

Are Skill-Selective Immigration Policies Just?

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Abstract: Many high-income countries have skill-selective immigration policies, favoring prospective immigrants who are highly skilled. I investigate whether it is permissible for high-income countries to adopt such policies. Adopting what Joseph Carens calls a “realistic approach” to the ethics of immigration, I argue first that it is in principle permissible for high-income countries to take skill as a consideration in favor of selecting one prospective immigrant rather than another. I argue second that high-income countries must ensure that their skill-selective immigration policies do not contribute to the non-fulfillment of their duty to aid residents of low- and middle-income countries.

Keywords: immigration; skill; brain drain; global justice; immigrant selection; duty to aid

Many high-income countries (HICs) have skill-selective immigration policies (SSIPs), favoring prospective immigrants who are highly educated and/or highly skilled.¹ Some, including Canada, Australia, the United Kingdom, and Germany, have special immigration categories for high-skill workers, and evaluate applicants within these categories on the basis of factors such as education and work experience. The European Union’s recently enacted *Blue Card Scheme* targets non-EU nationals with a higher education credential. Even the United States, which has historically admitted the vast majority of its immigrants under family reunification and humanitarian categories, is considering reforms to bring its immigration policy more in line with the above-mentioned countries. The *Border Security, Economic Opportunity, and Immigration Modernization Act*, recently passed by the U.S. Senate, includes substantial changes to U.S. immigration policy to ease the admission of high-skill workers.²

HICs adopt SSIPs for two principal reasons. First, recent technological

¹Throughout this paper, I understand *skilled* prospective immigrants to be those having at least some post-secondary education.

²By immigration policies, I mean policies governing the granting of permanent or semi-permanent resident status to foreign nationals. By semi-permanent resident status, I mean nonimmigrant statuses that often pave the way for the acquisition of permanent residency. For example, the U.S. H-1B visa is a temporary, nonimmigrant visa that targets high-skill workers, but permits those holding it to apply for permanent residency. Such nonimmigrant statuses are thus distinct from those of guest workers.

changes have altered the labor markets in these countries, increasing demand for high-skill workers. Governments see SSIPs as a way of securing a competitive advantage in knowledge-based industries. Second, many HICs with aging populations see skilled immigration as a way of ensuring a sufficient tax base to pay for benefits promised to their citizens.³

Despite the increasing popularity of SSIPs, however, they are controversial. Some scholars object to them on the grounds that they contribute to the *brain drain* of the highly educated from low- and middle-income countries (LMICs).⁴ This brain drain is harmful for residents of these countries, these scholars argue, both because human capital is necessary for economic growth, but also because the specific skills HICs select for (e.g., medical skills) are already in short supply.⁵

In this paper, I investigate whether it is permissible for HICs to adopt SSIPs. In addressing this question, my aim is to provide realistic guidance to policy-makers, that is, guidance that recognizes the moral, institutional, and political realities that limit the policy options open to them. Since such policy-makers work within the context of our current international institutional system of sovereign and independent states, I take this institutional system as given. Additionally, I presuppose the widely shared view that legitimate states possess a moral right to exclude, as this right is characterized by international law.⁶

By addressing the question of SSIPs in this way, I adopt what Joseph Carens calls a “realistic approach” to the ethics of immigration.⁷ A realistic approach, Carens claims, addresses the question of the ethics of immigration within the constraints of existing moral, institutional, and political realities.⁸ The purpose of this approach is to help policy-makers decide between policy options that are *feasible*—that is, have some

³Devesh Kapur and John McHale, *Give Us Your Best and Brightest: The Global Hunt for Talent and its Impact on the Developing World* (Baltimore: Brookings Institution Press, 2005), p. 3.

⁴Following the World Bank’s classification scheme, HICs are those with a 2012 GNI per capita income of \$12,616 or higher; middle-income countries are those with a 2012 GNI per capita income of \$1,036-\$12,615; and low-income countries are those with a 2012 GNI per capita income of \$1,035 or less.

⁵See Kapur and McHale, *Give Us Your Best and Brightest*.

⁶Importantly, the legal right to exclude is not an *absolute* right. The principle of *non-refoulement* is a requirement of international law and prohibits states from returning refugees to countries where they are likely to face persecution or threats to life or freedom. See Guy S. Goodwin-Gill, *The Refugee in International Law* (New York: Oxford University Press, 2007).

⁷Joseph Carens, “Realistic and Idealistic Approaches to the Ethics of Migration,” *International Migration Review* 30 (1996): 156-70. See also Joseph Carens, *The Ethics of Immigration* (New York: Oxford University Press, 2013), pp. 297-313.

⁸Carens, “Realistic and Idealistic Approaches to the Ethics of Migration,” pp. 158-66.

chance of adoption.⁹ Scholars can tailor this approach in narrower or broader ways by altering the constraints framing the analysis. An extremely narrow approach, for example, might focus on the choice legislators face between two bills. Following Carens, I take a broader approach, presupposing only (1) our current international institutional system, and (2) legitimate states' moral right to exclude.¹⁰ This level of breadth, I suggest, is suitably *realistic*, since our institutional system is deeply entrenched, and the view that legitimate states have a moral right to exclude is widely held; and, it is also suitably *idealistic*, exploring the implications of liberalism for the permissibility of SSIPs, within these constraints.

In section 1, I address the question of whether SSIPs are just in principle. Here, I ask whether it is in principle permissible for HICs to take skill as a *reason for inclusion*, that is, a consideration in favor of selecting one prospective immigrant rather than another. I argue that it is. In section 2, I consider the justice of HICs' SSIPs in light of HICs' duty to aid residents of LMICs. I argue here that HICs' SSIPs contribute to an *unjust relation* between HICs and residents of LMICs to the extent that these policies are a factor in HICs' nonfulfillment of their duty to aid.¹¹ Appealing to the most comprehensive empirical work concerning the likely harms and benefits of skilled emigration for residents of LMICs, in section 3, I argue that the SSIPs of many HICs are likely contributing to the non-fulfillment of their duty to aid. I also formulate two broad policy strategies HICs may adopt to address this problem.

My paper aims to contribute to the justice of immigration literature in three ways. First, I hope to contribute to the formulation of a successful account of the justice of immigrant selection. Second, in contrast to much recent normative work on the brain drain, which asks whether the need to stem the brain drain *grounds* a right to exclude,¹² I approach this question from a realistic perspective, taking the right to exclude as a given and asking how HICs should exercise it. Finally, my paper is unique in that it considers the questions of immigrant selection and the justice of the brain drain together, asking whether the latter imposes any constraints on how HICs make selection decisions.

⁹*Ibid.*, p. 159.

¹⁰Carens, *The Ethics of Immigration*, p. 10.

¹¹By an unjust relation, I mean a relation between two or more parties in which one or more parties is not fulfilling its duties of justice.

¹²See Devesh Kapur and John McHale, "Should a Cosmopolitan Worry about the 'Brain Drain'?" *Ethics and International Affairs* 20 (2006): 305-20; Fernando R. Tesón, "Brain Drain," *San Diego Law Review* 45 (2008): 899-932; and Kieran Oberman, "Can Brain Drain Justify Immigration Restrictions?" *Ethics* 123 (2013): 427-55.

1. Is Skill a Legitimate Reason for Inclusion?

May HICs take skill as a reason to favor one prospective immigrant over another? Is it just, at least in principle, for HICs to give preference to prospective immigrants who are highly educated and/or skilled?¹³

To address this question, we might start by noting that there are a number of grounds on the basis of which it would be wrong for states to favor one prospective immigrant over another. These include race, ethnicity, religion, sex, gender identity, and sexual orientation. Immigration policies that discriminate amongst prospective immigrants on these grounds are not only condemned by political theorists,¹⁴ but also by citizens and policy-makers in liberal democracies such as Canada, Australia, and the U.S., where they have been decidedly rejected. What explains why these immigration policies are wrong? What might a successful account of the wrongness of such discriminatory immigration policies imply for the permissibility of favoring skilled prospective immigrants? Is skill like race, or is it different?

Michael Blake has arguably provided the most comprehensive account of the wrongness of discriminatory immigration policies. He argues that such policies wrong both citizens of the receiving state and prospective immigrants. They wrong the former since they amount to a public endorsement of the legitimacy of certain forms of discrimination, sending a message to citizens with the disfavored identity that they are not “full participants in the project of self-rule.”¹⁵ Discriminatory immigration policies also wrong prospective immigrants, Blake thinks, because they involve receiving states exercising coercive authority over them in an unjust way.¹⁶

Blake’s account provides a helpful starting point for explaining the wrongness of discriminatory immigration policies. He also draws out the implications of his account for the question of SSIPs, arguing that they are permissible. But, although his explanation of how discriminatory immigration policies wrong *existing citizens* gets things right, his explanation of how such policies wrong *prospective immigrants* requires mod-

¹³To my knowledge, all of the (few) political theorists who address this question think that HICs may do so. See Michael Blake, “Immigration and Political Equality,” *San Diego Law Review* 45 (2008): 963-80, pp. 965, 970-79; Carens, *The Ethics of Immigration*, pp. 183-85; and Ayelet Shachar and Ran Hirschl, “On Citizenship, States, and Markets,” *The Journal of Political Philosophy* 22 (2014): 231-57, pp. 232-33.

¹⁴See David Miller, “Immigrants, Nations, and Citizenship,” *Journal of Political Philosophy* 16 (2008): 371-90, pp. 388-89; and Carens, *The Ethics of Immigration*, pp. 174-75.

