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Beyond Sectarianism? On David Miller's Theory of Human Rights

Abstract: In his most recent book, *National Responsibility and Global Justice*, David Miller presents an account of human rights grounded on the idea of basic human needs. Miller argues that his account can overcome what he regards as a central problem for human rights theory: the need to provide a 'non-sectarian' justification for human rights, one that does not rely on reasons that people from non-liberal societies should find objectionable. The list of human rights that Miller's account generates is, however, minimal when compared to those found in human rights documents, such as the Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights (ECHR). This article argues that contrary to what Miller claims, his account is 'sectarian', since it relies on reasons that some non-liberals should find objectionable given their divergent values. It goes on to question whether 'sectarianism', as Miller defines it, is, in any case, a problem for human rights theory. The article concludes that Miller provides us with no reason to abandon commitment to a more extensive list of human rights.

One of the most interesting aspects of David Miller's most recent book *National Responsibility and Global Justice* is his account of human rights. Against liberal accounts of human rights, Miller argues that human rights requires a justification that is 'non-sectarian' in the sense that it does not rely on reasons that people from non-liberal societies should find objectionable given their divergent values (p. 200).¹ Unlike other accounts that have sought to address the same concern, Miller does not justify human rights on the basis of actual political agreements or in reference to a supposed overlapping consensus amongst various ethical traditions, but instead on the idea of basic human needs.² A needs-based theory, Miller contends, is 'valid across the different religious, moral and political cultures that we find in the contemporary world' (pp. 164-164). It is thus capable of overcoming the 'sectarianism' problem. The human rights that Miller's theory generates, however, form a minimal list compared to those found in human rights documents, such as the Universal Declaration of Human Rights (UDHR) and the European Convention on Human Rights (ECHR) (pp. 167-168).

¹ This and all subsequent references to Miller are to *National Responsibility and Global Justice*. For the kind of liberal account that Miller opposes see (Griffin 2008).

² For a justification of human rights based on actual political agreements see (Beitz 2006). For accounts which claim to find an overlapping consensus amongst various ethical traditions see (Taylor 1999; Walzer 1994). Ironically Miller rejects these alternative accounts for either being implicitly 'sectarian' or for failing to support important human rights (pp168-178): two charges I shall make against Miller's own account.

In short, Miller makes two claims: (1) that 'sectarianism' is a central problem for human rights theory and (2) that his needs-based theory can solve this problem. This article refutes the second claim and queries the first. It argues that Miller's theory does not provide a justification that is 'non-sectarian' since it relies on reasons that some non-liberals should find objectionable given their divergent values. It also shows that Miller fails to provide a convincing argument for why one cannot rely on reasons others should find objectionable when formulating a theory of human rights. Since Miller neither solves the problem nor demonstrates why there is any such problem to be solved, he gives us no reason to suspend our commitment to a more extensive list of human rights.

The first section sets out Miller's theory of human rights. The second section notes its radical implications. The third section shows that Miller's theory is 'sectarian' since it relies on reasons that some should find objectionable given their divergent values. The fourth section assesses the extent to which 'sectarianism' is really a problem for human rights theory. It finds Miller's reasons for believing it is a problem unpersuasive, and considers, briefly, an alternative argument.

The Theory

Miller begins his account of human rights by establishing what he deems to be their role within international normative theory. Unlike John Rawls, Miller does not believe that the role of human rights is to mark the limits of legitimate state autonomy (pp. 79-80), nor, as others might argue, to act as goals to which people should aspire. Instead Miller regards human rights as the means by which people in one society make demands on those in other societies. Human rights 'specify a global minimum that

people everywhere are entitled to as a matter of justice' and are therefore capable of generating 'remedial responsibilities in outsiders' (pp. 166-168).

It is because human rights are capable of generating remedial responsibilities in outsiders that Miller argues they must not be sectarian. According to Miller, one can only justify the demands one makes on someone if the justification one offers them is one they should accept given the values they already hold (pp. 165, n. 3). A theory of human rights that refers to values held only by people in one type of society cannot justify the demands it makes on those in other societies. To be successful, a theory of human rights must provide everyone with reason to accept it, no matter which society they are from (p. 165).

Having presented the problem that he thinks faces human rights theory, Miller sets out to solve it. The solution he develops centres on the idea of 'basic human needs'. The type of needs Miller has in mind includes both biological needs (for food, health, shelter etc.) and social needs, e.g. for work and education. Miller defines this category of needs as the 'conditions for a decent human life in *any* society' (p. 181). Since Miller thinks that everyone can agree that people should be able to lead decent lives, he thinks a theory of human rights, grounded on the idea of basic human needs, should prove universally acceptable (pp. 199-200).

