Brain drain and compulsory service programs

Ryan Pevnick*

Wilf Family Department of Politics, New York University, New York, NY, USA

In *Debating Brain Drain*, Gillian Brock and Michael Blake give us a first-rate piece of applied political theory. And, they do so on an issue, the emigration of skilled migrants from the developing world, which—despite its tremendous importance—has seen relatively little discussion in the philosophical literature. Moreover, the juxtaposition of the conflicting viewpoints is a tremendous advantage of the format, as it encourages one to think about the issue from different perspectives, forces one to carefully reexamine settled views, and leads one to appreciate the philosophical complexity of the issue. Because of the quality of the analysis throughout, the book is an important contribution to the growing literature on the political theory of migration.

I

Brock’s primary goal is to defend the view that legitimate resource-strapped countries may rightfully enact compulsory service programs in order to improve their ability to provide needed medical services to citizens. In describing the type of programs that she has in mind, she uses the following example:

A legitimate government of a poor, developing country … decides that it has sufficient funds to train only a small number of people in each skill category every year…. Those who accept places in these limited tertiary training opportunity courses acknowledge that such acceptance creates an obligation for the graduates to provide services in their chosen occupation for a period of one year.²

On Brock’s account, there are two main reasons for thinking that such programs are justified:

*Correspondence to: Ryan Pevnick, Wilf Family Department of Politics, New York University, New York, NY, USA. Email: rp90@nyu.edu

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1. When skilled citizens leave poor countries without compensation, ‘those left behind are made more vulnerable by the emigrants’ decision’.  
2. ‘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’.  

The vulnerability of the citizens left behind provides reason for the state to act, and the fact that emigrants have accepted scarce resources from the state (and that this is what renders them marketable in the first place) justifies imposing a limited burden on them to address that vulnerability. One can obviously raise a host of pragmatic concerns about the likely effectiveness of the kinds of programs that Brock has in mind. But, in order to get to the heart of the philosophical issue, I am going to assume that such programs will be notably more effective in improving health outcomes than less restrictive alternatives.

II

I want to begin by arguing that if service programs are voluntarily entered into, then they will typically be permissible even if (1) nobody would be made vulnerable by the emigrant’s departure and (2) scarce resources are not devoted to investment in human capital.

To see this, consider the following example:

Imagine that we live in the richest country in the world, Richlandia, which is divided into five provinces. Although none of our fellow citizens are vulnerable in any absolute sense, one province (call it Mississipandia) lacks the fancy restaurants, excellent theaters, and perfect weather enjoyed by the other provinces. As a result, it is somewhat poorer than the others, has fewer medical professionals per capita, and somewhat worse health outcomes (say, average life expectancy in Mississipandia is 80 years compared to 85 years in the rest of the country).

In Richlandia, medical education is traditionally offered by a number of first-rate private universities. When a new government comes to power with a mandate to reduce inter-province inequality, it proposes to fund a new public medical school. One purpose of the medical school is to help address the growing gap in health outcomes across provinces. To do so, the public medical school would offer substantial scholarships to those who agree to a year of service in Mississipandia following graduation. We can imagine that the wealthiest citizens, ever interested in the egalitarian cause, simply donate money to the school in order to subsidize the scholarships.

Notice that citizens of Mississipandia are not made vulnerable by the decision of medical professionals to work in other provinces; after all, the rest of the world is poor and unhealthy by the excellent standards of that province. Their complaint is a relative one: it is a complaint about disparity rather than vulnerability. Moreover, thanks to the generosity of donors, the funds used to subsidize students’ education are not scarce resources in the relevant sense: this spending is not preventing the government from taking on other essential activities. Nevertheless, it seems uncontroversial to say that Richlandia may implement such a program.
This suggests that service programs need not satisfy Brock’s proposed requirements; that is, they need not aid vulnerable citizens or be justified by the investment of scarce resources. Instead, service programs will typically be unobjectionable so long as the individuals involved participate voluntarily.\(^6\) I hasten to stress that voluntariness requires more than just an agreement to participate.\(^7\) The program would not be acceptable if, for instance, the government closed all private medical schools at the same time that it enacted the plan. Instead, in our example, it is important that participants in the program have a range of other reasonable options: they may attend the public school without the scholarship, attend a private medical school, pursue other career options, and so forth. In such an environment, the fact that they choose, quite knowingly, to live in Mississipandia for a short period of time in exchange for an unusually cheap medical education provides very important reason to accept the program’s legitimacy.

