The Politics of EU Immigration Policy

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1. Introduction: The Puzzle of EU Immigration Policy Harmonization

Immigration is one of the top political issues facing the European Union (EU), not only because of its political volatility, which has led the rise of new parties and challenges to existing party systems, but also because of its importance to the evolving EU single market. One of the Single Europe Act's "four freedoms" of movement, aside from goods, services and capital, is the free movement of persons (labor). When Denmark opted in to the Schengen agreement in 2001, it meant that 13 of the 15 European Union member states dropped mutual border controls, and would allow full freedom of movement and residence for their nationals within this space. Institutionally, this freedom of movement has been completely "harmonized", meaning that its governance falls under the competence of the European Commission and Parliament, and under the legal jurisdiction of the European Court of Justice.

Most observers and EU policymakers alike agree that this freedom of movement in the internal space of the EU requires a coherent, harmonized policy for the EU's *external* borders, a policy for so-called "third-country nationals" (TCNs) who are legally resident but are not nationals of one of the EU's member states (European Commission 2001, Geddes 2000, Papademetriou 1996). With no internal border controls in the Schengen zone, any TCN admitted to any one of the member states can easily travel to other member states. Thus, the immigration "space" of the EU is now shared space, giving rise to political concerns over economic costs, law and order, and national security, especially in the wake of September 11th. But despite feverish diplomatic activity and a high place on the political agenda, actual harmonization of most aspects of EU immigration policy has not been forthcoming (Geddes 2000). What accounts for this puzzle, the discrepancy between expansive (liberal) immigration policy harmonization for EU nationals moving within the single market, and the failure to achieve expansive harmonization

(and sometimes harmonization of any kind) of other areas of immigration policy, despite the many factors making it necessary?

This paper will demonstrate how the economic and institutional imperatives of European integration have led to two contradictory political developments: 1) a push by EU institutions such as the Commission and the Parliament, as well as some member states, to develop a common, "harmonized" EU immigration policy that includes TCNs (European Commission 2000, European Parliament 2000); and 2) a resistance on the part of some member states to this development (Geddes 2000, Foreign and Commonwealth Office 1996). Because of this resistance, immigration harmonization has lagged behind other policy areas. To explain national resistance to harmonizing immigration policy, our paper's main task is developing a theoretical and conceptual model of how immigration policy is harmonized at the EU level, and how this harmonization comes to be blocked or restricted. Our model of EU immigration policymaking is bottom-up, in that it sees immigration policy institutions as arising from domestic politics and *national* immigration policies. Thus, we draw on theories of "intergovernmentalism", which see supranational institutions as a means of locking in preferred domestic political arrangements (Moravscik 2000, 1998), and see member states as the primary political actors.

The main argument in this paper is that politics at the national level has played a key role in determining the success and the nature of harmonization proposals, by determining the positions of member states on harmonization of particular types of immigration policies at the EU level. But here an important distinction must be made in analyzing immigration policy. Money (1999) has noted that the growing political salience of immigration has given rise to competing hypotheses about whether national immigration policies are converging or diverging. One of the reasons behind this lack of scholarly consensus is the need to distinguish between

immigration *control* and immigrant *integration* into society. Immigration control measures, and those policies which are aimed at the societal integration of immigrants, are often conflated. However, we will show that these two types of policies lead to separate outcomes. *National* immigration policies are more likely to be influenced by partisanship when it comes to immigrant integration, while immigration control is uncontroversial, and thus cannot be explained by party politics. At the EU level also, it has been easier to harmonize integration policies than control policies, in part because of the political Left, but also because of greater activism by supranational institutions and interest groups, and by lower political salience.

Our main hypothesis is that expansive (liberal) harmonization is more likely to occur when political salience is low and the perceived costs are diffuse. The dependent variables are the success, and the nature of policy (expansive vs. restrictive towards immigrant rights) at the EU level. The independent variables include concentration of societal costs versus the concentration of benefits to business (client politics), political salience, activism by organizations like the European Commission and European Parliament at the EU level, and pro-immigrant interest groups at the national level, and the institutional capacity within a country to protect migrant rights. We also add political partisanship as an independent variable for immigrant integration policies, like anti-discrimination and citizenship, but not for immigration control policies, like visas, political asylum, and illegal immigration. We support our hypotheses by presenting qualitative evidence based on directives introduced by the European Commission and articles from recent treaties that relate to immigration. The positions taken by France, Germany and the UK on these policies will also be examined in detail.

The next section explains our two dependent variables, the *success* of harmonization proposals, and *nature* of harmonization proposals, which clarifies the difference between two

types of harmonization: expansive and restrictive. Section Three discusses existing theories of European integration and immigration politics that have been used to explain harmonization, but shows how they cannot explain the variation in our dependent variables. Section Four provides a literature review and theoretical justification for our model, which is state-centric and focuses on the incentives and roles of national-level politicians in blocking or supporting harmonization. Section Five lays out our model of harmonization, proposing three testable hypotheses that can confirm or deny our model. Section Six describes the methodology and data that we use for the necessarily brief and preliminary empirical testing that we perform in Section Seven, using EU legislation and national positions on harmonization for France, Germany and the UK. Section Eight provides a concluding discussion.

