An Analysis of David Miller’s Rejection of Free Movement as a Reason for Open Immigration.
Contents

1. Introduction .........................................................................................3

2.0. Miller’s Arguments:
2.1. Freedom of movement is morally non-obligatory ........................................4
2.2. The right to emigrate is a ‘conditional’ right ..................................................6
2.3. Global injustice requires provision of basic rights .......................................8

3.0 Critical Discussion of Miller’s Arguments:
3.1. The marriage Analogy & the Nationalist Assumption .....................................9
3.2. Miller’s formal ‘right of exit’ reasoning ..........................................................12
    3.2.1. Is Freedom of movement a vital interest? .................................................13
3.3. Critical discussion of Miller’s First and Third Arguments ................................15
    3.3.1 Do we have a vital interest to move about freely? ......................................15
    3.3.2 The Brain Drain argument .....................................................................19

4. Summary ............................................................................................21

5. Concluding Discussion ..........................................................................22

6. Bibliography ........................................................................................27
1.0 Introduction

Global human movement has been a fact of life for centuries, if not the whole of history. This may have always had its difficulties, but migration in a modern world is problematic precisely because that world is a world of states. And states do indeed guard a right to determine who may settle within their borders. Modern states may be reluctant to immigration for a variety of reasons, for example security is often cited as an important consideration. But the issue arguably becomes more acute when the migration concerns modern liberal democratic states. The problem arises because such destinations are popular, whether it is refugees looking for a safe haven, or those people simply looking to improve their prospects of a better life. A basic problem here arises because it may be argued that the effects of immigration, even as it may bring benefits, nonetheless still imposes a cost on a society. Furthermore the burden of accommodating an influx of immigrants may not fall equally within a society. Much may arguably depend on who the immigrants are, and with whom they end up competing for jobs, housing, public facilities and services etc.

Now, it should be noted at the outset that immigration involves not one question, but many. I cannot and will not try to examine every ethical question with this phenomenon. My aim is to look at the argument of free-movement of peoples across states or sovereign territories. That is, the general question or aim I will be asking is whether people have a strong (negative) right to freely move about and live where they want. And if this is so, what exactly does that mean for the right of states to control immigration. So therefore the degree of migration the essay will focus upon will be those migrants who seek an indefinite permanent settlement of sorts.

I will approach this question from inside, a somewhat, broad liberal perspective. Such an angle of approach to the argument concerning freedom of movement (FOM), seems very much to bring to the fore a tension in liberal political philosophy. On the one hand there is the commonly made assumption regarding the rights of nations, where many believe that nations have a right to impose restrictions on immigration. And on the other hand, of the same liberal tradition, there are the universalist views about rights and justice- that may entail that people should be allowed to move about freely. That is, ‘borders should generally be open and that people should normally be free to leave their country of origin and settle in another\(^1\). So the

---

tension seems to stem from the fact that liberalism was discerned and developed in the context of the nation-state. This becomes problematic because the original backdrop of liberalism was narrow in scope, but at the same time some assert, that the doctrine in fact implies a broader universalist reading. Moreover, such a reading may not view this original and narrower context as being morally relevant in certain situations.

I attempt to carry out the essay by selecting and critically analysing a contemporary liberal nationalist argument that rejects the FOM argument respectively. This analysis will take a look at the arguments of David Miller. Miller is a common and forceful voice in the literature, who argues the case for limiting immigration. Part of his argument for this position, is based on his repudiation of the presumption: ‘that people should be free to choose where to live unless there are strong reasons for restricting their choice’. Hereafter referred to as ‘the presumption’. The essay seeks to look at and examine the plausibility of this position by Miller.

The essay initially proceeds by reconstructing Miller’s arguments against the presumption. The following section is then devoted to a critical discussion of Miller’s reasoning and argumentation of his rejection of the presumption. After this treatment of Miller’s arguments, I then proceed to summarize my own reasoning before going on to conclude and discuss some of the issues that arise in the essay. I conclude, contra Miller, by affirming the presumption, but also leave the door open that there may be other possible relevant factors that the essay has not taken up, which ultimately may still bear on the overall conclusion concerning the presumption.

---

2. Miller’s Arguments:

2.1. FOM is morally non-obligatory and only a ‘remedial’ right

Broadly speaking Miller’s first argument against the presumption rejects the notion that FOM is a kind of freedom that imposes a general moral obligation on to others. His argument seeks to accomplish this by initially installing an analytical framework that Miller takes as an appropriate measure to shift the burden of proof to those liberal philosophers who affirm ‘the presumption’. That is, he claims that the FOM claim has to have the kind of weight that could turn it into a right that could prohibit states pursuing immigration policies that limit FOM. He then finds this weight or significance to be lacking, maintaining that a person may have a contingent claim, or ‘remedial right’ to immigrate to some country, but there exists no general right or commitment above and beyond this. In arguing for this, Miller contends that that his opponents must do more than show that there is ‘some’ value in people being able to migrate:

Of course there is always some value in people having more options to choose between, in this case options as to where to live, but we usually draw the line between basic freedoms that people should have as a matter of right and what we call bare freedoms that do not warrant that kind of protection. It would be good from my point of view to buy an Aston Martin tomorrow, but this is not going to count as a morally significant freedom-my desire is not one that imposes any kind of obligation on others to meet it.  

