Skilled Migration: Who Should Pay for What? A Critique of the Bhagwati Tax

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Abstract

Brain drain critiques and human rights advocates have conflicting views on emigration. From a brain drain perspective, the emigration harms a country when emigrants are skilled and the source country is poor. From the human rights perspective, the right "to leave any country, including one's own"[1] is a fundamental right, protected for all, whatever their skills. Is the concern with poverty and social justice at odds with the right to emigrate? At the beginning of the 1970s, the economist Jagdish Bhagwati replied in the negative. He imagined a tax on the income earned by the skilled migrants in the destination country, to the benefit of the source country. He thus sought to reconcile the right to emigration and the brain drain effects[2].

This article argues that there is no need to tax skilled migrants in order to reconcile the right to emigration and social justice. Social justice is not incompatible with the right to emigration but rather with restrictions on mobility. If it is both the case that equal opportunities are a *minimal* requisite for social justice, and that access to opportunities implies freedom of movement, as I shall argue, then the brain drain criticism doesn't satisfy the minimal requirements of social justice.

The article is divided into three parts. Each part rejects one of the possible justifications of the Bhagwati tax, that is, as a way, for skilled migrants, (**i.**) to compensate the welfare loss occasioned to their country of origin; (**ii.**) to discharge for their obligation to the national community when it publicly financed their education; and (**iii.**) to compensate for the resulting inequality of opportunities between themselves and their non-migrant compatriots.

1. Should all losses be compensated by those who occasion them?

Since the brain drain debate began in the 1960s[3], different measures have been suggested to regulate skilled migration. Among those compatible with the right to emigrate, some are conceived of as incentives to stay in the country, while others as compensations for the welfare loss occasioned by emigration. The tax suggested by Jagdish Bhagwati belongs to the second category. His idea was that rather than seeking to reduce skilled emigration, a poor country may attempt to draw a benefit from it. He then proposed to tax the income the skilled earn in the host country to the benefit of the country of origin. Migrants should pay up to 10% calculated on their revenue net of the host country's taxes. The fiscal allegiance to the country of origin shouldn't last more than 10 years, the emigrant being supposed to acquire new citizenship.

[1] Cf. article 13(2) of the *Universal Declaration of Human Rights*, 1948

[2] First proposed in Bhagwati (1972)

[3] The phrase "brain drain" has been coined at the beginning of the 1960s by British tabloids to denounce the emigration of British scientists to the USA; it was quickly taken up by academic journals. See e.g. the debate Maddox (1964) launched in *Science*. Willis Russell (1965) mentioned the phrase among the "new words" that had entered the English language.

Bhagwati justifies this surtax as a form of compensation for the contribution that professionals would have made to the source country had they not emigrated[4]. His ethical reasoning would seem to be as follows:

1. (*Principle of Redress*) Each person should compensate for the losses that their voluntary actions cause to third parties
2. (*Loss*) By voluntarily emigrating and no longer contributing to the country's welfare, skilled workers are causing a welfare loss to that country
3. Therefore, skilled emigrants should compensate the country they leave

Since the beginning of the "brain drain" debate, several economists contested the second premise by denying that the source country suffers any loss of welfare from emigration. Indeed, the contribution they could have made to the country represents rather an *unrealised gain* than a real 'loss'. But it's above all the Principle of Redress (1st premise) that I am contesting here. Indeed, the idea that *the loss of welfare undergone by a country should be compensated by those who have caused it* brings together two assumptions: the first is that all loss should be compensated, and the second that such compensation should be made by those who occasion the loss. Both these assumptions are subject to criticism.

1.1. Loss or unrealised gain?

From the beginning of the debate on the brain drain, several economists have denied that a country can show any loss subsequent on emigration, allowing that the loss concerns 'welfare' rather than the number of inhabitants[5]. Firstly, according to these economists there is no loss if welfare is formulated in terms of *income*. Rather, emigration appears to be Pareto-superior: while the emigrant's income is supposedly augmented, the income of those left behind isn't diminished. On the contrary, if the emigrant's work is remunerated at its market value, her departure will augment the country's capital/work ratio and her absence will allow upgrading of the salaries of her fellow-professionals. In the short term, this upgrading will have the negative effect of augmenting inequalities, but the perspective of higher incomes across the profession will stimulate competition and inspire new postulants wishing to acquire the required expertise. Secondly, there should be no *fiscal* loss. One could imagine that, by her departure, the emigrant would deprive the country of origin of her fiscal contribution. Now, the emigrant certainly takes away her potential for fiscal contribution, but she also withdraws any claim on collective benefits. When her departure is definitive, there is no longer any risk that she will occasion further cost to the public purse. Thirdly, the loss can be formulated in terms of positive externalities – that is, of non-remunerated beneficial effects due to the simple presence of the professional in the collectivity. According to some, this loss would be minimal if organisational skills, creativity, or contribution to political life were linked to the individual rather than to a particular profession[6]. Unless we suppose that such qualities lead to emigration, they would seem to be equally well distributed between movers and stayers.

