

Insufficiently liberal and insufficiently nationalist

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On Nationality is a lucid, unpretentious and level-headed attempt to explore and defend nationality and nationalism. David Miller's values are those of European social democracy, known as liberalism in the USA; his methods are those of contemporary analytical philosophy, known ethnically as Anglo-American. *On Nationality* defends the principle of nationality against liberal cosmopolitan critics, but in a liberal manner. It is the most detailed, probing and sensitive of a sudden outpouring of works in a similar vein (e.g. Lind 1994; Margalit and Raz 1990; Tamir 1993).¹ It is, in Tina Turner's phrase, 'simply the best' of them. That does not mean, however, that Miller's arguments should be accepted as either definitive or true. Miller has nevertheless successfully set an agenda for discussion of nations and nationalism amongst ethicists and political philosophers, whose comparative contributions to these domains have lagged behind those of historical sociologists, political scientists and public international lawyers.

This short note takes issue with Miller's defence of national self-determination, but from a position that Marxists used to call one of 'critical support'. Miller's defence of national self-determination is insufficiently liberal, and indeed insufficiently nationalist. Nevertheless, Miller's position can be restructured, without too much difficulty, for those who would like to defend a liberal right of national self-determination.

Miller's case for a 'good claim' to national self-determination

Miller argues that as far as possible each nation should have its own set of political institutions which allow it to decide collectively those matters that are the primary concern of its members. Miller does not want, however, to defend a *right* to national self-determination, because 'it devalues the currency of rights to announce rights which in their nature are sometimes incapable of fulfilment; and ... this applies to the alleged right of national self-determination' (Miller 1995: 80), merely a good claim.

The good claim rests on several premises, nationalist and statist. The first is historical and nationalist: *ceteris paribus* an independent state is likely to provide the best means for a nation to fulfil its claim to national self-determination (p. 81). The second premise is nationalist and social welfarist. Having state boundaries coincide with those of nationality makes social justice more likely (pp. 82–5). Nation-states are communities of obligation, and work better as political units of duty-assignment and duty-enforcement than units in which sovereignty is subnational or supranational. Non-national political

systems are less likely to have workable methods for distributing social justice.² The third premise is cultural nationalist. National self-determination makes more likely the successful protection of the national culture (Margalit and Raz 1990). Miller grants that nations may attribute to themselves greater homogeneity than their members in fact display, but questions Mill's idea that what people need is access to a rich culture rather than their own. National cultures may be constitutive of personal identity, and if they are destroyed the consequences are painful for individuals. Moreover, he reasons that the defence of national culture may require state protection, e.g. the character of TV and film productions. (Anyone who has compared Canadian and American news programmes will sympathise with his case.)³ National cultures are public goods, not because they could not exist without state regulation, but rather because they could be undersupplied, and indeed could progressively become exponentially undersupplied. The fourth premise is democratic and nationalist. National self-determination facilitates the expression of collective autonomy. If people have an interest in shaping the world in association with others with whom they identify – an appeal that must be made with some care – the state must in some sense correspond with the popular will, i.e. be democratic in form. Miller correctly observes that the 'historical association between ideas of democracy and ideas of national self-determination is hardly accidental' (p. 89) – though he says that it would be too strong to say that national self-determination strictly requires democracy.⁴

The statist premises for national self-determination are threefold in Miller's brief. All assume that there are instrumental benefits which flow from the homogenising impact of nation-states. The first is the benefit from the creation of diffuse *trust*. Nation-states create a culture of trust which underpins the functioning of a range of other institutions.⁵ The second is that states which aim to be welfare states and to win democratic legitimation work better if they are nation-states. The third is that states which wish to practise deliberative democracy will benefit from a common sentiment of nationality – one that can coexist with linguistic and other cultural heterogeneity.