---

3 ibid pp-194
For Miller the physical extent of the FOM is unclear. That is with the right to FOM not being absolute but sufficient within liberal democratic states, Miller then asks what permits such an extensive reading of FOM to be applied between states. For Miller, the answer to such a question is ‘only’ to be found by referring to what possible ‘vital interests’, the right to move freely may be seen as protecting. That is, Miller assumes an interest based account of human rights. Furthermore the answer to this is to be based on social contingencies that warrant, for Miller, the right to move to some other country and settle there i.e. fleeing persecution. In these instances, for Miller, a person has a right to move not to any state of one’s choice, but to some state where their interests can be protected:

But here the right to move serves only as ‘remedial right’: its existence depends on the fact that the person’s vital interests cannot be secured in the country where she currently resides. In a world of decent states, states that were able to secure their citizens basic rights to security, food, work medical care, and so forth- the right to move across borders could not be justified in this way. 4

Miller then goes on to specify a general rationale for his view, stipulating that a legitimate individual demand, is one which is grounded in the demand to access an ‘adequate range of options’. Where adequacy is defined as ‘generic’ human interests rather than ‘particular’ interests. And from this not everybody will inevitably fall under Miller’s criteria, leading him to conclude that although people have an ‘interest’ in freely moving across borders; they do not have a ‘basic interest’ that is required to ground a human right. Concluding that such an ‘interest’ is pretty much like a bare freedom to which he mentioned at the outset of the argument. That is, for Miller, those who do not fall under his criteria are not seen as having an interest to some means of physical mobility; but more rather as expressing an interest that is more like his interest in having an Aston Martin.

4 ibid, pp-196
2.2. The right to emigrate is a ‘conditional’ right

Miller’s argument here broadly consists of two parts. For the first part Miller discerns and reiterates for what he takes the significance and value of the right to exit to consist in, before setting the limits of this very same right. The second part works by virtue of analogy, by referring to the right to exit as something that is analogous to the right to marry.

For Miller the right to exit is significant, because it precisely preserves his conception of decency and allows freedom of association. However, such instrumental significance for Miller does not at the same time entail an unrestricted right to enter any society of the immigrant’s choice. For Miller the exercisability of the right can be sufficiently met when at least one other society is willing to take the person(s) in.

The second part of the argument works by virtue of analogy. In the first premise Miller contends that many rights and their exercisability, are indeed contingent on finding partners who are willing to co-operate in the exercise. For example, the right to marry. From this example he reasons that it is not a right to have a marriage partner provided and that the right of exit is indeed analogous to this. That is, the right of exit doesn’t entail, for Miller, an obligation on any other state to let that person in. Miller then supposes that there are, in general, some states willing to consider migrants and most people would get offers from at least one state. Miller then concludes that the right to exit is pretty much the same as the right to marry. Insofar that no one gets to wed their ideal choice, but gets to marry someone at least:

But suppose states are generally willing to consider entry applications from people who want to migrate, and that most people would get offers from at least one such state: then the position as far as the right of exit goes is pretty much the same as with the right to marry, where by no means everyone is able to wed the partner they would like to have, but most have the opportunity to marry someone.

\[\text{ibid, p197}\]
2.3 Global injustice requires provision of basic rights

Miller’s answer to this challenge works by first rejecting the notion that equality of opportunity is required at the global level. He then argues that even if we did equalize opportunity, then the likely effects would not be desirable for most of the people concerned.

Miller does not accept that the fundamental moral equality of human beings demands or requires an equality of opportunity at the global level. For Miller, such a prescription to global injustice is by no means clear cut. That is, for Miller, accepting every human being as an equal object of moral concern does not in itself automatically tell us what is actually required to do for people; as a result of that initial equality. Miller’s answer to this problem is found in a basic rights approach. Therefore the morally relevant factor resides in the fact that: ‘no human being should be allowed to fall below the minimum level of provision that protects his or her basic interests’. So Miller here seems to endorse a ‘weak cosmopolitanism’, requiring humanitarian duties between nations, but not ‘strong cosmopolitanism’, which would require distributive principles between nations

Miller then argues that even if we were to go ahead and equalize opportunity for all, then this would perversely enough lead to less opportunity for most people. Employing the ‘brain-drain’ argument Miller speculates that if people can move freely to another country, then generally only the well off, skilled and comparatively rich in poor countries, would be able to take advantage of such a right:

But before jumping to the conclusion that the way to respond to global injustice is to encourage people whose lives are less than decent to migrate to elsewhere, we should consider the fact that this policy will do little to help the very poor, who are unlikely to have the resources to move to a richer country. Indeed, a policy of open immigration may make such people worse off still, if it allows doctors, engineers, and other professionals to move from economically underdeveloped societies in search of higher incomes, thereby depriving their countries of origin vital skills.

---

6 Ibid, pp-198.

So the argument cashes in on the irony, maintaining that in trying to increase opportunities for the many will actually have the opposite effect. And so in conclusion for Miller, most instances of global injustice require and obligate us to improve conditions ‘on the ground’ as he sees it, and not by equalizing opportunity and allowing an inevitable selective migration.

3. Critical Discussion of Miller’s Arguments

3.1 The Marriage analogy and the Nationalist Assumption

So starting with Miller’s marriage analogy, how accurate or appropriate is it? Well, I do think that there are significant parts of the comparison that are very much open to question. First there is the issue of consent. That is, the right to change one’s nationality and the right to marriage are not the same, insofar as a person can be single by their own choice. This is altogether different to those who are born into a nation-state, whose consent is arguably not given. Secondly, and perhaps more importantly, the inability of someone to find a partner to marry can be at a cost of no real harm to his or her existence in society, whereas the contingency of being stateless very much can be. To be sure, the right to marry and marriage is of course not without its significant instrumental benefits, but this is hardly the same or as crucial as a person’s nationality, viz. because such a thing nowadays affects all the fundamental public goods and benefits that a person may receive. A stateless person is not only effectually deprived of many significant and major social rights, they cannot even make an official contract of marriage even if they wanted to. And of course a single person may still be entitled to any stately social rights or benefits. So the normative situation of those trying to wed, and those trying to move countries do not seem to be hold a meaningful comparison. There also seems to be an implicit premise at work here in Miller’s marriage analogy. Insofar


