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David Miller's Nationalism: A Critique

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A thesis submitted in partial fulfillment of the requirements for the degree in Master of Arts

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Abstract

This thesis examines David Miller's defence of nationalism. It considers what is termed "the compatriot partiality thesis", that is, the view that we are justified in giving our compatriots more moral consideration than we give to outsiders. It examines the debate between Miller's own ethical particularism and the ethical universalist position. Miller's particularist view rests in part on his view that political theory must embrace a feasibility constraint, and his case for that is examined. Finally, Miller claims that his defence of nationalism is consistent with the endorsement of human rights. The thesis examines his attempt to incorporate an idea of human rights, and concludes that his attempt to do so is inconsistent with his ethical particularism.

Keywords

ethical particularism, compatriot partiality thesis, human rights

Acknowledgments

It is a genuine pleasure to express my deepest sense of gratitude to my supervisor Dr. Richard Vernon. His dedication and keen interest to help his students had been the only responsible for the completion of this thesis. Without his timely scholarly advice, I would have been lost.

It is also hard to overstate my gratitude to Dr. Charles Jones for the help he provided during the initial part of the thesis.

I wish to thank all of my friends and the Political Science Department for making London feel like home. Thomas J. Hipkin, A. Percy Sherwood, Thomas Randall, Noel C. Walker, Berent Batur, and Christopher L. Hoyos deserve special mention.

I wish to thank my brothers Osman, İsmail, and Emir as well as my uncle, Mehmet, for their ceaseless support.

Most importantly, I want to thank my parents, Ayşe Y. Seven and Ali Seven. They bore me, raised me, supported me, and loved me. Their unconditional love was the greatest source of motivation.

“The strangest of our powers is the courage to live

Knowing that we will die,

Knowing nothing more true”

-Nâzım Hikmet Ran

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Introduction

David Miller is the world's leading theorist of liberal nationalism, and also among the most influential political theorists writing about the topic of global justice today. Since the publication of *On Nationality* in 1995, Miller's work has attracted controversy because it rejects the cosmopolitan ideas that other liberal political theorists have recently favoured. Miller has continued to defend his conception of nationalism in later works, such as *Citizenship and national identity* (2000) and *National responsibility and global justice* (2007). What is the basis of his defence of the moral significance of nationality?

As we shall see, his defence depends in part on a certain conception of the methodology of political theory, advanced in his book *Justice for Earthlings* (2013). Rejecting what is termed "ideal" political theory, Miller argues that political theory must take as given the attachments that political actors currently have, as opposed to the attachments that theorists might want them to have.

Why, though, might Miller still count as a *liberal* nationalist? Here we must take account of his belief that what we owe to our nation is constrained by human rights. But how, given the approach that he relies on in order to defend nationalism, can he provide a convincing account of human rights?

In this thesis, I attempt to explain the basis of Miller's defence of nationalism (chapter 1), his methodological view (chapter 2), and his attempt to incorporate human rights within his liberal-nationalist position (chapter 3).

1 Compatriot Partiality Theses: David Miller vs. Robert Goodin

This chapter examines two different kinds of *compatriot partiality thesis* (CPT).¹ The CPT “holds that individuals have special duties to their fellow citizens that they do not have to non-compatriots” (Riker 2011, 172). Miller defends partiality for co-nationals by arguing for an ethical particularist position. Essentially, the argument is three-fold: (i) nationality can properly be part of someone’s identity, (ii) nations are ethical communities: the duties we owe to our fellow-nationals are more extensive than the duties we owe to human beings as such, and (iii) nationality makes social justice and democracy possible only *if* people value their nationality intrinsically. Hence, Miller’s method grounds special duties to compatriots in intrinsic considerations. To elaborate, Miller argues that special duties originate from relationships that are (i) “intrinsically valuable,” (ii) “essentially duty-laden”, and (iii) not unjust or immoral (Miller 2005, 65-67; Riker 2011, 173). Since Miller believes that co-nationality meets these three conditions, compatriot partiality is morally justified.

Another kind of CPT defends priority for national obligations by arguing for an ethical universalist position. Essentially, the argument is that nations are the best available tool to discharge our general duties; it grounds special duties in efficiency. Conceptually, we are not *prioritizing* our national obligations because global obligations are discharged as national obligations. For example, Robert Goodin (1988) argues that general duties to all persons are what matter, but that the most effective way to ensure that these general duties are fulfilled is through the state. David Miller himself uses Goodin as a contrast to his own view (Miller 1995, 62-65). In Goodin’s view, when general duties are not assigned to particular states, they are ineffectively

¹ For others see Tamir (1993) and Hurka (1997).

performed. Therefore, we should assign general duties to particular states², and hold them accountable for execution of these duties. Compatriot partiality is justified, then, because national borders are “useful devices for ‘matching’ one person to one protector” (Goodin 1988, 686).

I will attempt to show the tension between ethical particularism and universalism with regards to CPT by arguing that the debate between the two camps rests on the acceptance or rejection of contextualization of moral agents, especially with respect to the issue of motivation. I will also consider particularism critically by pointing out some possible problems.

1.1 Ethical Particularism

David Miller thinks that beginning our philosophical theorizing by taking into account of “actual” people and their “actual” emotions is crucial (Miller 2013; Brock 2002, 308). He notices that in the “actual” world, many people believe that their national identity is a crucial part of who they are (Brock 2002). To be a Japanese, for instance, is an esteemed aspect of Japanese people’s lives. Miller’s main goal is to argue that seeing oneself as a national is not irrefutably unethical, and that such a way of viewing oneself can actually be defended on moral grounds (Ibid).

1.1.1 General Remarks

David Miller begins his defense of nationality by arguing for an ethical particularist position³, which implies that special ethical obligations are contained in the idea of national membership:

² Not nations as Goodin does not distinguish between the two. See (Goodin 1988, footnote 1).

³ It is important to distinguish Miller from Jonathan Dancy’s moral particularism, which can be found here: *Challenging Moral Particularism* (2008) chapter 7, edited by Mark Norris Lance, Matjaz Potrc, and Vojko Strahovnik. Miller did not say anywhere that there are no moral principles, which separates his ethical particularism crucially from others. Although he seems to be in line with the general argument in moral particularism that moral judgements can only be found in particular cases, but the definition he provides is very different, which locates this in relationships and attachments.

Nations are ethical communities. In acknowledging a national identity, I am also acknowledging that I owe special obligations to fellow members of my nation which I do not owe to other human beings (Miller 1995, 49).

Miller formulates his argument by first explaining to us what he means by particularism:

Ethical particularism holds that relations between persons are part of the basic subject matter of ethics, so that fundamental principles may be attached directly to these relations (Miller 1995, 50).

People, in a particularistic view of ethics, “are already encumbered by a variety of ties and commitments” to other people, or to communities, and they begin their ethical reasoning from these commitments (50). It is important to keep in mind that different significance may be attached to different ties according to different forms of particularism but this does not change the basic idea that our ethical reasoning begins by taking these already-existing relationships into account (51). This, however, also does not mean that we should accept whatever moral demands that flow from these relationships (Ibid).

There is nothing wrong, for Miller, in seeing myself as possessing special obligations to my family, friends, and as a member of my community, and as a national. Miller stresses “members’ subjective belief that their association is valuable in its own right” (Miller 2003, 5, 7, 13, 18). A friendship generates an “open-ended” special duty – owed just to friends– to aid the friend and to maintain the relationship. One may ask why this is the case. There are three reasons, which relate to the three conditions I mentioned in the introduction. Firstly, friendships are intrinsically valuable according to Miller. Obviously, there would be some instrumental goods related to the friendship, but Miller rightly calls attention to the fact that these goods do not exhaust the significance of the relationship. Friendship itself is valuable, beyond whatever else it might bring. Secondly, friendship essentially contains reciprocal duties. Owing our friends special duties is fundamental to the relationship. That is, friendships would not be possible if there was no mutual

understanding that the relationship gives rise to particular special responsibilities for the people in that relationship. Miller stresses this point by saying “friends can call on each other for help when they get into difficulties” (Miller 2005, 63). Thirdly, friendships are not inherently unjust or immoral. Obviously, I and my friend can collaborate on performing acts that are unjust or immoral, but this does not mean that the friendship as an abstract idea is morally appalling.⁴ Miller thinks that shared nationality also meets these three conditions. This is because the relationship between conationals is also intrinsically valuable, is essentially duty-laden, and is not inherently unjust. Thus, the conational relationship comes with special duties attached. It is certainly the case that conational relationship, when abstractly conceived in the sense Miller proposes, can meet these three conditions. For instance, it might be true that conationals could come together to perform crimes against humanity. But this would only be true in such particular cases and could not be used to deny that conational relationship meets these three conditions.⁵ In other words, there is nothing inherent about conational relationship that would make it ineligible to meet the conditions. Miller, then says:

Special duties are generated within groups that are intrinsically valuable and not inherently unjust, where the duties can be shown to be integral to relationships within the group. Since nations can be shown to meet these conditions, acknowledging special obligations towards compatriots is justified (Miller 2005, 63).

To see why Miller sees particularism as the ethical theory to “embrace,” we can look at what he views as flawed in universalist morality (Miller 1995, 65). Firstly, universalist morality “draws a sharp line between moral agency and personal identity” (57). Such morality sees people as constantly engaging in “abstract reflection on the human condition” and “purely rational considerations” (Ibid). Secondly, such morality draws a sharp line between moral agency and

⁴ Also, gang membership would not be able generate special duties as it is inherently immoral.

⁵ I will get to more detail on why conationality meets these conditions shortly.

personal motivation (Ibid). Miller structures the debate between universalism and particularism in such a way that we either have to choose to see humans as heroic individuals or as sentimental and motivated beings, accepting that motives like love, pride and shame play an important role. Since many people are not heroic, universalist morality results, he claims, in an “implausible picture of moral agency” (Ibid). One may ask: why is the discussion of particularism so important for Miller? Well, Miller claims to overcome the weak “motivational power of morality” by presenting a communally entrenched picture of moral agency (Miller 1995, 66).⁶

So far, we know that attachments and relationships in general are ethically significant from a particularist point of view. But we need to elaborate on why nationality meets three conditions described above. Miller first suggests that national identities are valid sources of personal identity and that national identity occupies an essential space in our personal identity. To defend that, we need to look at what nations are. For Miller there are five distinctive characteristics of national communities. They are constituted by belief; they embody historical continuity; they embody an active identity ("nations do things together: they take decisions, achieve results."); they are connected to some geographical area; and they have a national character and a common public culture: there is a "sense that people belong together by virtue of the characteristics they share" (22). The main thing to consider here is *belief* because nations ultimately *exist* because we believe

⁶ In building a normative political theory, Miller argues that we need to focus on people’s motivations (Miller 1989, 228). He indeed says that:

It is no use viewing government as a benign perpetual motion machine that will turn out whichever policies we deem to be appropriate. We must give some account of the human agents who have in practice to turn its wheels (who they are, how they are related, what motivates them) (Ibid).

So, we can realize that people are motivated through their relationships. This motivating force, Miller contends, is found in communal ties. The specific kind of communal ties he is occupied with is “shared national identity.” Indeed, he says that nations “are the only possible form in which overall community can be realized in modern societies” (245).

that they exist. For this reason, he says that it is not possible to “identify nations by looking to see which people have common attributes such as race or language” (Ibid). He writes that:

A nation exists when its members recognize one another as belonging to the same community, and as bearing special obligations to one another, but this is by virtue of characteristics that they *believe* they share [common history, geographical place and so on] (Miller 1996, 413 – *emphasis added*).

If nations still exist, it is because we believe they do. It seems that their existence is a proof of the space nations occupy in our personal identity. If they did not occupy any space at all, nations would not continue to exist. He also thinks that we intrinsically value nations just as we intrinsically value our family and friends. For Miller, to be a *genuine* family (like the friendship example), we *must* be valuing our families intrinsically. This means that we do not value the relationship just because it provides us with certain goods and values even though these relationships will have instrumental benefits. We value them because it is our family. If we do not value them this way, the familial relationship is doubted and the duties that flow from such relationships might not have enough motivational power to be carried out. This holds for nations too as is clear when Miller says:

compatriots must first believe that their association is valuable for its own sake, and be committed to preserving it over time, in order to be able to reap the other benefits that national solidarity brings with it. Whatever value we as outsiders may attach to other people's sense of national belonging, a political association that was entered into and supported purely for instrumental reasons could not work in the way that a national community does (Miller 2005, 67).

This comes from Miller's commitment to the idea that we are particularists, which comes from the underlying belief that particularistic bonds (with friends, families, co-nationals etc.) cannot be sustained without intrinsically valuing them. Just as in the case of families, for nations to be nations, we need to value our attachment intrinsically. I cannot sustain my familial relationship if I believe the relationship leads to the maximization of some value that is distinct from what is already embedded in the idea of “family,” that is, if extrinsic goods of the relationship exhaust the

whole of the relationship. Another related reason to extend this to nations would be because we do not see them as a mutual-benefit society (Miller 1995, 61). We do not calculate how much tax we paid against how much benefits we might receive. So, “[w]e have duties as family members, as neighbors, as community representatives, and so forth, and in each case the duties stem directly from our understanding of the relationship” (Miller 1996, 416). Such duties, which he calls “ground-level” duties, do not arise because of a general principle that we are trying to fulfill and to accept this is to accept that we intrinsically value national membership and nations. This approach “ties together identity and membership with obligation: in seeing who I am and where I belong. I also see what I am required to do” (Ibid). This also suggests that there is loose reciprocity within the community (67). I know that in helping others in the group, I am helping to maintain a system that I *may* benefit from.⁷ Moreover, groups and communities make possible the subsequent establishment of more formal systems of reciprocity (65). A simple example would be that welfare programs are more likely be successful in states with strong national sentimentality because people who already feel duties towards their co-nationals will support state programs to implement it (71).

However, just because nationality occupies an essential space in our personal identity⁸; that we value our membership intrinsically; and that they lead to establishment of formal systems of reciprocity, might not entail that national membership is ethically significant. It is one thing to claim all these things above, and completely another thing to claim ethical significance for them. Indeed, Miller points out this logical gap when he considers nationality being intrinsically valued and its being intrinsically valuable (Miller 2005, 67). But he argues that “the onus surely falls on

⁷ The role of public culture is an important one as it sets the content of obligations. Public culture is a public phenomenon, and they are shaped by the people. Therefore, in a democratic community, in some sense the people define one’s duties, because they have shaped the culture and the culture determines the duties (Miller 1995, 68-70). The determination of the content of duties are through a deliberative system in which everyone contributes.

⁸ This is also contested but I will not address it. But see Mayerfeld (1998) for a great explanation of why this argument might be a myth.

those who want to deny the value of national attachments to show why people's actual valuations are misguided” (68).

The connection between particularism and the ethical significance of nationality is rather unsettled so far. This is because particularism as an ethical theory says nothing specifically about nationality. All Miller is suggesting up until this point is that particularism is in line with *how* we live, think, and act again pointing to his commitment to “earthlings” (Miller 2013). Additionally, particularism as an ethical theory makes sense of the common assumption that relationships and attachments are valuable without further justification. Couple this with the three conditions nationality satisfies, and particularism goes on to strengthen Miller’s position. Miller also turns to the instrumental justification of national membership as he recognized in the beginning that there are instrumental goods associated with partiality for compatriots. Such justification rests on two important concepts that national membership makes possible to promote: *social justice* and *democracy*.⁹

1.1.2 Instrumental Justification for CPT

Social justice for Miller is about “how the good and bad things in life should be distributed among the members of a human society” (Miller 1999, 1). There are, however, preconditions to distribution. We first have to define its *scope*. Miller notes that the “principles we use are always, as a matter of psychological fact, applied within bounded communities, and that the integrating power of national identity is sufficiently great to make the national community our primary universe of distribution” (19). Why is this? Because the “potential for social justice lies in the

⁹ Important thing to consider here is that these instrumental goods can only be achieved if people saw their conational relationship as intrinsically valuable. From what point of view Miller is advancing this argument? I suppose that Miller is looking down on people and he realizes that these instrumental goods can only be achieved only if people value their relationship intrinsically. So, he is the only one who realizes this rather than the people who actually engage in these relationships.

shared normative concerns of citizens for one another” (Verma 2011, 46). This potential can only be realized if the political institutions have the capacity to deliver the shared conception of justice. Miller believes that this shared concern for justice usually originates from culture. He also feels that individuals’ identity with one another usually is generated by shared membership in certain groups. The main problem would be that “it becomes harder to motivate people to extend the universe of distribution to include members of other groups” (262).¹⁰ Also, it might be the case that cultural differences translate into “conflicting conceptions of social justice.”¹¹

Secondly, in Miller’s view, a shared national identity incites trust among members and this helps to support a redistributive practice (Miller 1995, 92-4). He is presenting us with a “variation of the communitarian view” that people need to “feel bonds of membership to the recipients” of (re)distribution (Moore 2001, 4). If this is not the case, then, “redistribution by the liberal state will be experienced by individual (who is taxed) as coerced and therefore incompatible with individual freedom” (Ibid). Also, the *loose reciprocity* and shared identity that characterizes our national membership make the political will possible to discharge obligations that social justice would demand. This can be because it makes it possible to establish more formal systems of reciprocity, as noted above. Indeed Miller says:

...nationality answers one of the most pressing needs of the modern world, namely, how to maintain solidarity among the populations of states that are large and anonymous, such

¹⁰ For instance, Kok-Chor Tan argued that there is no conflict between liberal nationalism and cosmopolitan liberalism, therefore still advocating for justice without borders while accepting some of the liberal nationalist claims. He thinks that the conflict can be resolved once we “get clear on the scope and goals of cosmopolitan justice and “the parameters of liberal nationalism” (Tan 2002, 431). For instance, he says that cosmopolitan position does not deny the commonsense view that people may form special attachments and show special consideration to those with whom they have special ties” (456). He thinks that if liberal nationalism will be “liberal,” it must be consistent with the liberal ideal of justice as impartiality. So, we can have reasonable partiality to fellow co-nationals as long as all individuals are equally entitled to an equal baseline level of concern. Miller accepts this but we will talk more specifically about Miller on global justice by touching upon his human rights theory in the third chapter. Also, you can clearly see that Tan is arguing without specifically talking about motivation. Hence, there are indeed theoretical justifications for cosmopolitan global justice that agree with Miller on most issues.

