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Sharing the Risks and Rewards of Economic Migration

Anu Bradford[†]

INTRODUCTION

International cooperation on economic migration has been difficult to achieve. The interests of emigration countries (“source countries”) and immigration countries (“destination countries”) seem impossible to align. These countries disagree on who should migrate: source countries resist migration that leads to a brain drain, while destination countries welcome these very migrants given that they are likely to be the most productive citizens and the least likely to become fiscal burdens on the destination country. In addition, destination countries resist migration that leads to domestic unemployment through labor replacement. As a result, international economic migration remains restricted at a substantial cost to world welfare.

This Article argues that the global welfare gains from migration can be divided in a way that makes all stakeholders better off. It develops the idea of a “Migration Fund” that is used to insure the destination country against fiscally induced or otherwise undesirable migration while simultaneously serving as a mechanism to compensate the source country for the potential adverse effects of outward migration. As a condition for entry, the migrant or his sponsor deposits funds in a Migration Fund. If the migrant subsequently becomes unemployed or otherwise unable to support himself, this Fund will reimburse the destination country for the welfare benefits the migrant draws. Alternatively, the Fund would cover the costs of the migrant’s possible voluntary repatriation or, when warranted, deportation. This way, the Fund removes the concern that the migrant imposes a cost on the destination country. However, if the migrant remains employed and hence continues to contribute to the welfare of the

[†] Professor of Law, Columbia Law School. I am grateful to Jagdish Bhagwati, Eleanor Brown, Adam Cox, Eric Posner, Alan Sykes and the participants of The University of Chicago Immigration Law and Institutional Design Symposium, held at The University of Chicago Law School on June 15 and 16, 2012, for their helpful comments. Taimoor Aziz, Fannie Chen, and Erim Tuc provided excellent research assistance.

destination country through his labor and tax payments, the funds would be released and divided between the migrant (or his sponsor) and the source country. This way, the migrant or his sponsor would be entitled to recover part of the funds they initially deposited. The source country would similarly be compensated for the loss of its productive citizen, including the costs the source country might have incurred in educating and training the migrant. Finally, a productive migrant who voluntarily returns to the source country after some period of time—without thus imposing a cost on either the destination or the source country—could reclaim the entire funds deposited into the Migration Fund.

This Article is premised on an idea that existing restrictions on migration are inefficient. Quotas employed by many countries impede the entry of many desirable migrants. At the same time, abandoning migration controls altogether is too risky as long as there are substantial differences across the welfare systems of various source and destination countries, potentially incentivizing migrants to relocate to countries with more generous social welfare systems.¹ It proposes a system that enables greater freedom for people to move across borders while insuring destination countries against the risks of opening the doors for undesirable migrants. At the same time, it takes seriously the concerns that source countries may incur costs when losing their human capital to countries that can offer more attractive opportunities for migrants. In the end, the goal is to devise a mechanism that enhances global welfare while also distributing that welfare across the key stakeholders in a way that makes no party worse off.

Before proceeding, a few clarifications will likely help the reader. First, this Article focuses on economic migration (that is, labor migration) even though some insights apply to the broader immigration debate as well. The emphasis is on permanent migration (admission of migrants for permanent residence) as opposed to temporary migration (including guest worker programs). Second, the analysis is limited to the economic and fiscal effects of migration, intentionally omitting the discussion of various noneconomic costs and benefits involved. Finally, this Article takes the concerns expressed by source and destination countries—including fears of brain drain or fiscally induced migration—seriously without taking a stance on their empirical va-

¹ See Alan O. Sykes, *The Welfare Economics of Immigration Law: A Theoretical Survey with an Analysis of U.S. Policy*, in Warren F. Schwartz, ed., *Justice in Immigration* 158, 193 (Cambridge 1995).

lidity or relative importance. Rather, it treats these concerns as sources of political constraints that currently prevent countries from liberalizing migration flows and advances a proposal that is motivated by a desire to overcome these constraints.

I. THE DISTRIBUTION OF THE COSTS AND BENEFITS OF MIGRATION

Economists agree that liberalization of migration flows would enhance global welfare. The economic argument for free migration rests on the same foundation as the argument for free trade of goods.² Allowing people to move freely across the borders would allow for the maximization of world welfare through an optimal allocation of the labor force across markets. According to some estimates, elimination of immigration controls would more than double the world's real income.³ Even the more conservative estimates point to significant welfare gains, ranging from 5 percent to 12 percent of the world's real income, or from \$2 trillion to \$4.3 trillion per year.⁴ Despite the prospect of such significant welfare gains, migration remains the least liberalized factor of production, subject to high barriers in most countries.⁵ The inefficient status quo reflects political opposition to migration, in particular the perception that any gains from migration flows would be unequally distributed, leaving significant groups within societies worse off.

This Part outlines the costs and benefits that the liberalization of international economic migration would have on the key stakeholders affected by such liberalization: the migrant, the destination country, and the source country, respectively. It focuses on the costs more than the benefits of liberalization in recognition that it is the perceived costs that form the source of the political resistance to liberalizing migration controls.

² See, for example, *id.* at 162–68.

³ See, for example, Bob Hamilton and John Whalley, *Efficiency and Distributional Implications of Global Restrictions on Labour Mobility: Calculations and Policy Implications*, 14 *J Dev Econ* 61, 70–74 (1984).

⁴ See Jonathon W. Moses and Bjørn Letnes, *The Economic Costs to International Labor Restrictions: Revisiting the Empirical Discussion*, 32 *World Dev* 1609, 1616 (2004).

⁵ This is notwithstanding the estimates that migration restrictions impose a greater burden on the world economy than existing trade restrictions do. See *The Longest Journey*, *Economist* 3 (Nov 2, 2002); Howard F. Chang, *Migration as International Trade: The Economic Gains from the Liberalized Movement of Labor*, 3 *UCLA J Intl L & Foreign Aff* 371, 373 (1998).

A. The Costs and Benefits to the Migrant

A common reason to migrate relates to better economic opportunities available in the destination country.⁶ As long as the endowments of capital and labor are uneven across countries, individuals can gain by relocating to a country that offers the highest return on their labor.⁷ Migration takes place when the migrant believes that his expected lifelong wage earnings in the destination country exceed his expected earnings in the source country, even when various transaction costs associated with migration are subtracted from the perceived gains of migration.⁸ According to the estimates by the World Bank, a migrant nearly triples his income on average in the destination country, even after remittances sent to the home country are subtracted from his income.⁹ The costs associated with migration on the migrant himself are likely to be noneconomic, making the economic case for free migration unambiguously a positive one for an individual migrant looking to take advantage of these opportunities.

B. The Costs and Benefits to the Destination Country

The country that receives migrants experiences significant gains. Several studies suggest that immigration has a net benefit to most citizens in the destination countries.¹⁰ Despite the

⁶ See Michael J. Trebilcock and Matthew Sudak, *The Political Economy of Emigration and Immigration*, 81 NYU L Rev 234, 241–47 (2006).

⁷ See *id.* at 241–42. For examples of economic models, see W. Arthur Lewis, *Economic Development with Unlimited Supplies of Labour*, 22 Manchester School Econ & Soc Stud 139, 176–77, 190 (1954); Gustav Ranis and John C.H. Fei, *A Theory of Economic Development*, 51 Am Econ Rev 533, 533–34 (1961); Michael P. Todaro, *Internal Migration in Developing Countries: A Review of Theory, Evidence, Methodology, and Research Priorities* 21–28 (International Labour Office 1976).

⁸ See D.S. Massey, *Theory of Migration*, in Neil J. Smelser and Paul B. Baltes, eds, 14 *International Encyclopedia of the Social & Behavioral Sciences* 9828, 9829 (Elsevier 2001).

⁹ See *Global Economic Prospects: Economic Implications of Remittances and Migration* 34 (World Bank 2006), online at http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2005/11/14/000112742_20051114174928/additional/841401968_200510327112047.pdf (visited Mar 3, 2013).

