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Version: Accepted Version

Article:
Ulas, L. (2018) Are the people thinking what Miller's thinking? Contemporary Political Theory, 17 (1). pp. 91-96. ISSN: 1470-8914

https://doi.org/10.1057/s41296-017-0136-9

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Are the people thinking what Miller's thinking?

David Miller's interpretative approach to theorising about justice, articulated most explicitly in his book *Principles of Social Justice* (1999, from here on *PSJ*) but informing his work up to and including the recent *Strangers in Our Midst* (2016), takes people's existing beliefs to play a fundamental constitutive role in the development of normative principles. For Miller, the job of the political theorist is to uncover and present back to people "the deep structure of a set of everyday beliefs that, on the surface, are to some degree ambiguous, confused and contradictory", with the aim of producing "a clearer and more systematic statement of the principles that people already hold". It follows that a theory of justice is to "be tested, in part, by its correspondence with evidence concerning everyday beliefs about justice" (1999 p. 51).[1] The theory of justice that Miller understands to be embedded in the 'deep structure' of everyday beliefs in the societies with which he is concerned in *PSJ* is a contextualist one. Miller identifies three relational contexts, each of which have their own distributive principle. A context of solidaristic community (like a family or, says Miller, a nation) brings with it the distributive principle of need; a context of instrumental association (like a market economy) is governed by the principle of desert; and the context of citizenship brings with it the principle of equality. I am going to call this the 'principle-to-context framework'.

The justification for taking an interpretative approach that I will focus on here is an epistemological one.[2] For Miller, if the theorist reaches conclusions about the 'truth' of justice radically divergent from public opinion:

> then we must ask whether the criteria by which the philosopher distinguishes truth from falsehood are the same as those used by the ordinary person. If they are the same, why is there such a radical divergence between the philosopher's conclusions and those of the ordinary person? If, by contrast, the philosopher appeals to different criteria, what warrant does he have for thinking that they lead to objective truth? How can he distinguish between a mere conviction that the truth is to

[1] But only "in part". I return to this below.
[2] This is not the only justification – another is related to the notion that any principles of justice the theorist offers should be plausibly 'action-guiding' (see for example Miller, 2013).

> be found by the method of inquiry he favours, and a warranted belief that this is the case? (1999, p. 52)

These are rhetorical questions; Miller believes there are no good answers.

But do the people in fact think what Miller thinks they think? I will here first suggest that we have reason to at least be doubtful about that. Moreover, even if the people do indeed endorse the principle-to-context framework, there remains room for dispute about what follows from the framework politically. On the other hand, if we suppose that there is in fact a disconnect between what the public believes and what Miller imputes to them, then it is not clear what conclusions about justice should be drawn, because Miller also appears to have independent reasons to prefer his contextualist theory.

In *PSJ*, Miller refers to empirical data to 'test' the principle-to-context framework as an interpretation of what the people think about justice. But at first blush, there appears to be an obvious problem. Miller appeals to survey data (amongst other things) in which respondents answer in a certain way about, for example, the place of desert in judgements about just distributions. But of course, there is never *consensus* among the respondents; for every majority that responds one way there is a minority that responds in a different way, however much triangulation of studies is carried out. What then enables the assertion that 'the people' think something?

I understand Miller's approach here to be to draw a distinction between levels of disagreement. Although the data evidence disagreement among persons, it does not follow that those persons must be disagreeing about the principle-to-context framework; rather, they might simply be disagreeing about how best to categorise the context at hand, or about which context takes priority, while agreeing in the abstract about which distributive principles rightly apply to which contexts. So, for example, disagreements in the survey data about whether it is okay for an employee to use their influence to secure a job for a relative are said by Miller to evidence disagreement about whether the context that takes precedence is the familial context or the

context of the instrumental association (1999: 36). The assertion that the principle-to-context framework itself is consistent with public belief then survives.[3]

This however is not the only possible interpretation of the data: an alternative is that people in fact *do* disagree about the framework itself, and it is that deeper disagreement that explains the divergent responses. The empirical data cannot resolve this issue of their own interpretation. Surveys, for instance, tend merely to ask people to select from given options – we do not thereby learn *why* they select the option(s) that they do. Qualitative studies, in which participants' thoughts about justice are deeply probed, and which therefore provide more insight, are unfortunately less well represented in the data Miller appeals to. It is possible, then, that genuine deep disagreement about principle is being inappropriately rendered as merely a series of misunderstandings about context, or disagreements about context priority.