9 Miller, primarily between his first and third argument, oscillates between the terms ‘vital’ and ‘basic’ interests, saying that basic or human rights are justified by the protection of such things. Both terminologies, however, seem to refer to the same thing; viz. a ‘minimum level of provision’ that protects ones vital and/or basic interests. So, in a bid for a consistent terminology and ease of clarity I will only be referring to the term ‘vital interests’ in the treatment of Miller’s arguments.
as the party that needs to consent, the nation, has a de facto primary claim over the would be proposer or immigrant. That is, the analogy only works by assuming that settlers not only have a primary claim to access goods and resources; but also get to decide the conditions of those seeking to gain access and settle. To be sure, Miller does qualify this, in that settlers may not hold an ultimate defacto right in deciding who can or cannot settle, in every case i.e. When the would be immigrant’s vital interests, as Miller understands them, are at stake. So, other things being equal, the current settlers of a nation have a defacto right or ‘primary claim’ over the conditions of immigration of those seeking to settle. So, the question arises: what exactly is such a claim grounded in?

Now, it seems an unlikely implausibility if this claim were to be grounded in Miller’s notion of vital interests. One would be hard pushed to reasonably argue that a level of migration that we might find in today’s world, or any world for that matter, could possibly threaten the vital interests of the current settlers of a nation.

So it would appear that a de facto claim of a nation, that reserves the right to waive away, alleged obligations to those on the outside as secondary; is very much in need of independent support. So Miller, to avoid begging the question, and for his analogy to adequately work, very much seems to require a supplementary argument. Furthermore, such tacit supplementation seems very much to be the nationalist element, inherent in Miller’s general political philosophy. So a central feature of Miller’s nationalism that might arguably give support to this ‘primary claim’, seems to be the notion of national self-determination. So, ‘fundamentally understood self-determination is the claim to a public political sphere in which a nation’s culture and identity can be expressed, reflected and cultivated’. So the basic idea seems to be that nations have a claim to a certain degree of autonomy. This in turn, it is argued, commands the establishment of nationalized institutions that secure and sustain (in the name of self-determination) a nation’s cultural identity. Such self determination is seen as important, because it precisely secures a cultural context for individuals to exercise their choices. So it would seem that a strategy of restricting immigration into a nation, could possibly follow from such thinking.

---

10 Note: such obligations are still of a non-specific type; viz. Just because your vital interests may be at stake does not necessarily mean that any nation will automatically let you in. This can only be so, in theory, if no other nation grants you your claim. Then the obligation, in theory, must become binding on some nation.


12 Kok-Chor Tan, Justice Without Borders (Cambridge University Press, 2004), p 91
3.2 Miller’s formal ‘Right of Exit’ reasoning

Miller’s argument concerning the right of exit (ROE) seems to take the following logical form:

P1- Right of exit (ROE) is important to preserve conditions of decency

P2- ROE is also important in decent states to prevent contingencies of intolerable association

C- However, ROE does not entail an ‘unrestricted right’ to enter any society of the immigrant’s choice, if one other country is willing to take the immigrant(s) in.

Now I think this argument appears to work well in a certain sense, in that it does seem like that Miller may be right in maintaining that the ROE does not in itself entail an unrestricted right to enter any country. This much may be true, but what is more questionable in Miller’s conclusion is the notion or idea that the ROE can be ‘sufficiently’ exercised when ‘at least one other society is willing to take that person or persons in’\(^{13}\). That is, C may follow from P2, but still not be entirely reasonable. In other words the ROE whilst not at the same time entailing an unrestricted right of entry, may still morally require an accompanying ‘reasonable’ right to enter into a society\(^{14}\).

With this said of course the possible or minimal exercisability that Miller alludes to is by no means without any practical value, but it still seems to hold or allow an insufficient degree or amount of exercisability. On behalf of the person exiting a state, this matters because a reasonable and sufficient exercisability of the ROE would be needed for the form and content of this very right to be genuinely meaningful. So Miller seems to be going wrong some where in suggesting that the ROE exercisability is sufficiently met when ‘at least one other society,

\(^{13}\) This qualification by Miller: ‘when at least one other society is willing to take that person or persons in’, is the main area of Miller’s argument subjected to critique in this section.

\(^{14}\) Carens, J C 1992, ‘Migration and morality: A liberal Egalitarian Perspective’ in Brian Barry; Robert E. Goodin (eds), Free Movement: Ethical Issues in the Transnational Migration of People and Money. Pennsylvania State University Press, Pennsylvania, pp 27. Carens point is that he sees it as unsatisfactory to merely argue that freedom of exit and entry are asymmetrical. If freedom of exit does not imply a right to enter some particular place, then this is problematic for carens. This is because if entry is so restricted in most states then most people who in fact want to leave have no place to go. Carens sees this as an accurate reflection of the modern world, maintaining that liberal freedoms can be empty formalities under some circumstances, concluding that a right of exit that does not carry with it some reasonable gurantee of entry will not seem adequate.
society B, is willing to take him in”\textsuperscript{15}. Why may this be so? Well, Miller’s argument works fairly well due to the fact of it ignoring or omitting the context in which his argument or reasoning may be ultimately operating in. For example, imagine that A’s vital interests are not met and there are five countries where A’s vital interests would be met, but nevertheless none of these five countries decide to let A in. Now, Miller’s argument states that at least one country should let A in, which on the face of it seems a very nice thing to say. The more worrying thing, however, is that Miller’s argument stops here and doesn’t indicate that any ‘particular’ country is or would be obligated to let A in. So the worrying thing is that such an argument may engender a sort of diffusion of responsibility towards those countries that are indeed obligated to let A in. Furthermore this of course may give the potential outcome that no country will then assume such a responsibility. So this overarching collective responsibility that is required from Miller’s argument seems, I think, practically too weak. Miller’s argument here might work better if it was provided with an institutional context. For example the stipulation of a ‘first country’ obligation with regard to the ROE. That is, the country that is nearest to A (that can meet A’s vital interests), has a stronger obligation to let A in than those countries further away. So Miller’s argument may work better on this institutional level, but as long as these institutions do not presently exist, then it would appear that the ROE in certain cases amounts to a right to be stateless.

