Health, Migration and Human Rights

ABSTRACT

Doctors, nurses and midwifes from developing countries migrate to affluent countries in large numbers, often leaving behind severely understaffed healthcare systems. One way to limit this 'brain drain' is to restrict the freedom of movement of healthcare workers. Yet this seems to give rise to a conflict of human rights: on the one hand rights to freedom of movement, on the other hand rights to health. By motivating its own account of human rights, this paper argues that the conflict is not as acute as it seems, since rights to freedom of movement are in fact more limited than often acknowledged. Weak restrictions of the freedom to leave and strong restrictions of the freedom to enter are in principle compatible with the rights of healthcare workers. Hence, policies that involve restrictions of both kind can be justified in order to help secure the human right to health.

KEYWORDS: brain-drain, migration, health, human rights, freedom of movement

Introduction

In the places where they are most urgently needed, healthcare workers tend to be in short supply. There are 26 developing countries that have less than one doctor for every 10,000 inhabitants. Countries like France or Australia, in contrast, have over thirty times as many (WHO 2017). This uneven global distribution of healthcare workers is largely explained by international inequalities in resources and investments in healthcare. But a factor that considerably aggravates the dire situation in poor countries is the mass emigration of healthcare workers, the so-called brain drain.

In many African countries, not even half of all medical graduates stay. In Zambia, for instance, only 60 of the 500 doctors trained since independence were still in the country in 2004 (Johnson 2005, 3). Driven by a variety of 'push factors'—such as low wages, inadequate working conditions and the threat of infectious disease—many seek a better life in affluent countries. There, health systems have become reliant on foreign medical graduates, with recruitment practices acting as a powerful 'pull factor.' In the UK or the USA, for example, every fourth physician has been trained abroad, very often in low- or middle income countries, and usually at public expense (Mullan 2005). This kind of medical migration is a financial blessing for receiving countries because it relieves the pressure on education and healthcare budgets[1]. For many source countries, on the other hand, the exodus of healthcare workers makes it difficult to guarantee

[1] The costs of training a doctor in the UK, for instance, range between £240,000 and £510,000. See Full Fact 2016.

even the most rudimentary levels of healthcare. It directly undermines the realisation of the human right to health.[2]

In recent years, political theorists and philosophers have begun to ask what states may do to avert the harmful side-effects of medical migration. Should source countries try to stop healthcare workers from leaving, for instance by imposing exit taxes or compulsory service requirements on them? And should destination countries close their borders to healthcare professionals from countries that face serious shortages? (E.g. Oberman 2013; Brock and Blake 2015). These questions take the form of a moral tragedy or dilemma, for while the brain drain may hurt the health prospects of those left behind, doctors and nurses also have legitimate interests in improving their lot and that of their families. By restricting their freedom of movement, states ask them to

[2] See Dreesch et al 2005; Chauvet, Gubert and Mesplé-Somps 2013. To be sure, medical migration is not always harmful. Economists like to point out that the emigration of healthcare workers may also involve significant benefits for developing countries, most notably in the form of remittances. The possibility of lucrative employment abroad may even incentivise more people to become doctors or nurses in the first place, thus creating a 'brain gain' effect. And of those who leave, some may eventually return, thereby enabling beneficial knowledge transfers (Beine, Docquier, Rapoport 2001; Gibson and McKenzie 2012). But while these positive effects may in some instances outweigh the negative ones, it is unlikely to be the case in all or even most developing countries. The evidence for the 'brain gain' hypothesis is inconclusive, and studies suggest that few migrants return and that remittances cannot generally compensate for the overall costs of departure (Muller 2017; Kollar and Buyx 2013: 3; Eyal and Hurst 2008: 181e). The distribution of remittances matters too: healthcare professionals do not tend to be among the worst-off in their countries of origin, hence these transfers may not directly benefit the latter (Dwyer 2007: 41; Muller 2017). Finally, the brain drain also involves burdens that are less easily quantifiable. For example, the absence of highly educated citizens is likely to adversely impact the development of strong political, social and economic institutions in source countries (Brock and Blake 2015, Part 1).

bear high individual burdens. And if freedom of movement is a human right—as we commonly take for granted with regard to domestic migration—then states cannot simply sacrifice the rights of some to help secure the rights of others.

My aim in this paper is to show that the dilemma is less acute than might initially seem. By articulating background assumptions about human rights that are often left unstated in debates about medical migration, I argue that rights to freedom of movement are more limited than often acknowledged. Hence efforts to protect and promote the right to health by restricting the movement of healthcare workers can sometimes be permissible. This is the case with regard to the freedom to leave one's country, which—as I show by reversing the so-called 'cantilever argument' for open borders—is not absolute. It is also the case with regard to the freedom to enter other countries, which I argue does not amount to a human right. At the same time, a richer understanding of human rights also highlights other considerations that are significant in the context of medical migration, in particular obligations pertaining to refugeehood and global poverty.

