



# Nationalism and Freedom of Movement

## A Critique of David Miller's Perspective on Immigration

**Gijs Steinmann**

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Supervisor: prof. dr. **Helder de Schutter**

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## **Executive summary**

Do liberal states have the right to exclude non-members from their territory? Are there, in other words, reasons that justify restrictions on immigration? Or should we instead recognize immigration as a human right? The ethics of immigration nowadays appear at the forefront of political theory; the goal of this thesis is to contribute to these debates. My strategy is to critically evaluate the philosophical grounds on which David Miller bases his defense of the right to exclude. The central argument of this thesis is that, when subjected to critical scrutiny, the framework from which Miller approaches immigration does not suffice to trump the basic interests of immigrants – people who, for morally innocent reasons, seek a better place to live.

This thesis focuses on two key components that are embedded in Miller's perspective on immigration. The first is Miller's theory of nationality, which I argue forms the backbone for his view on immigration. The second is Miller's perception of freedom of movement. Section 2 describes Miller's theory of nationality, with an emphasis on his conception of national culture. A shared national culture, argues Miller, is a crucial element for building and maintaining extensive social solidarity and social justice. Accordingly, co-nationals have an interest in controlling their national culture. The inflow of immigration may have unwanted effects, both culturally and politically, and immigration restrictions are an important way in which citizens can control the development of their society. Nevertheless, argues Miller, the human rights of potential immigrants ought not to be violated.

This brings us to Section 3, which focuses on Miller's view on freedom of movement. Freedom of movement generally is considered to be a human right *within* the borders of each state. There are scholars that argue that all the reasons people may have for wanting to move within a state can also be a reason for movement across borders. Therefore, they argue, international freedom of movement – i.e. immigration – should be a human right. Miller opposes this view. He argues that the right domestic free movement forms an important protective function: it protects citizens and groups from discriminative state practices. Moreover, Miller argues that freedom of movement is predominantly valuable for its instrumental purposes, and movement within states provide sufficient freedom to serve a person's basic needs.

Section 4 forms my critique of Miller. I argue that Miller's conception of national identity is based on a flawed epistemology of culture. Contrary to what Miller assumes, cultures are not distinctive wholes that are congruent with a certain group of people. Moreover, the interest society may have in preserving their culture is outweighed by the interest of immigrants in finding a (better) place to live. Miller's view on freedom of movement is also flawed, which is mostly due to his need to make the physical extent of this freedom compatible with his theory of nationality. In conclusion, Miller's liberal nationalism cannot justify imposing severe restrictions on the freedom of immigrants.

*For  
my mother*

*and  
my sister*

*in memory of  
my father*

*with special thanks to  
Bárbara Morales  
and  
Helder de Schutter*

# 1. Introduction

Rotterdam, my hometown, is known for its funny architecture. The library building, located in the center of the city, serves as an obvious example: there is definitely something funny about this structure. Although aesthetically I find the library less than appealing, the edifice does evoke the sort of pride in me that one can feel when a certain thing belongs to “their” city, their country, their home. But it is not the architecture that stirs up this sentiment in me, nor is it the specific location or the content of the library’s catalogue per se. Rather, it is the proverb by the Desiderius Erasmus written in neon letters on the side wall of the library that reads “*heel de aarde is je vaderland*” (“the whole world is your fatherland”).<sup>1</sup> Perhaps somewhat paradoxically, this cosmopolitan message gives me a feeling of pride that is connected to a much more localized sense of belonging.

The personal note above indicates my stance regarding nationalist sentiment and, more importantly, introduces us to the issues of citizenship and immigration. Despite the wishes of cosmopolitans, in reality the world is of course not your country. Instead, your passport confines your homeland to a limited space and modern states have the right to exclude non-citizens from their territory.

Immigration nowadays appears at the forefront of political theory, with debates evolving around the question of whether and under what conditions the right of states to exclude outsiders from entering their territory can be justified from a liberal perspective. Several theorists are critical of the idea that modern states have the right to restrict immigration and instead advocate (more) open borders (Carens 1987, 1999, 2013; Cole 2011; Huemer 2010; Kukathas 2005, 2012). In contrast, other influential scholars have defended the opposing view that liberal states are indeed justified in imposing restrictions on immigration (Miller 2005, 2012, 2016; Wellman 2008, 2011; Blake 2003).

In this thesis I will focus on David Miller’s perspective on immigration. More specifically, I will critically evaluate the philosophical grounds on which Miller argues that nation-states have the right to exclude potential immigrants from their territory.<sup>2</sup> I shall argue that the framework from which Miller approaches the ethics of immigration cannot withstand critical scrutiny.

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<sup>1</sup> The saying comes from Erasmus’ *Agadia*, a collection of Greek and Latin annotated proverbs. The quotation in entry number 2.2.93. and the original Latin reads “*Quaevis terra patria.*” It can also be translated as “the whole world is my country” or “the world is my home.” The central idea remains, however: your homeland is ideally not restricted to your country of birth.

<sup>2</sup> In this thesis when I use the words “right to exclude” I refer to states as the bearers of that right, not individuals or associations (unless mentioned otherwise).

In political theory, debates on the ethics of immigration are related to questions on the desirable scope of egalitarian justice, with on the one side cosmopolitan scholars advocating global distributive justice, and on the other those that argue that we owe more to individuals with whom we share special relationships and form a particular community (e.g. a nation). The ethics of immigration is thus an area of debate in which the tension between the equal moral status of all individuals and the moral value of communal bonds becomes explicit. At the root of most arguments favoring restrictions on immigration lies the assumption that the good and well-being of fellow members should, to a certain extent, take precedence over the good of outsiders (Kukathas 2005: 214). In the words of Philip Cole, “these kinds of arguments rest on the claim that the principle of community outweighs the principle of humanity (2000: 86).”<sup>3</sup>

The *equal moral status* of all human beings is an important liberal principle that has been raised in defense of an individual’s right to immigrate (as opposed to a state’s right to exclude), another such principle, is *freedom of movement*. Fierce advocates of this liberty argue that each of us should be free to move about and settle according to our own choices and preferences (Kukathas 2005; Carens 2013: 245-52). Although there are some obvious constraints to this freedom,<sup>4</sup> I find it important not to underestimate how valuable the freedom of movement actually is. As Carens (1987: 267) tells us, no liberal state restricts the internal mobility of its inhabitants, and those states that do are strongly criticized for violating this basic human liberty.<sup>5</sup> There exists a general agreement among liberal theorists that the imposition of any restriction on the freedom of individuals requires justification (e.g. Blake 2001; Kukathas 2012: 654; Carens 2013: 236). Some restrictions on the freedom of movement are relatively easy to justify (like movement within another person’s real estate), while other such justifications are highly contested. In all such cases though, very weighty reasons are necessary in order to justify constraining people’s freedom to move.

In his defense of states’ right to exclude outsiders from their territory, David Miller

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<sup>3</sup> Although Miller’s perspective on immigration could certainly be seen in this light, some nuance is worthy to mention here. Miller adheres to the equal moral status of all human beings, but the moral rights and duties among co-nationals are more extensive than those among individuals from different nations. Immigration is a policy field in which this is becomes apparent.

<sup>4</sup> Many of these have to do with property rights; one cannot move freely within the property of others. Although there are theorists who argue that a state’s territory is the collective property of its members, a state’s land and the related rights are often discussed in reference to territorial rights. See Miller (2012) for an analysis of states’ territorial rights.

