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## The architectonic of Michael Walzer's theory of justice

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It is sixteen years ago that Michael Walzer published *Spheres of Justice*.<sup>1</sup> The book was noticed, of course. Not only because it had been written by the author of *Just and Unjust Wars*, but also because it presented, as the earlier book did, a wealth of fascinating observations on the way people actually deal with problems of justice in a rich variety of contexts of social interaction. But as an attempt to present an alternative way of theorizing about justice it had no great impact at first. Not many people were attracted by the charms of "complex equality". Recently the climate seems to change; we may be entering a period in which *Spheres of Justice* comes into its own. This is obviously due to a certain disillusionment with the philosophical style of the Grand Theory, as it is represented by the work of Rawls, Nozick, Dworkin or Habermas. I believe that Walzer's work indeed contains a promising alternative, in its pluralism and its emphasis on local relevance. One obstacle to its having the impact it deserves, however, is that the real structure of the theory as it is applied in Walzer's patient discussions of the exchange of actual goods, is quite different from the way he describes this structure himself. That, at least, is what I want to argue.

This analysis may look suspiciously like a critical review of a book, sixteen years after its publication. My justification is not so much that Walzer has extended his account since then, most recently in *Thick and Thin*.<sup>2</sup> For this later work, though containing additions and changes in its substantial details, is completely presented in terms of the conceptual framework first developed in *Spheres*. But people who are interested in Walzer's work as a possible alternative to recent orthodoxies, equally tend to take this conceptual framework for granted as an integral part of the alternative. So, precisely because my aim is to re-direct, and not to counteract the growing impact of Walzer's work, I have to engage in some close reading of the book. Its real values have still to be unearthed.

### 1. Complex equality

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<sup>1</sup> Michael Walzer, *Spheres of Justice, A Defence of Pluralism and Equality*, Robertson, Oxford 1983.

<sup>2</sup> Michael Walzer, *Thick and Thin, Moral Argument at Home and Abroad*, University of Notre Dame Press 1994.

The theory of justice which Michael Walzer develops in *Spheres of Justice* is an egalitarian one. Or so he says. But, he also tells us, it is very unlike the usual brand of egalitarianism. For what he aims to defend is a form of complex, not of simple equality.

What egalitarians share is not their conception of equality but of inequality: it is the monopolistic control of a dominant good. (11) A good is a dominant one if its possession provides the opportunity to acquire other goods. Distribution patterns in human societies are primarily differentiated by their dominant goods: "physical strength, familial reputation, religious or political office, landed wealth, capital, technical knowledge". (11) Adherents of simple equality are opposed to the monopoly, they advocate the equal distribution of the dominant good. Walzer on the other hand is opposed to dominance. It may be the case that different social goods are monopolistically held; as long as no particular good is generally convertible, inequalities will not be multiplied through the conversion process. (17) This is the regime of complex equality.

For example, Walzer holds that citizenship should be open to all residents, at least in those states in which all citizens are full citizens. If guest-workers are permanently denied the status of membership, they become "metics", comparable to "live-in servants within the family". They will do the hard work for low wages and will always be threatened by forms of exclusion, from dismissal to deportation. But why is their harsh fate a form of injustice? The basic reason is that exclusion from citizenship leads to a "piling up of inequalities" (62): inequality within the sphere of membership is reproduced through all other distributive spheres.<sup>3</sup>

Walzer suggests that egalitarian theories of distributive justice almost always focus on monopoly, not on dominance. This suggestion is not wholly accurate. Most recent theories define the task of a theory of justice as follows. Interaction processes within a society always result in the assignment to individuals of many different social goods. But the theory of justice is concerned with the distribution of one basic good only, and with the distribution of those other goods only insofar as they have effects on the allocation of this basic distribuendum. The theory of justice should start by identifying the basic distribuendum. Several proposals compete: welfare is one, a common measure of the value of resources another, freedom a third. Secondly, the theory has to identify the proper distributional pattern. This

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<sup>3</sup> It is rather obvious that the same criticism applies to hierarchical societies which differentiate between ranked forms of membership; and this irrespective of the endorsement of the system by the lowly ranked members.

could be a principle of the form: "everyone according to his x" (a replicating principle), but it can also be a principle which defines the right ratio between shares (a comparative principle). Egalitarians advocate the allocation of equal shares of the basic distribuendum, whatever it is.

Such a pattern can be called "simple equality", but the basic distribuendum is not a dominant good in Walzer's sense, and to this extent his description of the competing forms of egalitarianism is inadequate. "Complex equality", however, is supposed to be as different from simple equality in this sense (the equal distribution of a basic distribuendum) as in the other (the equal distribution of a dominant good). For Walzer rejects the search for a basic distribuendum as yet another form of unitary justice.<sup>4</sup> According to him there is a plurality of goods, each good or cluster of goods has its own social meaning, which means that the exchange of each defines one particular form of communal life, and the appropriate principle (or set of principles) for the distribution of each good is to be derived from this social meaning. Each sphere of justice, as it is identified by the distinct set of social meanings of the goods exchanged within it, is to be regulated by its own principle, whether it is a comparative, a replicating or even a non-patterned one. (10) Distributions are patterned in accordance with shared conceptions of what the goods of each sphere are and what they are for (231); "goods distribute themselves among people." (7) If the social meaning of a good is given, it is immediately clear which of the possible criteria of distribution relate to it and which don't.<sup>5</sup> For example, the only "intrinsic" answers to the question "who governs?" are: who best knows how to use political power, and: who most immediately experiences its effects. And it is a matter of the "internal logic" (197, cf. 75) of education that access to specialized schools should be given to the most promising students. In a revealing note (88, cf. 9) Walzer discusses Bernard Williams' claim that the only proper criterion for the distribution of medical care is medical need: the use of medicine is to cure illness, and therefore medicine should be given to the ill.<sup>6</sup> Walzer believes that Williams' method of

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<sup>4</sup> But cf. notes 38 and 41.

<sup>5</sup> "The meanings with which we invest objects have normative consequences. I have been calling these norms 'rules of use and value'; they are also rules of distribution... We will know what objects we owe to other people as soon as we understand what those objects (really) are and what they are for." Michael Walzer, "Objectivity and Social Meaning", in: Martha C. Nussbaum & Amartya Sen, *The Quality of Life*, Oxford UP, 1993, 169. "(W)e need focus only on things, the objects of distribution, to work out a critical account of distributive justice." Walzer, *Thick and Thin*, x, cf. 33.

<sup>6</sup> Bernard Williams, "The Idea of Equality", in: *Problems of the Self*, Cambridge U.P. 1973.

justifying principles of justice is basically right. The only criticism he offers is that our shared understandings of the meaning of goods are local ones; it is, it seems, not a universal truth that the proper use of medicine is to cure illness.

The critical force of this idea of local autonomy is then made explicit by the non-dominance-principle: "no social good  $x$  should be distributed to men and women who possess some other good  $y$  merely because they possess  $y$  and without regard to the meaning of  $x$  ." (20)

Local autonomy explains why the theory is complex, not why it is egalitarian. One may doubt whether egalitarianism is meant to be an independent basic moral concern of Walzer's theory at all; in his Preface he seems to reduce its appeal to its rejection of personal subordination and oppression. But he also argues that it is only a matter of fact that, wherever the requirements of local autonomy, and especially the non-dominance-principle, are satisfied, the requirements of egalitarianism will, as a matter of fact, be satisfied as well -or at least those requirements which, irrespective of egalitarian rhetoric, really matter. (20) So egalitarianism is an independent concern indeed.<sup>7</sup> If *Spheres of Justice* has any central message at all, it is this one. "Good fences make just societies." (319, cf. xv) "Equality is simply the outcome of the art of differentiation." (Cf. 28, 315; Walzer 1984, 320) These claims are not supposed to be true by definition. But this prompts the question, what exactly it is Walzer means by "equality", if not the proper ratio between shares of a dominant good or basic distribuendum. I will take up this question at a later stage (§ 10).

The program of the book seems to follow from this description of its message. Each chapter has to consider one particular social good, or cluster of goods, to describe its social meaning, to derive a proper distributional criterion, or set of criteria, and to discuss what measures can be taken to prevent dominance, and thereby to protect equality. It turns out, however, that this is not what Walzer is really doing. If we attend more closely to the program he actually executes, we will find that, by describing his conception of justice as

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<sup>7</sup> Robert J. van der Veen, "Sociale Zekerheid: een Omstreden Domein", 22-23, in: Paul Van den Berg & Margo Trappenburg eds., *Lokale Rechtsvaardigheid, De Politieke Theorie van Michael Walzer*, Tjeenk Willink Zwolle 1994, 22-23; Robert J. van der Veen, "The Adjudicating Citizen: On Equal Membership in Walzer's Theory of Justice", *British Journal of Political Science*, forthcoming; David Miller, "Introduction", in: David Miller & Michael Walzer eds, *Pluralism, Justice, and Equality*, Oxford U.P. 1995, 3; Michael Walzer, "Response", *ibid.*, 283. Richard Arneson, "Against 'Complex Equality'", *Pluralism, Justice and Equality*, 234, fails to appreciate the point.

