

I

Every tenth or so woman to undergo labor will need a cesarean. Her prospects are bleak if she lives in Malawi, where half of all births go medically unattended. Most of the twenty-one district hospitals have only one doctor. The entire country of fifteen million has fewer than three hundred doctors. The rest have emigrated to greener pastures, or else stayed in Malawi but quit doctoring. Without them, providing widespread obstetric care is simply impossible.¹

Stories like this, which are by no means limited to developing countries, implicate an important topic in the study of the value of social justice. The topic is signaled by the following questions. How are the goods whose distribution justice governs to be produced in the first place? By whom, in what quantity, and on what terms?

To distinguish it from distributive justice, I will call this topic justice in production, or productive justice. In this article, I shall argue that we need but do not have a satisfactory theory of this topic. There has been significant debate concerning whether every able citizen can be expected to work. However, if justice requires societies to ensure the

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1. Chris Lavy et al., "Surgery in Malawi: A National Survey of Activity in Rural and Urban Hospitals," *Annals of the Royal College of Surgeons of England* 89 (2007): 722–24.

provision of particular goods, then we must also ask whether individuals can be obligated to perform particular work, in particular places, on particular terms. Equally important, there is the question of what the state may do to summon individual contributions, not merely in emergencies such as wartime but in the all-too-common event of a critical labor shortage. To account for the requirements of productive justice, we have to answer both of these questions.

Recently, two prominent views have emerged that bear directly on these questions. According to the first view, justice does not constrain occupational choice, so that, as a matter of justice, people can choose to work whatever lawful jobs they want. According to the second view, justice generally forbids the state from forcibly assigning jobs, so that, as a matter of justice, the state must generally rely on incentives if it wants to get things done. Together, these two views yield a fairly complete theory of productive justice. For together they imply that what is produced, by whom, and on what terms is generally to be settled in and through a labor market.

These two views are prominent in political philosophy. Although both have been challenged, both continue to be widely held. In the next section, I document their broad continuing support. I then argue that they cannot both be true. Justice must either directly constrain occupational choice, or permit the state to forcibly assign jobs, or both. My argument leads me to reopen questions widely taken to be settled. May states ever restrict migration to improve access to medical care? May they ever deploy compulsory service to extend access to education? In deference to the basic liberties of citizens, the received view generally says no. I argue that this view is wrong. It can be permissible to restrict freedom of movement and free choice of occupation in an effort to improve human welfare. Not merely the provision of the basic liberties themselves can justify restrictions on the basic liberties of citizenship.

II

According to Rawls, society's major institutions—its basic structure—must satisfy two demanding principles for society to be just. By contrast, the occupational choices people make need not respect any principles at all for society to be just. Rather, “[w]hat kind of work people do, and how hard they do it, is up to them to decide in light of the various incentives

society offers.”² No particular profile of occupational choices is called for by any principle of social justice. In that sense, occupational choices are irrelevant to the justice of society.

G. A. Cohen has long criticized this view.³ As Cohen would have it, social justice directly constrains occupational choice. For society to be just, everyone must pursue economic equality to a reasonable extent, not only at the ballot box but also in his choice as to the wage he will accept. So when a doctor who will anyway be well off will not accept the egalitarian wage for filling a vacant hospital post, his decision to hold out for a larger salary or else refuse to fill the post can itself be unjust, from the point of view of social justice. Or so Cohen has argued at length.

Rawls and other theorists, however, have not been convinced. Rawls himself has said that if unacceptably large income inequalities come to pass the difference principle test⁴ because, say, the members of the medical profession refuse to work for less, then “we might . . . have to reconsider the soundness of the difference principle” as a principle for just institutions; he did not say that we should attribute injustice to the medical professionals’ occupational choices, nor that we should specify further principles of social justice that would apply directly to such choices.⁵

Many other authors have recently followed suit.⁶ They have tried to defend Rawls’s view explicitly against Cohen’s charge that social justice

2. John Rawls, *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, Mass.: Harvard University Press, 2001), p. 64.

3. Cohen calls it the “deep dividing line” between him and Rawls. His last book brings together all of his criticisms of this view. See G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, Mass.: Harvard University Press, 2008), p. 2.

4. That is, if unacceptably large income inequalities turn out to maximize the expectations of the representative member of society’s least advantaged group, which is (roughly) what the difference principle regards as the mark of fully just inequalities of primary social goods such as income and wealth.

5. Rawls, *Justice as Fairness*, p. 67n35.

6. See, e.g., Andrew Williams, “Incentives, Inequality, and Publicity,” *Philosophy & Public Affairs* 27 (1998): 225–47; Thomas W. Pogge, “On the Site of Distributive Justice: Reflections on Cohen and Murphy,” *Philosophy & Public Affairs* 29 (2000): 137–69; Joshua Cohen, “Taking People as They Are?” *Philosophy & Public Affairs* 30 (2002): 363–86, at pp. 364–65; Norman Daniels, “Rawls’ Complex Egalitarianism,” in *Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), pp. 264, 269–70; Kok-Chor Tan, “Justice and Personal Pursuits,” *Journal of Philosophy* 101 (2004): 331–62, at pp. 332–36, 359–62; Samuel Scheffler, “Is the Basic Structure Basic?” in *The Egalitarian*

directly constrains occupational choice. So, despite Cohen's critique, there has been little willingness among theorists of social justice to acknowledge that individual occupational choices could themselves be unjust. Instead, the contrary view appears to be alive and well: occupational choices cannot themselves be unjust, because justice does not directly constrain occupational choice.