¹⁵Michael Blake, “Discretionary Immigration,” *Philosophical Topics* 30 (2002): 273-89, p. 284.

¹⁶Blake, “Immigration and Political Equality,” pp. 968-71.

ification and development. In what follows, I first outline Blake's argument for the claim that discriminatory immigration policies wrong prospective immigrants and identify a problem with it. I then modify Blake's argument and spell out its implications for the question of SSIPs, arguing that they are in principle permissible. Finally, I consider a number of objections, and reject an alternative account.

1.1. A problem for Blake's account

Blake adopts a similarly realistic approach to the question of the wrongness of discriminatory immigration policies. He assumes that states have a moral right to exclude, and so formulates the central question of his paper as the allocation of a discretionary good: "When no individual applicant has a right to enter a given state, and there are more prospective immigrants than the state wishes to admit, what character of reasons might be given to justify differentiating between these prospective immigrants?"¹⁷

Blake's argument starts from the premise that prospective immigrants, in applying for entry to a foreign country, subject themselves to the coercive authority of the receiving state.¹⁸ Since coercion is always *prima facie* a violation of moral equality, involving one agent directing the will of another, receiving states must justify their exercise of coercion to those applying for residency.¹⁹ To do so, Blake argues, receiving states must find reasons they can give to prospective immigrants that they cannot reasonably reject as justifications for the "coercive threats they face in the course of applying for entry," thus leaving them with "no right to regard the use of force to exclude them as illegitimate."²⁰

The first reason Blake identifies is that prospective immigrants have no right to enter.²¹ This reason is not sufficient however: "The mere fact that [prospective immigrants] are seeking a benefit to which they are not entitled, and so have voluntarily placed themselves within a political and coercive relationship in the pursuit of this benefit, does not mean that the state in question has a right to use that coercive power in any manner it might choose."²² Blake thus argues that states must distinguish amongst prospective immigrants on the basis of reasons that "ought to be accepted in the end even by those excluded."²³

Blake identifies two principles of differentiation that are justifiable

¹⁷Ibid., p. 966.

¹⁸Ibid.

¹⁹Ibid., pp. 968-69.

²⁰Ibid., p. 969.

²¹Ibid.

²²Ibid., p. 970.

²³Ibid., p. 971.

even to those who are excluded, and one that is not. The first is “economic success.” States can distinguish amongst prospective immigrants on the basis of their potential contribution to the receiving society’s economic health since doing so does not violate the moral equality of persons.²⁴ The second principle is “political integration.” Since states have a legitimate interest in ensuring and promoting democratic institutions, they may favor prospective immigrants having a “demonstrated affinity for democratic practice.”²⁵ Finally, Blake claims that a principle of differentiation that denies the moral equality of persons—for example, by affirming the moral superiority of persons having a particular racial identity—is not justifiable to those who are excluded.²⁶

Blake’s account would seem to satisfy the task I identify above. It explains how discriminatory immigration policies wrong prospective immigrants while also having implications regarding the permissibility of SSIPs. Unfortunately, Blake’s argument is flawed. To see this, it is helpful to present Blake’s argument in more formal terms:

1. States have a duty to respect the moral equality of persons.²⁷
2. Coercion violates the moral equality of persons, replacing the will of one agent with that of another.²⁸
3. Coercion is *prima facie* wrong, and so requires justification (from 1 and 2).²⁹
4. States justify their exercise of coercion by providing reasons that those coerced cannot reasonably reject.³⁰
5. Prospective immigrants are subject to coercive threats in the course of applying for citizenship.³¹
6. States must justify their coercion of prospective immigrants by providing them with reasons that they cannot reasonably reject (from 3-5).³²
7. States must differentiate amongst prospective immigrants on the basis of reasons that they cannot reasonably reject (from 5 and 6).³³
8. The moral superiority of other prospective immigrants is a reason prospective immigrants can reasonably reject as a basis for differentiation.³⁴

²⁴Ibid., p. 972.

²⁵Ibid., p. 974.

²⁶Ibid., pp. 975-76.

²⁷Ibid., p. 966.

²⁸Ibid., pp. 968-69.

²⁹Ibid.

³⁰Ibid., p. 969.

³¹Ibid., p. 968.

³²Ibid., p. 971.

³³Ibid., pp. 970-71.

³⁴Ibid., pp. 975-77.

9. States' interests in economic success and political integration are reasons prospective immigrants cannot reasonably reject as bases for differentiation.³⁵
10. Immigration policies that discriminate on the basis of factors such as race, ethnicity, and sexual orientation are wrong (from 7 and 8).
11. SSIPs are permissible (from 7 and 9).

The problem with Blake's argument is that he is not entitled to premise 7, and so is not entitled to derive conclusions 10 and 11. 7 does not follow from 5 and 6 as Blake claims for the simple reason that states do not coerce prospective immigrants when they make selection decisions. As Blake himself recognizes, when states select some prospective immigrants for admission, they allocate a discretionary good, that is, a good to which no one has a right. But, the allocation of a discretionary good is not a coercive act. If I have an espresso machine in my office, I coerce neither those to whom I offer an espresso, nor those to whom I do not. Similarly, if we accept—as Blake does—that states have a moral right to exclude, the selection of prospective immigrants is a discretionary allocation problem. In deciding this question, the immediate question states face is not “May we coercively exclude this person?” but rather, “Of these prospective immigrants who have no right to enter, whom should we admit?”

Blake acknowledges something like this objection. After deriving 6, he notes that we “must remember that in the cases we are examining, admission to citizenship is a discretionary benefit.”³⁶ But, he argues that states must differentiate amongst prospective immigrants on the basis of reasons they cannot reasonably reject since the state, in making selection decisions, is still exercising coercive power over them:

The mere fact that they are seeking a benefit to which they are not entitled, and so have voluntarily placed themselves within a political and coercive relationship in the pursuit of this benefit, does not mean that the state in question has a right to use that coercive power in any manner it might choose. Instead, if we take the relationship of prospective immigrants as a *sui generis* form of political relationship, we arrive at the conclusion that a just state has an obligation to treat such prospective immigrants as equal to one another, in virtue of the more general obligation such states, in their exercises of coercive power, have to treat individuals as moral equals.³⁷

Blake is right that receiving states exercise coercive power over prospective immigrants, but we need to be precise about how they do so. States coerce prospective immigrants when they coercively prevent them from

³⁵Ibid., pp. 969-75.

³⁶Ibid., p. 970.

³⁷Ibid.

entering their territory. States' coercive exclusion of prospective immigrants thus requires justification. But, states do not coerce prospective immigrants when they make selection decisions. When states make these decisions, they are not deciding whom they may exclude, and whom they must include. Instead, they are deciding whom, of a larger group of prospective immigrants whom they are entitled to exclude, to admit. To answer this question, they require principles telling them how to *differentiate* amongst prospective immigrants, not principles to justify their *coercive exclusion*.

The selection decisions of receiving states of course have implications for their exercise of coercive power. But, in making these decisions, states are not deciding whether to coercively exclude particular prospective immigrants who apply for admission. Rather, they are deciding whether to exempt these prospective immigrants from subjection to a coercive power to which all nonresidents are subject. Thus, a prospective immigrant's complaint regarding a selection decision he does not like is "Why her and not me?" not "On what grounds are you coercively excluding me?" The latter complaint, after all, is one that any foreigner can make, independently of any selection decision.³⁸

This problem with premise 7 points to a broader problem with Blake's argumentative strategy. Although he claims to answer the question of the discretionary allocation of residency, the first half of his argument provides a solution to the problem of coercive exclusion. That is, Blake approaches the problem of discretionary allocation by identifying reasons states may employ to justify the coercive exclusion of prospective immigrants. As Blake puts it, "we seek categories of reasons in justification of coercion that might be accepted by those who are coerced, where such reasons respect the ideal of moral equality."³⁹

The problem with this argumentative strategy is that the questions of coercive exclusion and discretionary allocation are distinct problems that require distinct solutions. A solution to the former identifies the reasons states may employ to justify the coercive exclusion of prospective immigrants. It tells states whom they may exclude. The question of discretionary allocation, by contrast, concerns the allocation of the good of residency to those prospective immigrants who have no right to enter. It is thus the question states face once the question of coercive exclusion has been solved: Of these prospective immigrants whom we have the right to exclude, on the basis of what reasons should we decide whom to admit?

³⁸Note that Blake grants that all persons are equally subject to the border coercion of foreign states, even if they have not performed any actions to invoke that coercion—e.g., seek admission (*ibid.*, p. 969 n. 12).

³⁹*Ibid.*, p. 972.

A solution to the problem of coercive exclusion of course has implications for the problem of discretionary allocation, identifying those prospective immigrants states may exclude and so who is eligible to receive the discretionary good of residency. But, it doesn't tell us how to allocate this good. For example, the claim that states are entitled to exclude prospective immigrants who are not refugees—a claim that Blake and I share—provides little, if any, guidance regarding the allocation of residency to nonrefugee prospective immigrants.

1.2. Modifying Blake's account

Blake's argument is thus not successful. Since 7 does not follow from 5 and 6, he cannot derive his conclusions 10 and 11, and so he fails to explain how discriminatory immigration policies wrong prospective immigrants, or to address the permissibility of SSIPs. Still, Blake's analysis is rich in insight and I make use of much of it here to formulate an alternative argument. A central distinguishing feature of my argument—in contrast to Blake's—is that it makes no mention of coercion.

