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Joel P. Trachtman

The Political Economy of International Labor Migration Law

Trade specialists look at the field of migration and often ask, "Why are there so few international commitments to liberalize movement of workers, compared to the extensive commitments that exist to liberalize trade in goods?" Goods are usually single purchase events and do not broadly entail a continuing relationship between buyer and seller. Even services, while entailing more complex and durable relationships than a purchase of goods, are relatively unidimensional. Individuals, on the other hand, are multidimensional, and their movement as workers involves long-term relationships of great complexity with governments and with employers. Migration specialists often refer to the aphorism attributed to the Swiss author Max Frisch: "We imported workers and got people instead" (Borjas 2007). People come with cultures and skills, and they grow up in dense familial and social networks. They have spouses and children. They need education, health care, political engagement, and all of the other fruits of society. They bear responsibilities to society as well, including taxes and perhaps military service. So, as we discuss migration, we must recognize that it requires breaking and restructuring many relationships: a costly endeavor in the deepest sense. Yet despite these costs, large numbers of people today seem eager to move.

However, there are substantial barriers in place to prevent these people from achieving their desires to move in order to seek a better life. These barriers demean human welfare. So it seems worthwhile to grapple with the complexity in order to evaluate whether and how to unlock substantial welfare gains. Individuals will only decide to undertake migration if they perceive that it is worthwhile to them. Throughout history, some have decided to do so, while many others have not. But we must also recognize that there are costs and benefits that are external to the individual migrant. The migrant may be permitted to decide whether to accept these costs and benefits for his or her own family, but what about costs and benefits of the migrant's decision that are felt by the migrant's former compatriots, or by the migrant's new hosts?

The role of international law, in this as in other contexts, is to allow states to constrain themselves where their unregulated action would be less desirable than action constrained by international law. International law has not broadly responded to state restraints on immigration. There are a number of reasons why there is little international law addressing such state restraints. One reason is that these restraints are fairly recent.

The gains from total trade liberalization are estimated at $155 billion annually, while the gains from a 3 percent increase in the stock of migrants is $175 billion.

The United States, which was once a nation of immigrants, only began to restrict immigration in 1875, and then restrictions were limited to those who were destitute, engaged in immoral activities, or physically handicapped (Neuman 1993, p. 1883). This restriction seems to be intended to protect the public fisc, as opposed to jobs. The U.S. Chinese Exclusion Act of 1882 responded to concerns about competition from cheap immigrant labor, as well as racism. In fact, throughout the history of immigration restrictions we see the influence of both protectionism and racism. However, the late nineteenth century was still a period of effectively liberal policies toward migration. Roughly 60 million Europeans emigrated to the New World between 1820 and 1914. This liberalism ended in the imposition of country-of-origin quotas during the early twentieth century (O'Rourke 2004).

During the early twentieth century, many popular destination states began to establish restrictions on immigration. During the past 60 years, global society has made important strides toward free movement of goods, money, and even some types of services. Yet human migration for economic and noneconomic reasons remains broadly constrained.

The book *The International Law of Economic Migration: Toward the Fourth Freedom*, recently published by the Upjohn Institute (see p. 7), explores the law and policy of international economic migration. It analyzes the economics and politics of migration in order to assess the fit between the legal rules and institutions that presently exist to govern international economic migration, and the goal of maximizing welfare. In fact, there are practically no multilateral international legal rules regulating migration for economic purposes. This work shows that, in order to establish the domestic and international political conditions for welfare-enhancing liberalization of migration, it may be necessary to establish binding international legal agreements regarding liberalization.

The gains from total trade liberalization, according to a recent World Bank study, are estimated at $155 billion annually, while the gains from a 3 percent increase in the stock of migrants is $175 billion (World Bank 2006, p. 41). Not only does migration reform provide greater aggregate gains, but the gains are distributed more greatly to developing countries. No wonder thoughtful observers ask why economic migration is not on the global agenda.

It seems reasonable to conclude that liberalization of migration presents the possibility of substantial improvement of global welfare, even though these are only estimates, with many assumptions and empirical gaps. However, the devil is in the details of the distribution of increased (and decreased) welfare, and in the political consequences of these distributional details.

So, why do we see very little diplomatic activity toward international legal commitments for liberalization of economic migration? Why do we see few initiatives by states to unilaterally liberalize immigration, which would often have beneficial economic effects? Is the political economy story of international migration like the story of international trade, in which international legal commitments are useful to provide reciprocal incentives for exporters to lobby, alongside consumers, for lower import duties? We see a few regional or preferential agreements for liberalization—most notably, and most successfully, those within the EU and between Australia and New Zealand. We see almost no such agreements between wealthy countries and poor countries. Why?

Less-skilled workers from developed countries will rarely wish to migrate: they are likely to reduce their income if they go to a poor country, and they cannot improve their income much by moving to a developed country. On the other hand, it is difficult to adapt to a new culture, language, and lifestyle.

Skilled workers from developed countries may wish to migrate to other developed countries, and often this is permitted, although economic downturns seem to reduce the interest in immigrants. Skilled workers from developed countries have not sought work in developing countries in large numbers, presumably because they can earn a greater income in developed countries, which have more complementary factors to make them more productive.

Skilled workers from developing countries often wish to migrate to developed countries for the same reason: complementary factors in wealthy countries would allow them to increase their productivity and therefore increase their incomes. Policies in developed countries vary, but until the recent economic crisis there were important initiatives to facilitate immigration of skilled workers. Skilled workers would generally be expected to increase the welfare of the destination state.

Basic economic theory would suggest that migration of less-skilled workers from where they are abundant—developing countries—to where they are relatively scarce—developed countries—would increase general welfare. However, there are two major concerns. First, there is continuing debate regarding the extent to which less-skilled workers in the destination state experience reduced wages because of immigration of competing workers. Second, there is still some debate regarding the extent to which developing home states may experience reduced welfare due to "brain drain."

There is debate regarding the extent to which less-skilled workers in the destination state experience reduced wages because of immigration of competing workers.

Remittances and return migration may reduce the negative effects of brain drain.

If a multilateral framework agreement existed within which states could negotiate specific liberalization commitments regarding immigration, perhaps including reciprocal exchanges for liberalization in other areas such as investment or trade in goods or services, it is likely that states would more easily reach specific agreements that enhance welfare. It is also possible that enough enhanced welfare could be generated to compensate any less-skilled workers in the destination state who are adversely affected, or to compensate the home state for any adverse effects of brain drain.

There are many questions that would be relevant to the structure of an international agreement providing for liberalization of economic migration. Would this agreement provide for nondiscrimination among home countries, or would it be possible for states to make special bilateral or plurilateral commitments? Should permission to immigrate be temporary or permanent? How would immigrants be treated in terms of local taxes, social security, health care, access for family members, and inclusion in the political community? These collateral issues could operate as inducements or deterrents to migration. Under what circumstances, such as a recession, may the destination state reduce its commitments? Would an organization be needed? Could the International Organization on Migration, the World Trade Organization, the United Nations Conference on Trade and Development, the International Labor Organization, or a new organization, best perform the requisite functions?

It would be worthwhile for states to examine these issues, as their resolution could allow states to unlock great amounts of increased welfare, to increase the liberty of individuals to move, and to reduce global income inequality. *The International Law of Economic Migration* can inform this examination.

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