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An Independent Norms Entrepreneur? The European Commission and Asylum Rights

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ABSTRACT

Within the European integration literature, there exists a strong consensus that the co-decision II procedure has increased the European Parliament's policymaking power at the Commission's expense. This essay challenges these claims. It finds not only that the literature overstates the Commission's losses, but that it overlooks the diverse ways that Parliament has enhanced the Commission's ability to translate its preferences into policy. Two comparative case studies of recent EU asylum legislation (the Return Directive and the first and second Reception Directives) develop new theories of 'position insulation' and 'strategic discourse development'. Both suggest that Parliament has increased the latitude by which the Commission can function more assertively (though not entirely independently) as a norms entrepreneur in ways that are unavailable under the other legislative procedures.

Within the European integration literature, there exists a strong consensus that the co-decision II procedure has yielded absolute reductions in the Commission's capacities to influence EU policy. Rational choice institutionalists, the primary proponents of this opinion, focus on the European Parliament, arguing that its rise to co-legislator status came at the expense of the Commission's agenda-setting powers. In this essay, I build on the innovative analyses of Rassmussan (2001, 2003) and challenge these claims. I find not only that the literature overstates the Commission's losses under co-decision II, but that it overlooks the diverse ways that Parliament has enhanced the Commission's ability to translate its preferences into policy. Most importantly, I suggest that Parliament has increased the latitude by which the Commission can function more assertively (though not entirely independently) as a norms entrepreneur in ways that are unavailable under the other legislative procedures. This I observe through two hypothetical dynamics: 'position insulation' and 'strategic discourse development'.

The following analysis serves two purposes: first, to develop these models further, and second, to substantiate them empirically. I present two comparative studies that engage with the same policy issue: the allocation of free legal aid to third country nationals appealing negative decisions during the asylum process. Both examine whether Parliament's presence has affected the Commission's powers to promote its preferences. They do this by evaluating the procedures in which, according to the literature, the two institutions experience the greatest discrepancies in formal influence: the consultation and co-decision II procedures. Analyses of the first Reception Directive (consultation), its redraft (co-decision II), and the Return Directive (co-decision II) function as empirical backdrops.

Six sections divide the remainder of this paper. Section 2 evaluates the dominant literature on co-decision II and places my theories of 'position insulation' and 'strategic

discourse development' within a wider context. Section 3 elaborates the methodology I use to measure Parliament's impact on the Commission. Sections 4 and 5 describe the substance of my studies and provide them with corresponding analyses. Finally, Section 6 discusses the implications of this research on studies of the EU legislative procedures and asylum policy.

The Literature: Theories and Gaps

Since its introduction in 1999, co-decision II has received enormous attention from the political science community. A number of theoretical and empirical studies have addressed how the procedure has shaped EU policymaking and whether it has impacted the distribution of legislative power among the institutions. I begin this section with a short description of co-decision II and the four procedures that preceded it. This provides basic tools to understand the highly technical discussions that follow (for a more complete breakdown, see Hix 2005: 77-79; Wallace 2005: 51, 66). I continue with an analysis of the dominant literature and focus particularly on its presentations of the Commission's relationship to Parliament. I then detail my theories of 'position insulation' and 'strategic discourse development', explaining how they respond to gaps in current scholarship.

The Procedures

The Treaty of Rome (1957) introduced the first and most simple legislative procedure: *consultation*. Under its terms, the Commission and the European Council function as dominant policymakers, each enjoying its respective monopoly over agenda-setting and decision-making. While the Commission proposes an item for legislation, the Council decides whether and how it becomes a law. The Council can approve the Commission's original text by a qualified majority

(roughly 5/7 of weighted votes), but can amend it only through unanimity. Parliament has a more limited role. It can propose non-binding amendments before the Council's decision, and can delay the legislative process under most circumstances by failing to release an opinion promptly.

The Single European Act (1986) introduced additional steps to consultation by implementing two new procedures: *co-operation* and *assent*. Under co-operation, Parliament no longer can delay legislation; however, it can review the Council's initial decision through a second reading, and issue a series of potentially binding opinions: it can approve the proposal (in which case the text becomes law), reject it (in which case the legislation fails unless reaffirmed unanimously by the Council), or propose amendments (which, if approved by the Commission, can be accepted by a qualified majority of Member States or overturned through unanimity). The assent procedure modifies co-operation slightly, by replacing Parliament's amendment capacities with a straightforward veto that the Council cannot overturn.

The EU legislative process became more complicated under the Maastricht Treaty (1993) with the introduction of *co-decision I*. This modified co-operation by placing Parliament and the Council in a Conciliation Committee if Parliament rejected the Council's initial position or amended it in a way that the Council did not approve. The Conciliation Committee works to broker an agreement between Parliament and the Council, and is composed of an equal number of representatives from the two institutions. If the Parliament and Council representatives reach an agreement, their respective bodies must approve a compromise text to ratify it. If conciliation fails, the Council reserves the right to reaffirm its initial position with a positive vote from a qualified majority. This text becomes law if Parliament fails to reject it explicitly after six weeks.

The Amsterdam Treaty (1999) replaced co-decision I with a simplified version (*co-decision II*). It made conciliation the final stage of the legislative process and removed the

Council's capacity to reissue its position if conciliation fails. Co-decision II now operates as the EU's 'ordinary procedure' and governs the majority of policy issues, including asylum.

What the Literature Says

Over the past two decades, rational choice institutionalists have dominated comparative studies on the EU legislative procedures. Although severe disagreements characterize their discourse, virtually all scholars maintain the same four conclusions.

First, they find that the Commission's capacity to translate its preferences into law have diminished consistently with the introduction of each legislative procedure. Accordingly, they maintain that the Commission's powers are greatest under consultation and weakest under co-decision II. Crombez (1996, 1997, 2000) and Garrett (1995) offer the most detailed account of the Commission's steady fall. They observe that the Commission's strength under consultation stems from its shared policymaking monopoly with the Council. In the absence of a strong Parliament, the Commission only needs to consider the Council's preferences in order for its proposal to survive. The simplicity of this relationship gives the Commission considerable latitude to tailor a proposal toward its ideal position. So long as it considers the preferences of a qualified majority, it effectively can 'choose the policy it prefers most' (Crombez 1997: 99). Parliament's exclusion from decision-making also increases the Commission's capacity to secure legislative allies. With only the Council to consider, the Commission can focus its attention more narrowly and cultivate the support it needs to push through its agenda (Garrett 1995: 291).

According to Garrett and Crombez, co-operation, assent, and co-decision make these tasks more complicated. As decision-making splits between two independent institutions, the Commission confronts a greater 'heterogeneity of preferences' (Crombez 1996: 223). This

moves the policymaking game out of the Commission's favor, by forcing the Commission to accommodate a greater number of positions that may deviate from its own. It also reduces the chances that the Commission's position will pass unchanged, by adding additional amendment and veto players. In this vein, the literature pays considerable attention to the conciliation procedure. All studies conclude that it structurally isolates the Commission from the most decisive phases of the policymaking process. As Garrett (1995: 303) observes, conciliation gives the Council and Parliament unique opportunities to develop legislative proposals in a context where the Commission 'plays no formal role'. He continues, 'The result of this institutional innovation is that the Commission's preferences need not be taken into account because it is structurally unable to affect the decisions of Parliament and the Council.' Crombez (2000) and Tsebelis and Garrett (2000: 11) confirm these conclusions, but specify that conciliation is most detrimental to the Commission during co-decision II. Ending the process at conciliation eliminates all possibility that the final legislative draft will incorporate the Commission's preferences, since the reversion text tends to reflect the initial proposal (Crombez 1997: 113). Under this new scenario, the Commission's position becomes 'completely irrelevant' (Crombez 2000: 53).