My argument starts from the fundamental premise of Blake's analysis, namely, the claim that liberalism requires that states recognize the moral equality of all persons, not only citizens.⁴⁰ States respect the moral equality of persons, I suggest, by treating them the same, unless they have a legitimate reason for treating them differently.

One legitimate reason states might have to treat people differently is that they stand in a different institutional relationship to them. As Blake points out, states might have distinctive duties to their citizens that they do not have to foreigners.⁴¹ Additionally, and more importantly for our purposes, states also have a legitimate reason to treat people differently when doing so can be reasonably expected to facilitate the realization of their legitimate purposes. That is, states need not treat people the same, when differential treatment furthers the realization of a legitimate state purpose.

By legitimate state purposes, I mean the aims and goals that states are morally permitted or morally required to pursue. The legitimate purposes of states, I claim, are those commonly attributed to states by liberalism, including the securing and promoting of people's freedom, health, and well-being. The legitimate purposes of states do not therefore include the promotion of particular religious, ethnic, racial, or gender identities.⁴²

⁴⁰Ibid., p. 966.

⁴¹Ibid., pp. 966-67.

⁴²One might argue that by specifying the legitimate purposes of states in this way, I limit my analysis to states that are liberal. But, even if this is so, my account will still have implications for many HICs, since many profess to be liberal democracies. Additionally, my account need not be limited in this way if liberalism is true.

The idea that agents must treat people the same unless they have a legitimate reason for treating them differently, and that one legitimate reason for treating people differently is the realization of an agent's legitimate purposes, can explain the rightness and wrongness of many forms of differential treatment. Consider the sphere of employment. Government and for-profit employers have a duty to treat prospective employees equally, but also have a legitimate purpose in providing certain types of goods and services. It is therefore permissible for them to select employees on the basis of skill. But, it is wrong for them to select employees on the basis of religion. Neither government nor for-profit employers have a legitimate purpose in promoting a particular religious identity, and it is difficult to imagine any other possible legitimate reason they could have for selecting employees on this basis. The case is of course different for religious employers. Since the promotion and practice of a particular religious faith is a legitimate purpose of religious institutions, it is permissible for them to favor persons with a particular religious identity when the position in question involves the performance of clerical duties.

Additionally, although it is usually wrong for employers to treat prospective employees differently on the basis of race, it is also arguably permissible for government employers to do so when it facilitates the realization of some important government purpose. For example, many communities in the U.S. feature a large, impoverished minority population, low levels of trust between the police and the community, and high crime rates. It is arguably permissible for the police departments that serve these communities to favor qualified minority officers in the hiring process if doing so can be reasonably expected to facilitate the provision of fair and effective police services to the communities in question. Similarly, it is arguably permissible for colleges receiving public funds to favor qualified minority candidates for admission when doing so can be reasonably expected to further a legitimate purpose of the university—the provision of a high quality education.⁴³

What does this ideal of equal treatment imply for the question of immigrant selection? First, it explains why discriminatory immigration policies are wrong. States do not have a legitimate purpose in promoting a particular race, religion, ethnicity, sex, gender identity, or sexual orientation; and, it is hard to see how treating people differently on the basis of such features could be reasonably expected to further some legitimate government purpose. Additionally, it is difficult to imagine any other possible legitimate reason states could have for treating prospective im-

⁴³This is a central legal and moral argument for diversity affirmative action in U.S. college admissions. See James P. Sterba, *Affirmative Action for the Future* (Ithaca: Cornell University Press, 2009).

migrants differently on these grounds. States may not therefore adopt discriminatory immigration policies.

Second, it suggests that states may favor skilled prospective immigrants. As Blake points out, the reason that states adopt SSIPs is “economic success,” the development of a competitive economy and the securing of a sufficient tax base. Blake claims that economic success is a “legitimate subject for government policy,”⁴⁴ but I would put the point differently. Economic success is a legitimate aim of government because it can be reasonably expected to facilitate the realization of states’ legitimate purposes in securing and promoting the freedom, health, and well-being of their citizens. Provided that SSIPs are an effective means of realizing economic success, governments may take skill as a reason for inclusion.

How might economic success contribute to the health, well-being, and freedom of citizens? First, societies that are more economically successful have greater resources to devote to citizens’ health and well-being. Scholars of course disagree about the nature of well-being; but greater resources provide governments with the ability to improve citizens’ well-being on most—if not all—reasonable conceptions. With greater resources, people have a greater opportunity to satisfy their preferences, seek out pleasurable experiences and avoid painful ones, and realize those values that might be present on an objective list—for example, knowledge or health. For resourcists who claim that the government should not concern itself with citizens’ well-being, but should instead simply ensure that people have resources to pursue that plan of life they deem best, economic success is also welcome, since it is rational to prefer more resources to fewer. Finally, greater wealth also provides governments with the opportunity to expand people’s freedom for the simple reason that people can do more things with greater resources.⁴⁵

Let us present the argument in more formal terms:

⁴⁴Blake, “Immigration and Political Equality,” pp. 972-73.

⁴⁵See Ian Carter, *A Measure of Freedom* (New York: Oxford University Press, 1999), pp. 282-85. One might object that economic growth does not always promote people’s well-being, pointing to Richard Easterlin’s finding that increasing average income is not correlated with increasing self-reported happiness. Richard A. Easterlin, “Does Economic Growth Improve the Human Lot? Some Empirical Evidence,” in Paul A. David and Melvin W. Reder (eds.), *Nations and Households in Economic Growth: Essays in Honor of Moses Abramovitz* (New York: Academic Press, 1974), pp. 89-125. In response, consider first that there are significant problems with “self-reported happiness” as the sole account of well-being. See Daniel Hausman, “Hedonism and Welfare Economics,” *Economics and Philosophy* 26 (2010): 321-44. Consider second that recent research suggests that Easterlin’s claim is false and that there is a positive correlation between increasing average income and self-reported happiness. See Betsey Stevenson and Justin Wolfers, “Subjective Well-Being and Income: Is There Any Evidence of Satiation?” *American Economic Review: Papers & Proceedings* 103 (2013): 598-604.

1. States have a duty to respect the moral equality of persons.
2. Respect for the moral equality of persons requires that states treat people the same, unless they have a legitimate reason for treating them differently.
3. States must treat people the same, unless they have a legitimate reason for treating them differently (from 1 and 2).
4. States do not have a legitimate reason to treat prospective immigrants differently on the basis of race, gender identity, sex, religion, sexual orientation, or ethnicity.
5. States may not treat prospective immigrants differently on the basis of race, gender identity, sex, religion, sexual orientation, or ethnicity (from 3 and 4).
6. States have a legitimate reason for treating people differently when doing so can be reasonably expected to facilitate the realization of one or more of their legitimate purposes.
7. States may treat people differently when doing so can be reasonably expected to facilitate the realization of one or more of their legitimate purposes (from 3 and 6).
8. The securing and promoting of citizens' freedom, health, and well-being are legitimate purposes of states.
9. Developing a competitive economy and securing a sufficient tax base can reasonably be expected to facilitate the securing and promoting of citizens' freedom, health, and well-being.
10. SSIPs can be reasonably expected to contribute to the development of a competitive economy and the securing of a sufficient tax base.
11. SSIPs can be reasonably expected to facilitate the realization of a legitimate purpose of states (from 8-10).
12. States may enact SSIPs, treating prospective immigrants differently on the basis of skill and/or education (from 7 and 11).

I thus arrive at the same conclusions as Blake, and employ premises that are similar to his own. But, my account modifies Blake's in two important ways. First, for the reasons I identify above, it leaves out the question of coercive exclusion, formulating the question of the permissibility of SSIPs as one of the allocation of a discretionary good. It thus does not make use of the concepts of coercion or justification as reasonable rejection, instead developing a conception of equal treatment. Second, it provides a justification for Blake's claim that economic success is a legitimate purpose of government, showing how economic success contributes to the securing and promotion of citizens' freedom, health, and well-being.

1.3. Three objections

First, one might grant that favoring skilled prospective immigrants respects the moral equality of prospective immigrants, but not the moral equality of existing citizens. After all, by favoring skilled prospective immigrants for membership, don't states suggest that unskilled citizens are inferior qua citizens?

I don't think so. States do not commit themselves to the claim that unskilled citizens are somehow unfit for political membership when they favor skilled immigrants. They only commit themselves to the claim that skill is valuable and a legitimate reason for favoring one prospective immigrant over another, all of whom—skilled or unskilled—may be fit for political membership. This public endorsement of skill as a favorable factor is no more objectionable than state policies promoting adult enrollment in post-secondary education, or state employers' favoring of skilled citizens when hiring.

Second, one might question my claim that the promotion of a particular religion or ethnicity is not a legitimate purpose of states, pointing to liberal states that seem to select immigrants on these bases and that would seem to be *prima facie* justified in doing so.⁴⁶ For example, Israel's "Law of Return" grants Jews the right to live in Israel and become citizens.⁴⁷ Similarly, the Canadian province of Québec favors prospective immigrants who speak French, and one might think that the intent of this policy is to promote a particular ethnic identity.⁴⁸ Am I committed to condemning these policies?

