

Critical Notice of David Miller, *Justice for Earthlings*
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Justice for Earthlings reprints essays by David Miller written in the first decade of this century. The essays develop central themes of his long-term writings on social justice in interesting new ways and display the lucid and elegant prose, common-sense moral judgment, and sophisticated use of analytic philosophical techniques that always characterize his work.

Much of the book proceeds by way of comparison of the metaethical and normative views that Miller endorses with the luck egalitarian approach to social justice issues exemplified in the work of the late G. A. Cohen. Cohen tells us we should search for universal, necessarily true moral principles—true at all times and places, and true independently of any empirical facts. One such principle according to Cohen is that justice requires that benefits and burdens be overall equal for all persons, unless those who suffer the short end of unequal distribution can reasonably be held responsible for their predicament by virtue of their acts and omissions.

Miller rejects almost everything in this picture, except that Cohen and he unite in affirming that moral reflection turns up a plurality of principles and no master principle that rank orders them (so deciding what morality requires us to do involves intuitive balancing of several considerations) and agree also that what we owe one another is constrained by personal responsibility. This last idea involves the thought that if a burden that falls on a person is now or was once avoidable by reasonable and morally permissible conduct on the part of that person, there is less reason for others to act to eliminate or mitigate the burden than would have been the case if this personal responsibility consideration had not intervened.

Against the notion that justice requirements are set by universal principles, Miller holds that justice norms must be action-guiding, and specifically must be action-guiding for our fellow citizens. This is a significant constraint on candidate conceptions, because a proposal that one lacks reason to accept cannot be action guiding for one, and what one has reason to accept depends on one's current beliefs, including one's 'beliefs about justice and other political matters.' One has reason to accept only considerations accessible from one's present epistemic standpoint via reasoning one can do and evidence one can acquire. Miller adds a further constraint on what can be justifiably advanced to someone as a justice principle: the proposal must be accompanied by good reasons to accept it, on the basis of what the person currently believes and 'in the light of the actual circumstances' the person faces. So what a group of people now believe about justice limits what can be, for them, a justifiable principle of justice.

Against the notion that the just distribution of benefits and burdens is entirely set by principles that hold at all times and places, Miller asserts that justice is contextual. This means that some principles of justice may apply and bind us only if certain empirical claims obtain, without its being the case that there are more fundamental principles not conditional on any empirical facts, that explain and justify the conditioned principles. In particular, according to Miller, what principles of distributive justice apply to people and determine what they owe to one another depends on the social relationships

they have to one another. As Miller observes, justice among friends is not the same as justice among strangers.

This formulation invites the worry that the social context that Miller supposes to be a determinant of what is just might itself be profoundly unjust: consider the relationship of slave to master. And consider the epistemic position of someone who firmly believes that slavery, under his actual circumstances, is morally acceptable. Miller might say that the principles of justice whose application is triggered by master-slave relations dictate that the master should free the slaves, the master owes reparation to his slaves for foisting the wrong of slavery on them, and so on. But these contextual principles, however appropriate, might be epistemically unavailable to some slavemasters, in which case according to Miller's official position, those principles are not justifiable, for them.

As it happens, Miller holds that there are indeed universal principles that assert basic moral rights that all persons have just in virtue of being persons and that all persons have duties to respect and, to a degree, to act positively to promote. These principles rule out slavery, we can suppose. Miller's contextualism does not rule the roost. There are acontextual principles, including principles of distributive justice, and contextual principles as well. But now Miller's ramified position looks to be unstable. His views about the action-guiding nature of justice imply that for some slavemasters moral condemnations of slavery are not epistemically accessible, and so maintenance of slavery is, for them, morally acceptable. Yet Miller's basic moral rights imply that slavery is morally prohibited.

Or alternatively if there are some circumstances in which keeping slaves is not wrong—perhaps circumstances in which the only possible alternative is immediate slaughter of captives—then again we need to find guidance in principles that tell us when slavery is acceptable and when it is not, and these cannot be principles that are limited in application to the context in which relationships of slave and master obtain.

Suppose we find ourselves in hierarchical societies not condemned by the universal basic rights principles that Miller affirms. We might then say that given that we stand in feudal social relationships of lord and serf, or hunter-gatherer relationships of allegiance to customary rules, justice requires thus and so. However, contrary to Miller, we might suppose that the social relationships and basic practices that we share with others might be vulnerable to moral objection. Feudalism involves unchosen master and servant relations that we should eliminate if we can do so at acceptable moral cost. Hunter-gatherer society limits the freedom one has to lead a life of one's own choosing and limits sharply the opportunities we have to acquire knowledge about the world in which we live and to be informed critics of our social practices—so morality requires transition to conditions that offer more individual freedom and opportunity for knowledge acquisition if we can make the transition at acceptable moral cost. For that matter, what is true of feudal social relationships and hunter-gatherer social relationships might be true of some aspects of social relationships in modern democratic market societies. Thinking critically about fundamental terms of social relationship in our present circumstances requires resources beyond the contextual principles 'If we are in social relationships of type A, Do X' that Miller countenances and takes to be rock-bottom fundamental.

