

## **Facts, principles, and global justice: Does the ‘real world’ matter?**

Johann Go<sup>1</sup>

Department of Politics and International Relations, University of Oxford, Oxford,  
UK

### **ABSTRACT**

The world is undeniably full of injustice. Many feel that much political philosophy is practically impotent and engaged instead in overly abstract theorising insufficiently sensitive to the realities of the world. One response to this concern is David Miller’s influential model of evidence-based political philosophy, which claims to be sensitive to empirical evidence from the social sciences, takes seriously people’s opinions, and defends the role of facts in grounding normative principles. Using various examples from the field of global justice, one of Miller’s key areas of work, I show that Miller’s method is unconvincing on two-levels. His theoretical argument for fact-dependence is flawed, and his practical argument for an opinion-sensitive political theory is either guilty of status quo bias or, in an attempt to escape it, becomes self-defeating. While the paper is primarily critical, I endeavour also to draw out the implications of my critiques for the role of the ‘real world’ in theorising.

**KEYWORDS** Fact-Principles Debate; David Miller; G. A. Cohen; Realism; Ideal and Non-Ideal Theory; Global Justice

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<sup>1</sup> Johann Go [Johann.Go@politics.ox.ac.uk](mailto:Johann.Go@politics.ox.ac.uk)

## Part I: Introduction

Significant attention has been directed at the field of global justice in contemporary moral and political philosophy. Despite this, it is fair to say that philosophical theorising about global justice has made little progress, on a practical level, in reducing rampant global injustice.<sup>1</sup> In part due to this perceived lack of impact, debates about political philosophy's appropriate aims and methodology are ongoing and becoming increasingly prominent.<sup>2</sup> The case of global justice raises interesting questions about the relevance of the real world in our philosophical theorising, and about the methods of political philosophy more generally.

In response to these debates, David Miller has advocated a method of political philosophy which is sensitive to empirical evidence from the social sciences, is cognisant of people's opinions about political ideas, and takes seriously the role of facts in grounding normative principles (Miller, 1999, 2002, 2008a, 2013, 2016a, 2016b). Miller calls this approach 'political philosophy for earthlings' or 'evidence-based political philosophy' (EBPP) (Miller, 2008a). This paper analyses this methodological approach, showing that it is ultimately unconvincing in the manner Miller intends. Analysing Miller's philosophical methodology through the lens of examples from global justice is especially apt, given his noteworthy contributions to contemporary debates in this sphere. My aim in the paper, however, is not to provide substantive answers to any of the ongoing debates in global justice. Rather, it is focussed on analysing Miller's EBPP methodology to show that it is ultimately flawed.<sup>3</sup>

My strategy in this paper proceeds as follows. In Part II, I outline Miller's theory and explore some of the literature on the topic. I highlight my intended contribution to this growing body of literature. In Part III, I critique the first strand of his theory, which I call the *meta-theoretical claim*. I show that Miller's claim of fact-dependence is not plausible. While his first form of grounding (evidential grounding) cannot get off the ground at all, pre-suppositional grounding encounters two key problems: the *selection* and *mediation problems*. I argue that, together, these two problems are fatal to his account. In Part IV, I critique the second strand of his theory, which I call the *practical-normative account*. As well as suffering from the selection and mediation problems, it runs into a challenge I call the *fact-opinion problem*. To escape this problem, I argue that Miller must give up his fact-

dependence claim or the practical-normative claim, neither of which would be tenable for his account. In Part V, I briefly present some constructive points about the role of facts and the real world in political philosophy. In Part VI, I conclude my argument.

## **Part II: Miller's Evidence-Based Political Philosophy**

Miller advances two distinct but related positions about the nature of evidence-based political philosophy (EBPP), which I label the *meta-theoretical claim* and the *practical-normative claim*. The *meta-theoretical claim* is Miller's claim that principles depend upon facts, whereby the latter grounds the former. It relates to the ongoing fact-principles debate – the argument about the relationship between facts and normative principles, and the role of the former in grounding the latter. G. A. Cohen famously claimed that fact-dependent principles must rest upon a more fundamental fact-independent principle (Cohen, 2003). That is, 'principles that reflect facts must, in order to reflect facts, reflect principles that don't reflect facts.' (Cohen, 2003, p. 214). Following Cohen, I define 'principles' as normative prescriptions directed at agents and 'facts' as any truth (except principles, if these are 'truths') that one could reasonably think provides support for a principle (Cohen, 2003, p. 211).

Cohen argues that a person who affirms  $P$  (a principle) on the basis of  $F$  (a fact) must rely upon a further principle ( $P_1$ ) that is not dependent on that fact. The example of promise keeping is used. Someone who affirms the principle ( $P$ ) that we ought to keep our promises, based on the fact ( $F$ ) that doing so is the only way for us to pursue successfully our own projects, must hold on to another principle ( $P_1$ ) that we ought to help people pursue their own projects (Cohen, 2003, p. 216). A more ultimate principle ( $P_2$ ) could then be used to ground  $P_1$ , such as a principle that, notwithstanding other morally relevant considerations, we ought to promote people's happiness (Cohen, 2003, p. 216). The chain of argument continues until, in Cohen's view, we eventually reach a fact-independent, ultimate principle. Cohen adds a desideratum to prevent an infinite regress of principles, stating that if one has a sufficiently clear view of one's principles, it would not run into such an infinite sequence.<sup>4</sup> Thus, Cohen concludes that '[t]he view that all principles are sensitive

to fact sounds reasonable, but I believe it to be demonstrably mistaken' (Cohen, 2003, p. 214).

