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THE ETHICS OF IMMIGRATION AND THE JUSTICE OF IMMIGRATION POLICIES

Peter Higgins

I. INTRODUCTION

All philosophical defenders of the view that wealthy, liberal states morally ought to eliminate all or most restrictions on immigration maintain that the removal of formal barriers to immigration (that is, the adoption of an open borders immigration regime) by wealthy, liberal states would bring about a significant reduction in global economic inequality and severe poverty. The global egalitarian promise of open borders serves as the primary justification for the proposal in the work of some theorists,¹ while in the work of others, it features as an ancillary argument or as a reply to objections.² The rationale for this defense of open borders is that the global poor lack economic opportunities in their countries of residence, but that they could partake of the relatively abundant economic opportunities that wealthy, liberal countries currently reserve for their own legal residents in the absence of formal barriers to immigration.

Open borders has suffered a variety of criticisms, the most prominent of which involve appeals to cultural distinctiveness,³ national identity,⁴ and freedom of association.⁵ The limitation of these criticisms is that their success depends on acceptance of assumptions about the moral sovereignty of states and the moral significance of nations—assumptions that are rejected by those who defend open borders on global egalitarian grounds. In this respect, what one might call "the brain drain argument"⁶ for skilled immigration restrictions poses the most formidable challenge to open borders, for it shares the cosmopolitan, egalitarian principles on which advocates of open borders typically premise their arguments.⁷

The brain drain argument for skilled immigration restrictions points out that people who live in absolute poverty in most cases lack the social and economic resources that migration to wealthy countries of the Global North would require. The elimination of formal barriers to immigration by wealthy countries would chiefly benefit not the global poor, but rather their college-educated, professional compatriots, whose relative social and economic privilege furnishes them the

means that transnational migration demands. In this way, the enactment of an open borders immigration regime by wealthy countries would not merely fail to benefit, but would also positively harm the global poor. The emigration of college-educated professionals in large numbers from poor countries harms those who remain in several ways, but, in the most general sense, the brain drain argument observes, it does so by undermining prospects for human development. In this way, it threatens both to intensify and to increase the incidence of absolute poverty. For this reason, the brain drain argument calls for wealthy countries of the Global North to substantially limit skilled immigration.⁸

The brain drain argument, too, has faced criticism, empirical and moral, both from advocates and from opponents of open borders.⁹ In this paper, I examine a beguiling new objection to the brain drain argument first suggested by Christopher Heath Wellman¹⁰ and subsequently elaborated by Kieran Oberman.¹¹ In short, the objection is that wealthy countries that permit skilled immigration do so justly because skilled professionals from poor countries of the Global South act permissibly in emigrating. In other words, admissions policies that permit skilled immigration would be unjust only if what is not the case: that the skilled worker acts unethically by leaving her country of origin. I will call this challenge to the brain drain argument the Mere Accomplice objection, for it implies that insofar as wealthy countries' immigration policies permitting skilled immigration from poor countries of the Global South are unjust, it is because they abet wrongdoing on the part of individual migrants.¹²

This paper has two theses, one negative and one positive. My negative thesis is that the Mere Accomplice objection to the brain drain argument against open borders fails. I contend in this paper neither that the brain drain argument succeeds, nor that a case cannot be made for open borders.¹³

My positive thesis is supported by the particular set of arguments I will make against the Mere Accomplice objection. The reasons for which I argue that the Mere Accomplice objection does not succeed provide a lesson on how to reason about the justice of states' immigration policies. The question "What policies for admitting and excluding foreigners may states justly adopt?" occupies a central place in the philosophy of immigration. This question places normative philosophical discussions of immigration within the boundaries of political philosophy, whose concern is the moral assessment of social institutions (i.e., contingent systems of formal rules, informal norms, and stable practices that shape human interaction¹⁴).

Some recent contributions to normative philosophical thought on immigration propose to answer this question, but adopt methods of reasoning about possible answers that might be taken to suggest that normative philosophical inquiry about immigration belongs to the field of ethics, whose concern (in contrast to political philosophy) is the moral assessment of individual action and character.¹⁵ In this

paper, I focus on the examples of Wellman and of Oberman, who both attempt to derive conclusions about the justice of states' immigrant admissions policies from answers to the question "Is it morally permissible for person P to migrate internationally?"

I will argue in this paper that individualist ethical approaches to normative philosophical reasoning about states' immigration policies obscure factors consideration of which is indispensable for assessing their justice, producing policy recommendations that are quite possibly deeply misguided. These factors include the global structural causes of international migration, and the role that wealthy receiving countries of the Global North play in shaping these causes—factors that are better appreciated by political philosophy than by ethics, given the respective objects of concern of each. My critique of the Mere Accomplice objection, therefore, will provide evidence for my positive thesis that immigrant admissions is best conceived and reasoned about as a topic of political philosophy.

2. AN INITIAL STATEMENT OF THE MERE ACCOMPLICE OBJECTION

Wellman does not challenge the brain drain argument in service of open borders. Quite to the contrary, Wellman's view is that (legitimate) states are morally free to select the immigration policies that suit them, a view that could not be maintained if the brain drain argument is successful.

On Wellman's view, whether or not wealthy countries ought to enact skilled worker immigration restrictions to forestall brain drain depends on the ethical duties of skilled workers in poor countries. According to Wellman, "[a] developed country should no more assist in an unjust act than an individual should serve as an accomplice to a crime, but it is not clear that a doctor who emigrates from Ghana, for instance, acts impermissibly."¹⁶ Why not? Wellman's argument is that

[i]t certainly seems as though such a doctor should be free to leave medicine in order to pursue a career in journalism if she would like to, for instance, so why would it be any less permissible for her to emigrate from Ghana in order to pursue a career as a doctor in Canada? After all, whether as a journalist in Ghana or a doctor in Canada, she will equally be leaving Ghana's medical work force.¹⁷

Wellman's reply to the brain drain argument, put more formally, seems to be this:

1. If it is not impermissible for a medical doctor in a poor country to cease practicing medicine, then it is not impermissible for her to leave the country altogether.
2. It is not impermissible for a medical doctor in a poor country to cease practicing medicine.

