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978-1-107-02879-1 - Justice for Earthlings: Essays in Political Philosophy

David Miller

Excerpt

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Introduction

This book collects a number of my essays about justice written over the period 2000–2010. It was a good decade for writing about justice, judging by the stream of books and articles that academic political philosophers produced, but not so good for justice itself. Justice in this context means justice in the distribution of rights and opportunities, income and wealth, goods and services – what is often called social justice, though the term has become problematic, as we shall shortly see. The philosophers who write about justice nearly all understand it as requiring some form of equality, and there has been intense debate about exactly which form should be chosen; there is also intense debate about how widely the justice net should be cast, whether the aim should be equality within each separate political community or equality worldwide. Whichever way the idea of justice is understood, however, the real world seems to have moved in entirely the opposite direction. Levels of interpersonal inequality have relentlessly increased, both nationally and globally, mainly because in both developed and developing countries a class of super-rich persons has emerged, easily able to outflank the policies states have traditionally employed to reduce inequality among their citizens. Alongside this, there is evidence that public opinion, even in countries with strong traditions of social democracy, has become more tolerant of inequality. Fewer people now think that it is part of the state's business to redistribute income and wealth in favour of the poor. There is certainly anger at the present time directed against rich bankers and financiers who are thought to have inflicted harm on others by virtue of their risky behaviour, but this does not extend to sports stars and celebrities whose extravagant lifestyles are seen as appropriate reward for having won out in the lottery of life.

In this context, it is puzzling, to say the least, that philosophical enquiry into distributive justice should have largely been directed at exploring new and increasingly radical forms of egalitarianism. The

prime contender here is the position that has come to be known as ‘luck egalitarianism’. What justice requires, on this view, is that people should all enjoy the same level of advantage unless they have made choices that lead to their having either less or more than others. ‘Advantage’ here is a term of art that can be interpreted in different ways, but for simplicity’s sake assume that it means resources such as income and wealth. Then the luck egalitarian principle holds that the only thing that should affect the level of material resources that someone now has are the choices they have made over time about how to live, what work to undertake and so forth. The effects of all forms of unchosen luck are to be neutralized by ‘compensation’. Unchosen luck will include the circumstances someone is born into, the talents they are born with, the effects of other people’s behaviour on their prospects and so forth. A moment’s reflection will reveal how extraordinarily demanding this principle is, whether applied nationally or globally. To put it fully into practice would require some agency capable of monitoring the situation of each individual person and working out how far their present resource level could be attributed to ‘luck’ on the one hand and ‘choice’ on the other, and then calculating, counterfactually, what their position *would* have been if the effects of luck had been neutralized and only choice remained. Then the agency would have to extract resources from the beneficiaries of ‘good luck’ in order to provide compensation to the beneficiaries of ‘bad luck’.

A philosopher sympathetic to the position I have just outlined would no doubt protest that this misrepresents her views unfairly. The luck egalitarian principle is not supposed to guide practice directly. What it does instead is to define justice at the most abstract level. Once the meaning of the principle has been clarified philosophically, we can then turn our attention to society and to politics, and work out how far we can implement it and by what means. No doubt there will be limitations imposed both by our inability to gather the kind of evidence that would be needed fully to realize that principle, and by people’s reluctance to make the transfers that would be demanded of them, but these limitations should not influence the way we think about justice itself. If we allow them to do so, our theory of justice will be contaminated by irrelevant contingencies. It will become more conservative and less demanding than it should be, by allowing human frailties to affect our understanding of what is supposed to be the highest normative standard by which human beings and human societies can be judged.

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As the title of the book may suggest, the essays it includes all challenge the way of understanding justice presented in the last paragraph. They represent justice as a human invention that accordingly is shaped by the circumstances of human life. Were these circumstances to change radically, what we would see would not be the arrival of perfect justice, but its disappearance in any form we could recognize. Even if we held on to the word, we would mean something different by it. Furthermore, it is not one thing: no single principle, such as the luck egalitarian principle just outlined, can possibly capture the richness of human thinking about justice. Even the most influential theory of the past half century, put forward by John Rawls in his book *A Theory of Justice*, has turned out to be a partial theory, insofar as it is only plausible as an account of what justice demands of the public institutions of a self-contained nation-state. As Rawls himself admitted, if we want to understand what justice requires on a smaller scale – in social institutions such as families, schools and colleges, and churches – we would have to extend and modify his theory. The same is true if our aim is to understand justice at international or global level. If we want to say what justice must mean for Earthlings, therefore, we have to begin by thinking about the many different relationships in which these creatures stand towards one another, from the most intimate to the most distant. We will find that different principles fit different cases, as I shall explain in greater detail shortly. Any overarching theory that tries, Plato-like, to discover a single form of justice present in all these diverse instances will either be hopelessly inaccurate, leaving many aspects of justice unaccounted for, or else so vague as to be useless as a guide to practice.¹