Second, there is widespread agreement that Parliament's influence has expanded exponentially since the introduction of co-operation. Nearly all scholars confirm that Parliament has 'no substantive role' under consultation, primarily because none of its possible interventions are binding (Crombez 1996: 205; Tsebelis and Garrett 2000: 13). Scully (1997a: 60) also notes that the most potent of Parliament's powers (the capacity to delay legislation) is equally weak, because the European Court of Justice has forbidden its use in 'urgent' policy areas. The introduction of the co-operation and assent procedures changed this arrangement. Most scholars

(with the exceptions of Moser 1996 and Steunenberg 1994) find that co-operation's allocation of a stronger amendment power allows Parliament to function as a 'conditional agenda-setter' for the Council – conditional in that its amendments require the Commission's approval. This severely limits the Council's decision-making autonomy, because the Council can reject Parliament's amendments only through unanimity (Tsebelis 1994, 1996, 1997; also see Garrett 1995: 294; Garrett and Tsebelis 1996; Tsebelis and Garrett 1997, 2000, 2001; Kreppel 1999; Corbett et al. 2005: 206). The assent procedure has similar effects, having provided Parliament with the power to block the Council's common position (Scully 1997a: 61). Generally, scholars agree that Parliament has reached the height of its power under co-decision II. As Tsebelis and Garrett observe, the conciliation procedure and (most importantly) the removal of the reversion text placed the Council and Parliament on even ground as 'co-equal legislators' (2000: 24). This allows Parliament to shape policy without having to face the Council's 'take-it-or-leave-it' proposal when conciliation fails.

Third, the literature concludes that Parliament's rise to power came at the direct expense of the Commission. Scholars disagree over whether this was a continuous process – diverging over whether Parliament continued to steal the Commission's agenda-setting powers under co-decision I (see Scully 1997a, 1997b, 1997c; Crombez 1997: 112; Moser 1997; Garrett and Tsebelis 1996: 291; Tsebelis and Garrett 1997; 2000; 2001; Corbett 1994: 209-210). Still, all suggest that this relationship was mostly causal. With the introduction of co-operation, the Commission shared agenda-setting power with Parliament; with co-decision I, agenda-setting extended to the Council; and with co-decision II, it became completely monopolized by the conciliation procedure, in which the Commission takes no part (Garrett 1995: 305; Crombez 1997: 99; 2000: 53; Garrett and Tsebelis 1996: 290-291; Tsebelis and Garrett 2001: 359).

Fourth, there is overwhelming consensus that the Commission has suffered absolute losses with the introduction of each new legislative procedure. Very few studies explore whether the strengthened Parliament can benefit the Commission, particularly when their powers realign most significantly under co-decision II. While several scholars note the salience of inter-institutional alliances under the new legislative procedures, none extends these discussions to include the Commission and Parliament simultaneously. For example, Tsebelis and Garrett (2000: 26, 32) hypothesize that the Commission is likely to side with the Council when the Member States disagree with Parliament. They argue that the respective powers of Parliament and the Council over Commissioner removal and nomination shape this distribution of alliances. Crombez (1996) similarly dismisses the possibility of a Commission-Parliament partnership. While he affirms the hypotheses of Bogdanor (1989) and Corbett (1989: 363) that such a relationship could work in the Commission's favor, he suggests that Parliament's preferences are too unique for this to happen (Crombez 1996: 219-220). Finally, a number of scholars note how the new procedures bring the institutions into more intimate contact with one another as the number of relevant actors in the policy process increases. Garman and Hilditch (1998), Shackleton (2000) and Farrell and Héritier (2003, 2004) particularly observe that repeated interactions have created shared norms, informal institutions, and opportunities to expand powers beyond constitutional limits. However, these latter studies focus exclusively on Parliament and the Council under conciliation, and ignore the Commission completely.

Rassmussan (2001, 2003) uniquely deviates from these opinions. While she accepts that the introductions of new legislative procedures placed the Commission increasingly at a structural disadvantage, she argues that they preserved some of its informal powers, even under co-decision II. Specifically, these include the ability to strategically influence the 'tabling and

adoption of amendments and compromise texts' (2003: 9). She also suggests that a stronger Parliament may benefit the Commission, by permitting it 'to push forward its concerns to a much greater extent than in other legislative procedures where the Parliament's opinion is merely advisory or the Parliament does not have a final veto' (6). Still, she fails to develop this idea any further.

To summarize, the dominant literature concludes that 1) the Commission is strongest under consultation and weakest under co-decision II; 2) Parliament is weakest under consultation and strong (if not strongest) under co-decision II; 3) Parliament's ultimate rise came largely at the expense of the Commission's formal agenda-setting powers; and 4) the Commission suffered absolute losses during this process.

What the Literature Does Not Say

In the paragraphs that follow, I present three critiques of these conclusions. Ultimately, I find that the discourse underestimates the Commission's capacity to benefit from the strengthened Parliament, particularly under co-decision II. These observations segue into more elaborate discussions of my 'position insulation' and 'strategic discourse development' theories.

First, I find that the dominant literature overvalues the Commission's relationship to the Council under consultation. Crombez, Garrett, and Tsebelis argue that the Commission profits from a one-on-one relationship with the Council. Under this arrangement, it can craft its proposal to capture the preferences of a qualified majority of Member States, and can do so without the distraction of another actor's presence. This position relies on two assumptions: first, that the preferences of the qualified majority are likely to align relatively closely to those of the Commission, and second, that the presence of a third actor (i.e. Parliament) is naturally

distracting. I return to this second assumption shortly. For now, I focus on the first, and observe that it is misguided. Suggesting that the qualified majority's range of preferences generally falls close to the Commission's ideal position is dangerous, because it ignores a wealth of scholarship that confirms the opposite. The EU integration literature concludes that the Commission and Council have oppositional preferences, especially on the isolated issue of integration. While the former favors more integration in order to boost its capacities as a supranational actor, the latter prefers less integration for fear of losing its sovereignty (Stone Sweet and Sandholtz 1997; Cram 1997: 154-158; Pollack 1997: 121-124; 2003: 36; Hörl et al. 2005: 594, 598-599; Thomson et al. 2006; also see Keohane 1984: 88; Moravcsik 1993: 507). Some critical studies (namely Thomson 2008, and Wonka 2007, 2008) find that national interests may drive Commissioner behavior; however, they do not go so far as to suggest that this dilutes the Commission's integrationist preference substantially. Nor do they conclude that it cultivates a reliable legislative partnership between the two institutions, as Tsebelis and Garrett imply (Wonka 2007: 186).

Considering these perspectives, the Commission seems to gain little from a game where the Council is the only other relevant player. One-on-one engagement may encourage the Commission to promote its position in a more focused manner; however, conflicting preferences and the Commission's persistent exclusion from decision-making (even under consultation) reduce its opportunities to influence the Council's behavior radically. This arrangement does not mean that the Commission is powerless to draft a passable proposal that reflects its interests, or that it rarely finds allies in the Council. However, the disparity of interests that exists between these actors does suggest that the Commission's task of winning a qualified majority's support is more difficult than the rational choice institutionalists present.

