Refugees, Economic Migrants and Weak Cosmopolitanism

Commentary on chapters 5 & 6 of David Miller’s *Strangers in our midst*

Abstract

This article explores the arguments of chapters 5 and 6 of Miller’s *Strangers in our Midst*. It takes issue with several features of his account of justice with respect to refugees and to economic migrants, suggesting that even within the terms of his own weak cosmopolitanism, the requirements of justice are more demanding than he acknowledges. In particular, the argument advanced criticizes Miller’s ‘fair shares’ argument concerning obligations to refugees and his recourse to ‘mutual advantage’ in theorizing economic migration.

Key Words: refugees, economic migrants, fair shares, temporary migration, cosmopolitanism.

David Miller’s discussion of immigration takes place against the background of his general argument that while there is no human right to immigrate (states are not obliged to open their borders to everyone who might like to enter), there is a duty to give serious consideration to the reasons that any person who applies for immigration puts forward. This duty is grounded, in Miller’s view, on the general principle of respect for persons required of states – and specifically entails that immigration policies adopted by a state serve legitimate ends and are justifiable to reasonable persons who make application for entry (whether they are selected for, or excluded from, admission and, if selected for entry, under what conditions). This commentary focuses on Miller’s development of his general argument in relation to the particular cases of refugees and economic migrants but can only hope to highlight a few of the more important or controversial arguments proposed.

**Refugees**

Who is a refugee? Miller defends an account of refugeehood that encompasses persons ‘whose human rights are under threat either from natural calamities or from private acts of violence that the state is unable to prevent, and who can only avoid this threat by migrating’ (p.83). This is a widely defended and defensible view, although it should be noted that it takes refugee status to be necessarily conditional on migration and this ‘exilic bias’ is more controversial that Miller acknowledges.[[1]](#endnote-1)

Having set out this definition, Miller proceeds to offer an insightful argument on an issue rarely considered, namely, why the first state to which an application for refuge is made has a special responsibility to the applicant. He argues:

lodging a claim for asylum does not usually make the claimant more vulnerable to having her human rights abused; rather what it does is make her vulnerable (in a different sense) to the decision that the state she has applied to will take. Her claim that was previously indeterminate now has a specific target, and that is why the state where asylum is sought now has a special obligation to her. (p.85)

Miller is careful to note that this does not entail that refuge for legitimate claims be provided by the state to whom application is made; rather this state acquires the responsibility to ensure that the refugee is provided with refuge somewhere where their human rights will be protected. There may be good reasons for this to be the state of initial application in terms of language, family connections or existing immigrant community from the state that the refugee has fled (Gibney, 2015). These, however, are secondary to the provision of adequate human rights protection. A state is not obligated to comply with the refugee’s own choice of state of residence, although Miller acknowledges that we have good reason to give more weight to the refugee’s choice of state in circumstances where the stay is liable to be long-term.[[2]](#endnote-2)

There are, of course, likely to be a large range of cases in which this will be indeterminate and, in part, dependent on the actions of the international community. For this reason, in conjunction with historical experience, it seems reasonable to conclude from Miller’s argument that, unless we have compelling reason to suppose otherwise, we ought to adopt a default presumption that the stay is liable to be medium to long term and weigh the refugee’s choice of state on that basis. This point matters, first, because it stands in tension with Miller’s defense of the legitimacy of a secondary market in which states can trade refugee quotas; a mechanism that takes no account of refugee choices.[[3]](#endnote-3) Second, the fact the refugee’s choice of state of refuge ‘is likely to be pivotal in refugees developing into independent, dignified and contented members of their new society’ (Gibney, 2015: 12) acquires greater significance if Miller’s rejection of Matthew Price’s view that refugee’s granted asylum on the basis of persecution should ‘also rapidly be granted full and permanent membership in the receiving society’ is mistaken. Miller reject’s Price’s claim on the grounds that ‘it seems wrong to single out those who are escaping persecution and grant them permanent residence immediately on the grounds that having arrived they will all choose to identify politically with the society that takes them in’ (pp.135-6). But this misses the point (and presupposes that political identification must always be prior to, rather than facilitated by, membership). There are two reasons that refugees have a claim to more rapid access to citizenship than other classes of immigrant, with the exception of stateless persons. The first is that the refugee is *de facto* stateless in that they cannot exercise their right to diplomatic protection or right to return - and may not be able to use the passports provided by their state of nationality for travel or other purposes. The second is that the refugee’s relation to the society in which they now reside is characterised by an indeterminate time-horizon, neither open-ended like the permanent resident nor with a specified endpoint like the short-term worker, in that they may be subject to return if the relevant conditions entitling them to refugee status cease to pertain at some future point in time. Given the psychological burdens of this condition of social and civic limbo and the relevant analogies with stateless persons concerning external rights of citizenship, there is a compelling argument to support an accelerated path to citizenship for refugees and such a policy is itself likely to be among the more effective ways of generating political identification with the state of refuge (Owen 2013).

