

The kind of dog he likes

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London Review of Books, 18 December 2014.

Justice for hedgehogs (Ronald Dworkin) according to David Miller

- *Justice for Earthlings: Essays in Political Philosophy* by [David Miller](#)
Cambridge, 254 pp, £18.99, January 2013, ISBN 978 1 107 61375 1

Why 'earthlings'? David Miller isn't drawing a contrast with justice for creatures from outer space. Nor is he taking issue directly with Ronald Dworkin's 'justice for hedgehogs' in Dworkin's book of 2011 with that title, although Miller does say in a footnote that he disagrees with him. He has in his sights the 'neo-Augustinians', as he calls them, like the late G.A. Cohen, for whom justice can be realised only in a secular version of Augustine's City of God, thereby leaving political philosophers with nothing to do but lament the size of the gap between the disappointing actual and the impossible ideal. What use is a Platonic idea of the truly just society which exists only in a disillusioned Marxist's heaven?

For Miller, the aim of a theory of justice should be to present what John Rawls called a 'realistic utopia'. Political philosophers should be 'contextualists' as opposed to 'universalists' and their prescriptions 'fact-based' in the sense of acknowledging the findings of empirical psychology and sociology. But, as he is aware, this poses two dangers. The first is a slide into a relativism that inhibits philosophers from branding as unjust a society whose members' culture has no room for the notion of justice they would like to apply to it. The second is an excessive scepticism about the possibility of institutional changes that would carry the society in question some perceptible distance in the direction of a not wholly achievable but not meaningless ideal. Engineers, after all, don't stop measuring the efficiency of heat engines because they can't design them to reach more than 40 per cent of their theoretical maximum.

Anglophone political philosophers have been strenuously debating conflicting definitions of social justice for several decades, largely in the terms of an agenda set by the publication of Rawls's *A Theory of Justice* in 1971. Any reader of Miller's essays who, like me, is not a philosopher is likely to be equally struck by the subtlety and sophistication of the philosophers' arguments and their persistent inability to come anywhere near to agreement with one another. None of them has been fully convinced by Rawls, despite an avowed admiration for his writings and the intuitive appeal of his notion of a 'veil of ignorance' behind which the parties to a hypothetical social contract lay down principles of justice in advance of knowing where their individual interests will lie. Most seem agreed that the idea of justice is linked to the idea of fairness in the arrangements by which a society allocates resources and rewards among its members, and that fairness enjoins equal treatment of every individual member as of right rather than out of benevolence. But what is being equally distributed? Freedom? Respect? Welfare, or the opportunity for welfare? Resources, or bundles of selected resources? Entitlement to reward for effort, or skill, or contribution to the common good, or costs incurred in the making of that contribution? Or no more than the right to pursue any chosen goal which is within the law and compatible with the equal right accorded to others?

Jerry Cohen was an outstandingly eloquent advocate of a radical interpretation of social justice. Although Miller depicts him as having lost his already fading hopes of an egalitarian and communitarian alternative to capitalism once the Berlin Wall came down, he might more aptly have labelled him a non-violent intellectual descendant of Babeuf, executed in Paris in 1797 as leader of the Conspiracy of Equals, who believed that when anyone is starving it is a crime to have more than enough. An unrealistic utopia, if you will. But not a pointless or incoherent conception against which to assess and deplore the extent to which capitalist and socialist societies alike not only tolerate huge inequalities in power and privilege but do very much less than they could for the men, women and children in the world who die every year of malnutrition or famine. Cohen knew as well as Miller does

that people willing to respond to face-to-face appeals for help cannot be expected to respond in the same way to the plight of faraway strangers. (Jane Austen: 'How horrible it is to have so many killed, and what a blessing that one cares for none of them.') At most, they will participate to a modest degree in collective transfers of resources organised by their own government or an international relief agency. Miller cites Emerson for the apt rhetorical question: 'Are they *my* poor?' But whatever the reasons for the short supply of universal altruists, a world in which there were more of them would be more in accordance with what 'we', if we were among the starving and not the rich, would think just.