"protecting the integrity of spheres", "blocking dominance", and "realizing complex equality", he radically misdescribes its true nature.

## 2. *An essentially dominating good*

The first distributional domain which Walzer discusses is membership. It is the first domain because the subject of the book is not global justice, but justice within a political community, which is to say: justice between members. Walzer subscribes to a homogeneous conception of membership: in every domain he discusses, access to the goods of the domain is reserved to the same category of members. It follows that the sphere of membership cannot be fenced off from the other spheres in the way required by the non-dominance principle: the possession of membership determines or co-determines one's share in the other spheres. This is not only for the obvious reason that the goods of those spheres are only to be distributed among members, but also because one of the distributive principles that Walzers finds to be relevant to many of those spheres -security and welfare (78, 84), money (98-99, 105-106), office (144), hard work (175-176), basic education (203), private recognition (258), the social bases of self-respect (276)- is that the distributional pattern should sustain everyone's full membership. For example, prolonged unemployment and poverty are both "forms of economic exile", and therefore incompatible with full citizenship (278).<sup>8</sup>

Walzer would argue that, if a social good *x* is to be distributed to people because they already possess the good of membership, this is not "without regard to the meaning" of *x*. But, if it belongs to the social meaning of a good to be a dominating good, this has the consequence of making the non-dominance principle vacuous, at least as far as it concerns the domain of that particular good.

More to the point, he could agree that membership is an essentially dominating good, but maintain that, exceptionally, that is no problem. Dominance is objectionable if the inequality of one sphere is reproduced in another, but there is no harm in the reproduction of equality. The point remains that his treatment of the sphere of membership fails to give any substance to his claims about local autonomy and non-dominance. And to the extent that the principle governing the sphere of membership really is an egalitarian one (see §

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<sup>8</sup> Equality of membership may be critical in adjudicating internal disputes between competing principles "within" spheres, Michael Walzer, "Response", 287.

10), the dominance of this particular good also amounts to a form of "simple equality".

### 3. *Three spheres defined by principles*

My principal argument (§§ 3-5) will depend on the claim that Walzer uses two radically different concepts of "spheres". (In § 8 we will meet a third concept which better fits some of the claims he makes than the other two.) On one understanding a sphere is the range of proper application of one particular basic principle of justice, and the relevant "social meaning" of the goods making up that sphere is simply that they belong to that range. No wonder that the principle can be "derived" from an understanding of these social meanings. I will call spheres of this kind spheres defined by principles, or P-spheres for short. Spheres of the second kind are really defined by the goods which are to be distributed within them. I will call them spheres defined by actual distribuenda or D-spheres. For such spheres, the claim that relevant distributive principles are suggested by the proper understanding of the social meanings of the distribuenda which define them, is rather obviously false. It can only seem true because D-spheres are not distinguished from P-spheres. As soon as we do this, Walzer's actual practice turns out to be the following: he first establishes a list of relevant distributive principles (defining P-spheres), and then inquires for each D-sphere which of those principles (usually more than one) is relevant to them.

Among the domains discussed are those of security and welfare, of money and commodities, and of recognition. These spheres have an important characteristic in common, which is lacking in the others. And because of that characteristic they cannot be considered to exemplify the same general concept of "sphere" at all.

The most obvious example of a P-sphere is the sphere of money and commodities. Money is something which -unlike welfare- can actually be distributed among people, but it is different from all other distribuenda, because it has no value of its own. Rather it is a representation of the value of other things; indeed, the value of every good which can be owned can be represented in monetary terms for the purpose of exchange: everything can be bought and sold.<sup>9</sup> But not everything can be bought and sold properly, and in

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<sup>9</sup> Of some goods the enjoyment cannot be given on a claim of right (divine grace), or not without seriously distorting the nature of the good (love and friendship, praise and blame, cf. § 7). Cf. Judith Andre, "Blocked Exchanges: a Taxonomy", *Ethics* 103 (1992/1993), 32-33, reprinted in *Pluralism*,

three already classical pages (100-103) Walzer presents us with a presumably exhaustive list of the things believed in Western societies to lie beyond the boundaries of the sphere of money. All other things are "commodities": objects and services which are up for sale. Walzer also attempts to give an independent characterization of those objects and services: they are found useful or pleasing to different degrees, according to individual tastes and preferences (103).<sup>10</sup> But this description doesn't succeed in sorting out the right things, for many, if not all, items on the list of blocked exchanges answer to that description as well (political office, exemptions from communally imposed jobs, exit-rights, love, especially the love of particular persons, etc.) So the only positive description of commodities we really have is: they are the things we can properly exchange for money, they are marketable.

Money is the medium of free exchange. Of course, market activity can be subject to all kinds of constraints (taxation, liability for damages, the prohibition of cartels etc., blocked exchanges), but within the area determined by these constraints people owning money or commodities have at least some discretionary powers of decision. If they had not, if all forms of exchange were exhaustively regulated, people would presumably have a use for receipts, documents declaring acts of transfer, but these receipts wouldn't be money, precisely because they could not be used for alternative acquisitions. Things transferred wouldn't be "commodities". Indeed, neither receipts nor the things acquired by them would be property in the full sense, for property rights also imply some discretionary power. This is the strongest interpretation of Nozick's famous "Wilt Chamberlain" argument against replicating and comparative criteria of distribution: if an original allocation has been made according to the criteria, people will either exercise their discretionary power and thereby disturb the pattern, or they will have no discretionary power at all, but then their assignments are not their property.<sup>11</sup> Walzer subscribes to the argument. (111, cf. xi)<sup>12</sup> Perhaps the idea of "complex equality" can be interpreted as the

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*Justice, and Equality* ; Jon Elster, *Local Justice, How Institutions Allocate Scarce Goods and Necessary Burdens*, Russell Sage, New York, 1992, 13; Jeremy Waldron, "Money and Complex Equality", *Pluralism, Justice, and Equality*, 158-159. As they cannot be owned, they cannot be exchanged either.

<sup>10</sup> Waldron, "Money and Complex Equality", 149-155, ascribes to Walzer an independent account of the proper sphere of money (roughly: privately accessible goods), which I cannot find in his work.

<sup>11</sup> Robert Nozick, *Anarchy, State, and Utopia*, Blackwell Oxford 1974, 160-164. The argument only undermines insatiable principles. (On this concept, see § 10, at note 37.)

<sup>12</sup> The criticism offered by Brian Barry, "Spherical Justice and Global Injustice", *Pluralism, Justice, and Equality*, 70-71, is off target: Walzer doesn't deny that free exchange is subject to many constraints,

egalitarian's escape from it. "The market is a zone of the city, not the whole of the city." (109)

The sphere of money is a sphere of discretion. But this means that the theory doesn't develop in the official order (cf. 82): take any social good, determine its social meaning, derive the distributive principle "internal" to the sphere of this good, and forbid its domain to be dominated. Rather we start by asserting the legitimacy of one particular distributive principle, the principle of entitlement. Within certain constraints people are free to dispose of their holdings as it pleases them, and whatever is acquired by an apostolic succession of legitimate transfers is a legitimate holding. If the principle is legitimate, it will have its range of proper application, and the "social meaning" of any good described as belonging to the sphere of money and commodities is only that it is understood to belong to this range of application.<sup>13</sup>

A similar point can be made about the sphere of security and welfare. A concrete good is not as such a "commodity", it is a commodity because it is marketable. Similarly, the concepts of "security and welfare" -according to Walzer- do not directly identify any concrete goods. They refer to whatever goods are to be collectively provided to all members. The reason, however, for collectively providing any good is that it is recognized to be a "need", and anything which is so recognized is to be provided according to the replicating principle: to each needy person in proportion to his/her neediness.

So again we have a distributive principle -every member has a claim to have her needs fulfilled-, and a "sphere" which is nothing but the range of application of this principle. In the case of money and commodities we had only to accept the legitimacy of the principle in order to be able to identify the sphere, in this case we also have to accept the idea that the fulfilment of needs is a matter of collective care. But we have -as yet- no independent criterion of identification of the relevant goods, and the only thing we know about their social meaning is that they are to be understood as needs.<sup>14</sup>

Roughly the same point can, thirdly, be made about the principle "to each according to his deserts". What a person deserves is either honor or dishonor

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which may involve the forced redistribution of money. These constraints may even follow from comparative concerns, cf. my discussion of the principle of equal membership, § 10.

<sup>13</sup> Cf. Barry, "Spherical Justice and Global Injustice", 71, but he fails to appreciate the relevance of the distinction between P- and D-spheres.

<sup>14</sup> As I mentioned in § 2, within the sphere of welfare Walzer finds an additional principle at work: that the distribution should respect everyone's full membership. (78, 84) This principle, however, doesn't lead to the recognition of claims on welfare beyond needs; rather it contributes to the identification of needs.