2. Dependent Variables: The Success and the Nature of Harmonization Proposals

The harmonization of European Union immigration policy is not a monolithic process, and explaining the ways in which it varies is a fruitful enterprise for scholars of both immigration politics and European integration. There is unexplained variation in four areas of this harmonization: throughout time, across countries, across policy areas, and between "subjects" (EU nationals versus TCNs, who are legally resident in an EU country but do not hold citizenship). Such harmonization varies in two respects. First, the *success* of harmonization proposals is variable, since much of the proposed legislation has not been enacted. This is our first dependent variable, success of harmonization, which is a binary variable. Our second dependent variable, also binary, is the *restrictiveness* versus the *expansiveness* of a successful harmonization proposal vis-à-vis immigrant rights. That is, some harmonization *restricts* immigrant rights, by enacting a standardized policy with fairly low "standards" for the protection

of immigrant rights, by not providing judicial remedy, and by obligating some member states to "lower" their standards. For instance, Germany used EU harmonization in 1993 to tighten its expansive political asylum rules, which had previously been protected by domestic judges (Joppke 1999). Other harmonization is *expansive* towards immigrant rights, by obligating member states to "raise" their standards. For instance, the 2000 Racial Equality Directive (RED), while not protecting all immigrants (since it is based on race and not nationality), provides judicial remedy for ethnic minority immigrants, and obligates all member states (including those who previously had no racial discrimination legislation) to implement the RED into national law (Niessen 2001). Thus, not all harmonization proposals have been successful, and not all successful harmonization proposals have been expansive towards immigrant rights.

How do harmonization proposals vary on these two dimensions? *Throughout time*, harmonization has gathered pace, and has advanced in some policy areas after years of blockage. *Across countries*, there is variation in the support of EU member states for harmonization proposals, with some member states supporting expansive harmonization proposals, some countries supporting only restrictive harmonization proposals, and some member states blocking harmonization proposals altogether. *Across policy areas*, we find variation in the success and the expansiveness/restrictiveness of harmonization proposals, with some policy areas, like the societal integration of immigrants, seeing more harmonization success than other policy areas, like controlling borders. And finally, *between "subjects"*; EU nationals, in the last few decades, are increasingly able to exercise full freedom of movement rights, as long as they are participating in the labor market, meaning that member states are now unable to prevent each other's citizens from living in their territory, holding jobs, and even voting in local elections. Such a voluntary surrender of immigration sovereignty is an unprecedented political

development in the era of nation-states. However, TCNs, despite having legal residence, cannot exercise this freedom of movement, despite calls by the European Commission, European Parliament, and many of the member states to grant this freedom (Geddes 2000, Papademetriou 1996).

We argue that some existing theories can explain variation across time, since many of them see harmonization as a gradual process, but that these theories cannot adequately account for the observed variation across countries, across policy areas, and between EU nationals and TCNs. The next section provides a brief review of these existing theories that have been used to explain harmonization.

3. Supranational Approaches to Explaining Harmonization

Immigration in Europe, after the economic recessions of the early 1970s, became a law-and-order and national security issue, setting up a conflict between two political camps: 1) state actors wanting to maximize immigration control sovereignty (such as interior and justice ministries); and 2) state actors that defended immigrant rights (such as courts) and their allies in NGOs and supranational organizations like the European Commission (Guiraudon 2003, Den Boer 1995). Despite new political incentives for state actors to crack down on immigration, however, immigration flows continued relatively unabated in three areas: 1) family reunification, in which immigrant workers brought in relatives from their home countries; 2) political asylum, whereby developed countries were obligated to take in refugees under both the Geneva Convention and domestic laws; and 3) illegal labor that continued to flow into the country to take

jobs that were shunned even by unemployed natives (Cornelius, Martin and Hollifield 1994).[1]

This loss of state control, coupled with the institutional imperatives of the single market, led EU

member states to cooperate on immigration policy, setting the harmonization process in motion

(Papademetriou 1996).

What political factors account for this loss of state control over immigration, whereby

state actors were unable to prevent unwanted immigration despite solid public backing and the

weakness of immigrant-representing organizations (Geddes 2000), and were thus pushed to

cooperate? Several existing theories locate the loss of sovereignty in supranational

developments, such as economic globalization (Sassen 1996), or transnational discourses of

human rights (Soysal 1994). Stone Sweet and Sandholtz (1998), coming out of the

neofunctionalist tradition (Haas 1958), see initially economic cooperation spilling over into other

areas, such as immigration policy, with suprananational cooperation a quasi-inevitable by-

product of the expanding single market's rules and institutions (Phillip 1994).

These arguments, however, while possibly able to explain long-term variation in

harmonization across time (since globalization, rights-expansion, and supranational

institutionalization are gradual processes) cannot explain the recent variation across countries,

across particular areas of immigration policy, and between EU nationals and TCNs. The next

section provides a brief literature review of state-centric theories that we use to build a model of

immigration policy harmonization that can explain this variation.

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[1] Obviously, technical and financial problems also play a role in restricting state ability to stop unwanted immigration. Italy, for instance, has a long border, and even if there were more money for patrolling this border, the logistics are still daunting.

4. State-Centric approaches to Explaining Harmonization

Again, our model of EU immigration policymaking is bottom-up, in that it sees immigration policy institutions as arising from domestic politics and *national* immigration policies. Thus, we draw on theories of "intergovernmentalism", which see supranational institutions as a means of locking in preferred domestic political arrangements (Moravscik 2000, 1998), and see member states as the primary political actors.

