

**PUBLIC PROVISION OF ENVIRONMENTAL GOODS:  
NEUTRALITY OR SUSTAINABILITY?  
A REPLY TO DAVID MILLER.**

**ABSTRACT**

Theorists of liberal neutrality, including in this context David Miller, claim that it is unjust for environmental policy to privilege a particular conception of the good by appealing to normative principles derived from any substantive conception of human flourishing. However, analysis of Miller's arguments reveals the inability of procedural justice thus understood to adequately engage with the complex and contested issue of the relationship between human beings and the rest of the world. Miller's attempt to distinguish categories of public goods generally, and environmental goods in particular, according to the possibility of reasonable disagreement, is seriously flawed. It results in an inability to distinguish between want-regarding and ideal-regarding justifications for the public provision of environmental goods, and more generally, an inability to recognise ecological sustainability as an important aspect of the common good. Effective environmental policy is not rendered illegitimate or unjust by incompatibility with liberal neutrality.

Ecologically sustainable societies, if they are also to be just, will never be brought about by market forces alone. Their creation and maintenance will require interventionist environmental policy based on meaningful normative principles, particularly with respect to levels of production and consumption. These principles, in my view, will in turn best be defined and justified by reference to some substantive conception of human flourishing which takes full account of the ecological embeddedness of human beings, both collectively and individually.

From the perspective of liberal neutrality, however, it is seen as unjust for government to privilege any one conception of the good life over another. On this view the adoption of environmental policy based on normative principles would itself be unjust, precisely because these principles in turn rested on a specific conception of human flourishing. I shall argue here, against David Miller (1999a & 2004), that normative environmental policy is not in fact rendered unjust or illegitimate by incompatibility with the principle of neutrality. A neutral state as conceived by Miller will find it impossible to adopt or implement effective sustainability-oriented policies, because it deprives itself of the conceptual and ethical framework within which these

policies can be justified and defended, particularly against those who believe they stand to be adversely affected.

### ***Neutrality and Sustainability***

I should acknowledge at the outset that attempts can be made to justify strong environmental policies without abandoning neutrality. One recent example is Dobson's suggestion (2004) that genuine neutrality would require robust action to protect citizens' opportunity to choose a life governed by either environmentalist or what we might call eco-sceptical principles. This preservation of options, he argues, would effectively mean a commitment to "strong sustainability". Such arguments are undoubtedly tactically useful: but the requisite policies will surely be more effectively justified by affirming the real value of an ecologically sustainable society, than by adopting a precarious tactical position based on a hypothetical acceptance of the neutrality principle. I do not believe that a position of scrupulous even-handedness between environmentalists, eco-sceptics, and the indifferent can ever do the job of bringing about a sustainable society. In short I am of the view that we can have neutrality *or* ecological sustainability, but not both.

This issue comes into sharp focus in the debate about the public provision of "environmental goods". While it is far from clear that the economic language of commodity provision can really capture the relevant issues, this debate does illuminate the relationships between justice, liberal neutrality, and environmental policy. David Miller offers a *de facto* neutralist account of the conditions under which justice requires, permits or precludes the public provision of public goods generally, and environmental goods in particular, which I shall now proceed to examine. A range of interlinked problems with this account is identified, and I argue that these can all be traced back to more fundamental problems associated with liberal neutrality.

### ***Miller's categories of public goods***

In order to establish whether justice requires their public provision, writes Miller (2004: 136-140), public goods can be divided into three categories: "public goods whose provision is justified by an appeal to the value of justice itself" (category A); "public goods that can be given a public justification within the relevant political community, but not one that makes direct

appeal to the value of justice itself” (category B); and “public goods whose justification appeals to privately held conceptions of the good, i.e. conceptions of the good over which there can be reasonable disagreement” (category C).

Category A goods “correspond to basic needs which...the political community has a duty of justice to meet on the part of each member” (136). These needs, such as clean air, drinkable water, and personal security, must be provided as public goods because this is either the only or the best way for them to be provided. The public provision of goods in category A is, for Miller, uncontroversially justified by the duty of justice incumbent on the community to meet its members’ basic needs<sup>1</sup>.

Category B goods, though not required to meet basic needs, “play an essential role in sustaining the community, so that reasons can be given to anyone who is a member to support their provision” (137). People can reasonably be expected to see the value of such goods for the community even if they do not personally value them. If they value the existence of the community and all that it provides, they have a reason to support the provision of those public goods which play a constitutive role in it. This, says Miller, is preferable to the alternative way of arguing for the provision of the same range of goods, i.e. claiming to make objective judgements about for instance the excellence of Beethoven, since it avoids the problem that these are matters about which there can be reasonable disagreement. I may disagree with you about the value of classical music, but we could nevertheless potentially agree that we all benefit from its public provision, since we agree that this helps constitute or maintain the community. If the members of the community *do* agree on this, then classical music becomes a category B good, for which public subsidy is justifiable (see e.g. 2004 p146).