Not necessarily. To the extent that the purpose of these policies is to promote a particular religion or ethnicity, my position implies that they are unjust. But, I am not committed to condemning these policies since there are also *liberal* justifications for them. First, scholars have defended a modified version of Israel's Law of Return on humanitarian and liberal nationalist grounds, arguing that it is a response to the illiberal persecution of Jews, and a legitimate means by which the Jewish people can achieve a right to self-determination.⁴⁹ Second, language-based preferences can be justified by appeal to the legitimate purpose of liberal states

⁴⁶Thanks to an anonymous reviewer for raising this objection.

⁴⁷Nahshon Perez, "Israel's Law of Return: A Qualified Justification," *Modern Judaism* 31 (2011): 59-84, p. 61.

⁴⁸Will Kymlicka, *Politics in the Vernacular: Nationalism, Multiculturalism, and Citizenship* (New York: Oxford University Press, 2001), p. 158.

⁴⁹See Perez, "Israel's Law of Return"; and Chaim Gans, "Nationalist Priorities and Restrictions in Immigration: The Case of Israel," *Law & Ethics of Human Rights* 2 (2008): 1-19.

in achieving political integration,⁵⁰ and also by appeal to the need for national minorities—for example, the Québécois—to preserve their societal cultures, important preconditions for their members' exercise of freedom.⁵¹

Finally, one might argue that it is simply not possible for HICs to implement SSIPs without treating prospective immigrants unequally. HICs are likely to receive more applications for admission from skilled prospective immigrants than they are willing to admit. On the reasonable assumption that HICs will not be able to select those prospective immigrants who are most likely to contribute to their economic success—for example, due to lack of information about the applicants—it seems to follow that HICs must treat prospective immigrants differently, and not on the basis of a legitimate reason, thus violating premise 2.⁵²

Note first that this problem is not unique to SSIPs, but is a problem for all agents (1) committed to the ideal of equal treatment, and (2) who do not have enough positions for all qualified applicants. This problem thus affects HICs having any form of immigration policy under which not all qualified applicants are admitted, as well as employers and universities. Note second that there is a simple solution to this type of problem. Where agents cannot differentiate amongst qualified applicants on legitimate grounds, they should conduct a lottery. In this case, all qualified applicants are treated the same; each is given the same chance of securing the position in question.

1.4. An alternative account

Ayelet Shachar and Ran Hirschl take a similar position with respect to the question of SSIPs. They argue that states must select prospective immigrants on the basis of factors that are not arbitrary from the moral point view, but argue that skill is a nonarbitrary factor since “the *choice* to develop one’s natural or raw talent—and the significant effort that goes into cultivating one’s human capital—is bound up with identity and so can be said to be protected by considerations of personal liberty.”⁵³ In contrast to financial capital, human capital—that is, skill—is “encapsulated” in the skilled prospective immigrant and so is “non-transferable and non-alienable” and so “part of the self.”⁵⁴ Arbitrary factors, by im-

⁵⁰Blake, “Immigration and Political Equality,” p. 974.

⁵¹See Kymlicka, *Politics in the Vernacular*, pp. 156-59, 275-90; and Will Kymlicka, *Multicultural Citizenship: A Liberal Theory of Minority Rights* (New York: Oxford University Press, 1995), pp. 75-106.

⁵²Thanks to an anonymous reviewer for raising this objection.

⁵³Shachar and Hirschl, “On Citizenship, States, and Markets,” pp. 232-33.

⁵⁴*Ibid.*, p. 251.

plication, are therefore those aspects of a person that are not part of that person's self or identity, for example, her raw talent or wealth.⁵⁵

There are two problems with Shachar and Hirschl's account. First, it is not clear why a factor's being nonarbitrary in Shachar and Hirschl's sense implies that states may take it as a reason for inclusion. Shachar and Hirschl are certainly right that the fact that skill is part of one's self or identity implies that it should be "protected by considerations of personal liberty"—that is, that other agents have a duty not to interfere with the way in which one cultivates one's talents.⁵⁶ But why think that it follows from this that skill is a legitimate reason for inclusion?

Second, by drawing the arbitrary/nonarbitrary distinction in the way that they do, Shachar and Hirschl seem to commit themselves to the permissibility of illiberal immigration practices. After all, religion, race, ethnicity, and sexual orientation can also be said to be part of people's identity or self. Do Shachar and Hirschl think that these factors—like skill—are also legitimate reasons for inclusion?

In any case, we need not adopt Shachar and Hirschl's view. My account explains why discriminatory immigration policies are unjust and also resolves the question of the permissibility of SSIPs. HICs may—in principle—favor skilled prospective immigrants since developing a competitive economy and ensuring a sufficient tax base can be reasonably expected to further the realization of their legitimate purposes of securing and promoting citizens' freedom, health, and well-being.

Importantly, it does not follow from this that HICs' SSIPs are just. HICs may have duties of international justice that place constraints on the design of their immigration policies. I turn to this question next.

2. International Justice and SSIPs

Political theorists disagree sharply about what international justice demands. *Egalitarian cosmopolitans* argue that the same egalitarian principles of distributive justice that apply domestically also apply globally.⁵⁷ *Sufficientarian cosmopolitans*⁵⁸ and *weak statist*⁵⁹ reject this claim, but

⁵⁵Ibid., pp. 232-33.

⁵⁶Ibid., p. 232.

⁵⁷See Darrel Moellendorf, *Cosmopolitan Justice* (New York: Westview Press, 2002); and Simon Caney, *Justice Beyond Borders: A Global Political Theory* (New York: Oxford University Press, 2005).

⁵⁸See Gillian Brock, *Global Justice: A Cosmopolitan Account* (New York: Oxford University Press, 2009).

⁵⁹See David Miller, *National Responsibility and Global Justice* (New York, Oxford University Press, 2007); Mathias Risse, *On Global Justice* (Princeton: Princeton Univer-

argue that HICs have a duty of justice to ensure that all persons can satisfy their basic needs and live under reasonably just political institutions. Finally, *strong statist*s reject the claim that states have duties of *justice* to anyone but their own residents, admitting only that they have a duty of *humanity* to reduce extreme global poverty.⁶⁰

Determining which of these positions is correct is beyond the scope of my paper. Instead, I shall argue for a more modest claim, namely, that HICs have a duty of justice to aid people who are unable to access the conditions necessary to live a decent human life. I argue further that this duty places constraints on HICs' SSIPs. HICs must ensure that their SSIPs do not contribute to the nonfulfillment of this duty. Since I do not argue here that egalitarian cosmopolitanism is false, I shall also briefly explore how HICs' possible duties to realize global egalitarian justice might place constraints on their SSIPs.

2.1. Human rights and the duty to aid

I argue here that HICs have a duty of justice to aid residents of LMICs. The ground of this duty, I suggest, is HICs' limited obligation to protect and fulfill the human rights of residents of LMICs. This general line of argument is prominent in the global justice literature, and so the specific argument I present and motivate synthesizes the work of a number of scholars. Here is the argument:

1. People have human rights to those goods for which access is morally urgent.
2. It is morally urgent that people have access to the conditions they require to live a decent human life.
3. People have human rights to those conditions they require to live a decent human life (from 1 and 2).
4. The conditions people require to live a decent human life include food, clothing, shelter, sanitation, education, healthcare, and basic civil rights.
5. People have human rights to food, clothing, shelter, sanitation, education, healthcare, and basic civil rights (from 3 and 4).
6. All persons have a duty of justice to respect people's human rights.
7. All persons have a duty of justice to protect and fulfill people's human rights when doing so is not unreasonably costly.

sity Press, 2012); and Michael Blake, *Justice and Foreign Policy* (New York: Oxford University Press, 2013).

⁶⁰See Thomas Nagel, "The Problem of Global Justice," *Philosophy & Public Affairs* 33 (2005): 113-47.

8. States inherit the duties of their citizens to respect, protect, and fulfill people's human rights.
9. HICs have a duty to respect, protect, and fulfill the human rights of their residents; and a duty to protect and fulfill the human rights of those persons whose states fail to protect and fulfill their human rights, when doing so is not unreasonably costly (from 6-8).
10. The human rights of many residents of LMICs are currently unprotected and unfulfilled.
11. HICs can help protect and fulfill the human rights of many residents of LMICs without incurring unreasonable costs.
12. HICs have a duty of justice to aid residents of LMICs—i.e., help ensure access to food, clothing, shelter, sanitation, education, healthcare, and basic civil rights (from 5 and 9-11).⁶¹

I understand 1 and 2 to be largely self-evident. With respect to 1, as a number of scholars have noted, we use the language of human rights to identify claims that are morally urgent for all persons.⁶² Similarly, 2 is a necessary commitment of any reasonable moral theory. Scholars do disagree about how to interpret the idea of a decent human life, appealing to the differing ideas of “a distinctly human life,”⁶³ “normative agency,”⁶⁴ “basic human needs,”⁶⁵ “human capabilities,”⁶⁶ and “autonomous functioning.”⁶⁷ But, we need not resolve these disagreements here, since these scholars, despite their different interpretations of this idea, identify roughly the same basic conditions people require to live a decent human life.⁶⁸ Premise 4 outlines these conditions, and together with 3 establishes 5, the claim that people have human rights to food, clothing, shelter, sanitation, education, healthcare, and basic civil rights.

Human rights, as rights possessed by all persons, imply general obliga-

⁶¹For presentations of this general line of argument in support of HICs' duty to aid, see Martha C. Nussbaum, *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, Mass.: Harvard University Press, 2006), pp. 273-324; Miller, *National Responsibility and Global Justice*, pp. 178-99, 247-62; James Griffin, *On Human Rights* (New York: Oxford University Press, 2008), pp. 32-34, 101-5; Risse, *On Global Justice*, pp. 74-81; and Blake, *Justice & Foreign Policy*, pp. 113-17.

