

# *MIGRATION, FREEDOM OF MOVEMENT, AND SOCIAL JUSTICE: “DOES THE ‘BRAIN DRAIN’ EFFECT JUSTIFY RESTRICTIONS ON IMMIGRATION?”*

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This essay explores critical arguments for and against restrictions on immigration based on the ‘brain drain’ effect and the complexity of a normative discussion about moral duties and individual motives. I argue that the notion of restricted immigration under the justification of the ‘brain drain’ effect is normatively unjustified – primarily - due to the arbitrary fact of ‘the lottery of birth’; restrictions on migratory movements based on this assumption are not justified as they decrease the possibility for social mobility and, thereby, have a negative impact on social justice. The ‘brain drain’ effect, understood as the loss of human capital by nations due to emigration, might justify restrictions on immigration under the humanitarian assumption of ‘duty of assistance’; highly-skilled individuals present a duty to ‘return’ to the homeland not only because their nations have ‘invested’ resources in them, but also because they have an inherent moral duty to help their disadvantaged compatriots to be better off. Nevertheless, this duty limits social mobility by restricting migratory movements -to find better opportunities in life- and, thus, limits improvement for social justice. As highly-skilled workers are required to stay and/or to return to their homelands due their ‘duty to assistance’, significant opportunities to experience MEOs are less likely to occur, thus the possibility for social mobility is lower, and the improvement of social justice by solving the effects of the unjust ‘lottery of birth’ does not exist.

## Introduction

On 10th December 2018, after 18 months of negotiation<sup>1</sup>, Marrakech was the scenario for the signing of the Global Compact for Safe, Orderly and Regular Migration agreement proposed by the United Nations. This is described as “(...) the first, intergovernmentally negotiated agreement (...) to cover all dimensions of international migration in a holistic and comprehensive manner”.<sup>2</sup> From a total of 193 member-states, 29 did not sign for the agreement, with Austria, Hungary, Czech Republic, Israel, Australia, the United States, the Dominican Republic and Chile, being some of them.<sup>3</sup> Some arguments against this agreement were national security and the maintenance of the sovereignty of each state to define its rules; however the purpose of the Agreement was to foster international cooperation on migration rather than oblige and disrespect the sovereignty of states.

Although this situation received massive international attention, the discussion about this agreement has been focused on immigration itself and the receiver countries, rather than migration as a whole global phenomenon. Moreover, the discussion about migration has been defined as a matter of international cooperation from the humanitarian perspective, defending freedom of movement as a fundamental right and a crucial aspect for global justice, especially in the case of refugees. Nevertheless, some argue migration must be restricted because – contrary to what has been largely defended - it promotes social inequality due to the massive loss of human capital perceived by nations when their citizens emigrate, losing valuable resources for national development and empowerment: the brain drain effect. Some argue restrictions based on this theory violate principles of an individual’s liberty, while others defend these restrictions as a helpful tool for the reduction of global inequality. In this essay, I argue the notion of restricted immigration under the justification of the brain drain effect is normatively unjustified – primarily - due to the arbitrary fact of ‘the lottery of birth’.

This work discusses the arguments given to defend border restrictions based on the brain drain effect, and to expose some critical thoughts about the complexity of a normative discussion about moral duties and individual motives. Thus, this document is structured as it follows: First, I review the basic understandings of brain drain and brain gain assumptions - as interconnected effects - in order to establish the general argument; second, I continue with a brief discussion about justifications and critiques related to moral duties and individual liberties; and finally, I argue restrictions on migration based on the brain drain effect are not justified because they perpetuate global and social injustices by indirect discrimination of birth, introducing the concept of ‘birth-right lottery’ or ‘lottery of birth’ as the fundamental argument for this essay.

## ‘Brain Gain’ and ‘Brand Drain’: The conflict for human capital

Globally, public opinion tends to guide the discussion about migration from the perspective of the receiver country – illegal immigrants, unemployment, national security and crime -, however arguments about the impact of emigration as negative for global justice and the postcolonial era have been largely discussed in both the literature and the international public policy arena. This assumption finds its normative approach in the presence of two interconnected effects: the ‘brain drain’ (reduction in the human capital in the home country) and ‘brain gain’ (increase in the human capital of the receiver country) effects. More in detail, the ‘brain drain’ effect can be described as the loss of a highly-skilled worker that emigrate from their home country to a foreign one that perceives the ‘brain gain’ effect by receiving the foreign highly-skilled worker. In terms of definition, a highly-skilled immigrant corresponds to a “foreign-born individual, aged 25 or more, holding an academic or professional degree beyond high school” (Docquier and Marfouq, 2006 see Docquier and Rapoport, 2012: 684).