If such agreement cannot be reached, however, the goods in question must be seen as belonging to the residual category C: their provision benefits only certain individuals or groups, in this case lovers of classical music. Echoing Brian Barry’s (1990) distinction, Miller points out that the public provision of category C goods may be justified by their proponents either in want-regarding terms (eg provision of sports facilities) or in ideal-regarding terms (eg protection of species or habitats on the basis of their intrinsic value), or a mixture of the two (eg state support

for the arts). However he states that these goods should all “be treated together from the point of view of justice” because in all cases “people are being asked to contribute resources for purposes that they do not value, and that do not even benefit them directly” (Miller 2004: 140). The couch potato, to whom justice is owed as much as it is to anyone else, may be equally indifferent to the benefits of sport, art and nature.

Although Miller is clear that justice does not actually require it, state provision of public goods in category C will often be far more effective than private provision, for various reasons including free rider problems. The question thus becomes ‘*when* is the public provision of category C goods consistent with justice?’: and in order to address this we need to look at how the costs of providing such goods can be fairly distributed. This is not an issue with category A or B goods because the benefits are shared by all, so any generally fair system of taxation will produce a fair way of allocating the costs. Category C goods, on the other hand, benefit different people to different extents, so if they are to be publicly provided an issue of justice arises about finding a fair way of spreading the load of paying for them.

So how should the state justly allocate the cost of providing a package of category C goods which will benefit people differently “according to their tastes and values”? Everyone should be a net beneficiary: but beyond this, Miller wants to try and *equalise net benefit* as far as possible. This would include taxing more heavily those who benefit more.

“Supplying public goods in category C is a co-operative venture for mutual advantage, and since no one has a better claim than anyone else to the net benefit produced in this way, it should if possible be equally distributed.” (2004: 142)

Strict net equality of benefit, though, has the drawback that it commits one to saying that no-one should benefit more than someone who hardly benefited at all, such as the couch potato. So Miller in the end favours

“...allow[ing] the public goods package to be chosen on grounds of efficiency - looking at the size of the gains that can be made by providing goods valued by different groups - and then allocating the costs of the package so as to equalise the gains as far as possible.” (143)

The aim is to ensure that justice is done over time by arranging the packages of category C goods provided such that all groups benefit equally.

Miller explicitly rejects any special pleading for the many environmental goods which will, on this model, fall into category C. This is simply on the basis that “there can be reasonable disagreement” over, for instance, the value of saving the snail darter, in a way that there cannot be over the value of “a basic environmental good like clean air or drinkable water”. Individuals or groups who claim that they derive no benefit from the continued existence of the snail darter cannot be said to be wrong. Environmental goods are, for Miller, just like any other public goods, and as such their provision is required *as a matter of justice* only if they fall into categories A or B. Any other environmental good whose public provision is demanded by some people, but which does not fall into either of these categories, remains in category C to be considered as a good of benefit only to the particular interest group called “environmentalists”.

Here it must compete for funds with all the other goods demanded by other interest groups such as classical music lovers, motorists or sports fans, and await the moment when it is deemed to be the environmentalists’ turn to have some of their demands met. The environmentalists’ claim that the improvements they seek are of benefit to all is discounted, essentially on the basis that “they would say that, wouldn’t they”: this claim is, says Miller, akin to that made by a religious sect which believes public funding of their new church would benefit everyone (1999a: 171).

### ***Calculation or judgement about environmental goods?***

Aggrieved environmentalists might well question whether it is just or realistic to consider them as simply an interest group akin to sports or music fans; or to ask the same question from a different angle, whether it is really appropriate to respond to their demands by claiming that the nonbasic (Humphrey 2003) “category C” environmental goods they seek will benefit only them. I would argue, against Miller, that this is not an appropriate response. Demands for the provision of public goods made from an ideal-regarding perspective (such as a sincere environmentalism) are importantly different from those made from a want-regarding perspective (Barry 1990). They are at least in part invitations to deliberation, political claims by citizens about what society “should” be like. The proper response from a democratic government is to assess the arguments and

evidence offered to support these claims, and form a view as to their validity. This will inescapably involve some consideration of the ideals being appealed to, at least enough to judge whether these ideals are (or should be) among those which guide the community. For government to exercise judgement in this way when assessing demands for the public provision of environmental goods would be quite different from Miller's essentially calculative approach.

For Miller only public goods in categories A and B are such that it would be unjust *not* to provide them. Unless the environmental goods whose provision is demanded can be shown to meet "basic needs" they cannot be placed in category A. If they cannot be agreed to "play an essential role in sustaining the community", they are also excluded from category B, and must therefore remain in category C. At this point something curious happens: the actual nature of the goods in question, and the consequences or merits of providing them (or of failing to do so) become largely irrelevant. Miller says that public provision of a category C good will be just *only* if such provision is both fair and efficient: to find out whether this is the case, government should look at how successful the interest group making a demand for the provision of a public good has been lately in getting its demands met, in comparison with other groups. It should then proceed to feed this information about the group making it, together with an estimate of the cost of the good demanded, into a cost-benefit analysis process whereby public expenditure on category C goods, and the revenue-raising measures (if any) needed to cover this expenditure, are organised so as to equalise net benefit for all over time.