Therefore, it is not impermissible for her to leave the country altogether.

3. If it is not impermissible for her to leave the country altogether, then it is not unjust for a wealthy country to admit her as an immigrant.

Therefore, it is not unjust for a wealthy country to admit her as an immigrant.

One might question, in my view, the second premise in Wellman's argument.¹⁸ Here, I wish to focus on the third, which makes clear two assumptions on Wellman's part: (a) that the justice of states' immigration policies derives (at least in part) from the ethical duties of individual prospective migrants, and (b) that even if it were true that wealthy countries act unjustly by adopting admissions policies that permit the immigration of skilled workers from poor countries, their injustice is merely that of an accomplice—they abet the commission of wrongdoing by skilled migrants. I will argue that both of these assumptions ought to be rejected.

Against the first assumption implicit in Wellman's third premise, I wish to argue that one could not determine that the immigration policy of a wealthy country that admits or favors skilled workers is unjust (in virtue of its contribution to brain drain) by reflecting on the ethical duties of individual skilled workers in poor countries. The possibility of such an assessment is foreclosed by the fact that the loss of a single college-educated professional from a poor country rarely ever by itself has significant human development consequences. "Brain drain" refers to the large-scale emigration of college-educated professionals from a society. The moral wrongness, if any, of a skilled worker's migration from a poor country of the Global South to a wealthy country of the Global North presumably consists in its human development consequences, of which there typically will be none of moral significance in the case of an individual prospective migrant. By encouraging us to focus on the moral permissibility of emigration for a single skilled professional, Wellman's argument eliminates from view the very sort of consequence in virtue of which we might find the skills-favoring (or open borders) admissions policies of wealthy countries unjust. In order to assess the justice of admissions policies that facilitate the migration of skilled professionals from poor countries of the Global South to wealthy countries of the Global North, one must consider global social patterns and macroscopic statistical trends rather than individual behavior.¹⁹ Wellman's individualist ethical approach to the brain drain argument permits consideration of the latter exclusively, wholly obscuring the former.

The second assumption implicit in Wellman's third premise is misleading as well. Policies by which wealthy countries admit as immigrants skilled professionals from poor countries may be unjust, even if skilled professionals from poor countries act permissibly in emigrating, in virtue of causing avoidable harm to human development prospects in the Global South. Such policies make worse-off the globally worst-off for the benefit of others (both skilled prospective migrants and, in my view, wealthy receiving countries themselves) who are, by comparison, privileged. This consequence provides reason to think that immigration policies

that favor skilled prospective migrants (whether by overtly assigning them preference in admission or by eliminating formal barriers to immigration for all) may be unjust in their own right—that is, independent of their role in facilitating (alleged) wrongdoing on the part of prospective migrants. In other words, even if wealthy countries are accomplices (at most, as Wellman would say) to wrongdoing on the part of individual migrants, there are plausible reasons for thinking that they are not mere accomplices. Again, Wellman's individualist ethical approach (focusing on the moral duties of individual prospective migrants) conceals from view a relevant reason by which we might conclude that the adoption of immigration policies that favor skilled professionals by wealthy countries of the Global North is unjust.

Wellman's assumption that wealthy countries that adopt immigration policies that favor skilled professionals are (at most) accomplices to potential wrongdoing on the part of individual migrants appears to be facilitated by the misconception that patterns of international migration (both their magnitude and their direction) are nothing more than the cumulative product of the choices of individual migrants.²⁰ Tacit adherence to this misconception would explain why Wellman regards the potential wrongdoers in relation to international migration and brain drain as individual migrants, while he portrays wealthy receiving countries merely as accomplices. In a superficial sense, it is certainly true that the choices of individual migrants explain a large portion of international migration.²¹ However, as an explanation of patterns of international migration, Wellman's apparent individual choice hypothesis obscures global, structural causes of international migration (recognition of which shows why Wellman's exclusive focus on the ethical duties of individual migrants is misplaced).

International migration does not occur in a haphazard way; certain regular patterns of movement can be identified. Yet contemporary patterns of global migration are more complex than is appreciated by the thought that people simply move from poor states to rich ones, seeking to maximize their economic opportunities. The most salient patterns of contemporary migration follow historical patterns of colonization and military involvement. Stephen Castles and Mark Miller remark that

migration from Mexico to the USA originated in the southwestward expansion of the USA in the nineteenth century and the deliberate recruitment of Mexican workers by US employers in the twentieth century. The migration from the Dominican Republic to the USA was initiated by US military occupation in the 1960s. Similarly, both the Korean and the Vietnamese migrations to America were the long-term consequence of US military involvement. The migrations from India, Pakistan and Bangladesh to Britain are linked to British colonial presence on the Indian subcontinent. Similarly, Caribbean migrants have tended to move to their respective former colonial power. . . . The Algerian migration to France (and not to Germany) is explained by the French colonial presence, while the Turkish presence in Germany is the result of direct labor recruitment by Germany in the 1960s and early 1970s.²²

Castles and Miller defend the “migration systems theory” of patterns and causes in international migration. Migration systems theory explains international migration in terms of global, structural causes, emphasizing the effects of the domestic policies of both sending and receiving countries (including their policies governing migration), bilateral and multilateral agreements, policies of global political and economic institutions, and historical relations between states in initiating, shaping, and propelling large-scale movements of people internationally.

