
Immigration: The Case for Limits

David Miller

David Miller, Professor of Political Theory at the University of Oxford, considers three arguments in favor of a right to immigrate but finds none persuasive. He then suggests that safeguarding a state's distinctive culture and controlling its population provide reasons against having open borders. Thus in his view states are justified in not allowing unlimited immigration.

In this chapter, I shall explain why nation-states may be justified in imposing restrictive immigration policies if they so choose. The argument is laid out in three stages. First, I canvass three arguments that purport to justify an unlimited right of migration between states and show why each of them fails. Second, I give two reasons, one having to do with culture, the other with population, that can justify states in limiting immigration. Third, I consider whether states nonetheless have a duty to admit a special class of potential immigrants—namely refugees—and also how far they are allowed to pick and choose among the immigrants they do admit. The third section, in other words, lays down some conditions that an ethical immigration policy must meet. But I begin by showing why there is no general right to choose one's country of residence or citizenship.

Can There Be an Unlimited Right of Migration Between States?

Liberal political philosophers who write about migration usually begin from the premise that people should be allowed to choose

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where in the world to locate themselves unless it can be shown that allowing an unlimited right of migration would have harmful consequences that outweigh the value of freedom of choice. . . . In other words, the central value appealed to is simply freedom itself. Just as I should be free to decide whom to marry, what job to take, what religion (if any) to profess, so I should be free to decide whether to live in Nigeria, or France, or the USA. Now these philosophers usually concede that in practice some limits may have to be placed on this freedom—for instance, if high rates of migration would result in social chaos or the breakdown of liberal states that could not accommodate so many migrants without losing their liberal character. In these instances, the exercise of free choice would become self-defeating. But the presumption is that people should be free to choose where to live unless there are strong reasons for restricting their choice.

I want to challenge this presumption. Of course there is always *some* value in people having more options to choose between, in this case options as to where to live, but we usually draw a line between *basic* freedoms that people should have as a matter of right and what we might call *bare* freedoms that do not warrant that kind of protection. It would be good from my point of view if I were free to purchase an Aston Martin tomorrow, but that is not going to count as a morally significant freedom—my desire is not one that imposes any kind of obligation on others to meet it. In order to argue against immigration restrictions, therefore, liberal philosophers must do more than show that there is some value to people in being able to migrate, or that they often *want* to migrate (as indeed they do, in increasing numbers). It needs to be demonstrated that this freedom has the kind of weight or significance that could turn it into a right, and that should therefore prohibit states from pursuing immigration policies that limit freedom of movement.

I shall examine three arguments that have been offered to defend a right to migrate. The first starts with the general right to freedom of movement, and claims that this must include the freedom to move into, and take up residence in, states other than one's own. The second begins with a person's right to *exit* from her current state—a right that is widely recognized in international law—and claims that a right of exit is pointless unless it is matched by a right of entry into other states. The third appeals to international distributive justice. Given the huge inequalities in living standards that currently exist between rich and poor states, it is said, people who live in poor states have a

claim of justice that can only be met by allowing them to migrate and take advantage of the opportunities that rich states provide.

The idea of a right to freedom of movement is not in itself objectionable. We are talking here about what are usually called basic rights or human rights, and I shall assume (since there is no space to defend the point) that such rights are justified by pointing to the vital interests that they protect. . . . They correspond to conditions in whose absence human beings cannot live decent lives, no matter what particular values and plans of life they choose to pursue. Being able to move freely in physical space is just such a condition, as we can see by thinking about people whose legs are shackled or who are confined in small spaces. A wider freedom of movement can also be justified by thinking about the interests that it serves instrumentally: if I cannot move about over a fairly wide area, it may be impossible for me to find a job, to practice my religion, or to find a suitable marriage partner. Since these all qualify as vital interests, it is fairly clear that freedom of movement qualifies as a basic human right.

What is less clear, however, is the physical extent of that right, in the sense of how much of the earth's surface I must be able to move to in order to say that I enjoy it. Even in liberal societies that make no attempt to confine people within particular geographical areas, freedom of movement is severely restricted in a number of ways. I cannot, in general, move to places that other people's bodies now occupy (I cannot just push them aside). I cannot move on to private property without the consent of its owner, except perhaps in emergencies or where a special right of access exists—and since most land is privately owned, this means that a large proportion of physical space does not fall within the ambit of a *right* to free movement. Even access to public space is heavily regulated: there are traffic laws that tell me where and at what speed I may drive my car, parks have opening and closing hours, the police can control my movements up and down the streets, and so forth. . . . Yet few would argue that because of these limitations, people in these societies are deprived of one of their human rights. . . .

The point here is that liberal societies in general offer their members *sufficient* freedom of movement to protect the interests that the human right to free movement is intended to protect, even though the extent of free movement is very far from absolute. So how could one attempt to show that the right in question must include the right to move to some other country and settle there? What vital interest requires the right to be interpreted in such an extensive way? . . .

[I]t may be true that moving to another country is the only way for an individual to escape persecution, to find work, to obtain necessary medical care, and so forth. In these circumstances the person concerned may have the right to move, not to any state that she chooses, but to *some* state where these interests can be protected. But here the right to move serves only as a remedial right: its existence depends on the fact that the person's vital interests cannot be secured in the country where she currently resides. In a world of decent states—states that were able to secure their citizens' basic rights to security, food, work, medical care, and so forth—the right to move across borders could not be justified in this way.

Our present world is not, of course, a world of decent states, and this gives rise to the issue of refugees, which I shall discuss in the final section of this chapter. But if we leave aside for the moment cases where the right to move freely across borders depends upon the right to avoid persecution, starvation, or other threats to basic interests, how might we try to give it a more general rationale? One reason a person may want to migrate is in order to participate in a culture that does not exist in his native land—for instance he wants to work at an occupation for which there is no demand at home, or to join a religious community which, again, is not represented in the country from which he comes. These might be central components in his plan of life, so he will find it very frustrating if he is not able to move. But does this ground a right to free movement across borders? It seems to me that it does not. What a person can legitimately demand access to is an *adequate* range of options to choose between—a reasonable choice of occupation, religion, cultural activities, marriage partners, and so forth. Adequacy here is defined in terms of generic human interests rather than in terms of the interests of any one person in particular—so, for example, a would-be opera singer living in a society which provides for various forms of musical expression, but not for opera, can have an adequate range of options in this area even though the option she most prefers is not available. So long as they adhere to the standards of decency sketched above, all contemporary states are able to provide such an adequate range internally. So 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. It is more like my interest in having an Aston Martin than my interest in having access to *some* means of physical mobility.