The above reasoning suggests that, in a given market, the sole negative effects of emigration are due to temporary imbalances. The greater the substitutability of the qualification and the shorter the period of training, the smaller the imbalance generated by emigration. However, not all countries are organised as markets: they cannot easily adjust the available workforce to evolving needs, and don't always remunerate professionals at their just value. The inequalities between countries can be expressed in terms of their capacity to respond to such imbalances. Thus, the more the economy of a country is planned, the less its capacity to replace the workforce. But above all, the more a country lacks resources, and thus the capital to invest in education, the greater the impact of its incapacity to produce and replace skilled workers. It is certainly the case that in poor countries, pro-

4 Bhagwati and Delalfar (1973)

5 Initially, the brain drain debate opposed nationalist economists such as Pitkin (1968) and internationalist economists such as Johnson (1965) and Grubel and Scott (1966)

6 Grubel and Scott (1966)

fessionals contribute to collective welfare *much more* than is shown by their pay-checks. It's this marked difference between the value of their work and the salaries they receive that would be redressed by the Bhagwati tax[7].

Still, however great the difference between the value of a professional's work and her remuneration, it doesn't mean that the country loses through emigration. On the contrary, since the end of the 1990s, numerous studies have shown that poor countries gain from emigration[8]; these studies generally go beyond the short-term effects of the professional's *absence* from the country. And her sole presence – as Bhagwati admits – doesn't guarantee productivity as, without the appropriate conditions, "the brain (…) can drain away faster sitting in the wrong place than travelling abroad to Cambridge or Paris"[9]. Indeed, emigration represents a net gain for poor countries if we take into account other variables: the *diaspora effect* (remittances, commercial and technological exchange due to the diaspora); the *prospective effect* (the influence of the prospect of emigration, and notably on personal and institutional investment in education); and the *return effect* (returning emigrants have greater human, financial, and organisational capital)[10]. If we refer only to remittances, one can regret that the amounts sent by the skilled migrants are not directly proportional to their income[11]. Nevertheless, the total value of what is received by developing countries from remittances is considerable: it exceeds foreign economic investment in poor countries and represents today more than four times the aid to development[12]. In other words, what is achieved by migrants on a voluntary basis largely exceeds what is realised by States on an altruistic basis and by entrepreneurs on a commercially-interested basis.

1.2. Should unrealised gain be compensated?

The boon that the diaspora effect represents for many developing countries is not a reason to discard their claim to be compensated for the absence effect. Indeed, which court would invalidate a demand for damages solely because the plaintiff possesses other sources of income and hasn't suffered an overall loss?

Let us suppose that the absence effect implies a loss: is it the case that *all* loss should be compensated? Besides the case of emigration, we don't usually hold that, for a country, the simple fact of having suffered a loss justifies indemnity. Here, the abolition of slavery is a good counter-example. After a lively debate, historians agree today that, the decision to abolish slavery was economically irrational for the countries concerned. Some have gone so far as to describe the loss suffered by the British Empire by the neologism *econocide*, or 'economic suicide'[13]. This might seem excessive but, whatever the value of the loss occasioned, we wouldn't hold that the British Empire or its successor should be compensated for it – and all the more so, that those who should bear the compensation cost are the very beneficiaries of abolition. The mere existence of a loss doesn't justify compensation: only 'unjust' losses, we believe, should be indemnified. Therefore, the questions of what is just and of what one is entitled to are prior to and should be decided before discussing the value of any loss. Is then a country entitled to the non-emigration of its brains?

Entitlements to compensation are usually justified by two reasons: firstly, by the value of the positive externalities of the skilled' presence in the country and, secondly, by the cost of their education[14]. I will discuss the second reason in the next section, while focusing here on the first one. By definition, externalities refer to benefits which are not remunerated. Usually, when migration is not the issue, we don't claim we have *a right* to benefit from one's unpaid work or from one's presence in the neighbour-

7 Bhagwati and Delalfar (1973: 94).

8 See for example Mountford (1997) or Beine et al. (2001)

9 Bhagwati (2004: 214)

10 For a brief presentation, see Kapur and McHale (2006)

11 Faini (2007)

12 Cf. Human Development Report (2009: 78). The evaluation concerns the year 2007 and doesn't take into account money transferred through official channels.

13 Drescher (1977), see also Eltis (1987) and Fogel et al (1989-1992)

14 The second justification will be addressed in the following section.

hood. When valuable people stop generating benefits (either because they've changed their profession or because they've moved to a different place) we don't usually claim that they should compensate us for our *unrealised gain* – for that which we *would have* gained had the situation remained unchanged. This is perhaps because we usually respect their will to change occupations and places *as a right*, that is, despite the negative effects its exercise can have on us. When it comes to migration, this respect fades and we start to calculate the unrealised gain and to ask the skilled migrants to compensate for it. How come we deny a right that both we intuitively recognise and is acknowledged by the Universal Declaration of the Human Rights?

In some cases, the denial of the right to emigration can be explained by a bias. The legitimate concern we have for the poor countries where basic needs are not satisfied may come to override any other concern and to distort our judgement. We see the emigration of the skilled only as a means to deprive those who are already poor of an opportunity to become a little less poor. However small and however unrealised the gain would be, our concern for the very poor renders plausible the principle that *unrealised gain should be compensated by the person who occasions it*.