Against this position, Miller argues that while Cohen is right to conclude that facts cannot *entail* moral principles, they nonetheless provide grounding in two important ways: *evidential grounding* and *pre-suppositional grounding* (Miller, 2008a). Miller argues for a broader conception of what it means for facts to 'ground' or 'support' a principle, beyond entailment. First, facts may provide *evidential grounding* to support a principle (Miller, 2008a). Evidential grounding is the situation whereby 'a fact supports a conclusion, not by entailing it, but just by providing evidence that makes it likely to hold' (Miller, 2008a, p. 34). Thus, for example, if something has the features of being a small bird with a white wing-bar and an orange breast in the context of an English garden, this grounds the claim (without logically entailing) that the bird is a chaffinch (Miller, 2008a). Miller acknowledges that the grounding is not absolute or fool-proof, in the sense that there are other birds that may fit that description which are not chaffinches. However, *evidential grounding* provides support for the view that it is highly likely to be a chaffinch.

Second, fact-dependence can be demonstrated through the idea of *pre-suppositional grounding*, whereby unless a fact were to hold, the principle would not follow. Again, Miller's claim is that facts can support principles in a manner short of entailment: 'although A doesn't entail B, A's being true is a necessary condition of B's being true ... unless the premise holds, the conclusion cannot' (Miller, 2008a, p. 34). Unless the fact that humans can self-consciously make choices were to hold, the principle that liberty is intrinsically important would not follow (Miller, 2008a). The primary claim behind Miller's view of pre-suppositional grounding is that 'we do not have to show that F can conclusively justify P... What we have to explain is simply the role played by F in supporting P' (Miller, 2008a, p. 36).<sup>5</sup>

The *practical-normative claim* concerns Miller's vision of the purpose and nature of political philosophy, namely as a practical venture that can guide action and be relevant to the world, here and now (Miller, 1999, 2013, 2019). He rejects what he calls the 'Transcendental Truth' view of political philosophy, which is focussed on articulating idealised, universal conceptions of justice that are divorced from the realities and possibilities of the world (Miller, 2019). Instead, Miller argues that political philosophy must start from the world as it is, with a focus on being

realistic, contextual, and feasible. Political philosophy must be attuned to the factual realities of our social context and people's opinions about justice, supplemented by the empirical tools offered by the natural and social sciences. To identify what is feasible here and now, 'political philosophers need to take seriously the political beliefs of ordinary citizens' (Miller, 2019, p. 6).

Miller's EBPP has prompted a number of responses in the literature, both supportive and critical. At the same time, it is worth noting that Miller's arguments around EBPP, including fact-dependence, realism, and feasibility, cut through many other methodological debates taking place in the wider political philosophy literature. These include debates in political philosophy around ideal and non-ideal theory<sup>6</sup>, moralism and realism<sup>7</sup>, practice-dependence<sup>8</sup>, and the relevance of feasibility constraints<sup>9</sup>. My focus is primarily on Miller's model of EBPP although, insofar as his account incorporates insights from several cross-cutting debates, I indirectly address these broader topics too.

In what follows, I provide a brief map of the debate as it relates broadly to EBPP. In response to the *meta-theoretical claim*, Edward Hall (2012) has defended Miller's account of fact-dependence, arguing that Cohen's argument fails because without facts about context that begins from within the political domain, normative principles cannot provide convincing answers to real-world politics. Against Cohen, Hall affirms Miller's view of pre-suppositional grounding by emphasising 'that some facts bring certain principles into play' and, therefore, 'a set of facts may make a principle relevant and in so doing limit its applicability to a range of cases' (Hall, 2012, p. 179). Similar to Miller's view about the importance of the 'here and now', Thomas Pogge argues that Cohen fails to justify why we must extend our morality to 'all possible worlds and contexts' (Pogge, 2008, p. 475).

In response to Miller's idea of pre-suppositional grounding, Cohen argues that pre-suppositional grounding is not a form of factual grounding at all:

*So-called presuppositional grounding is not a form of grounding, where that means, as it has always meant in the present discussion, providing a reason for affirming. [...] That a certain action is possible is no more a reason for directing it than it is for forbidding it, nor is it part of the reason for either, since nothing can be part of the reason for something if it is equally a reason for its opposite (Cohen, 2008, p. 336).*

Because pre-suppositional grounding can mandate conflicting principles, a point I pick up in my substantive discussion, it cannot be advanced as a defence of fact-dependence. In another example, Cohen states that “‘The King of France is not bald’ presupposes that there is a king of France as much as ‘The King of France is bald’ does’ (Cohen, 2008, p. 336). In my critique of Miller’s meta-theoretical position, I aim to articulate more clearly why Cohen is right that pre-suppositional grounding is not a form of grounding that can prove fact-dependence.

While ardent defenders of Miller’s meta-theoretical account are noticeably rare, more theorists are sympathetic to the practical-normative component of EBPP, at least in some form. Andrea Sangiovanni, in a series of influential articles reminiscent of Miller’s position on the importance of context and practice, affirms the priority of politics to ethics, and the importance of understanding institutional arrangements before principles of justice can be applied (Sangiovanni, 2008, 2016). Amartya Sen’s own views seem compatible with the underlying idea in Miller’s practical-normative claim, given his criticism of political philosophy’s obsession with what he calls transcendental justice (the optimal, ideal notion of justice) rather than comparative justice (comparing presently feasible notions of justice) (Sen, 2006, 2009).<sup>10</sup> On the other hand, Kasper Lippert-Rasmussen forcefully challenges both the meta-theoretical claim by arguing against fact-dependence, *and* the practical-normative claim by providing counter-examples to Miller’s argument that something being ‘transcendental’ cannot also be practical (Lippert-Rasmussen, 2019). Two examples Lippert-Rasmussen cites are people’s opposition to the death penalty and state torture. In his view, people’s reasoning for opposing these two issues are fact-insensitive and purely abstract, but they nonetheless have a practical, action-guiding result.