I turn next to the argument that because people have a right to leave the society they currently belong to, they must also have a right

to enter other societies, since the first right is practically meaningless unless the second exists—there is no unoccupied space in the world to exit *to*, so unless the right to leave society A is accompanied by the right to enter societies B, C, D, etc., it has no real force. . . .

The right of exit is certainly an important human right, but once again it is worth examining why it has the significance that it does. Its importance is partly instrumental: knowing that their subjects have the right to leave inhibits states from mistreating them in various ways, so it helps to preserve the conditions of what I earlier called “decency.” However, even in the case of decent states the right of exit remains important, and that is because by being deprived of exit rights individuals are forced to remain in association with others whom they may find deeply uncongenial—think of the militant atheist in a society where almost everyone devoutly practices the same religion, or the religious puritan in a society where most people behave like libertines. On the other hand, the right of exit from state A does not appear to entail an unrestricted right to enter any society of the immigrant’s choice—indeed, it seems that it can be exercised provided that at least one other society, society B say, is willing to take him in. . . .

It is also important to stress that there are many rights whose exercise is contingent on finding partners who are willing to cooperate in the exercise, and it may be that the right of exit falls into this category. Take the right to marry as an example. This is a right held against the state to allow people to marry the partners of their choice (and perhaps to provide the legal framework within which marriages can be contracted). It is obviously not a right to have a marriage partner provided—whether any given person can exercise the right depends entirely on whether he is able to find someone willing to marry him, and many people are not so lucky. The right of exit is a right held against a person’s current state of residence not to prevent her from leaving the state (and perhaps aiding her in that endeavor by, say, providing a passport). But it does not entail an obligation on any other state to let that person in. Obviously, if no state were ever to grant entry rights to people who were not already its citizens, the right of exit would have no value. But suppose states are generally willing to consider entry applications from people who want to migrate, and that most people would get offers from at least one such state: then the position as far as the right of exit goes is pretty much the same as with the right to marry, where by no means everyone is able to wed the partner they would ideally like to have, but most have the opportunity to marry *someone*.

So once the right of exit is properly understood, it does not entail an unlimited right to migrate to the society of one's choice. But now, finally, in this part of the chapter, I want to consider an argument for migration rights that appeals to distributive justice. It begins from the assumption of the fundamental moral equality of human beings. It then points out that, in the world in which we live, a person's life prospects depend heavily on the society into which she happens to be born, so that the only way to achieve equal opportunities is to allow people to move to the places where they can develop and exercise their talents, through employment and in other ways. In other words, there is something fundamentally unfair about a world in which people are condemned to relative poverty through no fault of their own when others have much greater opportunities, whereas if people were free to live and work wherever they wished, then each person could choose whether to stay in the community that had raised him or to look for a better life elsewhere.

The question we must ask here is whether justice demands equality of opportunity at the global level, as the argument I have just sketched assumes, or whether this principle only applies *inside* societies, among those who are already citizens of the same political community. . . . Note to begin with that embracing the moral equality of all human beings—accepting that every human being is equally an object of moral concern—does not yet tell us what we are required to do for them as a result of that equality. One answer *might* be that we should attempt to provide everyone with equal opportunities to pursue their goals in life. But another, equally plausible, answer is that we should play our part in ensuring that their basic rights are respected, where these are understood as rights to a certain minimum level of security, freedom, resources, and so forth—a level adequate to protect their basic interests, as suggested earlier in this chapter. . . .

But what if somebody does fall below this threshold? Does this not give him the right to migrate to a place where the minimum level is guaranteed? Perhaps, but it depends on whether the minimum *could* be provided in the political community he belongs to now, or whether that community is so oppressive, or so dysfunctional, that escape is the only option. So here we encounter again the issue of refugees, to be discussed in my final section. Meanwhile, the lesson for other states, confronted with people whose lives are less than decent, is that they have a choice: they must either ensure that the basic rights of such people are protected in the places where they live—by aid, by intervention, or by some other means—or they must help them to move

to other communities where their lives will be better. Simply shutting one's borders and doing nothing else is not a morally defensible option here. People everywhere have a right to a decent life. But before jumping to the conclusion that the way to respond to global injustice is to encourage people whose lives are less than decent to migrate elsewhere, we should consider the fact that this policy will do little to help the very poor, who are unlikely to have the resources to move to a richer country. Indeed, a policy of open migration may make such people worse off still, if it allows doctors, engineers, and other professionals to move from economically undeveloped to economically developed societies in search of higher incomes, thereby depriving their countries of origin of vital skills. Equalizing opportunity for the few may diminish opportunities for the many. Persisting global injustice does impose on rich states the obligation to make a serious contribution to the relief of global poverty, but in most instances they should contribute to improving conditions of life on the ground, as it were, rather than bypassing the problem by allowing (inevitably selective) inward migration.

Justifications for Limiting Immigration

... In this section, I shall outline two good reasons that states may have for restricting immigration. One has to do with preserving culture, the other with controlling population. I don't claim that these reasons will apply to every state, but they do apply to many liberal democracies that are currently having to decide how to respond to potentially very large flows of immigrants from less economically developed societies (other states may face larger flows still, but the political issues will be different).