<sup>5</sup> The Universal Declaration of Human Rights (UDHR) lists internal freedom of movement as a basic right (Article 13.1)

addresses both the principle of equal moral status and the principle of freedom of movement.<sup>6</sup> In this thesis, I will critically evaluate Miller's perspective on immigration in relation to these two liberal principles. As this thesis will show, Miller's theory of nationality is a keystone for his approach to immigration.<sup>7</sup> In what follows I will present Miller's theory of nationality, with an emphasis on the idea of national culture (section 2). I will then describe Miller's perspective on freedom of movement (section 3). A critical evaluation of this view uncovers (some of) the flaws within Miller's position toward this liberal principle (section 4.1). I will argue that the apparent weak spots are mostly due to Miller's desire to align freedom of movement with national self-determination. This leads us to a critique of Miller's theory of nationality and of his appreciation of cultural and moral boundaries (section 4.2). I will argue that Miller's theorizing rests on a faulty epistemology of culture which cannot morally justify restrictions on immigration. Furthermore, the interests people may have in controlling their national culture are outweighed by the interests of immigrants (section 4.3). It should be noted that within this thesis no distinction is made between categories of immigrants (e.g. refugees and economic migrants); I am concerned with the vast majority of potential immigrants: people who leave their homeland and seek – for morally innocent reasons – to settle themselves either temporarily or permanently in another country.

## **2. Miller's theory of nationality**

David Miller has become one of the most influential political theorists in defense of liberal nationalism. His theory of nationality is an important part of the framework from which he addresses the ethics of immigration (cf. Miller 2016: 161). National identity, says Miller, serves a key purpose in liberal democracies; most notably because shared nationality is a crucial element for building and maintaining extensive social solidarity and social justice. Nationality is a type of group identity that fosters a special breed of communal loyalty. The nation is a community that forms the “natural site” of social obligations (Miller 1995: 67). The special duties and responsibilities that arise through membership in a nation are markedly bolstered up when combined with a formal scheme of cooperation. In other

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<sup>6</sup> Miller (2012) attributes the right to exclude outsiders from a territory to nations rather than states. The reasons and implications for this differentiation will become apparent in the following pages.

<sup>7</sup> Miller calls the position from which his approaches immigration policy “communitarian and social democratic” (2016: 161). I would argue that the term “nationalistic” is more suitable than “communitarian,” since it is almost exclusively the national community he emphasizes.

words, social solidarity becomes strongest when national boundaries and state boundaries coincide (70-2); when a formal scheme of political cooperation is placed on top of a more “natural” ethical community. If we accept Gellner’s (1983: 1) description of nationalism – as the principle that holds that it would be best that the ethno-cultural unit and the political are congruent – then without hesitation, Miller can be considered a nationalist (cf. Miller 1995: 98)

A nation, for Miller, is a body of people who feel that they belong together by means of cultural, territorial, historical, political, and moral bonds. The nation is a cultural unit, because its members share some cultural characteristics and values that distinguish them from other such groups. The nation is territorial, because national identification is connected to a limited space: a nation needs a homeland. The nation is historical, because it is a community that shares a history and its identity stretches backwards to past generations. Nations are political, in that they aspire to institutions of self-government which they may or may not already enjoy. The nation is regarded as a morally significant unit, because membership in such a community inherently means having special obligations toward fellow members that are more extensive than the duties we owe to other human beings (1995: 17-27; 2007: 124 & 143).<sup>8</sup>

Echoing Anderson’s (2006 [1983]) famous words, Miller (1995: 18-21) recognizes that nations are imagined communities; they exist only in the *belief* people attach to them. This is why it is difficult to verify the reality of nations, and why their realness is such a highly debated issue. However, argues Miller (32-3), it is the wish of a group of people to think of themselves as a distinct community that makes a nation real.

## 2.1 Public culture

A key ingredient in fostering the special commitments and loyalty among co-nationals is a shared public culture. Two important distinctions need to be made when looking at Miller’s understanding of culture in relation to immigration policies. The first distinction, which might seem obvious, is a delicate but crucial one; it considers the distinction between a nation and a state. Roughly speaking, a nation is a group of people that feel that they are bound together by cultural, territorial, moral and political ties that stretch back

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<sup>8</sup> Although nations share many characteristics with ethnic groups, they should not be confused with the latter. Ethnicity is often a source for national identity, but nations ought not to be seen as ethnically homogeneous units; there are many multi-ethnic nations (Miller 1995: 20-1). Moreover, ethnic groups lack the intrinsic political dimension and the territorial claims that characterize nations (Miller 2001: 302).

historically. States on the other hand, are political associations: the institutions to which nations aspire. A state is a formal political scheme of cooperation, whose boundaries may run parallel to that of a nation – the nation-state prototype – though many past and present states consist of multiple nations, and many nations are scattered across multiple states (Miller 1995: 19; 2007: 143).

In relation to immigration, Miller argues that nationality is the type of collective identity that gives weighty reasons in defense of the right to exclude non-members. More than a mere collection of voters (i.e. citizens associated on a “contractual” basis) in a purely political cooperation, a nation is a substantive collectivity, one that carries ethical weight (Miller 2016: 155). This is partly due to its “transhistorical” character: national identity can be transmitted across generations (Miller 2012: 258). We will further elaborate on the importance of history and cultural continuity below; what matters now is that for Miller nationality is more substantial than citizenship. The nation is prone to catalyze moral obligations in a way that goes beyond formal political cooperation (Miller 1995: 72).<sup>9</sup>

One characteristic aspect of a nation – one that sets it apart from a mere political association – is what Miller calls *public culture*. Here we touch upon the second distinction that needs to be made when thinking about the relationship between culture and immigration in Miller’s work: the distinction between *private* and *public* culture. Private culture considers beliefs about what is valuable in one’s personal life (e.g. art, dress, food, religion). Public culture, in contradistinction, concerns itself with a shared set of beliefs regarding the values the wider society should embody and pursue (Miller 2016: 67). At the hand of the national public culture a society becomes informed about the demands of its members. It is a set of ideas about the character of the community, which also helps to fix responsibilities (Miller 1995: 68).

For Miller (1995: 25-6) nations cannot be regarded as random assemblages of people: there *must* be some shared characteristics. The term public culture refers to an extensive portion of the qualities that co-nationals have in common: a *set of understandings about how to conduct life together*. This includes political principles, like the rule of law and a belief in democracy, but it also extends to social norms such as honesty in paying your taxes. Miller goes as far as to say that the British custom of

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<sup>9</sup> Miller (1995: 71-3) argues that the moral rights and duties that follow from formal political citizenship (that is not superimposed on a communitarian background such as nationality) would be based on “strict reciprocity” and the “rational self-interest of each participant.” Nationality reduces the opposition between self-interest and ethical obligations (ibid.: 79).

queuing as the way to decide who gets onto the bus first is part of the British national public culture.<sup>10</sup> Although public and private culture are to be distinct, these two forms do not exist in isolation, but tend to intermingle and influence one another. However, Miller states that while different *private* cultures can coexist peacefully, “in the case of public culture there needs to be a considerable degree of convergence if society is going to function without serious conflict” (2016: 67).<sup>11</sup> A shared public culture creates a feeling of likeness among co-nationals which makes them prone to sympathize with each other more than they do with non-members (145).

This feeling of sameness is reflected constantly in the public life of co-nationals. Miller (1995: 41-2) tells us that nations are held together by:

[A] dense web of customs, practices, implicit understandings and so forth. There is a shared way of life, which is not to say that everyone follows exactly the same conventions or adheres to the same cultural values, but that there is a substantial degree of overlap in forms of life. One can’t detach this way of life from the national identity of the people in question.

