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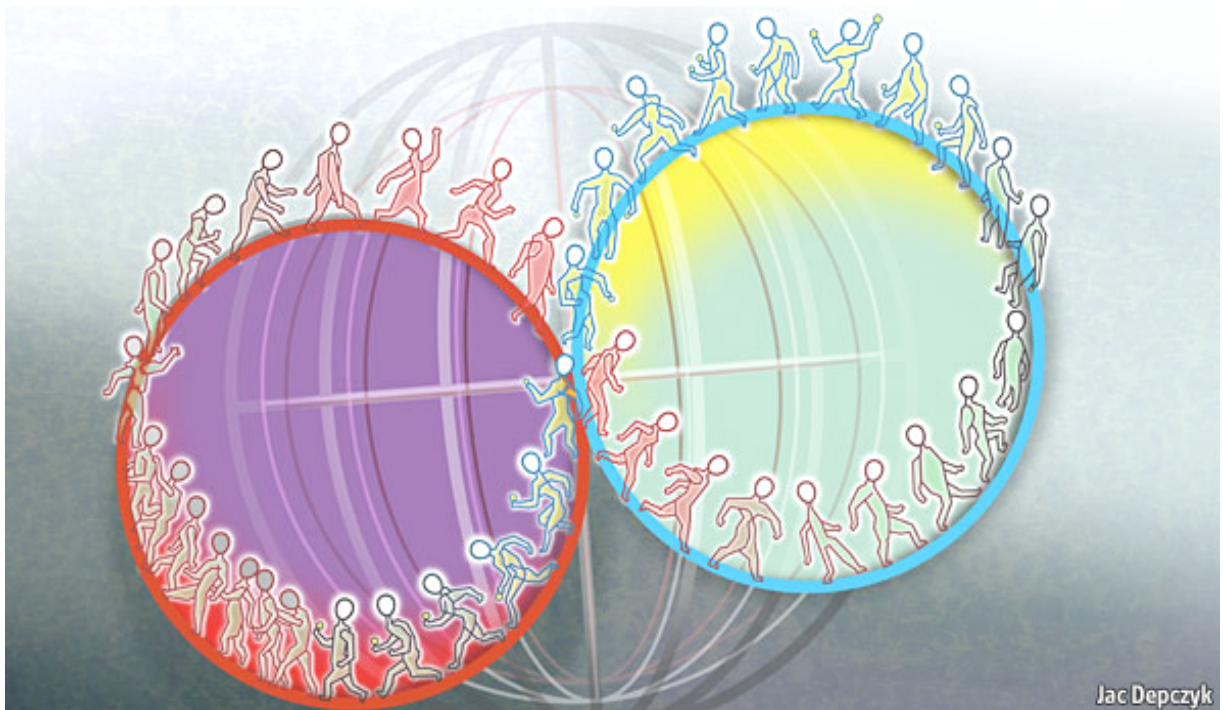


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# Right to Migrate & ‘Brain Drain’



[They say that ‘grass is always greener on the other side of the fence,’  
For a true emigrant, is it merely the grass?]

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Migration has always been generating a complex tension between individuals and nations. This tension has become evident in what is called the *open and closed borders debate*.<sup>1</sup> There are many perspectives on why people migrate, how people migrate, what impact migration has on what are called ‘receiving’ and ‘sending’ countries, and whether countries should encourage or limit migration. As a result, some advocate a completely free migration policy of ‘open borders’, while others favour either a total moratorium of ‘closed borders’ on migration or offer partially open and partially closed borders, named ‘porous borders’, with certain controls and restrictions on migration.

In order to show that the control of migration and its restrictions is a highly controversial and volatile issue that raises many ethical questions, I will analyse in this thesis a fundamental phenomenon which accompanies migration itself, namely *human capital flight*. This phenomenon is often depicted by its more popularized name, 'brain drain'. It concerns that highly skilled workers in developing countries seek a better future by migrating to developed countries. There has been an ongoing debate about the negative and positive effects of *human capital flows*. Most importantly, it can create problems for the sending country, given that expertise and skills are 'lost'. For that reason, my research will focus on the emigration of highly skilled workers and its impact on the sending countries as they are mainly the most disadvantageous participants of this human capital flow.

Accordingly, the main question I would like to investigate is: *to what extent can it be ethically justified for countries to impose restrictions on the migration of individual emigrants whose expertise could be significant for the country of origin which invested in their education?* The structure of my thesis will consist of 3 chapters guided by a number of coherent sub-questions serving as assets to the answer of my earlier mentioned question.

The questions I would like to answer in the first chapter are as follows: First, what are the benefits and drawbacks of brain drain respectively to the sending countries, receiving countries and individual emigrants themselves? Here, I will provide an overview of the ‘loss’ and ‘gain’ sides of human capital flight from the perspective of both the sending and receiving countries.

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<sup>1</sup> For the main discussion and the arguments of the debate see: Carens, J. H. (1987) *Aliens and Citizens: The Case for Open Borders*. *The Review of Politics* (49): 251-273. Cole, P. (2000). *Philosophies of Exclusion: Liberal Political Theory and Immigration*. Edinburgh: Edinburgh University Press. Miller, D. (2005). *Immigration: The Case For Limits*, in A. I. Cohen and C. H. Wellman (eds), *Contemporary Debates in Applied Ethics*. Oxford: Blackwell. Wellman C.H., *Immigration*, in *The Stanford Encyclopedia of Philosophy* (Summer 2010 Edition), Edward N. Zalta (ed.), available online: <http://www.science.uva.nl/~seop/archives/sum2010/entries/immigration/>, accessed 10 May, 2012.

The problem of human capital flight will be analysed from different aspects such as economical and intellectual. Additionally, *push (negative)* and *pull (attractive)* factors will be illustrated to show what makes highly educated individuals motivated to emigrate.

Having considered the negative and positive aspects, I will come back to the problem of brain drain and answer the last question of the chapter: what is the moral conflict the developing nations face dealing with the excessive migration of skilled workers? Here, I would like to formulate the problem of brain drain as a conflict of two moral principles, namely: respect for the freedom of movement of skilled workers from the perspective of the countries of origin and the obligation to protect the national welfare of the country of origin and rights of its citizens.

The second chapter will answer the question of what is the moral basis of the right to migrate which can protect the individual right of skilled and talented workers to migrate? In order to do this, I will first refer to the current legal status of the freedom of movement provided by the Universal Declaration of Human Rights. Second, to establish freedom of movement as a basic liberty, I will refer to principles such as freedom, equal autonomy, principle of non-coercion, freedom of conscience, moral equality etc. Besides, I will promote the human right to migrate as protecting the freedom to access the full range of existing life options [advantages] to individuals that are important for being autonomous and for attaining the free development of a human personality, personhood. Thus, I will demonstrate that freedom of movement can count as a human right, for it counts as essential component to protect the capacity of human agency and to exercise this capacity.

Regarding the unreasonably high costs that sending countries face being drained of intellectual capacity, one might imagine that skilled workers may have a duty to provide the assistance that they might owe their poor compatriots. This duty can entail different alternatives: i) a duty to assist and make poor compatriots better off overseas ii) an obligation to repay the costs of training before or after emigration, iii) a duty to stay in their state of origin forbidding educated individuals from leaving due to the severe state of affairs iv) restricting the emigration of educated individuals requiring them to do a certain time of work at home and then allow them to emigrate. In view of duties of assistance to compatriots, the concept of the '*agent-centered prerogative*'<sup>2</sup> will be introduced as a major opposing force towards the restrictions on migration of skilled workers. The main idea of this prerogative is that it allows agents to act in light of their

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<sup>2</sup> Scheffler S. (2001). *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought*, Oxford: Oxford University Press, pp. 97-110.

own projects, interests, or relationships, and deem them as more valuable than the impersonal optimal outcome of the projects and relationships of others.

Having presented the human right to migrate in light of the human agency account [that it is based on autonomous choices] and the ‘agent-centered prerogative’ [that gives greater moral weight to individuals’ life choices, projects], I will also challenge these accounts in relation to brain drain problem. The discussion and reflections will be held by the question, to what extent is it morally legitimate to pursue personal projects when this would conflict with seemingly basic duties to assist others in immediate need?

Given the difficult nature of balancing the two moral principles involved, namely, (i) *freedom of movement* and the (ii) *duty of assistance* toward those remaining behind, the third chapter responds to the ‘agent-centered prerogative’. Understanding migration as a basic human right, I will investigate the implications this has for the argument for restricting migration.

For that I present and examine the arguments which can be given to justify imposing restrictions on migration to protect the poor & developing countries from brain drain. The scope of my analysis concerns the main arguments given for *the protection of the national welfare* and the ‘*decent minimum*’ principle, understood as a provision of fundamental basic needs which are essential for the basic level of functioning of the society. The emphasis is to be made on the threats (disorder or crime) caused by migration to the national welfare, public safety and order, health, morals, the economic well-being of the country and other important freedoms of citizens.

In the conclusion, I will come back to the main question which I posed in the very beginning: whether and under which conditions it would be justifiable to impose restrictions on the migration of individual emigrants whose expertise could be significant for the country of origin which invested in their education? As an upshot of my analysis, I will conclude that the emigration of skilled workers can be restricted or replaced by the duty of assistance towards their poor compatriots, in the name of protecting national rights or preventing falling below the decent minimum of basic needs. In addition, one indication will be made. Although there is a room for certain a restriction of emigration, we cannot impose them before we properly determine (i) the extent the emigration of skilled professionals disturbs the adequate functioning of the sending countries in such a way that the effects will be disastrous for the sustainability of its national welfare, basic needs of the compatriots ii) the extent which is legitimate for skilled individuals to assert their agent-centered prerogative iii) and how large can be ‘fair share’ of either emigrants or receiving countries towards the duty of assistance sending countries.

## 1.1 WHAT IS THE PROBLEM OF THE PHENOMENON OF 'BRAIN DRAIN'?

Originally, the notion of *human capital flight* was used in a more general and broadened sense to designate the physical movement of highly skilled professionals from one country to another (from poor countries to developed ones)<sup>3</sup>. By skilled workers I generally refer to fields of expertise such as engineering, medicine & health, academics. The term was first coined by the British Royal Society with reference to the growing immigration of first-rank scientists towards the United States of America from countries such as the United Kingdom, Canada, and the former Soviet Union.<sup>4</sup> In view of human capital flight, the major concern of my research are the consequences of the habit of highly skilled workers in developing third world countries to migrate, because they seek a better, more decent life with more favourable opportunities in more developed countries. This can create problems for the country of origin, given that the expertise and skills which were invested in emigrants are 'lost'. This phenomenon is often depicted by the more popularized term 'brain drain', which is related to the discourse of the migration of highly skilled workers, and used as a symbolical expression-signal of negative outcomes caused by human capital flight.<sup>5</sup>

The controversy of brain drain can be understood like this: the development of the knowledge economy does not only produce more successful knowledge workers, but also causes 'brain drain', which favours more developed (and often rich) states over less developed (and often poor) states. The negative and positive effects caused by the emigration of skilled workers, (that is, the costs and benefits of the circulation of talent) make the phenomenon controversial and subject to fiery debate.

One of the initial and essential aims of this introductory chapter is to indicate by referring to empirical assessments what the benefits and drawbacks are of the skilled individuals' movements across the borders; who wins, who losses, and how large both sides 'Gain' and 'Waste'?

<sup>3</sup>The term Human Capital was invented an agricultural economist Theodore Schultz in the 1960s to define 'a measure of the economic value of an employee's skill set.' Available online: <http://www.investopedia.com/terms/h/humancapital.asp#ixzz1dEr5IRUn>

<sup>4</sup> Cervantes M. and Guellec D. (2002). *The brain drain: Old myths, new realities!*, *OECD Observer* No. 230, January.

