

The expression of religious identities and the control of public space

Simon Thompson

Department of Health and Social Sciences

University of the West of England, Bristol, UK

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Abstract

To what extent may an historic nation impress its religious identity on the public space of its society? For example, does it have a right to ban the wearing of hijabs in schools, to insist on the display of crucifixes in school classrooms, or to ban the construction of minarets? My aim in this article is to critically examine the answers which liberal nationalism gives to these questions, focusing in particular on David Miller's version of this theory. His key claim is that the religion associated with the historic nation may legitimately be given a predominant place in public space. After outlining the principal elements of Miller's position, I shall criticise the general principle on which it is based, before challenging his views on several particular issues. My conclusion will be that, whilst the historic nation has the right to express its religious identity in the public space of its society to some degree, this right is significantly more constrained than Miller believes. Constraints are derived in particular from consideration of the particular nature of different kinds of public space, and consideration of what people need from such spaces, including the need for spaces in which they can express themselves and in which they can feel at home.

Keywords

David Miller, crucifixes, hijabs, liberal nationalism, minarets, national identity, public space

Introductory remarks

To what extent may an historic nation shape the public space of its society in its own image? This question as it stands raises a series of issues too large and complex to attempt to answer in a single article. In order to make it more manageable, I shall focus on just one aspect of it. Assuming that there is an historic nation which is strongly associated with a particular religion,¹ I shall ask: to what extent may this nation impress its religious identity on the public space of its society? One important reason for focusing on religion is that it is at the centre of a number of recent and ongoing controversies, including, for example, those concerning restrictions on the wearing of hijabs and burqas in hospitals, university campuses and open public spaces; regulations concerning the display of crucifixes in public spaces, including in school classrooms and parliament buildings; and the Swiss ban on the building of minarets.² Applying the general question posed above to these particular issues, it may be asked, for example, if the historic nation has a right to ban hijab-wearing in schools, if it may insist on the display of crucifixes in school classrooms, or if it may legitimately ban the construction of minarets.

Clearly these are very important questions for nearly all contemporary societies, in which a multiplicity of faiths exist side by side, even where there is an historic nation which is strongly associated with just one of them. Whilst these questions may be answered from a variety of perspectives, my aim in this article is to critically examine the answers given by liberal nationalism. This is a political perspective which combines a commitment to liberal principles with a belief in the importance of national identity. In some variants, it is argued that a shared sense of national identity is the foundation of social solidarity which in turn is necessary for the stability of liberal principles.³ It is worth focusing on liberal nationalism in part because it is an influential position in contemporary political theory, with staunch defenders and as well as impassioned critics, but also in part because variations on this position are frequently found in contemporary politics itself. Many people think that nations are permitted to shape their own societies in certain ways, although subject to certain limits.

As I say, several contemporary political theorists explicitly espouse forms of liberal nationalism, including David Miller (1995) and Yael Tamir (1993). In this article, I shall focus

in particular on Miller's theory of liberal nationalism (1995, 2000, 2007, 2011, 2016a, 2016b). This is because his is the most sophisticated and influential version of this theory currently available, and also because he has given considerable thought to the place of religion in his theory (see in particular 2016a). On this particular subject, Miller defends the principle that the historic nation may 'legitimately give precedence to the artefacts of a particular religion when decisions about the use of public space are taken' (2016a: 454). For example, he contends that a Christian majority may insist that crucifixes – and no symbols of other faiths – should be displayed in school classrooms; and that, although a general ban on the construction of minarets cannot be justified, permission to build them may be denied if this is necessary to protect the predominance of the Christian faith in public space.⁴

My aim in this article, then, is to determine the proper extent of the historic nation's right to impress its religious identity on the public space of its society, and to do so by critically examining Miller's position on this issue. My argument will be that there are reasons for thinking that the nation's exercise of this right should be significantly constrained. I shall not make this argument by introducing constraints on the right to control public space which are entirely external to Miller's liberal nationalism. Rather my strategy will be to suggest that it is possible to draw certain arguments out of his theory which, if suitably and reasonably reinterpreted, can provide reasons for constraining the ability of the historic nation to exercise this right. To be specific, I shall suggest that constraints may be derived from consideration of the particular nature of different kinds of public space, and consideration of what people need from such spaces, including the need for spaces in which they can express themselves and in which they can feel at home.

In the next section, I begin by outlining the principal elements of Miller's position. In the section after that, I suggest that there are three rather different ways of understanding his central principle, and I then criticise each of them in turn. The section that follows challenges Miller's position on several practical issues, criticising his view that the historic nation has a right to insist on the display of crucifixes in classrooms, and rejecting his account of the specific circumstances in which permission to build minarets may be denied. In the final section, I draw the various strands of my argument together in order to conclude that there are clear limits to the right of the historic nation to impress its religious identity on public space.

