

Liberal Intergovernmentalism and EU immigration policy.
A theoretical approach in a complex policy field.

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Abstract

In this contribution, Andrew Moravcsik's theory of Liberal Intergovernmentalism will be illuminated in order to better evaluate its potential, but also potential shortcomings in the analysis and explanation of the path to European integration. The field of EU immigration policy has developed the potential of being of major concern for the European Union and its Member States. Therefore, the development of this field shall serve as an example and will be illustrated as well. In this sense and following a brief introduction, the first section is dedicated to the illustration of the theory's cornerstones. Afterwards, the development of immigration policy on European level shall be topic of analysis. Before briefly summing up the findings in the conclusion, the research question on the applicability of the theory of Liberal Intergovernmentalism in EU immigration policy shall be answered in the third section.

1 Introduction

There are several theories that try to analyze and explain the path of European Integration. However, some authors detect serious shortcomings of the traditional EU theories, like Neo-functionalism and traditional Intergovernmentalism, when it comes to the explanation of certain developments in the European Union (EU). As a result, new and often more diversified theories emerge, like for example the theory of Liberal Intergovernmentalism (LI), most prominently represented by Andrew Moravcsik. This paper is designed to provide an overview of Liberal Intergovernmentalism and the theory's explanatory power and deficits in the analysis and explanation of the path to today's European Union. In the last years, the field of European Union (EU) immigration policy has developed as very sensitive field for many Member States (MS). Due to this fact, it shall be emblazed and serve as an example to illustrate significant developments and undermine – or question – the theory's implications and predictions about the path of European integration. The research question hence is, whether LI can adequately explain the development of a "EU immigration policy" - if one can even consider immigration policies as matter of the European Union. Most attention shall be laid on the period after the treaty of Maastricht, when the field of immigration has first been made community issue. Despite the fact that immigration and asylum policy are strongly related, the author will not particularly refer to the latter since an adequate illumination of both exceeds this paper's scope.

2 Andrew Moravcsik's theory of Liberal Intergovernmentalism

LI as theory is grounded in broader social science theory, drawing insights from the traditional EU theories of Neo-functionalism and traditional Intergovernmentalism (Moravcsik & Schimmelfennig, 2009: 67). Moravcsik identifies three essential elements, namely rational state behavior, "a liberal theory of national preference formation, and an intergovernmentalist analysis of interstate negotiation" (1993: 480). He, as founder and main representative of the theory with his work "Preferences and Power in the European Union" created the theory's central manifesto in 1993 (Steinhilber, 2012: 142) and considers the EC / EU as "most successful example of institutionalized international policy co-ordination in the modern world (...) designed to manage economic interdependence through negotiated policy co-ordination" (Moravcsik, 1993: 473f). Epistemological, LI assumes the possibility of verification and falsification of hypothesis to be existent in social science, too. Concerning its ontology, the theory in general denies ideas, norms and values autonomous, policy-forming power when it comes to the decisive question "why" European integration takes place, and what factors account for its timing and content. The MS, represented by their governments, decide over and control EU integration (Steinhilber, 2012: 143f). LI assumes the determination of state behavior – in form of governmental action - by domestic societal pressure and the strategic environment (Moravcsik, 1993: 474). Therefore, most important institutional changes shaping the path of European integration since the treaties of Rome in 1957 have been determined by grand intergovernmental bargains at intergovernmental conferences (IGCs) (Slapin, 2008: 131).

2.1 Towards EU reforms – a three level analysis

While often being compared to, Moravcsik goes beyond Putnam's two-level game to analyze myriad entanglements occurring in interaction between the domestic and

the international sphere (Cini, 2010: 96), and names the three variables of preference building, inter-state bargaining and institutional choice as crucial for the process-analysis.

2.1.1 Preference building

Liberal theory is the corner of LI's approach on how states form their interests, assuming that during this phase, the state is the outcome of a specific societal balance of power (Moravcsik, 1992: 7, cited in Steinhilber, 2012: 147) and not a unitary actor mainly concerned for its relative geopolitical position in the state system (Cini, 2012: 98). Dominant Groups compete with each other for the attention of the governing elites, hence demand for international cooperation depends on their (mostly economic motivated) interests (Cini, 2010: 97). In the case of the European Union, these interests are particularly market liberalization and the abolishment of trade barriers. According to LI, small and clearly confined groups, above all the manufacturers, are most successful in influencing governmental policies, since they are usually homogenous and best able to concretely formulate their interests and purposeful apply lobbying. As soon as preference building is completed, preferences are assumed to remain stable during negotiation (Steinhilber, 2012: 148f).

