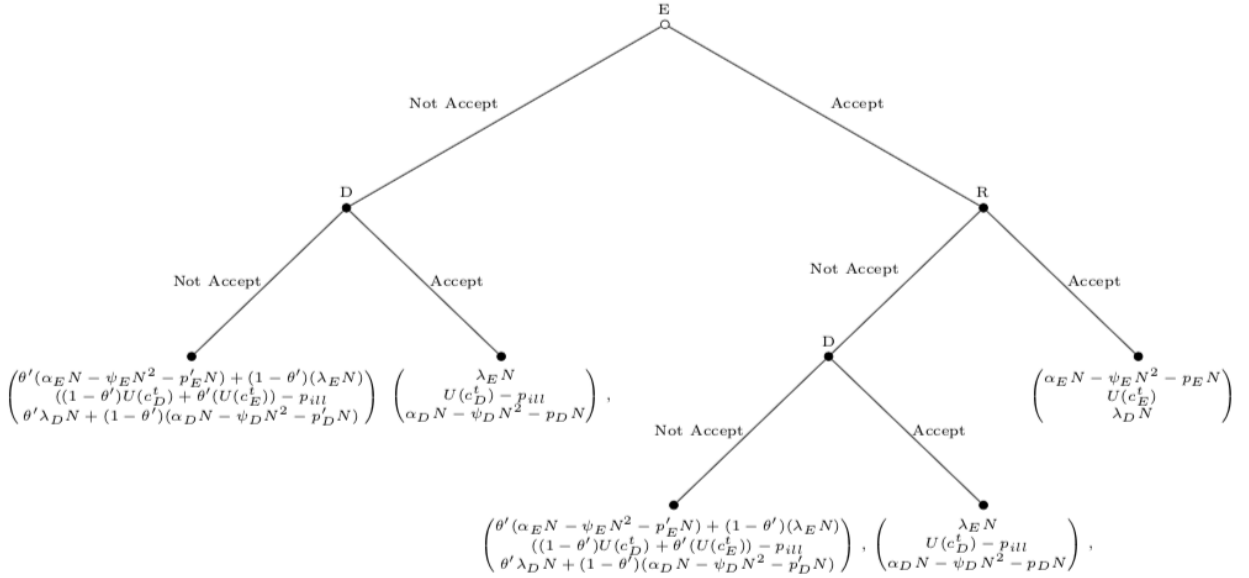$$V_E = \theta(\alpha_E N - \psi_E N^2 - p_E'N) + (1 - \theta)\lambda_E N$$

$$V_D = \theta(\lambda_D N) + (1 - \theta)(\alpha_D N - \psi_D N^2 - p_D'N)$$

$$V_R = \theta U(c_E) + (1 - \theta)U(c_D) - p_{ill}$$

As we have shown before, E has lower costs if R moves on to another country. Hence, E benefits not only from a non-acceptance by R, but has also the incentive to encourage secondary movements ('waving through'). We assume that θ decreases to θ' if E does not register R ($\theta > \theta'$) because transfer requests are less successful without registration in the country of first entry. Nevertheless, as long as $(1 - \theta')(\alpha_D N - \psi_D N^2 - p_a'N) < \alpha_D N - \psi_D N^2 - p_D N$, D aims to transfer any R back to E.

Including those two amendments E will decide to not accept the responsibility, R will move to D, and D will decide to accept neither. The equilibrium strategies for E and D are thus always *non-acceptance*. The sub-game perfect equilibrium is non-acceptance for E, R and D, i.e. (NA, NA, (NA, NA)). Following the transfer request (successful and unsuccessful), the respective country will eventually accept its responsibility for humanitarian protection, but total costs are higher due to p'_i and p_{ill}.

Figure 1: Sequential Game Tree. Payoffs read from top to bottom as (E, R, D)

$$
\begin{pmatrix} \theta'(\alpha_E N - \psi_E N^2 - p'_E N) + (1-\theta')(\lambda_E N) \\ ((1-\theta')U(c^t_D) + \theta'(U(c^t_E)) - p_{ill} \\ \theta'\lambda_D N + (1-\theta')(\alpha_D N - \psi_D N^2 - p'_D N) \end{pmatrix}
\begin{pmatrix} \lambda_E N \\ U(c^t_D) - p_{ill} \\ \alpha_D N - \psi_D N^2 - p_D N \end{pmatrix},
$$