This quotation says a lot about Miller’s conceptualization of nations. In the first place, he stresses the *density* of the national (public) cultures. Secondly, he argues there is an *inherent connection* between a person’s way of life and his national identity. As we have seen, Miller also puts emphasis on the historical element of the nation. This is a dimension that, as I will explain below, enhances the moral significance of the national unit.

## 2.2 History and continuity

A nation as a body of people is more substantive than an assemblage of decision makers – “contractual” citizens – because the nation thinks of itself as a collectivity that endures over time, with a shared past and shared aspirations for the future (Miller 2016: 154). This belief in historical continuity gives nations, according to Miller, a strong claim to self-determination, and in extension the right to exclude outsiders from their territory.

One can assume to benefit from its membership in a national community. After all,

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<sup>10</sup> Although some scholars see Britain as a multinational state (e.g. Keating 2001), Miller (1995: 173-4), at least in 1995, observes a unified British nation – in which Scots, for example, attain a peculiar position but do not form a nation.

<sup>11</sup> It is worthy to note that Miller (2016: 68) also sees potential problems arising from diversity in private culture: it is a source of identity that can become an impetus for cultural enclavism, which may lead minorities to cease participating in the public culture.

the special duties go both ways: from you towards your co-nationals and vice versa. This is one of the reasons why the continued existence of the nation is regarded as valuable by its members (Miller 2007: 125), and this inherently means that they also value those cultural features that lend their nation its distinct character, such as their language, traditions, architecture and landscape (ibid.: 131). It should be noted that the cultural features that constitute a national culture very often possess a highly public dimension. Therefore, if one wants public goods, such as education, mass media and public buildings, to continue to reproduce the national culture, one must also have an *interest in controlling* them to a certain degree (Miller 1995: 87).<sup>12</sup> This leads Miller (88) to deduce that if you care about preserving your national culture, your best option is to place the tools of cultural preservation in the hands of your co-nationals – persons that share your culture.

Individuals thus have a genuine interest in controlling the public culture of their nation. To a considerable extent, they want to control the way their nation develops. Miller finds this perfectly acceptable, and says that people have particularly good reasons to try to “maintain cultural continuity over time, so that they can see themselves as the bearers of an identifiable cultural tradition that stretches back historically” (2005: 200).<sup>13</sup> Nationality is the type of collective identity that can be transmitted across time, so that upcoming generations will inherit an understanding of the nature of the group (Miller 2012: 258). Public cultures are thus inherited, making national identities “transhistorical” (ibid.) insofar that they embody historical continuity (Miller 1995: 23).

Miller (42) points out that national communities are strongly connected to the past. The image of a shared history gives the community deep historical roots. These roots, says Miller (36) should be cherished: they reinforce the idea of historical continuity across generations which intensifies the community’s ethical character. Miller (32-8) acknowledges that when subjected to scrutiny many of these so-called deep historical roots appear to be rather inaccurate. All too often, they are based on false beliefs and myths. To Miller, however, this does not mean we ought to deny the ethical significance of these national identities. Myth and false beliefs can be a good thing: they can help build and sustain national communities (35-6).<sup>14</sup>

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<sup>12</sup> Miller (1995: 87) points out that this does not mean the political control over every single detail.

<sup>13</sup> Miller (2005: 200) adds that cultural continuity “is not the same as cultural rigidity: the most valuable cultures are those that can develop and adapt to new circumstances, including the presence of new subcultures associated with immigrants. Nevertheless, Miller does see cultural preservation as a valid reason for states to restrict immigration.

<sup>14</sup> Miller (1995: 34) goes as far as to suggest that states that it is essential for nation-building “to get one’s history wrong.”

Although the historical roots might not be as deep as imagined, they can still be deep enough to produce “real cultural unity” (ibid.: 34). A nation’s language is one example of a cultural feature that is transmitted and inherited across generations; another example Miller employs forth is the physical shape of the national territory. The homeland of a nation has often been historically shaped in such a way that it reflects the national culture (cf. Miller 2012: 260). Just like a nation’s language, the physical shape of the national territory can form an essential part of a nation’s cultural tradition.

In relation to his perspective on immigration, Miller (2005: 204) not only argues that nations have the right to defend their public culture as a whole, but that they are also entitled to decide which cultural features are essential parts of their public culture. Once deemed crucial, any cultural feature (e.g. language, architecture, political principles) can potentially become a good reason – in the name of cultural preservation – to restrict immigration (ibid.). A just immigration policy, says Miller (2005; 2016: 153), requires states to give good reasons for exclusion to those who are refused entry. Morally defensible reasons must relate to the “legitimate purposes of the state itself” (2016:108).<sup>15</sup> *Citizen solidarity* is such a legitimate purpose (153), and a nation’s public culture is seen as a essential ingredient in this regard. Miller (2005; 2016: 164) justifies selective immigration policies based on cultural backgrounds, and gives nations the right to determine which cultural facets are “national” enough to justify exclusion. Although the public culture is changeable, there is a difference between change through cultural self-determination and externally generated changes. Restricting immigration is one way in which states can serve the interest people have in controlling the way their society develops.

Miller thus gives to states the right to exclude, however, he also asserts that the exercise of this right may *not* trump the human rights of immigrants. The following section outlines Miller’s perspective on the freedom of movement. A number of theorists argue that there exists a human right to international free movement, which is being violated by restrictive immigration regimes (Carens 2013, Kukathas 2005, Oberman 2016). Miller has a different point of view.

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<sup>15</sup> Miller (2015b: 400) adds: “What matters is that the reasons are given sincerely, and are comprehensible, not that the immigrant must be able to accept them as reasons for him.”

### 3. Miller's perspective on freedom of movement

A driving force in liberal theory is the idea that more freedom is always better than less (cf. Miller 2016: 56). Obviously, restrictions on immigration are policies that severely constrain people's freedom of movement. If we recognize the important value of the freedom of movement, then very weighty reasons are required to justify imposing restrictions on the right to autonomous movement on this earth. Miller argues that such weighty reasons indeed exist (2005; 2016: 51-6). In this line of reasoning, modern states are reasonably justified in restricting the freedom of movement of potential immigrants.

Miller's defense for a limited conception of the freedom of movement starts by pointing out that even in the most liberal societies one cannot go wherever he or she pleases. Property rights and restrictions on free movement in public spaces indicate that an individual's right to free movement is not absolute, but naturally limited in a functioning society (Miller 2005: 195). Miller's theorizing on the freedom of movement in relation to his perspective on immigration is based primarily on arguments that deny that the basic right to free movement extends beyond the borders of nation-states.<sup>16</sup> Most of what Miller has written on freedom of movement is a critique of the following argument: every reason people have for movement within a state can also be a reason for movement across borders; therefore, the human right to (domestic) freedom of movement ought to apply internationally (Carens 2013: 239).<sup>17</sup>

We can discern two key components of Miller's position. The first concerns the basic interests that underlie a human right; the second concerns the differentiation between the domestic and the international sphere. By looking at the foundational interests that lie beneath the freedom of movement, Miller (2005; 2016: 51-6) argues, we are legitimized in limiting free movement to the domestic realm.

#### 3.1 Basic interests and instrumental freedom

Let me start with the first key component in Miller's theorizing on the freedom of movement: basic interests that lie at the core of human rights. Miller (2005: 195; 2016: 51) recognizes that there is a basic right to free movement. Without considerable

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<sup>16</sup> Miller (2016: 50, 53-6) and Carens (2013: 237-45) use the term "cantilever argument" to describe how a commitment to internal freedom of movement may have implications for a wider conception.