Regarding this, Kapur (2017) argues as nations - understood as geopolitical entities with defined physical borders and intrastate regulations - seek to maximize their utility and macro-political situation, they are willing to accept ‘fiscally desirable’ or ‘highly-skilled’ immigrants, producing the brain gain effect. As those highly-skilled workers – a valuable tool for economic growth - leave their home countries searching for better opportunities, they produce scarcity of essential human capital for national improvements, or the so called brain drain effect. Both – especially brain drain - are recognised as “one

<sup>1</sup> Retrieved from the La Tercera [Chilean newspaper] online version: <https://www.latercera.com/nacional/noticia/los-23-puntos-del-pacto-migratorio-la-onu-chile-no-quiso-firmar/438568/>

<sup>2</sup> Description of the Global compact for Migration: <https://refugeesmigrants.un.org/migration-compact>

<sup>3</sup> Retrieved from the La Tercera [Chilean newspaper] online version: <https://www.latercera.com/nacional/noticia/los-23-puntos-del-pacto-migratorio-la-onu-chile-no-quiso-firmar/438568/>

of the major aspects of globalization” (Docquier and Rapoport, 2012: 682), and they are also associated to the perpetuation of differences among developing and developed countries by obstructing nation empowerment through the massive loss of human capital, especially in the regions of the Global South. In this regard, Crush (2002) exposes the case of Alberta (Canada), where a “proactive strategy to deal with the growing shortage of family doctors in rural communities of the province” (p. 147) was created by the provincial government in 1998. The strategy sought the recruitment of South African doctors by a private immigration agency, promoting tensions between both countries. As the author cites, the South African minister of health indicated that the government would continue rejecting that developed countries acquire “skills resources of developing countries in organized raids”, while the head of the Canadian Medical Association suggested that “the South African government should accept responsibility for not retaining its doctors by making conditions more attractive for them at home” (p. 148). Although this situation has not been repeated in Alberta, “[t]he strategy of replacement recruiting is central to Canadian policy discourse on skilled immigration” (ibid.).

A similar description is given by Oberman (2013), adding that “in Granada, Haiti, and Jamaica, the skilled emigration rate is above 80 percent. In Africa, Cape Verde has a rate of 68 percent; Mauritius, 56 percent; Sierra Leone 52 percent; and Ghana, 47 percent” (p. 428). These countries -all of them defined as developing countries and part of the Global South- are ‘losing’ important human capital for the development of their nations. Thus, ‘brain drain’ might be extremely detrimental for some countries that face severe national problems, such as the Zambian health care system (only 646 doctors and 6,096 nurses for almost 12 million people) and its incapability to confront its significant levels of malnutrition and disease due to human capital loss (ibid., 428-9). Likewise, Stilz (2016) indicates that today, there “are more Ethiopian, Kenyan, and Sierra Leonean doctors in Europe and North America than in their home countries” (p. 67).

However -and this is crucial for the argument of this essay-, is this effect of massive loss in countries of the Global South strongly enough to restrict migration? Is it accurate enough to associate the brain drain effect to the maintenance of national conflicts such as scarcity of human resources for the health sector? In this regard, Kapur and McHale (2005) argue that a more accurate representation of the real effects of migration is difficult to obtain due to the lack of information about skilled migration in

different countries and the exclusion of other factors that might influence, for instance, the complicated situation evidenced in the health sector in Zambia (such as political instability, macroeconomics, corruption, and other variables). Moreover, an interesting point is included by Sager (2014), who claims that although emigration sometimes might incur in harmful effects, “this does not automatically establish moral rights or duties” (p. 563), which means that even when some detrimental circumstances can be related to the ‘brain drain’ effect, this might be not enough to define a normative justification for restriction.

