

The Complexity of Justice

Social Justice. By David Miller. London: Clarendon Press, Oxford, 1976. Pp. viii, 367. \$19.75.

Reviewed by Dennis Thompson†

No topic has attracted more attention from legal and political philosophers in recent years than justice—much of it stimulated by the work of John Rawls¹ and much of it derivative from his work. A great virtue of David Miller's *Social Justice*² is that it is not another commentary on Rawls. Without ignoring Rawls, his followers, or his critics, Miller approaches the problem of justice from a fresh perspective and makes a genuinely original contribution to the contemporary discussion of the subject.

For those who have been feeling somewhat intellectually irresponsible for declining to declare their allegiance to some particular theory of justice, Miller's book should be reassuring. In Miller's view, no single theory can account for the complexity and diversity of the concept of justice. He argues that anyone who seeks to develop such a theory is bound to fail because the elements of the concept of justice are mutually irreconcilable. One might expect a thesis of this sort to yield only a negative critique of other theories, but Miller offers much more. His analysis produces what may be called micro-theories of the various elements of the concept and a general theory of the relation between conceptions of justice and the kinds of societies in which they are likely to appear. Ultimately, Miller's project is not completely satisfying because he resolutely resists the possibility of a single prescriptive theory of justice that would decide among competing conceptions of justice. Yet his perceptive analyses of these various conceptions and their social contexts stand as a prolegomenon to any future work toward such a theory.

Miller's subject is *social* justice, the "distribution of benefits and burdens throughout a society, as it results from the major social in-

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1. J. RAWLS, *A THEORY OF JUSTICE* (1971). For a sampling of the reaction to Rawls's work, see B. BARRY, *THE LIBERAL THEORY OF JUSTICE* (1973); R. WOLFF, *UNDERSTANDING RAWLS* (1977); *READING RAWLS* (N. Daniels ed. 1974).

2. D. MILLER, *SOCIAL JUSTICE* (1976) [hereinafter cited by page number only].

stitutions.”³ It concerns such matters as the regulation of wages and profits, the protection of individual rights, and the allocation of housing, medicine, and welfare benefits. But it does not deal with the benefits and burdens distributed by the legal and political system. Miller thinks that social justice differs in important ways from legal justice (which, as Miller defines it, concerns “the punishment of wrongdoing and the compensation of injury”⁴). His insistence on this distinction yields some of the many insights in the book (for example, the argument that a person’s voluntary action is not a necessary condition for allocating benefits and burdens to him in social justice, though it may be in legal justice).⁵

Miller distinguishes three conceptions of social justice: to each according to his rights, to each according to his deserts, and to each according to his needs.⁶ Rights may conflict with deserts and with needs because individuals may hold rights that they do not deserve or do not need. This conflict is merely contingent, Miller maintains, for we can strive for an ideal society in which individuals have a right only to what they deserve, or only to what they need. Deserts and needs, however, stand in more uncompromising opposition. “[W]hen we speak of a man deserving something we have in mind some favourable attribute which we think ought to bring him a benefit, whereas when we speak of [his] needing something we are thinking of a lack or deficiency on his part”⁷ Similarly, the most deserving individual (for example, the hardest working person) is not likely to be the individual with the greatest need. Miller claims that deserts and needs are “necessarily” in conflict.⁸ But despite what Miller says, that conflict actually seems to be merely contingent: the requirements of the two conceptions could coincide (as when the hardest worker was also the neediest person), though such a coincidence is so unlikely that it might be considered accidental.

Like Miller’s concept of social justice, *Social Justice* is divided into three parts. The value of the first part of the book, fortunately, does not lie in its conclusions, which rather blandly state that each of the three conceptions of justice is “distinct,” and that each is “hard to define theoretically” and “hard to implement” practically.⁹ What is of

3. P. 22.

4. *Id.*

5. Pp. 95-102.

6. Pp. 24-31.

7. P. 27.

8. P. 28 (emphasis in original).

9. P. 152.

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greater worth are the many, often self-contained, analyses of aspects of justice. In its good sense and clarity of thought, and in its appreciation of the richness and subtleties of the idea of justice, Miller's work will remind some readers of that of Henry Sidgwick, the ablest exponent of the doctrine (utilitarianism) that Miller is most often disposed to attack. Moreover, just as Sidgwick's efforts continue to enlighten even those who reject his utilitarianism, so Miller's contribution will repay study even by those who would oppugn his skeptical attitude toward general theories of justice.