¹⁰ See, for example, James P. Smith and Barry Edmonston, eds, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* 334, 336 (National Academy 1997) (finding that immigration results in a net benefit of \$1 to \$10 billion to the US economy annually). Professors George Borjas, Richard Freeman, and Lawrence Katz note that a possible exception consists of some groups of native low-skill workers, in particular high school dropouts. George J. Borjas, Richard B. Freeman, and Lawrence F. Katz, *How Much Do Immigration and Trade Affect Labor Market Outcomes?*, 1997 Brookings Papers on Econ Activity 1, 62–63 (showing that immigration explains 4 to 7 percent of the decline of wages of high school graduates relative to college graduates

prospect of significant welfare gains, two principal concerns militate against opening borders for a large number of migrants. First, some migrants may impose a fiscal burden on the destination country, in particular if migrants are allowed access to public entitlement programs immediately upon, or shortly after, immigrating.¹¹ Second, the increase in migration flows may lead to labor replacement and hence unemployment among the citizens of the destination country.¹² Even in the absence of sound empirical support for these claims, fears associated with these two scenarios have dominated the public discourse, eroding any support for more open borders.¹³

Probably the most common political objection to open borders is the fear that migrants may impose a fiscal burden on the welfare state. This is the case when the transfer payments the migrants receive from the destination country exceed their contributions to the tax revenues of the destination country.¹⁴ As long as countries differ in their ability to offer various welfare benefits, the migrant may have an incentive to move to a country that provides subsidized healthcare, pension, education, and various other noncontributory welfare benefits. These cross-national differences in entitlements reflect varying levels of economic development as well as divergent political views on the appropriate scope of the welfare state, making any future harmonization of these policies unlikely. Thus, fears of fiscally induced migration are likely to persist going forward, notwithstanding empirical studies suggesting that migrants, on average, are more likely to generate a net fiscal benefit to the destination country.¹⁵

The public anxiety toward migrants also stems from the fear that these migrants displace domestic workers or depress their

from 1980 to 1995). Even then, these costs are outweighed by the overall benefits to the destination country. *Id.* at 66.

¹¹ See Sykes, *The Welfare Economics of Immigration Law* at 170–71 (cited in note 1); Trebilcock and Sudak, 81 *NYU L Rev* at 271–76 (cited in note 6).

¹² See Trebilcock and Sudak, 81 *NYU L Rev* at 269–71 (cited in note 6). See also Julie Murray, Jeanne Batalova, and Michael Fix, *The Impact of Immigration on Native Workers: A Fresh Look at the Evidence* 7–8 (Migration Policy Institute July 2006), online at http://www.migrationpolicy.org/ITFIAF/TF18_Murray.pdf (visited Mar 3, 2013).

¹³ Naturally, the two concerns of the destination state—the migrant becoming a fiscal burden and the migrant displacing domestic workers—should not materialize at the same time. If the migrant is unemployed, he can be a burden on the welfare state but not displace domestic workers. If, on the other hand, the migrant is working, he may displace a domestic worker but should not burden the welfare state.

¹⁴ See Chang, 3 *UCLA J Intl L & Foreign Aff* at 382–83 (cited in note 5).

¹⁵ See, for example, Smith and Edmonston, *The New Americans* at 334, 336 (cited in note 10) (examining the fiscal effects of migration on the United States).

wages.¹⁶ These concerns mirror the fears of import-competing industries that oppose free trade: the increase in the availability of foreign goods causes the consumption of some domestic goods to be replaced by the consumption of foreign goods, leading to unemployment by natives producing these same goods. Yet the losses to import-competing industries are often offset (or outweighed) by gains to exporting industries and domestic consumers who advocate trade liberalization as a result. Similarly, the losses from open migration to displaced domestic workers should be offset by the presumed gains to domestic employers, who would benefit from the increase in the supply of workers, and to domestic consumers, who would gain access to the goods and services produced with those workers. Yet, the political forces resisting migration often prevail over the interests of employers and consumers predicted to gain from migration.

C. The Costs and Benefits to the Source Country

The source countries are often thought to be the biggest losers under a free migration regime.¹⁷ The primary concern of the source countries relates to the loss of human capital. The outflow of talented individuals can lead to a “brain drain,” depriving these countries of their most productive individuals.¹⁸ These individuals are thought to contribute disproportionately to economic growth and higher levels of development in the source country. The source countries also worry about the declining tax base, in particular if the migrants consist primarily of skilled individuals with the highest earning potential and hence also the highest capacity to pay taxes.¹⁹

The extent of brain drain is subject to a contested theoretical debate and mixed empirical findings.²⁰ The overall economic

¹⁶ See Murray, Batalova, and Fix, *The Impact of Immigration on Native Workers* at 1 (cited in note 12) (stating that a 2006 poll suggests that 28 percent of Americans think that immigration has a negative effect on job availability in their communities).

¹⁷ See Sykes, *The Welfare Economics of Immigration Law* at 168 (cited in note 1).

¹⁸ See Trebilcock and Sudak, 81 NYU L Rev at 247–51 (cited in note 6). See also John Douglas Wilson, *Taxing the Brain Drain: A Reassessment of the Bhagwati Proposal*, in Elias Dinopoulos, et al, eds, *Trade, Globalization and Poverty* 254, 256–60 (Routledge 2008).

¹⁹ Obviously, this concern is relevant only if the expected decline in tax revenue exceeds the expected savings caused by the reduction in the migrants’ claims for entitlement programs.

²⁰ See, for example, Jagdish Bhagwati and Koichi Hamada, *The Brain Drain, International Integration of Markets for Professionals and Unemployment: A Theoretical Analysis*, 1 J Dev Econ 19, 34 (1974); *Drain or Gain?*, *Economist* 80 (May 28, 2011) (discussing several studies that found that emigration creates benefits for the source country by way of remittances and increased incentives to invest in education, among other

effect of migration on source countries is difficult to disentangle given the potential economic benefits of migration outflows.²¹ Migrants may repatriate some of their earnings through remittances.²² Indeed, remittances constitute a more important source of capital to many countries than any form of foreign aid.²³ The prospect of economic migration also creates positive incentive effects, such as higher levels of investment in education.²⁴ Migration can also lead to “brain circulation” as opposed to brain drain: Some migrants return to their homeland, contributing to the economy of the source country with an enhanced skill set, knowledge, and established networks in the destination country.²⁵ And even if these migrants stay in the destination country, they can spur investment and business opportunities by facilitating trade and economic connections between the source and the destination countries.²⁶ Still, the developing-country concern over brain drain has dominated the migration debates, making many of these countries skeptical of any policies that would increase the outflow of their productive citizens to countries with better economic opportunities.

things); William J. Carrington and Enrica Detragiache, *How Big is the Brain Drain?* *24 (International Monetary Fund Working Paper, July 1998), online at <http://www.imf.org/external/pubs/ft/wp/wp98102.pdf> (visited Mar 3, 2013) (finding that migration rates are higher for higher skill levels and that a number of countries in the Caribbean, Central America, and Africa face losses of more than 30 percent of their high-skilled citizens); Oded Stark, Christian Helmenstein, and Alexia Prskawetz, *A Brain Gain with a Brain Drain*, 55 *Econ Letters* 227, 233 (1997).

²¹ See Bhagwati and Hamada, 1 *J Dev Econ* at 19–20 (cited in note 20).

²² See *Global Economic Prospects* at 85 (cited in note 9) (describing the importance of remittances, and estimating that in 2005 remittances totaled an estimated \$167 billion).

²³ See Dean Yang, *Migrant Remittances*, 25 *J Econ Persp* 129, 129–30 (Spring 2011); Dilip Ratha and Sanket Mohapatra, *Increasing the Macroeconomic Impact of Remittances on Development* 1 (World Bank Nov 26, 2007), online at http://www.law.yale.edu/documents/pdf/Clinics/9_Increasing_the_Macro_Impact_of_Remittances_on_Development.pdf (visited Mar 3, 2013).

