

The Distinction Between Taxation and Public Service in the Debate on Emigration¹

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ABSTRACT

Are taxation and public service requirement for prospective emigrants justifiable in a liberal state? Brock thinks that taxation and service are normatively on a par. By contrast, Blake thinks that public service is impermissible, and only justified under emergency conditions when the liberal state itself is under threat. I argue that neither Brock nor Blake have adequately argued their case. Brock's normative grounds for obligations and how exactly prospective emigrants incur enforceable obligations are not spelled out in sufficient detail. As a result, she is too quick to draw an analogy between taxation and service requirement, without considering the morally salient difference between the two. I discuss a plausible ground, fair reciprocity in social cooperation, and draw out its implications for Brock's view. By contrast, Blake has not adequately shown that restricting life plans *directly* is unjustifiable, while restricting life plans *indirectly* by reducing the resources available to persons is justifiable. His account only shows that public service requires a different, more compelling justification than taxation. He does not, however, offer adequate support for the extreme justificatory burden he places on public service requirement. Both authors owe us an account of the resources and powers that can be legitimately claimed for purposes of social justice; whether there is a tenable normative boundary between transferring resources to the needy versus providing socially useful services to them.

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INTRODUCTION

One of the hardest questions about the brain drain concerns the tension between the needs of source populations and the freedom of the migrating professionals, and whether any kind of constraint on the latter is ever justifiable. Gillian Brock and Michael Blake's *Debating Brain Drain* takes on this difficult challenge, provides a rich set of normative arguments, and shows how they figure in the policy arena of skilled labor migration. The normative discussion assumes the perspective of poor source country governments that face the task of ethically guided policy-design in a deeply unjust world, where wealthy receiving countries fail to discharge their duties of international justice. What may source countries permissibly do to address the problem of high skilled emigration?

In this commentary, I focus on a key disagreement between Brock and Blake. Is a public service requirement for prospective emigrants justifiable in a liberal state? Brock thinks that taxation and service are normatively on a par. By contrast, Blake thinks that public service is an impermissible path to liberal justice, and only justified under emergency conditions when the liberal state itself is under threat. I argue that neither Brock nor Blake have adequately argued their case. Brock's grounds of obligations and how exactly prospective emigrants incur enforceable obligations are not spelled out in sufficient detail. As a result, she is too quick to draw an analogy between taxation and service requirement, without considering the morally salient difference between the two. By contrast, Blake's account only shows that public service requires a different, more compelling justification than taxation, and does not show that it is impermissible in liberal states. Blake does not offer adequate support for the extreme justificatory burden he places on a public service requirement.

1. RECIPROCITY AND THE BENEFITS OF SOCIAL COOPERATION

Brock provides a variety of reasons why skilled emigrants have moral obligations towards their country of origin or training. These include the duty to reciprocate for the benefits received; fair return for government investment; loyalty to fellow citizens in upholding institutions; responsibility for creating disadvantage, and responsibility for the

unintended harmful side effects of skills shortage. These special moral responsibilities, Brock argues, jointly provide the ground for state restrictions on emigration (Brock and Blake 2015: 65-68).

The various sources of duties that serve as the building blocks of Brock's position problematically draw together two separate normative questions: 1) Do skilled workers have moral responsibilities towards their country of training or origin? 2) Can states legitimately coerce them to discharge those responsibilities? (also see Eyal and Hurst 2014) A variety of moral obligations may arise from brain drain, but not all of them are legitimately enforceable in a liberal state. We need to unpack the grounds of obligations owed by emigrants towards those who remain, and analyze more precisely the way in which they give rise to obligations that are enforceable by liberal states.

I focus on two related grounds for emigration restrictions, both of which concern what persons owe to their society in virtue of having received certain benefits, in particular, those of education and of social cooperation more generally. These grounds are: (a) that governments must pursue a fair return on their investments and (b) the duty to reciprocate for the benefits received from social cooperation. As Brock writes, "governments are entitled to claim compensation from those who will benefit from their investment" (Brock and Blake 2015: 68). Skilled professionals accumulate "debts that are typically discharged by being a productive member of that society in adulthood" (Brock and Blake 2015: 68).