At the same time, principles of social justice are widely thought to restrict how the state may constrain occupational choice. In particular, it is widely thought that the state must not forcibly assign jobs. If the state wants to see to it that urgent jobs are done, it can use incentives to persuade people to take them on. However, it must not use force. The basic liberties of equal citizenship include a right to choose one's own job. So, on pain of injustice, the state must not force people into jobs they do not want.

This prohibition on compelling people to work urgent jobs is a long-standing feature of liberal political thought. Libertarians have always found it obvious, of course.⁷ But even those who are less shy about using the state to pursue distributive goals tend to deny that the state may actually conscript people to achieve these goals. Rawls, who insists that the state must ensure an adequate social minimum,⁸ denies that anyone may be forced to work in occupations productive of the minimum.⁹ On the contrary, thinks Rawls, "[c]itizens have free choice of careers and occupations. There is no reason at all for the forced and central direction

Conscience: Essays in Honour of G. A. Cohen, ed. Christine Synopwich (Oxford: Oxford University Press, 2006), pp. 102–4, 126–27; Samuel Freeman, *Rawls* (New York: Routledge, 2007), pp. 120, 121, 125. For an interesting recent departure from both Cohen's and Rawls's view, see Seana Shiffrin, "Incentives, Motives, and Talents," *Philosophy & Public Affairs* 38 (2010): 111–42, arguing that a just Rawlsian society has no room for incentive inequality, but not because principles of justice directly govern occupational choices.

7. See, e.g., Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), p. 169, where the idea of "forcing unemployed hippies to work for the benefit of the needy" is presumed to be an injustice par excellence.

8. "[A]ssurance of a social minimum covering at least the basic human needs" is a "constitutional essential" of a just constitution. See Rawls, *Justice as Fairness*, p. 162. See also Rawls, *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), pp. 228–30.

9. "The general level of wealth in society, including the well-being of the least advantaged, depends on people's decisions as to how to lead their lives. The priority of liberty means that we cannot be forced to engage in work that is highly productive in terms of material goods": Rawls, *Justice as Fairness*, p. 64. See also pp. 157–58.

of labor.”¹⁰ His view is widely shared among other liberal egalitarians,¹¹ and by all left-libertarians.¹² Indeed, today even socialists deny that the state may forcibly direct labor.¹³ Committed to equality, they would nonetheless have the state overreward a job if that is the only way to induce someone to fill it short of allocating the job by command. The alternative—having the state achieve equality by forcing people into urgent jobs—is thought to be too Stalinist and too illiberal.

So it is very widely thought that the state must not forcibly assign jobs in the name of equality, an adequate minimum, or other distributive goals. Instead, conscription is thought to be permissible only to protect the very liberties it takes away.¹⁴ So, for instance, a just state may conscript you into the army when its national security would otherwise be at serious risk. It may also keep you in a standing conscript army if this

10. Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Harvard University Press, 1999), p. 241. See also Rawls, *Justice as Fairness*, p. 138; Rawls, *Collected Papers*, pp. 313, 362, 366; Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 308.

11. See, e.g., Brian Barry, *Theories of Justice* (Berkeley: University of California Press, 1989), pp. 399–400; Joseph Carens, “Aliens and Citizens: The Case for Open Borders,” *Review of Politics* 49 (1987): 251–73, at pp. 260–62; Norman Daniels, *Just Health: Meeting Health Needs Fairly* (Cambridge: Cambridge University Press, 2008), p. 339; Ronald Dworkin, *Sovereign Virtue* (Cambridge, Mass.: Harvard University Press, 2000), pp. 89–90, 127; Liam Murphy and Thomas Nagel, *The Myth of Ownership: Taxes and Justice* (New York: Oxford University Press, 2002), pp. 121–25; Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press, 1991), pp. 115–16; Kristi Olson, “The Endowment Tax Puzzle,” *Philosophy & Public Affairs* 38 (2010): 240–71, at pp. 240–43; Stuart White, “The Egalitarian Earnings Subsidy Scheme,” *British Journal of Political Science* 29 (1999): 601–22, at pp. 603, 614–18. (However, for a contrasting view, see Stuart White, *The Civic Minimum: On the Rights and Obligations of Economic Citizenship* [Oxford: Oxford University Press, 2003], p. 258n33.) A contrasting view has recently been defended in Cécile Fabre, *Whose Body Is It Anyway? Justice and the Integrity of the Person* (Oxford: Oxford University Press, 2006), pp. 55–71.

12. Including Philippe Van Parijs, Michael Otsuka, Peter Vallentyne, Hillel Steiner, John Christman, and others. See, e.g., the works cited in Barbara H. Fried, “Left-Libertarianism: A Review Essay,” *Philosophy & Public Affairs* 32 (2004): 66–92; and Michael Otsuka, “Freedom of Occupational Choice,” *Ratio* 21 (2008): 440–53.

13. Here, G. A. Cohen’s view is representative: “Old-style Stalinistically inclined egalitarians might have . . . declared that, if people have to be coerced into equality, then so be it. But my own inclinations are more liberal, so that way out is not for me.” Cohen, *Rescuing Justice and Equality*, p. 186.

