

David Miller on Inherited National Responsibility

Sanklecha, Pranay

Veröffentlichungsversion / Published Version

Zeitschriftenartikel / journal article

Empfohlene Zitierung / Suggested Citation:

Sanklecha, P. (2009). David Miller on Inherited National Responsibility. *Intergenerational Justice Review*, 1, 18-22.
<https://doi.org/10.24357/igjr.1.1.520>

Nutzungsbedingungen:

Dieser Text wird unter einer CC BY Lizenz (Namensnennung) zur Verfügung gestellt. Nähere Auskünfte zu den CC-Lizenzen finden Sie hier:
<https://creativecommons.org/licenses/by/4.0/deed.de>

Terms of use:

This document is made available under a CC BY Licence (Attribution). For more information see:
<https://creativecommons.org/licenses/by/4.0>

A List of Apologies World Wide

by Graham Dodds

According to some observers, we are living in "the age of apology." (For example, see Mark Gibney, Rhoda E. Howard-Hassmann, Jean-Marc Coicaud and Niklaus Steiner, eds., *The Age of Apology: Facing Up to the Past*, University of Pennsylvania Press, 2007). Apologies from individual politicians are nothing new, but official apologies from governments to other states or to aggrieved domestic groups are increasingly common. Often, these actions are part of transitional justice. In certain circumstances, political leaders

choose to issue an official apology in order to come to terms with a problematic past, to heal old wounds, to reunite estranged communities, and to facilitate a better future for political victims, perpetrators, and the whole polity. These apologies may offer an attractive middle path between the alternatives of mass amnesty and criminal prosecution, and they may be part of a broader process of political reconciliation. Some political apologies are famous (e.g., the U.S federal government's apology for interning Japanese Americans in World War II, Pope

John Paul II's many apologies for various historical wrongs committed by the Catholic Church, and Australia's apologies for mistreatment of aboriginal peoples), but other political apologies are less well known. And of course they vary greatly in their motivation and efficacy. Information about hundreds of political apologies can be found via an online database [<http://political-apologies.wlu.ca/>], which was established and is maintained by Rhoda E. Howard-Hassmann, Wilfrid Laurier University, Canada.

David Miller on Inherited National Responsibility

by Pranay Sanklecha

Abstract: This paper offers a critique of David Miller's recent account of inherited national responsibility. It is argued that the account leads to a dilemma: either it does not make sense to say that we can accept the national inheritance, or, on a different sense of acceptance, it does, but then we encounter a serious conflict with one of our important intuitions about responsibility.

Introduction

David Miller argues that it makes sense to claim that nations can inherit responsibility. Given certain circumstances, current members of nation X can be said to have obligations to pay compensation of the relevant kind to either the victims or the descendants of victims of a past injustice that was committed by previous members of nation X. In this paper, I argue that while this account works for two sets of circumstances as distinguished by Miller, it does not for a third – the situation where the current members of nation X have not benefited from the injustice in question. My focus in this paper is narrow, and consequently I take many things as given. I accept the idea that nations can be held collectively responsible, I grant that it can be empirically possible to identify the victims or descendants of victims of past injustice and the effects that this inju-

stice had on them. I try, in short, to agree with Miller as much as possible, in order to disagree with him more effectively. In the first section 'Miller's Taxonomy: Three Types of Claims' I describe the three types of claims; the second section 'The First Two Claims Considered' deals with Miller's argument for the possible validity (given the right empirical circumstances) of the first two types of claims; the third section 'A Critique of Miller's Account in the Third Type of Claim' discusses problems which arise for the third type of claim from the impossibility or excessive cost of rejecting one's national inheritance; the fourth section 'The Challenge of Cultural Cosmopolitanism?' considers the view of cultural cosmopolitanism and its relevance to the question of inherited responsibility, national or otherwise; and the final section 'Considering One Response to the Critique of Miller' outlines a problem which arises for one plausible response to the problems outlined in the third section.

Before beginning the critique of Miller's account, however, it is necessary to deal with a generic concern that always arises when discussing historical injustice: how far back should we go? Several thousand years ago, Aryan groups migrated to the Indian sub-continent. In the process of establishing their civilization they indulged in the standard practice

of 'oppressing the natives'. Can descendants of those natives (the Dravidians) demand compensation from descendants of those Aryans? Could descendants of Adam, say, demand compensation from the descendants of Eve for her part in getting him to eat the apple?¹ Or is there some sort of limiting factor, some point in time such that acts beyond this point cannot be subject to claims of compensation?