<sup>5</sup> Edokat, T. (1998). *Effects of Brain Drain on Higher Education in Cameroon*. [http://www.uneca.org/eca\\_resources/Conference\\_Reports\\_and\\_Other\\_Documents/brain\\_drain/word\\_documents/edokat.doc](http://www.uneca.org/eca_resources/Conference_Reports_and_Other_Documents/brain_drain/word_documents/edokat.doc)

Before I will provide the positive and negative effects and consequences, I will explain how I approach and will come to further observations in this chapter. First, the intellectual and economic aspects will serve as basic criteria for my analysis in regard with the gains or detriments of brain drain. In my view, the major paradox of ‘brain drain’ occurs once it comes to the trade-off of economic and intellectual values.<sup>6</sup> Second, for the sake of conceptual clarity, it should be emphasised that while all human capital constitutes the skilled individuals’ emigration, it does not necessarily imply ‘brain drain’ itself. The reason of this is that skilled migration can lead to various scenarios which can be both conflicting and wholesome: loss of ‘drained brains’, and settlement, gain of diaspora and remittance, or brain circulation.<sup>7</sup> Third, since there are different conflicting views on the contribution of ‘brain drain’, it is important to make a distinction between the perspectives of receiving countries, sending countries and the partly international global welfare. Finally, it can be also crucial to illuminate the role of the so-called pull/push factors that explain the direct and indirect causes and mechanisms of brain drain migration; in other words, the reasons why so many people move from the developing countries towards the more developed countries. The ‘*push*’ factors are indigenous factors (depressing characteristics in the country of the origin) that put pressure on those who are able to leave the sending country to do so. The ‘*pull*’ factors are those factors that make the receiving country seem attractive. The differentials between these two types of factors are determined by the decision of the individual who migrates.<sup>8</sup> Appealing to earlier mentioned four criteria, I will illustrate in the upcoming section the different empirical references and statistics regarding the ‘Gain’ and ‘Waste’ sides of the ‘brain drain’ coin, respectively to *receiving* and *sending* countries.

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### 1.2.1 THE EFFECTS ON RECEIVING COUNTRIES

I will only briefly outline the consequences of the immigration of skilled workers for receiving countries, as receiving countries are generally seen as gaining from *brain drain* and therefore by default are the consequences in most cases less controversial, and more positive. In

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<sup>6</sup> This is the reason why it is necessary to analyse in more details—the human capital flight precisely in relation to ‘*brain drain*’ (intellectual capital flight) which is described as a paradoxical net of economic and intellectual costs and benefits.

<sup>7</sup> Due to typology of ‘*brain drain*’, these scenarios can be identified with following concepts: ‘*brain gain*’, ‘*brain waste*’ (‘*brain haemorrhage*’), “*brain circulation*” (“*brain exchange*”), and ‘*internal brain drain*.’ Salt, J. (1997). *International Movements of the Highly Skilled*. Directorate for education, employment, labour and social affairs - international migration unit. Occasional Papers No 3. Paris: OECD.

<sup>8</sup> AUN Report (2002). *Study of Concepts and Causes of Brain Drain*. <http://shikshanic.nic.in/cd50years/z/8T/H3/8TH30101.htm>

the coming section, the major focus will be made on the impacts concerning the sending countries, which are considered being in the most disadvantageous position by losing their highly skilled and very much needed people because of emigration at the expense of the emigration motivated by push/pull factors. Nevertheless, I find it essential to sketch some major negative and positive effects of the 'receiving' countries for the sake of building up a sufficient overview of the problem.

It is quite obvious that developed countries gain technical expertise and positive externalities generated by skilled labour from the economical or intellectual points of view, and in the best circumstances from both. As a case of economic benefits: the advantages which the entire National Health Service in the UK has gained from a steady flow of highly skilled short-term healthcare workers from developing countries is an example of such an economical gain. The positive aspect of this human capital flight that counts for the receiver country perspective (the UK) is that it helps to sustain the high levels of care and treatment provided for British patients and to benefit the state-treasury by saving in funds on training extra healthcare professionals.<sup>9</sup>

Considering the intellectual gain of receiving countries, there is a global need interest in the exchange of accumulated skills and experience, knowledge and technological benefits. It is true that the presence of foreigners<sup>10</sup> by their difference and creativity may produce new opportunities.<sup>11</sup> The example which is cited the most often is the role of the highly educated Indian technicians in building ICT industries, which have become the economic success of high-tech industries in Silicon Valley and in India itself. Another prominent example is the Russian scientist Igor Sikorsky, the 'father' of the helicopter. His emigration to America gave him more support and favourable opportunities to invent the first successful helicopter. Given Russia's economic turmoil back when he emigrated, he states: "*I had learned enough to recognize that*

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<sup>9</sup> The proponents of international approach (e.g. receiver-states) could argue that 'brain drain' should not be considered as a problem, and the scientist, should contribute to the progress of human and the global welfare, no matter where he is. On the contrary, national approach would plead that migration of highly skilled people to developed countries doesn't contribute to human welfare, especially, in those but contribute to the developed countries' welfare.

International Mobility of the Highly Skilled, OECD, 2002. See also: [www.oecd.org/migration](http://www.oecd.org/migration)

<sup>10</sup> To exemplify a bit more, many laureates granted with the Nobel Prize were foreigners. The creators of advanced technology enterprises such as Intel and eBay are foreigners.

<sup>11</sup> Cervantes M. and Guellec D. (2002). *The brain drain: Old myths, new realities*, OECD Observer No. 230, January.



*with the existing state of the art, engines, materials, and – most of all – the shortage of money and lack of experience... I would not be able to produce a successful helicopter at that time.*<sup>12</sup>

Following this, the reasons of emigration of skilled individuals are often seen in pull (attractive) factors, exerted by the destination countries and hereafter incorporated into the individual's subjective interests. A related concern in the cases of the Indian students and the Russian scientist is then the lack of necessary facilities in the countries of origin for research, in order to utilize one's capacities, to improve their living-circumstances and personal development.

In spite of the unambiguously positive effect of the individuals' movement from poor to rich countries, there is evidence of some of the negative impacts as well, namely, the case of intellectual loss which can be described by the phenomenon of '*internal brain drain*'. I shall illustrate this by the position of the anti-immigrant Dutch Freedom Party, which is directed by a fiery right-wing politician Geert Wilders. The main worry of his political party is that more and more young researchers are thinking about going abroad once they have finished their postgraduate studies. The reason of that is the competitiveness of skilled immigrants, the lack of career opportunities and the international saturation of the academic research sector.<sup>13</sup> Being pulled out by these factors, they lose their incentives to develop their skills or would rather 'flee' the country to better develop their skills abroad and, try their luck elsewhere by contributing to other countries. To better estimate the effects of '*internal brain drain*' on emigrants of 'receiving' countries, it is important to keep in mind that migration policies can be another important pull factor. For instance, the 'labour market test' enforced by EU countries (e.g. the German 'Green Card') that also targets ICT specialists from non-EU countries can serve as proof of such a statement. As an effect, the native skilled workers might face up with a decline in wages and an increase in competition caused by the immigration of skilled workers.<sup>14</sup>

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<sup>12</sup> *Sikorsky I.* available online: <http://www.britannica.com/EBchecked/topic/543984/Igor-Sikorsky>  
See also: The New York Times, April 20, *Russian airplane will be made here*, available online: [http://query.nytimes.com/mem/archive-free/pdf?\\_r=1&res=9906EFD91238EE32A25753C2A9629C946896D6CF](http://query.nytimes.com/mem/archive-free/pdf?_r=1&res=9906EFD91238EE32A25753C2A9629C946896D6CF)  
accessed 10 May, 2012.

<sup>13</sup> Radio Netherlands Worldwide, *No 'brain drain' in Netherlands*, available online: <http://www.rnw.nl/english/bulletin/no-brain-drain-netherlands>, accessed 5 May, 2012

<sup>14</sup> The United States, France and Germany and other developed countries, also have put in place visa policies that encourage the *brain drain*. It is the employment-based immigrant visas that offer programs for persons of extraordinary ability in the sciences, arts, education, business and athletics.

## 1.2.2 THE EFFECTS ON SENDING COUNTRIES

For sending countries or, let us say, *'those remaining behind'*<sup>15</sup> (TRBs hereafter), the signals of *brain drain* are much greater. The discussion about the benefits and costs of brain-drain in regard to the sending country will be focused on the impact of human capital formation, the role of remittances, the impact of return migration, the effects of diaspora externalities and the impact on governance and corruption. In addition, I will try to show the ambiguous effects of the emigration flows of skilled and educated individuals in regard to the intellectual capital and welfare of sending countries.

One of the striking negative effects of human capital flight is *'emigration surpluses'* of highly skilled individuals - when the sending countries might suffer from a direct economic loss of their emigrant's, especially when it concerns the critical shortages of healthcare workers. According the World Health Organization, the ratio of doctors to patients in sub-Saharan Africa is estimated to be 20 per 100 000. 34% Of Zimbabwe's nurses and 29% of Ghana's doctors work abroad (i.e. Zimbabwe has only 6.2 doctors per 100,000 people).<sup>16</sup> Regarding push/pull factors, the reasons of this waste of healthcare workers can be explained as a possibility to get away from the negative aspects (push factors) of their home country, like a non-democratic society, poverty and corruption, a declining healthcare service or missing thereof, inadequate living conditions, high levels of violence and crime. The Red Terror in Ethiopia, the interminable conflict in Somalia, genocide in Rwanda, civil war in the DRC, and human cruelty in Sierra Leone are extreme examples.

The intellectual detriment of the human intellectual capital flight is the loss of the potential institution-builders, *the supply side*.<sup>17</sup> How would TRB-states improve their institutions if the most productive and capable individuals have left for the international market in hope for more favourable alternatives?<sup>18</sup> Regarding the loss of the academic sector, for instance, the U.S. has many attractive offers to eminent or rising scholars in terms of salaries and time-tables for teaching, which has led countries all over the globe to lose a significant amount of professors, including some of its best.

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<sup>15</sup> Devesh Kapur and John McHale (2006). *Should a Cosmopolitan Worry about the 'Brain Drain'?* Ethics & International Affairs 20/3.

<sup>16</sup> Hooper C.R. (2008). *Adding insult to injury - the health care brain drain*, Journal of Medical Ethics 34:9. P.686

<sup>17</sup> It is a development of domestic institutions (e.g. reforming schools, establishing universities, clinics and the uptake of the business).

<sup>18</sup> Kuhn P. and McAusland C. (2006). *The International Migration of Knowledge Workers: When Is Brain Drain Beneficial?*, IZA Discussion Paper No. 2493.

Another possible drawback of the emigration of educated and highly skilled professionals which includes both intellectual and economical loss are the effects of the so-called '*free riding*'. When educated workers who trained [partly] at the expense of their government emigrate, the invested funds are lost, as the education does not sufficiently contribute to the welfare of the nation, but rather to the personal welfare of the educated worker. A current example is the continuous Iranian emigration, of which the workers occupy top jobs across every professional sector in the US and Europe. As a result of this emigration, the sending countries, instead of getting the fruits of the investment they have put in educating their professionals, lose their engine of growth in the face of their educated emigrants.<sup>19</sup> If almost all professionals emigrate, the local educational system generates only costs rather than contributes to economical development of the nation. Thus, the unsustainable educational system might induce the country to abandon the investment in professional and university sector. In order to ensure that the professionals after graduating will not emigrate without paying back their debts and costs to the society of their home country, the U.S. produced the "*Bhagwati tax*"<sup>20</sup>, which upholds certain obligations (e.g. conditional education grants that are repayable on emigration, visa fees) towards the countries of origin. However, all of these mechanisms still face practical difficulties and demand the collaboration between poor and rich countries, as well as their and others consent at the international level.

Regarding the positive effects of the skilled individual's emigration, they can be considered in the terms of circular movement of skilled professionals. The gain of this brain circulation can be presented by the *diaspora community* (i.e. an expatriate knowledge network) that tries to set up connections/linkages, trade opportunities between highly skilled expatriates and the country of origin on macro- and micro-level. Letting educated people go can turn out as a great advantage: talented minds are able to leave the country 'greener pastures'. The opportunity to migrate can be an incitement to get more and higher education. This by-turn might help those who left to alter or form the level of human, social, and financial capital of the developing countries as it happened in Indian students by their aroused interest in studying

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<sup>19</sup> See: Labont R, Packer C, Klassen N. (2006). *Managing health professional migration from sub Saharan Africa to Canada: a stakeholder inquiry into policy options*. available online: <http://www.human-resources-health.com/content/4/1/22>, accessed 4 May, 2012.

