**SPEED DATING: Political Economy**

The first line of critique [against a political economy approach] queries the theory’s assumptions about the definition of interests. It should be recalled that Freeman’s theory was based on an assumed link between the distribution of costs and benefits of a particular migration policy, and the way different societal groups defined their interests vis-à-vis this policy. In other words, it is important for the theory to retain some reliable link between objective costs and benefits, and perceived interests. However, as many scholars have observed, migration issues have assumed a highly symbolic role in many host countries, attributed an importance beyond any rational assessment of their real impact on individuals or social groups (Faist, 1994:51; Brochmann, 1999:329; Hammar, 2001:19–20). If this is the case, then we must relinquish any guarantee of a reliable link between observable/predictable interests and perceived ones. And forsaking this link, of course, removes one of the theoretical virtues of the theory – the possibility of predicting human behavior based on some objectively observable pattern of costs and benefits.

The second empirical critique relates not so much to the formation of interests, but the determinants of their impact. Freeman’s theory assumes that the degree of influence of interests is determined by the level of organization within a group. Yet this overlooks the role of institutions in mediating the relative influence of different interests. Such institutional factors include, notably, patterns of interest group incorporation, party political systems, and established ideological cleavages. This has in fact been a major source of critique of Freeman’s theory: commentators have argued that the theory is best applicable to pluralist interest group systems, such as that of the United States. It is less descriptive of European countries, with their more corporatist structures and higher degree of politicization of migration issues (Brubaker, 1995).

Third – and in my opinion a crucial weakness of the theory – is its characterization of the state as a broker. The neoclassical political economy account sees the state as passively reacting to different interests. Its role is confined to that of finding a utility-maximizing compromise between organized interests. This overlooks the fact that the state – at the very least – plays an active role in defining new policy alternatives capable of securing compromise (Held and Krieger, 1984:18). Other theorists have gone further, claiming that states display considerable autonomy in the formulation and implementation of preferences that are independent of societal interests (Nordlinger, 1981; Skocpol, 1985). Freeman’s account may be wieldy, but this comes at the cost of a simplified theory of societal interests, institutions, and the state.

**(Boswell, 2007)**

**SPEED DATING: The State as an Actor**

Let us now turn to an alternative set of theories, which locate the key explanatory variables of migration policy in the relationship between the state and groups or institutions resisting its restrictionist bent. On these accounts, the state is not a broker merely juggling interests. Rather, it is conceptualized as an actor in its own right, capable of defining and pursuing its own goals. However, the state is frequently constrained in the pursuit of its objectives by societal interests, its own administrative departments, the judiciary, or the international system. In the case of migration policy, these constraints often militate against restrictionist policies in the direction of more liberal approaches– hence Hollifield’s notion of the “liberal constraint” (1992:94).

This way of theorizing migration policy calls for a rather different concept of the state. In fact, there are at least two features of a definition of the state that are necessary for a neo-institutional account, or indeed any account trying to theorize the relationship between politics and other administrative or judicial institutions in liberal states. The first is that the state should not be understood as a monolithic entity. At the very least, we need a conceptual distinction between the system of party politics, which defines value orientations and political programs; and administration, or the state’s bureaucratic apparatus, which determines the detailed content and implementation of collectively binding decisions (Luhmann, 1981). Beyond this, it is also important to conceive of the administration as being composed of a number of different agencies, which may diverge intheir interests and goals, and have varying degrees of autonomy and capacity.

Second, as already suggested, we must allow conceptual space for the possibility of the state having preferences that are not reducible to some matrix of societal interests. This autonomy of preferences may be inferred from a number of considerations: most importantly, the interest of the administration in securing legitimacy over time; and the organizational dynamics and interests of different state departments and agencies. In migration literature, the common assumption is that the protectionist preferences of the state can be largely attributed to the interest of the government and certain of its agencies in securing popular legitimacy. The state secures legitimacy through protecting its citizens’ privileged access to welfare, or sociocultural stability. Hence the generally restrictionist bent of political discourse on migration issues in democratic welfare states.

