

# **Onora O’Neill’s views on vulnerability and the desirability of porous borders: Some important challenges**

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## 1. Introduction

Philosophical theorizing about global justice has evolved into a flourishing, sophisticated, and respectable field. This was not the case about two decades ago and O’Neill’s pioneering work on these topics has been highly influential in these welcome developments. In this paper I aim to review the important role agency, need, and vulnerability play in O’Neill’s normative theorizing, as well as the importance she places on being able to allocate responsibilities, in evaluating how porous borders should be to persons who want to cross them permanently. Some of the most important questions needing resolution in political philosophy today include how to distribute responsibilities for moving towards global justice. Just how difficult this is will soon become obvious. I discuss a case study which helpfully illustrates some of the complexity. It also provides an interesting challenge for O’Neill’s work for a number of reasons, such as the following: First, she acknowledges that “fruitful work in ethics or politics must be practical. It must address the needs of agents who have yet to act, who are working out what to do...”.<sup>1</sup> She also admits, second, that “any theory of justice that wishes to be taken seriously must respect empirical findings”.<sup>2</sup> Indeed, working out what to do “requires an empirically realistic view of ... the ways in which we are vulnerable to others, and of ways in which existing institutions may

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<sup>1</sup> O’NEILL (2000), p. 7.

<sup>2</sup> O’NEILL (2000), p. 2.

be either resilient or fragile”.<sup>3</sup> Third, she recognizes the fundamental role needs, vulnerability, and poverty should play in our normative theorizing. In particular, she recognizes the importance of examining the contexts in which needy, vulnerable people find themselves, in order to understand their plight, whether there are objectionable elements to their situation (such as coercion), and what ought to be done to assist. Fourth, she recognizes the key role institutions can and must play in prescriptions, and indeed examining contexts makes this even more salient. Fifth, she thinks that justice towards distant strangers might entail more porous borders or compensation for “harms caused by otherwise unjustifiable exclusions”.<sup>4</sup> Sixth, she also recognizes the importance of agency and prohibitions on coercion. What if some of these important elements point in different directions? How are we to navigate our way through distributing the relevant responsibilities?

In section 2, I briefly review the importance O’Neill places on some of the factors just outlined. Then in section 3 I review why addressing what will be effective in combating neediness and vulnerability can be crucial to the issue of just how porous borders should be. I discuss why there are important harms that frequently follow emigrants’ departure from developing countries, why there are important responsibilities to address these, fair ways to distribute the costs associated with tackling these losses, and begin the investigation into the kinds of policies that might be effective and normatively justified. I hope to draw attention to the ways in which others’ more severe vulnerabilities can, under certain conditions, place important constraints on what individual agents may permissibly do, even sometimes for agents who themselves may still be relatively vulnerable. Certain kinds of dire

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<sup>3</sup> O’NEILL (2000), p. 7.

<sup>4</sup> O’NEILL (2000), p. 202.

distributional consequences of our otherwise perfectly permissible actions should attract appropriate concern, when we have derived direct and indirect benefits from highly vulnerable people and our actions would have the result of exacerbating their vulnerability. Placing human vulnerability at the centre of our deliberation on this issue can help appropriately shift attention from the individual's entitlements, needs, liberties, opportunities, and interests on to others in the vicinity of the individual whose entitlements, needs, liberties, opportunities, and interests would also be significantly compromised. Focusing on vulnerabilities thus gives us a richer understanding of the nature of our ethical and political obligations in a world characterized by multiple injustices. But it also adds more challenges in our quest to assign responsibility fairly.<sup>5</sup>

## 2. The importance of need, vulnerability, and reexamining borders in O'Neill's normative theorising

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<sup>5</sup> Two qualificatory remarks bear mentioning. First, the focus for this paper will be on emigrants departing from *developing countries*, because this is where losses and vulnerabilities are most acute. The analysis does have some bearing on movement from developed countries as well, though I do not extend the analysis to developed world migration explicitly here. Second, it is important to note that though they are important, migration policies are only one component of a full account of global justice. We cannot expect all the wrongs of our current global situation to be addressed solely through policies concerning migration. For more general consideration of our obligations of global justice see BROCK (2009).

