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**Can Brain Drain Justify Immigration Restrictions?**

Immigration restrictions curtail freedom. They prevent people from going where they want to go, seeing who they wish to see and taking jobs they wish to take. For this reason, if no other, immigrations restrictions require justification. States should not interfere in personal decisions that, in the domestic context at least, are considered basic liberties, without providing good reasons for doing so.¹

This article considers one possible justification for immigration restrictions: that they help to prevent brain drain, the large scale migration of skilled workers from poor to rich states.² Brain drain affects many countries throughout the world. In Granada, Haiti and Jamaica, the skilled emigration rate is above 80 percent. In Africa, Cape Verde has a rate of 68 percent, Mauritius, 56 percent, Sierra Leone 52 percent and Ghana, 47 percent.³ While brain drain can have positive effects, particularly for the skilled workers themselves, their families (who often receive remittances) and the rich states that host them, it can impose serious costs for those left behind in poor sending states. The case of Zambia is illustrative of this. For a population of almost 12 million people, Zambia has only 646 doctors and 6096 nurses. Between 1998 and 2003, 461 Zambian nurses were recruited to the UK.

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² Here I define brain drain quite narrowly. The term can also be used more broadly to mean the migration of skilled workers from any state to any other state or indeed any region to any other region. My use of the narrower definition reflects the focus of this article.

Around half of the 50 to 60 doctors who graduate from the countries only medical school each year, emigrate soon after. Brain drain saps Zambia’s power to confront its horrendous levels of malnutrition, disease and ill health. 1.1 million Zambians have AIDS/HIV. Life expectancy is just 40 years. In cases of this sort, brain drain leaves people who are already desperately poor, worse off still.

If rich states chose to enforce immigration restrictions against all skilled workers coming from poor states where brain drain is problem, instead of continuing to offer many of them residency visas, rich states would remove the main incentive these skilled workers have to leave. Conversely, if rich states lifted the restrictions that prevent more skilled workers coming, it would almost certainly worsen the problem. Given the costs that brain drain can involve there seems a strong argument that, in this instance at least, immigration restrictions can be justified.

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6 This is not to deny that there is considerable debate over how bad brain drain is for people in poor states. Some economists argue that once compensatory factors, such as remittances, are properly taken into account, brain drain actually tends to be beneficial for sending states. See Michael Beine, Frederic Docquier and Hillel Rapoport, “Brain Drain and Economic Growth: Theory and Evidence”, Journal of Development Economics, vol. 64, no. 1, (2001); Oded Stark, “Rethinking the Brain Drain”, World Development, vol. 32, no. 1, (2004). Others find this revisionary literature too optimistic. See Riccardo Faini, “The Brain Drain: An Unmitigated Blessing?”, Centro Studi Luca d'Agliano Development Studies Working Paper No. 173, (2003). I will not intervene in that debate here. The only assumption I shall make in this paper is that there are at least some cases where brain drain does impose severe costs of sending states. The medical brain drain from Zambia seems to be such a case.
This article argues that immigration restrictions against skilled workers from poor states can indeed be justified on brain drain grounds.\(^8\) However it is not the case that immigration restrictions can be justified on brain drain grounds whenever the migration of skilled workers from poor states would make their poor compatriots worse off. If such restrictions are to be justified and if rich states are to have the moral authority to impose them, then a number of conditions must first be met. This article seeks to define what those conditions are.

Section 1 presents the reasoning behind the four main conditions for exclusion to be justified on brain drain grounds. These are (1) that a skilled worker has a duty to assist her poor compatriots, (2) that this duty entails a duty to stay in her state of origin, (3) that a skilled worker’s duty to stay and assist her poor compatriots can be enforced using immigration restrictions and (4) that a rich state has the moral authority to impose counter-brain-drain immigration restrictions. Section 2 argues that the first condition will often be met since skilled workers will normally have two types of duty to assist their poor compatriots, an “obligation of repayment” and a “duty of assistance”. An “obligation of repayment” is an obligation to repay the costs of training. A “duty of assistance”, by contrast, is simply a duty to make poor people better off. Section 3 turns to the second condition, arguing that skilled workers may have a duty to stay in their state of origin but only if they can better provide the assistance they owe their poor compatriots by remaining in their home state and only if staying does not involve unreasonably high costs. Section 4 answers the objection that skilled workers in poor states cannot have a duty to stay in their state of origin since foreign skilled workers have no duty to go there. Section 5 argues that a skilled worker’s duty to stay and assist their poor compatriots can only be enforced using

\[^8\text{Emigration restrictions imposed against their skilled workers by poor states might also be justified under similar conditions however this is not an issue I address here.}\]
immigration restrictions if rich states have no acceptable alternative means of countering brain drain. Section 6 questions whether rich states that have failed to fulfil their own duties of assistance to the global poor have the moral authority to exclude skilled workers on brain drain grounds. Section 7 concludes by laying out the full list of conditions under which exclusion can be justified on brain drain grounds and presenting an example of a case in which these conditions are met.

