

DOES COSMOPOLITAN JUSTICE EVER REQUIRE RESTRICTIONS ON MIGRATION?

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

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

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

with open borders, and provide some reasons as to why restrictions on migration are incompatible with cosmopolitan justice.

I. A QUICK OVERVIEW OF THE EGALITARIAN COSMOPOLITAN ARGUMENT

In his book *Immigration Justice*, Peter Higgins suggests that with respect to immigration justice, the job of the political philosopher is to “find ways to sort the benign [immigration policies] from the irresponsible ones.”¹ The reason Higgins frames the philosopher’s task in this manner—of separating the benign from the irresponsible, as opposed to separating the good from the evil or the right from the wrong—is twofold. First, as he correctly points out, states are situated differently within the larger global context and, internally, they face very different economic, political, and social circumstances. When these factors are taken into consideration, it becomes apparent why there is no one good or right immigration policy that all states should come to adopt.²

Second, immigration policies, Higgins claims, cannot resolve “many of the most pressing moral problems that appear to cause international migration and to motivate discussion of the issue.”³ These pressing moral problems, according to Higgins, would best be resolved by reforming global institutions and not by reforming immigration policies. With that being said, Higgins notes that “states’ decisions about how many and which prospective immigrants to admit may have grave consequences for economic and human development prospects in poorer countries.”⁴ Therefore, while there is no good or right immigration policy, there are a variety of immigration policies that can exacerbate current injustices, and we should work to avoid those.

Higgins contends, correctly, that countries in the Global North today employ mostly self-serving immigration policies. Higgins, quoting Stephen Castles and Mark Miller, believes that these policies function

mainly as a way of mobilizing cheap labour for capital. It perpetuate[s] uneven development, exploiting the resources of poor countries, to make the rich richer. . . . [L]abour migration [is] one of the main ways in which links of domination [are] forged between the core economies of capitalism and its underdeveloped periphery. Migration [is] as important as military hegemony and control of world trade and investment in keeping the Third World dependent on the First.⁵

For Higgins, this backdrop overdetermines the question philosophers ought to address when debating the issue of immigration. This question should be: What would immigration justice look like in a world such as ours and not in some idealized utopia where “people’s reasons for wanting to migrate would be anomalous and relatively trivial,”⁶ but in a world where immigration policies function as a kind of neo-colonialism?

As an answer to this question, Higgins proposes the Priority of Disadvantage Principle (PDP). This principle “holds that just immigration policies may not avoidably harm social groups that are already unjustly disadvantaged.”⁷ On its face, there does not seem to be anything exceptional about this principle. It does not promise to end world hunger, repair the environment, or bring peace on Earth. It does, however, have the virtue of at least not making things any worse. In this respect it seems uncontroversial, so one might worry that it will not add much to the ongoing immigration debate. After all, who would disagree with a principle that says “First do no harm”? Higgins, however, contends that this principle “challenges the three most common views among political philosophers on immigration justice.”⁸ The first of these is prescriptive nationalism, which “holds that states ought to choose immigration policies in accordance with ‘the national interest.’”⁹ The second is the moral sovereignty of states view, which “holds that states have absolute moral discretion with respect to the selection of immigration policies.”¹⁰ Lastly, there is inclusive cosmopolitanism (i.e., the open borders position), which holds “that the moral equality of citizens and foreigners requires states to open their borders by eliminating all or most restrictions on immigration.”¹¹

According to Higgins, the PDP poses a challenge to all three of these views. With respect to prescriptive nationalism and the moral sovereignty of states view, the PDP challenges these accounts because, as a principle of cosmopolitan justice, it “reject[s] the notion that states may show favor for citizens over foreigners in the selection of immigration polices.”¹² In this respect, Higgins’s account is consistent with the standard cosmopolitan rejection of states having a unilateral or presumptive right to restrict migration. His account begins to diverge from more standard cosmopolitan views on migration, however, when it begins to question the actual egalitarian effect that open borders would have. As Higgins writes:

The evidence for the egalitarian global economic effects of open borders is essentially speculative. After all, wealthy, liberal states have never permitted free migration from much poorer countries in global economic circumstances remotely resembling those that obtain today, if they ever have.¹³

Beyond questioning its egalitarian effects, Higgins also believes that lifting all restrictions on migration would avoidably harm those who, globally speaking, are already the most unjustly disadvantaged. Higgins provides three reasons for why this would be the case. First: “The ability to migrate transnationally demands material means that for the most part, only those who are relatively privileged, economically and educationally possess.”¹⁴ Therefore, since only those who already have some means will be able to take advantage of open borders and thereby send remittances back home to their family and friends (who, presumably, also are not without means), a lack of restrictions would only increase an already drastic inequality among citizens of the Global South. Furthermore, not only will free migration fail to directly help those who are the most unjustly

disadvantaged, but increased remittances will hurt them, since the poorest of the poor will have to contend with the increase in inflation that accompanies an increase in remittances. In short, not only will free migration not improve the situation of the most unjustly disadvantaged, but also, in terms of real money, it will decrease their already less-than-a-dollar a day standard of living.