For example, migration systems theory highlights that international migration often is motivated by social networks linking immigrants in receiving countries to family, friends, and associates in sending countries, social networks that are themselves the product of receiving countries’ past and present immigration policies.²³ In addition, it points to increasingly common ecological crises (whose causes are often located in the policies and conduct of wealthy countries of the Global North) to explain the displacement of a growing number of people, already in the millions, each year. Migration systems theory explains that various aspects of globalization will continue to spur ever-increasing cross-border movements. In particular, Castles and Miller note that the establishment of regional and global free trade areas and agreements will demand the movement of labor.²⁴

Castles and Miller’s analysis makes clear that wealthy receiving countries do not simply respond passively to international migration instigated by the (spontaneous) choices of individual migrants; they are in large part their cause. Because wealthy receiving countries play a major role in shaping the patterns of international migration that their admissions policies respond to, their immigration policies merit moral evaluation in their own right, independent of their role in enforcing the alleged ethical duties of individual migrants. An exclusive focus on the ethical duties of individual migrants is, therefore, both morally inappropriate and misleading.

3. A MORE ELABORATE DEFENSE OF THE MERE ACCOMPLICE OBJECTION

According to Oberman, counter-brain-drain immigration restrictions are justified only if four conditions are satisfied:

- (1) that a skilled worker has a duty to assist her poor compatriots, (2) that this duty entails a duty to stay in her state of origin, (3) that a skilled worker’s duty to stay and assist her poor compatriots can justly be enforced using immigration restrictions, and (4) that a rich state has the legitimacy to impose counter-brain-drain immigration restrictions.²⁵

Oberman does not dispute the brain drain argument’s empirical claim that the admission of large numbers of college-educated professionals to wealthy countries of the Global North from poor countries of the Global South often seriously harms

human development prospects in the latter and contributes to the high incidence of severe poverty, malnutrition, disease, and death. Nevertheless, Oberman finds, on the basis of the application of these four conditions, that counter-brain-drain immigration restrictions can be justified only in “a small minority of cases,”²⁶ namely those in which the prospective migrant is socially and economically privileged yet lives in an otherwise poor country for which institutional obstacles, such as government corruption, undermine the efficacy of international development assistance.²⁷ In the following subsections, I reply to and explain why Oberman’s argument is a version of the Mere Accomplice objection, considering each of the four conditions (largely) in turn.

3.1 *The Duty of Assistance Condition*

Oberman’s first condition, the duty of assistance condition, holds that counter-brain-drain immigration restrictions are justified only if the skilled worker excluded by them owes assistance to her poor compatriots. Those who defend skilled immigration restrictions on grounds of brain drain will find relief in Oberman’s conclusion in relation to this condition, which is that most skilled workers satisfy it, having either an obligation of repayment or a general, positive duty of assistance to their poorer compatriots.²⁸

What is troubling in this condition, nevertheless, is what it reveals about Oberman’s method for morally evaluating states’ immigration policies. Oberman’s first condition partakes of both of the misleading assumptions implicit in Wellman’s version of the Mere Accomplice objection. The first assumption (that the justice of states’ immigration policies derives from the ethical duties of individual prospective migrants) is explicit in the duty of assistance condition. For Oberman, the moral evaluation of states’ immigration policies is, as in the case of Wellman, a matter of individual ethics. Oberman’s fundamental question, it becomes apparent, is “May the prospective migrant permissibly leave her country of origin?” The question “What immigration policies may receiving countries justly adopt?” is answerable only once the ethical duties of individual prospective migrants have been ascertained. No less than in the case of Wellman, Oberman’s adherence to the assumption that the justice of states’ immigration policies derives (at least in part) from the ethical duties of individual prospective migrants encourages a microscopic perspective that eliminates from view the very sort of consequence in virtue of which we might find the skills-favoring (or open borders) admissions policies of wealthy countries unjust.

The second assumption implicit in Wellman’s version of the Mere Accomplice objection is also present in Oberman’s. On Oberman’s view, the admission of skilled professionals from poor countries of the Global South by wealthy countries of the Global North would be unjust only if (among other things) they facilitated a failure on the part of skilled migrants to discharge their duties of assistance to

their poor compatriots. In this way, it becomes apparent that it is Oberman's view that wealthy countries would be mere accomplices (at most) to the wrongdoing of others. For Oberman, wealthy countries that admit skilled workers from poor countries do not themselves wrong their poorest residents (whose poverty renders them internationally immobile); rather, on his view, the immigration policies of wealthy receiving countries merely serve to enforce (or not) the ethical duties of individual prospective migrants. Conceiving of wealthy receiving countries as mere accomplices prevents Oberman from recognizing that they may have duties of justice in their own right to adopt certain types of immigration policies (such as skilled immigration restrictions), apart from any derivative duty they may have to enforce the alleged ethical obligations of individual prospective migrants. In other words, in addition to asking "Does the skilled migrant wrong her poor compatriots?," one can ask "Does the receiving country wrong internationally immobile poor foreigners?" In this way, Oberman's individualist ethical approach, like Wellman's, obscures a question whose answer might lead us to conclude that the adoption of immigration policies that favor skilled professionals by wealthy countries of the Global North is unjust.

The observation, from the previous section of this paper, that wealthy countries of the Global North play a major role in shaping patterns of international migration (through their domestic policies, their immigration policies, bilateral and multilateral agreements, their influence in global economic and political institutions, and their past and ongoing colonial and military involvements) reveals the nearsightedness of the idea that the adoption by wealthy countries of admissions policies that favor the immigration of skilled professionals (whether by overtly assigning them preference in admission or by eliminating formal barriers to immigration for all) could be unjust only in the circumstance where they permit prospective migrants to act unethically. This point and the previous two show that there may be grounds on which counter-brain-drain immigration restrictions can be justified, whether or not a skilled worker has a duty to assist her poor compatriots; in other words, Oberman's first condition cannot be maintained.