¹¹ However, he partially discounts this on page 261 in *Principles of Social Justice*.

that their citizens cannot possibly enjoy the kind of community that relies on kinship or face-to-face interaction (Miller 2000, 31-2).

Overall, this can be said: Miller thinks that social justice is only possible if people have some common grounds to motivate them to sacrifice certain things to each other and accept the consequences. After all, social justice is about distribution. If we do not attach any ethical significance to relational ties, then, we cannot achieve social justice because we cannot motivate people. Nationality provides such common ground on the largest possible scale.

Nationality makes democracy possible for essentially the same reason.¹² Nationality has been one of the chief ingredients in the contemporary model of citizenship and it acquires its significance due to the functions it serves in the nation-state system. Nationality helped to find a source of meaning and solidarity in the modern political community, which relied on the shared understanding of liberal and equal people. By this, we can see that national awareness closed a vital gap in the liberal theory of the state, specifically the job of deciding on the boundaries of the people or, that is to say, the decision of the exclusive and inclusive character of the political community. National identity provides some insight to answer the question “for what reason do I need to be involved politically with this particular group?” by affirming that “you are already encumbered by the ties of culture and history; these people are your people, despite the fact that you have never seen or known most of them.”

1.2 Ethical Universalism

Miller’s approach to attaching ethical significance to nationality is not straightforward. He makes no claim to offer good reasons for people to have national attachments in the beginning, but starts from the assumption that people generally do display such national attachments, and attempts

¹² I will not directly engage with Miller’s conception of republicanism or his idea of republican citizenship. My goal here is to simply point out the instrumental significance of nationality, which leads to a bigger value: democracy.

to build a political philosophy which integrate them. He indeed says “[w]hat we can do is to start from the premise that people do exhibit such attachments and allegiances, and then try to build a political philosophy that incorporates them” (Miller 2000, 25) It is true Miller will reject ordinary beliefs and sentiments if they are “fatally flawed” but his project of building a political philosophy to integrate what people happen to believe seems risky (Miller 1995, 7). It is rather interesting how a particularist will be able to call something “fatally flawed.” From exactly what moral point of view are some of our beliefs fatally flawed? And from what point of view do we reach that conclusion “by critical reflection on our beliefs and sentiments”? (Ibid). Goodin’s extrinsic justification reveals these deeper concerns in Miller’s work. In this part, my goal is to show the tension between particularism and universalism by contrasting Goodin’s version of CPT with Miller’s.

1.2.1 Tension between particularism and universalism

Miller claims that the universalist, unlike the particularist, must “embrace” an unrealistic or “heroic” view of morality (Miller 1995, 65). From Miller’s discussion, it is hard to understand what is actually at stake between these two ethical camps when formulated as a choice between two extremes. One interpretation would be that he puts the “motivational” power of starting with pre-existing commitments at the forefront of ethical theorizing. This arises from Miller’s commitment to “earthlings” as *actual* people, their *actual* emotions, in an *actual* world to achieve social justice and democracy (Miller, 2013). However, even the extreme universalists never disputed that individuals are entrenched in a network of social relations, and they also appreciated how these would form individual and collective identity as well as motivation, loyalty, commitment and so on (Kymlicka 2002, 208-284). So, what is the disagreement between these two ethical camps according to these two theorists? I will argue that the tension between Miller’s

ethical particularism and Goodin's ethical universalism rest on the acceptance or rejection of contextualization of the moral agent.¹³

It may be true that feelings of national attachments for many of us occupy an important space in our 'pre-philosophical' moral point of view, or what others called 'common-sense morality'.¹⁴ Miller's particularist conception of morality endorses the moral significance of such feelings, whereas a universalistic morality would tend to be suspicious about them.¹⁵ Miller feels that he can at least claim that particularism is entrenched strongly in people's self-conceptions, whereas universalism is always in danger of losing "contact entirely with the beliefs of the people they seek to address" (Miller 1995, 14). Miller does not take particularism to advocate any specific set of policies, but rather wants it to be a principle of "identification grounding a degree of partiality towards one's co-nationals in the form of special obligations" (Weinstock 1996, 93). This permits Miller to set himself aside from other theoretical justifications of compatriot partiality, which might directly entail a defense of nationalist policies.¹⁶ His ultimate rejection of universalism relies on the idea that if we appeal to abstract moral notions or to methods of moral reasoning that clearly begins with a decontextualized conception of the moral agent involves bringing about an

¹³ Also, in the literature, the disagreement is usually constructed as the disagreement on the conditions and constraints we put on special duties. In other words, these two camps would disagree whether *these* special duties are moral duties and *those* are not as well as disagreeing on the strength of special duties to override general duties. Disagreement also arises due to the ambiguity of whether special duties can ever be strong enough to override general duties.

¹⁴ Some have constructed a whole ethics theory around the idea of common-sense morality (Scheffler 1994)

¹⁵ It is clear that Miller does not pretend that any bickering arguments can be produced in favour of particularism against universalism when he says "[n]othing I have said so far is intended as a critique of universalism in itself" (Miller 1995, 64).

¹⁶ Miller says in the intro that:

[This book] sets out to explore and defend what I shall refer to as 'the principle of nationality,' a principle which I believe can offer us rational guidance when, as individuals or as citizens, we have to respond practically to some national question [...] it neither celebrates nationalism nor writes it off as some kind of irrational monstrosity (Miller 1995, 2).

undesirable conception of morality (or of the moral agency i.e. “the heroic individuals”).¹⁷ Let us situate Miller against Goodin to see this more clearly.

As we have seen, Goodin’s *assigned responsibility model* sees special duties as merely “distributed general duties” and that “special duties derive the whole of their moral force from those general duties” (Goodin, 1988, 678-79). Goodin argues that there are a lot of general duties that point to certain tasks, which are discharged more effectively “if they are subdivided and particular people are assigned special responsibility for particular portions of the task” (681). He argues that this effectiveness can arise because of the “advantage of division of labour and specialization”; the limits of information we can process at any given time; and sometimes there are psychological processes at work that during childhood that “presuppose that each person will have some particular advocate and champion” (Ibid). So, Goodin essentially argues that whatever the reason is, if general duties are more effectively discharged through special duties, then, that is what should be done. He thinks that just as there are some doctors who are better than others, there are better nations (or states) (Ibid). So, it is not a matter of indifference which one is handling your case but we can all agree that “any one is better than all at once” (Ibid). By making special duties a matter of effectiveness, Goodin indeed decontextualizes and abstracts the relationships that, for Miller, give rise to such duties. This is because Goodin does not particularly care who these people are, what kind of history they have, or which language they speak.¹⁸ This suggests that the nation is not inherently valuable. But again, Miller’s rejection of Goodin’s decontextualization seems to

¹⁷ The argument about abstraction in this sense was also defended by Alasdair MacIntyre. See MacIntyre (1988).

¹⁸ Although Miller said that we cannot “identify nations by looking to see which people have common attributes such as race or language,” it is still the case that he believes that such things are not irrelevant contingencies. He says “[a] person who in answer to the question ‘Who are you?’ says ‘I am Swedish’ [...] is not saying something that is irrelevant or bizarre” (Miller 2000, 27). So, we can safely say that the things included in the idea of being “Swedish,” – for instance, the language, history, and so forth – are important for Miller even though it may not help us to identify the nations.

be the thinking that universalist accounts of compatriot partiality involve constant calculation about our actions. When structured this way, Miller might be correct to point out that decontextualization will simply hinder the possibility of calculating it from the ground-up. However, Miller is mistaken to structure universalism in this way. Goodin's goal is not to calculate things from the ground-up but rather to justify them.

Additionally, Miller suggests that where we "begin" our ethical reasoning is crucial, whereas Goodin's view implies that where we "begin" our reasoning does not really matter as long as we produce the best possible outcomes. Universalists such as Goodin would not reject beginning our ethical reasoning with particular commitments in the socially embedded view of moral agency as long as we test them against some general moral principles to come up with more fundamental source for their ethical significance. I think that the reason Miller cares so much about where we begin our ethical reasoning from is to avoid decontextualizing his notions from the subject. If we adopted universalist morality, we would have to test special duties to co-nationals against some set of general principles. But for Miller, this would decontextualize the moral agent by making the reasoning too abstract to effectively work and to reflect common sense morality. Granted that universalists see some special duties as morally unproblematic in the sense that they may automatically give rise to special obligation without further reason, they are reluctant to extend this to nations because they do not reflect the kind of nature of special duties that arise from families, friends, relatives and so on. But despite the fact that nations are not exactly like families etc., in practice we do things for our nations (and therefore to our co-nationals) that cannot be

explained by a universalist logic (e.g. dying for our nation).¹⁹ To this, Goodin insists that even if this is true, it cannot morally justify forgoing our general duties as all human beings matter.

So far decontextualization of the moral agent means that we do not particularly care about *who* these agents specifically are. Goodin's acceptance of this is also clearly seen when he argues that moral principles should give everyone equal weight despite the fact that basic principles that are perfectly impartial can play themselves out in particular applications in such a way as to allow us to treat different people differently (Goodin 1988, 664). Goodin also says "ultimate principles of morality must not themselves play favorites" (Ibid). Principles, for Goodin, should not be established on *who* people specifically are but rather on the equality of everyone. This means that partiality to co-nationals can only be justified *if* we conceive of it as fulfilling general duties that we owe to everyone. In other words, we cannot prioritize compatriots if this means we abandon our general duties because everyone counts for one, no one for more than one, according to the Benthamite calculus that Goodin endorses (Goodin 1988, 664).

I believe that another main issue for Goodin is Miller's claim that the conational relationship is valuable intrinsically, which again ties it to the debate about contextualization. It seems, for Goodin, that such a relationship is not always valued or valuable. Miller (2005) counters this by suggesting that it is irrelevant, because people would be capable of getting value from it, if they wanted to. Additionally, he argues that people who are apathetic to the inherent value of national identity are lacking in something significant from their lives (Miller 2005, 67-68). However, this

¹⁹ Consider an example I mentioned earlier. As a member of our society, I also pay taxes in April. When I am filing my taxes, I do not calculate strictly how much I benefited from the society against how much I contributed. If it was all about some calculation, I should create a scene when there is incongruence between what I contributed and what I received as benefits. But we could abstract and say that my proper payment of taxes, despite the fact of incongruence, contributes positively to the overall benefits I receive and such payment makes my life better in one way or another in general. Or we could invoke Categorical Imperative and argue that if *everyone* did not pay their taxes, the government would not be able to operate. Miller could probably argue that an abstract master principle would not motivate people but we will get to that later in the second chapter when I consider his views on moral contextualism.

is a contentious statement for theorists like Goodin who attempt to justify compatriot partiality extrinsically. Miller might be able to justify the statement that people could get value from the co-national relationship, the statement that those who eschew this source of value will have less flourishing lives as a consequence sounds a great deal less convincing, which Goodin cannot accept without further reason. Additionally, it is not evident to most that they require this sort of value to have flourishing lives.

Despite the fact that CPT may be morally defensible, Goodin thinks that there is also an unwarranted assumption running through Miller's discussion of particularism and justification of partiality. When we exercise special obligations to our co-nationals, we think that the special treatment that we give is especially good treatment. However, Goodin shows that special relations permit us to treat those linked to us worse than we would otherwise be obliged to treat them. For instance, we can "allow the emission of noxious factory fumes that damage the persons or property of fellow citizens" whereas we usually cannot do that to others if such fumes cross international borders (Goodin, 1988, 669).

Goodin's argument can be broken down into two parts. The first part, as mentioned, starts with the realization that we treat strangers better in various respects than our compatriots. Simply, we do bad things to our compatriots, which we would not be able to do to strangers. It seems that stronger negative duties to strangers are already well established in how we live our lives within our exclusive nation-states system. It is this that Goodin picks up on, thus offering a challenge to particularism. The problem is specifically that special relations based on three conditions of Miller is what grounds respective special duties. However, it seems that we may have stronger negative duties to strangers, whom we have no meaningful connection or significant interaction with.

Second, it is an implication of the assigned duties model that all states must be assumed to have the resources to carry out their duties to their own people. When they do not, it falls to rich states to transfer resources to poor ones. Thus, in addition to respect for other states' negative rights, there is a positive duty to redistribute resources. We can see this more clearly when we take a look at the lifeguard example that Goodin puts forth to exemplify the assigned responsibility model (Goodin 1988, 680). Let us say that there is a swimmer drowning off a beach that has an official lifeguard. In order to avoid disorder in responding to the swimmer, we need to assign someone the responsibility of rescuing. Since the lifeguard is officially chosen to rescue the drowning swimmer, the duty to save life – a general duty borne by everyone —can be assigned to the lifeguard. Miller argues that this example suffers from a significant problem. He argues that there is first a “social convention” of appointing lifeguard through which we can recognize the assignment of responsibility. Since the appointment of the lifeguard is not purely arbitrary, “we all have good reasons to think that the object of our duty – saving the swimmer – will be served best by our getting out of the lifeguard’s way” (Miller 1995, 62). Miller thinks that when we extend this example to global responsibilities, it fails. The failure comes from the idea that not every nation-state is equally capable of protecting their citizens. So, Miller asks “Why does it make sense to assign responsibility for the rights and welfare of Somalians to other Somalians, if we are looking at the question from a global perspective?” (63). Miller is quite right to point out that assigned responsibility model fails when constructed in this way. But we need to “notice how the example works” if we do not want to offer a *reductio* of Goodin’s argument (Miller 1995, 62). Goodin adds that “[i]f some states prove incapable of discharging their responsibilities effectively, then they should either be reconstituted or assisted” (Goodin 1988, 687). Miller could possibly argue that “reconstituting” a nation would go against national self-determination, which he defends

at length (Miller 1995, 81-119). Goodin responds to this possible charge by saying that the idea that such assistance and reconstitution would imply a colonial outcome only if “(a) citizens of the would-be colony have no very strong interests in their national autonomy and (b) the colonial power truly discharges its duties to protect and promote the interests of the colony, rather than exploiting it” (Goodin 1988, footnote 60).

Another line of criticism from Miller would be that this sort of idea of reconstitution or assistance would require wealth redistribution and we do not have the motivational momentum to redistribute when we explain our special duties as Goodin does. But let us see how Goodin is led to argue that position. He realizes the problem of the inefficient world-order. Rich states have responsibility for rich populations, and poor states for poor ones, despite the fact that a rich state’s resources have higher marginal utility for poor populace than for rich ones. Therefore, the current order does not efficiently assign general duties. Additionally, it can make things worse by implying that rich states have done all that is morally required of them once they have fulfilled their duties to their own populations. This is why Goodin rightly calls for assisting poor states and even a redistribution of wealth on a global scale. Miller, firstly, reconstructs Goodin’s argument poorly by misunderstanding Goodin’s example. Secondly, if Miller chooses the second line of criticism – that Goodin does not have the motivational bases to make his claim – then, Miller moves the debate from justification to motivation. However, these are two different things. Goodin is trying to justify special duties and realizes that such justification must take the fact of inefficient world order into account if it is to make any sense in terms of its justifiability.

1.3 Analyzing Miller’s Theory

Firstly, there seems to be nothing wrong in suggesting that we should move beyond the specific relations we are embedded in despite the fact that we start our ethical reasoning from them.

I can learn that hurting someone is wrong by accidentally hurting my cat and seeing it suffer. I can generalize my cat's suffering to the suffering of all and reach a conclusion that suffering is morally wrong. Over time, one may argue, we can start our reasoning from general moral principles which comes about through considering our particular relationships. By rejecting this, Miller ultimately criticizes universalism in favour of a particularistic view of morality. From a purely particularist perspective, it is possible to accept forming principles through particular relationships but it is not possible to accept that we should start our reasoning from these general principles or test particulars against them because a particularist would say that "universal is no more than a particular that has become dominant" (Laclau, 1992, 87). However, this is a non-starter in the complicated world that we have today because this would put us in "an unsolvable paradox" if particularism is the only accepted normative principle (Ibid). First of all, how are we to regulate possible disagreements that will inevitably arise from different groups? As Ernesto Laclau says:

I can defend the right of sexual, racial, and national minorities in the name of particularism, but if particularism is the only valid principle, I have to accept also the rights to self-determination of all kinds of reactionary groups involved in antisocial practices. Moreover, as the demands of various groups will necessarily clash with each other, we have to appeal to some more general principles—if not some kind of preestablished harmony – in order to regulate such clashes (Ibid).

It is important to stress here that the argument Laclau is advancing is not simply a traditional liberal critique of nationality. Miller clearly answers that by saying that liberals are mistaken to believe that nationality would be detrimental to cultural pluralism (Miller 1995, 119-155). Such a liberal critique can be refuted by noting that national identities do not exhaust the whole of our identities. A state can contain many different identities and national identity may not extend to "all the cultural attributes that a person might display" (Miller 1993, 10). Relatedly, Miller can say that since national identity does not exhaust all of our identities, the problems that can arise are not the result of national identity. The problem with this response is that it does not meet Laclau's concern.