Second, the lifting of restrictions will increase the drain of social resources, in particular, the loss of a professional class, in countries of the Global South. As Higgins writes:

The emigration of skilled, college educated, middle-class professionals in large numbers from relatively poor countries harms those who remain in several ways, but, in the most general sense, it does so by undermining prospects for human development . . . [and these harms] would surely be magnified in the absence of restrictions on immigration.¹⁵

The loss of this professional class will, again, disproportionately harm those who are already the most unjustly disadvantaged.

Lastly, Higgins claims that most migrants to the Global North are members of socially disadvantaged groups who “experience new forms of exploitation in the receiving country as both a condition and a consequence of their migration.”¹⁶ In other words, members of socially disadvantaged groups who leave the Global South do not necessarily find that their lives improve once or as they migrate to the Global North. In fact, even if migrants do find more opportunities in the Global North, the kinds of harms they might have to endure in order to take advantage of these opportunities might far outweigh any benefits they end up receiving. If this is so, then it stands to reason that these sorts of avoidable harms to members of socially disadvantaged groups would only increase in a world without borders.

While I agree with Higgins that these three aforementioned problems do indeed present real and avoidable harms to those already unjustly disadvantaged, I think he goes too far in his endorsement of migration restrictions. In fact, it seems that there might be some good reasons to believe that an open borders position could account for the PDP. If this is indeed the case—if the PDP and open borders are not as incompatible as Higgins makes them out to be—then maybe there are no good reasons for why cosmopolitan justice would ever require restrictions on migration.

2. RESTRICTIONS, POWER DIFFERENTIALS, AND SOCIAL STRUCTURES

In the section above, I summarized the three egalitarian problems that Higgins raises with open borders. These problems essentially boil down to two sets of harms: those harms that affect migrants who are members of socially disadvantaged groups and those that effect non-migrating foreigners who are also members of socially disadvantaged groups. Both sets of harms are serious, but as I will argue in these next two sections, they are either only tangentially related to migration or would be largely ameliorated in a world without borders.¹⁷

Beginning with the first set of harms, Higgins is correct that as things stand, migration is not always good to members of socially disadvantaged groups, in particular women and people of color. In today's world, migrants who happen to be members of socially disadvantaged groups suffer various forms of exploitation and discrimination. These harms can be so severe that one might reasonably conclude that in today's world, they might have been better-off not having migrated in the first place. For many undocumented immigrants, this is very much the case, but Higgins goes on to show that this is the case even for many *lawful* immigrants. *Lawful* immigrants, he argues, are subjected to various injustices "at the hands of brokers, recruiters, employers, and migration officials."¹⁸ If correct, this seems to suggest that more mobility, which open borders would obviously offer, might not only *not* make things better for socially disadvantaged migrants, but could make things worse. If this is correct, then this gives us a very good cosmopolitan reason for favoring certain restrictions on migration.

The problem, however, is that this assessment seems to gloss over an important difference between "privilege" and "right." As things currently stand, non-citizens only have a privilege, not a right, to migrate to places like the United States. This privilege (a) must therefore be obtained, and (b) is *always* subject to being revoked. Because of power differentials, which these privileges both create and are embedded in, members of socially disadvantaged groups have been forced to suffer various injustices in order to obtain and also retain permission to migrate. In a world without borders, however, this would no longer be the case. In such a world, members of socially disadvantaged groups would have a *right* to be present, and this right would not need to be obtained nor would it be subject to be revoked. This shift from a privilege to a right would significantly lessen, if not eliminate, the power that brokers, recruiters, employers, and migration officials currently enjoy over immigrants. In short, while it is abundantly clear how migration restrictions can be used to harm or manipulate members of already disadvantaged social groups (e.g., women and people of color), it is not as clear how removing the threat of deportation (which is what open borders would do) does the same.

Higgins's worry, however, is still not completely addressed. While it might take away some of the power that brokers, recruiters, employers, and migration officials currently enjoy, opening borders will not put an end to larger and more ubiquitous structures of oppression such as patriarchal and racist social structures. In places like the United States, these structures are alive and well, and continue to disproportionately (and avoidably) harm anyone who belongs to a socially disadvantaged group. Higgins is right to be worried about this because even if immigrants are not harmed as immigrants, they can still be harmed as women and as people of color, and in that case, we might still have a situation where socially disadvantaged migrants are jumping out of the frying pan and into the fire.