This concern is discussed, for example and amongst others, by Jeremy Waldron and George Sher². It will not, however, be discussed in this paper. This is not to deny its importance. Miller, for instance, clearly recognises that it is important, but avoids discussing it because it bears 'on the issue of whether the alleged victims of injustice have a claim to redress, not on the issue of whether another group has an obligation to meet the claim ... even if we are able to ... establish that claimant groups have a justified demand for compensation of some kind, it is still necessary to investigate whether other groups, or institutions, have a responsibility to meet such a demand'³. That is to say, we can leave this concern aside and still meaningfully examine what we may colloquially call the 'duties and responsibilities' side of the equation. A comprehensive system for dealing with historical injustice must deal with the concern mentioned, but Miller is concer-

ned not with a comprehensive system but just one part of it, that of whether groups can have responsibilities to meet legitimate claims of compensation. Given that this paper is a critique of Miller's account of how groups can have inherited responsibilities, I follow Miller's lead here and therefore do not propose to engage with this standard problem of thinking about historical injustice.

It is easy to dodge our responsibilities, but we cannot dodge the consequences of dodging our responsibilities.

/ Josiah Charles Stamp /

Miller's taxonomy: three types of claims

Using a taxonomy established by Miller, let us narrow in on three kinds of claims that victims or the descendants of victims of past injustice can make in the context of nations:

1. 'Claims for restitution'⁴ – an example of this might be Greece demanding the return of the Elgin marbles.
2. 'Claims based on the idea of unjust enrichment'⁵ – an example might be a claim made by India today against the British, on the grounds that Britain benefited in the past and still benefits today from the exploitation of India that it carried out between (roughly) 1757 and 1947.
3. 'Claims based on the idea of a compensable historic wrong'⁶ – the key notion here, or at least the one I will want to concentrate on, is that these are claims for compensation in situations where (a) there was a historical injustice and (b) this historical injustice did not benefit the perpetrators or their descendants. We can refine the India-Britain case to give an example of this. Let's say Britain did perpetrate injustice against India by colonizing it, and by how it treated India during the period of colonization. Let's also say, however, and this is the difference between the previous case and this one, that the British were supremely inefficient exploiters, and derived no benefit from this exploitation, and that the present day members of the British nation are therefore not unjustly benefiting from this historical injustice perpetrated by previous members of the British nation.

Miller thinks that each of these three claims can, under certain circumstances, be valid. My argument in this paper concentrates on the third type of claim, but before proceeding to a consideration of it, it is necessary first to outline why Miller thinks these claims can be valid.

The first two claims considered

Miller claims that nations have, or can have, assets. These can be physical, for instance deposits of valuable minerals within the nation's

territorial boundaries, or indeed the territorial boundaries themselves, and intangible, such as effective institutions, a shared public culture, and so on. Given that they have such assets, it makes sense to claim, says Miller, that members of a nation can be said to inherit at least part of these assets from their predecessors. Functioning institutions or a shared public culture, for instance, are things that are the result

of generations of practices and policies – they are not created anew by each generation. The same can be said of

course of many physical assets – the railways, public buildings, etc, built by Victorians, for example, are still being used by present-day members of the British nation.

The claim so far is that nations can be said to have assets, and that these assets can be said to be inherited by succeeding members of these nations. So far, so unexceptionable, at least for the purposes of this paper. Having established this claim, Miller turns his attention to the individual as a way of approaching the question of whether responsibilities, and not just assets, can also be inherited.

English common law and Roman law both uphold the principle that they can, at least in the case of individuals. For instance, it is an established part of English common law, says Miller, that in the case of individuals 'those who inherit from wrongdoers are potentially liable to make compensation for the wrongs committed'⁷. Making this potential liability actual depends on establishing that the descendants of the victims 'are themselves made worse off by the effects of the wrong'⁸, and an upper limit on the compensation payable by the descendants of the wrongdoers is set by the principle 'that inheritors should not be punished for what their predecessors did'⁹, i.e. they do not have to pay more than they inherited, even if the harms suffered by the descendants of the victims are greater than the amount of the inheritance.