<sup>17</sup> People may want a job, they may want to marry, practice religion, play sports, visit friends or lovers, they may want to travel and they may want to change their place of residence (cf. Carens 2013: 239)

freedom of movement human beings cannot live decent lives, and human rights serve to safeguard this decency. In particular, says Miller (2016: 50), human rights serve to provide the necessary *protection* from various forms of oppression and deprivation that make living decent lives impossible. Being able to move freely in physical space is a necessary condition to live a fully human life; this does not, however, mean unrestricted mobility. Not all restrictions on movement are violations of the basic right to move freely – e.g. one is reasonably restricted in their movement on and within another person’s real estate without such restrictions violating any principle of autonomous movement. So although it is fairly clear that freedom of movement is a human right, Miller (2005: 195; 2016: 51) rightfully raises the question as to how far the physical extent of that right should reach.

His answer is grounded on the premise that stretching out the physical scope of the right to move freely essentially serves to make possible the fulfillment of other basic human interests (ibid.). Freedom of movement provides access to a range of generic interests such as finding a job, practicing a religion, finding a partner, taking ones children to school and so forth. To Miller (ibid.) a wider freedom of movement is a human right in so far as it is *instrumental* in securing other basic interests. It is important here to distinguish between generic interests, and the *specific form* that interests may take (Miller 2016: 52). This means that while you have the generic interest in free movement, that does not give you the human right to own a Mercedes. The basic interest in education does not imply that all human beings have the right to attend Oxford. We are all entitled to pursue a range of basic human interests, but we cannot make claims on the specific form this takes (ibid.: 51-2). Miller understands freedom of movement in the same way. The physical extent of the human right to free movement extends only as far as it is instrumental for pursuing other basic interests. One has the basic interest to move freely, but that does not mean you can go wherever you want to go: you cannot claim the specific form a generic interest takes.

Nevertheless, what you can claim is an *adequate range of options* that provides for a decent life. When a society truly caters such a range of options this means that human rights are fulfilled (ibid.). For Miller (2005: 195), the physical extent of the freedom of movement may be limited when there is enough space for individuals to utilize their mobility in order to pursue the options society offers. And many societies, especially liberal ones, offer their members “sufficient freedom of movement to protect the interests that the human right to free movement is intended to protect” (Miller 2005: 195).

Although it may be argued that there are cases in which securing a person's basic interests may require him to leave his state and join another, this still does not mean that this person can choose any state he likes. It merely means this person has the right to move to *some* new state in which his basic interests are catered for. A universal human right to international migration would mean people can choose the specific form that emerges from their basic interests. This, says Miller, is not the purpose of a human right. He states: "although people certainly have an *interest* in being able to migrate internationally, they do not have a basic interest of the kind that would be required to ground a human right" (2005: 195; italics in original).

### 3.2 Domestic freedom and international limits

This brings us to the second key component that is discernible in Miller's perspective on freedom of movement, namely the distinction between the domestic and the international realm. Interestingly, unlike international freedom of movement, Miller (2016: 55) does recognize *domestic* freedom of movement to be a human right. In explaining this distinction, he again points to the protective function of human rights: they shield us from various forms of oppression and deprivation. In the domestic sphere, the right to free movement prevents states from discriminating against certain groups (especially minorities). Whether for electoral, economic or social reasons, it may matter for a state which people, and how many of them live in certain parts of the country. States may thus wish to target particular group of people by restricting their movement. This took place, for example, under South Africa's apartheid legislation. This, according to Miller (2015a: 18), is the reason *internal* freedom of movement is a human right, and part of the UDHR.

The international context is quite different, argues Miller (2016: 56). The power of states to control their borders does not allow them to dominate any external group in particular. Of course, a state can discriminate against a certain group of people by denying them entry, but this would not prevent those people from pursuing their basic interests elsewhere; "the group is not trapped in the way that an internal minority may be" (ibid.). In this line of thinking, the special reasons we have for domestic free movement do not apply internationally (ibid.).

Miller offers two additional reasons for perceiving the human right to free movement as limited to the space within state boundaries. One is rather pragmatic and the other is

closely related to his principle of nationality. The more pragmatic reason for rejecting the analogy between the domestic and the international realm centers around the fact that states have a more diverse set of tools available when it comes to managing internal migration (ibid: 54). Mass urbanization, for instance, might warrant for policies that address the effects of such large-scale movements of people. Regional subsidies, investment deals and tax arrangements are a few examples of how a government may influence internal migration patterns. By contrast, in the international sphere border controls are probably the only form of political action capable of managing migration flows.<sup>18</sup>

Miller (2012; 2016: 59-61) puts forth another reason for a nationally limited understanding of freedom of movement, one that is closely related to his theory of nationality. As mentioned in Section 2, the territorial element is implicit in Miller's conception of nations; seen as groups of people that identify with a certain geographical space – a homeland. The political element of nations is that they aspire to forms of self-government within their territory. Accordingly, Miller (2012) ascribes the right to territorial jurisdiction in the first place to nations, and only subsequently to states. A state becomes the valid bearer of territorial rights only when it can be regarded as the legitimate representative of the nation. In Miller's (2016: 60) view, a state's claim to territorial rights requires it to grant the people it represents the right to occupy the territory in question. Members of a particular nation are the rightful occupants of a particular territory and the rightful bearers of the right to territorial jurisdiction over that space. Imposing restrictions on the freedom of movement in the domestic sphere would thus infringe upon Miller's theory of nationality.

#### **4. A critique of Miller's national limits**

In the previous section we have seen that Miller denies that there is a human right to international freedom of movement; it is only in the domestic realm that such a basic freedom exists and ought to be protected. Freedom of movement is never understood to be absolute, and the physical extent of the right to move freely should reach wide enough so that a person's mobility will allow him to pursue other basic human interests. A wider

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<sup>18</sup> One could think of and creating more economic opportunities in poor states, and addressing global inequalities in general, as a way to reduce migratory pressure (Oberman 2016). Miller (2016: 17) seems to recognize this as a "hypothetical solution," but advocates more realism and practical guidance regarding the issue.

freedom of movement can be regarded a human right only in so far as it serves the *instrumental* purpose of providing access to a *sufficient* range of opportunities that are required for a person to live a decent life (Miller 2005).

#### 4.1 Nationally limited freedom of movement

Pivotal to Miller's argumentation is the assumption that some basic human rights can be secured by a certain level of sufficiency, and that freedom of movement is one of these, because it is an instrumental right. It is worth noting that many basic human rights and liberties are founded on absolute grounds. The issue of torture for instance – all human beings have the basic right not to be subjected to torture – is not a matter of degree, but absolute. One can wonder what makes the freedom of movement one of sufficiency while others are absolute in character. Miller could point to the “innocent” restrictions on movement that relate to property rights, though what makes these restrictions just is that they concern situations where two different basic human rights clash, namely the right to private property and the freedom of movement. Moreover, as Carens points out, some restrictions on freedom of movement are actually freedom-enhancing in that they make “everyone's freedom compatible with everyone else's freedom” (2013: 248). Traffic regulations, for instance, are “designed to increase overall freedom of movement” (ibid.).

There are of course several basic human rights that are considered to be limited by degree, like the right to a fair trial, or the right to equality. Key to these basic rights though, is that the *pursuit* of absolute fairness and equality lays the groundwork for their implementation. This is not the case regarding the freedom of movement, at least not in Miller's view.<sup>19</sup> If freedom of movement is considered to be a basic human right (cf. Miller 2016: 51) a defense of restrictions on immigration needs to justify why these are matters of a sufficient degree rather than absolute rights.<sup>20</sup> In other words, what reasons justify that we stop the *pursuit* of absolute freedom of movement?

