

# Responsibilities In An Unjust World: A Reply to Carens, Kollar, Oberman, and Rapoport

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## **ABSTRACT**

In this paper I respond to important concerns about the policies I believe poor developing states may be permitted to use in responding to losses associated with high skill migration, when those losses do indeed exist. I take up Joseph Carens's invitation to broaden the debate to consider the moral duties we may have surrounding the brain drain debate, given our unjust world. In response to Eszter Kollar, I show why the liberal state may sometimes justifiably control how citizens use their talents, especially in insisting that they use them to reduce compatriots' neediness. I consider Kieran Oberman's challenge that proper consideration of the human right to emigrate blocks the state's ability to use programs such as compulsory service ones. I reply to Hillel Rapoport's presentation of empirical evidence suggesting that there are important gains to be secured from high skill migration. I show why the empirical evidence presented is insufficient to make the relevant case. I also show why none of the challenges presented are sufficient to block the normative project of investigating how poor developing states may permissibly respond to losses associated with high skill migration. In particular, I argue that carefully crafted compulsory service and taxation programs may permissibly be used by such states under certain conditions.

**Keywords:** brain drain, migration, service, tax, moral duties, right to emigrate.

## INTRODUCTION

The contributors offer a stimulating collection of essays. I thank them for their reflective comments on whether and, if so how, high skill migration should matter in attempts to reduce global injustices. In what follows I cannot respond to all the many fine points made, however, I will take up at least one central issue raised by each author. In this paper I address answers to questions raised by Joseph Carens, Eszter Kollar, Kieran Oberman, and Hillel Rapoport, respectively, namely: What are our moral duties in an unjust world and do they include duties to use our skills in ways that benefit the community? May the liberal state rightfully control citizens' use of their talents, insisting they address the needs of compatriots? Does adequate consideration of the human right to emigrate block all attempts to implement "compulsory service" programs? What is the role of empirical evidence in debates about appropriate policy responses to losses associated with the brain drain and does our current state of knowledge about that evidence suggest there is no need to be concerned about high skill migration?

### 1. WHAT ARE OUR MORAL DUTIES IN AN UNJUST WORLD? A RESPONSE TO CARENS

There is much in Joseph Carens's rich discussion worthy of detailed engagement. Here I focus mainly on his core invitation to broaden out the discussion to consider the moral duties involved with high skill migration, especially in an unjust world. As Carens says: "Leave aside for a moment questions about legal restrictions. Do skilled medical personnel in poor states have a moral duty to stay at home and put their abilities to use in serving their fellow citizens? Do they act unjustly if they move to a rich state, even if they are legally free to do so?" (Carens 2017: 141) As Carens views the arguments of the book,

"we don't really get the fuller sort of inquiry that would be required to explore questions about the nature and extent of our moral duties to contribute to the political communities in which we live and whether we have any obligations beyond what can be extracted from a formal contractual arrangement. This is an important question for the brain drain because if skilled medical personnel in poor states only stay at home as long as it takes to fulfill the requirements of a reasonable contractual agreement, the existence of such policies *will not do much to remedy the problem*" (Carens 2017: 142, added emphasis).

Now, I disagree that the package of proposals I offer concerning service and tax will not do much to address core problems unless citizens remain in countries of origin. These are empirical issues to a large extent, but if Jagdish Bhagwati's calculations about taxation are to be relied upon, the revenue received could in fact make significant contributions to remedying deprivation (Bhagwati and Hansen 2009).<sup>1</sup>

Let me make two other points of clarification before I discuss his central challenge. First, even though I argue for adopting policies that have the effect of managing migration in ways that promote fair outcomes for countries of origin, I do not assume that my policies will in fact restrict emigration. I accept that many people want to leave their countries of origin and I offer policies that try to ensure countries of origin are not always net losers from such arrangements. My primary purpose in the book is to argue for a view about fair terms of departure in efforts to remedy the situation in which terms of exit often heavily favor destination countries and migrants, and disadvantage those left behind in countries of origin. So when skilled citizens leave countries of origin that have subsidized the acquisition of such skills, and they leave in ways that create heavy losses for those countries of origin, what if anything, may such citizens permissibly be asked to do in attempting to address such disadvantage?

In preparation for an answer to that question, we have to confront another: how do we improve the situation in countries of origin so that citizens can genuinely choose to remain? How should we address the root causes of why people would like to leave in such high numbers? I have quite a bit to say about that (for instance, Brock 2009a). But I note that whatever we do to improve matters, it is likely that significant wage differentials between countries will remain. That is likely to be a near sufficient reason for many to seek to migrate. So the issue of ensuring fair terms of departure for poor, developing countries of origin is still salient, even if we are successful in improving quality of life in countries of origin.