Deriving an 'ought' from an 'is' is of course a famously fraught enterprise, but there are good ethical grounds, thinks Miller, for why the basic principle – that those who inherit from wrongdoers can be liable to pay compensation – is established in these legal systems. The ethical case for inheritance is in general flimsy, thinks Miller, because the person inheriting has done nothing to deserve her inheritance¹⁰. So in a case like the following: A wrongs B, let's say by stealing B's car. A dies and leaves her assets to C. These assets include the car. B demands that C returns the car to him. It seems clear that B has a valid claim against C with respect to wanting the car back. The situation can be made a bit more complicated: let's say B

dies before he makes a claim against C, but D, who is B's child, makes a claim for the car against C. D has done nothing to deserve his inheritance either, so isn't it arbitrary whether we give the car to B or D? Not so, thinks Miller, because 'the right of A's successors to inherit might seem especially questionable, since they will in part be the beneficiaries of injustice – they will be benefiting from that portion of the estate which ought to have been transferred to (B) by way of redress'¹¹.

Let us accept then, that there are good ethical grounds to think that in the case of individuals it is right to say that they inherit responsibilities along with assets. Given the earlier story about nations having assets, and of members of nations being able to inherit assets, the analogy becomes clear. Claim 1 seems especially straightforward, as it seems simply to be an instance of the principle that 'you cannot bequeath goods to which you do not have a valid title'¹². The Elgin marbles, for instance, were not the property of the British nation in the first place, and therefore cannot be legitimately handed down to future generations of Britons. Claim 2 also seems reasonable – in the type of circumstance in which it can obtain, the goods in question were acquired through exploitation, and it seems as illegitimate to hand down goods that were acquired through exploitation as through unjust acquisition. Britons do not, then, have a valid claim to the goods that they have received as a result of previous exploitation of the Indian nation.

A critique of miller's account in the third type of claim

Claim type 3, however, seems more complex, because there are no goods in question. The present day members of the British nation have in no way benefited from the historical injustice; indeed, in my example, no members of the British nation have ever benefited from it. So the question of validity of title does not seem to arise, and consequently it cannot be used as an argument for the validity of the claim of compensation. There is a further disanalogy, which is that while in the case of individuals there is an upper limit on compensation payable for an injustice committed by the person they have inherited from, which is set by the amount they have benefited from the injustice in question, here there is no such limit – the current members of the British nation are being asked to compensate for an injustice from which they have not benefited in any way; it seems like they are, to use Miller's terminology, being punished for what their ancestors did.

Miller clearly recognises these dis-analogies, because he points out 'that the liability in cases like this is somewhat weaker than in the ear-

lier cases where the nation that had perpetrated the injustice also continued to benefit from it¹³. Nevertheless, he maintains that claims for compensation in this type of situation can be valid. His argument here is that we must think of national inheritance in a holistic kind of way. Present members of the British nation have inherited a wide variety of things from their predecessors, and at least some of these are assets they are benefiting from. For example, it is pretty plausible to claim that (a) they benefit from, for example, the secure establishment of English common law, or the roads they travel on and (b) these benefits were secured for them in part by the efforts of their ancestors. Miller's point now is that it is not acceptable for the current members of the British nation to accept as their inheritance only those things from which they benefit while disowning those aspects of their inheritance which are problematic, such as say the responsibility to compensate India for its colonization by previous members of the British nation. As Miller puts it, 'even where there is no unjust enrichment, a nation that wants to claim the advantages created by previous generations must also accept a responsibility to offer redress for the injustices they inflicted'¹⁴.

This is a persuasive solution to the difficulty created by the dis-analogies mentioned above, but in my view it is also problematic. Miller's argument in the type of situation denoted by the third claim is that we need to show that the present day members of X can be treated as the heirs of previous members of X for the purposes of redress, and then that 'it is unjustifiable to treat them in that way'¹⁵ when what is at stake is the inheritance of benefits, but not when what is at stake is the inheritance of liabilities¹⁶. That is to say, if the present day members of X benefit from at least some of the policies, practices, etc, of their ancestors then they cannot consistently accept these benefits and reject the responsibilities that arise from other policies of their predecessors – if they are to be treated as heirs to the national inheritance, then they must be so treated in all respects, not just the ones which are convenient. An important question this raises is about the possibility of rejecting your national inheritance at all, that is, the possibility of choosing not to stand in a particular relation with respect to the trans-generational community of the nation to which you belong. I will speak here only of the case of adults, in order to simplify the discussion as much as possible.