Miller (2005: 195) points to another reason which may possibly justify seeing the protection of the respective human rights as a matter of sufficiency instead of an absolute value. He argues that we need to look at the basic interests that lie beneath the formulation

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<sup>19</sup> One could argue that the freedom of association can clash with the freedom of movement. In relation to immigration, the issue of the freedom of association has been used both to defend restrictions on immigration (Wellman 2008) and to defend the case for open borders (Kukathas 2005).

<sup>20</sup> Miller (2016: 51) states that because of its instrumental purposes “there is indeed a human right to free movement.” Although he ambiguously changes the words (“free movement” instead of “freedom of movement”) he insists on a right to domestic free movement (ibid.: 51-26).

of specific rights and freedoms. What basic interest lies at the heart of that human right? Miller argues that all the fundamental interests that underlie human rights “point to conditions in whose absence human beings cannot live decent lives” (ibid.). Being able to move freely in physical space is such a condition, but the extent of this space needs only to reach far enough to provide individuals access to an adequate range of options (such as finding a job, and taking one children to school). For Miller, the extent of the basic right to freedom movement may be limited when there is enough space for one to utilize his mobility in order to pursue other fundamental interests. The basic interest underneath the freedom of movement is founded on its instrumental purposes.

Is this really what the extent of the freedom of movement is about – that it is predominantly instrumental? It may serve important instrumental purposes, but surely the foundational interest beneath the freedom of movement is also rooted in the immense value of the ability to move freely, to live freely, and of freedom itself. I will further address the value of freedom of movement (in itself) in subsection 4.3. For now, let’s focus on Miller’s instrumental freedom of movement.

It is unclear why this “instrumental” freedom coincides with the boundaries of the nation-state. If the physical stretch of the right to free movement can be limited so long as one has sufficient instrumental mobility, then why does Miller (2016: 56) believe in *domestic* freedom of movement? It seems to me that according to his line of reasoning a state may well be justified in inherently restricting free movement. Assuming that many provinces, cities and perhaps even villages, are well equipped to provide for an adequate range of options for which free movement is (merely) instrumental, a state would not violate a human right by confining certain people to certain areas.

Here Miller (2016: 55) argues that the freedom of movement within the domestic sphere serves to protect citizens and (minority) groups from falling victim to discriminating state practices. The domestic right to freedom of movement has a highly important *protective function*: it works to prevent the abuse of political power (especially in relation to minorities).

What is unclear to me, is how this is significantly different from the protective function an international right to freedom of movement – i.e. immigration as a human right – would undoubtedly entail. One could even argue that such a right would offer more protection from more states toward more people. What qualifies the protective function of the right to autonomous movement as a human right in the domestic sphere, but not in the international realm? Miller (2016: 55) again makes it a matter of degree; saying that

within the confines of a state, a minority could get “trapped” to an extent that is not comparable with the discriminative restrictions that may befall groups in the international realm. Bluntly speaking, if a state unjustly excludes a specific group from entering its territory, these people could still go elsewhere.

Although Miller’s hypothesizing is valid to a certain extent, it remains highly doubtful if the *potential degree* of severity of confinement is the yardstick for attributing a human right regarding free movement. And even if this would be the case, it is not at all clear whether the potential situation for a group to become domestically “trapped” would mark the tipping point after which freedom of movement becomes a human right. Miller’s perspective though, rests on both these assumptions.

Now, one could argue that it is precisely the delicate combination of certain degrees of instrumental and protective functions that gives the national sphere its privileged position. What makes this combination so delicate and fragile, I think, is that it results from the need to make a conception of freedom of movement align with a theory of nationality in which national self-determination is of the utmost importance.<sup>21</sup> In the introduction of this thesis I mentioned how Miller’s theory of nationality, most of which he outlined in *On Nationality* (1995), forms the backbone for much of his later work. It is undeniably a crucial part of his perspective on immigration (cf. Miller 2016: 161). Accordingly, Miller positions himself within the debates on the ethics of immigration from a nationalistic viewpoint. From that same point of view he thus approaches debates on the ethics of movement. This resultantly requires him to develop a scrupulous defense of a limited conception of the freedom of movement that may not contradict the principle of nationality.

His attempt lacks overall coherence, which is mostly due to the need for alignment with his theory of nationality. The assumption that a wider conception of freedom of movement is justifiable because of its instrumental value toward other basic interests (Miller 2005) is probably the most powerful, and definitely the most consistently built argument he offers within the debate on freedom of movement as a human right. It nevertheless falls short in explaining why it would *not* be a human right violation to restrict migration and movement to smaller units within the domestic sphere (e.g. provinces, municipalities, or villages). His argument that internal freedom of movement has a highly important protective function rests on the assumption that human rights in

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<sup>21</sup> To my knowledge, Miller himself does not *directly* link the right to freedom of movement to the importance he ascribes to national self-determination.

general serve to shield us from inhumane conditions. Though, even when we accept this premise, Miller's line of reasoning fails to explain why such a conception ought to be limited within national boundaries, instead of spread out internationally. Moreover, both argumentative strategies require some human rights to be a matter of degree without the pursuit of absoluteness, and Miller has yet to bring forth a truly convincing explanation for why the freedom of movement falls within this category. The importance he attaches to the protection of basic interests that lie beneath the formation of each human right reminds us of the important instrumental value the freedom of movement embodies; this does not, however, necessarily require us to limit the physical extent of freedom of movement parallel to its instrumental purposes.

In a rather peculiar way, Miller turns the tables in the ethics of movement. He acknowledges there exists a human right to free movement (2016: 51; 2005: 195); and states that "more freedom is always better than less, including the freedom to migrate between countries" (2016: 56); but he nonetheless requires us to justify international freedom of movement. In liberal theory, however, the protocol is usually the other way around: restrictions on freedom require justification, not the practice of freedom itself (Carens 2013: 236; Blake 2001; Kukathas 2005, 2012: 654).

Miller's approach to the ethics of immigration and movement is, I believe, to a large extent entrenched in his theory of nationality. This rootedness is noticeable in Miller's assessment of freedom of movement, from which he denies that there exists a human right to free movement that exists in itself – one that is *not* intrinsically connected to other basic interests. Nevertheless, he acknowledges that in order to justify a state's right to exclude outsiders from its territory, more is needed than merely pointing out that in doing so a state would not violate human rights. And Miller offers more. He does so in the form of his theory of nationality.

## **4.2 Nationally bounded culture**

In section 2 we have seen that Miller distinguishes public culture from private culture. Although diversity in private culture may, according to Miller's (2016: 68), indirectly raise some issues that are relevant to immigration policies, I focus here on public culture, which Miller directly links to issues around immigration. There are three crucial presuppositions in Miller's conceptualization of culture in relation to his defense of the right to exclude. The first is that each nation has a public culture that is shared among its

members. The second is that a nation's public culture – and its essential aspects – are worth preserving, since co-nationals have an interest in controlling their culture. In extension, cultural preservationist policies can justify restrictions on immigration. The third and closely related presumption is the belief that a shared national culture is a necessary condition for the levels of interpersonal trust that a well-functioning liberal democracy requires. For Miller, these three presuppositions justify denying people entry on the basis of their cultural background. In this section I will critically evaluate the philosophical grounds of these assumptions, and conclude that all three fail: they cannot morally justify the right to exclude based on national culture.<sup>22</sup>

### *1. Nations have a public culture*

The first presupposition is a foundational one for Miller's theory of nationality: national public culture is a vital part of each nation's *distinct character* (Miller 1995: 25). The concept of public culture is, I think, fundamentally flawed in two interrelated ways. First, it assumes that cultures are distinctive entities. Secondly, it overestimates the linkage between a geographical space (i.e. territory), a group of people (i.e. nation), and a culture.