It is worth noting, however, that even those generally supportive of Miller’s EBPP do not themselves accept the stronger meta-theoretical claim. Sangiovanni and Sen, for instance, do not advance the stronger claim of fact-dependence. Likewise, while Colin Farrelly (2011) provides one of the earliest critiques of the contemporary fact-insensitive (or what he calls ‘extreme ideal theory’) approach to political philosophy, he remains silent on the claim that principles are *ultimately* dependent on facts.<sup>11</sup> Enzo Rossi, despite affirming a position similar to Miller’s

practical-normative claim where issues of application cannot proceed without facts, nonetheless states that ‘there are true, non-trivial fact-*insensitive* normative principles’ (Rossi, 2016, p. 506, emphasis added). Theresa Scavenius (2019) defends a moderate position she calls ‘fact-sensitivity’ but denies fact-dependence on Miller’s conception. Jonathan Wolff, while advocating for a political philosophy sensitive to practical issues and public policy, nonetheless emphasises the value of presenting an ‘ideal blueprint’ for society (Wolff, 2011, 2015).

The primary purpose of this section is to show the diversity of positions in the methodological debates in political philosophy, and how these intersect with Miller’s account of EBPP. The debate is certainly not new, but the call for increased attention to action-guidingness and the resurgence of realist thought in many circles of political philosophy mandates directing our attention to these discussions.

Despite Miller’s influence in contemporary political philosophy, a systematic analysis and critique of his EBPP method is still lacking. In what follows, I aim to contribute to the start of a systematic critique of EBPP as a whole. I argue against the meta-theoretical claim by showing that Miller has not established fact-dependence in any meaningful sense. While I agree with Cohen’s response to Miller’s idea of pre-suppositional grounding – that pre-suppositional grounding is not a form of fact-dependence at all – I aim to articulate more clearly exactly why it is the case that pre-suppositional grounding cannot establish the claim of fact-dependence. I develop this conclusion by highlighting a two-strand objection, consisting of what I call the *selection problem* and the *mediation problem*. Against the practical-normative claim, I draw on the foregoing discussion of *selection* and *mediation*, together with an objection I call the *fact-opinion problem*, to show that it, too, fails in the strong manner Miller intends.

### **Part III: Against the Meta-Theoretical Claim**

Recall that Miller outlines two ways in which facts can ground principles: evidential grounding and pre-suppositional grounding. Evidential grounding as a form of fact-dependence seems to me to be clearly flawed in a way that pre-suppositional grounding might not immediately be. There are two reasons for thinking this. First, the sole example Miller gives is of the chaffinch. That is, a bird

with an orange breast with a white wing-bar in the context of an English garden evidentially grounds the fact that it is a chaffinch. However, notice that Miller is providing evidential grounding *for a fact-claim* – namely, that various supplementary facts are providing evidence for another *fact-claim*. The example of the chaffinch, therefore, is dis-analogous and misleading because it is using evidence to ground a *fact* (i.e. that something *is* a chaffinch), not a principle. It is unclear how, from this sole example, evidential grounding could apply to moral principles. The components of normative principles (such as ‘do not torture’ or ‘distribute resources equally’) do not manifest themselves physically in the same way as a chaffinch’s components (e.g. its chest colour, wing-shape). My primary point here, then, is that Miller is insufficiently clear about how evidential grounding of *facts* could translate to the evidential grounding of *principles*. Second, we may question whether evidential grounding is really an example of fact-dependence in any meaningful sense, in the same way Cohen attacks pre-suppositional grounding as being a form of factual grounding at all. It may be true that empirical facts go into the application and shaping of normative principles, but it would not prove the stronger claim that ultimate principles are *dependent* on facts – a claim needed to prove fact-dependence.

In the absence of further examples or argument, Miller has not established how evidential grounding provides any support for the view that facts can ground *principles*. Support for fact-dependence from within Miller’s meta-theoretical claim must therefore come from pre-suppositional grounding. In what follows, I highlight what I regard as a fatal two-strand objection to pre-suppositional grounding. Given that evidential grounding does not look like it can get off the line at all, if I refute pre-suppositional grounding, this would dismantle the meta-theoretical component of EBPP.<sup>12</sup>

### ***The Selection Problem***

The first strand of my objection to Miller’s pre-suppositional grounding account is what I call the *selection problem*. For every normative question, there exists multiple relevant facts ( $F_1, F_2 \dots F_n$ ) that each lead to a *different* principle ( $P_1, P_2 \dots P_n$ ). If  $F_1$  is treated as the relevant fact, then  $P_1$  would be the mandated principle – or, in Miller’s pre-suppositional format, unless  $F_1$  were to hold,  $P_1$  would



not follow. On this basis, he affirms  $P_1$ . However, another theorist may identify  $F_2$  as the relevant fact, which instead lends support to  $P_2$ , a *contradictory* principle to  $P_1$ . The meta-theoretical claim thus faces a major hurdle: it must be able to account for which fact(s) to take into account, and to justify this *independently of a higher-order normative principle*. That is, it must adjudicate between  $F_1$  or  $F_2$ , in the above scenario, without invoking a more fundamental normative principle.