<sup>20</sup> Dating back to more than thirty years ago Jagdish Bhagwati proposed "Brain Drain Tax" – that should from one side, reduce the "*free riding*" and from the other side, provide the "monetary compensation" that the High Developed Countries (HDCs hereafter) pay to the for the "draining of their cultural and poor countries scientific elites". Bhagwati, J. N.(1976). (ed.) *Taxing the Brain Drain, Vol. 1: A Proposal*, Amsterdam: North-Holland.

science and engineering.<sup>21</sup> By opening up possibilities for diasporas, India was well known for being the successful country which converted 'brain drain' into brain 'gain' where "...trade is the glue that bind us together and the diaspora will provide strength to this bond."<sup>22</sup>

Another positive effect of skill accumulation of the human capital might be created through remittance. The remittance offsets the loss of skilled workers who do eventually leave, as well as their return as wealthier, more educated, and better-connected workers. This can positively benefit their home communities by looking forward to a better life for themselves and their families. Recent studies of such developing countries as Ghana, Fiji, India, Romania, and the island country of Western Africa Cape Verde have found supporting evidence that brain drain migration results in the strengthening of the economic situation of those family members left behind by the influx of remittances from their descendants and immigrant communities living abroad. The underlying economic idea behind this is that migrants contribute to their home countries either by the remuneration that will exceed the costs of educating them in the first place or with their enhanced skills once they return.<sup>23</sup>

The massive increase in medical education in the Philippines illustrates a rather controversial form of *brain gain*, as it combines both economical gain and intellectual loss. Nurse-exporting countries intentionally invest in training an excess number of nurses and medical workers and send them to [Western] affluent countries depending on the demand of certain workers they have. Thus, the opportunity to emigrate depends on completion of qualification, that is, the demand for certain categories of workers (e.g. nurses, physical therapists, doctors, hospital wards). This outflow of human capital is seen as a good investment and an overall strategic labor export plan.<sup>24</sup> Nevertheless, becoming vagary of affluent countries' demand for health, like the UK, is still resulting in the local healthcare deficit, underemployment. For example, in some cases doctors prefer to undergo retraining to become

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<sup>21</sup> *Drain or gain? Poor countries can end up benefiting when their brightest citizens emigrate*, available online: <http://www.economist.com/node/18741763> \_<http://www.economist.com/node/18741763>, accessed 26 April, 2012.

<sup>22</sup> Karan Singh, India's ambassador to the US 1989-90, available: <http://www.diasporas.se/forcountriesoforigin.html>, accessed 4 May, 2012

<sup>23</sup> Hamilton K, Yau J.(2008). *The global tug-of-war for health care workers*. Washington, DC: Migration Policy Institute.

<sup>24</sup> Initially the movement of highly skilled Philippine's professionals was principally a private initiative among the workers and their placement abroad. It was only during mid-70s, after the rise of the demand for contract workers government began an institutionalised management of contract worker migration. Indeed, the entire National Health Service in the UK has become totally dependent on such a steady flow of highly skilled health short-term labor from developing countries. See: Association of Philippine Medical Colleges. (1971). *Physician and Nurse Manpower Survey Report*. Manila: APMC, See also: <http://www.ilo.org/public/english/protection/migrant/download/imp/imp51e.pdf>, accessed 10 May, 2012

nurses because of emigration competition depended on the qualification. The chances to leave the country in the face of nurses is much higher unless the affluent countries have demand for them. What is interesting to note here is that by contrast with the case of free-riding, Philippines' government does not allow nurses to go if their loans have not been paid. Then, the question is how to keep more nurses and healthworkers at home if they have repaid their nursing education, and are free to emigrate?

It is noteworthy to remark that in order to determine to what extent the problems of a sending country are endogenous, we should take into account the particular situation which lies largely within the sending countries themselves. For instance, Eastern-European and South-American countries exhibit relatively low brain drain levels. India is among the least affected countries despite their important contribution to the overall stock of skilled migrants worldwide. Whereas the size of brain-drain appears very high in small countries (e.g. Pacific and Caribbean islands), or countries suffering from civil war and political instability in Central America and Sub-Saharan Africa (e.g., Haiti, Somalia, Sierra Leone), every country has their own type of brain drain to deal with.

Summing up, it stands that '*brain drain*' causes a noticeable difference between the sending and receiving countries, the individual pull and push factors, between different kinds of 'brain gain' and 'brain waste' in terms of its economical and intellectual perspectives and etc. Nonetheless, in spite of the possible gains, they have a controversial character, since '*those remaining behind*' are always the first who face the harmful costs and pay for the detriments of the failure of *brain drain* migration.

### 1.3 WHAT IS THE MORAL CONFLICT THE DEVELOPING NATIONS FACE DEALING WITH 'BRAIN DRAIN'?

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The foregoing section has shown that sending countries do have a lot to lose due to brain drain migration. This faces us to some challenges for both emigrants and sending countries. On the one hand, one can imagine that the 'loss' side of skilled individuals migrating in a certain fashion leads sending countries to consider some restrictions to emigration or define whether returning home/moral obligations towards poor states left behind is a case of "*when*", "*if*", "*must*" or "*ought to*".<sup>25</sup> On the other hand, one can argue that emigration can be very important for the individuals themselves, at least in terms of the pull/push model (e.g. the search for improvements of life in the public sector, the development of skills or poverty and corrupt

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<sup>25</sup> *The brain-drain cycle*, available online: <http://www.economist.com/node/5279609>, accessed 1 May, 2012.

institutions). This together leads us to the main question of whether migration restrictions can be justified on the ground of brain drain problem? The best way to conceptualise the brain drain problem would be to put it into the challenging question of trading-off and balancing two moral principles: *achieving the freedom of movement for skilled workers* and *securing the assistance for their poor compatriots*.<sup>26</sup> One could argue that these trade-offs can be ethically justified and, therefore, sufficient enough to come to a solution to the brain drain problem. On the contrary, imposing migration restrictions on skilled workers in light of the brain drain problem involves coercing people, as it tries to get them to act in a certain way - in our case, to stay and assist their poor compatriots (by temporary work, remittance and etc). In other words, to justify coercing people by restrictions on the migration of skilled workers is to show that these persons have a duty to assist to their home countries, their compatriots, to do what the coercion is designed to make them do.<sup>27</sup>

The above cited conflict is phrased partly by the perspective of the emigrants (i.e. their duty to assist or to stay), partly by the position of the sending countries. It is important to mention that the main focus of my research is not the personal dilemma which potential emigrants face: whether to stay and serve their compatriots, or whether to go abroad and seek a more flourishing life elsewhere. It is the conflict first, in terms of the obligation/aim of countries to respect their citizens freedom of movement and second, in terms of the need/national welfare, the moral obligation to protect national human capital, the basic societal and institutional structures, or simply to satisfy the basic needs minimum of 'those remaining behind.' Given this, we literally face the difficulty of balancing two moral principles, respectively the (i) freedom of movement and the (ii) duty of assistance towards those remaining behind. Consequently, the question to be asked then is to what extent we can justify the restrictions on migration of skilled workers whose expertise could be significant for the home/donor country? For that, in the following second and third chapters I will concentrate on the freedom to migrate as a basic liberty and on possible arguments that can give some moral authority to the sending countries to limit this liberty on the ground of the brain drain problem.

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<sup>26</sup> Oberman K. *Can Brain Drain Justify Immigration Restriction? P.4*, available online: [http://iisdb.stanford.edu/evnts/5944/Oberman\\_BrainDrain\\_20101.pdf](http://iisdb.stanford.edu/evnts/5944/Oberman_BrainDrain_20101.pdf), accessed 14 May, 2012

<sup>27</sup> Ibid. P.5

This chapter will attempt to answer the question: *Do people have a human right to migrate and how should we understand it?* My primary intent is to set out the moral grounds for a human right to freedom of international movement. In order to do so, the question that will be investigated is: To what extent is it morally legitimate to pursue personal projects when this would conflict with seemingly basic duties to assist others in immediate need? For that, the freedom of movement will be considered as an essential element that empowers people with a human agency to rule over their lives and to pursue their agent-centered interests which also can be seen as personal moral worth.

### 2.1 FREEDOM OF MOVEMENT IN A NETWORK OF HUMAN RIGHTS

One important reason why we should have a right to migrate is a value of freedom which is largely expounded in the Universal Declaration of Human Rights. Here I will start my analysis with considering the legal status of the right to migrate exhibited in the Universal Declaration of Human Rights (UDHR) (1948) and the International Covenant on Civil and Political Rights ICCPR.<sup>28</sup> As we can see in Article 13, the human rights of emigration (i.e. to leave or ‘exit’ the country) are explicitly proclaimed in the UDHR.<sup>29</sup> According to Article 13 (1), everyone is endowed with the rights to freedom of physical movement and residence-ship within the border of a state. In addition, Article 13 (2) states that everyone has the right to leave any country, including his own, and to return to his country. It is not clear whether the human right to emigrate also implies the right to immigrate to another country. Receiving states do have a moral obligation to the protection of a human right to immigrate, but only in the case of the persecution. On this view, Article 14 (1) proclaims the protection of the freedom of a political asylum seeker who faces persecution; this means that, according to UDHR, the autonomous choice to immigrate does not have any moral weight at all. As ‘immigration rights’ are regarded, not as a basic right, but just ‘*a remedy*’ which would be fulfilled only when the human right to security is threatened. Thus, there is a legal asymmetry between the right to emigrate and to immigrate.<sup>30</sup>

<sup>28</sup> This right is also reinforced in the International Covenant on Civil and Political Rights (ICCPR) which, in Article 12, states that: “*Everyone shall be free to leave any country, including his own*”, See: the International Covenant on Civil and Political Rights, [www.unhchr.ch/html/me](http://www.unhchr.ch/html/me), accessed 8 May, 2012.

<sup>29</sup> See: *Article 13(1) & 13(2)*, Universal Declaration of Human Rights, (1948). Available online: <http://www.un.org/en/documents/udhr/>, accessed 10 May, 2012.

<sup>30</sup> See: *Cole, P. (2006). Towards a symmetrical world: migration and international law.* Ethics and Economics, 4(1). Yet, it is noteworthy to remark that the freedom of movement beyond nation-states is not recognized, since the human right to *immigrate* [to ‘enter’ another country] is implicit and narrowly asserted in the text of declaration.

Nevertheless, the human right to migrate can be better recognised in relation to other human rights. The UN Convention on Human Rights protects and holds many human rights which can serve as a robust ground for the freedom of movement. To prove that there is a moral human right to migrate, it can be seen that people have significant interests in the freedom of movement on the part to generate and protect other freedoms and duties which are also legally recognized as human rights. In a nutshell, I will introduce some of them: freedom of religion Article 18, freedom of association Article 20, freedom of occupational choice Article 23.1, the freedom to marry Article 16, Article 15 focuses on right to nationality (the right to have and to change nationality), and due to Article 26, elementary education shall be available, compulsory and free.<sup>31</sup> It is fair to assume that sometimes these rights and essential life interest (e.g. an international marriage, changing nationalities or simply studying abroad) can be fulfilled only beyond the domestic context, which requires international freedom of movement. In virtue of the interdependence of these human rights with their derivative right to freedom of movement, we can assume that once we curtail the right to migrate, other rights become at stake to be violated at some length. By interdependence I mean such situations when restrictions on freedom of movement can, therefore, imply restrictions on freedom of expression, of marriage, religion, conscience and others alike.

Thus, it provides us with more justification to consider the right to migrate [to cross the international borders] as a part of a wide set of indispensable rights protecting important freedoms. Since all aforementioned freedoms aimed to protect our interests in being free to access the essential life options and to make our autonomous choices and since many options can only be found abroad, this gives us a reason to see right to migrate as an indispensable human right.

Summing up, a commitment to already recognised human rights requires from us a further commitment to the human right to migrate without which the underlying interests are not to be sufficiently protected. Although all these freedoms are widely regarded as basic liberties that are thought to have an importance so that it is deemed impermissible to curtail them, there are

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While the freedom of movement within nations is seen as moral right, the movement across nations is merely a matter of political discretion. Although the reasons of moving across and within nations are the same, there is no right to enter another country. That makes the right to immigrate in comparison with right to emigrate [to leave] meaningless.

<sup>31</sup>See: Article 15, Article 20(1) and Article 23(1). Universal Declaration of Human Rights, (1948), <http://www.un.org/en/documents/udhr/>, accessed 10 May, 2012.



certain severe costs or circumstances, when such a curtailment is deemed justified and essential.<sup>32</sup> Attention to these circumstance and restrictions will be offered in the third chapter.