¹ This may be an appropriate point at which to explain how the present book stands in relation to Ronald Dworkin's recently published *Justice for Hedgehogs* (Cambridge, MA: Harvard University Press, 2011), since readers might imagine, looking at our titles, that it was intended as a riposte to Dworkin. This is not in fact the case, though as it happens the two books do represent sharply contrasting ways of thinking about justice. Dworkin's hedgehogs are not the spiky yet cuddly creatures beloved of gardeners, but thinkers who, following the suggestion of the Greek poet Archilochus, search for unity in the sphere of value: once we have interpreted and defined our values properly, they claim, there will be no conflicts between them. Thus not only is it possible, according to Dworkin, to capture all of justice under the aegis of a single principle (equality of concern and respect for everyone), but justice so understood can be shown to be consistent both with other political values such as liberty and

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To defend such an approach to justice we must also confront some basic questions about the nature and purpose of political philosophy itself. What is our aim when we think about politics from a philosophical perspective? This topic is taken up in the first and last essays in the book. The opening essay attacks the idea that the aim is to discover fundamental principles whose truth holds regardless of any facts we might discover about human beings or human societies. The principles we formulate and defend are meant to be action-guiding. And the actions they are meant to guide, the essay claims, are those of our fellow citizens, who come already equipped with their own beliefs about justice and other political values. This imposes feasibility constraints on the principles that can justifiably be advanced. It is not that they must be immediately acceptable to everyone; it is rather that good reasons can be given for accepting them, on the basis of beliefs that people hold to begin with, and in the light of the actual circumstances they find themselves in, rather than some imaginary world whose natural and social laws are different from our own.

Since these conditions might seem self-evident if political philosophy is to have any practical value, one might wonder how the idea of a fact-independent political philosophy took hold. The last essay in the book suggests a diagnosis, which is that such a political philosophy is born of disappointment at developments in the real world. I suggested above that there was paradox in the fact that while equality in the world itself appeared to be in retreat, many political philosophers espoused egalitarian theories of ever-increasing radicalism. This position is only sustainable if one is prepared to declare that the mechanisms that are producing increasing levels of inequality are irrelevant from a normative point of view. Clearly, if principles are independent of all facts, they must be independent of these facts as well. Political philosophy so understood cannot respond constructively to changes that are occurring in the world outside, so it has to retreat to a position of pure, principled opposition. I call this ‘political philosophy as lamentation’ (for what cannot be achieved) and suggest that there is at

democracy, and with the ethical values that define a good life. My Earthlings are more like Dworkin’s foxes. They find themselves confronted by conflicting demands – one form of justice against another, justice in all its forms against rival political values, political obligations against the right to lead a fulfilling private life – and have to learn the arts of weighing and compromise if they are to act rightly.

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least one historical precedent for the kind of retreat that we seem to be witnessing from engagement with the forces that are actually shaping our societies and our world.

An extreme reaction to detached political philosophy is to be found in a counter-movement sometimes called ‘realism’, which insists that principles are only worth elaborating at all if they can be attached to political agents capable of putting them into practice. This, I think, moves too far in the other direction. Although the focus on ‘agents of justice’ is important, and I shall say more about it later, it would be too confining for a normative theory only to recommend policies and social outcomes that *existing* agents are capable of implementing. Sometimes the point of elaborating principles is to call for the creation of institutions that can put those principles into practice. This is often true in international contexts, for example, where we devise principles to apply to a range of issues: the protection of human rights, fairness in trade, policies to combat global warming and many others. These principles can only be acted upon if states are willing to collaborate with one another and allow international institutions to monitor their compliance with what they have agreed to do. The fact that agreement is hard to achieve and the relevant institutions do not yet exist (or do not yet have the necessary powers) should not deter us from developing and setting out normative standards to apply to international behaviour. ‘Realism’ in political philosophy can be hostage to feasibility in too narrow a sense, failing to see that new agents of justice can be deliberately created once the problem they are intended to solve is correctly diagnosed.

The alternative way to think about justice that I advocate, in Chapter 2, I call ‘contextualism’. The key idea here is that what constitutes a just distribution of resources of various kinds will depend on the social context in which the distribution is going to occur. This approach does not exclude the possibility that some principles of justice apply universally whenever human beings interact – for example, respect for human rights. But in many other cases we need to understand the relationship in which the parties to a distribution stand to one another before we can say what justice requires them to do. Justice between friends is not the same as justice between strangers; justice in families is not the same as justice in business enterprises; and so forth. If we want to understand what social justice means – justice among the citizens of a large modern society – we need to examine the many

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different ways in which they associate with each other, on a larger or smaller scale; the same applies when we turn our attention to the wider issue of global justice. Each form of association may bring a different principle into play. That means that our theory of social justice is going to be complex, certainly by comparison with abstract single-principle theories such as luck egalitarianism. Should that be a cause for concern? The ideas of justice that people use in their everyday lives are complex in the same way as the theory will be. When resources have to be allocated, sometimes they will look at existing entitlements, sometimes at how comparatively deserving or undeserving various potential recipients are, sometimes at differences in need and sometimes they will advocate sharing resources equally. There are other possibilities as well, including combinations of different principles. It is not clear why it should be a virtue in a theory of justice that it should be much simpler in form than the practices of justice it is intended to illuminate.

