

Immigration, self-determination, and the brain drain*

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Abstract. This article focuses on two questions regarding the movement of persons across international borders: (1) do states have a right to unilaterally control their borders; and (2) if they do, are migration arrangements simply immune to moral considerations? Unlike open borders theorists, I answer the first question in the affirmative. However, I answer the second question in the negative. More specifically, I argue that states have a negative duty to exclude prospective immigrants whose departure could be expected to contribute to severe deprivation in their countries of origin. Countries have a right to unilaterally control their borders, but their exercise of this right is constrained by the demands of morality.

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Do states have the right to include and exclude prospective immigrants as they choose? If they do, what are the limits on this right? Occupying one extreme in the ethical debate over these questions are scholars who maintain that states should enjoy the right to unilaterally control their borders, including and excluding prospective immigrants as they see fit.¹ At the other extreme are those who deny that states have such a right, and recommend the immediate or progressive liberalisation of international migration.² However, neither a world of open borders nor a world where states have a right to exclude whoever they like seem to do justice to the plurality of values we care about.

To date, some scholars have acknowledged this problem and have defended more moderate accounts.³ Their strategy has been to argue that states have a right to

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¹ See, for example, Christopher H. Wellman, 'Immigration and Freedom of Association', *Ethics*, 119 (2008), pp. 109–41. Note that here I refer to *inclusion* as the granting of permanent residency (and eventual access to citizenship) by the recipient state and *exclusion* as the refusal of a would-be immigrant claim for admission.

² Joseph Carens, 'Aliens and Citizens: The Case for Open Borders', *Review of Politics*, 49 (1987), pp. 251–73; Philip Cole, *Philosophies of Exclusion: Liberal Political Theory and Immigration* (Edinburgh: Edinburgh University Press, 2000); Kieran Oberman, 'Can Brain Drain Justify Immigration Restriction', *Ethics*, 123 (2013), pp. 427–55.

³ Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983); David Miller, 'Immigration: The Case for Limits', in Andrew I. Cohen and Christopher H. Wellman (eds), *Contemporary Debates in Applied Ethics* (Malden, MA: Blackwell, 2005), pp. 193–206; Ryan Pevnick, *Immigration and the Constraints of Justice: Between Open Borders and Absolute Sovereignty* (Cambridge: Cambridge University Press, 2011).

exclude prospective immigrants, while simultaneously insisting that this right be constrained by the moral claims of refugees and similarly vulnerable individuals. The important point behind the moderate position is that there is a class of people who must be included even if we grant that everybody else can be justifiably excluded. But there is an important counterpart to this position that has been overlooked. The idea is that there is also a class of people who must be excluded even if we grant that everybody else can be justifiably included. The motivation for extending the moderate position in this way lies in the fact that protecting the vulnerable also entails protecting those who are harmed by what has come to be known as brain drain.

In this article, I motivate this extension of the moderate position by putting forth an account that takes seriously the moral claims of all those affected by migration. I argue that in order to do justice to vulnerable individuals, we will need to acknowledge that not only inclusion but also exclusion can, at times, be the content of a moral obligation on the part of recipient states. In this way my account goes further than other moderate accounts in that it also protects those unable to access basic services due to the departure of their fellow citizens.⁴

The account will be developed in three parts. In part I, I briefly argue that states have a *prima facie* right to control their borders, grounded on the value of political autonomy. In part II, I argue that although states have this right, they also have a negative duty to exclude prospective immigrants when their departure would foreseeably contribute to harm in their country of origin. In part III, I deal with objections and conclude.

Part I

The first important question that arises in the context of discussions on the ethics of immigration is whether recipient states have a moral right to control their border. Those who, like me, think that global justice does not actually require a world of open borders must explain what gives the state a right to decide who is allowed to become a members and who is not. To date, several scholars have put forth more or less persuasive accounts of why states have this right (usually by appealing to the negative consequences to the citizenry were they to increase or liberalise immigration). These scholars have argued, for instance, that open borders would negatively impact the special commitment that citizens have towards one another,⁵ or that it would undermine their capacity to control how the public culture is shaped and transformed.⁶

⁴ In particular, it goes further than two recent discussions on the topic of brain drain. It goes further than Kieran Oberman, who argues that exclusion on brain drain grounds can at times be permitted (whereas I argue that, at times, it is morally required). It also goes a step further than Lucas Stanczyk in his essay 'Productive Justice', in that I specify the key moral obligation that productive injustice gives rise to at the international level. See Oberman, 'Can Brain Drain Justify Immigration Restriction', and Lucas Stanczyk, 'Productive Justice', *Philosophy & Public Affairs*, 40 (2012), pp. 144–64.

⁵ Walzer, *Spheres of Justice*.

⁶ Miller, 'Immigration: The Case for Limits'. Others have focused on socioeconomic considerations, such as the effects that migration would have on poor citizens, or on how migration would undermine the capacity of the egalitarian state to achieve justice. See Stephen Macedo, 'The Moral Dilemma of U.S. Immigration Policy: Open Borders Versus Social Justice?', in Carol Swain (ed.), *Debating Immigration* (New York: Cambridge University Press, 2007), pp. 63–81; and Lea Ypi, 'Justice in Migration: A Closed Borders Utopia?', *Journal of Political Philosophy*, 16 (2008), pp. 391–418.

Despite the diversity of plausible contenders, I follow Christopher Wellman in assuming that the right of states to control their borders is best justified by an appeal to self-determination.⁷ This is because the negative consequences of immigration are often context-dependent and ill placed to justify a *prima facie* right on the part of all states to include or exclude prospective immigrants as they see fit. Indeed, once we acknowledge that what really does the justificatory work is the value of self-determination, it no longer matters whether immigration really has a negative effect on the national identity or whether it undermines the egalitarian ethos. What matters is that political communities should be self-determining in regards to their political future, which necessarily includes making unilateral decisions relating to their own immigration arrangements.