As Onora O’Neill observed in 1985, “most of the theories we commonly discuss pay little attention to needs”.<sup>6</sup> She explores why this is and also suggests that “if we start from a theory of human obligations rather than of human rights, we can readily take account of human needs”.<sup>7</sup> She argues that the language of rights is inadequate to the task of accommodating needs; we should rather look to the more basic language of obligations if we want to take adequate account of needs. One of her complaints against a rights-based account of justice is that unless obligations are specified and allocated, rights, such as the right to food and other rights important to the needy, will simply remain as manifesto rights or worse: unallocated obligations to assist may not only be “downgraded” but denied completely.<sup>8</sup> On the rights based approach a powerful wedge is drawn between questions of justice and matters of beneficence. Justice is regarded as involving “assignable, hence claimable and potentially enforceable, rights, which only the claimant can waive”,<sup>9</sup> whereas on this model beneficence is regarded as “unassignable, hence unclaimable and unenforceable”.<sup>10</sup> She believes an approach based on obligations fares better, especially in “incorporating discussion of needs into our ethical thinking”.<sup>11</sup> She argues that the Kantian construction can take full account of needs and she sketches how that can be done. O’Neill sees vulnerabilities as central to the arguments for our having responsibilities to meet needs.

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<sup>6</sup> O’NEILL (1998), p. 95.

<sup>7</sup> O’NEILL (1998), p. 95.

<sup>8</sup> O’NEILL (1998), p. 98.

<sup>9</sup> O’NEILL (1998), p. 98.

<sup>10</sup> O’NEILL (1998), p. 98.

<sup>11</sup> O’NEILL (1998), p. 104.

According to Kant, we should refrain from acting in ways that are not universalizable (in relevant ways) and so we can identify several principles of justice. Importantly, one of these is a principle that prohibits coercion. According to O'Neill, Kant emphasizes that his principles of obligation are principles for actual, finite, rational beings. In order to see whether actual, finite, rational beings are being coerced we will have to take account of their circumstances, for what counts as coercion will sometimes depend significantly on relative power and vulnerability. Of course, a basic form of vulnerability is that of those who are needy "to those who have the power to grant or refuse them the means of life, whether directly by help or hindrance or indirectly by the mediation of social institutions".<sup>12</sup> It is widely thought that "when we are in great need, others do not have to threaten much for compliance to be as ready as it would be, under other circumstances, to a pointed gun".<sup>13</sup> So if they are not to be coerced, we should ensure that they are not acutely vulnerable to the actions of the powerful, so, at the very least, we must ensure that institutional arrangements are in place to take care of their basic needs.

She briefly suggests there are implications for aid, trade, and development policies that can be derived from this analysis. "Kantian justice requires changes in the fundamental principles of institutions that make or leave others so vulnerable that their agency is impaired".<sup>14</sup> The single most important change needed will be abolition of material need. Furthermore, she also observes that: "When we consider what it is for a community of finite rational beings to be agents, we cannot but note

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<sup>12</sup> O'NEILL (1998), p. 108.

<sup>13</sup> O'NEILL (1998), p. 108.

<sup>14</sup> O'NEILL (1998), p. 111.

that their agency is partial and mutually vulnerable”.<sup>15</sup> In reviewing our obligations to construct institutions, we must take account of our mutual vulnerability.

In one of her classic articles, “Distant strangers, moral standing and porous boundaries,” O’Neill observes that we now have the means to act effectively over distance and meet needs through collective action.<sup>16</sup> She inquires whether we have obligations to try to implement a set of global institutions that can meet distant strangers’ needs. She notices that although we have considerable institutional capacity to act at a distance (for instance, through trade or capital transfers), other institutions obstruct action at a distance, such as state boundaries.<sup>17</sup> She notes that cosmopolitans argue about these boundaries, and whether (and if so, how) they should matter. She says: “The changes in boundaries that matter to cosmopolitans are not shifts in their location, but changes in their character. Cosmopolitans think that boundaries should be (more) porous to persons and their activities. Free traders seek to make boundaries more porous to commerce; liberals seek to make them more porous to the passage of information, and the movement of persons...”.<sup>18</sup>

O’Neill encourages us to think how porous a particular boundary should be relative to a particular activity, person, good (and so on).<sup>19</sup> Outsiders certainly count and not all boundaries are unjust. “Porosity is endlessly variable and adjustable; different filters can be institutionalized”.<sup>20</sup> When we think of justice towards distant

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<sup>15</sup> O’NEILL (1998), p. 108.

<sup>16</sup> O’NEILL (2000).

<sup>17</sup> O’NEILL (2000).

<sup>18</sup> O’NEILL (2000), p. 189.