3.2 Preventing Brain Drain by Means other than Immigration Restrictions

Oberman draws on arguments similar to each other to apply the second (duty to stay) condition and the third (just enforcement) condition. This subsection discusses both.

Counter brain drain immigration restrictions are morally justified, the duty to stay condition holds, only if "the skilled worker has a duty to stay in her state of origin to provide the assistance she owes her poor compatriots."²⁹ A skilled worker has a duty to stay, Oberman argues, if and only if the skilled worker can more effectively provide the assistance she owes from her state of origin than she can from abroad (condition 2.i), and remaining in the state of origin will not

impose an unreasonably high cost on her (condition 2.ii).³⁰ Applying condition 2.i, Oberman argues that under systems of forgivable loans (for training and education received in the country of origin) and emigrant taxation, skilled workers may be able to provide the assistance they owe their poor compatriots from abroad.³¹ Thus, Oberman reasons, counter-brain-drain immigration restrictions cannot be justified, since skilled workers lack a duty to stay. (I reply to condition 2.ii, which raises distinct questions, in the following subsection.)

Oberman's just enforcement condition requires that it be morally permissible for wealthy countries to enforce skilled workers' duties to stay and assist their poor compatriots via immigration restrictions. This condition holds if and only if, Oberman argues, "there is no acceptable alternative means of ensuring that the poor compatriots receive the assistance they are owed"³² (condition 3). Oberman argues that this condition is not fulfilled, and thus that counter-brain drain immigration restrictions cannot be justified, for a reason similar to that on which he holds that condition 2.i is not satisfied: there are alternative policy mechanisms by which wealthy countries may be able to allay the harms of brain drain, even if skilled immigration is permitted. For example, wealthy receiving countries can help poor sending countries enforce emigrant taxation policies; they might also fund development assistance to compensate for the effects of brain drain out of their own revenue, Oberman suggests.³³

Oberman is right to maintain that there would be no basis remaining on which to defend counter-brain-drain immigration restrictions should schemes such as emigrant taxation, forgivable loans, or emigration compensation be implemented and prove effective. Nevertheless, Oberman's appeal to alternative policy options by which to allay the harms of brain drain shows less than he claims. Having granted that the first (duty to assist) condition is fulfilled in the case of almost all skilled workers, Oberman claims that "the other conditions are far less likely to be fulfilled since . . . there are many things rich states *could be doing* to address global poverty in general and brain drain in particular which they are failing to do."³⁴ However, the existence of proposals for allaying the harms of brain drain while skilled migration continues does not render condition 2.i and condition 3 unfulfilled, for two reasons.

First, none of the sorts of proposals Oberman suggests can be implemented by the fiat of wealthy receiving countries alone. Systems of forgivable loans and emigrant taxation are policy options for sending countries; only if sending countries adopt them can receiving countries permit skilled immigration without causing human development losses in poor countries. The proposal that wealthy receiving countries directly compensate poor sending countries when they admit their skilled emigrants must be initiated by wealthy receiving countries, but also requires the development (within poor sending countries) of mechanisms for receiving and channeling what is given in compensation. It is highly plausible that wealthy receiving countries morally ought to investigate, pursue, and support

the development and implementation of policies by which skilled migration can occur unrestricted without causing human development losses in poor countries. Indeed, skilled immigration restrictions to prevent brain drain may someday be unjustified (specifically in relation to conditions 2.i and 3). However, the inability of wealthy receiving countries to unilaterally enact such policies means that, contra Oberman, conditions 2.i and 3 are (for the time being) satisfied.

Oberman's challenge to the brain drain argument for skilled immigration restrictions in conditions 2.i and 3 requires, second, that it be the case that policies of emigrant taxation, forgivable loans, and emigration compensation, having been implemented, are effective with respect to "ensuring that the poor compatriots receive the assistance they are owed."³⁵ Yet there are reasonable grounds on which to question whether such programs can replace the human development prospects poor sending countries lose through skilled emigration, some of which Oberman mentions.³⁶ Thus contrary to Oberman's later claim that "rich states *must seek to provide* extra assistance to compensate for the effects of deleterious brain drain before they consider enforcing immigration restrictions against skilled workers,"³⁷ the brain drain argument will supply a successful justification of skilled immigration restrictions (in relation to conditions 2.i and 3) until alternative policy options that fully replace the human development prospects poor sending countries lose through skilled emigration are conceived and adopted.

Even if one accepts conditions 2.i and 3, these arguments show that that they are satisfied (for now): until programs that fully replace the human development prospects poor countries lose through emigration are conceived and adopted (by both sending and receiving countries), it is true that the skilled worker "can better provide the assistance she owes if she stays in her state of origin than from her state of destination" (condition 2.i), and that "there is no acceptable alternative means of ensuring that the poor compatriots receive the assistance they are owed" (condition 3).³⁸ I accept the spirit of these conditions: counter-brain-drain immigration restrictions would not be justified if there were alternative means by which skilled migration could occur unrestricted without causing human development losses in poor countries. However, both imply that the justification of counter-brain-drain immigration restrictions depends on the ethical duties of individual prospective migrants; therefore, for the reasons I give in reply to the duty of assistance condition, I hold that both ought be rejected as specifically formulated by Oberman.

3.3 *The Unreasonably High Cost of Staying*

Oberman's second condition, that the skilled worker has a duty to stay, requires not only that the skilled worker can more effectively provide the assistance she owes from her state of origin than she can from abroad (condition 2.i), but also that the skilled worker not face unreasonably high costs should she remain (condition 2.ii). Skilled workers, Oberman maintains, face an unreasonably high cost in staying

when (1) they are separated from their immediate family, (2) they live in fear of persecution, civil conflict, or widespread violence, (3) they live in severe poverty, or (4) they work in dangerous conditions.³⁹ Under such circumstances, the duty to assist one's poor compatriots does not entail a duty to stay, Oberman reasons, in the absence of which counter-brain-drain immigration restrictions cannot be justified.