So, on to the central invitation. I very much welcome this opportunity to engage in discussion about the moral duties. In fact, it was reflection on the moral duties that led me towards the political and legal solutions for which I advocate. In order to see why, I need to back track and explain the reasoning that led me in this direction. As I later also illustrate, Carens' own reasoning on these issues suggests a similar progression once we

<sup>1</sup> Apart from Kollar, most of the authors ignore my proposals concerning taxation. This is slightly odd given that these are meant to be equally important to the service proposals and, in many ways, take account of concerns that some might have with service. The two policies might be seen as a good combination package that countries should adopt together: some of the perceived weaknesses with one policy measure can be accommodated by the other.

begin the moral analysis.

When we consider our moral duties in an unjust world, we need to think about a range of prior and surrounding questions such as these:

- (MD1) What do people need for a decent life?
- (MD2) What can reasonably be expected of others in helping people to secure a decent life?
- (MD3) What is my share of responsibilities in helping people to secure decent lives?

In answering the first question, what a decent life minimally requires, I argue why the following are core areas for concern (e.g. Brock 2009a; Brock and Blake 2015: ch. 2):

- (C1) Enabling people to meet their needs
- (C2) Protecting core liberties
- (C3) Securing fair terms of co-operation
- (C4) Supporting social and political arrangements that can underwrite (C1)-(C3).

I also argue that just and effective institutions are central vehicles that can deliver on what we need for decent lives. In addition to global institutions, there are many state-level institutions that should be a focus for concern. State-level institutions are an important site of co-operation that ought to aspire to fairness. Furthermore, in the world we actually live in, much responsibility for ensuring core ingredients necessary for decent lives is devolved to states. For instance, states ensure the availability of key goods such as healthcare, safe water, sanitation, education, and security. States are also ideally positioned to regulate and develop the economy in pro-poor or otherwise beneficial ways. Effective, legitimate, and accountable states can play an important part in reducing injustice in our world today.

So what is my share of this duty to assist with (C1)-(C4), in particular, my share of helping to provide strong, just institutions and effective states? It seems to me that discussion towards an answer might start off assuming that we all have equal duties to assist, but further reflection could plausibly yield a more complicated picture that makes use of other relevant factors such as capacities to assist, contributions to the problematic situation, and patterns of benefits. For instance, because of the important connection between the ability to provide core goods and services (such as healthcare or education) and those capable of assisting with their provision, it may be reasonable to expect those with such skills to play a special role in certain conditions. In working out what special role such people may play, it is

relevant to consider what others may also reasonably be expected to do, both within my country and outside of it. It is plausible to arrive at a view that we share responsibilities for remedying the situation and that our shares may be adjusted depending on how many others are available to shoulder responsibility, and along with a variety of other factors, such as their different capacities, patterns of relevant benefits, and contributions to unjust institutions that persist.

Would it be fair to expect people to stay when others are doing nothing? Should we encourage people to stay under certain situations where this involves grave personal sacrifice? If so, what of their hopes and dreams? I think here the kinds of contributions —levels of sacrifice, if you will —we are asking people to make in remaining is highly relevant. What is at stake for a citizen in asking her to stay will depend on a number of situational features. It is one thing to ask a doctor of Xhosa heritage to remain in South Africa in a post-apartheid world; it is another to ask her to remain in 1986, when her basic human rights would not have been secure. A doctor who chooses to remain in Syria in 2016 is a moral hero, clearly performing supererogatory acts, not someone merely discharging his basic moral duties. Reflection on the kinds of contributions people are being asked to make informs my view about what kind of government must minimally be in place, as an important indicator of the kinds of sacrifices people are being asked to make. A situation in which a government is making good faith efforts to protect basic human rights (and being somewhat successful at doing this) typically requires much less sacrifice from those who remain than a situation in which this is not the case, and constitutes a key reason why asking the Syrian doctor to remain now or the Xhosa doctor to remain in 1986, calls for heroic acts rather than basic moral duties. So, while there might be a place for social norms that encourage people to stay, we have to be mindful of excessive burdens. People can help in all sorts of ways other than being present in a community and putting their own lives at risk. We should also not ignore the important role that large revenue streams into public budgets can play in securing core ingredients for decent lives, at least under the right circumstances.