One obvious possibility for someone who wanted to reject her national inheritance comprehensively is emigration. Let us accept for the moment that if you emigrate you do succeed in comprehensively rejecting your national inheritance (I'm not sure if this is actually the case,

but I will explore this a bit later). Speaking generally, I think it's reasonable to claim that emigration involves considerable costs. Most obviously, there are the financial costs, which can already be substantial, but there are also other costs which are perhaps even more significant. There is the cost of leaving one's family and friends behind. There is the cost of no longer being rooted in a particular culture and way of life¹⁷, or at least of perhaps living in places which do not entirely share the particular culture you left behind. There is the cost of assimilating into the new culture, to the extent that this is possible. There is the cost of leaving behind a community in which you have a place, and a network of connections of all kinds, for one in which you will be mostly a stranger for at least a considerable amount of time. One could specify more costs, but I hope the general point is clear: emigration is in general an extremely expensive enterprise.

Let's say that for some people emigration is so expensive that it is ruled out as a possibility. They still want to reject their national inheritance, however, and they want to reject it comprehensively – i.e. they want neither the benefits or the responsibilities that come with membership in a nation. Is it possible for them to carry out this rejection while continuing to live within the relevant nation's boundaries? Let's imagine someone who attempts to reject his national inheritance by withdrawing from public life completely and living like a hermit. He goes off into the wilds, away from all modern conveniences and social interaction, subsisting on berries and the like. He makes, in short, the most dramatic effort imaginable – short of suicide – to withdraw from the benefits that membership in a nation provides.

Even in this scenario, however, it seems like he still can be said to enjoy some benefits. Remember that for Miller, the national inheritance consists of the benefits each generation derives from physical assets, such as coal mines or railways or just the national territory, for example, and from intangible things like functioning institutions, a shared public culture and so on. The wilds he lives in, for instance, might depend on the military apparatus of the nation it is part of for security from external aggression. It's kept free from highwaymen and bandits because of a functioning police and the rule of law. The berries he eats, the land he sleeps on, the water he drinks – all of these are part of the physical assets that make up part of his national inheritance. It seems impossible, then, for him, for anyone, to reject their national inheritance and the benefits flowing from it while physically still living in that nation.

There is also an argument to be made that even emigrating does not liberate you from your na-

tional inheritance, because it doesn't seem to be straightforwardly the case that emigrating means no longer benefiting from the intangible assets that are part of the national inheritance of the nation you emigrated from. Immigrants who have emigrated after a certain age will tend to benefit from the education and training in professional and social skills that they received in the nations they emigrated from. Further, if you look at immigrant groups across the world, one feature that is immediately obvious in most of them is the extent to which they attempt to preserve their old culture and old ways of life. Immigrant groups are often nourished and strengthened in new lands by their emotional and intellectual attachment to the practices of the nation or group they left behind. In many cases it seems undeniable that these groups are still benefiting from the intangible assets handed down to them as members of the nation they emigrated from. Moreover, it is not clear how it would be possible for any person or group to transcend the culture and society in which they developed to such an extent that they could be said to have rejected comprehensively the benefits deriving from that culture and society. And this comprehensive rejection is, it seems, necessary on Miller's account if they are to avoid bearing responsibility for the sins of their forefathers.

As a parenthetical point: there are, of course, different ways in which one could be said to own or disown one's national identity. One could, for instance, use the idea of national pride as a means of getting to national responsibility¹⁸. The idea might be that if one is proud of the achievements of one's predecessors then one has to accept responsibility for the undesirable effects of those achievements; so, for ex-

If you wake up at a different time, in a different place, could you wake up as a different person?

/ Chuck Palahniuk /

ample, if a currently living Briton was proud of the fact that Britain once had an Empire, she would have to accept responsibility for the undesirable effects of that Empire, such as say the exploitation of Indians. Rather than linking inherited responsibility to the benefits one receives by being a member of a nation, a link is made between inherited responsibility and pride in one's national past. This makes it much easier to own and disown one's national inheritance, and such a proposal would therefore not be open to the charge I have brought against Miller in this section. A significant merit of Miller's proposal, however, when measured against this alternative, is that it eliminates a crucial problem of this kind of alternative, namely that when it is up to the in-

dividual to decide if he or she identifies with her past, and which aspects of it, there is a lot of room for, as Farid Abdel-Nour puts it, “‘self-love’ to interfere”¹⁹.

