

David Miller

***Stranger in Our Midst:
The Political Philosophy
of Immigration***

by Chiara Destri

Among the many challenges that liberal democracies ought to confront these days, the phenomenon of migration is distinctively unsettling because it calls into question one key principle upon which Western democracies rest: the equal moral worth of human beings. Can democratic states maintain control of their borders without giving away this broadly egalitarian idea? David Miller's book, *Strangers in Our Midst: The Political Philosophy of Immigration* (Harvard University Press, Cambridge-London, 2016), attempts to answer this question in a way that stands on a middle ground between the open borders position, quite common among political philosophers, and closed borders, recently burgeoning among many Western citizens. Whilst cosmopolitans may find Miller's proposal unsatisfactory, because it concedes too much to actual states' policies of migration control (Fine 2016, Angeli 2016), surely Miller's ambition is worth commending, as he strives to keep together and make consistent with one another four relevant values: weak cosmopolitanism, national self-determination, fairness and the ideal of an integrated society. The result might be less balanced than he thinks, though.

The question of migration has gained more attention in both public and philosophical arena over the years and now almost amounts to a permanent and omnipresent collective concern, especially since the Syrian crisis and the spreading of Isis-inspired terrorism. Moreover, such question intertwines with different trending topics in normative political theory, like global justice, democratic citizenship and the methodological dispute between ideal and non-ideal theory, while at the same time calling for very specific policies to be implemented by liberal democracies. Hence, the problem of migration has all needed features to

spark our interest: on one hand, through its link to global justice, it represents a special opportunity to reconsider traditional and hidden assumptions in our thinking, like the idea that states really have a right to territorial control (Carens 1987, 2013, Buchanan 2004, Kolers 2009, Stilz 2009, 2011, Song 2010, Nine 2012, Risse 2013, Ypi 2013); on the other, its connection to the boundary problem in democratic theory is manifest, since the legal and moral standing of incomers puts under stress classic interpretations of equality and freedom as distinctive of citizenship (Walzer 1983, Bauböck 1994, Kymlicka 1995, Miller 2002, Benhabib 2004, Bosniak 2006, Bohman 2007, Bellamy 2008).

Ideally, open and closed borders represent the opposite poles on a range of policy options that generally aim to maintain control of national territory without letting human rights be wholly forsaken (Pevnick 2011). This has led advocates for open borders to challenge both the justification for the existence of territorial jurisdiction and the distinction between refugees and other so-called 'economic migrants' (Kukathas 2016a). While the former point represents a necessary precondition for states' right to selectively exclude outsiders, the latter ought to be defended for border control to be made consistent with human rights. Hence, insofar as one is not concerned at all with protecting human rights of individuals in urgent need, the special status of refugees can be easily discarded in order to fully close national borders. Yet, albeit worryingly present in public debates and parties' policy proposals, such position is hardly defended by philosophers and David Miller is no exception. Generally, thus, the closed border stance is identified with states' right to control their borders, rather than to close them up for good and for all. Two are the strong theses that Miller vindicates in his book: states' right to control their borders and the special status of refugees. More specific policy-oriented bids also feature in the book, but their justification is naturally grounded on the stronger philosophical theses defended in the first part.

Strangers in Our Midst can be divided in three thematic parts. After an introductory chapter, the first part takes chapters two to four and concerns arguments against open borders and in favour of closed borders. The second focuses on the distinction between refugees and economic migrants, to whom chapter five and chapter six are dedicated, respectively. Finally, the last two chapters address the question of how immigrants should be treated once they have entered democratic states, what rights they have, how and to what extent they should be integrated in the receiving political community. In the last two parts Miller discusses plenty of distinctive policies, like particularity claimants, the case of brain drain and irregular migrants.

I will tackle each of these parts in the same order.

I.

The first part starts with a key distinction between a weaker and a stronger form of cosmopolitanism. If cosmopolitanism is taken to consist in a “belief in the equal worth of all human beings” (Miller 2016a, 22), the two versions draw apart because of the implications they derive from this basic principle. While strong cosmopolitanism stands for pure impartiality, thus ruling out any special and partial concern for others, like family, friends and compatriots, weak cosmopolitanism only requires (1) “to consider the effects of our actions on all those who will bear the consequences” and (2) “that if there are no relevant differences between people, we should afford them equal consideration” (Miller 2016a, 23). As Miller declares, the second version eventually boils down to a “broad humanitarianism that does not rule out anything much at all beyond repugnant ideologies” (Miller 2016a, 24); therefore his subscription to it has to come to terms with a stricter respect of human rights and a clearer grasp of the obligations that democratic citizens have toward outsiders.