Let me start by analyzing Miller's understanding of distinctive cultures. Miller (cf. 1995: 34) undeniably thinks of our world, and the way in which public culture is distributed within that world, as if it were a mosaic in which the lines between different parts distinguish between different national cultures. In this view, it is not that every cultural aspect is distributed along these lines; rather the demarcations indicate the difference between the *bundles* of cultural features. Collectively, these bundles of socio-political characteristics distinguish one nation from the other. I think that such a perspective exaggerates the harmony among the different cultural facets that collectively (are supposed to) assemble the essence of a nation's public culture. Moreover, such a perspective overemphasizes socio-political differences *between* national communities, while underestimating such differences *within* nations.

Part of the problem is the inconsistency between the free flows and hybridity of cultural features on the one hand, and the theoretically fixed boundaries of national identity on the other (cf. Eriksen 2015: 9). This thesis stands in line with Seyla Benhabib (2002: 3-4) when she argues that it is a mistake to assume that each human group has

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<sup>22</sup> Strictly speaking, if the first premise fails – if nations do not have a shared public culture the way Miller believes – then the second and third premise also fail. For analytical purposes, and because the assumptions also entail moral claims by themselves, I shall analyze them independently.

some culture of their own, and that the boundaries between such groups can be specified and are relatively easy to depict. I argue here, that David Miller's theory of nationality and his justifications for certain immigration policies are based on such a rigid understanding of cultures and nations (cf. Abizadeh 2002: 501).

Miller (1995: 34) thinks of nations as having "real cultural unity." Moreover, he refers to a nation's public culture as a shared "way of life" (41-2). He goes as far as to suggest that: "One *can't* detach this way of life from the national identity of the people in question" (41, emphasis mine). Here, Miller deviates onto the slopes of essentialism: he essentializes public culture (i.e. a way of life) as a property of nations (cf. Benhabib 2002: 3). It is a form of cultural essentialism and a false epistemology of culture to attach a particular way of life to each national identity. The mistake lies in the act of generalizing: it would be a mistake to argue that a particular religious identity or sexual orientation is inherently connected to a particular, comprehensive, way of life; in the same manner it would be a mistake to attach a distinct way of life to each national identity. Such an understanding, I believe, rests on a too segregated conceptualization of cultural diversity, and a too singular notion of socio-political identity.

Moreover, social groups are always *internally contested*, and overemphasizing the cultural harmony within a community has the damaging potential of legitimizing repressive demands (Benhabib 2002: 3). Miller's perspective on immigration serves as a clear example: his rigid understanding of cultural differences leads him to a theory of nationality that gives nation-states the right to exclude non-members from their territory. By giving moral weight to national cultures, Miller legitimizes restraints on the freedom of migrants and argues that the special duties we owe toward co-nationals, people with whom we share a "culture," justify the right to exclude based on cultural background (cf. Miller 2005: 200).

The second fundamental flaw of the concept of public culture regards the assumption that cultures are congruent with certain territorially concentrated populations. As Benhabib (*ibid.*: 3) points out, such assumptions lay the groundwork for exaggerating the boundedness and distinctness of cultures. We have seen that Miller's nations are inherently territorial: they connect a group of people – who share a public culture – to a specific geographical space (1995: 24; 2012: 258-60). Such a portrayal of a "mosaic-like" distribution of public cultures mistakenly assumes the convergence of territory, identity, and culture. It is, however, not at all clear that the spatial divisions between nations, societies and cultures should be perceived as congruent (cf. Gupta & Ferguson 1992: 6). A

more appropriate picture is one that recognizes that individuals often identify with multiple collectives in fluid manners. Our world is full of intermixed and heterogeneous cultural affiliations (De Schutter 2007: 384).

Miller assumes that the distribution of cultural differences has developed or maintained specifiable units of different ways of life (i.e. national cultures). Opposing this view, I agree with Kukathas (2005: 216) that the idea of a comprehensive public culture could only make sense regarding small, relatively homogeneous nations like Iceland or Tahiti – though I doubt the reality of an extensive “Icelandic way of life.” In the case of large multicultural states – a fitting description for most contemporary liberal countries – this picture becomes quite inappropriate. Many of today’s liberal democracies are more than ever characterized by new levels and new kinds of diversity (Vertovec 2007).<sup>23</sup> A direct cause for this phenomena is the multiplicity of migration patterns. The last few decades have seen more people migrating from more places (Eriksen 2015: 12). In these societies, any attempt to contrive a territorial identity based on profoundly cultural and historical essentials will inevitably miss its target. Ergo, the idea of a comprehensive national culture seems farfetched.

Even if we assume that it is possible for nations to have a far-reaching, pervasive, public culture, this becomes very unlikely in today’s diverse democracies. It has been close to a quarter century since the anthropologists Akhil Gupta and James Ferguson (1992: 9) wrote:

In a world of diaspora, transnational culture flows, and mass movements of populations, old-fashioned attempts to map the globe as a set of culture regions or homelands are bewildered [...] and the illusion of a natural and essential connection between the place and the culture [is] broken.

During the past decades the movement of people, goods, ideas and cultural features across borders has gained pace and intensity, and this process does not seem to stop any time soon. We ought to recognize the prevalence of multiple, fluid and mixed identities; and acknowledge that territorially based (cultural) identities, such as nationality, are not as significant as they used to be.

In sum, Miller’s conception of public culture rests on false epistemic premises: it assumes that cultures are distinct entities; which are congruent with territorially concentrated groups of people (national communities). Today more than ever, the

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<sup>23</sup> It is within this context that Steven Vertovec (2007) has coined the term “super-diversity.”

assumption that a certain part of this earth belongs to a certain group of people, who share a distinct culture, seems inadequate. In multicultural democracies the idea of a comprehensive national culture makes little sense. In extension, the Miller's conception of public culture cannot establish justifiable grounds for the right to exclude. The first presupposition – each nation has a public culture – fails.

## *2. Cultural preservation*

Miller is part of the group of philosophers that not only sees cultures as unified and demarcated entities, but also advocates preserving (national) cultures and propagating cultural difference. In this line of thinking, multiculturalism tends to create conflict and rupture, hence a strong case can be made to keep cultural groups separate. Immigration will affect the cultural composition of the receiving country and a nation-state may have an interest in preventing this (Miller 2015a: 23). They may want to prevent the emergence or deepening of cultural divisions, or they may simply be very attached to their inherited cultural features (ibid.). It is within this context that Miller (2005: 204) justifies imposing restrictions on immigration in the name of cultural preservation.

There are two key components embedded in Miller's reasoning concerning cultural preservation that I find particularly problematic. The first is closely related to the previous presupposition regarding the concept of public culture. Miller (ibid.) argues that when a particular cultural feature, such as a language, is an essential element of a nation's public culture, then a state is entitled to restrict immigration based on a policy of cultural preservation. As mentioned, this implies that nations are granted the right to determine the cultural essence of their collective identity.

I think that the idea of a specifiable essence that is worth preserving is highly problematic. This thesis stands in line with Benhabib (2002: 68) when she states that a culturally preservationist policy based on a group's right to determine the content and the boundaries of its own identity relates to a static conceptualization of culture and consequently leads to too rigid boundaries. Miller's theory of nationality, with the principle of cultural self-determination, promotes exactly such a stark conception of (public) culture. In addition, especially in today's multicultural societies, territorially defined cultural self-determination will create injustices toward existing national and cultural minorities (cf. Blake 2003: 232-3; De Schutter 2007: 384-5).