### **Restrictions based on “Brain Drain” effect : Moral duty vs. individual liberties**

Following the previous idea, restrictions on immigration based on the massive loss in human capital and, therefore, limited development, growth, and empowerment of the poorest countries, can find their roots in the moral duty associated to the decrease of poverty and injustices in the world, which means that the ‘brain drain’ justification to restrict immigration might be highly justified in a humanitarian sense. Nevertheless, this moral duty finds an obstacle in an important natural and fundamental right: the right to leave one’s country. Widely, this natural right can be explicitly found in the 13th Article of the Universal Declaration of Human Rights: “(1) Everyone has the right to freedom of movement and residence within the borders of each state” and “(2) Everyone has the right to leave any country, including his own, and to return to his country” (Fine and Ypi 2016: 4). Crucially, the declaration defines migration as an undeniable right and restricting it incurs in a violation of a fundamental right. Regarding this, restrictions on immigration based on the brain drain effect would also violate the fundamental right of freedom of movement previously described; restricting the right to enter to a country also restricts the right to exit as an interconnected result. Moreover, the Universal Declaration of Human Rights represents an egalitarian principle; all human beings might be treated equally (Valadez, 2012), thus whether one person is restricted in terms of migration, then every person in the world must be restricted as well, assuming a closed-border perspective.

According to this, Harvey and Barnidge (2005) argue that freedom of movement is fundamental for exercising individual self-determination through the right to exit; exercising individual’s autonomy by finding the opportunity to pursue personal plans

(Hidalgo 2014). However, Carens (1987) indicates whether freedom of movement based on self-determination is justified in both cases within a nation and among countries, then justification for restrictions based on the loss of human capital might be applied at both national and international levels to be morally justified. In this sense, the decision of a person –for instance- with a degree, a few years of work experience, and bilingual, to move from the countryside to the capital searching for better opportunities (jobs, leisure, access to health and education, among others), is not morally justified and should not be permitted. This based on the idea that freedom of movement of skilled workers from areas with scarce resources to capitals and big cities, promotes the loss of human capital by the promotion of centralised countries, perpetuating differences and inequalities within states. Kapur (2017) supports Carens' claim by arguing that restrictions on immigration within a country and the prevention of individuals leaving their home countries are unjustified at the same level, with those two situations being constraints of elemental human freedom. Following this logic, it is widely accepted that people have the right to move freely within the borders of any state, and to emigrate from any state to another one, however the idea to immigrate (temporarily or permanently) is not recognised as a right.

Regarding the previous discussion, I argue justifications for restrictions on immigration based on the assumption of scarcity require the distinction between permanent and temporary migratory action; restrictions on immigration based on the 'brain drain' effect might be more justified in circumstances of permanent individual's reallocation or definitive emigration. For instance, if our highly-skilled individual (highly educated, with work experience, and bilingual) of the previous example decides that his/her emigration from the countryside or a resource-deprived city to the capital or to another country is based on a non-return intention, and given the fact that he/she found better opportunities and never returned to his/her home city/country, then is possible to argue that the loss of human capital has taken place, and the argument of scarcity might be justified. However, if our individual, after a determined time, returned to his/her home city/country, with fundamental cognitive capital gained from the experience in other cities/countries, then we can perceive a 'brain gain' effect rather than 'brain drain' one; thus the scarcity argument in favour of restrictions on immigration is unjustified. Given this distinction, Hosein (2013) includes two concepts associated

to the necessity to differentiate rights depending on the nature of the migratory movement: 'pass-through rights' and 'resettlement rights'. "The former establish only the right to visit an area for a limited time period, whereas the latter establish the right to move to a place and start a new life there, working and living in the new area" (p. 33).

Hosein's differentiation results interesting in terms of redefinition of treatments and rights according to the nature of the migratory movement, however this differentiation is highly complicated given the conditions that allow the migratory movement in the first place. This is crucial because it implies that not all highly-skilled workers have the possibility to emigrate, and if they receive 'help' to do it, they are obliged to return in order to 'pay-back', giving another justification against the scarcity argument in favour of restrictions on migration. Many individuals who wish to improve their personal experiences by increasing their cultural capital search for opportunities in places different from their home city/country. As many times the possibility to do this depends on financial constraints, individuals seek 'help' to pursue their dreams, and nations, which are also interested in the increase of human capital in their territories, provide possibilities to access to these opportunities by financing scholarships and exchanges assigned by merit. Thus, nations generate a kind of 'exchange' in where they provide financial and legal support to individuals, and individuals 'pay back' for this 'help' by returning to their home cities/countries, and sharing their 'new knowledge' in order to 'cooperate' in the improvement of the national socio-political situation. In this sense, it seems that an obligation to return is fundamental to avoid the 'brain drain' effect and to diminish the risk of human capital loss; there is a defence of the right to migrate conditioned and justified by a moral duty of 'paying-back'.