<sup>19</sup> O’NEILL (2000), p. 200.

<sup>20</sup> O’NEILL (2000).

strangers we can think in terms of making the borders more porous or compensating them for losses sustained from unjustifiable exclusions.<sup>21</sup> She acknowledges that moral cosmopolitanism “does not point to a stateless world, but to forms of institutional cosmopolitanism in which further boundaries become more porous in further ways”.<sup>22</sup> In this article she also makes evident her appreciation that helping people meet their needs is no simple matter, and that she understands there is complexity involved in securing people’s needs.<sup>23</sup>

### 3. Some challenges in evaluating the porosity of borders: the salience of need and vulnerability

Some of the most important questions needing resolution in political philosophy today include how to distribute responsibilities for moving towards global justice. Just how difficult this is will soon become obvious. Next we discuss a case study that helpfully illustrates some of the complexity, but also provides an interesting challenge for O’Neill’s work for the reasons indicated in section 1. Here is the basic problem. There is a lively debate on what would help developing countries best help themselves. What if helping them retain their most skilled citizens is a key issue in building better institutions necessary for development? The highly skilled are important sources of demand and supply for better institutions. If that is right, what policy options to retain these valuable citizens are permissible, given that on the face

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<sup>21</sup> O’NEILL (2000), p. 202.

<sup>22</sup> O’NEILL (2000), p. 202.

<sup>23</sup> For instance, she says obligations to reduce poverty may be well “served by mixes of investment, development and educational policies combined with efforts to relieve poverty when economies fail” (O’NEILL (2000), p. 200).

of it, we might be unduly restricting people's important freedoms? And, if the empirical analysis is taken seriously, would this not suggest that less porous borders might be normatively desirable, at least in these cases?<sup>24</sup>

One of the big push factors in migration is the vastly different life prospects people enjoy in different countries. For one thing, there are vast income disparities in different countries, especially between developing and developed ones. Furthermore, at least 1.5 billion of the world's population lives in poverty.<sup>25</sup> If poverty is one of the main drivers of movement away from developing countries, tackling it seems important. A lively debate flourishes on what causes poverty and how it should be addressed.<sup>26</sup> Emerging as a profoundly important factor is the quality of institutions in that country: the rule of law that is operative there, which includes institutions that provide dependable property rights, can manage conflict, maintain law and order, enable social and political stability, and sustain its regulatory capacity. Institutions matter greatly in the development process, whatever other factors are also significant.<sup>27</sup> For instance, those institutions that promote respect for the rule of law and accountability make for an environment conducive to innovation and investment in education, health, and infrastructure, all key ingredients for lifting people out of poverty. Creating better institutions is a significant component in helping people out of poverty, and a key factor in promoting

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<sup>25</sup> Counting the numbers who qualify as living in poverty yields different figures depending on what measures of poverty are used. For some insightful analysis see REDDY and POGGE (2005).

<sup>26</sup> For a fuller treatment of the issues, see BROCK (2009), chapter 5.

<sup>27</sup> See for instance, RODRIK (2003), NORTH (1990), ACEMOGLU *et al* (2001).



development.<sup>28</sup> As I go on to discuss, one of the most worrisome setbacks developing countries suffer from emigration is damage to institutions, institution-building, and therefore the loss that is sustained in opportunities for development and escape from poverty.

What do we know about high levels of absent human capital? Some sectors are especially hard hit, for instance, there is much awareness concerning the outflows of healthcare workers. Indeed, as I have argued elsewhere, brain drain in the health sector is particularly widespread and damaging for citizens of developing countries.<sup>29</sup> In some cases, the departure of health care workers from developing countries threatens the viability of the health care systems in those countries, especially in sub-Saharan Africa. (Consider, for instance, how about a third to a half of South African medical school graduates emigrate to the developed world, and about half the physicians trained in Ghana between 1985 and 1994 have left the country.<sup>30</sup> These kinds of substantial losses, born by already struggling developing countries, result in major loss of healthcare

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<sup>28</sup> As Allen Buchanan defines the term, “an institution is a kind of organization, usually persisting over some considerable period of time, that contains roles, functions, procedures, and processes, as well as structures of authority” BUCHANAN (2004), p. 2. I use the term “institution” slightly more broadly to include also *significant* practices which set up authoritative norms for interaction between individuals and groups, even if no one formal organization oversees the practices’ operations, including enforcement of the rules (which might take diffuse forms).