No defender of counter-brain-drain immigration restrictions would deny that skilled workers living in poor countries who are prevented from immigrating by wealthy countries are deprived of an opportunity to escape serious hardship.⁴⁰ The central problem for Oberman's condition 2.ii is that the absolutely poor, whose poverty renders them internationally immobile, and out of concern for whom counter-brain-drain immigration restrictions are defended, are, with respect to (at least three of) the circumstances Oberman's four cases describe, almost always already worse-off than their skilled (and thus relatively privileged) compatriots, the emigration of whom to wealthy countries of the Global North would make the poor even worse-off (in the same respects Oberman describes as unreasonably costly for skilled workers). Defenders of the brain drain argument for skilled immigration restrictions have not been unaware that preventing the immigration to wealthy countries of skilled workers from poor countries would deprive them of the opportunity to escape serious hardship; their argument has been that this deprivation is justified since allowing their immigration would come at greater cost to people who are already worse-off. Thus, Oberman's conclusion demands an argument for his claim that the sorts of costs described in his four cases are "unreasonably high." To merely assert that such costs are unreasonable (i.e., too high for immigration policies that impose them on skilled workers to be justified) would both beg the question and arbitrarily privilege the better-off.

Oberman appears to defend his view (that the cost counter-brain-drain immigration restrictions would impose on skilled workers may be unjustifiably high but that the similar cost to their poor compatriots of policies that permit skilled immigration are not) by appeal to the idea of agent-centered prerogatives, which allow persons "to do less than is required to produce what might otherwise be thought the best result."⁴¹ Oberman suggests he means his defense of condition 2.ii to rest on the idea of agent-centered prerogatives when he asserts that "everyone has an agent-centered prerogative allowing them to resist duties that are too burdensome."⁴² The appeal to agent-centered prerogatives allows Oberman to say that, though the cost of skilled emigration to the global poor is as great as if not greater than the cost to skilled workers of counter-brain-drain immigration restrictions, the nevertheless high cost of remaining for the skilled worker makes it the case that (owing to her agent-centered prerogative) she has no duty to stay (to fulfill her duty to assist her poor compatriots).

The notion that persons have an agent-centered prerogative is an assumption of Oberman's paper. Though, as Oberman notes, it "receives wide support,"⁴³ it is controversial and one could challenge it. However, I wish to argue that even if

one agrees that persons have an agent-centered prerogative that defeats especially demanding duties, Oberman is able to invoke this idea only by arbitrarily and without explanation shifting the location of the agency of potential wrongdoing from wealthy receiving countries (in the case that counter-brain-drain immigration restrictions are adopted) to individual prospective migrants (in the case that wealthy countries permit skilled immigration). Appropriately, Oberman treats wealthy countries' immigration policies as the object of moral assessment in the case that wealthy countries adopt counter-brain-drain immigration restrictions: wealthy countries, should they adopt counter-brain-drain immigration restrictions, are the agents who might act wrongly, Oberman's argument holds. However, in the case that wealthy countries adopt policies that permit skilled immigration, Oberman presents the conduct of skilled prospective migrants as the object of moral assessment: it is skilled prospective migrants who might act wrongly under policies that permit them to immigrate to wealthy countries. Should wealthy countries adopt policies that permit skilled immigration, Oberman's argument regards them as mere accomplices (at most), who abet the commission of a moral wrong that skilled migrants themselves perpetrate.

Oberman neither acknowledges nor defends this relocation of the agency of potential wrongdoing, which, in the absence of a rationale, seems arbitrary. Yet had Oberman not relocated the agency of potential wrongdoing from wealthy receiving countries to skilled prospective migrants, there would have been no reason to invoke agent-centered prerogatives: if instead of asking "Would skilled workers wrong their poor compatriots by emigrating?," Oberman had asked "Would wealthy countries wrong the internationally immobile global poor by adopting policies that permit skilled immigration?," the agent-centered prerogatives of skilled workers would not have been relevant. One could determine whether or not wealthy countries themselves wrong the global poor by permitting skilled immigration from poor countries regardless of skilled workers' agent-centered prerogatives.⁴⁴

If rather than shifting the location of the agency of potential wrongdoing from wealthy receiving countries (in the case that they enact counter-brain-drain immigration restrictions) to the individual skilled workers of poor countries (in the case that wealthy countries permit their immigration), one treats wealthy countries' immigration policies as the primary object of moral assessment in both cases, then a different set of considerations becomes relevant. In particular, wealthy countries face a choice between (a) adopting immigration policies (counter-brain-drain immigration restrictions) that deprive skilled workers from poor countries of a freedom by which they might considerably improve their circumstances, and (b) adopting immigration policies (policies that permit skilled immigration) that diminish human development prospects in poor countries, exacerbating poverty (quantitatively and qualitatively) among the world's poorest people. One could hardly be enthusiastic about either of these options, but it is reasonable to think

that (a) is more morally defensible than (b) since the skilled workers of poor countries (though markedly disadvantaged in comparison to most residents of wealthy countries of the Global North) are better-off than their compatriots who are poor by global standards. This is a plausible way of reasoning about what immigration policies wealthy countries of the Global North ought to adopt that whether successful or not, is artificially foreclosed by Oberman's individualist ethical approach, condition 2.ii in particular. I conclude, therefore, that it should be rejected.