Miller's argument

As a liberal nationalist, Miller believes that there are both 'intrinsic' and 'instrumental' reasons for thinking that it is desirable to develop and sustain a sense of national identity (2007: 37-8, 125). With regard to intrinsic reasons, Miller believes it is 'clear that many people have a strong subjective interest in retaining [national identities], and therefore in preserving the means by which they are reproduced over time' (2016a: 449). So far as instrumental reasons are concerned, he argues that national identity 'serves important political aims, helping to stabilize democracy and to promote social justice' (2016a: 448). His claim, in other words, is that national identity provides a stable foundation for important liberal goals and values. Of particular relevance here, Miller's argument about national identity leads him to defend what I shall call *the liberal nationalist principle* that the historic nation has the right to shape public space in its own image, so that, if the historic nation is closely associated with a particular faith, then it may rightfully expect that its religious identity will retain a 'dominant' or 'predominant' place in that space (e.g. 2016a: 439, 446, 448-9).⁵

In accordance with this principle, the state may take measures to shape public space predominantly in the image of the historic nation, including where appropriate its religious dimension. For example, the state is permitted to subsidise the maintenance of buildings for the established church, without being obliged to subsidise buildings for other non-established faiths. Although, by acting in this way, it may have advantaged the historic nation over other groups, it has not 'removed a liberty that was previously available' to all citizens (2016a: 451). It follows from this, however, that the state may not normally⁶ take negative measures against members of other confessions which would restrict their liberty, since to do so *would* be to violate its commitment to respecting the basic rights of all of its citizens (2016a: 441).

To see what Miller's position looks like in practice, let us consider three contemporary religious controversies. First, in the case of hijab-wearing in schools and other public spaces, his view is that Muslim women have the right to wear a hijab, both in school (2016b:

149) and elsewhere in public (2016a: 453; 2016b: 149). This is part of the basic right to religion, which individuals must possess if they are to be able to live minimally decent lives (2016a: 443-4). As such, it outweighs the right of the historic nation to shape public space, in this particular case by restricting or banning the wearing of hijabs.

Second, so far as the display of crucifixes in school classrooms is concerned, Miller argues that a democratic majority may decide that religious symbols should be displayed in classrooms as an expression of the historic nation's religious identity. Thus, discussing the well-known European Court of Human Rights (ECtHR) case of *Lautsi v. Italy* (2011), he says that 'a Muslim immigrant to Italy ... should not object to the presence of a crucifix as a representation of Italy's Catholic heritage' (2016b: 149).

Third, in the case of the Swiss minaret ban, Miller argues that, whilst the right to religion protects the construction of mosques since such buildings are essential to the practice of Islam, it does not protect the construction of minarets since they are not (2016a: 445). There are, moreover, two specific sets of circumstances in which the permission to build a minaret may legitimately be denied. First, the proposed minaret could 'become the dominant feature of the town- or cityscape by virtue of its size or height' (2016a: 451; and see 2016b: 149). Second, if there is only one spire in a village, then a new minaret would constitute 50% of all tall pointy religious buildings in that area, putting 'the two religions on an equal footing as far as public space is concerned' (2016a: 451). In both cases, the historic nation would be harmed since the predominance of its religious identity in public space would be lost.

It is important to emphasize, however, minaret construction does not necessarily undermine the predominance of the historic nation in public space. In this case, although individuals and groups are not entitled to construct minarets by right, their requests to construct such buildings may not always be legitimately turned down. In other words, a general ban on minaret building – especially one given constitutional standing – cannot be justified. Such a ban does not just favour the majority faith, but actively disfavours a minority faith by removing from it a liberty which at least some members of that faith wish to exercise as a manifestation of their religious identity. This could only be justified if the

exercise of that liberty would necessarily harm the predominance of the historic nation. Since it does not do so, a general ban cannot be justified (2016a: 451-2).

Having said this, Miller does mention two possible reasons for thinking that a general ban *could* be justified. First, 'only a full ban would provide a sufficient safeguard in the cases mentioned above' since 'local planning committees are not robust enough to turn down culturally damaging proposals' (2016a: 451). In other words, a national ban may be justified in order to prevent local political bodies giving permission to build minarets in circumstances which would tip the balance away from the historic nation's faith. Second, 'there is potentially a collective action problem whereby a series of individual decisions that allow minarets to be built produce an unanticipated change in the character of public space across the land' (2016a: 452). Thus a national ban may be necessary to prevent a number of local decisions being taken, each of which, although harmless in itself, may nevertheless contribute to a significant accumulative harm to the historic nation.⁷ However, Miller puts these two arguments aside, leaving it up to his readers to 'form their own view about the plausibility of such arguments' (2016a: 452).⁸

The liberal nationalist principle in theory

I now want to critically examine the general principle on which Miller's position is founded, according to which the historic nation has a right to be 'dominant' (2016a: 439, 448-49, 451) or to take 'precedence' (2016a: 448-52) in public space. In this section, I shall argue that there are three rather different ways of understanding this principle, and that each of these is problematic in various ways. At the same time, I shall contend that, against Miller's own intentions, each of these different ways of reading his principle actually suggest reasons for constraining the ability of the historic nation to shape public space.

The contribution argument

According to what may be considered the primary way in which Miller's principle should be understood, it is because the historic nation has created the distinctive public space of its

society that its members are entitled to enjoy all of the benefits that living in such a space brings them. As he says: 'When a people with a distinctive national culture occupy territory over time and transform it to meet their needs, they acquire the right to preserve and enjoy the value they have thereby created' (2016a: 448). I shall call this the contribution argument, since it stresses that it is in virtue of the historic nation's dominant contribution to the shaping of public space that it should continue to have a dominant role in the shaping of it.