<sup>29</sup> BROCK (2009b); also BROCK (2009a), Chapter 8.

<sup>30</sup> PANG *et al* (2002).

delivery capacity, with important consequences for the health of those in developing countries.<sup>31)</sup>

While negative effects in the health sector are worrying, other damage is pervasive. Here I identify four types. First, there are important fiscal consequences.<sup>32</sup> Skilled workers typically contribute more to a country's tax receipts than they get in government expenditures.<sup>33</sup> The loss of such workers can mean significant loss of revenue and opportunities for more progressive taxation regimes. Second, there are knowledge spillover effects. Skilled workers' knowledge spreads to others in the economy and in a context where knowledge about best technical practices, organization methods, and so forth is scarce, the loss of workers with highly specialized skills can be quite devastating.<sup>34</sup> Third, higher skilled worker migration reduces income and economic growth.<sup>35</sup> But, fourth, the most worrisome effects are institutional. Highly skilled people are "close to indispensable" in building domestic institutions.<sup>36</sup> As institutions are crucial in promoting development, when those most likely to contribute to institution building are absent, development suffers.

People build institutions, and the skilled people who leave are potentially important institution builders: they are both important sources of demand and supply for institutional reform. Generally, for institution building to occur, you need a critical mass

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<sup>31</sup> For more on these arguments see BROCK (2009a), Chapter 8, and BROCK (2009b).

<sup>32</sup> KAPUR and MCHALE (2005).

<sup>33</sup> KAPUR and MCHALE (2005), p. 91.

<sup>34</sup> KAPUR and MCHALE (2005), p. 95.

<sup>35</sup> KAPUR and MCHALE (2005), p. 97.

<sup>36</sup> KAPUR and MCHALE (2005), p. 96.

of people with high levels of human capital.<sup>37</sup> For instance, in the US it has been argued that an “intellectual vanguard of university-trained professionals, economists, and other progressive thinkers was among its most valuable state-building resources during the early twentieth century. These individuals played key roles in developing a more professional and bureaucratic state by providing new ideas about better organization and the exercise of power”.<sup>38</sup> Furthermore, the World Values Survey Data suggests a strong connection between a pro-democracy stance and class and education, so when the more educated leave this can weaken local support for democracy.<sup>39</sup> Developing countries tend to have a limited middle class so if members of this segment leave in high numbers, maintaining robust democracies will be challenging.

Do the positive effects that result from emigration outweigh or compensate for the losses? Not necessarily. It is widely assumed, for instance, that financial remittances can compensate for the departure of citizens. Though there are some notable successes from remittance programs, these are quite limited.<sup>40</sup> As Devesh Kapur and John McHale argue: “there is as yet no evidence that remittances can catalyze broad economic

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<sup>37</sup> KAPUR and MCHALE (2005), p. 97.

<sup>38</sup> KAPUR and MCHALE (2005), p. 97

<sup>39</sup> KAPUR and MCHALE (2005), pp. 108-9.

<sup>40</sup> Included in the success stories would be the Mexican “Three for one program” in which remittances from Hometown Associations are matched with federal, state, and local authorities contributing equal amounts. Overall, though, it is not clear that the programs have produced much in the way of income-producing jobs. Also not clear is whether they are simply funding future migration through enhanced training (KAPUR and MCHALE (2005), p. 97 and p. 152).

transformations, the kind that is essential to alleviate structural poverty in the long term”.<sup>41</sup>

Kapur and McHale’s assessments are quite compatible with my own previous arguments on this topic, in which I note that of the central negative effects of remittances observed for home countries, there are these seven: (1) the inflow of funds can create dependence for recipients; (2) dependence encourages further migration, especially among the working age, productive adults; (3) both home and host countries become dependent on continuing the arrangements; (4) economic activity can become depressed in countries of origin, which encourages more emigration; (5) needed economic reforms are neglected, as is the creation of rewarding opportunities in the home country; (6) remittances may have a positive effect on transient poverty, but do not by themselves reduce structural poverty, and (7) remittances decline over time.<sup>42</sup>

#### 4. Policy options

Before we survey some policy options that deserve consideration, it is worth pointing out that there are at least three fairly distinct types of losses that have been identified: (i) purely financial loss (such as costs of training or loss of tax revenue); (ii) loss of skills and services; and (iii) loss of institution-building assets. In many ways, harms identified in (iii) are the most difficult to address, but all of these losses are not insignificant (and can anyhow affect (iii)).