The aim of this paper is not, however, to adjudicate between these two accounts, but rather to argue that Miller’s account faces a problem. For this reason I will not explore alternatives to Miller’s account here, but mentioning that they exist does bring out the important point that I make a very limited claim in this section of the paper, namely that Miller’s account of inherited responsibility faces problems arising from the difficulty of rejecting one’s national inheritance (on Miller’s definition of what the national inheritance consists of). I do not make the claim that these specific problems arise for every account of inherited national responsibility.

The challenge of cultural cosmopolitanism?

I stated at the beginning of this paper that I would be taking the existence of national responsibility for granted. The reason for this is that I wanted to concentrate on Miller’s arguments for inherited national responsibility, with the emphasis on the inherited. The discussion has led us to a point, however, where it would be as well to consider one challenge to the idea of national responsibility, because at first sight it is also a challenge to the idea that it is difficult or impossible to reject one’s national inheritance.

Jeremy Waldron argues in his paper ‘Minority Cultures And The Cosmopolitan Alternative’, that an individual’s cultural identity is not, in the modern world, defined by allegiance to one particular culture. Rather, it is made up of lots of allegiances and influences from various different cultures, and one strong version of the cultural cosmopolitan view would be to argue that this is the only type of cultural identity that is possible in the modern world. Put in different terms, this strong view would be that everyone (aside from a few scattered and isolated groups living in rainforests and the like) is, culturally speaking, a world citizen, not the citizen of any specific nation, and that this is the only citizenship that is possible. If this is true, then it seems as though it is not only not difficult or not impossible to reject one’s national inheritance, it is actually impossible not to.

Miller would not concede this view was correct, but even if it was, it seems possible to adapt his argument for inherited responsibility to take the stipulated correctness of strong cultural cosmopolitanism into account. Remember that for Miller, it is standing in a particular relation to the transgenerational community, that of being heirs to previous generations, that justifies being held responsible for the trans-

gressions of previous generations. The cultural cosmopolitan does not deny that culture shapes and benefits individuals, she just denies that this culture is a specific one. Now, even if the strong view is right, what follows is not that individuals do not stand in this relation to any previous generation, rather, that they stand in a particular relation – by virtue of inheriting culture – not the transgenerational national community, but rather the international one. Miller’s arguments therefore can, I think, with some work and modifications, essentially be transposed to the international realm. Indeed, it seems at first sight as though this transposition will immensely widen the range of inherited responsibilities we have. The challenge from cultural cosmopolitanism might,

in other words, lead to a rejection of a national inheritance and responsibility, but it is not necessarily a rejection of Miller’s arguments for inherited responsibility.

Further, and more importantly, the relevant point for the purposes of this paper is the difficulty of rejecting one’s (national) inheritance. Suppose we grant that there is no such thing as a national inheritance, it still remains true that rejecting one’s international cultural inheritance is extremely difficult. Indeed, given the wider range of the inheritance, it is difficult to see how one could escape inheriting it – one has to inherit *something*, after all, when it comes to cultural resources, whether it be language, philosophical beliefs, religious commitments, etc. The central point, therefore, I think still stands: it is either extremely expensive or flat out impossible to reject one’s inheritance, be it national or international.

Finally, my view, which I will not go into at length here, is that the strong version of cultural cosmopolitanism is implausible. There is certainly an important insight that cultural cosmopolitanism points to, namely that we inherit intangible assets from several different places. ‘Hamlet’, or the Pieta of Michelangelo, for instance, are part of the cultural inheritance of people from across the world, not just Britons or Italians, while the teachings of the Buddha, and the long culture of tradition and practice of Buddhism, are not the sole inheritance of current members of the Indian nation; indeed, modern-day India is largely non-Buddhist. But we can acknowledge this without having to deny the importance of a particular cultural identity, or the importance of national ties. Such a denial would, I claim, run contrary to the experience of most of the people in this world, and is therefore not plausible.

