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Relevant evidence, reasonable policy, and the right to emigrate¹

Javier Hidalgo believes that we would be justified in restricting the liberties of health personnel if we had compelling evidence that this would bring about beneficial consequences.² He is skeptical that this evidence exists or would ever be forthcoming. He seems to have at least two concerns. Given the complexities of interpreting data, we can never have the required evidence because we cannot be sure about the necessary causal claims. A second issue is that policy makers or members of governments would not be in a good position to make the kinds of decisions involved in weighing the evidence, given that social scientists themselves disagree.³ Hidalgo therefore supports my position, at least in theory, that where there is good evidence concerning relevant beneficial consequences for remedying important losses associated with high skill migration, we may permissibly restrict health personnel's freedoms to migrate through introduction of carefully crafted compulsory service and taxation programs. So one important issue is whether such evidence is or could ever become available in a form useful to members of government.

By contrast, Phillip Cole expresses significant reservations about the policies I argue are permissible under certain conditions.⁴ He says: "Health workers ... should never be called upon to make the kind of sacrifices Brock is looking for".⁵ "I cannot see that it is fair and reasonable to remove the right to leave or to financially penalize those that do".⁶ He worries that health workers are not being sufficiently respected and the measures for which I argue would remove the right of workers to negotiate contracts. His main alternative position is that "the international community must make sure that it does not fail in its efforts to address"⁷ health crises facing developing countries so that "the violation of fundamental human rights is never, in fact, justifiable in practice".⁸ He also

notes that there are many powerful players who have more responsibilities including multinational corporations, the World Health Organization, and the International Organization for Migration. It is interesting that he points to multinationals' massive tax avoidance in African states as one example of corporations shirking their responsibilities, an example I too discuss at length in several places.⁹

While I certainly understand Cole's perspective, I think in many ways it simply fails to engage with the core questions I discuss and that he is hoping we never have to confront. These are the very ones I take seriously in my arguments for which policies, in our decidedly unjust contemporary world, might actually be permissible. So let me retrace some steps to see why we must confront the issues Cole would rather eschew. The central normative question for consideration in *Debating Brain Drain* is a conditional one and it takes seriously the concerns that both Hidalgo and Cole raise:

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?*

Note that the key question is one of what *developing countries* may permissibly do to solve problems they experience associated with brain drain. The analysis is meant to help them 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.

I argue that a poor, legitimate, developing state may implement carefully crafted compulsory service and taxation schemes when five important sets of conditions are met. Importantly, states must be legitimate, certain background conditions must hold, and

citizens must have relevant responsibilities.¹⁰ The skilled citizens have important responsibilities to assist with need satisfaction when seven important considerations all apply (cf. Chapter 4, *Debating Brain Drain*). Three highly relevant background conditions are:

(BC1). *Evidence from the particular country indicates that skilled citizens can provide important services for which there are severe shortages, and their departure considerably undermines efforts to meet citizens' needs.* The ways in which citizens' departure exacerbates deprivation may be quite direct (such as failure to provide important services necessary to meeting basic needs) or more indirect (such as when the institutional reforms necessary for development have been hampered by net losses resulting from migration of skilled workers, for instance through the loss of taxation revenue).

(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 *taxation programs* to be justified, 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 have made all high skilled citizens (whether prospective migrants or not) aware of their need to tax such citizens to assist

with remedying deprivation, and have made this an explicit condition of student's accepting the opportunity for tertiary-level training in various significant courses of study. The taxation program should not require unreasonable sacrifices.

For *compulsory service programs* to be justified, governments must, in addition to the conditions outlined above, have made students aware of the fact that they will be expected to meet needs on completion of their training, at least for a short period such as one year, and have made this an explicit condition of student's accepting the opportunity for tertiary-level training in various courses of study. 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.

The core issue with Cole is whether what I am proposing constitutes an unreasonable burden that migrants can never be asked to bear. In order to answer this question, compare some possible compulsory service programs that could be implemented:

- (1) Service in underserved communities is required on completion of the degree for a period of one year.
- (2) There is a delay (such as one year) between completing the education necessary to be awarded the degree and the awarding of the degree.
- (3) 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.
- (4) There is a requirement to complete a one-year term of underserved community service in order to be considered for postgraduate training.

Shortly I compare all of these programs with residency requirements that might take this form:

(5). A one-year module of underserved community service and training is part of the degree requirements.

Notice that none of (2)-(4) removes the right to leave. One may not wish to practice or pursue postgraduate training in that country, so (3) and (4) present no restriction in such cases. In the case of (2), many students will choose to spend the one-year gap between completion and award of the degree within the country and wait to receive the paperwork before leaving, but some may not. They are free to leave. So what about (1)? Is that unreasonable? Would it remove migrants' rights to leave?

A key issue is how these contracts to serve would be enforced. Enforcement for compulsory service might take the form of a delay between completion and awarding of the degree. This is in fact how 64% of compulsory service agreements are actually enforced today for those approximately 70 states that currently have implemented compulsory service programs, and it may well be a good option for many countries.¹¹

But let us anyhow consider other enforcement mechanisms. Whatever the form of the compulsory service program, on my view people should be permitted to leave and any breaches of contract should be pursued in the same ways many contracts are enforced when one party fails to comply and leaves the country, for instance through the destination country helping to enforce the contract. This is the

case with agreements to enforce child support or alimony orders. Host countries have often used wage garnishments to help enforce contracts.¹²

Is (1) unreasonable? Compare with (5), the standard residency requirement. I do not see a material difference between (1) and (5) in the levels of coercion that are being applied. If (5) is acceptable, then there is no principled reason why (1) is not, in my view. All things considered, I believe the details of my programs take account of Cole's concerns so that no unreasonable sacrifices are required.