1. The Four Main Conditions

In their article “Should a Cosmopolitan Worry About ‘Brain Drain’?” Devesh Kapur and John McHale set out three principles they claim should guide policy responses to brain drain: “global liberty (freedom of movement); global efficiency (maximizing the size of the global ‘pie’ of resources); and global equity (promoting equality or granting priority to improvements in the well-being of the less advantaged)”.9 They go on to advocate policy solutions that, they claim, “lead to a better balancing of the three principles than the status quo”.10 The policy solutions they offer include a less skills focussed immigration policy, temporary worker programmes and taxes on emigrants.11

The idea that addressing the brain drain problem is essentially a matter of trading-off or “balancing” certain principles - whether it is the three principles Kapur and McHale refer to or, more simply, those of achieving freedom of movement for skilled workers and securing assistance for their poor compatriots - may seem a natural way of conceptualising the brain drain problem. Certainly, at some point,

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11 Kapur and McHale, “Should a Cosmopolitan”, pp317-319. The idea of an emigrant tax is discussed below. The other two policies effectively involve immigration restrictions. A less skills focussed immigration policy involves excluding more skilled workers. Temporary worker programmes involve restrictions on how long a skilled worker can stay.
some such trade-off must be made. Yet the idea that making these trade-offs is all that is required to reach an ethical solution to the brain drain problem is mistaken.\textsuperscript{12} Imposing immigration restrictions against skilled workers on brain drain grounds involves coercing people (using fences, guards and holding cells) to try to get them to act in a certain way, in this case, to stay and assist their poor compatriots. To justify coercing people in this way one must do more than show that by coercing them one can achieve a superior balance of certain principles. To justify such coercion one must show that the coerced person has a duty to do what the coercion is designed to make them do. So in this case it must be shown that skilled workers have a duty to stay and assist their poor compatriots.

Demonstrating that skilled workers have a duty to stay and assist their poor compatriots itself involves two conditions: it must be shown that skilled workers have a duty to assist their poor compatriots and then it must be shown that this duty to assist entails a duty to stay. Moreover even if these conditions are fulfilled it must further be shown that it is morally acceptable to enforce a skilled worker’s duty to stay and assist their poor compatriots using immigration restrictions. For it is not true that all moral duties can permissibly be enforced; many cannot. Finally it must be shown that the rich state that intends to enforce a skilled worker’s duty to stay in their home state, by imposing counter-brain-drain immigration restrictions, has the moral authority to do so. For even if a duty can be enforced it is not the case that anyone can enforce it.

\textsuperscript{12} When Carens describes the brain drain argument for immigration restrictions as amongst “the sorts of arguments that have given utilitarianism a bad name” I think he is referring to an argument involving a simple trade-off of freedom of movement for poverty reduction. Carens, “Migration and Morality”, p33. Carens goes on to reject counter-brain-drain restrictions except in cases in which skilled workers have an obligation to repay the costs of their training. Carens is right to reject an argument for restrictions based on a simple trade-off of freedom of movement for poverty reduction but, as I shall show, a more sophisticated argument for excluding skilled workers (even when they have no training costs to repay) can be developed.
We have then four conditions for the imposition of immigration restrictions to be justified on brain drain grounds. Since these four conditions will form the skeleton upon which the rest of the article hangs let me formally set them out here for easy reference.

A rich state can justify imposing immigration restrictions against a skilled worker on brain drain grounds if and only if:

1. The skilled worker owes assistance to her poor compatriots.
2. The skilled worker has a duty to stay in her state of origin to provide the assistance she owes her poor compatriots.
3. It is permissible to enforce a skilled workers duty to stay and assist her poor compatriots using immigration restrictions.
4. The rich state has the moral authority to impose counter-brain-drain immigration restrictions.

Having set out these four conditions the rest of the article will be dedicated to the task of investigating what would make these conditions true. In other words our aim is to discover the sub-conditions that attach to these four main conditions. The final result will be a full list of the conditions that must be satisfied if immigration restrictions are to be justified on brain drain grounds.13

2. A Duty to Assist

It seems plausible that most skilled workers will owe some measure of assistance to their poor compatriots. In fact there are two different sorts of moral requirements they may owe: an “obligation of repayment” and a “duty of assistance”.

13 Feel free to skip to section 7 to see the full list before reading my arguments for each condition.
An “obligation of repayment” is owed by skilled workers who have acquired skills, during their adult life, at the poor state’s expense. It obliges them to repay the costs of their (advanced) training either with money or with their labour.\textsuperscript{14} This obligation may have been formalised within a contract that the skilled worker signed before starting their training. But even if no such contract was signed I think a skilled worker would be under an obligation of repayment assuming that (i) they consented to receive the training, (ii) they knew the training was provided to them in the expectation that they would go on to benefit their poor compatriots and (iii) their state can ill afford to provide such training for free. To give an analogy: if a poor father spends his life savings on you to go to medical school in the open expectation that you will then use your skills to treat his sick child, you have an obligation to repay him by treating his child or at least by repaying the money your training cost him.

An obligation of repayment is essentially an obligation skilled workers have not to make their compatriots worse off than they would have been had the skilled workers never been trained. Not all skilled workers will owe an obligation of repayment. Some will have repaid their training costs already; others will have paid for their own training and thus have no debts to repay.

A “duty of assistance”, by contrast, is a duty that skilled workers have to make their poor compatriots better off and arises independently of any prior action or commitment the skilled worker has made. Even if someone has fulfilled their obligation of repayment by paying off the costs of their training or had avoided incurring this obligation in the first place by funding their own training, this duty of

\textsuperscript{14} As the qualifications suggest I do not think skilled workers have an obligation of repayment to repay the costs of the basic education they received during childhood. Here I follow Carens who argues: “Everyone is entitled to basic education, and children cannot enter into binding contracts. Whatever investments a society makes in its young, it cannot rightly require direct payment”. Carens, “Migration and Morality”, p33.
assistance would still require them to assist their poor compatriots. In this way the duty of assistance binds even those who are free of an obligation of repayment.