The most influential variant of the liberal constraint thesis comes from neo-institutionalist accounts, and especially their insights about how liberal institutions have exercised an inclusionary influence on national migration policies. However, many of these accounts take for granted some inherent “logic” that motivates and gives force to these institutions’ attempts to resist state protectionism. They undertheorize the autonomy of these institutions in formulating interests separate from politics or societal interests. More importantly, they fail to explain the apparent resilience of institutions in the face of state attempts at encroachment. Why do states not simply dismantle liberal institutions whenever they stand in the way of protectionist migration policies?

**(Boswell, 2007)**

**SPEED DATING: Societal Interests**

A first set of theories locates the source of the liberal constraint in individual and group struggles for equal rights or justice. Societal groups mobilize to claim freedom from state authoritarianism, or a more just distribution of resources between citizens.

In order to provide such an account, such theories need to make two steps. First, they must explain the sources of mobilization of societal groups; and second, they must give an account of why and under which conditions this form of mobilization influences the state. On the motivation to mobilize, some accounts have located this in immanent features of human nature or communication: the capacity for autonomy or reason, or the structure of language. Failure to fulfill the relevant conditions can generate struggles for justice, especially on behalf of excluded and minority groups. Of course, the conditions for the emergence of these forms of mobilization require more than just the experience of injustice. Historically, such claims have tended to surface in the context of social upheaval linked to state-building, industrialization, and modernization (Tilly, 1975; Giddens, 1985; Mann, 1995).

The second question may appear naive, but it is far from straightforward: what motivates the state to respond to this mobilization? Historically, states have periodically found themselves under pressure to respond to the claims of mobilized societal groups in order to shore up legitimacy. This dynamic largely explains the extension of rights, in both scope and content. Rights have been extended to previously marginalized groups who have mobilized to struggle for them, and who – importantly – had political opportunities to make these bids successful. However, there is a complicating factor in explaining the rationale for such rights extension. The state’s motives for striking such bargains with society may well be largely reduced to the quite pragmatic goal of securing consent (Favell, 2001). And, once political rights have been accorded, this has triggered a dynamic of further rights extension through party political mobilization. But in the liberal political tradition, such struggles have derived ethical force from a conception of the universal scope of justice. Although in practice the scope of justice has almost always been restricted to nationals of particular states, the liberal social contract tradition drew on a notion of the moral equality of all human beings, grounded in their capacity for reason, or interest in autonomy.

This combination of pragmatic and ethical considerations makes it difficult to predict how far this dynamic can be expected to be relevant for immigrant rights. The key question is, under what conditions are claims for rights successful?

In the case of ethnic minority groups struggling for rights, the answer is less clear-cut. On the one hand, the normative force of the universalist arguments on which rights struggles have tended to be based provides a rationale for extending these same rights to minority groups. The moral force of this case for extension is difficult to deny, once one has embraced some universally grounded concept of justice. Yet patterns of class mobilization have also worked against the extension of rights to immigrants or ethnic minority groups. The workers’ movement has had at best an ambivalent relationship towards immigrants (Castles and Kosack, 1973:127–128; Haus, 1999). Concerns about preserving privileged access to resources appear at least as powerful as arguments about universal justice. Again, it is important to make the point that once deprived of more pragmatic considerations, the power of the normative argument as a motivation to extend rights to newcomers or ethnic minority groups appears to recede.

**(Boswell, 2007)**

**SPEED DATING: Institutional Explanations**

[Institutional explanations] focus on institutions as actors, rather than societal groups. They locate the source of the liberal constraint in the dynamics of institutions. We can divide them into three variants. According to the first variant, liberal institutions derive force from constitutional provisions that institutionalize their autonomy. These provisions may include the separation of powers, independence of the judiciary, and so on. As Claus Offe points out, the distinction is one between decisions that are contingent on the outcome of the political process and the interest conflicts shaping this; and those that are removed from the vicissitudes of conflict because they are constitutionally entrenched (2003:276). These arrangements usually derive from bargains struck between the state and societal groups, in cases where mobilization forced the state to make political concessions. But once such arrangements are instantiated, they are difficult to roll back (Hollifield, 2000:150); as Randall Hansen has put it, they display a “stickiness” that resists change (2000:279).

In fact, there are two assumptions that are important here. The first is the notion that institutions are screened from political pressure. They have sufficient independence from the political system and rival administrative agencies to be able to exercise some power over the extension of rights. The second assumption is that the actors within these institutions operate according to interests and norms that are at variance with those predominating politics or rival agencies.

