Justice and Communitarian Identity Politics

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1. Introduction

Most liberals now hold that there is reasonable disagreement about what counts as a good life: social and cultural values and personal commitments may reasonably influence our judgments about what makes a life worth living. Philosophers who would admit reasonable disagreement about what is good, however, often take the notion of justice to be considerably more fixed. But even if we can expect greater measure of agreement on principles of justice, there is reason to think that such principles will not be immune to reasonable dispute altogether. Freedom of speech and the separation of church and state, for instance, are required by justice in our society, but this may not be the case in other societies. We should expect standards of justice to be rooted in the societies they are to govern and to connect with local values, cultural practices, and shared aspects of identity. We should not expect that all societies would or ought to accept the same principles of justice. This is important not merely as a theoretical point. A nation's relations with other nations may well be shaped by its assessment of their justice, and there can be real human costs to misconstruing the requirements of justice in a foreign context.

Michael Walzer's work on justice takes us a good distance toward understanding the important ways in which standards of justice are embedded in particular aspects of local cultures. He argues that principles of just distribution are relative to "social meanings," what we may also refer to as "social values," and hence can vary from society to society.[1] He has developed and analyzed many interesting examples of this variation, and in doing so has strengthened the case for accepting that other societies may not unreasonably harbor notions of justice considerably different from our own. If certain practices in another society are not unjust in that society, the fact that the same, or similar, practices would be unjust in our society provides us with no basis for interfering with them. Walzer helps us to see this point.

He also goes some way in helping us to think about the limits of justice. In his most recent book, *On Toleration*, and previously in *Thick and Thin: Morality at Home and Abroad*, he elaborates the idea that human rights play an important role in defining these limits.[2] While the idea of cross-cultural

minimum standards of justice may seem to be in tension with the idea that standards of justice vary in accordance with social values, Walzer demonstrates the extent to which these two ideas are compatible. His view is that international standards of minimum justice reflect an overlap between conceptions of justice that each depends on a local consensus on social values. This notion of overlapping consensus, to use John Rawls's terminology, is important to any practical philosophy of international justice, and Walzer's view of justice is strengthened by the use it makes of it.[3]

Nevertheless, there is a problem with Walzer's conception of the limits of justice, as it is articulated in terms of the notion of overlapping consensus. In particular, it is too permissive with respect to the role that the social and cultural aspects of people's identities can play in setting and, in particular, in lowering international standards of minimum justice. This is because Walzer's notion of an international overlapping consensus is not shaped and bounded by an idea of what Rawls has referred to as "public reason."[4] Reasoning is public in the relevant sense when it serves to elaborate a conception of justice for resolving political disputes and when that conception of justice is one that all members of the society or societies in question could accept as reasonable and fair, provided that those members are themselves motivated to find terms acceptable to others. The terms of public reason can thus be said to have a practical aim and to satisfy a criterion of reciprocity.[5] This criterion of reciprocity limits the relevance of claims about cultural identity to justice.

This can be seen by considering the role public reason should ideally play in ordering relations between societies. What the requirement of public reason implies with respect to international justice is the importance of societies aiming to reach agreement with one another and thus constructing minimum standards of justice together. Standards of international justice should represent the terms of a common enterprise and commitment among societies to find mutually acceptable terms for ordering their relations. In order to achieve this, persons in different societies must acknowledge each other's basic interests and respect the legitimacy of each other's claims. They must seek to cooperate and to accept some responsibility for each another's affairs. Walzer's approach to international justice fails to allow for the importance of a common enterprise across societies facilitated by the ideals and practical aims of public reason.