How much must skilled workers do to fulfil their duty of assistance to their poor compatriots? One answer to this question is that they must do their “fair share”: that is, their share of the overall assistance burden once it has been fairly divided amongst all those that are obligated to assist. This answer raises two further questions: (i) what is the overall assistance burden? and (ii) what is a skilled worker's fair share of this burden?

The overall assistance burden is the amount of money and other resources required to bring the skilled worker's poor compatriots up to the level of welfare which they are entitled to enjoy. Different theories of global justice offer different accounts of what level of welfare the global poor are entitled to enjoy but one plausible view is that all humans have a right to enough food, shelter, health care and other basic necessities they require to lead a minimally decent life. In many states people are so poor that it would require a large expenditure of resources to provide them with even this minimal entitlement.

How large a skilled worker's fair share of the overall assistance burden is, will depend on whether they have a “special duty” to assist their poor compatriots, as a compatriot, beyond their “general duty” to do so. A general duty of assistance is a duty to help someone in need that falls on anyone in a position to help, foreigner and compatriot alike. I assume that people are bound by general duties to help the global poor. If skilled workers were only subject to this general duty then they would be not

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15 This is the approach taken by Liam B. Murphy, Moral Demands in Nonideal Theory, (Oxford: Oxford University Press, 2000).
be required to make any greater sacrifice for their compatriots than anyone else who is equally able to help. Indeed, since people in rich states tend to be better off than skilled workers in poor states, it may actually be that less can be demanded from the skilled workers than from rich state citizens, at least as far a monetary contribution is concerned.\textsuperscript{18}

In addition to a general duty to provide assistance to their poor compatriots, skilled workers may also have a “special duty” to do so, based on ties of citizenship or nationality. Sometimes it is argued that such special duties represent a means of allocating general duties owed to all. Without allocation general duties are unlikely to be fulfilled and there seems nothing necessarily wrong in allocating them on the basis of state membership. However as both the proponents and critics of this derivative view of special duties have pointed out, it has problems defending special duties to compatriots in a world, such as our own, where vast inequalities exist between states.\textsuperscript{19} Given such inequality it seems neither fair nor wise to allocate general duties for assisting the poor solely or even predominantly to their compatriots who, compared to people in rich states, are likely to be poor themselves.

An alternative view of special duties to compatriots is that they are not (or not only) derived from general duties but instead arise independently, on the basis of the nature of the relationship that exists between compatriots. This is the “non-derivative view” of special duties to compatriots. The least controversial examples of non-derived special duties are duties we owe our family and friends. I have a duty to care for my grandparents or console my broken hearted friend not (or not only) because by doing so I fulfil my general duties towards all elderly or broken hearted people but

\textsuperscript{18} I am assuming that the general duty to provide assistance to the global poor demands each make an equal level of sacrifice, rather than contribution. Since some are better off than others, an equal level sacrifice will demand an unequal level of contribution.

(also) because of the particular nature of the relationships I have with these people: for instance the fact that these relationships involve intimacy and affection. One way of putting this point is to say that I have reason to ascribe non-instrumental value to these relationships and that this gives rise to the special duties I owe. Do compatriots have reason to ascribe non-instrumental value to their relationships? Clearly relationships between compatriots are not, as a rule, characterised by either intimacy or affection, but nevertheless some people think there is indeed non-instrumental value of a sort to be found in them. For instance, David Miller finds non-instrumental value in the sense of national identity that many compatriots share, which gives them “the opportunity to place their individual lives in the context of a collective project that has been handed down from generation to generation, involving among other things the shaping of the physical environment in which they live, and whose future they could help to determine”.

The non-derivative view of special duties to compatriots is capable of demanding a greater level of sacrifice on the part of skilled workers in poor states to assist their poor compatriots than what is demanded of foreigners, even in a world with vast inequalities between states. No one adopting this view however need deny that there are general duties of assistance, which bind foreigners along with compatriots. Simply because compatriots must do more does not mean foreigners may do nothing.

Having set out the debate regarding special duties to compatriots I shall rule myself neutral on the question of whether people are actually bound by them. I shall work only with the assumption that everyone that is able to assist the global poor has

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a duty to do something for them and leave open the question of whether their compatriots must do more than foreigners.

I have explored, if briefly, the question of what a skilled worker’s fair share of the overall assistance burden may be. We should note however that whatever the correct answer is to that question there is a further question that needs to be asked, namely: does this fair share represent the extent of the skilled worker’s duty of assistance? What if other people fail to do their fair share? This is hardly a hypothetical possibility: whatever the truth regarding the extent of people’s duties to the global poor I think its safe to say that most people are currently not doing enough. Supposing a skilled worker has done their fair share but others have not: can the skilled worker allow their poor compatriots to suffer as a result or must they take up the slack? Again we are in controversial territory but I will work with the assumption that it is at least plausible that skilled workers do indeed have what may be called, a “secondary duty” of assistance to their poor compatriots, to fill in for non-compliant others, even after they have fulfilled their “primary duty”, i.e. their fair share.\(^{22}\)

Whatever one’s position regarding general/special duties and primary/secondary duties, one need not think the duty of assistance is limitless. The idea that people have an “agent-centred prerogative” allowing them to do less than is required to produce what might otherwise be thought the best result is one that receives wide support.\(^{23}\) I shall assume that, under certain circumstances, skilled

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workers will be able to assert an agent-centred prerogative in the face of demands that they provide further assistance to their poor compatriots.

