
Review Essays

Justice for Earthlings

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I. INTRODUCTION

David Miller, a prominent contemporary political philosopher affiliated to liberal nationalism, writes on issues of nationality, citizenship, migration, social and global justice. He is best known for his advocacy of the importance of the nation state and nationality in times of transition. With the exception of the 10th chapter: “A Tale of Two Cities; or, Political Philosophy as Lamentation”, most of the chapters in *Justice for Earthlings* (*JfE*) have already been published elsewhere. In this 10th chapter, in reference to Augustine’s distinction between the earthly and heavenly cities, Miller draws an analogy between the heavenly city and ideal-theorizing in justice. His critique is that such an understanding “[...] places justice so far out of reach of human beings that nothing we can practically achieve will bring us significantly closer to the cherished goal” (230). Miller’s main aim in *JfE* is to favour a theory of justice in which the principles originate in the social contexts that they are assigned to regulate. By implication,

contemporary normative theory should be more realistic and less utopian on justice if it wants to avoid being “[...] a lament for what might have been if the human condition were different” (15). Instead, it should focus on justice ‘here on earth’ as a point of departure and help to organize contradictory human beliefs on justice. In short, Miller defends a moral contextualism that can provide both practical and critical advice on policy decisions for the existent state, as opposed to efforts to define what justice is in its universal, abstract, cosmopolitan and perfect form. In what follows, I will present Miller’s main argument in *JfE* and then critically discuss his methodology.

II. A DOWN-TO-EARTH APPROACH TO SOCIAL JUSTICE

In my view, *JfE* can be considered as a continuation and refinement of the claims made in Miller’s previous books, namely *Principles of Social Justice* (*PoSJ*, 1999), *On Nationality* (*ON*, 1995), and *National Responsibility and Global Justice* (*NRGJ*, 2007). Throughout *ON*, Miller considers the nation state as a locus of social justice and national identity as enabling the necessary care among the members of a society to support welfare state policies. In *NRGJ*, his approach becomes more open to accommodate political change in terms of the place given to the nation state. He argues that “[...] fresh demands of justice emerge as human beings relate and associate in new ways at the international level” (2007, 22). As in his previous books, social justice, national identity, globalization and migration continue to occupy a central place in *JfE*. In contrast to his other books, however, Miller is more explicit on two points that refine his position on the philosophical spectrum on social justice: (i) he clearly argues against ideal-theorizing; and (ii) the concept of global justice is refined through a further specification of the ‘fair terms of cooperation’ as defended in the *NRGJ*. This fairness is specified in *JfE* as an equal share of the costs and benefits of cooperation per head of population (12). Let me now explain these two refinements and leave the discussion of global justice to the final section.

Miller locates his theory between two ‘extreme’ positions, namely fact-independent ideal-theorizing and realism (5). In so doing, he takes his theory to remain loyal to Rawls’ concept of ‘realistic utopia’. Moreover, he argues that *JfE* adopts an approach necessary to fulfil the requirements of the latter. The concept of ‘realistic utopia’ is in line with what Rousseau aimed at in *The Social Contract*, namely, ‘taking men as they are and laws as they might be’. In the end, according to Miller, ideal-theorizing lacks an action-guiding character to regulate the political and also presents an analysis bereft of moral requirements on the actual social contexts in which people are situated. As a result, the contexts being left out of the analysis in ideal-theorizing and the motivational power generated by the social relations situated in these contexts are likewise not taken into account in the theory. These social relations and contexts are essential in Miller’s analysis, because it is through their function as motivational powers that people come to care about each other. In other words, without them people would not have a ‘personal feeling of necessity to do the right thing’. It is in this sense that he criticizes ideal-theorizing as thinking of an “[...] imaginary world whose natural and social laws are different from our own” (4). This motivational power – or the ‘instrumental value of nationality’ – is something valuable that ought to be defended if one cares about social justice at all. In his opinion it is also a sociological fact that scholars are obliged to take into account. To grasp the depth of this argument, nationalism’s ‘inclusiveness’ rather than its ‘exclusiveness’ should be considered. In an inclusive sense, nationality is an ‘artificial’ but also a ‘powerful’ glue for a society, ensuring the enlargement of the ‘moral community’ from the people one personally knows to the unknown ‘co-citizens’. In a national society, each member conceives other co-nationals – people one has never met and probably will never meet – as ‘one of us’. The nation forms a larger scale of moral community than the family, neighbours, friends and other people with whom one is in direct relation.