In this case, however, the harm in question seems to go beyond the scope of immigration justice. Justice, in a general sense, requires that structures of patriarchy

and racism be addressed, but there is a limit to what immigration policies can do to bring about these changes. Higgins recognizes this and, for that reason, argues that members of socially disadvantaged groups, for their own good, should be restricted from migrating. Higgins defends his view against the charge of paternalism, by suggesting that restrictions on migration are, at least in these sorts of cases, analogous to not letting someone enter our home when we are sick. In these sorts of cases, we are keeping people out, not because it benefits us, but because we don't want to do harm to them.¹⁹

There is no denying that Higgins's view has a certain practicality to it; if something is harmful (e.g., an unstable cliff), then there is nothing unjust (or paternalistic) about placing barriers around it in an effort to prevent others from entering the area and getting hurt. The problem with extrapolating this kind of reasoning to cases of discrimination and exploitation is that it takes something that is "given" (e.g., an unstable cliff) to be sufficiently similar to our current social structures (e.g., a dual-labor market), when in fact they are not the same at all. With respect to the former, very little can be done to repair the situation, so keeping people away might be the best that can be expected. Social structures, on the other hand, are not like this. Furthermore, social structures are not simply in need of repair, but are also reproduced by and in our daily actions. Therefore, responding to social structures with restrictions will not only *not* help to repair them, but could in fact aid in their reproduction. For example, imagine a company or a school that is extremely racist and sexist. Would restricting the access of women and people of color to that company or school, even if it is for their own good, not simply aid in reproducing the injustice? It is true that open borders will not solve the larger underlying problem of unjust social structures, but restricting the movement of the socially disadvantaged will not solve it either. In fact, we have good reason to suspect (and an abundant amount of historical examples to confirm) that restricting the movement of women and people of color only perpetuates these sorts of unjust social structures.

3. RESPONDING TO BRAIN DRAIN

Even if we can account for this first set of harms, Higgins also believes that open borders would present harms for non-migrating members of socially disadvantaged groups. In this section, I will look at this set of harms by addressing what is likely the most serious objection to open borders: the problem of "brain drain." The problem of brain drain begins from the uncontestable fact that in today's world, the best and brightest of the Global South are immigrating in large numbers to countries in the Global North. This has created an abysmal situation where countries that are in dire need of professionals, such as doctors, not only have a hard time attracting these much-needed professionals, but are at the same time hemorrhaging them to countries that do not have nearly the same need for

them. This situation has, again, disproportionately harmed those who, globally speaking, are already the most unjustly disadvantaged.²⁰ Higgins believes that if borders were opened, the current situation would only be exacerbated. Therefore, he reasons that cosmopolitan justice would require restrictions on professionals migrating from the Global South to the Global North.²¹

While I concede that brain drain is real and presents a serious problem, I'm not convinced that immigration restrictions are (a) the preferred option to address this problem, and (b) that they would ameliorate, rather than worsen, the current situation. To show why I believe this is the case, I will employ an alternative way to deal with brain drain, which I call the "deportation option." While I do not seriously endorse this option, I contrast it to what I call Higgins's "restrictions option" for two reasons. First, as absurd as the deportation option is, it presents as good an—if not a better—alternative for dealing with the problem of brain drain than does the implementation of restrictions. Second, the restrictions option has a lot of serious flaws, but these flaws only come to light when contrasted with an equally dubious response to brain drain.

So, for the moment, let us assume that the flight of professionals from the Global South to the Global North does indeed present a harm to those who are already the most unjustly disadvantaged.²² Why would a cosmopolitan response to brain drain be restrictions on migration? Why instead would it not require, as absurd as this might sound, that professionals from the Global North be deported to the Global South?²³ Well, the most obvious reason is that deporting citizens is a *prima facie* violation of human rights. This is true, but it is also true that denying persons the right to exit is a violation of human rights. For example, the United Nations Declaration of Human Rights protects such a right under Article 13.2. Some might try (although Higgins does not) to get around this problem by suggesting that these restrictions could be reframed as immigration restrictions and not emigration restrictions, but that seems disingenuous. After all, these restrictions are not so much about a community trying to keep certain individuals out (i.e., immigration restrictions), as much as they are about not letting certain individuals leave (i.e., emigration restrictions). Therefore, while the deportation option is not any better with respect to human rights, it at least is not any worse than the restrictions option. Another way to think about it is as follows: if something is morally weighty enough to override a person's right to exit, it stands to reason that it should also be morally weighty enough to override a person's right to remain.