We can now present the first two sub-conditions.

The skilled worker owes assistance to her poor compatriots if:

1.i. She has not fulfilled her duty of assistance.

And/or:

1.ii. She relied on state funds to pay for her training and has not fulfilled her obligation of repayment.

This section has focussed on what skilled workers owe their poor compatriots but we should stress that skilled workers are not the only ones that owe assistance to the global poor. Others in a position to help, such as rich states, will also owe duties of assistance. Moreover many skilled workers are poor themselves. Indeed it is often their poverty – low wages, bad living conditions, inability to provide for their families – that prompts them to emigrate.\textsuperscript{24} If skilled workers’ poor compatriots deserve assistance, so too do those skilled workers that suffer a comparable level of poverty. Rich states will thus owe duties of assistance both to the skilled workers poor compatriots and to many of the skilled workers themselves. If rich states fail to fulfil these duties then it is questionable whether they have the moral authority to impose counter-brain-drain immigration restrictions: a point I return to in section 6.

3. The Duty to Stay

Do a skilled worker’s duties and obligations to assist their poor compatriots entail a further duty to stay in their state of origin? A skilled worker would only have a duty to stay if two sub-conditions are met. The first is:

2.i. The skilled worker can better provide the assistance she owes if she stays in her state of origin than from her state of destination.

There are two ways this condition may fail to be fulfilled. The first is that a skilled worker might be able to provide the assistance she owes her poor compatriots from her state of destination. To allow skilled workers to fulfil any obligation of repayment they owe, a system of forgivable loans could be instituted under which the workers are given the choice to either labour in their home state or repay their debts in cash payments from abroad. To allow skilled workers to fulfil their duties of assistance, poor states could learn from the American example and tax their emigrants. If poor states have problems collecting an emigrant tax, as many will, then there is the possibility that rich states that host their emigrants could collect it for them. The revenue that such taxation brings in could potentially be so large that the skilled workers benefit their poor compatriots more from abroad than they would do by staying home. The revenues raised could be used for a variety of purposes, but one obvious use would be to meet the costs of replacement workers.

But what if skilled workers cannot provide the necessary assistance from abroad? Take the emigrant tax proposal: it may fail for two reasons. First, a skilled worker, such as a doctor or a teacher, who provides an essential service, can only compensate for their absence by paying an emigrant tax if there are other workers

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back home to replace them. The tax revenues from emigrants could go to make
salaries at home more attractive but in some states conditions will be so bad that
higher salaries will not be enough to prevent skilled workers from leaving. Second,
there may be problems in collecting or spending the emigrant tax revenue. For
instance a poor state may find it impossible to collect this revenue and rich states may
refuse to collect it for them or a poor state may suffer from an incompetent or corrupt
government that cannot be trusted to distribute the revenues effectively.

We have reason to think then that some skilled workers will find it impossible
to provide the requisite assistance from abroad. But then we also need to consider the
alternative possibility, which is that skilled workers may find it no easier to assist
their poor compatriots from within their home state. This is the second way the above
condition may fail to be fulfilled. Some countries may lack the institutions required
for a skilled worker to make proper use of their skills: imagine a doctor working in a
state without a functioning health service or an engineer in a state too poor to fund
engineering projects. Whilst most skilled workers will be able to provide some
assistance to their poor compatriots no matter how bad the state’s institutions are, it
may be the case that they could actually provide more assistance from abroad, even,
that is, if they cannot provide sufficient assistance from abroad to entirely satisfy their
duties and obligations. In other words, “brain waste” can prove a bigger problem than
brain drain.27

Finally even if a skilled worker can better provide the assistance she owes if
she stays in her state of origin this does not necessarily mean she has a duty to stay.
To demand that someone stay when they want to move is to demand that they accept a
significant additional burden. In some circumstances this burden will be so great so

27 Peter Kuhn and Carol McAusland, “The International Migration of Knowledge Workers: When Is
as to make it impossible to say skilled workers have a duty to stay even if it is the only way they can provide the assistance they owe and even if leaving will necessarily make their poor compatriots worse off. My reasoning for this claim is captured in the aforementioned idea of an agent-centred prerogative. Everyone has an agent-centred prerogative allowing them to resist duties that are in one sense too burdensome. Sometimes people may assert such a prerogative even when doing so involves significant costs to others.

Thus skilled worker only has a duty to stay if:

2.ii. She will not face an unreasonably high cost in staying.

When are the costs of staying unreasonably high? Three plausible examples of skilled workers threatened by unreasonably high costs are: (1) those separated from their immediate family; (2) those living in fear of persecution and (3) those living in desperate poverty. Since many skilled migrants in poor states fit these descriptions (particularly the third) this condition significantly restricts the scope for justifying exclusion on brain drain grounds.

If sub-conditions 2.i to 2.ii are justified then a skilled worker from a poor state will have a duty to stay and assist their poor compatriots. The next question to be asked is whether this duty can be enforced using immigration restrictions. But before I consider that question I wish to answer an objection to the conclusion I have just made that skilled workers in poor states can have a duty to stay, namely that the idea entails the implausible view that foreign skilled workers could have a duty to move to poor states.

