

TETSU SAKURAI

PREFACE

In the summer of 2011 David Miller, Professor of Political Theory at Oxford University, was invited to give the tenth Kobe Lecture. The Kobe Lecture was first established in 1988 in order to commemorate the Thirteenth IVR World Congress that had taken place in Kobe the year before, and is sponsored by the Japanese National Section of the International Association for Philosophy of Law and Social Philosophy (IVR Japan) in collaboration with the Japan Association of Legal Philosophy (JALP). An internationally renowned scholar engaged in research on critical issues of legal, political and social philosophy is invited to give the Kobe Lecture every three years, previous lecturers having included Ronald Dworkin, Ralf Dreier, Joseph Raz, Will Kimlicka, Randy Barnett, Emilios Christodoulidis, Ulfrid Neumann and Cass Sunstein.

As well as delivering his lecture, which was entitled “Are Human Rights Conditional?”, at Doshisha University, Kyoto, on 9 July 2011, Professor Miller conducted seminars in Tokyo, Nagoya, Osaka and Fukuoka. Both the lecture and seminars were held under the umbrella title of “Human Rights and Global Justice,” which eventually became the title of this special volume in *Archiv für Rechts- und Sozialphilosophie*. By combining the two key concepts from Professor Miller’s titles – his Kobe Lecture and his book *National Responsibility and Global Justice* (2007) – *Human Rights and Global Justice* represents our shared belief that guaranteeing basic human rights is an essential element of global justice. It is, then, little wonder that many of the writings contained in this volume deal with the close relationship between global justice and the realization of fundamental human rights.

Needless to say, David Miller is one of the world’s leading political theorists, particularly as concerns global and social justice. His recent books, notably *On Nationality* (1995) and *National Responsibility and Global Justice*, have attracted much attention from political and legal philosophers, not least in Japan, where three of his books had already been published in translation before his visit.

In his earlier writings Professor Miller was well known for his particularistic view that contemporary concepts of justice should derive from the specific arrangements of market society, and for his detailed study of David Hume’s political thought. In *On Nationality*, for example, he sees a nation as a community of people that has “a good claim to be politically self-determining” (81), and argues that central components of liberal democracy, such as deliberative democracy, equality (social justice) and individual rights, are best realized in a *national* community. Professor Miller is especially instructive when he points out that “[t]he welfare state – and indeed, programmes to protect minority rights – have always been *national* projects, justified on the basis that members of a community must protect one another and guarantee one another equal respect” (*On Nationality*, 187).

In *National Responsibility and Global Justice*, a landmark text that deals comprehensively with the subject of global justice, Professor Miller not only sees national responsibility as a type of collective responsibility but addresses a central issue of global justice, namely, how we should allocate remedial responsibilities to the world’s poor.

In recent years more and more legal philosophers and political theorists in Japan have become interested in the themes of nationality and global justice, on which numerous books and articles have been written in Japanese. And since David Miller's writings have doubtless been a significant influence, it is hardly surprising that his Kobe Lecture in Kyoto and the concomitant four seminars, particularly the one given in Tokyo, drew large audiences and led to vigorous discussions on his multifaceted theory. That is one of the main reasons why we decided to publish this volume.

The editors would like to express their deepest gratitude to David Miller for his willingness to travel all the way to Japan to give the Kobe Lecture and to respond to all the questions and comments that followed it, and for his kind cooperation throughout this time and beyond. His visit took place barely four months after the Great East Japan Earthquake, at a time when some invited visitors were reluctant to travel to Japan, and we are grateful for the concern he showed, in various practical ways, for the people of our country.

We would also like to thank all the contributors to our symposium for their stimulating comments and for submitting their manuscripts in good time.

My warmest thanks also go to all those who helped to organize the 2011 Kobe Lecture and the seminars, especially Makoto Usami, my co-editor, who was in charge of the Tokyo seminar; Takahiro Doi, who was in charge of the Nagoya seminar; Takeshi Tsunoda, who was in charge of the Osaka seminar; Kosuke Nasu and Shin'ichiro Hama, who were responsible for the Kobe Lecture in Kyoto; and Teruhisa Se, who was in charge of the Fukuoka seminar, the first of such seminars ever to be held in the Kyushu district.