The argument unfolds as follows. The first section sketches my understanding of human rights. Against the backdrop of a debate between proponents of 'naturalistic' and 'political' approaches to the theory of human rights, I argue for an ecumenical approach that combines insights from both camps. Although human rights are grounded in particularly important human interests, their content and the duties they impose on others can best be understood through their functional role as conditions for the legitimacy of states in the international system. I exemplify this approach by discussing the human right to health.

The rest of the paper then turns to the human right to freedom of movement. This discussion is divided into two parts. The first focuses on the right to leave and the

duties of source countries. Proponents of open borders have often pointed to the fact that domestic freedom of movement is universally regarded as a human right, and that, by parity of reasoning, global freedom of movement ought to be seen as a human right too. By accepting the premise of this so-called cantilever argument, I go on to show that legitimate states may under certain circumstances impose weak restrictions on domestic freedom of movement, and that by extension, the same applies to weak restrictions of the freedom to emigrate. The argument hence supports the permissibility of measures like exit taxes or compulsory service programmes as means to tackle the brain drain.

The following section focuses on the duties of destination countries. I argue that, in view of the political function of human rights, there is arguably a human right to exit one's country, but not a right to enter any country of one's choice. Hence destination countries do not violate human rights if they impose immigration restrictions in cases when failing to do so endangers the fulfilment of the human right to health in source countries. This, however, is not an argument for less immigration into affluent countries, for a proper understanding of human rights also places duties on the latter to help alleviate global poverty, for which (low-skill) immigration is a powerful instrument. The final section summarises.

Human Rights

The problem of medical migration is often portrayed as a conflict of human rights. On the one hand there are the rights of prospective migrants, whose freedom of movement is thought to be threatened by proposals to tackle the brain drain; on the other hand there are the rights of those left behind, whose opportunities for a healthy life may suffer in the absence of an adequate healthcare workforce. Yet when we invoke

human rights—and potential conflicts between them—we invariably rely on some view or other about what these rights are. Though authors writing on the brain drain have seldom made it explicit, our understanding of human rights will clearly shape our moral assessment of policies to regulate medical migration.

The issue is particularly pressing because there is, in fact, little agreement on the nature of human rights. Recent years have seen a lively debate between proponents of so-called 'naturalistic' and 'political' conceptions. According to the former, human rights are rights that people possess simply in virtue of their humanity. There are different theories regarding what aspect of our humanity grounds human rights, but on one influential view, human rights are moral claims that arise from interests that are sufficiently important to place others under duties (Tasioulas 2015). These moral claims are understood to be, in some relevant sense, timeless and universal: they are valid regardless of whether they are recognised in our legal and political arrangements. Proponents of the naturalistic approach therefore typically emphasise the continuity between our contemporary understanding of human rights, and the natural law tradition dating back to the Enlightenment and antiquity (Griffin 2008).

The political approach, in contrast, understands human rights through their functional role in global politics. This role is one that developed specifically in our contemporary international system in the aftermath of the Second World War. Essentially, human rights became entrenched as normative standards that qualify the sovereignty of states, justifying international interference in cases of non-compliance. From this vantage point, each state must be sufficiently responsive to the basic interests of its citizens in order to be recognised as legitimate by the international community. Put differently, because sovereign states exert great power over their citizens, an international system that divides the entire world into sovereign states can only be justified if

basic moral norms regarding the treatment of individuals are respected everywhere (Rawls 1999; Beitz 2009).

Although these two approaches might seem at first glance quite different, there is reason to believe that they are in fact complementary, and that a plausible account of human rights must incorporate insights from both camps (see also Gilabert 2011; Valentini 2012; Barry and Southwood 2011). The political conception, for one, requires some account of the moral significance of the interests that legitimate states are expected to protect. The fact that the right not to be tortured, say, plays a central role in the contemporary practice of human rights can be best explained through some independent moral claim. Freedom from torture is a universal interest important enough to impose duties on others to respect, protect and promote that interest. By highlighting the nature of moral claims like these, naturalistic approaches can provide us with a philosophical foundation to better understand the grounds of human rights. Furthermore, this foundation seems necessary to develop a critical stance towards the real-world practice of human rights. For there is no guarantee that the current political role of human rights captures all potential rights that are worthy of protection under some plausible philosophical account.