The argument for fair return on investment rests on the idea that the education and training of medical skills, both in public and private institutional settings, may be seen as part of a collective enterprise jointly sustained by all through research, training, health care, which involve a broad range of social and economic resources, the rule of law, general services and infrastructure, public safety, human corps, and so on (Brock and Blake 2015: 76). Poor countries allocate scarce public resources to supply socially valuable skills, such as medical training, and they do that with the expectation that trained doctors will deliver health care services over the course of their productive lifetime.

How do individuals incur enforceable obligations for enjoying the social goods jointly produced in a cooperative scheme? How should we understand the underlying ideal of justice or fairness and the nature of the normative relationship that gives rise to such obligations? These are the questions that need further analysis for a better understanding of Brock's position.

One possible way of understanding the basis of reciprocity owed by the emigrants may be the contribution made by those left behind. On a *contribution based reciprocity* account, however, duties of distributive justice arise only among (potential) net contributors to the cooperative surplus. The unappealing implication of this account is that those who, for whatever reason, lack the capacity to contribute are not entitled to social resources.² This account would be inconsistent with Brock's moral concern with the unfulfilled needs of those left behind and her commitment to the imperative of moral equality, according to which "[a]ll human beings needs and interests matter ... and deserve equal consideration" (Brock and Blake 2015: 25). So why reciprocity is owed to everyone, and not merely to (potential) contributors, requires a different justification.

A more plausible account of why would-be emigrants have obligations to their home society is rooted in the idea of *fair reciprocity* in social cooperation (Rawls 1971). The departure from the contribution-based account is that moral standing is not attached to the capacity to contribute to the social product. The fair reciprocity account acknowledges the morally arbitrary distribution of natural abilities. Moreover, it recognizes that a person's capacity to contribute depends in part on the design of the cooperative framework and the rules that govern the production and distribution of social goods. It starts from an assumption of fundamental moral equality, so the terms on which social goods are produced and confer value on the talents and abilities of individuals must be justified from a benchmark of equality. Fair terms render the benefits drawn from the scheme of morally legitimate entitlements. What equal citizens owe one another and governments may justifiably enforce is the duty that each plays their part in upholding the fair terms of cooperation.

According to Brock the minimal requirement of a fair scheme is that its social and political arrangements support "the core ingredients for a decent life" (Brock and Blake 2015: 25). When the labor supply for one or more of these core ingredients is critically low, those who lack secure access to these important goods have a reasonable complaint. The complaint is that when emigrating professionals leave and deploy their skills abroad unconditionally, they fail to discharge part of their duty of fair reciprocity in sharing the burdens and benefits of an ongoing scheme of social cooperation. This, on my view, is the more plausible way of spelling out the idea of reciprocity underlying Brock's account. However, there are two problems that arise: 1) Do higher burdens depend on higher capacity? 2) Is a compulsory public service requirement included in the fair terms of cooperation?

2 For a critical discussion of this view see, for example, Buchanan (1990).

The first is a matter of clarification. Brock thinks that those with greater capacity should contribute more. As she writes, we “often think it fair to treat people differently on the basis of the varying ways in which they can contribute to promoting justice” (Brock and Blake 2015: 245). We do this, according to her, when we accept differential tax burdens. On an account of justice as fair reciprocity, however, differential contributions to uphold fair terms do not, strictly speaking, depend on differential capacities. The idea is not that those with higher talents or skills ought to shoulder greater burdens, because they are more talented, as Brock seems to think. Rather, the idea is that they may legitimately expect higher social rewards for their initially undeserved capacities on the condition that background institutions are fairly arranged to the benefit of the least advantaged. A fairly organized social scheme has to strike a difficult balance between providing incentives for the talented to develop and deploy their skills and allowing them to obtain benefits on terms that those who gain less have no reason to reject. This, I believe, is a more plausible way of understanding the normative underpinnings of a fair tax system.