However, Oberman (2013) goes further these arguments and indicates that this 'returning' to the home land is not merely a discussion of legality; it is also a discussion of moral duties with nation and compatriots. The author presents four main conditions that must be met in order to justify restrictions on immigration based on 'brain drain' effect: "1. The skilled worker owes a duty to assistance to her poor compatriots. 2. The skilled worker has a duty to stay in her state of origin to provide the assistance she owes her poor compatriots. 3. It is permissible to enforce a skilled worker's duty to stay and assist her poor compatriots using immigration restrictions. 4. The rich state has the legitimacy to impose counter-

brain-drain immigration restrictions” (p. 434). Widely, whether these four conditions are met -at the same time-, justifications on immigration based on ‘brain drain’ effect are justified.

Moreover, Oberman also explores two broad types of duty to assist ‘poor compatriots’: an “obligation of repayment” and a “duty of assistance”. The former is an obligation to repay the costs of training, and the latter is simply a duty to make people in social disadvantage better off (ibid.). For the following argument I use merely the first type of duty; while the second one, the “duty of assistance”, is included in the analysis of the last section. Stiliz (2016) argues ‘sending’ or ‘loser’ countries invest significant amounts of money in training these professionals to staff institutions and improve basic services for locals. This is the situation with governmental scholarships that cover all the costs of highly-skilled students; future national improvement/development as a result of improvement associated to quality in human capital. If those students do not return, loss is associated to both monetary and human aspects; money is ‘lost’ because ‘human capital’ did not return. Following this logic, this might be seen as unfair for nations that ‘trusted’ on those citizens and their return, and also for compatriots that finance their training (programmes that are financed by –mostly- public budget composed by taxes).

Although Oberman’s perspective and the duty to assist might seem to justify restrictions on immigration based on the brain drain effect as a matter of global justice, it does ignore a crucial argument based on individual liberties that defines the core argument of this essay.

### **‘Lottery of Birth’: Perpetuation of social and global injustices**

Focusing on the moral duty to assist ‘poor compatriots’ -or as Shachar (2016) defines it, this “collective (utilitarian) interest in having a skilled migrant stay in the country of origin”- is contrary to the principle of individual liberty (p. 192), and –contrary to the first main argument of the brain drain effect- promotes social injustice instead of decrease it.

The protectionist arguments given on the previous paragraphs reflect that an imposition to stay in the country of origin based on the ‘brain drain’ effect consists in a perpetuation of the ‘birth-right lottery’ or ‘Lottery of Birth’ theory. This can be understood, as Shachar (2011) presents, “citizenship, with all its blessings, is awarded by the accident of birth (...) access to well-off countries is still reserved primarily for

those born in a particular territory (...) those born on the ‘wrong side of the border’” (p. 2) are condemned to live the consequences of this ‘bad luck’. This explanation, in addition to the “duty of assistance” described by Oberman (2013), presents an interesting argument against justifications on immigration based on the ‘brain drain’ effect.

These justifications define –implicitly- that whether highly-skilled workers, “for no fault or responsibility of their own, were ‘sorted’ into the world’s most underprivileged countries and regions” (Shachar 2011: 5), just because they were ‘unlucky in this lottery’, and they have a moral duty with their nations and compatriots, they must stay in their home lands. The main question here is “could we [justly] say to a Ghanaian doctor that she must return to her country while an immigrant Russian doctor is allowed to settle down and start a new life” (Shachar 2016: 192) based on the ‘brain drain’ effect? Can we find sources of discrimination and perpetuation of social injustices in justifications for restrictions on immigration based on the ‘brain drain’ effect? In fact, these justifications allow the perpetuation of sovereignties and social injustices by indirect discrimination given by the arbitrary fact of birth.