Finally, the editors wish to express their heartfelt gratitude to Professor Tatsuo Inoue, President of JALP, and the executive board of JALP for their continuing support; to Dr. Annette Brockmöller, Managing Editor of ARSP, for backing this project and giving helpful advice; and, last but not least, to Dr. Graeme Tytler and his wife Sachiko for checking and editing nearly all the articles written by our Japanese colleagues.

MAKOTO USAMI, KYOTO (KYOTO UNIVERSITY)

INTRODUCTION

MILLER ON HUMAN RIGHTS AND GLOBAL JUSTICE

David Miller is an analytical but complex political thinker. On the one hand, he has long been well known for his particularistic ideas and arguments. In *Social Justice* (1976), he presented the pluralistic conception of social justice, arguing that what just distribution means depends on the type of relationship between the people involved. In *On Nationality* (1995) and *Citizenship and National Identity* (2000), he advanced the political form of nationalism, which contends that nationality is a significant factor in maintaining support for a welfare state. On the other hand, he has incorporated universalistic strands into his own theory. In *National Responsibility and Global Justice* (2007), for instance, he addresses what he calls weak cosmopolitanism, which holds those living in affluent societies responsible for meeting human rights of the world's poor, while rejecting the claim of equality of resources or opportunities on a global scale.

In the summer of 2011, Miller was invited to Japan to give the Tenth Kobe Lecture and to engage in discussion with legal and political philosophers in several seminars across the country. This was a valuable opportunity to figure out his sensible and subtle view on human rights, global justice, and nationality. In this introduction, I offer a brief overview of Miller's lecture and the comments and short papers of his Japanese colleagues.

CONDITIONALITY OF HUMAN RIGHTS

In the Kobe Lecture held in Kyoto, Miller explores one possible feature of the idea of human rights, namely conditionality. It is widely thought that human rights are not earned or alienated because they are held by all human beings. However, this view does not fit our practice: we wage wars that seem to violate the right to life, and we have a criminal justice system that usurps the right to move, among others. He thus raises a question: How can we reconcile our manifestos that human rights are held unconditionally and our practice of fighting wars and punishing criminals?

To answer this question, he begins by examining John Locke's discussion on crime in the *Second Treatise of Government*. Locke insists that when one person violates another's particular right, the violation demonstrates the offender's willingness to abuse the victim's rights more generally. This indicates further, it is argued, that the perpetrator declares war against humankind at large and removes herself from the human community, implying that she loses all of her rights in relationships with all other human beings. Nevertheless, Locke distinguishes between the rights that the perpetrator loses and those that she does not. It is also noted that punishment should be in proportion to the offence committed.

In order to develop Locke's suggestive but contradictory ideas into a coherent theory of human rights, Miller proposes an argument on the forfeiture of human

rights based on the idea of reciprocity. The assumption here is that one can claim human rights only if one is prepared to respect the same rights of others. Because one's successful or attempted violation of the rights of another can be taken as indicating the forfeiture of one's own rights, some of the offender's human rights can be legitimately transgressed. Miller sets two forms of limit on the forfeiture of rights. The first is what might be called the content limit, which demands that the extent of the forfeit be proportionate to the extent of the violation. The second is what I term the temporal limit, which means that forfeiture can be brought to an end when we have good reason to think that the wrongdoer is ready to rejoin the community of rights holders in terms of reciprocity.

Miller proceeds to argue that some human rights are unconditional in that they cannot be forfeited even if the rights holder displays disrespect for the rights of others by committing a rights violation. Unconditional rights fall into two categories. First, procedural rights concerning the criminal procedure are unconditional because we need to rely on these rights of the suspect to decide whether he has shown disrespect for others' rights by committing a crime. The second category of unconditional rights includes certain substantive rights. The right to life, for instance, is unconditional because the rights holder who has breached another's rights will lose in perpetuity the opportunity to rejoin the reciprocal community if we impose the death penalty on him. Miller also considers the right not to be tortured and the right to bodily integrity as unconditional rights, by appealing to the idea of a minimally decent life and that of human dignity. The juxtaposition of unconditional human rights and conditional ones, he suggests, is suitable for our practice of waging war and punishing criminals within legal limits.