In presenting this account Miller acknowledges a problem it faces: how is it possible to define what a decent life is without relying on a conception of decency that is distinctive to any particular society? One approach Miller considers to address this problem is what he terms the 'intersection approach' under which one recognises as basic human needs only those things that every society regards as conditions for a decent life.

While Miller thinks this approach would avoid the problem of 'sectarianism', he also thinks it would allow the definition of what counts as a basic human need to be unacceptably restricted by ill-informed beliefs about the conditions for a decent life. Miller thus rejects the intersection approach for 'a more objective approach', one that regards someone as leading a decent life if they are able to engage in 'core human activities', such as working, playing, learning, and raising families: activities that, Miller claims, are reiterated across cultures. From this definition, of a decent life Miller believes we can derive a list of basic human needs and from that list of basic human needs, our list of genuine human rights (pp. 183-184).

Miller's theory cannot support many of the human rights included in international human rights documents: a point Miller himself makes clear. Amongst the human rights that Miller rejects are the human right to an equal share in democratic governance, the human right to an equal degree of religious freedom and even the human right to free religious practice. While Miller rejects these rights as human rights, he thinks they may form part of a longer list of 'citizenship rights', held by people in liberal societies. Citizenship rights, as Miller defines them, are rights which only entail duties upon compatriots and can thus be justified with reference to non-universal (in this case liberal) values (pp. 195-197).

The Implications of the Theory

Before critiquing Miller's theory it is worth stressing the extent to which it departs from conventional accounts of human rights. Consider Miller's treatment of the human right to freedom of religion. When he examines this freedom Miller is impressed by the

fact that there are some societies in which 'religion is a marginal phenomenon, actively discouraged by the state' and other societies where 'there is a strong social norm that everyone should adhere to the same religion' (p. 195). Since this is so, Miller is reluctant to grant religious minorities many of the human rights they claim in protection of their faith. In an effort to avoid 'sectarianism', Miller offers an extremely narrow definition of the human right to freedom of religion as 'essentially a right not to be forced to adopt religious practices or espouse religious beliefs that you do not yourself endorse' (p. 196). This claim is startling: it means that a state could suppress all religious practice within its territory and still not violate the human right to freedom of religion, just so long as it refrained from taking the additional step of forcing people to adopt a particular religion. Such a conception puts Miller at odds not only with the UDHR and other international human rights documents but even Rawls, whose list of human rights is considered austere by the standards of many. Unlike Miller, Rawls insists 'that no religion be persecuted, or denied civic and social conditions permitting its practice' (p. 74).

Miller seems aware that some people will find his minimal conception of the human right to freedom of religion troubling. He points out that '[i]n liberal societies, a more extensive right to religious freedom is likely to be recognised ... reflecting the very strong commitment in the public culture of these societies to personal autonomy and equality' (p. 196). But this response should not satisfy Miller's objectors. Those that wish to defend free religious practice are typically concerned not only that the freedom is upheld in liberal societies but also in non-liberal societies. Indeed, it is precisely when religion is 'actively discouraged by the state' or when there is a 'strong social norm'

pressuring people to adhere to one religion, that the right to practice one's religion seems most important.

Even if the implications of Miller's theory are radical, these implications would have to be accepted were his argument for it successful. Fortunately for conventional accounts of human rights, Miller's argument fails.

Why the Theory is 'Sectarian'

Miller's argument fails by Miller's own standard for it relies on reasons that others should find objectionable given their divergent values. This fact is evident at two points in Miller's text. The first is when he rejects the intersection approach for defining basic human needs. The intersection approach, one will recall, defines as basic human needs only those things that every society regards as conditions for a decent life. Against the intersection approach, Miller opts for a 'more objective approach', one which defines a decent life as the ability to engage in 'core human activities' as Miller defines them. Miller's list of core human activities is constructed without recourse to the views of actual societies and, as he himself admits, there will be some societies that do not recognise all the activities he lists as necessary for a decent life. This seems to invite the charge of 'sectarianism', so why does Miller reject the intersection approach?

The problem with the intersection approach, Miller claims:

[I]s that it makes the definition of basic need hostage to what in some cases may be ill-informed beliefs about the conditions for a decent life. This is especially so when what are at stake are the needs of women. Members of some communities, including females members, may believe that women can have a decent life in the absence of certain conditions – access to contraception, or the opportunity to take paid work, for instance – whereas it can be

shown, empirically, that women who lack these things do not in general have adequate lives, even within the societies where the beliefs prevail (pp. 183-184).