Before going any further, it should be noted that the way in which Miller summarizes his position in the quotation just above is a simple distillation of his complex position on the question of territorial rights. There is a vigorous ongoing debate about such rights, and in this debate a range of distinctive positions can be discerned. Lea Ypi, for example, distinguishes between acquisition, attachment and legitimacy-based theories of such rights (2013).⁹ Arguably, Miller's position combines elements of each of these in order to suggest that nations can authorize states to exercise territorial rights to jurisdiction, resources and border control on their behalf.¹⁰

It is not my aim in this article to enter into the debate about territorial rights since this would take me much too far from my current concerns. Instead, I shall accept the following elements of Miller's broader theory: (1) there are (historic) nations, which, amongst other things, share certain cultural values; (2) such nations are capable of a kind of collective action, through which they are able to transform the territory that they occupy; and (3), following (1) and (2), these nations can be held responsible for the transformation of their territory, a responsibility which can be inherited by later generations of these nations. My disagreement with Miller, then, only concerns the implications of his theory for the control of public space. To be specific, I deny that it follows from his account that the historic nation has a right to public predominance of the kind he claims for it. To take one of the examples with which I am concerned, I deny that the Swiss nation has a right to ensure that the appearance of public space remains predominantly Christian in character.

In order to explain why I disagree with Miller, I shall begin by offering reasons entirely internal to his own account for thinking that not just the historic nation but also Swiss Muslims should have a role to play in the shaping of public space. Let me begin by noting

that Miller's account is grounded on facts about occupation and transformation: 'As a result of occupation and transformation ... the territory becomes a repository of value for the people in question' (2011: 258). If these facts are important, then it is relevant to point out that Muslims have been present on Swiss territory for some time, and have as a result effected certain significant changes to the appearance of its public space. So far as occupation is concerned, it may be noted that modern Switzerland was only established as a federal state in 1848, some 170 years ago. By contrast, significant Muslim migration into Switzerland began in the 1970s, nearly fifty years ago. I would argue that, if the historic nation's period of occupation gives it a certain claim to control its territory, including the appearance of public space, then Swiss Muslims' shorter but still significant period of occupation should also give rise to a similar – albeit lesser – claim. With regard to transformation, it is worth pointing out that the first minaret was constructed more than fifty years ago in 1962, and that there are now a total of four minarets and over one hundred mosques in Switzerland.¹¹ In parallel to my point about occupation, I would argue that, since Swiss Muslims are responsible for changing the shape of public space to some degree, it follows that they should continue to have some role in its future transformation. To be clear about what I am claiming here, I would not deny that the Swiss historic nation has a greater claim to enjoy the value of public space than Swiss Muslims do. My argument is simply that, if facts about occupation and transformation are normatively significant, then these facts give the latter group *some* claim to enjoy that value.

I now want to introduce the strategy that I shall rely on for most of the rest of this article. This involves taking particular elements from Miller's theory, and then showing that, if they are reworked in a certain way, they can provide reasons for thinking that the historic nation's right to impress itself on public space should be significantly constrained. This strategy seems to me to be the best way to convince those sympathetic to Miller that his position on the particular issue of public predominance is mistaken. Before starting to put this strategy into practice, I should say that, if my interpretation and reformulation of these elements of his position were found to be unpersuasive, then I would adopt a different strategy. This would be to formulate my own account of the criterion of need, and then to apply it to the cases with which I am concerned, without suggesting that this account could be found in some form in Miller's own theory.

My initial point of leverage, then, is the idea of need which Miller invokes when seeking to explain why the nation has a right to enjoy the enhanced value of the territory it has occupied and transformed. Thus, in the quotation towards the start of this section, he says that the nation has such a right since it has altered this territory in such a way that it now meets its 'needs' (2016a: 448). On the strongest version of this argument, the claim is that, if this territory 'is now taken from [the group in question], they will no longer be able to sustain their way of life' (2011: 259). The point I want to emphasize is that the nation does not have the right to enjoy the enhanced value of its territory simply because it has been there a while and made some changes to it. Rather, it has this right because the changes it has made have had the specific effect of making this territory one which meets its needs. Now, if the brute facts of occupation and transformation alone grounded claims about the right to control public space, then Miller's argument could only be countered by offering an alternative account of occupation and transformation. This is what I sought to do just above, when describing the significance of Muslims' presence on Swiss territory. However, if an idea of need is also normatively significant, then this changes matters. This is because the argument from need can be generalized: if it is good for the historic nation to have a public space which meets its needs, then it must be good for other groups to have that space meet their needs too.

This claim, as it stands, may not convince those sympathetic to Miller, who may reassert the argument that the facts of occupation and transformation mean that only the needs of the historic nation should count, or at least that its needs should enjoy higher priority over those of all other groups.¹² I would disagree, contending that the logic of the argument from need is different from that of that argument, so that claims about need can be detached from those about occupation and transformation. In order to make good on this claim, however, I shall need to explain why groups other than the historic nation also need a public space of a certain kind. This is what I aim to do in the next two sub-sections.

The expression argument

According to a second way of reading Miller's principle, the historic nation has a right to impress its own distinctive values and identity on the fabric of public space: 'a majority is entitled to ensure that the appearance of public space reflects its own cultural values, so that where those values reflect a Christian heritage, it can insist that Christian buildings and symbols should remain hegemonic' (2016a: 448). I shall call this the expression argument since it concerns the right of the historic nation to express itself in public space.