There arises an additional problem in relation to Miller's conception of cultural self-determination, which has to do with an "unlimited potential." It would be a notorious job to qualify cultural features in order to determine which are worthy of preservation policies. I think this partly explains why Miller describes all cultural features to be potentially essential for a national identity (cf. 2005: 204). One can hypothesize about the consequences of such an unlimited potential. It seems plausible that Colombian nationals regard salsa (among other dance styles) to be a cultural feature that lends their country its distinct character. Now, assume that a group of Germans want to migrate to Colombia. Would it be reasonable for the Colombian state to invoke the cultural preservation argument and declaring something like: "salsa is an essential part of our national culture, we are trying hard to preserve this essence, and since you have a cultural background that does not value salsa, and whose members generally do not dance salsa at a decent level, we deny you residence in Colombia"? There are some obvious objections that the Germans in question could make. They could, for example, argue that they are more than willing to learn salsa. And although they may never be very good at it, their children surely can be.

On a more fundamental level, they could object to the idea that salsa and someone's cultural background are reasons weighty enough to deny a person entry to a political community. But if, as Miller (2005: 200) suggests, language preservation can justify restrictions on immigration, then why can't dance style preservation? As long as Miller does not develop criteria for measuring the essential value of cultural features for a national identity, then salsa preservation could potentially justify a state invoking the right to exclude. It is worthy to mention that the same kind of objections may be raised regarding restriction based on language preservation. Immigrants may be more than willing to learn the language of the receiving country, and although they may never be really good at it, their children surely can be. The more fundamental objection could also apply; which requires us to question if the interests nations may have in cultural preservation outweigh the interests of immigrants. I will further address this issue below. It should be noted that, in Miller's opinion, cultural preservation can certainly be a reason weighty enough to justify restrictions on immigration: a public culture is a key component of a national sense of social solidarity and social justice. In addition, a shared culture is necessary to provide the level of *trust* between citizens that makes it possible for a liberal democracy to function properly.

Before addressing the trust argument, I would like to conclude my critique of Miller's second presupposition (cultural preservation) by stating that its validity is questionable because it hinges on a conceptualization of culture which is too bounded. On top of that, it creates an unlimited potential of cultural features whose preservation may justify restricting immigration. Altogether, the cultural self-determination argument makes it highly doubtful if the interest a nation may have in cultural preservation outweighs the interest of immigrants – people who for morally innocent reasons have left their home and want to live (part of) their life in another country.

### 3. *The trust argument*

Miller (1995: 96) argues that for a liberal democracy to function effectively there needs to be a considerable degree of interpersonal trust between citizens.<sup>24</sup> A well-functioning democracy means active participation and voluntary co-operation; this requires mutual trust in order to be successful (ibid.: 91). The emergence of this type of interpersonal trust demands, according to Miller (1995: 92; 2000: 34), a common nationality with a shared culture (cf. Abizadeh 2002: 501).<sup>25</sup> Increased levels of cultural diversity tend to cause a decline in social trust, and immigration can create a degree of mistrust within a society (Miller 2016: 10). The social trust factor ought to be incorporated into our immigration policies (ibid.: 65).

There are at least two problematic assumptions that critically negate Miller's trust argument. The first concerns Miller's statement that a shared public culture is a *necessary condition* for achieving the level of social trust that is *required* for a successful democracy. As Arash Abizadeh (2002: 501) points out, in principle, a shared culture is *not* a necessary condition for social trust in state institutions. Neither is it a crucial requirement for interpersonal trust; it is not even a key explanatory factor. It is thus the step toward successful democratic participation that makes a shared culture a crucial criteria for sufficient trust among citizens. A key presupposition here is that *only* when citizens share a national culture “would they be willing to moderate [their] own demands in order to reach a compromise” (Miller 1998: 48 in ibid.). At this point, I think, Miller

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<sup>24</sup> This becomes even more pertinent within the ideal of deliberative democracy (Miller 1995: 96)

<sup>25</sup> There exists an ongoing debate in political theory on whether a common identity needs to have a cultural component (the nationalist argument) or if a purely “civic” identity – focused on state membership and political principles – can foster sufficient support for social justice (Miller & Ali 2014).

again deviates onto the slopes of essentialism: he reduces the complexity of individual motivations to delineated group identities (cf. Benhabib 2002: 137).

The second problematic assumption concerns the idea that the degree of social trust can be a reason that outweighs the interests of immigrants. Miller (2016: 10) states that it is a fact, unfortunately, that social trust tends to suffer from cultural diversity. One can wonder if this is a strong enough reason to justify giving states the right to exclude people on the basis of their cultural background. I hold it safe to assume that “racial” diversity, or diversity in skin color, has a detrimental effect on interpersonal trust.<sup>26</sup> But could this possibly justify political theories and policies that emphasize difference and segregation between racial populations? The answer is a clear no. As liberals, we believe in the equal moral status of all individuals, and we believe in the pursuit of absolute equality. A potential for increased levels of interpersonal trust does not justify policies that emphasize and foster interracial divides because it would serve intra-racial cohesion and fuel intra-racial social justice.

Keeping this in mind, what gives national identity a privileged position? Is it – again – a matter of degree? Is it because, although national identity is inherited, it is less fixed and not as arbitrary as racial identity. Is nationalism, as opposed to racialism,<sup>27</sup> sufficiently “innocent” in order to justify the exclusion of outsiders?<sup>28</sup> The idea that national identity is less arbitrary because it involves cultural characteristics, whereas racial identity is predominantly based on “biological” features, weakens the trust argument as much as it strengthens it. The trust argument is weakened since one can change (at least parts of) his national identity. One can learn a new language and assimilate culturally; thereby potentially increasing social trust. The same is not possible regarding racial identity.

Just as issues surrounding “racial” diversity should be addressed within the borders of the state – instead of *at* those borders – so should issues surrounding cultural diversity. There is something deeply unjust in a state telling a potential immigrant that he cannot enter because its citizens don’t trust people with different cultural backgrounds. If we recognize that cultural diversity can have a detrimental effect on interpersonal trust, then

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<sup>26</sup> I use the terms ‘race’ and ‘racial’ here to describe popular categorizations of human populations based on visible characteristics. I do not subscribe to any biological definition of race. On the contrary, in accordance with many contemporary race studies I believe that biological human races are a myth (cf. Gannett 2004).

<sup>27</sup> Racialism can be seen as the belief in the existence, or the constitution, of racial differences between human groups. Racism can be understood as the ideological variant, often marked by notions of superiority and inferiority.

<sup>28</sup> M’charek et al. (2014) have pointed towards the racializing and racist effects of European immigration policies.

we ought to build bridges and bonds instead of digging cleavages that (over)emphasize difference and distinction.

In sum, the trust argument (Miller's third presupposition) also fails to justify restrictions on immigration. In the first place, it is not at all evident that a certain level of trust requires a certain level of cultural sameness. Secondly, interpersonal and social trust can by themselves not justify restrictions on immigration; it cannot do so in relation to racial differences, and neither regarding cultural diversity. In the next section, I will critically evaluate Miller's reasoning regarding the interest of the national community vis-à-vis the interests of immigrants.

### 4.3 Weighty reasons and basic interests

Miller (2005: 204) weighs the interests migrants have in entering the country they want to live in against the interest a nation may have in determining its own character. As we have seen, he claims that although migrants may certainly have strong interests in being admitted, these interests are not weighty enough to turn into an "obligation-conferring right to be admitted" (ibid.: 202, italics in original). According to this view, the interests of the nation trump the interests of potential immigrants, because the interests of immigrants are not the kind of *basic* interests that outweigh the interests of nation-states. One can wonder if this is truly the case; especially since – assuming the critique in this section is to a considerable extent viable – the weight of the national interests becomes attenuated when we scrutinize Miller's line of reasoning.