Furthermore, there are a number of important advantages associated with voluntary programs.

1. The best way to ensure that the costs associated with staying are reasonable is to allow individuals to decide for themselves whether they wish to participate.
2. The best answer to the claim that such programs unfairly distribute the burden of caring for the vulnerable is that the relevant individuals have chosen to accept that burden in exchange for valuable opportunities to which they were not already entitled.
3. Voluntary participation prevents the legitimacy of the program from hinging on matters of significant ongoing controversy, such as the likely effects of emigration and the extent to which the government has invested in the participants.

Thus, insofar as such programs are voluntary, they will typically be acceptable.

III

Part of the reason for stressing this is that there are reasons to think that the appeal of the programs described by Brock stem from their being voluntary, rather than from considerations related to vulnerability and investment. Recall that her position requires that acceptable service programs (1) be enacted by legitimate governments and (2) have terms that are known to participants ahead of time. My suggestion is that satisfying these requirements will typically render a program voluntary.

A government could hardly claim to be legitimate if its citizens have so few options that they are willing to enter into arrangements that they deeply oppose just to secure training. Indeed, on Brock’s account, a government will not count as legitimate unless it effectively protects human rights and exercises power ‘in ways that show concern for the needs of citizens, such as by providing core public goods essential for a decent life’.\(^8\) A legitimate government presides over a society in which citizens have a range of ways to secure marketable skills. Otherwise, the state in question is failing and Brock, with good reason, is careful to insist that such states cannot be considered
legitimate. But, if citizens have access to a number of different ways to obtain marketable skills, then their choice to knowingly enter a program that requires public service should be considered voluntary. It looks an awful lot more like joining the Peace Corps than registering for the draft.

For such arrangements to be non-voluntary, it would need to be the case that citizens enter into them because they are desperate to get training and the offer presented by the government is, however distasteful, the best option available. But, again, if that is the situation, then the government should be considered illegitimate. After all, its legitimacy surely requires that it governs in a way that makes it possible for citizens to acquire training without entering into coercive agreements with the government. And so, once we say that the government in question must be legitimate and that the terms of the program must be known in advance, it seems to me that we have only redescribed our previous conclusion: namely, voluntary service programs are typically acceptable.

Moreover, if the program described counts as voluntary, then the requirements (1) that emigration would leave some in positions of vulnerability and (2) that government has invested substantially in the would-be migrants are, as the Richlandia example illustrates, superfluous. Instead, it is the voluntariness of the program that is primarily important in rendering it acceptable.

IV

Still, an important question remains: in particular, is it ever legitimate for developing countries to combat brain drain via involuntary service programs?

The question is important because the countries that have the biggest problems associated with brain drain tend not to offer their citizens a range of options to acquire marketable skills. And, again, in such circumstances, agreeing to continue to reside in a country in exchange for training can hardly be taken as a sign of consent in the relevant sense. Thus, voluntary participation is unlikely to be available in many of the contexts in which such programs are most appealing.

Brock and Blake approach the issue of non-voluntary programs differently. On the one hand, Brock tries to ease concerns about involuntary programs via analogy, arguing that ‘compulsory service practices are quite widespread’. The most important example is compulsory military service. But, military conscription is itself a highly controversial, and morally dubious, practice. Moreover, the reasons that conscription is controversial, namely, that it allows governments to make decisions that are central to a person’s life and compels individuals to serve their compatriots, are just the worries raised by opponents of compulsory service programs designed to combat brain drain. Thus, the question of the acceptability of such programs cannot be settled by the willingness of state officials to enact similarly restrictive programs in other contexts. Indeed, the fact that many states aggressively pursue conscription despite important concerns about its acceptability might be thought to give us more reason, rather than less, to worry about sanctioning other non-voluntary service programs. After all, such programs will also be susceptible to abuse by state officials (particularly since the states that are least able to hold on to their well-trained citizens are arguably the ones most
likely to seriously abuse such authority). Thus, little argumentative advantage can be gained from the widespread use of non-voluntary programs.