To take a concrete example, consider one of Miller's key interlocutors, Joseph Carens. Miller affirms  $P_1$ , the idea that states are entitled to regulate their borders, grounded in  $F_1$ , the fact that this is necessary for states to discharge their duties of social justice domestically.<sup>13</sup> Carens affirms a conflicting principle,  $P_2$ , the idea that borders should generally be open, grounded in  $F_2$ , the fact that people's life prospects would be significantly more equal in such an arrangement.<sup>14</sup> It is true that both  $F_1$  (effective discharge of social justice duties) and  $F_2$  (equality in life prospects) may be 'facts' that require a further normative justification. However, we can set aside this problem for a moment because the current critique is not targeted at that particular concern. The selection problem shows that choosing between  $F_1$  and  $F_2$  cannot be done *merely* via some fact; it requires a more fundamental principle to adjudicate which fact to select as the pre-suppositional (or evidential) condition to ground the principle. Miller must draw upon a fact-independent principle to *select* which facts are the relevant ones. That is, a principle is required to select whether  $F_1$  or  $F_2$  or some other fact ( $F_n$ ) ought to be selected to provide the pre-suppositional grounding for the favoured principle. Relying upon a fact cannot work, given that what is essentially at stake here is deciding which fact is more normatively salient or important for grounding a principle. Absent a principle, a fact does not have the normative content to adjudicate between the moral salience and weight of competing facts.<sup>15</sup>

Consider another concrete example that highlights the *selection problem*. For Miller, the appropriate principle depends on the factual realities of the particular context: "In  $C_1$ ,  $P_1$ ; in  $C_2$ ,  $P_2$ ; . . . in  $C_n$ ,  $P_n$ ". This entails that whenever a decision has to be made or a policy followed in context  $C_1$ , the correct principle to apply is  $P_1$ ' (Miller, 2002 p. 8). Phrased in terms of pre-suppositional grounding, we can state that unless  $C_1$  holds,  $P_1$  would not follow.<sup>16</sup> In line with his contextualism, Miller affirms  $P_3$ , the principle that states have a right to exclude would-be migrants,

based on the fact that we are in a context,  $C_3$ , where nation states impart meaning to people's identity (Miller, 1993). Another theorist, Sarah Fine, on the other hand, affirms  $P_4$ , the principle that states do not have a right to exclude would-be immigrants, based on the fact that our immigration system/context,  $C_4$ , is rife with racism (Fine, 2013, 2016). Miller must decide on the relevant context –  $C_3$  or  $C_4$  – and, given both are true, is faced with a conflict about which context to *select* as the fact to pre-suppositionally ground his principle.<sup>17</sup> Deciding on the relevant fact and context requires a selection principle and cannot be done merely by considering those same facts, for reasons I articulated above.

Miller may attempt to immediately escape this objection by limiting the grounding facts only to proven and reliable *facts*, rather than what people may reasonably disagree and be mistaken about. It is important to note that the selection problem does not merely say that people may reasonably disagree about which facts are *true*, and that this would affect which principles are espoused. While I think this is a problem which itself weakens Miller's argument, my critique makes a stronger claim than this. Even if there is no disagreement about which facts are true (i.e. even if everyone agrees which facts are true), the selection problem would still apply. This is because *from the smorgasbord of facts we must still select the relevant true fact using some kind of normative principle*. It makes no difference if we grant Miller the condition that we must only consider proven or reliable facts; the *selection problem* would still stand.

Another immediate reply is to argue that the *selection problem* is not decisive against pre-suppositional grounding, since it would merely lead to a regress that ultimately terminates with a *fact*. On this response, the principle used to *select* the relevant fact/context could itself be further grounded upon a fact-dependent principle. Thus, if a 'selection' principle (call this  $P_S$ ) is used to select  $C_4$  (racist context) as the relevant context over  $C_3$  (national identity context), on the grounds that minimising racial injustice is more important, then  $P_S$  itself could be grounded in another ultimate fact ( $F_S$ ). The *selection problem* is considered diffused because going further back would reveal that a fact is ultimately grounding the principle used to select the relevant fact(s). While I share Cohen's view that the regress would ultimately terminate with a fact-independent principle, I will not pursue this response

to the reply. Instead, to refute this reply against the *selection problem*, I turn to the second strand of my argument against the *meta-theoretical claim* of EBPP.

### ***The Mediation Problem***

The second strand of my objection is what I call the *mediation problem*. Recall Miller's claim that a principle is fact-dependent insofar as a fact pre-suppositionally grounds a principle, such that unless the fact were to hold, the principle would not follow. This might seem like a value-free, innocent claim about the logical structure of normative claims, but this is very far from the truth. The mediation problem is the observation that to link  $F$  with  $P$ , even in a pre-suppositional sense, *one needs a fact-independent principle to show that  $F$  is meaningfully relevant to  $P$*  in the first place. This is potentially a fatal problem because it shows, again, that  $F$  is unable to provide the fact-dependence for  $P$  *without* invoking a more fundamental linking principle which is fact independent. On Miller's own example, one has to make a normative judgement that capacity for self-conscious choice *is normatively* relevant for the principle of liberty to hold (Miller, 2008a).

Consider another example to illustrate this objection more clearly.  $P_A$  is the principle that equality of opportunity applies between citizens of the United Kingdom, grounded in  $F_A$ , the fact that they are involved in a national scheme of mutually beneficial cooperation. This is an example of pre-suppositional grounding in Miller's example because he thinks that were  $F_A$  not to hold,  $P_A$  would not follow.<sup>18</sup> Assume a plethora of further facts that, let us say, happens to coincide with citizens of the UK:  $F_B$  (owning a dog);  $F_C$  (being 185cm tall),  $F_D$  (having purple as one's favourite colour), and  $F_E$  (enjoying a pint at the pub). The question for Miller, under the mediation problem, is this: Why does one particular fact,  $F_A$  (involvement in a national scheme of mutually beneficial co-operation) link up with the principle of equality of opportunity by providing pre-suppositional grounding, but not  $F_{B,C,D,E}$ ?

