

Reconciling Responsibilities

This paper explores some of the theoretical issues that complicate the process of reconciliation between indigenous and non-indigenous citizens in modern liberal-democracies. My specific purpose is to c

But a number of scholars (Yael Tamir and David Miller being perhaps the most prominent)¹ have pointed out that in practice the version of liberalism historically practiced is actually best described as liberal *nationalism*

Contradictory Intuitions

Miller distinguishes clearly between two basic reasons why an actor may take responsibility for the harm suffered by another, which he characterises as the “liberal intuition” and the “communitarian intuition.” He explains the difference between them in the following way:

On the liberal side, we are drawn to the idea that we are only implicated in responsibility when as agents we have made some causal contribution to [an] outcome... On the communitarian side, we have identities that connect us to larger groups of people, and we often feel vicarious pride or shame in what they do... With pride and shame comes responsibility³

I would argue that the primary theoretical basis for affirmative action programmes in contemporary liberal societies is the communitarian intuition, namely, that we feel connected to other members of our community and feel obligated to offer help to those who are struggling or suffering, regardless of whether we contributed to their plight or not. Consider the analogy of a family member who, wholly through their own poor choices, has fallen on hard times. Most of us would agree that their family has a responsibility to assist despite having had nothing to do with the ‘fall from grace’. Obviously the obligation is not a legal one, and it is also limited; we all know families whose efforts come to naught and who eventually wash their hands of the problem. But most of us would also agree that if a family absolutely refused to help a struggling member it would, at the very least, become a legitimate target for moral approbation.

Can the analogy be widened to include other groups, like the ‘imagined community’ of a nation? Ordinarily I would say yes, yet this raises a fundamental problem in the reconciliation context; communities rely on feelings of mutual solidarity which usually implies that there is a significant degree of ‘sameness’ between their members. In the reconciliation context this may either be lacking or, perhaps more importantly, indigenous groups may want to retain a sense of their own distinct identity. Indeed, many of the problems they now face were been caused by the efforts of liberal states to assimilate them. Given these observations I believe it is important to search for additional (not alternative) means of justifying government programmes targeted at improving the lot of indigenous peoples.

³ David Miller, *National Responsibility and Global Justice*, forthcoming publication, 135.

The 'Connection Theory'

In a similar vein Miller recognises that in the context of International Relations there is typically an insufficient sense of community between nations to underpin the communitarian intuition. Instead, we should look to liberal theory and hold nations responsible for the outcomes produced by their *choices*, and if a 'connection' can be established between harm-causing nation A and harm-suffering nation B then there may be good reasons to hold A responsible for remedying B's suffering. He refers to six criteria that should be considered to determine whether this connection exists; I will hold off on discussing the fourth, fifth and sixth criteria until later and will focus at the moment on the first three which investigate differing notions of responsibility that can be differentiated from one another with reference to the concept of *choice*

Our interest in outcome responsibility arises from our interest in the fair distribution of benefits and burdens between different agents: as far as possible we want people to be able to control what benefits and burdens they receive, but we also want to protect them against the side-effects, intended or unintended, of other people's actions.⁴

Take the analogy of a person lighting a bonfire to spice up their backyard party; they take a number of precautions to ensure it doesn't get out of control (checking the weather report, raking leaves, positioning the fire carefully etc) but later in the night an unexpectedly strong wind begins to blow and a spark flies onto their neighbour's shed and burns it down. Is the fire-lighter responsible? Miller argues that they are, as long as the outcome was reasonably foreseeable and the chain of causation was sufficiently close (releasing a butterfly in China that resulted in a cyclone in Bermuda is an example where the act and the harm would be too remote from one another for outcome responsibility to attach).⁵ Importantly, however, even if our fire-starter is held responsible to repair damage caused by his act he should not be subjected to *moral* approbation because he did not act maliciously, recklessly or negligently.