## 2.2 FREEDOM OF MOVEMENT & THE RIGHT TO 'ACCESS TO THE ADAVANTAGES'

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When people are suffering from terrible life conditions such as famine, poverty or violence in their home, it seems reasonable to provide them with the right to migrate in order to pursuit the minimum of a decent life which is not available in their home country. Nonetheless, what can we say about the search for the improvement of life conditions of people who haven't hit rock bottom, like educated emigrants, skilled professionals who seek to find a more favourable environment for their personal, intellectual development and well-being? In this regard, are they also entitled with the human right to migrate?

While my major intent is to set out the moral basis for the right to migrate, I find it useful to examine the main opposing argument against the human right to migrate in order to more clearly reveal the moral grounds of the human right to migrate.

For instance, a well-known proponent of controlled borders, David Miller, argues that freedom of movement does not have a universal value that should be counted as a human right. Instead, he tends to justify freedom of movement inasmuch as it protects the vital interests and basic rights. This views the human right to migrate merely as a '*remedial right*', and reminds us basically of Article 14 (1) on the protection of the asylum seekers from persecution. Miller states: "*of course, there is always some value in people having more options to choose between, in this case options as to where to live, but we usually draw the line between basic freedoms that people should have as a matter of right and what we call bare freedoms that do not warrant that kind of protection.*"<sup>33</sup> Following that, there should not be any general human right to migrate once your interest goes beyond the provision of vital interests.<sup>34</sup> Thus, if we apply this account to our question on 'brain drain' migration, skilled individuals are entitled with a human right to migrate as long as their life in their home country is in danger, either by poverty, persecution, or other severe circumstances. Whereas the emigration of skilled individuals in order to access to more life options or advantages [that goes beyond the basic standard of living] would not have

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<sup>32</sup> See, in this relation, the criteria for the justified restriction of freedom of movement in the UN's Human Rights Committee, General Comment No. 27: Freedom of Movement (Article 12), ICCPR/C/21/Rev.1, November 2 1999. Also, Joseph Carens' case for immigration limitation accepts the plausibility of such a restriction on immigration that may be enforced if would-be immigrants are to be a threat to the national security and public order of a state.

<sup>33</sup> Miller, D. (2005). *Immigration: The Case For Limits*, in A. I. Cohen and C. H. Wellman (eds), *Contemporary Debates in Applied Ethics*. Oxford: Blackwell, P. 194

<sup>34</sup> *Ibid.* P. 196

any significant moral demand to count as a human right. According to Miller, migrants can claim 'remedial rights' to go to the country where they can get a secure protection, but this does not provide them with the right to choose where they wish to go or to stay. He states that receiving countries can offer this minimum protection, however, they cannot be forced to let in migrants for the additional options which lie beyond the the protection of the basic needs and vital interests. Although migration motivated by non-vital interests and reasons can be valuable for all parties (sender states, emigrants, receiver state), it does not deserve the same protection as a remedial right; at least, it remains an aspect of a state sovereignty. This principle of sovereignty provides the receiving sates with national autonomy - a right to exclude the immigrants on the basis of their national assumption.<sup>35</sup> That makes freedom of movement a conditional right depending on the state's choice.

In spite of the fact that, Miller's argument highlights some fair points in regard to the principle of global justice and equality, his value of state sovereignty does not really give a sufficient justification for reducing the right to migrate to a vital needs interest. It is arguable that the highly skilled individuals can be legitimately denied to migrate so as to promote their enlightening ideas or talents, skills and therefore, to work wonders of engineering for us, create fascinations of art and knowledge, and achieve new heights in technology. As Arash Abizadeh points out, the state's laws subject persons to coercion by virtue of limiting person's options and by coercive threats that will prevent a person from choosing certain options in the future.<sup>36</sup> Abizadeh rejects that a state has the right to unilaterally close its borders, since it might violate a personal autonomy what is the core value of the liberalism and democratic theory. For instance, restriction on skilled migration [exercised by state sovereignty] might obstruct humans' developments and therefore desecrates the individual's autonomy and human's worth, which can be manifested in terms of work. In view of this 'no coercion' claim, Miller seems to underestimate the value of freedom of movement by making a state's sovereignty to be of prime importance compare to the individuals' self-determination.

In its bid, by encouraging migration solely based on basic vital interests and national sovereignty, Miller seems to forget that the migration caused by push/negative factors is not always advantageous for the emigrants. At least, given the fact that the kernel of the problem of

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<sup>35</sup> It is widely agreed that each state has a legal right to its territory, and therefore is given a qualified right to the exclusion and to limit immigration. The power over the national territory is essential to autonomy of the nation-state.

<sup>36</sup> Abizadeh A. (2008). *Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders*, in: *Political Theory*, Volume 36, Number 1, P. 40.

many push factors are political and economic issues, it can be foolhardy to make such a judgment. Many emigrants might not want to leave their country but they are forced or pushed to do so, by working in developed countries and sending remittance. Although the economical gain in considering the effect of remittances is salient and might help poor compatriots to meet their vital interests, the brain waste of the skilled remains an issue in such countries as the Philippines and India. Such examples are precisely violating a personal autonomy because they prevent us from going where we want to go. That is, physical movement seems to be a valuable liberty not only because of its instrumental value to protect someone's life or to seek better alternatives of life, but also because of the actual intrinsic value of moving in itself. If we agreed to reduce the human right to migrate merely to the provision of decent minimum of basic needs, it would amount to restriction and violation of our autonomy that might give rise to valid claims of unjust treatment. Besides, there is a risk that freedom of movement will be identified only with the right to survive.

Migration renders equal autonomy among individuals simply because it provides an equal access to advantages and life options to individuals in order to attain the free development of a personality. Thus, the further line of my reasoning is to argue that freedom of movement is not just remedial right, but it is a basic freedom that protects human's autonomous choices, the value of human agency. My claim is that beside the remedial right to migrate, skilled individuals should be also granted with the right to migrate in terms of self development that might involve opportunities and advantages which are not available in their home countries.

In order to give some more support to this assumption:

- (i) First, we have to defend that people should be entitled with the right to access the full range of life options and advantages that might lie beyond the range of options accessible within their domestic state of origin.
- (ii) Once this right to access to all life options and advantages is protected, it gives us a more stable moral ground to establish the right to migrate as a human right.

In response to the first task, perhaps the most suitable example of human rights which indicates that migration is the right of *'equal access to advantages'* (which is also proclaimed in the UDHR Article 27). It states that everyone has the right to freely participate in the cultural life of the community, to enjoy the arts and to share in scientific advancements and its benefits.<sup>37</sup> In view of this right and other rights which can be recognized in this one (freedom of expression,

education and etc), we can see that its content go beyond the basic provision. By linking different rights together, UDHR seeks to render equal autonomy to everybody by proclaiming that everybody should be entitled to have equal access to advantageous life options existing in the world.

Thus, if we stop at the range of domestic options or at the provision of the basic needs minimum, then states could radically curtail and violate all other aforementioned freedoms proclaimed by human rights (e.g. freedom of association, expression and etc.) by coercively narrowing down the options available to us. We have an essential right, in what Joseph Raz has called ‘independence’<sup>38</sup> - a condition of autonomy free from the subjection to the will of another through coercion or manipulation, by which the other narrows the options available to us.

Traditionally, human rights have been anchored in fundamental human needs, offering all human beings the same protection for needs-based rights. Above this narrow account, I suggest to consider the human rights through the *human agency account*, with the idea of autonomy lying at the centre of that agency. Viewed in the framework of human agency, human rights are protections of our normative agency what we mean by the term personhood (understood as the ability to formulate and pursue a personal life plan from a reasonably broad menu of options). Hence, I am willing to argue that freedom of movement can count as a human right as it is essential to protect the capacity of human agency and the exercise of this capacity. By securing freedom of movement we are securing our human agency, the ability to develop one’s personality and to be the author of one’s own life story.<sup>39</sup> According to this human agency approach, human life consists not only of a minimally decent life, but human flourishing as well.

One of the most often-cited proponents of open borders, Joseph Carens, remarks: “Every reason why one might want to move within a state may also be a reason for moving between states. One might want a job; one might fall in love with someone from another country; one might belong to a religion that has few adherents in one’s native state and many in another; one might wish to pursue cultural opportunities that are only available in another land.”<sup>40</sup> It is true that people do have essential interests in the freedom of movement in order to have access to life options or ‘access to the advantages’ which are not available in the country of origin. Let’s

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<sup>38</sup> Raz J. (1986). *The Morality of Freedom*, Oxford: Clarendon Press, pp. 377-378.

<sup>39</sup> Cole P. *Towards a right to international movement*, available online: [http://independent.academia.edu/PhillipCole/Papers/1112347/Towards\\_a\\_right\\_to\\_international\\_movement](http://independent.academia.edu/PhillipCole/Papers/1112347/Towards_a_right_to_international_movement), accessed 11 May, 2012

<sup>40</sup> Carens J.H. (1992). *Migration and Morality: A Liberal Egalitarian Perspective*, in Brian Barry and Robert E. Goodin, eds., *Free movement: Ethical Issues in the Transnational Migration of People and of Money*, University Park, PA: Pennsylvania State University Press, pp. 27-28.

remember earlier mentioned emigration which the Russian scientist, Igor Sikorsky, faced when his domestic state couldn't provide him with the necessary resources he needed to invent his helicopter. In the case of brain drain, we can talk about the heritage in the field of technological innovation, the development of potential talents and the exchange of skills. But for the encouragement of brain/skills circulation, we perhaps would not have an opportunity to enjoy all wonders of engineering, the internet and other modern technological gadgets, as well as the fruits of classical music, literature, paintings and other pieces of art which were cultivated by migrating aspirations. Moreover, Kantian deontology might demand that insofar as we are rational, we have the duty that all of our talents and abilities are to be developed: "for, as a rational being, he necessarily wills that all his faculties should be developed, inasmuch as they are given to him for all sorts of possible purposes."<sup>41</sup> Being rational gives us inclinations and obligations to develop our capacities and talents. And if we, by contrast, apply the maxim of refusing to develop any of our talents in a world as a universal law of nature, at the very least, the world would exist, but it would be obviously the worst world imaginable; it would be as living under a rock of ignorance and primitivism. It can be a duty toward the happiness of others and both oneself, particularly, in terms of answering the question of the ultimate meaning promoted by Martha Nussbaum as a freedom of conscience: "from the respect we have for the person's conscience, the faculty of inquiring and searching, it follows that we ought to respect the space required by any activity that has the general shape of searching for the ultimate meaning of life, except when that search violates the rights of others."<sup>42</sup>

Nevertheless, considering the weight the developed countries have by admitting the emigrants from developing countries, one may wonder why should they be the ones to support the flourishing of individuals that are not their citizens? Why should not sender nations be responsible for the flourishing of their citizens? By responding to this, we come across with another strong reason for the human right to migrate, that is, the idea of moral equality. According to Joseph Carens, it is crucial to treat both foreigners and citizens as free and equal moral persons. Provided that everybody is to have an equal right to the most extensive total system of life options, the priority and benefit of citizenship can be considered as morally irrelevant. It creates the social, economic and political inequalities among poor foreigners and

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<sup>41</sup> Kant I. (1969). *Foundations of the Metaphysics of Morals: text and critical essays*, Indianapolis: Bobbs-Merrill, Lewis White Beck, tr.; Robert Paul Wolff, ed. P. 47

<sup>42</sup> Nussbaum M. (2008). *Liberty of Conscience*, In *Defense of America's Tradition of Religious Equality*. New York: Basic Books. P.169

citizens that have to be “attached to positions open to all under fair conditions of equal opportunity.”<sup>43</sup> Hence, it is the right to migrate that is essential in order to compensate for an arbitrary natural contingency of citizenship which sustains unjust privilege and the enduring inequalities.

From what follows, we can conclude that there is a direct link between the right to freedom of movement and the right to access to all life options/advantages and to make autonomous choices. What I have been trying to illuminate so far is to show that freedom of movement is an essential component of human agency which is shaped by the concepts of freedom, conscience, autonomy, moral equality and independence. Consistently, the human agency approach takes us beyond the protection of basic needs and domestic context by requiring the equal access to the full range of life options/advantages which are essential for one’s personhood. Given this, freedom of movement counts as a human right that protects human agency and the exercise of this capacity. Thus, the human right to migrate can be grounded on the interests people have in being able to make important autonomous decisions on the range of options that can go beyond the domestic context and basic provision of needs. Viewed in terms of human agency, skilled individuals can be morally justified to seek and emigrate for self development, better opportunities and advantages which are not available in their home countries.

