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On David Miller on immigration control

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David Miller offers a liberal realist defence of immigration control grounded in cosmopolitan ideals of self-determination, fairness and integration. But a commitment to liberal values requires a commitment to more open borders than he admits. A part of the problem is that the notion of open borders Miller criticises is under-theorised. A deeper problem is that immigration control itself is inconsistent with important liberal values – notably the values of freedom and equality. This is a concern because it is the freedom and equality not only of immigrants but also of citizens that is threatened by the closing of borders.

Keywords: realism; immigration; control; Miller; borders

In *Strangers in Our Midst* David Miller supplies liberal democratic states with a defence of immigration control resting on four basic values: weak cosmopolitanism, self-determination, fairness and integration. The theory he proposes is grounded in a realist perspective. While an ideal society might not need to address the question of immigration if it assumes that people have no reason to move, actual societies today must confront the reality of human movement. In these circumstances, liberal democracies cannot evade the question of whether, and the problem of how, to control immigration. Or at least, so David Miller maintains.

Let me recognise at the outset that in defending his view, David Miller offers us a theory that is remarkably consistent not only within the terms set by the book but also within the broader context of his own thinking as a political philosopher who has addressed a range of fundamental topics over some 40 years, beginning with his first book on *Social Justice*. His is a democratic, market-socialist and communitarian-nationalist perspective that regards the modern state both as the instrument by which justice and fairness are secured, and the exemplary form of political association through which community is sustained and the forces that threaten social unity are kept at bay. Immigration control is one of a number of tools at the disposal of the state, and one that it must deploy to serve its purpose: to secure the well-being of the community it embodies.

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As a realist, but also as a political philosopher, Miller's aim is not to provide detailed policy prescriptions since these will vary with time and circumstance, but to explain why immigration control is necessary. In so doing, he steers a course between liberal advocates of 'open borders' and those nationalists who would keep borders always tightly closed even when refugees and victims of natural and human disaster ask for sanctuary or shelter. His commitment to self-determination and integration leads him to part company with open border liberals, while his weak cosmopolitanism, with its emphasis on fairness, puts him at odds with the more conservative end of the political spectrum.

The question I want to raise is whether this via *media* between extremes is sustainable. The thesis I wish to advance is that it is not, and that any substantial commitment to liberal values (which David Miller professes) makes it necessary to move towards a regime of more open borders.

To see this, we should begin with some definitional issues, which remain surprisingly unaddressed in Miller's book. Most obviously we need to be clear what is to be understood by 'open borders'. It is not enough to suggest, as Miller does on a number of occasions, that it means a 'free-for-all' – whatever that might mean. Nor will it do to say, as I think the book's analysis sometimes implies, that borders are either open or closed – for it is not clear what that could mean either.

National borders are notional boundaries demarcating the territorially defined jurisdictional limits of states. The international recognition of borders means that states have the right not simply to exclude people from entering their territories but also to determine the terms on which they may enter and remain. This is not, however, a straightforward matter, since international law complicates to a significant degree the authority of a state to set the conditions of entry, or even to exclude non-nationals from its territory. The 144 states that are signatories to the 1951 Refugee Convention are constrained, at least to the extent that they have ratified the Convention, by the terms of the agreement, which requires them to admit, consider and if the law after due process demands, grant residence to people seeking asylum. States may also be limited by their own internal laws or norms in ways that they cannot easily repudiate. For example, the member states of the EU cannot exclude each other's citizens from entering, or residing or working within their borders. Saudi Arabia is limited in its authority to deny Muslim pilgrims the freedom to come to Mecca. And Israel, under the terms of its own constitution, is obligated to admit persons of Jewish ancestry. Borders demarcate territory and help identify or distinguish national authorities; but they do not determine the shape or extent of authority or settle the question of the form or limits of its control. Just as rights of ownership cannot be assumed to be those held under the terms of *fee simple* property, neither can jurisdictional authority be understood without considering the context of international law and political history.

No borders are completely open and none are completely closed. This is true not only as a matter of law but also in practice. Every national jurisdiction sees people entering and leaving all the time, whether as diplomats, or tourists, or students, or pilots and flight attendants or traders. Not even North Korea excludes everyone. Many, if not most, states welcome border crossings, both because they want their own nationals to be able to leave and return (particularly if it is economically advantageous, and also for military purposes) and because they want the revenue brought by tourism and trade. What they wish to limit and control is not so much the number of crossings but the activities of those who do enter the territory of the state. In particular, they wish to control participation in the labour market and residency. They want the hotels full but the neighbourhoods quiet.