Miller's wording – 'ill-informed', 'empirically' – is critical. By using these terms, Miller suggests that those who disagree with his objective conception of basic human needs do so simply as a result of factual error. But this need not be the case. Some societies will disagree with his conception because they have a different view as to what constitutes a decent life. Thus imagine a society in which people accept that preventing women from working can lead to malnourishment in some cases but deny that malnourishment endured for the sake of virtue prevents one from leading a decent life. To argue against these non-liberal objectors, Miller must do more than point out the empirical consequences of their moral beliefs; he must argue that their moral beliefs are themselves mistaken. But if he does that, then clearly his conception of basic needs relies on 'reasons that others should find objectionable' and is thus 'sectarian' under his own definition.

Second, consider Miller's response to another group of non-liberal objectors: those who agree with Miller's conception of basic human needs but think that other considerations trump the duty to satisfy these needs. Miller's example is of a Muslim person who insists that criminals should receive harsh punishments in accordance with *shari'a* law because, in the Muslim person's view, the spiritual need for righteous punishment is more important than bodily needs. Miller responds that the difference between him and this Muslim is not so important for the Muslim can accept that 'having a hand amputated or being stoned to death are very serious harms'. The only difference between them 'occurs over the limits to be placed on these rights, and whether the health of the soul gives good grounds for overriding them in certain cases' (p. 199).

No-one denies that, other things being equal, all human beings should enjoy the conditions that allow them to live decent lives, and that this may impose responsibilities on those who are in a position to create such conditions. The disagreement is about what should go into the 'other things being equal' clause (p. 200).

The conclusion Miller draws from this is his basic needs justification is not 'sectarian in the sense of relying on reasons that others should find objectionable' (p. 200). Yet here Miller understates the importance of the disagreement in question. How we fill out the 'other things being equal' clause is crucial to determining whether we judge certain acts, such as chopping off a thief's hand, a human rights violation. Recall that Miller's justification for human rights is meant to allow us to make demands on those living in a different society without drawing on reasons they should find objectionable. Yet since Miller offers no universally acceptable means of filling out the 'other things being equal' clause, the demands made on the basis of his theory must draw on reasons that others should find objectionable. If one fills out the 'other things being equal' clause on the basis of 'sectarian' reasons, then the demands one makes from it (e.g. 'don't chop that thief's hands off') will be 'sectarian' demands.

Note, moreover, that the *shari'a* law example is far from an exceptional case. Most human rights abusers believe they have reasons that justify their behaviour: 'national security is at risk', 'these people deserve punishment', 'economic development must take priority' etc. It is no good for Miller to point out that were circumstances such that these reasons did not obtain, all, including the human rights abusers, could agree that their behaviour was unjustified. The argument the human rights abusers make is precisely that, under existing circumstances, the reasons they have to act as they do, do obtain, and hence their actions are justified. If Miller wishes to insist otherwise, he must

declare them mistaken in the weight they accord the reasons they offer when set against their victims' basic needs. Yet since Miller lacks any 'non-sectarian' argument for making this declaration, he must admit to the 'sectarian' aspects of his theory if the human rights he supports are to fulfil the purpose he sets them: to act as a means by which people in one society can make demands on those in other societies.

It might be suggested that Miller could deal with these various non-liberal objectors by simply declaring that there are some moral, as well as empirical, considerations that everyone must accept. That this option might be open to Miller is suggested by his definition of a 'non-sectarian' justification as one that 'everyone *should* accept no matter what their other beliefs' (p. 200, emphasis added), not one that everyone *will* actually accept. Could we not interpret 'should accept' to mean 'should accept in light of certain moral considerations'? The problem with this suggestion is that it would allow the proponent of any theory of human rights, including liberal ones, to declare their theory 'non-sectarian', on the basis of their own moral considerations. The 'non-sectarian' test would become so easy to pass that it would cease to be a test at all. If the 'non-sectarian' test is to screen out liberal theories of human rights, 'should accept' must be interpreted as 'should accept given relevant empirical facts'. Miller's response to the intersection approach suggests this interpretation, as does his comments on justification (see below). But if that is what the 'non-sectarian' test amounts to, then, as we have seen, it is a test that Miller's theory fails to pass.

The Problem of 'Sectarianism'

Miller's failure to offer a 'non-sectarian' justification for human rights lends us reason to revisit the problem of 'sectarianism'. Why should we think it problematic to ground human rights on values that some non-liberals reject? In what follows, I wish to consider Miller's answer to this question before turning to an alternative Rawlsian one.