14. Thus Rawls, *Justice as Fairness*, p. 47: “Since conscription is a drastic interference with the basic liberties of equal citizenship, it cannot be justified by any needs less compelling than those of the defense of these equal liberties themselves.” Cf. Rawls, *A Theory of Justice*, p. 333.

minimizes unjust wars that would put foreigners' liberties at serious risk.¹⁵ And perhaps it may even assign you to be my nurse in lieu of military duty, through a national civilian service designed to accommodate your conscientious refusal to serve in the military. But on the dominant view of what it takes to justify conscription, a just state must not conscript you to be my nurse *simply* because I need a nurse. Your libertarian rights, your basic liberties as equal citizen, your prerogatives as laborer: a value somewhere in this neighborhood is thought to take priority over mere improvements to my welfare.

III

And yet, virtually everyone thinks a just society must show concern for welfare. Of course, how much concern depends on whom you ask. Some think society must protect against severe material deprivation. For others it is enough if society gives everyone a decent chance to escape deprivation. Still others are content if society provides public goods in the economist's sense. But virtually no one thinks a just society is indifferent to how people fare once the basic liberties of citizenship are secure. On the contrary, by wide agreement justice requires society to ensure more than merely liberties.

Suppose you agree that justice requires society to ensure more than merely liberties. Then reflection on this fact should lead you to conclude that occupational choices can be unjust, or that the state may forcibly assign jobs, or both. To see why, take whatever good you think justice requires society to provide, over and above the good of equal basic liberties. And now suppose that people cannot be persuaded or enticed to do the necessary work.

So, if you think that justice requires society to ensure access to emergency medical care, then suppose that everyone with the training necessary to provide such care emigrates promptly after being trained, for example, in the way that doctors and nurses from dozens of the world's

15. Cf. Rawls, *A Theory of Justice*, p. 334: "Conscription is permissible only if it is demanded for the defense of liberty itself, including . . . not only the liberties of the citizens of the society in question, but also those of persons in other societies as well. Therefore if a conscript army is less likely to be an instrument of unjustified foreign adventures, it may be justified on this basis alone despite the fact that conscription infringes upon the equal liberties of citizens. But in any case, the priority of liberty . . . requires that conscription be used only as the security of liberty necessitates."

poor and middle-income countries emigrate en masse to affluent countries, leaving behind enormous public health catastrophes.¹⁶ By assumption, a requirement of justice is failing to be respected in these circumstances. Yet the two views described above jointly entail the opposite. For, if occupational choices cannot be unjust, then no one is committing an injustice in failing to be a nurse or a doctor. And, if only the defense of liberties justifies conscription, then there is no injustice in the state's failure to conscript unwilling doctors and nurses. After all, their lawful choices do not threaten anyone's liberties. They (merely) make it impossible for the state—or anyone else—to deliver emergency medical services. So, if both views described above are true, then there cannot be a requirement of justice to provide such services.

This result is general. It shows that the joint truth of the views described above would undermine all principles of justice purporting to impose a welfare-improving requirement on society. It does not matter how minimal the requirement. Thus, consider the principle that society must provide everyone with a fighting chance to escape inherited deprivation. Now suppose that no one will work as a teacher, in the way that no one will teach in South Africa's black townships. As a result, destitute children eager for instruction are so poorly educated that they qualify only for menial labor or joblessness.¹⁷ Again, if no one may be forced to teach merely to improve others' job prospects, and if the choice not to teach cannot be unjust, then the principle that society must provide everyone with a decent chance to escape inherited deprivation cannot be a principle of social justice. For when everyone shuns teaching, it is impossible to provide destitute children with a decent education without forcing some people to educate them.

Notice what makes this result general. For any improvement to welfare (comparative or absolute), it is true either that a failure to bring it about by agents capable of doing so is an injustice, or that it is not. The two views under examination would make the answer in all cases a

16. See, e.g., World Health Organization, *World Health Report 2006: Working Together for Health* (Geneva: World Health Organization, 2006), pp. xv–xxvi, and the works cited in Section IV.

17. Celia W. Dugger, "Eager Students Fall Prey to Apartheid's Legacy in South Africa," *New York Times*, September 20, 2009. See also Jacobus Gideon Maree, "Critical Appraisal of the System of Education and Prospects of Meeting the Manpower and Developmental Needs of South Africa," *Africa Insight* 40 (2010): 85–108, at pp. 94–101.

function of the occupational preferences of able people. If occupational choices cannot be unjust, and if justice forbids forcibly assigning welfare-improving jobs, then *there can be no injustice in any failure to bring about any state of affairs in which people fare well, whenever able people will not do the necessary work without being forced.*

Call this the impossibility result. Distinguish it from two similar sounding, false claims. It is not that there can be no injustice when people suffer unless someone is violating a requirement of justice. That is false. It is possible for an innocent person to be convicted of a crime without anyone acting culpably.¹⁸ Not all injustices are traceable to unjust actions. Nor is it that justice cannot require a happy state of affairs unless someone is required to produce it. Justice requires that no one innocent ever be imprisoned. And yet no one is required to ensure this, since it is not possible for anyone to ensure it.

The impossibility result is neither of these claims. Rather, it is that there can be no injustice in anyone's *failure* to bring about any improvement to human welfare that people will not freely bring about, if occupational choices cannot be unjust and justice forbids forcibly assigning welfare-improving jobs. For there can be injustice in someone's failure to do something only if he can be required by justice to do it. But, justice cannot require anyone to do what it cannot require anyone to do. So, it cannot require anyone to, say, teach if it cannot require anyone to make any particular occupational choice. And, justice cannot require anyone to do what it is forbidden by justice for anyone to do. So, when people will not freely work as teachers, justice cannot require anyone to ensure that there are teachers, if it forbids forcing people to be teachers. And so, there cannot then be any injustice in anyone's failure to ensure access to education. Either this, or justice issues contradictory injunctions, and so condemns its addressees no matter what they do. But the impossibility result holds barring this implausible view.