The second problem runs deeper and concerns a key disagreement between Brock and Blake. Should upholding fair terms of cooperation include a public service requirement for would-be emigrants, as Brock thinks? Or is compulsory public service an impermissible requirement of liberal justice, as Blake thinks? (I return to Blake’s account in the next section.) Brock seems to think that there is no morally significant distinction between making societal demands on a person’s material resources and her labor, so the move from income tax to a one or two-year public service requirement is a relatively straightforward one. She argues that if the coercive state practice of redistributive taxation is justified for the benefit of others, then providing services that involve our labor may also be required for the benefit of others. Brock draws the analogy between the two when she writes that “redistributive taxation involves, *in effect*, having to labor for the benefit of others” (Brock and Blake 2015: 97). While I welcome her conclusion that a highly conditional service requirement may sometimes be justified, her claim that taxation and service are analogous is too quick, and unfounded. There are relevant disanalogies between requiring persons to pay taxes and to dedicate labor hours to sustain background justice. These disanalogies require careful consideration before we can draw the conclusion that mandatory service, of some sort, is permissible for furthering social justice.

Liberal political morality draws a sharp distinction between two aspects of rightful ownership of our talents. It holds that persons have a

strong, nearly exclusive, right to control what happens to their capacities and how they are put to use. The right to control the use of our talents is justified by reference to our fundamental interest in autonomy and pursuing valuable ends for ourselves. By contrast, the right to draw material benefits from the use of our talents importantly depends on the contribution and cooperation of others. Rightful ownership of the material benefits depends on the idea of fairness embodied in the terms of social cooperation (Christman 1991). So how we use our talents and what kind of benefits we may permissibly obtain are justified in a different way. The normative distinction between the right to control the use of our talents and the right to benefit from our talents is thought to ground the moral significance of the distinction between service and taxation, at least among liberals.

The challenge for Brock, then, is whether she can provide an adequate justification of compulsory service consistent with her liberal commitments. Does she think that a person's right to control the use of her talent can sometimes be restricted by liberal states? The conditions under which such a restriction is justified would need to be spelled out and shown to be consistent with liberalism. At places, Brock seems to cross the bounds of liberal political morality. She writes, that "[t]hose people who have received the necessary training are, in a way and in part, community investments" (Brock and Blake 2015: 62). It is important to distinguish the skills that are developed and trained through societal investment from the persons who carry them. Skills are in a way and in part community investments for which fair returns may be claimed. But persons themselves are not. Much depends, then, on how Brock would, if pressed on this point, fill in "*in a way*" and "*in part*" in the sentence above. She would need to elaborate on how exactly skills depend on the investment made by others, and how, in virtue of this contribution-dependence, state restrictions on the deployment of skills may be justified.

There is another more general understanding of fairness as fair play that comes to the fore in parts of Brock's account. She relies on a general principle of fairness when she argues that emigrants owe a fair return for the benefits received from their home society. The principle of fairness holds that when people engage in a benefit-producing activity they incur enforceable obligations to do their fair share (Olsaretti 2013). In the joint production of a public good, such as public safety or public health, everyone who enjoys the benefits should do their fair share. However, even on this account, further argument would be needed on Brock's part. There is considerable disagreement about the nature of the good produced, the nature of cooperation, and the relevant constraints under which the fair

play principle applies. Is the intention to benefit from the scheme a necessary condition? Or is the idea that the goods produced are taken to be “presumptively beneficial” sufficient to incur obligations? (Klosko 1987) These are some of the questions Brock would need to answer for a more compelling account of prospective emigrants’ enforceable fair share.

To conclude, Brock still owes us an account of how we should understand the moral significance of the distinction between taxation and public service, and under what conditions the state can restrict the right to control the way we deploy our talents and skills. Her answer from consent underpinning educational contracts does not go far enough because it does not address the deeper question raised here about the terms of cooperation we may justifiably consent to, in the first place. Are the terms of the contract the state offers to students fair to start with? If so, why?