Rawls introduced the notions of overlapping consensus and public reason into his political philosophy as he worked out the idea of political liberalism. The theory of justice that Rawls first articulated in his seminal work, *A Theory of Justice*, failed to distinguish between political and comprehensive liberalism. The conception of justice he advanced, named "justice as fairness," was presented as part of a liberal doctrine that was comprehensive in its ambitions, articulating a set of values to govern non-political as well as political realms

of behavior. Later, Rawls came to acknowledge that a plurality of distinct and sometimes incompatible moral, religious, and philosophical doctrines are generated under free institutions, and that many of these doctrines are not unreasonable. Under the conditions of reasonable pluralism, he argued, it is important to show how a conception of justice can fit into various and even conflicting comprehensive doctrines: it should be a possible object of an overlapping consensus between them. In order to achieve this, a political conception of justice is justified by reference to political values only; it is not presented as part of a more comprehensive moral, religious, or philosophical doctrine that addresses the broader question of what counts as a good life. The principles of justice these values support form the vocabulary of a public reason that can mediate between a plurality of comprehensive doctrines.

Exploring the requirements of public reason has led Rawls to reevaluate the scope of justice as fairness. The reader of *A Theory of Justice* might well have assumed that justice as fairness, as a theory of justice for a domestic society, was meant to apply universally. In Rawls's more recent work, however, it has become clear that the requirements of public reason and reciprocity allow for cross-cultural differences in the content of standards of justice and support mutual acceptance of differences.[6] Rawls admits pluralism about justice in addition to pluralism about what counts as a good life. Indeed, respect for what Walzer refers to as social meanings would seem to help to make public reason possible. This is significant. But the requirements of public reason in international relations also set limits to claims to justice that are stricter in theory than Walzer's view allows; they generate minimum standards of justice for domestic societies that his theory fails to guarantee.

Walzer maintains that only when principles of justice enjoy the support of social meanings can they be said to be appropriately grounded in a social context, and he concludes that if a conception of justice receives no support from the existing social norms and conventions of a given society, it cannot apply to that society. He also thinks that social norms are sufficient to constitute standards of justice; they determine the proper standards of justice when most members of a society accept them. Walzer attempts to justify these claims by appealing to the role that comprehensive social values and their associated norms of justice play in shaping people's identities. Let us refer to this approach to justification as "communitarian identity politics." Proper attention to the idea of public reason as a requirement of political liberalism should lead us to reject communitarian identity politics.

Principles of justice for domestic societies should be principles that meet the reasonable requirements of international public reason, and they can do this only when they satisfy certain minimum standards of decency. The minimum standards do not require the existence of shared values; they may be external to social values and still apply. A society may lack a collective will

to implement them. Members of the society may even share concepts that are in tension with what justice minimally demands. Yet this does not mean that the requirements of minimum justice or decency are not relevant. Most existing societies fall notably short of any plausible ideal of justice. The fact that most people comply with existing institutions and find them meaningful is no guarantee that those institutions are just. Assessing the sensitivity that principles of political justice display toward social values will often play an important role in determining whether or not the principles can reasonably be rejected by any members of the society they are to govern. But conceptions of justice drawn from shared values that violate the limits drawn by international public reason cannot be justified. Members of all societies should acknowledge moral reasons to respect these limits. Thus, despite the importance of acknowledging the social relativity of many aspects of justice, minimum standards of justice should not themselves be thought to depend on social values.

Minimum standards of justice are provided by a conception of public reason that extends across nations. Such a conception is significant in at least two ways. First, persons can appeal to its standards in assessing the justice of the regime that governs their own society. Second, persons can appeal to its standards in reasoning about the moral permissibility or obligation of intervention in the political affairs of another society. As we shall see, a conception of international public reason and minimum justice can and should be used to criticize the idea of justice as social meanings at the same time it admits reasonable pluralism about justice.

2. Identity Politics

The term "identity politics" has come to be used to refer to cases in which people choose or affirm a group identity for political purposes. This identity may be, for instance, ethnic, racial, sexual, religious, or national. We can distinguish the motivation behind communitarian identity politics from several other reasons why people may come to organize politically around a particular group identity.