18. An innocent defendant may tell the whole truth and nothing but the truth. A judge may scrupulously shield the jury from unreliable categories of evidence. Lawyers may prepare the most appropriate defense with the greatest possible diligence. Legislators may impose the most reasonable conditions for criminal liability. Everyone may do exactly as justice requires. And yet an innocent defendant may nonetheless be convicted of a crime if circumstances are sufficiently fortuitous. Thus, there can be injustice even when no one has violated a requirement of justice. Not all injustices are traceable to unjust actions or omissions.

In particular, the result does not require any culpable failure of the state. For when forced labor is ruled out, what the state is able to accomplish depends on what its agents—people—will agree to do, without being forced. If they will not, say, teach short of being forced, then it is impossible for the state to deliver education short of using force. Nor does the result presuppose any labor market imperfection in the economist's sense. For even perfectly efficient markets can fail to deliver wanted goods. It all depends on what potential suppliers will accept to supply the goods. So if, say, doctors will not accept the maximum that sick people are able to pay, then medical care will not be supplied even if markets are perfectly efficient in the economist's sense. It is true that the state can try to redistribute wealth to would-be patients so that they can pay. But of course there is no general reason to suppose that there will always be enough transferable wealth. Doctors might simply want more than what the state can manage to raise. In fact, doctors the world over do want more than what states manage to raise. The significance of this fact will be explored below. Note here that redistribution of wealth does not touch the impossibility result. For wealth is itself a good that must be produced. If it is promptly to be redistributed, able people can bristle at having to produce it. They can also emigrate, so long as the state does not force them to stay and work. Thus, the impossibility result holds even if we suppose the state and market are doing exactly what they should.

Finally, the result does not presuppose any unfavorable circumstances. It turns only on the disposition of productive people to supply or withhold labor. Thus, the result is correspondingly general. It holds whenever people are free to withhold labor, and it touches the provision of any welfare-improving good whatsoever. Wealth, medicine, education: these are all products of human labor. But so are food, sanitation, clean water, adequate shelter, and virtually everything else some of us take for granted. Yet, if justice forbade forcibly assigning jobs, and if occupational choices could not be unjust, then society could not be required to provide any of these basic goods. For, were able people to decline to produce them short of being forced, society could not provide them short of using force.

These reflections expose the reason for the impossibility result. It holds because three propositions are jointly inconsistent:

Justice does not directly constrain occupational choice.

Justice forbids forcibly assigning jobs except where liberties are at risk.

Justice requires society to ensure more than merely liberties.

These three propositions form an inconsistent triad, so at least one must be pared back or thrown out altogether. It cannot be the third, however, because the consequences would be incredible. Suppose we said that justice requires a society to ensure goods beyond the basic liberties if, but only if, this can be done without assigning jobs and hence restricting basic liberties. There would then be no more inconsistency, and society could still be required to ensure goods beyond the basic liberties. But in fact, this would be a hollow victory. For then every requirement of justice to provide a good beyond the basic liberties would vanish the moment able people refused to do what is necessary.

Suppose teachers flatly refused to teach girls, as in many places they once did, and in some they still do. Then, on the pared-back version of the third proposition, justice would suddenly cease to require anyone to ensure any education whatsoever for girls, since no one could ensure this without forcing people to teach girls, and justice cannot require anyone to do what it forbids. And since justice would then cease to require anyone to ensure any education for girls, there could be no injustice in anyone's failure to ensure it. Neither society nor anyone in it could then be failing to respect a requirement of justice in failing to put an end to gendered educational apartheid, not even if *everyone* flatly refused to teach girls. But this is utterly incredible. So, the response to the trilemma cannot be to pare back the third proposition so that it ceases to conflict with the first and the second.

Nor, for the same reason, is it credible to reject the third proposition altogether. For then, too, there could be no injustice in *any* social failure to provide *any* good beyond the basic liberties to *any* group or even single person, provided only that able people refused to take the necessary actions. Countless unacceptable examples could be offered. However, the conclusion should be plain. We cannot reject, nor can we pare back, the third proposition. So it must be one or both of the other two propositions. We must say that justice directly constrains occupational choice, or that the state may forcibly assign urgent jobs, or both.

IV

Now, if there were always enough willing people to fill every urgent job, this conclusion would be of merely academic interest. However, the world is different. Urgent jobs regularly go unfilled at great human cost, and some may never be done unless people are forced.

Caring for the sick is one of those jobs. Millions of sick people have no access to medical help because they live where few medical professionals are willing to work. Indeed, as a rule, the more sick people there are in a given place, the fewer medical workers are willing to work in that place.¹⁹ Africa, with a population of one billion and the worst global incidence of disease, has both the lowest health-worker-to-population ratios and the highest health worker emigration ratios. Thirty-six African countries have fewer than two doctors for every ten thousand people,²⁰ while twenty-five have lost at least forty percent of their doctors to emigration.²¹ As a result, entire national health systems are threatened,²² and already shocking mortality rates are worsened.²³

However, the problem is not limited to Africa. Indeed, it is not even limited to poor countries. Medical workers in all countries concentrate in urban areas,²⁴ and thus critical shortages can be found everywhere. In the United States, where the number of doctors per capita is high, many urban areas are exceptionally well supplied. By contrast, many rural areas are chronically understaffed,²⁵ at an annual cost of tens of

19. World Health Organization, *Increasing Access to Health Workers in Remote and Rural Areas through Improved Retention: Global Policy Recommendations* (Geneva: World Health Organization, 2010), pp. 8–9.