One response might be that ‘everyday justice’ is in fact a mass of contradiction and confusion, and so we need a theory that can help to make people’s thinking more consistent and also to resolve the disagreements that arise when people simply follow their intuitive sense of what justice requires. But perhaps confusion and disagreement arise largely because people are uncertain about how to understand the context in which some decision about distribution has to be undertaken. Their thinking about justice is contextual, but because they don’t recognize this explicitly, they can become uncertain when faced with some unfamiliar situation. They have to reason by analogy, and sometimes the analogy they choose is the wrong one. Here a contextual theory can provide guidance by clarifying the relationship between context and principle, without requiring people to jettison the principles they already believe in.

Such a theory may not succeed in resolving all of the conflicts over justice that arise in politics and in everyday life. For sometimes, even after the relevant principles have been clarified and set in their appropriate contexts, we will find that they pull us in different directions. I give an example in Chapter 7 when I explain how the demands of *social* justice and *global* justice may conflict in practice. It is tempting at this point to suppose that a successful theory would provide a vantage point from which such practical dilemmas could be resolved. Rawls, for example, speaks at one point in *A Theory of Justice* of finding an

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‘Archimedean point’ from which the overall justice of a society can be assessed, the reference being to the (imaginary) point of balance outside of the world by means of which Archimedes claimed that, using a suitably long lever, he could lift the Earth. I do not believe that such a point can be found. Our thinking about the demands of justice, even at its most impartial, is always conditioned by the relationships in which we already stand towards the people to whom justice is owed.² Since we very often have multiple relationships, this is immediately a main source of conflicts over justice. But a theory of justice can nonetheless guide our decisions by making clear the exact nature of the choices that we face, even if it does not yield a determinate answer in every case.

Disagreements about justice are often said to stem from underlying cultural differences. Since most contemporary societies are to a significant extent multicultural, this might seem to pose problems for any theory of social justice that aims to overcome such disagreements – and at global level matters will be worse still. But the underlying premise needs to be scrutinized, as I do in Chapter 3. Rather than relying on conjecture, we should look empirically to see what impact culture has on people’s thinking about justice. It proves hardly to matter at the level of general principle. On the other hand, it can influence the way in which people interpret the context in which a judgment about fair distribution has to be made. People see their social relationships differently, depending on their cultural background, though even here we must be careful not to exaggerate the difference that culture makes. The real problem with social justice in multicultural societies lies elsewhere, I suggest: in diminished trust between members of different social groups, which makes them more reluctant to apply their principles impartially across groups. The problem, in other words, is motivational rather than cognitive. The solution, therefore (if our aim is to promote social justice), is to encourage inclusive identities

² I suggested above that ‘respect for human rights’ was a universally applicable principle of justice. By ‘respect’ I meant the injunction not to act in ways that violate the human rights of others. But if one asks instead how far we are required to go to *protect* human rights, for example by supplying people with the resources they need to lead a decent life, the answer will depend on the relationship in which we stand towards them. For arguments to this effect, see my essays ‘Distributing Responsibilities’, *Journal of Political Philosophy*, 9 (2001), 453–71, and ‘The Responsibility to Protect Human Rights’ in L. Meyer (ed.), *Legitimacy, Justice and Public International Law* (Cambridge University Press, 2009).

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to emerge that can help to build trust between cultural groups. This provides another respect in which a theory of justice needs to be sociologically informed. It not only needs to pay attention to the ways in which people actually think about justice, but it needs to understand what motivates them to practise it, and towards whom. ‘Justice for Earthlings’ is justice for creatures who naturally identify with others who they take to be like themselves in certain ways, so if it is to be implemented on a wide scale, questions of identity will loom large; I return to this theme below, when I discuss the boundaries of justice.

Cultural issues also feature in Chapter 4, the first of two essays that explore the idea of equality of opportunity. This idea is central to how justice is understood in liberal societies especially, but it is nevertheless fraught with difficulties. Both component parts need careful examination. What exactly does it mean to have an opportunity? If some goal that I might aim for is difficult or costly for me to achieve, do I still have the opportunity to reach it? And what does it mean for opportunities to be equal? Do the athletes who line up at the start of a race all have an equal opportunity to win it? We are likely to think that *some* differences between them that will affect the result – for instance the determination with which they run – do not amount to inequalities of opportunity. But which differences exactly?