But what exactly grounds the right to self-determination? In his influential ‘Immigration and Freedom of Association’, Christopher H. Wellman argues that part of what it means to be self-determining is having some degree of control over the membership arrangement that ultimately gives rise to the self.⁸ Because citizens care a great deal about whom they associate with, it is their right to freedom of association that ultimately grounds their right to be self-determining in matters of immigration.

While I agree with Wellman that immigration is rightly within the domain of a state’s right to self-determination, I have argued elsewhere that freedom of association is not necessary, nor helpful, in motivating this claim.⁹ While I do not intend to fully rehearse this argument here, I want to note that it is rather the value of *political autonomy* that grounds self-determination on the part of the state. It is simply because citizens should be free to decide on matters that are not only personal (that is, self-regarding) but also political that we must respect their collective right to self-determination. Indeed, it is no good to pay tribute to the value of autonomy when it comes to allowing persons to form, revise, and pursue their conception of the good if we are not simultaneously committed to allowing them to decide together with their fellow citizens which socioeconomic arrangements to bring about. While we need not embrace the Aristotelian ideal that human beings are essentially political animals, we can certainly grant that sociopolitical arrangements at the domestic level influence to a significant degree the quantum of autonomy citizens can exercise in their personal lives. It is therefore not surprising that for many people, the right to collectively decide how their countries should develop is just as important as (if not more important than) the right to decide how their own personal lives should go.

Apart from being intuitively plausible, there are important benefits in endorsing political autonomy rather than freedom of association as grounds for self-determination. For one, we need not accept any controversial empirical claim about whether citizens do care about whom they associate with, or whether political communities are the sorts of entities where persons associate in the relevant sense. Instead, we need only accept that citizens have a legitimate claim to make important political decisions in very much the same way they have a legitimate claim to make important personal decisions. To make the point more explicit: just as we normally grant that it is not up to others to decide on behalf of a competent individual how she should lead her life, we should also grant that it is not up to foreigners to decide on behalf of citizens what sort of political future they should strive to bring about.

⁷ Wellman, ‘Immigration and Freedom of Association’.

⁸ *Ibid.*, p. 115.

⁹ Luara Ferracioli, ‘Morality in Migration: A Review Essay’, *Global Justice Theory Practice Rhetoric*, 5 (2012), pp. 110–19.

To be sure, those who defend a moral or human right to immigrate do not necessarily defend the right of foreigners to impose their preferred immigration arrangement on a recipient state. As a consequence, these theorists may think that a country such as Brazil will lack the right to force Chile, for instance, into accepting immigrants from Paraguay, but still hold that Chile has a duty to open its borders to prospective immigrants from Paraguay and other parts of the world. Moreover, they will defend this position on the basis that all persons have a moral or human right to immigrate, grounded on a strong human interest in moving and settling in other parts of the world. As one defender of this right puts it, ‘people require freedom of movement in order to fulfil their basic life projects such as pursuing a career, maintaining social relationships and practicing their religion’.¹⁰

Now, it is true that a person’s interest in migrating can be grounded in his or her interest to have their autonomy expanded just as the community’s right to control their borders can be grounded on the value of political autonomy. And if this is right, we need to explain why autonomy settles the matter in favour of self-determination, and not in favour of a moral or human right to immigrate. As I see it, the reason we should give more weight to self-determination boils down to the distinction between negative and supererogatory obligations. While negative obligations are considered to be fairly stringent, supererogatory obligations are defined by their lack of stringency. Let me employ an example to show that while the negative duty to respect the political autonomy of others is fairly stringent, the positive duty to include foreigners, who are sufficiently well-off but would like to have their autonomy expanded, is at best supererogatory. Think again about the South American context. If Brazil were to decide on Chile’s behalf that they should accept immigrant workers from Paraguay (by, for example, smuggling these workers across the Chilean border), Brazil would violate a stringent negative duty not to undermine the political autonomy of Chileans (recall that due to the value of political autonomy this should be a decision that Chileans make for themselves). But note that when Brazil fails to include prospective immigrants from Chile, it simply denies these workers an additional set of life options. And while having one’s autonomy expanded is certainly desirable, it by no means creates stringent moral obligations on others. If it did, we would be committed to the counterintuitive idea that if I am rich, I have a duty to expand my neighbour’s set of options by buying them a second car or a holiday house at the coast. Unless we think that there is a stringent obligation to expand the autonomy of those who are sufficiently well-off, I am under no moral obligation to make the life of my neighbour go better.

But are prospective immigrants really in a similar position to a neighbour who would like my financial assistance in order to have their autonomy expanded? It depends. If they are refugees or equally vulnerable individuals, this is certainly not the case, for when it comes to political persecution and other kinds of egregious institutional failure, migration becomes necessary for a minimally decent life and not for the expansion of one’s autonomy.¹¹ But if prospective immigrants can already

¹⁰ Oberman, ‘Can Brain Drain Justify Immigration Restriction’, p. 427.

¹¹ Here I endorse the position that a minimally decent life is one where the most basic and non-negotiable human interests are secured. There will be, of course, grey areas in employing such a standard but states can avoid injustice by erring on the side of protection in times of uncertainty (even if it risks including some persons who lack a moral claim to be included). I assume that such an approach is preferable over potentially excluding some individuals who do have a moral claim to be included. For a discussion, see Luara Ferracioli, ‘The Appeal and Danger of a New Refugee Convention’, *Social Theory and Practice*, 40:1 (2014), pp. 123–44.

lead a minimally decent life in their country of citizenship, then their position is indeed analogous to the position of the neighbour who I could help at moderate cost to myself, but who would not be wronged if I failed to do so.

A standard move on the part of those who do think that persons have a human or moral right to immigrate is to say that prospective immigrants are not actually asking to have their autonomy expanded, but only asking to exercise their negative right to freedom of movement.¹² They reject the claim that immigrants are making a positive claim on the citizenry of recipient states, and so reject the claim that political autonomy trumps freedom of movement. But are these authors correct in thinking that migration is foremost about the exercise of one's negative right to freedom of movement?