On the other hand, Blake defends the liberal orthodoxy that core individual freedoms—such as the right to exit—should trump competing welfare-based considerations. As I understand it, he offers three main lines of argument in favor of this view.

First, he argues that citizens have a very important interest in being able to leave the state in which they were born to pursue opportunities and relationships elsewhere. Although this is—at least in certain cases—clearly true, it strikes me as inadequate in the present context. The reason for this is that the citizens left behind also have an extremely important interest in medical care. If we are assuming that the only effective way to deliver that care is to restrict the exit of medical professionals, then what would need to be shown is that the admittedly very weighty interest of medical professionals in forging their own relationships and life paths outweighs the extremely important interest that their fellow citizens have in medical care. But, it is not obvious why we should think that the freedom-based interest should always outweigh the welfare-based interest.

The second argument that Blake proposes insists that the case for restricting emigration objectionably ignores the separateness of persons. On this account, the problem with emigration restrictions is that the only justification that can be given for them to those who would emigrate hinges on the welfare of others. But, Blake insists that, ‘justification, if it is pressed against a particular individual, must be made with reference to that individual, to her rights and to her interests’. So, here Blake’s point is that limits on exit do not benefit those who are prevented from leaving; rather, those individuals’ fundamental interests are set back in order to improve the lives of others.

But, can we not make the same point in the other direction? What justification can be given to an individual who lacks access to very basic medical care, as well as the skills or health to make emigration a realistic possibility, for accepting a regime that includes a nearly inviolable right to exit? No justification could be given that simply makes reference ‘to her rights and to her interests’. Her interests—taking for granted the assumptions we have been proceeding under—speak in favor of a far more limited right to exit. Remember that it is fundamentally misguided, on Blake’s account, for some to insist that ‘the overall consequences for us are so good, that it is justifiable for you to be poor’. But, is this not precisely what the emigrants are insisting in defending an inviolable right to exit?

Thus, it seems to me that the argument against the compulsory service program, just like the case for it, requires some individuals to identify strongly with the interests of others. Although it would be nice to offer everyone a justification for policies that refers to his or her own interests, the conflict that characterizes the case at hand prevents us from doing so. In other words, in such circumstances, we face a hard choice: we can either protect the freedom of some at the cost of the welfare of others or we can promote the welfare of some at the cost of the freedom of others. Since both positions can be described as calling on some to sacrifice their
fundamental interests for the sake of others, it is not obvious how an appeal to the separateness of persons establishes the importance of protecting the right to exit. This is tricky territory. But, it seems to me that the argument’s appeal depends not on the separateness of persons (which fails to distinguish between the two positions), but on the vividness of the coercion involved in programs that limit the right to exit. Although both options sacrifice the important interests of some individuals in order to promote the interests of others, only the mandatory service program does so by directly coercing citizens. A different way to put the point is to say that while the mandatory service program allows the patient to treat the doctor as a kind of tool to serve his interests, the doctor does not seek to use the patient in an analogous way. Indeed, Blake insists that the fundamental—or ‘very basic’—question in need of an answer is about the justification for deploying such coercive power. But, starting from that question seems to stack the deck in favor of those who would prioritize freedom over welfare. After all, a different—but surely plausible—starting point is: what can justify a distribution of resources that leaves some citizens unable to afford access to basic healthcare?

Why is the former question more ‘basic’ than the latter? From Blake’s argument, I can glean two possible answers. The first is that the latter type of perspective fails to respect the separateness of persons since it would allow the freedom of some individuals to be sacrificed in order to promote the welfare of others. But, again, this begs the question since it does not explain why that would be worse than sacrificing the welfare of some to protect the freedom of others. This leads to the second possibility, which just insists that individuals have a very important interest in freedom. But, as we noted above, people also have a very important interest in having adequate access to basic healthcare.