This may perhaps be a fair approach when assessing want-regarding demands from which benefits are *agreed* to accrue only to members of the relevant interest group, but to bundle ideal-regarding demands into this category is already to treat them unfairly. It strips them of their political content and reduces them to simple preferences. Government on this model is effectively barred from actually assessing the claim (implicit in an ideal-regarding demand for provision of a public good) that benefits will accrue to all, or to society as a whole: it is required to remain even-handed between the group making this claim and those disagreeing and/or making other mutually exclusive claims. It is, therefore, precluded from considering the normative or ideal-regarding content of any demand for the public provision of environmental goods. This is surely wrong. It also seems to point to an inconsistency in the model: how did other public goods (such

as for instance subsidised health care) which *are* in categories A or B get there, if not by some process including consideration of the ideal-regarding justifications initially put forward for their inclusion?

For Miller, it can never be legitimate to "... value environmental goods not by some more or less sophisticated form of cost benefit analysis, but according to an objective account of the value they have for human lives" (1999a: 163)<sup>2</sup>. Those who are indifferent to particular (or indeed all) environmental goods are not making a mistake, as he takes philosophers such as Robert Goodin (1992) and John O'Neill (1993) to imply, but expressing a valid alternative view deserving of equal consideration. His response to Goodin and O'Neill appears to be more or less equivalent to the way in which he suggests governments should respond to environmentalists. It is not reasonable, he states,

"...to establish a regime of distributive justice which by privileging environmental goods assumes that people already value nature in that way when empirically we know that they don't." (1999a: 165)

But this response fails to properly engage with the objectivist argument. O'Neill's Aristotelian claim that there is an objectively ascertainable characterisation of a flourishing human life, and that this includes a certain type or level of valuation of nature, does not rest on any assumption that this actually *is* how everyone *does* value nature. No such assumption is required: substantive conceptions of the good are not undermined or rendered illegitimate by not being universally (or even widely) shared. In order to dispose of O'Neill's argument, Miller would have to say either that there are no such objective goods to human life, or more specifically that O'Neill's claim that a certain relationship to nature is one such good is mistaken. Empirical facts about people's existing beliefs alone cannot adequately support either conclusion.

Mathew Humphrey has observed that Miller's anti-objectivist position here seems inconsistent with the line he takes when promoting republican citizenship (eg in Miller 1999b), in which context he "appears to endorse a view that there are certain objective goods to a human life, in this case engagement with politics" (Humphrey 2003 p338). Even though people may give politics varying amounts of weight, Miller claims that it is still a necessary part of a good life. For

O'Neill, the same is true of the appreciation of nature: and Miller should thus accept, says Humphrey, that this can be "sufficient to ground a demand for nature preservation on the basis of preserving the possibility of a good human life".

### ***Justice and public opinion***

Miller's reply to Humphrey's criticisms is puzzling. He begins by saying (Miller 2003: 359) that he "fully agree[s] with Humphrey that establishing the right kind of relationship with the natural world is an integral part of a good human life", but goes on defend a version of neutrality: while not a subjectivist about conceptions of the good life, he says, he is a pluralist. Even among those who agree that a good life must include the relevant environmental goods there may be disagreement about the relative weight to be accorded to these goods. More generally, in order to live justly with others who hold different conceptions of the good life, we must all be prepared to take each others' conceptions as given and not assume that they should accept ours. Thus

"Since the value of environmental goods is still a contentious matter, we cannot give them a privileged place in our deliberations about justice, any more than we can cultural goods or other kinds of goods favoured by particular sections of our society." (2003: 359)

Firstly this does not address Humphrey's accusation of inconsistency, since it is surely true that the value of politics is also a contentious matter. Furthermore if we read Miller's neutralist sentiments as anti-objectivist, but also take him to be saying that engagement in politics is nevertheless a fundamental good to be accorded "a privileged place" as a right of citizens, this would seem to make him vulnerable to the classic communitarian critique of liberalism, that unacknowledged conceptions of the good are embedded in claims about the value of a politics based on neutrality between conceptions of the good.

Secondly and perhaps more to the point here, Miller still seems to offer no good reason why a philosophically valid theory purporting to show that the availability of certain goods constitutes a necessary condition for human flourishing should be seen as inadequate because of its contentiousness; that is, because of contingent empirical facts about how many people espouse it. His view that this is indeed the case presumably derives from his more general views about theories of justice. Elsewhere (eg 1999b, 2002) he defends a "contextualist" interpretation of

justice, similar in form to Walzer's (1983)<sup>3</sup>, and is at pains to distinguish this position from "conventionalism" about justice. Different contextual rules of thumb rest on common fundamental principles of justice, which simply cash out into different specific principles of just distribution in different contexts. But he is clear that his contextualism does not extend to wanting theorising about justice to start from scratch in every new situation, informed only by convention. Thus when he says that:

"an adequate theory of justice *must pay attention to* empirical evidence about how the public understands justice, and in particular to the way in which different norms of justice are applied in different social contexts" (1999b p42: emphasis added),

it seems clear that "must pay attention to" is not equivalent to "must be based only on". Paying attention to popular understandings and practices is thus an important part of deriving contextually appropriate norms of just distribution, but not, even on Miller's view, necessary for the prior establishment of the fundamental principles of justice which these contextualised norms will implement in practice.<sup>4</sup>

It follows that if the conception of human flourishing which informs a given theory is taken to enter in at the level of these fundamental principles, it cannot in itself be undermined by any subsequent failure to take full account of public opinion in the translation of those principles into properly contextualised norms. Miller has not satisfactorily shown, then, that a lack of public support for the underlying environmentalist conception of human flourishing can or should undermine the argument for the inclusion of nonbasic environmental goods as goods of justice.