Although Miller develops his basic needs account of human rights as a response to the 'sectarianism' problem, he provides little explanation for why he deems 'sectarianism' a problem. The argument he gives is essentially that if one is to make demands of someone then one must be able to justify these demands to them, and, in Miller's view, one cannot justify the demands one makes of someone unless the reasons one gives are reasons she could accept given the values she already holds. While Miller seems right on the first point, the second is questionable. It is true that to make demands of someone one must be able to justify those demands to them, but if the justification one gives them is sound then, one might think, the demands one makes will also be justified.

Miller anticipates this objection and responds to it as follows:

I am assuming a view about moral justification that may be controversial. Others might say that if a reason is a good reason for holding a belief, this must be a good reason for everyone, no matter what they think. So a justification for human rights, if it is sound, must by that token be a justification for human beings everywhere. But this view of justification seems implausible to me. What counts as a justification for someone, at least in the field of practical reason that concerns us here, must depend upon the beliefs that they already hold. So there is no a priori guarantee that the justification for human rights that we propose, even if valid in our own terms, will have universal reach (p. 165, n. 3).

If Miller's view of moral justification is controversial, it is for good reason. Imagine we wish to demand that the North Korean regime close their concentration camps. On Miller's account, we cannot do so unless we can find justification for our

demands that the regime can accept. Imagine we can find no such a justification. In that case, Miller seems to be committed to the view that we cannot justify our demand that the concentration camps be closed. But this would seem to be exactly the type of demand that we are most are justified in making.

Despite the controversial nature of his view, Miller offers no genuine argument for it. The closest thing we have to an argument is the claim that 'what counts as a justification for someone ... must depend upon the beliefs that they already hold'. This is undoubtedly true, but it is useless as an argument, since it is precisely the distinction between what counts as a justification *for someone* and what counts as a justification *per se* that Miller's objector insists upon. If the words 'for someone' are removed, the sentence becomes a simple reiteration of Miller's view, incapable of providing support for it.

This is not to claim that there are no arguments Miller could have given. Miller's view involves a kind of internalism about reasons and many philosophers of practical reason are internalists of one sort or another. But it is a commonly noted problem with internalism that it has difficulty explaining why people have duties to do things that they are not of a mind to do. There might be internalist solutions to this difficulty, but the most promising suggestions involve positing counterfactuals, about what people would be of a mind to do were they operating under certain ideal conditions, that allow us to put their actual normative beliefs aside (Finlay and Schroeder 2012). This kind of internalism is not one that Miller could endorse.

Miller provides no satisfactory reason for why we should deem 'sectarianism' a problem. But perhaps there are other arguments that are more plausible. Consider the

Rawlsian concern for tolerance in the face of reasonable disagreement. If one thinks that people in non-liberal societies may reasonably disagree with liberal values, one can see why one might oppose justifying human rights on the bases of liberal values. This kind of argument is quite different to Miller's. The thought is not that it is intrinsic to the process of justification that one must appeal to the existing beliefs of others, but that it would be intolerant to disregard the existing beliefs of others when those beliefs are not unreasonable. A consequence of this is that the Rawlsian seems to have a response to non-liberal objectors that Miller had such trouble responding to: the Rawlsian can declare the non-liberal objectors' beliefs unreasonable and therefore unworthy of toleration. (Of course, to be convincing this response requires the Rawlsian to offer some acceptable method by which to judge unreasonable, from reasonable, beliefs).

Whether or not this alternative argument against 'sectarianism' works is not a matter I can resolve here. Let me note, however, that even if we accept the argument it is not clear that it should lead us, as it leads Rawls in *The Law of Peoples*, to adopt a minimal list of human rights (Rawls 1999, p. 65). Tolerance is also a central concern of Rawls' *Political Liberalism*, but in that book Rawls argues for an extensive list of rights in liberal societies, despite the existence of non-liberal communities within those societies. This point not only reveals a possible inconsistency in Rawls' work (Caney 2002, pp. 106-107), it suggests that there may be a way to address the concern regarding toleration without having to settle for human rights minimalism (Cohen 2004).

Conclusion

Miller fails both to solve the problem he sets for human rights theory and to prove that there is any such problem to be solved. These failures underscore the fact that human rights are there to protect us from people who would wrong us in accordance with their core moral values (e.g. supporters of *shari'a* punishments) just as much as they are there to protect from those who would wrong us out of greed, hatred or factual error. The hope of achieving a justification for human rights that is consistent with everyone's moral values is thus illusory. There may be a genuine 'sectarianism' problem for human rights theorists to solve, but the problem cannot be the one that Miller describes.

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