Second, I find that the dominant discourse overstates the threat that the strengthened Parliament poses to the Commission. Nearly all scholars (especially Crombez) note that Parliament challenges the Commission by introducing more preferences to the policymaking game; however, they fail to observe that preference heterogeneity only works against the Commission when those newly introduced preferences conflict *a priori* with its own. This is not the case of the Parliament. Once again, the EU integration literature overwhelming concludes that Parliament and the Commission broadly share integrationist preferences. Ironically, the models of the rational choice theorists have been instrumental in advancing this claim (see Tsebelis 1994, 1996, 1997; Garrett 1995; Tsebelis and Garrett 1997; Tsebelis and Kreppel 1998). As Hix (2005: 103) summarizes, all assume that 'the Commission and the EP are more pro-integrationist than most Member States'. This does not suggest that Parliament and the Commission enjoy a principal-agent relationship: Parliament does not always accept the initial proposal, and the Commission does not always endorse Parliament's amendments. Yet, this does imply that their range of overlapping preferences is far greater than those that may exist respectively between the two institutions and the Council.

This reality of preference overlap has several implications on the literature's conclusions. First, it weakens Crombez's (1996) claim that Parliament's presence poses an absolute challenge to the Commission's initial proposal. Any amendment that Parliament proposes is likely to promote a pro-integration agenda and therefore fall within or at least near the Commission's range of preferences. Second, overlap reduces the likelihood that Parliament's removal power would discourage any possibility of coordination between the Commission and Parliament, as Tsebelis and Garrett (2000) surprisingly suggest. While it remains highly unlikely that Parliament could (or would) try to dissolve the Commission for failing to advance Parliament's

interests, this threat diminishes further when the two institutions favor similar agendas, as they do here. Finally, overlap invites an application of the informal relationship theories of Garman and Hilditch (1998), Shackleton (2000), and Farrell and Héritier (2003, 2004). Certainly, the Commission and Parliament do not benefit from as intimate a context as the Conciliation Committee to cultivate these dynamics. Nonetheless, similar preferences and repeated interactions provide substantial opportunities to develop shared norms, rules, and expectations.

Third, I find that the literature undervalues the Commission's relationship to the strengthened Parliament. In consultation, the Commission has minimal opportunities to compel the Council to accept a pro-integration position; yet, in the subsequent procedures, its position naturally receives more protection once the sympathetic Parliament gains co-legislator status. As the Council's monopoly over decision-making deteriorates with the introduction of each new procedure, Parliament's power intensifies and the presence of a pro-integration position strengthens. By co-decision II, the pro-integration agenda has a solid place in the decision-making process via Parliament. With legislative powers split evenly, the Council has no opportunity to dismiss this position as it could under consultation. In consequence, the Council must consider this position, especially when a qualified majority prefers policy reform to the status quo.

This arrangement has several profound implications for the Commission. First, it allows its pro-integration position (or one close to it) to survive the legislative process in ways that are not possible when Parliament is weak or absent. Second, the expectation of Parliament's pro-integration advocacy may encourage the Commission to release a proposal that corresponds more closely to the Commission's ideal position than to the preference range of the qualified majority. So long as the text broadly aligns with Parliament's preferences (and this can happen

with minimal cost to the Commission since their preferences overlap), the Commission can hedge on the co-legislator Parliament to protect this more extreme position during conciliation. Third, this capacity (via Parliament) to push through a more ideal policy may allow the Commission to act more assertively, developing policy norms that more closely align with its pro-integration preferences. This is an option that the Commission lacks under consultation, because the Council is likely to reject a proposal that deviates too greatly from its nationalist preferences.

These observations paint a more optimistic picture than the rational choice institutionalists. While co-decision II may take the Commission 'out of the game', as Garrett notes (1995: 303, 305), it introduces through Parliament a powerful player – one that not only can act on the Commission's behalf but that can win the game more easily than the Commission ever could on its own. Co-decision II also maximizes the Commission's capacities to shape the rules of the game in its favor. The right of initial proposal equips the Commission with significant powers. Not only does it allow the Commission to set the baseline pro-integration position for the debate that follows; it also permits the Commission to legitimize this position through data and third-party opinions before decision-making begins. Under consultation, these developments fall on deaf ears, since the Council's qualified majority is likely to favor a position that is less integrationist than the Commission's ideal preference. Under co-decision II, the Commission has a receptive audience in Parliament, which can consider this position and inject some form of it into the legislative process. Since compliance is not guaranteed (again, Parliament is not the Commission's agent) the Commission gains by developing a fully researched proposal, increasing the likelihood that Parliament will adopt a position that does not deviate too greatly from what the Commission finds ideal. Thus, thanks to Parliament, the initial

proposal gains new potential to insert the Commission's voice into procedures in which the institution enjoys no formal presence. It therefore seems inappropriate to call the Commission's initial position 'irrelevant' under co-decision II, as Crombez concludes (2000: 101).

To summarize, my three critiques illustrate that the dominant literature fails to identify the significant ways that the Commission may profit from Parliament's strengthened position under co-decision II. I develop two theories to respond to this void in the discourse. Both build upon my arguments from the previous section and streamline them into structured hypothetical processes.

Filling the Gaps: Two New Theories

I call my first theory 'position insulation'. It assumes that Parliament will use its structurally advantageous co-legislator status to shield from the Council's veto a pro-integration position that sympathizes with the Commission's preferences. If Parliament agrees fully with the Commission's proposal, it may push it through unchanged. If Parliament disagrees, it will amend it, but is unlikely to make radical changes, since Parliament's preferences overlap considerably with the Commission's. In conciliation, Parliament can use bargaining tools beyond the Commission's capacities to compel an agreement from the Council's qualified majority.

My second theory is called 'strategic discourse development'. It assumes that the Commission is aware of Parliament's preferences and will expect Parliament to insulate its position based on previous interactions. This expectation will prompt two possible responses from the Commission. First, it may align its proposal more closely to its own ideal preferences, recognizing that Parliament will likely embrace them (particularly the more integrationist ones) and help translate them into law. Second, the Commission may legitimize its position

aggressively by issuing more affirming documents to support its proposal. These include in-house research, third-party studies, as well as conclusions from meetings with relevant stakeholders. These actions may serve to compel Parliament to issue fewer amendments and thus deviate less from the initial proposal. They also may convince the Council's qualified majority to embrace this position more willingly after Parliament's defense in conciliation. In either case, 'strategic discourse development' suggests that Parliament's presence can encourage the Commission to capitalize on its capacities to influence policy discourse more effectively than it could if Parliament were weak or absent.

Methodology

In an effort to root my theories in empirical realities, I examine data from the legislative processes of three EU directives: the first Reception Directive ('Reception 1'), its redraft ('Reception 2'), and the Return Directive. The selection of these cases is not haphazard. All three offer an ideal environment to measure Parliament's impact on the Commission, and control for case-specific particularities that otherwise may skew their results. First, they permit an evaluation of the Commission's sensitivity to Parliament at moments of extreme power asymmetry. Reception 1 operates as a laboratory for observing the dynamics during consultation – when the Commission is strongest and Parliament is weakest. Reception 2 and the Return Directive serve similar functions for co-decision II – when the Commission is weakest and Parliament is highly (if not most) powerful.

Second, the cases occur within constrained and overlapping timeframes. Reception 1 and 2 take place respectively from 1995 to 2003, and from 2006 to 2010. The Return Directive

unfolds between 1999 and 2008. This arrangement works to reduce the effect of any time-sensitive disparities that may influence the behavior of the institutions.

Third, all three cases engage with the same policy issue: the allocation of free legal aid to third country nationals appealing negative decisions during the asylum process. My studies of Reception 1 and 2 look specifically at the capacity of asylum seekers to appeal any reductions or withdrawals in their material reception. My study of the Return Directive focuses on the appeal of orders to return to a country of origin.