### 2.3 THE ‘AGENT-CENTERED PREROGATIVE’

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As it was defended before, the right to freedom of movement can entitle people with an equal right to access the advantages, thus, it is understandable that skilled workers in poor countries may seek better opportunities abroad. Nevertheless, the emigration of the brightest and highly skilled will in most cases not contribute to the welfare of their home country and its compatriots. As we stated before in the first chapter, it is the receiving countries and emigrants themselves who reap the fruits of skilled migration. Whilst the transfer of resources spent on education or nurturing technical skills of ‘drained brains’ is in question by the sender countries and TRBs. Taking this into account, one might object and argue that skilled emigrants ought to contribute to the common good (of their own country) or owe certain duties of assistance. Assisting poor compatriots can be done in several ways: (1) to allow educated emigrants to make their compatriots better off from abroad by sending remittances or by contributing from diaspora entrepreneurship, (2) to oblige them to repay the costs of training given by state of

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<sup>43</sup> Carens, J. H. (2008). *Aliens and Citizens: The Case for Open Borders*, in: Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays*, St. Paul: Paragon House. P. 221-229

origin (3) restricting the emigration of educated individuals requiring them to do a certain time of work at home and then allow them to emigrate [perhaps that can be accompanied with certain criteria mentioned in the option 1], and (4) a duty to stay in their state of origin forbidding educated individuals from leaving due to the severe state of affairs.

In response to these possible claims of assistance, I wish to apply Scheffler's concern against the strict utilitarian/consequentialist approaches.<sup>44</sup> Scheffler argues that moral obligations to maximize the impersonal good should be limited, and allow people room to live a life of their own. This is what he once-named, the 'agent-centered prerogative'. It allows agents to assign "greater moral weight to their own projects, relationships, etc. than they are assigned from the impersonal point of view."<sup>45</sup> Any moral theory that takes the interests of others seriously must admit there is a place to be found within agent-centered pursuits. In the context of brain drain, imposing restrictions on the emigration of skilled workers can involve coercing people to act in one of afore-described ways. On this view, personal concerns of skilled workers may sometimes legitimately override the claims to assist their poor compatriots. In case we cannot assert the agent-centered prerogative fully, we can also argue for limits on the duties to contribute to the welfare of one's compatriots. If skilled emigrants are not released from their duty to assist their compatriots, at least, they can be allowed to do less than is required to protect the national welfare of their country of origin. That means that the harsh restriction forbidding the skilled individuals to emigrate can be balanced by the means of some remittances to home country, temporary works or other contributions [e.g.. creating a diaspora community] that can be made overseas.

What is interesting about Scheffler's idea is that it gives a more sufficient ground for the right to migrate and explains why citizens might be excused for seeking their migration for personal pull interests and from being pushed to migrate on the basis of a remedial right. Although Scheffler assumes the possibility of some restrictions, he sees them in the light of agent-centered prerogative: "appealing to the disvalue of violations of such restrictions is directly analogous to an attempt to motivate agent-centered prerogatives by appealing to the value or goodness of an agent's carrying out his projects and plans."<sup>46</sup> Consequently, even if the restriction on brain migration is needed, the agent-centered prerogative can lead to the best resultant state of affairs but shape it in accordance with the agent's autonomy and well-being. We can interpret it in such a way that pursuing one's own projects is helping others with theirs.

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<sup>44</sup> Moral theories which constantly pursue the impersonal best resultant state of affairs

<sup>45</sup> Scheffler S. (1992). *Human Morality*. Oxford: Oxford University Press. P.56

<sup>46</sup> Ibid. P.90

Another support to the agent-centered-prerogative can be found in the human agency account proposed by James Griffin. He reverses the traditional way of anchoring human rights by objecting their redundant and overlapping content, and singles out the idea of human agency as the centered notion that should determine the human rights. According to him, many of the human rights protected in the UN declaration would not live up to human rights with human agency as a central concept. By agency, he means our autonomous choice of a worthwhile life and the liberty to pursue this choice supported by a minimum material provision and unhindered by interference from others: “deliberating, assessing, choosing, and acting to make what we see as a good life for ourselves.”<sup>47</sup> It is worth emphasizing that the importance of this account is based on the concept personhood. Human rights are precious because they are protections of the exercise of our capacity for personhood.

Thus, what is important about being a human agent – about being a person – is the capacity for agency derived from autonomy and liberty, which however should not be misinterpreted as being allowed to follow one’s whim. “*Human rights can then be seen as protections of our agency - what one might call our personhood.*”<sup>48</sup> Following that, only such rights that are important for human agency should be understood as human rights. In this respect, a right to freedom of movement would become an essential component of the human rights framework, for it gives people control over one’s agency to choose when, why, and where they go. Similarly, Phillip Cole connects the freedom of international movement with human agency by describing it as ‘*an element of the empowerment.*’<sup>49</sup> Although he suggests a conception of human agency (with the idea of autonomy lying at the centre) as a base for the human rights framework, his approach takes us beyond seeing human rights as basic protections, towards something more dynamic and demanding: “the conception of human agency does not only consist of having a recognisably human life story, but also possessing the power to be its author, to have a say over its content.”<sup>50</sup>

Bearing all this in mind, ‘those remaining behind’ in poor countries perhaps would not be wholly persuaded by this human agency account linked with the international mobility, as being

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<sup>47</sup> Griffin, J. (2008) *On Human Rights*, Oxford, Oxford University Press, pp.104-107

<sup>48</sup> Griffin, J. (2001) *Discrepancies between the best philosophical account of human rights and the international law of human rights*, Proceedings of the Aristotelian Society, CI, P.4

<sup>49</sup> Viewed as an element of the empowerment, we may assume that disposing one’s agency may help to have a say over the migration policies exercised, for instance, against the global poor and their skilled compatriots. See: Cole P. *Towards a right to international movement*, P. 11 available online:

[http://independent.academia.edu/PhillipCole/Papers/112347/Towards\\_a\\_right\\_to\\_international\\_movement](http://independent.academia.edu/PhillipCole/Papers/112347/Towards_a_right_to_international_movement)

<sup>50</sup> Ibid.



in a position of worse-off gives them a poor chance and hope to become better-off. Poor compatriots' human agency usually can be impaired by impoverished situation of their ill-governed state of affairs (e.g. negative factors like a non-democratic society, poverty and corruption, a declining healthcare service or missing thereof, inadequate living conditions). Additionally, it is also questionable whether granting the global poor with international free mobility would be sufficient to dispose their human agency to combat the enduring inequalities of the global world.

Although based on liberty and autonomy human agency account seems to be a substantive asset to human rights, there is a worry of whether alone human agency is an appropriate ground for human rights claims. At least, this faces us with the question what human interests or features can be determined by what we think we need in order to establish our human agency? There are many aspects of human rights that need to be protected before we can freely dispose our agency such as the right to healthcare services, the right to education, the right to free expression and etc. Provided that we have already included freedom of movement as one of them, what else and how many should be in a list of rights disposing human agency, where shall we draw the line? The risk is that we might end up either with too few interests or with too many interests so that the conception of human agency will be either correspondingly degraded or the exaggeratedly affluent.<sup>51</sup>

Hence, the main question is whether this agency approach provides us with sufficient tools to determine the extent of our duties to other persons like poor compatriots? Meeting the problem of imposing duties on emigrants to help compatriots/one's nation of origin, Griffin would argue that this obligation should be fulfilled by a national government. Unless this is not possible, then positive obligations may shift to those who are able to help.<sup>52</sup> Hence, he introduces the notion of 'ability'. In this regard, the duty of assistance towards compatriots would depend on the ability of educated people to help. Having set out the challenge for imposing restrictions on emigration in a framework of the duty of assistance to compatriots, I shall rule myself to the next question; to what extent is it morally legitimate to impose basic duties on emigrants to assist

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<sup>51</sup> It is often argued that by tying human rights to human agency, we might exclude certain categories of individuals who, for some reason, might not have the capacities to have a *human agency* and to rule over them, for instance, infants and individuals with impaired cognitive capacities. Therefore, they are simply excluded, because the absence of human agency leaves them without the possibility to enjoy the full range of other human rights. Similarly to the cognitive disabled, citizens/emigrants of poor countries can be deprived from their human agency.

<sup>52</sup> Griffin, J. (2008) *On Human Rights*, Oxford, Oxford University Press, pp.104-107

others in immediate need? How large is a skilled worker's fair share of this overall assistance burden?

Relying solely on the 'ability' is neither relevant nor morally justified. To force someone to carry his/her duty of assistance simply by referring to his/her ability to do so violates both the principle of justice and the moral idea of 'agent-centered prerogative'. Thus, regarding the extent of the agent-centered prerogative, it would be morally wrong to assume that emigrants are the sole agents who owe duty of assistance to their compatriots. Given the existence of problems caused by global inequalities, it seems neither prudent nor moral to allocate duties for assisting the poor solely or even primarily to their compatriots who, compared to the natives of rich states, are living on or below the decent minimum of needs essential for basic functioning. If people in a country are in need (e.g. there is significant poverty), one shall argue that both compatriots and people from other countries have moral obligations to assist. Skilled emigrants are not the scapegoats to be responsible for everything. Given that such obligations are shared by many, there is reason to accept that the agent-centered prerogative is not as limited as it would have been otherwise. Viewed from the perspective of shared duties, it might 'create space' for people to devote part of their time, talents, energy and resources to shape their own lives. Otherwise, if demands on highly educated individuals would be harsher than, for instance, on non-educated individuals, others in view of these restrictions and poor economic chances at home would prefer to refrain from higher academic education. As a career on non-academic merits can turned out to be more promising for individuals. This might lead to internal level of brain drain lowering the level of education of individuals. In this sense working in a non-academic labor sector [which is not suffering from deficit of workers] can give more opportunities to leave country for a better future life abroad. This also can at part explain the massive retraining of physicians, engineers, teachers and doctors to become nurses elsewhere which has been experienced in the Philippines, the largest exporter of nurses worldwide. Perhaps a chance to emigrate simply in the face of a nurse is much greater than continuing to work in the area of specialisation. The brains of skilled individuals-turned-nurses are to be unabsorbed because of the state's focus on the benefits of remittances produced by nurses emigration rather than on the poor conditions of affairs.<sup>53</sup>

Provided that everyone who is both concerned and able to assist the global poor has a duty to do something for them, there is always a question of whether emigrants must do more towards their compatriots than rich states or foreigners and where shall we draw the line. It can be argued

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<sup>53</sup> As result, the dependence on labor migration has created the severe problems for domestic health system where demand for the workers is not being met, to say nothing of the lowering levels of academic sector.

that the *'fair share'* of the duty of assistance of the nurses from the Philippines, students from India, Iranian free-riders and pushed out skilled African workers differs. Indeed, skilled workers from Africa who, compared to people in rich states are likely to be poor and in need themselves cannot fully carry a duty of assistance towards compatriots from abroad. Also, if the free-riding Iranian elite have not paid the costs of the training to their country of origin, does it mean that they fail to do their *'fair share'* and have to face the *'obligation of repayment'*? More controversially, in case of the nurses from the Philippines who do not owe the government for their education, brain drain, as we stated, still remains an issue.

As I cited before there are different options how the duty of assistance can be accomplished, ranging from remittance and diaspora to harsh forbidding of brain emigration. But even if we make, for instance, the engineers and doctors (e.g. from the Philippines) stay, whether it would radically change the poor state of affairs? Supposing a skilled engineer or doctor has done his *'fair share'* by repaying his training or educating himself, whereas others have not; instead, they happened to take a chance of free-riding to a more affluent country which readily has admitted them for natural reasons to be better off. Does the *'fair share'* represent the extent of the skilled worker's duty of assistance? Shall the skilled engineer who fulfilled his *'fair share'* leave their poor compatriots to suffer? If not, how much can he help to the compatriots?