The first reason assumes that the states in question require a common public culture that in part constitutes the political identity of their members, and that serves valuable functions in supporting democracy and other social goals. ... What I want to do here is to consider how the need to protect the public culture bears upon the issue of immigration. In general terms we can say (a) that immigrants will enter with cultural values, including *political* values, that are more or less different from the public culture of the community they enter; (b) that as a result of living in that community, they will absorb some part of the existing public culture, modifying their own values in the process; and (c) that their presence will also change the public culture in various ways—for instance, a society in which an established religion had formed an important part of national identity

will typically exhibit greater religious diversity after accepting immigrants, and as a consequence religion will play a less significant part in defining that identity.

Immigration, in other words, is likely to change a society's public culture rather than destroy it. And since public cultures always change over time, as a result of social factors that are quite independent of immigration (participation in the established religion might have been declining in any case), it doesn't on the face of it seem that states have any good reason to restrict immigration on that basis. They might have reason to limit the *flow* of immigrants, on the grounds that the process of acculturation outlined above may break down if too many come in too quickly. But so long as a viable public culture is maintained, it should not matter that its character changes as a result of taking in people with different cultural values. . . .

What this overlooks, however, is that the public culture of their country is something that people have an interest in controlling: they want to be able to shape the way that their nation develops, including the values that are contained in the public culture. They may not of course succeed: valued cultural features can be eroded by economic and other forces that evade political control. But they may certainly have good reason to try, and in particular to try to maintain cultural continuity over time, so that they can see themselves as the bearers of an identifiable cultural tradition that stretches backward historically. Cultural continuity, it should be stressed, 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. . . .

The second reason for states to limit immigration that I want to consider concerns population size. . . .

What we think about this issue may be conditioned to some extent by the population density of the state in which we live. Those of us who live in relatively small and crowded states experience daily the way in which the sheer number of our fellow citizens, with their needs for housing, mobility, recreation, and so forth, impacts on the physical environment, so that it becomes harder to enjoy access to open space, to move from place to place without encountering congestion, to preserve important wildlife habitats, and so on. It's true, of course, that the problems arise not simply from population size, but also from a population that wants to live in a certain way—to move around a lot, to have high levels of consumption, and so on—so we could deal with them by collectively changing the way that we live,

rather than by restricting or reducing population size. . . . Perhaps we should. But this, it seems to me, is a matter for political decision: members of a territorial community have the right to decide whether to restrict their numbers, or to live in a more ecologically and humanly sound way, or to do neither and bear the costs of a high-consumption, high-mobility lifestyle in a crowded territory. If restricting numbers is part of the solution, then controlling immigration is a natural corollary.

What I have tried to do in this section is to suggest why states may have good reason to limit immigration. I concede that would-be immigrants may have a strong interest in being admitted—a strong economic interest, for example—but in general they have no obligation-conferring *right* to be admitted, for reasons given in the previous section. On the other side, nation-states have a strong and legitimate interest in determining who comes in and who does not. . . . It remains now to see what conditions an admissions policy must meet if it is to be ethically justified.

Conditions for an Ethical Immigration Policy

I shall consider two issues. The first is the issue of refugees, usually defined as people who have fled their home country as a result of a well-founded fear of persecution or violence. What obligations do states have to admit persons in that category? The second is the issue of discrimination in admissions policy. If a state decides to admit some immigrants (who are not refugees) but refuses entry to others, what criteria can it legitimately use in making its selection?

As I indicated in the first section of this chapter, people whose basic rights are being threatened or violated in their current place of residence clearly do have the right to move to somewhere that offers them greater security. *Prima facie*, then, states have an obligation to admit refugees, indeed “refugees” defined more broadly than is often the case to include people who are being deprived of rights to subsistence, basic healthcare, etc. . . .

Realistically, . . . states have to be given considerable autonomy to decide on how to respond to particular asylum applications: besides the refugee’s own choice, they are entitled to consider the overall number of applications they face, the demands that temporary or longer-term accommodation of refugees will place on existing citizens, and whether there exists any special link between the refugee and the host community—for instance, similarities of language or

culture, or a sense of historical responsibility on the part of the receiving state (which might see itself as somehow implicated among the causes of the crisis that has produced the refugees). If states are given this autonomy, there can be no guarantee that every bona fide refugee will find a state willing to take him or her in. Here we simply face a clash between two moral intuitions: on the one hand, every refugee is a person with basic human rights that deserve protection; on the other, the responsibility for insuring this is diffused among states in such a way that we cannot say that any particular state *S* has an obligation to admit refugee *R*. Each state is at some point entitled to say that it has done enough to cope with the refugee crisis. So the best we can hope for is that informal mechanisms will continue to evolve which make all refugees the *special* responsibility of one state or another. . . .

The second issue is discrimination among migrants who are not refugees. Currently, states do discriminate on a variety of different grounds, effectively selecting the migrants they want to take in. Can this be justified? Well, given that states are entitled to put a ceiling on the numbers of people they take in, for reasons canvassed in the previous section, they need to select somehow, if only by lottery (as the USA began to do in 1995 for certain categories of immigrant). So what grounds can they legitimately use? It seems to me that receiving states are entitled to consider the benefit they would receive from admitting a would-be migrant as well as the strength of the migrant's own claim to move. So it is acceptable to give precedence to people whose cultural values are closer to those of the existing population—for instance, to those who already speak the native language. This is a direct corollary of the argument in the previous section about cultural self-determination. Next in order of priority come those who possess skills and talents that are needed by the receiving community. Their claim is weakened, as suggested earlier, by the likelihood that in taking them in, the receiving state is also depriving their country of origin of a valuable resource (medical expertise, for example). In such cases, the greater the interest the potential host country has in admitting the would-be migrant, the more likely it is that admitting her will make life worse for those she leaves behind. So although it is reasonable for the receiving state to make decisions based on how much the immigrant can be expected to contribute economically if admitted, this criterion should be used with caution. What cannot be defended in any circumstances is discrimination on grounds of race, sex, or, in most instances, religion—religion could

be a relevant criterion only where it continues to form an essential part of the public culture, as in the case of the state of Israel.