Miller's analytical technique bears most fruit in the chapters in Part I on "Deserts" and "Needs." Miller finds, for example, that our ordinary beliefs about economic desert comprise a "confused tangle,"¹⁰ but he succeeds better than any writer on justice in making some sense out of them. In slightly more than a dozen pages of acute analysis, he shows that there are two main criteria of economic reward—contribution and effort—and that neither can be given an adequate justification.¹¹ The trouble with contribution, according to Miller, is that extraneous factors—such as the fertility of land and the quality of tools—affect an individual's contribution as much as the personal qualities for which he deserves reward. Furthermore, we cannot measure individual contributions in most cooperative activities; the idea of assigning a specific (marginal or other) value to an individual contribution in such contexts simply does not have any moral meaning. Ultimately, Miller himself adopts a version of the contribution criterion of economic desert,¹² but he never really provides a satisfactory answer to his own criticisms.

Effort fares no better as a criterion. Any useful work requires, Miller argues, a combination of effort, innate ability, and acquired ability. We can almost never say how much of the product should be attributed to the voluntary actions of a person whose effort, on this criterion, we should wish to reward. Anyhow, as Miller shows in a penetrating discussion of the relation of determinism and desert, voluntary action is not always a necessary condition for praising or rewarding someone. We do not look beyond personal qualities, which are to a large extent involuntary, when we say, for example, that "the prettiest girl deserves to win the beauty contest, the most skilful shot deserves to win at marbles, the ablest candidate deserves the

10. P. 114.

11. Pp. 102-14.

12. "The basis of desert will be the value which each individual has contributed to the common stock of society, or more strictly that portion of the value which is due to his own efforts, skills, and abilities." Pp. 118-19.

scholarship.”¹³ Despite Miller’s efforts to suggest a positive criterion of economic desert, however, we leave this section, as we leave most of the sections in the first part of the book, with a sense of the futility of seeking general criteria for even limited aspects of justice, such as economic desert.

At first glance, Miller’s analysis of needs seems to point the way toward a more determinate criterion of justice. His account is intended to make the question of what a person’s needs are almost wholly empirical: to say that “A needs X” is to say that “A will suffer harm if he lacks X.”¹⁴ “Harm” is to be understood as whatever interferes with activities essential to a person’s plan of life. Such a nonrelativist approach, establishing a standard that is partly independent of people’s perceptions of their needs, has real advantages. It provides an answer to critics of the idea of need who claim that needs are so indefinitely expansive that a society could hardly begin to satisfy them, and therefore presumably should not try.¹⁵ It also escapes the implication, accepted by some of the same critics, that if customary standards of living are low, so are needs.¹⁶ Miller’s approach, moreover, allows us to take a critical stance toward an individual’s claims of need, without actually imposing upon him our own view of a way of life. We do not have to approve of someone’s plan of life to be able to point out that he needs, or does not need, certain things to fulfill it, whether or not he wants them or knows he needs them.

Yet (as Miller evidently recognizes) we have to find a person’s life plan intelligible at least in the sense that we can understand how the plan has significance and value for someone. We would not want to endorse a pyromaniac’s need for plenty of matches and easy access to buildings. He actually needs psychiatric help, not as part of *his* life plan but as a part of a plan that *we* think would be acceptable. Presumably, part of the reason that life plans like the pyromaniac’s cannot be said to have value or significance is that such plans, pursued successfully, harm other people and interfere with the fulfillment of *their* life plans. If so, then we can criticize a much wider range of life plans and the needs they generate than Miller suggests. The small

13. Pp. 96-97.

14. P. 130.

15. E.g., S. BENN & R. PETERS, *SOCIAL PRINCIPLES AND THE DEMOCRATIC STATE* 141-48 (1959); M. HALBWACHS, *L'ÉVOLUTION DES BESOINS DANS LES CLASSES OUVRIÈRES* (1933).