Both of these issues are taken up in Chapter 4, which asks how equality of opportunity should be understood in a multicultural society, where people’s cultural (especially religious) commitments will prevent or discourage them from pursuing opportunities that would otherwise be open to them – for example, applying for jobs whose requirements mean that they would have to breach the cultural norms of their group to carry them out. A simple view, which I criticize, is that since people have the choice to disregard those norms, or even jettison their existing cultural commitments entirely, they pose no problems for equality of opportunity. I believe that this view underestimates the constraints that group membership imposes, and the real costs that individuals would face if they chose to leave groups that may provide their personal life with much of its meaning. At the same time, questions can be asked of the cultural group as a whole: since cultures are always in flux, is it reasonable to continue to impose an interpretation of the group’s culture that restricts the opportunities of individual members in significant ways? For example, if rigid dress codes are preventing them from being employed in jobs they would otherwise like

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to take, shouldn't there be a debate within the group about whether these codes are in fact justified? Perhaps a religious requirement that women should dress 'modestly' can be modified in such a way that it does not close off opportunities to find work or to participate in sports and other leisure activities, for example. So justice here cannot be achieved merely by having uniform rules that apply to everyone regardless of their cultural or religious affiliation. There needs to be flexibility both on the part of those who will provide the opportunities (employers, for instance) and on the part of those who wish to take advantage of them (members of potentially restrictive communities).

The following chapter examines the role of the family in relation to equality of opportunity. It is clear that the family you are born into affects your life prospects in many important ways. But which of those effects are compatible with equality of opportunity and which are not? Some authors seem to assume that everything that parents do that improves their children's prospects relative to others must conflict with that principle, so either we must abolish the family unit altogether, or we must become resigned to the fact that full equality of opportunity is unachievable. As I show, Rawls, for whom equality of opportunity was a leading principle of social justice, was sometimes inclined to take the second, more pessimistic view, and the same is true of feminists such as Susan Okin, whose influential work provoked the original essay. But I try to show that another response is possible. It proves to be difficult to pin down the precise means by which parents affect their children's life chances. Do they do so primarily by the genes they transmit, by the social environment in which children are raised or by the material advantages they pass on through inheritance or by paying for education? I suggest that to apply the equal opportunity principle in this context, we need to draw a line between personality and circumstances – between the characteristics that make someone the person she is, and the external conditions that may help or hamper her as she advances through life. Once we do this, we see that some of what families do for their children falls on the personality side of the line. Equality of opportunity requires us to correct as best we can for the unequal circumstances in which children are raised, but not, in general, for the impact of family membership on personality.

Although luck egalitarianism is not the main target of my discussion in Chapters 4 and 5, it should be abundantly clear how the understanding of justice that informs them contrasts with that doctrine.

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Justice, here in the form of equal opportunity, does not require us to eliminate the effects of everything that on a wide interpretation might be regarded as ‘luck’. There is a sense in which it is ‘luck’ to be born and raised a member of one cultural group rather than another; it is also ‘luck’ to have had a particular set of parents, who transmitted their genes to you and gave you a childhood different from the one that others experienced. By virtue of these influences, you have become the person that you now are, and what justice requires is that the opportunity set that now confronts you should as far as possible be as wide in extent as those that other people will face. How successful you are in making use of these opportunities will depend on ‘personality’ (in the broad sense, which includes talents); justice does not require equal outcomes. The point here is not merely that a principle that tried to correct for all kinds of unchosen luck would be impossibly demanding in practice, as I argued earlier; it is also that it threatens to collapse into incoherence, since it is impossible to say what choices I might have made had I been a different person, in the sense of having different genes, or being raised in a different environment. Equality of opportunity (properly understood) does aim to correct for relative disadvantage in people’s circumstances – access to inferior schools, for instance – which could be labelled as cases of ‘bad luck’, but it is an error of abstraction, discussed further in Chapter 10, to suppose that the principle must therefore imply a wholesale attempt to compensate people for everything that might be so described.

In Chapters 6 and 7, attention shifts to the hotly contested issue of the proper boundaries of distributive justice. The idea of social justice was intended from the time of its first appearance at the end of the nineteenth century to govern the way in which political communities distributed their resources internally: what tax and property regime should they adopt, which publicly funded services should they supply to their members, and so forth. But this inward-looking focus has in recent years come under attack. It is said to be arbitrary for states to respond to the justice claims only of their own members, unless it can be shown that people elsewhere are equally well provided for. The implication is that our understanding of social justice must be stretched until it becomes global in scope. Once again, we find that this stretching is what luck egalitarianism would entail. It is normally a matter of unchosen luck which political community you are a member