What if we consider the option of skilled workers to provide the necessary assistance abroad by means of remittance and emigration taxes? For some categories of emigrants this tax revenue proposal may fail, therefore, the principle of *'fair share'* would be questioned. How the essential health services, compulsory education can be compensated by the tax if most of the doctors and teachers and other institution-builders have left? Also, another obstacle concerns the problems of collecting the emigrant tax revenue by poor states. It is true that some poor states cannot be trusted to distribute the revenues effectively, [particularly, in an incompetent or corrupt government]. On the contrary, there is another option; skilled workers may find it no easier to assist their poor compatriots by staying within their home state. The reason is merely the lack of the institutions required for a skilled worker to make proper use of their skills: imagine a doctor working in a state without a functioning health service or an engineer in a state which is too poor to fund engineering projects. Hence, it may be the case that they could actually provide more assistance from abroad, even if the assistance from abroad is not entirely sufficient to satisfy their duties. It should be also taken into account that rich states are to be better off than skilled workers in poor states; it may actually be that less can be demanded from the skilled workers than from rich state citizens that also owe duties of assistance both to the global poor

and their skilled workers themselves. Additionally, some recruiting policies and other examples of power inequality, oppression and exploitation of the developing world caused by powerful developed states (which were illustrated in the first chapter) also illuminates that skilled workers are not the only ones that owe assistance to the global poor. The rich states can also carry some duties of assistance to the global poor, perhaps, in the form of conscription that might also enforce a foreign skilled worker's duty to go.

To sum up, this chapter has shown that people do have essential interests in accessing options that lie beyond the domestic and basic needs range (self-development, jobs, studies, loved ones and etc.). More specifically, they have interests in conscience, independence, personhood and being autonomous choosers. Similarly, states should not interfere in personal decisions that, in the domestic context at least, are considered basic liberties, without providing good reasons for doing so. A skilled worker may have a duty to assist but, due to agent-centered-prerogative and shared/global concern, they also have a right to violate their duty. Nevertheless, the next chapter will offer the main possible arguments that can entail some limitation on the agent-centered prerogative, as well as restrictions on the right to migrate.

### CHAPTER 3 WHAT CAN JUSTIFY RESTRICTING THE RIGHT TO MIGRATE?

So far, there has been said much in favour of the 'agent-centered prerogative', which is aimed to combat restrictions on the international mobility, as well as to defend the individuals 'human agency' in regard to the duty of assistance. In spite of the importance of agent-centered prerogatives, there is always room left for some restrictions that may require agents to act in certain ways in some circumstances. Therefore, the main goal of this chapter is to answer the question to what extent is it morally legitimate to restrict the right to migrate when this would conflict with the rights of national welfare and basic duties to assist others in immediate need? Consistently, the forthcoming sections will examine two arguments that can justify the restrictions on the right to migrate together with the right to impose the duty of assistance on skilled emigrants toward poor compatriots. The arguments for the protection of the national welfare of both the receiving and sending countries will start a discussion on the plausibility for restricting migration in order to combat the severe consequences of brain drain. Another central line of my discussion will be drawn in the view of the '*decent minimum principle*'<sup>54</sup>, taken as a counter response to the '*agent-centered prerogative*' which goes beyond mere vital interests.

### 3.1 THE PROTECTION OF NATIONAL RIGHTS AND BASIC FUNCTIONING

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Previously we investigated that the right to migrate is a human right which should not be violated, however, there is always room for some limitations of this freedom. In hereafter I will examine one argument that can serve as a plausible ground for restricting the freedom of movement. This argument is related to the protection of the national welfare. The core idea of this argument can be put in this way: insofar as the costs of migration are particularly severe, the limitation of the right to migrate can be enforced by the agency of the protection of the rights of national welfare. Although this argument is commonly presented from the perspective of receiving countries (in terms of the mass influx of immigrants that can become a threat to the nation), the major purpose is to examine this argument from the sender country perspective.

One can argue that most moral rights are provisional rather than absolute, and can be limited under severe circumstances, for they are “resistant to trade-offs but not too resistant.”<sup>55</sup>

Similar to other moral human rights, the human right to migrate is a non-absolute right as well. Even some defenders of open borders such as Joseph Caren, Chandran Kukuthas et al. accept the plausibility of restricting the freedom of movement. According to their overall claim, restrictions on immigration may be enforced if would-be immigrants are to be a threat to the security and public order of a state.<sup>56</sup> For Caren, freedom of movement can be overridden by the principle of national security that can justify a refusal of the would-be immigrants. Regarding the view that Kukuthas offers, it is illegitimate to charge against the would-be immigrants who have proven that they are not a threat to national security. Instead, he suggests that it is ‘*tourism*’ that should be the main concern of national security, more than immigration, because large numbers of people move much more often in a short-term visit.<sup>57</sup> He also considers the threat of a state’s local economy as a sufficient reason to curtail the freedom of movement. The arrival of many immigrants can influence the distribution of goods; reduce the quality of services such as healthcare, education, the maintenance of public space.<sup>58</sup> To put it briefly, the main worry is that free migration can hurt the national welfare to such a degree that the functioning of society

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<sup>55</sup> Griffin, J. (2008) *On Human Rights*, Oxford, Oxford University Press, P. 37

<sup>56</sup> See: Caren, Joseph H., *Aliens and Citizens: The Case for Open Borders*, in Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays*, St. Paul: Paragon House, pp. 219-220.

<sup>57</sup> Kukuthas, C. (2005). *The Case for Open Immigration*, in Wellman, Christopher Heath and Cohen Andrew I. (eds.), *Contemporary Debates in Applied Ethics*, Oxford : Blackwell Publishing. pp.211-212

<sup>58</sup> Ibid.

would be undermined and put in danger. Free migration could also cause a local overpopulation problem. Because of free migration each country would lack incentive to control its own population as each country would assume that it can export its citizens to another country. If they did not control the migration influx, developed states, for example could be '*flooded*' by a mass of poor migrants from the developing world, whereas developing states would be suffering and facing the costs of the emigration surplus.<sup>59</sup> Despite all of the above, a nation-state has a moral obligation to admit the migrants if he/she does not endanger public order, national security, or causes overpopulation.

Therefore, the main line of their argumentation is aimed to underline the importance of securing the national welfare rights and the protection of its citizens. This justifies some restrictions on freedom of movement which "*are necessary to protect national security, public order (ordre publique), public health or morals or the rights and freedoms of others, and are consistent with other rights recognised by the present Covenant.*"<sup>60</sup> Considering harm not in the personal sense by social functioning, serves in this utilitarian argument a more justified role to curtail freedom of movement to the possible degree in the name of protecting public order, safety, and security etc.<sup>61</sup>

Despite that this protection argument is mainly applied by the receiving states, I dare to argue that this restriction is equally warranted for the sending countries, especially in the context of the brain drain problem. Considering the foregoing argument of protection of national welfare, we can assume that if states do face real danger of mass either emigration or immigration they would have the right to control it. This way, if developed states do have the right to protect themselves from the real threat of mass immigration, why not understand emigration in the same way? Shall the sending states have the same right to protect their national welfare from the real threat of mass emigration if too many people want to leave their country of origin? It is noteworthy to mention that so far the discussion of limiting the right to migrate was held mostly in the context of immigration rather than emigration. It has been claimed that a particular kind of immigration imposes great costs, while emigration is seen as cost-free. While it is possible to see

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<sup>59</sup>For the argument on overpopulation see: Miller, D. (2005). *Immigration: The Case For Limits*, in A. I. Cohen and C. H. Wellman (eds), *Contemporary Debates in Applied Ethics*. Oxford: Blackwell, pp. 201-202

*Indeed, due to the Article 12 of the ICCPR, despite that everyone is free to leave any country, it states that this freedom can be subject to restrictions in the name of the protection.* See: the International Covenant on Civil and Political Rights, [www.unhcr.ch/html/menu3/b/a\\_ccpr.htm](http://www.unhcr.ch/html/menu3/b/a_ccpr.htm), accessed 6 May, 2012.

<sup>61</sup> It is interesting to note, that the essence of the protection argument lies in the classical libertarian *Harm Principle*, first fully articulated by John Stuart Mill. He also imposes a legal prohibition on individual freedom: "*the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others.*" See: Mill, J.S., 1978, *On Liberty*. Indianapolis: Hackett Publishing Press. P.119

emigration without borders, it remains unreasonable to remove the controls over immigration. In view of a hypothetical sudden mass influx of people, it would impose great costs and serious consequences for the security of a nation-state. Due to the aforementioned problem of ‘brain drain’, sending countries can also meet an equivalent amount of threat caused by emigration. There are states that are simply threatened by mass brain emigration, for example, the mass exit of healthcare workers, leaving poor countries without an adequate provision of health care, which is one of the most essential basic needs for people.

Nevertheless, before we entirely apply the argument for protection of national welfare and move towards establishing moral equivalence between immigration and emigration restrictions, there is one caveat we should keep in mind - immigration is *per se* different from emigration.<sup>62</sup> It has its *national sovereignty thesis* which emigration does not have. Based on the sovereignty principle some like Miller have argued that receiving states should be in their right to exclude individuals from entering their territory: “states have the legal power inherent in sovereignty to admit or exclude aliens as they deem fit...”<sup>63</sup> This pleads that it is for the state to identify what is to count as a serious threat and what not. Can this sovereignty principle as well legitimize poor countries’ refusal to let certain individuals leave their territory? For instance, would it not be imprudent to grant the poor impoverished countries which are mostly ill-governed and perhaps corrupted the same national sovereignty? How can we be sure that the decision making process concerning the right of the skilled professionals to leave their country or to stay will be exercised by their national authorities justly or adequately? Nations may have a right to migrate in a ‘particularly liberal way’, but not an outright *de facto* right, and it concerns not only sending, but receiving countries as well. In such a case of migration control legitimized by sovereignty principle, the rights of certain categories of migrants can be limited when the political community of nation-state has *arbitrary dominion*<sup>64</sup> over migration. The problem is that the rights of skilled individuals can be subjected to certain restrictions without having a chance to contest with them.

My intent is not to defeat the argument of the national protection which, as I truly believe, is of great weight. Rather, I am questioning the idea of the principle of national sovereignty that can be undermined by inadequate arbitrary dominion and therefore rashly employed to the

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<sup>62</sup> See: Cole, P. (2006). *Towards a symmetrical world: migration and international law*. Ethics and Economics, available online: 4(1).[https://papyrus.bib.umontreal.ca/jspui/bitstream/1866/3371/1/2006v4n1\\_COLE.pdf](https://papyrus.bib.umontreal.ca/jspui/bitstream/1866/3371/1/2006v4n1_COLE.pdf)

<sup>63</sup> Ibid.

<sup>64</sup> Thinking of the individual outsider's right of freedom of movement which conflict with a state's control over migration, Abizadeh refers to the notion of *dominion* – a key concept in neo-republican theory.

emigration regime in an imitation of the immigration regime. Our choice is not between a controlled migration which brings order and stability for everyone and liberal anarchy without borders with instability in which everyone is worse off. The choice is whether we should take a global/cosmopolitan perspective or a local/nationalist one in order to examine the migration flows. To avoid arbitrary dominion, those exercising power over others must give reasons for their actions and those subjected to power must be able to contest. If we take a stance of nationalistic view, there is a risk that this independent national assessment might lead to its potential abuse and ultimately threaten the right itself. In the framework of the international view and international law [ICCPR] states should not be accorded wide latitude in restricting the freedom of movement [‘margin of appreciation’],<sup>65</sup> in order to start treating freedom of movement not as a privilege that the government can restrict as it sees fit, but as an inalienable human right. Furthermore, they have to demonstrate to other states its stringent grounds in order to justify control over emigration.

It is the international law which acts as a watchmen over all national restrictions of fundamental human freedoms, to determine in the light of all peoples whether they are rectified or not. From that we can conclude that a universal human right to leave a state and emigrate can be limited in times of extreme emergency and in order to protect the national welfare, but it is for international law to establish what will count as a serious emergency.<sup>66</sup> Regarding the discussion of the emigration of health care professionals from developing states, an example of such an emergency given on behalf of the ICCPR is “*when it is strictly necessary to contain an outbreak of certain highly infectious diseases.*”<sup>67</sup>

### 3.2 THE RIGHT TO A BASIC NEEDS MINIMUM

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When viewed in the light of tragic social circumstances, the agent-centered prerogative, while important, is also subject to certain<sup>68</sup> reasonable restraints. The reason is that it cannot

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<sup>65</sup> ‘Margin of appreciation’ is based on the notion that each society is entitled to a certain latitude in balancing individual rights and national interests, as well as in resolving conflicts that emerge as a result of diverse moral convictions, See Benvenisti E, (1999)., *Margin of Appreciation, Consensus, and Universal Standards*, 31 International Law and Politics 843.

<sup>66</sup> Article 4 of the ICCPR states that in times of public emergency which threaten the life of the nation, states “may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, *provided that such measures are not inconsistent with their other obligations under international law* and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin”

<sup>67</sup> the Siracusa Principles on the Limitation and Derogation Principles in the International Covenant on Civil and Political Rights, UN doc. e/CN.4/1985/4, Annex (1985). Accessible at [www1.umn.edu/humanrts/instree/siracusaprinciples.html](http://www1.umn.edu/humanrts/instree/siracusaprinciples.html). See also: Bueno de Mesquita and Gordon (2005), p.15.