This is confusing territory, especially since Miller would presumably want to object that no non-procedural conceptions of the good life should enter into our deliberations about the principles of justice at either stage. The basic point here though, which I believe remains sound, is that arguments like O'Neill's which claim a basis in an objective conception of human flourishing can only be satisfactorily refuted by engaging with the *reasons why* that claim is made. This of course is difficult for a neutralist liberal, since such engagement is likely to involve appeals to alternative conceptions of the good life. The only consistent neutralist strategies available appear

to be either to deny that any such objective ethical basis can exist, or to argue that the existence of a plurality of such (potentially valid) claims makes it unjust to base policy on any one of them. Miller essentially adopts the latter (see for instance Miller 2003: 359). The problem, however, reappears at the next stage: how to justly reconcile these competing conceptions of the good life without making any judgements as to their validity? For the neutralist, this must be done by rules of procedure: hence the retreat into government by calculation, as cost-benefit analysis, preference-satisfaction and opinion polling replace the exercise of judgement. The inadequacy of this approach is thrown into sharp relief in the context of environmental policy.

### *Justice for the indifferent?*

There are then serious general problems associated with attempting to arbitrate between conflicting ethical claims by quantitative analysis, while refusing on principle to critically examine their content. I would however suggest that there is also a specific problem with Miller's preoccupation with what we might call the rights of the indifferent. Even if we were to accept that the proper procedure for dealing with citizens' mutually incompatible conceptions of the good life could be a calculative one based on preference satisfaction, rather than a judgement-based one, there would remain an issue as to whether my *indifference* to something that you value - for instance the continued existence of the snail darter fish - should really count as my having a *conflicting* preference, rather than simply no relevant preference at all. I might place more value than you on the new dam which will destroy the fish's only remaining habitat, because I have more interest than you in getting more (or cheaper) electricity: but that does not mean I actively want to see the snail darter extinguished, or that I object to measures required for its preservation.

In this famous example, (influentially discussed by Dworkin (1986), based on a case brought under the US Endangered Species Act), there are hypothetical possibilities of happy endings. Perhaps the rosier scenario is one in which the extra power generation capacity is rendered superfluous by better energy conservation measures: adequate power supplies are maintained without building the dam, the snail darter lives happily ever after, and we are both satisfied. Even in this case, though, there is evidently an opportunity cost, (the reduction in total power available) associated with saving the snail darter: the question is whether this cost is acceptable.

This in turn can be discovered only by looking at the reasons for people's expressed preference for cheap plentiful electricity: in reality people value electricity as a means to various ends, not as an end in itself. There may well be other means available to satisfy these ends. We may even also find that some of them, once uncovered, are revealed as antisocial, illegal, or otherwise illegitimate.

Solutions to such dilemmas, where they exist, will only emerge once our preferences and their underlying values and rationales are unpacked and examined. What this means is that the discovery that there exist people in a society who are indifferent to certain environmental goods does not *necessarily* mean that it would be unjust to impose on that society the cost of providing those goods. In order to support this claim we do not have to go as far as Miller accuses O'Neill and Goodin of going (Miller 1999a; 164); that is, saying to such people that they are making a mistake and that we are therefore justified in riding roughshod over their preferences. We can simply point out that injustice arises *only* if the indifferent are *actually* significantly disadvantaged by such provision, and that we can only know this by finding out what lies behind their indifference. It is the neutralist's insistence on not engaging with questions of *why* people believe things that makes this seem so difficult.

We can only unpack people's raw preferences in a meaningful way by treating them as value judgements, rather than merely as quantifiable economic preferences. Miller in fact accepts this, when arguing against a suggestion of O'Neill's that people might value, for instance, an area of drab marshland more highly if they knew more about its ecology:

“So even if we want to say that questions about the value of the environment are questions of judgement, the judgement involved is going to be one that combines matters of fact with an irreducible element of valuation. Even when we know everything there is to know about the marsh, some of us may find little or no value in it.” (1999a: 163)

But once we arrive at the implied next stage, of adjudicating between the newly revealed range of underlying conceptions which cause people either to value the marsh or to remain indifferent to it, we will have come full circle back to the point where neutrality lacks the resources to achieve any such adjudication, and thus to make any decision about, for instance, whether to “develop”

the marsh. It seems clear that such decisions can only really be made with reference to substantive conceptions of the value of particular human relationships to “nature”, and thus of human flourishing, whether or not these are made explicit. If we aim to avoid the imposition of unexamined conceptions of the good, the only just way to achieve this is in fact for environmental policy-making to be based on some explicit and publicly deliberated conception of just what kind of human / nature relationship we are trying to maintain.

