

COMMENTS ON GABRIEL WOLLNER'S "CONTEXTUALISM AND GLOBAL JUSTICE"

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In his paper (71), Wollner states that:

In the general account of contextualism, the just principle was intended to spring from the context that existed independently from people's beliefs. In the second account, the context is itself constituted by people's beliefs, shared meaning and agreements. This point is key to Miller's argument against more substantial principles of global justice, at the same time it is responsible for collapsing contextualism into conventionalism.

I will, for the most part, be concerned with examining this claim, which is essential to Wollner's criticism of the argument that he calls "the argument from pluralism and contextualism" (69).

So, essentially, the claim appears to be that if the context is determined by what people believe, and the relevant principles of justice depend on the context, then it will follow that whatever people believe to be just will turn out to be just in that context, and that is, essentially, conventionalism. This would obviously be a problem for Miller, since he is concerned to put forth an argument that depends on contextualism as a position that is distinct from conventionalism.

So, we can pose the following question: Does the view that context is constituted by peoples' beliefs, shared meaning and agreements really force Miller's theory to collapse into conventionalism? I do not think that it does.

First, it is instructive to examine what Miller himself has to say about this charge. I will attempt to sum up some of what he says in "Two ways to think about justice", and while Wollner is concerned to attack Miller's version of contextualism as it is put forth in another article, "National Self-Determination and Global Justice", I think that the comments made by Miller in "Two ways" are still relevant to responding to Wollner's charge.

Miller states that, "to respond effectively to this challenge (the challenge that contextualism collapses into conventionalism), contextualists must show that the repertoire of social forms relevant to justice is constrained in various ways. Societies cannot shape these forms in any way that they please if they are going to qualify as just" (Miller, 2002 22). Now, as Wollner points out, in this article Miller's version of contextualism is different from contextualism as advanced in "National Self-Determination." But the job of

the contextualist, in responding to the challenge, is essentially the same: the contextualist must show that there are constraints that limit what may be counted as just. If there are no such constraints, then, yes, contextualism collapses into conventionalism. But if there is a way to show that there are certain constraints while remaining true to the central commitments of contextualism, then Wollner's challenge can be resisted. Miller thinks that the challenge can be resisted, and I will use some of his own examples in order to bring out this point.

Miller uses the following example in his discussion of what he calls "constrained variation": different societies award different honors to people based on merit or desert. Different societies attach varying amounts of value to different accomplishments, and the system of giving awards will differ depending on the relative amounts of value placed on these accomplishments. This variation is perfectly reasonable and, as Miller states, "there is no Archimedean point which allows us to say that one of these practices is more just than the other" (*ibid.* 22). Here is the reasonable variation that is crucial to contextualism.

But (and here's the "constrained" part of "constrained variation") a society cannot set up an honors system in a way that requires that a person be black in order to receive honors. It is unjust for a society to do this. Why? Again, to quote Miller, "the answer is that an honors system is just only when those receiving honors deserve them, and that requirement in turn imposes some restrictions on the characteristics that form the basis for being honored" (*ibid.* 22). Desert is conceptually connected to achieving something that is somewhat difficult by using talent, effort, or self-control. Miller puts the point nicely by talking about "the limits of our conceptual universe" (*ibid.* 23). The very concept of desert constrains the criteria that can be used in distributing desert-based honors. Now, and this shows how contextualism does not collapse into conventionalism, even if everyone in the society believed that this practice was just, it would still be unjust. Even if non-blacks in this society were brainwashed or otherwise convinced that this practice was just, it would still be unjust because having black skin has nothing to do with being deserving. A conventionalist would have to say that if everyone in the society believed that the practice was just, then it would be just. The contextualist clearly does not have to say that.

This line of resistance can be used if we are working with contextualism as presented in "National Self-Determination" or "Two ways". According to Wollner, Miller digs himself into a hole by holding that context is constituted by people's beliefs, shared meaning and agreements. It seems perfectly reasonable to hold that context is constituted by these factors but that what can count as just in a context is constrained in certain ways. To say that what

can count as just is constrained is to say that sometimes people will believe a practice to be just and they will be wrong. As stated earlier, sometimes they will be wrong because they will limit the distribution of honors by considering a factor that has nothing to do with desert or merit.

Another way that a society can go wrong is if they exclude certain members of the society from social institutions on the basis of views that are empirically false. Let us consider another example that Miller uses: many societies have, and some still do, exclude women from citizenship. Miller states that, "societies that exclude women do so... 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.* 23). This belief about women is empirically false, and a society that uses maleness as criterion for distributing citizenship rights is using an irrelevant criterion. The contextualist can, consistent with his theoretical commitments, argue that it is unjust to use this irrelevant criterion.

So, by looking at this example we can see another way that contextualists can avoid conventionalism: by holding that empirically irrelevant criteria not be used in distributing social goods. Some might say that contextualists flirt with universalism in making these sorts of arguments, but they do not. It is one thing to argue for universal principles of justice, and another thing to say that there are constraints that limit what can rightly be done in a particular context. Put another way, it is one thing to say 'all societies must follow this principle if they are to count as just,' and another thing to say 'societies may follow different principles, but they can't do things any way they want and still count as just.'

But, since the main issue is whether or not contextualism collapses into conventionalism, let us return to it. It is perfectly reasonable to hold that it is necessary to take people's beliefs, shared meaning and agreements into account without holding that that is all that we must take into account when determining what is just. Another way of putting this point is to say that it is necessary to take these things into account, but not sufficient. In any case, contextualists can be saved from Wollner's objection if they hold that it is necessary but not sufficient to take people's beliefs into account when determining what is just.

So, if a defensible version of contextualism can be maintained along these lines, the threat to cosmopolitanism is clear: it will be difficult to advance and defend strong principles of international justice without stepping on the collective toes of nations that have different principles of distributive justice. There will be a reasonable variation with regard to principles governing how goods are to be distributed, and an international practice that says that goods

ought to be distributed in a certain way will probably violate the right to self-determination that nations are entitled to.

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REFERENCES

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