⁶²See Nussbaum, *Frontiers of Justice*, p. 290; Miller, *National Responsibility and Global Justice*, p. 180; Griffin, *On Human Rights*, pp. 3-4.

⁶³Risse, *On Global Justice*, p. 74.

⁶⁴Griffin, *On Human Rights*, p. 45.

⁶⁵Miller, *National Responsibility and Global Justice*, p. 179.

⁶⁶Nussbaum, *Frontiers of Justice*, pp. 278-79.

⁶⁷Blake, *Justice & Foreign Policy*, p. 113.

⁶⁸See Nussbaum, *Frontiers of Justice*, pp. 278-79; Miller, *National Responsibility and Global Justice*, pp. 178-85; Griffin, *On Human Rights*, p. 33; Risse, *On Global Justice*, pp. 77-79; and Blake, *Justice & Foreign Policy*, pp. 113-17.

tions, that is, obligations possessed by all.⁶⁹ All persons therefore possess a duty to *respect* people's human rights, where this is understood to only require negative action. But, because the *protection* and *fulfillment* of people's human rights require positive action—for example, the provision of a police force to protect security rights or the funding of a healthcare system to provide access to basic healthcare—persons have only a *limited* duty to protect and fulfill people's human rights. The purpose of this limitation is to ensure that the duty to protect and fulfill human rights is not too demanding, and to account for cases in which it is simply not possible for individuals to protect and fulfill the human rights of distant others.⁷⁰

States inherit their citizens' duties of justice to respect, protect, and fulfill people's human rights. States are simply citizens considered as a collective agent, and since the principal purpose of states is to secure justice, citizens retain their duties of justice qua members of the state.⁷¹ It therefore follows that HICs have a duty to respect, protect, and fulfill the human rights of their own citizens, and a limited duty to protect and fulfill the human rights of those persons whose states fail to respect, protect, and fulfill their human rights.⁷²

Premise 10, the claim that some LMICs fail to respect, protect, and fulfill their residents' human rights, is uncontroversial; and although I do not fully specify which costs are unreasonable for HICs to bear, any plausible account of such costs will leave HICs with substantial obligations to protect and fulfill the human rights of residents of LMICs. It follows therefore that HICs have a duty of justice to aid residents of LMICs whose human rights are not respected, protected, or fulfilled. This duty of justice requires HICs to help ensure that residents of LMICs have access to food, clothing, shelter, sanitation, education, healthcare, and basic civil rights.

Many more questions would need to be resolved to fully specify HICs' duty to aid. Additionally, objections can no doubt be raised against some of the premises of my argument.⁷³ However, resolving these questions is

⁶⁹See Nussbaum, *Frontiers of Justice*, pp. 279-80; Risse, *On Global Justice*, p. 79; and Blake, *Justice & Foreign Policy*, pp. 25-26.

⁷⁰See Nussbaum, *Frontiers of Justice*, pp. 308-10; Miller, *National Responsibility and Global Justice*, pp. 185-90; Griffin, *On Human Rights*, pp. 101-4; and Risse, *On Global Justice*, p. 80.

⁷¹See Nussbaum, *Frontiers of Justice*, pp. 307-8; and Blake, *Justice & Foreign Policy*, p. 50.

⁷²There are also instrumental reasons for assigning this limited duty to HICs, since they are likely to be the only agents with the knowledge and resources to successfully discharge it. See Nussbaum, *Frontiers of Justice*, pp. 316-17; Miller, *National Responsibility and Global Justice*, pp. 253-59; Griffin, *On Human Rights*, p. 104; and Risse, *On Global Justice*, p. 80.

⁷³For example, Onora O'Neill argues that there are no positive human rights, since

not necessary to specify how HICs' duty to aid places constraints on HICs' SSIPs. Additionally, the aim of this paper is not to advance a particular argument for HICs' duty to aid, but rather to consider how this duty places constraints on HICs' SSIPs. I think that the above argument is the strongest argument for HICs' duty to aid; but, the claim that HICs possess such a duty is widely accepted and there are other arguments for it.⁷⁴ Even if the above argument is unsuccessful, therefore, this need not be fatal for my paper.

2.2. *The duty to aid and SSIPs*

Although HICs' SSIPs are just in principle since skill is a legitimate reason for inclusion, their duty to aid places constraints on the policies they may adopt that affect LMICs. HICs must ensure that their SSIPs do not contribute to the nonfulfillment of their duty to aid. In cases in which they do so, SSIPs contribute to an unjust relation between HICs and residents of LMICs.

This constraint is important since HICs' SSIPs can both benefit and harm residents of LMICs. Such policies benefit those skilled residents of LMICs who are able to take advantage of them; and they can benefit those who are left behind—for example, by incentivizing the development of human capital, or by creating a diaspora that facilitates trade and the transfer of knowledge.⁷⁵ HICs' SSIPs can also harm residents of LMICs by depriving their country of the human capital it requires to provide essential medical services, develop a competitive economy, and build reasonably just political institutions.⁷⁶

What does it mean for HICs' SSIPs to not contribute to the nonfulfillment of HICs' duty to aid? To address this question, it is helpful to first specify what it means for HICs to fulfill their duty to aid residents of

such rights do not clearly identify a duty bearer. See Onora O'Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (New York: Cambridge University Press, 1996). Similarly, some scholars argue that the correct account of human rights is a practical account, not the naturalistic account I present above. See Charles R. Beitz, *The Idea of Human Rights* (New York: Oxford University Press, 2009). For responses to the first objection, see Nussbaum, *Frontiers of Justice*, pp. 275-78; and Griffin, *On Human Rights*, pp. 107-10. For a response to the second, see Miller, *National Responsibility and Global Justice*, pp. 168-72.

⁷⁴See Brock, *Global Justice*; and Nicole Hassoun, *Globalization and Global Justice: Shrinking Distance, Expanding Obligations* (New York: Cambridge University Press, 2012).

⁷⁵Frédéric Docquier and Hillel Rapoport, "Quantifying the Impact of Highly Skilled Emigration on Developing Countries," in Tito Boeri, Herbert Brücker, Frédéric Docquier, and Hillel Rapoport (eds.), *Brain Drain and Brain Gain: The Global Competition to Attract High-Skilled Migrants* (New York: Oxford University Press, 2012), pp. 238-39, 254-57.

⁷⁶*Ibid.*, p. 239.

LMICs. I claim here that HICs fulfill their duty to aid when the aggregate effects of all their policies affecting residents of LMICs—for example, financial aid, knowledge and technology transfer, trade, and intellectual property law—benefit residents of LMICs to the requisite degree—that is, the degree specified by their duty to aid. This means that HICs, at least in principle, have *discretion* regarding the specific policies they adopt to realize this duty.

Why think that HICs have this discretion? Consider first that HICs' duty to aid requires that they adopt policies that can be reasonably expected to realize the goals specified by this duty—for example, meeting people's health needs to a requisite extent. Consider second that in many cases, HICs may have the choice of a number of policies, or sets of policies, that can be reasonably expected to realize these goals. Consider third that in these cases, it is reasonable to think that it is permissible for HICs to decide amongst these effective policies or sets of policies on the basis of their own interests. This is so for two reasons.

First, the duty to aid imposes an obligation to realize particular *outcomes*, namely, to ensure that residents of LMICs have access to the conditions necessary for a decent human life; it therefore only requires that HICs adopt policies that are effective in realizing these outcomes and do not violate any other moral constraints. Second, HICs, like all countries, have a right to self-determination, and are permitted to exercise it to a reasonable degree to pursue their national interest. This right entitles legitimate states—subject to certain limitations⁷⁷—to decide questions of domestic law and policy free from the interference of foreign states and citizens; and it entitles legitimate states to form treaties and trade agreements with other states. The principal liberal justification for this right is that it enables citizens—acting collectively—to exercise self-governance, that is, to govern their domestic affairs and foreign interactions with other states free from the interference or direction of other agents.⁷⁸ States are also permitted to exercise this right to self-determination to pursue their national interest to a reasonable degree, since citizens considered collectively, like citizens considered individually, have legitimate collective interests—for example, developing a competitive economy and ensuring a sufficient tax base. This right to self-determination is thus a key principle of a number of theories of international justice.⁷⁹

⁷⁷For example, respect for the human rights of both citizens and foreigners.

⁷⁸For different versions of this general argument, see Daniel Philpott, "In Defense of Self-Determination," *Ethics* 105 (1995): 352-85; John Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 2003), pp. 34-38; and Andrew Altman and Christopher Heath Wellman, *A Liberal Theory of International Justice* (New York: Oxford University Press, 2009), pp. 11-42.

⁷⁹See Rawls, *The Law of Peoples*, p. 37; Brock, *Global Justice*, pp. 274-97; and Altman

It follows from this that HICs have some discretion regarding the fulfillment of their duty to aid. HICs must choose policies that can be reasonably expected to be effective in realizing the goals specified by this duty; but, HICs are free to choose amongst these policies on the basis of their own interests. With respect to any particular policy choice, therefore—for example, immigration or trade—HICs need not implement policies that maximally benefit residents of LMICs. Instead, because they have discretion over the policies they employ to satisfy their duty to aid, they need only ensure that the particular policies they enact do not contribute to the nonfulfillment of their duty to aid, that is, impose net harms on residents of LMICs such that HICs fail to realize the goals specified by their duty to aid.