Even if this is true, we might still want to ask what the consequences of the deportation option would be, as opposed to the consequences of the restrictions option. What would happen if the United States really did begin to deport doctors to Africa? Well, the consequences seem pretty obvious. I don't think that African nations would suddenly see an increase in doctors, so much as Americans might stop going to medical school altogether. After all, who would want to invest all

their time and money if the end result would be a deportation order? Therefore, from a strictly consequentialist point of view, the idea of deporting professionals from the Global North to the Global South seems like a well-intentioned but dubious enterprise. This option would not achieve its intended result of helping the most disadvantaged, but, as counterintuitive as it might seem, it would end up harming everyone, in the long run, by reducing the overall number of available doctors.

This last problem, however, is not just a problem for the deportation option. It is also a problem for the restrictions option. If going to medical school would take away one's right to exit—as opposed to offering a ticket out of the Global South—then we could equally ask: Why would anyone, especially citizens of the Global South, go to medical school? Higgins addresses a related concern toward the end of his book when he considers the following objection: “many residents of poor countries are motivated to pursue advanced education [only for the] prospect of migration to wealthy countries.”²⁴ Higgins's reply to such an objection is to point out that many residents of poor countries pursue advanced education without ever intending to migrate. It therefore stands to reason that these same folks would not “forgo advanced education in the absence of the option of international migration.”²⁵

The problem I'm suggesting, however, is different from the objection Higgins has responded to. I agree that people do not need the possibility of migration to motivate them to pursue an advanced education. The worry I'm raising is that the prospect of losing one's right to exit will serve as a deterrent to those who might otherwise have pursued an advanced education, even if they originally had no plans to emigrate. While I agree that restrictions on migration will not discourage *everyone* from pursuing an advanced education—especially when there are less attractive alternatives in the Global South than there are in the Global North—it will still have the unintended consequence of discouraging enough people so that countries in the Global South might, because of these restrictions, end up with fewer rather than more professionals.

So while neither option so far seems very appealing, the deportation option does have one advantage over the restrictions option: it is more truly cosmopolitan. Cosmopolitanism requires that states not show favor for citizens over foreigners, but it also rejects the notion that compatriots have special duties to each other that they do not share with others. In this regard, the deportation option, unlike the restrictions option, puts professionals from the Global South on equal footing with professionals from the Global North. By preventing immigrants from applying for professional jobs in places like the United States, the restrictions option comes close to adopting a kind of anti-cosmopolitan position. First, professionals from the Global South are being asked to bear a disproportionate amount of the burden necessary to achieve global justice simply because they happen to be citizens of a country in the Global South. Second, citizens of countries in the Global

North who are seeking professional jobs in places like the United States would be protected from non-Global North competition, simply because they happen not to be citizens of a country in the Global South. The deportation option, on the other hand, not only does away with this unearned privilege that citizens of the Global North enjoy, but it would also ask citizens of the Global North to do their part in helping to bring about global justice.

In the end, both the deportation and restrictions options seem like well-intentioned, but nonetheless wrongheaded ways of dealing with brain drain. In order to properly deal with brain drain, we first need to understand that there is the difference between “poaching” and “free movement.” While I agree that there is something troubling about policies that allow already-wealthy countries to poach much-needed professionals from poor countries, this injustice goes beyond immigration policy. As the phenomenon of “brain waste” (e.g., when immigrants from the Global South with advanced degrees end up working menial jobs in the Global North) shows, professionals from the Global South are willing to come to the Global North, even when they are not actively recruited. In other words, professionals from the Global South who want to migrate to the Global North have shown that they are willing to immigrate even if it means losing their status as professionals. Therefore, it is not clear that putting restrictions on professionals, as professionals, would necessarily curtail their flight.

Addressing the injustice of brain drain requires a radical transformation of global conditions and institutions such that countries in the Global South are not only able to retain their local homegrown professionals, but can also begin to attract professionals from the Global North. What we need are not ways to coerce professionals to stay or go to work in the Global South, but a way to create a situation in which professionals would freely choose to do so: where professionals are there because they have bought in, not because they have been trapped or banished there. As I’ve tried to show here, immigration restrictions (just like deportations) will not help in this endeavor, and in fact, they are more likely to do harm.²⁶

CONCLUSION

There is a near consensus among economists that, to varying degrees, open borders would dramatically increase global economic growth. Egalitarian cosmopolitans, such as Higgins, do not so much question this conclusion as much as they question how this economic growth will be distributed, and they have good reason to be suspicious. As recent free-trade agreements have shown, opening borders to capital, goods, and services has not benefited unjustly disadvantaged social groups. In fact, members of those groups have disproportionately (and avoidably) borne the brunt of the ills that accompany these agreements. This worry seems to motivate much of the skepticism that certain egalitarian cosmopolitans have

for open borders. To them, open borders seem like the final nail in a neoliberal coffin. While it is true that libertarian policies have not been kind to the globally disadvantaged, it is also important to keep in mind that even a broken clock can be right twice a day.