(or the material expression of them), and all human societies believe that honor and dishonor should not only be awarded by private persons, but also in a more public way. Therefore the sphere of public honor is co-extensive with the sphere of the public use of the principle of desert.<sup>15</sup> If we compare the relation between public honor and the principle of desert to the relation between security and welfare and the principle of need, there is only one difference. The principle of need requires that all needs shall be met, even if it is immediately acknowledged that the public circumscription of the class of needs is necessarily imperfect and to a rather large extent arbitrary. Similarly, the principle of desert requires that all crimes shall be punished, even if it is acknowledged that crimes are a subclass of dishonorable deeds which at the margins can only be identified imperfectly or arbitrarily (or perhaps not even in proportion to their blameworthiness but rather by reference to utilitarian reasons). But the principle does not require that all dishonorable deeds are punished, and certainly not that all honorable ones are rewarded. It is only for each reward that we try to identify the most deserving person, not for each desert that we try to provide an appropriate reward.

Nevertheless, if the only thing we know of a good is that it is given to a person by an act of public honor, we know nothing about it except that it is collectively provided by application of the principle of desert.

I have argued that, contrary to his announced program, in his description of these spheres Walzer does not derive relevant principles of just distribution for a certain sphere of goods by considering the social meanings of those goods. Rather he introduces some distributive principles which are conventionally accepted, and defines a "sphere" as the range of application of each of them. At least four principles are introduced in this way:

- (a) the principle that the distribution of any good should be such as to sustain the full membership of members;
- (b) the principle that individual needs are to be fulfilled by collective provision;
- (c) the principle that (only) desert is to be rewarded;
- (d) and the principle that goods should be marketable, i.e. the proper object of free exchange by property-holders, if the other principles provide no positive reason to block such exchanges. "It is one thing to clear the Temple of traders, quite another to clear the streets." (109)

In other words, marketability is a presumption which can be defeated by the other principles. If we look at the list of things which cannot be properly be

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<sup>15</sup> I will argue below, § 7, that the sphere of private honor is co-extensive with the sphere of the private use of the same principle, and not really a "free competitive market".

bought and sold from this perspective -and leave aside the things which cannot be owned at all-, it turns out that the principle of full membership explains the occurrence on the list of political power, freedom of speech, press, religion and assembly, the right to emigration, exemptions from community service, and basic welfare services like police protection and primary schooling. The principle of need, which prohibits exchanges based on desperation<sup>16</sup>, explains the occurrence of personal freedom, freedom of speech etc., the right to emigration, basic welfare rights (including the access to life-saving health care), and limitations of the freedom of contract. Lastly the principle of desert explains the occurrence of criminal justice and of prizes and honors. In all these cases the "social meaning" of the goods which forbid them to be sold or bought, is simply that they belong to the range of application of other principles of justice.<sup>17</sup>

It is, of course, trivially true that justice is concerned to protect the boundaries of these "spheres". (As announced I will call them "P-spheres".) The interesting question is, rather, how we are to decide for any concrete good which of these spheres it belongs to.

#### 4. *Competing principles within spheres*

Not all the spheres are P-spheres. Jobs, hard work, free time, education, kinship and love, divine grace, political power are actual distribuenda, and they are not described in terms which bring them into the range of application of any distributive principle. Let us consider Walzer's discussion of some of these "D-spheres".

In the sphere of "hard work" (dangerous, grueling or dirty) we find the presumption in favour of free exchange. Under ideal circumstances people

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<sup>16</sup> This is not a paternalistic principle, as Elster, *Local Justice*, 13, says. It rather protects the voluntary character of the exercise of free choice, cf. Joel Feinberg, *Harm to Self*, Oxford U.P. 1986, 80, 249ff. This explains why the principle of need precedes the principle of free exchange. Such insights are a first step in the process of developing the list of principles into a theory.

<sup>17</sup> Compare the limitations on the market provision of vacations, discussed 191-2. Considerations of efficiency may be relevant as well, e.g. the need to solve collective-action problems (votes), or to insure efficient job performance (degrees), cf. Elster *Local Justice*, 13. I don't want to deny that value-considerations may play a direct role as well, cf. Andre, "Blocked Exchanges", 37-40, arguing that markets influence the character of what is sold, sometimes for the worse, by altering incentive structures. The classical example is the comparison by Richard Titmuss, *The Gift Relationship*, Pantheon, New York 1970, of the quality of donor blood from gifts and from market exchange.

prepared to do this work would be compensated by salaries above the average and by short working hours. The problem is that, when a "reserve-army" of labour exists -and its ranks tend to be filled by non-members- these compensations will not be supplied. The result is that these workers will be socially degraded, which violates the principle of the sustainment of full membership. This principle would be satisfied if we conscripted all members to do equal shares of every kind of hard work, but this would often (e.g. in the case of mining and bridge-construction) involve unacceptable losses of efficiency. So we have a weighing problem. The solution is different for different forms of hard work, and different circumstances. Full sharing may be defensible for military service. For dirty work Walzer proposes a "partial and symbolic sharing...to break the link between dirty work and disrespect" (175), and also in order to make people more conscious of the costs they create by their production of waste. In any case the market should be corrected by the supply, from taxes and by collective decisions, of the necessary compensating goods, including a share of the power to make decisions about the organisation of the work. These measures will change, if not the work itself, at least its moral character.

A second example of Walzer's approach to the question of the proper distribution of actual distribuenda is provided by the chapter on education. Market provision, if it has any place at all, should be severely constrained in this sphere. Education is a need; it therefore belongs to the sphere of welfare, and therefore of collective provision. Some shared knowledge is necessary for each member to be able to function adequately as a citizen, to exercise the rights and share the burdens of membership. Therefore, basic education should aim, not only at equal opportunities, but at equal (minimum) results. If this common end -providing what is necessary for the sustainment of membership- is achieved, two further functions remain to be fulfilled within this sphere: to provide the opportunity for a general and liberal education, and of specialized professional training for jobs requiring expertise. The first type of education is a kind of welfare again, it should be available (for a certain period) for anyone who "needs" it, i.e. is interested to get it. The second type of education is a kind of office, students must qualify for the occupation of a limited number of available places, by signs of interest and capacity.

In these chapters -and it can easily be checked that they are fully representative- once again we do not find what we had been given reason to expect. Walzer doesn't start by giving independent descriptions of the social meanings of the goods involved, in order next to derive a distributive principle

or set of principles "internal" to each sphere. Rather, the scope of his inquiry is dictated from the start by the distributive principles he has established already. Within each sphere the typical questions he asks are: for each good, is it a necessary condition of full membership, is it a need, is it deserved? (If it is none of these, it is a proper object of free exchange.) Only when these answers have been given, we really know the full social meaning of each class of goods. Principles are not derived from social meanings, but social meanings from principles.

"Simple equality" also turns out to be a very different thing than we expected. In several of the chapters on D-spheres Walzer surprisingly speaks of simple equality within a sphere, which seems contradictory when we understand the term as it was originally introduced. For simple equality was supposed to be the belief that there was either one dominant good, or one basic distribuendum remaining constant through all the spheres, and that it should always be distributed equally. But simple equality now appears to mean: one distribuendum for each sphere, and one way to distribute it. In most cases (hard work, leisure, education, divine grace) the preferred distributive pattern is, indeed, equality of shares, but in the sphere of education equal distribution is seen as following from the principle of need (for all have the same need to know, 203), which is not a comparative but a replicating principle. And this is not the only deviant case. Simple equality in the sphere of jobs is defined by the principle: "everyone according to his qualifications". Social inequalities will then exactly reproduce natural ones (132), so this, evidently, is a replicating principle as well. And simple equality in the sphere of kinship and love would allegedly even be realised by the perfect implementation of the romantic idea that all marriages should be love marriages (234); this sphere would then be governed by the principle of free choice. Even if we take such descriptions of simple equality to be mistaken in their own terms -because they are not comparative, hence not egalitarian to begin with-, the mistakes are significant. For what is wrong about "simple equality" in this sense is not only the application of a comparative principle to goods which are not up for redistribution at all (like divine grace, 245), but also the application of one single principle to each particular D-sphere.

So simple equality-within-P-sphere turns out to be remarkably similar to what originally was called complex equality: one principle for each sphere! It should not even matter whether or not the principles are different. If a society existed in which money, status and power were all distributed equally, only by independent distributive mechanisms, this society would exhibit a form of local

autonomy, and fully satisfy the non-dominance principle. But it now appears that this is a form of simple equality nevertheless. Indeed, simple equality in the sphere of private recognition is described exactly in this way: as a distribution which is dis-connected from the distribution of professional status and economic reward! (255) In this case, complex equality is not achieved when the good is non-dominated (which is impossible), but when it is multi-dimensionally or vectorially dominated.

The only sin which all these forms of "simple equality" can be seen to commit is that of simplification: they propose to allocate a good according to one criterion, when in fact its distribution should be governed by more than one. But, of course, it is equally possible to sin by allowing too much complexity: when for instance certain health care provisions are recognized to be needs, but their distribution is nevertheless partially left to the market. Injustice consists in the failure to apply relevant principles; it cannot be independently characterized in terms of simplicity and complexity.