Capacity and Benefit

I will now turn to the other criteria that make up Miller's connection theory. The sixth or final criterion is whether there are 'community ties' and is basically analogous to the

brings other responsibilities, like apologising or compensating B for distress). With respect to *benefit*, we can all imagine a number of situations where X benefits from an injustice suffered by Y that X had no part in causing. Consider a small town where there are only two lawyers competing for a steady amount of business. If one is injured in a car accident by a drunk driver while on holiday and has to spend six months in hospital then the other lawyer will probably benefit from the first's misfortune.

Indeed, benefit and capacity seem to be intimately related in the sense that a completely unsolicited or 'mere' benefit may create a responsibility to assist a suffering actor in two senses. First, it is a fair assumption that the beneficiary, because they have benefited, has the *capacity* to help. Second, the beneficiary in the case above did nothing to *deserve*

'no thanks'? Isn't it arguable that by accepting the unsolicited offer she has *chosen* to receive the benefit of his protection?

I think so, so long as it was reasonably foreseeable that she would benefit. In this case we all know that there is a small but nevertheless real chance that a woman walking home alone at night may be attacked and that the chances of this occurring are reduced significantly if she is accompanied by a male. Accordingly, she should have refused the offer of protection point-blank if she wanted to avoid outcome responsibility completely. Yet this does not help us resolve the intergenerational case because the benefit the contemporary generation received was *truly unsolicited*; because they were not in existence when the benefit of living in a developed, affluent and stable society was 'offered' they could not have 'reasonably foreseen' that they would benefit.

Intergenerational Responsibility

We have seen so far that liberal theorists seem generally reluctant to attribute responsibility in the absence of intention or choice on the part of actors; moral responsibility attaches when one deliberately, recklessly or negligently acts in a harmful manner and outcome responsibility requires an intentional act that could foreseeably cause harm and is not too remote from the act. On the other hand we have determined that where the actor does not intend to act at all we feel uncomfortable with holding them responsible and only do so if no other responsible party can be identified, if they have the capacity to help and if they benefited undeservedly. The issue of responsibility, then, largely turns on the matter of whether an actor *chose* to act.

So, if choice really is the most important consideration when assigning responsibilities can we move to the next stage and assign intergenerational responsibility? Can we rightly hold a contemporary generation responsible for the injustices committed by their ancestors? Considering what we have discussed to this point the answer seems simple; *the contemporary generation did not choose to take part in the injustices, so they are therefore not responsible*. Having said that, we have also established that if no other party can be held responsible, if there is a capacity to help and if the beneficiary did not deserve the benefit, then we *may* be able to attribute responsibility to them. But the first response is the standard reply to demands to acknowledge past injustices; for example Prime Minister John Howard has openly stated "Australians of this generation should not

be required to accept collective guilt and blame for past actions or policies over which they had no control".⁸

Certainly the contemporary generation in modern liberal states is affluent and therefore has the capacity to help and, more importantly, haven't they *benefited significantly* from injustices perpetrated by their ancestors? As Janna Thompson points out the contemporary generation in settler states would probably not even *exist* but for past injustices;⁹ existence itself, then, is perhaps the ultimate benefit. They have also benefited from the schools and hospitals and football stadiums built on land taken from indigenous groups; indeed the entire economies of such states would never have been developed but for the unjust dispossession of indigenous groups. I believe that if we can find a stronger basis for assigning responsibility by at least finding the contemporary generation *outcome* responsible, which requires finding that they exercised some sort of choice, then we may be able garner more support for the reconciliation process.

Collective Responsibility

One way to do so may be to consider a model of collective responsibility discussed in an earlier article authored by Miller, the 'cooperative practice' model.¹⁰ Take the example of, say, an agricultural co-op. Some of the co-op's members may have wanted to switch to new environmentally friendly, but more expensive, pesticides. Unfortunately they were outvoted by the majority of members who wanted to keep using the ordinary cheaper yet more environmentally damaging pesticides. Miller argues that the collectivity, including the dissenting members, can still be held responsible for damage caused to the environment because they *benefited* from the continuation of their old practices. In other words despite the more environmentally aware members' specific preference, manifested as a choice to vote a particular way, after losing the vote, they also *chose to remain* in the co-op and benefited thereby.