When we think of the ethics of immigration, it is tempting to think of a person at the border holding a passport and asking a government official to let him or her in. The problem is that this familiar image severely obscures what really is at stake when persons ask permission to join another political community. Immigrants do not only or primarily exercise their freedom of movement (they don't enter the land and continue to move about like tourists do), they actually settle in the community and in so doing make a number of *positive* claims on its members. They make claims to access basic public services such as housing, health care, and education and to eventually join the political domain. They ask permission to join the labour market of that country and in so doing to affect the economic situation of domestic workers.¹³ And the reason this matters is because these services and opportunities are a direct by-product of the ongoing system of legal and economic cooperation that citizens engage in. Thus, even though theorists talk loosely about the right to cross borders, this language is somewhat misleading given that what prospective immigrants are really asking for is to join the community and to benefit from the goods and opportunities that make migrating appealing in the first place. It is therefore not surprising that citizens have a strong interest in having some say over which immigration arrangement to bring about.¹⁴

There is, however, a further reason why one could be sceptical of the right of states to control their borders. The worry is tied to the idea that some states commit gross human rights violations and so whether or not they care about their immigration arrangements should give them no right to self-determination in this area, or self-determination more generally. Functionalist accounts of the sort implied here has an easy response to this problem: if what grounds self-determination is the value of political autonomy then the state must actually protect and promote individual autonomy in order to warrant self-determination. Because illegitimate states fail to protect and promote the autonomy of their citizens, they lack rights over territory, including the right to control immigration.¹⁵

¹² For proponents of this view, see Cole, *Philosophies of Exclusion*; Oberman, 'Can Brain Drain Justify Immigration Restriction'.

¹³ See Macedo, 'The Moral Dilemma of U.S. Immigration Policy'.

¹⁴ Note that self-determination is not a freestanding reason for a state's right to exclude visitors when granting them short-term access to the territory would not give rise to significant costs. But self-determination is a sufficient reason for barring prospective immigrants from permanently joining the territory because rights to territory are similarly grounded on the value of self-determination.

¹⁵ For functionalist accounts of legitimacy, see Wellman, 'Immigration and Freedom of Association'; Anna Stiltz, 'Nations, States, and Territory', *Ethics*, 121 (2011), pp. 572–601.

But note that even when states are legitimate, they are not at liberty to do wrong. Their right to exclude prospective immigrants does not give them a moral right to impose admission criteria that is sexist, homophobic, or racist. After all, the specific policies that are carried out by a legitimate state are themselves subject to basic moral requirements. One's social class, sex, sexuality, or race is completely irrelevant to questions of membership, and by barring applicants on these bases, a state would treat non-members in ways that lack the most basic degree of moral respect. The citizenry's right to include or exclude is a moral right to be self-determining on matters of immigration, not a right to behave without showing appropriate respect or concern to fellow human beings.

Part II

Having briefly argued that legitimate states do have a right to self-determination and that self-determination is grounded in political autonomy, I now want to show that the moral claims of citizens in sender states also place moral limits on this right. But before I defend this claim, let me briefly expose a conceptual mistake that the proponents of open borders usually make when criticising their opponents. The mistake rests on the assumption that there is a necessary relation between the moral justification of the right to exclude, and the limits that morality places on it. As one proponent of open borders puts it, '[defenders of the right of states to exclude] are left with two unpalatable choices: either a liberal universalism that contradicts itself into incoherence, or a liberal realism that is coherent and consistent, but only at the cost of abandoning the quest for morality altogether'.¹⁶

To show that there is no necessary relation between the two, think of my right to decide whether or not to partake in social events. Almost everyone agrees that it would be wrong for my neighbours George and Georgia to violate my autonomy and coerce me into joining them for dinner. But the fact that we have a robust justification for my right not to associate with George and Georgia tells us nothing about my moral obligations to them. While they are certainly not entitled to force me into accepting their invitation for dinner, George certainly has a right that I rush him to the hospital when it would save his life and cost me little, while Georgia certainly has a right that I do not insist that George joins me for a camping trip when I am well aware that due to her disability, she would be left alone without vital assistance.

The same is true of those who defend the right of states to control their borders. These theorists simply believe that legitimate states are acting within their rights when they exercise self-determination in the area of migration. But this says nothing about what is the morally best course of action available to them, nor does it preclude the possibility that there might be stringent moral responsibilities to foreigners that constrain the degree of self-determination states can exercise in practice. States have a right to include or exclude, but this alone tells us nothing about their moral duties in the area of migration. One of these duties – inclusion – is tied to the moral claims of refugees and similarly vulnerable individuals. Another is tied to the moral claims of vulnerable populations who are harmed by the departure of their fellow citizens. As I hope to show in the remainder of this article, the moral claims of those

¹⁶ Cole, *Philosophies of Exclusion*, p. 311.

left behind also impose limits on the right of states to implement their own immigration arrangements.

On the face of it, it seems strange that states would have an obligation to exclude prospective immigrants due to the harms associated with their movement. I grant that it seems more intuitive to let immigrants move across borders, potentially sending remittances back to their families, while simultaneously requiring that affluent countries mitigate the negative effects of the brain drain with the provision of foreign aid or by transferring taxes from immigrants back to their countries of origin.¹⁷ But while these solutions can work when financial resources are sufficient for protecting the vulnerable, they are doomed to fail when the departure of skilled workers leads to harm (in the form of human deprivation) that cannot be appropriately mitigated or alleviated with the transfer of resources alone. The cases I have in mind are those in which professional skills are essential for the protection of basic rights in resource-deprived settings. But before I defend the claim that a duty to exclude is triggered when the transfer of resources is not sufficient for protecting the vulnerable, a bit more background detail about this phenomenon is necessary.

The brain drain is often understood in the literature and in public discourse as involving the departure of skilled workers from developing to more affluent countries, which in turn, deprives already vulnerable populations of skilled workers who could instead stay and contribute to domestic institutions. And while the label ‘brain drain’ refers to all sorts of professional skills, it is usually the loss of skills associated with the provision of basic health care and education that is of greatest moral concern.