Now, if this way of expressing Miller's principle was taken in isolation, it would appear to say that a majority has a certain entitlement to express itself publicly simply in virtue of being a majority. Just after this quotation, however, Miller does introduce his argument about occupation and transformation in order to suggest that it is these factors which give the nation the right to ensure that its forms of public expression remain hegemonic. I nevertheless want to argue that this argument from expression does make a distinctive claim about the significance of the historic nation's control of 'the symbolic character of national territory' (2016a: 449) or its ability 'to shape public space in a way that reflects its identity' (2016a: 454). To be specific, the claim is that the historic nation's ability to express itself to this extent is vital because its members 'come to understand their own historic identity partly through their direct experience of the environment they and their predecessors have created'. Miller claims, further, that 'the value that is created by preserving this heritage is the value of national identity itself' (2016a: 448). In other words, it is through the exercise of its ability to shape public space in its own image that the nation comes to know itself and to reproduce its identity through time.

The point I want to make is that, like the argument about need, this argument about expression can also be detached from considerations of occupation and transformation: it is not because of what the historic nation has done in the past, but because of what it needs going into the future, that its ability to express itself in public space is important. My claim, then, is that this argument about expression can also be generalized: if it is good for the historic nation to have a public space which reflects its identity, thus facilitating its self-understanding and enabling it to continue through time, so it is good for other groups too. Put negatively, if members of minority groups are unable to see themselves reflected in the public space of their society, then their ability to understand themselves and to survive over time will be significantly diminished.

If it is accepted in principle that it is not only the historic nation which has a need to express itself in public space, are there nevertheless other arguments which could be used to deny this right to certain minority groups? To take one of the cases with which I am concerned, could it be argued that there is good reason not to allow public expression in the form of minaret-building? One possibility would be to argue that certain buildings (or other features of public space) express the 'wrong' sort of message, and that this gives us some reason not to permit their construction. In order to briefly consider this possibility, I shall assume that the 'wrong' message is one which suggests that some people's basic rights should be undermined or which declares that some people are of lower civil status than others.

One problem with this argument is that it is often very difficult to determine the meaning of particular features of public space. In some cases, certainly, the significance of certain symbols is clear. When a swastika is daubed on the wall of a Jewish synagogue, the meaning of that sign is beyond reasonable doubt. However, in the case of minarets, their significance is highly contested. Defenders of the Swiss ban claim that such buildings express meanings which are contrary to Swiss values. For example, Cécile Laborde suggests that the supporters of the ban associated Islam with 'gender oppression, sharia law, and political violence' (forthcoming: 12). For opponents of the ban, however, minarets may serve the simple function of indicating where the nearest mosque is located or may be regarded as primarily aesthetic additions to such buildings.¹³ I would suggest that, where there is a fairly clear consensus that a certain building would express the 'wrong' sort of message, this provides a *pro tanto* reason to oppose its construction. In the case of a proposal, say, to construct a building in the shape of a giant swastika, the usual sort of arguments for regulating other, more conventional forms of hate speech would apply (e.g. Waldron, 2012). If, however, it cannot be shown beyond reasonable doubt that minarets express the 'wrong' sort of message, then the case for banning their construction is to this extent undermined.

Are there other reasons for denying minority groups the right to public expression? Let us say that there is a consensus about the message which a particular building conveys, and that, even though it is accepted that this message is not 'wrong' according to the standard I have just suggested, it is nevertheless a message which does not accord with the values of

the historic nation. In cases like this, I would suggest, the state can respond to the public expression of values with which it disagrees in ways short of banning them. To put it in the briefest possible terms, it can permit the construction of certain buildings – thus respecting this somewhat unusual aspect of the right to public expression – but at the same time speak out against all views it disapproves of, including those which it believes may such buildings express.¹⁴ The conventional way of thinking about state speech in this context assumes that includes measures such as campaigns against racism. But, in the present context, it is worth considering whether the state’s counter-speech might also include encouraging or funding the construction of buildings which express the ‘right’ sort of message, including, for example, public libraries with cafés in which halal and kosher food can be prepared, hospitals with multi-faith spaces of contemplation, and museums representing the multi-faith character of their locale or their broader society. My conclusion is that Swiss Muslims should not be denied the right to public expression in the form of the construction of minarets, both because it is not clear what meanings are expressed by minarets, and because the state can respond to forms of public expression with which it disagrees without banning them.

The alienation argument

There is yet a third way of reading Miller’s principle, one which emphasizes the idea that members of the historic nation may rightfully expect to find the public space of their society familiar to them. To see why, note his claim that ‘people ... want the places they live in and enjoy to look both beautiful and familiar’ (2016a: 447). As it stands, this desire for familiarity only concerns what Miller calls ‘aesthetic preferences’ about the built environment (2016a: 447). But now consider his further claim that ‘people value their national membership and want it to continue. They must also value, therefore, those cultural features that lend their nation its distinct character’, including ‘the physical appearance of cities or landscape’ (2007: 131; and see 2016a: 449). Putting these two claims together, I suggest that they form what I shall call an argument from alienation, according to which members of the historic nation have an interest in the preservation of a public space in which they can continue to feel at home.