The idea that national identity does not exhaust all identities does not mean that there will not be conflicting demands from different groups. It presupposes that these groups will live peacefully. Miller suggests that people who are indifferent to the inherent value of national identity are simply missing something important from their lives. But this assertion is not very-well balanced against the concern for disagreement and its possible resolution.²⁰ So, Laclau is trying to get at the inevitability of conflicting demands if national identity is not an all-embracing identity. Hence, Laclau asks how are we to regulate clashes? We have to have a general moral principle to even weigh different demands and the problem becomes worse when we have to regulate disagreements. Another theorist expresses his concern about rejection of abstraction by saying that:

...abstraction does not have an expressive function in liberal political philosophy at all, but rather, that it gives theoretical shape to a perfectly reasonable way of dealing with conflict and plurality among agents, which consists in seeking common ground by abstracting from beliefs and traits which, while they might be of central importance in other contexts, pose an obstacle to reaching agreement over some issues of shared interest (Weinstock, 1996, 91).

The appropriate level of abstraction in political theorizing is an important debate, which I will talk about in the second chapter within the debate of ideal and non-ideal theorizing. For now, Weinstock is making a simpler point about abstraction by emphasizing that abstracting in ethical theorizing is not about expressing but rather about preparing the groundwork for reaching an agreement. This falls under a similar point I made earlier about *justifying* and *calculating*. When abstraction is understood as calculating from ground-up, it is indeed easy to sympathize with Miller. However, abstraction need not only be confined to this and it usually serves a justificatory role. Weinstock is pointing to the idea that abstraction produces the groundwork for justification, which serves as an important step to reach agreement over some issues of shared interest.

²⁰ Miller introduces moral contextualism as a possible response. I consider this the second chapter.

1.3.1 Relational Facts

Relational facts also illuminate why Miller eventually rejects extrinsic justifications for compatriot partiality but also reveals the problematic sides of particularism. The problem Miller identifies is that liberalism disregards the ethical significance of relational facts leaving believers incapable to account for the compatriot partiality. This is a vital problem for Miller because “no state can survive without necessitating its citizens to make special sacrifices on behalf of their fellow citizens”, which again ties his argument to motivation (Wellman 2000, 537). The idea that we *must* embrace the view that relational facts have a basic moral significance is captured by particularism very well (other theorists called it *associativism*) (Ibid). This, according to Miller, has a decisive effect on the success of any social justice principles as well as democracy.

Ethical particularists like Miller think that relational facts play a significant role in shaping our moral standing. For instance, Alasdair MacIntyre argued that universalism:

requires of me to assume an abstract and artificial—perhaps even an impossible—stance, that of a rational being as such, responding to the requirements of morality not qua parent or farmer or quarterback, but qua rational agent who has abstracted him or herself from all social particularity, who has become not merely Adam Smith's impartial spectator, but a correspondingly impartial actor, and one who in his impartiality is doomed to rootlessness, to be a citizen of nowhere. How can I justify to myself performing this act of abstraction and detachment? (quoted in Miller 1995, 57).

From this passage, we can see that Miller emphasizes that each person has different *particulars* and that these particulars carry ethical significance. As Wellman puts it “the fact that you are my sister, my colleague, or my compatriot is of a moral moment *independent of any more fundamental morally significant features of our relationship*” (Wellman 2000, 539 – original emphasis). For instance, suppose that Smith has a special duty to his brother, John. Miller would argue that Smith can refer to *brotherhood* as the definitive source of duty whereas Goodin would argue that such

special duty should be derived from more “long-standing emotional intimacy and interdependence” rather than the brotherhood itself or other extrinsic considerations (540). Or Goodin would also be able to say that Smith’s being partial to his brother is something needed just like a mother needs to be partial to her child.²¹ This is grounded in a more fundamental idea of efficiency. It is indeed more efficient that mothers took care of their own children. It is clear that Goodin and Miller can agree on the possible demands that flow from the duty but Miller would argue that the relationship itself has fundamental moral importance, whereas Goodin would argue that the moral significance of the relationship is derivative.

It is indeed a standard move to take a particularistic position to reject impartial and universalistic theories as such theories will generally have difficulty dealing with attachments. However, a particularist’s difficulty may be far more significant when we consider relational facts more seriously. Miller suggests that everyone has relational facts, even human beings to human beings albeit very vaguely.²² He says that there is nothing wrong in considering human beings as a whole and let them enter our ethical reasoning at the basic level. This happens alongside many other relational facts. Once we jettison universalism, however, particularism is left with a job of telling us how to weigh these different relational facts if it is to operate in a complex contemporary world.²³ In other words, “the particularist has to give an account of which ties and attachments should be privileged by the theory” (Brighouse 1989, 387). This also opens Miller’s theory to a different problem of arbitrariness. As Harry Brighouse suggests:

²¹ Martha Nussbaum also argued “that families are usually the best performers of duties to children, and that nations, similarly, are the best protectors of various interests of citizens – without treating these duties as special duties in any deep or fundamental way” (Nussbaum and Kallhoff 2001, 37). She continued on to say that “[t]his seems to have been the position of the original Greek Stoics” pointing to the historical basis for such a thought (Ibid).

²² This will be discussed at more detail in the third chapter.

²³ We will see later in the second chapter that Miller offers us moral contextualism to determine the content of duties. But he does not tell us how to weigh different relational facts.

One reason why universalistic theories of ethics have been seen as more secure bases for liberalism is that moral theories which make arbitrary features of our lives figure centrally in the determination of rights and obligations will have difficulty in giving a principled account of the freedoms and rights associated with liberal democracy (Ibid).

Another problem with emphasizing relational facts' moral significance as Miller does is that it gives rise to the problem of disregarding the reality that co-nationality competes with other, even stronger, relational facts, which, according to particularism, automatically give rise to special duties as long as they meet the three conditions Miller put forth. When we consider the duties that arise from relationships, the list can be quite long. For instance, we can be "members of unions, political parties, social movements, interest groups, religions, ascriptive groups (i.e. ethnic, sex, gender etc.), territorial political units, families, friendships" and so forth (Bader 2005, 86). As one can realize, justifying national obligations do not require direct interaction, so by that logic, all these examples of memberships can *and* do give rise to many different special duties as well as the less morally problematic ones such as families and friendships. At an individual level, emphasizing national duties and justifying them the way Miller does, leaves us to subjectively pay our attention to whatever membership we have depending on how much we value them. Such attention will not be equal in any way as we may have many commitments that we are "encumbered by." Let's say, in our union that we may have to forgo on other duties that theoretically deserves our attention. We may be members of some union that directly conflicts with my co-nationals' interests, and in this case, we will not be performing our special duties to co-national in the area we disagree on. A theory *must* give us some sort of clue into how to weigh these and also tell us what can be prioritized and what cannot be.²⁴ Goodin realizes this problem and tells us that no matter what we do, we have to put humanity at the forefront in our ethical theorizing by emphasizing general duties whereas Miller does not so. This is why Goodin

²⁴ Brighouse (1989) also touches upon this when he talks about the indeterminacy of obligations (384-386).

attempted to build a theory that does not make general duties a matter of weighing. The complex and conflicting duties not only complicate the ethical picture for an *average* individual but also disregards the complexity itself by emphasizing special duties to compatriots. It is interesting to see that Miller's preoccupation with compatriot partiality led him to disregard this "complexity of special duties and ignore not only conflicts between associative and universal duties²⁵ but also conflicts between different associative duties" (87).

At the national level (or state level) as opposed to individual level, the complexity can be worse. Usually, states have to recognize certain special duties that go beyond their borders (96). As Bauböck (1994) points out, states may have to recognize special duties to "specific populations that may result from active involvement in the affairs of another country, from geographical proximity, or from historic ties" (315 – as quoted in (Bader 2005, 96)). For instance, there can be historical injustice that can be intergenerational. These special relations, as Bader (2005) argues, "justify costly *reparative* duties not often recognize by defenders of priority for compatriots" (96). Additionally, states may need to recognize global duties that results from treaties or contracts, or because of their involvement in certain institutions.²⁶ The point to take home here is that at national level special duties can be very costly as well and conflict with each other. Miller's three conditions implicitly includes the basic idea that states *have* to fulfill their special obligations to its people as

²⁵ Associative duties are a specific class of special duties "that we only have to those particular people with whom we have had certain significant sorts of interactions or to whom we stand in certain significant sorts of relations" (Scheffler, 2002, 49).

²⁶ Veit Bader makes the argument by suggesting that overlapping political entities (i.e. subnational and transnational) represent a significant issue for Miller's overwhelming focus on the nation-state (Bader 2008, 539-552). The complexity of morality as well as the complexity of our institutions requires a "multi-level and multi-layered institutionalist approach." Miller's response to this is to express his "fear that attempts to be specific about, say, the design of the international institutions that would best serve the cause of global justice will quickly fall foul of the problem of empirical disagreement" (Miller 2008, 555). But Bader is trying to point out that without being specific, predominant focus on nation-state is problematic, so we at least need to come up with ways to solve empirical disagreements to justify such a focus.

he emphasizes that states need to be just to give rise to special duties on the part of its own citizens. However, carrying out such special duties on the part of the states is can both be demanding and conflict with each other.

1.4 Conclusion

Within this chapter, I introduced David Miller and Robert Goodin's respective compatriot partiality theses. The first part considered Miller's particularism and how it justifies CPT. By pointing out the tensions between particularism and universalism, I tried to convey the idea that decontextualizing the moral agent becomes crucial as it foregrounds the issue of motivation. Finally, I introduced possible problems with particularism by specifically considering relational facts, which points us to question how particularism fits with respect for human beings in general.

2 Ideal and Non-Ideal Theory

This chapter examines David Miller's views on ideal and non-ideal theory and what has been termed the feasibility constraint. I argue that Miller's criticism of ideal theory is not successful, and his solution to such criticism, by introducing contextualism, is not sufficient. I also examine Miller's three notions of feasibility and argue that they suffer from conceptual ambiguity. I also consider Miller's rejection of strong cosmopolitanism. I argue that it is not clear whether Miller rejects strong cosmopolitanism simply because it is normatively infeasible. I introduce Thomas Pogge to further clarify Miller's position on strong cosmopolitanism. Lastly, I return to Goodin and show that there are indeed ways to motivate people to care about outsiders and make cosmopolitanism normatively feasible.

2.1 General Remarks

When we look back into the history of political philosophy, ideal moral theories have normally indicated the conditions that must be fulfilled to make a situation completely just (Rawls 1971: 8, 245, 351). Theorists like Rawls, Philips, and Buchanan argued that the goal of ideal theories is to supply us with a moral target that moral agents should aim at to bring about the fully just state of affairs. Non-ideal theories analyze states of affairs that are not *fully* just and prescribe ways to bring about a society that is more just than the previous one (Robeyns 2008, 346-349; Stemplowska 2008, 324). Theorists who endorse ideal theories argue that non-ideal theories operate as a "transition" that tell us how to advance towards justice rather than bringing about a "fully-just" state of affairs (Rawls 1971, 244-246; Philips 1985, 551; Buchanan 2004, 67-678). In other words, non-ideal theories start from the observation that some ideals are not "fully" realized

in certain societies and attempt to explain how we can approach that ideal. By contrast, an ideal theory attempts to explain what a social setting would be like if the ideal in question is fully realized.

Ideal and non-ideal theorizing do not seem to contradict each other if we consider them as a division of labour in political theorizing. For instance, Adam Swift made the argument that “even those exasperated by the utopian, abstract, and useless current in contemporary political philosophy [...] must accept that they too cannot avoid philosophy” (Swift 2008, 363). Here, Swift is attempting to say that there is no theory that is fully ideal or non-ideal. Even though he seems to accept the “demerits” of ideal theory, he argues that we still need “fundamental, context-independent, normative philosophical claims” (Ibid). Swift also defends the idea that political philosophy cannot only have one single objective, that of practicality. Rather, he insists that there can be epistemological roles an ideal theory can assume. Swift makes his argument very clear:

It is for social science to tell us which states of affairs are feasible and how to achieve them but that we need philosophy to evaluate and rank options --- which include the actions that produce states of affairs—within the feasible set. Judging what we should actually do, in the circumstances that actually confronts us, requires input from both [from ideal and non-ideal theorizing] (Ibid).

Yet, we still see theorists who argue that ideal theory “is really an ideology, a distortional complex of ideas, values, norms, and beliefs” (Mills 2005, 172). And others call ideal theory an “inherently flawed” way of theorizing (Farrelly 2007, 845). But we still see others, including Swift, that argue for ideal theory’s necessity in political theorizing by emphasizing that ideal theorists should attempt to “filter out bad idealizing assumptions,” to “correct the current academic bias towards ideal theorizing by re-evaluating non-ideal theory” (Robeyns 2008, 342). So, other than the strong

criticism of ideal theory that it is too ideal to be action-guiding, most accept the necessity of ideal theory while calling for some changes in the academic circle.

2.1.1 Miller on the Ideal and Non-Ideal Debate

Miller criticizes ideal theorizing because it lacks the action-guiding character it needs to be of use in our real social settings. So, Miller argues against Swift by defending the idea that theories must be constrained by feasibility from the ground up. Feasibility simply refers to the possibility of a state of affairs to come true. If social contexts are being omitted in our analysis in ideal theories, Miller argues that we lose connection with the real world, thus losing the ability to incorporate motivational power that is supplied by the social contexts. Miller believes that we cannot make people do something without first understanding *who* they are and *how* they get to be motivated to act, and a theory of justice needs that motivation. Since Miller believes that the goal of normative theories is to guide people, a theory that cannot guide us in real life is too far from the realms of possibility. Miller, states, however, that

[i]f the theory assumes too much by way of empirical constraints, on the other hand, it may become excessively conservative, in the sense of being too closely tied to contingent aspects of a particular society or group of societies, and therefore no longer able to function as a critical tool for social change (Miller 2007, 18).

To understand Miller's position on this better we need to look at his book *Justice for Earthlings* (*JfE*). It can be said that Miller's main goal in *JfE* is to defend a theory of justice whose principles emerge from the social settings themselves that they are assigned to govern. Miller accordingly says that

[...] we do justice a disservice if we begin to compare its limited earthly form with an imaginary divine form that escapes those limitations. We might think that we are simply setting our sights high when we do this, but the result is that justice no longer serves as an

inspiring guide to action. Instead it becomes merely a lament for what might have been if the human condition were different (Miller 2013, 15).

Miller's above points derive from his moral contextualism. His moral contextualism simply dictates that what should be seen as "just" depends on the context in which "justice" will play out. To put it more concisely, contextualism holds that "it is the context of distribution itself that brings one or other principles into play" (Miller 2002, 10). For him, moral contextualism provides both practical and critical perspectives on what to do for us in real conditions rather than producing a definition of justice that is abstract and not applicable to our reality.²⁷ For Miller, contextualism is a pluralistic, objective, and critical approach that creates an interdependent connection between principles and factual circumstances. It is pluralistic in the sense that "different contexts of distribution support the appropriateness of different principles." (Buckley 2012, 73).²⁸ It is objective in the sense that "judgements based on principles find rational grounds for justification" in connection with "factual circumstances" (Ibid).²⁹ And it is critical in the sense that "justified principles serve as independent criteria against which social practices and institutions are judged and found wanting" (Ibid). Michael Buckley gives the example that the principle of "first-come-first-served" (Ibid). Though highly appropriate in some contexts, would be illogical in the case of organ transplants because biological match is found crucial, by scientists, to ensure successful transplants (74). With these in mind, Miller formulates his contextualism as follows: in context C, it is always appropriate to distribute goods and bads (related to C) according to principle P. If we can determine the context C fully, we can then explain the truth in principle P without reference

²⁷ He says the same thing about his principle of nationality by suggesting that it can provide us with "practical" and "rational guidance" (Miller 1995, 2). So, in a way, defense of nationality not only is underpinned by ethical particularism but also moral contextualism. I will get to the distinction between the two later. But it is important to point out that Miller does not refer to contextualism at all in his book *On Nationality*. The only time the discussion of contextualism arises is when he talks about political methodology and human rights.

²⁸ See (Miller 2013, 48).

²⁹ See (Miller 2013, 50).

to a more transcendental principle (or a “master principle”) (Miller 2002, 8; Miller 2013, 51). Since there are different contexts, for Miller, it is the case that there is a plurality of fundamental principles that is not derived from an overarching principle of justice. So, it will be C1, P1...Cn, Pn. But what is a context? He says that context is defined “by reference to the kind of social relationship that exists among the parties between whom justice is to be done; the principle that should be used to determine whether an allocation of resources in each of these contexts is just will depend on which kind of relationship obtains” (48). We can see this more clearly in his book *Principles of Social Justice* (1999). Miller’s important contribution here is that context is characterized by the relationship from which we induce the necessities of justice. For instance, there are three basic modes of relationship – “solidaristic community, instrumental association, and citizenship” – and in each of these modes of relationship a distinct principle applies (Miller 1999, 25-26). For instance, solidaristic community is underlied by need, instrumental association by desert, and citizenship by equality. Justice being sensitive to context in this sense does not mean that we endorse whatever conventions that is widespread in that particular context. Miller instead argues that justice is successfully realized when the conventions are appropriate to the context. So, when the conventions are not appropriate to the context, we can rightfully criticize it (Miller 2013, 49-50). So, there are indeed principles, which might be viewed as tenets that shape and direct conduct, empowering the activities of various people to be composed in quest for a common purpose or activity. In any case, it must be comprehended that principles incorporate an extensive variety of evaluative and ‘action-guiding’ elements, including, for instance, “values, ideals, rules, maxims, tenets, morals, and goods” (Modood and Thompson 2017, 6). But principles can only come into play if the context is fully determined. In this light, we can state there are principles in the relationships, which tell us how the distribution is going to happen. Principles, at the end of

the day, shape our comprehension of relationships, and encourage and administer our relationships with each other.