The enlargement of the moral community is the main reason why Miller defends the nation-state as the essential actor in the first place, but

also why he criticizes luck-egalitarianism as a form of ideal-theorizing. In *J/E*, he stresses the importance of cultural identity affiliations by drawing an analogy with the ‘genotype’ constituting a person’s physical body. According to him, these two types of ‘luck’ – physical and moral – make people who they are (10), rather than constituting ‘irrelevant contingencies’ as claimed by luck-egalitarianism. Despite Miller’s powerful justification of nationality as a catalyst of ethical duties towards co-nationals, however, it remains a mystery why exactly Miller thinks that ideal-theorizing is incompatible with his stance. Various scholars have argued that ideal-theorizing has its own limited function, which is different from giving people action-guiding recommendations (Robeyns 2008; Valentini 2009; Simmons 2010; Cohen 2011). In what follows, I will present a twofold argument against Miller’s position on social justice as explained above.

My first argument is that Miller has no good reason to attack ideal-theorizing on the basis of its lack of action-guiding recommendations, for the following reasons: (i) Miller’s own approach of moral contextualism is itself unable to give such recommendations when it comes to the most prominent issues whose contexts consist of grey areas, such as global justice and migration. In addition, (ii) it simply is not the task of ideal-theorizing to issue such recommendations. Let me call the first of these the ‘conflicting principles argument’ and the second the ‘multilayered justice argument’.

III. CONFLICTING PRINCIPLES ARGUMENT

Miller, as can be understood from the title of the book, emphasizes that a theory of justice should be able to offer practical guidance to people here on earth. Yet moral contextualism, as proposed by Miller in his *PoSJ*, remains limited because it is unable to offer any “[...] practical guidance when principles of social justice conflict” (61). The conflicting principles are often to be found in the areas corresponding to contemporary political transformations, i.e. the emergence of the notion of global justice. These

are the areas in which conflicting principles are at stake, areas that simultaneously constitute Miller's main interests. In this sense, Miller's main critique of ideal-theorizing – that it does not provide practical recommendations – applies also to his own analysis. Let me explain this further.

According to Miller, to determine what justice entails in a certain situation involves considering both the contexts as well as the principles related to it. It is formulated as follows: “Rather than laying out principles P1 ... Pn as constituting justice in all circumstances, it should take the form ‘In C1, P1; in C2, P2; ... Cn, Pn’ where the Cs are the distributive contexts in which principles of justice may be applied” (43). The difficulty arises when a context is not completely determined. If this is the case, then there might be different and contradictory principles. This situation is also not regulated by an overarching scheme of assignment of responsibilities.

An excellent example of such a case can be found in *NRGJ* in terms of the assignments of remedial responsibilities related to global justice (*NRGJ*, 99-104). According to his understanding of global justice, despite the existence of universal context-independent principles of justice – respect for ‘basic human rights’ and the establishment of ‘fair terms of cooperation’ – Miller avoids arguing for setting priority rules to achieve an overarching assignment of responsibilities, simply because that would result in conflating his position with the type of ideal-theorizing that his stance opposes. Considering the limited nature of global justice in Miller's scheme, to assign its requirements, Miller proposes various logics of assignment. A full presentation lies beyond the scope of this essay, but before proceeding we can note the ambiguous refinement of the concept of global justice made in *JfE*. For an international cooperation to qualify as fair, in Miller's view, it has to fulfil the following condition: “[...] costs and benefits of cooperation should be shared equally, per head of population” (12). It is not yet clear, however, whether such equality refers to a strict equality or equality in terms of the purchasing parity power of each country. The economic implications of such an understanding of global justice for developing countries are also left unexamined by Miller.

In terms of the clash of principles, Miller seems to leave the issue unresolved.

There are six types of assignment of global remedial responsibilities: moral, outcome, causal, benefit, capacity and community. For instance, responsibility related to capacity asks the following question: who is capable of supplying the remedy? The assignment then becomes the following; “If A is uniquely in this position, then he is remedially responsible for P” (2007, 111). In the case of another type of responsibility, such as the communitarian one, only the community members are responsible for discharging the duty. Fellow nationals, for instance, are remedially responsible for needy individuals in the nation state (2007, 104). In the absence of priority rules in moral contextualism, Miller suggests that we “[...] weigh up conflicting considerations and decide which is the most powerful” (64). Thus, in the case of grey areas of undetermined or underdetermined contexts, Miller’s theory falls short of providing action-guiding recommendations. The function of theory then changes from regulating the organization of that particular context into *explaining why* “there is a deep and persisting dilemma” (63). These objectives are significantly different from the ideal-theorizing Miller criticizes.