3.4 *The Legitimacy Condition*

Since, in Oberman's view, states that impose skilled worker immigration restrictions to prevent brain drain are, in doing so, enforcing the ethical duties of prospective migrants, they themselves (states) must have adequate moral standing to do so. Oberman denies that just any state may "legitimately enforce justice,"⁴⁵ rejecting the view that "there is no connection whatsoever between an agent's right to enforce moral duties and her own moral performance."⁴⁶ Oberman argues that a wealthy country has the legitimacy to enact counter-brain-drain immigration restrictions as long as, first, "[t]he rich state is not seeking to enforce a skilled worker's secondary duty of assistance that the skilled worker only has because the rich state has failed to fulfill its primary duty of assistance,"⁴⁷ and second, "[t]he rich state is committed to fulfilling its duty of assistance toward the skilled worker."⁴⁸

What is primarily objectionable in Oberman's legitimacy condition is the individualist ethical understanding of the moral reasons wealthy receiving countries might restrict skilled immigration it implies.⁴⁹ It is plain that, in Oberman's view, wealthy receiving countries that enact skilled immigration restrictions in order to prevent brain drain would merely be attempting to "enforce the duties of skilled workers."⁵⁰ Oberman does not consider whether wealthy countries that admit skilled workers from poor countries might themselves wrong their poor, internationally immobile compatriots by adopting immigration policies that foreseeably and avoidably bring about brain drain. Yet, states' immigration policies have morally significant consequences in virtue of which it is reasonable to think that they can be just or unjust in their own right, apart from what role they may play in enforcing the alleged ethical duties of individual migrants. Thus a state may be bound by principles of justice that apply directly to its immigration policies to restrict the immigration of skilled workers from poor countries, even if it lacked the legitimacy Oberman argues is required for it to enforce the ethical duties of skilled prospective migrants.

The idea that wealthy countries would, in enacting counter-brain-drain immigration restrictions, not merely be enforcing the ethical duties of prospective migrants, but would also (or instead) be complying with their own independent duties of justice is reinforced by the observation, described earlier in this paper,

that wealthy receiving countries actively shape international migration flows and the social and economic forces that condition potential migrants' choices; wealthy receiving countries do not simply respond passively to the spontaneous choices of prospective migrants. Wealthy countries' immigration policies are evaluable as just or unjust in their own right because of the major causal role they play in creating the circumstances under which people seek admission to their territory.

Recognition that wealthy countries may have an independent duty of justice to restrict skilled immigration reveals why the exclusive focus on the ethical duties of individuals that gives rise to Oberman's fourth condition is nearsighted. A legitimacy requirement is apt in arguments for the moral prerogatives of states, such as in Wellman's argument for the view that "every legitimate state has the right to close its doors to all potential immigrants."⁵¹ However, a state that restricts skilled immigration in order to prevent brain drain does not thereby claim a moral prerogative or right for itself; on the contrary, it subjects itself to a duty of justice, sacrificing its own economic interests in service of the vital interests of the global poor. Viewed from this perspective, Oberman's fourth condition amounts to the peculiar requirement that states must already meet a standard of moral decency before they can permissibly do what principles of justice may require of them. For this reason, it cannot be maintained.

4. CONCLUSION

In this paper, I have endeavored to show that the Mere Accomplice objection to the brain drain argument against open borders fails. Even if my arguments have been persuasive, one might think that this result—an objection to an objection to an objection to a position in the philosophy of immigration—is too narrow to be especially interesting in itself. I have not, after all, sought to take a position in this paper on the ultimate success of either the brain drain argument or the case for open borders. What I regard as most significant in this paper is what the reasons I have given to defeat the Mere Accomplice objection imply about the nature of immigrant admissions as a philosophical topic and how best to reason about the moral justifiability of states' immigrant admissions policies.

This paper takes inspiration from Alison Jaggar's distinction, in "Abortion Rights and Gender Justice Worldwide: An Essay in Political Philosophy," between three levels of philosophical questions one might ask about abortion: metaphysical (e.g., Is the fetus a person?), ethical (e.g., When it is ethically permissible for a person to seek or to perform an abortion?), and political (e.g., How ought society arrange its institutions to facilitate or limit access to abortion?).⁵² As she notes, one cannot necessarily derive answers to questions at one level from answers to questions at another: the metaphysical status of the fetus (for example) does not by itself entail a view on the ethical or legal permissibility of abortion, and the

design of social institutions governing access to abortion need not imply a view on the ethical permissibility of abortion or the metaphysical status of the fetus. Beyond defending a view on the political morality of abortion, Jaggar argues, in her essay, for the indispensability of the perspective of political philosophy for fruitful philosophical inquiry on abortion, a topic primarily approached by philosophers as a matter of ethics or metaphysics.

I have sought in this paper to motivate the view that immigrant admissions ought be understood and reasoned about as matter of political philosophy rather than as a topic of ethics. Ethics and political philosophy are distinguished from each other not by the substantive topics each concerns but by the object each examines: ethics assesses the morality of individual action and character, while political philosophy assesses the morality of the social institutions (e.g., laws, policies, norms, etc.) that influence human interaction and choices. The ethics of immigration is a worthwhile topic, to be sure. However, one cannot derive answers about which one could have rational confidence to questions such as "What immigration policies ought liberal states adopt?" and "Are policies by which wealthy countries of the Global North admit as immigrants in large numbers skilled professionals from poor countries of the Global South unjust?" (questions of political philosophy) from answers to ethical questions such as "Is it morally permissible for person P to move from this country to that?" My argument has been that individualist ethical approaches distort reasoning about the justice of states' immigrant admissions policies: by obscuring salient questions, by assigning relevance to what is not and denying relevance to what is, and by encouraging acceptance of historically and sociologically simple understandings of the phenomenon of global migration. Most importantly, thinking about immigrant admissions in terms of the ethics of immigration rather than in terms of the justice of immigration policies may supply rationalizations for policies that are contrary to the moral goals that motivate them, if not simply unjust.