One source for Miller's view is Michael Walzer's work (Walzer 1983).³⁰ Walzer showed us that determining contexts requires a factual component and links these facts to normative prescriptions. Hence, for Walzer, it seems that a "crucial medium of social relations" is a common conception of "what the goods are and what they are for" (Walzer 1983, 6-7). This common conception then determines the distribution of a good or bad. In this manner, Walzer contended that what justice requires is profoundly subject to the significance of the meaning of social goods accessible to be distributed in every specific political community. One can realize that these meanings are entrenched in culture, so principles as well as the understanding of moral agents are relative. There is an issue of conservatism, which is the objection that contextualism fails to be critical because it does not offer principles that can function as independent criteria for assessing social practices. We cannot assess social practices in this way because the selection of principles is based on the social practices themselves. To avoid this, Walzer suggests that every society needs a social critic, who is accepted as the interpreter of a society's practices, and dictates the fit between a society's institutions and its ideals (Barry 1990, 360-373). What we can know from Walzer is

³⁰ Michael Buckley also mentions Walzer to introduce the argument that contextualism is not critical enough. However, I just wanted to show the basics of Miller's theoretical basis for contextualism. We can think about Plato here as a clear rejection of contextualism. He sought a conception of justice that is unchanging and eternal whereas Aristotle tried to develop a typology of political systems point by point keeping in mind the end goal to see how best to mold constitutions for human beings with various attributes and resources. In contemporary political philosophy, we can give the example of Cohen (2008) who was looking to stress that principles of justice entirely autonomous of any facts about the world as we are aware of it. Walzer (1983), then, could be taken as a source of Miller's contextualism at least among the contemporary philosophers.

simply that to avoid this conservatism (or status-quo bias), principles must be, to some degree, independent of cultural bias to serve as a critical tool for social change.³¹

We can see that Walzer's account is not that different from Miller's. This is because it is hard to envision a circumstance in which relationships are there but social goods are not.³² Miller also recognizes this internally in his theory of justice by saying that his account "ignores the fact that people who are related in one or more of these three ways will usually also have an institutional relationship, defined by the law or by other rules and procedures" (Miller 1999, 26). Likewise, the majority of the social goods on which Walzer (i.e. money) concentrates on are traded in relationships. To go back to principles, for Miller, it may create the impression that it is conceivable to get from a completely factual record of the kind of relationship that shows in a specific setting to a "normative" decision about the principle of justice which ought to win in that unique circumstance. The basis for why this is misleading is that arrangements of relationships are dependably interjected with and controlled by the principles, which are fundamental keep up the character and the on-going presence of these relationships. So, in this sense, the criticism levelled against Walzer can also be raised against Miller.

To go back to Miller's contextualism, we see that it resists making the contrast between ideal and non-ideal theory for two important reasons: (1) the reality of the human condition itself does not correspond to the abstract definitions that ideal theory promotes, and (2) ideal theory cannot give useful recommendations for the particular quandaries human beings find themselves

³¹ Michael Buckley objects that it is not very clear if Miller is accepting or rejecting Walzerian social criticism but Miller rejects Walzer's theory in general (Buckley 2012, 75). We can see such rejection in his book *Principles of Social Justice*.

³² I am leaving out Joseph Carens's institutional contextualism. But Carens suggests that we should not be focusing on the meanings of social goods or relationships but instead we should focus on the concrete practices and institutions (Carens 2004). It also hard to envision a circumstance in which relationships and social goods are present but not institutions. So, these all tie into each other in an interesting way.

in. The source of the case for contextualism, at least for Miller, is that he believes that universalism “cannot explain why so many theories of justice have been put forward, nor why there is so much diversity in the judgements that ordinary people make” (Miller 2002, 5). Another source of his view comes from Miller’s requirement that there should be a “reasonably close fit between the theory and out pre-theoretical considered judgements” (6). There are two reasons for this. First, we need to develop a theory of justice, not a theory of political morality, and to do this we need the “conceptual markers that are present in everyday judgments” (6). Second, we want our theory of justice to have “practical force,” which means that people will be motivated to act on its principles.

Since Miller’s case for contextualism derives from his rejection of universalism, I want to touch upon the dichotomy he creates by distinguishing between the two. Briefly, Miller says “universalists hold that basic principles of justice are invariant – they apply in every circumstance in which questions of justice arise” (Miller 2002, 5). On the other hand, contextualists “hold that different principles apply in different contexts, and that there is no underlying master principle that applies in all” (Ibid). Miller arrives at this distinction through rejecting fact-independent theorizing.³³ This is because universalists try to define what justice is by explaining fundamental

³³ This also ties to Miller’s rejection of Gerald Cohen’s fact-independent theorizing (Miller 2013). Miller rejects fact-independent theorizing for two reasons. Firstly, he disagrees with Cohen on the necessity of invoking a supreme fact-independent principle (or a master principle) to explain the relationship between a fact and a fact-sensitive principle. Cohen argues that to explain a principle such as ‘we should keep our promises,’ it is not sufficient to point to the fact that promisees cannot successfully seek projects if promises are not kept. So, there must be another fact-independent principle of ‘we should help people pursue projects’. But Miller says that a fact may also ground a principle in the *evidential* sense (by providing evidence that a principle is possibly true) or in the *presuppositional* sense (in which a fact being true is a necessary condition for the truth of a principle) (Miller 2013, 22, 23, 25). Secondly, Miller argues that the aim of a normative theory is to guide the action of ordinary citizens by coming up with principles that regulate their actions connected with their institutions and practices (34). Cohen’s challenge to Miller’s first argument was “to provide an example in which a credible explanation of why some F [*fact*] supports some P [*principle*] invokes or implies no such more ultimate principle” (Cohen 2003, 218). In other words, how is it the case that if no F, then no fact-sensitive P; and if F, then fact-sensitive P? What definitely makes facets of human nature being true as a necessary condition for principles being true? In other words, what are the “facts” of human nature that can give us *the* principle? Answering this question is crucial to effectively justifying Miller’s distinction of presuppositional ground.

principles of justice independent of circumstances.³⁴ It is interesting that Miller creates a dichotomy between universalism and contextualism because the principle that he pointed to above about principles of justice emerging from the social settings themselves that they are assigned to govern can itself be a master principle. Indeed, he says that contextualism is not just “a political principle but a meta-principle, a guide for arriving at valid political principles” (Miller 2013, 39). Miller refines the distinction further because he realizes what I am trying to convey here about the ambiguity of the distinction. Miller considers a version of universalism that sees fundamental principles as mutually compatible with applied and contextual principles. For instance, he thinks that Rawlsian difference principle offers a good example of this:

The shape of monetary distribution that would result from applying this principle depends on whether and how economic inequalities have the effect of improving the position of the worst off, and this in turn depends on contingent facts such as the extent to which different jobs require special talents to be performed effectively, the extent to which material incentives are needed to attract talented people into those jobs, and so forth (Miller 2002, 10).

So, a universalist can also allow for trade-offs between principles of justice and other political principles as long as it is in line with the master principle. They can also ask the question of ‘how can justice be achieved in this specific society?’ Hence, they can indeed ask practical questions. There is an important distinction between two functions: (i) need for implementation, and (ii) need for giving a foundation. It is true that universalists can ask this sort of practical questions to interpret how a master principle can be implemented in this particular society. But this does not need to relate to the foundational role a master principle serves. So, master principle is the

³⁴ We can also see, from the first chapter, how this is reflected in Miller’s rejection of Goodin’s assigned responsibility model, which is a utilitarian approach. Utilitarians can only derivatively account for compatriot partiality. For instance, Goodin showed us that compatriot partiality is justified because it is efficient that people have global duties discharged as special duties and it could only be justified if we have some redistribution in place or at least we need to assist states who cannot perform its functions. So, for Goodin, compatriot partiality is not something that has intrinsic value but only extrinsic value.

foundation for these practical questions. Given these, Miller is suggesting that universalists need not be committed to a strict priority of justice to be considered universalists. Miller says “[universalists] can judge that society S is as just as it reasonably can be, meaning that further attempts to make it conform to their conception of justice would be too costly in the light of these other principles” (Miller 2002, 10). But where contextualists and universalists are set apart is that the latter operates according to a master principle, in the example the “difference principle” whereas contextualists will say that principles in question are “normatively independent of each other, that is to say, not applications of, or derivative from, some overarching, more fundamental principle” (Miller 2002, 10). Still, even if we take the distinction as refined, I still believe that Miller needs to do more than reiterating the contextualist point. He needs to successfully show how principles themselves are context-specific, without reliance on any universal and fundamental principle because he rejects the idea of a self-standing justification due to principles and contexts being interdependent.

2.2 Response to Contextualism

Miller considers three challenges to contextualism. The first challenge asks “why are all these contextually specific principles principles of *justice*?” (Miller 2002, 19). In other words, how can we say that “principle of desert applies here, a principle of need applied there”? (Ibid). He responds to this challenge by reminding us of the concept of a game from Wittgenstein. We can argue that a range of human activities are counted as games without having a “necessary and sufficient conditions for something’s being a game” (Ibid). Wittgenstein looked for overlapping characteristics, which let us classify activities, which are different in many respects, under the same heading. Miller believes that contextualists can use the same technique. For instance, he can say that principle of equality should govern the relations between citizens, whereas desert should

govern the relations in other kinds of relationships, without invoking a single overarching principle or set of principles that applies across different contexts.

Miller also considers another challenge, which is the argument that contextualism also offers no practical guidance when principles of justice conflict. Here, in the sense that both seem to hold “up a number of principles as equally fundamental, without suggesting any lexical ordering between them” (Miller 2002, 20). So, when principles of justice conflict, which they inevitably will, then, the contextualist throws up its hands and says “Well, you just have to weigh up the conflicting considerations and decide which is the most powerful” (Ibid). Miller’s response to this challenge is puzzling. He says that

The contextualist riposte is that such clashes of principle will not, in general, occur, once the context in which the distributive decision in question is being made is properly specified (Ibid).

He believes that once we settle “who is distributing what to whom in what setting,” then we can answer to this challenge. There might be cases, however, in which considerations of justice may pull in two different directions, and “it may be that contextualism alone can provide no decisive argument for prioritizing one context and its associated principle” (21). So, to resolve this problem Miller suggests that “[j]ustice is not the whole of political morality, and where justice is ambivalent [...] other values may be brought into play in support of one or the other interpretation” (Ibid). But there is an ambiguity in how “other values” will provide action-guiding recommendations. One may think that the easiest way for justice to be not ambivalent, we need a master principle from which we can derive some guidance. However, since Miller rejects this the only possible way to derive some guidance is to depend on “other values.” But what are these values exactly? Without giving a clear run-down of these values as well as how they are supposed to operate when justice is ambivalent, Miller’s point here should be taken with a grain of salt.

Another challenge Miller considers is that contextualism “collapses into conventionalism” (Miller 2002, 21). This argument suggests that contextualism makes justice a relative idea when “it holds that the validity of distributive principles depends on their context of application, whether this context is spelt out in terms of practices, or types of social goods, or modes of human association” (21-22). This means that justice “can never serve as an external regulator of a society’s practices” (22).³⁵ In this sense, then, justice only tells us what the right thing to do is given the already existing social forms. For instance, Walzer’s response to this was to come up with an account of external and internal criticism (Walzer 1987). Miller’s response to the problem of conventionalism is to constrain the “repertoire of social forms relevant to justice” (Ibid). For instance, a society can give the highest honors to warriors because they put the highest weight on military achievements (Ibid). But Miller says

it is not open to a society to institute an honours system that discriminates, for instance, on grounds of race, with only those with black skins allowed to receive awards (Ibid).

What is the basis for constraining the “repertoire of social forms” in this way? Well, Miller argues that a system of honours is ‘just’ only if the recipients deserve them, in the sense that what they have done is not easy to do and contributes to society by creating various benefits because system of honours operates according to desert principle (Ibid). We cannot, in this sense, say that a black person receives an award just because he is black due to the fact that “there is no imaginable sense in which having a black skin can make you deserving” (23). But he says that some can still say that “only black people [...] could be genuinely loyal to this particular state, or achieve a certain kind of spirituality [...] a belief that underlay his society’s practices” (Ibid). Miller’s response to this is that “the belief is false” (Ibid). The question that *must* be asked here: How do we say that

³⁵ A point that directly relates to the general criticism of the Walzerian contextualist justice.

that belief is false but the belief about desert (which is the principle in the context of the honours system) and its underlying structure is *true*? In other words, how can we say this without having a master principle, a moral point about such beliefs and the underlying structure of desert? Miller continues his attack on universalism

I believe that a contextualist approach to justice makes better sense of our considered response to societies whose distributive and other practices differ from our own than a universalist approach possibly can (23).

This does not resolve the question that I asked but attacks universalism because it cannot explain why there are so many different theories of justice have been put forth. He argues that contextualism is more in line with common sense morality, a point that he advanced earlier. He, in other words, sidesteps this grander question.³⁶ Consider another example by Miller. The exclusion of women from citizenship is still common today since Ancient Greece. When we look at Miller's argument that justice requires that citizens must be treated equally, this does not say much about how citizenship itself is understood. He says the following

Societies that exclude women do so, I believe, not because they define citizenship as an exclusively male practice, but because they believe, mistakenly, that women cannot possess the qualities demanded by citizenship, or cannot enjoy the benefits it provides (Ibid).

Hence, by showing empirically that this belief is false, we can be convinced that they are reinforcing injustice.³⁷ I believe that Miller is giving an example that is very safe and works for his general argument that contextualism can resolve these issues. But consider another example, in which contextualism seems not to offer much solution. As another theorist asks "why have some

³⁶ A question that goes back to Cohen as well (see footnote 32).

³⁷ This might tie to his view about presuppositional grounding. Since we can empirically say that P1 relies on F1 (which is false), then P1 is not justified.

societies become rich while others have remained poor?” (Buckley 2012, 75). We can ask this question to try to get an explanation of global poverty. Buckley then says that empirical data can offer various answers as to why this is the case. For instance, we can say that domestic institutions provide us with causal links to economic growth. However, Buckley argues that “it is unclear whether these factors are sufficiently insulated from global structures to be independently efficacious” (Ibid). So, in the event that we cannot generally pick between conflicting explanations as to why the inequality exists, the context cannot be described “clearly and uncontroversially” (Miller 2002, 11). One might say that, through further empirical analyses, we will have some dominant explanation as to why such inequality exists to obtain a fact. But Buckley convincingly points out that this only creates a bigger philosophical problem because we can then say that the “very purpose of identifying certain facts in support of a normative principle is already guided by a practical enterprise influenced by variety of social factors” (76). So, the problem here becomes not one of coming up with a dominant theory as to why inequality exists but one of “establishing a clear and uncontroversial description of the context” (Ibid). Since people assign different weights to the facts and since the assignment of facts is not determined by the facts, “the different descriptions are incommensurable” (Ibid). This, Buckley argues, “undermines Miller’s claim that ‘clashes of principle will not, in general occur, once the context in which the distributive decision in question is being made is properly specified’” (Ibid). So, when such clashes happen, in which context is not fully determined, we are left with no action-guiding recommendation. This is because contexts will determine the appropriateness of the principle that will guide us.

2.2.1 Connection between Particularism and Contextualism

Miller, by virtue of being a very organized thinker and a very good writer, made most of the arguments connect to each other in an interesting way. Ethical particularism, as discussed in

the first chapter, might be thought of as applied to how he thinks about theorizing generally. This is because ethical particularism also takes social relations and contexts as essential, just as contextualism does. Again, this is because social relations and contexts define what the human condition really is. So, without incorporating these real world social relations and contexts, we cannot get people to act. Miller, for this reason, believes 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 (4).

He believes that nationality provides instrumental goods and that nationality is something of value that should be defended if one wants to advance any social justice. It is here Miller stresses that we take *facts* of life into account. Nationalism is indeed something partially imaginary but it has the ability to extend the “moral community” by making us care about co-citizens who we have never met personally. So, for him, nation manufactures this larger moral community and not be narrowly stuck with other more obvious moral communities such as neighbors, families, friends and so on.³⁸

However, I want to ask what the difference is between ethical particularism and contextualism.³⁹ We saw that ethical particularism “holds that relations between persons are part of the basic subject-matter of ethics, so that fundamental principles may be attached directly to

³⁸ The manufacturing of this larger moral community by taking nation as the primary actor is the reason why he eventually attacks luck-egalitarianism as a form of ideal-theorizing. This is simply because what luck egalitarians find as irrelevant contingencies of human beings are relevant for Miller because it creates the opportunity to manufacture this larger moral community. If they did not take these irrelevant contingencies as relevant, they could not create nations as it were.

³⁹ I am not going to delve deep into this as it would depart us from considering feasibility. But I am putting here simply as a thought-provoking distinction we should be considering. This is because Miller has never written about the difference between ethical particularism and moral contextualism.

these relations” (Miller 1995, 50). Contextualism, on the other hand, holds “that different principles apply in different contexts, and that there is no underlying master principle that applies in all” (Miller 2002, 5). I believe that contextualism, in Miller sense, is the methodology to determine the content of particularistic ethics. For instance, we can say that relations between persons are part of the basic subject-matter of ethics, but this does not tell us what principles there should be. This content determination is done by the contextualist methodology that I presented in this chapter. I tried to show that contextualism as a methodology might suffer from a problem that is supposed to solve,⁴⁰ and in the third chapter I will suggest that the underlying ethical position of this methodology might also create problems when we consider the moral standing of human beings in general.

2.3 Feasibility Constraint

At first sight, one of the most important feasibility constraints that lead Miller to attack cosmopolitanism in general and Goodin in particular regards motivation. He believes, as I said, that when decontextualizing the moral agent, we strip what makes a person away from the person, hence leaving no momentum for the person to care about others, which we need to advance justice.⁴¹ But the question about whether he is justified in thinking that this constraint really limits cosmopolitan ideals still remains.

2.3.1 Miller’s Three Notions of Feasibility

As we have seen, Miller thinks that the question of feasibility must operate at a basic level in political theory. In *JfE*, Miller provides his own version of the feasibility constraint. He argues

⁴⁰ Miller criticized ideal theories because they cannot provide guidance, but his contextualism also suffers from the same problem if contexts are not fully determined. If this is the case, then, ideal accounts can get away with it by thickly detailing their own accounts.