To see how the bias works, let us analyse how it trapped some feminist authors[15]. Traditionally, feminists oppose the sexual division of labour and the relegation of women to childcare. But recently, Arlie Hochschild, a feminist sociologist, coined the phrase *care drain* to describe the loss of care produced in poorer countries by women who leave their families and migrate to work as caregivers in richer countries[16]. Hochschild sought to criticise globalisation and indeed, our natural empathy for children deprived of their mothers' presence gives an easy support to such criticism. But the idea that women's migration produces care drain implicitly reaffirms the sexual division of domestic labour, by which women should be present to care for their (own) children. Hochschild *exclusive* concern for the children's loss of care leads her to ignore the situation of migrant mothers. She is neither puzzled that all over the world, some women are always associated to carework – unremunerated in the poor countries and badly remunerated in the rich countries – nor that most migrant domestic workers support their families in the poor countries at the cost of discrimination, downgrading, and exploitation in the rich countries[17]. She takes mothers', not fathers', departure as a loss without inquiring why fathers' migration doesn't generate a 'care crisis'. For, indeed, fathers' absence remains unnoticed not only by researchers but by children themselves. As a survey has shown, the wellbeing of children whose father is a migrant is equal to or even higher than that of children who have no migrant parent[18]. Given the pre-existing sexual division of domestic labour, can anyone be surprised that mothers' migration has noticeable effects in terms of care?

This example illustrates how the exclusive focus on the immediate loss caused by emigration distorts our judgement. Considering migration as an isolated event and assessing it by its immediate consequences on third parties overlooks the pre-existing scarcity and overestimates the migration's effect. In the above example, taking the care drain as caused by mothers' migration is overlooking why fathers' migration might not cause a loss. Should a remedy to the care drain address mothers' migration? If children's care,

[15] Dumitru (2011)

[16] Hochschild, A. (2001); Ehrenreich and Hochschild (2002)

[17] For an analysis of the over-representation of migrant women in care activities and the downgrading of migrant graduates, see the OECD Report (2006). This phenomenon is overlooked by Hochschild (2002:16) who associates the migration of a woman with engineering degree with the *care drain* rather than with the *brain drain*. On the invisibility of the women's skilled migration, see Kofman (2000), Morrison et al. (2007), Docquier et al. (2007).

[18] Cf. the survey realised by the Soros Foundation (2007) on a sample of 2037 Romanian children. In answer to the question "What do you feel about … your health, your family, and your life in general?" the children of non-migrant parents and the children of migrant fathers make a similar appraisal of their welfare. Indeed, the value of the subjective index of welfare is *higher* when the father is absent than when both parents are present – cf. Soros Foundation (2007: 27-28).

and not women's migration, is our concern, the best political response is not one which tries to keep mothers either in their homes, or in their homelands. Indeed, when women begun to work outside the home, there was a loss of care, but however important, this care drain is not a reason to override the women's right to work. The best – and, indeed, the only acceptable – policy is one that *adapts* the care of children to the women's freedom to work and to move.

Similarly, it is sometimes assumed that to deal with poverty, a country cannot but tie the citizens together in the homeland. In the brain drain debate, the suggested policies are even more brutal than in the care drain debate. For indeed, no-one has yet foreseen to respond to the loss of care through emigration policies that forbid mothers, rather than fathers, to leave the country or which oblige women, rather than men, to compensate for their departure through taxation. In the brain drain debate, interdictions and taxes are often advanced as solutions, in disregard with the human right of emigration and despite the discrimination they operate between skilled and unskilled people with regard to a human right. Now, the analogy with the care drain solutions suggests that if the brain drain critics are concerned by development should worry how the poor countries can respond to the existing needs, without denying the workforce's mobility. To overemphasise the immediate effects of individual mobility is to work with a short-term concept of development.

2. Éducation oblige?

If a country's unrealised gain cannot justify compensation by skilled emigrants, could the public financing of their studies provide a better justification? This hypothesis would seem to depend on a principle of fairness which holds that anyone who benefits from the cooperative labour of others – as invested in public education – should assume reciprocal duties[19]. The reasoning is as follows:

4. (*Principle of Reciprocity*): No-one should benefit from the cooperation of others without assuming reciprocal duties
5. (*Public Education*): Anyone who studies in a public establishment is benefiting from the co-operation of others.
6. Therefore, anyone who studies in a public establishment should assume reciprocal duties.

"Éducation *oblige*" would be the conclusion of this argument which implies that educations creates obligations. One would agree with the dictum, without agreeing on who is obliged to whom and how much.

2.1. Who is obliged to whom?

The answers to the question of *who* might be under an obligation as a result of education vary according to the views of public education. A first view, much present in the literature on the brain drain, affirms premise (5): education is a privilege made available by collective efforts. When a community decides to allocate its resources to education rather than to other ends, it is making an investment and has the right to expect a return; and the poorer the country, the graver the graduate's departure seems. Julius Nyerere, a former Tanzanian president, went so far as to compare the skilled emigrant to a traitor:

> "Some of our citizens will have large amounts of money spent on their education, while others have none. Those who receive this privilege therefore have a duty to repay the sacrifice which others have made. They are like the man who has been given all the food available in a starving village in order that he might have strength to bring supplies back from a distant place. If he takes this food and does not bring help to his brothers, he is a traitor."[20]

By contrast, in the literature on equal opportunities, the view of public education is opposed to that expressed in premise (5). On this view, education is a source of obligation not for the younger generations who benefit from it, but for the older ones who must finance it. All the theories of equal opportunities consider educa-

[19] Rawls (1971, §18) takes this principle from Hart (1955: 185).