And this I think is satisfactory because your ROE, in this instance, is exercisable and for Miller nothing more needs to be said-but is this really a reasonable and morally endorsable state of affairs? Is Miller’s reasoning and justification that one’s right of exit’s exercisability only need to be shown theoretically possible, all that we need? It seems to me it is not. Whilst the ROE may not require an unrestricted choice, it still seems that it may in some instances require more than the one non-binding or non-specific choice that Miller indicates. What is a reasonable degree of choice or obligatory requirement is of course far from being a straightforward and uncontroversial matter. Such issues may ultimately depend on the context of the specific case and are not the focus of this essay. It is enough however, to point out that it seems that Miller has went too far the other way on the issue of choice in relation to one’s ROE. That is, Miller on arguing against an unrestricted view on choice, offers an overly narrow alternative that can permit unsatisfactory results. So although Miller’s view would

perhaps seem to allow more immigration than is presently the case, the ROE whilst not being a trump card for the case for FOM, still potentially has more value than Miller implies or allows.

So in summing up, this reading of the ROE may not entail a restricted choice to anywhere, but nonetheless a reasonable choice may still be morally required. Where in some instances, the degree of choice may exceed one single theoretical possibility, requiring that at least some of the options open are of a genuine practicable nature.

3.2.1. Is Freedom of movement a vital interest?

An important question at this point may be to ask that whether the reasons for why the ROE are needed for decency (protection of vital interests), are also reasons for the claim that the FOM is needed for decency. That is, it may well be that the reasons that speak for why the ROE is needed for decency, are ‘also’ the same reasons for the claim that FOM is needed for decency. This of course hinges on the fact that whether FOM is indeed a vital interest, which is something that Miller contests. It is crucial to Miller that he contests this claim, because not doing so may indeed undercut his rejection of the FOM presumption with regard immigration. I will do nothing more for now, but just merely raise the question, aiming to pursue this idea more rigoursly in the treatment of Miller’s first and third arguments.
3.3 Critical discussion of Miller’s first and third argument

Miller’s first and third argument would very much appear to rest on the following premise:

P1- The right to freedom of movement is only justified by protection of vital interests

Broadly speaking Miller’s first argument lays out and asks the question, is FOM is a vital interest? That is, Miller outrightly asks the question-do we have a vital interest to move about freely? Miller doesn’t think there is such vital interest at stake and the result of this first argument affects Miller’s third argument. This is precisely because Miller proceeds to ground his obligations towards global injustice in the protection of such vital interests. So Miller’s procedure works by first defining what vital interests actually are, before going on to say that these same vital interests ground our obligations to the problem of global justice. That is, Miller in his third argument takes rights on the global level to be grounded by vital interests, not an alternative equality of opportunity, which he routinely rejects. Now, I will not proceed to defend such an alternative as the equality of opportunity, but rather question Miller’s suggestion.

I will first proceed however, by looking at the analytical framework that Miller sets up at the outset of his first argument. That is, I will first take Miller’s requirement (that the right to FOM is only justified by protection of vital interests) and then assess the plausibility of his answer.

3.3.1 Do we have a Vital Interest to move about freely?

As mentioned, the key premise in Miller’s first and third argument would appear to be:

P1- The right to freedom of movement is only justified by protection of vital interests.

From this, Miller in his first argument, infers and concludes that the right to FOM is only legitimate when correcting or remedying an insufficiency of vital interests. Now, this in some ways at least seems like a fairly adequate response to the modern problem of migration. It certainly doesn’t appear on first glance to be an all-together unreasonable option or approach.
In its bid to secure vital interests, Miller’s approach has the advantage of appealing to a human commonality to those interests and attributes we all supposedly share. And in doing so offers a relatively broad based defence for a ‘special case’ of a legitimate right to FOM. Another advantage, it could be argued, for Miller’s interests approach to human rights is that it could be seen to hold an effacious heuristic value or appeal. That is, in prioritising vital interests, Miller’s approach provides the possibility of resolving and adjudicating the all too foreseeable potential disputes surrounding the claims of all those who want to move to other countries.

With these things said however, it does still appear that Miller’s view of the general argument for FOM, still allows for some somewhat strange and counter-intuitive results. That is, the freedom to choose to live and work at a certain place is seen in itself as non-valid reason, or rather it is downgraded to the same kind of freedom as a desire to buy an Aston Martin. Now, I have hard time in seeing how these two things are ‘really’ comparable in any significant sense. That is, it is arguable that living a fully good human life seems to be something that may be underscored or manifested in terms of work. Being denied the chance to promote one’s labour, talents, or skills, hardly seems seriously equivalent to one being denied the opportunity to buy an Aston Martin. The denial of the FOM situation amounts to a restriction of autonomy, which may give rise to valid claims of unjust treatment. This possibly may also have the further effect of devaluing one’s worth, which may be partly expressed in terms of work.