I should pause here to note that the general scopes of the Return and Reception Directives are not identical. While they apply equally to asylum seekers, only the Reception Directives engage with this class of migrants specifically. The Return Directive focuses more broadly on irregular third country nationals, who may or may not seek asylum formally. This is an important distinction to make, particularly within the context of a study that blends these directives together in such a systematic fashion. To avoid making the inaccurate suggestion that asylum seekers and irregular migrants are always one in the same, I consider the Return Directive narrowly as a text that *may* (but does not always) apply to asylum seekers. Three conditions allow me to do this. First, the Return Directive specifically identifies ways that asylum seekers may fall under its purview: when they remain within the EU after the expiration of legal stay and/or upon the formal rejection of an asylum claim (Council and Parliament 2008: Recital 9). Second, the migration and asylum literature provides numerous studies on how asylum seekers may fall in and out of irregularity, thus exposing them to the return procedures that the directive outlines (as an example, see Kraler 2009: 9-13). Third, the EU institutions have packaged the Return Directive as part of their efforts to construct a Common Asylum System, linking it to discourse on asylum reception, qualifications, and procedures (Commission 2003: 8-9;

Parliament 2009a: Point 26; Council 2008a: 1-4). By taking these precautions, my study avoids drawing any inappropriate or unjust conclusions about the legal status of asylum seekers within the EU.

My analysis also borrows several rudimentary assumptions from game theory. First, I assume that all actors have Euclidean preferences – in other words, the utility they derive from a given outcome steadily diminishes with spatial distance from their ideal preferences. This not only increases the accessibility of my study by simplifying the motivations behind actors' behaviors; it also invites more complete comparisons with the existing rational choice literature, which makes similar assumptions.

Second, I assume that individual policy debates do not operate as 'one-shot games', although I maintain that all actors play for the most immediate victories. This gives my analyses a crucial element of depth. On the one hand, it allows me to measure actors' preferences through their actions at the time. On the other hand, it permits me to examine how present patterns of cooperation may create expectations that guide future behaviors.

Third, I assume that actors behave rationally. All fully understand the workings of the legislative process and can reason backward from the end of the game in order to condition earlier moves that may guarantee preferable outcomes. I also assume that, at the moment of decision-making, actors have adequate information about one another's preferences and the location of the status quo. These assumptions distort reality minimally, because dense information networks, frequent interactions, and high levels of transparency tend to keep EU policymakers well informed.

Fourth, I assume that the Commission, Parliament, and Member States are unitary actors. Therefore, my analysis goes no deeper than the individual institutions (the Commission,

Parliament, and the Council) and ignores all sub-level sources of influence (Commission Presidents, Commissioners, Rapporteurs, Council Presidents, etc.). Although this framework oversimplifies the complexity of the policymaking process, it makes my study more accessible and cohesive than it could be under a multilevel analysis.

Finally, I assume that the preferences of relevant actors fall across a two-dimensional space. I use the same integration (I) / nationalism (N) divide as the literature, but impose an intersecting human rights (HR) / securitization (S) divide that the migration policy discourse often references (see Figure 1). It is important to discuss the implications of this arrangement. First, asylum policy discourse presents the HR/S divide in specific reference to the respective preferences of Parliament and the Council: while Parliament strongly advocates human rights and integration, the Member States tend to favor national securitization frameworks at the expense of allocating rights to third country nationals (see Bigo 1998: 204; Corbett et al. 2005: 307-309; Guiraudon 2000: 264; Huysmans 2000: 758-762; Thielemann 2009: 167-168; Guild 2003). While the literature does not place the Commission within this spectrum, I suggest through my case studies that the Commission favors Parliament's human rights preference.

Second, I should note that this arrangement is not absolute. S and N are not natural pairs; nor does reform always move in the direction of HR and I. Certainly, it is easy to imagine a policy debate in which policy moves away from HR while integration occurs along the lines of S. A counterterrorism directive provides a good hypothetical example. Nonetheless, the case of EU asylum policy is unique. The premise behind these directives is to raise human rights standards while implementing an effective community-wide mechanism. Furthermore, Member States are not allowed to lower their standards if their policies are more favorable to human rights than the provisions outlined in a directive. Finally, all EU directives strive to provide more

harmonized structures than existed before (see Commission 2010). As a result, EU-level asylum policy is likely to move in a direction that is more HR than S, and I than N; accordingly, the status quo tends to be more S (or better yet, less HR) and more N than the movement of policy. This is not to suggest that HR/I and S/N may be arranged as two poles along a one-dimensional space. As my analysis will demonstrate, it is highly possible (if not entirely likely) that actors will favor more I *and* less HR, or visa-versa. Thus, a movement toward I will not guarantee one towards HR, nor will a movement toward N guarantee one toward S. For this reason, it makes sense to split these preferences across two dimensions.

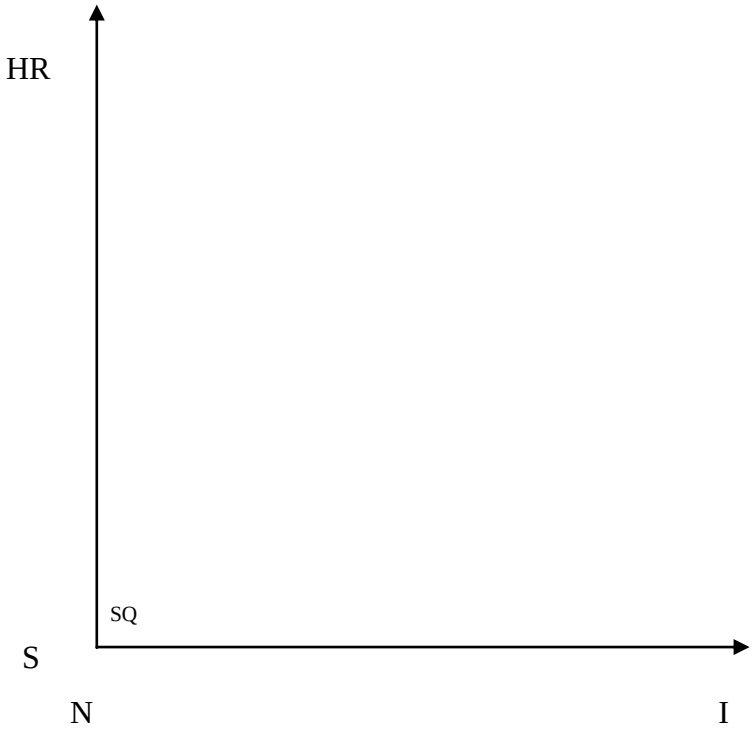

Figure 1. Possibilities for Preference Arrangement

The subsequent analysis proceeds in the following way. I sort my cases into two sections, each discussing my individual theories: 'position insulation' and 'strategic discourse development'. The first engages with Reception 1 and the Return Directive, while the second engages with Reception 1, the Return Directive, and Reception 2. I should point out that by the submission of this essay Reception 2 remained at the proposal stage. Unlike Reception 1 and the Return Directive, its legislative process had not yet finished. Parliament had released an amended text, but the Council had not issued its common position. A completed process would have been ideal, because it could have offered more diverse possibilities for data analysis. However, the directive's immaturity has little impact on my study in the end. Since the 'strategic discourse development' section focuses exclusively on the pre-legislative relationship between the Commission and Parliament, all observations on the Council's readings become superfluous.