[20] Speech by President Julius Nyerere, 12th May 1964, quoted by M Sinclair (1979 : 19)

tion not as a privilege, but as a means to improve one's opportunities to find work and to live a better life. All things being equal, the higher a person's level of education, the lesser her chances to be constrained by poverty. Education is meant to grant access to the widest possible range of opportunities. If the range of opportunities were equally open to every person whatever their origins, this would imply – as the philosopher Darrell Moellendorf remarks – that

> "…a child growing up in rural Mozambique would be statistically as likely as the child of a senior executive at a Swiss bank to reach the position of the latter's parent"[21].

One needs not to endorse Moellendorf's ambitious ideal to realise just how opposed these two views are. They diverge on the role of older generations: while, on one view, older generations are *obliged* to ensure the financing of education, on the other, financing education is a choice that a community *can* make if it expects a return on the investment. They also diverge on the goal of education: while for the one education is a means of ensuring greater personal freedom, by allowing a person to aspire to the *highest possible* standard of living, for the other it's a means of *limited improvement* of a person's lot, on the condition that that person in turn improves the lot of the community as a whole. Finally, they diverge over the link between the child and the family: while one holds that education should *free* the child from the possible disadvantages of their family origins, the other sees education as *attaching* the child's lot to that of their community of origin.

One might claim that poverty explains a great deal of the divergence between these two views. A poor country is obviously not freer to invest in education than is a rich country, but the cruel lack of resources requires well-thought out political choices. If limited public funds are spent to the befit of some members of the community, who thereafter emigrate, the funds will be entirely lost to the community. This being the case, a poor country would seem to have no other choice than to cling to the links that favour the national community.

Does the validity of the dictum "*éducation oblige*" therefore depend on the poverty of the country? In fact, it rather depends on the value one attaches to national frontiers than on any concern for poverty as, setting aside the international context, there's little credibility to the idea that the poorer one is, the greater one's duties with respect to one's community of origin. Let's imagine for a moment a country where university fees are largely ensured by families or by village communities. Some families or villages are poor; others are better off. If education incurs greater obligations for the poor, it follows that children from an unfavourable background should return to work in their family or village, unless they pay some special tax. The first consequence of our dictum would be *the more that one is born in circumstances of poverty, the less one is free to prosper* and, conversely, *the richer one is, the fewer obligations one has*. It's hard to imagine that such a principle would be accepted in any theory of social justice whatsoever. The second consequence is that certain young people born in poor families or villages would refuse subsidised education, hoping rather to earn more in exchange for non-qualified work in the richer areas. If their calculations were correct, the consequence of our dictum would be *the poorer one is, the less incentive one has for escaping poverty through education*. This is certainly not the goal of development policies.

2.2. What is one obliged to?

The problem with the brain drain criticism is that it cannot draw on the principle of reciprocity. Even if education is supposed to generate obligations for those who benefit from it (premise 5), the obligations the brain drain criticism assigns to the skilled largely surpass the requirements of reciprocity. I'll argue that neither a return to the country of origin nor the Bhagwati tax can be defended in the name of reciprocity.

In the Tanzanian president's indictment above, the obligation not respected by the graduate is the return to the country. Nyerere compares the skilled migrant to one who has been given

[21] Moellendorf (2002 : 49)

all the food available in a starving village in order to bring supplies back from a distant place, but who thereafter refuses to return and help her fellows. This comparison suggest an instrumentalist and collectivist view of education: to educate an individual is to give her the means to help her own community. Though, the value of the help remains unspecified. The analogy creates the illusion that a *simple act* – that of "bringing back the promised supplies" – suffices to discharge the graduate's obligation. But the promise she has made is not clear: what is the value of the promised supplies, and if supplies are the stake, why cannot they be routed without the professional's physical return? One can find strange that the return to the country is supposed to be a return with precisely what is owed to the community, while not returning makes her a traitor. For if the *value* of the supplies is defined by the *fact of returning*, one may wonder how education can generate such an obligation that one cannot discharge other than by working *for one's own community, for as much and as long as the latter needs it*. If this is the case[22], the choice amounts to either enslaving oneself to one's community or being a "traitor". Can reciprocity command such a choice?

As a matter of fact, such an obligation largely surpasses the requirements of reciprocity: investing in one's education cannot yield an obligation, for the beneficiary, to *indefinitely* work for the financing community. Even if the value of the investment was indexed to the resources available to the community by taking into account the share of such expenditure for a community with few assets, it should always be possible to *specify* the value owed in return. Outside the migration field, any contract conditioning a scholarship on the requirement that the grantee works for the sponsoring community *for as much and as long as the latter needs it* would be qualified as a contract of 'self-enslavement' and declared void. Why do skilled migration critics consider it unproblematic?

As Fernando Tesón points out, concern over the brain drain is incompatible with due respect for self-ownership[23]. Indeed, to suppose that a country is morally allowed taking measures to regulate movement of "its" professionals is to deny those people the rights over themselves, that is, the rights to choose where, for whom and for which amount of money they work. In other words, skilled people are treated not as self-owners, but as the apprentices of feudal Guilds who, in exchange for their apprenticeship, were bound to work for a given period in the service of the master who had taught them their trade[24]. While this period was limited to several years in medieval times, the State, which plays nowadays the role of feudal masters, claims to own "its" professionals for lifelong. "The slavery of the talented", a phrase that Ronald Dworkin coined to describe regimes in which the community claims to have a right over the exercise of individuals' talents, is nowhere better suited[25].