2. THE JUSTIFICATORY BURDEN FOR TAXATION AND PUBLIC SERVICE

Blake’s response to the alleged analogy between taxation and public service is that this is the inverse of an old argument made by Robert Nozick, who famously objected to redistributive taxation as tantamount to forced labor (Nozick 1974). Brock, according to Blake, should be seen as turning the above claim around: if we think income taxes are permissible then we should also think that forced labor is permissible (Brock and Blake 2015: 174). Blake thinks that both of them are wrong for the same reason, so what could be said in response to Nozick should be a good enough response to Brock.

Blake here rehearses the standard liberal view according to which individuals have an exclusive right to decide what happens to their bodies and how they use their talents, which bars others from interfering. However, they do not have an exclusive right to the income that flows from the use of their talents. Talents are considered inviolable, personal resources not up for grabs for social purposes, and should not be distributed in the name of social justice. By contrast, income and wealth are social resources that may be claimed appealing to the idea of fairness in cooperation.

In the remaining part of my commentary I analyze this fundamental difference between Brock and Blake’s view. Are talents and labor hours more similar to organs and body parts as Blake thinks, or closer to income and wealth, as Brock thinks? I cannot hope to settle this question in a short

commentary or provide an alternative answer in the space available.³ What strikes me as problematic in Blake's reply, however, is that he simply takes for granted this sharp distinction. In responding to Brock he does not argue for the view, but rather, spells it out. I do not claim that there should not be any distinction at all between what kind of powers and resources we can and cannot claim for purposes of social justice. I do think, however, that the way we draw the line should be more carefully examined. The question to be asked is whether there is a normatively relevant distinction between the *use of our talents* and the *benefits that flow from them* that renders the former inviolable.

Cécile Fabre (2006) has questioned the standard liberal way of drawing the boundary and whether we have an *exclusive* right to control our body and person. She argues for a *highly qualified* right to personal integrity. Her starting point is that the state should provide its citizens with a minimally flourishing life, including opportunities to form and revise their plans of life. With respect to others who fall below the threshold of sufficiency, "if it is true that we lack the right to withhold access to material resources from those who need them, we also lack the right to withhold access to our person from those who need it" (Fabre 2006: 2). She endorses an analogy between distributing social resources to those in dire need and distributing "personal" resources. That is, under conditions of extreme deprivation, other persons may have a justified claim to things liberals take to be inalienable parts of our person. These things, on Fabre's account, include the body, its organs, the maternal womb, and our talents and skills that are necessary for addressing the basic needs of others.

Fabre's endorsement of the legitimacy of transgressing bodily integrity (under certain limited circumstances) is highly controversial. The idea of "body exceptionalism", namely the belief that there is "a prophylactic line that comes close to making the body inviolate, that is, making body parts not parts of social resources at all" (Dworkin 1983), is an important liberal assumption that I do not question here. I do think, however, that Fabre's question, i.e. whether skills (rather than talents) and labor may be considered social resources to be claimed by others under conditions of extreme scarcity, is worth considering in the context of the brain drain. The question is whether there is a tenable normative boundary between transferring resources to the needy versus providing socially useful services to them.

What distinguishes the use of talents from the income that flows from them, according to Blake, is that talents come attached to persons. There is

3 I argue for a middle ground between their two positions in Kollar (manuscript) .

a difference between the coerced transfers of goods and coerced restrictions of life plans. He writes that life plans are a “more dangerous and difficult site of coercion” (Brock and Blake 2015: 175). I argue that Blake has not adequately shown that restricting life plans *directly* is unjustifiable, while restricting life plans *indirectly*, by reducing the resources available to persons, is justifiable. In fact, he has only claimed that there is a *difference* between the two, and that restricting life plans directly is *more difficult* to justify. So, if his objection to Brock is that taxation and service require different justifications, and that the latter requires very compelling reasons, then we agree. There is still room for disagreement concerning what counts as adequate or strong enough liberal justification for coercively restricting life plans.