Cohen himself was always disarmingly frank about the 'peculiarity', as he used to put it, of being an Oxford professor preaching radical egalitarianism from the cloistered luxury of All Souls. But what has that to do with the strength or weakness of his arguments? There is always some easy fun to be had at the expense of high-salaried, expenses-paid delegates attending a conference on global poverty in a developing country and treading delicately round the emaciated forms of the homeless on the way from their five-star hotel to the conference venue. But nobody expects them to start scattering dollar bills on the pavement. If they are trying to devise a workable scheme for narrowing the enormous gap between the rich nations and the poor, they are acknowledging the force of the claim that justice enjoins redistribution in accordance with need. It's a matter only for them whether they come home feeling guilty about not donating more to Oxfam. Some egalitarians are plain-living, selfless and even saintly, while others are envious, untrustworthy and self-seeking. Some anti-egalitarians are greedy, complacent and callous, while others are open-handed, fair-minded and genuinely committed to the well-being of their dependants and subordinates. But that commonplace observation is no help in the quest for a theory of social justice which will command general assent, even if only among high-minded liberal intellectuals in Britain and the US.

And then there is the problem of the scope, or as Onora O'Neill puts it, the 'bounds' of justice. 'Social' justice is by definition a property of institutions, not people. People can of course behave unjustly in their social roles: judges take bribes, teachers have favourite pupils, policemen fabricate evidence, employers victimise targeted employees and so forth. But we don't (do we?) talk about social justice in relation to voluntary associations freely joined. It sounds odd to describe someone as belonging to an 'unjust' golf club, even if it operates an informal quota restricting membership by women. Rawls and some others restrict the catchment area of social justice to fellow citizens of a sovereign nation-state who are assumed to share a commitment to a norm of fairness. But others, including Miller, hold that it extends both inward and downward to justice within families and outward and upward to justice between societies as such. Nobody is going to deny that there are some families within which wives and daughters are getting a raw deal, any more than they will deny that some weaker societies get a raw deal in their relations with stronger ones. But does justice require parents to equalise their children's opportunities and therefore favour the lazy and untalented over the gifted and diligent? Or is it to be 'stretched', as Miller puts it, to the global level, with the interests of the domestic population subordinated to those of societies whose very different institutions are outside the control of any other, let alone a hypothetical 'world state' ruling over them all?

Even in relation to a territorially bounded, demographically closed and institutionally self-contained society, the inescapable facts of cultural diversity pose dilemmas about how justice is to be defined and applied to which different philosophers respond in mutually irreconcilable ways. They may agree that liberty of conscience is a basic entitlement in a just society, while conceding that there are some creeds whose behavioural expression a just, or even minimally decent, society would be bound to outlaw. But in a multicultural society, there may be numerous self-defined communities whose alternative but equally coherent conceptions of what justice requires (or doesn't) are impossible to reconcile. Miller discusses among other standard examples the Sikh father who wants his son to attend a school which prohibits the wearing of turbans. The boy is being denied the equality of opportunity that justice requires. But who is to give way – the Sikh father entitled to plead liberty of conscience, or the school's head entitled to deny privileged treatment to any individual pupil? Miller places his hopes for the harmonious resolution of such conflicts in interdisciplinary research into the 'different configurations of cultural groups' and dialogue in which such groups 'are able to explain the significance of particular requirements and prohibitions'. But how plausible is it to suppose that agreement will arise out of this?

Despite his nods in the direction of the 'facts', Miller, along with the other philosophers he cites, never draws in detail on the sociological record for evidence of forms of social organisation in which their

chosen principles of justice are more nearly approximated than elsewhere. Although 'Platonism' is a byword for hopelessly unrealistic utopianism, it is worth remembering that the Jesuits in 17th and 18th-century Paraguay created a society of childless guardians overseeing an educational system and division of labour strikingly reminiscent of Plato's republic (although goodness knows what Plato would have made of the myths of the Catholic Church when compared and contrasted with his own). Examples are to be had of producers' co-operatives, self-governing communes, mutual indemnity associations, charitable foundations, liturgies, progressive taxes, compensation tribunals, anti-monopoly rules, and education and healthcare services free on delivery. The larger and more diverse the population, the greater the difficulty, as political theorists have long recognised, in applying to it rules workable in smaller ones. A favourite example of Cohen's was a group of friends on a camping trip, between whom liberty, equality and fraternity can be taken as a matter of course. But he didn't seriously suppose that the political, ideological and economic institutions of the United States could be so reorganised as to take a camping trip as a model. More to the point would be a detailed comparison with the Scandinavian social democracies which Miller, although he mentions them in passing, sees as becoming more rather than less like the other capitalist societies of present-day Europe.