Feminist and anti-racist identity politics are prompted by particular analyses of the nature of discrimination or oppression and the distribution of power within society. The Black Power movement in the United States was launched to challenge white domination. Feminists have argued that organizing along gender lines, and sometimes along sexual lines, is necessary to counter gender discrimination. Political lesbians maintain that heterosexuality is an institution that subordinates women, and lesbianism is affirmed by them as a women-centered political identity, not merely a sexual preference. Political lesbians have held that only by rejecting heterosexuality and identifying as

lesbians can a system of sexist and heterosexist domination effectively be challenged.[7]

These forms of social analysis and political organization encounter a certain danger. The danger lies in treating the difference that marks out the group as an essential characteristic of persons who bear it. The group's identity may be treated as natural or fixed. Moreover, these forms of identity politics may have us assume too much about the commonality of the group in question. In the 1980s, the feminist movement went through a period of intense criticism, both from without and from within. Critics challenged the idea that gender should be elevated as the politically most important aspect of people's identities. Women of color, in particular, rejected the alleged primacy of gender discrimination. The challenge to gender essentialism led to fragmentation within the women's movement.[8] At the same time, black liberation movements were criticized as sexist.

Fragmentation also poses a threat to multiculturalist identity politics. Multiculturalism as a political movement can be viewed as a response to a so-called melting pot ideology. Groups that have traditionally been excluded or marginalized by the dominant society may not, over time, assimilate. This may be either because of the group's own resistance to relinquishing a distinct and separate identity, or because the dominant society refuses to permit the group's assimilation. In any case, the affirmation of a distinct identity, a group's difference from other groups within a society conceived of as multicultural, can be part of an attempt to create and maintain a sense of belonging and self-esteem for members of marginalized groups. Multicultural identity politics may be seen as crucial for enabling the exercise of the equal political rights of all members of society. Support for bilingual and multicultural education programs, for instance, is sometimes justified along these lines. Multiculturalists may also advocate special political rights, such as proportional representation or regional autonomy, for members of minority groups. Persons typically identify in multifaceted ways, however, along ethnic, religious, gender, kinship, class and occupational lines. A multiculturalist movement that aims to do justice to the complexities of people's identities risks fragmentation.

Both feminist and multiculturalist identity politics, as we have considered them, are motivated by a sensitivity to injustice. They are responses to the marginalization, exclusion, or domination of some social groups by other social groups. The normative framework within which identity politics of these sorts seems compelling could be centered on such notions as equal rights, fair equality of opportunity, and an affirmation of the equal moral status of all members of society. In view of different values, behavioral norms and capabilities, a strict principle of equal treatment may indeed be unfair.[9] Special group rights or differential treatment, such as affirmative action, may be called for in order to rectify present and past injustices, and to create fair and equal opportu-

nities for all groups to participate politically and economically in the broader society. Insofar as the goal of multicultural and feminist identity politics is the full participation and inclusion of all social groups in accordance with the rights of equal citizenship, the normative framework within which identity politics is propounded could be identified as liberal.

A contrasting normative framework for identity politics can be found in what we may refer to as an ideology of community. This type of ideology underlies some varieties of multiculturalism.[10] It is also an aspect of a communitarian conception of justice such as Walzer's. Subscribers to an ideology of community maintain that community is a primary source of goodness or authenticity in people's lives. Sharing a multiculturalist's resistance to a melting pot ideology, proponents of this ideology may adopt it in response to a group's alienation and with the intention of creating a sense of belonging without requiring cultural assimilation. They do so, however, by asserting and aiming to preserve particular cultures as sources of value and shared meaning. This conception of value leads them to communitarian identity politics: persons mobilize around a particular cultural identity and defend it as a source of value and goodness. Bilingual education thus serves not simply to facilitate the full participation of various cultural groups in the broader society, but to preserve distinct and possibly competing identities.[11] It is a short step to the concept of justice associated with communitarian identity politics: because of the shape they give to people's identities, the social meanings or values characteristic of a culture or community set the standard of justice for it.

A danger for communitarian identity politics is the tendency among its advocates to portray cultures as static and mutually exclusive.[12] Insofar as it would have us acknowledge a society as multicultural, a communitarian approach may involve describing the society, as one critic puts it, "as composed of basically internally homogenous units – a hegemonic majority, and small unmeltable minorities with their own essentially different communities and cultures which have to be understood, accepted, and basically left alone . . . in order for society to have harmonious relations."[13] Moreover, communitarians may overlook or downplay the significance of conflicts and inequalities within cultural or social groups.[14] That problem is apparent in Walzer's philosophy.