##### *5. The role of the concept of spheres*

In the Walzer-literature we often find discussions of the question whether some good or cluster of actual distribuenda, e.g. law, legal aid, health care provisions, information, pollution rights, should be seen as constituting a separate sphere.<sup>18</sup> Such questions only make sense when it is presupposed that by recognizing a separate sphere we also recognize the existence of a separate principle or set of principles governing all distributions within the sphere. My argument shows that this presupposition is mistaken. P-spheres do of course correspond to one principle, but trivially, for they are defined as the range of application of a principle. For D-spheres, however, the question which principle should govern the distribution within each sphere is entirely open, and it will typically receive an answer of the form: for some goods within the sphere, principle (a), for others (b), or an ordered combination of (a) and (b), etc. And the relevant principles turn out to be relevant across the lines.<sup>19</sup>

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<sup>18</sup> E.g. several papers in van den Berg & Trappenburg, o.c., cf. also Margo J. Trappenburg, "Defining the Medical Sphere", *Cambridge Quarterly of Healthcare Ethics* 6 (1997), 416-434. Or the criticism by Michael W. Howard, "Walzer's Socialism", *Social Theory and Practice* 12 (1986), 103-113: the system of decentralized worker control Walzer advocates straddles the spheres of political power, and of money and commodities.

<sup>19</sup> Cf. Amy Gutmann, "Justice across the Spheres", *Pluralism, Justice, and Equality*, 99-119; but she doesn't realize the extent to which this account describes Walzer's actual treatment of (D-)spheres.

The concept of a "sphere" should therefore be understood as nominalistically as possible. We may for instance choose to discuss "the sphere of education", or the separate spheres of "basic, liberal and professional education", as it pleases us. (Walzer himself is prepared to discuss a "sphere of private affairs" within the sphere of kinship and love.) Nothing depends on the decision, it is only a matter of convenience of exposition.

For this reason Dworkin's criticism in his famous review was besides the mark.<sup>20</sup> Dworkin said that Walzer seemed to combine a Platonic understanding of the existence of spheres with a relativistic understanding of the assignment of goods to spheres. Everywhere we would find exactly the same number of spheres governed by the same principles, but each concrete good would conventionally be understood to belong to sphere X at one time, and to Y at another. The mistake is profound, but revealing; I would diagnose it as resulting from a failure to distinguish between P-spheres and D-spheres. Of P-spheres it is necessarily, if uninformatively, true that they exist in each society which recognizes the relevant principles. Walzer would also acknowledge that these principles really are very widely recognized; this is presupposed by his exemplary studies of their application by Greeks, Jews, Chinese and Puritans. (But he is not committed to assert that all of them are, or should be, universally recognized: the principle of membership does not apply to hierarchical societies and these, he thinks, are not necessarily unjust.<sup>21</sup>) D-spheres on the other hand, are defined, not by distributive principles, but by a class of actual distribuenda, and Walzer denies that the distribution of these goods is governed by the same principle, or set of principles, everywhere: the provision of drama, not of poverty relief, was a need for the Greeks. Advanced education in our society is, as we saw, partly a form of welfare, partly a kind of office; so how could education be on a par with welfare and office in a Platonic heaven of spheres?

The discussion about the canonical list of spheres has no substantial meaning at all. We should therefore stop complaining that Walzer fails to

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Walzer, "Response", 282, cheerfully accepts the points, unaware, apparently, of their inconsistency with the explicit formulations of his theory.

<sup>20</sup> Ronald Dworkin, "To Each his Own", *New York Review of Books*, April 14, 1983, 4-6, reprinted in Ronald Dworkin, *A Matter of Principle*, Oxford U.P. 1986, ch. 10.

<sup>21</sup> But see note 3. The other principles may have almost universal applicability, which suggests that their recognition can be explained in a naturalistic way, cf. note 27.

provide even the beginning of an argument for his list.<sup>22</sup> And the following types of argument have no force.

(1) "A good of type x (let's say: health care) belongs to sphere y (welfare); the "internal" distributive principle of sphere y is z (to each according to his needs); therefore x should be distributed in accordance with z."

(2) "Goods of type y (health care again) constitute a separate sphere; for some goods of this type it is common wisdom that they should be distributed according to principle z (medical need, as defined by medical experts); therefore this is true for all goods of this type."<sup>23</sup>

Either sphere y is an P-sphere; then the decision to assign any actual distribuendum to it is equivalent to the recognition of z as the proper criterion of its distribution. Or sphere y is a D-sphere; then the question of the proper distributive principles (plural!) for each of the goods belonging to it is entirely open. Health care is only to be distributed in accordance with the principle of need, or of medical need, insofar as it is a need, or a medical need; and this has to be decided independently for each separate health care provision (in vitro fertilisation, circumcision, artificial hearts, homeopathic medicine, physiotherapeutic treatment of sporting injuries, preventive screening programs, transport of patients to hospitals, breast-corrections for psychological reasons, birth-control, abortion, homes for the elderly, adaptations of homes for handicapped people etc.). Of course, we can always say of an excluded facility that it isn't really "health care", but the point is that this is not an argument. It cannot be an objection against taking some health care provision from the welfare package that this "crosses the boundaries between spheres". Whether it does, has to be argued for by reference to the relevant principles of justice, given the importance of the good in terms of prevalent conceptions of the good life. There is no short-cut by means of the spurious classification of "spheres".

## 6. *Two kinds of social meaning*

It is not only Dworkin, it is also Walzer himself, who mis-describes the structure of his theory because he does not distinguish between P- and D-spheres. I now want to assess whether Williams' method of justification really is

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<sup>22</sup> As Walzer entreats us to do, "Response", 282. But I will argue (§ 9, 10) that the concepts of non-dominance and of complex equality require a list.

<sup>23</sup> M.J. Trappenburg, *Soorten van Gelijk, Medisch-ethische Discussies in Nederland*, Tjeenk Willink Zwolle, 1993, ch. 7; Trappenburg, "Defining the Medical Sphere".

adequate to the theory of justice. Is it possible to derive the proper distributive principle for a good from a description of its social meaning? We may expect that, if we look at the two types of spheres separately, this general description of what goes on will turn out to mean something very different in each case. This, in its turn, is obscured, however, because of a basic ambiguity in the concept of "social meaning". I will argue that, as soon as we make the relevant distinction, Williams' method can be easily seen to fail.

We should distinguish between two layers in the relevant description of distribuenda, which are related to each other in a characteristic way: the second description is supervenient on the first one.<sup>24</sup> By means of this second higher-level description we characterize a good in terms which bring it into the range of application of a certain distributive principle. Its "characteristic normative structure"(9) is, for example, that some people sometimes are in need of it, or that it counts as a reward for deserts. On the other hand, this classification of a good may depend on further understandings of what it is and what it is for, which have no such obvious distributional implications (given the validity of the principles). Dirty work is degrading, personal service demeaning. "Bread is the staff of life, the body of Christ, the symbol of the Sabbath, the means of hospitality". (8)

To illustrate further, a good can be said to be needed if its possession has a particular degree (and perhaps a particular kind) of importance or urgency. So this is a criterion of a high-level ascription of social meaning (need). Whether any good has this particular degree or kind of urgency, depends on the role the good is understood to play in people's life. It is because of the role of the drama in the life of the Greeks or of education (and especially religious education) in the life of medieaval Jews, that these things could be judged by them to be needs. Lower-level descriptions always concern those aspects of a good which are relevant to the way it contributes to the good life of people, which is always, to a large extent, a common life.<sup>25</sup>

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<sup>24</sup> To give an example: an action is courageous (higher-level) because it is performed competently in a dangerous situation (lower-level). When two actions share all other properties, it cannot be the case that one of them is courageous and the other is not. For then the second one can't share the properties which make the first one courageous.

<sup>25</sup> Cf. Walzer, *Thick and Thin*, 22-24 on the understanding of human lives as "careers". The distributive principle of equality of opportunity may presuppose this understanding, but it isn't entailed by it.

To call descriptions of both levels descriptions of "social meaning" suggests that they are based on conventions.<sup>26</sup> This is sometimes the case, but not always. Lower-level descriptions may be based either on convention, or on natural causality, or on a mixture of both (including common beliefs concerning natural causality). Our understanding of medical care, for example, has changed because it is, as a matter of fact, more effective than it used to be. (87)<sup>27</sup> Higher-level descriptions, on the other hand, tend to be conventional to a rather small degree only. For example, once we know the role a particular good plays within people's lives, we can assess whether it has the right degree and type of importance to be called a need, and this judgment is not itself, or only at the margins, a matter of convention. Once we know the present use of medicine, it is, given shared conceptions of the good life, often clear that it is a need (e.g. antibiotics in the case of pneumonia), it is equally often an object of informed debate, even if in the end a grey zone remains to be solved by convention (or arbitration). It is precisely on account of this relative independence from convention that we can criticize existing arrangements in the sphere of security and welfare (as Walzer does in his design of an American welfare state, 84ff), even if these are supported by a considerable degree of social consensus.<sup>28</sup>

Walzer tends to overaccentuate the conventional nature of this higher-level judgment (cf. 66, 83), precisely because he doesn't distinguish it sufficiently from a lower-level one. If we make this distinction, much of the ongoing discussion about the relativistic implications of Walzer's appeal to social meanings, not excepting his own contributions, turns out to be misdirected.<sup>29</sup> The importance of goods for the good life of people in society

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<sup>26</sup> Though actual distribuenda aren't natural or conventional signs for other things, Walzer's use of the concepts of "meaning" and "interpretation" is a perfectly legitimate one, cf. such expressions as "the meaning of life" or "the meaning of x", where x refers to certain historical events.