In parallel with my interpretation of what the arguments from contribution and expression, my suggestion is that the argument from alienation makes a distinctive claim about the reasons why the historic nation should be able to play a predominant role in the shaping of public space, a claim which can be detached from considerations of occupation and transformation: it is not what the historic nation has done in the past, but what it needs now and in the future, that is important. The distinctiveness of the alienation argument lies in the emphasis which it places on the nature of one's experience of the social environment. To be specific, it suggests that the feeling of being 'at home' in the social institutions and physical environment of society is one of the most important goods of national identity.¹⁵ Hence this argument from alienation concludes that public space should be shaped in a way which makes it a familiar environment for members of the historic nation.

I want to claim that, in virtue of the distinctive logic of this argument from alienation, it follows that, like the two previous arguments, it can be generalized: if the historic nation has an interest in having a public space in which it feels at home, then other groups have such an interest too. If members of the historic nation should be able to feel a strong sense of connection to their polity,¹⁶ then so should others who do not identify with that nation. To put it negatively, and in parallel with my earlier claim about the importance of expression in public space, there appears to be no good reason to privilege the historic nation in this regard. As Matteo Bonotti puts it, when discussing what he calls 'symbolic religious establishment', 'I cannot see any qualitative difference between the alienation of religious and non-religious citizens' (2012: 347). In the case with which I am concerned, if members of minority groups were to feel alienated from the public space of their society, then their collective wellbeing would be significantly diminished, just as it would be for members of the historic nation. In short, if alienation is important, then it is important for everyone.

What criticisms might be made to this argument from alienation, especially in the generalized form that I want to defend here? One criticism raises a fundamental objection to any such argument. It contends that, since it relies on an account of how people happen to feel about particular states of affairs, it fails to provide an objective test for the validity of their claims about those states. As Sune Lægaard puts it, 'a literal reading of the alienation account allows idiosyncratic sensibilities to influence the judgement whether institutions are problematic or not' (2017: 123). It follows that whether or not the citizens feel

connected to the public space of their polity should have no bearing on arguments about what form that space should take. In this case, neither the historic nation nor minority groups could claim that they should have a certain say in the shaping of public space by claiming that this is necessary to prevent their alienation.

In response, I do not think that feelings of familiarity or alienation should be disregarded. This is because the subjective feelings which a person or group has to their social environment will play a significant role in the determination of their overall wellbeing.¹⁷ I believe, in other words, that nationalists like Miller are right to emphasize that one of the vitally important goods of national identity is the feeling of being at home in the place we regard as our home. I would not deny Lægaard's claim that some individuals may feel less alienated than others by a particular state of affairs since they are psychologically robust, or that some may feel more alienated than others for reasons to do with their own peculiar sensibilities. But I would maintain that the feelings of a particular group about the public space of their society is likely to be more regular and predictable than Lægaard suggests. To be specific, if members of a group cannot see anything of themselves reflected in the public environment of their society, then I think it is likely that this will have a detrimental effect on their wellbeing. Having said, this, I would not claim that complex and inevitably imperfect judgements about the quality and intensity of people's affective attitudes to different sorts of public space should play a decisive role in the normative evaluation of those spaces. Whilst other considerations may be more important, my claim is simply that feelings of familiarity or alienation should play some role.

Another of Lægaard's concerns about the alienation argument is that its implications are indeterminate: 'the alienation account might imply that *disestablishment* is just as problematic in terms of alienation as establishment, or even more problematic, since it might alienate adherents of the majority faith' (2017: 123). Bonotti makes this same point when he argues that a law permitting the public display of certain religious symbols would alienate non-religious citizens and citizens of other faiths, but equally that prohibiting their display would alienate all religious citizens (2012: 346). Assuming that both groups' affective attitudes towards public space are normatively relevant, then it is not at all clear whether arguments about alienation would count in favour of that law or against it.

This objection should be taken seriously since it does indeed seem likely that there is no particular form that public space could take which would enable members of all groups to feel equally at home in it. However, I do not think it follows that no solution can be judged better and worse than others in terms of degrees of alienation. Compare three scenarios: (1) the religious buildings of the historic nation have a dominant place in public space; (2) the building of all religious groups – and those of non-believers¹⁸ – have a public presence roughly in proportion to their significance in that society; and (3) public space is unmarked by the buildings of any religious or non-religious worldviews. I think that, judged in terms of alienation, there are reasons to think that (2) is the best solution. (1) enables members of the historic nation to feel at home in public space, but is likely to alienate everyone else. (3) may be welcomed by secularists of various kinds, but all religious citizens are likely to feel alienated from that public space. But (2) enables all citizens to see something of their own religious or non-religious identities on public display. My hunch – and it is no more than this – is that a person gains more from seeing their own buildings in public space than they lose from seeing others' buildings in that space too. The public presence of their own buildings helps them to feel at home there, and this is a feeling which is not entirely undone by the presence of buildings with which they do not identify. My conclusion, then, is that a third way of reading Miller's principle, one which emphasizes the importance of feeling at home in public space, suggests that the feelings of members of the historic nation about this space should not be favoured over those of members of minority groups.

The liberal nationalist principle in practice

In the previous section, I sought to argue that the right of the historic nation to impress its religious identity on the public space of its society should be significantly limited. I now want to consider relatively briefly what implications my argument has for the three particular cases which I described earlier on. If I am right to say that Miller overestimates the extent to which the historic nation may shape public space, what does this imply for his views on hijab wearing, crucifix display and minaret building?