One worried about this possibility might additionally wonder why, if what the public thinks rightly plays a constitutive role in determining principles of justice, the empirical exercise doesn't come first, rather than only at the point at which confirmation of a pre-constructed theory is sought. One reason potentially to worry about the order in which Miller does things is that by the time we get to the hard data, there has already been considerable intellectual investment in the theory to be tested. And indeed, the elements of the theory sketched in *PSJ* can be, I think, understood to proceed from earlier work such as *Market, State and Community* (1989): the three elements of that book's title being exemplary of the three contexts of instrumental association, citizenship, and community. None of us is immune to 'motivated reasoning' (see Alice Baderin's contribution to this exchange for discussion): might there be a type of confirmation bias at work in the interpretation of the data, that leads one to consider that that data "stands up" the theory (1999, p. 61), rather than simply fails to falsify it?

[3] A second possible response to the variation evident in the data is to begin by accepting the inevitable existence of principled disagreement, and then to make clear that by 'what the people think' is meant 'what the majority think'. This seems to be hinted at when Miller recognises the existence of those with "deviant views" (1999, p. 24), which we might interpret as those whose beliefs about justice do not correspond to the principle-to-context framework. Even if we assume that the number of these deviants is small, however, it's not clear how they should relate to the society they find themselves in: if justice is constituted by what 'the people' think, and yet I do not think the same way, what normative authority does justice have for me?

Perhaps this thought gets things wrong. Miller may respond that even though it is true that he already had a favoured theory before consulting the 'hard' empirical data in *PSJ*, this does not mean that that theory was not developed in the first place via a process of social interpretation. Miller is, after all, a person in the world: he can claim to have developed his initial contextualist theory via an ongoing 'soft' interpretation of public beliefs and sentiments, in a more Walzerian vein: from the fact he had a theory before coming to consult the hard data it does not follow that that theory must have been constructed, in a Platonic manner, via a process of abstract reasoning divorced from existing political practice. And since Miller is a person in the world who cannot help but interpret society as it confronts him, reference to the 'hard' empirical data could never, in practice, come first. But while this may all be right, any such response would also seem to amount to recognition that the 'hard' data in fact plays a less important role in the interpretative methodology than advertised, even in *PSJ*. We should also want to know more about exactly what is involved in the prior, 'soft' process of interpretation that delivers us the theory in the first place but is not explicitly contained within Miller's articulation of his methodology.[4]

Suppose, notwithstanding these concerns, that the principle-to-context framework is indeed an accurate representation of the deep structure of collective public belief. There remains the question of what can properly be said to follow, in terms of specific political recommendations, as an implication of that structure. There is significant scope for divergence on this secondary question, even assuming agreement at that deeper level. An affinity can be drawn with the justificatory "internalism" of Bernard Williams. For Williams, "A has reason to O only if he could reach the conclusion to O by a sound deliberative route from the motivations he already has" (Williams, 1995, p. 35). Miller may want to say something similar, perhaps: 'Policy O is just for Society A only if it can be shown to be an implication of the deep structure of belief about justice Society A already holds'. As Williams freely admits however, "the

[4] In her review of *Strangers in Our Midst*, Linda Bosniak notes that the precise method of social interpretation Miller there undertakes is unclear. While he does still "briefly cite" some polling and survey data, there also seems to be a more general and underspecified attempt to "intuit the zeitgeist" (Bosniak, 2017, pp. 96-7).

deliberative process which could lead from A's present [motivational set] to being motivated to O may be more or less ambitiously conceived" (Williams, 1981, p. 110). But given this variability of 'ambition', any number of differing actions, potentially inconsistent with each other, can seemingly be shown to lay at the end of a "sound deliberative route" from persons' existing motivations (Forst, 2012, pp. 30-31). Because of this, disagreement about what any one person has an internal reason to do seems highly likely, even assuming agreement about the contents of the existing motivational set.

The political implications of the 'deep structure' of public belief can themselves be more or less 'ambitiously' conceived. For instance, both Miller (1983) and Michael Walzer (1989) have endorsed a kind of market socialism. But this is surely not the only possible way to cash out the implications of the purported deep structure of public belief.[5] Even if you and I both agree that the principle of equality applies to the context of citizenship, and the principle of desert to the marketplace, we might well not agree that market socialism is a necessary implication of the confluence of those two principles; perhaps a cap on top-to-bottom income ratios (something else with which Miller has shown sympathy), even where companies stay in private hands, would be sufficient; or perhaps something even less ambitious might be thought to do the trick. In other words, it is again seemingly quite possible for persons to confront the same 'data' – here, the principle-to-context framework itself – and draw opposing conclusions about it.