3. Walzer's Theory of Justice

Walzer argues that investigating the shared understandings of goods will lead us to the correct standards of distributive justice.[15] The social understanding of a good depends on the way in which it is valued in a society. This is revealed in the social processes bound up with the conception, creation, possession, and employment of that good. The social practices surrounding ecclesiastical office in medieval Europe, for example, reveal that Christians had good rea-

sons to hold that it was unjust for office holders to buy their positions. Walzer writes, "Given the Christian understanding of office, it followed – I am inclined to say it necessarily followed – that office holders should be chosen for their knowledge and piety and not for their wealth."[16] Or consider another example. Walzer argues that there is general agreement that community provision should be according to need. If something is recognized as a need in a community, the community ought to provide for it. But what counts as a need can vary significantly from one cultural and social context to another. Public drama festivals satisfied an important need in ancient Athens, while this is not true in our society. Short of investigating shared social values, Walzer concludes, we cannot determine what reasons people have or which distributive schemes justice requires.

Surely it is plausible to think that the claims of justice often depend on social values in these ways. But Walzer's thesis is stronger than this: he claims that investigating social values is the only way to specify the claims of justice. There is no way to step outside of local values to take up a critical vantage point from which to argue for a requirement of justice that is not supported by them. Walzer thinks, for instance, that there are no clear grounds for claiming that metics in ancient Greek society ought to have been granted citizenship, even though we would have to say that they were "the subjects of a band of citizen-tyrants, governed without consent."[17] This is because the social understanding of citizenship in Greek society did not support the idea that citizenship be extended to metics. The claims of justice, says Walzer, will always be embedded in "thick" meanings; they are the products of "historical and cultural particularism."[18] Since the shared understanding of goods varies from one social context to another, the standards of justice will also vary and will maintain a local character. Social values provide a necessary structure: "There are no external or universal principles that can replace it. Every substantive account of distributive justice is a local account."[19]

This position faces a serious problem. The sorts of things to which Walzer attributes social meaning are open-ended. Consider community support for the disabled: how much is required? It would seem that something must mediate between different possible understandings of shared values and their connection to the claims of justice, if such values can indeed be said to determine specific distributive principles. Walzer concedes that,

> exactly what ought to be done will be a matter of dispute. Words like *health, danger, science,* even *old age*, have very different meanings in different cultures; no external specification is possible. But this is not to say that it won't be clear enough to the people involved that something – some particular set of things – ought to be done.[20]

Yet the shared idea that something particular ought to be done is a far cry from a determinate principle of justice, and surely what ought to be done is often deeply controversial within a single culture.[21] Walzer himself asserts that shared values admit of varying and incompatible interpretations even within a culture. This problem would seem to call for critical external principles, principles that could be consulted in determining whether a particular interpretation is a reasonable one.[22]

Walzer denies this. Instead he argues that a particular interpretation is legitimate when it is the product of "ongoing political determination" by democratic political processes.[23] He is vague about the nature of these political processes claiming, for instance, that they involve "negotiation, intrigue, and struggle."[24] Nevertheless, in his caution about judicial review he suggests that voting is the relevant political process for determining the content of the requirements of distributive justice. Thus it appears that for Walzer, principles of justice that articulate a particular interpretation of shared values are legitimate or authoritative when a democratic majority accepts them. The will of the majority comes to represent the social understanding. But why should those with unpopular views accept that the dominant morality binds them?

Walzer's answer is that the dominant interpretation of social values has moral authority because of the way in which it shapes the psychological and moral identities of all members of society. In his view,

> it is only by virtue of [the dominant morality's] existence that we exist as the moral beings we are. Our categories, relationships, commitments, and aspirations are all shaped by, expressed in terms of, the existing morality.[25]

He writes, "men and women take on concrete identities because of the way they conceive and create, and then possess and employ social goods."[26] His idea is that because a context of comprehensive social values helps to constitute the nature and very possibility of their concrete moral personhood, people have reasons to value goods in the ways shared by the majority of their society or community, and to accept the standards thus implied for the distribution of these goods. Moreover, and this is vital to Walzer's view, they have no reasons to accept standards not thus grounded.