In the context of a well-functioning international refugee regime, may states also legitimately select the refugees who they choose to host in their own territory? Miller rules out selection on cultural grounds except in the context of an agreed division of responsibilities between states (presumably one in which no refugee’s chances of acquiring refuge *somewhere* are effected by their cultural or religious identity). However, he advances a distinctive argument in relation to economic grounds. This distinguishes two stages of the refugee process: first, the assessment of the claim and, second, the distribution of those who have legitimate claims. His argument is that potential economic contribution must not play any role in the first stage but that it can play a role in the second stage

in cases where the state is offering something more than asylum to the refugee – when it is offering permanent resettlement to someone who does not automatically qualify for it. States are surely permitted to do this, in the same way that they can offer resettlement to refugees who have been granted asylum elsewhere, and when they do so it is reasonable to take account of the refugee’s prospective contribution. Could those who are moved elsewhere under a burden-sharing arrangement complain about the unequal treatment they are receiving? I do not think so. The important point is that they are treated equally at the point at which their claim to asylum is assessed, and thereafter in ways that respect their human rights. That the state does more for some refugees than it is obliged to do is not an injustice to the others. (p.91)

This argument is not limited to economic contribution since, as Miller argues in the following chapter, states can legitimately value a wide range of types of contribution (for example, sporting talent). However, the argument raises an issue analogous to the brain drain problem in that offering more than refugee status to refugees currently settled elsewhere (or who the state would otherwise look to settle elsewhere) who have valuable skills effectively allows wealthy liberal democracies to cherry-pick from the refugee population so that the benefits that accrue to states from hosting refugees are unevenly distributed. It might be objected that if ‘Poor, Human Rights Protecting’ State A that currently hosts valuable refugee V does not offer V a status greater than refugeehood, then ‘Wealthy Liberal Democracy’ State B has the right to do so and V has the right to take up the offer. This seems reasonable at least in cases where the skills that make V valuable to State B do not have the same value to State A but, for a wide range of valuable skills (e.g., in health care), both State A and State B will have reason to make the offer and realistically State B is likely to win as the more attractive offer even if State A more urgent need of the relevant skills. Two objections arise. First, the residents (refugees and citizens) of State A could reasonably complain about such cherry picking just as they may do so in relation to ‘brain drain’ migration. Second, refugees in State A could specifically complain that this will communicate a message to the citizens of State A that refugees who don’t receive such offers (or are sent on from State B to State A under a burden-sharing agreement) are not viewed as potentially valuable contributors, rather they are what is left when the valuable refugees have been taken out. Contra Miller, this suggests to me that a state that does more for some refugees than it is obliged to do can thereby engage in injustice to other states and to those refugees not selected.