So, I cannot see what makes justifying the coercion involved in programs that limit the right to exit the appropriate starting point or the ‘very basic’ question in need of answer. Why is the basic question not: how can we justify a distribution of resources that leaves some unable to afford basic healthcare? Or, if one wishes to keep the focus on state coercion, why not: what justifies coercively upholding a system of property rights that leaves some unable to afford such services? After all, such a system coercively prevents the poor from accessing resources in a way that facilitates, and is often designed to facilitate, the freedom of the better off. In sum, although it seems to me that much of the position’s rhetorical appeal stems from highlighting the coercive nature of such programs, we lack good reason for accepting the view that the justification of coercive programs should be given special priority.

Blake’s third argument for insisting on a very strong right to exit depends on the practical dangers associated with allowing regimes to prevent their citizens from exiting. Perhaps most importantly, in my view, is the opportunity for abuse that such programs provide to governments that are not capable of, or interested in, facilitating sufficiently attractive living conditions to hold on to skilled native-born citizens. It seems to me that a hefty dose of skepticism about the likelihood that such governments will use this restrictive power to promote the public good is appropriate. For this reason (rather than for any deep reason of political morality), concerns about
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brain drain are probably better approached in a range of other ways; perhaps, most importantly (as Blake suggests), by working to ensure that the developed world adequately invests in training its own medical personnel.

It seems to me, then, that even if we can conceive of circumstances in which governments would be justified in enacting non-voluntary service programs, those circumstances may be sufficiently uncommon that we could be better off simply refusing to countenance such programs. Even if there are unusual circumstances in which they may be justified, it may not be worth pursuing them given (1) the alternative mechanisms through which healthcare delivery may be pursued, (2) the potential that public officials will abuse the associated restrictive power, and (3) the increased likelihood, in a world that does not proscribe them outright, that they will be enacted in inappropriate circumstances. These pragmatic considerations strike me, anyway, as the most compelling line of argument against permitting programs that hinge on emigration restrictions.

NOTES

1. For one exception, from a somewhat different perspective, see Kieran Oberman, ‘Can Brain Drain Justify Immigration Restrictions?’, Ethics 123, no. 3 (2013): 427–55.
2. Gillian Brock and Michael Blake, Debating Brain Drain (Oxford: Oxford University Press, 2015), 60–61.
3. Ibid., 68.
4. Ibid.
5. Notice that the program in question is not just a very temporary response to a fleeting emergency situation; instead, it is a standing piece of public policy meant to address an ongoing problem. It is not just an emergency program that might very temporarily limit exit (say, to help care for those injured in a natural disaster or other unforeseen catastrophe).
6. Although it is easy to imagine programs that are illegitimate despite being voluntary, they are relatively unlikely to arise.
7. Blake, who accepts that truly voluntary programs would be acceptable, makes this point in terms of unconscionable contracts (Brock and Blake, Debating Brain Drain, 215).
8. Brock and Blake, Debating Brain Drain, 86.
9. Ibid., 93.
10. Ibid., 197–203.
11. Even if one thinks that it is a mistake to sacrifice the freedom of some individuals in order to capture further welfare gains when basic needs have already been met, it does not follow that it is also inappropriate to do so in this much starker context. For further discussion of the limits of interest-based arguments in establishing the priority of liberty, see Ryan Pevnick, ‘Should Civil Liberties Have Strict Priority?’, Law & Philosophy 34, no. 5 (2015): 519–49.
12. Brock and Blake, Debating Brain Drain, 206.
13. Ibid., 204.
14. For an excellent argument for compulsory service programs beginning from these premises, see Lucas Stanczyk, ‘Productive Justice’, Philosophy & Public Affairs 40, no. 2 (2012): 144–64.
15. Brock and Blake, Debating Brain Drain, 203.
16. I explore these issues in more detail in ‘Political Coercion and the Scope of Distributive Justice’, Political Studies 56, no. 2 (2008): 399–413.