So let us turn to the issue of whether there is relevant evidence currently available that Hidalgo might find compelling. First, I should stress that I do not hold the view that there are always net losses from high skill migration, nor that empirical results about one state might generalize to others. Evidence is highly particular to different countries. Indeed, recall that both (BC1) and (BC3) take account of this particularity, for instance, (BC1) requires that evidence from the particular country indicates that skilled citizens can provide important services for which there are severe shortages, and their departure considerably undermines efforts to meet citizens' needs.

So, is there any relevant current evidence that has a bearing on the issues under discussion? There is a general problem in health services research with trying to show *direct evidence* of physician impact on population health. There are standard ways around this problem such as using measures that capture enhanced service provision as indicators of success. Here there is relevant evidence. For instance, Mozambique reports that all 148 districts in the country have at least one physician, since implementing their compulsory service program (which was not the case previously).¹³ After implementing their program, Puerto Rico reported that all 78 municipalities had one doctor.¹⁴ Similarly good results are available from Indonesia and Turkey, with South Africa showing "better staffing levels in rural hospitals, shorter patient wait times and more frequent visits to outlying clinics by

health workers”.¹⁵ Of course, just having a health professional present in the district need not convert to improved health outcomes, but it does remove one important current obstacle to the likelihood of better health outcomes.¹⁶ Finally, there is important research on what makes compulsory service programs effective when they are in place. For instance, when individuals are well trained for the procedures and conditions relevant to working in rural or underserved communities, and the support necessary for people to function effectively is available, both within the health care system and from the community, these programs can be effective.¹⁷

¹ I am very grateful to Javier Hidalgo, Phillip Cole and Eszter Kollar for their stimulating comments.

² “The Missing Evidence In Favor of Restricting Emigration” this volume.

³ Hidalgo cites Michael Clemens’s article, “A Case Against Taxes and Quotas on High-Skill Emigration,” *Journal of Global Development*, 2014; 5(1): 1-38, as authoritative on the matter that “we have almost no evidence that restricting freedom of movement would reduce deprivation.” I therefore read the Clemens article with great interest, since it conflicted with the collection of evidence that I had found, some of which I will discuss further along. The article cited discusses evidence for a number of claims that are not ones I make. For instance, Clemens argues that restrictions on skilled migration are inefficient. Also, he argues that taxes are insufficient to undo negative externalities that arise from skilled emigration. Since I make neither the claim that restrictions on skilled migration are efficient, nor the claim that taxes are sufficient to undo negative externalities, the evidence discussed presents no challenges to my position. (On the last issue, just because taxes are insufficient by themselves to remedy all negative externalities, it does not follow that taxes, along with other policy measures and interventions, could be jointly sufficient. So taxes may be one part of a successful solution to address negative externalities.)

⁴ “ “, this volume.

5 “ “, p.

6 “ “, p.

7 “ “, p.

8 “ “, p.

9 See, for instance, Gillian Brock, *Global Justice: A Cosmopolitan Account* (Oxford: Oxford University Press, 2009), especially chapter 5; Gillian Brock “Global Poverty, Decent Work, and Remedial Responsibilities: What the Developed World Owes to the Developing World and Why” in Diana Meyers (ed.), *Poverty Coercion, and Human Rights* (Oxford: Oxford University Press, 2014); Gillian Brock, “Taxation and Global Justice: Closing the Gap between Theory and Practice,” *Journal of Social Philosophy* 39 (2008): 161-184; Gillian Brock, “Institutional Integrity, Corruption, and Taxation,” Edmond J. Safra Research Lab Working Papers, No. 39, March 13, 2014, ssrn.com/abstract=2408183.

10 As proxy measures, states exercise power legitimately when they make credible efforts to protect human rights with sufficient effectiveness and provide other core goods and services.

11 Seble Frehywot, Fitzhugh Mullan, Perry Payne and Heather Ross, “Compulsory Service Programmes for Recruiting Health Workers in Remote and Rural Areas: Do They Work?” *Bulletin of the World Health Organization* 88 (2010): 364-370.

12 One final point worth emphasizing is that I also argue that people should be permitted to buy out of the contracts.

13 Seble Frehywot, Fitzhugh Mullan, Perry Payne and Heather Ross, “Compulsory Service Programmes for Recruiting Health Workers in Remote and Rural Areas: Do They Work?” *Bulletin of the World Health Organization* 88 (2010): 364-370.

14 Ibid.

15 Seble Frehywot, Fitzhugh Mullan, Perry Payne and Heather Ross, “Compulsory Service Programmes for Recruiting Health Workers in Remote and Rural Areas: Do They Work?” *Bulletin of the World Health Organization* 88 (2010): 364-370.

16 Seble Frehywot, Fitzhugh Mullan, Perry Payne and Heather Ross, “Compulsory Service Programmes for Recruiting Health Workers in Remote and Rural Areas: Do They Work?” *Bulletin of the World Health Organization* 88 (2010): 364-370.

17 For more on such research see Frehywot et al., “Compulsory Service Programmes: Do They Work?”; also S. J. Reid, “Compulsory Community Service for Doctors in

South Africa – An Evaluation of the First Year,” *South African Medical Journal*, 91 (2001): 329-335. It is worth remarking that there is scope for further useful research on the results of compulsory service programs and how to make them effective. The fact that there are fewer research projects on the effects of compulsory service than one might like is unsurprising to me. Those who might be interested in the results of such research, especially where they might indicate gains for poor countries, are typically under-resourced poor countries that may well prioritise programs that meet needs rather than research programs of any kind. Those who have an interest in arguing for the availability of more labour in developed countries would have little interest in research of this kind.