Now, not only is criticism of the brain drain incompatible with self-ownership, it also establishes and justifies an *appropriation mechanism* for individual talent. By financing their education, the State is held to acquire property rights over the exercise of individual talent. To the extent that it is supposed to both yielding duties for the professional and granting rights to the collectivity, education becomes the tool by which the latter enslaves the former, a way of treating others

[22] Nyerere's disregard for the freedom of movement and for monetary value of goods seems to be corroborated by certain historical facts. In his Arusha Declaration (1967), he affirmed that development based on "money" fails. To fulfil the unity and self-sufficiency of the country, the creation of *Ujamaa* (literally, *togetherness*) villages, that he was to promote as an alternative, consisted in the forced displacement and relocation of peasants living in isolated farms.

[23] Tesón (2008); see also Dumitru (2009 : 130)

[24] There are differences between the requirements formulated by critics of the brain drain and Guild laws. Among others, the seven years of apprenticeship determined the exercise of any trade, with an obligation of supplying unremunerated work. But, unlike obligations to the State, obligations to a master came to an end after a certain predefined period. For a critical analysis of the guild system, see Adam Smith (1776) Book 1, Ch. 10.

[25] This expression is due to Dworkin (1981: 312). The idea was first suggested by Nozick (1974: 279), in response to Rawls (1971: 106) who considered the distribution of talent in a given society as a "*collective asset*".

as merely means to an end, by taking "people's abilities and talents as resources for others"[26].

If the obligation of definitive return to the country of origin seems hard to defend, what about the Bhagwati tax? Some authors have held that:

> "…even a contract of short duration that calls for the performance of routine and unobjectionable tasks is a contract of self-enslavement and therefore legally unenforceable if it bars the employee from substituting money damages for his promised performance."[27]

Seen from this angle, payment of a tax does indeed seem to offer a solution and saves the dictum *éducation oblige* from the domain of 'contracts of slavery'. The Bhagwati tax (like the Soviet exit tax[28]) by allowing the possibility of buying back one's debt is compatible with one's right to emigration. But is it morally justified?

In truth, the Bhagwati tax is confronted with the same difficulties as an obligation to return to the country. The first is the difficulty of not being justifiable by the principle of reciprocity. The Bhagwati tax does not actually *reimburse* a fixed debt. It doesn't not because the tax was conceived of as compensation for the absence effect rather than as a reimbursement of investment in education[29], but is rather due to its being indexed to the income of those who are supposed to pay it. It doesn't because a deduction of 10% of skilled emigrants' income over 10 years means that in some cases their education will have been repaid several times over while, in other cases, it'll be far from full repayment. For instance, two graduates from the same Tanzanian college won't discharge their duty of reciprocity at the same rate if one emigrates to South Africa and the other to Switzerland. The Bhagwati tax doesn't represent the monthly repayments of a student loan, but rather levies a tax on non-resident citizens[30].

The second difficulty arises from the way the Bhagwati tax is linked to talent. Even if it doesn't grant the State the right to enslave the educated, it nonetheless establishes a form of *intellectual property over human individuals*. In the same way that the author of a book has the right to a percentage on each copy sold without being the owner of each copy, the State claims a right over each professional's value. While not being the owner of each individual, it perceives a percentage on each departure for a foreign country of the talents it has educated. Investment in education thus becomes a source of *royalties* for the State.

Some will find nothing objectionable in this kind of property. If the author has rights over her work as a result of the resources and the labour she has invested in it, why should the State not have rights over the people as a result of the resources it spent on their education? Yet, this analogy is questionable for at least three reasons. The first lies in the asymmetry between the raw materials of, respectively, the author's work and that of the educating State. Allowing that labour grants rights over the raw materials it transforms[31], the "raw materials" are inert matter in one case and human being in the other. Secondly, unlike labour transforming inert matter, education is not transforming minds unless their possessors make an *effort*. Indeed, education is viewed by critics of the brain drain as a simple good, a good that one can benefit from as one consumes a bowl of rice. However, education – and particularly higher education – is a good that can be "consumed" only as the result of significant efforts by the "consumer". Thirdly, if work on a person grants rights over that person, there are perhaps more legitimate claimants than the State. Indeed, the principal work involved in *making* a human being is the "painful,

[26] Nozick (1974: 228).
[27] Kronman (1983: 779).
[28] In theory, the Soviet tax offered the graduate a choice between reimbursing the cost of his education and exercising his profession on the spot. Admittedly, if the cost had to be reimbursed before departure and was assessed as being equal to the benefit the graduate would have brought had he worked on the spot throughout his life, the model would maintain the situation of slavery despite offering the theoretical possibility of monetary compensation.
[29] Bhagwati & Dellalfar (1973)
[30] Citizenship as the basis of contribution is employed by the United States and by fiscal regimes inspired from the American model, in the Philippines, New Zealand and – formerly – Mexico. For an analysis, see Pomp (1989).
[31] Locke (1690: Book II, Ch. 5)

prolonged and risky labour … of a woman who produces a baby"[32]. Would it not therefore be more appropriate to levy the Bhagwati tax to the benefit of mothers, rather than the State? And if thereafter a person's life is saved by a doctor, would this latter not be in a position to proclaim "santé oblige" and feel entitled to a part of the future income of the patient? Given the conflict between the claims of so many "owners", it is hard to see how the monopolistic claim of the State can be defended.

