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## Productive Justice and Compulsory Service

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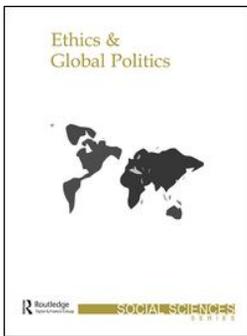
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COMMENTARY

# Productive justice and compulsory service

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This paper is part of the Special Issue: *Book symposium on Debating Brain Drain: May Government Restrict Emigration?* More papers from this issue can be found at <http://www.ethicsandglobalpolitics.net>

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In her contribution to *Debating Brain Drain*, Gillian Brock defends the contentious position that poor but legitimate states may take coercive measures to restrict the emigration of skilled workers.<sup>1</sup> This position can be challenged on empirical and on normative grounds. Brock's case for compulsory service rests on three empirical claims: (1) the departure of skilled citizens directly or indirectly exacerbates deprivation; (2) the gains from emigration (e.g. through remittances, skill transfer, etc.) do not compensate for losses; and (3) if states demand compulsory service from skilled workers, then this will reduce the deprivation. If any of these claims are false, it will be difficult to mount a case for emigration restrictions.<sup>2</sup> From a normative perspective, even if it is established that the emigration of skilled workers significantly contributes to deprivation, human rights and principles of justice may prevent states from justly restricting citizens' freedom to leave.<sup>3</sup>

I am sympathetic to both empirical and normative challenges and will attempt to show why by situating emigration restrictions under productive justice, the branch of justice that investigates how goods and services ought to be produced. Lucas Stanczyk frames productive justice around the question: 'How are the goods whose distribution justice governs to be produced in the first place? By whom, in what quantity, and on what terms?'<sup>4</sup> For Brock and for Stanczyk, ensuring productive justice sometimes justifies coercive measures to compel people to produce goods and services. I argue that the choice to concentrate on state measures to restrict workers' liberties so that they produce desired goods and services is unduly narrow and shortsighted from an empirical perspective and falls short on important dimensions of productive justice.

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Since Marx, much of the normative discussion around productive justice has centered on the work conditions and on worker compensation.<sup>5</sup> (A paradigmatic topic today is the conditions and wages of workers in international manufacturing.) Nien-Hê Hsieh's recent survey of justice in production fits squarely in this tradition by calling for liberal egalitarians to more fully articulate criteria for meaningful work and for worker participation (e.g. through workplace democracy).<sup>6</sup> Implicit in this approach is that production itself is not a major moral problem, as firms will produce goods when consumers demand them.

In contrast, Brock and Stanczyk's approach to productive justice focuses on the state measures, including compulsory service, to improve welfare for the community at large.<sup>7</sup> Instead of states simply providing a framework of rights and liberties to guarantee just working conditions and fair wages, they see productive justice as sometimes requiring that states compel some workers to produce for the greater good. Built into this approach is the empirical assumption that markets fail to provide needed goods and services and that positive incentives are insufficient to correct these market failures. There are two dangers with this approach. Empirically, we risk misunderstanding the conditions that need to be in place for an adequate provision of goods and services. Normatively, we should not only care *whether* goods and services are available but we also need to inquire into *how* they are produced (e.g. are the rights of workers respected?).

Consider first the empirical problem. We should be very cautious about advocating compulsory service and the restriction of emigration unless there is clear evidence that it will be effective. Surprisingly, the empirical literature provides almost no evidence for a causal relationship between compulsory service and better health outcomes.<sup>8</sup> For example, Seble Frehywot's 2010 survey article of compulsory service programs for health workers mainly develops a typology of compulsory programs without rigorous assessment of whether these programs work. The section on outcomes reports anecdotal evidence that some compulsory service programs may lead health workers to reside in underserved regions, but the authors admit that 'No rigorous study has systematically compared rural and remote workforce disparities in countries with compulsory service to those in countries that don't have such programs.'<sup>9</sup> Compulsory service programs *might* have the desired effects in some cases but more is needed than the possible efficacy to justify compulsion: the burden of proof rests on those who wish to restrict emigration. This burden of proof requires not only showing that compulsory service programs have the desired effects but also demonstrating that these programs are significantly more effective than other non-coercive measures such as voluntary incentive-based programs.<sup>10</sup>

Beyond this lack of evidence, there are theoretical reasons to believe that compulsory service programs are unlikely to be successful. It is a mistake to examine dimensions of productive justice in isolation. When we think about a policy intervention, we posit a causal model. As Nancy Cartwright has stressed, when constructing a causal model we need to identify the causes introduced by the policy that will contribute to the desired outcome, think about how they will work in combination, and reflect on the background conditions (auxiliary factors) necessary

for the effect to occur. Moreover, when trying to understand how causes will operate, mechanisms matter.<sup>11</sup>

A single model will not helpfully elucidate a complex, multidimensional goal such as productive justice. Nonetheless, it is useful to begin thinking about how one might do so. To simplify somewhat, let's consider the area that has received the most attention in the 'brain drain'<sup>12</sup> debates: the shortage of health care services in some of the world's least developed countries. The desired outcome is that the population receives an adequate level of health care. The proposed policy intervention is to compel workers who acquired the ability to provide these services in these countries to remain and work in their profession. This policy intervention rests on a causal claim: compelling workers (e.g. through compulsory service) to remain and work will at least partially alleviate health care shortages.