²⁴ A study of Cape Verdeans found that a 10 percent increase in the country’s young people’s probability of migrating raises their probability of completing secondary school by 8 percent. See *Drain or Gain?*, *Economist* at 80 (cited in note 20). These incentives to acquire education are facilitated by the “point systems” that some countries use to screen desirable migrants. Migrants that aspire to enter these countries are motivated to acquire education that allows them to meet the educational prerequisites. See Trebilcock and Sudak, 81 *NYU L Rev* at 251–52 (cited in note 6). A study on young Fiji citizens of Indian origin supports this assumption. See *Drain or Gain?*, *Economist* at 80 (cited in note 20).

²⁵ See Trebilcock and Sudak, 81 *NYU L Rev* at 253–55 (cited in note 6).

²⁶ See *id.* at 259–60.

II. EXISTING POLICIES TO RESTRICT MIGRATION FLOWS

The above discussion suggests a deep divide between migration policies favored by destination countries and source countries, respectively. Destination countries favor policies intended to encourage desirable migration—migrants that add to the human capital and tax base without displacing domestic workers—while seeking to restrict undesirable migration—migrants that burden the fiscal state of the country or displace domestic workers. Source countries favor policies intended to discourage the emigration of the citizens that contribute most to the development potential of the country. With respect to migrants that leave, source countries seek to encourage these individuals to remit part of their destination country income or, ultimately, to return to the source country. This Part discusses the specific policies that destination and source countries adopt to achieve these outcomes.

A. Migration Policies Adopted by Destination Countries

Destination countries pursue a number of policies to control the entry of migrants. These policies include ex ante restrictions such as quotas that regulate the overall volume of migration. In addition, destination countries use various qualitative entry screens in an effort to encourage desirable migration and deter undesirable migration. After a migrant is allowed entry, destination countries employ a host of ex post policies to ensure that migrants remain productive and law-abiding residents of the destination country.

Quotas are commonly used to regulate the number of migrants the destination country accepts each year. The reliance on quotas allows the destination country to control the various negative externalities of migration, including “congestion effects,”²⁷ labor market effects, as well as fiscal and political effects that an uncontrolled flow of migrants could pose on the economic and political stability in the destination country. The

²⁷ Congestion effects refer to the increased use of public spaces and infrastructure such as roads, parks, and beaches in the destination country. See Trebilcock and Sudak, 81 NYU L Rev at 281–83 (cited in note 6); Chi-Chur Chao, Bharat R. Hazari, and Jean-Pierre Laffargue, *Public Good Congestion and the Optimal Number of Immigrants* *8 (Centre pour la Recherche Economique et ses Applications Sept 2006), online at <http://www.cepremap.ens.fr/depot/docweb/docweb0607.pdf> (visited Mar 3, 2013).

United States, for instance, relies on quotas to regulate the total number of migrants it accepts each year.²⁸

In addition, destination countries typically identify certain categories of migrants that are not eligible for an admission even within the set quotas. They carry out basic national security, criminality, and health background checks before admitting a migrant into the country.²⁹ The costs imposed by a migrant posing a national security threat or prone to criminal activity are well-accepted grounds for denying entry. Health checks are motivated by a presumption that a migrant suffering from serious illnesses will not likely be a productive resident and will instead make a disproportionate use of welfare payments offered by the destination country.³⁰

Beyond disqualifying unambiguously undesirable migrants, countries often seek to screen the remaining categories of migrants with the help of various proxies that allow them to predict which migrants are likely to become productive residents that successfully assimilate into the culture of the destination country. Countries such as Australia, Canada, and New Zealand use point systems that help them select migrants with desirable demographic and educational qualities.³¹ These entry screens are designed to encourage high-skill migration that is believed to contribute most to the welfare of the destination country. The United States follows a different strategy. It primarily seeks to ensure that admitted migrants possess labor market skills that are complementary (as opposed to overlapping) with the labor market skills of its native workers. This screening method mitigates the labor displacement effects of migration and entails employers certifying that the employment of foreign labor does not have an adverse effect on domestic labor.³² The United States also requires that every migrant—including those sponsored by a relative as opposed to an employer—show that he or his sponsor has sufficient resources to ensure that the migrant

²⁸ See, for example, Immigration and Nationality Act (INA) § 203(a), 8 USC § 1153(a)(1) (capping the number of visas to be allocated to unmarried sons and daughters of citizens at 23,400). See also Sykes, *The Welfare Economics of Immigration Law* at 183–93 (cited in note 1).

²⁹ See Trebilcock and Sudak, 81 NYU L Rev at 276–77 (cited in note 6).

³⁰ See id at 276.

³¹ See id at 278–79.

³² See id at 278. In practice, the US employer must show that no qualified domestic workers are available or willing to perform the same job that the employer offers to the migrant.

will not “become a public charge.”³³ Some countries take a step further in “selling” the right of entry.³⁴ Belize used to allow migrants to buy citizenship at the price of \$50,000.³⁵ More commonly, countries grant admission for migrants making a sizeable investment in their domestic economies.³⁶ All these policies, while notably different in their formulation, share the goal of seeking to select productive migrants while screening out migrants that are expected to impose a net cost on the destination country.

If a migrant clears the ex ante screens and is allowed entry, the destination countries still employ certain policies to ensure that the adverse effects of migration will not materialize ex post. Destination countries may limit the migrant’s access to many welfare benefits immediately upon entry. Further, some destination countries seek to facilitate voluntary repatriation by migrants that have limited financial means. Denmark, for instance, offers repatriation benefits to (non-EU) migrants who are prepared to voluntarily return home but have no financial means to do so.³⁷ Repatriation benefits cover not only the migrant’s travel expenses, but also the cost of healthcare and prescription medications for one year after the return as well as pension benefits for the period of five years back in the source country (a so-called “reintegration allowance”). The ultimate policy tool used by the destination country in the case of unsuccessful migration is deportation. The grounds for deportation differ from one destination country to another, but those grounds often involve mi-

³³ Chang, 3 UCLA J Intl L & Foreign Aff at 393 & n 49 (cited in note 5), quoting INA § 212(a)(1)(4)(A), 8 USC § 1182(a)(1)(4)(A).

³⁴ For an argument that the United States should participate in this endeavor, see Julian L. Simon, *The Price of Citizenship: Auctioning Immigration Visas Helps Foreigners and Americans Alike*, 39 Pol Rev 71, 71–72 (1987).

³⁵ See Elizabeth C. Babcock and Dennis Conway, *Why International Migration Has Important Consequences for the Development of Belize*, 26 Yearbook: Conference of Latin Americanist Geographers 71, 75 (2000).

³⁶ See Uma A. Segal, *United States: The Changing Face of the United States of America*, in Uma A. Segal, Doreen Elliott, and Nazneen S. Mayadas, eds, *Immigration Worldwide: Policies, Practices, and Trends* 29, 31 (Oxford 2010) (describing America’s “investor program” which “issues approximately 10,000 visas annually to those who are willing to invest between \$500,000 and one million dollars” in the United States). See also James Walsh, *Navigating Globalization: Immigration Policy in Canada and Australia, 1945–2007*, 23 Soc Forum 786, 800 (2008) (discussing Canada’s point system for entrepreneurs, including the requirement for an investment of more than Can\$500,000 for five years in a Canadian business that preserves Canadian jobs).

³⁷ See *Repatriation Benefits* *1 (Dansk Flygtninge Hjælp), online at http://flygtning.dk/fileadmin/uploads/pdf/Saadan_hjaelper_vi_PDF/repatriering_PDF/Muligheder_for_oekonomisk_stoette_-_ENGELSK_2013.pdf (visited Mar 3, 2013). See also Liav Orgad and Theodore Ruthizer, *Race, Religion and Nationality in Immigration Selection: 120 Years after the Chinese Exclusion Case*, 26 Const Commn 237, 293 (2010).

grants being convicted of some criminal activity or violating immigration laws.³⁸

B. Migration Policies Adopted by Source Countries

Source countries pursue policies that mitigate the costs of emigration. These policies can be aimed at discouraging human capital outflows, encouraging return migration, or maximizing the source country's share of the migrant's destination country income.