If nation-states are allowed to decide how many immigrants to admit in the first place, why can't they pick and choose among potential immigrants on whatever grounds they like—admitting only red-haired women if that is what their current membership prefers? I have tried to hold a balance between the interest that migrants have in entering the country they want to live in, and the interest that political communities having in determining their own character. Although the first of these interests is not strong enough to justify a right of migration, it is still substantial, and so the immigrants who are refused entry are owed an explanation. To be told that they belong to the wrong race, or sex (or have hair of the wrong color) is insulting, given that these features do not connect to anything of real significance to the society they want to join. Even tennis clubs are not entitled to discriminate among applicants on grounds such as these.

Let me conclude by underlining the importance of admitting all long-term immigrants to full and equal citizenship in the receiving society (this does not apply to refugees who are admitted temporarily until it is safe to return to their country of origin, but it does apply to refugees as soon as it becomes clear that return is not a realistic option for them). Controls on immigration must be coupled with active policies to insure that immigrants are brought into the political life of the community, and acquire the linguistic and other skills that they require to function as active citizens. . . . In several states immigrants are now encouraged to take citizenship classes leading up to a formal admissions ceremony, and this is a welcome development insofar as it recognizes that becoming a citizen isn't something that just happens spontaneously. Precisely because they aim to be "communities of character," with distinct public cultures to which new immigrants can contribute, democratic states must bring immigrants into political dialogue with natives. What is unacceptable is the emergence of a permanent class of non-citizens, whether these are guest workers, illegal immigrants, or asylum seekers waiting to have their applications adjudicated. The underlying political philosophy which informs this chapter sees democratic states as political communities formed on the basis of equality among their members, and just as this gives such states the right to exclude, it also imposes the obligation to protect the equal status of all those who live within their borders.

Study Questions

1. What is the difference between *basic* freedoms and *bare* freedoms?
2. Is the right to exit similar to the right to be married?
3. According to Miller, why does preserving culture provide a reason to limit immigration?
4. According to Miller, when should refugees be granted asylum?

Is There a Right to Immigrate?

Michael Huemer

Michael Huemer is Professor of Philosophy at the University of Colorado at Boulder. He argues that closing borders violates the rights of potential immigrants. His view is that everyone has the right to immigrate because all should be free from the threat of physical force, and restrictions on immigration involve harmful coercion.

1. The Immigration Question

Every year, close to one million individuals from foreign nations migrate to the United States legally. But many more are turned away. Individuals seeking to enter without the permission of the U.S. government are regularly barred at the border, and those discovered in the territory without authorization are forcibly removed. The government expels over one million people from the country each year.¹ Hundreds of thousands continue to try to smuggle themselves in, occasionally dying in the attempt. On the face of it, this raises ethical questions. Is it right to forcibly prevent would-be immigrants from living in the United States? Those excluded seem, on the face of it, to suffer a serious harm. Why are we justified in imposing this harm?

Some reason that, just as a private club may exercise its discretion as to whom to admit or exclude, so a nation-state has the right to choose whom to admit or exclude. Some believe that we must exclude most would-be immigrants in order to maintain the integrity of our national culture. Others argue that immigrants cause economic hardship for existing citizens—that they take jobs from American workers, depress wages, and place an undue burden on social services provided by the state. Some go so far as to warn that unchecked immigration would

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bring on environmental, economic, and social catastrophes that would reduce the United States to the status of a Third World country.

Few would question the state's right to exclude at least some potential migrants. For example, the state may deny entry to international terrorists or fugitives from the law. The interesting question concerns the vast majority of other potential immigrants—ordinary people who are simply seeking a new home and a better life. Does the state have the right to exclude these ordinary people?

In the following, I argue that the answer to this question is no. I shall assume that we are considering ordinary, noncriminal migrants who wish to leave their country of origin for morally innocent reasons, whether to escape persecution or economic hardship, or simply to join a society they would prefer to live in. Though I shall conduct the discussion in terms of the situation of the United States, most of my arguments apply equally well to other countries.

My strategy is to argue, first, that immigration restriction is at least a *prima facie* violation of the rights of potential immigrants. This imposes a burden on advocates of restriction to cite some special conditions that either neutralize or outweigh the relevant *prima facie* right. I then examine the most popular justifications offered for restricting immigration, finding that none of them offers a credible rationale for claiming either that such restriction does not violate rights or that the rights violation is justified. This leaves immigration restrictions ultimately unjustified. . . .

2. Immigration Restriction as a *Prima Facie* Rights Violation

In this section, I aim to show that immigration restriction is a *prima facie* rights violation. A *prima facie* rights violation is an action of a sort that *normally*—that is, barring any special circumstances—violates someone's rights. For example, killing a human being is a *prima facie* rights violation: in normal circumstances, to kill someone is to violate his rights. But there are special circumstances that may alter this verdict: euthanasia and self-defense killings do not violate rights, for instance. Furthermore, even when an action violates rights, it may sometimes be justified nevertheless, because the victim's rights may be *outweighed* by competing moral considerations. Thus, killing one innocent person may be justified, though a violation of the victim's right to life, if it is necessary to prevent the deaths of one million others. Or so it seems to me.

The claim that an action is a *prima facie* rights violation, then, is not a very strong claim. It does not entail that the action is wrong all things considered, for there may be special circumstances that prevent the action from being an actual rights violation, or that render it justified despite its violation of rights. But nor is the claim entirely without force: to accept that an action is a *prima facie* rights violation has the effect of shifting a normative presumption. It becomes the burden of those who advocate the act in question to identify the special exculpatory or justificatory circumstances that make what tends to be a wrongful rights violation either not a rights violation in this case, or a justified rights violation. Those who oppose the act in question need only rebut such efforts.

Now before we turn to the case of immigration, consider the following scenario. Marvin is in desperate need of food. Perhaps someone has stolen his food, or perhaps a natural disaster destroyed his crops; whatever the reason, Marvin is in danger of starvation. Fortunately, he has a plan to remedy the problem: he will walk to the local marketplace, where he will buy bread. Assume that in the absence of outside interference, this plan would succeed: the marketplace is open, and there are people there who are willing to trade food to Marvin in exchange for something he has. Another individual, Sam, is aware of all this and is watching Marvin. For some reason, Sam decides to detain Marvin on his way to the marketplace, forcibly preventing him from reaching it. As a result, Marvin returns home empty-handed, where he dies of starvation.