Furthermore, human beings are highly social creatures with a deep sense of fairness and reciprocity that operates within their relevant groups. The behavior of others has a reasonably strong bearing in formulating views about what fairness requires of me, here and now. In short, we have to make room for the reasonable thought “I’m willing to play my part on condition that similarly placed others do theirs”. So an appreciation of others’ duties, how they are discharging them, and how duties will be

enforced, is relevant to my sense of what moral duty requires. Another highly relevant issue is what to do in a situation where others are *not doing their fair share*. What, if anything, can be done to enforce compliance with a fair allocation of duties? In these ways, I think reflection on these aspects of moral duties lends itself to consideration of the reliable authorities that may be able to enforce compliance. And so, inevitably, I believe we get to the political and legal issues from the moral reflections. Here, consideration of all the agents who share responsibilities is relevant as well. Agents from the developed world have a huge role to play. To give one example, they undermine states' abilities to be effective by supporting a variety of global practices and institutions that undermine revenue-raising capacity in all countries. In virtue of their capacities to make reforms, their contributions to the problems, and their patterns of benefit, it is clear their share is large. But what if they refuse to play their part or do too little? What are the moral duties in such cases? Of course, agents from the developing world might well press on, arguing that they ought to do more. But when their calls fall on deaf ears, what else may they do? When there is a high level of deprivation, what may developing countries do to solve their own problems themselves, in a context in which affluent developed states are not complying with the demands of justice? Under relevant circumstances, some in developing countries may be asked to do "a bit more" and a lot will depend on what "a bit more" consists in. Consider some of the things called "compulsory service programs" in our actual world:

- (CS1) A one-year module of underserved community service and training is part of the degree requirements (call this a standard residency requirement).<sup>2</sup>
- (CS2) There is a delay (such as one year) between completing the education necessary to be awarded the degree and the awarding of the degree.
- (CS3) There is a requirement to complete a module of underserved community service (of one year's duration) as part of the requirements to gain a license to practice in that state.
- (CS4) There is a requirement to complete a one-year term of underserved community service in order to be considered for post-graduate training.
- (CS5) Service in underserved communities is required on completion of the degree for a period of one year.

2 We could offer a perfectly good educational justification for this. We surely want people to be able to apply their skills successfully and this requires a period of practical training. If governments offer these practical training opportunities they may defensibly direct service to underserved areas.

Notice that none of (CS1)-(CS4) restricts rights to emigrate in any straightforward way. In the second option, many students may choose to spend the year between completion of their studies and award of the degree within the country. They may wisely judge that they will be more employable in other countries once they receive their formal qualifications. During that year they may be heavily dependent on government employment and governments may be able to steer them towards underserved communities. This may have the same effect as (CS5). So, none of (CS1) through (CS4) presents any relevant problems concerning restrictions on emigration. All these options are entirely liberty respecting and, through careful design, manage to secure service for underserved areas. A country could adopt a so-called compulsory service program such as any of (CS1)-(CS4), and I expect few of the contributors to this symposium would have any problems with this form of so-called compulsory service.

So, what about the seemingly different proposal labeled (CS5)? Does that present unreasonable burdens? Does it remove migrants' rights to leave?

One very important consideration is how any contracts to serve would be enforced. On my preferred account of enforcement, people should be permitted to leave states even if they do not comply with their contractual agreements. Compensation for breaches of service contracts should be pursued as we do with other breaches of contract. So, to take one example, consider violations of agreements concerning child support or alimony. Host countries have used wage garnishments and denial of licenses to enforce contracts. Destination countries have a range of ways to help enforce contracts, and there is some good precedent for co-operation here, if we consider the legal arrangements around child support and bilateral treaties that are aimed at ensuring compliance.<sup>3</sup>

Do programs such as (CS1) —(CS5) present unreasonable burdens? I have suggested that none of (CS1)-(CS4) do present unreasonable burdens; in fact they are rather light on burdening those with great capacities to help others, capacities that have been developed while making use of public resources. (CS5) demands a little more in asking migrants to delay plans for one year, but not so much more that it crosses into being an unreasonable burden under the circumstances. (We see further defense of this claim in the next section.) In my view, a case can be made that each of (CS1)-(CS5) could constitute the “bit more” a citizen of a developing country might reasonably be expected to do.

<sup>3</sup> I should also note that I have argued for other mechanisms such as the ability to buy out of service contracts, so there are already other provisions in place that make migration unproblematic, should someone wish to leave.

Notice again how I have indicated that the core question is this:

When there are net losses from high skill migration, what may developing countries do to solve their own problems, in a context in which *affluent developed states are not complying with the demands of justice?*

My arguments are focused on helping developing countries formulate permissible policies that they can implement here and now, without having to wait any longer for non-compliant developed world actors to discharge their duties. In other places I do discuss the duties developed world actors have (e.g., Brock 2009a; Brock 2014; Brock 2009b), but here my focus is firmly on developing states and the actions they may permissibly take.

Let me emphasize some other core features of my account that are necessary for such normative views to be justified and are useful in rebutting further objections. I argue that a poor, legitimate, developing state may implement carefully crafted compulsory service and taxation schemes at least when five important sets of conditions are met. For instance, states must meet legitimacy conditions, citizens must have relevant responsibilities, and certain background conditions must be met.<sup>4</sup> Let me emphasize three particularly relevant background conditions here:

- (BC1) Evidence from the particular country indicates that skilled citizens can provide important services for which there are severe shortages.
- (BC2) Governments have invested appropriately in training of skilled workers to provide for their citizens' needs and to promote beneficial development.
- (BC3) Losses that result from skilled workers' otherwise uncompensated departure would not adequately be compensated for by benefits that result from citizens who leave.