16. “‘Basic needs’ are thus a function of the general living standards of the community in question Where poor sight is common and spectacles rare, there would be no basic need for spectacles.” S. BENN & R. PETERS, *supra* note 15, at 145-46.

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crack that Miller opens for evaluation in his concept of need expands under the slightest critical pressure, and the concept of need as a basis of justice, despite Miller's meritorious efforts, begins to look problematic again.

The second part of the book illustrates how single-minded defenders of each conception of justice—rights, desert, and need—try to justify that conception and resolve the difficulties of implementing it. The justifications and the answers to the difficulties of implementation, Miller claims, come from a theorist's adopting a view of society that supports his conception at the expense of its rivals. In this way, Miller shows that arguments about social justice cannot be arguments *merely* about justice, but must also involve disputes about different views of human nature and society. Miller examines three theorists: Hume, who advocates the conception of rights within a "stable order"; Spencer, who defends the conception of desert within a "competitive market" society; and Kropotkin, who supports the conception of need within a "solidaristic community." One may wonder why Miller chose these particular theorists. All three of them are, or have often been regarded as, utilitarians of one sort or another, and Miller must in each case justify his interpretation of their theories before he can use the theorist for the purposes of his own argument. Miller, furthermore, does not succeed in showing that an idea of justice must necessarily, or even usually, correspond to a particular view of society. For example, it is not *prima facie* plausible to suppose that a purely rights-based conception of justice can be justified *only* in the context of an aristocratic society such as that depicted by Hume, though it may be in some sense appropriate for that society. Miller does not even attempt to show that other kinds of societies cannot theoretically accommodate justice as rights. He would have to establish that proposition for rights and for each of the other conceptions of justice if he were to make good on the general claim of Part II. Nevertheless, Miller has achieved a great deal here by showing, what so many theorists of justice neglect, that arguments about conceptions of justice turn in part on general views of society and human nature.

The third part of the book forges a somewhat firmer link between conceptions of justice and views of society—this time empirically instead of philosophically. Offering the rudiments of a "sociology of justice," Miller attempts to show that particular social structures generate certain conceptions of social justice and that it is "*rational or appropriate*" for individuals living within a particular structure to

adopt the corresponding conception of justice.¹⁷ He considers three basic types of societies: primitive, hierarchical or feudal, and market. At this point, however, the tidy trinitarian structure of the book begins to break down. Justice as deserts characterizes market society, while justice as rights predominates in hierarchical or feudal society. But Miller's primitive society has no conception of social justice; the network of close personal relationships in this kind of society produces commitment to values such as generosity rather than justice. Justice as needs corresponds uniquely to none of the societies; it appears as a subsidiary principle in market societies in which market relations have become less salient and in egalitarian communities that spring up within the other types of societies in response to "social dislocation."¹⁸

But these further complexities serve a purpose. Miller is ultimately interested in explaining the conception of justice current in the kind of society we live in, and although that society ("organized capitalism") is a variant of market society, it shares features with each of the other types of societies. It therefore can hardly be expected to fit comfortably into Miller's tripartite schema. In organized capitalism, membership in a corporate group begins to replace the individualism of the market; exchange relationships among individuals give way to status relationships among members of organizations. Consequently, the basis of desert, which prevailed as the criterion of justice in a pure market society, changes. Since each person's contribution to the corporate product cannot be measured, desert is apportioned on the basis of the positions that individuals hold in an organization, the positions being graded according to their social contribution and being filled according to competitive merit. Miller believes that, with this sociological approach, he can also explain certain tensions or mixtures in our conception of social justice—for example, between desert and need as criteria for the allocation of benefits. Pure market societies have no room for justice as needs, but organized capitalism justifies rewarding persons of higher organizational status by pointing to their (alleged) greater contribution to social well-being, which finally must be interpreted as the satisfaction of individual needs. The welfare state seeks to satisfy basic needs and then allocates the remaining benefits in accord with merit or desert.