But by the same token, naturalistic approaches seem inadequate insofar as they neglect the political function of human rights. The right not to be tortured, for example, is typically understood to be held against political authorities, paradigmatically the state. We do not normally take it to be held against sadistic kidnappers who are not acting in the name of, or being aided or tolerated by, political authorities. Because naturalistic accounts are primarily interested in whether an act of torture undermines our humanity, not in who is committing it, they can fail to identify the appropriate addressees of human rights claims (Barry and Southwood 2011, 374). Moreover, the

reference to the political role of human rights also seems necessary to specify the content of a given right. We may have an abstract interest in not being discriminated on account of our gender, for instance, but the precise duties that follow from this must be established within the context of our contemporary political, legal and economic institutions. Here, recognising the functional role of human rights allows us to delineate the contours of the right in question.

This is not to claim that the leading theories of human rights, of either kind, cannot motivate the resources to adequately deal with these issues. Rather, my point is that the contrast between naturalistic and political conceptions is frequently overdrawn, and that a plausible understanding of human rights will need to incorporate insights from both approaches. When thinking about a presumptive right, we examine the interests that lie at its core: are they basic and important in a way that justifies the imposition of duties on others? This rules out trivial interests, as well as interests that others cannot plausibly be required to advance (say, an interest in finding the right romantic partner). But the presumptive right must also be of the kind that any legitimate state ought to make appropriate efforts to protect in order to maintain its standing in the international community; its violation must be a matter of global concern.

To exemplify the position I am advocating, and to begin to unpack one of the two rights that are the focus of this paper, let me turn to the human right to health. Health is undoubtedly a universal human interest. Apart from its immediate significance for human well-being, a reasonable degree of physical and mental health is instrumentally valuable for the exercise of our normative agency and the pursuit of our life plans. The satisfaction of our basic health needs can also be seen as a requirement for the protection of our human dignity. In short, health is the kind of interest that, from a naturalistic point of view, is a plausible candidate for a human right.

Yet despite its obvious importance, it is not entirely clear what the right to health is a right *to*. Few people take at face value Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which famously declares 'the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.' For one thing, the right to health cannot be interpreted as a right to be *healthy*, since this is often outside the control of any potential duty-bearer. Moreover, if the 'highest attainable standard' is interpreted in absolute terms as requiring the provision of the best technically possible health services, then it seems an unlikely goal for even the richest societies in the world. Some services promise only marginal improvements in health at exorbitant costs, but if these were owed to people as a matter of right, there would be no resources left to meet other valuable social needs (see also Wolff 2012: 222) What, then, is the content of the right to health? Who are the bearers of its correlative duties? And how demanding are those duties?

Questions of this kind can best be answered by reflecting on the political role of human rights. If human rights are conditions for the legitimacy of states, then a person's interest in being healthy does not straightforwardly generate duties to satisfy every possible health need at any cost. Rather, it grounds a higher-order right to live in a state that implements adequate and equitable healthcare policies (see also Raz 2015). The precise content of the right—the health-related goods and services that must be made available—may vary depending on the social priorities of the society in question and, at least to some degree, the total amount of resources available. Hence the specification of the catalogue of goods and services that must be provided remains a matter of normative argument. Generally speaking, however, the human right to health requires states to put in place health-promoting social arrangements that could be seen as satisfactory by other actors in the international arena (including not only other states,

but NGOs and international organisations). This would certainly include arrangements for the provision of healthcare, which in turn will involve maintaining an adequately-sized health workforce.

From all this, it should be clear that the primary duty-bearers of human rights are the states of the individuals in question. However, on the view I am sketching, there are also a number of ways in which other states—and the international community as a whole—come to bear responsibilities. Perhaps most obviously, outside agents stand under a duty to refrain from undermining the realisation of human rights in other countries, for instance by adopting policies that avoidably and foreseeably thwart health prospects there. Furthermore, they have reasons for action when states are either unwilling or unable to guarantee the human rights of their citizens. These actions may include, in extreme cases, diplomatic or even military intervention. But in the context of the question I address in this paper, there are in particular two duties that fall on the international community.

The first is the duty to admit refugees. When a person is actively oppressed by her state, emigration is often the only way to protect her basic interests. In a world entirely divided into sovereign states, this means that other states must be willing to grant asylum to ensure the protection of human rights. In other words, the institution of refugeehood is a condition for the political legitimacy of the international system as a whole (see also Owen 2016). So even though in what follows I will develop a series of arguments to put pressure on the freedom of movement of healthcare workers, I do not intend these arguments to apply to those who flee oppression, persecution or civil war. Naturally we can ask questions about who ought to count as a refugee, and how the duty to protect refugees is to be distributed. I shall take no stance on these question here. I shall simply assume that much like everyone else, healthcare workers have a

right to asylum that cannot be suspended in light of the harmful effects that the brain drain has on the health prospects of those who stay behind.