<sup>68</sup> See: Article 25 (1), Universal Declaration of Human Rights, (1948), <http://www.un.org/en/documents/udhr/>



afford legitimate reasons for ignoring demands to alleviate, for instance, the significant poverty, slavery and servitude, disablement and etc.

Even submitting to the moral importance of agent-centered prerogatives, the provision of basic needs can be a vigorous argument to override their pursuit. The protection of the so-called ‘decent minimum principle’<sup>69</sup> can be found in the UN declaration which states that everyone should be granted with “*the health and well being of himself and of his family, including food, clothing, and housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*”<sup>70</sup> This decent minimum principle is another protection argument that can be offered as a solid ground for both putting limits on the right to migrate as seen by the agent-centered prerogative.

Thus, if we adopt the decent minimum principle, the emigration of highly skilled professionals should be organised in accordance with securing the home country’s minimum basic needs floor. If a sending country and its citizens are below this decent standard of living or in immediate dangers of falling below, skilled professionals would be asked either to stay or protect the country’s decent minimum of basic needs or to provide essential assistance overseas.

Following this claim, we come across with the typical conflict between national welfare rights and individual’s rights which have to be balanced. On the one hand, a search for a good, flourishing, and developing life ought to be a worthwhile moral goal viewed by the agent-centered prerogative. On the other hand, flourishing alone does not take the interests of those who fall below a minimally decent standard of living.

In order to justify the importance of the right to basic needs, I will begin discussing with some arguments offered by the cosmopolitan thinker Gillian Brock. Her first claim is that an adequate provision of the minimum of basic needs is the primary interest of all persons, regardless of class, origin, culture, nationality and etc., which is of major importance to be protected. All individuals should have at least decent opportunities to shape and to pursue their own life projects, incentives and etc.<sup>71</sup> Furthermore, by securing the basic needs we are securing our human agency. Without the fulfilment of one’s most basic needs, one cannot engage one’s agent-centered pursuits. Brocks points out that providing a ‘*needs-based minimum*’ is required for being able to rule one’s agency, it is a precondition of someone’s human agency: “*no matter*

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<sup>69</sup> See: Sen, A. (1987). *The Standard of Living*, ed. Geoffrey Hawthorn, Cambridge: Cambridge University Press.

<sup>70</sup> See: Article 25 (1), Universal Declaration of Human Rights, (1948), <http://www.un.org/en/documents/udhr/>

<sup>71</sup> Brock, G. 2009. *Global Justice: A Cosmopolitan Account*. Oxford: Oxford University Press. P 253-59

what goals people have in life, their achievement is going to be more likely if we eliminate barriers that impede human agency, and these include not having secure access to clean water, food, sanitation, education, health care and so on".<sup>72</sup> With this said, we can clearly see that Griffin's idea of human agency as a central concept of the human rights is untenable. He omits the fragility of human agency, which can be easily undermined by unbearable conditions, violence, hunger and etc. Only when needs are met we are able to do things, to occupy social roles and political roles: *'physical survival and personal autonomy are the preconditions for any individual action in any culture.'*<sup>73</sup> Thus, it is a decent minimum standard of living that is required for an agent to live and have control over one's life. It is also important to note, when we talk about the provision of basic needs, we embrace everyone. If someone's basic needs are met, it's implausible to claim that his pursuit of flourishing has greater moral importance than the mere survival of *'those in needs remaining behind'*. As Amartya Sen describes: *"As people who live—in a broad sense—together, we cannot escape the thought that the terrible occurrences that we see around us are quintessentially our problems."*<sup>74</sup> We are required to place a priority on the minimal decent standard of those with whom we share our moral life. Employing this decent minimum to our case of brain drain migration, one can argue that migration of skilled workers who migrate for a better life, advantages, and opportunities can be justified, only if the basic needs of their poor compatriots are fulfilled.

Another and more rigid interpretation of the decent minimum principle is proposed by David Miller. He supports his point by considering the possible negative implications of free migration as a basic liberty. More specifically, he takes the 'brain-drain' problem to show a moral failure of the right to freedom of movement protecting non-vital interests (access to advantages, life options that lie beyond a certain basic minimum). He states, that free migration/open borders *"will do little to help the very poor, who are unlikely to have the resources to move to a richer country. Indeed, a policy of open immigration may make such people worse off still, if it allows doctors, engineers, and other professionals to move from economically underdeveloped societies in search of higher incomes, thereby depriving their countries of origin vital skills."*<sup>75</sup> This argument states that trying to increase opportunities for the many we will actually come to the opposite result in consequence of global injustices. Poor

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<sup>72</sup> Ibid. P.62

<sup>73</sup> Doyal L, and Gough I.,(1991). *A Theory of Human Need*, Basingstoke: Macmillan Education, P. 54.

<sup>74</sup> See: Sen A. (1999). *Development as Freedom*, New York: Anchor Books, P.282

<sup>75</sup> D, Miller (1998). *The Limits of Cosmopolitan Justice*, in D Mapel and T Nardin (eds), *The Constitution of International Society*, Princeton, Princeton University Press, P. 176

compatriots of developing countries are at stake to be left without the minimum provision of their basic needs to which they are entitled. Their needs can be left unfulfilled and their very survival is put at risk unless a certain duty of assistance is provided. Thus, this is precisely the high sort of cost that is severe enough to justify the restriction on the right to emigrate.

It seems that Miller's argument derives merely from the negative side of brain drain. In my opinion, free-riding is one of the issues that correspond to Miller's demands of restricting the freedom of migration. Even some opponents of counter-brain-drain would accept restrictions in cases when skilled workers leave their countries without paying back the costs of their training to their country of origin.

Although I can but agree with the importance of the provision of the decent minimum of basic needs, without which we are not able to rule our human agency and create our agent-centered pursuits, Miller's view of the right to migrate as a '*remedial right*' seems both categorical and morally imprudent. He rigidly claims that emigrants should have very strong reasons to want to pursue opportunities in other states that are not available at home, once their access to basic needs at home meets some minimum sufficiency standard. By doing justice to compatriots of poor countries, he rises up another injustice towards the highly skilled workers whose incentives are not necessarily the prospects of the so-called 'American dream' with its material prosperity and stability. Furthermore, imposing such rigid limitations on the mobility of skilled workers would make the '*luck of birth*' doubly disadvantageous to them. In my eyes, it is especially implausible to make them alone respond to the demands of global justice. In spite of the critical treatment of his argument, the reason why I appeal to Miller's counter brain drain argument is to spell out the proposal of bringing resources to 'those remaining behind' as a response to global injustice.

In view of unreasonably high costs that threaten the rights of national welfare and undermines decent minimum of basic needs, we can morally justify imposing some restrictions of skilled emigration in the name of the national protection. Thus, if people in poor states are left in the situation where their needs are left unfulfilled and their very survival is put at risk, this can curtail the right to freedom of movement. The shortage of the doctors (as it is the Philippines) can be precisely the sort of cost that is severe enough to justify the restriction of a basic liberty, since it deprives individuals from the access to health care, that is, one of the most important basic needs. Here we can come to such a conclusion that skilled workers would have a duty to stay:

- i) if a state of origin have an unreasonably high costs caused by skilled emigration,
- ii) if the expertise of skilled emigrants is utterly significant for a sender country so that they can provide

the assistance better in a state of origin rather than from a state of destination. In spite of that these two protection arguments have robust moral ground for restricting; for some poor and ill-governed states, it can take ages and require lots of recourses to provide them even with the minimal entitlement and to combat the local impoverished situation. Simply imposing and limiting skilled emigration alone would not be sufficient to cope with it.

## CONCLUSION

The main purpose of my thesis was to illuminate the moral status of the developing nations dealing with excessive emigration of skilled professionals ('brain drain') to more developed world. So far the debate on migration regime and restrictions has been framed mainly in perspective of receiving countries and the individual rights of migrants. The disastrous costs left behind by the drained brains from the developing countries has shown that the voice of the poor sending countries with 'those remaining behind' citizens has to be listened to as well. The question I intended to answer was whether in the case of poor sending countries it can be ethically justified to impose restrictions on migration of their skilled individuals/emigrants whose expertise could be significant for the home/donor country who invested in their education? Thereby, the conflict was mainly framed by the tension between individual's rights and national rights, namely, by the right to freedom of movement and right to protect national welfare (by means of duties of assistance towards 'those remaining behind'). Facing the problem of balancing these rights, the main line of my reflections and aroused discussions was concerned with the search for moral justifications for both limiting skilled emigration and supporting the value of freedom of movement.

My analysis started with a defence of the right to freedom of movement as a basic human right that should be protected for a number of reasons: i) it is one of the basic liberties within networks of human rights so that its curtailment put other freedoms, consequently, at stake to be either violated or unfulfilled, ii) it protects our human agency, a capacity to make autonomous life choices and it provides the access of full range of life options essential for the individual value of personhood. The development of my account on freedom of movement was also based on the examination of Miller's account that recognizes a human right to migrate only in relation to the protection of basic interests and the principle of national sovereignty. Given this, I have tried to show that by viewing freedom of movement as remedial right [to which individuals are granted on the basis of the principle of national sovereignty] turns this liberty into an instrumental value to survive and deprive the actual intrinsic value of moving itself.

The consideration of the agent-centered prerogative has given some more support for emigration of skilled professional to seek other life options either for betterment or for personal development. In regard to duties of assistance, it has shown that skilled emigrants' pursuits [to devote part of their time, talents, energy to shape their own lives] can be of greater moral worth. Thus, they can be released from imposed duties [to protect the national welfare of home country] or to do less in view of the shared concern to the assistance of the global poor. Viewed in this perspective, I concluded that states should not interfere in personal decisions of individuals or would-be emigrants unless there are reasonable grounds, for doing so.

Therefore, the next step of my analysis was to demonstrate these reasonable grounds that can serve as a moral claim for limitation of this freedom. The discussion on restriction of freedom of movement was framed in terms of duty of assistance by two 'protection' arguments. First, the costs of immigration/emigration are a threat to the basic functioning of nation in relation to the security and public order of the state, public health or moral rights and freedoms of others. Second, everyone is entitled to have a so-called decent standard of living (fulfillment of needs-basic rights), without one cannot dispose one's agency or engage one's agent-centered pursuits.

Based on these two protection arguments, I argued that some restrictions on the emigration skilled workers can be enforced, at least in the face of the duty of assistance from overseas or rich countries. For instance, a shortage of healthcare workers, in Sub-Saharan Africa, can be a reasonable ground for such a moral claim, since it leaves compatriot's basic needs unfulfilled as well as it puts their very survival at risk.

Considering the main arguments against the emigration of skilled professionals, I concluded that freedom of movement can be restricted or limited by duties of assistance to their poor compatriots; either in the name of the protection of national welfare or the prevention of not falling below the minimum living standard of basic needs. Nevertheless, the only moral claim of these protection arguments to impose a duty of assistance on skilled professionals is not sufficient to impose the restrictions on their emigration. Before we entitle the sending countries with a right to impose the restrictions on the emigration of skilled professionals, some indications have to be made: (i) the extent to which the emigration of skilled professionals disturbs the adequate functioning of the sending countries in such a way that the effects will be disastrous for the sustainability of its national welfare, basic needs of the compatriots ii) the extent to which it is legitimate for skilled individuals to assert their agent-centered prerogative

iii) and how large can be the ‘fair share’ of either emigrants or receiving countries towards the duty of assistance toward the sending countries.

In respect to these tasks, we have to keep in mind that it is irrelevant to frame the question of emigration restrictions harshly in terms of imposing a duty to ‘stay’ or a right to ‘go’. The most important and controversial part is to determine what this duty of assistance entails for skilled professionals [and perhaps for rich states as well]. As we stated before there are several options that can be offered to deal with ‘brain drain’: (i) sending remittances or contributing from diaspora entrepreneurship, (ii) repayments of the costs of training given by the country (iii) requiring compulsory temporary works at the country of origin (iv) a duty to stay in their state of origin forbidding educated individuals from leaving due to the severe state of affairs ( which are threats to a decent minimum of needs and the basic functioning of the national state), and in addition to that, viewed in the perspective of global justice and shared concern to the overall burden, we might also include the participation of the affluent states in the assistance to the global poor. This can be organized in a form of voluntary conscription to enforce foreign workers to do temporary essential work in the poor states.