Considering one response to the critique of Miller

But in any case, it appears to me that we can leave the two last questions open: that is, the question of whether emigration can amount to a rejection of one’s national inheritance, and the question of whether cultural cosmopolitanism is correct. Even if the answers to both these questions are positive, I think that the nature of my criticism is clear, and that it is still forceful. Rejecting one’s national inheritance²⁰ is, when it is not impossible, generally extremely costly. Given this impossibility/costliness,

Bear in mind that the wonderful things you learn in your schools are the work of many generations. All this is put in your hands as your inheritance in order that you may receive it, honor it, add to it, and one day faithfully hand it on to your children.

/ Albert Einstein /

it is not clear that one can demand of members of a nation that they have to bear these costs if they want to avoid the responsibilities of compensating for injustices perpetrated by their predecessors as members of that nation.

The costliness or impossibility of rejecting one’s national inheritance speaks against the possibility of rejecting it. It does not seem to make sense, given how Miller characterises the national inheritance and how I have characterised the costs of rejecting it, to talk of accepting or rejecting it; how is one to go about, for example, ‘rejecting’ that air has oxygen in it, or that we need oxygen to survive?

There might, however, be a different sense in which one can accept or reject one’s national inheritance. Indeed, Miller seems to point to it when he writes that one has to consistently ‘own’ or ‘disown’ the policies of previous generations. This sense deals with reasons; in the context of national inheritance, what it might mean is the following. Let’s grant that it is impossible or unreasonably costly to escape from one’s national inheritance in the sense I have been talking about so far, i.e. in the sense of no longer benefiting from at least some of the things it comprises. We can, however, still choose whether we are happy with accepting it or not. That is to say, even if I cannot avoid benefiting from the national inheritance associated with being Indian, I can choose to regret this or be accepting of it. If I decide to accept it, perhaps am even proud of it, I can be said to have accepted my national inheritance; and then the claim would be that if I have accepted my national inheritance in this way I become liable to respond to claims for compensation made by people or groups who had injustice perpetrated against them by my predecessors. This might not be unproblematic. For example, a German person could have said in 1960 that she regretted benefiting from the national

inheritance, and on this account she has disowned the policies of her predecessors. A consequence of the view outlined in the previous paragraph is that this somehow lets her off the hook, that she therefore does not have an obligation to respond to claims for compensation made, for example, by the state of Israel. This consequence seems unacceptable, at least to me, because the view doesn't seem to capture one of our important intuitions about responsibility, namely that it can be the case that it doesn't matter what we accept or regret or choose, we can still be held responsible. This is a point that has been made several times in the context of individuals. I may not choose, for example, the circumstance of being by a pond while a child is drowning in it, but I can still be held responsible for not attempting to save her²¹.

These considerations have led us to two important and conflicting intuitions about responsibility. The first is the intuition that free agency, or free rational choice, is an essential component of any account of responsibility, the second is the idea that, to quote Miller, 'my responsibilities are thrust on me by my circumstances, but they do not cease to be my re-

Today, more than ever before, life must be characterized by a sense of universal responsibility, not only nation to nation and human to human, but also human to other forms of life.

/ Dalai Lama quotes /

sponsibilities because of that²².

To sum up the discussion so far, I think Miller's argument for historical responsibility in the third type of case leads to a predicament. To put the point in Miller's terms, on one plausible reading of what it means to accept one's national inheritance, it does not seem to make sense to say that members of a nation want to claim their national inheritance (which it must do if it is to be held responsible for various injustices committed by its predecessors) – they just have it, and therefore it does not seem to be plausible to base an account of the legitimacy of historical responsibility on the idea that one can choose to claim one's national inheritance in its totality (i.e. that in choosing to claim the benefits one also chooses to claim the responsibilities). So we move to the other reading, the sense in which claiming one's national inheritance involves something like having independent persuasive reasons to accept it or affirming that one doesn't regret having it, but then the problem is that on this reading we seem to stray too far from the intuition that it doesn't even matter if one wants to claim it or not, one can still be held responsible for it²³.