To sum up, the dictum "*éducation oblige*" does not justify anything more in the name of reciprocity than the cost of the education itself. The view of education as investment and as a means of collecting royalties for the State is diametrically opposed to the view of education as a way of ensuring people's access to opportunities. If we recognise that "people do not spring up from the soil like mushrooms" [33], but that they require help in becoming adults, then older generations cannot refuse to invest their resources in education just because such investment doesn't seem sufficiently profitable to them. It may be true that "éducation *oblige"*, but the obligation concerns above all the older generations. They fund education to increase young people's opportunities and they publicly fund it to decrease inequality of opportunities between them. In the same way, the burden on poor countries can be avoided as I'll show in the next section, by a taxing, at a global level, the highest incomes[34] – be they of migrants or not.

3. Why migration should not be taxed?

If the Bhagwati tax cannot be justified either by unrealised gain or by investment in education, why not use it to redress inequality of opportunity[35]? If migration increases opportunities for some, revenue could be used to compensate for lower opportunities of their non-migrant compatriots. The reasoning favouring the tax would be as follows:

7. (*Equality of opportunities*): Justice requires to equalise opportunities, by any means including taxation
8. (*Migration*): Through migration, the opportunities' level of some becomes higher than that of their non-migrant compatriots
9. Therefore, justice requires to tax migrants to compensate for the lower opportunities' level of their non-migrant compatriots

The above reasoning depends on two assumptions. The first is *nationalist*: the group of individuals among whom opportunities should be equally distributed is restricted to the national community. The second is *sedentarist,* as I call it: to stay in the country, rather than to move is supposed to be the "normal" conduct. Should these two assumptions be absent, an alternative conclusion would be:

> 9*. Justice requires that migration (as an access to opportunity) be favoured for all

I won't defend the conclusion 9* here. Rather, this section is devoted to rejecting the conclusion 9 which states that in so far as it increases the access to opportunities for some, migration should be taxed to compensate for the lower opportunities of others. To grasp why taxing mobility is unacceptable, one should ask, without having a prior commitment to *global* equality of opportunities, firstly, whether equality of opportunity can be achieved in segregated territories and, secondly, whether access to greater opportunities is an appropriate object of taxation.

3.1. Separate, but equal… opportunities?

Nowadays, the most popular agenda amongst the egalitarian thinkers has two objectives. The first is to favour equality of opportunities which appear "to many writers to be the *minimal* egalitarian goal, questionable (if at all) only for being too weak".[36] The second is to diminish global inequalities, but in the context of separate states – indeed, the slogan of this objective could well be "equal *but separate*". But is such a programme coherent?

[32] Shaw (1984: 21).
[33] Kittay et al (2005: 443)
[34] For a defence of the idea of a global fund, see Steiner (1999) and Pogge (2001).
[35] McHale (2009: 381) discusses the use of the Bhagwati tax to aliment a development fund.
[36] Nozick (1974: 235 – my emphasis); Moellendorf (2002: 49)

By its primary justification, the notion of equal opportunities is a notion of global justice[37]. The idea that no-one should be disadvantaged because of their social origins, sex, or the of skin's colour is justified by the fact that none can choose the circumstances of their birth. Now, as one's country of birth is no more 'chosen' than are one's social origins, the scope of the ideal of equal opportunities should be global and indifferent to the country in which one happens to be born. But, for the sake of the argument, let's avoid here all recourse to positions not easily accepted by the critics of the brain drain and limit our arguments to a single country: are equal rights compatible with a country divided into "equal but separate" regions?

One could hold, as did Judge Henry B. Brown in the well-known case of *Plessy vs. Ferguson*, that separation is compatible with equality. According to Brown, separation is not of itself liable either to reduce the privileges, immunities, or property of any person, or to deny equality under law. One could say that separation is only offensive when it is accompanied by inequalities and serves to amplify them. But once we have ascertained that opportunities are strictly equal in each region, the separation between regions is no longer objectionable.

This argument constitutes a real challenge for the theoretician of equal opportunities. If two regions enjoy equivalent opportunities and the inhabitants of each have the same access to the opportunities available in *their* region, but not to those of the other, can we still hold that the regional frontier deprives these people of equal access to opportunities?

The answer one gives to this question is fundamental for theories of justice in the field of migration. Indeed, a large number of authors adopt a position that I would call "*sedentarist*": they consider mobility to be an exceptional condition that in no way characterises "human nature" and that can be explained by the presence of inequalities:

> "…human beings move about a great deal but not because they love to move. They are most of them inclined to stay where they are, unless their life is very difficult there."[38]

These authors consider that, in the absence of inequalities, there would be neither migration nor other changes:

> "Imagine a world in which there are no significant political and wealth variations among bounded membership units. (…) In such a world nothing is to be gained by tampering with the existing membership structures (…) there is no motivation for change and migration."[39]

Taking migration to be invariably forced, these authors propose trade-offs between development aid and migration to bring "equilibrium" to "migratory pressure". Any preference for migration seems to them either rare or eccentric:

> "Persecution, oppression and lack of opportunity are surely the principal migration incentives (…). An individual might seek to migrate in order to get as far away from his family as possible, to master a foreign language or to live in a country where people take siestas. *For simplicity, I will assume that such preferences cannot be expected to favour one country over another*."[40]

On the political level, these authors maintain that persuading governments and compatriots to accept more foreigners is a second-best solution to the problem of global inequalities:

> "If [this] *is* a worthy cause, it is so in virtue of the protection it affords to persons who are badly off."[41]

To sum up: if being sedentary is considered as the most "natural" behaviour under conditions of equality, a world with "equal but separate" regions doesn't seem to pose any problem. But is being sedentary compatible with equal opportunities?