Whilst the other situation, being denied the chance to purchase an Aston Martin, amounts to a single preference being frustrated, with no significant restriction of autonomy or reasonable devaluing of one’s self-worth. So the normative contexts of these two situations are strikingly dissimilar, and it is really hard to see how they bear any serious or meaningful equivalence to one another.

Another question we could ask at this point, is whether or not, Miller’s definition and particular rendering of the term ‘vital interests’, is entirely adequate. That is, these interests may be a valid form of modus operandi, but still nevertheless be arguably construed in a more inclusive manor; viz. it may in fact be, that to move to the place where you want, ‘is’ indeed an example of a vital interest being at stake.

There is a venerable tradition in liberal political philosophy that holds the notion of the sovereign individual to be of prime importance. The origins of such liberal thinking and sentiments can be found in Locke when he describes that an individual ‘has a right to decide what would become of himself and what he would do, and as having a right to reap the
benefits of what he did’. 16 Or succinctly put by Locke himself-’every man has a Property in his own Person.’17 This self ownership tradition, where bodies and talents move according to the plans that they may have, seems to have been neglected or overlooked by Miller. That is, the weight Miller gives to FOM seems to speak against or not recognize the notion of the right to control the use of one’s person or body. Such notions, I think, are indeed relevant when it comes to discussing normative issues surrounding the right to FOM. For example, imagine myself nailing your door and window shut, impeding you from moving about as you wish, then such a thing would be uncontentiously unjust. Likewise, we would think the same if one were to fall head over heels in love with someone from Malmö, but were prevented from being with that person by virtue of the fact that they live in Göteborg. I think we could all possibly agree that such examples are instances where someone’s vital interests, in some way, are at stake. So with this said, would it really be the case that a vital interest is not at stake if one of the parties in the last example happened to live in Copenhagen and not Göteborg? I will return to this point a little later, but it does prima facie appear inconsistent at least, to maintain that a vital interest is at stake in the within country example, but not so for the between country example. Such examples are precisely bad because they prevent us from going where we want to go. And with this it may be argued that the right to FOM may hold a significant value in itself. That is, physical movement seems to be a valuable liberty not only because of its instrumental value, but also because of the actual intrinsic value of moving in itself. Such an argument may partly reveal why imprisonment is so bad; viz. because it precisely prevents us from going to where we want to go. So enormous numbers of intrinsically and instrumentally valuable actions require that those performing them are able to move in particular ways. Bearing all this in mind it does seem to me at least, that it should give one serious pause for thought in considering whether there is a presumption for FOM with respect to immigration. Miller, I think, seems to underestimate the value of this FOM and seems to have been too hasty in his dismissal of it. This is because not only has Miller not succeeded by his own standards in showing that FOM isn’t a vital interest, he has also overlooked plausible

---

18 Carens, J C 1992, ‘Migration and morality: A liberal Egalitarian Perspective’ in Brian Barry; Robert E. Goodin (eds), Free Movement: Ethical Issues in the Transnational Migration of People and Money. Pennsylvania State University Press, Pennsylvania. pp 27-28. Here I have adapted Carens line of reasoning that argues that FOM should be a moral imperative across borders, just like it is treated as such within state borders.
arguments and ideas that point towards the idea that FOM may even be, after all, a vital interest.

Some may even interject at this point and claim that I have not convincingly shown that the right to FOM is justified between states, but maintain nonetheless that such a right is still justified within states. So taking our earlier example, they may maintain that it is unjustifiable to prevent one from being with their loved one, if one of the parties lived in Göteborg and the other Malmö, but not so if one of the parties in love happened to live in Copenhagen. So in the second situation we have a national border separating the two lovebirds and with this the crucial question still remains; viz. is a vital interest also at stake for the general case of immigration? Now, to claim even a general asymmetry here and say that a vital interest is generally not at stake in the case of immigration, is I think, an unsatisfactory answer. This is because even though FOM may not be unlimited, like every freedom involving human action, it is still nevertheless an important liberty. And accordingly limitations must be justified in a manor that gives equal weight to the claims of all\(^\text{19}\). That is, if we take the principle of moral equality seriously giving it its full extension, then the distinction we draw between conationals and outsiders, for the case of vital interests, becomes a morally arbitrary one\(^\text{20}\).

To be fair, Miller’s nationalism would probably have a pointed an immediate response to all this. That is, Miller’s response to such an argument, would appear to take the form that there ‘is’ a moral difference operating between conational and outsider that justifiably explains ‘special obligations’ to the former and not the latter\(^\text{21}\).

\(^{19}\)Note that limitations could of course also be justified if shown that such limitations would indeed promote liberty and equality in the long run i.e. FOM could be not be justified in a contradictory manor, i.e. if it could be plausibly shown that such a freedom could or may in fact lead to less.

\(^{20}\)ibid, p27-28.

3.3.2 The Brain Drain Argument

Miller’s brain drain (BD) argument seems to work as a contra-contra argument against a general right to the FOM. That is, the BD argument kicks in as a ‘secondary’ defence, asserting that if the BD argument is indeed true or relevant, then even if there is a good case for a general right to FOM; the BD still may show that the ‘presumption’ is wrong.

Miller’s BD argument seems to have the following logical character:

P1. Open immigration (OI) will be of very little benefit to the poor and only those who are rich and/or skilled, with the necessary resources, will be able to take advantage of it.

P2. Therefore OI will result in an outsourcing of skills, wealth and brains out of the poorer countries into the richer countries. Thus depriving the poorer countries of vital skills.

P3. This will do more harm than good, having an adverse effect for the majority of citizens of the poorer country.