The main objective of ideal theories of justice is to set a fair objective as perfectly as possible, accounting for what the ultimate direction is that a society should strive for. Non-ideal theory in its turn focuses on what should be done to achieve that ideal. The recommendations given by non-ideal theory are called ‘justice enhancing recommendations’. Miller’s moral contextualism, as explained earlier, opposes making the distinction between ideal and non-ideal theory, for two reasons: (i) the human condition itself is grounded in reality rather than on the abstract definitions that ideal theory promotes, and also (ii) ideal theory cannot promote useful recommendations for the particular dilemmas in which human beings find themselves. But this critique also applies to Miller’s own theory, because, as I mentioned earlier, it is incapable of providing practical recommendations in the most delicate situations of overlapping contexts.

Moreover, justice enhancing recommendations are issued from non-ideal theory and not directly from ideal theory in the first place. This means, contra Miller, that non-ideal theory scholars not constrained by moral contextualism can provide justice enhancing recommendations on issues that fall within the grey areas. In so doing, they have a greater capacity to help people deal with prominent concerns related to migration, multiculturalism or global justice for which the contexts are overlapping in Miller's framework. As a conclusion, what non-ideal theory scholars are able to produce while thinking about justice is 'down-to-earth' enough to fulfil the requirements of Miller's expectations in *JfE*.

To summarize: if we would look at the particular subjects that Miller's book covers – migration, global justice, multicultural societies – it is surprising to observe that they all risk being set back by the 'priority issue' that moral contextualism is unable to provide. Concerning all these matters, his theory remains capable only of 'explaining' why there is a dilemma but not 'regulating' it. Let me now turn to ideal-theorizing and see whether his critique necessarily attacks multilayered justice as such.

IV. MULTILAYERED JUSTICE ARGUMENT

Here we are in the middle of the ideal/non-ideal theory distinction debate. In her article "Ideal Theory in Theory and Practice", Ingrid Robeyns explains the difference between ideal and non-ideal components as follows: "[...] ideal theory guides us by taking us where the *endpoint* of the journey lies: it does not necessarily tell us about the route to take to paradise island" (345, italics original). In this sense, Robeyns' contribution is this original structure in which ideal and non-ideal components are not mutually exclusive, but 'co-function'. This is what has been called a 'multilayered understanding of justice' or simply, 'multilayered justice'. A similar distinction has been made by G.A. Cohen, according to whom the entirety of political philosophy is understood through different layers that coexist and co-function. As a consequence, many 'seemingly contradictory'

ideas might turn out to be not contradictory, but simply situated in different layers (Cohen 2011, 225-235).

According to multilayered justice, a normative theory includes three components: (i) The ideal theory in which the principles of justice are sought, (ii) the non-ideal path of how to achieve the ideal-theory's objectives, and (iii) issues related to the policy implementation (Robeyns 2008, 242-243). Robeyns explains how the first component serves as a regulative ideal according to which current institutions are evaluated. By depending on the ideal component, non-ideal theory takes the unfavourable conditions of the empirical into account to give justice enhancing recommendations for the particular injustice at hand. The implementation component in turn focuses on how to procedurally establish the recommendation in a concrete institutional way.

If Miller does indeed attack ideal-theorizing on the basis of its lack of issuing justice enhancing recommendations (34-35), there can be two possible reactions on the part of the defenders of multilayered justice. As a first option, they can take such a critique simply as an encouragement of an effort to be made at the non-ideal theory level. Being unable to issue justice enhancing recommendations at that level, ideal theory scholars are simply not concerned by this critique. There is, however, a second and deeper critique that Miller's position might entail: an attack on multilayered justice in its entirety as a methodology. If Miller is in fact making a second attack then the above answer would not suffice. Indeed, considering the analogy of culture and genotype explained earlier, I think it is this second interpretation of the critique that is at work in *JfE*. This analogy, by corresponding respectively to moral personhood and the physical body, explains both human and societies' natures and their implicated social laws (18). As Miller puts it: “[...] we do justice a disservice if we begin to compare its limited earthly form with an imaginary divine form that escapes those limitations” (15). In this sense, according to him, any account of justice should take human nature as its point of departure to be considered an ‘inspiring guide’ applying to earthlings (15). As a second

point, basing himself on Hume's 'circumstances of justice', Miller takes scarcity as the basis upon which very concept of justice is built. If, indeed, the earth was a perfect place with more than enough resources, why would we bother with issues related to the distribution of goods, different and contradictory needs and so on?

How can advocates of multilayered justice respond to such a criticism in *JfE*? Is there any positive value in favouring moral contextualism over simply strengthening the non-ideal component of multilayered justice? I would argue that multilayered justice not only accommodates but also encourages positive political change. After all, its main argument is that we cannot confuse the descriptive account with the normative account. In other words, what *has* happened cannot limit what *should* happen. Even if this were not accepted, a historical support can also be given to such a position: the very extension of social justice from the sub-national to the national level by the *Révolution Française*. The extension of the national moral community that Miller continuously defends in his books itself occurred as a consequence of historical change. Therefore, compared both to a progressive understanding of history as well as to multilayered justice, Miller's stance remains content with a form of conservatism.