For compulsory service programs such as (CS5) to be permissible in the cases that are my particular focus, governments must have made students aware of the fact that they will be expected to meet needs on completion of their training for a short period (such as one year), and such expectations should be specified in a contract students would sign before embarking on tertiary-level training. In addition, being present in the country must be important to remedying the deprivations, the compulsory service program should not require unreasonable sacrifices, and the costs of staying should not be unreasonable.

<sup>4</sup> As proxy measures, states exercise power legitimately when they make sufficiently effective and credible efforts to protect human rights and provide other core goods and services (e.g. Brock and Blake: 2015: ch. 5).

For taxation programs to be permissible for the cases in view, in addition to the state's being legitimate, and the relevant background conditions and moral responsibilities applying, it must be the case that taxation of those skilled citizens would assist in remedying deprivation. Governments should clarify expectations by specifying such taxation arrangements in an explicit contract which the student is required to sign before accepting the opportunity for tertiary-level training. The taxation program should not require unreasonable sacrifices.

Though most contributors to the symposium ignore the taxation proposals, it is plausible to see them as part of a permissible package. I take seriously the idea that no matter how desirable a particular developing country may be, in a world characterized by significant disparities in income or wages, this will inevitably draw some citizens away. So the salient question is: what constitutes fair terms of departure? Ongoing taxation commitments for a limited period may be part of such fair terms.

Before I conclude this section, notice that some of Carens's own reflections on the moral duties nicely mirror the moves I make myself. Consider, for instance, these quotes from Carens:

"What sorts of norms and values is it morally permissible for a political community to seek to transmit with respect to the concerns raised by the brain drain? For example, would it be morally acceptable for a poor state to teach children that those with special gifts and opportunities for advanced training have a particular obligation to use their gifts and training in ways that will benefit the community? Would it be morally acceptable to tell students that they should not seek medical training unless they are willing to commit themselves to working within their home state over the long run, at least under normal circumstances, ... Would it be morally acceptable if this sort of expectation became part of a wider social culture, so that most people in a poor state felt it would normally be wrong for skilled medical personnel to move to a rich country?" (Carens 2017: 142).

So, how does he believe we should answer such questions?

"I must confess that I do not have a clear answer. On the one hand, like Brock and, I think, more than Blake, I am sympathetic to the idea that a just society can include legitimate expectations and social norms with respect to the ways in which people make use of their talents and skills. ... On the other hand, we don't live in a just world. So, I would also be sympathetic to a doctor or nurse from a poor state who said, 'Why should I be the one to bear the burdens of serving the

health needs of this community especially since they are in important respects the byproducts of an unjust social order? Why shouldn't skilled medical personnel from rich states be the ones with a duty to come and address these problems?' ... To be frank, that is just the starting point for some of the intellectual puzzles that emerge when we seek to talk about moral duties in an unjust world" (Carens 2017: 145).

As Carens's own preliminary reflections suggest, the moral issues draw us into consideration of everyone else's duties as well, as I suggested. And once we make that move, other salient considerations quickly line up, such as the ones I've emphasized. As I have tried to show, the political and legal solutions can offer important clarity missing when we consider the moral duties in isolation, apart from issues such as duty content, numbers of duty bearers and the conditions under which duties are triggered.

I should address very briefly a matter that both Carens and Oberman raise, namely that I fail to say much about what rich states ought to do with respect to the brain drain problem. I am not sure that is quite fair, given the arguments I make in *Debating Brain Drain*, especially Chapter 2, and elsewhere (such as in Brock 2009a: ch. 8; and Brock 2009b). But at any rate, the focus in this book is on what poor developing countries may permissibly do to solve their own problems themselves. So we need to focus on what is under their control. They may wish that developed country agents discharged more of their duties and may regret the existence of immigration restrictions in other countries. But getting developed world agents to change these features is not directly subject to their control. I should also emphasize that I do discuss immigration restrictions in other places (e.g. Brock 2009a), and given those extended discussions and the fact that my core question here is a different one, space limitations require focusing on the neglected question of what developing countries may do.

## 2. DOES THE LIBERAL STATE HAVE A RIGHT TO CONTROL CITIZENS' USE OF TALENTS? A RESPONSE TO KOLLAR

As Eszter Kollar argues, the following important outstanding question remains with my position:

"The challenge for Brock, then, is whether she can provide an adequate justification of compulsory service consistent with her liberal commitments. Does she think that a person's right to control the use of her talent can sometimes be restricted by liberal states? The conditions under which such a restriction is justified would

need to be spelled out and shown to be consistent with liberalism” (Kollar 2017: 114).