An important proponent of this type of theory in migration literature is Virginie Guiraudon. Her “institutional sociology” approach describes how the judiciary and welfare bureaucracies have been instrumental in expanding rights to nonnational residents, through the inclusionary, ondiscriminatory “logic” of the law and the principles of the welfare state (Guiraudon, 2002, 2003). In addition to a normative and professional commitment to the nondiscriminatory application of rules, bureaucracies are also motivated by interests in administrative efficiency. “Put simply, bureaucracies standardize operationsand courts seek coherence in the application of legal principles” (Guiraudon, 2002:87).

The third variant of state/domestic institutions theory overlaps with political economy approaches. According to these theories, the state allows liberal institutions a degree of autonomy because of its interest in guaranteeing the accumulation of wealth, or preserving the capitalist mode of production. This attribution of a privileged status to the interests of capital tends to result in more liberal immigrant policies. Employers, it is assumed, have an interest in securing an abundant supply of cheap labor.

**(Boswell, 2007)**

**SPEED DATING: International System**

The final set of theories of the liberal constraint places the onus of explanation on the international system. These theories share the assumption that the international system comprises a set of norms that encourage or oblige states to pursue policies which do not reflect societal preferences. Moreover, in the case of the current international system, this influence may well push governments in the direction of more liberal policies.

There are two main strands in such theories that have been applied to explain the liberal constraint in the area of migration policy. First is James Hollifield’s account of the role of “embedded liberalism” in constraining the restrictive proclivities of states (1992:26–28, 2000). Relations between states (and certain areas of domestic policy) are shaped by a series of norms, codified in conventions, treaties, and declarations, and also informally instantiated in the practice of international relations. Since the current system is defined by hegemonic liberal states, the norms governing interstate relations also embody the liberal systems and values of these states. The dominant norms within this hegemonic liberal order include not just those of peaceful settlement of disputes or economic cooperation, but also provisions on individual rights.

The second strand is more explicitly normative, attaching both ethical value and explanatory weight to international norms of human rights (Bauböck, 1994; Soysal, 1994; Jacobsen, 1996). Yasemin Soysal, for example, points to the expansion of international and European human rights regimes since the end of World War II. These regimes set out norms for the treatment of individuals and minority groups which provide a form of extranational rights coverage. As Soysal writes, “The rights and claims of individual are legitimated by ideologies grounded in a transnational community, through international codes, conventions and laws on human rights, independent of their citizenship in a nation state” (1994:23).

Soysal’s account has been criticized for overestimating the power of international human rights norms in constraining state restrictionism. Moreover, it has been objected that insofar as these norms do have explanatory power at all, this is essentially derived from interests, norms, and institutions within nation-states ( Joppke, 1998). But there is another problem with these international society theories, which surfaces in both the Soysal and the Hollifield accounts. This can be best demonstrated by returning to Hollifield’s account. His discussion of embedded liberalism assumes that the codification of liberal norms in the international system is/was brought about by hegemonic liberal states interested in exporting their worldview. What is less clear, though, is whether their attachment to this liberal framework is essentially (albeit indirectly) derived from some conception of national interest (for example, an interest in the spread of free trade or a faith in “democratic peace”); or whether it also embodies an ethical commitment to values of liberty and justice, and thus an interest in extending rights to the nationals of other states (Linklater, 1998).

**(Boswell, 2007)**

**SPEED DATING: Boswell’s Theory of Legitimacy**

We can most usefully understand the state’s response to the demands embodied in the “liberal constraint” through the lens of these four criteria for assessing state legitimacy: fairness, accumulation, security, and institutional legitimacy. States strive to satisfy what they perceive to be public expectations about the satisfactory performance of these functions. However, each of the four preconditions is brought into question in the sphere of migration policy. And understanding these tensions is key to explaining immigration policies…

Governments and bureaucracies have limited motivation to take on board interests and norms that are not helping them to meet these imperatives. However, there is frequently a coincidence between functional imperatives and the liberal approaches propounded by societal actors, domestic institutions, or international regimes. … But the point to reiterate is that these liberal constraints are not a function of exogenous factors, i.e the characteristics of liberal institutions or the power of the business lobby. Rather, their power derives from their resonance with state interests, understood as the imperative to meet the preconditions for legitimacy. However, a second important point is that these functional imperatives are difficult to realize simultaneously. And migration policies often bring them into conflict in a particularly pronounced way.