Miller defends a by now familiar two-tier account of distributive justice, with nuances drawn from his contextualist approach. Each person just by being a person and independently of her relationships to others has a right to the items and conditions that are needed for her to have a minimally decent life in the society she inhabits. Beyond this right to a decent minimum, what justice requires for an individual and from her depends on the social relationships that she has to others. Here a crucial relationship is being a fellow member of a nation state.

In his chapter on ‘Justice and Boundaries’ Miller appeals to three features of nation states that together bring it about that strong distributive justice requirements apply among members of each nation state taken separately and not across borders among members of different national communities. None of these three features is by itself either necessary or sufficient to trigger social justice relations, but bundled together, they form a decisive basis for denying that there is one universal set of distributive justice principles that applies across the globe.

First, a well-functioning nation state is a cooperative venture for mutual advantage. This cooperation brings about a surplus above what individuals could produce on their own, and distributive justice principles concern the fair distribution of the cooperative surplus. Second, the nation state massively coerces insiders but not outsiders, and the coercion requires a justification addressed to those who are coerced, which principles of distributive justice provide.

Third, in a well functioning state, its members form a community, such that they “recognize a common national identity and share a common will to live their lives together.” Miller takes it to be part of human nature that we tend to identify with certain others whom we recognize as like ourselves in some ways that matter to us. Members of a national community share culture and traditions and ways of thinking about what is fair and on this basis have solidarity toward each other. A national community has proto-political aspirations; its members want political autonomy of some form. Talk about fair distribution among people presupposes common understandings about the goods that are to be distributed and about how they should be distributed. A community of persons who identify with one another in the national way satisfies this presupposition. Also, fair distribution cannot be achieved except among people who are motivated to cooperate together on fair terms, and members of a genuine national community have this motivation.

Miller holds that these features trigger distributive justice requirements and that they massively obtain within national borders and not across them. But he can allow that one or another of the triggering features might obtain to some degree among people spread across separate nations, so some social relationships that trigger some distributive justice duties can hold across national borders.

The plausibility of this bundle theory of the basis and scope of distributive justice claims ultimately depends on the strength of each of the sticks rolled into the bundle. If one doubts that any has any normative strength, one will not discern here any challenge even to the crude universalist conception of distributive justice that claims that there is only one set of justice principles that and that these principles do not allow that just being a member of some political society (or other social group) per se affects what one owes to members of that political society as compared to outsiders. (Call one who adopts this

position a cosmopolitan.) Let us confine attention to national community regarded as a basis of special distributive justice obligations. This is a topic on which Miller's philosophical writings have provided significant insight.

Miller describes an attractive ideal of the humane nation state, as it might be, claiming our allegiance, in part, in virtue of the fact that its members form a national community. On this view national community membership is in itself a noninstrumental source of obligation, like friendship. Just as friends have duties to favor one another and preserve the friendship, so members of national communities have duties to favor conationals and promote the national project.

If the cosmopolitan rejects this ideal, what are the alternatives? One might hold that being part of a national community is not in itself valuable whereas being a friend is in itself valuable. But why so? One might claim that friendship requires intimate personal association whereas national community membership involves nothing of the sort. One member of a national community will lack acquaintance with most others. But it is not clear that friendship itself requires association or intimacy. If people on the basis of personal acquaintance reciprocally have affection for one another and are disposed specially to advance each other's welfare, the disposition being caused by the affection, then (arguably) they are friends. If people have solidarity with conationals, value their common culture and history, and want to live together in some independent political unit, they form a national community. Miller does a good job presenting this community aspiration as noninstrumentally valuable. So if the cosmopolitan allows that there can be valuable friendship social ties that generate agent-relative duties to favor friends and sustain the friendship, she is pressured by the considerations Miller adduces to allow that national community membership can likewise be a valuable social tie that generates agent-relative duties to favor conationals and advance the national project.