The simplest way for HICs to satisfy this requirement is to ensure that their SSIPs do not impose net harms on residents of LMICs. Provided that HICs can fully satisfy their duty to aid through other policies—for example, training of professionals, knowledge and technology transfers, financial aid, and pro-development trade deals—HICs need not design their SSIPs to maximally benefit residents of LMICs. If these alternative policy levers are likely to be ineffective, however, and HICs' SSIPs can be designed to benefit residents of LMICs, HICs have an obligation to do so in order to fulfill their duty to aid.

An alternative way for HICs to satisfy the above requirement is to ensure that any harmful effects of their SSIPs are offset by the positive effects of other policies.⁸⁰ Since HICs need only ensure that the aggregate effects of their policies affecting residents of LMICs are consistent with the fulfillment of their duty to aid, HICs may implement *particular* policies that harm these residents, provided that their policies taken together fulfill their duty to aid. Let me explain.

Suppose that to fulfill its duty to aid residents of Jamaica, the government of Canada must help the Jamaican government realize certain health outcomes, for example, a life expectancy of 78 years and an infant mortality rate of 8 deaths per 1000 live births. Suppose also that Canada's SSIP currently admits Jamaican nurses at a rate that is net harmful to residents of Jamaica—that is, they would be better off if Canada's SSIP admitted fewer Jamaican nurses. Suppose finally that the Canadian

and Wellman, *A Liberal Theory of International Justice*, pp. 11-42. Even some egalitarian cosmopolitans recognize that the right to self-determination must be accommodated within their theories of global justice. See Moellendorf, *Cosmopolitan Justice*, pp. 128-41; and Caney, *Justice Beyond Borders*, p. 173.

⁸⁰I am working with an expansive conception of harm according to which policies are harmful if they leave individuals worse off than they would otherwise be, where individuals can be worse off along a number of dimensions including income, personal security, and health status.

government can achieve the above health outcomes by adopting one of two strategies. Strategy A involves (1) reducing the current immigration rate of Jamaican nurses so that it is no longer net harmful; and (2) providing the Jamaican healthcare system with a modest amount of funding. Strategy B involves (3) maintaining the current immigration rate of Jamaican nurses; and (4) providing the Jamaican healthcare system with a large amount of funding. Under strategy B, Canada's SSIP—considered in isolation—imposes a net harm on residents of Jamaica. But, provided that Canada provides the Jamaican healthcare system with enough funding to offset these harms and so ensures that the health outcomes are met—for example, because the system is able to purchase highly effective technologies and medicines—then Canada's SSIP does not contribute to the nonfulfillment of Canada's duty to aid residents of Jamaica.

We can point to a similar type of case in the domestic sphere. Just as HICs have a duty to aid to ensure that residents of LMICs have access to the conditions necessary for a decent human life, so too states have a duty of distributive justice to ensure that their citizens meet a certain level of well-being—whether this is specified by a sufficientarian principle or an egalitarian principle. But, although states have such a duty of distributive justice, it is permissible for them to enact policies that, considered in isolation from other policies, harm particular citizens, provided that there are other policies in place to maintain their well-being at the requisite level. For example, it is permissible for a state to sign a free-trade agreement with another country even if a known consequence of doing so is job losses in a particular industry. The state in question must only ensure that policies are in place to sustain the well-being of those affected by these job losses—for example, by providing employment insurance.

Despite the difference in context, this case is sufficiently analogous to the international case. In both cases, states have a duty to ensure that a group of people achieve a specified standard of living. Just as HICs have some discretion with respect to the policies by which they satisfy their domestic duties of distributive justice, so too they have some discretion with respect to the policies by which they satisfy their duty to aid.

One might object that even if HICs ensure that their policies benefit residents of LMICs to the degree required by the duty to aid, it does not follow that the harms caused by their SSIPs are not wrong. To the extent that HICs' SSIPs harm residents of LMICs, they are unjust. By analogy, in many cases, if I harm you, I wrong you, even if I provide you with benefits that offset the original harm.⁸¹ If I enjoy using your car for target

⁸¹Thanks to Joseph Millum for pressing this objection.

practice with my slingshot without your consent, I wrong you, even if I fully compensate you for the cost of fixing the inevitable scratches and broken windows.

This objection rests on a faulty premise, however. States have a duty to respect the rights of other states—including the right to self-determination—as well as a duty to respect the human rights of their citizens. But states do not always act wrongly when they impose harms on the residents of other states, that is, when they make residents of other states worse off than they would otherwise be—for example, by adopting policies that have the consequence of reducing the expected GDP of other countries. Such harms are simply the likely consequence of states permissibly exercising their right to self-determination. For example, if the U.S. decides to exploit domestic sources of energy and develop green technologies, it will harm residents of its chief suppliers of oil, including Canada and Mexico. Similarly, if the U.S. decides to enact policies to encourage domestic manufacturing, this decision will likewise harm residents of exporting countries. However, provided that the U.S. respects the rights of these states and their citizens, these harms are not wrongful.

Of course, the situation is more complex when the interaction in question concerns HICs and LMICs. But we need to be clear about where the difference lies. It is not that HICs are bound by a duty *not to harm* residents of LMICs, but rather that HICs have a duty to *aid* residents of these countries. This means that HICs must ensure that the aggregate effects of their policies affecting residents of LMICs are consistent with the fulfillment of their duty to aid. If an HIC adopts a policy that, considered in isolation from other policies, would harm residents of a particular LMIC, the HIC acts permissibly, provided that the aggregate effect of *all* its policies affecting residents of this LMIC leave them no worse off than they have a right to be. To meet this standard, the HIC in question must therefore ensure that the harms it causes through one policy are offset by the beneficial effects of other policies. Thus, in the example of the Jamaican nurses above, if Canada successfully carries out strategy B, its SSIP harms residents of Jamaica, but these harms are not wrongful because they are offset by other policies that ensure that Canada fulfills its duty to aid residents of Jamaica.

If an HIC adopts a policy that harms residents of LMICs and *does not* enact additional policies to offset these harmful effects, these harms are wrongful, since they contribute to the nonfulfillment of HICs' duty to aid. If Canada fails to successfully carry out strategy B, maintaining its harmful SSIP and not providing the Jamaican healthcare system with sufficient funding to offset these harms (and thus failing to fulfill its duty to aid), the harms caused by Canada's SSIP are wrongful. Importantly,

however, these harms are not wrongful because Canada has a *duty not to harm* residents of Jamaica, but because it has a *duty to aid* them, and these harms contribute to the nonfulfillment of this duty. The harmful policies of HICs are thus wrong when they contribute to the nonfulfillment of their duty to aid residents of LMICs. HICs, we might say, don't have a wide-ranging duty not to harm residents of other states, but rather a duty not to harm residents of other states when these harms contribute to the nonfulfillment of their duty to aid.

One might grant that states have no wide-ranging duty not to harm residents of other states, but argue that states do have a duty not to harm residents of other states through their immigration policies—for example, by recruiting their top workers, thus resulting in a reduction (if very small) in the quantity and type of goods and services countries can produce. But why think this? The determination of who is to become a resident of one's country seems to fall within the permissible exercise of states' rights to self-determination, and, as I argue above, skill is a legitimate reason for inclusion. It therefore seems permissible for states to impose harms on residents of other states through their immigration policies as well as through other policies. The U.S. does not wrong Canada if it admits Canadian professionals, even if a likely consequence of doing so is a less competitive Canadian economy.⁸²

HICs must ensure that their SSIPs do not contribute to their failure to fulfill their duty to aid. But, suppose that global justice demands more of HICs and that egalitarian cosmopolitanism is true. What follows for my analysis of the permissibility of SSIPs?

In this case, HICs would need to ensure that the aggregate effects of their policies affecting residents of LMICs are consistent with the fulfillment of their duties of egalitarian distributive justice. This means, first, that if HICs' SSIPs are harmful to residents of LMICs, HICs would need to implement far more generous policies to offset these harms, since global egalitarian justice is a far more demanding principle than the duty to aid. Second, if global egalitarian justice requires global fair equality of opportunity, HICs must also design their SSIPs so as to prevent indirect discrimination against prospective immigrants, that is, to ensure that their SSIPs do not disproportionately disadvantage prospective immigrants

⁸²One might argue here that skilled emigrants from LMICs have a duty to their fellow citizens not to emigrate, for example, because their education has been publicly subsidized. One might conclude therefore that HICs act wrongly when they admit these prospective immigrants. I think it is reasonable to think that skilled citizens of LMICs have a duty to their fellow citizens; however, I don't think that HICs have a duty to enforce this duty, for example, by not admitting them. For a discussion of this question and what I take to be a successful defense of this line of response, see Oberman, "Can Brain Drain Justify Immigration Restrictions?"

who belong to particular groups—for example, minorities in LMICs who have not had the same chances as their fellow citizens to acquire skills.⁸³

By spelling out these implications, I do not mean to endorse egalitarian cosmopolitanism; but since I don't show that this position is false, it is important to spell out the implications of my analysis if this position turns out to be true.

3. SSIPs and the Real World

I have argued thus far that SSIPs are just in principle but that HICs' duty to aid places constraints on the design of such policies. Since the aim of my paper is to provide realistic guidance to policy-makers of HICs, I now consider (1) whether the SSIPs of HICs currently contribute to the nonfulfillment of their duty to aid, and (2) if so, the policy strategies HICs may adopt to address this problem.