### ***Problems with reasonable disagreement***

What I have characterised as liberal neutrality’s need to make decisions by calculation rather than judgement is closely related to its tendency to regard areas of “reasonable disagreement” as no-go areas for intervention. Miller’s categories, and his descriptions of the circumstances under which goods in each category should be provided, reflect this notion that wherever people disagree for reasons based on their personal conceptions of the good, government should remain neutral between them. As discussed above this ideal of neutrality is itself problematic: but there can also be reasonable disagreement at many more levels than Miller seems to acknowledge.

One consequence of this is the dissolution of the distinction between categories B and C. Category B goods are characterised as those which “play an essential role in sustaining the community, so that reasons can be given to anyone who is a member to support their provision” (2004: 137). Miller gives as an example measures to protect the national language, or “physical elements of the community’s cultural heritage” such as important parts of the built or natural environment. But saying that “reasons can be given” is very different from saying that everyone can or will accept them: many people in Wales, for instance, feel they have good reasons not to support the requirement that all public employees be fluent in Welsh. Local people often object to central government’s “listing” of buildings they consider eyesores. There can be, and frequently is, reasonable disagreement about what goods “promote values that give the community its distinct identity” (140).

Miller does not say, though, that giving people reasons will necessarily persuade them. Ultimately it is the *capacity* for such “public justification” which is supposed to be what distinguishes category B goods from category C goods, of which Miller says:

“...there can be reasonable disagreement over the value of the snail darter’s refuge. [...] Ecologists may care passionately about the fate of the snail darter: but religious believers may care with an equal passion that that public resources should be used to promote their faith, and artists that their work should be made freely available for the public to appreciate. In each case what prevents these [category C] goods from being of more than sectional value is that *compelling reasons cannot be given* to persuade others to value them.” (141, emphasis added)

Ecologists, religious believers and artists might well all justify the public provision of the particular goods they value on precisely the grounds that they “promote values that give the community its distinct identity”. In fact environmentalists seeking, for instance, the protection of a threatened landscape often do use precisely this argument. In theory it could happen that all concerned found it “compelling”, at which point the protection of that landscape could become a category B good. If not, then once again we have an instance of reasonable disagreement.

So far so good, it would appear: if there is reasonable disagreement about the value of a good to the community, it must be in category C; if not, and all are agreed that it has such value, it is a candidate for category B. But this is not what Miller says. He says that the distinction rests on whether there *can be* reasonable disagreement. It is not a matter of whether there *actually is* reasonable disagreement: when describing category B goods he clearly wishes to ascribe to them some extra property which makes their value capable of being “publicly justified” and thus somehow less subject to reasonable disagreement. To put the quote I have already used into its full context:

“So if someone argues for state funding of classical concerts on the grounds of their intrinsic musical excellence, she is liable to be challenged on the ground that the standard of excellence she is invoking is open to reasonable disagreement, and that there are competing claims that could equally well be advanced. Faced with this challenge, there is nothing more that can be said – in contrast to the position that I favour, where category B public goods are defended on the grounds that they promote values that give the community its distinct identity, and bind its members together.” (140)

Taken together, these two passages clearly imply that there is some property which goods like classical music possess, and goods like the survival of the snail darter lack, which makes it possible to give compelling reasons of community identity for providing the former, but not for the latter. Two questions arise: firstly what this property might be, and secondly why Miller does not make it explicit what he has in mind. Whatever it is though, there is sure to be reasonable disagreement about it: to take his own examples, many would argue that how we value the non-human world is a more important measure of the quality and coherence of our society than how we value classical music.

The “reason that can be given” to the sceptical person in such cases, says Miller, is that “she benefits from belonging to a political community that is constituted in part by the values in question” (138). But she might reasonably disagree with the implicit assessment of what values constitute the community, for many perfectly good reasons which may or may not have to do with her own fundamental values. There is a further important distinction between the values that do at present constitute the core of a community, and those which members of that community think *ought* to be part of that core.

As Mark Sagoff (1988) has argued, people quite legitimately have different answers to the questions “what do you value?”, “what does our community currently value?” and “what do you think we *should* value as a community?”. In Sagoff’s terms, this is because we are all quite capable of holding different and often conflicting views simultaneously, in our different roles as consumers and as citizens. Echoing Barry’s distinction again, Sagoff says that public policy should reflect the views of people as citizens, not as consumers:

“[S]ocial regulation should reflect the community-regarding values we express through the political process and not simply or primarily the self-regarding preferences we seek to satisfy in markets.” (1988, p8)

Miller admits that Sagoff has a point - this is in fact, he says, the crucial difficulty for the “standard cost-benefit approach” (Miller 1999a: 165):

“The problem is that when people make judgements about the value of environmental goods, (for instance in response to willingness-to-pay or willingness-to-accept questions),

they are likely to incorporate into their answers a social perspective. [...] This corresponds to Mark Sagoff's claim that when people make judgements about the environment, they are behaving as citizens rather than as consumers."