At the same time, this cannot be done, according to Miller, at the expense of those associative obligations that citizens of a liberal democracy have towards compatriots and fellow citizens. Here Miller defends the intrinsic value of special relationships, like the one with family and friends, and argues that a similar special connection arises among fellow citizens because of the values of distributive justice and collective freedom that said connection allows to achieve. Yet, while this might vindicate obligations of fairness toward fellow citizens, it hardly suffices to justify the intrinsic value of our relation to fellow *nationals*. Since he has already tackled the issue in the well-known *On Nationality* (Miller 1997), Miller does not examine it carefully here, but claims that the value of national identity, albeit perhaps more controversial than citizenship itself (Miller 2016a, 28), is *assumed* in any discussion on the extent to which we ought to accommodate migrants’ cultural values. Even if the problem of integration is addressed in the last two chapters on the basis of such assumption, Miller seems to take it for granted.

However, this makes the grounding of his argument shaky for two reasons. First, the idea that we have special associative obligations not only with respect to those who participate in the same just scheme of cooperation and collective self-determination, a.k.a. fellow citizens, but also toward compatriots, who presumably share with us certain cultural values and “a sense of belonging to a particular place” (Miller 2016a, 26), ought to be accounted *further* in order to be convincing. One could already object that the kind of partiality characterizing citizenship is not as justified as an intrinsic value as the one characterizing family

and friendship. But even if one was willing to agree on citizenship, the justification of nationality would require a further step. Second, although there is a position in global justice known as statism, which claims that duties of justice apply differently to fellow citizens and outsiders (Rawls 1999, Blake 2001, Nagel 2005, Sangiovanni 2007, Stilz 2009 and 2011), still Miller ought to articulate a better defence of this idea because once we accept that justice requires us to treat differently fellow citizens and outsiders, a good part of his argument follows. But this is exactly what strong cosmopolitanism contests (Caney 2005, Pogge 2008, Carens 2013). Or, he could distinguish between duties of justice owed to all other human beings and associative obligations emerging from special relationships and argue that these two can be accommodated (Scheffler 2001, Buchanan 2004). However, he does not pursue this path either.

Rather than focusing on individuals' associative obligations, a better strategy for Miller may be represented by the identification of collective duties that states bear. This second argument starts with the idea that human rights only cover basic needs, that is the minimal threshold of what is required to lead a "decent human life anywhere" (Miller 2016a, 31). As such, they qualify as "urgent claims", meeting the needs that "all human beings share regardless of their cultural or social affiliation" (Miller 2016a, 33) and creating correlate duties on all other human beings. According to Miller, these duties can be interpreted in two ways: as merely negative duties or as both negative and positive. Whilst the former interpretation only entails a prohibition to violate human rights, the latter also results in active responsibility to guarantee the protection of human rights and the satisfaction of the basic needs of all human beings. Since this latter version refers to imperfect duties, whereby the agent who bears the responsibility and the action required are not clearly specified, Miller takes it to apply to collective entities, like states. Hence, the positive and negative duties corresponding to human rights are borne by states, rather than by individuals. This consideration seems to approximate Allen Buchanan's and David Owen's idea that legitimacy of states hinges on the protection of human rights and that said protection ought to be guaranteed for all human beings, thus generating remedial responsibilities on well-functioning states with respect to outsiders whose rights are threatened (Buchanan 2004, Owen 2016).

Yet, contrary to Owen, Miller supports a principle of equal cost sharing, according to which states have duties to protect outsiders' human rights conditionally on a fair distribution of said duties (see also Miller 2001). Hence, since justice requires them to do their fair share, only a humanitarian concern may prompt them to do more. In this case, though, states ought to receive their citizens' explicit consent, which is something that for instance Angela Merkel has failed to

do in the summer of 2015, thus exceeding her legitimate authority in Miller's eyes (Miller 2016b, 8). Although the distinction between human rights and societal or citizenship rights sounds convincing (Miller 2016a, 31), it is not similarly clear why states should prioritize the fulfilment of their citizens' societal rights, which are well above the threshold of a decent human life, with respect to the protection of all human beings' fundamental rights, which correspond to what is at least demanded to lead such decent life. Or, Miller needs the justification of associative obligations, which individual citizens have to discharge to one another, to claim that states "as agents of their citizens" (Miller 2016a, 36) ought to respect that priority. As we have seen, this is an assumption Miller starts from rather than thoroughly defends. Strong cosmopolitanism is therefore rejected thanks to an unsteady argument based on associative obligations, while the equal moral worth of human beings is taken as a weak cosmopolitan demand. States are then justified in rejecting migrants as long as one of two conditions holds: (1) outsiders' human rights are not at stake; (2) the receiving state has fulfilled its fair share of responsibility with respect to these rights (Miller 2016a, 36-37).

