

# Book Review: Taxing the Brain Drain: A Proposal, by J. N. Bhagwati and M. Partington (eds.)

A. A. Shapiro

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Book Review

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TAXING THE BRAIN DRAIN: A PROPOSAL, eds. J. N. BHAGWATI and M. PARTINGTON, New York: North-Holland Publishing, 1976. Pp. 222.

Not only has the gap between rich and poor nations continued to grow during the 1970s, but among the poorest nations there has in fact been a decline in real *per capita* income since 1970. In this context, any serious proposal, whether at the level of the grandiose or the particular, for alleviating third world poverty, and particularly a proposal by a leading economic theorist, must be seriously evaluated. In 1972, Jagdish Bhagwati<sup>1</sup> advanced a suggestion for dealing with a persistent problem that has bedeviled less developed countries (LDCs) since the Second World War: the "brain drain" of highly educated professional and technically trained citizens (doctors, scientists, engineers, nurses, technicians, etc.) from the LDCs to western developed countries (DCs).

Bhagwati's proposal was simple and startling: tax the emigrants from the LDCs on the increment to their incomes earned via emigration to the DCs and remit the proceeds to the LDCs to be used for development purposes. Bhagwati and others have since investigated the revenue from such a tax and its political and legal feasibility, and the present volume, edited by Bhagwati and Martin Partington, gathers papers on the topic presented at a conference of economists and lawyers at Bellagio, Italy, in 1975. The economists' papers, in addition to a full discussion of the proposal and its associated problems by Bhagwati, deal with revenue estimates from a hypothetical tax on professional and technical immigrants into the United States, the United Kingdom, and Canada, while the lawyers' papers consider the constitutionality of such a tax in the U.S. and the U.K., and its compatibility with human rights conventions in each country and those of the United Nations.

Eighteenth and nineteenth century population flows tended to be beneficial for all concerned. Immigrants to North and South America from industrializing Europe, Eastern Europe, and the Mediterranean tended to be from the less-well-off and less-educated parts of the population. They provided cheap labour for the development of the Americas while earning higher real incomes than in their countries of origin. Those who remained in their countries of origin experienced an improvement in their relative economic position, for the outflow created both a higher marginal productivity of labour and lower real costs of subsistence than would have been the case without emigration. Leaving aside transportation costs, there were few artificial barriers to the free movement of peoples — whether for economic, political or religious reasons.

The situation changed dramatically in the 20th century as the United States and Canada began applying restrictions against European immigration and virtually all western countries established stringent and frequently racial barriers to third world immigration. Priority among would-be third world migrants was (and is) given to those with the highest levels of education and

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<sup>1</sup> J. Bhagwati, "The United States in the Nixon Era: The End of Innocence," *Daedalus*, Fall, 1972.

training and this, coupled with the incentive of large differentials in real incomes between professional and technical earnings in DCs and LDCs, largely accounts for the phenomenon of the brain drain.

Gains and losses arising from the brain drain are unequivocally regressive. Had the LDCs invested in the construction of physical capital for domestic use, they would have directly enhanced their rate of growth. Had they exported the physical capital, they would at least have realized its capital value in terms of import purchasing power. The present investment in and export of human capital, however, involves an uncompensated net transfer of real wealth from the poor to the rich. It also leaves the LDCs in the position of having to offer higher relative incomes to remaining professional and technical residents, thus further distorting existing and significant income differentials.

Bhagwati proposes a surtax on after-DC-tax incomes of professional and technical immigrants resident in DCs. At a tax rate of ten percent and a liability period for the immigrant of ten years, the combined revenue of such a tax in the United States, Canada and the United Kingdom would be in the range of \$350 million to \$400 million per year.

Three questions arise and are considered (often superficially) by the contributors. First, would such a tax be economically efficient, or at least neutral in the sense that it would not lead to any significant real resource reallocation? Second, is such a tax legally and politically feasible? Related to this, of course, is the optimal format of the tax. And third, what is the moral basis for applying a special tax to a subset of a country's residents who have presumably already spent a good part of their lives at a far lower standard of living than the rest of the DC population? It need hardly be noted that the subset in question would be a racial minority in the DC.

Assuming the tax rate is not set at a punitive level, the tax is unlikely to affect the actual flow of professional and technical migrants. As a result of DC barriers to immigration, there exists in all LDCs an excess demand for emigration to DCs, and a tax on the rewards to emigration will lead only to a shortening of waiting lists as marginal applicants become discouraged. A concomitant benefit to that of lower rewards to emigration will be that lower salaries may be paid to remaining professionals, thus in part countering the distorting effect on income distribution of the present untaxed brain drain.

Of more serious concern, and primarily the subject of the lawyers' contributions to the volume, is the legal and political feasibility of such a tax. Three possible formats are discussed. First, the tax could be levied by the LDC and enforced through the DC courts and tax collection agencies. It is highly likely, however, and recognized by the legal contributors, that courts in the United States, Canada, and the U.K. will refuse to enforce foreign tax jurisdictions — a tax being an assertion of a foreign country's sovereignty which another independent country is unlikely to tolerate within its jurisdiction. It is true that tax treaties between nations do exist wherein one country pledges its assistance in tax collection to another, but this assistance is generally limited to situations in which taxpayers wrongfully seek to obtain treaty

benefits. The case of an immigrant failing to pay taxes claimed by an LDC *after* emigration does not fall under this head.