What is the proper assessment of Sam's action? Did Sam harm Marvin? Did he violate Marvin's rights? Was Sam's action wrong?

It seems to me that there are clear answers to these questions. Sam's behavior in this scenario was both extremely harmful to Marvin and a severe violation of Marvin's rights. Indeed, if Marvin's death was reasonably foreseeable, then Sam's act was an act of murder. Unless there obtained some unusual circumstances not mentioned in the preceding description, Sam's behavior was extremely wrong.

Intuitively, Sam's behavior would still be wrong if the harm suffered by Marvin were less severe. Suppose that, rather than dying soon after returning home, Marvin foreseeably suffers from serious malnutrition. Again, assume that this misfortune would have been avoided had Marvin been able to trade in the marketplace, but Sam forcibly prevented him from doing so. In this case, again, it seems that Sam violates Marvin's rights and wrongfully harms Marvin.

What do these examples show? I think they show, to begin with, that individuals have a *prima facie*, negative right not to be subjected to seriously harmful coercion. Sam's behavior in the scenario was, by stipulation, coercive—it involved a use or threat of physical force against Marvin, significantly restricting his freedom of action. It was also extremely harmful, resulting in Marvin's starvation. These facts seem to explain why Sam's action was a violation of Marvin's rights, and why it was wrong.

How do we know that Sam harmed Marvin? A "harm" is commonly understood as a setback to someone's interests. Marvin's death by starvation certainly sets back his interests. Moreover, in my view, no philosophical *theory* of harm is required in this case. Perhaps there are borderline cases in which one would need to appeal to a theory to determine whether an event counted as a harm or not. But the story of starving Marvin presents no such difficult case. Marvin's death is a paradigm case of a harm. . . .

I am not claiming here that all acts of coercion are harmful. Paternalistic coercion, for instance, need not be harmful. Nor are all harmful actions coercive. One might harm a person, for instance, by spreading false rumors about her, without any exercise of physical force. I am only claiming that *this* action, Sam's forcible interference with Marvin's effort to reach the marketplace, was both harmful and coercive. Similarly, I am not claiming that all coercion violates rights, nor that all harmful acts violate rights. I claim only that, when an action is seriously harmful *and* coercive, it tends for that reason to be a rights violation, other things being equal—that is, it is a *prima facie* rights violation. Sam's behavior in the scenario described violates Marvin's rights, because it is an act of extremely harmful coercion, and there are no relevant extenuating circumstances. Sam's behavior could be justified if, for example, it was necessary to prevent the deaths of a million innocent persons; or, perhaps, if Marvin had for some reason contracted Sam to forcibly prevent Marvin from going to the marketplace. But assume that nothing like that is the case. The case is just as originally described, with no special circumstances. Few would doubt, then, that Sam's behavior is unacceptable.

How does all this relate to U.S. immigration policy? The role of Marvin is played by those potential immigrants who seek escape from oppression or economic hardship. The marketplace is the United States: were they allowed in, most immigrants would succeed in meeting their needs (to a greater extent, at least, than they will if they are not allowed in). The role of Sam is played by the government of

the United States, which has adopted severe restrictions on entry. These restrictions are imposed by coercion: armed guards are hired to patrol the borders, physically barring unauthorized entry, and armed officers of the state forcibly detain and expel immigrants who are found residing in the country illegally. As in the case of Sam's detention of Marvin, the U.S. government's exclusion of undocumented immigrants is also very harmful to most of those excluded: many suffer from oppression or poverty that could and would be remedied if only they were able to enter the country of their choice. In view of this, the actions of the U.S. government, *prima facie*, constitute serious violations of the rights of potential immigrants—specifically, the government violates their *prima facie* right not to be harmfully coerced. . . .

Sam's action might be justified if there were special circumstances not previously specified, circumstances that either cancelled the right that Marvin normally has not to be harmfully coerced, or that morally outweighed Marvin's rights. Likewise, what we have said so far does not establish that the U.S. government's restrictions on immigration are wrong *tout court* [without qualification], but only that those defending the policy incur a burden of providing a justification for these restrictions. In light of the seriousness of the harms involved in this case, the justification for immigration restrictions must be correspondingly clear and powerful.

3. Reasons for Restriction

Harmful coercion is sometimes justified. It may be justified when necessary to defend an innocent party against harmful coercion. It may be justified when necessary to prevent much worse consequences. It may be justified because of a prior agreement made by the coercee. And there may be other circumstances that justify harmful coercion as well. Some believe, for instance, that harmful coercion may be justified because of a need to rectify severe economic inequality. The latter claim is controversial, as would be many other alleged justifications for harmful coercion. This illustrates one reason why a general theory of the conditions for justified harmful coercion would be difficult to devise and still more difficult to defend.

Fortunately, it may turn out that we do not need any such general theory. Some sorts of reasons . . . are generally accepted as legitimate justifications for harmful coercion. Equally, there are some sorts of reasons that we can see intuitively, even without a general theory, *not*

to be legitimate justifications for harmful coercion. For instance, one is not justified in harmfully coercing a person simply because one wants the victim's shoes, or because one hates the race to which the victim belongs, or because one disagrees with the victim's philosophical beliefs. Whatever is the correct theory of justifications for harmful coercion, *those* reasons surely will not qualify. The task at hand is to determine whether there are any circumstances that justify the harmful coercion involved in immigration restrictions. Given that immigration restriction is a *prima facie* rights violation, the burden of proof falls on advocates of restriction. Thus, we may proceed by considering the reasons they have offered for restricting immigration. If it turns out that all of these reasons fall into the category of things that clearly do not count as valid justifications for harmful coercion, then it is fair to draw the conclusion that immigration restrictions are unjustified.