2.2.2 Inter-state bargaining

Here, the realist element of LI comes to effect. Moravcsik assumes that reforms and progress in the EU depend on the relative power of the MS. Hence, the "supply" of integration neither resulted from unintended spill-over nor supranational initiatives (Steinhilber, 2012: 149 f), but has been determined by the European Council and the Council (Cini, 2010: 98). Several political factors strongly influence the process of bargaining between the MS, and the exception under which cooperative solutions under unanimity can go above the lowest common denominator (Steinhilber, 2012:151). Of

particular importance is the availability of issue linkages, as well as the (non-)existence of alternative coalitions whereas the intensity of national preferences (Cini, 2010:97f), the strong “need” for common policy, weakens the relative power of the states (Steinhilber, 2012: 151).

2.1.3 Institutional choice

Moravcsik does not assume supranational institutions to be the antithesis of intergovernmentalism (Moravcsik, 1993: 507). Instead, he considers them not sufficient for, but able to improve the efficiency of inter-state bargains in specific situations such as control, distribution and sanctioning (Steinhilber, 2012: 152). Not federal endeavor, but the need for credible commitments make MS, who remain masters of the treaties, delegate and pool sovereignty in international institutions (Moravcsik, 1998, 3f, cited in Cini, 2010: 98). None of the supranational institutions except for the Commission in the case of the Single European Act (SEA) has according to Moravcsik been the driving force or able to determine the political guidelines for any of the grand bargains (Steinhilber, 2012: 152). Opposing critique that LI strongly underestimates supranational institutions, LI-theorists rather assume EU institutions to be “more consensual than their formal structure suggests” (Moravcsik & Schimmelfennig, 2009: 84).

2.2 A theory of European integration indeed?

2.2.1 Power...

Supporters of LI attribute the theory the status as “baseline theory” when it comes to regional integration (Moravcsik & Schimmelfennig, 2009: 67). It can be referred to as a touchstone against which other integration theories are compared to due to its clarity (Cini, 2010: 96), “theoretical soundness, empirical power, and utility as a foundation for synthesis with other explanations” (Moravcsik & Schimmelfennig, 2009:

67). Moravcsik (1993: 482, cited in Steinhilber, 2012: 147) himself emphasizes the necessity of clearness and thrift to explain EU reforms with as little variables possible, as already mentioned in the preceding section. LI, as confessed, works best when decision-making is taking place unanimously as in the grand-bargains but claims to apply far beyond that and “into the realm of everyday EU decision-making” (Moravcsik & Schimmelfennig, 2009: 74). To what extent this remains valid, however, after the treaty of Lisbon entered into force, bringing severe institutional shift, is to be questioned.

2.2.2 ... and weakness of LI as theory

Criticism is wide-ranged when it comes to LI, coming from several theories but also empirical conclusions; however, due to the narrowness of this paper, not all of them will be dealt with appropriately. In general, LI has been criticized for its narrowness. First, it has been assumed to be too uncompromising for alternative interpretations of European integration to reconcile with. Second critics say it is too narrow-minded when considering economic interests (and to a lesser extent geo-political concerns) as decisive for national preference formation (Cini, 2010: 99f) whereas several other domestic structures have an important impact on local preferences too, as especially emphasized by Multi-Level Governance (MLG) approaches (Steinhilber, 2012: 157). Additionally, LI is being under critique for downplaying the role supranational actors such as the Commission and the European Court of Justice (ECJ). Also, the theory neglects the importance other non-state transnational actors like European interest groups may have, since prior to interstate negotiations, action in the informal behind-the-scenes dimension sets the boundaries for the talks between the MS (Cini, 2010: 100f). Furthermore, a criticism often referred to is its lack of empirical explanatory power, since its predictions often don't fit the facts of specific case studies and empirical analyses of EU politics. Consequently, LI's empirical focus has been considered too narrow and selective, applying mostly in cases of intergovernmental negotiations – Moravcsik among others

counts the SEA, the European Monetary System and the Common Agricultural Policy as case studies – where mostly economic interests indeed are the main concern at stake and decisions are taken unanimously (Cini, 2010: 99). As Scharpf (1999: 165) and Peterson (1995, both cited in Cini, 2010: 99f) argue, it therefore is hardly surprising that the theory proves to be correct when illuminating history-making decisions of constitutional significance, dealing with the future of European integration. Where other forms of decision taking apply, namely in most matters of day-to-day politics, LI is much less able to offer an explanation, as e.g. pointed out by rational-choice institutionalists (Moravcsik & Schimmelfennig, 2009: 73).