20. World Health Organization, *World Health Statistics 2011* (Geneva: World Health Organization, 2011), pp. 115–25.

21. Michael A. Clemens and Gunilla Pettersson, *A New Database of Health Professional Emigration from Africa: Center for Global Development Working Paper No. 95* (Washington, D.C.: Center for Global Development, 2006), p. 10.

22. See, e.g., Joses Muthuri Kirigia et al., “The Cost of Health Professionals’ Brain Drain in Kenya,” *BMC Health Services Research* 6 (2006): 94.

23. Niko Speybroeck et al., *Reassessing the Relationship between Human Resources for Health, Intervention Coverage and Health Outcomes: Background Paper for the World Health Report 2006* (Geneva: World Health Organization, 2006), p. 4.

24. World Health Organization, *Increasing Access to Health Workers in Remote and Rural Areas*, p. 8.

25. Association of American Medical Colleges, *Recent Studies and Reports on Physician Shortages in the US* (Washington, D.C.: Association of American Medical Colleges, 2011), pp. 3–17.

thousands of lives.²⁶ And yet in the United States there is no shortage of incentives for rural practice. Physician incomes that are extraordinary by global standards are generally as high in rural as in urban areas.²⁷ On top of that, the state has long offered to bankroll the medical education of rural-bound doctors.²⁸ Still, many rural areas are chronically understaffed at great human cost.

I take it that in this failure to extend access to basic medical care a requirement of justice is being violated. And yet it is doubtful that the injustice lies merely in the state's failure to sufficiently incentivize American doctors. Their median annual pay—\$190,000²⁹—is already in the ninety-sixth percentile of the distribution of household (not personal) income in the world's richest country. Additional subsidies to motivate rural service might well be objectionable, given the poverty of underserved areas. For instance, Mississippi's Issaquena County has two-thirds of its children living in poverty and, perennially, no health

26. A recent analysis of seventeen studies of primary care physician supply in the United States found that an increase of 1 primary care physician per 10,000 persons is associated with an average all-cause mortality reduction of 5.31 percent, or 49 persons per 100,000 persons per year. "The policy impact of these findings is considerable. At the national level, a 5.31 percent reduction in all-cause mortality in 2000 would translate into 127,617 deaths potentially averted": James Macinko, Barbara Starfield, and Leiyou Shi, "Is Primary Care Effective? Quantifying the Health Benefits of Primary Care Physician Supply in the United States," *International Journal of Health Services* 37 (2007): 111–26, at p. 119.

27. See W. B. Weeks and A. E. Wallace, "Rural-Urban Differences in Primary Care Physicians' Practice Patterns, Characteristics, and Incomes," *Journal of Rural Health* 24 (2008): 161–70, at p. 161; and James D. Reschovsky and Andrea Staiti, *Physician Incomes in Rural and Urban America: Issue Brief* (Washington, D.C.: Center for Studying Health Systems Change, 2005), p. 5.

28. The federally funded National Health Service Corps has been in existence since 1970. It funds medical education for students willing to work for two to four years in an underserved area after graduation. Manifest demand for the program is nowhere near the demand for medical professionals in underserved areas: the NHSC reports that 483 eligible persons applied in 2009, whereas in the same year the U.S. Department of Health and Human Services judged that the country was short 16,643 primary care physicians, 5,338 mental health providers, and 9,642 dental health providers in underserved areas. (Since 2009, these shortages have increased.) See U.S. Department of Health and Human Services, Health Resources and Services Administration, "Shortage Designation," <<http://bhpr.hrsa.gov/shortage/>>.

29. Medical Group Management Association, *Physician Compensation and Production Survey 2010: Report Based on 2009 Data* (Englewood, Colo.: Medical Group Management Association, 2010).

workers whatsoever.³⁰ How much of a bonus payment from the state would it take to entice doctors who already make \$190,000 elsewhere to move to places like Issaquena? Five, ten, twenty times the local per capita income of \$10,000? Even if sufficient subsidies were politically feasible, they may well be objectionable for egalitarian reasons. They may also be, all things considered, impermissible when other crises are more urgent.

However, suppose there were nothing objectionable about the state raising doctors' incomes to thirty times the median income of their poverty-stricken patients. Still, that would not end the world's most devastating doctor shortages. The government of Ghana already pays its doctors thirty-two times the gross national income per person.³¹ Yet it cannot hope to compete with the ten- to twentyfold salary increase its doctors receive when they emigrate to the United Kingdom.³² Nor can it hope to match British working conditions, professional development opportunities, public services, and other nonfinancial amenities that commonly motivate doctors and nurses to emigrate. The incentives solution thus runs up against a hard budget constraint. Fifty-seven poor countries need more than two million doctors, nurses, and midwives just to cover the most critical shortages.³³ But even with all the aid in the world, poor countries still could not come anywhere close to matching rich-country salaries and working conditions for that minimum number.³⁴

Now, what if poor countries *cannot* stem mass health worker emigration using only incentives? And what if rich countries cannot motivate rural service without *impermissible* incentives? Then, by the argument of the previous section, we have four options. When millions of people die

30. See Charles Caleb Butts and Jeralynn S. Cossman, *Mississippi's Physician Labor Force: Assessing Primary Care Providers: Health Map 2007-02* (Canton: Mississippi Health Policy Research Center, 2007), p. 1; and Mississippi State Department of Health, *Issaquena County: 2007 Health Profiles* (Jackson: Mississippi State Department of Health, 2007), pp. 6, 9.