Miller's paper is followed by three comments made from different perspectives. Tetsu Sakurai starts by pointing out remarkable similarities between Miller's claim of the conditionality of human rights and David Hume's conception of justice as an artificial virtue based on convention. He also finds parallelism between Henry Shue's view that the idea of sovereignty is supported by reciprocity between states and Miller's argument that many human rights are founded on reciprocity between individuals. Sakurai then puts forth the idea of society that he thinks underlies human rights, by suggesting that the emerging notion of international society might provide good reason to protect universal human rights.

Katsu Tomisawa makes comments not merely on the paper presented by Miller in the lecture but also on his major publications. As to Miller's works on nationality, he notes that the effects of nationality are limited in promoting reciprocity among citizens since many people may not have the sense of nationality in daily life. With regard to Miller's current discussion on human rights, he suggests that while the principle of reciprocity might make the notion of inalienable human rights seem to be an object of idolatry, the unconditionality of some rights can protect their inalienability.

Hirohide Takikawa examines three aspects of Miller's argument on human rights forfeiture. He begins with the question of what kind of rights a person can forfeit, by wondering how the needs-based view of human rights that Miller presents elsewhere fits the reciprocity-based one. Next, he explores when rights can be forfeited and says that a suspect cannot abandon such rights as the freedom of movement before trial and conviction. In discussing the issue of whether the offender's

rights are forfeited in his relation with the victim or all others, Takikawa argues that these rights cannot be lost even after conviction, as the fact that a private penalty by a third party is always unjust illustrates. His comment includes addenda in which he responds to the revised version of Miller's paper that is published in this issue.

GLOBAL JUSTICE AND NATIONAL RESPONSIBILITY

Several years before he gave the Kobe Lecture, Miller published a celebrated book, *National Responsibility and Global Justice*. In this book, he presents a nuanced position that maintains that people in affluent societies are, under certain conditions, obliged to fulfill the basic needs of those living in the developing world, while criticizing different versions of global egalitarianism. The Tokyo Seminar was devoted to discussion on this significant monograph, and four commentators replied to the author.

Tatsuo Inoue raises a question: to what extent does Miller succeed in integrating his nationalist and globalist motifs into a coherent theory? His exploration of this question is threefold. First, he objects that Miller's discussion on the justice gap – a gap between what the world's poor can legitimately claim and what citizens in affluent countries are obliged to sacrifice to meet this claim – might allow these citizens to refuse to bear their burden except in such emergencies as natural disasters. Second, it is argued that Miller misunderstands and commits the fallacy of what Thomas Pogge terms explanatory nationalism. Third, Miller's demand for the proof of negative impacts of past colonialism is criticized as illustrating the biased manipulation of the burden of proof.

Despite his general agreement with Miller's position, Ko Hasegawa emphasizes the subsidiary relationship between national responsibility and global justice in terms of liberal equality. For one thing, the active role of non-national actors implies, he argues, that the boundary of nationality is not a limit but a factual condition in realizing global justice. It is also noted that the idea of human rights requires international law to solve national problems. Hasegawa then points out that one's self includes multiple identities – familial, associational, racial, and civil – which can have different responsibilities. The ideal of global justice might have connection not only with civil identity but also with other identities.

Fumihiko Ishiyama seeks to show that Miller's theory on national responsibility has three forms of limitation. The first is that Miller focuses on the responsibility of nation, assuming that each state acts on behalf of its nation as a whole. However, this assumption does not apply to cases in which the society in question includes two or more nations or in which the state is not democratic. Second, in the case of a nondemocratic society, those responsible for poverty can be ethnic groups, some individuals, or private companies based in other countries, whose liability Miller's discussion does not cover. The third limitation Ishiyama finds is that Miller's speculative discussion does not identify which nations are responsible for poverty in the real world.

Yuko Kamishima's concern is that those who are skeptical about global justice might read Miller's theory of national responsibility as providing affluent nations with good reason for not taking positive action to reduce world poverty. After offer-

ing an overview of his conception of global justice, she points out that by limiting the cases in which outsiders of a poor nation bear a duty of justice, Miller's view might leave some of those whose human rights are violated in an unassisted situation. To remedy this and other problems that she finds in his discussion, Kamishima suggests that Miller consolidate his account of human rights by incorporating a Nussbaum-like version of the capabilities approach into it.