To assess this policy intervention, we need to ask about the causal mechanism and about the auxiliary factors that are needed to realize the desired outcome. I follow Cartwright in identifying mechanisms with the answer to the question: 'How would the policy variable bring about the desired effect?' (Cartwright 2008: 35) The mechanism posited by compulsory service is that people compelled to remain will work to increase the quantity of health services and thereby move the country closer to an adequate level of healthcare.

At this stage, we should raise a number of questions about the proposed mechanism. Will workers compelled to remain in fact provide health services? Will would-be emigrants who have been compelled to stay have opportunities to work? Will they be motivated to work? Do recent graduates possess the skills to effectively provide services, especially in local conditions that may differ greatly from those encountered in their training? Will their clinics have the resources necessary (electricity, clean water, medications, etc.) to deliver services? Will the population that needs these services have access to these clinics? Will corruption or violence interfere with the provision of services? Will the expectation of compulsory service create a disincentive for people to pursue education in health care? A negative response to the first six questions or a positive response to the last two will cast doubt on the efficacy of the policy measure.

These questions about the proposed policy interventions are connected to background conditions and to causal complexes. All outcomes are produced by multiple causes that jointly bring about desired effects. The provision of health care services rests on a combination of material, political, and social conditions that must be in place. This casts doubts on the efficacy of compulsory service without other substantial, concurrent reforms. Dimensions of productive justice such as the provision of medical services are realized together with other goods and services—health care professionals only deliver services when they have reliable means of transportation, supplies, facilities, rule of law, and a regime of rights and liberties that enables them to pursue their work.

In fact, Brock's policy recommendation—compulsory service—may very well be at odds with the conditions needed to realize productive justice. Brock stresses that only legitimate states that respect core civil and political rights can justly impose

emigration restrictions.<sup>13</sup> This should not be seen only as a normative prerequisite; compulsory service is also unlikely to have positive results in areas where civil and political rights are absent. Countries that have approximated a reasonable level of productive justice (e.g. enough goods are produced under reasonably just conditions for human flourishing)<sup>14</sup> do so in large part by upholding institutions such as rule of law, secure property rights, and checks and balances against government.<sup>15</sup> Leaving aside normative concerns for a moment, the guarantee of the rights of individual workers, including the right to exit, is generally not in tension with productive justice but rather a necessary condition in a prosperous regime. Notably, proposals for compulsory service not only prevent workers from leaving the country but also prevent them from responding to incentives within the country. Without exit rights, skilled workers are unable to adequately react to market forces in their job choices and to engage in entrepreneurship, plausibly stymying innovation and institution building. Furthermore, without emigration rights, societies are less able to take advantage of the resources and ideas of the rest of the world. There are sharp limits to productivity gains that can be gained through forced labor.

Brock may respond that this exaggerates the burden caused by a couple of years of compulsory service. This may be correct, but we should keep in mind that compulsory service should in most circumstances be a temporary measure on the path to a well-functioning, prosperous, and just community. We should consider carefully to what extent such a community can be built on policies that abridge rights. Coercive means may undermine the very good we hope to achieve.

So far, I have expressed empirical reservations about compulsory service producing the envisioned outcomes. I turn now to normative concerns. One unfortunate tendency of the ‘brain drain’ debates is that they tend to treat workers as factors of production to be moved where they are expected to do the most good. Workers are subsumed under what Iris Young dubbed the ‘distributive paradigm’ as benefits to be allocated.<sup>16</sup> An advantage of considering the topic from the perspective of productive justice is that it brings our attention back to the workers as people with plans, hopes, and ambitions. If we focus on the conditions under which people produce goods, rather than asking if they are producing enough goods, then we will insist that a regime that meets the standard set by productive justice must not only produce enough goods but also do so in ways that respect the rights and freedoms of workers and fairly compensates them for their labor. We should balk at labeling ‘just’ a society that produces its wealth on the backs of indentured laborers, even if the forced labor is temporary and performed under acceptable conditions.<sup>17</sup> The focus on ‘brain drain’ threatens to reduce productive justice to a desired outcome without sufficiently acknowledging that justice is also a matter of the means by which this outcome is achieved.