3.1. *Immigration and Employment*

In popular discourse, the most common sort of argument for limiting or eliminating immigration is economic. It is said that immigrants take jobs away from American workers, and that they cause a lowering of wage rates due to their willingness to work for lower wages than American workers. At the same time, economists are nearly unanimous in agreeing that the overall economic effects of immigration on existing Americans are positive. These claims are mutually consistent: there are certain industries in which immigrants are disproportionately likely to work. Preexisting workers in those industries are made worse off due to competition with immigrant workers. According to one estimate, immigration during the 1980s may have reduced the wages of native-born workers in the most strongly affected industries by about 1–2% (5% for high school dropouts).² At the same time, employers in those industries and customers of their businesses are made better off due to lower production costs, and the economic gains to these latter groups outweigh the economic losses to the workers. Some economists have accused immigration opponents of overlooking the economic benefits of immigration due to a bias against foreigners or members of other races.

Let us leave aside the question of the overall effects of immigration on the economy, and focus instead on the following question. Granted that immigration makes some American workers economically worse off, does this show that immigration restriction does not violate the

rights of would-be immigrants, or that if it does, the rights violation is nevertheless justified? More generally, does the following constitute a valid justification for harmful coercion: that the coercive action is necessary to prevent someone else from suffering slight to moderate economic disadvantage through marketplace competition?

It seems to me that it does not. Consider two related examples. In the first example, I am being considered for a particular job, for which I know that Bob is the only other candidate. I also know that Bob is willing to work for a lower salary than the salary that I could obtain if I were the only candidate. On the day Bob is scheduled to have his job interview, I accost him and physically restrain him from going to the interview. When confronted about my seemingly unacceptable conduct, I explain that my action was necessary to protect myself against Bob's taking the job that I would otherwise have, or my being forced to accept a lower salary in order to get the job. Does this provide an adequate justification for my behavior? Does it show that, contrary to initial appearances, my harmful coercion does not really violate Bob's rights? Alternatively, does it show that my action, though a rights violation, was an ethically justified rights violation?

Certainly not. The mere fact that Bob is competing with me for a job that I desire, or that Bob is willing to accept a lower salary than I could obtain if I did not have to compete with him, does not invalidate or suspend Bob's right not to be subjected to harmful coercion. Nor does my interest in having less economic competition *outweigh* Bob's right not to be coercively harmed. If my need for the job in question were very much greater than Bob's need, then some might argue that I would be justified in overriding Bob's rights. We need not decide exactly when a right may be overridden, nor whether a greater economic need could constitute an adequate basis for overriding a competitor's right to be free from harmful coercion; we need not decide these things here, because we can simply stipulate that Bob has at least as much need for the job for which we are competing as I do. In such a case, no one would say that Bob's right to be free from coercive harms is suspended or outweighed.

My second example is a modified version of the story of Sam and Marvin. As before, Marvin plans to walk to the local marketplace to obtain life-sustaining food. Due to his economic circumstances, Marvin will have to buy the cheapest bread available at the market. Sam's daughter, however, also plans to go to the market, slightly later in the day, to buy some of this same bread. This bread is often in short

supply, so that the vendor may run out after Marvin's purchase. Sam's daughter could buy more expensive bread, but she would prefer not to. Knowing all this, Sam fears that if Marvin is allowed to go to the market, his daughter will be forced to pay a slightly higher price for bread than she would like. To prevent this from happening, he accosts Marvin on the road and physically restrains him from traveling to the market. Is Sam's action permissible?

Suppose Sam claims that his harmful coercion does not violate Marvin's rights, because it is necessary to protect his daughter from economic disadvantage. Certainly this defense falls flat. A person's right to be free from harmful coercion is not so easily swept aside. Likewise for the suggestion that Sam's action, though a rights violation, is justified because his daughter's interest in saving money outweighs Marvin's rights. No one would accept such feeble justifications.

Yet this seems analogous to the common economic argument for immigration restriction. The claim seems to be that we are justified in forcibly preventing individuals—many of whom are seeking escape from dire economic distress—from entering the American labor market, because American workers would suffer economic disadvantage through price competition. No one claims that American workers would be disadvantaged to anything like the degree that potential immigrants are disadvantaged by being forcibly excluded from the market. Nevertheless, the prospect of a modest lowering of American wages and narrowing of employment opportunities is taken to either suspend or outweigh the rights of needy foreigners. The ethical principle would have to be that a person's right to be free from extremely harmful coercion is sometimes held in abeyance simply by virtue of the fact that such coercion is necessary to protect third parties from modest economic disadvantage resulting from marketplace competition. The implausibility of this principle is shown by the examples of Bob and Marvin above.

3.2. *The State's Duty to Its Citizens*

Perhaps immigration restriction can be justified by reflection on the special obligations governments owe to their own citizens, as distinct from foreign nationals. Few doubt that there are such duties. States must provide their citizens protection from criminals and hostile foreign governments. A state does not have the same obligation to protect foreign citizens from criminals or other governments. . . .

Perhaps this leads to a rationale for immigration restriction. Perhaps the state has a general duty to serve the interests of its own citizens, including their economic interests, and no such duty, or no duty nearly as strong, to further the interests of foreign nationals. As a result, when the interests of American citizens come into conflict with those of foreigners, the American government must side with its own citizens, even when this results in a lowering of global social utility. Limitations on migration into the United States run contrary to the interests of would-be immigrants, but since those would-be immigrants are not presently U.S. citizens, the U.S. government has either no duty or a much weaker duty to consider their interests, as compared to the interests of its own citizens. Perhaps this gives some traction to the argument that American workers are disadvantaged because of competition with immigrants. Alternatively, one might argue that immigrants impose a financial burden on government providers of social services, such as health care, education, and law enforcement. Since these social programs are financed through revenues collected from existing U.S. citizens, the government's consideration for the interests of its current citizens dictates that it limit the amount of immigration into the country.