Perhaps the most controversial part of Miller’s argument (pp.92-93, see also Miller 2007: 226-7 & 2013), however, occurs in the context of his claim that it may *legitimately* be the case that not all refugees receive protection. There are two steps to the argument he advances:

[1] A state that has set an overall immigration target, *on grounds that are publicly justified*, can also take steps to ensure that the number of refugees it admits does not exceed that target. (p.92)

[2] The net effect, nonetheless, may be that there are some refugees for whom no state is willing to take responsibility: each receiving state sincerely and reasonably believes it has done enough, taking into account the cost of accepting refugees, to discharge its fair share of the burden. Here we are confronted with a tragic conflict of values: on the one side, people who are liable to be severely harmed as a result of the persecution they are undergoing; on the other, bounded political communities that are able to sustain democracy and achieve a modicum of social justice but need closure to do this. (p.93)

We may note, first, that a state can only take steps to prevent the number of refugees exceeding its immigration target if that the number of immigrants set by that target is greater than its fair share of refugees. There is no public justification for setting an immigration target that is less than its fair share of refugees. I assume Miller accepts this. (It is, however, also not clear to whom public justification is owed with respect to ‘immigration targets’ since *prima facie* the addressees and scope of public justification vary across different types of migration: economic migration, family reunion migration, refugees.)

The second, and much more significant, point is that Miller’s argument hangs on the claim that each state only has an obligation in justice to do its fair share of refugee protection, where the notion of ‘fair share’ is specified on the assumption of full compliance by potential refugee-protecting states. It is reasonable to point to unfairness in contexts where an actor has to assume additional burdens due to the non-compliance of another actor with a duty of justice. However, the argument that an actor need only do their fair share as matter of justice where the extent of the duty of justice is specified under the assumption of full compliance *and this assumption does not hold true* represents an illicit prioritizing of intra-group fairness (horizontal equality) over effective protection of the human rights of those in need (Owen, forthcoming). Two points are key here. The first is that, in contexts of remedial responsibility, a duty of justice *is* a duty to act effectively to remedy the injustice; responsibility for ensuring effective action falls on those who are in a position to help. The second is that duties of justice are duties where the duty-bearing agent would not be wronged by the enforcement of the duty. Hence, in contexts in which the agents bearing remedial responsibility are also agents who (a) could construct enforcement mechanisms and (b) have reasons of justice to do so, since the problem they are obligated to remedy is not a one-off emergency but a recurring condition, these agents bear collective outcome-responsibility for the fact that full compliance is not assured.[[4]](#endnote-4) Given these points, to insist that justice is limited to doing one’s fair share as specified under the assumption of full compliance is illegitimately to shift the cost of the failure to ensure full compliance from the group who owe the collective duty onto the group to whom it is owed. Thus, contra Miller, we may say that in cases of collective duties of justice, there is an obligation to accommodate intra-group fairness as far as possible within the duty to remedy injustice but not at the cost of failing to act effectively to remedy injustice.

This does not ensure that all refugees will receive protection since, independent of the fair shares issue, states are not obligated to protect refugees at the cost of being able to protect the human rights of their own citizens – the tragic conflict that Miller identifies is possible. I do not deny this possibility. Rather my argument is that the premises of ‘weak cosmopolitanism’ are compatible with the following view of the ‘fair responsibility’ of states in relation to human rights:

A state has primary duty to do its fair share by securing the human rights of its own citizens; when other states are non-compliant with this norm, then a state has a secondary duty to take their fair share of refugees; when other states are non-compliant with this norm, then a state has a tertiary duty to take its fair share of surplus refugees; etc.

Hence, the point at which this tragic conflict arises is likely to be rather more distant than Miller’s argument implies.