⁴¹ This again ties to his criticism of universalism – that we cannot be “impartial spectators” to how we do things and that theorists should theorize by taking this into account.

that if we want to talk about feasibility at all, we have to distinguish between three notions of feasibility: (i) political, (ii) technical, and (iii) normative (Miller 2013, 36-38). The first one is about the level of support a political proposal can have. For instance, an “environmental policy that required doubling the price of petrol to cut down on car use would be politically infeasible if adopting it would provoke mass protest and civil disobedience and condemn the party that brought it in to electoral defeat” (Miller 2013, 37). The second one is about whether a proposal directly defies the physical laws and natural facts of humankind. As Lior Erez puts it, these two are analogous to *actuality* and *possibility* of motivation, respectively (Erez 2015, 45). The third position is about whether people could be brought to endorse cosmopolitanism by reasoned discussion, which tells us that Miller might not be rejecting the cosmopolitan defense of CPT solely due to impossibility or lack of actuality of motivation (Miller 2013, 37). If people cannot be brought to do something by reasoned discussion, justice does not require her or him to do it (Erez 2015, 48).⁴² As Erez points out, this constraint is neither about the possibility nor the actuality of motivation but it provides a normative constraint on how we get people to do things (47). Erez, however, tells us that it is still unclear why cosmopolitanism would not be normatively feasible. That is, we do not know why we cannot achieve cosmopolitanism as a result of reasoned discussions. I agree with Erez that Miller might not be rejecting cosmopolitanism because of the impossibility (or technical infeasibility) of cosmopolitan motivation. But when we look at what

⁴² Erez arrives at this point by this passage in *JfE*:

A political philosophy that presents itself to any given society as realistically utopian must contain principles that members of that society could be brought to accept by reasoned discussion, which means that the principles cannot have implications that those citizens would find abhorrent. This doesn't mean that the principles must be accepted immediately they are laid out. They may be unfamiliar, or they may be resisted simply because they impose sacrifices that many citizens are initially unwilling to make. Political philosophy should be in the business of changing political attitudes, of showing people what their convictions mean when applied consistently to political questions. It should not be constrained merely by political feasibility in the above sense. But at the same time it implies more than technical feasibility, because many technically feasible proposals would fail the requirement that they be reasonably acceptable to present-day citizens (Miller 2013, 37).

Miller says to cosmopolitans in his earlier writing, we can see that he might be referring to the lack of actuality of motivation:

The onus is on the universalist [or cosmopolitan] to show that, in widening the scope of ethical ties to encompass equally the whole of human species, he does not also drain them of their binding force (Miller 1995, 80).

There are two possible ways to understand this. The first is simply that Miller is neither denying the lack of actuality of motivation nor accepting it. Rather, he is telling us that, universalists need to show us how they would motivate people to expand the scope of ethical ties. Since Miller believes that his ethics of nationality rests “on well-established facts about human identity and human motivation”, cosmopolitans – whose ideas do not rest on such well-established facts – need to prove the possibility of expanding ethical ties (i.e. an onus of proof argument is on cosmopolitans) (Miller 1995, 80). A second way to understand this is that Miller believes since cosmopolitans cannot yet show such binding force, his argument wins. This line of argument would be closer to impossibility of motivation or to the technical infeasibility. Erez is correct to point out that Miller might be arguing along neither of these lines (Erez 2015, 47). However, I believe that this is a too quick a move given that Miller’s initial argument is ambiguous between these two unhelpful versions. But now I want to take his normative feasibility more seriously.

For Miller, it is clear that we need to have a reasoned discussion by considering all aspects of a theory and not simply concern ourselves with its ideal view of a future where we imagine people to care about each other no matter where they are and expect them to sacrifice to keep that system afloat (any system or any justice will put demands on people). Instead, Miller suggests that we need to have what Erez calls a “democratic view” of political philosophy where we do not take “a leap of faith without considering the consequences” (Erez 2015, 48). In the end, it is hard to

deny that Miller's thesis on motivation is not simply about possibility or actuality of motivation but rather about the infeasibility of getting people to accept cosmopolitanism due to its moral costs. This is because it is hard to hold the position that there can never be cosmopolitan motivation as any motivation is quite possible due to the fact human motivation is very malleable.⁴³ We can see this when Miller writes that

Strong cosmopolitanism would require the creation of a world government, and this could only be an imperialist project in which existing cultural differences were either mollified or privatized (Miller 2002, 80).

It seems that Miller is arguing that we cannot get people to agree on cosmopolitanism by reasoned discussion because it would be an imperialist project since cosmopolitanism requires a world government. As we cannot make people agree on cosmopolitan ends – because its ends would be imperialist – justice does not entail cosmopolitanism at all because if something is not normatively feasible, justice does not require us to do it. Although Miller accepts the ethical outlook of cosmopolitanism – that every human being is equally an object of moral concern – he says that “ethical cosmopolitans slide from this moral truism to deny, controversially, that as agents we have special duties of limited scope” (Miller 2002, 80).

Miller distinguishes between ethical cosmopolitans (or weak cosmopolitans) and strong cosmopolitans. He argues that strong cosmopolitans take an uncontroversial idea – that every human being is equally an object of moral concern – to justify that “we are required to treat all human beings equally, in the sense that we have the same duties to each” (82). To achieve this strong cosmopolitan end that we should treat everyone equally, Miller thinks cosmopolitans must

⁴³ Erez actually responds to David Axelsen, who criticized Miller by arguing that cosmopolitanism seem to be not possible because modern nation-state system creates the anti-cosmopolitanist motivations (Axelsen 2013, 451-472). For a detailed version of this argument, see (Erez 2015, 43-48).

demand a world government, which refers to the idea that everybody is united under one political authority. There are many ways to argue against such a world government and Miller argues that it is normatively infeasible, which, in a way, combines feasibility with desirability, and ties it to justice. However, there are ways to respond to Miller here.

It is true that most cosmopolitans call for some sort of global reform. However, this does not mean that such global reform will result in a hierarchical world state, in which such state is an imperialist one. Some see global democracy as a bound together arrangement of worldwide lawmaking and administration where liberal democratic electoral instruments would in the end be reached out to the international level (Held 1995).⁴⁴ Other cosmopolitans are at unease because endeavors to broaden ordinary institutional procedures hazard hiding the unique features “global political and social affairs, and especially their stunning pluralism and social complexity” (Scheuerman 2014, 420). Following this, Jurgen Habermas “offers a complex tripartite model of global governance, where national, transnational (that is, regional or continental), and supranational (that is, global) levels pursue separate tasks, while others have gone even further in advancing highly decentralised and differentiated models with strongly pluralist, functionalist, and corporatist intonations” (Ibid). All things considered, different cosmopolitans recommend that the most ideal approach to democratize global affairs is by maintaining a strategic distance from the interest for novel worldwide political establishments (Dryzek 2006). At last, others suggest that the fight for democratization globally should point us towards giving up a portion of the long-established theoretical apparatus of modern democratic theory (Goodhart 2005). Despite these critical contrasts, all cosmopolitans concede to one essential thing: they all prefer a multilayered

⁴⁴ Archibugi, Held, and Kohler (1998) would be a good example.

system of global governance relying on dispersion of decision-making power.⁴⁵ So, the new possible global state separates itself crucially from modern statehood. Cosmopolitans reject such a modern view of statehood because they think a monopoly on legitimate power, in the Weberian sense, is neither necessary nor desirable. It is wholly another issue whether cosmopolitans' antagonistic vibe to a formal world state is justified but what we can say at least is that Miller's characterization of cosmopolitans is essentially off-base.

Miller can point out that a multilayered system of global governance cannot really come to be, but it is another thing to say that it is normatively infeasible. This is because such infeasibility of cosmopolitanism rests on a specific characterization of cosmopolitanism as consisting of world government, which means it has a centralized monopoly on legitimate force.⁴⁶ Obviously, when we characterize cosmopolitanism in a way that entail such a world government, people would not agree on it through reasoned discussion. No one would want to give up their power and hand it to one global authority.⁴⁷ But again, this need not happen theoretically. Miller can possibly argue for the impracticality of cosmopolitan world because we do not have a feasible path to it through the existing state system but this concerns itself with technical feasibility rather than political or normative.

The cosmopolitan theorist Thomas Pogge responds directly to Miller's critique of cosmopolitanism. Firstly, Pogge reconstructs Miller's argument that I mentioned above. Pogge accepts the refutation of strong cosmopolitanism, which is to deny that we have equal

⁴⁵ For instance, Lea Ypi argued that a "unique associative sphere" depends on political communities, which cosmopolitanism also depends on (Ypi 2008, 48). Exception to the cosmopolitans who agree with the dispersion of decision of making power seems to be (Marchetti 2008).

⁴⁶ Miller might mean something different when he mentions world government but this is not clear. Hence, I believe that I am justified to take him to mean what we normally mean by world government.

⁴⁷ Maybe stretching Hobbes' Leviathan to the idea of a world government would suggest that there might be some people who not only would endorse such a world government but also try to promote it.

responsibilities to everyone. However, Pogge argues that the “stringency of our negative duties does not vary with the presence or absence of compatriotism” (Pogge 2003, 87). To illustrate this, we can consider the action of murder. Pogge argues that we do not have more moral reason not to murder a co-national than anyone else. Hence, Pogge puts forth, what he calls, an “intermediate cosmopolitanism,” which claims that “compatriotism makes no difference to our most important negative duties” (ibid). Since Miller believes that this claim is not cosmopolitan because if it were true that we are “world citizens” in this way, “then equal responsibilities [to everyone] would certainly follow”. Pogge denies this because the domestic analogue is not true: “If we were truly citizens of the UK, then equal responsibilities to all citizens of the UK would certainly follow” (Ibid). This is because citizens of UK can have greater responsibilities to their family than to compatriot strangers. To give the “*cosmopolitan*” – that is the citizen part – some substance, Pogge substantiates the political aspect by considering “the duty not to impose unjust social institutions upon them” (Ibid). Coupling his intermediate cosmopolitan claim with the idea that we have this negative duty not to impose an unjust institutional order upon *any* human beings, makes the intermediate position no longer “weak” in Miller’s sense. So, Pogge points out that weak cosmopolitanism is not weak at all, which makes Miller’s weak/strong distinction about cosmopolitanism pointless. That is, when we say that everyone has equal moral worth – that is the ethical cosmopolitan part (or weak part) – what follows, at least, among what be many other things, is the fundamental negative duty not to impose an unjust institutional order upon any human being including our co-nationals. Pogge thinks that this intermediate position avoids the idiocy Miller finds in strong cosmopolitanism, that is the creation of an imperialist world government. So, we can be an ethical cosmopolitan and also act equally to everyone in terms of our fundamental negative responsibilities without the need to create a world government.

Also, when we take a more critical look at Miller's three notions of feasibility, we see that some of the different notions of feasibility are not that different from each other. This is especially true about *political* and *normative* feasibility. Political feasibility is about the level of support a political proposal could receive and normative feasibility is about whether we can get people to do something by reasoned discussion. But what is the difference between political and normative feasibility when defined in this way? So far, it seems that a theory of justice we are advancing has to be accepted by reasoned discussion but how is this different from a political proposal commanding support? At the end, justice will regulate our actions and would be a political ideal. To recall normative feasibility, Miller writes that

A political philosophy that presents itself to any given society as realistically utopian must contain principles that members of that society could be brought to accept by reasoned discussion, which means that the principles cannot have implications that those citizens would find abhorrent (Miller 2013, 37).

However, a normatively infeasible proposal would, necessarily, also have low political support, therefore making cosmopolitanism neither politically feasible nor normatively feasible. If so, why are we distinguishing between them? This lack of conceptual clarity in feasibility also shows up itself when we look at why Miller thinks that cosmopolitanism is normatively infeasible. Miller would also reject most types of cosmopolitanism (except libertarian cosmopolitanism) because any distribution or redistribution already assumes that there is some sort of collective solidarity and collective identity (Miller 1999). Without these collectivities, it is not possible to motivate people to sacrifice resources to make redistribution a plausible idea. Also, we saw that Miller suggests that the moral cost of cosmopolitanism is very high because existing cultural differences need to be "either mollified or privatized." Although a cosmopolitan can say that such mollification serves a functional role to motivate redistribution, Miller would argue that mollifying such

differences is itself a moral cost that many people would not want to incur.⁴⁸ It can be argued, as Erez does, that “this line of argument assumes that special duties to compatriots are not merely apparent, but are a moral fact arising from cooperation, gratitude, shared history, mutual subjection to coercion” (Erez 2015, 49). But in what way is any duty a moral fact? If something simply becomes a moral fact because it arises from cooperation, gratitude, shared history, mutual subjection to coercion, then, cosmopolitanism would have the potential to become a moral fact. This is because we indeed have global cooperation at many levels as well as all the other elements, which could give rise to the moral fact of global duties. If we say that we have more cooperation and more of the other elements with our co-nationals, which gives rise to special duties toward them, then, the question of “how intense does the cooperation need to be?” arises to which Miller is clearly ambiguous about. In other words, if it can indeed be a moral fact that we have duties to everybody no matter who they are, then, why does it have to be limited in the way Miller puts forth, that is along national lines?

2.4 Goodin on Motivating Political Morality

Since Miller’s eventual rejection of cosmopolitanism is about the infeasibility of getting people to accept moral costs of it, Goodin’s work on processes of motivation is highly relevant. It is important to point out that Miller clearly rejects making justice equivalent to political morality (Miller 2002, 6).⁴⁹

Again, the moral costs of cosmopolitanism can be characterized differently but this part will concern itself with the basic idea of getting people to do what is morally right. If it is morally

⁴⁸ This is obviously because Miller believes that cultures which are not inherently unjust are intrinsically valuable.

⁴⁹ However, he does not give us good reasons why that should not be the case and he himself recognizes that “[j]ustice is not the whole of political morality, and where justice is ambivalent [...] other values may be brought into play” (Miller 2002, 21).

right to be a cosmopolitan to bring a more just world, then, how do we make people comply with the demands of it? We know that people act immorally for all sorts of reasons. Sometimes, they act immorally because they are in epistemic darkness about what morality demands of them. However, there are also cases in which people act immorally despite the fact that they know what the right thing to do is. We can speculate why people act immorally even though they know what is right. For instance, do they delude themselves into accepting that they do not know what the right thing to do is? Or do they justify, in their mind, not to do the right thing? Sometimes, there are no reasons why people do certain things. Since we know that the world is patently unjust and we know that fixing this injustice involves a lot of sacrifices on the part of people themselves, why do people refuse to bring about a better world in which we do not discriminate benefits along national lines? It is hard to deny that a more connected world along cosmopolitan lines with proper redistribution systems at work would definitely be better for everyone. Miller's concern was that such a system would be infeasible as we would not be able to bring people to agree on it through reasoned discussion, and he definitely has a point. How do we convince an average Canadian who enjoys hundreds times more financial stability with access to greater benefits to sacrifice some portion of that stability and benefits to better the person who lives thousands of kilometers away? Where Miller's point goes astray is when he says that normative feasibility is directly related to justice. However, if ethics is about finding the right thing to do *and* motivate people to do that right thing, justice still is relevant even if we cannot motivate people now by making them accept cosmopolitanism by reasoned discussion.⁵⁰ So, normative feasibility need not constrain idealizations of justice.

⁵⁰ If we followed Miller, this would indeed foreclose the opportunity for the cosmopolitan motivation to arise.

In the book *Motivating Political Morality*, Goodin asks whether we can motivate people to act morally even if it is not for the right reason. Goodin thinks that there might be practical grounds for requiring people to be motivated by moral concerns because such people would be more consistent in how they act rather than people who are solely motivated by self-interest. However, Goodin also does not think that we should always morally persuade people.⁵¹ Rather, he attempts to come up with ways to motivate people without constantly counting on prudential moral motives. He is also not addressing how we would motivate elites but rather how we would motivate average people. Crudely put, Goodin is writing about getting people to do the right thing. He sets the book up in a way that he does not raise questions about first-order substantive morality but about moral motivation. However, Goodin recognizes that first-order moral theory is needed to tell us what behaviour counts as moral, so the strategies he points out in the book will still need a first-order theory in order to be complete.

Goodin starts with an acceptance of what he calls “bare-bones moral code” (Goodin 1992, 11). This moral code is the notion of reciprocity, which is an element of fairness. He writes that

if others have incurred costs in order to produce benefits for you, it is only fair that you should be prepared to do likewise, come your turn. You should, in all fairness, be prepared to reciprocate and to incur similar costs in order to produce similar benefits for those who have borne costs to benefit you (Goodin 1992, 23).

With this simple idea of reciprocity, he sets the moral track for the rest of the book. This idea is so important that “the entire market economy is organized around some such principles” (23-24). He thinks that moral motivation might not need to come into play here because such fairness is guaranteed by legal structure. However, once we go deeper, Goodin believes that the legal

⁵¹ So, Goodin does not accept the Cohenian idea that we need to internalize the principles of justice to realize a fully just state of affairs.

structure is itself a reflection of “deeper moral codes” (ibid). Such a bare-bones moral code, which is embedded in the Golden Rule, can be infused into politics, Goodin maintains. He argues, unlike Miller, that the Golden Rule at least tells us not to include relational facts in moral principles, for it construes particulars as irrelevant contingencies. This is why Goodin argues that it is an important asset to get people

to generalize and universalize their claims, applying them to a broader class of claimants beyond themselves and their immediate group [...which] is an important step toward developing a genuinely moral consciousness (Goodin 1992, 12).

Essentially, Goodin offers three ways to build such moral consciousness: (a) co-determination, (b) ratcheting up, and (c) bridging down.

Co-determination is simply about showing people that the way they determine what is right can also motivate them to do what is right (151-153). Goodin writes that

because we can sometimes get people to behave better by showing them that much the same thought that motivates their belief that something is the morally right thing to do, in the first place, should also motivate them behaviorally to perform that action (151).