4. The Foreign Worker Objection
This objection has two premises: (1) if citizen skilled workers can have a duty to stay in a poor state then foreign skilled workers can have a duty to go to poor states but (2) it is implausible that foreigners could have a duty to go. The first premise is supported by the claim we established earlier that foreigners, at least from rich states, have their own duties of assistance to the global poor, in conjunction with the thought that there are likely to be circumstances under which foreigners will be unable to provide the assistance they owe from their home state.28 The second premise simply appeals to our intuitions as to what is and is not plausible, and it is indeed true that few argue that foreigners are subject to a duty to migrate to poor states. Those that hold that skilled workers from poor states can be subject to a duty to stay need to either deny the first premise by providing some sort of justification for this asymmetrical treatment of citizens and foreigners or deny the second premise by arguing that the assumption that foreigners cannot be subject to a duty to migrate to poor states is mistaken.

Those that accept the idea of special duties to compatriots can offer a justification for the asymmetrical treatment of citizens and foreigners: since, on their account, citizens owe their poor compatriots more than foreigners do and can thus be asked to accept significant burdens, such as the commitment to reside in their state, which cannot be asked of foreigners. It is those that reject the idea of special duties to compatriots that will find the foreign worker objection more challenging since they will struggle to justify the asymmetry between citizen and foreigner. One possible argument they may offer is that it is unreasonable to ask a foreigner to move to a poor state but not unreasonable to ask a citizen to stay, because the costs of moving are so much higher than the costs of staying. People tend to have social attachments binding

28 Even if foreigners can fulfil their duties of assistance to the global poor from their home state, it could be argued that they have a further duty to share in the extra residency burden that skilled workers in poor states face (through no fault of their own) who are unable to fulfil their duties from abroad.
them to their home state. If a foreigner moves to a poor state they must abandon these attachments, but this is not true of the citizen who stays.

This argument suffers from three problems however. First, it is not always true that residency in a poor state is less costly for a citizen than it would be for a foreigner even as far as social attachments are concerned. Compare for instance a citizen whose family reside abroad to a foreigner who is young, single and eager to travel. Second, the strength of social attachments in places outside a state is not the only factor that determines how burdensome it is to have to reside there. Another important factor is how much wealth one has. The superior level of wealth that foreigners from rich states generally enjoy may make life for them in a poor state easier than it is for that state’s own citizens and this may be true even given higher costs in terms of broken social attachments. Finally, even when it is more burdensome for foreigners to come than it is for citizens to stay this does not explain why foreigners should be absolved of any duty to reside in the poor state. We might instead conclude that they do have a duty to spend a period of time in the poor state, only for a shorter period than citizens are expected to serve.

If those that do not accept the idea of special duties to compatriots want to argue that skilled workers from poor states can be subject to a duty to reside in their state, then they must also argue that the assumption that foreigners cannot be subject to such a duty is mistaken. This bullet can be bitten. The idea that people from rich states have a duty to go and do essential work in poor states does not seem so strange: there are in fact thousands that make such journeys each year with organisations such as Voluntary Service Overseas and many of these volunteers no doubt feel driven by a sense of duty. Biting this bullet however requires us to re-conceptualise the problem: we must think not just about getting ‘them’ to stay, but also about getting ‘us’ to go.
Indeed it leads us towards a particularly striking possibility: if coercion, in the form of immigration restrictions, can be justified as a means to enforce a citizen skilled worker’s duty to stay, then coercion, in the form of conscription perhaps, might also be justified as a means to enforce a foreign skilled worker’s duty to go.

5. Enforcement

If a skilled worker does have a duty to stay and assist her poor compatriots is it morally permissible to enforce this duty using immigration restrictions? For immigration restrictions to be permissibly used for this purpose it must be the case that:

3.i. There is no acceptable alternative means of ensuring that the poor compatriots receive the assistance they are owed.

One acceptable alternative has already been mentioned: rich states collect emigrant taxes on the skilled workers they host. Even when that policy is not available however another might be: rich states might be able to provide the required assistance to counter brain drain, out of their own revenue. Rich states could use their revenue to fund a salary increase for skilled workers in poor states to encourage them to stay voluntarily or to pay for the recruitment of replacement workers.

Now I have already argued that rich states owe duties of assistance to the global poor so it might be that any assistance required to counter brain drain merely forms part of what they already owe. But suppose a rich state has already fulfilled its initial duty of assistance. Would it still need to seek to provide assistance to counter brain drain before imposing immigration restrictions against skilled workers? The claim that it would amounts to a demand that rich states take on extra assistance to make up for a failure by skilled workers to fulfil their duties to their poor compatriots.
This may seem unfair. Why should a rich state have to take up slack left behind by skilled workers if it could instead use immigration restrictions to enforce the duties skilled workers owe?

I accept that it is unfair if rich states have to provide extra assistance to make up for a failure by skilled workers to fulfil their duties to their poor compatriots. Nevertheless I hold that rich states must seek to provide this extra assistance before they can justify imposing counter-brain-drain immigration restrictions. Recall the point made at the opening of this article that immigration restrictions curtail people’s freedoms: to go where they want to go, see who they wish to see and take jobs they wish to take. These are freedoms that, in the domestic context, are widely regarded as basic liberties. The UN Convention on Human Rights, for instance, holds that people have human rights to freedom of movement, freedom of association and freedom of occupational choice.29 Because these freedoms are thought to have such importance it is deemed impermissible, if, under ordinary circumstances, states curtail them. It is only when the costs of allowing people to exercise such freedoms are particularly severe that curtailment is deemed justified.30

If we think of these freedoms as basic liberties when they are exercised within states we should also think of them as basic liberties when they are exercised across states.31 The arguments that some philosophers have given for making a distinction

29 See Article 13(1), Article 20(1) and Article 23(1), Universal Declaration of Human Rights, (1948).
30 See, in this relation, the criteria for the justified restriction of freedom of movement in the UN’s Human Rights Committee, General Comment No. 27: Freedom of Movement (Article 12), CCPR/C/21/Rev.1, November 2 1999.
between the two cases have proved unconvincing. The freedom to migrate should thus be regarded as of the same moral importance as these more conventional freedoms: indeed the freedom to migrate is nothing less than a prerequisite to their full realisation. Unless and until people have the freedom to cross international borders their basic liberties to free movement, association and occupational choice remain incomplete.