It's more likely that the ideal of equality such thinkers have in mind is an equality of *results* rather than of opportunities. These views of equality are distinct. Firstly, final results and

[37] For the development of this argument, see Carens (1987) and, more recently, Caney (2001), Moellendorf (2002), Loriaux (2008) etc.

[38] Walzer (1982: 38)
[39] Shachar (2009: 5)
[40] Cavallero (2006: 105 – my emphasis)
[41] Pogge (2005 [1997]: 713)

the opportunities of obtaining such final results are two different things. As an illustration, the example given by Sven Hansson is telling: "if I am certain to receive payment to my bank account for this month's work, it would seem unnatural to say that I have an opportunity to receive my salary"[42]. Secondly, it follows that these views stand in different relations to action. While the equality of results is indifferent to what is done by individuals, equal opportunities concern *access* to opportunities: they specify the conditions under which the *action* of individuals might be accomplished. Thus, sedentarist thinkers see human individuals as simple recipients of a redistribution of resources, while on the ideal of equal opportunities they are agents in movement.

Attachment to equal results and to a sedentarist view explains why we're tempted to believe that a country with two equal but separate regions respects the equal opportunities of its inhabitants. When thinking of the value of the stakes[43], our attention is drawn to the *equality* of opportunities to the detriment of *access* to opportunities. But boundaries and segregation are incompatible with (equal) access to opportunities. To see why boundaries cannot equalise opportunities, imagine a policy dividing professions: half of them being set aside for women and half for men, so that no woman is entitled to exercise a profession reserved for men, and vice versa. The distribution is equal in all respects: remuneration levels in each category are the same (i.e., the best job for men is as highly-paid as the best job for women and this holds for any wage level); the distribution of job profiles within each group are the same (i.e., there are as many men as women occupying well-paid jobs – a proportion also strictly observed for lower-paid jobs); and the symbolic value of jobs is equivalent (jobs for men have as much social dignity as jobs for women). Would we call this professional segregation a policy of equal opportunity? It would seem more appropriate to call it a policy of *equal discrimination*: men and women are equally discriminated against when they are given separate, though equal, opportunities.

The difference between a policy of equal discrimination and equal opportunities is evident: only the second opens the *totality* of positions *to all*. This is a minimal condition for social justice and one that is often considered to be insufficient – indeed, a large number of authors agree with Rawls that a regime where "*all* have at least the same legal rights of access to *all* advantaged social positions"[44] represents no more than a *formal* equality of opportunities. On a more sophisticated (yet still insufficient) view, "positions are to be not only open in a formal sense, but … all should have a fair chance to attain them"[45]. This implies more proactive policies – in education, for example – that ensure that "those who are at the same level of talent and ability, and have the same willingness to use them, have the same prospects of success, regardless of their initial position in the social system"[46]. Taken as a policy of equal opportunities, the aim of education is to maximise individual access to opportunities – the invariable object of such policies is to allow individuals to go beyond the opportunities to which their origins would seem to predestine them. To be educated is to be able to leave, should one so desire.

It's now a little clearer why geographical and social mobility go hand in hand. If the *minimal* political goal of social justice is to allow access to the widest range of opportunities, wherever such opportunities are to be found, then *equal opportunities imply freedom of movement*. Rawls counts freedom of movement and the free choice of occupation as primary goods – that is, among those goods that are useful to us whatever our life plan. He remarks that "freedom of movement and free choice of occupation against a background of diverse opportunities (…) allow the pursuit of diverse final ends and give effect to a decision to revise and change them, if we so want" [47]. Not being a defender of cosmopolitanism, Rawls refers here to freedom of movement

[42] Hansson (2004 : 306)
[43] "Stakes equality" is half-way between equal opportunities and equal results. For a defence of the notion, see Jacobs (2004)
[44] Rawls (1999 : 103)
[45] Rawls (1999 : 103)
[46] Rawls (1999 : 104)
[47] Rawls (1993 : 224, 366)

within the confines of the State. Nonetheless, the link between freedom of movement and access to opportunities seems to him to be necessary.

3.2. What's wrong with the brain drain debate

By its scope, the programme of those who criticise the brain drain is a programme of social justice. Its goal is to ensure – albeit in the context of distinct states – a real improvement of opportunities for the most needy. But even though it recognises that education and migration are indeed ways of accessing opportunities, the critics of the brain drain reprimand those who choose them.