Few countries actually prevent their citizens from emigrating, for instance, by requiring exit visas as a condition for leaving.³⁹ Some economists have proposed the use of "exit taxes" as ways for source countries to retain a portion of the migrant's income.⁴⁰ Yet these coercive proposals have been controversial, and few countries have resorted to them in practice. South Korea presents a rare example of a country that has successfully taxed some of its emigrant citizens, specifically when these migrants work abroad under Korean government contracts.⁴¹ Professor Kim Barry discusses an example where the Korean government helped Korean construction companies using Korean migrant workers secure contracts in the Middle East. Here, Korea not only withheld these migrants' income taxes, but also required a large portion of the migrants' salaries to be deposited in foreign currency accounts held in Korean banks.⁴² In contrast to such mandatory taxes, Eritrea has imposed a "voluntary tax" of 2

³⁸ See, for example, INA § 237, 8 USC § 1227.

³⁹ Exit visas were used, for instance, by the former Soviet Union. See Albert Kaganovitch, *Stalin's Great Power Politics, the Return of Jewish Refugees to Poland, and Continued Migration to Palestine, 1944–1946*, 26 *Holocaust and Genocide Stud* 59, 66–70 (2012) (discussing the application of Soviet exit visas to Polish Jews). Today, communist Cuba and Nepal still require their citizens to obtain a permit to leave the country. See Eric Retter, Comment, *You Can Check Out Any Time You Like, but We Might Not Let You Leave: Cuba's Travel Policy in the Wake of Signing the International Covenant on Civil and Political Rights*, 23 *Emory Intl L Rev* 651, 661–65 (2009) (discussing the Cuban laws restricting citizen emigration amidst human rights reforms under Raul Castro's government). Some countries, such as Saudi Arabia and Qatar, apply exit visas to foreign workers. See "As If I Am Not Human": *Abuses against Asian Domestic Workers in Saudi Arabia* 26–33 (Human Rights Watch July 2008), online at http://www.hrw.org/sites/default/files/reports/saudiArabia0708_1.pdf (visited Mar 3, 2013) (describing the Saudi Arabian "Kafala" work authorization system for foreign workers); Heather E. Murray, Note, *Hope for Reform Springs Eternal: How the Sponsorship System, Domestic Laws and Traditional Customs Fail to Protect Migrant Domestic Workers in GCC Countries*, 45 *Cornell Intl L J* 462, 471 (2012).

⁴⁰ See notes 80–81 and accompanying text.

⁴¹ See Kim Barry, *Home and Away: The Construction of Citizenship in an Emigration Context*, 81 *NYU L Rev* 11, 37 (2006).

⁴² *Id.*

percent on its migrants' annual income.⁴³ The tax applies to all nonresident Eritreans.⁴⁴ It is justified as a "moral obligation" that migrants have to help with the post-war nation-building efforts.⁴⁵ The tax has been sustained in exchange for giving the migrant community extensive political rights and thereby a larger stake in the country's future.⁴⁶ The vast majority of the migrants are thought to pay the tax given the social pressure to do so and the fact that the payments are made publicly.⁴⁷

Perhaps most commonly, source countries adopt policies that actively encourage migrants to send remittances to the source country. The prospect of remittances may even lead the source country to actively support, even subsidize, outmigration in some circumstances.⁴⁸ Remittances have significant positive overall welfare effects on many source countries.⁴⁹ In 2010, migrants from developing countries sent home \$325 billion in remittances.⁵⁰ Yet whether the remittances are sufficient to offset the negative effects of migration on source countries is subject to debate.⁵¹ Remittances can also have mixed effects on wealth distribution within source countries.⁵² Still, the overall positive macroeconomic effects of remittances have led source countries to pursue various strategies to increase them. They seek to cultivate deeper emotional connections between the migrant and the source country in an effort to foster the migrant's loyalty and thereby willingness to devote part of his income to remittances.⁵³ Source countries also seek to make the transmission of remit-

⁴³ Id at 38–39.

⁴⁴ Id at 38.

⁴⁵ Barry, 81 NYU L Rev at 38 (cited in note 41).

⁴⁶ See Nadje Al-Ali, Richard Black, and Khalid Koser, *The Limits to "Transnationalism": Bosnian and Eritrean Refugees in Europe as Emerging Transnational Communities*, 24 *Ethnic & Racial Stud* 578, 587–92 (2001).

⁴⁷ See id at 593.

⁴⁸ See David M. Forman, *Protecting Philippine Overseas Contract Workers*, 16 *Comp Labor L J* 26, 44 (1994) (describing how the Philippines's development strategy includes formal policies that recognize obligations to overseas workers in exchange for requirements to remit a portion of earnings to the Philippine government). See also Barry, 35 NYU L Rev at 51 (cited in note 41) (noting that source countries describe emigrants as heroic in order to promote remittances).

⁴⁹ The top nineteen remittance world recipients receive more than 10 percent of their GDP in remittances. See *Global Economic Prospects* at 90 (cited in note 9).

⁵⁰ See *Drain or Gain?*, *Economist* at 80 (cited in note 20) (citing World Bank estimates).

⁵¹ Compare Mihir A. Desai, Devesh Kapur, and John McHale, *Sharing the Spoils: Taxing International Human Capital Flows*, 11 *Intl Tax & Pub Fin* 663, 676 (2004), with *Drain or Gain?*, *Economist* at 80 (cited in note 20).

⁵² See Ali Mansoor and Bryce Quillin, eds, *Migration and Remittances: Eastern Europe and the Former Soviet Union* 67–73 (World Bank 2007).

⁵³ See Barry, 81 NYU L Rev at 35–36 (cited in note 41).

tances easier by reducing the fees associated with the transfer process.⁵⁴ Some countries have adopted policies to match remittances to further encourage them. Mexico, for instance, matches migrants' contributions made via "hometown associations" to improve the infrastructure of migrant-sending areas of Mexico.⁵⁵ The government's "3×1 Program for Migrants" provides \$3 for each \$1 contributed this way for local development projects.⁵⁶

Similar positive effects can be accomplished if the source country creates incentives for the migrant to channel investment and capital flows back to the source country with the help of the networks the migrant builds in the destination country.⁵⁷ Mexico's "Migrant Business Fund," for instance, provides subsidized loans to Mexicans living in the United States willing to invest in Mexico.⁵⁸ Similarly, India offers some of its emigrants preferential treatment under its investment and banking laws, consisting of more generous investment terms than those available to foreign investors or resident Indians.⁵⁹ Countries also actively encourage return migration with the help of incentive packages. Russia, for example, has since 2006 actively facilitated its emigrants' return migration by offering returning migrants various welfare and education benefits, in addition to paying for the return migrants' costs of traveling and resettling in their former homeland.⁶⁰

C. Criticism of Existing Restrictions

Even if some of the concerns motivating existing migration restrictions were valid, the set of policies that countries have implemented to respond to those concerns are largely inefficient. Quotas used by destination countries deter desirable migration, including the entry of migrants who would not burden the welfare state or lead to displacement of domestic workers.⁶¹ Quotas

⁵⁴ See id at 36.

⁵⁵ Francisco Javier Aparicio and Covadonga Meseguer, *Collective Remittances and the State: The 3×1 Program in Mexican Municipalities*, 40 *World Dev* 206, 206 (2012).

⁵⁶ Id.

⁵⁷ See Trebilcock and Sudak, 81 *NYU L Rev* at 259–60 (cited in note 6).

⁵⁸ See *3×1 Citizens' Initiative* (International Labour Organization Aug 7, 2009), online at http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=44 (visited Mar 3, 2013).

⁵⁹ See Barry, 81 *NYU L Rev* at 41 (cited in note 41).

⁶⁰ See Vladimir Iontsev, Irina Ivakhnyuk, and Svetlana Soboleva, *Russia: Immigration to Russia*, in Segal, Elliott, and Mayadas, eds, *Immigration Worldwide* 47, 60 (cited in note 36).