If migration is a basic liberty, what implication does this have for the argument for restricting immigration on brain drain grounds? On the one hand, it does not mean the argument should be rejected altogether. If people in poor states are left without the assistance to which they are entitled, their needs are left unfulfilled and their very survival is put at risk. This is precisely the sort of cost that is severe enough to justify the restriction of a basic liberty. On the other hand, if migration is a basic liberty then immigration restrictions cannot be imposed to avoid a less than severe cost and the imposition of distributive unfairness upon rich states fits this latter category. Once people’s basic needs have been fulfilled, basic liberties should not be restricted for further gains in the fair allocation of economic resources. Rich states must thus provide extra assistance so that skilled workers can exercise their right to migrate without leaving their poor compatriots in need of basic goods. This is true even though a skilled worker may have a duty to stay in their home state in order to do their fair share of assistance. A skilled worker may have a duty to stay but, in this instance at least, they also have a right to violate their duty.

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34 My approach coincides here is similar to GA Cohen’s treatment of the trilemma between Pareto
While this position may seem radical it is in fact no different to what many already believe about the importance of the freedom to migrate when set against distributive fairness. Consider here the example of British doctors who, attracted by higher salaries in the US, emigrate or threaten to emigrate from the UK. As a result of their actions the British National Health Service has to spend money on retaining those that threaten to leave (by paying them higher wages) and/or replacing those that act on this threat. Since doctors are well off in any case, it seems unfair that they should impose these additional costs by pursuing their own self-interest and British doctors may well have a duty to stay in Britain rather than emigrate or threaten to emigrate to the US. Yet despite the unfairness it would be wrong for the UK to prevent doctors from emigrating to the US. Raising additional tax revenues to address the problem may represent an unfairness but it remains an acceptable alternative to restricting a British doctor’s freedom to migrate.

The case of British doctors is relevantly analogous to the case of skilled workers from poor states. In both cases the detrimental consequences of granting the freedom to migrate can be avoided if those in a position to provide extra assistance are willing to do so. And in both cases, while such a solution represents an unfairness to those that must provide this extra assistance, it is nevertheless required since the two alternative solutions of curtailing the worker’s freedom to migrate or denying their compatriots the provision of some basic good, are unacceptable.

But what about situations where, for whatever reason, rich states have no acceptable alternative means of ensuring that their poor compatriots receive the assistance they are entitled to? In such cases we face a simple dilemma between the


first two options: the freedom to migrate for skilled workers or assistance for their poor compatriots. Given such a dilemma and given the moral evil that poverty constitutes, the use of immigration restrictions can be justified on brain drain grounds. However it is not necessarily the case that rich states have the moral authority to impose these otherwise just immigration restrictions; a point to which I now turn.

6. Moral Authority

Rich states owe duties of assistance towards the global poor which many believe they are failing to fulfil.\(^ {36} \) The question then arises whether rich states can impose counter-brain-drain immigration restrictions if they fail to fulfil their own duties of assistance to the global poor.

Ideally only those that act justly themselves will enforce justice. This thought is reflected in the high standards people set for police officers and judges in terms of abiding by the law and other official rules. There is a social expectation that law enforcers who act in clear violation of their duty should be dismissed. Why should this be so? There are at least three reasons. First, performance: we are concerned that those acting unjustly themselves will not serve justice well. Second, perception: we think that justice should not only be done but be seen to be done. If those enforcing justice are themselves acting unjustly this undermines the impression that justice really is being done. Third, hypocrisy: when someone coerces others to act justly, when they act unjustly, they act hypocritically and this, in itself, undermines the just nature of their act.\(^ {37} \)


\(^ {37} \) The first and last of these reasons are implicitly referred to in the Sermon on the Mount when Jesus says “How can you say to your brother, ‘Let me take the speck out of your eye,’ when all the time there is that plank in your own? You hypocrite! First take the plank of your own eye, and then you will see clearly to take the speck out of your brother’s”. Matthew 7.3-5. A second biblical passage on the same
These three points together give us reason to demand honest judges and scrupulous police officers but I think they also give us reason to demand that rich states imposing counter-brain-drain immigration restrictions fulfil their own duties to the global poor. A rich state that fails in this regard seems less likely to impose counter-brain-drain immigration restrictions justly (i.e. only in circumstances in which they can be justified), is unlikely to give the impression that justice is being done and will act hypocritically: coercing others to help the poor but failing to do so themselves.\footnote{The hypocrisy involved would be “hypocrisy of inconsistency” in Roger Crisp’s and Christopher Cowton’s useful taxonomy. See Roger Crisp and Christopher Cowton, “Hypocrisy and Moral Seriousness”, American Philosophical Quarterly, vol. 31, no. 4, (1994). What precisely is wrong with this or any other form of hypocrisy is not a question I can address here, although Crisp’s and Cowton’s suggestion (p347) that hypocrisy involves a “failure to take morality seriously” is one plausible answer.} The first point concerning behaviour does not provide reason to introduce a further condition of justification for if the other conditions are met then the rich state will necessarily impose counter-brain-drain immigration restrictions only when they are justified. The second two points, regarding perception and hypocrisy, do however provide a reason to regard it as a condition for immigration restrictions to be justified on brain drain grounds that the rich state imposing these restrictions meets its own duty of assistance to the global poor.