The same assumption serves to frame the question of open versus closed borders that chapters three and four address. Thus, only premises consistent with weak rather than strong cosmopolitanism are taken into account when Miller discusses and rejects three arguments in favour of open borders. The first is the common ownership of earth (Risse 2013); the second regards global equality of opportunities (Carens 2013); and the last depends on a human right to immigrate (Oberman 2016). Miller contends that the only "practically intelligible" (Miller 2016a, 44) way to make sense of the common ownership of earth is Grotius's original understanding, but that this only grants residual rights to the use of earth's resources, rather than a proper right to cross territorial borders.

Similarly, Miller objects that the second argument rests on an erroneous translation of a domestic requirement to the global dimension. While domestically we have a public measure of the opportunities available to a person and political control necessary to ensure such equality, both conditions do not hold internationally, as cultural differences lead to different indexing of opportunities, while a unique agent responsible for the implementation of said equality lacks. Moreover, even if receiving states were responsible for granting equal opportunities for all, this would not *eo ipso* account for open borders, as there could be other ways to help the least advantaged in their own countries.

While this argument starts from an egalitarian concern, and in fact has been advocated by egalitarian theorists (Caney 2001, Carens 2013), the third argument regards a proper human right to immigrate and as such can be appealing to liber-

als and libertarians as well. Miller devises three strategies to that aim: (1) a direct strategy, which holds that the same grounds of other human rights also work for a right to immigrate; (2) an indirect strategy, which claims that the right to immigrate is instrumental in securing other human rights; and (3) the cantilever strategy, which takes the right to immigrate as a logical extension of existing human rights. The rejection of all these strategies is necessary for Miller, because his argument for national self-determination would stand no chance, if a proper human right to immigrate existed. In order to do so, Miller draws and defends two distinctions: on one hand, the right to exit, which is a fundamental human right acknowledged by the 1951 Geneva Convention, does not entail a right to enter another country; on the other, the right to free movement within a state, also a fundamental human right, cannot be translated into a right to free movement outside one's own country.

If one finds Miller's argument convincing so far, the third step to undertake concerns the legitimacy of states' territorial jurisdiction, i.e. states' right to occupy an area, use its resources and control movements of people and goods across borders. As it often happens, the constructive side of the argument is less persuasive than the destructive side. Miller spells out three conditions that must be met in order for territorial rights to obtain: (1) the maintenance of social order and the protection of inhabitants' human rights; (2) inhabitants' belief in the state's legitimate authority; (3) inhabitants' right to occupy the territory as a people (he has already tackled the issue in Miller 2011). Naturally, this last condition seems the more controversial, also because Miller accounts for it in terms of the assumed national identity we encountered earlier. Furthermore, he complements the argument with an interest in self-determination that would justify a democratic public to make certain policy choices within the boundaries posed by the respect of human rights. Interestingly enough, he defines self-determination both as a right (Miller 2016a, 62) and "as an interest rather than a right" (Miller 2016a, 71).

The existence of something like a people of fellow nationals with the right to occupy a territory and an interest in self-determination is the key component of Miller's reasoning. This allows him to resonate with Christopher Wellman's argument on self-determination as a collective right of association, while at the same time responding to Sarah Fine's objection against Wellman (Wellman 2008-2009, Wellman and Cole 2011). Fine draws a compelling line between the right to self-determination as control over the membership in political community and the right to control territorial borders. Hence liberal states' right to refuse social membership to outsiders does not give them the right also to refuse outsiders' entrance in the territory they occupy (Fine 2009-2010). Miller, though, has a good

answer to that: territorial rights to control borders are grounded on *both* self-determination *and* territorial jurisdiction, therefore neutralizing Fine's objection.

Yet, Miller's defence of these connected ideas is somehow curious. Not only does he defend territorial jurisdiction on the basis of the same problematic idea of national identity, but he also claims that it is the very liberal nature of democratic states that requires closed borders. In fact, since liberal states generally respect human rights, as well as other liberal requirements within borders, like the principle of equal treatment or the accommodation of immigrants' diverse values and cultural identities, they ought to have the right to exclude outsiders that it would be unfeasible for them to treat according to liberal principles, if accepted within the state. The same reasoning goes for the democratic ethos, which cannot stand long the existence of dire political inequalities that prompt domination of immigrants. The line of the argument appears to sound like this: since it is unfeasible for me to buy you a Ferrari, I will not buy you any vehicle to go to work with. It is not necessarily a flawed argument, but surely it has something counterintuitive in it. Moreover, between lines, it appears that the same argument would not apply to all those non fully liberal and democratic states, such as certain Middle East countries.