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<sup>41</sup> KAPUR and MCHALE (2005), p. 162.

<sup>42</sup> BROCK (2009a), Chapter 8.

A variety of policy options to address important losses deserve consideration and these include:<sup>43</sup>

(i) Regulate outflow: e.g. stop the targeting of scarce talent, mandate codes of practice in recruitment, or developed countries should consider employing migrants for short-term assignments, such as clearing the backlog, rather than permanent employment.

(ii) Require Compensation: e.g. link development aid with human capital recruitment, share tax revenues (between home and host countries), impose (ongoing or exit) taxes on emigrants (which accrue to source countries), or provide conditional education grants repayable on emigration.

(iii) Create opportunities and incentives: invest more in human capital, create more incentives for migrants to want to go home, such as depositing money in special accounts that can only be accessed when emigrants return,<sup>44</sup> or leverage connections in the diaspora to create mutually beneficial opportunities (e.g. in trade). Policies surrounding creating human capital also need attention, such as affluent countries systematically underinvesting in sectors such as health care and education which leads to permanent skill shortages.<sup>45</sup>

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<sup>43</sup> Most of these are discussed in some detail in KAPUR and MCHALE (2005).

Some of these are also discussed in more detail in BROCK (2009a) and BROCK (2009b).

<sup>44</sup> Such a scheme applies to migrant workers from Mozambique and Lesotho who work as miners in South Africa; a portion of their wages is sent to banks in their home countries (KAPUR and MCHALE (2005), p. 187).

<sup>45</sup> Also, developed countries should not waste the talent that does arrive by not recognizing skills that often function as a screen for protection of domestic competition.

As we have seen then in this section, there are important effects on those left behind and also a variety of policy options that deserve our consideration. Before we discuss some of these policy options in more detail, I examine the normative case for there being important responsibilities that need to be discharged, especially on the part of the emigrant and the destination country.

#### 5. Towards just migration policy: my position and why I think O'Neill would have to agree with the main conclusions

Here I have space for only a brief sketch of how we should theorise about what justice requires in migration. There are a number of benefits that typically flow to members of a community that is functioning minimally well. There will be a certain level of peace, protection for people's basic liberties and property, some level of developed infrastructure, some education, and so forth. Arguably, the greatest benefit of all of these is providing a level of peace and security so that people can go about their lives without constant fear of imminent danger. Enjoying such benefits accrues debts that are typically discharged by being a productive member of that society in adulthood. However, if one's adulthood is not spent in that community, other ways of discharging that debt must be arranged.

Furthermore, well-governed communities will make plans to enable the satisfaction of members' needs, by investing in the training of those able to provide educational services, build infrastructure, deliver health care, and the like. Those investments in developing human resources are prudent, and are part of what good planning and governance of a community requires. Those people who have received the necessary training are, in a way and in part, community investments.

When a highly skilled citizen of such a community leaves to take up employment elsewhere, there are a number of costs she now imposes on the community she leaves. Notably, there are the training costs which are frequently heavily subsidized by the community, but there are others that are likely to have important effects on development, such as the stream of services she would have provided, the loss of income from taxed wages, the loss of progressivity in fiscal arrangements, the fact that worse off citizens must now bear more of the cost of public goods, the contribution that person would have made to a well-governed community, including participating in political and civic affairs, and, in general, the loss of people likely to be both important sources of demand and supply for better institutions. The departing individual therefore imposes burdens and as a beneficiary of the community's hospitality, nurturance, and protection, she has a duty to address the losses she has created for the community that helped her become the person she now is, notably, one who has been educated to a sufficiently high level that she is able to take up well-paying opportunities in a global employment market. She has clearly derived benefits and therefore has incurred some relevant duties.

Why is that? Basically, states provide important benefits unlikely to arise in their absence, and they do this without asking subjects to make unreasonable sacrifices. For instance, each of us gains from general compliance with state laws that guarantee peace and security. A certain amount of state coercion of its residents is justified when this is necessary to ensure the peace and security from which we benefit. We also have to be willing to do our fair share in providing key public goods.