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NOTES

1. See Kukathas, "Case for Open Immigration"; and Huemer, "Is There a Right to Migrate?"
2. See Carens, "Aliens and Citizens"; Carens, "Migration and Morality"; Cole, *Philosophies of Exclusion*; Wellman and Cole, *Debating the Ethics of Immigration*; and Exdell, "Immigration, Nationalism, and Human Rights."
3. See Walzer, *Spheres of Justice*, chap. 2.
4. See Miller, *On Nationality*, "Immigration"; and *National Responsibility and Global Justice*.

5. See Wellman, "Immigration and Freedom of Association"; and Wellman and Cole, *Debating the Ethics of Immigration*.

6. I take this name for the argument from Kieran Oberman. See Oberman, "Can Brain Drain Justify Immigration Restrictions?"

7. A prospective migrant is considered "skilled" when she is educated and trained in a field of work that is regarded as economically productive in the receiving country. For this reason, the notion of "skilled migrants" is normatively laden, and is often attended by gender and cultural bias.

8. See Kapur and McHale, "Should a Cosmopolitan Worry about the Brain Drain?"; Ypi, "Justice in Migration"; and Brock, *Global Justice*.

9. The empirical objection to the brain drain argument is that migrants provide remittances to family members remaining in their state of origin, thereby reversing the loss their emigration represents. The most common moral objection to the brain drain argument is based in opposition to the argument's consequentialism. Carens, for example, makes both of these arguments. (See Carens, "Migration and Morality.")

10. Wellman and Cole, *Debating the Ethics of Immigration*, 152.

11. Oberman, "Can Brain Drain Justify Immigration Restrictions?"

12. Neither Wellman nor Oberman dispute the empirical claim made by the brain drain argument (that wealthy countries harm human development prospects in the global South by adopting immigration policies that favor the admission of skilled workers from poor countries). (See Wellman and Cole, *Debating the Ethics of Immigration*, 151–52; and Oberman, "Can Brain Drain Justify Immigration Restrictions?," 428–30.) Because the purpose of this paper is not to show that the brain drain argument is successful ultimately (i.e., against all objections), I assume the truth of the empirical claim of the brain drain argument in this paper.

13. After all, there are other objections one could press against the brain drain argument, as well as defenses of open borders one could make in relation to which the brain drain argument may be irrelevant.

14. I draw this understanding of social institutions (roughly) from Ann Cudd, who defines social institutions as entities that set "constraints that specify behavior in specific recurrent situations, that are tacitly known by some nontrivial subset of society, and that are either self-policed or policed by some external authority" (Cudd, *Analyzing Oppression*, 51).

15. This way of distinguishing ethics from political philosophy is taken from Alison Jaggar in Tooley et al., *Abortion*, 123.

16. Wellman and Cole, *Debating the Ethics of Immigration*, 152.

17. *Ibid.*

18. Certain aspects of the example Wellman exploits in service of the second premise are misleading in respects that grant it greater plausibility than it merits. Journalists contribute to human development in poor countries in many ways that though distinct from the contributions of medical doctors, are nevertheless significant. Wellman's example would more adequately mirror the impact of professional emigration on poor countries if he had instead imagined that the doctor in his example left medicine in order to become a beach bum or a socialite. However, it does not seem to me utterly implausible to hold

that it may be morally impermissible for a person in a position to alleviate significant suffering (as a medical doctor is) to refuse to do so in favor of some other option through which she alleviates little or no comparable suffering (e.g., by becoming a socialite).

19. This expression of my thought is inspired by Marilyn Frye's argument, illustrated in her well-known birdcage analogy, that one cannot detect oppression via a microscopic perspective (focusing on the actions, beliefs, and intentions of individuals); rather, one must adopt a macroscopic perspective (focusing on the consequences, history, and symbolic meaning of social norms and institutions) in order to perceive oppression (Frye, *Politics of Reality*, 1–16).

20. As evidence, consider the solution (designed to maintain his general view that legitimate states morally may admit and exclude foreigners as they will) Wellman presents to the problem of brain drain: "[P]erhaps countries that actively recruit (and maybe even those that *merely passively allow*) the immigration of skilled workers from developing states may permissibly do so only if they adequately compensate the countries from which these professional emigrate" (Wellman and Cole, *Debating the Ethics of Immigration*, 152; emphasis added).

21. Some international migration is forced.

22. Castles and Miller, *Age of Migration*, 27–28.

23. *Ibid.*, 28.

24. *Ibid.*, 4.

25. Oberman, "Can Brain Drain Justify Immigration Restrictions?," 430.

26. *Ibid.*

27. *Ibid.*, 454.

28. Oberman argues that many skilled workers have an obligation of repayment consequent on their having "acquired skills, during their adult life, at the poor state's expense," for example, state-subsidized job training or tertiary education. Whether they have an obligation of repayment or not, most skilled workers have, in Oberman's view, a positive duty of assistance "to make their poor compatriots better off," regardless of "any prior action or commitments the skilled workers made" (Oberman, "Can Brain Drain Justify Immigration Restrictions?," 435). Oberman distinguishes between primary duties of assistance (to do one's "fair share" to assist the poor) and secondary duties of assistance ("to fill in for noncompliant others"), maintaining that skilled workers have both. However, he holds that the latter are circumscribed by an "agent-centered prerogative" (Oberman, "Can Brain Drain Justify Immigration Restrictions?," 439).

29. Oberman, "Can Brain Drain Justify Immigration Restrictions?," 453.

30. *Ibid.*

31. *Ibid.*, 439–40.

32. *Ibid.*, 442.

33. *Ibid.*

34. *Ibid.*, 453–54; emphasis added.

35. *Ibid.*, 442.

36.