The Golden Rule can be shown as an example here. It not only helps us determine the right but it also provides motivation through showing some forethought to do what is right. Expectations to the contrary, we cannot disregard that others ordinarily do unto us as we have done unto them. So, unaccompanied by any plea to moral sympathies, this simple recognition of the Golden Rule might motivate most people to partake in a system of government from which they do not directly benefit.

Goodin says that Golden Rule

Establishes a fairly tight link between moral belief and moral motivation: we are led to perform morally proper acts out of considerations very closely akin to those that made us think that those were the morally proper acts to perform in the first place. The link thus forged between moral belief and moral action is, in this way, relatively direct; and the appeal to people’s “sense of morality” as a motivating force is kept down to a bare minimum (62).

Provided that people believe that the tables might be turned, at that point some motivation will be there to do what is required by morality. In other words, insofar as individuals accept that there is probability they will require others' help, they will be motivated. However, this unfortunately does not solve the motivational problem with cosmopolitanism because in most cases members of the rich countries do not think that they will ever need the help of members of poor countries. However, we do not need to stop here. We can indeed try to show rich countries that the tables might be turned and let the state convince its citizens to sacrifice for others who might live thousands of miles away. Also, Goodin is quick to point out that evidence points to a positive direction. He says that not many of us are in fact free of the fortuities of circumstance (35, 44, 66, 67, 105, 168). This is because it is indeed the case that we do not know what lies ahead even if we do not confess it. Goodin believes that if we can convince people of their vulnerability, they will probably start to back fair policies overall. For instance, we can see that most modernist intellectuals move left and the Left became cosmopolitan during inter-war period (Stirk 2016). Such reflexivity in our thinking structure shows us that war is something bad not only for us but for others. It is indeed the case that winning a war is not really a "win" at all, it is a "loss" for both sides. Coupling this with the fact that tables might be turned gives us a good motivation not to engage in war at all. We know that in 1910s, there were rising peace movements that promoted European unity (Ibid). French pro-European associations had thousands of members in 1920s (Pasture 2015, 116). Paneuropean Union formed in Austria, led by Count Richard von Coudenhove-Kalergi in early 1920s (Kövics and Boros-Kazai 1979). We saw that French premier Edouard Herriot's advocacy for "United States of Europe" in 1925 as well as advocacies on both world peace, visible in Geneva Protocols, and on European federalism along with Coudenhove (Stirk 2016, 25). Another example can come from Aristide Briand's *Memorandum on a United*

Europe in 1929, which was shown in League of Nations and sent to European leaders for debate (Pasture 2016, 128-182). We additionally observed the European Economic Community's formation in 1950s pushing the idealism of European Commission, which was partially motivated by motivations to avoid war (183). We also see the introduction of UN Human Rights legislation, which started the idea of an "international law." Although Goodin's examples usually talk about certain welfare proposals, co-determination's implications on global justice is vividly clear.⁵²

Ratcheting up simply the strategy of urging individuals to generalize from their strong intuitive judgements about what is right in particular cases. Goodin says that we need to be ratcheting up

from people's strong intuitions about the right thing to do in particular cases, generalizing them into principles that apply well beyond those narrow intuitive applications (Goodin 1992, 151).

Unlike Miller, Goodin believes that this generalization can be done, and we have proof. Goodin gives an example from slavery (3, 8, 68-70). Thomas Jefferson, who owned many slaves, knew that it was wrong to enslave people. Many people know that it is wrong to take advantage of the powerless but some do it regardless of their knowledge of its immorality. So, Goodin says that we need to show those who hold these instincts that they are committed to some minimal fairness (derived from bare-bone morality), which safeguards not only themselves, but also others. For instance, we see major attitude changes in the US among the 'baby boom' generation on issues of race and national identity between 1965 to 1973 (Schuman 1997). The growth of a post-materialist mindset in cohorts of college-educated people who are pro-immigration and pro-Europe is also visible (Gallup 2013). We also see very influential additions to the cosmopolitan democratic literature by Held, Giddens, Beck, and Nussbaum. Cultural changes in the US are also evident,

⁵² Goodin mentions child benefit programs, food stamps, old age pension etc. (Goodin 1992, 38-40).

which shows that ratcheting up is already at play. For instance, white approval of inter-racial marriage in the United States was at 4% in 1958 whereas it is 87% in 2013 (Gallup 2013). We also see that the more educated people are in the US, more the approval of inter-racial marriage. It was indeed pretty much well expected that as we push the minimum standards on education upwards, there would be less racism and so on. Hence, the world is already headed in the direction of at least cultural cosmopolitanism. I believe that it is important here to point out that cosmopolitanism emphasizes cultural diversity as opposed to universalist uniformity. However, many nationalists including Miller argues that hybridity leads to universalism, and that both reflect the same culturally-neutral tendency.⁵³ We can see this in Miller's argument against strong cosmopolitans above.⁵⁴ However, these do not dispose of the idea that ratcheting up was already at play. So, what Goodin is suggesting is not something that needs to be built-up from nothing, we already made considerable progress on this front. We can see that Miller embraces the "moral truism" of ethical cosmopolitans, but he cannot disregard the political progress we have made to have the baseline motivation to bring about a cosmopolitan future that respects and not mollifies cultural differences.

The last strategy calls for showing people how their general principles should be applied to specific cases. Goodin says that we need to be bridging down

from people's general principles, showing how they actually commit them to specific acts in particular cases (Goodin 1992, 151).

Goodin thinks that this is visible in extensive endorsement of constitutions. It is indeed the case today that many people desire constitutional protection of speech, press, religion and this desire occurs intensely when people's personal interests are put at risk. Goodin believes that we can show

⁵³ We can see this when Miller talked about strong cosmopolitanism.

⁵⁴ A few patriots likewise battle that every single cosmopolitan venture have certain predispositions at their center and are social colonialism, for example, the American globalization is usually referred to as like that.

people how such protections commit them to protect the interests of people whose interests they do not approve of or do not like. This pushes the idea that we also can be convinced to create a formal line of protection for people all over the world. We already have this at operation in our nation-states and there is indeed nothing, technically, that stops us from expanding such motivation by making people realize how protecting others can help them. This ties to Goodin's view on ideal and non-ideal theory as well.⁵⁵ Simply put, when we have a thickly detailed ideal, we can come up with ways to motivate people. This is not an outrageous point as Miller himself recognized that for his contextualism to work we need to specify the contexts. The only reason, then, that we do not have a some sort of cosmopolitanism is not because we cannot get people to accept it through reasoned discussion but because our conceptions of cosmopolitanism is not detailed sufficiently and accordingly.⁵⁶ That is the next thing that cosmopolitans must do.

⁵⁵ Goodin, like Miller, points out that two extremes of theorizing (ideal or non-ideal) are not where we should be heading. He argues that political philosophy might be useless if it is incapable of moving people, that is, if it is "inaccessible" to be action-guiding. However, he also says that it is equally useless if we only engage with people as they are by never requiring them to move. So, for Goodin:

Ethics is not only supposed to be action guiding, it is supposed also to be critical. If it can achieve the first aim only by sacrificing the second, then it will just as surely have failed in its primary practical purpose (Goodin 1995, 40).

For Goodin, rejecting ideal theories because they cannot provide action-guiding recommendations is not a reason to criticize ideal theories themselves as this problem can be resolved by thickly detailing our ideals (Goodin 1995).

⁵⁶ Another biggest difference between Goodin and Miller is how we start our ethical reasoning as I mentioned in the first chapter. Since Miller wants to incorporate what is already visible in how people conduct their lives, he would reject Goodin's strategies on the grounds that (i) we cannot make justice a matter of political morality, and (ii) these strategies will not change how people are naturally motivated because people are motivated by their relationships. But it is important to emphasize that Goodin's strategies usually talk about how people can re-analyze their relationships with others to arrive at a general principle of, let us say, Golden Rule. So, Goodin, in a way, wants to change how people view their relationships whereas Miller takes it as is.

2.5 Conclusion

This chapter examined David Miller's views on ideal and non-ideal theory and what has been termed the feasibility constraint. I argued that Miller's criticism of ideal theory is not successful, and his solution to such criticism, by introducing contextualism, is not sufficient. I also examined Miller's three notions of feasibility and argued that they suffer from conceptual ambiguity. I also considered Miller's rejection of strong cosmopolitanism. I argued that it is not clear whether Miller rejects strong cosmopolitanism simply because it is normatively infeasible. I introduced Thomas Pogge to further clarify Miller's position on strong cosmopolitanism. Lastly, I brought in Goodin's work to show that there are indeed ways to motivate people to care about outsiders and make cosmopolitanism normatively feasible.

3 Examining David Miller's Transcendent-Monistic-Intuitive Human Rights Theory⁵⁷

David Miller began his defense of nationality by arguing for an ethical particularistic position. Ethical particularism, for Miller, “holds that relations between persons are part of the basic subject matter of ethics, so that fundamental principles may be attached directly to these relations” (Miller 1995, 50). He also says:

The particularistic defense of nationality begins with the assumption that memberships and attachments in general have ethical significance (65).

Such an ethical position eventually raises the question about the moral standing of human beings in general, to which Miller does not have a clear answer.⁵⁸ To find a basis for such moral standing in Miller's account, I will look at his theory of human rights. Firstly, I will briefly go through some of the literature in the philosophical foundations of human rights by touching upon the interest theory approach and the choice theory approach. Secondly, I will try to situate Miller on this literature, arguing that he falls under the interest-theory approach as long as we consider needs as a subset of interest. Thirdly, I will question how Miller's particularistic ethics fits with the moral standing of human beings in general. I will argue that his “transcendental-monistic-intuitive” account of human rights contradicts the ethical position he assumed in his defense of nationality. Here, I will point out that the idea of “relation” with other human beings is ambiguous, which

⁵⁷ I will not get into the specifics about the various theories Miller comes up with regarding different types of responsibilities (i.e. outcome, remedial, collective etc.) This is because I want to consider how he grounds human rights and consider his ethical particularism in relation to the grounding of his human rights. See (Miller 2007, 81-112).

⁵⁸ There is something interesting that I am leaving out. That is the connection between contextualism and his theory of human rights. Miller explicitly defended that we need to “define contexts by reference to the kind of social relationship that exists among the parties between whom justice is to be done” (Miller 2002, 11; Miller 2001). Here, Miller suggests that people may be related to each other in different ways by giving examples from familial, communal, collegial relationships. The kind of relationship, then, determines the just distribution. So, the idea of relationships or “relation,” is loaded in Miller's writings and are used to argue for a contextualist conception of justice as well as his defense of nationality. But how does this really apply to his theory of human rights?

makes it hard for us to say that there is any moral standing of human beings in general if relation grounds the moral standing. Additionally, if membership attachment is the most important thing for the ethical particularistic position, then, why does Miller ground human rights in human needs? It is interesting that Miller identifies something intrinsic with human beings as a whole – the human needs – rather than grounding human rights in terms of some relation between human beings. The idea of “relation” also seems to be clear when Miller argues that people in particularistic view of ethics, are already encumbered by a variety of ties and commitments. So, relation does not refer to our membership in the same genus of primates. If the idea of a relation is more concrete than simple biological connection (or relation) – and it is – I do not see how grounding human rights in human needs fit well with particularistic ethics. Along the way to making this grander point about Miller’s work, I will also criticize his theory of human rights on two other grounds: (i) it is not non-partisan as he claims so, and (ii) it also undershoots.

3.1 Philosophical Foundations of Human Rights

There is a fundamental distinction in theories of rights: some theories are interest-based, others are choice-based. Let us consider where Miller stands.⁵⁹

3.1.1 Interest Theory Approach

The interest theorists concern themselves with fundamental human interests. In their view, human beings are not only social beings but also physiological beings that require ample protection to become “humans” (Fagan 2012, 9-23). Thomas Paine also expressed the spirit of interest theory when he said that a person “acquires a knowledge of his rights by attending justly to his interests” (Paine 2011, 237). Figuring out fundamental human interests is the initial step to formulate an

⁵⁹ This is not intended to be a comprehensive review of the literature but intended to be one that is sufficient for us to situate David Miller in one of these camps.

interest theory approach to human rights but it also is the most sensitive issue that created more disagreement than agreement. This is essentially on the grounds that human nature and key human interests are given diverse definitions and qualities by different scientists and theorists. Getting a clear answer to the question of ‘what are the fundamental interests’ is the most challenging part of this approach. For instance, John Finnis presented us with seven universal forms of human flourishing that consists of social and physical characteristics of human beings. These are: capacity for practical reflection, capacity to life, knowledge, play, aesthetic experience, sociability, practical reasonableness, and religion (Finnis 1980, 85-90). Finnis argued that if we focus too much on human beings as simply physiological beings, human nature is simply incomplete and not comprehensive enough to even account for the empirical facts of human beings (Ibid). So, for Finnis, the argument is that *any* human rights must protect the access and enjoyment to these basic forms of human flourishing. The justification of any human rights, then, is successful so long as such rights successfully protect these basic forms of human flourishing.

3.1.2 Choice Theory Approach

The choice theory approach mainly concerns itself with two normative ideals: (i) individual liberty, and (ii) equality (Fagan 2012, 14-16). Equality refers to people’s equal moral and legal standing within the legal and political institutions of modern nation-state system (Ibid). In human rights discourse, equality refers to the idea that people do not claim equality due to merit but rather we possess it no matter what. This means that equality will exclude considerations of gender, race, nationality, physical capabilities and so on. This does not mean that we should not even be thinking about these considerations but rather we cannot discriminate by using these unchosen facts of life. Yet, it is also true that individual liberty, in the Western world, plays a more important role.

The choice theory approach is different from the interest theory approach in the significance that is given to the free exercise of choice as the foundation of human rights. Theorists in this approach attempt to stay away from theorizing on the specifics about the nature of human beings. Instead, they focus on the capacity for individual liberty as a distinct feature of human beings. Hence, in the choice theory approach, human beings should have both the condition of liberty and adequate opportunities for exercising that liberty. Indeed, choice theory approach also says something about the human nature, that is the capacity for individual liberty and that the significance of all other interests is established by this end. So, the goal of human rights, in this approach, is to secure and promote the exercise of free choice. The idea here is not merely to secure and promote individual liberty but equal individual liberty and the task for theorists is to identify the “grounding” of this condition and establish its scope of its implementation. H. L. A Hart expressed the underlying notion concisely when he said “[t]he individual who has the right is a small-scale sovereign” (Hart 1982, 183).

3.2 Transcendent-Monistic-Intuitive Grounding of Human Rights

Miller argues that we need to decide on what a theory of human rights is supposed to do and that this decision will have significant impact on its justification and its substance. He, following Peter Jones, says that a theory of human rights is supposed to regulate interactions between people who hold rival first-order views. That is, it needs to regulate the interactions between people who disagree on questions about the meaning of life and so on. He disagrees with making human rights “a theory of inter-cultural toleration” (Miller 2012, 409). Instead, Miller suggests that we need to defend a doctrine of human rights that specify a “global minimum that people everywhere, regardless of societal membership or cultural affiliation, are owed as a matter of justice” (Ibid).

Miller sets out a question to which human rights must give an answer. That is, human rights must explain why people in rich countries have obligations of justice with respect to global poverty. The way we can achieve a successful human rights theory is to “identify moral claims that are powerful enough to impose potentially demanding obligations on agents” as well as taking cultural diversity into account. The latter part is needed simply because any human rights theory will regulate the interactions of people who actually belong to different cultures. For this reason, then, human rights cannot be ‘partisan’. We see that Miller rejects choice theory because he argues that human rights theory “cannot justify rights by appeal to reasons that only have practical force for people who belong to one particular culture” (410). Obviously, when we look back into the idea of equality and individual liberty, these values are usually culturally-specific, that is the West.

Given these, Miller asks *the* question: “How, then, should [a theory of human rights] be constructed?” (Ibid). He identifies two strategies. One is finding separate justifications for the same set of rights for each different cultures. In this view, human rights will have different foundations and different justifications for different groups of people. Such overlapping consensus strategy is rejected by Miller clearly (Ibid). He says that “I reject this approach, for reasons [Peter Jones] articulates superbly well” (Ibid). So, to understand why Miller rejects this approach for identifying multiple justifications, let us look at Peter Jones’ view. Jones names this strategy the “continuous” strategy, which “[tries] to establish a continuity between the theory of human rights and the various doctrines to which people are committed” (Jones 2000, 34). Jones suggests that if we are to say anything about this continuous strategy, we *must* discover what the “overlapping consensus” is. Jones gives six reasons why such an approach to construction of a theory of human rights is less than satisfactory. Firstly, Jones expresses his skepticism towards finding a value that is common to every culture and belief system. Even if we find such commonality, Jones argues

that “these are likely to be meagre, so denuded of content” that they will not be of any use to us and that “lowest common denominator is likely to be very low indeed” (35). Secondly, Jones argues that

[t]he consensual approach implies a conception of values as modules that are slotted into, and that can be removed without loss from, any system of belief, so that a value remains the same value in whatever system of belief it resides. That ignores the way in which values are not isolable units but intersections in a nexus of moral relations (36).

Here, Jones makes the argument that it is not sufficient to identify something as good in any culture but also to rank “that good in relation to other goods” which specifies how responsibilities on the part of people is specified and justified (Ibid). Thirdly, Jones argues that if we were to follow consensual strategy, then, human rights would be nonessential. He rightly asks “Why, if its content has to be limited to values already endorsed by all other theories, do we need a theory of human rights? What will it provide that we do not already have?” (Ibid). Fourthly, Jones points out that overlapping consensus cannot generate justification because of the “mere fact that a number of moral theories overlap is no warrant for identifying the domain within which they overlap as the domain of human rights, particularly since some or all of those theories may not themselves identify the values within that domain as human rights” (Ibid). Fifthly, Jones argues that this strategy subordinates human rights to demands of other doctrines and ideologies. We see this when he asks “Should we allow any and every doctrine to exercise a veto over the content of human rights?” (Ibid). Lastly, and most crucially, overlapping consensus does not “address diversity” but avoids it (Ibid). He says

Suppose, for example, that we discover, among all the systems of value that we scrutinise, agreement that, as far as possible, our basic biological needs should be met and that we should neither inflict upon others, nor ourselves have to endure, unnecessary physical pain. That discovery will be of little help when we try to work out how we should organise a world

in which people have different and conflicting beliefs about how they all should live. The search for an overlapping consensus is merely the search for an element of uniformity among diverse systems of belief. It is a search for something other than diversity, rather than a search for a way of dealing with diversity (37).