But this concession threatens to undermine cosmopolitanism. The cosmopolitan might deny that national community, friendship, and other social relationships can be in themselves valuable, make people's lives go better for them. At least regarding friendship, this would be a hard saying, and Miller's evocation of national community challenges anyone who would single out national community as lacking value. An alternative way to retain cosmopolitanism (as characterized three paragraphs back) would be to accept friendship and perhaps national community also as per se valuable but adopt an act consequentialist principle that says one ought always to do whatever would bring about the best reachable outcome, with one's own friendships and national allegiance thrown in the hopper for impartial assessment along with those of all other persons one's actions might affect. No doubt there are other possible positions one might adopt. Miller's achievement in this unsettled area of thought is to highlight the possible value of national attachment in terms that capture what might be the insight in popular common-sense views that moral philosophers tend to disparage.

As Miller recognizes, people can identify with one another in solidarity and favor group members over others along many dimensions—religion, culture, ethnicity, social class, social caste, and so on. For that matter, one might identify strongly with others on the basis of racial ancestry or skin color or sex. Miller claims that race-based solidarity or skin color solidarity would be simply mistaken, because there is no rational basis for holding that people are more deserving than others in virtue of such traits or for holding that such traits reliably correlate with genuine bases of deservingness. But the racist or

sexist need not be irrational in that sense. I might simply have a disposition to favor those who share my skin color without harboring any false beliefs at all about those who do not share my skin color. A male person might prize the history and traditions of men without denying the horrendous crimes they have committed and without denigrating the history and traditions of women. Nonetheless partiality toward whites and toward men is morally suspect, to understate the point.

Common identity as characterized by Miller can ground partiality and special justice obligations to people united by race and skin color and sex as well as to people united by national community membership, so unless we want to countenance racism and sexism as morally acceptable, we should be wary of embracing common identity as a valid ground of special justice ties. But we lack a convincing account of what marks the difference between social relationships of value such as friendship and social relationships that lack moral significance such as being male or female. The doubts about Miller's views expressed in this review do not amount to a substitute doctrine that resolves the puzzles.

Miller's own stated reasons for supposing that common national identity can trigger special justice obligations are oddly instrumental in character. Recall that he says that talk about fair distribution presupposes agreement among people on what is to be distributed and what are the proper criteria of distribution, and he adds that a fair distribution system is unlikely to prevail unless the people affected are motivated to conform to fair distribution according to the conception being upheld. Among members of a national community, these requirements for fair distribution are met. The idea seems to be that you cannot obtain fair distribution on any substantial conception of it except among members of a community. But why is obtaining 'fair distribution' on any conception of it whatsoever, regardless of the reasonableness of its content or scope, presumptively morally valuable? Note also that these requirements for fair distribution could be satisfied by racial community.

Anyway it is doubtful that the existence of national community does guarantee satisfaction of these requirements for fair distribution. People who share a culture and history can disagree vehemently on issues of fundamental justice. And discourse about distributive justice does not necessarily presuppose agreement on what is to be distributed and on what basis—these might be matters we hope the distributive justice discourse itself will make progress toward resolving. Nor does discourse about distributive justice presuppose prior knowledge of a group that is motivated to conform to the requirements that this branch of justice will impose—attempting to induce allegiance to a candidate distributive justice scheme might be a project for the future.

Notice that when he comes to discuss global justice and how we should understand its requirements, Miller does not proceed by inquiring whether there is sufficient agreement among people spread across the very different cultures and political societies on Earth to make sense of talk about the necessary conditions for a minimally decent quality human life. He has ruled out any doctrine of equal opportunity for all on a global scale on the ground that across the diverse cultures and ways of thinking and different types of society on Earth, people disagree profoundly about what goods are the ones whose regulation and distribution are the proper concern of justice. Moreover, people disagree about how to assess people's condition, and if we cannot tell whether some are better off or worse off than others, we cannot tell whether they are equally well

off or not. But a similar line of argument would also by parity of reasoning rule out sufficiency for all as a global doctrine of distributive justice. What should qualify as a good enough life? Even if we all agreed that possessing certain basic capabilities is good, a good enough life might be short in basic capabilities but compensate by the presence of especially valuable nonbasic capabilities—but which these are, and how to rank them, are contestable issues. In rigidly hierarchical societies, people may set the bar of adequacy very low. Defending slavery in the U.S., in 1855 William John Grayson writes, ‘There is a poor and suffering class in all countries—the richest and most civilized not excepted—labourers who get their daily bread by daily work, and the slave is as well provided for as any other.’ Others, and many in some cultures, might deny that there is any level of quality of life that people are obligated to ensure for other people, much less for all people everywhere.

Suppose that Miller responds, disagreement notwithstanding, there is a minimal quality of life below which no one should be allowed to fall, and the location of this line is not set by people’s opinions or attitudes, which may be distorted by many impediments to sound judgment including bias and stinginess. Saying this would be plausible.