Egalitarian cosmopolitans are correct that with respect to immigration justice, their views challenge both prescriptive nationalists and proponents of the moral sovereignty of states view. They are also correct in questioning the egalitarian potential of liberalized borders, especially as it concerns the liberalization of trade. Egalitarian cosmopolitans would be mistaken, however, if they believe that migration restrictions can bring about benefits or reduce harms. As the last two sections have shown, restrictions on migration only contribute to already existing power differentials that negatively affect the globally disadvantaged. These restrictions do not challenge—and in fact, they might even help perpetuate—unjust social structures. Lastly, restrictions are more likely to hurt than to help globally disadvantaged non-migrating foreigners. Therefore, there seems to be no good reason for immigration justice, at least from a cosmopolitan point of view, to ever require restrictions on migration. The harms associated with migration are mainly symptoms of larger injustices, and by using immigration policy to respond to these symptoms, we risk not only failing to get at the root of the injustice, but we might also inadvertently help perpetuate current (or create new) injustices.

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NOTES

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1. Higgins, *Immigration Justice*, 18.
2. *Ibid.*, 21.
3. *Ibid.*, 18–19.
4. *Ibid.*, 12–13.
5. *Ibid.*, 9 (quoting Castles and Miller).
6. Higgins, *Immigration Justice*, 78.
7. *Ibid.*, 20.
8. *Ibid.*

9. Ibid., 22.
10. Ibid.
11. Ibid., 60.
12. Ibid., 186.
13. Ibid., 62. On a side note, this is not completely accurate. As late as 1965, the United States had an open borders policy with all countries in the Western Hemisphere.
14. Higgins, *Immigration Justice*, 63.
15. Ibid., 67.
16. Ibid., 65.
17. Amy Reed-Sandoval hints at a very similar objection in her brilliant review of Higgins's book. See Reed-Sandoval, Review of *Immigration Justice*.
18. Higgins, *Immigration Justice*, 66.
19. Ibid., 71–72.
20. Kieran Oberman presents a compelling argument against most brain drain arguments, but because his argument is grounded on an appeal to individual autonomy and is anti-consequentialist in nature, Higgins's version of the brain drain argument is largely immune to Oberman's overall criticism. See Oberman, "Can Brain Drain Justify Immigration Restrictions?"
21. Lea Ypi makes a similar argument, but unlike Higgins, her use of the brain drain argument is not so much aimed at justifying restrictions on migration, as it is to show that a theory of immigration justice grounded in egalitarian principles leads to a contradiction. Ypi ultimately wants to argue that we should abandon all attempts to ground immigration justice in egalitarian principles. Ypi's concerns are worth mentioning here, but because Higgins and I are both in agreement that cosmopolitan egalitarianism can ground a theory of immigration justice, these worries are beyond the scope of this essay. See Ypi, "Justice in Migration."
22. I say "assume" here because it is still very much a live question among economists and social scientists as to whether the exit of professionals also has some positive consequences that might balance out or even outweigh the negative effects of brain drain. For example, professionals who emigrate from the Global South to the Global North often send remittances or return to their home countries with new technologies/skills. See Moses, *International Migration*, 173–76; and Brock and Blake, *Debating Brain Drain*, 160–67. Higgins does provide his readers with some very good reasons to be wary of these arguments, but he by no means definitively disproves them.
23. This "deportation option" is a kind of conglomeration of Michael Blake's "kidnapped foreigner" and "in-kind transfers" examples that also inverts Gillian Brock's suggestion that "compulsory service programs" can be used to address brain drain. See Brock and Blake, *Debating Brain Drain*.
24. Higgins, *Immigration Justice*, 224.
25. Ibid.
26. In this regard, my view is very much in agreement with Alex Sager's who argues

that: "Rather than focusing on the permissibility of migration restrictions for skilled workers, we should ask what institutions must be put in place so that migration will not have harmful effects and interact with other policies to make people better off." See Sager, "Reframing the Brain Drain," 560. I also endorse most, if not all, the suggestions made by Michael Blake. See Brock and Blake, *Debating Brain Drain*, 208–28.

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