Drawing on work by Wilson (1980), Freeman (2000) and Joppke (1999), our model begins with a low-conflict mode of "client politics" that determines immigration policies in the absence of populist pressure against immigration. Client politics was the normal state of affairs in immigration policy for most West European countries before the economic slowdowns of the 1970s, and is still applicable in some areas of immigration policy today. Client politics is a measure of how the costs and benefits of potential immigration policies for various societal groups determine the effectiveness of these groups in impacting official state policy. Groups (like businesses) that face more concentrated benefits will more effectively organize to impact the state in favor of their interests than those groups that face more diffuse costs from potential immigration policies (Freeman 2000). If client politics alone determined the shape of immigration politics, then a liberal, harmonized policy would be the likely outcome, since businesses standing to gain from free movement of cheap labor would face great incentives to lobby for such a policy. However, in most areas of immigration policy, such as TCNs, asylum, and citizenship, harmonization has been blocked, and where it has occurred it has been security-focused and heavily restrictive. But the costs of these policies are not necessarily always concentrated in narrow sectors of society, so by the logic of client politics there should be no

obstacles for expansive harmonization that would provide total free movement for workers within the single market. What can explain this puzzle?

The answer is our second independent variable, political salience. Salience can politicize an issue and override client politics by mobilizing society as a whole, across political lines, against certain areas of immigration policy harmonization, usually under initial conditions of economic recession and unemployment. We explain Europe's shift from client politics to a conflictual mode of policy making with the theory of agenda setting put forth by Baumgartner and Jones (1993). Although their analysis focuses on policy making in the United States, it is easily generalizeable and can be applied to the European case. A key factor in their analysis is the "great policy issue of the twentieth century" in the U.S., which is the size of government (Baumgartner and Jones, 21). In Europe, a similar kind of issue has arisen: how much sovereignty should be given to Brussels? Although there isn't the same *partisan* divide over this issue in Europe as there has been in the U.S., it has divided electorates, as seen in referendums on the Maastricht Treaty and monetary union, for example. Understanding the nature of issue definition and venue access adds an important dimension to the nature of policy change. Baumgartner and Jones note that most change occurs "during periods of heightened general attention to the policy . . . in the process of agenda-setting, the degree of public indifference to given problems changes dramatically" (Baumgartner and Jones 1993, 20). Not only does the public become more involved in an issue, but political parties, the organizers of societal cleavages, also become involved. This can lead not only to temporary shifts in policy but to long-term shifts in policy outlook, which can endure even if economies improve, as happened in the late 1990s. The literature on agenda change (Baumgartner and Jones 1993) helps to explain how the interaction of salience and issue definition can lead to what are called "punctuated

equilibria" where rapid change in policy occurs. Salience is defined as the level of attention paid to, or awareness of, the immigration issue, which can be operationalized as references in newspapers or the ranking given the importance of the issue in public opinion surveys. As the number of articles and survey respondents referring to immigration increases, the salience of the issue increases, and the impact of client politics decreases.

Thus, when it comes to the contentious issue of TCNs (whether legally resident workers, asylum-seekers, or illegal immigrants) the low-conflict mode of politics is replaced by a high-conflict political mode that pits various parts of the state and society against one another. We build on the work of Guiraudon (2003), Lahav and Guiraudon (2000), Geddes (2000) and Joppke (1999) to analyze this new, high-conflict mode of immigration politics concerning TCNs, which sees restrictionist national executives protecting de facto national sovereignty over immigration to maximize political capital, by either blocking supranational harmonization of immigration policy, or making sure that the harmonization that does occur is weighted in favor of law-and-order and security, and is not subject to the scrutiny of supranational institutions and courts. The supranationalist theories outlined above cannot explain this national resilience, because recent analysis has shown that European state actors have been successful in getting around supranational constraints on their ability to restrict immigration. Lahav and Guiraudon (2000) argue that actors within EU national governments have dodged constraints through one particular strategy called "venue shopping" (Baumgartner and Jones 1993) in which state actors use EU level organizations to pursue national policy goals.

Thus, the harmonization that has occurred, in areas of high political salience and/or concentrated costs, has tended to be restrictive in nature, designed only to *enhance* national sovereignty and control over immigration by allowing state actors to circumvent national-level

institutional constraints. Germany's use of EU harmonization in 1993 to tighten its expansive

political asylum rules (which had previously been protected by domestic judges and the

constitution) is a perfect example of this paradoxical development, whereby EU harmonization

enhances de facto national sovereignty as opposed to eroding it (Joppke 1999). A country like

Britain, on the other hand, with no strong, independent judiciary, has no need of the EU's

"venue" to legitimize its immigration crackdown, and thus has tended to block even the most

restrictive harmonization proposals that have been on the table, preferring to maximize pure

sovereignty instead of strategic policy cooperation (Hix and Niessen 1996, Freeman 1994). Thus,

the degree of institutional capacity to protect migrant rights, in a particular member state,

determines whether or not that national government will pursue harmonization in a high-

salience/concentrated cost area of immigration policy. This hypothesis accords with the

literature on "two-level games" in the EU, which shows how national governments can

strategically use the EU level to enhance de facto sovereignty, depending on the strength of their

domestic constraints (Vink 2001, Rotte 1998, Vaubel 1994, Putnam 1988).