Hijab wearing

In the first of these cases, Miller argues that, although the historic nation may rightfully expect to dominate public space, this expectation does not prevail over the right of Muslim women to wear hijabs in such space. I want to discuss this particular case fairly briefly, since I agree with Miller's position. I just want to add that it would be strengthened by further reflection on the nature of the right to religion. To be specific, it is worth emphasizing that this right entitles individuals to manifest their religious beliefs and identities in public as well as in private. To take one very well-known example, Article 9.1 of the European Convention of Human Rights reads as follows:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance (Council of Europe, 1950).

If it is understood in this way – as I think it should be – then the right to religion bears directly on the question of who may do what, and to what extent, in public space. In particular, since this right affirms that citizens may express various aspects of their religious identity in public, it sets a clear limit on what the historic nation may do in that space when its actions threaten to curtail that right.

I would acknowledge that my interpretation of this right puts me at odds with the European Court's own interpretation of the Convention. In *S.A.S. v. France* (2014), the Court argued that the right to wear a burqa in public space was outweighed by the principle of 'living together'. Furthermore, it suggested the burqa-wearing might actually breach 'the right of others to live in a space of socialisation that makes living together easier' (ECtHR, 2014: para. 122). Here I would follow others' arguments that, in this and other related cases,¹⁹ the Court got it very wrong, first by accepting that an interest in 'living together' could outweigh a basic right, and second by implying that there might even be a right to the social conditions believed to be necessary for this goal to be achieved. In the words of the two dissenting judges in *S.A.S.*: 'The very general concept of "living together" does not fall directly under any of the rights and freedoms guaranteed within the Convention. Even if it could arguably be regarded as touching upon several rights ... the concept seems far-fetched

and vague' (ECtHR, 2014: separate opinion, para. 5; see also Edwards, 2014; Lægaard, 2015; Marshall 2015).

Crucifix display

Turning now to the second case, Miller believes that his principle gives strong support to the right of the historic nation to insist on the display of religious symbols – such as crucifixes – in the classrooms of state-funded schools. Here it appears that all three ways of reading Miller's principle – in terms of contribution, expression and alienation – work together to support his position. In the Lautsi case, for instance, the argument would be that, since the Italian nation has created the public spaces of its society – including its schools – it may legitimately expect that such spaces will continue to reflect its identity above all others, and thus to be a familiar environment for its members.

In order to explain why I think that in this case Miller permits the historic nation to do too much in defence of its dominance of public space, I want to begin by arguing that there are different kinds of such space. Privately-owned places open to the public (including cafés, concert halls and shopping malls), premises where public services are provided (including courts, schools and hospitals), open public spaces (including beaches, parks and squares), and the public highway itself, all have distinctive characteristics and functions. It is my contention that, as a consequence of their distinctive features, different normative rules should govern the appearance of each sort of public space.

In the case of state schools, we can say that they have a very specific function, which may be construed most narrowly as the education of children, and more broadly as the forging of citizens who in the future will be expected to play a full part in the life of their multi-faith societies. One way of fleshing out this account is again by referring to the European Convention, but this time to Article 2 of Protocol 1 which states that all people have a right to education. In the Lautsi case, the Grand Chamber offered the following interpretation of this article:

as its aim is to safeguard the possibility of pluralism in education, it requires the State, in exercising its functions with regard to education and teaching, to take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner, enabling pupils to develop a critical mind particularly with regard to religion in a calm atmosphere free of any proselytism (European Court of Human Rights, 2011: §62).

If we put aside issues to do with the content of curricula and methods of teaching, and focus on the idea that the right to education requires ‘a calm atmosphere free of any proselytism’, does this imply anything for the physical environment of state schools?

In order to answer this question, it is important to take note of three particular features of the practice of crucifix display. First, a religious symbol fixed to a classroom wall is a constant and inescapable feature of that space. Second, the schoolchildren affected in this case may be regarded as a particularly vulnerable audience since their desires and preferences are still in the process of being formed.²⁰ Third, it is natural to understand such a symbol in such a location as an expression of the state’s official endorsement of the religion with which it is associated.²¹ In my opinion, it follows from this account of mandatory crucifix display that this practice is highly likely to undermine a school’s proselytism-free environment. As a result, I also think that it is likely to undermine what Howard Caygill and Alan Scott, discussing the Bavarian Crucifix Order, characterize as schoolchildren’s ‘right to a self-determined development of religious or philosophical conviction’ (1996: 509). My conclusion, therefore, is that this practice should not be permitted since it violates the standards that should be applied to schools regarded as a special kind of public space.

I shall end my discussion of this case with two brief notes. First, I should acknowledge that in the *Lautsi* case the Grand Chamber did not in the end take the principle of non-proselytism to have the implications which I have drawn from it. This was partly because it accepted the Italian government’s distinction between ‘active’ and ‘passive’ symbols, and its claim that, since crucifixes are passive, they do not have the proselytising effects which critics have attributed to them. In response, I would deny that a coherent distinction between these two types of symbol can be made. After all, why would the Italian

government want crucifixes in classrooms if it thought they had no effect on those present (Mawhinney, 2012; Perez, 2015)? Second, I should also acknowledge that my argument as it stands only provides certain *pro tanto* reasons to oppose the practice of crucifix-display. In principle, the historic nation's right to predominance could still outweigh these reasons in an all-things-considered judgement about the merits of this practice. In response, I would say that, in my opinion, this is highly unlikely to happen once the several constraints which I suggest need to be imposed on this right are taken into account.