Conclusion

This paper has been focused on David Miller's account of historical responsibility, and even more specifically, on his account of historic responsibility in one specific type of situation. This is the situation characterised by what Miller describes as 'claims based on the idea of a compensable historic wrong'²⁴; cases, that is, where 'acts of injustice occurred which harmed their victims in one way or other (without necessarily benefiting the perpetrators or their descendants), and which can be compensated for, at least in part, by money payments or other forms of material compensation either to the victims themselves or their descendants'²⁵. I further sharpened this case, by considering a hypothetical situation such as the one above but with the further stipulation that it was one in which the perpetrators and their descendants did not benefit from the acts of injustice. Finally, I also stipulated, for obvious reasons, that in the type of case I was considering we would be talking about the descendants of the victims and the perpetrators.

As I have outlined earlier, Miller argues that claims for compensation can be valid in this type of case, because 'even where there is no unjust enrichment, a nation that wants to claim the advantages created by previous generations must also accept a responsibility to offer redress for the injustices they affected'²⁶. More generally speaking, the idea is that if you want to claim the national inheritance, you have to claim all of it.

I have tried to argue in this paper that this account of historical responsibility runs into either the problem of making it intelligible that a nation can be said to 'accept' its national inheritance, or of doing violence to our intuition that in some circumstances it doesn't matter in terms of responsibility whether we have accepted them (i.e. our circumstances) or not. Consequently, my claim is that Miller's account is, as it stands, unsuccessful in justifying the existence of historical responsibility in the specific type of situation I have picked out.

Notes:

* I would like to thank four anonymous reviewers and David Miller for their comments. I would also like to extend special thanks to Nora Kreft and Lukas Meyer.

(1) This would be an ingenious explanation of the centuries of sexist discrimination that the descendants of Eve have subsequently suffered.

(2) Waldron 1993: 4-28; Waldron 2002: 135-160 and Sher 1997.

(3) Miller 2008: 137.

(4) Ibid: 138.

(5) Ibid.

(6) Ibid.

(7) Ibid: 150.

(8) Ibid.

(9) Ibid.

(10) Ibid: 151.

(11) Ibid: 150.

(12) Ibid: 152.

(13) Ibid: 155-156.

(14) Ibid.

(15) I.e. as heirs.

(16) Miller 2008: 156.

(17) I recognise that this is sometimes a benefit of, and even a reason for, emigration. But it would be wrong to not simultaneously recognise that it is also often a serious cost.

(18) A view of this kind can be found in Abdel-Nour 2003: 693-719. I thank an anonymous reviewer for alerting me to this.

(19) Abdel-Nour 2003: 710.

(20) I will continue to write 'national' inheritance for the sake of convenience, and terminological coherence with the earlier part of this paper.

(21) It has also been made about groups, for example by Held 1991.

(22) Miller 2008: 121. Miller makes this claim in his discussion of national responsibility, where he rejects the claim that as people have not chosen to be in their historical situation they cannot be held responsible for things deriving from it. However, he seems to make the opposite claim in his discussion on the historical responsibility immigrant groups might have, where he rejects the analogy between an immigrant entering a nation and an individual joining a business partnership, on the grounds that often immigration is not a matter of choice, and further that at any rate the descendants of immigrants cannot be said to have given their consent to joining the nation. It seems here he is trading on the intuition about the importance of free consent to an account of responsibility, while earlier he rejects its significance.

(23) This difficulty has been brought out for the type of claim that takes place where no one has unjustly benefited, but I think it can be extended to any benefit-based argument for historical responsibility.

(24) Miller 2008: 139.

(25) Miller 2008: 139.

(26) Miller 2008: 155-156.

References:

Abdel-Nour, Farid (2003): National responsibility. In: *Political Theory* 31, 693-719.

Held, Virginia (1991): Can a Random Collection of Individuals be held Morally Responsible. In: May, Larry / Hoffman, Stacy (eds.): *Collective Responsibility*. Savage, MD: Rowman and Littlefield.

Sher, George (1997): Ancient Wrongs and Modern Rights. In: Sher, George (ed.): *Approximate Justice: Studies in Non-Ideal Theory*. Lanham, Oxford: Rowman and Littlefield.

Miller, David (2008): *National Responsibility and Global Justice*. Oxford: Oxford University Press.

Waldron, Jeremy (2002): Redressing Historic Injustice. In: *University of Toronto Law Journal* 52, 135-60.

Waldron, Jeremy (1992): Superseding Historic Injustice. In: *Ethics* 103 (1), 4-28.