Thus, it is the extent of client politics and the intensity of political salience of a given

immigration issue that combine with institutional constraints in a given country to determine one

of three outcomes: whether or not that national government will: 1) block harmonization of a

particular area of immigration policy; 2) push for maximum restrictiveness in the harmonization

that is allowed; or 3) allow a relatively expansive harmonized policy. When salience is high,

institutional constraints determine whether a government will block harmonization altogether or

else allow harmonization while pushing for resulting policies to be restrictive in nature.

Institutional constraints are conceptualized as activism by interest groups, national courts, and

EU institutions that are more insulated from populism (and hence political salience and societal

costs). This is the role of the European Court of Justice, Commission, and Parliament in our model, which may well become a more important role in the future, as these bodies gain an institutional foothold in the area of immigration policy. These institutions have done their best to push towards harmonization, and to make existing harmonization as expansive (non-restrictive towards TCNs) as possible. Where political salience is low and costs are diffuse, our model shows that they are more likely to succeed. Where political salience is high and/or costs are concentrated, our model shows how national governments either block harmonization altogether, or allow only a restrictive brand of harmonization at the EU level in order to get around judicial and political constraints that protect immigrant rights at the national level.

5. A Model for Explaining Harmonization Variance

Along with Jones and Baumgartner's analysis of policy making in the U.S. that highlights issue definition, Rosenblum (2002) finds that the president and foreign policy considerations are less likely to have an impact on U.S. immigration policy when the issue is highly salient. He argues that immigration policy is dominated either by congress when issue salience is high or by the president and foreign policy concerns when issue salience is low. In the case of Europe, we can use the same type of model, where national level governments or EU level institutions may dominate immigration policy. National level considerations will play more of a role when issue salience is high. Although the level of salience may vary from country to country, the unanimity voting rule for immigration in the Council ensures that those countries where salience is high can block harmonization, or ensure that more restrictive harmonization is pursued.

Given a historical context of economic recession and unemployment, and given the perceived functional necessity of harmonization (the single market and the loss of state control),

there are four factors that determine the restrictiveness of national policy, which determines positions on harmonization in our model: 1) concentration of costs; 2) political salience; 3) the conservatism of government, which applies only to integration issues, not control issues; and 4) the strength of migrant rights-protecting institutions at the national level (e.g., a strong judiciary in Germany versus a weak judiciary in the UK). Figure 1 displays the relationship between these variables.

[Figure 1 here]

In this process, the salience of the issue is determined by public opinion, which can be influenced by the media. If the salience of a particular immigration policy area is relatively low, or if costs of specific immigration policies are relatively diffuse, then public opinion will have less of an impact on national legislatures and executives, through electoral considerations. Instead, legislatures and/or governments will be free to appease business clients and/or supranational institutions, pro-immigrant NGOs and courts by allowing for harmonization of expansive immigration policies. If public opinion does have an impact, however, then legislatures and executives face high political costs if they ignore restrictionist or anti-harmonization sentiment. Such costs find their most extreme form in increased success for extreme-right parties, such as the Freedom Party in Austria or the FN in France.

> H1: As the salience of an issue increases, client politics decrease and immigration policy becomes more restrictive at the national level.

Without the broader context of European integration, the outcomes would never vary, as national governments would be too concerned about loss of sovereignty to give up control over immigration policy. Thus, no harmonization at all would happen in high-salience, concentrated-cost policy areas. However, the institutional imperatives of the single market, including free

movement of labor, common external borders, and no internal borders, mean that a great deal of

immigration policy harmonization is seen as functionally necessary by virtually all parties

(Geddes 2000). Therefore, the question becomes: how will national governments vote in the

Council? Will they block harmonization entirely, will they support the relatively expansive

proposals for harmonization that originate from the Commission, or will they support only

restrictive proposals for harmonization that usually originate from member states? In an issue

area where there is a consensually perceived functional necessity for harmonization, such as visa

policy, Table 1 describes the likely outcomes in national orientations towards harmonization.

[Table 1 here]

Table 1 shows that this choice depends upon both the political salience and concentration

of costs of the particular issue in question, as well as the degree to which immigrant rights are

protected by national institutions. For high-salience issues, we propose the following second

hypothesis.

> H2: States in which national institutions protect immigrant rights will prefer restrictive
> harmonization. States in which national institutions do not protect immigrant rights will
> prefer no harmonization.

The analyses described in the literature review tend to look at immigration as a unitary

set of policies. However, a complete understanding of immigration policy needs to break down

the entire subset of issues covered by immigration. Money (1999) argues that there are different

causal variables for immigration *control* policies, as compared to immigrant *integration* policies.

Her analysis shows, for example, that the main political parties in Britain had similar policy

positions on immigration control, but diverged on immigrant integration. In order to understand

preferences of the actors in immigration policy harmonization, we must factor in the different

types of immigration policy and the preferences different actors in the EU may have.

H3: Governments (particularly left governments) are less likely to block harmonization that deals with *integration*, as opposed to control.

The next section describes the methodology and evidence that we will use to perform a rudimentary test of these hypotheses.

6. Methods and Data

Since supranational theories cannot explain the variation in the success and restrictiveness/expansiveness of harmonization, the main task of this paper is to advance a rigorous, state-centric model that can be used to explain this variation. Thus, much of the paper is theoretical and conceptual. However, in the next section we will provide some empirical evidence showing that variation in policy areas, in national positions on harmonization, and between EU nationals and TCNs fits well with the variables in our model. This evidence is of a qualitative nature, and involves three elements.