So, can liberal theorists provide an account of fair terms of co-operation that include a justification for how and why the state may restrict the use of our talents and skills? I think they can and I argue the case using the work of John Rawls, arguably the most prominent liberal theorist.

In *Justice as Fairness: A Restatement*, Rawls makes explicit some important ways in which we are to understand the Principles of Justice and the priority to be given to his first principle of justice concerning the weight to be accorded liberty. The first principle states that “Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all” (Rawls 2001: 42). Rawls adds this important clarification to his principle: “This principle may be preceded by a lexically prior principle requiring that basic needs be met, at least insofar as their being met is a necessary condition for citizens to understand and to be able fruitfully to exercise the basic rights and liberties” (Rawls 2001: 44). This seems to be a very sensible clarification to offer given the role basic needs such as security and subsistence play in being able to enjoy any of our civil and political rights, as Henry Shue and others have urged (Shue 1980; Peffer 1990). In this important discussion, Rawls not only clearly concedes that a principle of basic needs fulfillment may well be lexically prior to the principle of equal basic liberties, but he also adds further important points, such as that while there is a general presumption against imposing restrictions on liberties, there can be sufficient reason to do so (Rawls 2001: 44-47). Rawls continues the discussion with these important concessions:

“no priority is assigned to liberty as such, as if the exercise of something called ‘liberty’ had a preeminent value and were the aim, if not the sole, end of political and social justice. While there is a general presumption against imposing legal and other restrictions on conduct *without a sufficient reason*, this presumption creates no special priority for any particular liberty. Throughout the history of democratic thought the focus has been on achieving certain specific rights and liberties *as well as specific constitutional guarantees*, as found, for example, in various bills of rights and declarations of the rights of man. Justice as fairness follows this traditional view” (Rawls 2001: 44-45, added emphasis).

Rawls goes on to state quite clearly that addressing needs is a constitutional essential, emphasizing that “... a social minimum providing for the basic needs of all citizens is also a constitutional essential” (Rawls

2001: 48). Furthermore, “the first principle... covers constitutional essentials” (Rawls 2001: 48). Here Rawls is making explicit that needs and liberties have equal standing as important constitutional essentials.

So I think we can marshal a general argument concerning the importance of need satisfaction via at least two arguments. One concerns the equal importance of two weighty constitutional essentials. The second stresses the importance of ensuring for all citizens the basic liberties of citizenship: everyone has a claim to the basic liberties of citizenship and the social conditions, including satisfaction of needs, that make this possible or worth having. So everyone has a prior claim to appropriate satisfaction of their needs. Rawls does not address the issue of how we might press people into the service of meeting needs, but it seems the question *must be confronted* given the priority and importance to be accorded the satisfaction of needs. My work in *Debating Brain Drain* is aimed at answering such questions, in particular for conditions of highly scarce resourcing. My short answer is that certain kinds of reasonable contributions —sacrifices if you will —can be required of citizens under specified conditions. Much work is done by the particular conditions and the shape of the particular programs according to which citizens would be making contributions. In the last section I have argued why developing countries may make use of carefully crafted programs that incentivize or require such service, such as all of (CS1)-(CS5) discussed in the previous section. We can marshal an argument that there is sufficient reason in the core cases that characterize “poor, but responsible” (Brock and Blake 2015: ch. 4) to allow deprivation to have a bearing on liberty.

There are, of course, important questions of when and where we may “force” people into serving others in liberal societies. I think the framing of such questions often ignores the ways in which liberal societies standardly require such contributions —coercion, if you will —in order to secure the very goods liberals think of as worth having. Consider examples such as compulsory jury duty and income tax, both of which are standard components of the liberal tradition of justice. Many liberal states have practices of compulsory jury duty in which all sufficiently competent citizens are required to make themselves available to serve on juries. I believe this can be justified on something like the following argument which, I hope, appeals to Kollar, because it considers what all citizens owe one another and government may justifiably enforce, as each plays her part in upholding fair terms of co-operation. It also invokes her preferred view about fair reciprocity.

We need a fair way to secure significant interests such as those protected by the right to a fair trial. Those who are sufficiently competent to participate appropriately in trials have the relevant capacities to secure

the interests protected by the rights. So it is fair to ask those with such capacities to assist, so long as the sacrifices demanded are reasonable. One important factor in deciding whether or not the sacrifices would be reasonable is the duration of time required for the trial. We seem to accept that quite significant burdens can be placed on individuals on a temporary basis. These burdens might include that for the trial's duration, the juror is expected to defer her plans, aspirations, and projects—including those related to her work. This kind of coercion is justified because of the importance of what is at stake in ensuring the core interests, rights, and needs of fellow citizens in a well-functioning state. The basic interests being served are ones that are core for all human beings, and ones that states have responsibilities to secure for all citizens.