This might strike some as a ridiculous and unreasonable question. After all, why should owning a dog or enjoying a pint at the pub matter for equality of opportunity? Or how can the feature of a person's favourite colour possibly provide any kind of pre-suppositional grounding for equality of opportunity? This initial incredulity, however, misses the point of my objection. The force of the objection is

that to even stipulate which facts can provide the necessary pre-suppositional grounding, one must already have an independent normative conception (i.e. a principle) to say that  $F_A$  is necessary for  $P_A$ , but  $F_{B,C,D,E}$  are not. Considering a related example, to make the statement that nationality pre-suppositionally grounds our principles around the scope of freedom of movement but not, say, eye colour, height or dog ownership status, is to invoke a prior normative principle. To say that something pre-suppositionally grounds something is itself a normative statement *because* it involves judgements of normative salience and relevance. One must be able to judge, independently of the facts, that *F is normatively relevant and salient* in order for P to hold.

A second possible reply is to say that we have to further ground  $F_A$ , which is really a normative principle, with another fact-dependent claim. That is, the idea that involvement in national cooperation matters for equality of opportunity can be pre-suppositionally grounded on a further fact. This reply, however, cannot escape my objection. No matter how many facts ( $F_1 - F_n$ ) we include, the mediation problem will continue to apply. This is because for *every* F stipulated, no matter how far back one goes, a fact-independent principle must provide the link to the principle (P) it is supposed to pre-suppositionally ground. The replies open to Miller therefore do not succeed in refuting the mediation problem. This response also invalidates the earlier regression reply to the *selection problem*. It shows that stipulating further facts that might provide pre-suppositional grounding for a principle cannot succeed because for each step one goes back in an effort to find an ultimate fact, a principle must be provided to articulate why that proposed fact is normatively relevant to ground the principle in the first place.

Even with a view that *multiple* facts can sometimes ground a single principle (i.e.  $F_1$  and  $F_2$  *together* ground  $P_1$ ), the *selection and mediation problems* would still apply. A fact-independent principle would still be required to select and mediate between the principle and the *group* of facts. We would need to show that  $F_1$  and  $F_2$  should be *selected* as the relevant facts and that, taken together, they are meaningfully relevant to pre-suppositionally ground  $P_1$ . The mediation problem, like the selection problem, poses its biggest challenge to Miller's account when it can be used to mandate conflicting principles. This is especially challenging for Miller,

who argues for an explicitly action-guiding and practically-oriented vision of political philosophy grounded in such facts.

#### **Part IV: Against the Practical-Normative Claim**

Having established that Miller's EBPP does not succeed in establishing fact-dependence, I turn now to his more general guidelines around the practical-normative aspect of political philosophy. One of Miller's clearest articulations of the practical-normative thesis in real-world terms is as follows: "The aim ... is to develop normative principles that could guide the public policy of a democratic state, say in relation to world poverty or to reparations for historic injustice, but to ground these principles in some general features of contemporary societies" (Miller, 2008b, p. 553). Miller's thought here is that our solution to the public policy for world poverty or historic injustice should be grounded by some other facts about contemporary society. It is worth pausing to process this statement, which I find contains a slightly puzzling idea. Why can the existence of world poverty or historic injustice not themselves be taken as *facts*? That is, treated as *facts* that themselves ground normative principles on Miller's own account. It seems that Miller is immediately falling prey to the selection problem in his selection of grounding facts.

One initial concern with my framing of this objection is that we cannot take world poverty or historic injustice as facts in Miller's sense because it is the *issue* that we are attempting to solve. I am not convinced by this charge. We may instead state that our concern is with the problem of equality or injustice more generally. If we frame our issue this way, then the existence of global poverty and historic injustice now become *facts* that are relevant to the higher-order normative problem we are attempting to answer (i.e. equality or injustice). To artificially bracket the problem of world poverty as being a non-relevant fact to consider would not only be to fallaciously beg the question in favour of one preferred answer, but to fall prey immediately to the selection problem in choosing facts that fit the normative principle we wish to affirm.

The selection problem's implications for the practical-normative aspect of EBPP comes to light when we contrast two influential writers in global justice: Peter Singer, and Miller himself. Consider Miller's recent monograph on immigration,

*Strangers in Our Midst* (Miller, 2016c). The work is clearly informed by Miller's view of some of the most relevant and salient facts in the contemporary world, namely the importance of national identity and culture. Against this work, consider Singer's influential older essay, *Famine, Affluence, and Morality* (Singer, 1972). Here, Singer takes the fact of world poverty, famine, and the ability of affluent persons to help as the relevant and salient facts. It is entirely fair to say that both sets of facts in the accounts of Miller and Singer are true and that both sets are still applicable today. It is undeniable that global poverty and affluence exist today, and also undeniable that people care about their national identity. Yet Miller places more emphasis on his set of facts, and Singer places more on his own. They are able to do this, I argue, because they have a prior normative principle of which facts matter in the world.

Another type of critique is the accusation that Miller's theories themselves are contradictory to his practical-normative claim of basing his principles upon facts of the world. Sarah Fine, reviewing Miller's work, argues that he advantages a certain account of nationalism and history that ignores the factual realities of how states came about and the injustice they continue to sustain (Fine, 2017). Miller thus switches between making descriptive claims (about the world as he sees it) and prescriptive claims (about the world as he would like it) without clearly acknowledging this task and undermining his own claim that principles are to be based on facts, rather than being theorised transcendentally (Miller, 2019). When Fine's scrutiny is combined with my more theoretical critique (i.e. the selection problem), the methodological foundations of EBPP are challenged.