31. David McCoy, Sara Bennett, Sophie Witter, et al., "Salaries and Incomes of Health Workers in Sub-Saharan Africa," *The Lancet* 371 (2008): 675-81, at pp. 677-78.

32. *Ibid.*

33. World Health Organization, *World Health Report 2006*, p. xviii.

34. The additional sums of money needed merely to train and annually to pay two million health workers at *existing* poor-country salaries present a major challenge. See *ibid.*, pp. 145-47.

avoidable deaths for want of basic medical care, (1) we can deny that a requirement of justice to provide basic medical care is being violated. (2) We can say that medical workers are violating such a requirement in their occupational choices. (3) We can say that states may justly compel medical workers to serve needy populations. Or (4) we can say that justice requires societies to do what it simultaneously forbids: extend medical care by implementing compulsory service.

It is clear that the last option is the least appealing. To say that justice issues contradictory injunctions, which it demands societies live up to, is to say that justice condemns societies no matter what they do. If this were true, justice would cease to be a standard of political morality capable of guiding action. For then it would cease to have coherent implications for the reform of social institutions. Facing a preventable catastrophe, neither lawmakers nor voters would know what they should do, were they told that they would commit injustice no matter what they do. Thus, if justice is to be a standard for our world, we must not say that it requires what it forbids.

However, we also must not choose the first alternative. The right response to avoidable health catastrophes cannot be to stipulate away requirements of social justice. Certainly this response would be ill motivated if it were meant to block the possibility of unjust occupational choices and of justly assigning jobs. For if occupational choices could not be unjust and justice forbade assigning welfare-improving jobs, this would wipe out every requirement of justice to provide any welfare-improving good the moment that able people refused. But that is absurd. It thus makes no sense to stipulate away the requirement to provide basic medical care in an effort to keep faith with these two claims. At least one of them must be rejected anyway.

There are, then, only two things left for us to say when many more people die avoidable deaths for lack of access to basic medical care. We can say that states may justly compel medical workers to work in under-served places. Or we can say that medical workers are committing injustice in failing to do so. And yet, it is implausible to attribute injustice to medical workers' occupational choices. On the one hand, medical work in developing countries is often extremely difficult. Hours are long, workloads are heavy, and conditions can be horrific. Medical workers from developing countries can scarcely be blamed for avoiding these circumstances. On the other hand, medical workers everywhere

make their occupational choices against the background of existing institutions: educational systems, labor markets, tax regimes, immigration exemptions. For better or worse, these institutions shape lives and form expectations. It makes little sense to blame individual medical workers for choosing lives and careers that such formative institutions so clearly facilitate. Moreover, blaming individual medical workers would not accomplish anything. So, instead, we should ask whether states may justly reform institutions so as to compel medical workers to serve needy populations.

v

To answer that question, consider existing regimes of compulsory service. After years of mass emigration by nurses, Ghana now forces its nurses to serve locally.³⁵ The health ministry imposes a fine on nurses who wish to emigrate before five years of local service. The fine is prohibitive, nearly three times a nurse's annual salary. Yet unless the fine is paid, proof of educational qualification is withheld by the ministry. Nurses thus cannot secure permission to enter and work in more affluent countries, and so they are forced to serve locally, for a number of years at the minimum.

To move health workers into rural service, other countries operate so-called contractual bonding arrangements. The U.S. National Health Service Corps is one of the oldest examples.³⁶ Medical, nursing, and dentistry school students are provided with publicly funded subsidies to cover the costs of their training, but in exchange they agree to serve up to four years in an underserved urban or rural area. Anyone who defaults on their service obligation is fined three times the value of the subsidy plus the maximum legal interest, a sum that can reach half a million dollars per delinquent. Failure to pay leads to the revocation of medical licenses, court-enforced expropriation, wage garnishing by the tax authorities, and ineligibility for public benefits. Participants are thus left with no choice but to complete their service requirements.

35. Will Ross, "Ghana Gets Tough on Brain Drain," *BBC News*, July 4, 2008, <<http://news.bbc.co.uk/2/hi/africa/7490340.stm>>.

36. See U.S. Department of Health and Human Services, National Health Service Corps, "School Year 2011–2012 Application & Program Guidance," <<http://nhsc.hrsa.gov/scholarship/pdf/uguidance.pdf>>.

Other states compel health workers to serve the needy even more directly.³⁷ Australia requires ten years of compulsory rural service of foreign medical school graduates. Thailand requires three years of assigned service of all medical school graduates. Cuba requires its doctors to serve in underserved places at home and internationally. Ecuador, Peru, and South Africa require years of assigned service as a condition of medical licensing. Tennessee requires its doctors to treat publicly insured patients as a condition of access to better-paying, privately insured patients. (Elsewhere, American doctors flatly refuse to treat publicly insured patients.³⁸) Indeed, altogether some seventy countries operate one or another regime of compulsory medical service.³⁹

What are the moral objections to these existing regimes of compulsory service? Distinguish two different objections. According to the first, the problem with existing regimes is that they distribute the burden of caring for sick populations unfairly. This is a common complaint against contractual bonding arrangements. Students tend to agree to such schemes only because they are too poor to afford medical education. Once they agree, they are forced to complete years of difficult rural service. By contrast, wealthy medical students are never required to practice in rural areas. They are left free to treat only wealthy clients in much more comfortable urban settings.