C. So, OI will not benefit and in fact do more harm to the majority of the population of the poorer country.

So the simple point it would seem that Miller may be getting at is that OI will harm rather than protect the vital interests of the very people it seeks to benefit. Now, I think Miller is right in saying that the BD is a very real problem or concern. But I also think Miller has an overall weakness in his reasoning here, in that it seems to be thread bare in context. P2 may seem harmless enough, but I do think it is somewhat problematic or misleading. This is because such an empirical assumption seems to be pretty much happening in some sense (at least in some liberal democracies) already. For example Australia and (more recently) the UK have a ‘points system’ that motivates a restricted immigration policy that is primarily geared towards attracting the brains or wealth and keeping out the low skilled or poor.

So under conditions of restrictive immigration P2 seems to be happening in principle. So perhaps Miller’s contention is more one of degree and not kind. Insofar that the rate of the BD
may become greater under conditions of OI. So the question that naturally arises becomes an empirical one, in that what difference would it really make or add to ‘the problem of the BD’ if borders were open. Well all I can think of what Miller may be getting at is that the process will become easier. That is, less regulation or bureaucracy may increase more movement of brains from poor to richer countries. Not that these brains were ever disallowed in principle in the first place, they now just have to jump through less hoops. It may be true, and Miller may even be correct in thinking that OI will have a significant effect on the rate of the BD; but this seems to be very far from being necessarily so. What is also just as plausible, perhaps even more so, is that OI may not significantly affect the degree of brains moving from poor to richer countries. This is precisely because such brains, more or less, are allowed in principle now to carry out such a task, if they indeed really wanted to. So assuming that moving country is a serious goal for most people, then it is difficult to see that significantly more people would ‘jump’ at the chance to move based on the fact the process became that bit easier. True you might not have to wait in the cue as long waiting for that meal you really want, but if you were really hungry in the first place, you were always probably going to stand in the cue.

The truth or problem is that P2 is an inherently speculative premise. That is, it is difficult to assert with any reasonable conviction what exactly may happen. This doesn’t mean that speculating is not useful or even necessary sometimes, it should just be kept in mind that it is precisely speculation. Therefore one should be careful in not ascribing this theorising too much weight; treating it as if it were something akin to a factual premise.

What is probably more disputable in Miller’s reasoning is that he seems to be only accounting for one side of an arguably two sided coin of the BD. This can be argued for if we take Miller’s first premise, P1, where he states that the poor would not have the ‘necessary resources’ to take advantage of OI. Now, of course there very much seems to be something to this. One can all too easily imagine that some people may be so hungry and severely poverty stricken, that the task of moving country would be very much impossible. However, much more needs to be said. Because I don’t think it convincing or plausible to maintain that this would be an adequate characterisation of ‘everybody’ that Miller refers to. Indeed, I think it plausible to imagine that a significant amount of people may very well have the necessary resources and wherewithal to make the one necessary trip. More precise or accurate estimates of the amount that could, or could not move countries, would seem to move us off the point. But what is important, however, is that P1 seems to be very much disputable.
So where does all this leave us? Well, if for the sake of argument, we grant a reconstructed version of P2, and insist that the rate of the BD may in fact increase due to OI—then how bad would this really be compared to what is happening now? Well in trying to adequately answer this question, I think one would need to amend P1, and recognize the fact that some poor and low-skilled people would ‘also’ be able to migrate with the brains. Well, if one were allowed to assume such things, this would in some measure at least go to readdressing the gross imbalance in migratory flows that generally exists at present. So on the plus side, you now have some permissible free movement for the poor, where there was once none; giving them both the chance to pursue their goals in life and access certain goods that were once off limits. On the down side, you have the people left behind in the poor country that has also been depleted by more vital skills due to an increased effect of the brain drain. This down side may be offset to a point, if one could imagine that those who made the trip would indeed send back economic aid or resources to their immediate family etc. I say ‘to a point’ because this still seems like an unsatisfactory situation, but the key question would have to be is it any more unsatisfactory than the situation before? Well, this seems difficult. On the one hand you had the previous situation where there was no FOM and the BD, and on the other hand you have some FOM, but ‘more’ BD. This is indeed a difficult dilemma, but I would have to say that the situation that fosters a measure of FOM is better than the situation that does not. This may be backed up by assuming that FOM may indeed be a vital interest. That is, in one situation, those who are left behind, may have it that bit worse with an increase in the BD, whilst those moving would seem to have a utility difference that is greater. What may also bolster this claim somewhat is the point mentioned previous, of the migrants sending back economic aid. This is of course a very speculative argument that probably would require some numbers or figures to make it work. For example if 10 people can move for every 100000 that cannot, then the complexion of the argument may change somewhat.

Notice though that the dilemma arises, if we grant the reconstructed version of P2 of Miller’s argument. I’m not so sure, however, if this is the correct thing to do. This is because it isn’t all too clear to myself that OI will necessarily lead to an increase in the BD, when some countries very much seem to have ‘brain gain’ policies actively in operation today. So in summing up Miller’s reasoning on the BD problem several points seem to arise. Firstly it appears somewhat inconclusive that an increase rate in BD levels will actually have a ‘significantly’ lowering effect of vital skills for the poor country. Secondly it seems somewhat implausible to imply that the poor wouldn’t be able to move, even if OI became possible. And finally thirdly, even if we do grant the problem in the way that Miller conceives
it may still arguably be not as bad as the situation before the BD. So Miller's general reasoning is that the BD is bad-period-so our obligations are to move resources to people. Now this is very commendable and would be a major improvement to the current state of affairs. Furthermore there may still be a great deal of truth in Miller’s proposal, but at the same time Miller’s BD argument and reasoning would seem not to support this. So, for the want of a better strategy may indeed be that of bringing resources to people or people to resources, or perhaps even both options. The settling of such a strategic question outright, however, is beyond the scope of this essay. But what may be worth adding, on a speculative note, is that the basic structure inherent in Miller’s argument may in fact require or allow ‘both’ options as a response to global injustice. That is, if our obligations are determined by ensuring peoples’ vital interests are met, and the FOM is in fact a vital interest, then it would appear to follow that aiding the poor people to countries richer in resources- is an option that would not be off the table.