Study 1: 'Position Insulation'

The Facts

In 2001, the Commission issued its proposal for what would become Reception 1. This document was submitted under the consultation procedure, since asylum had not yet transitioned to co-decision II. The text detailed several scenarios in which applicants could enjoy legal assistance while appealing the terms of their material reception. These included appeals made against restrictions on free movement within the Member State of application (Commission 2001a: article 7.5), access to free material assistance (Article 19.2), and access to free health and psychological care (Articles 20.5, 21.7). The proposal also included a provision that extended these entitlements to all unspecified scenarios where applicants could issue an appeal. It

explicitly framed legal aid as a ‘right’ that should be ‘free of charge when applicants cannot afford it’ (Article 22.5).

Parliament and the Council responded to these provisions differently. In plenary session, Parliament endorsed the Commission’s position, and did not propose any amendments on Article 22’s broad extension of free legal aid to all reception-related appeals (Parliament 2002). The Council, in contrast, made substantial modifications, which it then translated into law. First, it stripped away any language that could present legal aid as ‘free’ or as a ‘right.’ It also removed all explicit provisions that required Member States to develop legal assistance schemes where none had existed previously. While Article 21.2 guaranteed that Member States would develop ‘procedures for access to legal assistance’ to be ‘laid down in national law’, it failed to specify what these procedures would or should entail (Council 2003a). Second (and most importantly), the Council limited legal aid access to cases related to free movement restrictions (Article 21.1; also see article 7). Although it included a section broadly dedicated to the ‘reduction or withdrawal of reception conditions’, it did not include a single provision that guaranteed legal assistance in this context (Article 16).

Since the Council functioned as exclusive legislator, Parliament’s oppositional opinion had no effect, and the Council’s amendments dictated the drafting of the final legislative text. Effectively, this document reflected neither the language nor the spirit of the Commission’s initial proposal.

The development of the Return Directive followed a noticeably different dynamic. In 2005, the Commission issued its proposal, which fell under the co-decision II procedure. As in 2001, the text favored the rights of those who could possibly benefit from legal assistance schemes. Article 12 (‘Judicial Remedies’) specified that Member States ‘shall ensure…the

possibility to obtain legal advice, representation, and, where necessary, linguistic assistance' (Commission 2005a: article 12.3). It continued, 'Legal aid shall be made available to those who lack sufficient resources insofar as such aid is necessary to ensure effective access to justice'. The provision did not go so far as to specify whether assistance should be free.

Once again, Parliament and the Council received these provisions differently. In line with its 2002 behavior, Parliament supported the Commission's legal aid provisions. This time, however, it added language that modified these protections. Amendment 52 (Parliament 2007) submitted legal aid allocation to the terms of Article 3 ('Right to legal aid'), Article 5 ('Conditions relating to financial resources'), and Article 7 ('Costs related to the cross-border nature of the dispute') under the Directive on Improving Access to Justice in Cross-Border Disputes (Council 2003b). In so doing, Parliament endorsed a slightly less-integrationist position than the Commission, since Articles 3, 5, and 7 give Member States wide discretion to establish the terms of legal aid, its application, and its implementation. On the axis of human rights, however, Parliament's intervention introduced more substantive protections to the Commission's text, detailing scenarios in which Member States must provide 'assistance with' or 'exemption from' all costs incurred during legal proceedings (Council 2003b: article 3). It also guaranteed legal aid access to those who 'partially' or 'totally' cannot meet the costs of legal representation, and specified which benefits this assistance would cover: the allocation of a lawyer, interpretation, translation of documents, and necessary travel (Articles 3, 5, 7).

The Council also followed its behavior from Reception 1, and neutralized any language that threatened the resources and sovereignty of the Member States. In its common position, it deleted the Commission's needs-based provision, and replaced it with a more vague one: 'The third-country national concerned shall have the *possibility* to obtain legal advice, representation

and, where necessary, linguistic assistance' (emphasis added, Council 2007: 37). It also included that 'legal aid shall be made available in accordance with national legislation', but again failed to detail what Member States should draft. Overall, the Council's amendments had the same effect as those issued for Reception 1: they dissolved the strength of the Commission's legal aid guarantee by granting Member States enough flexibility to sidestep it.

Under consultation, the legislative process would have ended here, with the Council's amendments bypassing the positions of the Commission and Parliament. The Return Directive, however, fell under co-decision II, and thus the legal aid debate continued into conciliation. Initially, the Council refused to soften its stance, with six Member States (Austria, Estonia, Greece, Germany, Latvia, and Portugal) rejecting provisions that guaranteed mandatory free aid (Council 2008b, 2008c). By the spring, Parliament issued an ultimatum: it refused to release the Return Fund budget if the Council failed to agree with it on a legal aid provision (Peers 2008: 1). This was a powerful threat, particularly for Member States receiving large asylum flows. The Return Fund would offer hundreds of millions of euros (ultimately, 676 million) worth of assistance for national asylum procedures (Europa 2007). If Parliament did not release these funds, Member States would have to bear the costs of the asylum procedure alone. The Council was highly responsive to this. After drafting five compromise texts in total, it finally agreed on a settlement document with Parliament (Peers 2008: 2; also see Council 2007, 2008b, 2008c, 2008d; 2008e). Its language fully adopted Parliament's human rights amendments, but reaffirmed the Member States' capacity to specify in which circumstances legal aid is to be 'considered necessary' (Council and Parliament 2008: article 13.4).

Evaluation

The cases of Reception 1 and the Return Directive suggest that the co-legislator Parliament can ensure the translation of the Commission's preferences into a final legislative text. Most importantly, they reveal that Parliament can make this happen with greater success than the Commission alone can under consultation. In Reception 1, the Council's monopolization over the legislative process gave it full capacity to eliminate the provisions it did not favor in the Commission's proposal. In the Return Directive, however, Parliament's co-legislator presence prevented the Council from doing this. More importantly, it compelled a qualified majority of Member States to settle on a text that was not only closer to the Commission's preferences but also some distance away from the Council's nationalist/pro-securitization position. Figures 2 and 3 illustrate these dynamics. In both, the Commission (C) and Parliament (P) had similar integrationist/pro-human-rights preferences. In Reception 1 (Figure 2), the Commission and Parliament shared the exact same position (C, P), since Parliament proposed no amendments to the Commission's original proposal. In the Return Directive (Figure 3), they had close preferences, with Parliament (P) slightly less integrationist and more pro-human-rights than the Commission (C). It is safe to assume that Parliament's additional movement in the human rights direction reflected the spirit of the Commission's proposal, since the amendment simply specified what the Commission expressed, and did not transform its substance radically. It also is safe to assume that the Commission was strategically silent on Member State control over the implementation of legal aid, and that Parliament's less integrationist position deviated from the Commission's pro-integration preference.