In my view, the argument for compulsory jury service generalizes to securing other core interests essential to enjoying basic liberties, such as enjoying basic healthcare and education. The extension to requiring capable citizens to assist with these other core interests on a temporary basis seems permissible via an exactly parallel argument. Of course, it is better if those capable of assisting with core interests (such as health, security, or education) do so voluntarily, and are attracted to positions using normal employment procedures and market incentives. But the question arises about what to do when there is radical under-supply relative to the needs for such services. What may a liberal society do to remedy matters? I have been arguing that carefully designed programs may incentivize or require such conditional service. The details of my approved programs all highlight the low levels of coercion required, along with the many options available for avoiding coercion altogether. Citizens being in severe need may have a bearing on what people are at liberty to do with their skills, especially after taxpayers have subsidized the very acquisition of those skills.

I do not mean to suggest that all issues have now been resolved through my arguments. What I do hope to have established in this section is that there are tools from within the liberal tradition that (1) show that what I am proposing is perfectly justifiable from within the liberal framework, (2) that, indeed, the liberal tradition already presupposes their use in important respects, and (3) there are ways to increase service provision for the needy that are entirely respectful of liberty and fair reciprocity.

I have space to deal briefly with only one other issue raised by Kollar and I address her claim that I view taxation and service as normatively on a par. I believe we have different interpretations of the passages she cites to substantiate her case for this position. To be clear, in my view, imposing taxes is easier to justify than requiring people to serve. In *Debating Brain*

*Drain*, the order in which I discuss these issues along with some of the discussion attached to those justifications —such as not wanting to let citizens off too lightly by assuming the payment of taxation would be sufficient to discharge duties —attempted to make these points. However, I could have been clearer on these issues, and I thank Kollar for raising them.

### 3. THE APPEAL TO THE HUMAN RIGHT TO EMIGRATE AND PHANTOM CONDITIONS: A REPLY TO OBERMAN

According to Oberman, I argue for emigration restrictions and, because of the importance of the right to emigrate, only emergency situations could justify such restrictions. He believes that proper consideration of the human right to emigrate supports his view. He also outlines an emergency justification for emigration restrictions. In this section I show why the appeal to the human right to emigrate does not support his case against me as clearly as he maintains.

A few points are worth underscoring before we get to that core argument. First, I have been at pains to show how carefully crafted proposals need not actually entail restrictions on emigration that are problematic, as (CS1)-(CS4) in Section 1 illustrate. Well-designed policies may have an indirect effect on the timing of migration, so that citizens delay their departure or anyhow their departure is regulated to ensure fair terms of exit. Good policies need not prevent people who would like to exit a state from doing so.

Second, we have seen that the relationship between liberty and need satisfaction is complicated in the liberal tradition, even under the Rawlsian assumption that favorable conditions obtain. As we saw in the last section, it is not the case that only emergencies can justify restrictions on important personal liberties. Through exploring some of Rawls's work, we see how the liberal tradition must confront this issue in perfectly normal, non-emergency situations. After all, the background assumption in *A Theory of Justice* is that reasonably favorable conditions exist, such that there are sufficient resources for everyone's needs to be met. No emergency situation is encountered in these situations, and yet in such situations Rawls maintains that there can be sufficient reason to limit liberty in virtue of neediness.

Oberman's main argument starts with recognizing the importance of the human right to emigrate. However, as I show next, his discussion does not settle the debate because it fails to appreciate all except one human right. There are plenty of relevant human rights that are unfulfilled in the

situations that are my core focus. To name just a few of the rights that are relevant, there are rights to health, adequate standards of living, education, and self-determination. The question is what to do in cases where multiple human rights are under threat. So, I do not think the appeal to human rights documents proves to be as decisive as Oberman thinks. Even from within these human rights documents, the state has much leeway about balancing salient issues, when there are several human rights in play. Let us review some details.

Consider UNDHR for some salient rights and, in fact, some helpful advice about how to weigh up the rights and duties citizens have. Articles 13, 25, 26, 28 and 29 are all important.

Article 25.

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food-clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance.

Article 26.

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.

Article 28.

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

Article 29.

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject

only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.

(3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations (UNDHR 1948).

Article 13 does indeed recognize the relevant rights to emigrate:

“(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country” (UNDHR 1948).

However, articles such as 28 and 29 make clear that this is not any kind of absolute right and that it may be limited in attempts to recognize others’ rights and freedoms, “the just requirements of morality, public order and the general welfare in a democratic society” (Article 29). If we consider the human rights documents in their entirety, we see ample support for the project of trying to determine what fair contributions people may be asked to make in establishing societies in which everyone has the prospects for a decent life, including adequate protection for their most basic human rights.