I have said these points provide a reason to introduce a distributive justice condition but do they provide sufficient reason all things considered? Or to put this question slightly differently: if we want to say that failing to fulfil its duty of assistance to the global poor undermines a rich state’s authority to impose counter-brain-drain immigration restrictions, do we want to go as far as to claim that their authority is undermined to such an extent that they cannot rightfully impose these restrictions?
The first issue to consider here is whether there are other states that have fulfilled their duties to the global poor which could do the job of policing the counter-brain-drain immigration restrictions for the state which has failed to fulfil its duties. If this solution is possible it should be adopted but of course, in today’s world, it is unlikely to prove tenable partly because there are too few ‘good’ states to stand in for ‘bad’ states, but also because it is hard to conceive that states would allow others to police their borders. So we must consider whether we want to bar a rich state that has failed to fulfil its duty to assist the global poor from imposing counter-brain-drain immigration restrictions, even when this means no such restrictions will be imposed.

There is a strong case for thinking that if this is the choice we face then we should allow states that have failed to fulfil their duty to assist to impose counter-brain-drain immigration restrictions. If rich states are barred from doing so, it will be the poor worker’s poor compatriots who suffer. We may be concerned that rich states do not act hypocritically and that justice be perceived to be done but it would be crazy to give these matters absolute priority when the interests of some of the world’s poorest people are at stake.

Nevertheless I maintain that in some circumstances the fact that a rich state has failed to fulfil its duties to the global poor will mean that it is unable to justify imposing immigration restrictions on brain grounds. To determine what these circumstances are we need to distinguish between four cases: those in which the rich state has failed in its duty of assistance to, (a) people in a poor state different to the one it wishes to impose counter-brain-immigration restrictions against, (b) the poor compatriots of the skilled workers it wishes to exclude and (c) the skilled workers themselves. Finally there are type (d) cases in which a skilled worker only has an
enforceable duty to stay and assist her poor compatriots because the rich state has failed to do its duty. Let me address each of these cases in turn.

If the rich state has failed poor people from another state then I do not think this will undermine their authority to such an extent that they will be unable to impose counter-brain-drain immigration restrictions. The hypocrisy that imposing the restrictions would involve in such a case is relatively mild, for what the rich state has failed to do can be reasonably well distinguished from what it is trying to coerce the skilled workers to do.

If, on the other hand, the rich state has failed to fulfil its duty to assist the skilled workers’ poor compatriots (case (b)) then I think it is hard for the rich state to justify excluding skilled workers on brain drain grounds. The similarity between what the rich state has failed to do and what it is coercing the skilled workers to do, makes the level of hypocrisy involved too acute. Excluded skilled workers would be able to complain with force, “How can you coerce me to fulfil my duty to assist my poor compatriots when you have failed to fulfil your own duty to assist them?” To put the point in general terms: it is hard for A to justify coercing B to encourage B to meet her duty of assistance to C if A has failed to fulfil her own duty of assistance to C.

I have said it is hard for a state that has failed to fulfil its own duties to the poor compatriots of skilled workers to exclude the skilled workers for the sake of their poor compatriots but I have not said it is impossible. We need to take account of two factors. The first is the scale of hypocrisy that would be involved in imposing the counter-brain-drain immigration restrictions. The scale of hypocrisy can be judged by comparing how much the rich state has done to fulfil its duty of assistance to the poor
compatriots to how much the skilled workers have done to fulfil their duty.\textsuperscript{39} If the rich state has done much (but not all) of what morality requires of it, while the skilled workers have done nothing, then the hypocrisy involved in imposing restrictions would be minimal and restrictions may thus be justified. The second factor is the size of costs that would accrue to the skilled workers’ poor compatriots if the rich state did not enforce counter-brain-drain immigration restrictions. If the costs are high enough then we might be prepared to license restrictions even if their imposition represents deep hypocrisy on the rich state’s part.

Let us turn to case (c) in which the rich state has failed to fulfil their duty of assistance to the skilled workers they wish to exclude. Under these circumstances rich states cannot justify excluding the skilled workers on brain drain grounds. This is not just because exclusion in such cases would involve hypocrisy: although that is also true. The key point here is that exclusion would prevent the workers from seeking the better life owed to them by the rich state. A cannot justify coercing B to meet her duty of assistance to C if A thereby denies B the means of pursuing that which A was in any case under a duty to provide for B.

Finally consider type (d) cases, in which a skilled worker only has an enforceable duty to stay and assist her poor compatriots because the rich state has failed to do its duty. An example of a type (d) case would be one in which the rich state could have pursued an alternative means of addressing brain drain but failed to do so and now immigration restrictions are necessary to counteract brain drain. Another example would be a case in which a skilled worker only has an obligation of repayment now because the rich state failed to assist the skilled worker when she did her training and thereby forced her to rely on poor state funds. In these cases I do not

\textsuperscript{39} If special responsibilities exist then this may be additional factor to take account of when judging the scale of hypocrisy involved.
think counter-brain-drain immigration restrictions can be justified. Since it is the rich state’s fault that the skilled can be justifiably coerced, the rich state lacks the moral authority to enforce this coercion.