The first piece of evidence is a table (Table 2) showing proposed pieces of EU legislation in various policy areas, and their success/failure and restrictiveness/expansiveness. This legislation comes from five policy areas within immigration policy: political asylum, legal migration, visas and border control, illegal immigration, and anti-discrimination. This table shows the wide degree of variation across policy areas, and shows how the political salience and concentration of costs in these policy areas is negatively related to success, but positively related to the restrictiveness, of each piece of legislation.

The second piece of evidence is a typology of policy areas, Table 3, which can explain the variation between integration and control issues, and the variation between policies for EU nationals and policies for TCNs. The third piece of evidence is a table, Table 4, showing the

positions of three national governments, France, Germany and the UK, on various harmonization proposals at the 1996 Amsterdam Treaty Intergovernmental Conference. This table shows how the relative strength of national institutions to protect immigrant rights (weak in the UK, strong in Germany, mixed in France) can explain the variation in national support for the various harmonization proposals on the table at the Conference.

Further testing of our model is beyond the scope of this paper, but should be performed in the future to rigorously sketch out the relative impact of client politics, political salience, and political partisanship (on integration issues). Such testing could also measure the strength of institutions that protect immigrant rights across countries, and broaden the comparative analysis to include more than three countries. The model would also be strengthened in the future with the provision of quantitative indicators for both political salience and the concentration of costs and benefits for society and business.

7. Results

Table 2 lays out proposed EU directives, treaty articles and their status, indicating the areas where harmonization has or has not occurred. This table also sketches out the perceived costs, salience and the outcome of various specific areas of immigration. This table provides initial empirical evidence that issues with concentrated costs and/or high salience are less likely to be harmonized, and when they are harmonized, they are more likely to be restrictive in nature. For example, in the area of asylum policy, only two proposals have been adopted by the Council, and these are measures that we consider to be restrictive in nature. The table also shows that integration issues are more likely to be harmonized, and more likely to be expansive, than

control issues, although it is beyond the scope of this paper to sort out the causal impact, on integration issues, of left governments in power (versus low salience and diffuse costs).

[Table 2 here]

In the case of visa policy, the level of salience was relatively low, but the institutional capacity (of NGOs in particular) was weak in Brussels and in most member states. The European Parliament, keen to strengthen its institutional capacity, challenged national discretion over visa policy in the Court of Justice and lost (Guild 1998, 617). The fact that the Court would rule for the member states and against the European Parliament on this issue confirms the intergovernmentalist hypothesis of Garrett, Keleman and Schulz (1998), who argue that the Court is reluctant to overstep its delineated role on issues where it feels it could lose political legitimacy in the eyes of its member state creators. Therefore, because institutional capacity was weak, the outcome of visa harmonization was a more restrictive brand of harmonization, emphasizing security and control over free movement and immigrant rights. This harmonization is restrictive because there is no "floor" of standards/procedures that could pave the way for rights-claiming by TCNs. Member states are thus free from the ECJ's watchful eyes, and can apply the utmost national discretion in their policies. TCNs who feel that they are unjustly required to get visas for EU travel, or are unjustly denied visas, have no formal recourse to the ECJ (Guild 1998, 617).

Institutional capacity to protect migrant rights can be located in the ECJ, the Parliament and the Commission (lobbied by NGOs) at the EU level, as well as the courts and social service/economy ministries at the national level (Guiraudon 2003). In general, in the case of immigration policy, institutional capacity to protect migrant rights at the EU level has been weak, but the case of the Racial Equality directive (described below) was one in which NGOs and the

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Commission were able to combine their efforts to push through an expansive, harmonized anti-racist policy (albeit under conditions of relatively low salience and diffuse, if any, societal costs).

[Table 3 here]

Table 3 compares the different policy areas and indicates that integration issues (residence rights for EU nationals and anti-discrimination policy) generated expansive harmonization while control issues (TCN and asylum policy) generated only partial harmonization that was restrictive in nature. In general, both left and right governments have a preference for immigration control. Where policy preferences tend to diverge is the area of immigrant integration, as shown by Money (1999). Left governments tend to prefer more activist forms of immigrant integration, while right governments tend to have a *laissez-faire* attitude. In the case of policies related to immigrant incorporation, we would expect to see partisan differences across countries, which would also be reflected in national preferences towards harmonization of these policies.

Table 3 explains variation in control/integration and EU national/TCN by highlighting four types of policy, the first two of which are integration issues, and the lower two of which are control. The first row, internal border controls and free movement rights for EU nationals, is an integration issue because EU nationals have full citizenship rights that are protected by the European Court of Justice. Furthermore, nationals of EU countries that move to other EU countries are not seen as a security or a law-and-order threat. Costs to society were diffuse, and the political salience was relatively low, i.e. Dutch people living in Germany did not trigger far-right opposition. Thus, this policy area was harmonized and the resulting policy was expansive, meaning that immigrants (EU nationals) were able to make rights claims to the ECJ, many of which were successful (Craig and de Burca 1998).

The second row in Table 3, anti-discrimination policy, is also an integration issue, because it deals with immigrants that are already resident in society. This is also a low-salience area where *expansive* harmonization resulted from left government support and activism by both supranational (EU) and pro-migrant (NGO) institutions. This is the Racial Equality Directive (RED) that was adopted by the EU in 2000. This example highlights the impact that pro-migrant institutions can have when they are coordinated (due to concentrated benefits to their "clients," i.e. migrants who are being discriminated against), and working on an issue of relatively low salience and diffuse societal costs. Anti-discrimination can be considered an immigration issue, since it is considered a response to racist attacks on immigrants and descendants of immigrants across Europe. It is, however, an issue of *integration* rather than *control*. In the case of integration issues, we would expect that left governments would be more supportive, and since it is an area of low salience, strong institutional actors would be able to pursue harmonization.