Having made the case for a good claim to national self-determination Miller throughout the book qualifies it in multiple ways. He confines the good claim to nationalities, defined as he defines them. Ethnic groups, disgruntled clan-families and others have no recourse to the claim of self-determination (p. 112). He objects to the claim being used as a *right*, especially as central component of a *right* of secession, either in ethical argument or in public international law (p. 80, *passim*). Small nationalities must be 'viable' and militarily non-threatening to their ex-partners before they are entitled to express their national self-determination (pp. 114–15). Where there are two or more nationalities, and where the prospective secessionists cannot secede from the existing state to create their own without creating endangered minorities, Miller appears, on balance, to favour the preservation of the existing bi- or multi-national state (p. 113), albeit in a federal format in some cases.⁶ In short, the radical liberal

nationalism of the opening chapters is calmed by considerations that might appear music to the ears of those who preside over contestable and indeed indefensible sovereign boundaries.

Why not defend a more liberal and nationalist right to NS-D?

The qualifications that Miller places on his own case for national self-determination are unnecessarily conservative. They are somewhat illiberal and anti-nationalist in character; and indeed they are anti-rightist in the wrong manner.

The case for being right-on. Miller's argument against a right of national self-determination, as opposed to a claim, rests on the thesis that 'it devalues the currency of rights to announce rights which in their nature are sometimes incapable of fulfilment', and on the additional argument that such a right does not tell us what to do when rights of national self-determination conflict. This gambit can be met by two replies. The first is that the same claim could be made about all rights: no meaningful rights are capable of complete 'fulfilment', if that noun signals unproblematic operationalisation, protection and expression. The European Convention on Human Rights has not been well respected by the UK, especially not in Northern Ireland, but it would be surprising if Miller considered it merely a set of good claims. The United Nations, a club of states in which many if not most of its members suppress nationalities, may not be the most likely vehicle to protect the right of nations to self-determination, but the fact that it recognises the right, albeit in qualified, contradictory and incoherent ways, leaves open the prospect of growth in respect for the right, and for sensible adjudication of its implications. The *International Covenant on Civil and Political Rights* (ICCPR) opens thus: 'All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.'⁷ The jurisprudence of the ICCPR remains underdeveloped, though it has undoubtedly influenced the potentially far-reaching *Draft Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities* (1992). The right embedded in article 1(1) of the ICCPR, despite its various (multiple and open) interpretations, should not only be protected from Miller's scepticism, but also by some of his own arguments. For example, it is a good liberal principle that the 'right of conquest' be rejected; the corollary must be that the right of government, including its territorial boundaries, must rest upon consent. It follows, for example, that an indigenous people should have the ethical right (and legal right in international law) to withhold its consent until it has a satisfactory form of government (and boundaries).

The second reply is that because rights may conflict is not a knock-down argument against their legal expression, protection and enforcement. Where

legal rights clash democratic and judicial arguments and processes may resolve (if only temporarily, provisionally, or particularistically) the issues at stake. Alternatively, a transcending operative principle of a liberal kind may resolve the clash, to wit: each party is entitled to exercise its right subject to, and to the extent that, the same right is equally available to others. In the case of nationalities and national self-determination many kinds of clashes of rights might and do occur: e.g. nations or sub-sets of nations that are intermingled may have competing claims to self-determination, or the right of one party to national-self-determination may clash with the right of territorial integrity sought by another. It is here that we should expect political philosophers, especially of a liberal disposition, to make their most important contributions, assessing which arguments should have weight when rights clash, but Miller disappoints expectations by not following through the logic to which he appears to be committed.

Against illiberal statism. A liberal nationalist should want to let nations be free and liberal, provided they let other nations be free and liberal. A liberal nationalist should start, as Miller does, from the premise that there is a great deal to be said for each nation having the right of self-determination, including the right of sovereign statehood, provided that each nation grants the same right to others. But what happens in Miller's argument is that he effectively grants to existing states, not nations – despite his careful attempts to distinguish them – the right to determine which groups are nationalities, and which ones should be free to exercise self-determination.