3.1. *Are HICs fulfilling their duty to aid?*

Determining what the duty to aid requires of HICs is a large and complex task that is beyond the scope of this paper. I shall therefore stipulate that HICs' duty to aid requires (1) meeting the United Nations Millennium Development Goals (UN MDGs) in the near term,⁸⁴ and (2) delivering 0.7 percent of gross national income (GNI) to LMICs in the near term, with 0.15 to 0.20 percent of GNI dedicated to the least developed countries.⁸⁵ The UN MDGs are as follows:

1. Eradicate extreme poverty and hunger.
2. Achieve universal primary education.
3. Promote gender equality and empower women.
4. Reduce child mortality.
5. Improve maternal health.
6. Combat HIV/AIDS, malaria, and other diseases.
7. Ensure environmental sustainability.
8. Develop a global partnership for development.⁸⁶

This stipulation is admittedly rough, but it does have certain ad-

⁸³For discussion of this question, I thank Alasia Nuti and Jan Brezger.

⁸⁴Given the targets and indicators that are constitutive of the MDGs, the objects of this duty largely reside in LMICs.

⁸⁵United Nations General Assembly, Resolution 56/210B, "International Conference on Financing for Development," 9 July 2002.

⁸⁶United Nations, *The Millennium Development Goals Report 2013*, <http://www.un.org/millenniumgoals/pdf/report-2013/mdg-report-2013-english.pdf> (accessed 5 May 2014).

vantages given my aim of providing realistic guidance to policy-makers. First, it provides us with a standard by which to evaluate HICs' policies and for which data is readily available. Second, the content of (1) and (2) largely corresponds to the content of the duty to aid, namely, ensuring that residents of LMICs can access the conditions necessary for a decent human life. Finally, since all HICs have endorsed (1) and (2), it provides a strong premise in support of the policy strategies I outline below.

Governments have made significant progress towards meeting the UN MDGs, including goals 1, 3, 6, 7, and aspects of 8.⁸⁷ However, many goals are unlikely to be met, including goals 2, 4, 5, and 8.⁸⁸ Of course, the fact that many UN MDGs will not be met in the near term does not necessarily imply that HICs are not fulfilling their duty to aid. Whether these goals are met or not depends a good deal on the quality of LMICs' political institutions and the policy choices that these countries make.⁸⁹ But, a recent report by the United Nations Development Programme suggests that HICs also have an important role to play. Much of the progress on the health and education UN MDGs has been the result of Official Development Assistance (ODA), and further progress is similarly dependent.⁹⁰ Additionally, goal 8 explicitly requires HICs to help develop an open, rule-based, predictable, nondiscriminatory trading and financial system, address the needs of especially burdened LMICs, deal with the debt problems of these countries, and help make essential pharmaceuticals and new technologies available to their residents.

Importantly for our purposes, many HICs have not provided LMICs with sufficient ODA and have not done enough to achieve the targets of goal 8.⁹¹ For example, although HICs have committed to deliver 0.7 percent of GNI by 2015, with 0.15 to 0.20 percent of GNI dedicated to least developed countries, many of these HICs, including Belgium (0.47), France (0.45), Switzerland (0.45), Germany (0.38), Australia (0.36), Canada (0.32), Austria (0.28), the U.S. (0.19), Japan (0.17), and Italy (0.13), are not even close to these targets, providing less than 0.5 percent of GNI in 2012.⁹² The failure of these and other countries to meet their

⁸⁷Ibid., pp. 6-7, 10-12, 18-23, 34-41, 46-51, and 54-57.

⁸⁸Ibid., pp. 14-17, 24-33, 53.

⁸⁹United Nations Development Programme, *What Will it Take to Achieve the Millennium Development Goals? An International Assessment* (2010), pp. 20-32, http://content.undp.org/go/cms-service/stream/asset/?asset_id=2620072 (accessed 5 May 2014).

⁹⁰Ibid., pp. 32-37.

⁹¹United Nations, *Millennium Development Goal 8, The Global Partnership for Development: The Challenge We Face, MDG Gap Task Force Report 2013*, http://www.un.org/en/development/desa/policy/mdg_gap/mdg_gap2013/mdg_report_2013_en.pdf (accessed 5 May 2014).

⁹²Ibid., p. 16; OECD, "Aid to Poor Countries Slips Further as Governments Tighten

ODA commitments, as well as the broader failure of HICs to work with LMICs to meet many of the targets of the UN MDGs, suggests that many HICs are failing to fulfill their duty to aid.

3.2. Do SSIPs harm residents of LMICs?

The fact that many HICs are not fulfilling their duty to aid does not mean that their SSIPs are to blame. HICs' SSIPs contribute to this failure only if they harm residents of LMICs. Unfortunately, there is reason to think that it is likely that HICs' SSIPs are harming residents of some LMICs.

Frédéric Docquier and Hillel Rapoport have recently completed the most comprehensive study of the effects of skilled emigration on residents of LMICs.⁹³ Docquier and Rapoport develop a theoretical model that includes the different ways in which skilled emigration affects LMICs, and consider the available evidence in light of this model. It is the first study that quantifies and compares the positive *and* negative effects of skilled emigration from LMICs. Skilled emigration from LMICs can *positively* affect those left behind, since the prospect of emigration incentivizes human capital accumulation,⁹⁴ and knowledge transfers, technology adoption, and the establishment of trade and investment linkages can be facilitated by the resulting diasporas in HICs.⁹⁵ Skilled emigration from LMICs can *negatively* affect those left behind by removing human capital from the country that is important for economic performance⁹⁶ and the building of successful institutions.⁹⁷

Docquier and Rapoport quantify the short- and long-term effects of skilled emigration on GDP and income per capita for 148 LMICs. They emphasize that their findings are uncertain, given the weakness of much of the empirical evidence that is available.⁹⁸ However, they conclude that it is very likely that LMICs exhibiting low levels of skilled emigration (below 20-30 percent) will gain.⁹⁹ Since many LMICs currently exhibit skilled emigration rates in this range, skilled emigration is likely to be

Budgets," 4 March, 2013, <http://www.oecd.org/newsroom/aidtopoorcountrieslipsfurthergovernmentstightenbudgets.htm> (accessed 5 May 2014).

⁹³Docquier and Rapoport, "Quantifying the Impact of Highly Skilled Emigration on Developing Countries," pp. 209-90.

⁹⁴Ibid.

⁹⁵Ibid., pp. 254-57. Docquier and Rapoport also discuss the ways in which remittances from skilled emigrants can affect economic performance in LMICs (ibid., p. 272). However, they argue that remittances have only a minor impact on GDP and per capita income in LMICs (ibid., pp. 272-76).

⁹⁶Ibid., p. 239.

⁹⁷Ibid., p. 261.

⁹⁸Ibid., pp. 268-71.

⁹⁹Ibid., p. 271.

beneficial for many LMICs. However, there are a number of LMICs for which skilled emigration rates are likely to be harmful, including Guyana (89.0%), Haiti (83.6%), The Gambia (63.3%), Sierra Leone (52.5%), Ghana (46.9%), Kenya (38.4%), and El Salvador (31.0%).¹⁰⁰ To the extent that HICs' SSIPs enable these high skilled emigration rates from LMICs, it is very likely that these policies harm their residents, including those residents in extreme poverty who are objects of HICs' duty to aid.

Other scholars have estimated the effects of the emigration of health-care workers on the health of residents of LMICs. These studies are particularly important for our purposes, since the UN MDGs include certain health outcomes. Scholars mostly find that healthcare-worker emigration from LMICs negatively affects the realization of these goals.¹⁰¹ First, Alok Bhargava, Frédéric Docquier, and Yasser Moullan find that for LMICs on average, the prospect of emigration does not lead to an increase in physician training great enough to compensate for the number of physicians who emigrate; physician emigration in these countries can be expected to reduce staffing levels. They also find that reducing such emigration is likely to lead to reductions in child mortality and increases in vaccination, though they caution that these benefits are likely to be small in comparison to the UN MDGs.¹⁰² Lisa Chauvet, Flore Gubert, and Sandrine Mesplé-Somps come to a similar conclusion regarding the negative effects of physician emigration on child mortality rates in LMICs, though they find that the negative effect is far more pronounced. Focusing on a sample of 84 LMICs, they find that a 1 percent increase in the physician emigration rate increases child mortality by 0.35 percent.¹⁰³

Physician emigration from LMICs also has negative effects regarding the combating of HIV/AIDS. For example, Bhargava and Docquier find that physician brain drain in Sub-Saharan Africa is associated with increases in adult deaths due to AIDS once the HIV prevalence rate crosses 3 percent. A doubling of the physician emigration rate, Bhargava and Docquier claim, is associated with a 20 percent increase in adult deaths

¹⁰⁰Frédéric Docquier and Abdeslam Marfouk, "International Migration by Educational Attainment, 1990-2000," in Çağlar Özden and Maurice Schiff (eds.), *International Migration, Remittances & the Brain Drain* (New York: Palgrave Macmillan, 2006), pp. 175-77.

¹⁰¹For a contrary finding, see Michael Clemens, "Do Visas Kill? Health Effects of African Health Professional Emigration," Center for Global Development, Working Paper Number 114, March 2007.

¹⁰²Alok Bhargava, Frédéric Docquier, and Yasser Moullan, "Modeling the Effects of Physician Emigration on Human Development," *Economics and Human Biology* 9 (2011): 172-83, p. 182.