The first point to raise in regard to the departure of skilled workers and its effects on sender countries is that much of what is considered brain drain in the literature cannot be said to be morally problematic. This is because the costs to the sender state can, at times, be adequately compensated for, or be outweighed by countervailing benefits associated with this kind of movement. For instance, by opening their borders to immigrants with a specific set of skills, recipient states may employ workers from countries where unemployment in their professional area is high, and simultaneously make it possible for them to acquire new professional skills that they can later utilise in their countries of origin. Such migration might, on balance, substantially improve the socioeconomic situation of these workers and that of their fellow citizens.

Migration from developing to developed countries can also have other sorts of positive effects. Returnees often bring back with them large pools of savings, and migrant workers often send remittances back to their families and/or community members.¹⁸ In fact, some households are only able to lift themselves out of poverty because of the remittances that are received from a family member that has departed.¹⁹ This is especially true for families that spend remittances on productive activity, education for school-aged children and consumption of basic household items.²⁰

¹⁷ See United Nations Development Programme (UNDP), *Human Development Report* (New York: Palgrave Macmillan, 2009), p. 109; Javier S. Hidalgo, ‘The Active Recruitment of Health Workers: A Defense’, *Journal of Medical Ethics*, 39 (2013), pp. 603–9.

¹⁸ Martin Ruhs, ‘The potential of temporary migration programmes in future international migration policy’, *International Labour Review*, 145 (2006), pp. 25–6.

¹⁹ Jagdish Bhagwati and Koichi Hamada, ‘The brain drain, international integration of markets for professionals and unemployment: A theoretical analysis’, *Journal of Development Economics*, 1 (1974), p. 40.

²⁰ UNDP, *Human Development Report*, p. 72.

Further, remittances can be particularly effective against poverty due to a favourable epistemic position on the part of the remitter and a simultaneous capacity on her part to *demand* that resources are spent wisely.²¹ As Devesh Kapur notes, immigrants from poor countries can ‘send back money that not only helps their families, but their countries as well. [They] then become the biggest provider of “foreign aid”’. The general feeling appears to be that this private “foreign” aid is much more likely to go to the people who really need it.’²²

Notwithstanding the fact that remittances will often compensate developing states for the loss of skilled workers, or that returning immigrants will bring with them new skills and savings, there are cases in which the emigration of *high numbers* of skilled workers leads to deprivation that *cannot* be adequately compensated for or mitigated through the transfer of new skills and financial resources, no matter how great. These are cases in which skilled workers are urgently needed on the ground for the provision of essential services, making their departure inimical to the protection of their fellow citizens’ most basic interests.

For instance, South Africa possesses the largest number of people living with HIV/AIDS and yet can only rely on a third of its locally trained physicians, since most of them have moved to developed countries in Europe and North America.²³ It is therefore not surprising that the HIV and the tuberculosis epidemics in South Africa have been exacerbated by the brain drain.²⁴ And if we take Africa as a whole, we find that an ‘estimated 1.3 per cent of the world’s health care workers provide services to 13.8 per cent of the world’s population in a region suffering 25 per cent of the world’s disease burden’.²⁵ These numbers explain why the ‘shortage of health professionals in Africa proved to be the bottleneck that hindered the utilization of global funds for improvement of healthcare systems’.²⁶

Apart from undermining the capacity to provide basic services, a decrease in skilled workers can also prevent the strengthening of public institutions in low-income countries. This is because the lack of well-functioning public institutions – such as strong legal, taxation, and market systems – can obstruct the attainment of successful human development outcomes in poor parts of the world.²⁷ But for strong public institutions to become viable, skilled workers presumably need to play some part by both demanding institutional change and supplying the state with the human resources necessary for the staffing of these institutions.²⁸ This is not to deny that those who return make a substantial difference in the strengthening of public institutions and the democratic process, especially if they were exposed to progressive new practices

²¹ World Bank, *Global Economic Prospects 2006: Economic Implications of Remittances and Migration* (Washington, DC: World Bank, 2006), pp. 126–27.

²² Davesh Kapur, ‘Remittances: The New Development Mantra?’, *G-24 Discussion Paper Series* 29 (2004), p. 7.

²³ Mohammed El-Khawas, ‘Brain drain: putting Africa between a rock and a hard place’, *Mediterranean Quarterly*, Fall (2004), p. 47.

²⁴ Mickey Chopra *et al.*, ‘Achieving the health Millennium Development Goals for South Africa: challenges and priorities’, *The Lancet*, 374 (2009), p. 1023.

²⁵ Gillian Brock, *Global Justice: A Cosmopolitan Account* (Oxford: Oxford University Press, 2009), p. 200.

²⁶ Gamal Serour, ‘Healthcare workers and the brain drain’, *International Journal of Gynecology and Obstetrics*, 106 (2009), p. 177.

²⁷ UNDP, *Human Development Report*, p. 108.

²⁸ Gillian Brock, ‘Feasibility, Nationalism, Migration, Justification and Global Justice: Some further thoughts’, *Global Justice Theory Practice Rhetoric*, 4 (2011), p. 71.

and ideas.²⁹ But for this sort of positive effect to be felt by those in developing countries, migration must either be temporary or circular, in the sense that the immigrant travels back and forth from his or her state of citizenship to his or her country of residence.

It seems then that skilled migration from developing to developed countries is not the problem *per se*. Rather, human deprivation is enabled by *permanent* migration of a certain kind; namely, that of workers whose expertise and skills are *urgently needed* in their countries of origin (be it for the provision of basic services or for activities that are absolutely essential for human development more generally).³⁰ This means that what is morally problematic in the area of skill-based migration is the permanent departure of workers whose skills are not only essential, non-substitutable, and non-shareable across borders, but also that their departure will not be adequately compensated for by the financial resources that they may transfer back home.³¹

A clear example of this sort of harmful migration can be found in Malawi, where the physician-to-population ratio is one physician per 50,000 citizens – for comparison, the ratio in the UK is one physician per 500 citizens.³² The same is true of sub-Saharan Africa, where half of the countries do not meet the World Health Organization's minimum acceptable ratio of one per 5,000.³³ In fact, a doubling of the medical brain drain rate in this part of the world has been 'associated with a 20 percent increase in adult deaths from AIDS'.³⁴ This means that what citizens in some parts of the world need are health care workers, and that no amount of financial resources can mitigate the kinds of deprivation this perverse low physician-to-population ratio gives rise to.