4. Summary

The central aim of the essay was to examine Miller’s rejection of ‘the presumption; viz. that people should be free to choose where to live unless there are strong reasons restricting their choice. Miller challenges this presumption in three ways. Firstly disputing the notion that there is a general right to FOM and how this must include the notion of moving and settling in states other than one’s own. He secondly questions a persons right of exit from a state, before going on to reject that such a right should be matched by right of entry into other states. Finally, Miller rejects the claim that people who live in poor states have a claim of justice that can be met by allowing them to migrate and take advantage of the opportunities that rich states provide.

It was argued for in the treatment of Miller’s first argument that his rejection to the notion of a general right to FOM was unfounded. That is, it seems that Miller has not yet reasonably established that there isn’t such a right. Such reasoning was supported, in particular, by a Lockean rights tradition, which Miller seems to have completely overlooked or omitted. In connection to Miller’s second argument concerning the right of exit (ROE); it was argued that even if Miller is correct in saying that the ROE does not entail an unrestricted choice to any state, he nonetheless seems to be wrong in overlooking the empirical context that the ROE ultimately seems to operate in. That is, the ROE may still morally require a reasonable
choice or option, where some of the options are of a genuine practicable nature that may require that the degree of choice exceeds one single theoretical possibility.

In response to Miller’s third argument, it was argued that Miller might be correct but his reasoning about the brain drain problem would not seem to support this; viz. because certain assumptions Miller makes about the BD are either inconclusive or implausible. Furthermore even if we waive some of these assumptions and allow Miller’s argument to more or less stand, then the case was made that the BD may arguably be not as bad as the current state of affairs. It was also put forth that if we were to honour Miller’s position, in light of the notion that FOM may indeed be a vital interest, then Miller’s argument would appear to also allow for the option of aiding poor people to move to countries that are richer in resources.

5. Concluding Discussion

Providing one were allowed to take FOM as a vital interest, would this then imply that there is such a right? And if so what sort of controls may perhaps be implied for immigration policy? Well, it may be that we can presume such a right, but not necessarily claim one. That is, it seems to me that what only follows is the presumption. Whether people should be actually allowed to move countries or not, is indeed another thing. In other words, FOM may be a vital interest, but there are of course other vital interests that need to be considered as well. And further still, the right to FOM may give us a strong moral reason, but this in itself is not conclusive; viz. the presumption does not support in every instance that there is a right—there are perhaps ‘other’ more weightier moral reasons as well, that may of course take precedence. So in light of all this it would appear it doesn’t necessarily follow, for example, that there should be a policy of open immigration. Therefore the consideration of the consequences of what would be more open borders, are of course in no way off the table. So the common complaints of public order, sustainability of the welfare state, brain drain etc, need not be prohibited. What does change radically, however, is how we are to evaluate such things. That is, the presumption may function as a kind of ‘default setting’. Meaning that it may give us a reason or reasons to initially accept this option or value (of FOM), but depending on the context can be cancelled or overridden by other more salient and stronger values.
It is worth noting the different trajectory that my argument took compared to Miller’s with regard to the presumption. This has much to do with myself using a different starting premise. That is, I saw it as plausibly relevant to conceive of a human being primarily in broad Lockean terms; viz. a self determining individual. Much of my reasoning flowed from such an assumption i.e. that FOM may be a vital interest and that such FOM may be justified from a principle of human liberty.

Miller on the other hand, it would seem does not start his discussion of the presumption from the same place. He seems to embrace arguably more objective standards giving the impression that he is more of a needs theorist\textsuperscript{22}. That is, if we can borrow Aristotle’s ‘Rational Animal’ conceptual distinction, Miller seems to place a greater emphasis and importance on the ‘Animal’ part. Now, I think, this takes us up an interesting avenue. So (assuming that the following question is appropriately formed), which part of this conception holds or should hold primacy? Now, I think at this point that probably the most plausible thing to do would be to remain agnostic on the issue, or at least entertain the prospect that Miller may ultimately be right. That is, the line of reasoning that expresses the sentiment: ‘what good is the ‘rational’ if the ‘animal’ can’t function’- may be correct. And on the other side of the coin, it very much seems like the reverse sentiment could be thrown straight back. So it does seem on this cursory and superficial analysis, somewhat of a moot point, and an attempt to settle or adequately understand more about this question would very much seem to require another essay.

The final topic of discussion will be Miller’s ‘Nationalist Assumption’ referred to earlier in the essay. Now, it may very well be that these nationalist arguments that Miller has in his back pocket, could undercut the case made for the presumption in this essay. That is, such arguments are certainly not without any plausibility themselves. For example there seems nothing objectionable to the act and practice of nation-building in itself. In fact it seems plausible and consistent with the legitimate aspirations of peoples to protect and sustain their national ways of life. Furthermore, to try and save any confusion, I think it also important to point out, that Miller’s liberal nationalism is not necessarily justifying nation’s quotas on immigration per se; but just some regulation. So, to be clear, Miller is only opposed to the idea of open immigration. So rendered in this light Miller’s view on immigration, including

\textsuperscript{22} So, it may be that Miller’s classification of vital interests or needs are similar to the bottom level on Maslow’s hierarchical structure. That is, what seems to count for Miller are bodily needs such as food, shelter, to be free from harm and other life essentials.
those assumptions informed by his nationalism, do not appear to be an all-together unreasonable option.