⁶¹ See Trebilcock and Sudak, 81 *NYU L Rev* at 281 (cited in note 6). See also Paschal O. Nwokocha, *American Employment-Based Immigration Program in a Competitive*

are also undesirable due to their inflexibility: they are set in advance and cannot adapt to the constantly changing needs of the labor market.⁶² Point systems allow destination countries to attract primarily skilled migrants, but the empirical evidence suggests this to be an imperfect proxy for these migrants' productivity in the labor market.⁶³ Attempts to restrict migrants' access to welfare payments can similarly be complicated under constitutional law constraints that prevent discrimination of residents in their access to basic support systems.⁶⁴ Finally, labor market certifications are cumbersome and blatantly protectionist, considerably limiting the employers' opportunities to hire productive foreign migrants.⁶⁵

Any coercive policies employed by source countries to restrict emigration, including exit taxes, are questionable. While potentially effective in curtailing migration outflows, exit taxes simultaneously reduce the beneficial effects of migration to the migrant and the destination country. Also the source country might lose as it forgoes remittances that the exiting migrant would potentially send home. A productive migrant who sends remittances home benefits the source country more than a migrant who is prevented from leaving and therefore underutilizes his potential in the source country. Exit taxes may also lead to resentment, causing the migrant to leave, even renounce his citizenship, or otherwise sever his ties with the source country.⁶⁶ This type of resentment would also likely discourage the migrant from sending remittances or considering eventual return. In contrast to coercive policies designed to deter outmigration, positive efforts to attract remittances and return migration seem

Global Marketplace: Need for Reform, 35 Wm Mitchell L Rev 38, 65 (2008); Seth R. Leech and Emma Greenwood, *Keeping America Competitive: A Proposal to Eliminate the Employment-Based Immigrant Visa Quota*, 3 Albany Gov L Rev 322, 334 (2010) (claiming that skilled immigrants are deterred from coming to the United States by the visa cap and instead choose to go to other countries, which then benefit from their work); Jung S. Hahn, Note, *American Competitiveness and Workforce Improvement Act of 1998: Balancing Economic and Labor Interests under the New H-1B Visa Program*, 85 Cornell L Rev 1673, 1692 (2000).

⁶² See Trebilcock and Sudak, 81 NYU L Rev at 281–82 (cited in note 6).

⁶³ See Arnold De Silva, *Earnings of Immigrant Classes in the Early 1980s in Canada: A Reexamination*, 23 Canadian Pub Pol 179, 197 (1997) (arguing that skills-based screening is largely ineffective and that age is the most relevant predictor of the migrant's success in the labor market).

⁶⁴ See Sykes, *The Welfare Economics of Immigration Law* at 179 (cited in note 1) (noting that, in the United States, the courts have not been receptive to extensive residency requirements as a condition for participating in entitlements), citing Laurence H. Tribe, 1 *American Constitutional Law* 1380–84 (West 2d ed 1988).

⁶⁵ See Sykes, *The Welfare Economics of Immigration Law* at 187 (cited in note 1).

⁶⁶ See Trebilcock and Sudak, 81 NYU L Rev at 291 (cited in note 6).

defensible. Still, these policies alone have not led source countries to let go of their perception that they are losing from the outward migration. The idea of a persisting welfare loss associated with the exit of their valuable citizens continues to limit their willingness to support a liberal migration regime.

III. MIGRATION FUND: SHARING THE RISKS AND REWARDS OF ECONOMIC MIGRATION

Many scholars have acknowledged the inefficiencies that characterize the existing migration policies. They have also suggested reforms that would replace the current policies with various alternatives that respond to the legitimate concerns of undesirable migration while preserving the gains from desirable migration. This Part builds on these proposals. It develops an idea of a Migration Fund that seeks to share the risks and the rewards of migration between the migrant, the source country, and the destination country. The Migration Fund differs from other existing proposals in its focus on aligning the divergent interests of the source and destination countries as opposed to solving only the concerns of one or the other the way the existing proposals do.

A. Existing Reform Proposals

To alleviate the destination countries' concerns over fiscal migration, Professor Michael Trebilcock has advocated for a private insurance scheme that would reimburse the destination country for any drawings that a migrant makes against noncontributory social programs.⁶⁷ This insurance would cover the welfare payments, public (noncontributory) pensions, and other expenses that the migrant may become entitled to once residing in the destination country. The mandatory social program insurance scheme would mitigate the destination country's fears of fiscally induced migration by making the migrant or his sponsor internalize the social costs of migration.⁶⁸ Professor Eleanor Brown has advanced an idea that the migrant would be required to post a bond upon entry.⁶⁹ The migrant would forfeit the bond if he violated the conditions of entry, including overstaying his

⁶⁷ Michael J. Trebilcock, *The Law and Economics of Immigration Policy*, 5 *Am L & Econ Rev* 271, 298–313 (2003).

⁶⁸ *Id.* at 298–300, 311–12.

⁶⁹ Eleanor Marie Lawrence Brown, *Visa as Property, Visa as Collateral*, 64 *Vand L Rev* 1047, 1060–71 (2011).

visa.⁷⁰ A variation of this idea, which Professor Brown discusses in connection with temporary guest workers,⁷¹ could apply to permanent migration as well. The bond could be forfeited in situations where the migrant needs to rely on social programs, thereby insuring the destination country against the risks of socially costly migration.

Economists such as Gary Becker and Julian Simon have advocated the removal of immigration quotas and have proposed setting a price for entry or, alternatively, making greater use of auctions to allocate entry permits. Becker has proposed that anyone willing to pay a set price, such as \$50,000, would be entitled to enter the United States immediately.⁷² Simon calls for periodic auctions that would allocate entry permits to those willing to pay the most.⁷³ Their proposals rest on the idea that markets would allocate entry permits to those who derive the greatest utility from migrating and who are therefore willing to pay the highest price for the right to migrate.⁷⁴ These proposals would also likely insure the destination countries against fiscally induced migration, as the high price of entry would deter migrants who would likely burden the welfare state.⁷⁵

Similarly focusing on the adverse fiscal consequences of migration to the destination country, Professor Howard Chang has argued for the use of immigration tariffs.⁷⁶ A tariff would take the form of a differential income tax on migrants, shifting some of the migrants' income to the public treasury.⁷⁷ Further, the tax would be positive for immigrants with low incomes while negative for immigrants with high incomes, incentivizing skilled immigration while deterring unskilled immigration.⁷⁸ This way, the quotas would be replaced by less generous fiscal policies applied

⁷⁰ Id at 1050–52. This proposal is inspired by the Kuwaiti system. Kuwait often requires the migrants to post a bond as a condition of entry for guest workers. The bond will be forfeited if the guest worker violates the terms of the visa, including overstaying his visa or imposing welfare costs on the Kuwaiti government. See id at 1060.

⁷¹ Id at 1051–52.

⁷² Gary Becker and Guity Nashat Becker, *The Economics of Life: From Baseball to Affirmative Action to Immigration, How Real-World Issues Affect Our Everyday Life* 58 (McGraw-Hill 1997).

⁷³ Simon, 39 Pol Rev at 71–72 (cited in note 34) (discussing the advantages of an auction scheme both for Americans and immigrants); Julian L. Simon, *The Economic Consequences of Immigration* 357–63 (Michigan 2d ed 1999).

⁷⁴ See Becker and Becker, *The Economics of Life* at 58–69 (cited in note 72); Simon, 39 Pol Rev at 72 (cited in note 34).

⁷⁵ See Becker and Becker, *The Economics of Life* at 59 (cited in note 72).

⁷⁶ Chang, 3 UCLA J Intl L & Foreign Aff at 378 (cited in note 5).

⁷⁷ Id at 381–82.

⁷⁸ Id at 378, 384–87.

to emigrants—not by reducing their right to entitlements but by applying a differential income regime to them.⁷⁹

These types of proposals have the potential to improve the status quo by removing the inefficiencies associated with the use of quotas. They would increase the number of migrants while mitigating the concerns for admitting migrants that impose a net fiscal cost on the destination country. At the same time, they would do little to alleviate the fears of source countries. To respond to the concerns of source countries, these proposals would therefore need to be complemented with schemes to compensate the source country for the loss of valuable human capital.