"First, a skilled worker, such as a doctor or a teacher, who provides an essential service, can only compensate for her absence by paying an emigrant tax if there are other workers back home to replace her. The tax revenues from emigrants could go to make salaries at home more attractive, but in some states conditions will be so bad that higher salaries will not be enough to prevent skilled workers from leaving. Second, there may be problems in collecting and spending the emigrant tax revenue. For instance, a poor state may find it impossible to collect this revenue, and rich states may refuse to collect it for them, or a poor state may suffer from an incompetent or corrupt government that cannot be trusted to distribute the revenues effectively." (Oberman, "Can Brain Drain Justify Immigration Restrictions?," 440)

37. Ibid., 447; emphasis added.

38. Ibid., 453.

39. Ibid., 441.

40. Those to whom Oberman attributes the brain drain argument all acknowledge the serious cost counter-brain-drain immigration restrictions would impose on skilled workers. (See Kapur and McHale, "Should a Cosmopolitan Worry about the 'Brain Drain'?" 312, 314; Ypi, "Justice in Migration," 415; and Brock, *Global Justice*, 190, 192–93.)

41. Oberman, "Can Brain Drain Justify Immigration Restrictions?," 439.

42. Ibid., 441. I believe that Oberman's defense of condition 2.ii relies not only on an appeal to agent-centered prerogatives, but also on the alleged moral distinction between harming and failing to assist, though he says nothing explicitly to acknowledge the latter. Oberman describes the effect of counter-brain-drain immigration restrictions on the skilled worker as a "cost" that "demand[s] that she accepts a significant additional burden" (Oberman, "Can Brain Drain Justify Immigration Restrictions?," 440), but characterizes the effect of skilled emigration on the global poor as a deprivation of "the assistance they are owed" (Oberman, "Can Brain Drain Justify Immigration Restrictions?," 442). By describing matters in this way, Oberman not only reaps unearned plausibility among those who accept the view that harming is morally worse than failing to assist (other things being equal); he also vindicates his appeal to agent-centered prerogatives in defense of condition 2.ii (since agent-centered prerogatives are not normally thought to entitle persons—for example, skilled workers—to resist negative duties not to harm others—for example, their poorer compatriots). However, Oberman does not acknowledge the moral significance of the distinction between harming and failing to assist as an assumption of his paper, nor does he provide a rationale for his divergent characterization of the effects of wealthy countries' immigration policies on skilled workers and their poor compatriots, respectively.

43. Oberman, "Can Brain Drain Justify Immigration Restrictions?," 439.

44. Relocating the agency of potential wrongdoing also allows Oberman to say that wealthy countries would themselves harm [deprive of assistance] skilled workers if they adopted counter-brain-drain immigration restrictions, but that wealthy countries would merely allow others to harm [deprive of assistance] the global poor if they permitted skilled immigration. Thus, by arbitrarily relocating the agency of potential wrongdoing, Oberman's argument undeservedly acquires plausibility among those who accept the con-

ventional moral distinction between doing and allowing, on which it is morally worse to oneself harm [deprive of assistance] than to allow others to harm [deprive of assistance], other things being equal.

45. Oberman, "Can Brain Drain Justify Immigration Restrictions?," 448.

46. Ibid., 449.

47. Ibid., 453; see note 28 for an explanation of Oberman's distinction between primary and secondary duties of assistance.

48. Oberman, "Can Brain Drain Justify Immigration Restrictions?," 453.

49. One might worry, in addition, that no actual states meet Oberman's conditions of legitimacy. One might also worry that insofar as wealthy receiving countries lack the legitimacy Oberman argues imposing skilled immigration restrictions requires, they would equally lack the legitimacy to enforce skilled migrants' ethical duties by helping poor sending countries enforce emigrant taxation and forgivable loan policies.

50. Oberman, "Can Brain Drain Justify Immigration Restrictions?," 451.

51. Wellman, "Immigration and Freedom of Association," 109.

52. Tooley et al., *Abortion*, 122–23.

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DOES COSMOPOLITAN JUSTICE EVER REQUIRE RESTRICTIONS ON MIGRATION?

José Jorge Mendoza

In today's world, most people have done nothing either to deserve or be burdened with the citizenship they happen to hold. Most people have acquired their citizenship either by their place of birth or through ancestry (usually inheriting the citizenship of one or both of their parents). While most people have citizenship in at least one country, not all forms of citizenship can be said to be equal. For example, being a citizen of a country in the Global North comes with a greater set of opportunities than being a citizen of a country in the Global South. On its face, this arbitrary and disproportionate distribution of opportunities seems unfair and unjust. A commitment to equality would suggest that these sorts of differences be eradicated and that the fairest way to accomplish this task would be by eliminating restrictions on migration (i.e., opening borders).

It might, therefore, come as a surprise to learn that there are some egalitarian cosmopolitans who not only find certain restrictions on migration acceptable, but also argue that these restrictions are a requirement of cosmopolitan justice. These arguments begin by both acknowledging that there are gross and unjustifiable forms of global inequality and rejecting the notion that there are any fundamental moral differences between citizens and foreigners. Nevertheless, these egalitarian cosmopolitans believe that lifting all restrictions on migration would be unjust because this would avoidably harm those who, globally speaking, are already the most unjustly disadvantaged.

In this essay, I present a criticism of this position. I argue that even when they appear to help, restrictions on migration are usually only an impediment, not an aid, to cosmopolitan justice. Even though egalitarian cosmopolitans are well intentioned in their support of migration restrictions, I will argue that these restrictions (i) are not truly cosmopolitan, and (ii) will not have the kinds of consequences they expect. My argument in defense of this claim begins, in section 1, by outlining a version of this position as presented by Peter Higgins. I single out Higgins's account both for its thoroughness and because his Priority of Disadvantage Principle seems to offer the strongest cosmopolitan justification for migration restrictions. In the second and third sections of this essay, I reply to the harms Higgins believes are associated