Since the early 1990s, numerous organizations had lobbied for a formal EU anti-discrimination policy. Chief among these was the Starting Line Group, an alliance of more than 400 NGOs from around the EU, which proposed an EU Directive called the Starting Line. This proposed directive, in turn, was taken up, referred to, and supported by actors within the EU's central institutions, such as the European Commission (Bell 2001). This sponsorship, in turn, led to the formal adoption of the RED, based on the Starting Line, that makes anti-discrimination law a part of EU law that falls under the ECJ's full jurisdiction (unlike other areas of immigration policy). This harmonization took a decade, however, and, not coincidentally, happened at a time when left governments were in power in the most important EU member states, thus providing evidence for H3.

The RED "provided the European institutions with considerable new powers to act on racial, ethnic and religious discrimination" (Niessen 2001, 7). Such harmonization can be considered expansive, by the definitions of our model, because under the RED *all* national courts and tribunals can refer questions of non-discrimination to the ECJ (unlike other, more high-salience areas of immigration law, in which only "courts of final instance" can take this step), since, like free movement policy for EU nationals, the Court has full jurisdiction over this area. The ability of individuals to make claims against their own governments before national courts has been a key mechanism of supranational governance, allowing for expansive harmonization in other (non-immigration) areas of EU policy (Cichowski 2001, Stone Sweet 2000). Any immigrant can bring an anti-discrimination case to a national court, which under Article 234 is empowered to refer the case to the ECJ, whose ruling is then binding on national governments. Thus, institutions to protect migrant rights are now much stronger in this area of immigration policy, and rights-claims by migrants are much more likely to lead to expansive supranational harmonization as the EU's central institutions gain a political foothold in this area (Guild 1998).

The third row in Table 3 is a control issue, made up of policies dealing with TCNs. TCNs are seen as a control issue because they have no rights of citizenship in the EU, and even when they are legal immigrants they are often lumped in with illegal immigrants in terms of being a legal and security threat, as well as an economic drain on the welfare state (Geddes 2000, Ugur 1995). The next row, political asylum claimants, also fits this category, because many asylum claimants are seen as "bogus" and are lumped in with other TCN immigrants, both legal and illegal, as an unwanted presence that should be controlled by the state (Santel 1995, Den Boer 1995, Rogers 1992). Thus, we can summarize both of these rows in our table with concentrated (or at least mixed) societal costs, since many regions of EU member states perceive

that they lose jobs to immigrants and must bear disproportional costs of housing and caring for immigrants. Political salience here is obviously medium to high, and thus the harmonization that has resulted has only been partial. Where it has been successful, it has been restrictive, meaning that it has only occurred because it has allowed state actors to circumvent domestic institutions that protect migrant rights (Lahav and Guiraudon 2000).

In Section 5, we proposed a typology of outcomes for national preferences towards immigration policy harmonization. Empirically, these outcomes can be tested by looking at the 1996 Intergovernmental Conference (IGC), which is an incredibly important case because it aggregated member state harmonization preferences for the new Amsterdam Treaty, which took large steps towards making EU immigration policy more coherent. According to Geddes (2000), a bottom-up model such as ours accurately captures the policymaking logic of the IGC, and matches with Money's (1999) integration/control dichotomy. "There was a broad measure of agreement on the 'control' dimensions of policy, but there was disagreement about the form that EU-level co-operation/integration should take and the extent to which the EU should develop responsibilities affecting the rights of migrants" (Geddes, 112).

According to our model, in an issue area where all states agree on the functional necessity of harmonization, the key factors in determining whether harmonization will be supported, and what kind of harmonization will be supported, are: 1) diffuse costs and benefits; 2) political salience, and 3) the strength of national institutions for immigrant rights protection. Taking France, Germany and the UK as our test cases (being the EU's "heavy hitters") we can analyze the preferences of negotiators for these 3 member states at the 1996 IGC to see if they accord with the testable implications of our model. In most cases, the strength of national institutions for immigrant rights protection is the key variable that differs *across countries* (as opposed to

across issue areas, in the case of our four other independent variables) and can thus explain varying national orientations towards harmonization on a single policy area.

Table 4, adapted from data by Hix and Niessen (1996) shows British, French and German preferences towards a range of immigration policy areas in which harmonization was being discussed at the 1996 IGC. A "1" means that harmonization in that policy area was supported by that government, while a "0" means that harmonization was not supported.

[Table 4 here]

Germany has strong national institutions (especially courts) for protecting immigrant rights (Joppke 1999), while Britain has weak institutions (Freeman 1994). France is somewhere between these two countries on the continuum, since the French Constitutional Court has ruled in favor of immigrant rights, but has been overturned by the French legislature (in 1993). Therefore, Germany should support all proposals in areas where salience is low and/or costs are diffuse, while they should support only restrictive proposals in areas where salience is high and/or costs are concentrated. The UK should oppose *all* proposals except for in one area: restrictive harmonization in areas where salience is low and/or costs are diffuse. France should be somewhere in between these two extremes, standing with Germany on some issues while opposing harmonization on other issues where Germany supports it. Looking at table 3, in fact, we see that these implications are confirmed, lending strong support to our explanatory factors.