In *The Morality of Freedom,* Joseph Raz also argues for the necessary dependence of the goals of individuals on "forms of behaviour which are in fact widely practised in [a] society."[27] He calls these forms of behavior "social forms." Like Walzer, Raz argues that what counts as a good for someone depends, in central cases, on the social forms with which that person is engaged. Raz advances two arguments for this dependence thesis. The first is that goals that are important to a person over a significant period of time, what he calls "comprehensive" goals, require social institutions for their very possibility

and meaningfulness for the individual who has them. Social forms create the possibility that certain goals could acquire a significant role in an individual's life while limiting the role and significance those goals could take. No one can be a lawyer, for instance, in a society that has no legal system, and what lawyers can do is limited by the role specified for them within a legal system. Raz argues that nearly all comprehensive goals depend on social forms for their significance, if not their very possibility. Even goals that do not rely as directly rely upon particular institutional structures, such as recreational fishing, often involve sharing certain attitudes and values with other people.

Raz's second argument is that an individual cannot acquire a comprehensive goal by explicit deliberation, for the acquisition of comprehensive goals depends instead on experience and habituation. What an individual must learn in order to acquire many comprehensive goals is too complex to be grasped merely in the activity of reasoning about those goals. Raz thinks that we cannot adequately describe everything that is involved, for instance, in being a good spouse or parent. The appropriate responses are systematically conditioned by social conventions with which a person must participate in order to gather a sufficient understanding. Goals that involve interactions with other people depend on having correct expectations regarding the meaning of the behavior of other people, and the expectations are derived from habituation and experience within a common culture, or at least within common social forms.[29] Since the experience and habituation necessary for the acquisition of most comprehensive goals take place within and are conditioned by particular social forms, social forms can be said to shape in basic ways the comprehensive goals people have.

Walzer's view would seem to be supported by Raz's arguments; Raz may well agree that standards that are in conflict with the beliefs of people concerning the kind of people they are and want to be would have no appeal for them. But even so, Raz could ask whether the fact that distributive schemes are grounded in shared values settles the question of their justice. Raz claims that his thesis is not a conventionalist thesis: "It does not claim that whatever is practised with social approval is for that reason valuable."[30] Walzer, instead, believes that the influence that shared values have upon our comprehensive goals supports their normative authority. While Raz holds that reliance on social forms is a necessary condition of an individual's having comprehensive goals, Walzer goes on to claim that it is also a sufficient condition. Walzer's normative thesis seems to be that the exclusive source of the goodness and justice of distributive schemes is the contribution they actually make to the formation and support of people's identities.[31]

Walzer suggests that the idea that social meanings suffice to constitute standards of justice is required by a decent respect for opinions that have been taken seriously enough to shape people's lives. This moral claim is not itself

a principle of justice; it is something like an axiom of morality that Walzer takes to support the theory of justice he defends. He writes:

> There is a certain attitude of mind that underlies the theory of justice . . . : we can think of it as a decent respect for the opinions of mankind. Not the opinions of this or that individual, which may well deserve a brusque response: I mean those deeper opinions that are the reflections in individual minds, shaped also by individual thought, of the social meanings that constitute our common life.[32]

Walzer thinks that the fact that social forms, such as those described by Raz, shape our lives so essentially is an argument for their value. He says, "Where we are . . . is always *someplace of value*, else we would never have settled there."[33] This is a presupposition of his identity politics.

The idea that appeals to social forms are not only necessary, but also sufficient to establish the justifiability of the moral claims implicit within them seems to imply, implausibly, that dissent from shared values is never justified. But without an adequate account of what we can say to dissenters, Walzer would appear simply to insist upon the value of a culture for those whose identities are in basic ways defined by it, even though they may reject it. Can Walzer convincingly show that dissenters must be making a mistake?