<sup>27</sup> Cf. Walzer, *Thick and Thin*, 28-31. "Given the human body, the construction of edible objects is not an entirely free construction..." Walzer "Objectivity and Social Meaning", 170. If social constructions are "reiterated", they probably have naturalistic explanations, Walzer, *Thick and Thin*, 8, 17, 26.

<sup>28</sup> Cf. Lyle A. Downing, Robert A. Thigpen, "Beyond Shared Understandings", *Political Theory* 14 (1986), 462.

<sup>29</sup> Dworkin, "To Each his Own" (if social meanings are contested, the interpretation can only make an arbitrary choice); Joshua Cohen, Review of 'Spheres of Justice', *Journal of Philosophy* 83 (1986), 457-468 (interpretation is either conservative or arbitrary); Susan Moller Okin, "Justice and Gender", *Philosophy and Public Affairs* 16 (1987), 42-73. 1987 (interpretation cannot criticize forms of dominance (e.g. of gender) enshrined in common understandings); G. Warnke, *Justice and Interpretation*, Polity Press, Cambridge 1992, ch. 2; Walzer, *Thick and Thin*, ch. 3.

may be largely determined by history and context, but the application of the principles of justice to the goods, so understood, is not.

The consequences of Walzer's failure to distinguish between these layers of social meaning come in sight in his comments on Williams' method of justification. Williams, he says, is right to believe that we can derive a criterion of distribution for a good from an understanding of its nature; he only fails to see that this understanding should refer to the social meaning of the good. But this can only seem plausible because the concept of "social meaning" is ambiguous between the higher and the lower level. For instance, if we are only told that the use of medical care is to cure the ill, it doesn't seem at all plausible that we know enough to decide how to distribute it, at least among the ill. On the other hand, if we are told that (a certain type of) medical care is a need, it seems more plausible. But this, of course, is only because we then have already described it in terms which immediately invoke the principle.<sup>30</sup>

It seems more plausible, but it isn't true. Even in that case, if we had not before asserted the principle on independent grounds, the statement that something is a need would not be sufficient to conclude that it should be distributed according to neediness. We are interested in the statement because of the principle, but they are logically distinct. There are no "internal reasons" or "intrinsic principles". Williams' method fails.<sup>31</sup>

### *7. The anomalous cases of honor and love*

To this conclusion, however, there is one exception, or class of exceptions, of some interest. Part of the interest is that the cases illustrate how Williams' method is supposed to work.

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<sup>30</sup> Cf. the following argument about the distribution of food: food is used to appease hunger, therefore it should be provided to the hungry. For that reason "(h)oarders in time of famine act wrongly.. given what food is for." Walzer "Objectivity and Social Meaning", 170-1. Obviously the distributional norm is not entailed by the functional statement.

<sup>31</sup> Miller, "Introduction", argues that, disregarding the special goods I discuss in § 7, Walzer isn't committed to claiming the existence of a conceptual link between the social meaning of the good and the proper principle of its distribution. "Once we see what kind of good medicine is, this immediately *triggers* a particular distributive principle...", (Miller, 6). My comments: (a) this concedes that the validity of the principle should be recognized on independent grounds; (b) only a higher-level description really "triggers" a principle, in the way described in this section; (c) therefore Miller's claim is false for actual distribuenda like medicine.

To introduce them, consider the case of private honor. It can only be "distributed" in one way. For to honor someone is to believe something about him, and the proper basis for a belief is relevant evidence. Analogously it follows from the nature of love that it can only be given or reciprocated, if it is felt, and if it isn't felt, no reason why it should be felt, can substitute for this absence. I don't mean to suggest that the "sphere" of these goods itself might be taken to exemplify Williams' method. Rather, such mental states do not belong to the province of distributive justice at all, for nobody can have the authority to decide to allocate them, one way or another, rightly or wrongly, according to certain "principles". That there is something wrong with the conversion of power into belief, surely is not a matter of the conventional meaning of belief, as Walzer suggests (19, cf. 244), it is not a violation of the non-dominance principle, it is not even a matter of justice. Rather it is a matter of the nature of belief that not even a true belief has any value, either for God or for the believer himself, if it is recognized to be arrived at by the wrong causal path. Exactly the same can be said about love: even if it has only been "discovered" by the romantics, it is not its nature which is a matter of convention (122), but only the extent to which we want it to be formative of our personal relations. And this nature is violated if one brings oneself to love a person for his wealth or for his ancestry. It is even impossible to do this consistently without self-deception.

If these goods aren't proper subjects in the theory of justice, it cannot be true either that they belong to the sphere of free choice, as Walzer would have us believe. "The sphere of private affairs", he tells us, is "exactly like the market in commodities, except that these commodities own themselves". (238) Similarly, the distribution of private honor is said to be a free enterprise system: "the free appraisal of each person by each person". (257) At the same time he recognizes, of course, that these are "markets" outside the market, for selves are not commodities, nor is praise or blame. The reason, however, is that choices in this area are only "free" in the sense that no one else has a commanding power over them. On the other hand, the self has no commanding power over them either. You cannot sincerely praise a person whom you know to be a knave; and if you do it, you know yourself to be mistaken (or you deceive yourself). You cannot be mistaken in the same way in the exercise of your power of free choice concerning your money; even if you give it away to the un-deserving poor, that is all right: it is your money. The principle of free exchange gives you a full discretionary power, the principle of free love doesn't even give you an accountable authority.

Praise and blame and love aren't up for distribution. But goods may be proper objects of distributive activity which, in accordance with common understandings, presuppose those mental states. One example is the wreath of laurel which conventionally expresses honor; another is marriage which we conventionally understand to be a loving relation. If these understandings are shared ones, the identification of the proper distributive criteria for laurel and marriage is not a contingent matter any more, it rather follows from the nature of honor and of love. And so Williams' method is appropriate in these cases.

Again, Walzer's description of the relevant criterion is not wholly satisfactory. If the disposal of love isn't "free" in the sense in which the disposal of property is, it is misleading to say that a loving relation is a matter of free exchange; why, in that case, would it be a "blocked exchange"? Marriage is not a commodity because it should only be entered into by loving partners. And so it appears that "marriage is a loving relation" is not only a lower-level description of its social meaning; it is at the same time a description which already reflects a "distributive" decision: marriage should follow love. That is why Williams' method is appropriate.

Suppose we say that the social meaning of medical care is that it is a welfare provision, and then conclude, "by an inner logic", that it should be provided according to need. That would be an equivalent application of Williams' method. But it would not be equally informative, because in that case all the interesting things have to be said in the explanation of the fact that medical care is (always?!) a welfare provision.

The cases of honor and marriage are a-typical. In the typical case we first determine the value of a good -its contribution to the good life of people living in communities-, next discover that it is scarce, and then decide on the proper criterion for its distribution. These steps aren't internally related. But it is not the case that we have a certain amount of marriages available which are up for distribution, and so we have to decide which principle would be the most adequate one for executing the task. Rather, we believe that a long-term loving relation should be given a proper expression and socially recognized form. If the value of the good is identified, the only "distributive" decision yet to be made is to realize the value.<sup>32</sup> This may perhaps be called a distributive

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<sup>32</sup> Something analogous may be said about some burdens, e.g. the task of expressing gratitude. These burdens don't pose the usual "problem of scarcity" (in the case of burdens: of the good of avoidance) either. The problem of recruiting priests is that priesthood belongs to both categories of burdens at the same time: it is the proper expression of vocation, but also a job which is there to be done. Only Providence can match the two allocative schemes arising from these "shared understandings".

decision, but not because marriage is a scarce good. If there is a conflict of interest here which may require arbitration, it derives from the fact that love wants to be reciprocated, but, as I said, love itself is not a proper object of a theory of justice. Therefore, if marriage is, it is only marginally so.

### *8 The principle of subsidiarity*

Marriage is a loving relation but for Walzer this is only part of a complicated truth. For a family is also "a kind of welfare state, which guarantees to all its members some modicum of love, friendship, generosity, and so on, and which taxes its members for the sake of the guarantee" .(238) And therefore, "because of what families are, freedom in love can rarely be anything more than a free acceptance of (a particular set of) domestic constraints". (239) Marriage is partly a P-sphere, the range of application of the principle of the institutional expression of love. At the same time, it is used as an instrument of the satisfaction of the principle of need (as the sphere of need, in its turn, was used as an instrument for the sustaining of membership). The whole institution of marriage, the meaning of the social good, is shaped in these ways by the application of a plurality of principles of justice.