We may conclude this section by posing a further question for Miller that arises in the context of the tragic fact that even if refugee-protecting states do all that can reasonably be asked of them, there may still be unprotected refugees. The question is this: ‘How may such unprotected refugees legitimately act to protect their own human rights?’ If human rights protecting states have no duty to admit them, what are they entitled to do? What obligations they owe to a global structure of rule that leaves them unprotected, beyond not acting in ways that breach the human rights of others? Even if we assume, for the sake of argument, Miller’s fair share standard, rather than the human rights standard that I propose, for determining the limits of state duties to admit refugees, we should still adopt this human rights standard for determining the circumstances in which a refugee has a duty to refrain from entering a state. In other words, even if a state has no duty to do more than its fair share, as Miller argues, a refugee is still permitted to enter as long as this would not undermine the human rights of residents.[[5]](#endnote-5)

**Economic Migrants**

Miller’s approach to the admission of economic migrants appeals to the norm of mutual advantage constrained by considerations of justice across two dimensions: first, the relationship between migrant and receiving state and, second, the relation between sending state and receiving state. The second of these dimensions in which Miller briefly addresses issues of brain drain is held largely in the background on the basis that it is only triggered where the recruitment or admission of migrants would serve to undermine the ability of the sending state to secure the human rights of its own citizens. In relation to this second dimension, Miller offers a strong argument for the view that ‘the fact that someone who is applying for admission has skills that would otherwise be employed in her home country to do work that helps to meet the basic needs of her compatriots should be treated as a disqualifying condition, however much her talents are valued by the receiving country.’ (p.111) This is a defensible liberal view[[6]](#endnote-6) but only highlights the point that it isn’t treated in this way and, hence, raises the question of what the states of emigration may legitimately do under these conditions.[[7]](#endnote-7) Here Miller only indicates that there may be some (unspecified) circumstances under which is justifiable for high skilled migrants to be bound to a period of service in their home state (p.198 fn. 45 & 46). The main focus on his discussion concerns the justification of temporary worker programmes (TWPs) in which there is no transfer route to permanent residence and the issue of selection in admissions.

Miller’s defense of TWPs takes commendably seriously the safeguards that must be in place to protect the immigrant workers who enter under them but still, I think, faces two objections. The first arises from his defense of the view that employers

must pay guestworkers at least the minimum wage that has been fixed for the society as a whole, but the level at which their wage is set above that minimum, and the terms and conditions of employment more generally, provided they are agreed in advance under conditions of full information [and would be agreed under conditions of free consent], need not correspond exactly to what other workers receive. (p.99)

But there are two ways of considering fairness we might deploy here that acknowledge the differential rights and obligations of temporary migrant workers and of citizens. The first would be to say that the pay of migrants and citizens should be equal once adjusted for the different costs and benefits that they incur. Migrants might then receive less pay than citizens but this would still represent a reasonable understanding of equal pay for equal work. The second is Miller’s proposal. The worry is that if this proposal leads to a lower rate of pay than the first method of fairness, it either erodes the social norm of equal pay for equal work or leads to an undesirable social view of migrant labour as less valuable than citizen labour (and may support the formation of stigmatizing stereotypes in which migrants are seen as less than equal human beings).[[8]](#endnote-8)

Even if we set this aside however, there is another problem. Miller argues that temporary worker programmes should be short – 1-2 years – but he also allows that a worker’s visa may be renewed for one or more further short-term contracts. And on a mutual advantage basis, we can see why the retention of temporary workers who perform well would be attractive to all parties. The problem is whether it is just to treat a temporary worker who serially renews their contract as if they were a new worker each time. Suppose Miller is right that temporary worker’s need not have access to rights to bring their family with them, does this remain the case with serial renewals? Does renewal have no implications for whether they should have a route of transfer to permanent residency status?[[9]](#endnote-9) Miller does not ,address this issue but there is a potential tension here in his argument between the logic of mutual advantage and the logic of democratic inclusion:

I concede nonetheless that there is something troubling about the image of a two-caste society that temporary migration on a large scale without accompanying political rights creates. We feel this particularly when the immigrants are taking on menial work that the natives are unwilling to perform.

Serial renewal of short-term contracts heightens what is troubling here. Miller needs either to endorse a policy of non-renewal or to allow for transfer to a permanent residency status.