Miller's position might, indeed, be more progressive than the realistic approach to justice, according to which evaluations of the fairness of an action can be made solely in reference to the existing institutions. It is evident, however, that his position is more conservative *vis-à-vis* a larger-scale moral impartialism that extends the moral community beyond the borders of the nation-state. Miller's conservatism is one of 'culture' and not of existing 'institutions'. The understanding of responsibility as present in *ON*, *NRGJ* and *PoSJ* limits global justice to basic human rights or to fair terms of cooperation. Such an understanding remains loyal to the way it is conceived in Western – or perhaps British – culture. In my view, this is the reason why a more demanding concept is considered to be unrealistically utopian, because it is in tension with the promoted culture in a particular place in the world that is taken to change only *slowly* if not at all.

Despite the fact that Miller leaves the possibility open for progress by asserting that “[...] fresh demands of justice can emerge as human beings relate and associate in new ways at the international level” (*NRGJ*, 22), his general approach is rather in defence of the nation-state as the basic actor. In this sense, it is difficult to be progressive and to appreciate fully the ‘laws as they might be’ from within a conservative approach. Moreover, concerning Hume’s ‘circumstances of justice’ and their emphasis on ‘scarcity’, Miller’s over-emphasis on scarcity risks overlooking the actual state the world is in. Oftentimes some deeply problematic situation, e.g. ‘world hunger’, can be resolved with some organized action. While the factor of scarcity is important for the distribution of different resources among peoples, placing it at the centre of the theory can mislead us. For instance, the world is now capable of producing enough food to actually resolve the problem of hunger. By rendering theorists dependent on what is happening in the world now, such an emphasis on scarcity can prevent them from conceiving new schemes of organization. Another example would be the idea of a united Europe. Although the idea has existed at least since the 16th century, such a union has been formed only in the last fifty years or so. To qualify this sort of activity as ‘lamentation’ for what could have been achieved, as Miller does, is in my view mistaken. Such an activity is positive, and moreover, a positive change can only happen when we, as scholars, keep our minds open to new possibilities rather than sticking to the ‘second-best options’. Nevertheless, it does not constitute a sufficient condition in itself for positive change to take place.

There is thus a tension between conservative and progressive ways of thinking, and Miller seems to be conservative rather than ‘down to earth’ in his analysis. In this sense, in contrast to what he proposes, his theory is not more realistic than other theories. One of the most striking sentences of the book exhibiting exactly this tension concerning the nation-state’s place and cosmopolitanism is the following: “[...] encouraging people to adopt a more cosmopolitan identity may weaken their

commitment to social justice still further without at the same time making them any more committed to global justice” (181). Here again it becomes clear that the possibility of harm to the national moral community seems to Miller to be sufficient to justify not even trying to take further steps to achieve global justice.

JfE can be seen as a book summarizing Miller’s approach to citizenship, migration, and distributive justice both at the national and global levels. Therefore, it is to be recommended for those seeking a good summary of his theories. It is slightly refined *vis-à-vis* his previous books, i.e. *ON*, *PoSJ* or *NRGJ*. If the intention is to have a deeper grasp of the dilemmas related to contemporary political transformations initiated by globalization, it might be an excellent book to read. If, however, the intention is rather to find inspiration for answers on ‘how to deal with the challenges raised by globalization’, then I recommend the reader look further afield.

WORKS CITED

- Cohen, Gerald. 2011. *On the Currency of Egalitarian Justice, and Other Essays in Political Philosophy*. Edited by Michael Otsuka. Princeton: Princeton University Press.
- Miller, David. 1995. *On Nationality*. Oxford: Clarendon.
- Miller, David. 2007. *National Responsibility and Global Justice*. Oxford: Oxford University Press.
- Miller, David. 2011. “National Responsibility and Global Justice.” In *Nationalism and Global Justice: David Miller and his Critics*. Edited by Helder De Schutter and Ronald Tinnevelt, 18-30. London: Routledge.
- Miller, David. 2013. *Justice for Earthlings: Essays in Political Philosophy*. New York: Cambridge University Press.
- Robeyns, Ingrid. 2008. “Ideal Theory in Theory and Practice.” *Social Theory and Practice* 34/3: 341-362.
- Simmons, John. 2010. “Ideal and Non Ideal Theory.” *Philosophy & Public Affairs* 38/1: 5-36.
- Valentini, Laura. 2009. “On the Apparent Paradox of Ideal Theory.” *The Journal of Political Philosophy* 17/3: 332-355.