The question then is not whether borders should be open or closed but how open or closed they should be. There are a number of ways in which borders might be made more open – or closed. They could be opened by states allowing more people to enter the territory; or by states giving those who enter a greater range of rights or freedoms (to work, to reside, to set up business, to trade or to study, e.g.); or by states making it easier for those who come to live and work to become members or citizens of the state. Borders become more closed when fewer people become eligible for tourist visas, or fewer work permits are issued or spouses of would-be immigrants are not granted an automatic right to work; or when acquiring citizenship remains difficult for those who have settled. The case for opening borders is a case for reducing the barriers not only to entry but also to participation and membership of a society. The case for closing borders is generally a case not for eliminating border crossings but for limiting entry by some categories of people and restricting the legal rights of others allowed in (Kukathas, 2010).

Much of *Strangers in Our Midst* is devoted, strangely, to defending the claim that the state has the right to exclude. Given that the book proclaims its realist assumptions, it is not clear why this is necessary. States have certain rights in law to determine who may or may not enter, and what rights those who do so enjoy. From a realist perspective, there is no further need to justify this: we live in a world of states and states have the authority and usually also the capacity to control their borders. Better from this starting point to turn to the question of whether they should exercise this power to open or close their borders, and how open those borders should be.

At this point, however, Miller's contribution is more limited than I would like. Having said that he does not wish to get into detailed policy prescriptions, because these are going to be highly dependent on particularly circumstances, he leaves us with a rather vague and incomplete understanding of where he stands on the question of the extent to which borders should be open. Let us agree, having granted the realist premise, that states have the right to control immigration. What does this mean for a state like the UK, whose government has set a target (unrealised over the past 5 years) of 100,000 net immigrants

per year, and also proposed to take in 20,000 Syrian refugees over the coming 5 years? Germany has committed itself to accepting as many as 800,000 refugees a year for the foreseeable future. Are the UK government's measures closing the borders to an appropriate degree? Or are they leaving the borders dangerously open? Is Germany, by taking in so many (assuming the policy stays in place) moving towards an immigration policy that is no more than a free-for-all? My point here is not that Miller needs to be writing a work with detailed policy prescriptions, but that the abstract theory proposed does not tell us much about what exactly it is he is advocating. He proposes a via media between completely open borders and completely closed ones, but that medium between extremes is occupied by almost everyone, so more needs to be said if we are to understand where he stands in relation to others debating this matter.

Now it could be argued that what Miller offers is a set of reasons or considerations that should help us draw appropriate conclusions when particular circumstances are taken into account. To the open border liberal, he is saying: the borders cannot be completely open, for there are reasons to exclude some people – to protect the fairness and integrity of a society. And this is fine as far as it goes. But it does not really tell us very much without some concrete examples. As it stands, it looks to me as though one could use Miller's principles and reasoning to defend the current level of immigration to the UK (300,000 net immigrants each year), or the Conservative government's target of 100,000 net immigrants per annum, or the UKIP proposal to reduce immigration further still, or a policy that limits immigration to 1 million net immigrants each year.

Let me set aside my grumbles about these uncertainties to turn to a deeper concern about the defensibility of a via media between the extremes of open and closed borders if liberal values are to be sustained. The values Miller wants to protect are weak cosmopolitan commitments to fairness within the limits set by the imperative to maintain social integrity. What I would like to draw attention to is the tension between these different values.

If one's concern is with the protection of basic liberal values, two candidates are pre-eminent: freedom and equality. The question is whether immigration control helps us protect these values or endangers them. Immigration control, as Miller envisages it, protects liberal values by reducing the extent to which the influx of people is capable of transforming society by overwhelming local traditions or practices. As I noted earlier, this control is exercised not simply by restricting the numbers of people entering a society but by limiting what they may do. Entering as a tourist may be fine, but coming to work may not. This control also involves determining who may come to work or reside and who may not. But control threatens both freedom and equality – and here I mean only the freedom and equality of existing citizens and residents since we are leaving the interests of would-be immigrants out of the equation for the moment.