I have space to deal with only one further issue raised by Oberman and here I address his “phantom conditions” argument, since it occupies such a large portion of his article. Oberman tries to make the case that some of the conditions for which I argue are not necessary to justify emigration restrictions. The basic problem with the phantom conditions argument is that Oberman misconstrues my strategy. My claim is that a certain set of conditions, when all met (such as in the case of “poor, but responsible”), can be *sufficient* to generate obligations to serve and pay additional taxes. His objections take the form of arguing that the conditions are not necessary. But my claim is not that they are necessary, only that they can be jointly sufficient such that carefully crafted compulsory service and tax proposals may permissibly be used in certain conditions. So, this whole line of argument proves to be a red herring as a criticism of my arguments, though it is interesting to see Oberman’s development of a case for emigration restrictions in emergency situations and a welcome contribution to the literature.

I address Oberman’s claims about the empirical literature in the next section, but in closing I should say that I do not share his assessment of what the empirical literature shows, namely that “Among migration

economists there seems to be only one point of agreement: migration, as a general rule, benefits the global poor” (Oberman 2017: 107). While I concede there is much economic research that suggests that migration can lead to economic benefits for the global poor, there is also significant research that suggests that there are important losses, both economic and non-economic.

#### 4. WHAT IS THE ROLE OF EMPIRICAL EVIDENCE IN DEBATES ABOUT POLICY RESPONSES TO THE BRAIN DRAIN? A RESPONSE TO HILLEL RAPOPORT

We can address several misconceptions that ground Hillel Rapoport’s concerns by drawing on discussion from previous sections. So far I hope to have shown that:

- 1) My proposals do not attempt to ban emigration.
- 2) I do not argue that those who have legitimate fears about persecution should be required to sign contracts to serve. Indeed, governments would not satisfy the legitimacy conditions if they were persecuting citizens and could not permissibly use the compulsory service and tax proposals for which I argue.
- 3) The carefully constructed policies for which I advocate take the rights of would-be migrants very seriously.

So many of Rapoport’s concerns about the normative views can be addressed. What about the empirical claims? Rapoport believes my argument will partly collapse once he presents evidence that there are positive effects from high skill migration. Since my argument is a conditional one, *and the relevant normative question is only triggered when there are net losses*, the fact that there may be net gains in certain cases is irrelevant to the central normative inquiry. In the book I acknowledge that there are some positive effects and document several types, including the one he spends most time on concerning increased human capital formation.<sup>5</sup> I do not presuppose that there are always and only negative effects.

Rapoport discusses brain gain through increased human capital formation in some detail. As indicated, I discuss this consideration myself (Brock and Blake 2015: ch. 10). Some of the critical issues I raise there

<sup>5</sup> His overall conclusion is that instead of limiting the “drain effect” through emigration restrictions, institutions should be developed to capture gains that there could be from the positive effects of skilled migration. I agree with that position and have developed such views elsewhere (e.g. Brock 2009a: ch. 8).

include whether this is always a sufficiently positive effect to outweigh other negative effects, whether the increased human capital formation necessarily benefits source countries sufficiently (rather than individuals who acquire the skills), and benefits source countries in all the areas of human well-being that are relevant.<sup>6</sup> I elaborate on some of these points next.

As I observe in *Debating Brain Drain*, Chapter 10, one important benefit of high skill migration is increased human capital formation (as Rapoport discusses). However, as with all the purported benefits, we need to be cautious about their magnitude, whether particular gains accrue to particular countries, whether they are sufficient to outweigh other losses, and so on. So, consider the gain of human capital formation. The areas in which additional skills are acquired may not be very useful for source countries. Enhanced training can be skewed towards usefulness in the targeted destination countries. As Gibson and McKenzie note it can lead to overinvestment in some fields (e.g. geriatric medicine) that have large payoffs overseas rather than studying in other fields —such as tropical medicine more urgently needed locally (Gibson and McKenzie 2011). There may be little urgent need for geriatrics in situations where life expectancy is around 50, whereas there might be very high urgent need for those skilled in treating diseases common to the tropics. More importantly, when there is a brain gain, it is not always significant or sufficient to outweigh other losses. For instance, Alok Bhargava, Frederic Docquier and Yasser Moullan (2011) note that the magnitude of the positive effect in the medical sector is small and insufficient to generate a net brain gain. Furthermore, even when there is brain gain it does not necessarily outweigh reduced health outcomes from medical brain drain. Bhargava and Docquier (2008) observe that medical brain drain is connected with a 20% increase in adult deaths caused by AIDS. So, even when there is increased human capital formation, the net gains for those relevantly affected are far from obvious.