A second way in which responsibility for human rights can shift to the international community is when a state is unable to satisfy the most basic interests of its citizens. Consider the extent of extreme poverty in the world. When people live below a subsistence minimum, other countries have duties to help lift them above a suitable standard. Given their greater ability to discharge these duties, it is plausible to hold that affluent countries bear special responsibilities here, which they may meet in several ways, from direct assistance to debt relief. One of the most powerful instruments at the disposal of affluent countries, however, is their immigration policy. Because the main asset of the global poor is their labour, and because they tend to be large remitters, opening the labour markets of affluent countries to low-skill workers is widely considered one of the most effective short-term policies to reduce extreme poverty worldwide (Adams And Page 2005; Kapur and McHale 2006, 317; Pritchett 2006). This creates at least a pro-tanto reason for permitting low-skill immigration as a way to help realise human rights.[3]

The Right to Leave

Having set out a general framework to think about human rights, I now turn to the question of whether freedom of movement is a human right. We can divide this discussion into two parts: the freedom to leave and the freedom to enter. In this section,

[3] It bears noting that I am here only outlining obligations that arise specifically from human rights, as understood within the framework I propose. Affluent countries may well owe more demanding obligations that are grounded, for instance, in a history of colonialism or exploitation in the contemporary global economy. Though I bracket these considerations in order to build the arguments in this paper on fairly minimal premises, the existence of more demanding duties would further support the conclusions I draw.

I cast doubt on the idea that source countries violate rights to freedom of movement by restricting the ability of healthcare workers to leave.

As a starting point, consider what is commonly acknowledged to be a human right: the freedom to move within the confines of one's own country. States that deny this right are often considered oppressive states. Indeed, historically, geographical restrictions have been used by states such as the Soviet Union to exert undue control over their citizens. Taking a widespread agreement on this point for granted, it has been argued that the same reasons that support treating internal freedom of movement as a human right also apply globally. In order to invoke the so-called cantilever argument, it is not necessary to specify these reasons. As Joseph Carens (2013, 239), the most prominent exponent of the argument, explains:

> I deliberately do not attempt to articulate the rationale for treating free movement within the state as a human right. Instead, I just claim that whatever that rationale is, the same rationale will apply to movement across borders because the reasons why people want to move from one place to another will apply in both cases.

In other words, the cantilever argument does not delve into the philosophical foundations of the human right to domestic freedom of movement, it simply takes it for granted. If the argument is successful, it would show that healthcare professionals from low- and middle income countries have a right to migrate to high-income countries, in much the same way they enjoy domestic freedom of movement. And this, in turn, would mean that states may not tackle the brain drain problem by impeding their healthcare workers from leaving (it also means that other states may not stop them from entering, though I defer discussion of this point to the next section).

A natural way to rebut the cantilever argument would be to resist the analogy that it proposes. In other words, one might attempt to highlight normatively significant differences that make domestic but not global freedom of movement a human right. Here, however, my approach is a different one. I want to concede the validity of the cantilever argument, and assume that domestic and global freedom of movement are normatively analogous. Although I scrutinize this assumption in the following section, accepting it allows us to think more carefully about how the issue of medical migration puts pressure on the right to freedom of movement *within* any given state. For as I want to show, domestic freedom of movement cannot be absolute, and the content of the individual right that protects it must be established in light of its effects on the pursuit of other important goals, including the right to health. Legitimate states are under no duty to allow entirely unrestricted movement. Hence my cantilever argument here is a 'reverse cantilever' that emphasises the limits of the human right to internal freedom of movement, and by extension, the human right to leave.

Let me start by pointing out that brain drain occurs not only across countries, but also within them. Whenever personal, professional, and financial incentives are sufficiently strong, doctors will move from the countryside to the cities, from poor to rich regions, and from the public to the private sector (or, in many developing countries, to the NGO sector). This internal brain drain typically leads to gaps in the provision of healthcare, and inequalities in availability and quality along geographic and socio-economic lines. Virtually all developed and many developing countries attempt to put in place healthcare systems that minimise these gaps and inequalities. As we saw before, these efforts are part of what is required to secure the human right to health, understood as a higher-order right to live in a state with adequate and equitable health

policies. But to what extent may states restrict the domestic freedom of movement of healthcare workers in order to secure the human right to health?