Assuming an egalitarian position, it was previously described that whether one person is restricted in terms of migration, then every person in the world must be restricted as well, defending a closed-border perspective. Nevertheless, international law behaves differently, presenting a global scenario with restrictions on immigration that crystallise the ‘Lottery of Birth’ through the hegemony of *jus soli* and *jus sanguinis* in “citizenship and immigration policy worldwide” (Solodoch and Sommer, 2018: 3). Weil (2001) explains that *jus soli* refers to a citizenship granted by being born within the geopolitical borders of a country, and *jus sanguinis* refers to a citizenship granted through parental inheritance, thus the socio-political privileges associated to the condition of nationality or membership – such as the right to access to public education and health – are determined by the arbitrary fact of birth. In this regard, the migration policy of the European Union represents the crystallisation of the argument previously given; the EU – under the Single European Act and the Schengen Agreement - established a borderless Europe with free movement of labour between the signing countries, but it also has a common external border policy executed by FRONTEX (European Border and Coast Guard Agency) to control migration in the European Schengen Area (Adepoju, van Noorloos, and Zoomers, 2010), reflecting that privileges – such as the possibility to freely immigrate seeking for better opportunities in life – are given by the mere fact of being born within the

European Schengen territory, not because of personal effort. Furthermore, Shachar (2009) adds to this that the hegemony of these two conditions is given by the fact the "vast majority of the global population has no way to acquire membership except by circumstances of birth" (p. 4), as it can be observed in the EU example.

Following the argument of indirect discrimination, Chambers (2009) proposes an interesting explanation that supports the argument of this essay: the Moment of Equal Opportunity (MEO). This might be explained as a specific and crucial point in people's life that divides it in two halves. The first half is defined by the presence of diverse unchangeable characteristics and situations (such as gender, nationality, and race) that define differences between individuals. Then, a MEO occurs and the second half appears; equality of opportunity occurs (such as a new job, new position within a company, and emigration to another country for better opportunities). Beyond this point, the second half of life develops very differently, with that moment being crucial for the definition of a better future (p. 337-8). This argument is fundamental for this discussion; whether a person - 'sorted' into a underprivileged country - might find better opportunities to success, to develop their talents, and to experience social mobility in other 'lands', then the argument in favour of migratory movement is justified under the assumption of reduction on social inequality and injustice.

Moreover, Valadez (2012) indicates that "in situations in which highly educated workers in developing countries are not able to find employment or when they stand to earn low wages despite their high level of training, they can be better rewarded for their specialized skills by migrating to technologically advanced countries" (p. 138). Nevertheless, as restrictions on migration based on the 'brain drain' effect reduce the possibility to 'leave the homeland', that specific moment that could be fundamental for social mobility, or the 'perfect' opportunity to change the direction of that individual's life, will not occur, therefore MEOs will not occur and the possibility of social justice related to solve the effects of lottery birth do not exist. Finally, it could be argued that the notion of restricted immigration under the justification of the brain drain effect is normatively unjustified due to the arbitrary fact of 'the lottery of birth', which detrimentally impacts social justice.

## Conclusion

To conclude, this essay explored some critical arguments for and against restrictions on immigration. As a result, I conclude that restrictions on migration based on the 'brain drain' effect are normatively unjustified; by restricting the fundamental right of freedom of movement, important aspects associated to social inequality and injustice might be perpetuated such as the arbitrary fact of 'the lottery of birth'.

The 'brain drain' effect, understood as the loss of human capital by nations due to emigration, might justify restrictions on immigration under the humanitarian assumption of 'duty of assistance'; highly-skilled individuals present a duty to 'return' to the homeland not only because their nations have 'invested' resources in them, but also because they have an inherent moral duty to help their disadvantaged compatriots to be better off. Nevertheless, this duty limits social mobility by restricting migratory movements -to find better opportunities in life- and, thus, limits improvement for social justice. As highly-skilled workers are required to stay and/or to return to their homelands due their 'duty to assistance', significant opportunities to experience MEOs are less likely to occur, thus the possibility for social mobility is lower, and the improvement of social justice by solving the effects of the unjust 'lottery of birth' does not exist.

Finally, I argue that restrictions on migratory movements based on the 'brain drain' effect are not justified as they decrease the possibility for social mobility and, thereby, have a negative impact on social justice.

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