In this way Miller argues that the members of a nation, even if they opposed the particular practice that caused harm to another nation, cannot escape responsibility completely if they benefited from it. He acknowledges that it would probably be

appropriate to hold the dissenters in a collective *less* responsible than other members; it would not be appropriate to subject them to strong moral condemnation which the majority of the co-op deserves for deliberately choosing to pursue profit at the expense of the environment.¹¹ Yet the minority should nevertheless not be allowed to evade responsibility completely; to absolve them absolutely would mean they were unjustly enriched because they would have *chosen* to continue to benefit from a practice that they could reasonably foresee would cause harm to others.

The Choice to Leave

So, we seem to have a solution – beneficiaries who may not have chosen ‘directly’ to act unjustly can still be held outcome responsible for harms as long as they also chose to remain as part of the collective entity that caused the harm, particularly if they have benefited from membership and are likely to continue doing so. But can this logic be applied to a nation, and can it be applied intergenerationally? I argue that it can be because *if the contemporary generation chooses to continue living in that nation and receiving benefits that arose from past injustices they should be held responsible for the remedying the harm caused by their ancestors’ choices*. In other words, they *do* have a choice; they could choose to acknowledge and take responsibility for their ancestors’ unjust practices, or they could choose to pull up stakes and leave.

But is this a reasonable solution? At first glance it seems quite harsh; the strict liberal who is not prepared to give in easily to my manifestly inescapable logic may face banishment or exile, punishments that seem pretty considering he had no say in what occurred before he was born. But I will argue below that this problem can be circumvented to by the consideration of three additional matters. The first is the notion that specific injustices committed in the past can sometimes be shown to ‘echo in the present’ and, by implication, the future if they are not addressed by the contemporary generation. Second, Thompson makes an essentially pragmatic ‘future-oriented’

The Echo of History

Consider the analogy between a nation and a company; when a company is acquired the new proprietor implicitly assumes responsibility for both assets *and* liabilities. But the analogy is not a perfect one because the purchaser of a company has clearly *chosen* to assume responsibility for both assets *and* liabilities. Perhaps the analogy of inheritance is closer because, as Miller points out, the beneficiary of an estate cannot resist valid claims against it arising from events that occurred prior to the death in question; they must accept the estate's liabilities if they want its assets.¹² Still, in an historical context this creates a fairly weak form of responsibility; one may tell the average Aussie that celebrating the courage of the ANZACs at Gallipoli without acknowledging the injustices perpetrated against indigenous Australians is hypocritical. But a charge of hypocrisy is arguably not going to achieve much more than a concession by the contemporary generation that they should take responsibility by 'saying sorry'.

Instead I suggest that history be taught in a way that connects specific past injustices to present inequalities with the implication that if nothing is done now then these 'structural injustices' will continue in the future. Thomas McCarthy provides an excellent example in the American context. He explains how under Roosevelt's New Deal many Americans were able to participate in public housing projects that in effect significantly subsidised

themselves in a *continuing* injustice. Such a *refusnik*

another go' on this particular issue in the future. This observation demonstrates clearly that they *have* indeed had the opportunity to choose, that their choice is not ephemeral, and strengthens the argument that they should be held responsible for their choices.

The Responsibility Continuum

The fundamental principle behind the continuum is that *someone* has to be held responsible for remedying instances of injustice, so we should begin on the left side of the continuum and look for a *morally* responsible agent. If one cannot be found then we should look for, in order, actors that can be held to the standard of *outcome* responsibility and if this fails then we need to look for *causal* responsibility. Only if none of these can be found we are forced to rely on the communitarian intuition alone.

Conclusions

I have found that it is possible to hold a contemporary generation responsible.