$$
\begin{pmatrix} \theta'(\alpha_E N - \psi_E N^2 - p'_E N) + (1-\theta')(\lambda_E N) \\ ((1-\theta')U(c^t_D) + \theta'(U(c^t_E)) - p_{ill} \\ \theta'\lambda_D N + (1-\theta')(\alpha_D N - \psi_D N^2 - p'_D N) \end{pmatrix}
\begin{pmatrix} \lambda_E N \\ U(c^t_D) - p_{ill} \\ \alpha_D N - \psi_D N^2 - p_D N \end{pmatrix},
$$

$$
\begin{pmatrix} \alpha_E N - \psi_E N^2 - p_E N \\ U(c^t_E) \\ \lambda_D N \end{pmatrix}
$$

Implications of the model

In the following subsection, we discuss the implications of our findings for the provision of humanitarian protection in Europe. We show above that the dominant strategies for E and D are non-acceptance, thus not contributing to the public good. Both countries aim to reduce the share of refugees for which they are responsible due to the prisoners' dilemma. An important implication is therefore how the outcome would change if countries are either forced or incentivized to contribute to the public good.[12] The model demonstrates that even if E complies with the Dublin rules, R moves to D due to higher benefits of protection in that country. As a result, the public good is not effectively provided even when states decide to contribute to it due to persistent secondary movements by refugees.

This finding helps understanding the ineffective response of European countries to the 'refugee crisis' of 2015, when countries of first entry, such as Italy and Greece, were supported in the

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[12] While E's behaviour of non-contribution does not conform to the Dublin Regulation, the non-contribution of D by a transfer request conforms to it.

registration of migrants using a hotspot approach (Börzel, 2016). Member states were left with few opportunities for shirking their responsibility through the purposeful non-registration of refugees. As a result, the registration rate has increased substantially (Neville et al., 2016). Nevertheless, it has not reduced secondary movements and asylum requests in northern member states. Rather, the empirical pattern corroborates our model's prediction that state compliance is insufficient to establish efficient provision to the public good of humanitarian protection.

Discussion

The formal modelling depends on a series of assumptions about the behavioural options and payoffs of the actors involved. In this subsection, we discuss a range of boundary conditions in order to evaluate the scope and limitations of our model and suggest potential extensions of our analysis.

For states, we rely on the simplified assumption that they primarily perceive refugees as a burden that must be minimised. However, some scholars argue that humanitarian protection is not a pure public good and that it also contains private benefits for states (Betts, 2003). Other scholars assume that states primarily aim to have a proportional distribution of the responsibility and to contribute to the extent that other countries contribute as well their fair shares (e.g. Suhrke, 1998). Hence, these approaches assume that states perceive refugee admission as a burden, but that states are willing to contribute under certain circumstances. To model countries' preferences for a proportional share, one could for example adapt the value function and add a parameter that measures the disutility of a disproportional distribution. Nevertheless, the substantive outcome remains unaltered: The effective provision of the public good fails as long as the refugees' preferences differ from the state-centred optimal perspective.

For refugees we rely on the assumption that they have fixed preferences regarding their preferred country to seek protection. In reality, their preferences and the decision to move irregularly may vary along the journey and depend on refugees' risk behaviour. A refugee might not initially plan to seek asylum in a particular country but form this preference after being informed by peers about better job opportunities or by negative experiences in the country of first entry. A more vulnerable refugee, on the other hand, may be more risk-averse and avoid another irregular journey. While our model is based on a simplified notion of refugee preferences, the empirical data on secondary movements provides considerable support for the assumption that refugees prefer some countries over others as a protection destination. Similarly, one could argue that a refugee's destination preferences depend on the different recognition rates of countries. However, even in the case of their harmonization, there are large structural differences between states that shape refugees' preferences.

Furthermore, we have assumed that refugees can afford an irregular journey. Can states alter payoffs for refugees in favour of compliance? European countries have continuously increased their efforts to prevent secondary movements and to enforce the compliance of refugees with the Dublin Regulation. For several reasons, these efforts have limited effect on the payoffs of refugees. The immigration control literature shows that more restrictive asylum policies have limited deterrence effects (Thielemann, 2012), but increase the deflection of refugees into irregularity (Czaika and Hobolth, 2016). Furthermore, international law binds states to process asylum requests and the open Schengen-area permits largely uncontrolled movement within Europe. Forced relocation by Dublin transfers is costly for states and systematically ineffective as discussed above. The prevalent existence of secondary movements by refugees across Europe, despite concerted political efforts to prevent them, suggests that policies are not able to increase their costs to the level of the perceived benefits in the destination country. In sum, we conclude

that states have limited capacities to enforce the compliance of refugees whose payoffs are primarily determined by structural factors.