A similar concern relates to the mediation problem. Assuming we can even choose the appropriate facts of contemporary society to ground our theoretical task, what justifies the use of those specific facts in *grounding* our theorising? Consider the above sets of facts again: national culture and identity in Miller and world poverty for Singer. The fact that national culture or world poverty *is relevant* for a particular principle (or normative theory) requires a mediation principle that is itself independent of the 'facts' of contemporary society. A fact-independent principle is necessary to link the fact of national identity or world poverty to immigration policies and stringent duties of aid, respectively.

There is another major way, however, in which the practical-normative claim is problematic. I will call this the *fact-opinion problem*. Miller is not clear about which ‘facts’ one must consider. I must emphasise that this is not a rehash of the selection problem, but a unique manifestation of it. Assume two kinds of facts, broadly: (i.) ‘facts’ in the sense of natural features about the world, such as scientific theories, objective geographical features, or statistical figures; and (ii.) ‘facts’ in the sense of people’s opinions, views, and disagreements. Henceforth, I will refer to the first kind of facts in (i.) as *facts* and the second kind in (ii.) as *opinions*.<sup>19</sup> Recall that Miller explicitly states that opinion polls and people’s real views about what justice requires are important in our theorising (Miller, 2016c, 2019). The issue for EBPP becomes what to do in circumstances where facts and opinions diverge.

Consider the idea of equality of opportunity for women to attain senior positions in the workplace. Assume that the opinions of ‘ordinary citizens’, as Miller calls them, are opposed to such a principle on the grounds that they believe women are unable to fulfil the tasks as well as men. People believe that women are more easily stressed, cannot cope with the workload, and are simply less competent than men by virtue of their ‘brain structure’. Against these opinions, we have scientific evidence (facts) that women are as capable as men in performing these roles, are no more stressed than any other average senior executive, and that the view about their differential brain structures is mere pseudo-science. We have a putative case, therefore, of the facts and the opinions diverging. On the practical-normative claim, it is not clear at all whether the facts should override the opinions (or vice versa), or whether we should even pay any attention to the opinions.

A simple response appears to be open to Miller: he could simply offer some qualifications and limits on what counts as a legitimate opinion to be considered in our theorising.<sup>20</sup> When taking into account people’s opinions, we should be attuned to the ways in which these may have been shaped by bias, prejudice, and social influence.<sup>21</sup> On these grounds, we have reason to be critical of opinions about women, given the social context in which they have been shaped and biased. We should therefore only accept certain qualified opinions that we have reason to believe are reliable. Call this the *qualified opinion response*. This response, however, comes with significant costs to his account.

By advancing the qualified opinion response some significant implications follow for EBPP. First, it challenges the meta-theoretical foundation of EBPP, given that fact-dependence is now reliant on a normative premise about what is a 'qualified' opinion. In the worst-case scenario, the *qualified opinion response* runs the risk of merely begging the question in favour of whatever principle one already prefers. In the best-case scenario, it still requires normative input about what legitimately counts as 'qualified', such that unqualified opinions can be ruled out. Even if this is defined as thinly and as neutrally as possible, normative judgement is still required in evaluating what counts as undue social influence or bias in people's opinions.

Second, and more in line with our critique of the practical-normative claim, it challenges the action-guiding nature of EBPP such that it is at risk of being rendered practically useless. If only qualified opinions are to be taken into account, defined as being free from bias/prejudice and undue social pressure, this may exclude almost all opinions about justice. It would warrant extreme caution when taking into account most people's opinions about injustice, given that a significant portion of these have been formed through the history of colonialism, racism, and other forms of contemporary and historical injustices. The case of immigration is arguably one where people's opinions have been tainted with the history of racism and colonialism. It would mean, under the qualified opinion response, that we should be suspicious of people's opinions and views about immigration. Yet this would not be tenable for Miller's own project, since he bases his theories of immigration strongly (though not exclusively) on people's opinions about nationality.

Third, and most fundamentally, there will still be instances where 'qualified opinion' and 'objective facts' diverge. Stipulating that the opinion must be qualified will do little to solve the issue. To solve the issue of conflict, one must be given priority. If we give opinions priority, the *fact-opinion* problem is not solved, and status quo bias or adaptive preference formation become very real dangers – dangers Miller himself are aware of and at pains to mitigate (Miller, 2019). On the other hand, if we give facts priority, it suddenly makes EBPP and the practical-normative claim less interesting since it would mean reverting to a transcendental view of truth and ignoring what people's opinions are. Miller himself strongly rejects this view of theorising (Miller, 2019). It would also fall prey to the meta-theoretical



objections to EBPP I outlined, due to the issue of selection and mediation of which facts ought to inform normative principles.<sup>22</sup>

Another possible response to the *fact-opinion* is that we need to judge, on a contextual and case-by-case basis, whether facts or opinions ought to have more sway.<sup>23</sup> The thought is that in certain contexts, facts ought to prevail or be given additional weight, while in others opinions should hold the balance. My reply to this response is similar to the qualified opinion response, which is that this would involve an untenable and self-defeating reliance for EBPP on ‘transcendental’ normative principles. The criteria used to judge whether facts or opinions should be given more weight in specific instances would be a principle that transcends the facts/context of the case. It would thus run contrary to the practical-normative component of EBPP, and face the same dilemma highlighted above – namely, that giving opinions priority would fall prey to status quo bias while giving facts priority would be self-defeating for the meta-theoretical and practical-normative component of EBPP.