Other scholars have focused on the concerns of source countries. Some economists, including Jagdish Bhagwati, have proposed taxing the brain drain and thereby compensating the developing countries for “the loss of the human capital to wealthier countries.”⁸⁰ This would entail imposing a supplementary income tax on high-skilled emigrants and transferring that tax to the source countries. Professors Mihir A. Desai, Devesh Kapur, and John McHale have built on the proposal, exploring the use of various tax instruments as a way to mitigate the costs of migration outflows from developing countries.⁸¹ For instance, source countries could seek to tax their citizens for their global incomes. Alternatively, destination countries could collect the migrant’s taxes but afterward remit a proportion of those taxes to the source country governments. Yet another option would entail charging the migrant an exit tax at the point of emigration. The idea behind any such taxation would be to compensate the source country for the costs involved in educating and training a migrant who subsequently goes on to benefit the tax base of the destination country.

The problem of complementing the various entry prices (as proposed by Trebilcock, Becker, Brown, and Simon) with exit prices (as proposed by Bhagwati, Desai, Kapur, and McHale) is that implementing both would lead to a version of “double taxation”—fees imposed simultaneously by the source and the desti-

⁷⁹ The familiar economic arguments that support tariffs over quotas in restricting trade in goods support the use of immigration tariffs over immigration quotas. See id at 380.

⁸⁰ Jagdish N. Bhagwati, *The Brain Drain Tax Proposal and the Issues*, in Jagdish N. Bhagwati and Martin Partington, eds, *Taxing the Brain Drain I: A Proposal* 3, 20 (North-Holland 1976). See also Deepaak Nayyar, *Migration, Remittances and Capital Flows: The Indian Experience* 121 (Oxford 1994).

⁸¹ See Desai, Kapur, and McHale, 11 *Intl Tax & Pub Fin* at 682–85 (cited in note 51).

nation countries.⁸² These fees would further be levied irrespective of whether any concerns by either the source country or the destination country would be realized. High fees associated with both exit and entry would make migration unreasonably costly, reducing the welfare of the migrant and limiting the number of migrants that ultimately leave as a result. This would likely lead to suboptimally low levels of migration, reducing global welfare and thus minimizing the gains that could be divided among the parties concerned.

B. The Creation and Operation of the Migration Fund

An alternative way to respond to the legitimate concerns of source countries and destination countries would be to pool the funds that are used to insure the destination countries against fiscally induced migration and the source countries against the costly brain drain. Ultimately, the funds would be disbursed to the party whose concerns will have materialized after information about the migrant's "success," and the ultimate decision to stay or to return, has been gained.

The Migration Fund would operate in the following way. The immigrant or his sponsor would deposit a predetermined sum—say \$50,000 for the purpose of this discussion—into a Migration Fund. This Fund could be managed by a private company, which would have a contract with the destination country government, the source country government, and the migrant and/or the migrant's sponsor. After a certain predetermined period—for instance, at the time the migrant becomes eligible for naturalization—a determination would be made about the disbursement of the deposited funds.⁸³ The \$50,000 would be disbursed differently depending on the outcome with respect to two variables: first, whether the migrant has been successful or unsuccessful in the destination country and, second, whether the migrant remains in the destination country or returns to the source country. A migrant is considered "successful" if he remains employed or otherwise capable of supporting himself in

⁸² See Michael A. Clemens, *Economics and Emigration: Trillion-Dollar Bills on the Sidewalk?*, 25 *J Econ Persp* 83, 92 (Summer 2011) (criticizing Bhagwati's exit tax proposal on the ground that "the economic equivalent of a large emigration tax is already broadly applied" though restrictive measures taken by destination countries).

⁸³ The moment at which the migrant is eligible for citizenship would be a natural time to make a determination about the disbursement of the funds. It is difficult to justify the differential treatment with respect to entitlements or any other rights that citizens are eligible for after the migrant becomes a citizen.

the destination country. A migrant is considered “unsuccessful” if he becomes unemployed and needs to rely on welfare benefits to stay in the destination country. Naturally, a migrant that engages in criminal activity or otherwise meets conditions for deportation would be considered “unsuccessful.”

In the case of unsuccessful migrants, the funds from the Migration Fund would be disbursed to the destination country. If the migrant became a fiscal burden, yet still wanted to stay in the destination country, the funds would be used to compensate the destination country for the costs of the welfare benefits that the immigrant claims. Alternatively, the funds could be used to cover the costs of repatriating the voluntarily returning migrant to the source country. Finally, if the conditions for deporting the migrant were met, the costs associated with deportation could be recovered from the fund. This way, the destination country would assume no risks nor bear any costs in having to support an unproductive migrant. The destination country would also not have to pay the costs of voluntary repatriation or involuntary deportation. Admitting the migrant would therefore be “risk free” as the destination country would be insured against the negative scenarios of migration.

In contrast, if the migrant were successful and remained in the destination country, the destination country would need no compensation from the Migration Fund. The destination country would enjoy the positive contribution the migrant makes to the welfare of the country through his human capital and tax payments. Under this scenario, the deposit placed in the fund would be divided between two sets of recipients: half the funds would be released to the migrant or the migrant’s sponsor, while the other half would be remitted to the source country. This way, the migrant’s (or his sponsor’s) contribution to the Migration Fund would be treated like a bond that is released when the conditions motivating the bond (that is, unsuccessful migration) failed to materialize. This would further incentivize the migrant to remain productive and the sponsor to screen successful migrants. At the same time, the source country would be compensated for the loss of its productive work force and tax revenues—whether based on the high-skilled or low-skilled labor of the migrant.⁸⁴

⁸⁴ The willing migrant could, of course, voluntarily send his share of the funds back to the source country in the form of remittances. The source country may even employ various incentives to induce the migrant to do so (including matching the contributions).

Finally, if the successful migrant voluntarily returned to the source country, the funds would be released to the migrant.⁸⁵ Under this last scenario, the destination country needs no compensation beyond the human capital and taxes it has enjoyed during the migrant's productive time in the destination country. The source country similarly needs no compensation as the migrant returns—most likely with an enhanced skill set and accumulated funds that are repatriated back to the source country.⁸⁶

While the primary focus of this Article is the movement of independent migrants for an economic purpose, a question of family migration is often directly related to a migrant's welfare and initial decision to move. In principle, the Migration Fund could apply to family-sponsored migrants in the same way. Family members could follow the migrant as long as they have a sponsor that is willing to deposit the necessary funds or invest in a larger "Family Migration Fund." Most likely, the employer sponsor or the migrant himself would sponsor the migrant's immediate family who are thought to contribute most to the welfare of the primary migrant. It is possible that the idea of a Migration Fund would, however, deter the more distant relatives from migrating in the absence of an independent economic basis to migrate (such as an independent economic opportunity that entails a sponsoring employer). Again, this may not be a negative outcome as long as the immediate family of the migrant is able to follow the migrant. If we seek to preserve gains to both destination and source countries, we may even want to restrict the migration of more distant family. If some relatives stay behind in the source country, the migrant is likely to feel more connected to the source country. This way, the migrant is also more likely to send remittances home or even consider return migration. This feature of the Migration Fund would likely further enhance the source countries' support for a liberal international migration regime. The restrictive elements of the Family Migration Fund would also appeal to commentators who advocate decreasing family migration and increasing employment-based migration as a way to maximize the destination country benefits of migration.

⁸⁵ There could be a minimum time limit after which the migrant is eligible for the funds as opposed to the sponsor who might have initially paid the bond. This arrangement would reflect an assumption that after a certain number of years, the employer has recouped his investment through the labor contribution of the migrant.

⁸⁶ See *Drain or Gain?*, Economist at 80 (cited in note 20).