At this point, it is useful to distinguish between a weak and a strong sense of what it means to restrict freedom. A weak restriction of freedom imposes costs on certain options that remain available nonetheless. One could also say that it creates incentives and disincentives for action, without actually taking away any meaningful option. When we impose high taxes on particularly lucrative professions, for example, we make the option of choosing these professions somewhat less appealing. This is a weak restriction of freedom of occupation. When we force someone to take up a certain profession, on the other hand, we are removing a whole set of options that they might find valuable. This is a strong restriction. Whereas the latter is a clear violation of the right to occupational choice, the former needn't be: we have an abstract interest in choosing our own line of work, but a legitimate state is under no duty to guarantee an endless or unrestricted range of opportunities. Weak restrictions of freedom are compatible with our human right to occupational choice.

Admittedly, the distinction I have just drawn is not always clear-cut, since the line between weak and strong restrictions of freedom can be blurry. Nevertheless, it is largely uncontroversial that much like weak restrictions of freedom of occupation, certain weak restrictions of freedom of movement are not only permissible but required by justice. If the domestic migration of healthcare workers creates inequalities in healthcare provision for different social groups or geographical areas, we commonly think that the state ought to persuade doctors to practice in underserved areas. It could, for instance, increase pay differentials for healthcare workers in the public sector depending on their geographical location. It could impose higher taxes on those working in particularly desirable areas within the private sector. It could make it more difficult

to practice in cities by limiting the number of licenses given out each year. And so on. In these examples the state creates incentives to work in underserved areas, or increases the costs of not doing so.

Under favourable conditions, these measures of persuasion may suffice to ensure an equitable distribution of healthcare workers. But it is also possible that (dis-)incentives alone will not bring about the desired outcome. Lukas Stanczyk (2012) has argued that in situations like these, the state may force healthcare workers to serve needy populations. He cites compulsory service requirements as an example. Over 70 countries—including Japan, Australia and Norway—have or have had schemes by which medical graduates are required to practice in underserved areas for a number of years (Frehywot et. al. 2010). These service requirements are often one of the conditions attached to offers for a publicly-funded medical education. When this is the case, even critics of coercive anti-brain drain measures typically agree that voluntarily accepted contractual obligations can be morally acceptable (Brock and Blake 2015: 214-5).

But service requirements are sometimes imposed not just on those who rely on publicly-funded studentships, but on all prospective students. I would argue that, under certain circumstances, measures like these may also be permissible. This is so because (despite their name) not all compulsory service requirements are necessarily strong restrictions of freedom of movement or occupation. For one thing, they do not eliminate the option of becoming a doctor or a nurse – they simply attach an additional cost or disincentive to it. Nor do they force anyone to live and work in a place where they rather wouldn't be, since medical students—whether financed publically or privately—would accept this possibility as a condition of their training. To be sure, compulsory service programmes eliminate the option of becoming a doctor who will attend exclusively to wealthy urban patients. But much like the option of becoming a banker

who doesn't pay taxes, this is not an option that a legitimate state must provide (see Stilz 2016, 58).

For these reasons, human rights to freedom of movement and occupation are not violated by states that impose compulsory service requirements. Granted, designing these measures in ways that are fair and effective can be challenging in practice. Even if no one is forced to choose a profession that will entail a (temporary) restriction of their freedom of movement, there are limits to what can reasonably be imposed on prospective students; the disincentive or cost must be reasonable in order for the option to remain meaningful. Furthermore, unreasonable costs may discourage people entering the healthcare professions in the first place. Hence a balance must be struck between the goal to be achieved and the loss of freedom and effectiveness that the policy implies. I am here assuming quite generally that a service requirement of, say, one or two years can be a justifiable cost that will not act as a severe deterrent, though of course the justifiability and effect of any given policy is context-dependent. In any case, it seems clear that some versions of this practice are in principle justifiable and effective. On the continuum between persuasion and coercion, at least some types of compulsory service requirements will be within the bounds of what a society may ask of its members without violating their rights.