We have seen that Miller values freedom of movement almost exclusively for its instrumental purposes: people have a interest in free movement because it helps pursue other basic interest. I believe that Miller mistakenly overlooks that freedom of movement is an offshoot of the fundamental interest a person has in living a free live – in freedom itself. Individuals have a basic interest in being the authors of their own life story (Cole 2011: 296). When we make personal choices we do not want others, especially not states, to determine which paths are important enough to pursue – even if this leaves us with an adequate range of options (Oberman 2016: 43; Carens 2013: 249). All human beings have a basic interest in being free, and freedom of movement is a crucial aspect of living a free life (Cole 2011; Oberman 2016; Carens 2013: 249).

Human beings also have a quite basic interest in finding a place to live – a place to raise their children. Obviously, restrictions on immigration severely restrict the freedom of

immigrants.<sup>29</sup> What gives a state the right to constrain the freedom of outsiders and refuse them admission? What reasons are weighty enough to justify refusing people to pursue their interest in moving toward a place that better suits them? These reasons, I think, ought to be grounded upon fairly *basic socio-political interests*, since the interest you may have living your life (and raising your children) where you think this would be best is also a rather basic interest.

Contrary to Miller, I do not think the protection of the national public culture suffices as such a basic social interest. It rests on a faulty epistemology of culture; it exaggerates the boundedness of culture and overestimates the harmony among divergent cultural features within national communities. Miller's appreciation of cultural self-determination – the right of co-nationals to determine the cultural essence of their community – also relates to a stark conception of culture. In addition, it causes injustices toward existing minorities.

What about the preservation of cultural features to which the members of a nation are strongly attached? The ethical premise here is that cultural preservation justifies severe restrictions on the freedom of others. This seems highly doubtful to me. Consider the following hypothetical example by Michael Huemer (2010: 449):

[S]uppose that a number of your neighbors have been converting to Buddhism or selling their homes to Buddhists. Because of this, your neighborhood is in danger of being changed from a Christian to a Buddhist community. The Buddhists do not coercively interfere with your practice of your own religion, nor do they do anything else to violate your rights; still, you object to the transformation, because you would prefer to live among Christians. If you catch on to what is happening in the early stages, are you ethically entitled to use force to stop your neighborhood from becoming Buddhist?

For anyone committed to liberal and democratic values the answer will be a clear no. Your cultural preferences, even if they are deeply rooted in the particular place you live in, do not justify that you restrict the freedom of other individuals; even if these people are not “rooted” in that place the same way as you. This suggests that attachment to cultural features *by itself*, cannot justify severely restricting the freedom of others in the name of cultural preservation (ibid.; Oberman 2016). Although I do not mean to neglect the

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<sup>29</sup> Restrictions on immigration constrain the freedom of both insiders and outsiders because “they prevent foreigners from travelling to visit, work or reside in a country they would otherwise have the opportunity to go to, and because they prevent citizens and residents of a country from engaging with those foreigners they wish to meet, employ, or befriend” (Kukathas 2012: 654).

importance of culture in people's lives, exercising the right to cultural expression and the freedom of conscience should not violate the rights and liberties of others. A cultural preservationist immigration policy – as accepted by Miller – would directly constrain the freedom of many, whereas international freedom of movement seems to cause no direct injustices to anyone. Although a community may certainly have an interest in preserving its cultural character, this interest is not the kind of basic social interest that outweighs the interests of immigrants.

Miller's trust argument relates to a different kind of national interest, namely the interest in a well-functioning democracy. Nevertheless, the idea that sufficient levels of social trust can *only* be derived from a shared public culture is prone to essentialism. I agree that it is *desirable* for a democratic state to have some degree of mutual comprehension and understanding among its citizens. But to anchor the required degree of mutual trust and understanding exclusively in a shared national culture is a step I am not willing to take.<sup>30</sup> Moreover, the arbitrariness of a person's cultural *background* (which is comparable to the arbitrariness of skin color) makes it hard to justify selective immigration based on culture. However, a commitment to democratic principles (e.g. non-discrimination) and the interests of immigrants outweigh the interest a society may have in interpersonal trust.

In sum, the reasons put forth by Miller in relation to national culture do not, in my opinion, carry the weight that is needed to trump the interests of immigrants. This is not to say that there can be no justifications for denying admission, though such reasons need to be founded on *basic social interests*. Examples of such interests could be public safety, public order and public health. When a state can reasonably demonstrate that admitting more immigrants would directly jeopardize fundamental social interests then it would certainly be justifiable to implement some restrictions. Until that point, states are obliged to open up their borders as much as possible to people who are simply looking for a better place to live.

Before concluding, I would like to say a few words on refugees, a topic that has hardly been mentioned thus far. It is worth noting that within the framework of this thesis it is relatively unimportant *why* someone migrates; what matters is that one *wants* to. That

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<sup>30</sup> Abizadeh (2002: 498) reminds us of the empirical cases of Switzerland and Canada that weaken Miller's thesis: two functioning democracies that lack a single overarching culture. Interestingly, Miller argues that these countries have cultivated common national identities alongside their communal ones, but "is silent on the requirement of a shared national public *culture* that he emphasizes throughout the rest of this book and his other writings" (ibid., note 15).

being said, Miller (2016) does distinguish between refugees (chapter 5) and economic migrants (chapter 6), and I agree with him that states are obliged to give priority to refugees within their immigration policies (2016: 164). This is however an exception, as for the most part I fundamentally disagree with Miller's views on immigration.

## 5. Conclusion

The previous sections have shown that Miller's perspective on immigration is to a large extent grounded in his theory of nationality. This is evident in his scrupulous, though muddled, elaboration on freedom of movement, which he sees as a human right within the domestic sphere, but not in the international realm. After critically evaluating Miller's position I cannot but conclude that it fails to justify a limited conception of the right to freedom of movement; *especially* when these limits are to be congruent with the borders of the nation-state.

Miller's theory of nationality is founded upon the premise that each nation has its own distinct character – a national culture. I have argued that his conception of culture is based on false epistemic premises and prone to cultural essentialism. Cultures, whether public or private, are *not* distinctive units that are owned by a territorially concentrated group of people. Moreover, the interest people may have in cultural preservation do not morally justify severely restricting the freedom of others.

Miller's defense of the right to exclude is to a large extent based on his perception of nationality (1); and his view on freedom of movement (2). A central claim of this thesis is that, when subjected to critical scrutiny, Miller's philosophical grounds (1 and 2) fall short of providing a liberal justification for the right to exclude..

Ultimately, I think that most, if not all, of the problematic assumptions and weaknesses embedded in Millers view on immigration can be traced back to his nationalism (at least the ones revealed in this thesis). He firmly believes that the nation is an ethical community that deserves political self-determination. The great value he attaches to the national community is closely related to his committed to citizen solidarity. I think this is a noble commitment. But so is a commitment to freedom and equality. When these commitments clash, such as within the ethics of immigration, we may begin to weigh the interest people have in citizen solidarity, against the interest they have in optimal freedom and equality. To me it seems, that the interest a human being has in

living a free life in which he is treated with equal moral concern, is far more basic than the interest in citizen solidarity. Moreover, admitting immigrants does not directly cause injustices toward anyone, whereas immigration restrictions severely constrain the freedom of so many human beings. In conclusion, the claims of nationalists are not strong enough to outweigh the interests of immigrants. Human beings, who are simply looking for a better place to live.

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