Freedom is endangered to the extent that immigration control requires the regulation and monitoring not simply of potential immigrants but of citizens

and residents since the point of control if not merely to turn people away at the border but to prevent those who have entered the country from working, or overstaying, or studying or setting up business. Since the local population is all too ready to employ, trade with or rent to outsiders, this means greater monitoring and regulation of the local population. As UK Prime Minister, David Cameron, noted during the Calais crisis, the answer is to strengthen the 'internal borders' by making it harder for people to get bank accounts, or to rent property or move undetected in their efforts to evade deportation. But this means it is necessary to extend the scope of state regulation and surveillance. It means patrol vans moving through neighbourhoods, inspections of employers, sweeps through suspected areas or professions and rules that make it more difficult not only for immigrants but also residents to operate. It means that universities have to report to the Home Office on their students and foreign staff to make sure their records track the movement of everyone.

Equality is endangered most immediately in a couple of ways. First, given that the state will have tried to protect liberal values by controlling not only the number of immigrants but also the source of migration, some ethnic and cultural groups will be more likely be suspected of harbouring people not authorised to remain. The result will be that some ethnic communities will feel the force of immigration control more than others. Between 1930 and 2005 more than one million US citizens were deported from their own country because they were suspected of being illegal immigrants – mostly suspected of being Mexican (Motomura, 2014, p. 41). The pressure to reduce immigration and the decision to deport resulted in American citizens who looked like Mexicans being sent to a foreign country, even though many of them came from families who had lived in the United States for generations. (The deportation of Americans continues even today.) Second, in order to protect the integrity of the social order, the state will end up choosing immigrants by excluding on the grounds of culture, ethnicity or race – albeit by finding official proxies that do not show the discrimination directly. This means not only treating would-be immigrants unequally but also treating citizens and residents unequally. Those from favoured ethnicities will find it easier to bring in relatives or to hire from abroad, while those from minority communities will face greater difficulty.

There is, however, an even more troubling side to this. The history of immigration control, notably in liberal democracies, is a history of the exclusion of people of particular ethnicities or races. The infamous 'White Australia Policy' is not an outlier in this regard. The attempt to control immigration to America from the mid-nineteenth century was equally explicitly to maintain the whiteness of the population, and foreigners were differentiated on the basis of their fitness for citizenship by being distinguished on the basis of colour. After the passing of the *Chinese Exclusion Act* of 1882, which reinforced earlier forms of legislation limiting Chinese immigration, American Governments passed more and more legislation to exclude would-be immigrants from Japan, then Korea and then Asia more generally. Immigration control on the basis of

ethnicity or race was extended further from the middle of the twentieth century with increasing restrictions on Mexican immigration. The ideology underpinning this was the view that Europeans entering the country were Americans in waiting, but other races were not.

It is, of course, entirely possible, to argue for a non-discriminatory immigration policy, and it is clear enough that this is what David Miller favours. The problem here, however, is that there is a dilemma that faces any liberal egalitarian opposed to discrimination on the basis of ethnicity or race. If among the purposes of immigration control is the preservation of 'integrity', the most likely strategy would have to be restricting admission or entry or citizenship to people of similar cultural values – which would mean discriminating on the basis of ethnicity or race. This would be undesirable because it means discriminating against would-be immigrants on grounds of race or ethnicity as well as against those citizens or residents who would not have the same opportunity to sponsor people of their cultural or ethnic background to come to the country. Yet, if it is deemed inadmissible to discriminate on the basis of such characteristics, and immigration is controlled simply by lowering the numbers of people entering or taking up citizenship, the goal of preserving integrity may be compromised since people from different cultures could still be admitted – unless, that is, immigration were reduced to such negligible amounts that too few people were admitted to make any discernible difference. (It bears noting here that if the measure of immigration intake is 'net immigration' a non-discriminatory policy could still involve admitting many people from diverse backgrounds, the numbers entering offset by the number of people leaving.) In reality, most Western liberal democracies discriminate on the basis of culture or race or ethnicity by some proxy measure since it would be unseemly to state openly that the policy aims to do so.

Immigration control is *control*. I think David Miller's case for control underappreciates this fact. The more open one's borders are, the weaker is the imperative to control; the more closed they are, the greater the extent to which control is needed, not just of outsiders but of insiders. The attempt to sustain a regime of control will have unintended consequences – some of them practical in nature; others, ethical.

Joseph Carens famously opened his classic paper on open borders with the observation that borders have guards and guards have guns (Carens, 1987, p. 251). What he did not fully recognise is that those guards are not just at the border and that the guns mostly face inwards. Miller may have made the same mistake.

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Notes on contributor

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