Call this the distribution of burdens objection. No doubt it impugns most, if not all, existing regimes of compulsory service. On the one hand, compulsory service in poor countries often comes with low wages and harrowing working conditions. On the other hand, compulsory service everywhere falls disproportionately on less advantaged workers. Even in rich countries such as the United States, it is generally immigrant doctors

37. Seble Frehywot et al., "Compulsory Service Programmes for Recruiting Health Workers in Remote and Rural Areas," *Bulletin of the World Health Organization* 88 (2010): 364–70.

38. A quarter of all American doctors refuse to treat any patients on Medicaid, the national publicly funded health insurance program for the indigent. Of those doctors who do accept Medicaid patients, two-thirds strictly limit the number of Medicaid patients they will treat, even though nearly all of them welcome new patients able to pay higher fees through private insurance. See the congressional testimony of the Physician Payment Review Commission, cited in Sidney D. Watson, "Medicaid Physician Participation: Patients, Poverty, and Physician Self-Interest," *American Journal of Law & Medicine* 21 (1995): 191–220, at p. 193.

39. Frehywot et al., "Compulsory Service Programmes," p. 367.

from poor countries who are legally compelled to work in underserved areas.⁴⁰ More advantaged, domestically trained doctors face no comparable service requirement. Such disparities are everywhere. They make most, if not all, existing regimes of compulsory service unfair.

This objection calls for dramatic reforms to existing regimes of compulsory service. Notice, however, that it does not call for abolishing compulsory service altogether. Indeed, if anything, it calls for extending compulsory service more widely to ensure that the burden of caring for sick populations is distributed fairly. Thus, consider a second, more thoroughgoing objection to the very fact of compulsory service. According to the basic liberties objection, some individual liberties are specially important or basic: everyone has a right to these particular liberties, and the right is of a sort that may not justly be infringed for welfare-improving purposes. Among the liberties that are basic in this sense are the freedoms of movement and of choice of occupation. Yet schemes of compulsory medical service restrict these two liberties in order to extend medical care to needy populations. They thereby infringe individual rights that no state may justly infringe for welfare-improving purposes. Schemes of compulsory medical service must therefore be abolished and replaced with ordinary labor markets.

What is the force of the basic liberties objection? Notice, first, that it misfires against many conceivable regimes of compulsory service. Most states already make permission to practice medicine conditional on career-long continuing education. They could just as well make permission to practice conditional on periods of assigned service. Yet there could be no objection to such a system of medical licensing on grounds of basic liberties. On the one hand, such a system would not force anyone to serve needy populations. To avoid compulsory service, would-be medical professionals could simply choose a different profession. On the other hand, forcing would-be professionals to choose

40. A quarter of all American doctors are foreign-trained, and two-thirds of these foreign-trained doctors come from poor countries with extreme shortages. These foreign doctors typically enter the U.S. workforce through residency positions in understaffed inner-city hospitals, and then are permitted to stay in the United States on the condition that they practice in underserved areas. Similar schemes exist in other rich countries, including the United Kingdom and Australia. See Amy Hagopian et al., "The Migration of Physicians from Sub-Saharan Africa to the United States of America: Measures of the African Brain Drain," *Human Resources for Health* 2 (2004): 2.

between serving the needy and working in other professions would not abridge anyone's right to free choice of occupation. For there is no reason to suppose that this right requires free choice between unregulated professions. On the contrary, this right requires having the freedom to choose from a range of professions organized to permit the development and exercise of a broad array of human talents. Everyone can have this right even when entry into the organized professions is conditioned on periods of compulsory service.

So it is not true that all regimes of compulsory service unjustly restrict the basic liberties. However, some such regimes do seem to restrict the basic liberties. Consider, for instance, Ghana's way of forcing nurses to serve locally. The health ministry withholds proof of educational qualification. As a result, nurses are unable to enter and work in affluent countries. In addition, however, many likely have no choice but to work as nurses domestically (as the ministry intends). For while nursing in Ghana is underpaid, other jobs that nurses might do instead tend to pay a deep poverty wage. Anyhow, suppose that is the case. Then a policy such as Ghana's clearly restricts two liberties. By making nurses unable to enter other countries, it restricts their freedom of movement. By forcing them to work as nurses domestically, it restricts their freedom to choose an occupation. And yet, neither restriction can be justified as necessary for the defense of basic liberties. For no one's *liberties* are jeopardized when a Ghanaian nurse emigrates. No one, at home or abroad, is any less free to speak, vote, worship, or associate. No one's property rights are infringed, and courts and police institutions are unaffected. What happens instead is that sick people remain sick, for want of nurses. In other words, welfare remains low where it could be improved. However, if the basic liberties objection is sound, then no state may justly restrict migration and compel people to work as nurses for welfare-improving purposes. Only the provision of the basic liberties themselves justifies such restrictions.