CAPITALISM, CULTURE, AND COSMOPOLITANISM

In seminars held in three other cities – Nagoya, Osaka, and Fukuoka – a number of legal and political philosophers read short papers. These papers, four of which are selected and included in this volume, discuss issues surrounding Miller's theory on human rights, collective responsibility, and cosmopolitanism as developed in *National Responsibility and Global Justice* and related works.

Yasuhiko Itoh focuses on what he sees as lying behind poverty in less developed countries: global capitalism. He maintains that it is difficult to identify those responsible for world poverty emerging in the process of cumulative market transactions on a global scale because most producers, investors, and consumers act within legal rules. It is also noted that in the global market, the risk of deprivation and poverty threatens not merely those living in developing countries but also citizens in rich societies. To meet these difficulties of global capitalism, Itoh claims that the ideal of global justice requires the responsibility of reforming international institutions, not the remedial responsibility advocated by Miller.

Teruhisa Se explores the conditions necessary for ensuring the universality of the idea of human rights, which Miller approves, and for giving adequate consideration to its sensitivity to diverse cultural contexts in different societies. He reads Miller as suggesting that people in every culture should engage in the reflective search for better conceptions of basic needs. To elaborate this suggestion, Se argues that it is crucial for intellectuals in each society to formulate their local conceptions of human needs in their own language, by taking as an example the Japanese understanding of the self, which is very different from the Western one. He proceeds to underline the importance of nationalism, with reference to the history of prewar modernization in Japan, and to suggest that Western liberal thinkers, including Miller, should pay more attention to national cultures in non-Western societies.

Seiko Urayama holds that what weak cosmopolitanism denotes is susceptible to three interpretations. First, this form of cosmopolitanism might be weak in that it argues against global egalitarianism and demands that only the basic needs of the global poor should be met. Second, weak cosmopolitanism might mean objection to assigning one cause of global poverty to the defects of the current international order. Third, Miller's view may be weak because it contains the claim of a justice gap, which means that peoples in rich societies can justifiably refuse to fulfill the claims of the world's poor. After examining the cogency of three possible meanings of weak cosmopolitanism in turn, Urayama concludes that this position is less stable than it appears.

The aim of Chikako Endo's paper is to show that citizenship provides more adequate grounds for collective responsibility than nationality does. To begin with, she offers her conception of citizenship as a legal status of membership in a demo-

cratic state governed by norms of equality, reciprocity, and fairness. Next, it is argued that while Miller's like-minded group model plays a role in ascribing causal responsibility to a nation, the formal procedure of voting and the public culture of equality provide reasons to hold individual members of the nation responsible for the collective outcome. She then observes that Miller's cooperative practice model is plausible only when benefits and burdens of cooperation are distributed fairly among citizens.

These comments and short papers are followed by Miller's lengthy rejoinder, in which he presents three foundational theses that underlie *National Responsibility and Global Justice* and his lecture. The first concerns the contextual character of principles of distributive justice, an implication of which is that when we ask about what global justice means, we need to look at the relationships between those living in one society and those in another, which are very different from domestic relationships. The second thesis emphasizes the role of reciprocity in practical reasoning, which has two aspects. First, the way in which one person is morally obliged to behave toward another depends on how the latter has treated, or will treat, the former. Second, when a group of persons bears some responsibility, what one member is required to do depends on what others do, and it does not go beyond her fair share of the collective task. The last thesis lying behind Miller's arguments addresses the significance of assigning responsibilities to correct injustice. When we know that people are suffering from injustices, the thesis demands us to identify who has the primary responsibility to remedy the injustices. Based on the three basic theses, Miller responds in depth to questions and criticisms raised by his colleagues. The constructive exchange between Miller and his commentators and discussants, I hope, sheds new light on various aspects of his multifaceted theory and on such important concepts in political philosophy as human rights, global justice, nationality, and responsibility.

Makoto Usami
Graduate School of Global Environmental Studies
Kyoto University
Yoshida-Honmachi, Sakyo-ku, Kyoto 606-8501, Japan