A critical question one might ask at this point, however, is how exactly does this nationalism of Miller’s, fit together with his liberalism in all this. Well, on the face of it Miller’s liberalism and nationalism seem to go together quite well with regard to immigration. However, I still think that there are worries or tensions rather, that raise their head under certain situations or conditions. For example it would appear a tension arises between the right given to a political asylum seeker, by Miller, and the right of a nation to choose such political asylum seekers. So it would seem we have a clash of rights here, and the interesting thing is how Miller, even in this situation, still reserves exclusive rights to a country’s self determination. So even though an individual’s life may be in mortal danger and the receiving country are quite competent to receive him, Miller nonetheless maintains that each country still has an exclusive self determination concerning how to choose refugees. That is, if the receiving country decides not to take them in, they simply need to go elsewhere and hopefully some other country decides to receive them\(^\text{23}\). So Miller may define a nations self determination as something that is as important as an individuals, but perhaps this is misleading with regards to political asylum seekers, and he needs to say that a nations self determination is in fact ‘more’ important. That is, Miller seems to prioritise a nation’s autonomy over a human right to be free from persecution, effectually making the duty to protect the human rights of a political asylum seeker as merely supererogatory. And this is something that does seem hard to square with the liberalism in Miller’s position.

So, political refugees aside, Miller maintains that there is no moral obligation to accept new entrants. To be fair, Miller’s reasoning does not just stop here, he feels that prospective immigrants are owed a reason for why they’re denied. Now this seems commendable, and in here lies Miller’s ethical ground for a restrictive immigration policy\(^\text{24}\). So Miller seems very much alive to the liberalism in his position at this point, stipulating that reasons for denial should not be based on things against liberal ideals such as sex, religion and race. Miller

\(^{23}\) Miller David , ‘Immigration: the Case for Limits’ in A. Cohen and C. Wellman (eds.), Contemporary Debates in Applied Ethics (Oxford, Blackwell, 2005).p 203. It may be important to stress that Miller is aware of such a conflict and does wish it would be resolved by an ‘informal mechanism’, so that every refugee has a ‘special relation’ to some country that wants to receive them . So miller sees the situation as in some way unsatisfactory, but not, it would seem, unsatisfactory enough to renego on a nations absolute right of self determination.

maintains that people may legitimately be rejected because of ‘cultural differences’ and not for example race per se. Now, this seems not so objectionable in itself, but the worry is that generally each individual was born and raised within a racial group and prevailing cultural background. In other words, it may be difficult to separate race from culture in practice, and the worry is that the pre-text of ‘cultural difference’ may work as an implicit form of racial discrimination in rejecting prospective immigrants.

With this said however, I don’t think we should see liberal nationalism per se as oxymoronic. That is we should not rule out nationalism all together, particularly ‘liberal’ forms of nationalism. The point is the ‘liberal’ part of the nationalist equation limits the ways in which a plausible national self determination may be expressed. That is, nations may have an obligation to control immigration in a ‘particularly liberal way’, but not an outright de facto right. Which is not something that Miller is saying entirely, but perhaps he needs to pay more attention to the ‘particularly liberal’ part of the equation, if he wants his position to be more coherent.

So the final question taken up, asks how Miller’s ‘nationalist assumption’ sits in the context of a presumption for free-movement. Well, if one is allowed to let the presumption stand, it does seem that the goal posts have indeed shifted somewhat. That is, there is at least a stronger moral claim for those looking to move than Miller has previously legislated for. Miller has failed to show that FOM is not a fundamental human right, and there is argument enough, I think, to at least presume such a right. I say ‘presume’ and not ‘claim’ a right, because this seems like a more reasonable and accommodating option. And as mentioned earlier, FOM may be a vital interest, but there are of course other possibly more morally urgent claims. So in light of this a possible suitable way to determine immigration control may be to equally consider the interests of all affected; whether they be conationals or nonnationals. Therefore when evaluating border policies it is arguable that states, by simply referring to their situation and interests etc, cannot legitimately claim a defacto right to accept refugees or immigrants.

I say a ‘possible’ suitable way, because after all said and done, I still feel that this is just a speculative end point, which of course requires very much more to be said. That is on balance, I think that the presumption may have arguably got off the ground somewhat and gathered a

---

25 Note that due to a non-ideal world, even though an equal consideration of interests is specified, the more pressing or fundamental interests would therefore take precedence over less pressing interests. So there would be equal consideration of interests along with the precedence of fundamental interests. This view is basically the same as Singer’s in; *Practical Ethics*, 2nd Edition, Cambridge, Cambridge University Press, (1993) p 256
little momentum, nothing more, nothing less. This is because there are of course other arguments that the essay has not taken up. For example the moral universalism, that is inherent in the equal consideration of everybody’s interests, and how this runs straight into Miller’s ethical particularism; viz. that of patriotic partiality and the ‘special obligations’ argument that accompanies it. So Miller’s nationalism, besides the argument from self determination, still very much has a response. And it could very well be that this argument may undermine the presumption. After all, it may be the case that a plausible theory concerning normative aspects surrounding global justice such as FOM, may have to, in some way at least, account for such ‘associative ties’26 that very much characterise our individual lives. So in a way, I suppose, the presumption even though it may have gathered some momentum still has more work to do.

But then again, if one is allowed to speak more generally in closing - would accounting for such associative ties or obligations be necessarily antithetical to a ‘plausible’ moral universalism or cosmopolitanism? That is, is there space for a conciliatory approach, which could question or resolve the alleged incompatibility between cosmopolitanism and nationalism? Such a direction for future research, I think, may be one of the more fruitful avenues out there to pursue.

---

26 Tan Kok-Chor, Justice Without Borders (Cambridge University Press, 2004), p 87
6. Bibliography