8. Discussion

The previous section was able to confirm our model by showing that harmonization proposals in high-salience/concentrated-cost policy areas are less likely to be successful, and if they are successful they are less likely to be expansive. Regarding national variation, we showed

that a country with strong domestic institutions to protect immigrant rights, such as Germany, is more likely to support harmonization. We also showed that integration issues are more likely to be harmonized than control issues.

Controlling fully for other factors in this analysis is difficult, and cannot be empirically done in the space of this paper in any systematic way. But what alternative explanations might leap to mind, preliminarily? We have already ruled out supranationalist explanations, because they have no theory to account for variation across countries and policy areas, although they may gain long-term validity if the political difficulties we highlight give way to total, expansive harmonization at some future point. But what about national-level factors, other than political salience, partisanship and economics that might explain the present-day difficulties? Some might argue that consistent British opposition to immigration policy harmonization reflects a stubborn British national identity that is "Euro-skeptic" on all issues, and has nothing to do with our explanatory factors, such as the high political salience of immigration (Pinder 1995, Wallace 1995). However, the House of Lords has been relatively more supportive of harmonization than the House of Commons (House of Lords 1999), which is likely due to the fact that the House of Lords is insulated from the kinds of political pressures arising from salience that lead British officials to block harmonization. Therefore, this support for harmonization by a traditional British institution cannot be accounted for by national identity.

The evidence presented above provides support for the three hypotheses presented in section 5 of this paper. Policy areas with high salience are less likely to be harmonized than those with low salience. Countries with strong institutions for protecting migrant rights are more likely to prefer restrictive harmonization at the EU level. We can also get a better understanding
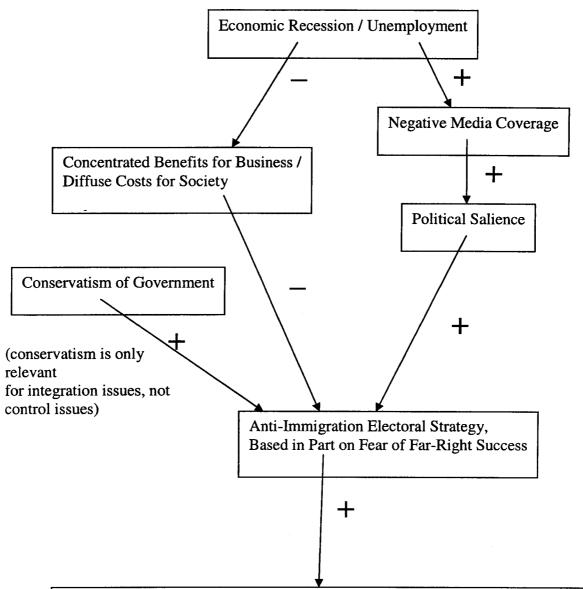
of policy harmonization by breaking down immigration policy into areas related to control vs. integration.

The literature on EU immigration policy harmonization that has existed thus far has been fairly descriptive and has not offered systematically testable hypotheses. Our model has addressed this shortcoming by providing a state-centric theory that can explain the political difficulties and the variation in harmonization, and whose component arguments can be empirically tested. Our model shows that bottom-up bargaining reflecting national preferences is a reasonable way to understand the harmonization (or lack thereof) of immigration policy. We have shown that immigration policy must be broken down into its component parts before we can understand the nature of national policy preferences. It is the extent of client politics and the intensity of political salience of a given immigration issue, combined with political partisanship and institutional capacity to protect migrant rights that determine one of three national orientations towards harmonization: total blockage, restrictive, or expansive. Whereas theories relying on economics, partisanship, globalization, human rights, or supranational institutions alone cannot explain variation across EU countries and immigration policy areas, our model can explain the varying nature and success of harmonization proposals.

Further empirical testing of national cases and specific areas of immigration policy will solidify our conclusions. Our model also has relevance for the broader study of European integration, and could be applied to other EU policy that have high political salience, by assessing the ability of electorally threatened state actors to achieve national policy goals, given their domestic legal and institutional context. If state actors who face strong domestic institutional constraints allow supranational, expansive harmonization only in low-salience issues, while pushing for intergovernmental, restrictive harmonization in high-salience issues, while

state actors who face weak domestic institutional constraints block all harmonization except for that in low-salience issues, then our model will be confirmed outside of the context of immigration policy.

Figure 1
A Model of the National Politics of EU Immigration Policy
Harmonization

Economic Recession / Unemployment

−

+

Negative Media Coverage

+

Concentrated Benefits for Business /
Diffuse Costs for Society

Political Salience

Conservatism of Government

−

+

+

(conservatism is only relevant
for integration issues, not
control issues)

Anti-Immigration Electoral Strategy,
Based in Part on Fear of Far-Right Success

+

Restrictiveness of National Immigration Policy, Contingent Upon Absence of
Institutional Capacity to Protect Migrant Rights. If Institutional Capacity Is Weak,
State Actors are Satisfied and Will Not Support Harmonization. But If
Institutional Capacity Is Strong, Then National Policies Are Not Restrictive
Enough to Satisfy State Actors, Thus Promoting Restrictive Harmonization
(See Table 1)