However, we need to consider what might be thought of as "the bad luck objection". Why put all the costs on the emigrant, someone might argue? The fact is that whatever luck came her way, she still was not lucky enough to be born into a better community yet, namely the one to which she would like to move. It is no fault of hers

that she was born where she was. What of all those in developed countries who, through no achievement of theirs, found themselves lucky enough to be born into those countries? Why should they not be made to compensate the source communities? I have considerable sympathy with this line of argument as should become clear. The short response is that developed country citizens do have a duty to contribute to these less well-off communities as well. After all, they will gain from adding to the stock of well-educated, highly skilled citizens, who will be able to contribute to political, civic, economic, and social affairs in that country. Indeed, even if no benefits were to accrue directly, they have obligations to the global poor that derive from a number of sources, as I discuss at length elsewhere.<sup>46</sup> Compensation can take a variety of forms and I discuss some possibilities below. Before we get to that, I summarise two key lines of argument from the discussion so far.

First, by leaving without compensation, emigrants create disadvantages for others. Emigrants' actions would now create a burden that must be recognized. Those left behind are made more vulnerable by the emigrants' decisions, as the viability of their enjoying a decent society could be under threat, so they deserve protection from the disadvantages the emigrants have now created for them. While the emigrant is the one who might initially have the duty, by allowing the emigrant into a developed country, members of developed countries become, in effect, enablers or accomplices, so they incur the duty too. By facilitating the unintended harm, they become co-responsible. Second, when governments invest scarce resources in creating human capital to provide for the needs of their citizens, they are entitled to fair returns on their investment. They are entitled to claim compensation from those who will benefit from their investment if the beneficiaries are non-citizens – after all, non-citizen beneficiaries are gaining services for which their

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<sup>46</sup> For instance, BROCK (2009a), Chapters 3 and 4.



governments did not pay. Indeed, for governments not to claim a fair return on their investment would be to use public resources unwisely.

It seems that O'Neill would have to come to similar conclusions about the normative positions for which I have argued here, namely that it is permissible to regulate trans-national movements of would-be emigrants, though, of course, through a more Kantian analysis. For one thing, we could not universalize the underlying relevant maxims involved, such as: it is permissible to take advantage of the benefits of community without reciprocating or offering a fitting response for those benefits, especially when we thereby make others considerably worse off. Similarly, we could not universalize a maxim such as: it is permissible to invest scarce resources in initiatives that will meet others' needs without expecting a return on that investment. Deploying a Kantian analysis we would have to find problematic uncompensated departures by highly skilled workers.

In addition, there is plenty throughout O'Neill's work that could be assembled to add force to the central conclusion, such as her view that just systems must "support the capacities of vulnerable agents".<sup>47</sup> Furthermore, justice may require institutions "that coerce in order to limit coercion".<sup>48</sup> In addition, "if justice is fundamentally a matter of securing external freedom for all, reforms which build a more just transnational economic order might have to regulate and police international ...transactions and relations" to ensure more security for the weak.<sup>49</sup> So, it seems to me there is enough evidence that O'Neill's position would be similar to the one I claim is normatively desirable.

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<sup>47</sup> O'NEILL (2000), p. 140.

<sup>48</sup> O'NEILL (2000), p. 139.

<sup>49</sup> O'NEILL (2000), p. 139.

## 6. Justice in migration: Distributing responsibility

The key issue, then, is how to allocate responsibility for that compensation. Who should do what?<sup>50</sup> In deciding how to allocate these responsibilities we could invoke some familiar considerations doing helpful work in other domains when costs must be distributed (for instance in deliberations about distributing the costs of climate change), such as the following three:

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<sup>50</sup> While O'Neill does discuss responsibilities for primary and secondary agents of justice, she does not take up the issue of particular principles for assigning responsibility in a sustained and focused way, as far as I am aware. However, we can find places in her analysis where she supports at least some of these ideas. For instance, O'Neill suggests that capabilities often matter, especially if non-state actors have the capability to act effectively in weak state environments. See, for instance, O'NEILL (2005). This suggests she would at least support the capacity principle outlined below. Using her terminology, it is clear that both primary and secondary agents will have responsibilities. So, for instance, recruitment agencies, healthcare organizations, engineering firms and the like (all secondary agents of justice) will have responsibilities to support fair codes of practice in recruitment, to comply with fair agreements, and so forth. All of these secondary agents can have important responsibilities. Here, however, I focus more on the principles for assigning responsibilities, and assigning responsibilities among emigrants, citizens of host and home countries, rather than extending the analysis to agents who will also have further responsibilities in virtue of additional factors (such as the organizations that employ them).