2.3 The EU isn't broke

When it comes to the future of the EU, LI draws a more optimistic picture than others who interpret the failure of the constitutional treaty or the democratic deficit often indicated as clear signs for crisis. Moravcsik, denying suchlike, states that a weak European Parliament (EP) does not necessarily imply formal non-democracy, since in LI, the national governments who are democratically legitimated, remain the most important and powerful actors (Steinhilber, 2012: 154). He rather emphasizes the substantive and institutional stability of the EU concluding that it is more likely that the improvement and reform of policies is going to take place within the current con-federal constitutional framework. According to LI, the lack of substantial reforms is owed to the lack of national interest in any major project comparable to the monetary union or the common market, hence neither Amsterdam, nor Nice or Lisbon are of the same importance and scope as Maastricht or the SEA (Moravcsik & Schimmelfennig, 2009: 83f) as they are way more conservative and remain within the constitutional order fixed in the Treaty on European Union (Moravcsik, 2008: 157f). In this sense, LI can be assumed to be a defendant of the status quo as long as the leading position of the MS is being reinforced.

3. EU Immigration policy

As already mentioned previously, EU immigration policy shall be serving as example to demonstrate the (in-)applicability of LI in a policy field that is of growing concern for the EU and its' MS. After illuminating the development of the same – in line with LI, focus will be laid on the grand bargains - the theory's explanatory power when it comes to EU immigration policies is going to be analyzed.

3.1 Historical landmarks for immigration policy before Maastricht

While during the 1950s and 1960s, immigrants were considered a necessary extra workforce in many western European countries, immigration later became a subject of restrictive and control-oriented policy (Huysmans, 2000: 753f). Starting with the Rome treaty in 1957, promoting freedom of movement for workers within the community (Satvinder, 2005: 763) and the creation of a common market in 1968, several developments have had important implications for immigration policy, such as the establishment of the Schengen area and the SEA, deepening the existing structure of the common market (Geddes, 2001: 23f). The MS kept all sovereignty in the field of immigration- and asylum policies (Bösche, 2002: 42). During the 1980s and 1990s, the MS intensified their cooperation but limited it to intergovernmental agreements and it remained characterized by informality (Geddes, 2001: 23f). The Trevi Group, an intergovernmental organization formerly only occupied with combat on terrorism, added asylum and immigration to its purview in 1980, and "in 1986, the Ad Hoc Group on Immigration was first set up to formulate" a common approach to immigration and asylum policy (Satvinder, 2005: 750). Since 1984, the ministers of interior and justice, who are responsible for immigration, meet regularly in the Council of the EU (Bösche, 2002: 93).

3.2. About treaties and programs

3.2.1 Maastricht

Immigration policies, belonging to Justice and Home Affairs (JHA), were “pillarized” in the TEU under Article IV of the third pillar and hence solely intergovernmental rule. The EU only had competences to coordinate immigration policies among the MS, therefore the institutions’ power remained limited: the EP had the right to be informed and heard, the Commission had to share the right to initiative with the MS and the ECJ had no competencies except the right of interpretation of international law given through the MS. Both within and outside of the EU, intergovernmental working groups gained significant importance (Bösche, 2002: 47ff). While being strongly oriented towards the common market, Maastricht legally defined intergovernmental coordination of immigration policies, which, according to Moravcsik (1993: 497f, cited in Bösche, 2002: 79) makes national, mostly restrictive policies more efficient while at the same time diminishing transaction costs. However, often negotiations led to deadlock since decisions were only taken under unanimity, and even if this was reached, the result hardly ever exceeded the lowest common denominator (Ucarer, 2010: 310).