Since Miller rejects this Rawlsian approach for the reasons above, he says that there is another alternative that seeks to ground human rights: a transcendental approach, or as Jones puts it, the discontinuous approach. It is transcendental because it seeks to “justify human rights by appeal to universal human interests, interests that everyone will recognize whatever culture they belong to” (Miller 2012, 410). Miller distinguishes the interest approach even further by subdividing it into two: (i) monistic and (ii) pluralistic. Miller is quick to point out the problems in the pluralistic interest theory approach. He says that finding multiple sources of support rather than relying on a particular ground might fail to provide a “single, coherent rationale for human rights,” which “may weaken their ethical force, since they will begin to look more like a rag-bag of claims that we are defending on quite different grounds” (411). This produces a pressing problem of lack of guidance when grounds conflicts (Ibid). Also, Miller says

if we want the theory of human rights to be non- partisan [...] we are going to have to check, in the case of each of the grounds that we put forward, that it is accessible from within the different cultures to be found in the contemporary world (ibid).

Miller suggest that this is “quite a tall order” and that it is “unlikely that all of the justification for human rights [...] are going to pass that test” (Ibid). Miller is clearly rejecting the choice theory approach when he says “[i]t is hard to think that self-ownership, for example, as a ground for human rights is going to have much appeal outside of societies with strongly liberal cultures” and the “same applies to individual autonomy” (Ibid).

For these reasons, Miller rejects pluralistic interest theory approach as well as choice theory

approach. He says that it is better “to aim for a monistic and transcendental theory of human rights” that is grounded in one single thing – human need (Ibid). But if a monistic theory approach is going to be successful, it needs to meet two important prerequisites: (i) it needs to deliver “a sufficiently extensive list of human rights,” and (ii) it needs to be “non-partisan, in the sense of providing a justification that people from all cultures have reason to accept” (Ibid).

Miller recognizes that his theory must settle controversies about human needs because if not, then the theory itself will be controversial. So, he looks for objectivity “in the sense that they can be justified to people coming from different cultures and holding different conceptions of the good life” (411). Also, if his theory is going to have a chance to be successful, he feels the need to overcome “the problem of overshoot” (Ibid). This simply refers to the problem of our human needs being too expansive to serve as a foundation of human rights. Since he is not a fan of utopias, our need theory should not “take us beyond human rights themselves, [and should not] possibly constitute a complete, albeit somewhat utopian, political morality” (Ibid). Relatedly, if the need theory of human rights is going to be successful, it cannot “undershoot” as well (Ibid). To illustrate undershoot, Miller says

We can explain why rights to food, shelter, and medical aid are human rights by appeal to the human needs they correspond to, but it is harder to do this in the case of civil and political rights such as the right to vote (411-412).

Miller is aware of two objections to his argument that needs have the kind of objective status he mentioned. First objection concerns itself with the social aspect of need and this subdivides into *economic* relativity and *cultural* relativity. It is obviously clear that the “needs” are different for people who live in the South as opposed to people who live in the North and such need is socially constructed. Miller says that we might avoid this problem by distinguishing between the provision of human rights and its universal aspect. For instance, we can argue that human rights are indeed

universal but their provision is socially relative. However, as Miller himself recognizes, this would have the unsettling outcome of requiring poor societies to meet the “expanded needs of people in richer societies” (413). Hence, Miller distinguishes between “human needs proper” and “societal needs” (Ibid). Miller says:

Societal needs are the needs people have qua members of particular societies, and they can be defined as the conditions that must be fulfilled in order for a person to lead a minimally decent life in the society to which he or she belongs. Such needs depend on contingent social norms that define standards of decency; someone whose needs are not met may still be able to function properly in a physical sense, but he will not be able to participate in the full range of activities that are regarded by those around him as together making up an adequate human life (Ibid).

Here, there is an implicit assumption. That is, the assumption that there is indeed an agreement on what such activities are and what counts as need or not. Miller accepts this and simply says that “I assume” that here (Ibid). But accepting such an assumption still does not answer how we should understand human needs. Indeed, there is a big ambiguity in what are identified as human needs in his theory and its basis for identification. To be clear, however, human needs ground human rights whereas societal needs ground citizenship rights. Miller argues that we need to find a “core set of activities” that looks behind contingent norms that define societal needs. Unfortunately, this takes us back to the question we started with. That is, the question of whether there is a “generic human form of life over and above the many specific forms of life that human beings have created for themselves” (Ibid). Miller suggest that core activities ranging from opportunity “to engage in productive work” to opportunity “for recreation” answer that question (413). It is quite possible that people may choose not to fulfill some needs because of a view of life they adopted. Hence, Miller is not suggesting that *all* needs must be met to lead a decent human life. However, if we lack access to *any* basic needs, this threatens the ability to lead a decent human life. Miller recognizes that core activities will be shaped by the conditions and conventions of particular

societies. For instance, the need for food may turn into a need for “socially acceptable food.” In short, the way he responds to the criticism that needs have social aspect is to say that even in these cases where needs are socially defined, we can still invoke “human needs proper” “even though what we must do to fulfill them may in some cases have to take account of the social circumstances” (414).

Miller also responds to the objection that needs are culturally relative, “in the sense of being dependent on culturally specific notions of what is important in human life” (414). For instance, the need for religious education in a society must be fulfilled by members of that society to lead a minimally decent life in that society. However, since most human beings do not need religious education to lead a minimally decent life, it would be hard to say that religious education is a human right. However, Miller gives the same response here. He suggests that we can formulate these in a more abstract way. We can simply say that religious education is not a need to be included in human rights but “education” certainly is. So, the specific content of the need for education may be specified through the particular character of the society in question. This is acceptable to people who hold that there must be religious education because they cannot deny that education, in its abstract form, is necessary for children. Hence, “the position is that we have cross-cultural agreement on there being a human need for education, and partial, but not complete agreement on what this means more concretely in given circumstances” (415). This position turns into a more abstract point. That is, “we can agree on a list of human needs without necessarily agreeing on the relative importance of meeting different needs on the list” because it is practically infeasible to fulfill them all (ibid). For instance, due to scarcity of resources, we cannot secure both right to education and right to basic healthcare. The priority we give to any of these will be socially specific depending on the relative judgements of the societies in question. He, indeed, says that

“[i]t should not be a part of a theory of human rights to offer an authoritative resolution in such a case” (416).⁶⁰

It is certain that people will need things that they cannot claim as human rights. Miller thinks that if people can claim everything as needs, then this would be to demand too much of others (governments and people). Miller gives the example of medical needs. It is true that some medical conditions need supervision at all times or there are yet others that require the need for organ transplants. If we construct human right to medical care in the way that we require these sorts of needs met, then, firstly, there is no guarantee that it will succeed unless we coerce people into supervising sick patients or into giving up their organs. This would mean that we interfere with people’s bodily integrity and their engagement with core activities, which would also be justified by their human needs. If we, then, say that medical care should not include conditions that are demanding on the part of others, then, “it seems that we are arbitrarily deciding that one set of needs should count when rights are at stake while another set should not” (417).

Miller suggests that to overcome this problem we should not approach “the justificatory relationship between human needs and human rights as one-to-one, in normal cases” (Ibid). It might be true that sometimes a need will be clear enough that it generates a human right without much disagreement. But usually, he argues, “a particular need will lend support to several rights, while on the other hand a particular right may be grounded in several distinct needs” (417). It is still important to say that despite that this move seems to deviate his theory from the “monistic” approach, he still thinks that “need” grounds everything, eventually.

⁶⁰ Since there this strict rule of non-prioritization in his contextual approach, it again brings us back to the second chapter where I argued that when contexts are not fully determined, we lack guidance.

If needs conflict, then, we need to decide on which need takes precedence before we say anything about human rights themselves. For instance, if A needs X, and X can only be provided if B sacrifices the need for Y, then we need to first say whether X or Y takes precedence before saying anything about human rights themselves because we have not yet decided there is a human right to X or Y (417). Let's take the need for bodily integrity. Miller exemplifies this by suggesting two people, one of which needs a kidney transplant, the other is healthy (418). If person A does not receive the kidney, he or she will either die or go through dialysis for the rest of his or her life. If we force B against his or her will, who is healthy, to give up one of his or her kidneys, he or she will suffer from psychological trauma but will still have functioning bodily organs. So, we would say that B has to give up his or her kidney to A if we only consider the need to have functioning bodily organs. This is absurd. But A's need for functioning bodily organs directly contradicts B's need for bodily integrity. This means that there are several "human needs related to the body that together go to justify the right of bodily integrity of which the need to have functioning set of vital organs is only one" (Ibid). So, Miller suggests that we cannot look at A and B and ask whose needs are more urgent. We, instead, "have to ask about the overall impact, in terms of fulfilling needs" (Ibid). For this reason, Miller argues that needs can still occupy a foundational role in human rights even though needs may carry us beyond human rights. This is because we need to look at "needs... holistically rather than in terms of one-to-one connections" (Ibid).

Human rights theories are criticized because they do not generate all of the human rights that we think it should, which is a problem of undershoot. When we ground human rights in human needs, it might be the case that we provide both justification and explanation to "*material* human rights" such as "rights to subsistence" and "basic healthcare" (Miller 2012, 419). However, when we move towards protecting liberties such as freedom of religion and freedom of speech, human

needs seem to undershoot to cover these liberties that we value dearly. Firstly, Miller thinks that his human rights theory does not need to cover everything that is set out in the UN Declaration or “any of the later documents” (420). So, in a way, he does not think that UN Declaration is minimalistic. He continues by saying that the issue is not one of delivering all of the rights in the UN Declaration but “whether it can produce a catalogue that is long enough and full enough to represent the minimum demands of global justice” (Ibid). Miller identifies three ways to cover civil and political rights on the basis of human needs. Firstly, he believes that “rights against slavery, against torture, against arbitrary arrest or detention” fall under the human need to “plan and organize their lives securely” (420). So, he believes elementary freedoms such as these can “be justified by appeal to the rudimentary needs of a social animal” (421). Secondly, Miller invokes the need for recognition. That is, people cannot lead minimally decent lives “unless they achieve a certain standing, at least in the eyes of those who matter to them” (Ibid). Hence, this secures rights such as “being systematically demeaned, ignored, treated as non-persons” (Ibid). Thirdly, Miller thinks that some civil and political rights such as “right to a fair trial and the right to political representation” can be justified instrumentally. Even though some may believe these are not objective human needs, but he says that “it has long been recognized that a person who lacks such rights is vulnerable to having other, more basic, rights violated or taken away entirely” (Ibid). He argues that freedom of expression, for instance, can only be secured if there are legal procedures in place that protects people from arbitrary interference. When Miller is grounding these sorts of rights in human need, it also looks like a rag-bag of claims by referring to different human interests. Miller responds to this by reminding us of the key distinction of his theory of human rights. That is the distinction “between conditions that are simply of great value to human beings, and conditions in the absence of which they cannot lead decent lives” (422).

3.2.1 Situating Miller in the Interest Theory Approach

I think that if we consider human need as a subset of interest, then, we can say that Miller falls under the interest theory approach. Miller's example of opera is telling here. For instance, we can suppose that everyone enjoys listening to opera (Miller 2012, 422). And for some reason, it is no longer possible to go to opera performances. This universal shared interest of enjoying opera would still not create a human right because it is not a universal human need. That is, we can still live minimally decent lives without opera's availability. So, even a universal shared interest cannot ground a human right in this sense. But I think that we can still include Miller in the monistic interest theory approach by taking him to mean that universal human needs are what we have universal interest in. If going to opera is a universal human interest, according to interest theory it must contribute to the well-being of all people socially or psychologically, therefore people would need opera to be a human. If that is so, Miller cannot argue that opera as a universal human interest cannot ground a human right to opera. Obviously, the need for water and shelter would be covered under human needs proper (or physiological needs) and are better examples. But I can still ask why such needs are also not fundamental interests. We do not choose to need water and shelter therefore it is our choice-insensitive interest to drink water and to be sheltered. If we understand the interest approach to define fundamental interests that ensure the physiological and social well-being of human beings, such interests also become needs to ensure being a 'human'. Because if I do not have access to water or shelter, I will certainly die and cease to become a 'human' and I have an interest in being a 'human' in this sense. Let us also look at the distinction Miller makes to avoid the charge that his needs-based human rights theory also looks like a 'rag-bag' of interests. He distinguished "between conditions that are simply of great value to human beings, and conditions in the absence of which they cannot lead decent lives" (422). An ambiguity appears

here between something being “great value to human beings” and something being ‘a fundamental interest’. These two are not analogous. Here, we can say that conditions that are of great value to human beings do not directly relate to leading decent lives. This is because values are indeed naturally pluralistic but deciding on fundamental interests cannot be a matter of great value to each individual’s perspective but a ‘fundamental’ interest of everyone. So, we cannot use “interest” synonymously with “value” here. For these reasons, I think it is possible to situate Miller under the interest theory approach.

We saw that Miller’s theory is monistic and transcendental. It is monistic because it grounds and justifies human rights in one thing – human need. It is transcendental because human needs transcend particular cultures, “in the sense of being available to people regardless of their cultural affiliation” (Miller 2012, 410). But how is it “intuitive”? Miller says that “I cannot explain why needs can ground obligations whereas other interests, however strong, do not; that is a fundamental intuition I take for granted” (Miller 2012, 422).⁶¹ Miller cannot explain why, if something is a strong interest, it cannot ground human rights. So, Miller is essentially trying to convince us that needs should be the way we have to ground human rights rather than following universal interests without giving us a fundamental reason why we should do so. In this sense, then, his theory becomes intuitive, therefore it is a monistic-transcendental-intuitive strategy to interest theory approach.⁶²

⁶¹ I think Miller is not saying that “fundamental interests” cannot ground human rights in the sense that interest theorists conceive of fundamental interests. When fundamental interests are conceived as above, I would think Miller would not reject it.

⁶² I have not seen anyone else who name Miller’ approach in this way. My purpose to try to name his approach is to more structurally analyze it.

3.3 Analyzing Miller's Theory of Human Rights⁶³

Let us take Miller's argument that his needs-based approach offers us a non-partisan way of grounding human rights. Miller is right to point out that grounding of human rights should not be partisan. This is because human rights should be capable of generating responsibilities in outsiders and we can only justify the demands one makes on someone if the justification is acceptable to them given the values they already hold (Miller 2013, 165).⁶⁴ Since Miller thinks that everyone would agree that people should be able to lead decent lives, a theory of human rights grounded in basic human needs should be universally acceptable (199-200). As we saw, Miller considered the overlapping consensus or the continuous approach, but even though this avoided the problem of being partisan, this would make the content of human rights 'meagre'. Hence, he chose to define a decent life by coming up with "core activities" of human beings such as working, playing, learning, and raising families, which are activities that are present across cultures, so not subordinating his theory to the veto power of ideologies and different cultures. But Miller's argument for being non-partisan seems to fail. The overlapping consensus approach would define basic human needs as those things that every society regards as conditions for a decent life. Miller instead chooses an 'objective approach' which defines a decent life as the ability to engage in core activities.⁶⁵ However, when deciding on the core activities, he also does not consider the views of

⁶³ An important argument against Miller that I am leaving out here comes from (Schaber 2014). He asks a very important question of 'why are we protecting the basic needs of human beings?' Miller could say that they cannot engage in sorts of core activities to lead minimally decent lives. But why? Schaber instead says that we protect basic needs because they are instrumental in exercising our normative authority, which is the "authority to do what one wants with regard to whatever falls within the purview of one's authority" (Schaber 2014, 115). Schaber says that we can all think that basic needs are needed to live a minimally decent lives but these "do not entail that authority over oneself is a basic need" (117). So, he constructs his argument over a more abstract idea than basic needs, which would possibly put him into the choice theory approach.

⁶⁴ This is also rejected by Kieran Oberman, which I will leave out here (Oberman 2013) because he thinks that being partisan is not a serious problem for human rights.

⁶⁵ Objective "in the sense that they can be justified to people coming from different cultures and holding different conceptions of the good life" (Miller 2012, 411)

actual societies. This is true because Miller himself points that there will be some societies that do not recognize all the core activities as needed for a decent life without some abstraction. But what is important is that these abstract core activities are accessible to everyone. For instance, religious education cannot be a human right but “education” can because everyone could agree that education is important. But even if someone argues that religious education is the *only* education for them, Miller says “[h]e must admit, in other words, that when children in Western societies are taught to be literate and numerate, their human need for education is met [...] not in full” (Miller 2012, 415). It is here that we see Miller being partisan because this suggests only one thing: if people do not recognize that if Miller’s core activities are accessible then their human need is met, such people and societies are factually wrong. Overlapping consensus would instead try to find some commonality to justify such activities but Miller implicitly draws a more stringent line. So, regardless of some societies not engaging in the core activities, such activities must be in the human rights. How is this not partisan? Kieran Oberman makes this clear:

Thus imagine a society in which people accept that preventing women from working can lead to malnourishment in some cases but deny that malnourishment endured for the sake of virtue prevents one from leading a decent life (Oberman 2013, 279).