What does this mean for the normative status of any first-order political prescriptions Miller makes? One answer is to suppose that at *this* level, the philosopher does indeed have some privileged epistemic status, and does not need to seek correspondence with what the people think; if, on the other hand, the philosopher remains constrained to work within the frame of 'what the people think', then it would seem to be the case that they should resist making first-order political recommendations, because it is inevitable that the people will not think one coherent thing. Perhaps the best way to conceive of things here, however, is to treat the philosopher as a citizen contributing to political debate like any other, offering their own

[5] As Brian Barry put it with particular reference to Walzer, "Like it or not … there is a coherent rationale for the private ownership and control of firms, based on widely diffused ideas about the rights of private ownership" (Barry, 1995, p. 74)

interpretation of the political implications of the shared deep structure of belief without any pretence or requirement that that interpretation is, or will ever be, shared by 'the people' at large.

But what happens if the deep structure of public belief, as a matter of fact, and as I have suggested is quite possible, does not comprise the principle-to-context framework that Miller has produced?[6] I noted at the outset that Miller says a theory should be tested "in part" by its correspondence with public belief. He says that "the evidence [about public beliefs] is not decisive from a normative point of view unless we can say something more about why a certain mode of social relationship makes the corresponding principle of justice the appropriate one to use" (1999, p. 34). Part of that 'something more' is the perceived "fittingness" between the context and the principle; an independent normative appraisal. Public beliefs, however well systematised by the theorist, are not in themselves sufficient to ground justice: we must in addition find justification for why the content of those beliefs is appropriate. But there is a curiosity here. The normative 'appropriateness' of the link between a given social relationship and a given distributive principle presumably remains even if it *didn't* accord with what the people think. Indeed, as Miller has put it:

> "it may turn out that people in [a] society that includes context C fail to apply [principle] P in that context; they may not only fail to govern those relationships in the way that P demands, *they may not even recognise that P is the appropriate principle to apply*. In that case, contextualists should have no hesitation in saying that they [i.e. the people] have got it wrong, that the society is to that extent radically unjust" (Miller, 2003, p. 351, my emphasis)

Contextualists *simpliciter* might well be able to say this, but how can contextualists who also believe in the constitutive relevance of public belief to justice do so? How can Miller anticipate telling a society that the principle it endorses is "radically unjust" while also being sceptical about philosophers' epistemic capacity to reach normative conclusions at "radical divergence" from those of the ordinary person? (1999, p. 52). One answer for a contextualist to offer might be that it is possible to tell a society it is radically wrong about a given context of justice only when there

[6] Andreas Busen and Thomas Schramme also reflect on this question in their contributions to this critical exchange.

are other contexts of justice which the society gets right, and that can explain to that society why the context they've got wrong *is* wrong *for them*. In that way, Miller could meet his own condition for a valid theory "that it should be possible for people to come to accept it and live according to its principles", where a component of 'possibility' is that persons can be plausibly persuaded to recognise the theory on the basis of the set of beliefs they already hold (Miller, 2003, p. 352).

There could, though, be no correct theory of justice that is *completely* divorced from what the people think about justice. The reason for this is that, as we have seen, the philosopher is presumed to have no privileged epistemic vantage point – when philosophers reach the judgement that what the public believes about justice is *comprehensively* "wrong", the appropriate reaction is to question the warrant for that judgement. The people are assumed to be competent locators of an appropriate 'deep structure' of justice (even if, as it appears, Miller is willing to allow that they may occasionally go *partially* wrong); the philosopher enters to make that structure plain, and to explicate its appropriateness. But even if Miller does not think that 'what the people think' and what's normatively appropriate will come fully apart in practice, the analytic distinction is illuminating, because if, as I have been suggested he might be, Miller is in fact wrong about what the people think, he seemingly would find himself in a dilemma: on the one hand committed to the notion that the people are essentially the epistemic equals of the philosopher; on the other hand of the independent opinion that the contextualist theory he has imputed to the people is normatively appropriate, when in fact the people endorse something that Miller might consider objectively wrong. It's not clear what the way forward would be in such a scenario – if a correct theory of justice requires both accordance with what the people think *and* an independent ascription of normative appropriateness, could there here even *be* correct principles of justice? In the interests of protecting the methodology from having to confront this kind of difficult scenario, there is always reason to believe that it hasn't occurred.

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