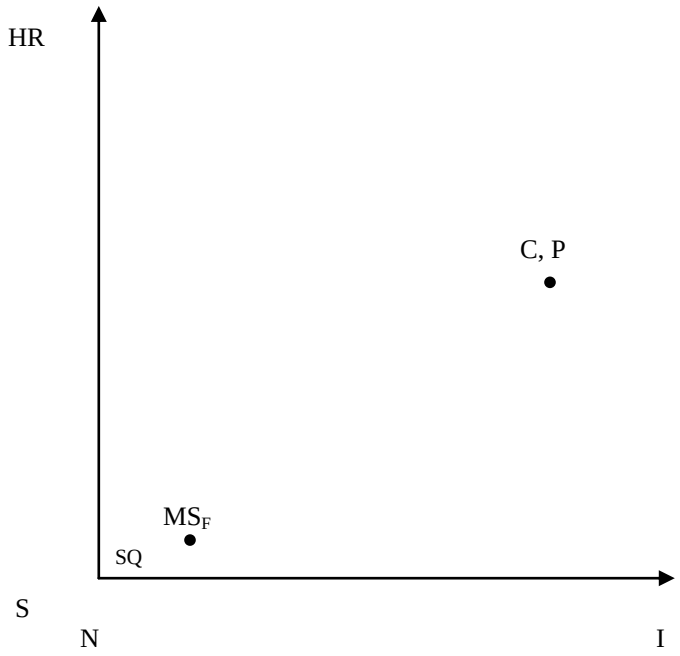

Figure 2. Preference Arrangement for Reception 1

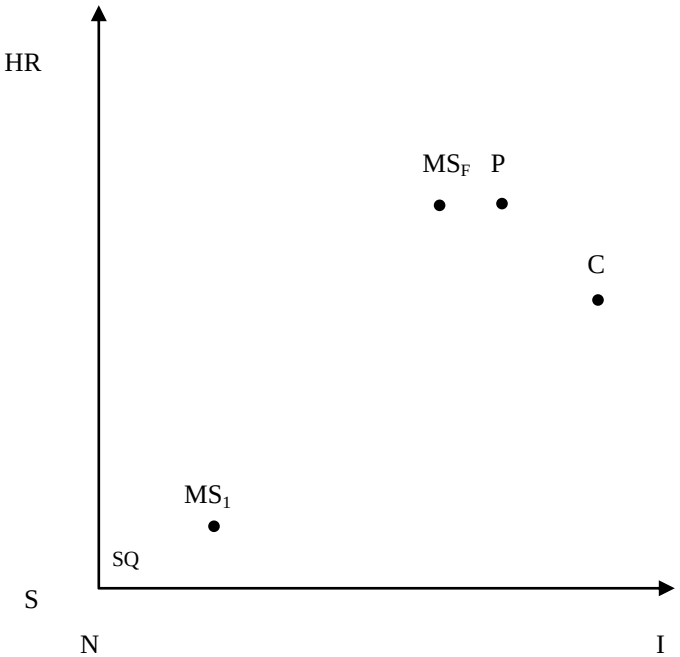

Figure 3. Preference Arrangement for the Return Directive

In both cases, the Council (MS) also acted consistently, preferring positions that were resistant to further integration and human rights allocations. In Reception 1 (Figure 2), it adopted a position (MS_F) that deviated greatly from those of the Commission and Parliament – one that ultimately became policy under the consultation procedure. In the Return Directive (Figure 3), the Council acted similarly in its common position (MS_1); however, it ultimately settled on a text that was considerably more integrationist and pro-human-rights (MS_F). Although this position was slightly less integrationist than the Parliament's, it was more pro-human-rights than the Commission's (C). This marks a substantial change from the Council's initial position. Had Parliament been absent from the decision-making process and the Council functioned as exclusive legislator, this first position (MS_1) would have marked the location of the final legislative text. In this case, the spirit and language of the Commission's position would have been lost completely.

Study 2: 'Strategic Discourse Development'

The Facts

Pre-legislative discourse development for Reception 1 unfolded over a six-year period, from 1995 to 2001. Initially, the Commission played a minimal role, drafting its first independent statement on the issue in 2000 after the Council already had released three (Commission 2000b: see table; Council 1995; 1997: articles 2-3; 1999: conclusion 14). After the Amsterdam Treaty transferred asylum from the Intergovernmental to Community Pillars, the Commission became more proactive and contributed significantly by tying legal aid to reception discourse. Its commissioned study on the 'Legal Framework and Administrative Practices of

Member States' (PLS 2000) was the first document to mention legal aid. It highlighted the 'large differences' that separated national schemes, and noted that the issue had seen 'the least improvement in recent years' (35). Shortly after, a Discussion Paper embraced this agenda in more explicit terms, emphasizing the importance of opening 'access to legal assistance' (Commission 2000a: 5). Similarly, the 2001 proposal cited a commissioned report from the Danish Refugee Council (DRC) and an independent study from UNHCR, both of which advocated unequivocally for a harmonized aid mechanism (Commission 2001b: 2; Liebaut 2000; UNHCR 2000).

The Commission's introduction of these norms had little effect on the Council. The two statements it released following the Commission's activity failed to incorporate this burgeoning rights discourse. Its Discussion Paper ignored the issue entirely, even though the DRC had released its much-publicized report just one month earlier (Council 2000a). Its December 2000 Conclusions expressed a similar attitude, failing to clarify a vague guarantee for '*some* form of legal aid' (emphasis added, Council 2000b: 5.2). Interestingly, the Commission also appeared reluctant to embrace these provisions fully. While the UNHCR report and even the commissioned studies from DRC and PLS strongly suggested the importance of free assistance, the Commission failed to emphasize this position in its Discussion Paper (2000a) and subsequent Communication (2000c: 9-10). Only in the 2001 proposal did it more explicitly stress that aid should be free, and cite the reports accordingly (2001a: article 22.5).

The Commission was noticeably less equivocal in the Return Directive, when Parliament functioned as co-legislator. Once again, the Commission was instrumental in developing a segment of discourse that guaranteed free legal aid for appeals. This time, however, it was considerably more assertive in its engagement with the issue and with outside sources of

authority. This behavior worked against the expressed position of the Council, which hesitated to incorporate these issues into the discourse.

The 2002 Green Paper was the Commission's first independent publication on the matter. It also was the first EU document to address return exclusively. Different from its behavior during Reception 1, the Commission showed no reluctance to take a firm stance on migrant rights at the beginning of the policy debate. Its report dedicated an entire section to human rights and return (Commission 2002a: article 2.4), even though all of the six previous related EU documents had failed to do this explicitly (European Union 1999; Council and Commission 1998; Council 1999; Commission 2001c; Council 2001; Council 2002c). It also went as far as to emphasize a 'right to an effective remedy and to a fair trail' (Commission 2002a: article 2.4).

The Commission also assembled forty-four stakeholders to discuss the Green Paper, featuring 'human rights' as one of its three talking points (Commission 2002b, 2002c). Sixteen organizations and advocates participated, of which six endorsed the right of appeal (CIMADE 2002: 11; ECRE 2002: 2; ENAR 2002: 1; IOM 2002: 10; Law Societies 2002: 1; Nascimbene 2002: 3), four supported a community mandate on legal assistance (CIMADE 2002: 8; ECRE 2002: 2; ENAR 2002: 3; Nascimbene 2002: 5), and one noted the service should be free of charge (ENAR 2002: 3). These opinions had a noticeable effect on the Commission's subsequent positions. Although its 2002 Communication did not mention legal assistance or the right of appeal (Commission 2002d), its 2005 proposal fully integrated the standards presented during the public hearing, guaranteeing the 'possibility to obtain legal advice' and the availability of legal aid 'to those who lack sufficient resources' (Commission 2005a: article 12.3). Three supplemental documents would accompany the proposal, each developing this position further (Commission 2005b-d). These included an 'Impact Assessment', an 'Explanatory

Memorandum', as well as a 'Commission Staff Working Document'. This move contrasted greatly with the Commission's release of the Reception 1 proposal, which contained only one additional explanatory document (Commission 2001d).