The idea of the Migration Fund is premised on an idea that both destination countries and source countries gain from migration, yet they both face risks that militate against allowing for unrestricted migration. Another assumption motivating the proposal is that both sets of countries have some bargaining power that enables them to demand their share of the gains. Critics may challenge the latter assumption. Some commentators have argued that destination countries can set their desired migration policies unilaterally and are therefore in a position to forgo negotiating with source countries.⁸⁷ If this were correct, destination countries would indeed have no incentive to share the gains from migration with the source countries.

It may be true that destination countries have at times the leverage to set their migration policies unilaterally. However, at other times the source country's cooperation is desirable. Many destination countries have entered into bilateral agreements with certain source countries,⁸⁸ suggesting that both parties can gain from a cooperative migration policy. These bilateral agreements are often motivated by destination countries' need to seek source countries' cooperation in their efforts to deter illegal immigration.⁸⁹ Source countries can gain leverage by withholding such cooperation, or by refusing to admit criminal deportees or other return migrants that destination countries seek to repatriate. The migration issue could also be linked to many other

⁸⁷ See, for example, Jennifer Gordon, *People Are Not Bananas: How Immigration Differs from Trade*, 104 Nw U L Rev 1109, 1137–39 (2010) (arguing that trade is different from immigration because developed countries can obtain all the labor they want, whereas for trade, countries desire access to developing markets and therefore must negotiate with the governments). See also Alexander Betts, *The Global Governance of Migration and the Role of Trans-regionalism*, in Rahel Kunz, Sandra Lavenex, and Marion Panizzon, eds, *Multilayered Migration Governance: The Promise of Partnership* 23, 32–42 (Routledge 2011) (discussing the unequal bargaining power between destination and source countries); Joel P. Trachtman, *Coherence and the Regime Complex for International Economic Migration*, in Kunz, Lavenex, and Panizzon, eds, *Multilayered Migration Governance* 46, 48–51 (cited in note 87) (same).

⁸⁸ See Rahel Kunz, *Depoliticization through Partnership in the Field of Migration: The Mexico–US Case*, in Kunz, Lavenex, and Panizzon, eds, *Multilayered Migration Governance* 283, 292–96 (cited in note 87).

⁸⁹ See, for example, Gordon, 104 Nw U L Rev at 1140–41 (cited in note 87); Kunz, *Depoliticization through Partnership* at 292–96 (cited in note 88); Sergio Carrera and Raúl Hernández i Sagrera, *Mobility Partnerships: 'Insecurity Partnerships' for Policy Coherence and Migrant Workers' Human Rights in the EU*, in Kunz, Lavenex, and Panizzon, eds, *Multilayered Migration Governance* 97, 105 (cited in note 87); Natasha Ward, *Facilitating the Temporary Movement of Natural Persons: Economic Partnership Agreements versus Bilateral Migration Agreements and Mobility Partnerships*, in Kunz, Lavenex, and Panizzon, eds, *Multilayered Migration Governance* 143, 146–48 (cited in note 87); Betts, *The Global Governance of Migration* at 32–35 (cited in note 87).

policy issues in international negotiations—be it opening markets for foreign direct investment, securing intellectual property rights, fighting terrorism, or undertaking commitments to mitigate climate change—where destination countries are dependent on source country cooperation and therefore willing to offer transfer payments to source countries. These transfer payments could include destination countries' offer to share the gains from migration with source countries.

Finally, source countries' decisions to restrict outmigration would offer an ultimate way for source countries to force destination countries to share the gains from migration with them. These restrictions could consist of prohibitively high exit taxes or the requirement (and possible denial) of exit visas. Source countries could also threaten to remove emigrants' citizenship or prevent their reentry upon emigration. These types of policies, designed to permanently sever migrants' ties to source countries, would discourage many migrants from leaving. This would be particularly true for destination countries that limit family migration, as the decision to emigrate would, in such instances, permanently separate families. Any of these policies would deter many desirable migrants and therefore harm destination countries as well. While the benefits of these policies to source countries would be highly questionable, they would allow the source countries to gain leverage against destination countries and thereby claim a larger share of the gains generated by migration in return for undertaking to ease their restrictions on emigration.

C. The Benefits of the Migration Fund

The primary advantage of the Migration Fund is that it allows the relevant parties to allocate the gains from migration while simultaneously securing them against the risks of undesirable migration. In other words, the Migration Fund pools the risks and rewards associated with migration, paving the way for countries to adopt more liberal migration policies. It does this by mitigating the prevalent fears and aligning the interests of all key stakeholders: migrants, destination countries, and source countries.

The Migration Fund is motivated by the same concerns that inspire many other proposals that seek to liberalize migration flows. The Migration Fund would allow countries to remove inefficient quotas and abolish the discretionary point systems or cumbersome labor certification requirements. The ability to secure the funds needed to insure the migrant against unsuccess-

ful migration would serve as the sole screen (in addition to mandatory national security, criminal, and health checks) for whether the migrant is eligible to enter the destination country. This would lead to a greater movement of economic migrants without augmenting fears associated with undesirable migration.

At the same time, the key difference of the proposed Migration Fund compared to other, existing proposals is twofold. First, the expenses paid to the Migration Fund are conditional on an outcome; there is no automatic disbursement of funds to a party that may not need compensation. Second, the proposal avoids imposing a “double burden” on migrants by using the same pool of funds to insure both the destination country and the source country against outcomes they consider undesirable from their perspective.

The conditionality aspect of the Migration Fund manifests itself in the following way. The migrant does not need to pay an exit tax (or other compensation to the source country) in all circumstances. The source country is entitled to compensation only in case of a productive migrant who decides not to return. If the migrant becomes a burden to the destination country, a reasonable assumption is that the individual does not represent a significant loss of human potential to the source country. In fact, the source country may experience a welfare gain when it does not need to provide welfare benefits to this individual, assuming the individual would have also remained unproductive in the source country. Similarly, the source country’s compensation is conditional on the migrant not returning: a returning migrant can keep the funds, incentivizing a return migration, which in itself offers a gain to the source country. Here, no additional compensation is paid to the source country.

Also the compensation to the destination country is conditional: the destination country is not entitled to an automatic entry fee, either from a sale or an auction of entry permits. No private insurer in the destination country is further entitled to an insurance payment. An obligation to compensate the destination country only materializes when the migrant proves to be unproductive yet wants to stay in the destination country or when the destination country incurs expenses in repatriating or deporting an unsuccessful migrant. Similarly, the migrant (or the sponsor) loses the entire entry fee only if the decision to enter was an erroneous one in hindsight, such as when the mi-

grant becomes unemployed or engages in reprehensible behavior that triggers the right to deport the migrant.⁹⁰

The Migration Fund also removes the double burden that would otherwise be imposed on the migrant: the same pool of funds is used to insure the destination and the source countries against a possible adverse outcome. This dual use of the same funds is premised on the idea that the destination country and the source country cannot both lose at the same time. If the migrant is successful in the destination country, only the source country can lose. In contrast, if the migrant is unsuccessful, only the destination country can lose. There is thus no need for an individual migrant to ever compensate both countries. The direct beneficiary of the removal of this double burden is the migrant himself (or his sponsor) who does not need to accumulate funds necessary to compensate both the source and the destination country as a condition for migrating.

Of course, a counterargument may suggest that double taxation would be avoided if the governments of destination countries and source countries priced their entry and exit taxes optimally based on a correct assessment of the probability that the migration may lead to a costly outcome. For instance, if the destination country considered there to be a 50 percent chance of the migrant becoming a fiscal burden, it should charge an entry fee that reflects only 50 percent of its expected costs of accepting an undesirable migrant. Similarly, the source country may agree to lower its exit tax by 50 percent under the presumption that only half its emigrants will eventually impose a cost by leaving. However, the Migration Fund regime would have the advantage of compensating both the destination country and the source country at the full 100 percent (as opposed to the probability-based 50 percent) level each time their fears of costly migration materialized. Because of the dual use of the same funds and the principle that only the deserving party is entitled to claim the deposited funds, both the destination country and the source country would be fully insured—without increasing the cost on the migrant.