Yet Miller seems to find it unimportant that people behave as citizens, not as consumers, when they make ideal-regarding claims for the public provision of "category C" goods. They are opening up a discussion about what goods and values *should* constitute our community. Similarly when, in Miller's terms, they fail to reach agreement as to what goods fall into category B, while this may be due to disagreements over the empirical facts of what does constitute our community, there may also quite properly and reasonably be disagreement about what sort of community we want to build and maintain. Decisions about which public goods should be publicly provided are inescapably political decisions.

This, however, still does not exhaust the scope for reasonable disagreement. Our sceptic might simply have her own very different conception of what constitutes her community. She might go on to question which level of community she is being asked to consider: the values which constitute the local, regional, national, international and global "communities" to which we all simultaneously belong are often in conflict. But she might also go beyond all this and ask why being constitutive of cultural identity should be the only criterion for inclusion in this category of goods which she is being "given reasons to value". It appears that some concept of the common good is being invoked here. If so there are likely to be many other qualities of specific public goods that can contribute to this. Should possession of such other qualities then also cause a government to promote these goods, to go around "giving reasons" why people should support their public provision? Many would say yes, but I suspect Miller would not. It would be difficult to go down this route and retain any recognisable neutrality between conceptions of the good.

Finally, and underlying all of the above, there is the awkward fact of reasonable disagreement about what exactly constitutes "public justification", among "the public" themselves as among theorists. The concept originates (Rawls 1993) in the context of considering the criteria for legitimacy of a system of distributive justice, or of a regime based on such a system. In that context, as in this, there is considerable tension between empirical and normative understandings

of what constitute “good reasons” that may be given for believing things. Should we understand as “good reasons” (a) those which all reasonable people *do* accept, or (b) those which they *ought to* or *would* accept under certain ideal conditions? This is of course a key question not only in political theory but in real-world debates about the relationship between policy-making and public opinion. Both (a) and (b) seem to capture important aspects of what public justification consists of, though it has been argued (e.g. by D’Agostino 1996) that the two are fundamentally incompatible.

Miller evidently favours some version of (b), the normative understanding of “good reasons”: he wants to say that the reasons advanced by environmentalists in support of the claim that the continued existence of the snail darter plays an important constitutive role in our community fail to be “compelling” not just because they are not unanimously accepted, but because they are in some normative sense not good enough. His position is problematic however firstly because, as mentioned above, he offers no explanation of just what the test is that this claim fails (and that the similar claim about classical music passes). Secondly, though this is obviously a far wider question than can be adequately discussed here, taking a normative stance on the nature of public reason arguably sits ill with the attempt to remain neutral between privately held conceptions of the good. Thirdly, and perhaps in part because of these tensions, Miller seems to allow in places (e.g. 2004: 146) that given unanimous support for the proposition that they are importantly constitutive of the community, goods can in fact enter category B irrespective of the quality of the reasons given to support that proposition.

In sum, Miller claims to be simply enquiring into what justice requires of us in the context of the public provision of public goods. In reality, however, the process of deciding what goods to place in each of his three categories raises at least three related but separate questions: what does justice require, what constitutes our community, and what makes for a good life. There can be, and is, reasonable disagreement about all of these questions.

This means firstly that if government were to take seriously the injunction to avoid interfering in areas of reasonable disagreement it could barely act at all. Secondly, and importantly for Miller’s position, it means that merely by placing public goods into categories A, B or C it already

trespasses into areas of serious and eminently reasonable disagreement, and thereby risks imposing implicit unexamined conceptions of the good while professing its neutrality. Thirdly, of course, it also means that the possibility of reasonable disagreement cannot serve as a criterion for distinguishing which of the three categories a given public good should be placed in: categories B and C, especially, are in serious danger of collapsing into one another.

### ***Practical implications***

Consideration of Miller's model would not be complete without a brief look at how environmental goods are likely to fare in practice when categorised in this way. Miller is clear that nonbasic environmental goods which are candidates for public provision can only be promoted from the residual category C (only of benefit to environmentalists) to category B (of benefit to all by virtue of being constitutive of the political community) by persuading the whole community to consensually redefine them as such (see eg 2004: 146). One major problem with this approach becomes rapidly apparent if we consider cases involving the public provision of environmental goods by means of effective environmental regulation.

Environmental regulation in the public interest, including effective enforcement through the legal system, is inescapably a public good, which needs to be publicly provided. But it is also, by its very nature, not amenable to consensual decision-making. In the real world, polluters resist attempts to curb their excesses, individuals resist policies aimed at discouraging unsustainable consumption, and businesses resist measures which restrict their freedom to develop and market products. In general, those who believe they stand to be adversely affected by regulation are very unlikely to consent to it.