But now we are again in a position to see that Miller’s two-tier theory of global and social distributive justice is an unstable compromise. His account of the global sufficiency standard appears to reflect his own firm conviction as to what the content of a reasonable account of global distributive justice must be. But his appeals to the deep disagreement about justice across different cultures and societies around the globe, if accepted as grounds for rejecting strong candidate conceptions of global distributive justice, would be equally good grounds for rejecting his more minimalist conception.

Consider theories of justice that affirm an ideal of justice that is unreachable by virtue of massive conflict with most people’s common-sense convictions and perhaps also unreachable by virtue of massive conflict with people’s deep-seated dispositions to behavior. Derogating such theories, Miller characterizes the trend they exemplify as ‘political philosophy as lamentation.’

Miller is anyway committed to regarding as false any proposed principle of justice for a group of people that massively conflicts with the deeply held commitments of those people. If implementing your favorite principles even in the best of circumstances would lead to outcomes that most people would find unacceptable, your principles are wrong, says Miller.

Miller calls attention to ‘the disabling character of a political philosophy that places justice so far out of the reach of human beings that nothing we can practically achieve will bring us significantly closer to the cherished goal.’ Such a political outlook would be disabling according to Miller because it would abandon the action-guiding nature of justice as we conceive it. But doing that would be changing the subject, not explicating our ideas of this particular concept. Justice is action guiding—whatever we make of utopian theorizing, which openly eschews the practical aim of guiding our actions, utopian speculation is not the same as a theory of justice, which must be practical in this sense. Miller cites a G.A. Cohen passage that takes a contrary position that there would be intellectual achievement in identifying what justice is even if this discovery, like the discovery of a very distant galaxy, had no practical implications at all. Miller

takes this equanimity in the face of practical irrelevance to be a sign that current influential trends in political philosophy have gone disastrously off track.

Moreover, Miller also finds an intellectual sleight of hand in the arguments by which political philosophers affirm as true abstract justice ideals of no practical relevance. Miller's analysis here takes us back to his contextualism. The faulty sleight of hand is that the philosopher identifies a principle that is plausible in a certain context and proposes that the principle's domain has no natural stopping point and that when pushed to its logical limit, the principle requires radical revision of our ordinary practices, habits of mind, and conduct. According to Miller this easy maneuver neglects the very real possibility that principles of justice are limited to contexts of application and cannot be assumed binding when wrenched from their home setting.

In Miller's view a prime example of a prominent way of theorizing about social justice that exhibits the pathologies just described is the family of luck egalitarian views. Miller singles out G. A. Cohen as a chief advocate of this universalist justice theory. There might be local contexts in which this very strong equal opportunity view has some plausibility, but extending its jurisdiction across time and space and across all institutions, practices, national borders, and so on gains no support whatsoever from any reasonable contextualist standpoint. Since there is no remotely feasible way in which this principle might be implemented and control the distribution of goods and bads, its examination and defense become for its advocates purely contemplative enterprises.

Miller speculates that what might underlie this trend toward abstract and nonactionable radicalism of doctrine is intellectual disorientation in the wake of the dismantling of the Berlin Wall in 1989 and the concomitant collapse of the world empire of the U.S.S.R. and with it the collapse of any residual idea that socialist and communist ideals rooted in the thinking of Karl Marx might be showing the way to a progressive and rational future state of society despite twentieth-century setbacks. But whatever its sources, the trend itself is wrongheaded.

In reply: the thought that abstract ideals that cannot be fully achieved cannot be practical and action-guiding is simply wrong. Take the simplest egalitarianism: everyone should have the same. Just assume this doctrine cannot be fulfilled: for many reasons, we shall never live in a world in which everyone has the same.

All of these concessions leave it entirely open that an unrealizable ideal can be practical and action-guiding. Inequality of condition across persons might be staggeringly huge, modest, or sufficiently slight that further moves toward equality should not be a matter of much concern. Same goes for other unrealizable ideals such as an ideal of sufficiency for all with the threshold of sufficiency set at a generous high level, or a prioritarian maximizing principle. Even if we lack an uncontroversial standard for comparing any two distributions across persons and determining which is more nearly equal, when all reasonable standards of comparison agree, a principle that identifies justice with equality should demand the more nearly equal distribution. (If we can alter the status quo distribution by making a Pigou-Dalton transfer, we should do so, if the choices are doing that or retaining the status quo.)