Minaret building

In the case of the Swiss minaret ban, Miller argues that, since the historic nation created the public space of its society, and is therefore entitled to dominate that space and so feel at home there, it can rightly deny permission to build any minaret which would undermine the its predominance, either by overshadowing its religious buildings or by having a disproportionate presence relative to them.

In parallel with my analysis of crucifix display, I want to point out that minaret building pertains to a very particular kind of public space. This is what Francesco Chiodelli and Stefano Moroni call '*stricto sensu*' public space, which comprises 'public spaces for general use ... typically spaces of the connective and open type: public squares and plazas, streets, pedestrian areas' (2014: 169). This sort of public space has a number of distinctive functions. One first is to connect private spaces, including homes and places of work, and another is to provide an arena for particular activities – such as parades and demonstrations – which cannot take place in private spaces. More evocatively, Margaret Kohn describes such public space as 'a common world made up of streets that connect us with jobs, entertainments, necessities, visual delights ... beneficial relationships, educational opportunities', and so on (2016: 1).

From this account, I think it is easy to see that it is very important for individuals to be able to access *stricto sensu* public space. But what follows for the rules governing its appearance? To answer this question, it is necessary to focus on several characteristics of this kind of space, particular in relation to a practice like the construction of religious

buildings such as minarets. First, minarets are not an inescapable presence in *stricto sensu* public space in the way that crucifixes are in classrooms. Individuals may walk past and notice religious buildings such as minarets, but they are not constantly confronted by them.²² Second, most of the ‘audience’ which sees church spires and minarets are not vulnerable schoolchildren whose identities and values are in the process of being formed. Third, permitting minarets to be built in *sensu stricto* public space does not imply that the state endorses Islam – as would be the case if, for example, it funded the construction of buildings associated with the historic nation’s religion.

In light of this account of minaret construction as a practice which occurs in *stricto sensu* public space, I can see no good reason to prohibit it. To put it negatively, since this kind of public space lacks the very specific functions of state-funded schools, there is no good reason to try to ensure that it has ‘a calm atmosphere free of any proselytism’. To put it positively, it is vital for members of all groups in society to enjoy some measure of influence over the appearance of an open public realm in which they are able to express themselves, and in which they are therefore able to feel at home.

Concluding remarks

I have tried to cover quite a lot of ground in this article, critically analysing three distinct ways of understanding what I have referred to as Miller’s liberal nationalist principle, and also showing why I disagree with the way in which he applies this principle to several particular cases. There is no doubt that there is plenty more that could be said, both about the general principle and about these various cases. But I think that the breadth of my argument has been justified in order to provide a broad overview of the range of issues at stake.

My overall thesis has been that Miller’s principle would give the historic nation an unwarranted degree of influence over public space. In order to argue this, my general strategy has been to argue that there are certain elements in Miller’s own theory which, if reinterpreted in what I believe is a reasonable way, can provide reasons for imposing constraints on that right. To my mind, these reasons coalesce to form an account of what

people need in the different sorts of public spaces in their society, especially the ability to express themselves and to feel at home in those spaces. Hence my conclusion is that a number of constraints should be placed on the right of the historic nation to impress itself on public space.²³

At a practical level, I agreed with Miller that hijab-wearing in public spaces should be permitted, since this practice is protected by that part of the right of religion which enables individuals to manifest their religious identities in public space. But I argued that the historic nation does not have a right to insist that the symbols of its religion are displayed on classroom walls, given the nature of schools as a special kind of public space. Finally, I argued that permission to build particular minarets could not be denied even if this threatened the predominance of the historic nation's faith, since to do so would be to deny other groups a reasonable share of *stricto sensu* public space.

In closing, I would readily acknowledge that the main tenor of this article has been negative, since its principal objective has been to present a critique of Miller's right of the historic nation to dominate public space. Having said this, by arguing that there are several significant reasons for constraining the exercise of this right, I do think I have given some indication about how I think that the appearance of public space should be determined, and how in particular it needs to reflect the diversity of its society. Elaborating and defending that claim is a task for another day.

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¹ Whilst this is without doubt a significant assumption, I do not think that it limits the scope of my argument only to situations in which it holds true. On the contrary, although I do not have the space to justify it here, I believe that the analysis I present in this article can be applied *mutatis mutandis* to other situations in which there is, for example, more than one historic nation, or one nation with two religions, or one nation whose religious identity has changed over significantly time, and so on.

² On hijab- and burqa-wearing restrictions, see, for example, the European Court of Human Rights (ECtHR) cases of *Ebrahimian v. France* 2015, *Şahin v. Turkey* 2005, and *S.A.S. v. France* 2014. On the display of crucifixes in classrooms, see the ECtHR case of *Lautsi v. Italy* 2011. On their display in parliament buildings, see the case of Quebec’s National Assembly (Beaman, 2013). On the Swiss minaret ban, see Laborde (forthcoming) and Zellentin (2014).

³ For short but useful introductions to liberal nationalism, see Crowder (2013: 85-91) and Riker (2011).