As noted in the previous section, Parliament would endorse this position, modifying it only so that it more explicitly framed legal aid as a 'right' and more clearly outlined the circumstances in which Member States must offer this service at no cost (Parliament 2007: amendment 52). The Council was less receptive, mirroring its pre-legislation avoidance of the issue. Following the Green Paper's release, the Seville Council (2002a) made no reference to legal aid or the appellate procedure more generally. The twelve member state delegations present at the Commission's Green Paper hearing were equally silent (Commission 2002b), as were the Council's discussions in the Return Action Plan Proposal (Council 2002b) and Hague Program (Council 2004: article 1.6.4). Evidently, this conflict of opinion did not discourage the Commission, which continued to advocate for a legal aid right despite the Council's indifference.

In Reception 2, the Commission was equally willing to deviate from the Council; this time, however, it acted with even greater aggression by consulting more outside authorities in greater frequency, and by criticizing the Council's position more openly. The Commission's 2007 Green Paper was the first EU document to discuss Reception 1 since its legislation in 2003. Section 2.2 focused exclusively on 'Reception conditions for asylum seekers' (Commission 2007a). While it did not address the appellate procedure, it broadly commented on the directive's protection of human rights – a discussion with natural connections to the legal aid issue. It particularly criticized the 'wide margin of discretion' that the Council's original amendments had introduced, and noted how this 'obstructed [*sic*] the effective enjoyment of rights guaranteed by the directive' (Section 2.2).

Findings from the Commission's 2007 Green Paper public hearing advanced these criticisms while emphasizing the importance of legal aid guarantees. This convening was similar to the one held for the Return Directive, but was considerably larger in scale. It involved over ninety stakeholders, compared to the former's forty-four, and seemed to prioritize the input of human rights organizations, with at least fifty-six invited and contributing (Commission 2007b). Only twenty of the then twenty-five Member States sent their respective delegations, of which fifteen (Cyprus, the Czech Republic, Denmark, Estonia, France, Germany, Hungary, Ireland, Latvia, Lithuania, Malta, Poland, Portugal, Slovakia, and the United Kingdom) failed to mention legal aid (see Member State Delegations 2007). Meanwhile, twenty-five human rights organizations and advocates placed a clear emphasis on the issue, noting the importance of providing adequate (if not free) assistance to asylum seekers (Amnesty International 2007: 10, 12, 16; Association Européenne Pour la Défense des Droits de l'Homme 2007: 4; Associazione Studi Giurdici 2007: 13; Caritas Europa et al. 2007: 7; Conference of German Bishops et al. 2007: 2; ECRE 2007: 13; European Women's Lobby 2007: 10; Foro Integración Inmigrantes 2007: 2; France Terre d'Asile 2007: 9-10; Halina Niec Legal Aid Center 2007: 11; Harrell-Bond, B. E. 2007: 4-5; Helsinki Foundation for Human Rights 2007: 2; Immigration Law Practitioners Association 2007: 7, 17; International Rehabilitation Council for Torture Victims 2007: 7; IRC 2007: 3-4; Jesuit Refugee Service 2007: 5-6, 10; Refugee Women's Association 2007: 5; UNHCR 2007: 16). Of these, twelve specifically noted that Member States had not done enough to ensure the availability of these mechanisms (Associazione Studi Giurdici 2007: 13; Caritas Europa 2007: 3; ECRE 2007: 13; France Terre d'Asile 2007: 10; Halina Niec Legal Aid Center 2007: 12; Immigration Law Practitioners Association 2007: 7, 17; Refugee Women's Association 2007: 5).

Although these statements referred to the asylum system as a whole, the Commission integrated them fully into its report on the application of Reception 1, which it released shortly after the public hearing had taken place. Here, the Commission again criticized the vague language that the Council had introduced in 2003, noting that it created 'deficiencies…regarding the possibility of appeals against certain negative decisions' (Commission 2007c: section 3.2.3). Furthermore, the Commission evaluated the implementation of free legal assistance schemes within the EU and identified eight Member States that failed to meet the standards of Reception 1: Austria, Cyprus, Estonia, Germany, Greece, Hungry, Latvia, and the Netherlands (Section 3.2.3). It also clarified its position on free legal aid, framing it as a 'right', and reiterated its conclusion from the Green Paper that 'the wide discretion allowed by the Directive…undermines the objective of creating a level playing field in the area of reception conditions' (Section 3.2.3).

The Commission continued to develop this pro-human-rights discourse in additional convenings with academic experts, NGOs, UNHCR, and MEPs. These included a meeting on the treatment of persons with special needs during reception and several informal consultations about the Reception 2 proposal (see Commission 2008a: section 2). The contents of these discussions were not released to the public; however, they are likely to have influenced the strong language of the 2008 redraft proposal, which affirmed the Commission's position for further integration and rights protection. Article 25.2 ('Appeals') eliminated the vague language that the Council had introduced in 2003 and clarified that 'Member States shall ensure access to legal assistance and/or representation', which 'shall be free of charge' and 'laid down in national law' (Commission 2008a: article 25.2). The Commission also broadened the scope of its 2003 presentation of the free legal aid right so that it extended to detained asylum applicants (Article 9.6). Finally, the Commission provided a number of supplementary documents with its proposal,

as it did for the Return Directive (Commission 2008b-e). The Impact Assessment particularly explained the rationale behind the proposal's aggressive legal aid provisions, noting that they responded to the Member States' 'problematic' failure to implement these mechanisms adequately following Reception 1 (Commission 2008d: 11).

Parliament received these provisions in a way that deviated from its behaviors under Reception 1 and the Return Directive. While it broadly endorsed the Commission's free legal aid guarantees, it made their activation contingent upon articles 15(3-6) and 39 of the 2005 Directive on Granting and Withdrawing Refugee Status (Parliament 2009b: amendment 31; Council 2005). Introducing the terms of an outside directive did not have the same effect as Parliament's similar actions for the Return Directive. Rather than strengthen legal aid guarantees with minimal costs to integration, this severely reduced asylum seekers' opportunities to draw upon this right, and placed substantial authority in the hands of Member States. For example, article 15.3.d of the 2005 Directive limited the allocation of free legal aid to only appeals that are 'likely to succeed', and suggested that Member States should have full discretion to measure a claim's possibility for success (Council 2005). Similarly, articles 15.5.a, 15.6, and 39.2 allowed the Member States to impose their own rules regarding the duration and size of legal aid packages. As a result, Parliament's intervention did little to advance the Commission's position.

Evaluation

These three cases reveal a high correlation between the strength of Parliament's legislative power and the aggression of the Commission's proposal development. When Parliament played a minor role, the Commission pushed its integrationist and pro-human-rights position modestly. In Reception 1, it entered the policymaking game five years after the debate

had begun, and when it finally did intervene, it developed its position quietly. It drew upon only three outside reports and waited some time before integrating their affirming language into its position. In the Return Directive and Reception 2, when Parliament enjoyed co-legislator status, the Commission was considerably more assertive. It made debates more public, encouraged the participation of more rights advocates, and more readily integrated their arguments into its subsequent positions. It also released an arsenal of explanatory documents to support its final proposals, and, in Reception 2, openly criticized the Council's position.

My theory of 'strategic discourse development' provides a feasible explanation for the simultaneous phenomena of Parliament's strengthening and the Commission's assertiveness. According to this framework, the Commission would have considered that it shared integrationist and pro-human-rights preferences with Parliament, and that Parliament could insulate this preference during the decision-making process (as illustrated in my first case study). The Commission could draw these conclusions based on Parliament's past behaviors. This could encourage the Commission to develop the discourse in a way that deviated from the expected preferences of the Council's qualified majority. It also could persuade the Commission to support its position through the arguments, language, and norms of outside authorities (like UNHCR, human rights advocates, and NGOs). This would encourage Parliament to adopt this position during conciliation, but also would prompt an agreement from the Member States by de-legitimizing their counter arguments. The fact that the Commission was most aggressive in Reception 2, shortly after Parliament had endorsed and pushed through its position in the Return Directive, suggests the possible salience of this dynamic.