A potential response here is to say that poor countries must take responsibility for their situation and invest more resources in the public provision of basic services.³⁵ This sort of response is only appropriate in cases where decent employment is not available for those whose skills are urgently needed. But in cases in which workers can access decent employment in their area of expertise, recipient states do play a problematic contributory role by including these workers on a permanent basis. While it is true that recipient states do not start and finish the causal process that

²⁹ Davesh Kapur and John McHale, *Give Us Your Best and Brightest: The Global Hunt for Talent and its Impact on the Developing World* (Washington DC: Centre for Global Development, 2005), pp. 163–76.

³⁰ A difficulty arises when the emigration of skilled workers raises the living standards of part of the population while giving rise to severe deprivation in another segment of the population. Or when the benefits and burdens of migration are unevenly distributed among regions within a country, with one region particularly badly affected and another particularly well benefited. It seems to me that in those cases, we must not lose sight of the fact that some people are suffering severe deprivation, and that this cannot be justified simply by reference to the fact that some are doing much better as a result of emigration.

³¹ It is true that migration comes in degrees, and that not only permanent but also long-term migration can be morally problematic when it comes to securing the access of vulnerable populations to basic health care and education. Note, however, that I am not suggesting that temporary migration is always morally unproblematic. In order for states to discharge their duty not to contribute to harmful brain drain, they must be careful not to implement temporary arrangements that can easily become long-term or permanent. This can be done through the creation of strong financial incentives for return. For a discussion, see Martin Ruhs, 'The potential of temporary migration programmes in future international migration policy', *International Labour Review*, 145 (2006), pp. 29–30.

³² Edward Mills *et al.*, 'Should active recruitment of health workers from sub-Saharan Africa be viewed as a crime', *The Lancet*, 371 (2008), p. 685.

³³ *Ibid.*

³⁴ Alok Bhargava and Frédéric Docquier, 'HIV Pandemic, Medical Brain Drain, and Economic Development in Sub-Saharan Africa', *World Bank Economic Review*, 22 (2008), p. 365.

³⁵ Fernando R. Teson, 'Brain-Drain', *San Diego Law Review*, 45 (2008), pp. 899–932; Hidalgo, 'The Active Recruitment of Health Workers: A Defense'.

gives rise to harm (which means that they don't *do* harm in the conventional sense), they still *enable* harm to be brought about or exacerbated by opening their borders to certain kinds of skilled workers coming from certain parts of the world.

Of course, there are understandable reasons why developed states wish to include skilled workers as permanent members, such as the desire to benefit their own citizens by spending fewer resources educating their own workforce, while simultaneously benefitting from the taxes paid and services provided by a larger skilled workforce. But even though there are no malicious intentions in place, recipient states are still acting negligently by disregarding the foreseeable harm that accompanies their conduct in the area of skilled-based migration. The fact that recipient states lack malicious intention certainly makes them less blameworthy, but it does not give them moral permission to continue the causal process that enables harm in resource-deprived parts of the world.

It has also been suggested in the literature that what is wrong with the brain drain is that skilled migrants have received publicly funded education, and that so long as workers pay for their own tertiary education, they can depart with a clean conscience.³⁶ If we agree with this proposition, then it necessarily follows that recipient states are morally permitted to include graduates from private universities, even if they are leaving countries where the ratio of professionals per population is significantly low. But this line of reasoning rests on a naïve understanding of what contribution to education and training amounts to. Public tertiary education is only one among many of the public goods that makes the acquisition of skills possible (think here of public schools, public health care services, public transport, and so on),³⁷ and it is therefore arbitrary to single it out as necessary for reciprocity to arise. Because all skilled workers benefit to some degree from the financial contribution of their state of citizenship, those who have paid for their own tertiary education cannot be so easily let off the hook.

As I see it, we can actually leave the debate around contribution to education aside when it comes to attributing moral responsibilities to skilled workers in resource-deprived settings. After all, in cases where vulnerable people are in urgent need of health care and education, it is the capacity of these workers to assist at moderate costs to themselves that grounds a moral responsibility on their part.

To be sure, it may well be that publicly funded tertiary education exacerbates the stringency of the duty we have been discussing. It may well be that if your fellow citizens paid for your tertiary education; you are obliged to take on extra costs in order to discharge your moral obligation. Note, however, that we can remain entirely agnostic about this question when it comes to attributing responsibility to affluent *recipient* states. What matters morally here is that, at times, they actively enable severe human deprivation in poor countries by including skilled workers who do not have a prior moral claim to be included, while they could easily train their own workforce and collect their own taxes.

There are, however, two worries here. The first is that human deprivation in sender states may be overdetermined. The second is that recipient states may actually

³⁶ UNDP, *Human Development Report*, p. 109.

³⁷ Brock, 'Feasibility, Nationalism, Migration, Justification and Global Justice', pp. 66–76. For an interesting discussion on the 'privatization of public goods', whereby emigrants take with them the benefits of social cooperation, see Iain Brassington, 'What's Wrong with the Brain Drain (?)', *Developing World Bioethics*, 12 (2012), pp. 113–20.

lack the knowledge to avoid enabling this sort of harmful migration.³⁸ Let me take each in turn.

The cases of brain drain that are morally problematic are not overdetermined because of the scale on which immigration policies are implemented by recipient states. That is, while the negative consequences that follow from the loss of a handful of skilled workers is always overdetermined (these workers could choose to take up jobs that do not require skills, or they could suffer accidents, become ill, etc.), there is no sense in which large scale immigration policies are overdetermined, since there is nothing else at the domestic level that would take hundreds or even thousands of workers out of the workforce. Indeed, this empirical fact also explains why it is unhelpful to blame employers instead of governments in recipient states for the harm associated with the brain drain.³⁹ It is the recipient state that enables harm by providing working visas to hundreds or thousands of skilled workers, the majority of which would have employed their skills at home had they been denied entrance in the first place.