On one extreme, Blake thinks that the justificatory burden is so high that only a state of emergency can meet it. Only states that face emergencies may permissibly suspend liberal rights. He also thinks that the current critical health worker shortage in Sub-Saharan Africa might qualify as such a dire situation (Brock and Blake 2015: 210).⁴ On the other extreme, Fabre thinks that those in dire need have legitimate claims on the material resources as well as service provision of the provider, as long as they do not jeopardize the provider’s prospects for a minimally flourishing life.

On my view there is a plausible middle ground between these two extremes. We need not put the bar of justification as high as the state of emergency, as Blake does. The claim that liberal states can justifiably restrict our right to control the use of our talents under less than emergency conditions is what would need to be established here.⁵ We should also not put the bar of justification as low as the service provider’s claim to a minimally flourishing life, as Fabre does. Instead, we may set the relevant circumstances to be unfavorable conditions of *extreme scarcity in skills* for essential goods, and make service requirement conditional upon the provider’s prospect for a *reasonably autonomous life*. It seems that under conditions of critical skills shortage, where non-coercive incentives have proved to be futile, a carefully designed short-term compulsory service program that allows ample room for the personal autonomy of prospective emigrants may be justified. Forcing a medical graduate in South Africa to deliver health care services locally for 20 years is clearly ruled out because neither the critical shortage nor the reasonable autonomy conditions are met. A one-year service requirement in Sierra Leone may, however, pass

4 I have argued elsewhere why I think Blake’s emergency justification of compulsory medical service fails. See Kollar (2016) and the response by Blake (2016).

5 I argue elsewhere that a qualified service requirement may be part of the fair terms of benefiting from skills across borders under conditions of extreme scarcity in source countries. See Kollar (2016: fn. 3).

the test of an autonomy-sensitive measure under extreme skills shortage and resource scarcity coupled with the dire burden of disease.

To conclude, I have argued that Blake has not successfully shown that public service is an unjustifiable policy measure in a liberal state. He has only shown that it requires a more compelling justification than taxation. Blake thinks that a public service requirement amounts to the suspension of a liberal right that requires an emergency justification. I think that under unfavorable social conditions, public service may be justified as a moral constraint on our right to control our talents. The question is a complex one and our divergence in the answer points to a deep, but reasonable, disagreement.

BIBLIOGRAPHY

- Blake, M., 2016: "On Emergencies and Emigration: How (Not) to Justify Compulsory Medical Service", *Journal of Medical Ethics* doi:10.1136/medethics-2016-103493.
- Brock, G. and Blake, M., 2015: *Debating Brain Drain: May Governments Restrict Emigration*, Oxford: Oxford University Press.
- Buchanan, A., 1990: "Justice as Reciprocity versus Subject-Centered Justice", *Philosophy & Public Affairs* 19: 227-252.
- Christman, J., 1991: "Self-Ownership, Equality, and the Structure of Property Rights", *Political Theory* 19: 28-46.
- Dworkin, R., 1983: "Comment on Narveson: In Defence of Equality", *Social Philosophy and Policy* 1: 24-40.
- Eyal, N., and Hurst, S., 2014: "Do Health Workers have a Duty to Work in Underserved Areas?" in *Routledge Companion to Bioethics*, eds. J. D. Arras et al., New York: Routledge.
- Fabre, C., 2006: *Whose Body is it Anyway? Justice and the Integrity of the Person*, Oxford: Oxford University Press.
- Klosko, G., 1987: "Presumptive Benefit, Fairness and Political Obligation", *Philosophy & Public Affairs* 16: 241-259.
- Kollar, E., 2016: "What is Wrong with the Emergency Justification of Compulsory Medical Service", *Journal of Medical Ethics*.
- (manuscript): "Brain Drain, the Ownership of Talents and Fair Terms of Emigration"
- Nozick, R., 1974: *Anarchy, State and Utopia*, New York: Basic Books.
- Olsaretti, S., 2013: "Children as Public Goods", *Philosophy & Public Affairs* 41: 226-258.
- Rawls, J., 1971 (2nd ed. 1999): *A Theory of Justice*, Cambridge, Mass.: Harvard University Press.