Now, I believe that these observations can help shed light on the measures that can be justified to curb the global brain drain.[4] Many restrictions of freedom of movement that have been decried as unacceptable in the global context are in fact analogous

[4] For an excellent discussion of some of these measures, see Gillian Brock's contribution in Brock and Blake 2015. The arguments made in this section reinforce her conclusions.

to the restrictions we have just discussed in the domestic context. Consider the following policies. At the least restrictive end of the spectrum, there are proposals to make medical education in low- and middle income countries more 'locally relevant.' By offering medical curricula focused on local needs, such as the treatment of infectious diseases, graduates become less attractive for employers in high-income countries, hence reducing the options to move abroad (Eyal and Hurst 2008). A more restrictive policy option is the so-called 'Bhagwati Tax,' which would have source countries place a tax on the income earned by their high-skilled professionals living abroad (Bhagwati 1976). This form of taxation follows the same rationale as taxes and pay differentials that are imposed within a domestic healthcare system in order to manage the geographical distribution of professionals. Something similar can be said about exit taxes, that is, one-off taxes to be paid by healthcare workers who emigrate. As long as exit taxes are not so prohibitively high as to effectively eliminate the option of leaving, they may qualify as a weak restriction of freedom of movement. Finally, there are compulsory service requirements, which may be applied either to all medical students, as discussed above, or specifically to those who intend to leave.

These measures increase the costs of departure, but do not eliminate the possibility. They are weak restrictions of freedom of movement. As long as they are known to those entering the healthcare professions, they can be avoided entirely by choosing an alternative line of work. Of course, like any restriction of freedom of movement, they must be reasonable, proportionate, effective, and so on. But they are in principle permissible. Now, at this point someone might object that the human right to exit should never be subject to any conditions whatsoever. In other words, whereas weak restrictions of internal freedom of movement may sometimes be justified, the same is not true with regard to global freedom of movement. Recall, however, that I am here

assuming that the cantilever argument is correct, and that both types of freedom of movement are normatively analogous. To be sure, there are reasons to think that the freedom to exit is *particularly* important, given its significance as a protection against oppressive regimes. Nothing I have said should be taken as an attack on the freedom to leave oppressive regimes, which is, of course, entailed by a human right to asylum. Everyone, including healthcare workers, enjoys that right. Yet as I have argued, the policy proposals discussed here are not necessarily rights violations; they do not in themselves make a regime oppressive.

To conclude this section, it should be noted that—in line with the attribution of responsibilities outlined at the outset—the responsibility to secure the human right does not fall solely on the shoulders of source countries. If institutional capacities and resources are limited, it may well be incumbent upon other, more affluent states to provide assistance, be it through financial assistance or the deployment of healthcare workers of their own. The case for such responsibilities is even stronger when these other agents are in some way casually involved in the predicament of developing countries, for instance by encouraging and benefitting from the brain drain. Hence, the policies I have discussed in this section should perhaps be seen as last-resort measures that source countries can take when other agents fail to meet their obligations. But the main point I have been making is the following: a proponent of the cantilever argument cannot, on pain of contradiction, reject these measures simply on the grounds that they restrict freedom of movement. Like freedom of movement within a given country, the freedom to leave can be restricted without violating human rights.

The Right to Enter

So far, I have argued that even if there is a right to global freedom of movement, it should not be understood as an absolute right. Much like we accept weak restrictions of freedom of movement in the domestic context, we may entertain policies to persuade healthcare workers to stay in their home countries by increasing the costs of departure. However, in this section I want to go further, and ask whether destination countries seeking to curb the brain drain may not only dissuade prospective immigrants, but also place strong restrictions to their freedom to immigrate. To answer this question, we must take a closer look at the rationale for a purported human right to global freedom of movement, which we have hitherto left unexamined. As we will see, people often have important interests in moving across borders, but a proper conceptual understanding of human rights ultimately does not support a general right to do so.

International law recognises a right to *leave* any country, albeit no corresponding right to enter countries other than one's own (see Art. 13 of the UDHR). In recent years, however, authors such as Joseph Carens (2013: Ch. 11) and Kieran Oberman (2016) have argued that there are compelling moral reasons to recognise a right to enter alongside the right to leave, thus giving us a comprehensive right to freedom of movement. Their arguments operate largely within the naturalistic understanding of human rights, emphasising the significance of freedom of movement for the protection of basic human interests. As Oberman (2016, 35-6) puts it, we have a general interest in pursuing the 'life options' that 'give our lives meaning and purpose: friends, family, civic associations, expressive opportunities, religions, jobs and marriage partners.' We furthermore have interests in associating with others to pursue political goals. In order

to access the life options that are of value to us, so the argument, we must be able to move to the places where they can be realised. Many (or perhaps even most) of the life options that we may want to pursue are likely to be within the country where we reside. But then again, some are not. In order to access them, we need to be able to move across international borders.

The argument can be pushed even further. If the right to emigrate really protects fundamental interests—as virtually everybody agrees—then it might be thought conceptually and normatively incoherent to deny the existence of a right to immigrate. For unless there are states willing to grant entry, a right to exit appears to be worth little (Dummet 1992: 173; Cole 2000: 58). The human right to global freedom of movement must therefore be seen as an indivisible package. And if human rights act as constraints on migration policy, the argument goes, then medical migration cannot be coercively restricted in light of its effects on the health prospects of those who stay behind.