The analysis of marriage illustrates a principle to which Walzer often appeals: the principle of subsidiarity. Principles of justice should be applied by collective decisions of the smallest circle of people which can apply them efficiently. One reason for subsidiarity may be the fact that in the processing of information, the larger the channels of transfer, the more noise is produced. The participants within a small-scale informal practice are able to regulate their exchanges far more finely-tuned than any representative of a larger collective could possibly do. A second reason is the fact that effective participation (but not necessarily equal participation) in such decisions is itself a constitutive element of the good life. Rousseau's vision of the moral transformation of men in political society may be too idealistic for modern times, it can be approximated in intermediary societies. A third reason, to which I will return, is that decentralisation of power prevents abuse.

As we saw in § 7, expressions of love and of private honor are to be left to be decided upon by individuals. But that is not on account of the principle of subsidiarity, it follows from the nature of love and of belief, as it follows from the nature of property. (And that is the good reason why those spheres can be thought to be analogous to the sphere of free enterprise, even if they don't belong to it.)

In these cases two questions are answered by the same principle, which normally require separate answers: what is a just distribution?, and: who is responsible for achieving it? "Responsibility" refers to a kind of authority: if you are responsible, then your decision will be binding whatever (within certain limits) its content. But this may mean two different things: that your decision, whatever its contents, cannot be criticized on grounds of justice; or: that your decision will be binding, even if it is so criticizable. In the first case -the area of free choice- we have a pure procedure, in the second case only an imperfect one. The principle of subsidiarity only applies to the second case.

These considerations suggest a new interpretation of the concept of "sphere": the jurisdiction of a distributive authority. Note that spheres of this kind, J-spheres, are not identical with either P- or D-spheres.<sup>33</sup> One and the same authority (for instance: the state, the family, the individual) may be responsible for the application of one principle or of several, to one kind of social good or of several.

I argued earlier that, in order to determine the correct distributive principle for a particular social good x (e.g. a particular health care provision like in vitro fertilisation), the following argument is fallacious: x belongs with y to the same sphere of goods (e.g. welfare, health care), y is clearly to be distributed according to criterion z, this is therefore the right criterion for this sphere, and should also govern the distribution of x. This argument is equally fallacious when a sphere is interpreted as a jurisdiction, for a distributive authority is not committed to using only one principle throughout its jurisdiction, but should rather apply to each good its proper criterion. And it is no less fallacious, if we interpret spheres in the usual way, but try to determine, not the proper distributive criterion, but the proper distributive authority. Perhaps I should be willing to let the professor decide whether I have a claim to a cum laude, but that doesn't commit me to having her decide as well whether I have a claim to be examined.

If jurisdictional authority is dispersed over a plurality of agencies, there may arise a need for coordination and control. We will then introduce a supervising agency, or, descriptively more accurate, a structured cluster of supervising agencies: the state. The state has three tasks: for many goods it is itself the proper distributive authority (or rather: one of its branches is, supervised by another), for many others it is a court of appeal. (If such appeal is possible, it remains true that the decisions of the lower agencies are binding, even if they are wrong, but only if they are not objected to.) But thirdly, and

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<sup>33</sup> Despite Walzer talking about the "inhabitants" of a sphere policing its boundaries, "Response", 187.

most interestingly, the state decides authoritatively on the distribution of distributive authority, its decisions being the imperfect procedure for the implementation of the principle of subsidiarity. If some lower agencies consistently make the wrong decisions, this can be a good reason to redistribute their authority.

When Walzer attributes political power to other agencies besides the state, he clearly means only power of the first (or, just possibly, the second) kind. For this type of power it makes no sense to claim that its function is not to dispense justice directly, but only to protect the boundaries between spheres. For power of the third kind, however, it makes sense to make this claim. Sometimes, e.g. in administrative law, a court of appeal has the power of annulling a decision of some agency if it is judged to be made *ultra vires*, but not if it is judged to be made with authority, but wrongly. It is also possible that the state has the power eventually to deprive an agency of its authority if it consistently acts unjustly, but cannot revise its decisions in the meantime. However, to say that this is the only proper task of the state is surely an overstatement: that would involve denying to the state any other distributive task (of the first or second kind) beyond the allocation of distributive authority.

### *9 The vacuity of the non-dominance principle*

The idea of policing the boundaries between spheres can be given a plausible interpretation, if spheres are jurisdictions. Otherwise, it cannot.

Let us take a closer look at the non-dominance principle. It tells us that no social good  $x$  should be distributed to men and women who possess some other good  $y$  merely because they possess  $y$  and without regard to the meaning of  $x$ . If we interpret this principle within the context of the official program, we tend to assume as a background the existence of a fixed number of spheres. The impression we then get is that in applying this principle we should take our  $x$ 's and our  $y$ 's from different spheres. The principle then reads as follows: it is ruled out that the possession of a good from sphere  $X$  according to the proper "internal" criterion of this sphere should be recognized, by the proper criterion of sphere  $Y$ , as a legitimate basis for allocating goods from  $Y$ . Or: no replicating principle ("to each a portion of  $X$  according to his possession of  $Y$ ") can be justifiable which takes its replicatum ( $Y$ ) and its replicans ( $X$ ) from different spheres. This would be an interesting thesis. It would warrant the assertion that justice requires that the boundaries between the spheres should be protected, and the further insight that one important, perhaps the most important way of

promoting justice consists in policing those boundaries. Justice is achieved when social goods are distributed for distinct and "internal" reasons.

However, we have found many counter-examples to this thesis. The subject of the theory is justice between members, and so membership is an essentially dominating good. Justice requires that the allocation of shares in whatever domain should sustain every member's full membership, for this reason again membership is an essentially dominating good. Political power in the sense of distributive authority is an essentially dominating good as well, though in another sense: the whole point of its distribution is to guarantee (however imperfectly) the proper distribution of other goods. On the other hand, recognition is an essentially dominated good: you are always honored for something. (257) That achievement in advanced education dominates distributions in the sphere of office, as it is governed by the meritocratic principle, is recognized by Walzer when he calls access to such education a form of office itself. On a smaller scale Walzer sometimes allows other forms of dominance, for instance of simple jobs (not offices) by kinship. (161) In addition, his suggestion that leisure does not easily convert into other goods, (184) is mistaken: free time can be used for self-education, as a value in itself or as a way to office; it can also be used to acquire political power (by the frequent attending of meetings), or perhaps even friends. I assume that Walzer would not want to forbid these uses.

Such counter-examples are supposedly taken care of by the additional clause "without regard to the meaning of x". As we saw, "the meaning of x" can refer to an appropriate higher- or lower-level description. If a higher-level description is meant, the clause amounts to the following: the domination of the distribution of y's over the distribution of x's is forbidden, unless there is a valid distributional principle (like the principle of the sustainment of membership) which allows or requires it. The unfortunate result of adding this clause is that the non-dominance principle becomes vacuous. If distributions are to be justified by reference to principles, of course we should not mete out any good to anybody unless this is licensed by a valid principle. "Without regard to the meaning of x" might alternatively refer to a lower-level description. But in that case the question whether a form of domination would be justifiable could not be decided. Unless, of course, by appealing to the relevant principles again.

For example, free time should be the object of communal provision, because (precisely under conditions of complex equality!) this good will otherwise be dominated by wealth and power. (192) Why is this wrong?

Because free time has the meaning of space for the free expression of one's personality. This lower-level description of its meaning, however, is only suggestive, not sufficient. It should be supplemented by saying: and people have a claim (of need?, of membership?) to have some such space protected.<sup>34</sup>

If spheres are defined by principles (P-spheres), to say that the boundaries between spheres should not be crossed is equivalent to saying that principles should not be violated. Why have principles if not for requiring compliance with them? If spheres are defined by actual distribuenda (D-spheres), we cannot give any clear sense to the non-dominance principle at all, because there is no canonical list of spheres. We can always redefine our x's and y's as belonging to the same sphere z. But, of course, that wouldn't help. If a person acquires more money, education, or leisure on the strength of his possession of a certain amount of it, that isn't necessarily an acceptable justification. The columns are irrelevant.

All those very interesting examples of "domination" Walzer discusses throughout the book can easily be seen to concern allocation on irrelevant grounds, violations of the classical "*suum cuique*". It is entirely unhelpful to re-describe them as trespassings of the boundaries of "spheres".

#### 10. *The egalitarian concern*

One question remains: in what sense, if any, is Walzer's theory a form of egalitarianism?