3.2.2 Amsterdam and Tampere

The Treaty on Amsterdam (ToA) partly “communitarized” asylum and immigration in Title IV EC (Kostakopoulou, 2010: 151) and transferred the Schengen Acquis to the first pillar, giving the EU institutions real, albeit limited power. Article 67 not only named unanimity as requirement for most legislation, but also special transition arrangements (Acosta, 2009: 21). After a five-year transition period, the Commission would gain the right to put forward proposals regarding immigration. The EP’s power remained limited to consultation in most cases, with visa and irregular migration policy to be subject

of co-decision procedure (Ucarer, 2010: 311; Acosta, 2009: 21), and the ECJ received the mandate to interpret Title IV and undertake preliminary rulings responding on national courts' request (Satvinder, 2005: 773f). Amsterdam established the objective of developing and maintaining the EU as area of freedom, security and justice (Elvins, 2004: 28), now as equitable goal beside the common market (Bösche, 2002: 80), ensuring the free movement of persons on the territory of the EU and offering high-level protection to the EU citizens. Additionally, instruments of secondary right – legal regulations, principles and decisions - can be applied since Amsterdam (Bösche, 2002: 65).

The Council meeting on 15 and 16 October 1999 in Tampere has been the first summit meeting held specifically to discuss JHA issues (Elvins, 2004: 28) that should be linked closer to foreign policy among others with the goal to intensify cooperation between the EU and countries of origin and transit (Ucarer, 2010: 316). A common EU asylum and immigration policy has beside the issue of transnational organized crime been the major theme emerging from the meeting (Elvins, 2004: 28). Furthermore, heads of states and government members confirmed the right to freedom as inclusive and not reserved for EU citizens and emphasized the shared commitment to human rights and humanitarian values, to a certain part surely answering on the critique of its intents to create a "fortress Europe" (Satvinder, 2005: 775f). That the interests of the most powerful MS remain important has been emphasized through the definition of basic rules in regard to content by a paper submitted by Germany, France and GB (Bösche, 2002: 82).

3.2.3 Nice and The Hague

The Hague Program that has been approved by the European Council in November 2004, succeeding Tampere. It lacked in ambition and was characterized by a prominent security focus as a result of 9/11 and the Madrid bombing in March 2004. It primarily followed the logic of control and surveillance, hence tackling irregular immigration and terrorism and aiming on the integrated management of the EU's external borders (Kostakopoulou, 2010: 153; 162ff). However, it also included the guarantee of

fundamental rights, minimum procedural safeguards and the access to justice. The Hague Program also affirmed the move to QMV (unanimity remained for matters of legal migration) and co-decision procedure and stressed the importance of partnership with third countries (Satvinder, 2005: 749, 778ff; Ucarer, 2010: 318).

3.2.4 Lisbon and Stockholm

The Lisbon Treaty covers JHA - now Area of freedom, security and justice (AFSJ) - by Title V Treaty on the Functioning of the European Union (TFEU), dealing with border checks, asylum and immigration and opened the way for the full involvement of the Commission, the EP and the ECJ (Kostakopoulou, 2010: 151). QMV has been extended, the EP would operate with co-decision authority in almost all cases and ECJ jurisdiction should after a five-year transitional period enforce all decisions (Ucarer, 2010: 313). A different form of cooperation, following the logic of control and surveillance now slowly digs out within the security-oriented and traditionally executive-driven paradigm, as reflected in the Stockholm Program and the proposed action plan (Kostakopoulou, 2010: 151). Finally, and at last concluding the "third pillar", police and judicial cooperation in criminal matters have been transformed into the TFEU (Fredborn Larsson, 2010: 22). The Stockholm Program that has been adopted by the European Council on 11 December 2009, sets out the priorities and objectives for the period between 2010 and 2014 and offers a more citizen-centered discourse counterbalancing (while not abolishing) the rather security-driven agenda of its ancestors. As the official European Commission's Communication of 2009 states, the formulation of a common immigration policy based on a global approach, partnership with TCs and respect for fundamental rights and dignity is a central topic on the European policy agenda (Kostakopoulou, 2010: 159f).

3.3 A need for “Fortress Europe”?

The lifting of internal borders through the realization of the area of freedom, security and justice requires a stronger management of the EU’s external borders, including regulation of entry and residence of Third Country Nationals (TCNs). For a long time, the official communication to accomplish this has been through a restricted and control-oriented migration policy. However, recent developments and action, such as the Commission’s Action Plan of 2010, entail a shift towards the affirmation of migrants’ fundamental rights and the protection of values of freedom, human dignity, equality and solidarity (Kostakopoulou, 2010: 161f). A common asylum and immigration policy should serve this goal while at the same time meeting the challenges of today’s and future immigration flows.