What, then, are we to make of this objection to schemes that do make people care for needy populations? For the reasons already intimated, I think we should reject it. On the one hand, invoking the basic liberties objection is unnecessary whenever it is possible to retain a minimum medical workforce using less restrictive measures. For example, suppose access to medical care can be extended universally by conditioning permission to practice medicine on periods of

assigned service while publicly funding the education of anyone who chooses to pursue a medical career. Then there is simply no reason to favor any more compulsory scheme. Nor can anyone credibly claim that his basic rights have been violated. And, the incentive of publicly funded medical education can be seen as fair compensation for assuming the shared burden of caring for vulnerable populations, a burden that others decline to assume when they opt *not* to pursue a medical career under these terms. Thus, whenever it is possible to entice and retain a sufficient medical workforce using, say, widely distributed conditional service and fair incentives, there is no need to invoke the basic liberties objection to explain why it is wrong to implement a more restrictive scheme.

On the other hand, there is no reason to expect that it will always be possible to deliver even minimal access to medical care without any more compulsion. Consider Ghana's situation before the health ministry adopted its policy of withholding proof of educational qualification. Nurses emigrated at up to twice the rate at which Ghana's medical schools were able to train them.⁴¹ Ghana of course can and should do much more to try to persuade its medical workers to stay.⁴² And certainly wealthier countries can and should provide much more technical and financial help. Even so, there is no reason to think that strictly incentive-based reforms must always be able to succeed. As long as the personal, professional, and financial rewards abroad are comparatively more spectacular, medical workers from poor countries with critical shortages may well continue to emigrate shortly upon graduation, at rates higher than what is needed (merely) to replace them. If this happens, rich and poor countries alike will face an important choice. They can do nothing, and witness many more people die preventable deaths for lack of access to basic care. Or they can compel medical workers to work the fair

41. Until recently, nearly three-fifths of the nursing vacancies in Ghana went unfilled, whereas, in a bad year, the number of Ghanaian nurses who emigrated was twice the number of new nursing school graduates: see James Buchan and Julie Sochalski, "The Migration of Nurses: Trends and Policies," *Bulletin of the World Health Organization* 82 (2004): 587–94, at p. 588.

42. For interviews with Ghanaian nurses and doctors concerning how to make rural service in particular more attractive, see Janet Kwansah et al., "Policy Talk: Incentives for Rural Service among Nurses in Ghana," *Health Policy and Planning* 27 (2012): 1–8; and Rachel C. Snow et al., "Key Factors Leading to Reduced Recruitment and Retention in Remote Areas of Ghana," *Human Resources for Health* 9 (2011): 1–12.

minimum term in the country in which they were trained by, say, withholding proof of educational qualification until the minimum term has been served. When *this* is the choice, invoking the basic liberties objection to every such welfare-improving restriction on freedom of movement and free choice of occupation will not be a viable option.

For, to invoke this objection when incentives alone will not work, consistency requires declaring one of two things: that there *is* no requirement of justice to ensure basic medical care, or that medical workers from poor countries are committing *injustice* in their life and career choices. But neither of these propositions is at all plausible. How could it be that requirements of justice to provide basic goods vanish the moment it is clear that people are unwilling to do the work? Surely, this cannot be true. The right response to the resulting catastrophes thus cannot be to stipulate away requirements of justice. But it is equally implausible to attribute injustice to medical workers' life and career choices. Like everyone else, medical workers structure their lives and careers on the basis of expectations that institutions facilitate. Just as professors become professors because this is permitted and rewarded, so nurses and doctors migrate because this is permitted and rewarding. As long as institutions facilitate their choices, medical workers from poor countries are no more to blame than anyone else who fails to work in the most urgent occupations in the most disadvantaged places.

Thus, when incentives alone are insufficient, neither of the possible implications of invoking the basic liberties objection is plausible. I therefore conclude that the objection should be dismissed. Provided that the burdens of compulsory service are distributed fairly, it can be permissible to restrict migration and compel people to work as doctors or nurses for welfare-improving purposes. It is not only the provision of the basic liberties of citizenship that justifies restrictions on freedom of movement and free choice of occupation.

VI

A just society must provide a range of goods—police protection, education, medical care, legal representation, to name only a few. But how should a just society organize production of these goods? To ask this question is to broach the topic of productive justice. We need a theory of this topic in order to explain the content of the value of social justice.

There is a pair of views that would yield a complete theory. The first view holds that justice does not directly constrain occupational choice, so that, as a matter of justice, people can choose to work in whatever lawful ways they want. The second view holds that justice generally forbids the state from forcibly assigning jobs, so that, as a matter of justice, the state must rely on incentives to provide important goods.

Together, these views would answer all the questions of productive justice. For together they entail that what is produced is to be settled in ordinary labor markets. Sure, the state can sometimes act unjustly by failing to incentivize production appropriately. But when the state provides the right incentives, there can be no further questions of productive justice. No one's particular labor contribution can be unjust. Nor can the state's refusal to compel particular contributions be unjust. So once we have the right incentives, what is produced must be immune to criticism on grounds of justice.

But this last view is not sound. As I have argued, the two views it rests on cannot be combined. Their joint implication for productive justice should therefore be rejected. There is, then, both room and need for a different theory of the subject. This theory must answer pressing questions. May states ever restrict migration to improve human health? May they ever deploy compulsory service to deliver universal education? I have argued that such welfare-improving restrictions on the basic liberties of citizenship must sometimes be permissible. It cannot be that only the provision of the basic liberties themselves justifies their restriction. If my argument for this claim is sound, then there is a need for future work to establish the ground and limits of other valid justifications.