The proof of this statist bias can be found in Miller's reflections on viability and the size of states. A liberal nationalist must, however, object that the definition of what constitutes a viable entity must be for the relevant nation to determine.⁸ It is a liberal maxim that freedom includes the freedom to err. Any people which discovers that it cannot manage the basic responsibilities of sovereign statehood will, in due course, have to look for a state willing to accept it, as happened to the dominion of Newfoundland before its people's decision to join Canada in 1949, or else to protect it, as with the micro-states of Western Europe. Equally it is illiberal for an existing state to be granted a veto on national self-determination for peoples who are not part of the *Staatsvolk*, or on secession by a territorially compact minority, solely because it judges the relevant territory (if not its preponderant people) essential to its military security. No liberal should accept that just because Irish naval bases were seen by British admirals to be essential to the UK's security that the British state therefore had the right to veto Ireland's secession from the Union, or to limit its sovereignty. Had Miller followed his own premises more consistently he might have developed a more liberal and nationalist principle of national self-determination. Since his text often reads like a preparatory brief for a future UN Court hearing it is a shame that his arguments ultimately fall short of a truly liberal nationalist jurisprudence, and in effect kow-tow to the 'powers that be'.

What follows is the merest sketch of what may be a better liberal nationalist case, and yet be consistent with Miller's own premises. First, any group should have a *prima-facie* right to claim national self-determination. This presumption need not immediately usher in Balkan nightmares or the comic vistas of the old movie *Passport to Pimlico*. A jurisprudence could develop requiring a group and its leaders to meet certain conditions of representativeness and proofs of national identity for its claim to be taken seriously in international and domestic law. Second, where the exercise of the right of national self-determination in the form of secession would clash with the interests of minorities certain procedural safeguards can reasonably be insisted upon by liberals, including as a necessary condition provisions for the protection of collective minority rights, as well as individual rights. Miller is correct to insist that consent is 'not merely to count heads' (p. 112), but surely head-counting must be part, but not the only part, of evaluating national self-determination claims – otherwise his position must often end in support for what may be an unjust status quo. Third, the phenomena of enclaves, disputed borderlands, territories with intermingled populations, and of complex bi- or multinational states, should be approached with the liberal nationalist principle of reciprocal national self-determination: each group has a right to national self-determination but its exercise must be dependent upon the grant of the same right to relevant others. This principle, for example, puts a prudential check on would-be secessionists – they would have to grant the right of secession to regions within their proposed new state, though these regions, in turn, would have to grant the same right to those within their lands. In such circumstances, where no group has a reasonable claim to unchallenged territorial sovereignty, and where domino-secessions and chaos seem possible, a simple liberal and nationalist logic cannot operate. People must, however, have the (collective) right of exit, and the (collective) right of voice, and not simply be required to be loyal. It would follow, I believe, that in circumstances where reasonable and rival claims to national self-determination clash, the relevant nationalities must be granted a right to co-sovereignty (shared voice) if they choose not to exercise their right to exit, and moreover, that if they were not granted access to co-sovereignty their right to secession would be defensible.

The principle of co-sovereignty within multinational states and across disputed territories (often disparagingly known as *irredentas*) would allow for three possible political systems, each of a recognisably liberal democratic character, and each capable of sensitive permutations in design:

- (a) *federations and confederations*, appropriate where there is a significant degree of spatial separation between the relevant nationalities (O'Leary and McGarry 1995);
- (b) *consociations*, appropriate where there are significantly spatially intermingled peoples (Lijphart 1977);

- (c) *systems of joint sovereignty* by nation-states in regions where their respective co-nationals are intermingled with other nationalities (for an application to Northern Ireland see O'Leary *et al.* 1993)

In addition, when and where states fail to grant co-sovereignty or secession to groups with reasonable national-self-determination claims, but instead oppress hostage nationalities, then a liberal nationalist philosophy must endorse international intervention (by states which respect national self-determination) to redress such wrongs. The modes of intervention, naturally, would have to be tempered by considerations of feasibility as well as justice⁹ – it is very odd that Miller appears to end up with such a weak view of the right of international intervention against states which manifestly do not respect liberal and nationalist principles. The point is that a consistent liberal nationalist world-view would endorse external interventions not only to prevent genocide and ethnic cleansing, but to encourage systems of co-sovereignty and, where unavoidable, to encourage just secessions. In short, the principles of liberal nationalism still have disturbing and possibly revolutionary implications for many of the world's states.