The principle of entitlement is a non-patterned one, the principles of need and of desert are patterned, but replicating. The principle of "recognizing and upholding the underlying equality of membership" (84) seems to be a comparative principle on the face of it, but it may be doubted whether it really is. Perhaps the use of the concept of "equality" in this context is only a rhetorical one in the sense defined by Raz.<sup>35</sup> In that case "equal" membership only means "full" membership. For membership, in Walzer's view, is a uniform moral status, as being a human person is; therefore every member has a claim to all the rights of membership as a "*suum*". To determine his share no reference needs to be made to the shares of others. That he turns out to have the same rights is only a matter of formal justice, not a result of intentional equalizing. If x is a characteristic which either you have, or you don't have, and a principle of the form "everyone according to his x" is applied to people who have it, they

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<sup>34</sup> Cf. Barry, "Spherical Justice and Global Injustice", 73.

<sup>35</sup> Joseph Raz, *The Morality of Freedom*, Oxford U.P.1986, 227.

will get equal shares. Similarly, if we consistently apply the principle of need, there will be some level of well-being below which -as far as fate permits- we will not allow people to descend. Therefore this minimum-level will be guaranteed to all, "equally". But that doesn't mean that the principle of need is a comparative principle.

However, it is not impossible to interpret the principle of membership as containing a comparative norm after all. For "being a member" refers to a way of relating to other people. People meet each other in the exchange of all kinds of social goods, and in collective decision-making, and if they meet "as members", their relation has a certain quality which requires that to some extent they are symmetrically placed. If the deepest purpose of distributive justice is to enable people to maintain their self-respect (275) by satisfying communal standards of acceptable ways of life, justice will give us the task of enabling them to meet these standards. For example, people need to acquire some basic skills in order to be able competently to participate in communal life; but perhaps within a certain range they need to be educated as well as any other. You can be an illiterate and nevertheless become emperor, in a society in which only clerics read, but being an illiterate in a modern society will gnaw at your self-respect.<sup>36</sup> Walzer therefore interprets (206) the requirements made on the distribution of education by the principle of sustaining membership as a form of "simple equality" (within a sphere). Obviously this time the term has no disparaging meaning. But it has a comparative one.

Even so the use of the term "equality" is misleading. For, as the example also illustrates, even if the principle of membership contains a comparative norm, it needs not be a norm of equality. It doesn't require all people to be educated equally well, but only all of them to be educated, as much as possible, up to some minimal level of basic competence. The norm is a satiable one; and as soon as its requirements are satisfied, resources can be spent according to other principles. A strict egalitarian principle, on the other hand, is not only a comparative but an insatiable one.<sup>37</sup>

The other principles of justice Walzer appeals to are not egalitarian ones, and he doesn't claim they are. Rather he claims that the concerted application of all the principles will lead to results which will please the egalitarian. That doesn't mean either that the value of the possession of each social good can be

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<sup>36</sup> For arguments of this type, from the quality of a relation to a comparative norm, cf. Dennis McKerlie, "Equality between Age-groups", *Philosophy and Public Affairs* 21 (1992), 276-295; G.J. Postema, "Equality as Membership", *Rechtsfilosofie & Rechtstheorie* 19 (1990), 155-178.

<sup>37</sup> For this concept, see Raz, *The Morality of Freedom*, 235-244.

expressed in some common currency in terms of which we can compare total shares. There is no common currency, or, if there is, justice isn't interested in it. So how can we establish the existence of "complex equality"?

If we had a canonical list of "spheres", we could develop a measure of egalitarianism in roughly the following way. For each of the distributive spheres, we register the actual order of holdings (assuming that shares are commensurable within spheres, even if not across the lines), and we go on to check for cumulation of relatively high and relatively low positions, e.g. in deciles. If we find some persons in the highest positions in each of the spheres, this can be explained in two ways. Either these persons use their legitimate high position in one sphere to acquire an illegitimate one in another one. Or these persons simply happen to have what it takes to be legitimately placed in the highest positions in each of the spheres. Walzer seems to argue that this contingent cumulation of "best titles" is, as a matter of empirical fact, highly improbable.

It would be debatable when a criterion of non-cumulation would be strong enough to deserve to be called "egalitarian". (Is it sufficient that for each person, there is at least one sphere in which he doesn't belong to the highest, resp. the lowest decile?) But the question is doomed to remain an academic one, because, as I argued, it is impossible to construct a canonical list of "spheres" anyway. We can draw up our list as we please, and there is no reason to expect our calculation of "complex equality" to remain constant through all possible listings. Of course, the more columns we make, the less probable it becomes that patterns of cumulation will not be broken. But that only means that, for any measure of complex equality, there will probably exist an arrangement of the data satisfying it.

We might try to develop a canonical list by selecting actual *distribuenda* which are to be judged the most important ones. But this requires the identification of a basic value, e.g. welfare, freedom, or status, as a measure of importance. And that manoeuvre would eliminate the distinctiveness of the theory, or at least of its independent egalitarian component, altogether, by interpreting its basic principle as equal welfare, freedom, or status.<sup>38</sup>

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<sup>38</sup> Taking status as a basic *distribuendum* has been proposed by David Miller, "Complex Equality", *Pluralism, Justice, and Equality*, ch. 9; and Adam Swift, "The Sociology of Complex Equality", *ibid.*, ch. 11; and is implicitly accepted as a possible interpretation of complex equality by Walzer, "Response". Because this requires commensurability of actual *distribuenda*, the result is a form of simple equality. Miller tries to evade this consequence by introducing his principle as nothing but a tiebreaker in cases of

So how is it possible for Walzer to be so optimistic? I can think of two reasons only. The first is that principles of justice of the form "to each according to his  $x$ " take different, and unrelated, personal characteristics as their input. Therefore we cannot expect the same people always to be the tops, or always to be the bottoms. This argument amounts to taking the list of the P-spheres as our canonical list. The question then becomes: is it probable for the same people to be systematically advantaged, or disadvantaged, in the four spheres of membership, need, desert and entitlement? We can leave out the goods which go with membership, for they are supposed to be distributed equally (according to some measure of their value). But looking at the remaining three, unfortunately, cumulation seems a highly probable result. A rich person will tend to have his needs satisfied, not by collective welfare provision, but through his own efforts. And there will be many cases in which the same achievements will generate wealth as well as deserved rewards. Even if no significant relation existed between wealth and honor, the statistical chance of a person ending at the top, or at the bottom, in both spheres isn't negligible (being only a function of the number of levels we distinguish).

A second reason for optimism could be that, according to the principle of subsidiarity, the application of the distributive principles is to be entrusted to a plurality of agencies, each of which has to make up its own mind on their proper application. But this reason is necessarily parasitic on another: if the correct application of the principles produces cumulation, institutional guarantees of correct application will not prevent it.

The argument for complex equality fails, because in the only non-arbitrary interpretation it can be given (which takes P-spheres as the columns of measurement), it is implausible. It is true that violation of the principles of justice often, though by no means always, result in the piling up of advantages or of disadvantages, as Walzer amply illustrates. The keeping of justice tends to be in the interests of the weak and the poor. If justice is done, nobody will be left in a pitiable state (but for the blows of Fortune). But not because his disadvantages in one sphere will be compensated by his advantages in another, but because his needs will be fulfilled and his membership will be respected, even if he has every possible bad luck in the enterprises he freely undertakes, and lacks every possible qualification for reward. That insight, though important, can hardly be of sufficient comfort to the true egalitarian.

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conflict between other criteria, but in so doing only succeeds in reducing the scope of the egalitarian concern without changing its basic character.

## 11. *Tyranny*

In many places Walzer suggests another desirable social state which would result from respecting the boundaries between (or rather, as it turns out, within) spheres, and can be seen as dear to the egalitarian heart: the absence of "tyranny". Indeed, opposing oppression in any form seems to be his basic moral commitment, and also the core of his "minimalist morality" (the intersection of human moralities which is due to the fact that they are human).<sup>39</sup>

But what is tyranny? The possession of a share of whatever good by one person always changes the shape of the freedom of others, the range of options available to them. It is oppressive when it is illegitimate, and it is illegitimate when it violates the principles of just distribution. Tyranny is a form of dominance, e.g. "the deepest understanding of tyranny probably lies here: it is the dominance of power over kinship". (228) The same act, done for the same motive- sending a political opponent into exile- may be a form of tyranny if it is the exercise of criminal justice, but not if it is a use of the institution of ostracism. (270) So tyranny, like dominance, is also another word for injustice (or rather of its grossest forms): the allocation of a good for an improper criterion. Therefore the thesis that "the dominance of goods makes for the domination of people"(19)-, though it has strong rhetorical appeal, in the end appears to be only another tautology. It doesn't introduce any independent concern, egalitarian or otherwise.

That doesn't mean, of course, that talk of tyranny in these contexts is improper. We may expect a successful theory of justice to articulate and to explain our intuitions about oppression (cf. 116), and that is precisely what Walzer does.