There is one type (d) case in which exclusion would be particularly wrong and that is when a skilled worker has fulfilled their primary duty of assistance to their poor compatriots but has an unfulfilled secondary duty of assistance to their poor compatriots because the rich state has failed to fulfil their own primary duty of assistance to those poor compatriots. Were the rich state to exclude the skilled worker in such a case it would be coercing them to do literally the same work it has failed to do. Rich states cannot force skilled workers to pick up the slack that they leave behind even if these skilled workers have a duty to pick up this slack. A cannot force B to fulfil a secondary duty to C that B only has because A has failed to fulfil their primary duty to C.

This section has explored the idea that sometimes an agent can lack the moral authority to enforce justice if they act unjustly themselves. This is not a new idea. Jesus endorsed it when he said that to those wishing to punish an adulterer, “He that is without sin among you, let him first cast a stone at her”. Nor is it an idea that lacks currency in popular political discourse: those opposing the US-led wars of recent years have often slammed human rights or anti-terror justifications for these wars by referring to the US’s own poor record in these areas.

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40 John 8:7.  
Yet despite biblical and popular endorsement of this idea, political philosophers have largely failed to explore it.\(^{42}\) Why, is not clear. One reason may be the dominance of ideal theory within academic philosophy. Ideal theory asks: what does justice demand if everyone acts justly?\(^{43}\) Most non-ideal theory moves just one step away from ideal theory, asking: what can one do if others fail to act justly?\(^{44}\) The question I am asking takes one further step: what can one do if not just others, but also oneself, fails to act justly? Perhaps this question is simply too far from the ideal theory heartland for most philosophers to travel.

Another possibility is that philosophers find the idea that an agent can lack the moral authority to enforce justice by acting unjustly themselves so implausible that they have not deemed it even worth refuting. The stronger elaborations of the idea are indeed implausible.\(^{45}\) But, as I hope to have shown, weaker, more nuanced elaborations of the idea are plausible and as such, demand consideration.

7. Conclusion

To conclude let me lay out the full list of conditions and sub-conditions for justified exclusion on brain drain grounds.

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\(^{44}\) It is this type of question that is addressed in Murphy, *Moral Demands*. See also Rawls’s examples of problems in non-ideal theory in Rawls, *A Theory of Justice*, pp244-248 and Rawls, *The Law of Peoples*, pp89-120.

\(^{45}\) Some of the anti-war arguments that refer to hypocrisy seem to me implausibly strong. See Glaser, “Does Hypocrisy Matter?”
A rich state can justify imposing immigration restrictions against a skilled worker on brain drain grounds if and only if:

1. The skilled worker owes assistance to her poor compatriots.  
   *She will owe them assistance if:*  
   1.i. She has not fulfilled her duty of assistance.  
   *And/or:*  
   1.ii. She relied on state funds to pay for her training and has not fulfilled her obligation of repayment.

2. The skilled worker has a duty to stay in her state of origin to provide the assistance she owes her poor compatriots.  
   *She will have this duty to stay if and only if:*  
   2.i. She can better provide the assistance she owes if she stays in her state of origin than from her state of destination.  
   2.ii. She will not face an unreasonably high cost in staying.

3. It is permissible to enforce a skilled worker’s duty to stay and assist her poor compatriots using immigration restrictions.  
   *This is so if and only if:*  
   3.i. There is no acceptable alternative means of ensuring that the poor compatriots receive the assistance they are owed.

4. The rich state has the moral authority to impose counter-brain-drain immigration restrictions.
4.i. It has fulfilled its own duty of assistance to the global poor or if it has not then there are no other states that have fulfilled their duty of assistance which could impose the counter-brain-drain immigration restrictions in its place.

4.ii. It has fulfilled its own duty of assistance to the skilled worker’s poor compatriots or if it has not then the level of hypocrisy that exclusion would involve is small enough and the costs of not excluding, large enough, for exclusion to nevertheless be justified.

4.iii. It has met its duty of assistance to the skilled worker.

4.iv. It is not responsible for the fact that the skilled worker has an enforceable duty to stay and assist her poor compatriots. (In other words, it has not made conditions 1, 2.i. or 3.i. true).

How often will these conditions be fulfilled? In the case of almost all skilled workers condition 1 will be fulfilled. However the other conditions are far less likely to be fulfilled since there are many things rich states could be doing to address global poverty in general and brain drain in particular and yet are failing to do.

Let me however offer an example of a skilled worker against whom the use of counter-brain-drain immigration restrictions does seem justified. Imagine a skilled worker called Radhika. Radhika enjoys a decent life, living in a secure environment with her family. Radhika’s state however is ill-governed. It is insular to the point that it often refuses foreign aid and corrupt to the point that it misuses the aid it receives. Because of how the poor state behaves, rich states can do little to assist Radhika or her poor compatriots. Because Radhika lives a decent life she has no compelling reason for wanting to leave. Nevertheless Radhika does want to leave. She wants to
go and live in a rich state where she can earn more money. If Radhika leaves then some of her poor compatriots will be substantially worse off and there is little Radhika or others (including rich states) could do to compensate them.

It is, I think, morally permissible for a rich state to exclude Radhika. If there are real people in Radhika’s situation, or in positions similar to it, which seems plausible, then immigration restrictions can, at least sometimes, be justified on brain drain grounds even in today’s unjust world.