There is a further, instrumental reason for not underestimating the importance of exit rights for securing just working conditions. The fact that temporary workers in the *kafala* system in the Middle East and domestic workers in Asia are often prohibited from changing employers plays a major role in human rights abuses.<sup>18</sup> When constructing models to support policy interventions, we should be sensitive

not only to the desired outcome but also to the indirect ethical consequences. The willingness to override rights to achieve a laudable end may sometimes be justifiable if the circumstances are dire enough, but we should contemplate the consequences that this may have.<sup>19</sup> These consequences may affect the workers compelled to remain by trapping them, in many cases along with their families, under morally unacceptable conditions.

More drastically, the willingness to override rights to coercively achieve ends sits uneasily with building and maintaining a regime in which core civil and political rights are respected (recall that Brock insists that only these states are justified in imposing emigration restrictions). We should keep in mind that regimes upholding these rights can be fragile and a high negative net migration rate is a symptom indicating that all may not be well. Though we should be wary of slippery slope arguments, a willingness to abridge the freedom of some under some circumstances for the greater good may well make it easier to further abridge civil and political rights necessary in the long term for justice and prosperity.

Thinking about compulsory service in the context of productive justice should encourage a more holistic approach, reflecting on the multiple causes of deprivation and the measures we can realistically take to ameliorate them.<sup>20</sup> Before restricting emigration, we should ask why people are leaving and what can be done to make them more likely to choose to stay. Development is a process fraught with challenges and setbacks, including setbacks caused by policies that do not exemplify the character of the society that we hope to build. Fundamental human rights such as the right to emigration and the freedom from compulsory labor should only be abridged when other means have been attempted, there is a high likelihood that coercive measures will succeed, and the end indeed justifies the means. My conviction is that when we think about ‘brain drain’ in the larger context of productive justice, compulsory service ceases to be an attractive option.

## NOTES

1. Brock, Gillian, and Michael Blake. *Debating Brain Drain: May Governments Restrict Emigration?* New York, NY: Oxford University Press, 2015. I leave aside her discussion of taxation of citizens residing abroad which I find less objectionable from a moral perspective. For arguments against this sort of proposal, see Clemens, Michael A. ‘A Case Against Taxes and Quotas on High-Skill Emigration’. *Journal of Globalization and Development* 5, no. 1 (2014): 1–39; and Dumitru, Speranta. ‘Skilled Migration: Who Should Pay for What? A Critique of the Bhagwati Tax’. *Diversities* 14, no. 1 (2012): 9–23.
2. Javier Hidalgo challenges these claims in his recent review of Brock and Blake’s book, ‘The Missing Evidence in Favour of Restricting Emigration’. *Journal of Medical Ethics*, Online First, 2016. <http://jme.bmj.com/content/early/2016/01/29/medethics-2015-103165.short?rss=1>. For detailed discussions of the economic literature, see Clemens, Michael A. ‘Do Visas Kill? Health Effects of African Health Professional Emigration’. CDG Working Paper Number 114, Center for Global Development, Washington, DC, 2007. [http://www.cgdev.org/files/13123\\_file\\_Clemens\\_Do\\_visas\\_kill\\_3\\_.pdf](http://www.cgdev.org/files/13123_file_Clemens_Do_visas_kill_3_.pdf) (accessed September 29, 2016); ‘Skill Flow: A Fundamental Reconsideration of Skilled-Worker Mobility and Development’. CGD Working Paper 180, Center for Global Development, Washington, DC, 2009. <http://www.cgdev.org/content/publications/detail/1422684> (accessed September 29, 2016); ‘Losing Our

Minds? New Research Directions on Skilled Migration and Development'. Discussion Paper No. 9218 The Institute for the Study of Labor, 2015. <http://ftp.iza.org/dp9218.pdf> (accessed September 29, 2016); and Docquier, Frédéric and Hillel Rapoport, 'Globalization, Brain Drain, and Development', *Journal of Economic Literature* 50, no. 3 (2012): 681–730.