Rapoport maintains that even though “there are losers and winners, the brain drain contributes to an increase in the overall number of highly-skilled people living in the developing world” (Rapoport 2017: 127). Even if this is true, it is hard to see how service programs such as (CS1)-(CS5) *eliminate* whatever incentive effects there are. Recall that my position is not to discourage people from leaving the country completely. Indeed, I assume that many high skill citizens will still want to leave, hence my advocating for the tax for five years (which he does not address). What needs to be shown is that measures such as (CS1)-(CS5) have a clear

<sup>6</sup> Surprisingly, Rapoport and his research associates have made several of these skeptical points too in previous published writings.

dis-incentivizing effect on acquiring additional skills in the first place. No evidence of this kind is presented. In his contribution to this symposium, Rapoport claims that “the recent economic literature does not support the ... view that brain drain is an impediment to developing countries’ current and future economic performance” (Rapoport 2017: 130). I do not believe this conclusion is justified and I give some brief reasons for this below. Note also that I do not focus exclusively on economic performance. When looking at the effects for countries of origin I include a variety of effects on other dimensions of human well-being, such as health outcomes and political institutions. Here data can be worrying.

Having studied the recent empirical literature fairly extensively in preparation for this book, my overall assessment of the literature is that the effects of brain drain vary enormously across countries and can even vary a fair bit over time. Relevant factors as to whether high levels of skilled migration is overall good or bad for particular countries include population size, geographical features, levels of development, skill levels in the source country, and language in home and host countries. What is the case for particular countries in sub-Saharan Africa in the health sector may not hold at all for effects on trade or technology transfer for citizens in India. Small island states are more affected by brain drain than large developing countries such as China, India, and Brazil (e.g. Beine, Docquier, and Rapoport 2008). Small countries also often lose much more than large countries gain (e.g. Beine, Docquier, and Rapoport 2008). Assessments of the state of play also vary over time. As one indication of this, consider these remarks made by Hillel Rapoport and research associates, in assessing the state of play at a particular time:

“high-skill migration is becoming a dominant pattern of international migration and a major aspect of globalization. The fact that international migration from poor to rich countries is becoming more of the brain drain type is a serious source of concern in developing countries and for the development community. Through the brain drain, it would seem, globalization is making human capital scarcer where it is already scarce and more abundant where it is already abundant, thereby contributing to increasing inequalities across countries, including among richer ones” (Docquier and Rapoport 2008).

Furthermore, as mentioned, even when brain gain does occur it is not necessarily sufficient to outweigh other bad health effects. Bhargava and Docquier (2008) find that medical brain drain can be associated with increased adult deaths from AIDS. While some studies show a positive correlation between the number of skilled migrants a country has in the

United States and levels of foreign direct investment from the US economy to countries from which migrants hail (Kugler and Rapoport 2007; Javorcik *et al.* 2011), others suggest caution about how generalizable these results are, as data sets contain only two small countries (Gibson and McKenzie 2011).

Researchers have recently examined diaspora and network effects on the quality of political and economic institutions in source countries (Docquier and Rapoport 2012). Docquier and Rapoport (2012) advise caution as there are only a few papers that explore this topic.<sup>7</sup> They note, “the empirical assessment of these effects is still at an early stage” (Docquier and Rapoport 2012: 711). Even among this sample we find a quite mixed result, for instance, Docquier and Marfouk (2006) find that in the study they undertook, brain drain may have positive effects on political institutions but negative ones on economic institutions (Docquier and Rapoport 2012: 711). While it is true that high-skill emigration can produce some positive network externalities, those countries that gain typically have large populations and large numbers of skilled citizens living in the diaspora. Particular policies of both the host and home countries make a difference as well (Docquier and Rapoport 2012: 725). There is also still much about which we are ignorant (Gibson and McKenzie 2011). We clearly need more research on a range of issues including the actual effects of policies aimed at reducing or capitalizing on high-skilled immigration.

Finally, it is important to note that there can be a certain fashionable element to empirical research. While early research on brain drain indicated clear losses, this could have itself stimulated other researchers to investigate more closely. In the future, researchers on this topic will raise other questions and collect other data, perhaps in response to perceived convergence. So caution is advisable when we try to make overall assessments on what the consensus opinion on such a vast body of evidence suggests is the new “received wisdom”. The data available to date suggests the only fair generalizations we can make at this point are that there are some positive, along with some negative effects of brain drain, there is much we still do not know, and that the effects vary considerably for particular countries and within particular sectors. Given that Rapoport himself seems to have changed his mind about some of the evidence and what it shows, it is worth considering the normative question apart from what the current state of play about the empirical evidence suggests, even if we are able to get agreement on what that is.

7 See also Kraay *et al.* (2005), and Docquier and Marfouk (2006).

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