These two considerations play a major role in Miller's analysis of the admissible criteria for selection of economic migrants and for determining immigrants' rights once entered in a receiving state. The former is clearly liberal-communitarian in nature, as it allows liberal states to contain cultural diversity, by selecting those economic migrants whose integration within the receiving society would not be too costly for the stability of the public culture. The latter reveals a concern for social justice and democracy because it refuses the idea of "a permanent class of subordinated people" within democratic societies as "deeply wrong" (Miller 2016a, 162). In such a way, Miller's concerns resonate with Michael Walzer's well-known requirement that all immigrants be allowed to become full members of the political community (Walzer 1983), although Miller admits also properly regulated temporary migration programs, contrary to Walzer.

Finally, at the end of the chapter, Miller engages with Arash Abizadeh's argument for open borders based on democracy (he has already done so in Miller 2009, 2010; Abizadeh 2008, 2010). Against Abizadeh, who takes states' coercion to call for democratic legitimation through consent from all those subjected to the coercion, hence from outsiders as well, Miller contends: (1) that said legitimation is required only by those who continuously live under the state and are then passible of being dominated by it; (2) that states only prevent immigrants from crossing their borders by refusing them entry and hence they do not properly coerce them.

II.

The second section, chapters five and six, deals with the distinction between refugees and economic migrants. Naturally this distinction is crucial for Miller's argument, as he demands that national self-determination rest within the limits drawn by human rights. Therefore, if all migrants were to be considered under an urgent and permanent threat, they would all be entitled to cross borders under the principle of non-refoulement. Here Miller endorses a slightly broader definition of refugee than the one established by the 1951 Geneva Convention, as it includes also people under the danger of natural calamities. Nevertheless, although Miller agrees that the sources of vulnerability do not matter morally, he rejects an even broader definition of refugees, upheld by many other philosophers (Schacknové 1985, Singer and Singer 1988, Carens 1992, 2013, Dummett 2001). This is because Miller holds that, to qualify as refugees, individuals must be in a condition whereby they cannot help but escaping, because their state is unable or unwilling to prevent the breach of their basic rights.

What Miller acknowledges, though, is a duty of care all states have towards migrants approaching their borders and asking to enter as refugees. Since these individuals make themselves directly vulnerable to the approached state by physical proximity, their general claim-right to be protected becomes a specific claim on the approached state, which acquires the responsibility to offer sanctuary to rightful refugees. That said, since Miller takes states' obligations toward outsiders to be remedial, said obligations are conditional on fairness and costs. Miller offers the example of a dehydrated hiker, whose life depends on us: while it seems that we have a duty to rescue her if this does not cost us our own life, it is not as clear that we ought to help her by giving her a book to read, or something not strictly needed for survival. Similarly, receiving states have a duty to take care of outsiders, as long as it is not too costly and as long as outsiders' rights are under urgent threat. Although apparently fitting, this example conceals at least two relevant aspects: (1) that it is much harder to devise the threshold of unbearable costs in states' case than in individuals'; and (2) that in states' case, there should be a clear system of international distribution of costs, which Miller does not attempt to provide.

Furthermore, given that there is no general right to immigrate, refugees do not have a right to *choose* which state ought to meet their claim-right to basic protection, so that states may decide to take their fair share or to pay for their share to be admitted by some other state. This result seems especially convenient to geographically well-positioned states that migrants can reach with more difficulty. In fact, since these states will have fewer asylum claims "lodged at their doors" (Miller 2016a, 87),

they will be in the peculiarly advantageous position to offer side payments to other states for taking refugees in. This may raise two concerns: (1) that a ‘commodification’ of refugees is unduly permitted; (2) that some states might end up with more than their fair share of refugees, which might in turn threaten their own national self-determination even more. Although paying for it, the dodging states appear to gain an unfair advantage. Interestingly enough, Miller envisages the possibility of “a tragic conflict of values” (Miller 2016a, 93), whereby the claim-rights of vulnerable people clash with the interests of democratic states that refuse to do *more* than their fair share in order to “achieve a modicum of social justice”.

After refugees, Miller addresses the question of economic migrants, whose admission he takes to be conditional on mutual advantage of both incoming immigrants and receiving states. Since this category cannot claim a right to have their needs fulfilled, weak cosmopolitanism merely demands that receiving states select on the basis of public criteria and provide refused migrants with good reasons for their refusal, although these reasons might be unacceptable for migrants themselves. Despite rejecting criteria of selection based on ethnicity or national origin, Miller does include among permitted ones those based on cultural grounds. The conclusion, albeit apparently discriminatory, follows: as integrating too different people might come at a high price for liberal democracies, they are justified in refusing admission on the basis of cultural diversity, as integrating too different people might come at a high price for them.