Begin with the observation that immigration disadvantages American workers through labor market competition. There are two obstacles to regarding this as a justification for immigration restriction, even if we accept that the state has a much stronger obligation to protect the interests of its own citizens than it has to protect the interests of others. First, only some current citizens would be disadvantaged by increased immigration—those citizens who work in industries that immigrants are disproportionately likely to join. This is a relatively small portion of the population. All other current citizens would either fail to be significantly affected or actually be benefited by increased immigration. As mentioned earlier, most economists believe that the overall economic impact of immigration on current citizens is positive. Thus, if we consider only the interests of current citizens, it is at best unclear that immigration restrictions are beneficial. If we also give *some* weight to the interests of the immigrants themselves, it seems that the case for free immigration is clear.

Second, there are some obligations that any moral agent owes to other persons, merely in virtue of their status as persons. The special obligations that governments owe to their citizens, whatever these obligations may consist of, do not eliminate the obligation to respect the human rights of noncitizens. In particular, the government's duty

to give special consideration to its own citizens' interests cannot be taken to imply that the government is entitled to coercively impose grave harms on noncitizens for the sake of securing small economic benefits for citizens.

Consider again the case of starving Marvin. In the last version of the story, Sam coercively prevented Marvin from reaching the local marketplace, on the grounds that doing so was necessary to prevent his daughter from having to pay a higher than normal price for her bread. This action seems unjustified. Would Sam succeed in defending his behavior if he pointed out that, as a father, he has special obligations to his daughter, and that these imply that he must give greater weight to her interests than to the interests of non-family members? Certainly the premise is true—if anything, parents have even stronger and clearer duties to protect the interests of their offspring than a government has to protect its citizens' interests. But this does not negate the rights of non-family members not to be subjected to harmful coercion. One's special duties to one's offspring imply that if one must choose between giving food to one's own child and giving food to a non-family member, one should generally give the food to one's own child. But they do not imply that one may use force to stop non-family members from obtaining food, in order to procure modest economic advantages for one's own children.

Next, consider the charge that immigrants create a fiscal burden due to their consumption of social services. On the whole, immigrants pay slightly less in taxes than the cost of the social services they consume.³ This is mainly because immigrants tend to have lower-than-average incomes, and thus pay relatively low taxes.⁴ Some economists believe, however, that in the long run (over a period of decades), increased immigration would have a net positive fiscal impact.

Assume that immigrants impose a net fiscal burden on government. Would this fact justify forcibly preventing a large number of potential immigrants from entering the country? To answer this, first we must ask whether the state presently has an obligation to provide social services to potential immigrants, even at a net cost to the state. On some theories of distributive justice, it could be argued that the state has such an obligation, even though these potential immigrants are not presently citizens. If so, then the state obviously may not exclude potential immigrants for the purpose of shirking this duty.

Suppose, on the other hand, that the state has no such obligation to provide social services to potential immigrants, at least not without collecting from them sufficient revenues to cover the expenditure. If

this is true, the state would perhaps be justified in denying social services to immigrants, raising taxes on immigrants, or charging special fees to immigrants for the use of social services. But it remains implausible that the state would be justified in excluding potential immigrants from the territory entirely. It is not typically a satisfactory defense for a harmful act of coercion to say that because of a policy one has voluntarily adopted, if one did not coerce one's victim in this way, one would instead confer a benefit on the person that one does not wish to confer.

Suppose, for example, that Sam runs a charity organization. He has made a policy of offering free food to all poor people who enter the local marketplace. Unfortunately, the organization is running short on cash, so Sam is looking for ways to cut costs. When he learns that Marvin is heading to the market to buy some food, he decides to save money by forcibly preventing Marvin from reaching the market. Marvin would be better off being allowed into the marketplace, even without free food, since he could still buy some inexpensive food with his limited funds. But Sam has already made a policy of offering free food to all poor people in the marketplace, so he would in fact offer free food to Marvin, were Marvin to make it there. Is it permissible for Sam to coercively inflict a serious harm on Marvin, in order to avoid having to either break his policy or give free food to Marvin?

Surely not. Perhaps Sam would be justified in altering his policy and refusing to give free food to Marvin when he arrives at the marketplace—this would be permissible, provided that Sam has no humanitarian obligation to assist Marvin. But whether or not Sam has any such humanitarian duties, he surely has no right to actively prevent Marvin from getting his own food. If Marvin had been coming to the market to *steal* Sam's food, perhaps then again Sam would be justified in excluding him. Even this claim would be controversial; if Marvin's condition of need were sufficiently urgent, some would say that Sam must let him take the food. But whatever one thinks about that question, surely Sam cannot justify barring Marvin from the opportunity to *buy* food from others, merely on the grounds that if Sam permits him to do so, then Sam will also voluntarily give him some food. . . .

3.4. *Cultural Preservation*

In the views of some thinkers, states are justified in restricting the flow of immigration into their territories for the purposes of preserving the distinctive cultures of those nations. . . . David Miller argues that

existing citizens have an interest in seeking to *control* how their culture does or does not develop, and this requires the ability to limit external influence; thus, again, we have a right to restrict immigration.

To see this as a persuasive reason for restricting American immigration, we must accept two premises, one empirical and the other ethical. The empirical premise is that American culture is in danger of extinction or at least severe alteration if immigration is not restricted. The ethical premise is that the need to preserve one's culture constitutes a legitimate justification for harmful coercion of the sort involved in immigration restrictions.

Both premises are open to question. Empirically, it is doubtful whether apprehensions about the demise of American culture are warranted. Around the world, American culture, and Western culture more generally, have shown a robustness that prompts more concern about the ability of other cultures to survive influence from the West than vice versa. For example, Coca-Cola now sells its products in over 200 countries around the world, with the average human being on Earth drinking 4.8 gallons of Coke per year. McDonald's operates more than 32,000 restaurants in over 100 countries. The three highest grossing movies of all time, worldwide, were *Avatar*, *Titanic*, and *The Lord of the Rings: The Return of the King*. All three were made by American companies, but 70% of the box office receipts came from outside the United States. The television show *Who Wants to Be a Millionaire?* has been franchised in over 100 countries worldwide, including such diverse places as Japan, Nigeria, Venezuela, and Afghanistan. Whether one sees the phenomenon as desirable, undesirable, or neutral, Western culture has shown a remarkable ability to establish roots in a variety of societies around the world, including societies populated almost entirely by non-Western people. This robustness suggests that American culture is in no danger of being eradicated from America, even if America should drastically increase its rate of immigration. Other societies may have cause to fear the loss of their cultures due to foreign influence, but America does not.