The consequences of their criticisms are sometimes surprising. Take the Bhagwati tax: those who should pay are migrant graduates. If education and migration are equally ways of accessing opportunities, then the Bhagwati proposition amounts to a tax on… social mobility. This principle would seem strange to us outside the context of the debate on immigration, as we usually tax income and not the individuals whose income increases. Should the child of a poor peasant who leaves for the city to study and earn a hundred euros more pay a special tax? Ought he be made to pay a tax that wouldn't be paid by the non-migrant child of a banker whose income is high but stable? For not everyone is concerned by the Bhagwati tax, but only migrant graduates who attain a high level of income. Isn't the improvement of levels of opportunity the goal of a minimally-just programme? What is it that strikes false in the critic of the brain drain's attachment to social justice?

We can venture two hypotheses to explain this dissonance between attachment to social justice and criticism of the brain drain: the first is *national prioritarianism*[48] and the second, *sedentarism*. What is national prioritarianism? As we've seen, the nationalist's principal ethical concern is his country. The critics of the brain drain recognise that improving levels of opportunities is a fundamental goal, but underline that they're solely concerned with making improvements *within* the country. Access to opportunities outside the country isn't considered to be a successful outcome of their programme. Moreover, their judgement depends on a strict version of prioritarianism: priority is given to improving the levels of opportunity for the most needy, and any improvement to the levels of opportunity available to other citizens is morally questionable unless it leads to an improvement for the most needy. For this reason, nationalist prioritaritsts find it entirely unacceptable that some should accede to greater opportunities by education and/or immigration but should not thereafter help improve the lot of their compatriots.

This hypothesis renders the social justice programme of the critics of the brain drain coherent and understandable. But it has insufficient explanatory power. If the critics of the brain drain were just concerned with the lot of the neediest, they should be the first to defend the migration of poor or less-qualified workers. The ex-World Bank economist Lant Pritchett has shown that policies favouring migration of the less skilled are effective tools in the fight against poverty. He regrets that development is seen as a policy concerned with places rather than with people. Such approaches are to him immoral, as "it is people, not patches of earth, who have well-being"[49]. He suggests a change of paradigm, asking not at all rhetorically:

> "How long should transfers through aid be the only mechanism for promoting development? How long must only Boliv*ia*, Armen*ia*, or Niger*ia* figure on the international agenda and not Boliv*ians*, Armen*ians*, or Niger*ians*?"[50]

But the majority of critics of the brain drain wouldn't defend access to opportunities in the rich countries for less-qualified workers from the poor countries[51]. Either their prioritarianism isn't authentic, or it doesn't represent the *sole* value they would defend.

But neither is nationalism an explanation of their attitude. In its recent manifestations, criti-

[48] The term "prioritarianism" is due to Temkin (2000).

[49] Clemens and Pritchett (2008: 395)

[50] Pritchett (2006: 140). For an estimation of compatriots' income gains see Pritchett (2008)

[51] With a few exceptions, see for example Chauvier (2006) for a defence of rationed migration comprising the poorest inhabitants of the poor countries.

cism of the brain drain has begun to target the *migration of the skilled within a country*. The NGOs who come to the aid of poor countries and who employ local personnel at higher salaries than are available to the generality are now accused of poaching talent or undermining public services:

> "The rapid proliferation of NGOs has provoked a "brain drain" from the public sector by luring workers away with higher salaries, fragmentation of services, and increased management burdens for local authorities in many countries."[52]

Sometimes, emphasising that *foreign* NGOs harm state authorities suggests a nationalist approach:

> "There is growing recognition of the danger posed by indiscriminate recruitment by foreign agencies of skilled health professionals from the public sector in developing countries (…) This "local" brain drain is potentially damaging to the effective delivery of health services in a country, where it constitutes a huge financial loss and could have a negative effect on the economy".[53]

But, however deplorable it might be, internal migration – and particularly that of health workers – not only concerns foreign NGOs:

> "Within developing countries, internal migration flows generally from the primary level to hospitals, from rural to urban areas, from clinical and research positions to managerial posts, and from the government service to the private sector."[54]

Here, the criticism is certainly directed against *all* access to opportunities. Justified by the country's medical needs, the reprimand takes in any professional change, as if healthcare workers should remain rooted to the spot where they happen to be.

What's wrong with criticism of the brain drain is not so much its nationalist approach, but rather its sedentarism. The debate on the internal or local brain drain does indeed show to what degree one can be sedentarist and thereby criticise all social ascension. But this view of the world also shows that sedentarism is incompatible with free access to opportunities. Rather than a world in which we are "equal but separable", the critics of the brain drain seek a world that is entirely immobile.

[52] Pfeiffer et al. (2008: 2134)
[53] Deribe Kassaye (2006: 1153)
[54] Marchal and Kegels (2003: S89)

4. By way of conclusion: who should pay for what?

In so far as migration provides access to opportunity, taxing skilled migrants amount to taxing the social mobility. Rejecting the Bhagwati tax is in no way to suggest that skilled migrant should not pay taxes. If the reduction of inequality of opportunities is a minimal goal of social justice, then both migrants and sedentary people are under an obligation to contribute. The idea of a tax which is global in scope is neither new nor eccentric. Indeed, development aid already constitutes a global tax; it aims to reduce unequal opportunities in terms of life expectancy, education, and income worldwide. Development aid is presently paid by states, but individuals with high incomes, be they migrants or not, could contribute as well. Migrants already remit four times more than is currently earned by development aid. However, social justice forbids that they should do so alone, or on account of their mobility.

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