## **Part V: Does the real world matter, then?**

The objections against the practical-normative strand of EBPP are not just mere applications of those I levied against the meta-theoretical strand. While the selection and mediation problems also pose an issue for the practical-normative claim, I have shown that there are unique issues that go beyond those problems. Therefore, Miller’s EBPP is liable to a two-pronged attack: one that starts from the top down (attacking his meta-theoretical claim) and one that starts from the bottom up (attacking his practical-normative claim). Where, then, does this leave the endeavour of EBPP, and what does it say about the role of facts and the real world in our philosophical theorising? While my aim was never to present a comprehensive account of the role of facts in political philosophy, some brief remarks can be made.

First, facts can be relevant for political philosophy without this needing to be any kind of dependence relationship at a fundamental level. Facts may be relevant not in grounding our fundamental normative principles but in guiding the *application* of these to various contexts and situations. While Miller is not satisfied with facts

playing this mere 'application' role, I am simply keen to emphasise that the use of facts in this manner is not ruled out by my argument thus far. Indeed, it is hard to see how the field of global justice – and much political philosophy, in general – could proceed without any consideration of the 'real world', when much theorising is in response to contemporary injustice. So-called realists who critique ideal theorists for being insufficiently attuned to the realities of the real world, then, are not objecting to a failure to consider reality so much as a failure to consider *their* reality. Given my foregoing discussion of selection and mediation and the fact-opinion problem, combined with Fine's critique, the main thrust of Miller's practical-normative claim can therefore be framed as a lack of attention to *his* set of facts, rather than a lack of attention to facts *tout court*. More provocatively, it may be a conflict between *Miller's* world and the *real* world.<sup>24</sup>

Second, the application of facts to normative theorising will itself be governed by normative principles. This might seem like repetition. Again, however, it is worth being explicit. None of my preceding critical discussion rules out the consideration of facts in normative theorising, nor does it deny its importance. Rather, it says that where facts are used to support or pre-suppositionally ground a normative principle, this itself is governed and mediated by a more fundamental normative principle. As long as this proviso is borne in mind, theorists are free to draw upon various facts in the world to form their theories. Thus, when Singer or Miller identify certain facts about the contemporary world to apply to their theories, they ought to acknowledge that their choice and application of these facts constitute a normative exercise. So long as theorists subject their facts to appropriate empirical and normative scrutiny, and so long as they accept that the *selection* and *mediation* of these facts are themselves governed by a normative principle, there is plenty of appropriate scope for the use of evidence, empirical data, and facts from the social and natural sciences in our philosophical theorising.<sup>25</sup> This understanding of the role of the real world does not fall prey to the earlier fact-opinion objection, since it does not see a problem with relying upon transcendental *fact-independent* principles to delineate the appropriate role of facts/opinions in specific instances.

Consider, as a further exposition of this point, Ronald Dworkin's influential *envy test*. According to the envy test, equality of resources between two persons obtains when neither of them prefer the other's bundle of resources (Dworkin,

2002). There is a sense, therefore, in which ordinary people's beliefs about justice determines the contours of when justice obtains.<sup>26</sup> A *fact* of a particular kind – namely, people's beliefs about their bundle of resources – appears to determine whether justice obtains or not. This position, however, does not lend support to EBPP because of the following reason. The *envy test* is itself justified through an idealised normative thought experiment conceived by Dworkin. Therefore, if the *fact* of someone's envy matters, it is because there is an existing *principle* articulating that people's feeling of envy matters, normatively. What the example of the envy test shows, however, is the way specific facts can be relevant to particular conceptions of justice without collapsing into the EBPP view.<sup>27</sup>

Third, and finally, it is worth echoing an important remark made by Kasper Lippert-Rasmussen regarding the potential of abstract theorising to have practical impact. Rather than seeing abstract, 'transcendental' political philosophy as practically impotent, we should acknowledge the ways in which even purely abstract theorising can have practical effects (Lippert-Rasmussen, 2019). The theorist who writes about the death penalty or women's suffrage in a purely abstract way, insofar as this is possible, can nonetheless command practical import for her theories without having to explicitly consider 'facts' in her work. I do not take a judgement on this view, but merely highlight it as a potential way of disaggregating the claim that practically oriented political philosophy cannot also be abstract at the same time.<sup>28</sup> If Lippert-Rasmussen is right, then, at least on the practical-normative claim, Miller may be mis-directed in criticising abstract theorising for having no practical, action-guiding aspects.<sup>29</sup>

## **Part V: Conclusion**

In this paper, I have argued that both strands of Miller's argument in EBPP fail. The meta-theoretical claim suffers from a two-strand objection, the selection problem and the mediation problem, from which I can see no escape without sacrificing the central claim of fact-dependence. The practical-normative claim, as well as being plagued by the application of the selection and mediation problems, further suffers from the fact-opinion objection. Advancing the qualified opinion

response merely collapses the argument in ways that makes Miller's position self-defeating.

While Miller's meta-theoretical and practical-normative claims are ultimately unconvincing, he rightly highlights the importance of philosophers being cognisant of empirical evidence and the social and natural sciences. At the same time, he has shown indirectly through his own work that there is a danger in being selective with our use of 'facts'. The temptation of being selective in our use of evidence and facts may be inevitable, but the danger can be reduced when we place facts within the purview of normative theorising rather than considering such facts as prior to, or grounding, those very same principles. To paraphrase Oscar Wilde, facts are rarely pure and never simple.<sup>30</sup>

## Notes

<sup>1</sup> We have only to think of rampant global injustices that persist; for example, in terms of severe poverty and the global burden of disease.

<sup>2</sup> See, for instance, a recent issue of the *European Journal of Political Theory* (Volume 19, Issue 2, April 2020) dedicated to debates about political realism, and a recent special issue of *Critical Review of International Social and Political Philosophy* devoted to the fact-principles debate ("Facts and Norms," Volume 22, Special Issue 1 (2019) edited by Theresa Scavenius and Kasper Lippert-Rasmussen).