Turning to the ethical premise of the argument for restriction, is the desire to preserve American culture a valid justification for immigration restriction? More generally, can one be justified in harmfully coercing others, solely because doing so is necessary to prevent those others from altering the culture of one's society? Miller is on plausible ground in maintaining that people have a strong interest in controlling their culture. But not everything in which one has an *interest* is something that one may, ethically, secure through harmful coercion of others, even if

such coercion is required to protect one's interest. For instance, I have an interest in having my lawn mowed, but I may not force anyone to mow it, even if this is the only method I have available to secure the desired result. Even when one has a *right* to something, it is not always permissible to protect one's enjoyment of the right through coercion. Suppose that I am in need of a liver transplant, but there are no willing donors available. To preserve my life, I must take a liver by force from an unwilling donor. Even though I have both a strong interest in living and a right to life, this does not imply that I may coerce an unwilling donor.

Why, then, should we assume that our admittedly strong interest in preserving our culture entitles us to harmfully coerce others in the name of cultural preservation? Proponents of the cultural preservation argument have neglected this question. Two hypothetical examples, however, may help us to address it.

First, suppose 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? Consider a few ways in which you might go about this. You might forcibly interfere with your neighbors' practice of their religion. You could go to their houses, destroy their Buddha statues, and replace them with crucifixes. You could force your neighbors to attend Christian churches. You could forcibly expel all Buddhists from the neighborhood. Or you could forcibly prevent any Buddhists from moving in. All of these actions seem unacceptable. Hardly anyone would accept the suggestion that your interest in preserving a Christian neighborhood either negates or outweighs your neighbors' rights not to be harmfully coerced by you.

A society's dominant religion is an important part of its culture, though not the only important part. But similar intuitions can be elicited with respect to other aspects of culture. You may not forcibly prevent your neighbors from speaking different languages, wearing unusual clothes, listening to unfamiliar music, and so on. This suggests that the protection of one's interest in cultural preservation is not a sufficient justification for harmful coercion against others.

Second, consider another variant of the story of Marvin. Again, imagine that Sam has coercively prevented Marvin from reaching the

local marketplace, where he would have bought food needed to sustain his life. His earlier justifications for his behavior having fallen flat, Sam mentions that he had yet another reason. Marvin practices very different traditions from most of the other people in the marketplace. For instance, he wears unusual clothing, belongs to a minority religion, speaks a different language from most others (though he is able to get along well enough to purchase food), and admires very different kinds of art. Sam became concerned that, if Marvin went to the marketplace and interacted with the people gathered there, he might influence the thinking and behavior of others in the marketplace. He might convert others to his religion, for example, or induce more people to speak his language. Because Sam did not want these things to happen, he decided to forcibly prevent Marvin from reaching the marketplace.

Sam had a real interest in preventing the sort of changes that Marvin might have induced. The question is whether this interest is of such a kind that it justifies the use of harmful coercion against innocent others to protect that interest. Intuitively, the answer is no. Sam's desire to be surrounded by people who think and behave in ways similar to himself does not overrule Marvin's right to be free from harmful coercion.

Is this case a fair analogy to the case of immigration restriction? One difference is that Marvin is only one person, and it seems unlikely that he could single-handedly bring about a drastic change in the culture of Sam's society. In contrast, if the United States were to open its borders, *millions* of people would come across, making drastic cultural change a much more realistic possibility.

This difference between the two cases would invalidate my argument, if the reason why Sam's action was impermissible were that Marvin would not in fact have had the effects that Sam feared. But this is not the case. In both of my examples, it should be stipulated that the agent's fears are realistic: in the first example, you have well-founded fears that your neighborhood is becoming Buddhist; in the second example, Sam had well-founded fears that Marvin would have a large impact on the other people in the marketplace. (Perhaps the marketplace is small enough that a single person can significantly influence it.) My contention, with regard to these examples, is not that the cultural change would not happen, but that the avoidance of cultural change does not seem an adequate justification for harmful coercion against innocent others. . . .

5. Conclusion

... Literally *millions* of lives are affected in a serious and long-term manner by immigration restrictions. Were these restrictions lifted, millions of people would see greatly expanded opportunities and would take the chance to drastically alter their lives for the better. This makes immigration law a strong candidate for the most harmful body of law in America today. In view of this, it is particularly troubling that these restrictions appear to have so little justification.

Notes

1. U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2007*, <http://www.dhs.gov/ximgtn/statistics/publications/yearbook.shtm> (Washington, D.C.: U.S. Department of Homeland Security, Office of Immigration Statistics, 2008; accessed April 9, 2009), pp. 5, 95.
2. National Research Council, Panel on the Demographic and Economic Impacts of Immigration, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*, ed. James P. Smith and Barry Edmonston (Washington, D.C.: National Academies Press, 1997), pp. 6–7.
3. The National Research Council (*The New Americans*, p. 10) estimated that a 10% increase in immigration would impose an increased annual fiscal burden of \$15 to \$20 per household on existing Americans. As the Congressional Budget Office reports, the most costly government services used by immigrants are public school education, health care, and law enforcement (“The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments,” <http://www.cbo.gov/doc.cfm?index=8711> (Washington, D.C.: Congressional Budget Office, 2007; accessed April 9, 2009)).
4. National Research Council, *The New Americans*, p. 11.

Study Questions

1. What is a *prima facie* rights violation?
2. According to Huemer, why is immigration restriction a *prima facie* rights violation?
3. According to Huemer, are all acts of coercion harmful?
4. Does Huemer agree that a state is justified in restricting the flow of immigration in order to preserve that state’s distinctive culture?