An equally unsatisfactory format would be for the DC itself to levy the tax against the emigrant. Oliver Oldman and Richard Pomp<sup>2</sup> make it very clear in their presentation that the United States Supreme Court would most certainly strike down as unconstitutional any tax legislation which discriminated against aliens, to say nothing of laws which discriminated against naturalized citizens.<sup>3</sup> Even if the legality of such a tax was not open to question, Oldman and Pomp correctly suggest it is very doubtful, with no direct U.S. interests at stake, that the U.S. Congress would enact a tax with such implied racial and explicit political overtones. Martin Partington<sup>4</sup> finds no fundamental British constitutional law objections to the proposal, yet raises so many practical, political and social problems in its design and application that one is left in little doubt that no British Parliament would pass the necessary legislation.

The final format, and that preferred by most of the contributors, is for the tax to be levied by the United Nations, with its DC members' consent, and collected by the DC collection agencies, or alternatively simply levied against the DC itself on the basis of the number of professional and technical immigrants received. The proceeds would then be distributed to the LDCs from which the immigrants came, or distributed as development grants to LDCs in general. Frank Newman<sup>5</sup> examines the large body of United Nations human rights law which could be relevant to this format of a brain drain tax. He concludes that the non-discrimination clauses and other articles in U.N. human rights instruments "would appear to proscribe a brain drain tax," and then proceeds to mine the material for loopholes and ambiguities through which a brain drain tax could be squeezed. It appears to this reviewer that many of the same domestic legal and political problems arise out of the U.N. format as were associated with a DC levied tax, though few of the contributors deal with these problems. A number of the authors somewhat naïvely suggest that the imprimatur of the United Nations would lend authority to the tax!

If the reader is beginning to detect an air of unreality surrounding the basic proposal and its various formats, she or he may well be right. Leaving aside all the problems of assessment and collection (many of which seem politically and legally insuperable), one may first question whether there is sufficient revenue from a brain drain tax to justify its application. On a world scale of development aid, \$350 million per year is not as large a sum as it

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<sup>2</sup> O. Oldman and R. Pomp, "The Brain Drain: A Tax Analysis of the Bhagwati Proposal."

<sup>3</sup> The Bhagwati proposal would leave the immigrant liable for the brain drain tax for a period of ten years, during which time many would have become citizens of the host DC.

<sup>4</sup> M. Partington, "The Brain Drain Tax Proposal: A Lawyer's Analysis."

<sup>5</sup> Frank Newman, "The Brain Drain Tax and International Human Rights Law."

first appears — and certainly not an excessive sum when compared, for example, to armaments expenditures by LDCs.<sup>6</sup>

More significantly, the viability of the proposal presumes a state of international cooperation and recognized moral obligation which is simply not yet with us. And should such a state of cooperation and morality come into existence, there are far more obvious and remunerative ways of putting it to the aid of LDCs. For example, an international proportional income tax on DCs at the absurdly low rate of one-tenth of one percent of Gross National Product would yield revenues of one and one half billion dollars from the United States alone, and \$185 million from Canada.<sup>7</sup> Once accepted by a particular developed country, there would be questions of neither constitutionality nor legal enforceability associated with such a tax. Of more importance, the tax would be borne by the entire population of the DC and hence no question of racial or national discrimination would arise.

But is aid (or more accurately in the Bhagwati proposal, grants in compensation) the way to development? True, few LDCs have rejected aid, even with strings attached. But there is currently much more concern in third world countries, as expressed, for instance, in their proposals for the 'New International Economic Order' currently being debated, for economic measures by DCs which would enable LDCs to better benefit from their natural endowments through international trade. Such proposals involve commodity price stabilization agreements, removal of tariff barriers by DCs, improvement of the terms of trade in favour of LDCs, and so on. The current emphasis by LDCs, particularly in the United Nations, is on proposals of this nature, and it seems unlikely that they will divert their attention and energy to proposals that are both difficult to implement and of doubtful remuneration.

It is always pleasant to observe academics from different disciplines attempting to work together on critical world problems. In this case, however, the contributors have not only concerned themselves with a problem that is not of the first order of importance to third world development, but have proposed a solution which is difficult to implement and likely to have a low rate of return. One might have hoped for more from the two streams of society's priesthood, lawyers and economists.

By A. A. SHAPIRO\*

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<sup>6</sup> If the LDC were to retain the human capital itself, it would have to employ that capital in its existing form — e.g., medical or engineering skills. Compensation for the value of the emigrated capital may be spent on anything the LDC wishes however, besides development — e.g., armaments, Olympics, underemployed civil services, etc.

<sup>7</sup> Ideally, of course, one would prefer a progressive international income tax with a bottom negative component, LDCs with the lowest per capita real income receiving the highest proportionate *per capita* share of the revenues.

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\* Mr. Shapiro is an Associate Professor of Economics, York University, Toronto and a member of the 1979 graduating class of Osgoode Hall Law School.