The purpose of this sketch is not merely provocative. It is to suggest that it is possible to bridge the works of liberal political philosophers, exemplified by Miller, with those of political scientists engaged in the study of national and ethnic conflict-regulation (e.g. Horowitz 1985; Lijphart 1977, 1979, 1984, 1989, 1990; McGarry and O'Leary 1993; Smooha and Hanf 1992), as well as the international relations literature on interventions in ethno-national conflicts (e.g. Bauwens and Reyhler 1994; Beitz 1980; Bercovitch 1985, 1991; Beres 1984; Drüke 1994; Durch 1993, Gurr 1993; Halperin, Scheffer and Small 1992; Heraclides 1992a, 1992b; Higgins 1994; Hoffman 1992; Vayrhynen 1987). Scholars of nations and nationalism will be indebted to David Miller for opening up these fruitful lines of inquiry, even though his own arguments are questionable on his own liberal and nationalist premises.

Notes

1 One well-written and concise book, published after *On Nationality*, investigates the same themes as Miller, but forswears the ambition to defend liberal nationalism (Canovan 1996).

2 This argument, naturally, will be received by economic individualists as a debit entry for liberal nationalism, especially by those who follow Hayek in regarding social justice as a myth. As Miller observes 'socialists should be more strongly committed than classical liberals to the nation-state' (1995: 91–2, n. 14). On Miller's logic it is a bizarre irony of contemporary British politics that its nominal social democrats favour weakening the British nation-state in favour of the European Union, while its hard-line economic liberals defend the nation-state against European federalism.

3 Miller's assertion that Canada 'has managed to hold an internal balance between French and English culture, but apparently at the cost of allowing a dominant American culture to pervade

both' is contestable (1995: 88). The 'internal balance' is doubtful, as is the assumption that American culture now pervades the two solitudes -- *inter alia* the urban and rural landscapes of the relevant regions tell heavily against Miller's casual assumption.

4 Miller cites Plamenatz (1960), and summarises Plamenatz's case in the context of the European colonies as follows: 'it was not absurd for people to expect that they would have a greater sense of control over their destinies when ruled by local oligarchies than when ruled by imperial powers, even if in many cases these expectations have been frustrated' (Miller 1995: 90).

5 No comparative evidence is cited -- Miller cites Barry (1983) in support, but Barry also fails to supply empirical evidence. The argument must, in any case, be relative. No one would claim that Italian nationality is associated with a high level of diffuse trust. The Millerian claim must be that without Italian nationality the trust index in the Italian peninsula would register at a lower level.

6 Except notably in the cases of the United Kingdom, which Miller does not see as ripe for internal federalisation, or of Czechoslovakia, the break-up of which Miller endorses even though this dissolution was not authentically legitimated by the respective peoples (Innes 1996).

7 Adopted December 1966, entered into force January 1976. This article is also common to the *International Covenant on Economic, Social and Cultural Rights*.

8 Miller makes this point against Harry Beran (Miller 1995: 114, n. 114), but its force applies to him.

9 An ambitious attempt to develop neo-Wilsonian principles of intervention to protect valid national self-determination movements can be found in Halperin, Scheffer and Small (1992).