Given this, the crux of the matter is to define what type of these options (or perhaps some other possible ones) can be the most appropriate and ethically justified to a particular situation which lies largely within the sending countries themselves. As we remarked before, the duty of assistance/restricting the emigration of nurses from the Philippines, students from India, Iranian free-riders and pushed out skilled African workers would differ. Although the concept of ‘ability’ and ‘fair-share’ has been discussed as key perspectives in distinguishing the duties, I hold that they are not sufficient to define the extent of restricting the emigration of skilled professionals.

In light of the perspective of shared duties and global inequalities, it seems neither prudent nor moral to allocate duties for assisting the poor to their compatriots by referring only to their ‘fair share’ and ‘ability’ to do so. Relying on the ‘ability’ of skilled emigrant to assist their compatriots would violate the moral idea of the ‘agent-centered prerogative’ and the principle of justice, according to which the duty of assistance can be seen as a globally shared overall burden. The idea of ‘fair share’ can also fail to represent the extent of the skilled worker’s duty of assistance. Regarding ‘fair share’ as an ‘obligation of repayments’ for education and training or ‘emigrant taxes’, it can be questioned whether essential health services, a compulsory education can be compensated by these taxes. Given the situation of severe circumstance, the call for

doctors and teachers [who complied with their obligations of repayments] could take a form of moral demand to protect a basic level of national functioning and survival.

Thereby, before we move toward imposing the duties of assistance on skilled workers, what should be assessed at first, is a shared/global concern to obligations together with a scale of 'fair share' and one's ability to fulfil them. Given this, I have highlighted the part of rich states which also owe duties of assistance to the global poor, at least, for the reason of reaping the fruits of the drained brains contributed to their welfare.

Lastly, I have considered the arbitrariness of the state sovereignty in regard to imposing restrictions on emigration. Here, my main caveat was to question if we assume that a skilled worker does have a duty to assist to their poor compatriots whether it would be morally permissible to enforce this duty/ emigration restrictions using the principle of sovereignty? The problem I sought to portray is a worry that the right to national sovereignty [arbitrary dominion over emigration]<sup>76</sup> would violate the rights of certain skilled individuals. They can be subjected to certain restrictions without having a chance to contest with them. Therefore, my claim was to say that restrictions on emigration (as well as on immigration) should not be exclusively managed merely by national or regional policies. Migration is not only a national issue, it is rather a global one. Only if we move towards a more global perspective to migration regimes, we would be able to make a just assessment of what type of restrictions and duties we are to impose on both individuals and states. One of the ways to arrive at this global order was offered by Phillip Cole, Arash Abizadeh et al. According to them, in order to make everyone as a free and equal chooser or participator in political decision making, so that all voices of sending, receiving countries and individuals are to be heard, we need to create a *global political community* or *transnational democracy*.<sup>77</sup> This global order has two conditions: participation on the one hand and freedom [in the form of personal autonomy] and equality on the other hand "regardless of their historical or cultural ties to that community."<sup>78</sup> Although I sympathize with the major principle of this idealistic theory, I deem it not as a solution but rather as a proposal of direction towards the debate, on supporting and limiting a right to migrate, should be lifted.

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<sup>76</sup> Thinking of the individual outsider's right of freedom of movement which conflict with a state's control over migration, Abizadeh refers to the notion of *dominion* – a key concept in neo-republican theory.

<sup>77</sup> See: Abizadeh A. (2008). *Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders*, in: *Political Theory*, Volume 36, Number 1, P. 40. See also: Cole P. *Towards a right to international movement*, P. 11 available online: [http://independent.academia.edu/PhillipCole/Papers/1112347/Towards\\_a\\_right\\_to\\_international\\_movement](http://independent.academia.edu/PhillipCole/Papers/1112347/Towards_a_right_to_international_movement)

1. Abizadeh A. (2008). *Democratic Theory and Border Coercion: No Right to Unilaterally Control Your Own Borders*, in: *Political Theory*, Volume 36, Number 1.
2. Benvenisti E, (1999). *Margin of Appreciation, Consensus, and Universal Standards*, 31 *International Law and Politics* 843.
3. Bhagwati, J. N. (1976). *Taxing the Brain Drain, Vol. 1: A Proposal*, Amsterdam: North-Holland.
4. Brock, G. (2009). *Global Justice: A Cosmopolitan Account*. Oxford: Oxford University Press.
5. Carens, J. H., *Aliens and Citizens: The Case for Open Borders*, in Pogge, Thomas and Darrel Moellendorf (ed.), *Global Justice: Seminal Essays*, St. Paul: Paragon House.
6. Carens J.H. (1992). *Migration and Morality: A Liberal Egalitarian Perspective*, in Brian Barry and Robert E. Goodin, eds., *Free movement: Ethical Issues in the Transnational Migration of People and of Money*, University Park, PA: Pennsylvania State University Press.
7. Cervantes M.and Guellec D. (2002). *The brain drain: Old myths, new realities*, *OECD Observer* No. 230, January.
8. Cole, P. (2006). *Towards a symmetrical world: migration and international law*. *Ethics and Economics*.
9. Cole P. *Towards a right to international movement*, P. 11 available online: [http://independent.academia.edu/PhillipCole/Papers/1112347/Towards\\_a\\_right\\_to\\_international\\_movement](http://independent.academia.edu/PhillipCole/Papers/1112347/Towards_a_right_to_international_movement)
10. Doyal L, and Gough I., (1991). *A Theory of Human Need*, Basingstoke: Macmillan Education. available online:  
4(1).[https://papyrus.bib.umontreal.ca/jspui/bitstream/1866/3371/1/2006v4n1\\_COLE.pdf](https://papyrus.bib.umontreal.ca/jspui/bitstream/1866/3371/1/2006v4n1_COLE.pdf)
11. Griffin, J. (2001). *Discrepancies between the best philosophical account of human rights and the international law of human rights*, *Proceedings of the Aristotelian Society*, CI.
12. Griffin, J. (2008) *On Human Rights* , Oxford, Oxford University Press.
13. Edokat, T. (1998). *Effects of Brain Drain on Higher Education in Cameroon*. [http://www.uneca.org/eca\\_resources/Conference\\_Reports\\_and\\_Other\\_Documents/brain\\_drain/word\\_documents/edokat.doc](http://www.uneca.org/eca_resources/Conference_Reports_and_Other_Documents/brain_drain/word_documents/edokat.doc)<sup>1</sup>
14. Miller D. (1998). *The Limits of Cosmopolitan Justice*, in D Mapel and T Nardin (eds), *The Constitution of International Society*, Princeton, Princeton University Press.



15. Miller, D. (2005). *Immigration: The Case For Limits*, in A. I. Cohen and C. H. Wellman (eds), *Contemporary Debates in Applied Ethics*. Oxford: Blackwell.
16. Mill, J.S., (1978). *On Liberty*. Indianapolis:Hackett Publishing Press.
17. Nussbaum M. (2008). *Liberty of Conscience*, In *Defense of America's Tradition of Religious Equality*. New York: Basic Books.
18. Kant I. (1969). *Foundations of the Metaphysics of Morals: text and critical essays*, Indianapolis: Bobbs-Merrill, Lewis White Beck, tr.; Robert Paul Wolff, ed.
19. Kapur D. and McHale J. (2006). *Should a Cosmopolitan Worry about the 'Brain Drain'?* *Ethics & International Affairs* 20/3.
20. Kuhn P. and McAusland C. (2006).*The International Migration of Knowledge Workers: When Is Brain Drain Beneficial?*, *IZA Discussion Paper No. 2493*.
21. Oberman K. *Can Brain Drain Justify Immigration Restriction? P.4*, available online: [http://iisdb.stanford.edu/evnts/5944/Oberman\\_BrainDrain\\_20101.pdf](http://iisdb.stanford.edu/evnts/5944/Oberman_BrainDrain_20101.pdf), accessed 14 May, 2012
22. Hamilton K, Yau J.(2008). *The global tug-of-war for health care workers*. Washington, DC: Migration Policy Institute.
23. Hooper C.R. (2008). *Adding insult to injury - the health care brain drain*, *Journal of Medical Ethics* 34:9.
24. Labont R, Packer C, Klassen N. (2006). *Managing health professional migration from sub Saharan Africa to Canada: a stakeholder inquiry into policy options*. available online: <http://www.human-resources-health.com/content/4/1/22>, accessed 4 May, 2012.
25. Raz J. (1986). *The Morality of Freedom*, Oxford: Clarendon Press.
26. Salt, J. (1997). *International Movements of the Highly Skilled*. Directorate for education, employment, labour and social affairs - international migration unit. Occasional Papers No 3. Paris: OECD
27. Sen, A. (1987). *The Standard of Living*, ed. Geoffrey Hawthorn , Cambridge: Cambridge University Press.
28. Scheffler S. (1992). *Human Morality*. Oxford: Oxford University Press.
29. Scheffler S. (2001). *Boundaries and Allegiances: Problems of Justice and Responsibility in LiberalThought*, Oxford: Oxford University Press
30. Wellman C.H., (2010). *Immigration*, in *The Stanford Encyclopedia of Philosophy*, Edward N. Zalta (ed.)

1. Britannica Online Encyclopaedia, *Sikorsky I.* available online:  
<http://www.britannica.com/EBchecked/topic/543984/Igor-Sikorsky>, accessed 26 April, 2012.
2. The Economist, *Drain or gain? Poor countries can end up benefiting when their brightest citizens emigrate*, available online: \_  
<http://www.economist.com/node/18741763>"\_ <http://www.economist.com/node/18741763>, accessed 26 April, 2012.
3. Karan Singh, *India's ambassador to the US 1989-90*, available:  
<http://www.diasporas.se/forcountriesoforigin.html>, accessed 4 May, 2012
4. The Economist, *Drain or gain? Poor countries can end up benefiting when their brightest citizens emigrate*, available online: \_  
<http://www.economist.com/node/18741763>"\_ <http://www.economist.com/node/18741763>, accessed 26 April, 2012.
5. The New York Times, April 20, *Russian airplane will be made here*, available online:  
[http://query.nytimes.com/mem/archive-free/pdf?\\_r=1&res=9906EFD91238EE32A25753C2A9629C946896D6CF](http://query.nytimes.com/mem/archive-free/pdf?_r=1&res=9906EFD91238EE32A25753C2A9629C946896D6CF) accessed 10 May, 2012.
6. The Economist, *The brain-drain cycle*, available online:  
<http://www.economist.com/node/5279609>, accessed 1 May, 2012.
7. Radio Netherlands Worldwide, *No 'brain drain' in Netherlands*, available online:  
<http://www.rnw.nl/english/bulletin/no-brain-drain-netherlands>, accessed 5 May, 2012
8. Universal Declaration of Human Rights, (1948), <http://www.un.org/en/documents/udhr/>, accessed 10 May, 2012.
9. International Mobility of the Highly Skilled, OECD, 2002. See also: [www.oecd.org/migration](http://www.oecd.org/migration)
10. AUN Report (2002). *Study of Concepts and Causes of Brain Drain*.  
<http://shikshanic.nic.in/cd50years/z/8T/H3/8TH30101.htm>, accessed 10 May, 2012.

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SCHEMATA

INTRO: human capital flight = brain drain  
 → problem! not fair for sending country! :-(

\* CH. 1.: pro/cons of brain drain for all involved, w/ push-pull factor argumentation  
 => brain drain specifically in accord to the sender countries, 2 principles check!

\* CH. 2.: moral basis of migration? → i. freedom of movement = human right  
 ii. therefore, migration = human right  
 iii. AGAINST RESTRICTIONS: agent-centered prerogative of human agency

\* CH. 3.: However, FOM, DUTY OF ASSISTANCE, are difficult to balance

Alisa Nadezhkina → restricting FOM in accordance with 'national security' and 'decent minimum' to protect the national welfare of sending countries

core: In accord to an international agency, play in sharing fair and square receiver countries, and individual sovereignty, and certain restrictions should be implemented on

WELL, THAT'S ALRIGHT! BE FRIENDS!  
 MAY BE FRIENDS!  
 ARGH! HEY!

FREEDOM OF MOVEMENT (PERSONAL WEALTH) NATIONAL WELFARE OF SENDING COUNTRIES (NATIONAL WEALTH)