⁹⁰ If the migrant, however, remains employed, half of the deposited funds would be returned to the sponsor or the migrant. Under this scenario, the migrant (or the sponsor) would be unlikely to suffer costs by the decision to transfer the other half to the source country. This share of the Fund would presumably be more than offset by the income the migrant earns and the productive labor that the sponsoring employer enjoys when the migrant is successful.

The Migration Fund would create incentives for desirable behavior, simultaneously accomplishing multiple preferred outcomes. It would deter migrants that are motivated by access to generous welfare benefits, as the migrants would need to use their own funds, or the funds of their sponsor, to pay for entitlements. By becoming unproductive, these migrants would forgo a salary as well as lose the funds paid as a condition for entry. The sponsors would also have an incentive to exercise care in screening foreign labor given the need to deposit the funds under the knowledge that the funds will only be returned if the migrant is successful. Destination countries would face few risks as they would be compensated if the screening by employers fails or if the migrant makes an investment in the Migration Fund under overly optimistic assumptions about his employment potential. Thus, the destination countries would be able to enjoy the upside of migration while being insured against the downside of migration. Source countries would also be better off: they would enjoy compensation for the loss of their productive citizens without the risks of alienating them (and their remittances) with coercive tactics such as exit taxes. They could also experience higher levels of return migration, as the migrant would be lured to return by allowing them to reclaim the entire funds that were placed in the Migration Fund.

The Migration Fund employs some elements of so-called “reversible rewards”—an idea that Professor Omri Ben-Shahar and I have developed as a way to bolster incentives for desirable behavior by combining rewards and sanctions, and linking the funding of the two.⁹¹ To the extent that the Migration Fund would be used to finance the costs of penalties such as deportation, the Fund would “double” the migrant’s incentives for good behavior. Failing to remain in the labor force and engaging in criminal activity would entail a dual cost on the migrant: First, the migrant would forgo the income associated with productive labor as well as the funds deposited in the Migration Fund. Second, the migrant would be even likelier to be deported when the same funds would be used against the migrant to facilitate the deportation. The destination country would face zero costs in deporting the individual, as the expenditures would be directly reimbursed from the Fund, making the decision to seek deportation more likely. This way, the prospect of losing twice should

⁹¹ Omri Ben-Shahar and Anu Bradford, *Reversible Rewards*, 15 *Am L & Econ Rev* *6–12 (forthcoming 2013), online at <http://aler.oxfordjournals.org/content/early/2012/12/18/aler.ahs018.full.pdf> (visited Mar 3, 2013).

give the migrant an additional incentive to be a productive member of the destination country's economic life and society.

D. The Downsides of the Migration Fund

Notwithstanding the many benefits of the Migration Fund, the proposal is likely to invite criticism as well. One objection might be that unskilled workers in particular are unlikely to be able to obtain the requisite funds to migrate. This could lead to suboptimally low levels of unskilled migration. Of course, some migrants could borrow the funds to enter the destination country. But if the migrant is unable to supply the requisite collateral to secure the debt, or if the banks in the source countries have limited means to enforce debts, functioning lending markets will not likely develop.⁹² This concern would suggest that the practical application of the Migration Fund is limited to high-skilled migration where employers are more likely to pay the costs of the migrant's entry.

This concern, which applies similarly to all proposals involving entry fees, seems valid. In response, supporters of entry fees may point out that several existing policy tools are designed specifically to encourage high-skilled migration and discourage low-skilled migration, justifying this outcome.⁹³ Further, unlike entry fees proposed by Becker and others, the Migration Fund involves a conditional payment, which is partially returned in the case of successful migration. This should increase the migrant's chances of securing the loan in the first place. In some instances, source country governments may even be inclined to guarantee such loans, assuming they are entitled to a greater share of the gains that the migrant's decision to emigrate offers.

A similar concern relates to the impact that the Migration Fund would have on illegal immigration. Critics may assert that higher barriers to enter the destination country would only incentivize the migrants to enter illegally. However, all immigration restrictions likely have a similar effect. It is not obvious why conditional entry fees would encourage illegal migration more than existing quotas, point systems, and labor certification requirements do. One should also consider that many illegal mi-

⁹² See Eric A. Posner, *The Institutional Structure of Immigration Law*, 80 U Chi L Rev 291, 314–15 (2013) (criticizing the bond proposal advanced by Eleanor Brown on similar grounds).

⁹³ See, for example, Martin Kahanec and Klaus F. Zimmermann, *High-Skilled Immigration Policy in Europe* 21 (Institute for the Study of Labor Dec 2010), online at <http://ftp.iza.org/dp5399.pdf> (visited Mar 3, 2013).

grants currently bear substantial costs related to various smuggling services that they use in an effort gain an illegal entry into the desired destination. According to the International Organization for Migration, these fees—facilitating illegal entry—vary significantly but can amount to as high as \$35,000 for an individual migrant.⁹⁴ The Migration Fund would allow the prospective migrant to forgo these expenses, lowering the migrant's perception of the net cost of entering legally.

The Migration Fund may also be criticized in that it does not remove all concerns harbored by destination countries. It directly responds to the destination country concern of fiscally induced migration and the source country concern of brain drain. However, the Migration Fund does not directly address the destination country concern of labor displacement. In fact, if the labor market certification requirement is removed by making the availability of funds the sole criteria for admission, one could expect the labor displacement concerns to become even more prevalent.

Nonetheless, this should not be a significant concern. First, the Migration Fund requires a considerable investment from the employer sponsoring the entry of a foreign worker. It is reasonable to assume that the employer is prepared to incur this expense only if the domestic workforce cannot satisfy the demand. This would be the case when there is a domestic labor shortage or when foreign labor and domestic labor are not substitutes. If domestic labor were available, the employers would likely not agree to pay the premium in the Migration Fund, given that even under the best scenario—that of a successful migrant—half the funds need to be returned to the source country at no direct benefit to the employer. Second, if the working migrant were to displace domestic workers, the additional tax revenues paid by the migrant could be directed to these displaced workers as compensation.⁹⁵ These two factors, together with the recognition that migrants do not only supply labor but also create jobs by demanding goods and services,⁹⁶ should alleviate the concerns relating to labor displacement in the destination country.

⁹⁴ *World Migration Report 2003: Managing Migration; Challenges and Responses for People on the Move* 303–15 & table 17.21 (International Organization of Migration 2003), online at http://publications.iom.int/bookstore/free/WMR_2003.pdf (visited Mar 3, 2013).

⁹⁵ See Howard F. Chang, *The Economic Impact of International Labor Migration: Recent Estimates and Policy Implications*, 16 *Temple Polit & CR L Rev* 321, 330 (2007).

⁹⁶ See id at 328.

Alternatively, should the concern of labor displacement nonetheless persist, the destination country could consider disbursing the sponsoring employer's or migrant's portion of the Migration Fund to itself instead. The destination country would then redistribute the funds as additional welfare benefits to displaced domestic workers. This way, the employer would no longer be required to certify *ex ante* that no labor displacement would take place and could instead be required to partake in the compensation of displaced domestic workers *ex post*, particularly if concrete effects of labor displacement were shown.

CONCLUSION

Economic theories and empirical studies on economic migration have for a long time supported greater liberalization of international economic migration. Contrary to this evidence, fears of negative distributional consequences associated with migration have kept borders tightly regulated. This Article has sought to respond to the source and destination countries' key concerns without taking a position on whether those concerns are well-founded. Instead, the above discussion is built on a premise that these concerns constrain countries' ability to free migration. This calls for policies that reframe the migration debate from a zero-sum game to a positive-sum game. Countries will only agree to liberalize migration flows if both destination and source countries are insured against the downsides of migration while guaranteed a share of the gains that beneficial migration creates. The multiuse and conditional nature of the Migration Fund would have the advantage of simultaneously addressing the concerns of source countries and destination countries without imposing a dual burden on the migrant. As a result, we should see greater acceptance of international economic migration, resulting in greater global welfare, as well as a more equal distribution of that welfare.