This line of reasoning has considerable force, not least because it is hard to deny that the pursuit of our life option across borders can be an important individual interest. But in order to see whether that interest can ground a general human right, we must also look at whether its satisfaction is required to fulfil the political role that human rights play – that is, how the purported right fits within the practice of human rights. As we saw at the outset, the content and limits of human rights cannot be understood merely in abstract philosophical terms, but must also be established in view of their political function. Human rights are not merely protections of basic human interests; they are also conditions for the legitimacy of states in the international system.

How does this latter insight shed light on the human right to freedom of movement? In order to be recognised as legitimate by the international community, a state

should clearly respect, and as far as possible facilitate the pursuit of the opportunities or life options that matter to its citizens. The greatest possible degree of internal freedom of movement (consistent with other just goals, such as an adequately-staffed healthcare system) is instrumental to this end. But if the opportunities that somebody values lie outside of its borders, there are arguably only two things a legitimate state can do. First, it can attempt to create those opportunities within its territory. Imagine, for instance, that many citizens have an interest in pursuing higher education, but that there are not enough universities to offer this opportunity except to a small percentage of all qualified applicants. Arguably here the state ought to create more university places, to the extent that this is financially feasible and compatible with the pursuit of other important social goals.

Of course, some life options that people may want to pursue are far less generic. Some may want to move abroad to be with family or loved ones, or to experience a culture that simply cannot be replicated within the borders of their own country. Here, the only thing that a legitimate state can do is to allow people free exit to pursue these more specific life plans. This suggests that the human right to freedom of movement is—as recognised in international law—primarily a right to move freely within the borders of one's own country, as well as right to exit it. Yet it may not necessarily imply a right to immigrate to any country of one's choice. Since human rights obligations accrue primarily to the state of the person in question, it is not obvious that other countries have to guarantee to that person the fulfilment of his or her opportunities.

Therefore, on the view that I have been sketching, the asymmetry between entry and exit is not necessarily conceptually incoherent. It also not normatively incoherent, if one takes a closer look at a class of exemptions for whom the right to leave must

indeed be complemented by a right to enter: refugees. When a state oppresses or persecutes its citizens, it loses its legitimacy. In these cases, as we argued before, the responsibility to protect the human rights of these citizens shifts to other states, which must provide protection and assistance. The right to asylum must be considered a basic right in a world divided entirely into sovereign states. For those migrants who are not oppressed or persecuted, however, there is no general human right to immigrate.

At this point, I should point out that this is not an argument against immigration. The fact that there is no human right to immigrate does not mean that considerations of human rights have no bearing on the immigration policies of destination countries. Whereas high-skill migration of doctors, nurses and midwives may in some cases undermine the realisation of the human right to health, low-skill migration has an overall positive effect on poverty-reduction in source countries. If affluent countries have duties to help secure subsistence rights in developing countries, as we argued before, then inviting greater numbers of low-skill immigrants is an important way to discharge these duties.[5] To be sure, there are also other mechanisms by which affluent countries can help alleviate poverty in developing countries *in situ,* and these other mechanisms should be exhausted.[6] But a more permissive immigration policy is known to be a particularly effective strategy. As Robert Goodin (1992, 8) once put it, 'if we cannot move enough money to where the needy people are, then we will have to count on moving as many of the needy people to where the money is.'

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[5] See also Pevnick 2011: 86-9. It is worth noting that many proponents of the right of states to control their borders accept this line of argument, see e.g. Miller 2005: 198; Wellman 2008: 127.

[6] After all, low-skill workers, like most people, have an interest to stay in their home countries. Emigration should not be the only way for people to escape poverty. On this point, see Oberman 2011.

This argument invites the following objection. Like all countries, destination countries sometimes struggle to ensure an adequate and equitable distribution of healthcare workers along different regions. Immigrants are often willing to settle in regions that are less attractive to domestic healthcare workers, thereby helping fulfil the state's obligation to secure the human right to health. Furthermore, whereas high-skill immigration provides great economic benefits for receiving countries, low-skill immigration may involve costs and risks. For example, it is sometimes said that low-skill immigration leads to lower wages, the erosion of the welfare state, and a deterioration of the position of the worse-off. If this is correct, destination countries are caught in a dilemma between meeting the needs of citizens and those of foreigners (Ypi 2008; Macedo 2007). Since human rights obligations accrue primarily to the state of the individuals in question, why shouldn't destination countries prioritise the needs of their own citizens?