¹⁰³Lisa Chauvet, Flore Gubert, and Sandrine Mesplé-Somps, "Aid, Remittances, Medical Brain Drain and Child Mortality: Evidence Using Inter and Intra-Country Data," *The Journal of Development Studies* 49 (2013): 801-18, p. 808.

from AIDS.¹⁰⁴ Similarly, there is good reason to think that the UN MDGs regarding maternal care can only be met with a substantial increase in the number and availability of healthcare workers.¹⁰⁵ The emigration of healthcare workers works directly against this goal.

For many LMICs therefore, current emigration rates of skilled citizens in general, and healthcare workers in particular, are likely to be harmful to those who remain behind. To the extent that HICs' SSIPs enable these emigration rates, these policies are harmful to citizens of many LMICs. For those HICs having such harmful SSIPs, and that are not fulfilling their duty to aid, these SSIPs are contributing to their failure to fulfill their duty to aid, and so are contributing to an unjust international relationship with many residents of LMICs.

3.3. Policy strategies

How might HICs ensure that their SSIPs do not contribute to a failure to fulfill their duty to aid? In addressing this question, my aim is not to outline precise policy guidance for HICs, but to outline the broad strategies HICs can adopt to ensure that their SSIPs do not contribute to unjust relations with residents of LMICs.

First, HICs can take steps to ensure that their SSIPs enable skilled emigration rates that are *beneficial* to residents of LMICs. Of course, individual HICs cannot unilaterally set the emigration rates of LMICs;¹⁰⁶ however, they may be able to affect them by limiting the number of skilled prospective immigrants they admit from LMICs. In doing so, HICs should consider the sector-by-sector effects of their SSIPs. It may be that the rate at which skilled emigration is harmful to residents of LMICs is different for healthcare professionals from what it is for engineers. Additionally, skilled emigration affects different LMICs differently, depending on their size and the levels of education in the country.¹⁰⁷

¹⁰⁴Alok Bhargava and Frédéric Docquier, "HIV Pandemic, Medical Brain Drain, and Economic Development in Sub-Saharan Africa," *The World Bank Economic Review* 22 (2008): 345-66, pp. 364-365.

¹⁰⁵See Lincoln Chen, Timothy Evans, et al., "Human Resources for Health: Overcoming the Crisis," *The Lancet* 364 (2004): 1984-90; Sudhir Anand and Till Bärnighausen, "Human Resources and Health Outcomes: Cross-Country Econometric Study," *The Lancet* 364 (2004): 1603-9; and UNICEF, *Progress for Children: A Report Card on Maternal Mortality, Number 7* (2008), http://www.unicef.org/publications/files/Progress_for_Children-No_7_Lo-Res_082008.pdf (accessed 29 May 2014).

¹⁰⁶For this reason, scholars have suggested that states institutionalize international cooperation on migration in the same way that they have institutionalized such cooperation on trade. See Jagdish Bhagwati, "Borders Beyond Control," *Foreign Affairs* 82 (2003): 98-104; and Kapur and McHale, *Give Us Your Best and Brightest*, pp. 204-6.

¹⁰⁷This policy strategy is consistent with using immigration policy as a means by which

Have any HICs adopted this policy strategy? First, in 2010, the member states of the World Health Organization agreed to the WHO Global Code of Practice on the International Recruitment of Health Personnel, which requires member states to “discourage active recruitment of health personnel from developing countries facing critical shortages of health workers.”¹⁰⁸ Unfortunately, this code is nonbinding, and most HICs have not made meaningful progress to implement its recommendations.¹⁰⁹ Still, it provides HICs with guidance regarding the reform of their immigration and healthcare policies to ensure that LMICs have successful healthcare systems.

More importantly, some HICs have adopted policies to reduce the immigration of healthcare workers from LMICs. For example, Norway has taken steps to ensure that it has an adequate, domestically sourced healthcare workforce, thus avoiding the need to recruit healthcare workers from LMICs.¹¹⁰ The U.K., after actively recruiting foreign physicians and nurses from LMICs for a number of years, adopted a number of policies to reduce the immigration of healthcare professionals, including the introduction of new work permit legislation requiring employers to prioritize European Economic Area graduates over international graduates.¹¹¹ The U.K. has also signed a number of Memorandums of Understanding (MoUs) with LMICs, including India, South Africa, and the Philippines, that govern the recruitment of healthcare workers. The U.K.’s MoU with South Africa, for example, specifies that South African healthcare workers may only train or work in organizations providing U.K. National Health Services for a period of time that is mutually agreed upon by the U.K. and South African governments. This MoU has had a dramatic ef-

HICs can partially discharge their duty to aid residents of LMICs. HICs can simultaneously reduce the number of skilled immigrants they admit from LMICs while increasing the number of unskilled immigrants they admit. The latter are likely to be worse off than the former and their emigration is not likely to be harmful to those left behind. For a discussion of the gains from greater immigration, see Michael Clemens, “Economics and Emigration: Trillion-Dollar Bills on the Sidewalk?” *Journal of Economic Perspectives* 25 (2011): 83-106.

¹⁰⁸World Health Organization, *The WHO Global Code of Practice on the International Recruitment of Health Personnel*, adopted 21 May 2010.

¹⁰⁹Timothy Ken Mackey and Bryan Albert Liang, “Rebalancing Brain Drain: Exploring Resource Allocation to Address Health Worker Migration and Promote Global Health,” *Health Policy* 107 (2012): 66-73, p. 70.

¹¹⁰Otto Christian Rø, “Health Personnel Challenges in Norway,” in Amani Siyam and Mario Roberto Dal Poz (eds.), *Migration of Health Workers: WHO Code of Practice and the Global Economic Crisis* (Geneva: WHO Document Production Services, 2014), chap. 5, p. 57.

¹¹¹Claire Blacklock, Carl Heneghan, David Mant, and Alison M. Ward, “Effect of UK Policy on Medical Migration: A Time Series Analysis of Physician Registration,” *Human Resources for Health* 10 (2012), doi:10.1186/1478-4491-10-35, p. 6.

fect on the rate of South African healthcare workers immigrating to the U.K.¹¹² The U.K.'s MoU with India limits the active recruitment of Indian healthcare workers to those states not receiving development aid from the U.K.¹¹³

These policies of Norway and the U.K. have proven to be successful in limiting the immigration of healthcare workers from LMICs and arguably provide a feasible and effective model for other HICs. In implementing these types of policies, however, policy-makers of HICs should be careful not to prohibit skilled emigration from LMICs that is likely to be beneficial for all parties.

In cases in which HICs choose not to limit the immigration of skilled workers from LMICs—for example, because they rely on skilled immigrants to provide essential services to their citizens—HICs must ensure that the harm they impose on residents of LMICs is sufficiently offset by the beneficial effects of other policies. HICs need to ensure that the aggregate effect of their policies affecting residents of LMICs is consistent with the fulfillment of their duty to aid. To realize this strategy, HICs must reform their current aid policies and increase their ODA, since, as we saw above, many HICs are not even close to fulfilling their duty to aid without taking into consideration the harms their SSIPs impose. HICs may also introduce policies that directly compensate residents of LMICs for the harms imposed by their SSIPs.¹¹⁴

Of course, there may be cases in which HICs simply cannot meet their duty to aid residents of LMICs by carrying out this second strategy. For example, it may be that a certain prevalence of healthcare workers is necessary to meet the basic health needs of the population and that it is simply impossible for HICs to (1) admit some of these healthcare workers; and (2) help LMICs meet their residents' basic health needs. In these cases, HICs must revert to the first strategy and reform their immigration policies.¹¹⁵

Conclusion

My aim in this paper has been to investigate whether HICs' SSIPs are just. I argued first that there is nothing wrong—in principle—with HICs

¹¹²Ibid., pp. 5-6.

¹¹³Madeleine Sumption and Ruth Young, "Immigration and the Health-Care Workforce in the United Kingdom Since the Global Economic Crisis," in Siyam and Dal Poz (eds.), *Migration of Health Workers: WHO Code of Practice and the Global Economic Crisis*, chap. 11, p. 170.

¹¹⁴For suggestions on how to do this, see Brock, *Global Justice*, pp. 198-204.

¹¹⁵Thanks to Louis-Philippe Hodgson for discussion of this point.

taking skill as a reason for inclusion. I argued second that because HICs have a duty to aid residents of LMICs, they must ensure that their immigration policies do not contribute to the nonfulfillment of this duty. To the extent that they do so, HICs' SSIPs contribute to an unjust relation to the residents of LMICs that these policies harm.

In making this argument, I have adopted a realistic approach to the ethics of immigration, assuming that legitimate states possess a moral right to exclude. Proponents of open borders would no doubt object to my approach, arguing that I am presupposing a controversial answer to the central question of the ethics of immigration. They would no doubt also object to my recommendation that HICs reduce the skilled emigration rates of many LMICs on the grounds that this violates the rights to free movement of prospective skilled immigrants. However, although a world of open borders is normatively attractive, HICs are likely to control their borders for the foreseeable future. The question I have tried to address in this paper is how HICs should do so, given their duties to residents of LMICs. Within our current institutional system of sovereign states having a firmly entrenched legal right to exclude, appeals to open borders are not sufficient to respond to the policy questions HICs face. Instead, such appeals risk providing policy-makers of HICs with a normatively appealing rhetoric to justify admitting skilled prospective immigrants, while HICs continue to control their borders and fail to fulfill their duty to aid residents of LMICs.¹¹⁶

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