Brain drain is also not internationally overdetermined, since the more states open their borders to skilled workers, the more individuals decide to immigrate. While it may appear as if when taken individually, each recipient state would be off the hook (if workers do not immigrate to state X, they will immigrate to state Y anyway), empirically, emigration is not such an indiscriminate phenomenon. Skilled immigrants will go to one country, but not necessarily to another. They may only immigrate to places where they speak the language quite fluently, or where they already possess social capital. They may also only migrate if income reaches a certain threshold, or if they know that their dependents would eventually be able to participate in the workforce.⁴⁰ The upshot here is that each state that opens its borders for skilled workers enables a distinct group of workers to immigrate, thereby enabling and contributing in its own way to the causal chain that leads to human deprivation in resource-deprived parts of the world.

A comment, in passing: Kieran Oberman has argued that whether or not recipient states have the right to exclude prospective immigrant on brain drain grounds very much depends on whether they have the *legitimacy* to impose justice abroad.⁴¹ As he puts it, ‘when rich states fail to fulfill their own duties towards the global poor, but nevertheless enforce the duties of skilled workers, they exhibit toward the skilled workers a form of disrespect: they are forcing others to act in a way that they are not prepared to act themselves’.⁴² He then complains how academic philosophers have ignored this question of legitimacy in imposing justice, and goes on to quote Jesus who urges a mob not to punish an adulterer on the grounds that many were sinners

³⁸ Christian Barry and Gerhard Øverland, ‘The Feasible Alternatives Thesis: Kicking Away the Livelihoods of the Global Poor’, *Philosophy, Politics & Economics*, 11 (2012), pp. 97–119.

³⁹ Javier S. Hidalgo has defended the active recruitment of health workers on the grounds that employers ‘do not enable harm when they recruit health workers abroad’, in ‘The Active Recruitment of Health Workers: A Defense’, p. 606. He is certainly right about but the fact that *employers* do not enable harm, but he has failed to consider whether recipient states enable harm by granting visas to hundreds or thousands of workers coming from resource-deprived settings.

⁴⁰ Ayelet Shachar, ‘Race for Talent: Highly Skilled Migrants and Competitive Immigration Regimes’, *New York University Law Review*, 81 (2006), pp. 148–206; Martin Ruhs, ‘Migrant Rights, Immigration Policy and Human Development’, *Journal of Human Development and Capabilities*, 11 (2010), pp. 259–79.

⁴¹ Oberman, ‘Can Brain Drain Justify Immigration Restriction’, p. 449.

⁴² *Ibid.*

themselves ('He that is without sin among you, let him first cast a stone at her'). But if my view is correct, then this criterion is unnecessary, if not misleading. Recipient states should exclude prospective immigrants coming from certain parts of the world, not because they are trying to impose justice, but because they have a moral responsibility not to contribute to a causal chain that foreseeably contributes to harm abroad. Oberman's condition for the permissibility of exclusion on brain drain grounds leads to the problematic, if not radical, implication that only those states that have discharged their positive obligations are morally permitted to discharge their negative obligations not to contribute to harm abroad.

Going back to the question of knowledge, affluent states know or at least should know that when they include workers on a large-scale from places where decent jobs are available, they enable, and therefore contribute to human deprivation to be brought about, or substantially exacerbated.⁴³ It is therefore hard to deny that harmful brain drain can be foreseen by those states that choose to ignore low ratios of worker per population in the developing world as opposed to train and tax their own workforce.⁴⁴

This last point explains, in part, why it is at least morally justified when poor countries open their borders for workers coming from other similarly poor countries: while it is foreseeable that they too might contribute to harm, the costs of doing otherwise would be too high. For instance, imagine that Malawi accepts nurses coming from Zambia and that both countries are similarly unable to provide their citizens with a sufficient degree of basic health care services. In this case, it does not seem as if Malawi acts impermissibly since to refrain from enabling harmful migration in this case would be extremely costly.

Of course, it is regrettable when a poor country enables harm in another poor country due to its immigration policies. But Malawi is not doing wrong while a country like the United Kingdom certainly is. While the former is trying to avoid severe deprivation to its own population, the latter is seeking more convenience and higher tax revenues at the expense of countries where the loss of medical skills will virtually condemn many vulnerable men, women and children to avoidable suffering, premature death and lifelong disability.

So what follows from the preceding discussion? Given that we have very good moral reasons to expect states not to contribute to any causal chain or process that will clearly lead to human deprivation in other parts of the world, we should also expect them not to include immigrants coming from countries where their skills are urgently needed for the provision of basic services. Because enabling harm is clearly a form of contribution to harm (that is, without the enabler, harm does not come

⁴³ See Luca Marchiori *et al.*, 'Brain Drain in Globalization: A General Equilibrium Analysis from the Sending Countries' Perspective', *Economic Inquiry*, 51 (2013), pp. 1582–602. Note that if the government of the sender state is not taking the most basic steps to ensure that the skills are actually employed to the benefit of the people, then it cannot be said that a recipient state will enable any deprivation to take place. Employment is, however, not sufficient, since workers must be sure to receive a fair wage and other aspects of decent working conditions. The rationale here is simply that it would be unreasonable to expect skilled workers to accept jobs where they would be exploited, and so again, potential recipient states would not be enabling harm in any meaningful sense.