Submitted: 04.08.2008

Revised version accepted: 02.12.2008



Pranay Sanklecha is studying for a masters in political philosophy at the University of Bern, Switzerland. His major research interests are in individual and collective responsibility, especially in collective action situations, ideal and non-ideal theory, and justice and legitimacy in global contexts.

Contact details: E-mail: pranay.sanklecha@students.unibe.ch



Dear Reader, Your opinion matters!

We want to improve the Intergenerational Justice Review with your input. Send us your comments to:

IGJR-Editors
Postfach 5115
61422 Oberursel
GERMANY
Phone +49 6171 982 367
Fax +49 6171 952 566
E-Mail: editors@igjr.org

Please tell us of any friends to whom we can send one trial issue free of cost.

Indigenous minorities' claims to land

by Daniel Weyermann

Abstract: *Claims of indigenous minorities to land are a significant political issue in many parts of the world. These claims, though, are contested, be it in theoretical, political or legal terms. I consider a position, put forward by Jeremy Waldron, that asserts some theoretical reservations towards indigenous minorities' claims to reparations and land. Waldron seems to assume that indigeneity is no important factor regarding land claims and reparative issues. I propose a rivalling account of indigenous land claims, based on the idea of self-determination. Self-determination itself can be understood in two different ways, it can either be conceived as a form of political autonomy or sovereignty, or it can be understood as having pre-political property rights.**

Introduction

Political issues regarding indigenous or national minorities are arguably amongst the most burning ethno-political concerns throughout the world. The history of slavery, colonialism and imperialism, the emergence of nation states and power politics had fatal consequences for many cultural groups in every part of the world. As Lars-Anders Baer, president of the Saami parliament in Sweden, indicates indigenous minorities have for a long time been “the wretched of the earth”¹ when it came to ethno-cultural or economic justice. Things may have changed, at least to some degree, during the last years.² In international law at least indigenous minorities have, after decades of struggle, gained recognition and a juridical basis to make their interests heard.³ Issues regarding indigenous minorities, apart from concrete legal and political considerati-

ons, also raise interesting philosophical questions. In this essay, I would like to scrutinise one of them. I will, most generally, be interested in indigenous minorities' claims to land, i.e. claims to their traditional territory of settlement. Through the history of colonialism and imperialism, different groups that we today refer to as indigenous peoples, aborigines, first nations etc, lost their traditional homelands to the new settlers. Throughout the world—or at least where the interests of indigenous minorities are not completely denied or ignored—claims to regain rights to this land seem to be at the heart of indigenous peoples' political struggles.

One of the main aims of this essay is to scrutinise what is at stake when we speak about indigenous land claims. Put differently, the main question is: how should we understand indigenous claims to land? In a first step, I will sketch a recently presented position by Jeremy Waldron that takes indigenous land claims to be fundamentally problematic. They are, Waldron holds, confronted with some grave theoretical flaws. In a second step, I will then outline an alternative account on indigenous land claims, drawing on the axiomatic idea of self-determination. I will thus outline a possible understanding of indigenous land claims on other grounds than the ones presented by Waldron. Thus, I will propose a possible interpretation of what rationale might underlie indigenous land claims. I argue that by claiming land, what is actually aspired is self-determination in

the broadest sense. Self-determination itself can be understood in two different ways, it can either be conceived as a form of political autonomy or sovereignty, or it can be understood as having pre-political property rights. Self-determination in the first sense means amplified political influence, self-government and autonomy. Ownership over a certain piece of land does not convey any such political recognition. It just includes rights to use, management etc. Thus in its second sense, self-determination is reached by pre- or extra-political ownership rights in the land. In my definition, political rights can be granted independent of ownership rights, just as ownership rights can be granted independent of any political rights. We can, now, interpret some indigenous land

Land: A part of the earth's surface, considered as property. The theory that land is property subject to private ownership and control is the foundation of modern society, and is eminently worthy of the superstructure.

/ Ambrose Bierce /

claims as claims to the ownership of land. Ownership of the claimed land might confer self-determination independent of any political status.⁴ This interpretation, then, might also be important in more general discussions on reparative justice—not just regarding land claims. The account presented might help to understand what the (political and economic) injustice committed against indigenous peoples consisted in.

How to understand indigenous land claims?
One point of access to the understanding of