A state unable to simultaneously meet all functional requirements may have an interest in the persistence of contradictions and inefficiencies in policy. In the case of migration policies, such mal-integration usually takes the form of a gap between proclaimed, restrictive migration policy, and the de facto toleration or covert implementation of more liberal measures.

The state’s need to fulfill these four requirements motivates it to selectively incorporate the interests of different societal groups or institutions. However, the power of these interests and institutions does not emanate from characteristics they possess, as neoinstitutionalist accounts would have it: rather, it is contingent on the resonance of these concerns with the functional imperatives of states. We might paraphrase Alexander Wendt’s (1992) famous observation about anarchy in international relations: the liberal constraint is what states make of it.

This approach helps elucidate the dilemma faced by states in the area of migration policy. The state is expected to meet competing requirements, and its inability to satisfactorily fulfill all four imperatives raises the risk of a withdrawal of legitimacy. In some cases the dilemma can be, or has been, avoided: notably because of limited migration and refugee flows (type one), or elitist policy making (type two). Where states are confronted with a conflict between the preconditions for legitimacy, they are likely to resort to two strategies: intentional incoherence of policies through implementing or tolerating de facto immigration (types four and five); or populist mobilization around concerns about security and/or protectionist conceptions of fairness (type three).

**(Boswell, 2007)**

**SPEED DATING: Accepting Unwanted Immigration**

A domestic political process under the sway of client politics is one reason why liberal states accept unwanted immigration. But I suggest two modifications to Freeman's model.

First, Freeman ignores the legal process as a second source of expansiveness toward immigrants in liberal states. In fact, the political process is chronically vulnerable to populist anti-immigrant sentiments --even in the United States, as the Congressional anti-immigrant backlash in the wake of California's Proposition 187 testifies. Judges are generally shielded from such pressures, as they are only obliged to the abstract commands of statutory and constitutional law. The legal process is crucial to explaining why European states continued accepting immigrants despite explicit zero-immigration policies since the early 1970s. In open opposition to a restrictionist executive, which switched from elitist client politics to popular national interest politics, courts invoked statutory and constitutional residence and family rights for immigrants. In Europe, the legal rather than the political process explains why states accept unwanted (family) immigration.

In a second modification to Freeman's model, I suggest that there are important variations in the processing of unwanted immigration not just between the United States and Western Europe but within West European states themselves. Freeman lumps together guest-worker- and postcolonial-based immigration regimes and thus overlooks their different logics. In a guest-worker regime, such as Germany's, the state at one point actively lured (de facto) immigrants into the country, and thus is morally constrained not to dispose of them at will once it decides upon a change of course. In a postcolonial regime, such as Britain's, immigration was never actively solicited but passively tolerated for the sake of a secondary goal--the maintenance of empire. Immigration policy is thus by definition a negative control policy against immigration that at no point has been wanted. Differently developed moral obligations toward immigrants in both regimes (among other factors) help explain variations in European states' generosity or firmness toward immigrants.

Discussing the two cases of illegal immigration in the United States and family immigration in Europe, I suggest that liberal states are internally, rather than externally, impaired in controlling unwanted immigration. The failure of the United States to control illegal immigration, particularly from Mexico, is due primarily to the logic of client politics and a strong antipopulist norm that feeds upon America's emphatic self-description as a universal "nation of immigrants" and upon the civil rights imperative of strict nondiscrimination. In Europe, legal and moral constraints kept states from pursuing rigorous zero-immigration policies after the closing of new postcolonial and guest-worker immigration in the late 1960s and early 1970s, respectively. Juxtaposing the extreme cases of Germany and Britain, I further suggest that these constraints were most unevenly distributed across Europe, partially reflecting the different logics of guest-worker and postcolonial regimes.

**(Joppke, 1998)**

Articles from NYT:

1. Japan Keeps a High Wall for Foreign labor 2/1/11
2. Defying Trend, Canada Lures More Migrants 12/11/10
3. Nebraska Town Votes to Banish Illegal Immigrants 21/6/10
4. Israel Grows Uneasy Over Reliance on Migrant Labor 4/7/10
5. US Sees Success in Immigration Program for Haitians 19/1/11
6. Deportations from US Hit a Record High 6/10/10