References

- Barry, Brian. 1983. 'Self-government revisited', in David Miller and Larry Siedentop (eds.), *The Nature of Political Theory*. Oxford: Clarendon Press.
- Bauwens, W. and Reyckler, L. (eds.) 1994. *The Art of Conflict Prevention*. Brassey's Atlantic Commentaries No 7. London: Brassey's.
- Beitz, Charles. 1980. 'Nonintervention and communal integrity', *Philosophy and Public Affairs* (Summer): 385-91.
- Bercovitch, J. 1985. 'Third parties in conflict management: the structure and conditions of effective mediation in international relations', *International Journal* 40, 4.
- Bercovitch, J. 1991. 'International mediation', *Journal of Peace Research* 28, 1.
- Beres, L. R. 1984. 'Reason and *Realpolitik*: international law and the prevention of genocide', in I. W. Charney (ed.), *Understanding and Prevention of Genocide*. London: Westview Press.
- Canovan, Margaret. 1996. *Nationhood and Political Theory*. Cheltenham: Edward Elgar.
- Drüke, Luise. 1994. 'The United Nations in conflict prevention', in W. Bauwens and L. Reyckler (eds.), *The Art of Conflict Prevention*, 22-71. London: Brassey's.
- Durch, William J. (ed.) 1993. *The Evolution of United Nations Peacekeeping: Case Studies and Comparative Analyses*. New York: St Martin's Press.
- Gurr, Ted Robert. 1993. *Minorities at Risk: A Global View of Ethnopolitical Conflicts*. Washington, DC: United States Institute of Peace Press.
- Halperin, Morton, Scheffer, David and Small, Patricia. 1992. *Self-Determination in the New World Order*. Washington DC: Carnegie Endowment for International Peace.
- Heraclides, Alexis. 1992a. 'Secession, self-determination and nonintervention: in quest of a normative symbiosis', *Journal of International Affairs* 45, 2: 399-420.
- Heraclides, Alexis. 1992b. *The Self-Determination of Minorities in International Politics*. London: Frank Cass.
- Higgins, Rosalyn. 1994. *Problems and Progress: International Law and How We Use It*. Oxford: Clarendon Press.
- Hoffman, Mark. 1992. 'Third-party mediation and conflict-resolution in the post-Cold War world', in J. Bayliss and N. Rengger (eds.), *Dilemmas in World Politics: International Issues in a Changing World*, 261-86. Oxford: Oxford University Press.
- Horowitz, Donald. 1985. *Ethnic Groups in Conflict*. Berkeley: University of California Press.
- Innes, Abigail. 1996. 'The break-up of Czechoslovakia'. Ph.D. in progress. London School of Economics.
- Lijphart, Arend. 1977. *Democracy in Plural Societies: A Comparative Exploration*. New Haven and London: Yale University Press.
- Lijphart, Arend. 1979. 'Consociation and federation: conceptual and empirical links', *Canadian Journal of Political Science* 12, 3: 495-515.
- Lijphart, Arend. 1984. *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries*. New Haven: Yale University Press.
- Lijphart, Arend. 1989. 'The power-sharing approach', in Joseph P. Montville (ed.), *Conflict and Peacemaking in Multiethnic Societies*. Lexington, MA: Lexington Books.
- Lijphart, Arend. 1990. 'Democratic political systems: types, cases, causes and consequences', *Journal of Theoretical Politics* 1, 1.
- Lind, Michael. 1994. 'In defence of liberal nationalism', *Foreign Affairs* 73, 3: 87-99.
- McGarry, John and O'Leary, Brendan. (eds.) 1993. *The Politics of Ethnic Conflict Regulation: Case Studies of Protracted Ethnic Conflicts*. London and New York: Routledge.
- Margalit, Avishai and Raz, Joseph. 1990. 'National self-determination', *Journal of Philosophy* 87, 9: 439-61.
- Miller, David. 1995. *On Nationality*. Oxford: Oxford University Press.
- O'Leary, Brendan and McGarry, John. 1995. 'Regulating nations and ethnic communities', in Albert Breton, Jean-Luigi Galeotti, Pierre Salmon and Ron Wintrobe (eds.), *Nationalism and Rationality*, 245-90. Cambridge: Cambridge University Press.
- O'Leary, Brendan, Lyne, Tom, Marshall, Jim and Rowthorn, Bob. 1993. *Northern Ireland: Sharing Authority*. London: Institute of Public Policy Research.
- Palmenatz, John P. 1960. *On Alien Rule and Self-Government*. London: Longmans.
- Smootha, Sammy and Hanf, Theodor. 1992. 'The diverse modes of conflict-regulation in deeply divided societies', *International Journal of Comparative Sociology* 33, 1-2: 26-47.
- Tamir, Yael. 1993. *Liberal Nationalism*. Princeton: Princeton University Press.
- Vayrhynen, Raimo. 1987. 'Third parties in the resolution of regional conflicts', *Bulletin of Peace Proposals* 18, 3: 293-308.