Even though states are the primary duty-bearers for their citizen's human rights, it does not necessarily follow that they should promote high-skill immigration nor that they should restrict low-skill immigration. Consider first the point about high-skill immigration. Of course, it is true that foreign healthcare workers often play an important role in closing gaps in healthcare provision. There is nothing objectionable about hiring these workers when it does not undermine the realisation of the right to health in their countries of origin. Whenever it does, however, a duty not to harm others must take precedence over the state's obligations towards its own citizens. After all, we are not allowed to undermine the realisation of the human rights of foreigners in order to ensure our own, in the same way that it is impermissible to steal from others in order to pay one's debts. This point aside, however, it is also the case that many of the afflu-

ent countries that contribute to the brain drain through their recruitment policies possess the resources to train an adequate number of healthcare workers domestically. In order to secure the human right to health of their own citizens, then, it is neither necessary nor in many cases permissible to encourage medical migration (see also MacKay 2016; Ferracioli 2016).

Moving on to point about low-skill workers, a first response to the objection is to scrutinise its empirical premise. It is not clear that there is always a tension between the interests of the worst-off in destination countries and those of low-skill immigrants. Indeed, studies in various affluent countries suggest that the effects of low-skill migration on domestic wages, for example, are either negligible or even positive (Dustman, Frattini and Preston 2013; Mette and Peri 2016). One might also point out that the interests of the domestic worst-off are often politically more aligned with those of low-skill immigrants than with those of their better-off compatriots (Valdez 2019). But let us grant, for the sake of argument, that there is a tension here. Since we have argued that there is no general right to immigrate, a country would not violate human rights by maintaining a restrictive immigration policy, as long as it discharged its duty to help secure subsistence rights in other ways. However, if it were to welcome fewer low-skill migrants, this would not mean it could therefore compensate by encouraging more high-skill immigration, if this were to undermine the realization of human rights in developing countries.

To conclude this section, let me make one final point regarding the human right to immigrate and the brain drain problem. Let's suppose that the approach that I sketched here is misguided, and that healthcare workers *do* have a human right to immigrate to any society of their choice. Would this conclusively show that affluent countries are not justified in reducing the number of healthcare workers they admit? Not necessarily.

If there is a human right to immigrate, then surely all people possess it in equal measure. In other words, it is held by both high-skill and low-skill migrants. But now consider the following two empirical propositions, both of which strike me as highly plausible. First, the number of potential low-skill migrants greatly exceeds that of high-skill migrants. Second, for at least many affluent countries, there is an absolute number of migrants that can be accepted each year without overburdening the institutions of the state, and endangering the fulfilment of other human rights. To be clear, this number may be much higher than commonly assumed (although I cannot say with any certainty how high it actually is). But if *any* such absolute limit exists, then it follows that governments must apply some kind of selection procedure to decide whom they admit. Currently, high-skill migrants such as doctors and nurses are admitted preferentially, due to the benefits that they generate for receiving countries. But if there is a human right to immigrate, such preferential treatment would violate the human rights of low-skill migrants. A fairer selection procedure—an unweighted lottery system, for instance—would give each person an equal chance of fulfilling their human right to immigrate. Yet if the number of low-skill migrants outnumbers that of high-skill migrants, a fair distribution of the right to immigrate would indirectly lead to a reduction of the actual number of doctors, nurses and midwives who settle in affluent countries (see also Stanczyk 2016 for a similar argument).

Regardless of whether there is a human right to immigrate, then, a just immigration policy for affluent countries would in practice reduce the number of healthcare workers from developing countries, and admit larger numbers of their low-skill compatriots.

Conclusion

This paper has looked at the issue of medical migration through a human rights lens. There is a tension, it is often thought, between the rights of healthcare workers who want to leave developing countries, and the rights of those who stay behind. On this view, restrictions of freedom of movement amount to human rights violations, impermissible instruments in the struggle to meet often overwhelming health needs. By motivating an account of human rights that combines insights from naturalistic and political conceptions, I questioned the extent to which freedom of movement is a human right. While there is a human right to emigrate, weak restrictions of our freedom to leave are morally permissible, as the 'reverse cantilever' argument showed. With regard to the freedom to enter, the proposed human rights framework supports a right to asylum, and it provides strong reasons in favour of more low-skill immigration. But it does not establish a general human right to immigrate, and indeed it places limits on the recruitment policies of destination countries when these exacerbate the brain drain problem. Hence both weak restrictions of the freedom to leave and strong restrictions of the freedom to enter are in principle justified ways to help secure the right to health in developing countries.

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