Miller would point out the empirical consequences of this belief in the society in question but as Oberman says “[Miller] must argue that their moral beliefs are themselves mistaken” to justify basic need in question (279). However, “if he does that, then clearly his conception of basic needs relies on ‘reasons that others should find objectionable’” and it becomes partisan “under his own definition” (Ibid).

Oberman also considers Miller’s response to non-liberal objectors. These are people “who agree with Miller’s conception of basic human needs but think that other considerations trump the

duty to satisfy these needs” (Ibid). Miller’s example of a Muslim person who thinks that criminals should receive severe punishment, due to shari’a law, is telling (Miller 2007, 199). Here, the Muslim person thinks that the thief’s hand should be chopped off because of his or her underlying belief that such punishment is more important than the need for bodily integrity. Miller says that the difference here is not important because Muslim, regardless of that underlying belief, can accept that chopping off a hand is a serious harm. He says

The Islamic interlocutor I am imagining would not deny that, as a general matter, having a hand amputated or being stoned to death are very serious harms, and would therefore presumably agree that we should recognize rights to life and bodily integrity to protect against them (Ibid).

So, Miller argues that the actual difference between him and the Muslim “occurs over the limits to be placed on these rights, and whether the health of the soul gives good grounds for overriding them in certain cases” (Ibid). Since everyone, according to Miller, believes that, “other things being equal, all human beings should enjoy the conditions that allow them to live decent lives [...] this may impose responsibilities on those who are in a position to create such conditions” (200). Hence, he locates the disagreement in the content of ‘other things being equal’. But Oberman argues that Miller “understates the importance of the disagreement in question” (Oberman 2013, 279). Oberman rightly argues that the content of ‘other things being equal’ is important to judge whether an action, such as chopping off a criminal’s hand, is a human rights violation or not. So, Oberman says:

Recall that Miller’s justification for human rights is meant to allow us to make demands on those living in a different society without drawing on reasons they should find objectionable. Yet since Miller offers no universally acceptable means of filling out the ‘other things being equal’ clause, the demands made on the basis of his theory must draw on reasons that others should find objectionable (279-280).

If we decide on the content of ‘other things being equal’ clause by partisan reasons, then what

follows (e.g. “don’t chop that thief’s hands off”) will indeed be a partisan demand. Oberman argues that this example is not an “exceptional case” (280). This is because most of the human rights violators indeed think that they have ‘good’ reasons to violate human rights (Ibid). For instance, let us take a look at the recent argument made by Theresa May. In the light of the brutal terrorist attacks on London Bridge as well as in the Ariana Grande concert in Manchester, May told us that “UK will change human rights laws if needed for terror fight” (Griffiths 2017). Oberman, then, makes an important argument by saying that “[i]t is no good for Miller to point out that were circumstances such that these reasons did not obtain” (Oberman 2013, 280). This is because Theresa May could agree that violating human rights is unjustified. But she is making the argument that, under the existing circumstances, the reasons she has to act obtain, and therefore she can violate some human rights to fight terror. So, here, to argue against May, Miller must declare that she is mistaken in the weight she gives to the reasons she offers when set at odds with the possible victims’ basic needs. However, Oberman, accordingly says:

Yet since Miller lacks any ‘non-sectarian’ argument for making this declaration, he must admit to the ‘sectarian’ aspects of his theory if the human rights he supports are to fulfil the purpose he sets them: to act as a means by which people in one society can make demands on those in other societies (280).⁶⁶

Oberman takes this point further by trying to come up with a possible response Miller may provide. For instance, Miller could say that “there are some moral, as well as empirical, considerations that everyone must accept” (Ibid). But Miller says that non-partisan justification is the one that “everyone should accept no matter what their other beliefs” (Miller 2007, 200). Oberman thinks that we can take “should accept” to mean “should accept in light of certain moral considerations”

⁶⁶ Here Oberman chooses to use the word “sectarian” instead of “partisan” but they are used interchangeably. Indeed, Miller opts for “partisan” in his paper on grounding human rights.

but this would fail because then liberal theories could also declare themselves as non-partisan “on the basis of their own moral considerations” (Oberman 2013, 280).

This, I think, has an important implication for normative feasibility as well. Recall that normative feasibility referred to the idea that our proposals should be acceptable to people through reasoned discussion. By using normative feasibility, Miller rejected strong cosmopolitanism (i.e. cosmopolitanism that required a world government). However, if Oberman is correct to point out that Miller’s argument itself is partisan, then this is problematic for his human rights theory’s normative feasibility. If it is true that Miller cannot give us a non-partisan argument for why a Muslim country, which is ruled by shari’a law, should not chop off a thief’s hand, then the suggestion of basic need for bodily integrity is normatively infeasible. This is because we cannot get the Muslim country to agree on it through reasoned discussion if reasoned discussion means that we should not give them reasons that they find objectionable. If we say that it is morally wrong to chop off a thief’s hand (or anyone’s hand for that matter), then we move away from the reasoned discussion to justify bodily integrity because it goes against his argument that we should give reasons that “everyone should accept no matter what their other beliefs” are (Miller 2007, 200). Hence, we can turn Miller’s normative feasibility back to him and ask him if his human rights theory itself is normatively feasible.

We also saw that Miller stays away from the concept of equality in human rights theory. He argued that equal share in democratic governance or equal degree of religious freedom is out the window because equality is neither achievable nor a human need. These may be covered under the idea of citizenship rights in the societies in question. So, societal needs would cover it as it were. This is, again, because he wants his theory of human rights to satisfy a global minimum rather than a utopia. However, to avoid the problem of being partisan and utopian, Miller gives us

a very narrow definition of some human rights. This also makes his argument that his needs approach does not undershoot problematic. Let me consider the human right to religious freedom.⁶⁷ Miller realizes that different societies approach to religious freedom differently. He observes that “religion has been a marginal phenomenon” and “actively discouraged” in some societies, yet in others, “there is a strong social norm that everyone should adhere to the same religion” (Miller 2007, 195). Miller says that religious freedom “may not always be a need” but “there is a more basic need that covers some of the same ground” (196). This more basic need is the need for freedom of conscience, which means “not being forced to live according to values that you cannot endorse, and that you may find repugnant” (Ibid). The right to freedom of conscience supports freedom of religion “without giving it any special status” (Ibid). So, religious freedom as a right looks something like this: “a right not to be forced to adopt religious practices or espouse religious beliefs that you do not yourself endorse” (Ibid). This right is very narrow and not enough to secure the sort of religious freedom human rights should. For instance, a nation-state can take measures to crack down on religious practices and it would still not violate human rights. To violate human rights, it needs to force people to adopt a religion. How is this not an illustration of the problem of undershoot? Every reasonable people would agree that cracking down on religious practices in a country is a violation of religious freedom.⁶⁸

⁶⁷ Oberman (2012) also considers this freedom to further his argument on why Miller’s theory is also partisan but he did not advance that argument in the context of undershoot.

⁶⁸ Oberman (2012) takes the point further by considering Miller’s response that some societies will recognize more extensive right to religious freedom. However, Oberman writes the following:

Those that wish to defend free religious practices are typically concerned not only that the freedom is upheld in liberal societies but also in non-liberal societies. Indeed, it is precisely when religion is ‘actively discouraged by the state’ or when there is ‘strong social norm’ pressuring people to adhere to one religion, that the right to practice one’s religion seems most important (278).

3.3.1 Bringing back Ethical Particularism

The consideration of split-level morality is under the spotlight when we seriously think about human beings in general. We know that many ethical theories indeed allow for both global duties to human beings as a whole and also some special duties to the ones we are related, attracted, or attached to.⁶⁹ My goal here is to consider how Miller's theory of human rights fits with ethical particularism. For instance, Goodin's approach, by virtue of being universalist, is very straightforward in terms of human beings in general. Since general duties are discharged as local duties, there is conceptually no conflict between the two eliminating the split-level morality. However, Miller's particularism is rather interesting because of the question about *how* exactly prioritizing our compatriots (that can override general duties) fit with respect for human beings in general (or global duties)?

A particularist, as I have defined it in the first chapter, will have to care about the identity (i.e. simply who the person is) of the person to recognize obligations, at least in Miller's conception of it. This is crucial and if it was not, Miller would not situate relational facts as morally significant.⁷⁰ Since we start our ethical reasoning from relational facts at the basic level, it is interesting to see an argument, from particularism, about our obligations to human beings as a whole (if we have any) since obligations stem from the relational facts. Miller asks the question in

⁶⁹ Usually, special duties in universalistic accounts are more minimal than a particularistic account would allow. Mostly, universalistic accounts would make room for familial responsibilities as well as responsibilities that would arise from friendships etc. The important distinction would be that universalists would usually ground *any* duty by looking at its consequences. For instance, we saw that Goodin grounded it in efficiency of national duties if construed as a discharging of global duties. But since any duty that would have overall "bad" consequences would not count as a "duty," universalists would deny national duties in light of global injustice or they would call for some sort of global reform to justify it. Main thing is that universalists would not have a problem with saying that everyone is morally equal and that universalists do not play favorites. This comfort comes from the way they ground duties, which is in extrinsic considerations.

⁷⁰ Consider again what Miller says about universalism: "[b]ecause principles are to be universal in form, only general facts about other individuals can serve to determine my duties towards them [...] [but a particularist would care about] what we might call relational facts about Tom, facts about some relationship in which he already stands to me" (Miller 1995, 50).

the last part of the chapter: “Does the ethics of nationality not entail moral indifference to outsiders?” (Miller 1995, 73). His first response is to point out that when we talk about outsiders, we are not talking about isolated individuals, but about people who are themselves members of national communities. Miller goes on to say:

But in general, in considering relationships to outsiders, we should not fall into the trap of thinking that our only relationship to them is one of human being to another. We are certainly related in that way; but in considering my ethical relationship to, say, a Tanzanian, I should not forget that we are also related as Briton to Tanzanian [and this complicates the ethical picture] (73).

He says that if we consider the first dimension of our relationship with human beings as a whole, then, the obligations are best captured by theory of basic rights. After pointing out the universalist ambitions to endorse basic rights, he thinks that there is no reason why particularists cannot endorse a list of basic rights. The problem occurs “when we juxtapose relationships between persons abstractly conceived with relationships between persons as members of communities, including national communities” (74).

As we saw, Miller thinks that we owe duties to human beings in general by emphasizing a needs-based approach. So, human need is put forth as a general fact about human beings (see footnote 69). Basically, we have a duty to “respect the conditions that are universally necessary for human beings to lead minimally decent lives” (Miller 2005, 73). What is rather interesting *and* puzzling in Miller’s writings is that, he does not explain to us how his view on these matters fit with his particularistic ethics. One interpretation might come from particularism as an ethical theory itself. Since particularism offers us an ethical conduct by considering particulars in their relevant context, it is not outrageous to suggest that we have different particulars with human beings as a whole and with closer groups such as friends, family, co-nationals and so on. So, in

this case, we would have particular relationship with everyone considered individually. Even if incredibly this were true, Miller offers us no basis of how we are related as human beings qua human beings. After all, from the discussion in the first chapter, it seems fairly clear that particularism needs the relation between persons. In other words, particularism cares about the kind of relationship between people rather than what people are.⁷¹ The onus is on Miller to tell us how such relation or interaction occurs with human beings as a whole. Certainly he could point out that we live in a globalized world and anything we do in country X will impact country Y, but he did not follow this path when he was grounding human rights. He told us that there is something fundamental with human beings, rather than telling us that there is a relationship or a connection.⁷² In other words, he gave us a “general fact” rather than a “relational fact [...] facts about some relationship in which he already stands to me” (Miller 1995, 50) He told us that needs are what makes humans “humans.” But relation, in his ethical particularism, does not refer to us sharing the same genus of primates. As said, ethical particularism takes the relation between people as the basic subject-matter of ethics. Hence, if we take his particularistic ethics, he needs to give us a “relational fact” of human beings qua human beings. Rather, he chooses to define the “human being” as one thing and in the process he is giving us a “general fact”. Things cannot be related if they are not separate. Since we consider human beings as “one” in his monistic-transcendent-intuitive strategy, then, there is really no “connection” or “relation” other than the general fact that we are all homo sapiens. If Miller could characterize our relation with human beings in general as

⁷¹ To elaborate, ethical particularism suggests that relations between people is the basic subject-matter of ethics. It construed people in terms of the relation they stand to each other rather than the people themselves. We can see this with the different modes of association Miller argued for in his sketch of a theory of social justice. So, our relations – be it familial, collegial, national – is what is important rather than what people are.

⁷² This creates another pressing problem. If Miller’s argument against Goodin relied on the rejection of decontextualization of the moral agent, then, his needs-based theory also suffers from the same problem. This is because we do not take individuals because of who they are but what they are (i.e. homo sapiens). That is, all the other characteristics of human beings – other than human need – become irrelevant contingency.

of biological connection or relation, then both terms lose meaning for him. So, how does particularism, as he defines it, justify his grounding of human rights? It is interesting that Miller has never spoken about how his particularism specifically fits with his theory of human rights.⁷³

To reiterate, when we look at what Miller means by relation, it becomes apparent that “relation” means something more concrete for him. Relation simply turns into identifying yourself as a member of some attachment or relationship. For instance, I identify myself as belonging to a “family, my college, or my local community” or to my nation. I am an individual, who is connected to these groups because I identify myself as belonging to them (Miller 1995, 65). So, relation in this sense gives me the opportunity to “properly acknowledge obligations to members of these groups that are distinct from the obligations I owe to people generally” (Ibid). How do I acknowledge obligations to outsiders? How do I consider myself a member of outsiders? Should I think of myself as belonging to the group called ‘homo sapiens’? But then, what is the point of cutting most duties off the national borders if I can already generalize my moral judgement this way? Here, then, we can rightly accept that particularism does a good job of justifying relationships (because it assumes that attachments and relations are generally ethically significant) at a basic level but ask how it fits with human beings as whole. It is this ambiguity that I find as a pressing philosophical problem in Miller’s work.

One come back to this, for Miller, is to accept that, special obligations are best justified by particularism, and global obligations⁷⁴ are best justified by universalism. But Miller does not seem to do this, and shows that he is consistent with his particularism.⁷⁵ Because, for Miller, “[s]uch a

⁷³ Instead, he wrote quite extensively on how contextualism relates to his human rights theory.

⁷⁴ Obligations that we owe to everyone no matter who they are and where they are.

⁷⁵ Obviously, it would be inconsistent to be a particularistic to justify national obligations and a universalist to justify global obligations. If we adopt one ethical theory at one level, we need to apply to all levels. Same can be said for

split-level view requires us to specify the kind of attachment that can ground special duties, and to explain the comparative force of the two kinds of duties [global vs. special] in cases of conflict” (Miller 2004, 63). So, it seems that he is still a particularist. Now, we go back to the same question: what grounds global duties? In other words, why does our special duties to compatriots need “to be reasonable, [and that] it must be balanced against recognition of duties of global justice”? (Ibid). What are the grounds do we have to recognize duties of “fairness towards non-nationals” and of “human rights”? (Ibid). Miller’s needs-based approach seems not to offer solutions once we take ethical particularism into the picture because it is not offering us an attachment or relation as I argued above. Another possible come back from Miller would be to argue that some global duties (the ones he might be putting forward) are grounded in intuition. But universalists could do the same.⁷⁶ So, one thing we can say is that Miller does not offer foundational reasons for why we have global duties along his ethical particularistic lines, but just thinks that there are such and such global duties. Relatedly, Miller was strictly telling us that special obligations arise because they are (i) intrinsically valuable, (ii) essentially duty-laden, and (iii) not unjust or immoral.⁷⁷ This applied to how he grounded national obligations more specifically. The pressing question, then, becomes “how are our relations as human beings qua human beings intrinsically valuable?” Also, how is our relationship as human beings qua human beings “essentially duty-laden”? Then, a further problem arises because we can also ask how we are motivated to perform the global duties.⁷⁸ After all, particularism is adopted because it overcomes the weak motivational power of

universalists. They cannot be particularists to justify national obligations and universalists to justify global obligations. Main reason for this is that it would contradict the theories themselves.

⁷⁶If Miller indeed insists on this argument about intuitionism, then, we simply showed that all of his arguments eventually rest on intuition.

⁷⁷ Miller’s ethical particularism underlies these three conditions. If we can say that Miller is also adopting ethical particularism when talking about human beings in general, then, we could level these questions against him in the context of global justice.

⁷⁸ Indeed, if we look back to footnote 5, we will again see that relationships motivate people.

universalism. Although his particularistic argument compatriot partiality is well-taken, the same cannot be said for global duties as well as his monistic-transcendent-intuitive theory of human rights.

My suggestion is that we either need to avoid Millerian ethical particularism or needs-based approach if we want to avoid such an ambiguity. As seen, his particularism creates a pressing philosophical problem because human rights itself is a pressing philosophical issue, which it cannot ground if structured around need. We can also avoid needs-based strategy to human rights, and try to look for connections or relations as human beings qua human beings to make it compatible with Miller's ethical particularism. For instance, Miller could have pointed out that we are connected in various ways due to globalization and interdependence and so on without getting into phenomenological questions about human beings. Lastly, if we say that there is something intrinsic in human beings rather than something intrinsic in the relationship, and *if* we can be motivated by it, then why cut most duties off the national borders?⁷⁹ Or if we can just say that there are such and such global duties, then, why do not we accept Goodin's assigned responsibility model, which also justifies compatriot partiality?

3.4 Conclusion

This chapter considered the fit between David Miller's particularistic ethics and his theory of human rights. I argued that his particularism faces a significant problem against the way he grounded human rights. I also argued that Miller's human rights theory is not as non-partisan as

⁷⁹ Another possible come back from Miller would be that relationships between people are not intrinsically valuable but people who create those relationships are. Well, again, this would only be plausible if we change how Miller defined particularism—particularism takes the attachments and relationships as the basic subject matter of ethics.

he claims it is. Additionally, I showed that his theory undershoots as well, when we consider the human right to religious freedom.

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