⁴⁴ For a discussion on how international organisations play a role in obscuring the responsibility of recipient states in regards to the negative effects of brain drain, see Antonina Levatino and Antoine Pécoud, 'Overcoming the Ethical Dilemmas of Skilled Migration? An Analysis of International Narratives on the "Brain Drain"', *American Behavioral Scientist*, 56 (2012), pp. 1258–76.

about),⁴⁵ affluent recipient states have a duty to exclude prospective immigrants when: (i) it is foreseen (or should be foreseen) that their departure will bring about or exacerbate harm that cannot be addressed with the transfer of resources only (when the ratios of professionals to the overall population are lower than what is required for the adequate provision of basic services) and; (ii) when workers have the ability to *actually employ* those skills that are so badly needed (when there are decent jobs that allow workers to provide basic services to their fellow citizens if they stay).⁴⁶

It is important to note that if the sender state has the resources but chooses not to spend them in the provision of basic goods and services, then recipient states are not enabling harmful migration. After all, sender states need to play their part in protecting the basic interests of their citizens. But if the sender state doesn't have the financial resources, better-off states have a secondary moral responsibility to assist if the costs to them would be moderate (triggering what is known as a 'duty of beneficence').⁴⁷ Such assistance can also come in the form of assistance in training the future workforce, thereby improving the ratio of workers per population so that there is no need to exclude skilled workers coming from that country in the future. It is important to bear in mind, however, that when it comes to health care and education, it makes little sense to provide funding for educational and medical resources, while simultaneously recruiting scarce teachers and health care workers from poor parts of the world. Only when an adequate ratio of workers per population is sustainable, can states assist with aid and training and simultaneously recruit workers from that country.⁴⁸

The claim that there are conditions under which recipient states have a duty to exclude certain prospective immigrants from entering therefore complements the widely accepted claim that there are conditions under which recipient states have a duty to include prospective immigrants.⁴⁹ Most theorists agree that when prospective immigrants are extremely vulnerable due to political persecution, they count as legitimate refugees, and so must be included by recipient states. The upshot of my discussion is

⁴⁵ According to Christian Barry and Gerhard Øverland, much of what is normally perceived as contribution to severe deprivation at the international level is more accurately defined as instances of enabling harm. They call attention to how enablers of harm contribute to harm 'in a quite different manner than those who do harm in ways involving a spatiotemporally continuous causal process', in 'The Feasible Alternatives Thesis: Kicking Away the Livelihoods of the Global Poor', p. 106.

⁴⁶ There may be epistemic uncertainty in some domestic contexts due to reasonable disagreement over whether the local conditions are appropriate and whether or not brain drain is contributing to a relevant degree to human deprivation. In such context of uncertainty, it may be appropriate for recipient states to continue including workers until it becomes reasonably clear that their inclusion is in fact playing a significant contributory role in rendering vulnerable populations unable to assess basic services.

⁴⁷ Peter Singer, 'Famine, Affluence, and Morality', *Philosophy and Public Affairs*, 1 (1972), pp. 229–43.

⁴⁸ For a discussion of the development-migration nexus, see Ida Marie Vammen and Birgitte Mossin Brønden, 'Donor-Country Responses to the Migration-Development Buzz: From Ambiguous Concepts to Ambitious Policies?', *International Migration*, 50 (2012), pp. 26–42.

⁴⁹ Here I have primarily defended the conditions under which states have a moral responsibility to exclude skilled workers who would like to be included. However, there is still an important question about how individual states should go about implementing the duty to exclude. To this question, I would say that much of implementation is likely to be context-dependent, with motivational, institutional and diplomatic considerations playing different roles in different domestic context. Still, the duty to exclude is a duty that falls on each individual state not to contribute to harm abroad. The fact that states are already well equipped to control their borders adds plausibility to the assumption that it is feasible for them to act even when others are not doing so.

that the vulnerability of those who stay behind also matters when it comes to morally constraining the right of states to include and exclude as they see fit.

Before I conclude this section, let me emphasise that although the negative duty to exclude is fairly stringent, it is not morally on a par with the duty to include. Indeed, when there is a conflict between the duty to include and the duty to exclude as a result of the oppression and persecution of skilled workers, recipient states should prioritise their duty to include by opening their borders to these workers. Doing otherwise would be grossly unjust, for it would sacrifice the basic interest of ‘skilled refugees’ not to be persecuted or oppressed in order to protect the basic interests of their fellow citizens. This would be analogous to refraining from helping a battered woman to leave an abusive relationship on the ground that only by remaining in the relationship she would be able to care for her children.

Part III

Before I conclude this discussion, I wish to respond to three objections that could be made against the duty to exclude. The first objection relies on the intuition that morally arbitrary features such as skills and citizenship should not have such a pervasive influence in how someone’s life should go. The major concern here is that if states discharge their duty to exclude, they will deny an opportunity for skilled workers to seek a better life for themselves and their families simply on the basis of their skills and citizenship. A critic motivating this sort of criticism might also add that it is unfair to sacrifice the desires of these workers for the good of their fellow citizens, as well as treat workers from different countries differently. Let me take each complaint in turn.

The reason why one might feel uneasy with a moral responsibility to exclude skilled immigrants when the relevant conditions are met is that exclusion usually requires a moral justification that does not appeal to morally arbitrary features. The sheer fact that someone possesses certain skills and comes from a certain country does not seem, on the face of it, to qualify as a legitimate basis for exclusion. This point, however, rests on a misunderstanding of what it means for something to be morally arbitrary. Skills and citizenship, unlike gender and race, can be quite relevant when it comes to *assigning* moral responsibilities to agents. Here is an analogy that makes the point explicit.

If I am a doctor driving past the scene of a road accident and do not stop to offer help, the bystanders who are aware of my professional occupation would be justified in knocking on my door to demand a justification. They could rightly claim that it was terrible of me, as a doctor, not to stop and offer help to the victim, but they could not reasonably claim that it was terrible of me, as a woman or as a Caucasian, to not stop and assist. The same holds for my responsibilities as a citizen: while I possibly have no moral obligation to support the political institutions of other countries, I presumably do have an obligation to support the institutions of my country of citizenship. This is because citizenship is partly constituted by the reciprocal acts of claiming rights and discharging responsibilities.