In Miller’s discussion of selection criteria for admission to permanent residency, he argues that:

Selection on economic grounds is the least controversial example, but other forms of positive discrimination cannot be ruled out: if a society wants to enhance its sporting reputation, for example, I cannot see why it should not seek to attract immigrants who will later qualify for the national teams. (p.108)

I touched on this in the preceding section but here I want to draw attention to the point, which Miller endorses, that admission with this status also entitles the immigrant to a fair opportunity to become a citizen. Suppose then that a state wishes to recruit Ultra-High Net Wealth Individuals (UHNWIs) and does so through the mechanism of investment visas. This is surely legitimate on Miller’s account on the same grounds as the recruitment of high skilled individuals (subject to the brain drain restriction). But even while Miller would obviously object to policies of selling citizenship (such as Malta practiced), we may worry that the widespread state practice of investment visas simply represent a more indirect way in which access to citizenship is subject to commodification. It is hard not to think that such policies actually undermine the view of citizenship as not simply of instrumental value but also, and crucially, of non-instrumental value that, rightly in my view, Miller takes to be central to the sustaining of tolerably just liberal democratic states. But the example of recruiting UHNWIs through investment visas simply raises (perhaps in a more dramatic way) the general worry that admissions based on mutual advantage that entitle those admitted to a fair opportunity to acquire citizenship may corrode the non-instrumental value of citizenship. Since a liberal democratic state can hardly justly deny permanent residents a fair opportunity to become citizens, this may perhaps suggest that the problem lies with the view that the admission of voluntary migrants (who do not have specific particularity claims such as family reunion migrants) should be structured by appeal to a norm of mutual advantage.

**Conclusion**

In reviewing these chapters I have sought to stay within the weak cosmopolitan terms that Miller adopts. The aim of this strategy is to press Miller to re-consider some of his arguments and conclusions with respect to refugees and economic migrants. Needless to say, there is much of significance in his discussions that I have passed over and which, I hope, future discussion of this book will bring into focus.

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1. See Owen (2016) for a fuller discussion of this issue. [↑](#endnote-ref-1)
2. As Matthew Gibney has recently argued, respecting the choices of refugees to the widest extent compatible with a fair distribution of responsibility for refugee protection ‘is likely to be pivotal in refugees developing into independent, dignified and contented members of their new society’ (2015: 12). It should be noted that Gibney’s criticism is directed against my own previous writing on this topic (Owen 2016) as well as Miller’s (2007) and his point is well-taken. [↑](#endnote-ref-2)
3. We should also, I think, be more wary that Miller allows of refugee trading schemes on general grounds. Miller’s response to objections to refugee trading schemes hangs on the claim that these objections suppose ‘that under a transfer system states will vary the amount they pay to pass refugees on according to the specific characteristics of the refugees themselves, and I can see no good reason to accept this assumption.’ He contends: ‘The payments made are meant to reflect the material costs borne by the receiving states in accommodating the refugees who are transferred, and these will be uniform costs.’ But the claim that such cost will be uniform is dubious: the material costs of accommodating different groups of refugees may vary significantly depending on their differing abilities to integrate into a given state or to contribute to that state. [↑](#endnote-ref-3)
4. The standard model of thinking about this in terms of one-off emergency scenarios is very misleading in this respect. [↑](#endnote-ref-4)
5. I am grateful for an anonymous referee for pushing me to clarify this point and providing a lucid formulation of how to do so. [↑](#endnote-ref-5)
6. Although it would need some nuancing in relation to practices of temporary or circular migration of high skilled professionals. [↑](#endnote-ref-6)
7. See Blake and Brock (2015) for a significant debate on this topic that is continued and expanded in the special issue of *Moral Philosophy and Politics* addressing their dialogue. [↑](#endnote-ref-7)
8. Anderson (2012) has a good discussion of how this may occur in the context of her discussion of black-white inequality in the USA and there are several respects in which her analysis can be applied to immigrant-citizen relations. [↑](#endnote-ref-8)
9. See Owen (2013) for a consideration of this issue. [↑](#endnote-ref-9)