⁴ On the other hand, Miller contends that the historic nation may not ban the wearing of hijabs in schools; to do so, as I shall explain later, he must assume that hijab-wearing does not undermine the preponderance of that nation’s religious identity in public space.

⁵ It is interesting to note that Miller has not always thought this way. In the first book-length iteration of his liberal nationalism, he emphasized that the ‘importance of national communities ... is simply that they are encompassing communities which aspire to draw in everyone who inhabits a particular territory’, and that ‘nationality becomes a self-defeating idea if it is not accommodating’ (1995: 92). In the specific case of religion, he sketches a

scenario in which ‘we are members of a national community forming the dominant group’ in a particular place, but we share this place with ‘a minority group’, which differs from us only because it has a different religion. In these circumstances, Miller argues, ‘we have good reason to de-emphasize this feature, and to stress instead, as a basis of unity, those cultural traits that we already share with the minority’ (1995: 92).

⁶ I say ‘normally’ because Miller immediately goes on to say liberties may be restricted if ‘the exercise of the freedom that is being removed is in some way harmful to the adherents of the favoured religion, or more generally those who value retaining its precedence in public space’ (2016a: 451).

⁷ It may be noted that there is a shift in scale here. When outlining the specific circumstances in which the permission to build a minaret may be denied, Miller refers to particular areas – namely, townscapes, cityscapes and villages. Now he has moved to the national scale, talking about changes ‘across the land’. I think that the choice of scale has important implications, but I cannot more about this in the present article.

⁸ It may be noted here that, since I shall be arguing that the historic nation does not have a right to predominance in public space, I can put these further reasons in favour of a general ban aside.

⁹ Compare Clara Sandelind’s classification of such theories into ‘nationalist, Lockean and Kantian’ types (2015: 488).

¹⁰ The fact that Miller’s position contains elements of acquisition, attachment and legitimacy theories is not a problem for Ypi’s analysis since, as she readily admits, ‘many theories inevitably fit more than one box’ (2013: 242).

¹¹ According to swissinfo.ch, the website of the Swiss Broadcasting Corporation (no date), mosques ‘are a part of the Swiss landscape’.

¹² It is worth noting that it cannot be claimed that first occupation is the only one that counts, since this would mean that the claims of indigenous peoples would always trump the claims of later-established nations. As Miller himself says, his view ‘does allow for the

occupancy and use of land over a long period eventually to trump the territorial claims of the original possessors' (2007: 220).

¹³ In 2010, 'COJEP (Conseil de la jeunesse pluriculturelle) International with its partners and the support of Council of Europe, ISESCO and Organisation of Islamic Conference launched a contest to select the most beautiful existing Minaret in Europe through a photographic competition ... The jury met at the European Parliament in Strasbourg on 19 April 2010 to determine the winner and found that Madni Mosque in Bradford had the most beautiful minarets in Europe' (Habitat International Coalition, 2010).

¹⁴ Compare Corey Brettschneider's argument (2012) that the state should allow hateful viewpoints to be expressed, but should at the same time speak out against them.

¹⁵ In a comment on an earlier version of this article, Cécile Laborde suggested putting it this way.

¹⁶ My language here echoes what Daniel Brudney calls 'the strong-connection-to-the-polity thesis', according to which "[o]ne's proper relation to the polity involves a sense of connectedness to the polity, and this relation plays a significant role in one's overall good" (2005: 820).

¹⁷ In so far as this is the case, I do not think that the alienation account can be replaced by what Lægaard calls the 'symbolic equality account' (2017).

¹⁸ Bonotti argues that '[e]ven a multi-faith symbolic establishment ... would not treat all citizens equally ... as it would alienate non-religious citizens' (2012: 346). I would seek to over this problem by allowing or encouraging the construction of temples of humanism, complete with towers in the shape of the DNA double helix.

¹⁹ In the more recent cases of *Belkacemi and Oussar v. Belgium* and *Dakir v. Belgium* (both 2017), the Court closely followed its reasoning in *S.A.S.*

²⁰ On this point, in its final verdict in 2011, the Grand Chamber of the ECtHR summarized the argument of the Second Section of the Court in 2009 that there is 'an obligation on the State to refrain from imposing beliefs, even indirectly, in places where persons were dependent

on it or in places where they were particularly vulnerable, emphasising that the schooling of children was a particularly sensitive area in that respect' (European Court of Human Rights, 2011: §31; see also Perez, 2015: 573; and Pierik, 2012: 207).

²¹ Here I side with the European Court's first decision in the Lautsi case rather than its second. That is to say, I think that crucifixes should be understood as symbols of the Catholic faith rather than as symbols expressing the secular values of the Italian state. A number of commentators make the same point, including, for example, Mancini (2010).

²² I would not want to exaggerate the difference between these cases. Whilst a crucifix in a classroom is unavoidable for the child in that class, a minaret is not entirely avoidable for a person in the street, especially if it enjoys a prominent and central location. I do nevertheless think that there is a significant difference between the extent to which the two 'audiences' are forced to confront these two sorts of religious symbol, and that this also makes a significant normative difference.

²³ It is worth noting that, in the broader debate about territorial rights, it is universally accepted that such rights are not absolute but may rightly be limited or overridden, always by concerns about human rights, and sometimes by concerns about other matters too (see, for example, Lægaard, 2010: 249-50; Miller, 2011: 266; Sandelind, 2015: 489).