Even if ideal justice is unrealizable, movement toward ideal justice can constitute a morally significant improvement. An egalitarian can judge that the lesser inequality across persons in Norway as compared to the degree of inequality that prevails in the U.S. and U.K. is morally significant even if neither society is perfectly just by the

egalitarian standard. An advocate of an unrealizable ideal of justice can readily allow that half a loaf is better than none and that a few crumbs are better than no bread.

Miller sometimes suggests that a seriously action-guiding justice ideal must be capable of motivating people to compliance. But in a simple and clear sense, an ideal standard that leaves us motivationally unmoved can still be action guiding. We may be ready and eager to engage in oppression and slaughter, but the ideal theory of justice prohibits these actions. Miller's presumption is that to be action-guiding for a person a directive must appeal to reasons that are available to her given her present beliefs, but we have seen that this presumption is too restrictive.

Suppose there are circumstances in which the standard of ideal justice is inert so far as practical implications for conduct are concerned. The world is in a bad state, but there is nothing sensible any of us can do to make it better from the standpoint of justice. Suppose such a scenario is possible. Does this possibility discredit the attempt to discover an (or the) ideal standard of justice? No. First, we might simply seek an answer to the interesting question, what would be fair terms for interaction among people, even if we know in advance the knowledge we gain will be unusable. Second, in the scenario as described, the ideal standard does have some residual practical relevance: If there is nothing we can do that would significantly make the world better in any way, we cannot be constrained in our choices of conduct by the obligation to make the world significantly better. In that scenario, the moral dictates of beneficence go on holiday, and we are free to act in ways that simply benefit our or please us so long as they do not violate deontic requirements. Instructing us that this is our moral situation, the unrealizable ideal theory would after all have practical relevance.

Miller's remaining complaint against the advocates of unrealizable abstract ideal justice principles is that they argue for their pie-in-the-sky standards by taking acceptable norms and illicitly extending their scope of application beyond the context in which they really make sense and properly guide our choices. No doubt illicit extension is an intellectual vice, but one would have to examine the arguments in particular cases to see if any actual proposed extension is really objectionable.

Again, Miller's poster-child example of a theory gone wrong is the luck egalitarianism of G. A. Cohen. Cohen makes two moves. He holds that if it is bad in itself if some are worse off than others, the mere fact that others are distant in space or time does not in itself mitigate the badness of inequality. He also holds that if we are bound by a standing moral duty to mitigate inequality by improving the condition of the worse off, the duty becomes less stringently binding if those who are suffering from inequality could have avoided this misfortune by some course of action it would have been reasonable for them to take. A companion idea is that the less difficult and onerous it would have been for those who suffer misfortune involving inequality to have avoided this predicament, the greater is the slackening of the duty to mitigate inequality on the part of others that ensues. So there are two components that work together on Cohen's view—an equality component and a responsibility component.

Miller's view is that Cohenite luck egalitarianism goes off the tracks and that this occurs by way of applying the equality norm beyond the circumstances in which the conditions for its sensible application are present. Miller does not reject the idea that one's obligation to alleviate someone's misfortune can be reduced by that person's responsibility for her plight.

Miller disagrees with Cohen's view that there is one universal principle of distributive justice that is insensitive to national borders and is binding at all times and places. However, Miller shares with Cohen a claim about the nature of distributive justice that renders his claim that there is one universal principle of distributive justice less compelling than it should perhaps appear. Miller and Cohen both agree that at least in some social contexts, distributive justice dictates substantive equality of opportunity in some sense or other across persons. Miller can then support his rejection of cosmopolitanism by adding that it is very implausible that across the globe, across different political societies and political cultures, distributive justice dictates substantive equality of opportunity or condition among all persons. However, cosmopolitan universalism about distributive justice is not defeated by rejecting even minimal egalitarianism on a global scale, because there is the possibility that there is one universal principle of distributive justice that is not egalitarian in any way, shape or form. Miller briefly considers that some might uphold Lockean libertarianism as a version of universalist distributive justice, but he dismisses Lockean libertarianism as advocating too truncated and stingy a view of what we owe one another. But there are other nonegalitarian versions of universalist distributive justice theories that are not truncated and stingy in the libertarian way--prioritarian consequentialism would be one example of this type of view. So in his response to Cohenite luck egalitarianism Miller may go wrong not only by rejecting too many of Cohen's claims but also by accepting uncritically a crucial one.

David Miller brings a humane sensibility and sharp intelligence to his project of convincing his readers that the convictions of ordinary men and women play a far greater role in fixing what is really just than most moral philosophers would like to admit. Readers of his prior works will correctly anticipate that they will benefit from engaging with his project, whether or not they ultimately agree with his verdicts.