Still, it is dangerous to overstate the explanatory power of the 'strategic discourse development' thesis. Reception 2 and the Return Directive developed after the asylum domain

had transferred from the Intergovernmental to Community Pillars. This would have given the supranational actors (i.e. the Commission and Parliament) greater capacity to shape the flow and substance of policy. This development could explain why the Commission did not participate substantively in Reception 1 until after the Amsterdam Treaty in 1999, and why it was more aggressive in the Return Directive and Reception 2, which both developed entirely under the Community Pillar. This would suggest that the stronger behaviors of the Commission and Parliament were more coincidental than causal – more a product of changes within the Pillar system than within the legislative procedures per-se.

From the information available, it is difficult to conclude which of these explanations is most valid. Additional studies would have to analyze the intentions behind Commissioner actions during each of the three proposal processes – data that only interviews can provide. At this point, however, these two explanations reveal more broadly how the Commission responds to opportunities to translate its preferences into policy (both formally and informally). They suggest that it will gain turf whenever it has the chance, particularly within the domain of asylum policy, as my studies indicate. This observation may help forecast how the Commission will react to similar opportunities in the future, particularly as they exist under the Lisbon Treaty's increased supranationalization of the Justice and Home Affairs domain (see Carrera and Geyer 2007).

Finally, the case studies reveal that a legislative partnership between the Commission and Parliament is not guaranteed. Although Parliament consistently supported the Commission's broad position in all three Directives, it did not always advance the discourse in the direction that the Commission had introduced. This particularly was the case in Reception 2, where Parliament's amendments modified the Commission's initial provisions, moving them in the

direction of the less integrated and more securitized status quo, which the Member States seemed to prefer (Figure 4).

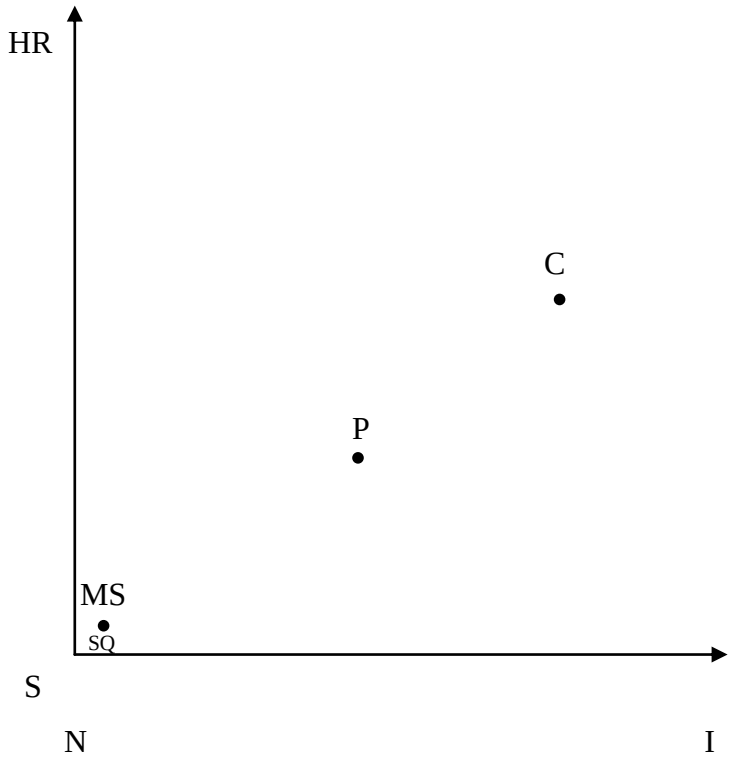

Figure 4. Preference Arrangement for Reception 2

These observations invite two conclusions. First, the Commission cannot fully rely upon Parliament's support, even if their evident preferences for integration and human rights overlap broadly. Parliament remains an independent institution with unique preferences, and is capable of developing understandings of integration and rights allocation that deviate from those of the Commission. Thus, if the Commission uses Parliament's co-legislator status as a pretext for developing discourse that more overtly contradicts the preferences of the Council's qualified majority, it takes a gamble. Ultimately, Parliament may reject the position that the Commission

has developed or substantially dilute it, as was the case in Reception 2. Second, the Commission does not enjoy absolute independence to develop discourse under co-decision II. Overlapping preferences with Parliament do give it more possibilities to deviate from the Council and to translate its own preferences more genuinely into its proposal; however, the Commission remains dependant upon support from Parliament if its preferences are to influence policy. In repeated games, this may persuade the Commission to tailor its discourse development more in line with Parliament's preferences should they wind up deviating from the Commission's ideal position.

Conclusions

Overall, these studies suggest that the strengthened Parliament can enhance the Commission's capacity to shape the policymaking process. As Reception 1 demonstrates, consultation gives the Commission few opportunities to protect its integration and human rights preferences from the Council's veto. Consultation also seems to discourage the Commission from developing discourse assertively, because the Council, as exclusive legislator, can reject any framework that deviates from its nationalist and securitization preferences. In contrast, co-decision II affords the Commission greater latitude to act independently from the Council. As the Return Directive demonstrates, the Commission's position had the greatest chance of survival when Parliament functioned strongly as co-legislator. Similarly, the Return Directive and Reception 2 reveal the Commission's greater willingness to developed pre-legislative discourse that deviated and even challenged the Council's position.

In the first case, Parliament unquestionably facilitated the Commission's success: it sympathized with the Commission's position and used a favorable co-legislator status to push it

past the Council. In the second, the strength of Parliament's influence is less clear, and it remains possible that genuine growth in the Commission's capacities (via revisions in the Pillar System) had a greater impact on its behavior. Additional studies are necessary to understand whether Commissioners actually considered Parliament's co-legislator presence when they developed their position most aggressively.

Despite these remaining empirical holes, my studies still assemble enough data to illustrate the broad dynamics proposed by my 'position insulation' and 'strategic discourse development' theories. In so doing, they disprove the absolutist claims of the rational choice institutionalists that the Commission gains *nothing* under co-decision II. My studies also support Rasmussen's conclusions (2001, 2003) that Parliament may benefit the Commission under co-decision II. These findings invite the development of a new stream in the co-decision II discourse dedicated to finding a greater diversity of empirical studies and further testing this Commission-Parliament relationship.

My observations also contribute to EU asylum policy discourse. First, they illustrate that the Commission and Parliament tend to share integration preferences that favor asylum-seeker rights. Generally, this overlap occurred consistently in all three case studies. Second, they find that the strengthened Parliament may encourage the Commission to function more independently from the Council as an asylum norms entrepreneur. Still, this independence is not absolute. Even under co-decision II, the survival of the Commission's proposal remains contingent upon the approval of independent legislators, Parliament included. While Parliament may share the Commission's broad preferences and even advance them (as in the Return Directive), it also may work against the Commission. In the Return Directive, Parliament reduced the integration implications of the Commission's proposal; in Reception 2, it did the same on human rights.

Thus, the Commission's independence remains conditional, even if it has expanded since the consultation procedure.

Finally, my studies suggest that the Commission is highly responsive to formal and informal opportunities to increase its policymaking capacities, particularly in the asylum domain. This holds true regardless of whether Parliament did or did not encourage the Commission to develop discourse more aggressively. Even if Pillar revision was more influential, the Commission's visibly eager response may indicate how it will react to similar opportunities provided by the Lisbon Treaty.

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