4 The communitarization of immigration policy – a loss of control?

The question that deserves particular illumination when analyzing the development of EU immigration policy responsibilities under LI spotlight, is about the sovereign capacity of states to regulate international immigration (Geddes, 2001: 22). Counter-arguing several authors predicting a loss of control for MS through the shift to EU level, the author in 2001 emphasized that EU cooperation and integration on the contrary consolidated and reasserted “their ability to regulate international migration” (Geddes, 2001: 21). It does not necessarily weaken them through the loss or surrender of power to the EU but rather depict “new international venues for the pursuit of policy objectives” (Geddes, 2001: 22). Both, the formation of intergovernmental regulations such as the Schengen-Acquis or the pillarization of immigration policies in the third pillar speak in favor of LI. Moravcsik later still concluded that immigration and citizenship are likely to remain national since political control over the major fiscal activities remains with the MS and they remain responsive to publics (Moravcsik & Schimmelfennig, 2009: 83f). He assumes that real constitutional change would not only demand the expansion of QMV,

the prerogatives of the EP and the adjustment of voting weights and structure of the Commission, but also essential intergovernmental cooperation in important areas such as immigration and foreign policy (Moravcsik, 2008: 157f). He furthermore argues that in the area of immigration and asylum unanimity prevails and EU policy or institutions play only a subordinate role. Despite he acknowledges considerable progress in the field, he limits it to "soft" cooperation such as common norms, data-exchange, the coordination with third countries and of national policies and the codification of already existing international obligations. Hence, control the EU has over immigration issues remains only secondary in comparison to the MS (Moravcsik, 2008: 174).

While Geddes' argument in 2001, that cooperation has rather strengthened the position of the executive branches of national governments at the expense of parliaments and courts (Geddes, 2001: 22) seemed coherent for a long time, the situation has changed significantly. The communitarization of immigration policies as a very sensitive field of sovereignty in the Treaty of Amsterdam is hard to explain with LI, since the interests of the MS in the field are very diverse due to geostrategic reasons, among others. Additionally, national interests would have changed significantly between Maastricht and Amsterdam to make such a development explainable (Bösche, 2002: 74f). The position of the EP has been strengthened since with Lisbon, immigration policy has developed as a field subject to co-decision procedure and ordinary legislation procedures (Kessler, 2009: 12). Furthermore, the ECJ has been given the right to verify every EU institutions' activity – including Frontex – with the European treaties (Kessler, 2009: 13). What speaks in favor of LI is the guarantee of opt-outs for the UK, Ireland and Denmark, especially in areas of legal immigration, visa and border control, since these countries only supported communitarization as long as their separate protocols legitimized non-participation (Satvinder, 2005: 749; 784). Also the fact that programs such as The Hague and Stockholm are still being decided over by the European Council (Kostakopoulou, 2011: 153) highlights the important role national governments still play, at least in the fundamental decision of suchlike action. And some may even question, whether the

involvement of the EU Parliament has actually even rather improved the Council's position more than without its participation.¹ However, if one asks the question on how immigration and asylum policy actually became "EU business", one could strongly argue in favor of neo-functionalism, as e.g. Huysmans (2000: 752f) mentions. Consequently, immigration as part of a policy framework defining and regulating "security issues arising from the abolition of internal border control" (Huysmans, 2000: 753) derives from a spillover of the former only economic internal-market project to an internal security project. This argument, among others, questions LI's assumptions about EU immigration policy.

¹ D. Acosta (2009) interestingly discusses the possible position of the EP as new „bad“ and „ugly“ player in migration policy, potentially improving „the Council's position in a way which would not have been possible without its participation“.

5 Conclusion

Representatives of Liberal Intergovernmentalism conclude that the EU assures the survival and the endurance of nation states and, defending the status quo, define the EU not as state in the making but as the “most ambitious and successful (...) multilateral organization” (Moravcsik & Schimmelfennig, 2009: 84), while the Member States remain deciding and sovereign actors. Liberal Intergovernmentalism indeed is strong when making clear and well verifiable predictions about the way immigration policy will develop. While the treaty of Maastricht is in accordance to those, recent developments since then mostly empirically proved different. However, it remains at least partly questionable whether the achieved developments have the potential to constitute a clear and coherent strategy for the European Union.

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