Meanwhile on the other side of the equation environmentalists, as concerned citizens, often call for the implementation of new or stronger regulation on the basis of new information (such as the discovery of the impact of endocrine-disrupting chemicals), emerging awareness of previously unsuspected problems (such as global warming), or in response to new commercial activity (such as the introduction of GM food crops). This is hardly surprising: even leaving aside the many broader questions around how societies deal with risk and uncertainty, it is clear that effective environmental regulation requires spotting problems early and acting in time to prevent potential

damage becoming actual. Almost by definition, such precautionary action will not enjoy universal support. Waiting until everyone agrees action is needed often means waiting until it is too late: climate change is perhaps the most widely recognised example. This means that when environmentalists propose changes to regulatory regimes their proposals are almost always resisted. In such contexts it is routine for there to be conflicting research results, and indeed competing “experts” are usually produced by both sides. The situation is further complicated by the fact that government is usually committed to defending the existing regulatory system.

Miller might reply here that these are not in fact nonbasic goods: much environmental regulation could perhaps fall under category A since it aims at the provision of, for instance, clean air and water, which are clearly basic needs. But in reality debates about pollution control are largely about thresholds. Questions would thus immediately arise about what *levels* of cleanliness or purity of air or water, and about the absence of *which* pollutants, are to be considered basic human needs: and these, once again, are questions which cannot be answered without privileging some particular conception of the good life. If demands for new or more stringent regulation are cast in these terms they become demands for society to adjust its existing definition of basic needs. Hence only the most anaemic and uncontroversial environmental regulation could be justified under category A, unless a new and enhanced “environmentalist” conception of basic needs were adopted, which is surely not what Miller envisages.

Could tougher environmental regulation then be justified under category B? This will depend, for Miller, on whether there can be reasonable disagreement about the value to society of the state of affairs the proposed regulation seeks to bring about. He is clear (eg 2004: 141, as discussed above) that a proposal for publicly-funded action to preserve some particular species, such as for instance the snail darter, is likely to fail this test. People may reasonably disagree about whether a world with snail darters in is significantly better than one without. If this is so, then it seems evident that under conditions of uncertainty they may also reasonably disagree about whether a world with  $x$  parts per million of a particular chemical in the water supply is significantly better than one in which this is reduced to  $(x-1)$  ppm.

So it seems that in practice any proposal for new or improved environmental regulation must remain in category C. This means that it may legitimately be implemented only if it is both “efficient” in cost-benefit terms, and “just” in the sense that it cannot be construed as favouring the interests of those who propose it over those who object to it, or are indifferent. This latter test is, I suggest, one which regulations would in practice very rarely pass. Any regulation with teeth will be bound to upset some groups who feel their chosen practices are being unfairly targeted: consider for instance fishermen, frequent recreational flyers, or urban 4X4 drivers.

But in allocating an overall package of category C goods, Miller says government must ensure that everyone is a net beneficiary. This implies that implementing an environmental regulation which impacts on certain groups will only be possible if those groups derive commensurate benefit from other measures in the package. Should people then always expect to be compensated for having to give up profligate or environmentally destructive habits? I believe the answer to this is clearly no, and that any conception of justice which supports the contrary conclusion must rest on a flawed concept of what rights and freedoms we may legitimately expect as free human persons. Some inessential freedoms may legitimately be restricted in pursuit of the common good, and ecological sustainability is an important part of the common good. This line of reasoning is not open to Miller, however: recall his insistence that

“Since the value of environmental goods is still a contentious matter, we cannot give them a privileged place in our deliberations about justice, any more than we can cultural goods or other kinds of goods favoured by particular sections of our society.” (2003: 359)

This does not bode well for effective environmental regulation. As Miller has candidly admitted (1999a: 160), on his reading “much that is of concern to environmentalists... gets fairly short shrift in the liberal theory of justice.”

A further practical problem which should be mentioned, though I do not have the space to address it properly here, is that Miller appears keen to keep environmental issues separate from those of inter- and supra-national justice. In his only paper dealing specifically with environmental policy, he explicitly limits himself to considering it “within a self-determining

political community”, content to “leav[e] aside...the complex issues that arise when cross-national collaboration is needed in order to resolve environmental problems, as is of course frequently the case” (1999a: 152). His consideration of the implications of justice for the provision of public goods more generally, in which the threefold categorisation I have discussed is most explicitly presented, similarly focuses on justice within a political community, which seems largely to equate in practice to a nation state. The model also rests on the following presupposition:

“Suppose that a society has achieved a just distribution of income and other privately-held or privately consumed resources, but at this point no public goods have been politically supplied.” (2004: 130)

This picture of a self-contained, self-determining society with a perfectly just distribution of privately-held resources clearly takes us a very long way from the real world. Any realistic discussion must recognise the global dimension of environmental problems and solutions, the structural inequalities both within and between societies, and the complex ethical issues that arise when we consider relations between individuals in different countries connected by the tentacles of global trade.

### ***Conclusions***

I have attempted to identify a range of theoretical problems with Miller’s account of what justice has to say about the public provision of environmental goods, and also (very briefly) to look at a few practical problems. In so doing I have looked at a number of his writings which bear on this question, which I take to express a more or less consistent and mutually reinforcing position. The problems with this position, I have argued, may all be traced to the fundamental inability of the framework of procedural justice which emerges from liberal neutrality to adequately engage with the complex and contested issue of the relationship between human beings and the rest of the world. Areas of reasonable disagreement are avoided, and their prevalence underestimated, leading either to what I have termed government by calculation rather than judgement, or to the imposition of unexamined implicit conceptions of the good embedded in the ideal of the neutral state.