- a) The Beneficiary Pays Principle: Those who benefit from actions should bear their costs, *ceteris paribus*.<sup>51</sup>
- b) Capacity to Pay: Those who have greater capacity to pay should bear a greater proportion of costs, *ceteris paribus*.
- c) Causal Responsibility: Those who cause (or substantially contribute to) a problem should be expected to fix it, *ceteris paribus*.

While there are well-known strengths and weaknesses with all these considerations under certain conditions, such as in the domain under review, it seems we can helpfully deploy some of these in deciding on a fair distribution of costs, as a number of them converge to suggest how costs may fairly be distributed. To simplify, let us consider the three primary stakeholders and their positions: the emigrant, the citizens of the source country, and the citizens of the host country. The emigrant is a major beneficiary of the move, she has greater capacity to pay than her typical fellow developing country compatriots, and by leaving she causes or contributes to relevant losses. However, similar reasoning applies to those in the host country: they will typically be greatly benefited by the emigrant's departure, compatriots in host countries have superior capacity to pay than either the group of emigrants or source country citizens, and considerations of causal responsibility may seem to point strongly here in their direction. I have suggested that by taking in the emigrant (without relevant compensation) developed countries facilitate harm to developing ones. Furthermore,

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<sup>51</sup> The Modified Beneficiary Pays Principle may be superior to this principle, according to which those who benefit from unjust practices should bear their costs.

arguably but on several accounts, they are also the most responsible for undermining good institutions in developing countries. The arguments can be pressed in a number of forms, such as that developed countries dominate all the major international decision-making fora in which the rules of international interaction are decided (such as the WTO, or IMF) and use their superior power to impose terms of agreements that have a tendency to vastly favour the interests of developed countries at the expense of developing ones. Developed countries also uphold various other unjust institutions (such as the International Resource Privilege, not to mention grossly unjust taxation and accounting regimes), which points to a global basic structure that is far from fair.<sup>52</sup> Developed countries have great responsibilities to change the underlying globally unjust situation, and so it is not unfair if we put a *large share* of the responsibilities on their shoulders.

Now let us return to some of the policy options that we could consider implementing that were listed in section 4 above. Would it be fair to impose, say, exit or ongoing taxes on departing individuals, for instance? Given the arguments surveyed, this does not seem in principle unreasonable. However, perhaps this is to let the emigrants off too lightly? According to the arguments of Kapur and McHale, what developing countries most need is the best and brightest to stay in the country, so what policies are permissible in trying to encourage people to stay or return? What about compulsory service requirements to address loss of skills and service? In some ways compulsory service requirements provide a good fit between what the skilled prospective emigrant can offer and the relevant loss that would be born. Getting clearer on the shape of such justified programs involves tackling questions such as these: What sorts of compulsory service terms are reasonable ones to impose (e.g., 1 year or 5 years)? What costs should emigrants be required to pay back? And can we require emigrants to be more active in

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<sup>52</sup> BROCK (2009a), Chapter 5.

institution-building to make up for the years when they will not be present? Can emigrants “buy out” of the compulsory service requirement, for a suitably high fee? If so, can this cost be passed on to others?

Balancing considerations, a reasonable position might be to impose (say) a two-year compulsory service requirement.<sup>53</sup> However, note that emigrants should be able to “buy out” of a service requirement, if adequate terms of compensation can be arranged, such as, if relevant exchanges are made (e.g., a Canadian doctor goes to work in South Africa for a few years when a South African one goes to Canada for a comparable time period). For a suitably high fee, emigrants should have the option of buying out of the service requirement and they may pass the costs of this on to the beneficiaries of their services. But this fee should take account of all the real costs of the transaction including training, loss of service, loss of revenue from taxation, costs of training replacements, perhaps opportunity cost to institution-building, and so forth. Placing further conditions on emigrants to be more active in institution-building during their discretionary time when they reside in the source country would not be reasonable.

Controlling the targeting of scarce talent seems worthy of more attention. There are a number of ways of doing this, which have yielded some successes, though there is much scope for further gains here. Gaining more compliance with codes of best practice for international recruitment of workers from developing countries would be a significant advance. Ensuring recruitment transactions are more beneficial for source countries

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<sup>53</sup> While the emigrant may well not have fully discharged the debt after two years, I am assuming that the further debt may perhaps be discharged differently, e.g. through exit or ongoing taxes rather than a requirement to remain in the source country.

seems key.<sup>54</sup> Compensatory measures could take a number of forms including technological, technical, or financial assistance, the setting up of training programs, or other help with institution-building. Since governments are the ones who will be issuing the work visas to potential recruits, they have a natural intervention point for checking that recruitments do conform to agreements. To ensure governments continue to play their parts in agreements in recruitment, it would be best if there is an international agency that oversees activities, brokers compensation, can punish violators (perhaps by levying meaningful fines), and so forth.