TABLE 1 Salience and Harmonization

		Level of Political Salience & Concentration of Costs:	
Institutional Capacity to Protect Migrant Rights:		Low	High
	Strong	support expansive harmonization	support restrictive harmonization
	Weak	support restrictive harmonization	block harmonization

TABLE 2 EU Immigration Proposals And Policies

Policy	EU Proposal	Perceived Costs	Salience	Adopted by Council?	If harmonized, restrictive or expansive?
Asylum	Common asylum procedure (COM(2000)755)	Concentrated	High	No	NA
	Minimum standards for conditions for the reception of asylum-seekers (COM(2001)181)	Concentrated	High	No	NA
	Determining the Member State responsible for examining an asylum application (COM(2001)447)	Concentrated	High	No	NA
	Granting refugee status (COM(2000)578)	Concentrated	High	No	NA
	Status of third country nationals and stateless persons as refugees (COM(2001)510)	Concentrated	High	No	NA
	Granting temporary protection in case of mass influx (COM(2000)303)	None until "mass influx" invoked	Low	Yes	Restrictive
	Council Regulation No 2725/2000 the establishment of "Eurodac" for the comparison of fingerprints	Diffuse	Low	Yes	Restrictive
Legal migration	Right to family reunification (COM(1999)638); (COM(2000)624), (COM(2002)225)	Concentrated	High	No	NA
	Status of third country nationals who are long term residents (COM(2001)127)	Concentrated	High	No	NA
	Conditions of entry and residence TCNs for paid employment (COM(2001)386)	Concentrated	High	No	NA
	Residence permit for victims of illegal immigration who cooperate with authorities (COM(2002)071)	Concentrated	High	No	NA
	Council Regulation (EC) No 2424/2001 development of second generation Schengen information system (SIS II)	Diffuse	High	Yes	Restrictive
Visas and border control	Council Regulation amending Regulation (EC) No 1683/95 uniform format for visas (2002/C 51 E/03) (COM(2001) 577)	Diffuse	Low	Yes	Neither
	Council Regulation (EC) No 2414/2001 listing third countries whose nationals must possess visas	Diffuse	Low	Yes	Restrictive
Illegal Immigration	To combat illegal immigration (2002/C 142/02),	Diffuse	High	Yes	Restrictive
	Mutual recognition of expulsion orders: Directive 2001/40	Diffuse	High	Yes	Restrictive
	Carrier sanctions: Directive 2001/51	Diffuse	High	Yes	Restrictive

Anti-discrimination	Treaty of Amsterdam -- European Union can fight any discrimination including discrimination on the basis of nationality (Article 12, TEC)	Diffuse	High	Yes	Expansive
	EU can also fight discrimination based on sex, race or ethnic origin, religion or belief, disability, age or sexual orientation (Art. 13, TEC).	Diffuse	Low	Yes	Expansive
	Charter of Fundamental Rights of the European Union (2000 / C 364 / 01)	Diffuse	Low	Yes	Expansive
	Racial Equality Directive	Diffuse	Low	Yes	Expansive

TABLE 3: Immigration Policy Areas, Outcomes, and Analysis

Policy Area (Integration or Control)	Perceived Costs of harmonization: diffuse or concentrated?	If costs concentrated, salience (far right potential) high or low?	Outcome: Harmonized or still national?	If harmonized, restrictive or expansive?	Analysis
Internal border controls/free movement and residence rights for EU nationals (framed as integration issue)	Diffuse	Low (not much far-right opposition)	Harmonized (EU nationals now have full free movement and settlement rights)	Expansive (liberal policy, ECJ has full jurisdiction)	Diffuse costs, low salience, and ECJ/Commission activism led to expansive harmonization
Anti-discrimination (has been framed as an integration issue)	Diffuse	Low	Harmonized	Expansive	Treaty provisions on anti-discrimination mean that all immigrants may be able to make rights claims to the EU. Left governments were supportive.
External border controls/visas/free movement for TCNs (has been framed as a control issue)	Concentrated (regions with high unemployment perceive harmonization as a threat -- likely to bring in more rights for TCNs)	High (potential for significant mainstream party losses)	Partially harmonized	Restrictive (state actors resisted ECJ and Commission activism by making policy intergovernmentally instead of supranationally)	Concentrated costs and high political salience partially blocked harmonization, and led to restrictiveness in harmonization that did take place
Asylum (has been framed as a control issue)	Mixed (some countries feel that harmonized asylum policy will dilute their standards)	Medium	Partially harmonized	Restrictive	Mixed costs, medium salience and ECJ/Commission activism led to partial harmonization, although it was very restrictive.

TABLE 4 Country Responses to Policy Proposals

Harmonization Proposals (4 Categories of Policy)	Issue Areas	Ger.	Fra.	UK
Expansive – high salience and/or concentrated costs,	No differentiated integration	0	0	0
	Communitarize 3rd Pillar	0	0	0
Restrictive – high salience and/or concentrated costs	Incorporate Schengen	1	0	0
	Action Program/objectives	1	0	0
Expansive – low salience and/or diffuse costs	Imm. & Asylum to 1st Pillar	1	1	0
	EU Commission initative	1	1	0
	EP consultation	1	0	0
	ECJ jurisdiction	1	0	0
	Majority voting in Council	1	1	0
	Binding legal instruments	1	1	0
	EU accession to ECHR	1	1	0
Restrictive – low salience and/or diffuse costs	Less negotiating committees	1	1	1

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