<sup>3</sup> However, given Miller's reliance on his EBPP methodology to support many of his views on global justice, if I am successful in my endeavour against EBPP, it *may* cast doubt on these views. Equally, by way of a caveat, it remains a *logical* possibility that his views of global justice may be correct even if his method is flawed.

<sup>4</sup> For a critique of Cohen's response to the problem of infinite regress, see Ypi (2012).

<sup>5</sup> Though I will not pursue the point, notice that Miller here seems to overlook his slide from 'justify' to 'support' and presenting the contrast as though it is between 'conclusively justify' and 'non-conclusively justify'.

<sup>6</sup> See, for instance Mills (2005), Stemplowska (2008), Stemplowska & Swift (2012), and Valentini (2012)

<sup>7</sup> See, for instance Estlund (2017), Leader-Maynard & Worsnip (2018), Rossi & Sleat (2014), and Williams (2007).

<sup>8</sup> See, for instance Erman & Moller (2019), and Sangiovanni (2008, 2016).

<sup>9</sup> See, for instance Estlund (2011), Gheaus (2013), and Lawford-Smith & Gilibert (2012).

<sup>10</sup> A similarity between Sen and Miller here is their resistance to what Miller calls 'lamentation'. Instead of issuing practical, action-guiding that will improve our current situation, the focus becomes on lamenting the infeasibility of achieving the ideal.

<sup>11</sup> Farrelly focuses primarily on criticising the endeavour of ideal theory prevalent within liberal egalitarian political philosophy, which he sees as ignoring the realities of costs, human misfortune, and the trade-offs necessary.

<sup>12</sup> While Cohen highlights a plausible *intuition*, he does not provide a general argument for his claim of fact-independence – a point picked up by Pogge and a claim Cohen readily admits. My account builds upon this intuition to construct a clearer argument against Miller's account, is therefore in favour of Cohen's.

<sup>13</sup> For Miller's view on immigration and borders, see Miller (1997, 2016c).

<sup>14</sup> For Carens' view on immigration and borders, see Carens (1987, 2013).

<sup>15</sup> My claim that judgements of salience and relevance are normative judgements (or principles) is consistent with Cohen's (narrow) definition of principles as prescriptive 'ought' statements or directives. This is because normative salience or relevance can be interpreted as 'ought statements' in an important sense: the fact that A is more morally salient than B means, on balance, that one *ought* to prefer, or *ought* to do, A instead of B. See Cohen (2003, p. 211).

<sup>16</sup> C, in this variant, is equivalent to a fact (F).

<sup>17</sup> Miller could, hypothetically, insist that the relevant context is a single, complex context (such as 'Earth'). However, defining 'context' in this way trivialises his claim about being attuned to the realities, here and now. Such a broad, single context would not provide much guidance at all.

<sup>18</sup> Again, we can set aside the issue of  $F_A$  requiring further normative justification. Let us make it easier for Miller and grant him this as a pre-suppositional grounding fact for the sake of illustrating this objection.

<sup>19</sup> A related way of articulating this distinction, suggested to me by an anonymous reviewer for this journal, is between (a) the 'fact that P (or F)' and (b) the 'fact that people believe P (or F)'. It is fair to claim that Miller believes in the relevance of *both* these kinds of 'facts' for EBPP, hence the rise of what I am calling the *fact-opinion problem*.

<sup>20</sup> This was Miller's initial response when I initially put this objection to him. The case of gender inequality was the same example he used in his initial response.

<sup>21</sup> Miller himself is alive to these possibilities when he mentions the danger of adaptive preference formation if we rely too much on current feasibility constraints. See Miller (2019).

<sup>22</sup> Even if Miller were to drop his meta-theoretical claim, however, the fact-opinion problem against EBPP would still stand. A different kind of coherentist dilemma would remain; namely, he would either have to override opinions and move towards ‘transcendental’ style theorising or bite the bullet and accept status quo bias/adaptive preference formation. Neither solution seems acceptable to EBPP.

<sup>23</sup> This kind of case-by-case reasoning has some similarities to Zofia Stemplowska and Adam Swift’s *balancing view* approach to weighing justice and legitimacy. In some contexts, justice ought to prevail, while in other cases, legitimacy ought to. See Stemplowska & Swift (2018).

<sup>24</sup> This is hinted at in Fine’s critique. See Fine (2017).

<sup>25</sup> Philosophers should also be cautious about their interpretation and application of science and empirical data, including being cognisant of biases. See, for instance, Kingsbury & Dare (2017).

<sup>26</sup> For instance, Tom Parr has recently defended the envy test on the grounds that it respects people’s views about justice in a specific way. See Parr (2018).

<sup>27</sup> None of this, however, needs to be taken as support of Dworkin’s particular conception of justice.

<sup>28</sup> While Miller, in his latest work on this topic, acknowledges that more abstract philosophy may have a role to play alongside practical philosophy, he does not explicitly consider the conjunction of practising abstract theorising *and* having practical effects. See Miller (2019).

<sup>29</sup> See, also, Swift (2008).

<sup>30</sup> The original quote is from *The Importance of Being Ernest*: “The truth is rarely pure and never simple.”

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## Note on contributor

**Johann Go** is a Rhodes Scholar and Master of Philosophy candidate in Political Theory at the University of Oxford. His primary research interests are in social and distributive justice (especially theories of egalitarianism), global justice, public health ethics, and methodological debates in philosophy. Recent work has appeared in the *International Journal of Applied Philosophy*, the *Journal of Bioethical Inquiry*, and the *Journal of Value Inquiry*.

## ORCID

Johann Go <https://orcid.org/0000-0003-0293-095X>

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