These happy reconciliations of deserts and needs, as Miller appreciates, have not been achieved in modern societies. In the first place,

17. P. 255 (emphasis in original).

18. Pp. 330-31.

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the "claims that business has become a profession, and that it acknowledges its social responsibilities, conflict with the hard fact that a businessman's actions are still constrained by the need to make a sufficiently large profit."¹⁹ The demands of the market and of justice as deserts (determined by the market) still predominate in organized capitalism. In the second place, the conflict between desert and need runs deeper than the merely empirical constraints of modern society. The conflict is a moral one. The idea of rewarding desert, Miller points out, presupposes human inequality; differences in reward correspond to inequalities in status within organizations, which in turn refer to differences in skill and talent. The idea of distribution according to need, in contrast, presupposes a sense of human equality, in which justice does not take account of differences in status, skills, or talents. Miller speculates that modern societies will continue to embody both of these ideas, sometimes emphasizing one and sometimes the other.

The complexity of justice finally defeats Miller. As a sociologist of justice, he can explain how these conflicts in our conception of justice arise, how they vary in different societies, and under what conditions one element of justice may come to dominate another. But he refuses to pursue a theory of justice that would order and resolve the complexities that he has so perceptively revealed and explained. Indeed, his account points to "the relativist conclusion that no single conception of justice can be preferred to any other, and that consequently no definite prescriptions about the justice or injustice of a policy can be made."²⁰

Must we accept this conclusion? The leading theories of justice that today resist it—utilitarianism and the contractarianism of Rawls—come under attack from Miller for deviating "sharply from intuitive judgments of justice which we feel no inclination to give up."²¹ Utilitarianism, committed to aggregating benefits and burdens, cannot take account of how those benefits and burdens are to be distributed. Utilitarianism can show that justice is generally beneficial to society, Miller asserts, but it cannot explain why in particular instances the distributive claims of justice should have any weight independent of their utility. Somewhat surprisingly, Miller argues that Rawls's theory is vulnerable to the same charge: because it demands the maximization of benefits for one particular group in society (the worst-off), the theory

19. Pp. 312-13.

20. P. 342.

21. P. 31. Miller's attack comes at pp. 31-51.

turns out to be a modified form of utilitarianism. One may doubt whether an interpretation of Rawls's theory that pays so little attention to his first principle of justice (equal liberty) and the priority he assigns it can be an adequate foundation for a critique of contractarianism.

Even putting that doubt aside, we should still wonder why our "intuitive judgments" and "ordinary thinking" should be decisive in justifying and choosing a theory of justice. While arguing that ordinary language and ordinary thinking are the proper place to begin an analysis of justice, Miller himself does "not hesitate to impose a more precise use of terms if important distinctions are in danger of being lost."²² Furthermore, a "fundamental assumption" of his sociological inquiry is that a "man's sense of justice is strongly affected by the nature of the relationships which he enjoys with other men."²³ If the social structure shapes conceptions of justice, surely we can sometimes criticize a particular social order for producing conceptions of justice that we find unacceptable, and recommend that social structures be transformed so that more satisfactory conceptions of justice—even a theory of justice—can be realized. The conflict between desert and need may be inevitable in our ordinary thinking about justice sometimes criticize a particular social order for producing conceptions in the organized capitalistic society in which we live, but that is no reason, or at least not a sufficient reason, for rejecting any theory of justice that seeks to resolve such conflicts. It may be a reason for conceding that a theory of justice will have to call for significant changes in the structure of society, perhaps more radical changes than proponents of such theories have appreciated. It may also be a reason for demanding that such theories supply a foundation that in part stands independently of appeals to ordinary thinking or other socially determined intuitions. But unless some independent standpoint is possible, we shall inevitably remain prisoners of the complexities of prevailing conceptions of justice.

Few philosophers have portrayed as well as Miller the richness of these complexities and the extent to which they lie deeply embedded in the structures of social life. But Miller does not establish that it is futile to seek a theory that would transcend these complexities and the social structures that generate them. The paralyzing effects of the relativism implied by Miller's approach should, on the contrary, underscore the need for such a theory.

22. P. 151.

23. P. 255.