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It is tempting to suggest that the theorists of social justice with whom Miller engages are all as Augustinian as one another. If Cohen's utopia is unrealistic, so at the opposite pole is Robert Nozick's in his *Anarchy, State and Utopia*, where overriding priority is given to individual liberty, and social justice is a matter entirely of process rather than outcome. But such a society would easily give rise to inequalities which nobody on either side of Rawls's veil of ignorance would be willing to countenance any more than Cohen and the so-called 'luck egalitarians', who want to compensate all who are disadvantaged for reasons outside their personal control, would countenance penalising those advantaged by good looks in the universal competition for sexual partners. No less unrealistic are the utilitarians, who bounce back off the ropes every time their critics claim to have administered the knockout blow to the principle of the greatest happiness of the greatest number. As Miller points out, the successors of Sidgwick and Mill have been no better able than they were to resolve the dilemmas posed by the practical application of Bentham's celebrated maxim. Yet decades after Bernard Williams pronounced that 'the day cannot be too far off in which we hear no more of it,' Richard Layard, in a book with the title of *Happiness*, holds out the vision of a Benthamite utopia in which the pursuit of self-interest gives way to a commitment to the welfare of others propagated by a mass movement called Action for Happiness.

So how (on earth) are the philosophers ever going to reconcile their differences? Ironically, perhaps, the fundamental reason they never will emerges in Rawls's 'original position', where the parties to the social contract come together to frame their principles of justice. As many of Rawls's commentators have pointed out, the choice of principles of justice cannot be taken by disembodied creatures lacking a necessary minimum of information about both themselves and the world for which they are to lay down the principles that will regulate their relationships with one another. They have to be 'earthlings' equipped both with personalities of their own and, as Rawls himself recognised, a set of rudimentary psychological and sociological assumptions. His 'difference principle', whereby inequalities are justified if, but only if, they work to the advantage of the least well-off, could easily be rejected not only by Cohen and the egalitarians wary of the implication of incentives for those lucky enough to have marketable talents but by disinterested constitution-makers who regard the principle as irrational in itself.

All would, presumably, agree about universalisation. You can't refuse to abide by a decision taken behind the veil of ignorance if it turns out to work against you. But what is irrational about opting for a high-risk, high-reward society in which you willingly accept that you may be either much better or much worse off than in one governed by the difference principle? To endow the parties to the contract with a sense of justice that would preclude such a choice is to defeat the purpose of proposing an original position in which no viable alternatives have been pre-emptively ruled out. That is the dilemma from which no one (so far as I can discern) has rescued Rawls. Contractarians, egalitarians, utilitarians and libertarians will all hold fast to their different overriding principles, the alternatives to which would be subordinated in their different Cities of God.

There is, what is more, yet another utopia which Miller doesn't mention but which, dated as it may be, has not lost its appeal altogether: Tawney's. His ideal, set out in the stately Edwardian prose of *The Acquisitive Society* and *Equality*, was not so much egalitarian or contractarian as communitarian. His dislike of capitalism and disdain for capitalists was no less heartfelt than Cohen's. But his concern was not so much to break up the capitalists' personal fortunes as to see them diverted to purposes, as he put it, of 'common advantage'. How can the payment of distributable profits to private shareholders be justified when they could be used to build hospitals for the benefit of everybody? But, as he reluctantly acknowledged many years later, there will always be societies where the idea of the common good 'cannot easily find a foothold' and there will always be people who find 'positively exhilarating' the struggle for personal gain. Like it or not, they would much prefer to find themselves in a high-risk, high-reward society than in a safer but duller one. With such a person, argument is futile: 'if', in Tawney's words, 'he likes that kind of dog, that is the kind of dog he likes.' Such people will be as ready to declare their preference from behind as from in front of Rawls's veil. No one – not Rawls, or Cohen, or Miller, or any other philosopher – will ever succeed in proving to them that they are 'irrational'; and Nozick wouldn't even want to.