III.

Policy-oriented prescriptions, which start appearing in the second section, become the central focus of the last section dedicated to immigrants’ rights once resident and their integration in the receiving political community. Although Miller shares the general democratic concern for political inequalities within states’ borders, he denies that all resident migrants, regular and irregular, have a valid claim to social membership, with two notable exceptions: (1) so-called particularity claimants, who are in a special relationship with the receiving state (Miller 2016a, 113-115); (2) the narrower subclass of people admitted regularly and “not explicitly under the auspice of a temporary migration program” (Miller 2016a, 124). Contrary to the most common view that resident immigrants should be conferred social membership and/or citizenship more or less automatically (Walzer 1983, Nagel 2005, Shachar 2009, Carens 2013, De Schutter and Ypi 2015), Miller attempts to argue that permanent residence and citizenship might rightfully be denied to temporary

migrants and irregular immigrants, on the grounds that the former came willingly and knowing the eventual costs of being expelled, while the latter violated the state's immigration policies and acted unfairly with respect to those who regularly submitted applications (Miller 2016a, 126). Although immigrants' human rights are always to be respected and the liberal principle of equal treatment applies to regular migrants as well, still mere residence does not afford outsiders a right to be included in the political community on a stable basis. Therefore, it makes sense that Miller defines full inclusion and access to citizenship more as a "final goal for all those who plan to live permanently in the society", rather than something migrants might have a claim on (Miller 2016a, 126-127).

Such conclusion is in line with Miller's idea of the responsibilities that come with citizenship and rights to political participation, the concession of which calls for a previous integration of outsiders in the society. Miller distinguishes between social, civic and cultural integration. While the former is required by the very idea of a socially just and integrated society, the second identifies with citizenship and as such ought not to be mandatory (De Schutter and Ypi 2015), but grounded on the acceptance of a common set of rules, obligations and responsibilities that people feel and discharge when they desire to make "a social contribution" (Miller 2016a, 141). Yet, in his quasi-republican twist, Miller seems unaware of the fact that the same demandingness would apply to native citizens and thus questions the idea of a birthright citizenship. Finally, cultural integration looms large as an aspiration or expectation that may be rightfully placed on migrants. Although this does not qualify it as a proper *requirement*, outsiders are expected to accept the public culture of their new society and integrate it with their private cultural identities. What is here appealing in Miller's reasoning is that also democratic majorities have their role to play, as they ought to follow the principle of equal treatment and make an effort to understand and accommodate immigrants' private cultures.

In conclusion, Miller offers a "communitarian and social democratic" (Miller 2016a, 161) theory of immigration that purports to be realistic and non-ideal. As a matter of fact, any approach to immigration is a case in non-ideal theory, because exceptional waves of migration might happen only when human rights are being put in jeopardy (Miller 2016a, 158). Nonetheless, Miller's proposal is also realistic in the sense that it does not aim to change current institutional settings, nor the overall spirit of various policies that liberal democracies already pursue. Yet, his realistic account avoids being wholly complacent to reality, by insisting on the weak cosmopolitan requirement of protecting refugees' human rights. Hence, Miller's account provides a set of policy directions that actual states may follow if they want to treat immigration in a fairer and more just way. Some have criti-

cised Miller's endeavour as being too generic and not policy-specific (Kukathas 2016b), or for being too idealistic in its national identity premise (Fine 2016), or too despondent toward migrants' right to realize their life plans outside their countries or their acquired right to stay where they have already built a family and a life (Strachle 2016, Angeli 2016). Perhaps these criticisms are too harsh and it seems they all lose sight of the difficulty, which Miller scores, of remaining liberal-democrats by protecting other people's fundamental rights while at the same time preserving the public culture that allowed us to reach a liberal-democratic political regime in the first place (Parvin 2016). All things considered, though, it also seems that Miller fails to account convincingly for his case, as he constructs the whole argument on the unsteady grounds of national identity and weak cosmopolitanism. The reason why he declares actual conditions as "ethically and politically unacceptable" is that they are characterized by violation of migrants' human rights, on one hand, and by native citizens' "perception of cultural threat and a sense that their home is under invasion", on the other (Miller 2016a, 160). Miller's endeavour is worthwhile, but he does appear to weigh these two issues as if they were of the same moral relevance, which hardly looks like a fair balance.

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