At every stage, Miller's model is hampered by its unwillingness to venture onto territory where reasonable disagreement *does* prevail, and there to engage with the actual substance and basis of claims for public provision of environmental goods. This unwillingness makes it impossible to fairly examine the true content of citizens' ideal-regarding claims that the environmental goods whose public provision they seek will be of benefit to all. It leads to the unwarranted assumptions firstly that those who are indifferent to a particular good will necessarily be disadvantaged by its public provision, and secondly that even if they are so disadvantaged this will always be unjust. It also undermines the attempt to base a category of public goods (category B) on citizens' shared understanding of what constitutes their political community. This last is hardly a surprising outcome: we need only consider the history of the public provision of goods like education and health care to see that such an understanding is likely to emerge, if at all, only after lengthy political debate involving much reasonable disagreement. The boundary between categories B and C in the end becomes unworkable when it turns out to rest on the untenable claim that reasonable disagreement is possible over the value of some public goods, which are to be banished to category C, but not of others, which are susceptible to public justification and may thereby gain admission to category B.

To avoid areas of reasonable disagreement is to avoid political argument altogether. This may be appropriate in areas (if there are any) where the role of government really is simply to facilitate the satisfaction of individuals' private preferences: but environmental policy is not such an area. Even leaving aside the inescapably global dimension of environmental issues, and indeed ecocentric critiques which would add yet further concerns, we surely want environmental policy to serve not just the private interests of individuals but the community as a whole: in short, we want it to serve the common good. What we as a community consider the common good for all of us as citizens is in no way equivalent to the sum of our preferences as individual consumers, and is discoverable only through messy and emotive, but nevertheless reasonable, processes of public deliberation and political debate.

It is the degree of congruence with the outcomes of these processes, not the net level of individual preference satisfaction, that can legitimise principles adopted by government to guide public policy (see Sagoff, *op. cit*, but also republican commentaries such as Pettit (2004)). This

means that as long as a policy has been constructed in accordance with such agreed principles it is entirely possible for its implementation to serve the common good (or as we might also say, the public interest) without having to be in everyone's personal interest, without enjoying universal support, and even without having been subject to specific *de novo* public debate. Disagreement, much of it reasonable, will probably continue: but as long as underlying policy-making principles have been adopted which genuinely reflect the common good, we allow and indeed expect public authorities to translate those principles into policy, and to be prepared to effectively implement and defend the resulting measures.

Pettit (2004: 169) gives a generic definition of what it is for public authorities to act in pursuit of the public interest:

“...the public interest should be identified with those measures – those practices and policies – that by publicly admissible criteria answer better than feasible alternatives to publicly admissible considerations”.

The effort to build ecologically sustainable societies must by any standards count as a publicly admissible consideration – and the criteria by which we judge measures aimed at this end surely cannot be purely procedural. I hope that this discussion has gone some way towards showing that environmental policy made in the absence of any substantive conception either of a flourishing individual life or of the common good cannot be either consistent or effective. Upholding the common good here requires the development of an ecologically realistic account of what rights and freedoms we may legitimately expect to have protected, based on the identification and protection of the conditions within which people may not only survive but flourish as fully human beings. This is not just an abstract philosophical project, but an essential precondition for just and effective decision-making which successfully integrates environmental protection with other public policy objectives.<sup>5</sup>

## Endnotes

1. What constitutes “basic needs” is of course an important and controversial part of this debate, which I do not address here purely for reasons of space. Attempting to answer this question from a position of neutrality, without privileging any particular conception of what human life requires, is of course especially problematic.
2. While not seeing it as a stand-alone solution, and acknowledging the considerable practical problems involved, Miller does nevertheless maintain that cost-benefit analysis is an essential stage in environmental decision-making, especially in the case of category C goods:

“[A]lthough I am not proposing that cost-benefit analysis should be used mechanically to resolve environmental disputes, I am claiming that without something like cost-benefit analysis as a first step, a just resolution of such disputes will turn out to be impossible.” (1999a: 170)
3. Miller’s contextualism differs from Walzer’s mainly in that the relevant feature of a particular context, which determines what principles of justice are applicable, is not the social meaning of the goods in question, but the kind of social relationship existing between the parties.
4. Alternatively if, as Humphrey reads Miller here, a theory of justice which “pays attention to how the public understands justice” is one which is guided by public opinion as to what goods are to count as goods of justice at all, then its contents *will* be critically dependent on the empirical facts of what goods are taken by the public at large to be constitutive of a good human life. This way of understanding justice, however, has well-documented unfortunate ramifications. As Humphrey asks rhetorically:

“If a society believes in the justice of slavery [...] should this entail that a theory denying the justice of slavery (based on a belief, say, in the moral equality of all humanity) is inadequate because it fails to engage appropriately with the intuitions of the members of that society?” (Humphrey 2003: 339)
5. My thanks to David Miller, John O’Neill, and an anonymous reviewer for their generous and insightful comments on earlier drafts of this paper.

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