It is important to note that migration issues are just one part of trying to secure a more just world. In seeking global justice we should not expect our policies on migration to solve *all* the pressing problems facing us in trying to achieve a more globally just world. As I have argued elsewhere, we, especially in developed countries, have significant duties of global justice, and it is not unfair (for instance) if we levy global taxes as a way of discharging our global obligation to promote development, to ensure people are enabled to meet their basic needs, their liberties are secured, fair terms of cooperation are maintained in collective endeavours, and that social and political arrangements underwrite these goals.<sup>55</sup> As part of that larger project I have argued that global taxes may well be justified and, more importantly, that reforms to our global taxation and accounting arrangements are long overdue, especially those that still facilitate vast tax escape that enable the siphoning away from developing countries of enormous sums (by for instance permitting a variety of accounting measures to count as perfectly legitimate, including tax havens and transfer pricing schemes). There are more

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<sup>54</sup> I make a start on this in, for instance, BROCK (2009a), Chapter 8, and  
BROCK (2009b).

<sup>55</sup> BROCK (2009a).

direct and indirect ways for those in developed countries to discharge some of their global duties, and we need not expect to be able to secure a just world by relying only on public policy concerning migration. As I have already indicated, a major contributor to prosperity is good institutions. Building institutions can sometimes benefit significantly from additional revenue. There is much we as outsiders can do to help fortify strong, local institutions as I discuss elsewhere.<sup>56</sup> But there are some special problems that emigrants cause by leaving that seem only to be fixed by their staying. I have been considering, *inter alia*, what it may be permissible to do to retain them.

Before closing this section, I consider and respond to one important objection, namely concern that imposing costs on emigrants would be a way of unjustly limited their freedoms. Freedom of movement and freedom to associate (or dissociate) may seem to be under threat. In responding to such concerns I would start by noting that though freedom of movement is an important liberty that we should be allowed to enjoy, even within the most well-functioning communities this liberty always has various limits attached to it. I may not freely move about in ways that conflict with people's property rights, for instance, I may not move into your house without your permission. Other cases where limiting freedom of movement can be justified include quarantining people for public health reasons or limiting people's abilities to use particular threatened habitats in efforts to protect them. The limits of my freedom of movement often coincide with harms or setbacks to others' important interests, and so it is precisely an open question if we have identified losses that should have some appropriate weight. The arguments of this paper explore this question, rather than presupposing the answer, and moreover argue that in the case under discussion, third party interests should have significant weight that may

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<sup>56</sup> BROCK (2009a).

permissibly affect freedom of movement. In response to the form of the worry having to do with threats to freedom of association/dissociation, I would again begin by noting that while freedom to disassociate should generally have considerable force, notice that we often appropriately impose exit costs. Our practices around fair dissolution of marriages recognize the permissibility of specifying terms under which dissolution may proceed, especially the permissibility of requiring financial transfers to be made to parties whose important interests would otherwise be compromised and requirements concerning ongoing care for vulnerable parties, notably children.

## 8. Summary and Conclusions

In this paper I discussed why there are important harms that frequently follow emigrants' departure from developing countries, why there are important responsibilities to address these, fair ways to distribute the costs associated with tackling these losses, and began the investigation into the kinds of policies that might best address these. I hope to have drawn attention to the ways in which others' more severe vulnerabilities can sometimes place important constraints on what individual agents may permissibly do, even sometimes for agents who themselves may still be relatively vulnerable, particularly when they have derived direct and indirect benefits from highly vulnerable people and their actions would have the result of exacerbating vulnerability. Focusing on vulnerabilities can often give us a richer understanding of the nature of our ethical and political obligations in a world characterized by multiple injustices. But it also frequently adds more complexity in distributing responsibility fairly. In the first two sections I outlined why I think the case study presents an interesting one for O'Neill's work. Given the empirical knowledge we now have about how high levels of absent human capital may facilitate capital increasing



vulnerability and neediness, it appears that our regulating borders more tightly when people want to move across them permanently is not necessarily always undesirable and unjust. In the non-ideal world that we inhabit, borders should, arguably, often be *less* porous – or at least much better regulated, to ensure that movements across them are beneficial, especially for the most vulnerable.

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