The exclusion of skilled workers from some countries on the part of a recipient state does not then follow *arbitrary* features possessed by them, but a capacity that

they have, due to their skills and citizenship, to provide basic services that are essential to protect the basic interests of their fellow citizens. It is often claimed that with greater power comes greater responsibilities, and this is precisely what happens with skilled workers in some parts of the world – they have a greater capacity to avoid harm due to their skills and this gives rise to greater responsibilities on their part. Recipient states would not be discriminating unfairly against these applicants since the different treatment accorded to them (exclusion) would be partly justified in reference to their moral obligation to stay put and protect their fellow citizens from harm.

Further, skilled immigrants, unlike refugees, do not normally have a moral claim to immigrate in the first place, and whether they should be included is a question for each state to decide at its own discretion. In fact, when skilled immigrants apply for inclusion they actually apply for a privilege or a benefit to be conferred to them on a non-moral basis, and to be determined by their economic desirability to the recipient state (on the basis of their skills, possession of resources, age, ties to the existing community, and so on.) Because skilled migration is a form of privilege, migrant workers have no grounds for complaint against states that exclude them in order to discharge a stringent negative obligation not to contribute to harm abroad. There are only grounds for complaint if states make use of racist, sexist, or xenophobic criteria, or if they fail to include skilled workers who have a prior moral claim to be granted asylum.

Still, there is a serious concern here that if states implement the duty to exclude, such exclusion would in effect be racially discriminatory because, as it happens, so many of those excluded would be non-whites from the global south. There are a couple of things to be said about this concern. For one, the empirical claim behind the objection is not straightforward. In many developing countries, skilled emigrants are more likely to be part of the white elite. To take just one example, most doctors departing South Africa are white.⁵⁰ But even if it was true that the majority of excluded skilled workers would be from a given race or gender, there is a significant moral difference between states excluding on sexist or racist criteria and their implementing morally justified immigration policy which leads to the *unintentional* under-inclusiveness of some ethnic or racial group. In the latter case, we have a morally regrettable outcome, but one that is preferable to bringing it about that vulnerable populations are less equipped to protect their human right to basic health care and education.

Some may feel, however, that if developed states close their borders to those leaving specific parts of the world (as I suggest they do), they will not be treating foreigners as equals. I might even be accused of contradicting myself in saying that states can simultaneously exclude prospective immigrants *and* treat foreigners with moral concern. The concrete worry here is that if the duty to exclude is implemented by states, an Italian doctor can easily make her way to a place like Australia, while a Malawian doctor cannot. At this stage, a critic may even agree with me that Australia is under

⁵⁰ Renee Weiner, Graham Mitchell, and Max Price, 'Wits medical graduates: where are they now?', *South African Journal of Science*, 94 (1998), pp. 59–63. See also Taskeen Khan, Leena S. Thomas, and Shan Naidoo, 'Analysing post-apartheid gender and racial transformation in medical education in a South African province', *Global Health Action*, 6 (2013), pp. 75–81. The latter study shows that although blacks are 79 per cent of the population of South Africa, they only accounted for 31 per cent of medical graduates in 2011.

an obligation to exclude Malawian doctors, but suggest that Australia must be fair and deny entrance to Italian doctors as well.

My response to this line of reasoning is that the background conditions of Italy and Malawi are so dissimilar that even though these doctors share the same skills, what takes place in each of their countries gives Australia a moral reason to treat them differently. Moreover, it seems that by denying Italian doctors entry on the grounds of equal treatment, Australians would be committing themselves to levelling down. After all, Italian health care workers are not part of the causal story that leads to severe deprivation in Malawi, and for this reason, Australia would be making them worse off simply to bring about equality between them and the Malawi doctors. This seems to be more problematic than granting the privilege or benefit of immigration only to those coming from countries where their departure would not actually contribute to severe deprivation.

The second objection to my account relates to the effect that the duty to exclude has on the human right to exit. The concern here is that a denial of the right of skilled workers to immigrate, in effect denies their human right to exit their state of citizenship.

The force of this objection depends a great deal on how we understand the human right to exit. If we think that a right to exit necessarily entails a right to enter, then we cannot affirm the former without also affirming the latter (this, in turn, commits us to endorsing a human right to immigrate). But there is another way we can understand the right to exit, namely, as a right not to be coerced by one state's of citizenship when moving across international borders. That is, a right not be treated as a property of the state. And if we understand the right to exit in this way, we can grant its moral force without also defending the idea that there is a corresponding human right to enter. On the moderate account that I am advocating here, all human beings possess the right not be coerced by their state of citizenship when seeking to exit, but only those who have a moral claim to immigrate (that is, refugees) will have a moral right to enter another state. The result is that we can cogently deny that skilled workers have a human right to enter while simultaneously affirming that they do possess a human right to exit.

A final line of attack against my account is to claim that skilled workers do have a moral right to immigrate, derived from their right to expand their income, access better public services, provide their children with a better education, and so on. This, in turn, creates a duty on states to include them as members. My response to this sort of objection is to say that if these aspirations provide skilled workers with a moral right to be included, then they also provide all other workers with the same right. Fruit pickers, cleaners, and waiters too want to expand their income, access better public services, provide their children with a better education, and so on. It then follows that there is no moral basis to defend the right of skilled workers to immigrate without also defending the same right for other workers. Note, however, that this position inevitably vindicates the necessity of open borders.

A commitment to a world of open borders is certainly a coherent one, but its implications must be made explicit. For one thing, political communities would lose a key component of their right to self-determination, while the claims for inclusion on the part of refugees and similarly vulnerable persons would lose its special moral status. Most troubling, however, states would not be able to use their capacity to

exclude prospective immigrants to protect vulnerable populations from the harmful effects associated with certain kinds of brain drain.

The approach I have defended here avoids the problems associated with a world of open borders. It vindicates the value of self-determination while ensuring that self-determination is exercised in ways that protect the most vulnerable human beings. But if those pushing for open borders are right, we must only hope that in practice, refugees will not compete for scarce public goods and services with immigrants whose claim for inclusion is far less compelling, while the most vulnerable are left behind without proper access to basic health care and education.