Lastly, there is one other state of affairs which Walzer believes to be causally connected to the application of the non-dominance principle (and which he rather should believe to be connected to the application of a plurality of relevant principles). This is the stability of the system as a whole. For instance, if the spheres of office, money, and recognition, are governed by their proper criterion, nepotism will be ruled out, inheritance curtailed, and aristocratic titles abolished, and the happy result will be that people will tend to marry each other for the proper reasons, i.e. for reasons of love. In this way conformity to one distributive principle is reinforced by conformity to the

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<sup>39</sup> Walzer, *Thick and Thin*, ch. 1. (Published before as: Michael Walzer, "Moral Minimalism", in: William R. Shea & Antonio Spadafora eds., *From the Twilight of Probability*, Science History Publ. USA 1992, 3-14.)

other. Of course, this isn't an independent concern either: if you want your principles to apply, you want them to apply stably.

However, if we take a closer look, it turns out that for Walzer stability is not only the outcome of the interplay of the relevant principles, but an independent policy-consideration, limiting their proper range. For instance, the reason why inheritances are to be curtailed, is not that the unfettered application of the principle of free disposal of commodities directly offends any of the other principles. The reason is that unrestrained inheritance leads to accumulations of wealth which tends to bring the person who benefits from it into a position in which he is able to disregard blockings of exchange. (127) More generally, redistribution is a proper means of opposing "market imperialism". (120-122) It is this type of consideration -curtailing the possibility of the abuse of power- which also provides Walzer with his decisive arguments for distinguishing between the spheres of offices and other jobs. (163) Similarly, the convertibility of political power should be limited because political power, distributed for the protection of justice, is particularly prone to become an instrument of tyranny. (281) Obviously, this is an important reason for creating a plurality of distributive authorities, checking and balancing each other. (This might indeed usefully be called "the art of separation".<sup>40</sup>) Generally put, the aim of the policy is to prevent people from getting shares of any good which would enable them to acquire illegitimate shares of (the same or any) other goods, and get away with it.

## 12. *The structure of the theory*

Delete the concept of "spheres". Delete the concept of "non-dominance". Delete the concept of "complex equality". What do we retain? Do we retain anything? Yes we do.

In my reconstruction Walzer's theory of justice has the following components:

(1) In the distribution of social goods we have a plurality of concerns, roughly these: that membership should be sustained, the needs of members fulfilled, their deserts rewarded, and their discretionary power over the disposal of goods respected within the range left open by the other concerns. (I leave out the concern for the proper institutional expression of love and similar ones, which in my view are peripheral to the theory of justice.)

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<sup>40</sup> Cf. Michael Walzer, "Liberalism and the Art of Separation", *Political Theory* 12 (1984), 315-330.

(2) For each particular good, the question which of these criteria should govern its distribution, is to be decided by considering why the good is thought to be important to people individually and collectively. It should be noted that the theory doesn't impose the artificial constraints of the principle of neutrality to ideals of the good life on the relevant understandings, though it addresses itself to the concerns expressed in that principle. It transcends the discussion between welfarism and resourcism. In a way, it actually defines a basic distribuendum after all: the social bases of the good life. But it denies, or should deny, that these are commensurable.<sup>41</sup>

(3) It is a proper independent consideration for the design of distributive patterns that they should be stable, i.e. prevent people from acquiring sufficient power to become tyrants.

(4) Principles should be applied by a plurality of agencies, each operating on the lowest possible level.

This theory doesn't seem to me to be egalitarian in any clear sense, though its principle of membership may have some comparative implications. It is not a very spectacular theory anyway, in comparison with "equality of resources" or "leximin real freedom". But that may actually be one of its merits.

The usual Grand Theory of justice is characterized by the following features: it is monistic, as regards both its conception of the basic distribuendum, and the basic principle governing its distribution. And this fundamental principle is also insatiable: for every particle of the basic distribuendum which comes up for distribution, it completely determines its allocation. In contrast Walzer's reconstructed "theory" is thoroughly pluralistic. And the principles of a pluralistic theory cannot be both insatiable and of unrestricted application, for such principles would not leave any room for the operation of other principles at all. The principles of a pluralistic theory only identify some side-constraints on acceptable distributional profiles. Let me

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<sup>41</sup> Though Walzer, "Response", 283, advises against the method of weighted averaging of people's standing vis-à-vis different social goods, he doesn't want to argue for their radical incommensurability either, only for the inherently controversial character of the weighing required. This weighing is said to have an egalitarian effect of its own, because it will tend to prevent the emergence of a commonly recognized measure of overall standing. (That is a paradoxical claim. Suppose that some people who happen to subscribe to the correct theory of justice, are able to verify the radical inegalitarian character of its requirements, which only fail to be implemented on account of widespread ignorance. From which point of view are they supposed to be so happy with this situation?)

conclude by suggesting some possible advantages of a theory with these characteristics.<sup>42</sup>

The first is that the usual ambitious type of theory, with its monistic and insatiable principles, presupposes one central agent, or a system of fully coordinated agents, able to control the distributional profile of a whole society. But no such agency exists. The concept of "the state" with its associated connotation of sovereignty may suggest this, but what it stands for is a system of agents which is less than fully coordinated, both internally and with respect to other agents: supra-state institutions, economic agents (e.g. multinational corporations) and even individual people. A multi-actor system requires a plurality of limited responsibilities.

In the second place, one of the most conspicuous aspects of the dominant liberal egalitarianism is its lack of congruence with people's actual beliefs about justice.<sup>43</sup> Social psychologists have everywhere found three distributional concerns: desert, need, equality, in roughly that order. (The very fact of this pluralism shows that these "principles", cannot be both insatiable and of unrestricted application, not even those of desert and equality.) On any account of the proper way of theorizing about justice which requires people's "considered judgments" to play some role, theory should either respect those universal beliefs, show that they are derivable from it after all, or argue why they are mistaken. In this respect pluralism has a headstart on its rivals. As a matter of fact, Walzer's list of principles (see § 3) closely resembles social psychology's list, if we understand the principle of sustaining membership as his interpretation of "equality", and add the entitlement principle.<sup>44</sup>

The third possible advantage is a relative one, relative that is, to Walzer's explicit aim: to contribute to the discussion of urgent and controversial policy issues. His political theory is not one of the Owl of Minerva variety, it is meant to be a form of applied ethics. In the pursuit of this aim Grand Theories have

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<sup>42</sup> It will require another paper to argue this in detail: Govert den Hartogh, "Agency and Distribution", unpubl. MS, available from the author.

<sup>43</sup> Excellently reviewed by D. Miller, "Distributive Justice: What the People Think", *Ethics* 102 (1992), 555-593.

<sup>44</sup> It is an interesting question why this principle is lacking in social psychological accounts: because the people studied do not consider entitlements a matter of justice, or rather because the psychologists don't. One suggestion is that people tend to misinterpret entitlements as deserts, especially people who hold them.

turned out to be of limited value only.<sup>45</sup> That is a truth known from applied ethics generally: as soon as we have introduced the necessary qualifications to counteract obviously counterintuitive results, utilitarianism, for example, hardly yields any determinate results at all. Similarly, attempts to apply the dominant liberal egalitarianism, in one or the other of its existing forms, to concrete policy issues, e.g. in health care<sup>46</sup>, have been singularly unsuccessful in providing even modest guidance.

It has been argued that "principlism" in applied ethics doesn't do any better. However, this turns out to depend on a mistaken deductivist conception of the "application" of principles.<sup>47</sup> It is true that in order to get any results, we have to specify and to balance our principles,<sup>48</sup> and this implies the willingness to be informed by "considered judgments" other than judgments of principle. But it doesn't follow that we can limit ourselves to being so informed and forget about the principles. For they are what we have to specify and to balance.

Once we forget what Walzer says his "theory" amounts to, and look only at the way he discusses matters of distributive justice in any specific domain, his practice turns out to provide an excellent example of this specification and balancing process. It is true that the principles he appeals to, do not and cannot fully determine their own application. The application has to be mediated by lower-level descriptions of the "social meanings" of goods. The sages will argue about it. Hermeneutics and the appeal to principles do not exclude, but rather presuppose each other.

So how is it possible for a theory in some sense to survive the demolition of the central concepts in which it is articulated? This testifies, I suggest, to Walzer's true genius, which is not so much in the construction of conceptual frameworks, as in his mastery of the phenomenology of the moral life. The "theory" is only a disguise. What it disguises, turns out to be a very effective way of doing applied ethics without theory.

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<sup>45</sup> In the Netherlands Rawls' difference principle has been appealed to by both defenders and opponents of the existing welfare arrangements.

<sup>46</sup> Govert den Hartogh, "Priorities in Collective Health Care Provision: Why the Search for Criteria Failed", in: Govert den Hartogh ed., *The Good life as a Public Good*, Kluwer Dordrecht 1999.

<sup>47</sup> Govert den Hartogh, "Generalist and Particularist Considerations in Applied Ethics", in: A.W. Musschenga & W. van der Steen eds., *Reasoning in Ethics and Law: Theory, Principle, and Judgment*, Ashgate, Aldershot, forthcoming.

<sup>48</sup> Henry Richardson, "Specifying Norms as a Way to Resolve Concrete Ethical Problems", *Philosophy and Public Affairs* 19 (1990), 279-310; Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 4th edition, Oxford U.P. 1994, ch. 1.