4. The Problem of Dissent

If Walzer is to hold the view that dissent from shared values is misguided, he must explain how it is that we can say that reasons provided by widely held social values are reasons for dissenters. Here we may make use of a distinction set forth by Williams between so-called internal and external reasons. Williams conceives of internal reasons as reasons for an agent that derive from the agent's "subjective motivational set."[34] They are reasons that already motivate the agent, or that would motivate the agent after she deliberates about how to advance her desires, values, and projects. By contrast, reason is external if the agent's subjective motivational set does not already contain the motivation to act on that reason, and the agent would not be led to the reason in question after deliberating about how to advance elements of her current subjective motivational set.

Can a dissenter have external reasons to comply with the dominant morality? If reasons for compliance with dominant social values are external to a dissenter's subjective motivational set, in Walzer's view there would seem to be nothing other than the threat of force to ground the claim that they are reasons for the dissenter. How can social values generate reasons for an individual who is not motivated by them and could not be motivated based on the con-

tents of her subjective motivational set? The fact that other people in the dissenter's society are so motivated hardly seems to provide a convincing account, and neither does the idea that others value aspects of the dominant culture. But Walzer denies the possibility of further grounding, and so it seems he must conclude that dissenters can have no external reasons to accept dominant social values.

If the dissenter's reasons to comply are internal, then dissenters are not radical dissenters. They accept and are to some extent motivated by the values in question. They contest the received interpretation of social values but do not reject the values themselves. Such dissent can be redescribed as disagreement about how properly to interpret shared values. Shared values "are embodied in many different forms: legal and religious texts, moral tales, epic poems, codes of behavior, ritual practices."[35] The forms call for interpretation, and the interpretive enterprise creates much room for controversy and disagreement. The will of the majority, for instance, might not be readily apparent or may itself be critical. Critical interpretations imply that social practices do not properly embody the underlying shared values. This kind of dissent from current social practices and from received interpretations is legitimate, according to Walzer, for it does not demand authority external to underlying social values.[36]

Walzer is not particularly concerned to be able to establish that principles of justice justified by appeal to social values have moral authority for radical dissenters, because he thinks that genuinely radical dissent is extremely rare. This is because he believes a person expresses support for the distributive schemes of the dominant conception of justice when she values goods in a way typical for her society. If I value some medical care because I believe I need it, or accept an honor because I think I deserve it, then I am committed to specific distributive principles, he thinks. Thus, consider Marxists. They reinterpret the bourgeois concept of equality, Walzer argues.[37] But is it meaningful to claim that Marxists and bourgeois capitalists share a social value, that of equality, but give it different interpretation? If we suppose, with Walzer, that they do, then it is difficult to see how the meaning of equality determines principles of distributive justice; the concept of equality is much too broad. And even if my valuing medical care because I need it could be said to presuppose the principle that care should be distributed according to need, this principle itself is too vague to imply a specific distributive scheme. It does not indicate how far social provision has to go, whose responsibility it is to provide it, or how conflicts between the sphere of medical care and other spheres of justice should be settled. It does not help us to determine whether it would be wrong for a society to invest in public art, for instance, if that would mean some people's medical needs could not be met. It is also far from clear that in valuing medical care because I need it, I have committed myself

to the idea that a democratic procedure such as voting can determine the correct interpretation of an ostensibly underlying principle.

Thus the idea that distributive standards are implicit in loosely characterized shared values is unconvincing, for it is implausible to think that distributive standards can be drawn from the nature of social goods alone. The internalist thesis would seem to amount to nothing but the empty or trivial claim that the interpretations in question come from within the society: there is some intellectual and cultural framework that makes them possible. If dissenters' reasons are usually internal to social values, this does not bode well for the thesis that social values provide principles of justice.

The will of a democratic majority is too arbitrary, morally speaking, to be said to determine the correct standards of justice, since it may not be acceptable to all members of society. Even so, something must guide interpretations and render them normatively compelling. In search of an alternative, let us turn to the idea of a moral minimum formulated within a liberal conception of international justice and explore whether it can and should serve in this role.