3. Michael Blake's contribution to Debating Brain Drain ably defends the position that individuals have a right to exit one's country and to renounce one's nationality. Also see Tesón, Fernando R. 'Brain Drain', *San Diego Law Review* 45, no. 4 (2008): 1–32; and Oberman, Kieran. 'Can Brain Drain Justify Immigration Restrictions?' *Ethics* 123, no. 3 (2013): 427–55.
4. Stanczyk, Lucas. 'Productive Justice'. *Philosophy & Public Affairs* 40, no. 2 (2012): 144.
5. Marx, Karl. *Capital: Volume I*. trans. Ben Fowkes. New York, NY: Penguin Classics, 1990.
6. Hsieh, Nien-Hê. 'Survey Article: Justice in Production'. *The Journal of Political Philosophy* 16, no. 1 (2008): 72–100.
7. Brock and Blake. 'Debating Brain Drain', 73–9; and Stanczyk, 'Productive Justice', 158–63.
8. Hidalgo, 'The Missing Evidence'. Indeed, the developmental economist and leading expert on skilled migration flows Michael Clemens confirms that 'there are no rigorous studies showing a causal relationship between additional staffing by very highly trained health professionals (registered nurses and doctors) in underserved areas of poor countries, all else equal'. (Personal correspondence.)  
I provide more discussion and a diagnosis of the gap between the evidence of the harmful effects of skilled emigration and the attention the issue has received among policy makers and normative theorists in Sager, Alex, 'Methodological Nationalism and the "Brain Drain,"' in *The Ethics and Politics of Immigration: Core Issues and Emerging Trends*, ed. Alex Sager, 223–41. Lanham, MD: Rowman & Littlefield International, 2016.
9. Frehywot, Seble, Fitzhugh Mullan, Perry W 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, no. 11 (2010), 369.
10. There is evidence this may not be the case. For example, in Bangladesh, working with rural community health workers has in fact been more efficient in curing TB patients than the government-sponsored alternative: Islam, Md. Akramul et al. 'Cost-effectiveness of Community Health Workers in Tuberculosis Control in Bangladesh', *Bulletin of the World Health Organization* 80, no. 6 (2002): 445–50. Evidence from Indonesia and Ethiopia suggests that incentives can be effective for increasing rural service: Chomitz, Kenneth, et al. 'What Do Doctors Want? Developing Incentives for Doctors to Serve in Indonesia's Rural and Remote Areas', *Policy Research Working Papers*; The World Bank (1998). <http://elibrary.worldbank.org/doi/book/10.1596/1813-9450-1888> (accessed September 29, 2016); and Hanson, Kara and William Jack. 'Incentives Could Induce Ethiopian Doctors And Nurses To Work In Rural Settings'. *Health Affairs* 29, no. 8 (2010): 1452–60.  
I'd like to thank Michael Clemens for pointing me to these studies.
11. Cartwright, Nancy (with Jacob Stegenga). '*A Theory of Evidence for Evidence-Based Policy*'. London School of Economics and Political Science, Centre for the Philosophy of Natural and Social Science, London, UK, 2008, 1–42.
12. In 'Skill Flow: A Fundamental Reconsideration of Skilled-Worker Mobility and Developments', Michael Clemens argues cogently for replacing the pejorative phrase 'brain drain' with the more neutral term 'skill flow'. I concur, but the convention in the normative and social scientific literature make it difficult to avoid the term.
13. Brock and Blake. Debating Brain Drain. 79–80, 85–6.
14. People will differ on what is required for the realization of productive justice, including what counts as 'enough' and what are 'just conditions'. Here, I have in mind developed countries that enjoy relative abundance and whose workers are (for the most part) reasonably well-off. All societies are imperfectly just, but a plausible case can be made that prosperous Western

- democracies at least approximate standards of productive justice for large segments of their populations.
15. See Acemoglu, Daron and James Robinson. 'The Role of Institutions in Growth and Development'. Working Paper No. 10. Washington, DC: World Bank, 2008; and Holmberg, Sören, Bo Rothstein, and Naghmeh Nasiritousi. 'Quality of Government: What You Get', *Annual Review of Political Science* 12, no. 1 (2009): 135–61.
  16. Young, Iris Marion. *Justice and the Politics of Difference*. Princeton, NJ: Princeton University Press, 2011, 15–38.
  17. I echo here Michael Blake's discussion of Stancyk: 'We are right to be horrified at the possibility of forced labor, and am more convinced than Stanczyk is that forced labor is never compatible with liberalism'. Brock and Blake, 'Debating Brain Drain', 184.
  18. Crépeau, François. 'Report of the Special Rapporteur on the Human Rights of Migrants, François Crépeau, on His Mission to Qatar (3 to 10 November 2013)'. A/HRC/26/35/Add.1. United Nations General Assembly, Human Rights Council, 2014. [http://www.ohchr.org/Documents/Issues/SRMigrants/A-HRC-26-35-Add1\\_en.pdf](http://www.ohchr.org/Documents/Issues/SRMigrants/A-HRC-26-35-Add1_en.pdf) (accessed September 29, 2016)
  - Human Rights Watch, 'I Already Bought You': Abuse and Exploitation of Female Migrant Domestic Workers in the United Arab Emirates (New York: Human Rights Watch, 2014).
  19. We should also keep in mind that we are overriding basic rights and this is regrettable even if it necessary to avert grave harms.
  20. I have pursued this line of argument in more detail in Sager, Alex. 'Reframing the Brain Drain', *Critical Review of International Social and Political Philosophy* 17, no. 5 (2014): 560–79.