Conclusions

The EU member states introduced the CEAS in order to establish a common refugee protection system. The prevalent non-cooperation of states and the secondary movements of refugees repeatedly highlight the malfunctioning of the CEAS. The so-called 2015 'refugee crisis' led to a suspension of the Dublin Regulation and to unilateral deterrence measures in countries, such as fences and the re-introduction of border controls (Bauböck, 2017; Niemann and Zaun, 2017). The public good of humanitarian protection was insufficiently provided, which resulted in severe human suffering and which profoundly endangered the European integration project (Costello and Mouzourakis, 2016; Zaun, 2017).

Previous literature analyses European asylum policy using the framework of a prisoner's dilemma based on the interaction between states. We expand the analysis by developing a three-player game-theoretical model. To overcome the state-centred perspective of the provision of the public good, we include the agency and strategic behaviour of refugees. Empirical evidence informs our theoretical model: We assume that states perceive refugees as a burden to minimise and that refugees choose a destination country in order to maximise their future life prospects. Thus, all actors have incentives to maximise their utility. States attempt to reduce their private costs and refugees seek to increase their private benefits. In order to provide the public good of humanitarian protection at lowest costs, refugee compliance must be ensured.

We show that a central blind spot in existing public good theories is that the rationality is only modelled with regard to states and not with regard to refugees. More broadly speaking, the

current political and policy debates consider the very idea that refugees should be able to exert any choice as an anathema. This paper suggests that the agency of refugees should be incorporated into the analysis of international asylum policy. While functionalist theories of European integration argue that states must cooperate in order to ensure state compliance, our approach demonstrates that states and refugees must cooperate in order to ensure an effective European asylum system. Our model shows that efforts to increase the enforcement of state compliance (i.e. through sanctions) or of refugees (i.e. through securitisation) are unlikely to overcome the provision dilemma of the CEAS. Furthermore, responsibility-sharing mechanisms, including the introduction of a fixed allocation scheme, do not result in the provision of the public good when the allocation opposes the fundamental interests of the refugees seeking protection.

This article taps a broad empirical literature and it theoretically shows why the strategic behaviour of refugees should be taken in to account when devising asylum policies. We can think of two reasons why the strategic behaviour of refugees has been largely omitted so far. First, the CEAS rests on a strong state-centric view of humanitarian protection, which focuses on policy harmonization and the establishment of minimum protection standards in national asylum policy (Kaunert and Leonard, 2012).[13] Second, the negative social construction of refugees as a target group may have led to a perception of refugees as a threat to be contained or a burden to be lessened, instead of a policy target group with its own agency and with credible motivations to (non-)comply with European asylum policies.

The current dysfunctionality of the CEAS is the result of a conflict between national interests and the rights of refugees (cf. Boswell, 1999). As such, it is not surprising that policies prioritise state

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[13] The provision of 'double voluntarism' requiring the consent of both states and refugees, is mentioned in the 2001 Directive on temporary protection (2001/55/EC), but it is absent in the Dublin Regulation.

interests over the interests of refugees. However, our findings suggest that neglecting the strategic interests of the policy target group incentivises their non-compliance with the common responsibility to provide humanitarian protection and creates negative externalities. States face a trade-off between enforcing their sovereignty over the distribution of asylum responsibilities and the effective provision of humanitarian protection. The European Parliament partly acknowledges this in its 'Wikström Report' and recommends establishing a permanent and automatic quota-based allocation with limited elements of choice for refugees (Wikström, 2017). Some scholars recommend immigration quotas that match refugees and host countries based on their mutual preferences (Fernandez-Huertas Moraga and Rapoport, 2015). The most far-reaching proposals include refugees' free choice of destination country combined with the sharing of the norms and financial burden associated with refugee admission (e.g. Lutz et al., 2017; SVR, 2015, 76-80). In any case, the public good of humanitarian protection requires an international regime in which both states and refugees engage in cooperative behaviour. We demonstrate that privileging state interests over refugee interests is likely to hamper the long-term resolution of the collective action problem in European asylum policy. Scholars and policy makers should therefore examine the agency of refugees in international humanitarian protection in order to develop a more encompassing understanding of asylum policies and their effects.

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