5. Minimum Morality

On Walzer's view, since social values vary significantly from one social and cultural context to another, justice will be compatible with great variation in the content of distributive principles. He writes:

> Justice requires the defense of difference – different goods distributed for different reasons among different groups of people – and it is this requirement that makes justice a thick or maximalist moral idea, reflecting the actual thickness of particular cultures and societies.[38]

Nevertheless, he does also acknowledge a universalistic minimalist morality. A minimalist morality is composed of abstract moral principles that are elaborated in different societies in different ways. Examples of such principles include principles that would have us hold that law enforcement should be equal and impartial, that arbitrary arrests are unjust, that news reporting should be truthful, and that torture is wrong.[39] We might think of these principles as the focus of an overlapping consensus. In an overlapping consensus, advocates of competing moral perspectives each endorse the shared set of requirements for their own reasons. Suppose that every thick or maximalist moral view provides a basis for endorsing the principles of Walzer's minimalist morality by way of its social meaning consensus. The minimalist morality could then be said to secure an overlapping consensus.

Should we think of minimalist principles as placing normative constraints on local maximalist moralities by virtue of the capacity of the minimalist principles to secure an overlapping consensus? If so, then aspects of a local morality that have the support of an international overlapping consensus would have a kind of normative authority that its other aspects lack. This would suggest that securing an overlapping consensus is alone sufficient to constitute a free-standing justification of minimalist principles. A free-standing justification is a justification of principles of justice that does not appeal to any particular set of comprehensive social values. It nonetheless can account for the normative force of such principles within a particular society; it would be by virtue of its free-standing justification that the recognition of a principle in concrete and particular circumstances would have validity and normative force.

The appeal of a free-standing justification is that it accommodates reasonable pluralism about principles of domestic justice without abandoning the idea that there could be some universally shared normative principles of international justice. But we should reject the idea that an overlapping consensus could comprise a free-standing justification of minimalist principles; a mere overlapping consensus is too thin to constitute a justification.[40] The fact that a set of agents, in this case the peoples of different nations, all accept some set of principles does not seem enough to justify those principles. There is no guarantee that the parties involved accept the principles for the right reasons, namely, because they aim for agreement and believe that the proposed principles express what all can accept as reasonable and fair minimum requirements of justice. There is no guarantee that the principles express the mutual commitment of a common moral enterprise. Nevertheless, Walzer is wrong to conclude that nothing could provide a free-standing justification of minimalist principles. There is reason to think that if an overlapping consensus is organized by the requirements of public reason in the international context, then it could be said to have a free-standing justification.

Ideally, public reason will issue in substantive requirements that articulate the proper limits of good standing in a world of societies. We may think of the limits as given by an ideal of decency.[41] An ideal of decency is a conception of minimum justice acceptable to parties motivated to find reasonable and mutually acceptable terms for dealing with their differences. Such parties are motivated by the ideal of public reason. As already indicated, important to the idea of international public reason is a sense of what societies can attempt to achieve together without repudiating many of their fundamental differences. If we can formulate a conception of decency that meets the requirements of public reason and can in that way secure an overlapping consensus, we should take that minimum conception to be justified.

Walzer rejects the idea of a free-standing, minimalist morality because he believes that a minimalist morality can be nothing but a generalization from

features common to a large number of maximalist moralities. As we have seen, these are moralities that are embedded in particular social and cultural forms and that depend essentially on the comprehensive social values which members of a particular society share.[42] Consider the general principle that community provision should be according to need. Walzer would argue that this principle itself provides no normative support for its instances. There is no argument from this minimalist principle to the conclusion that a community ought to recognize a need that it now does not. Any normative content a general principle has can be derived only from its instances, not the other way around.

The same can be said of principles that arbitrary arrests are unjust, or that torture is wrong. If it so happens that such principles receive universal recognition, we may say that they are minimalist moral principles. But the generalized form of a piece of local morality does not do any normative work in virtue of its *de facto* universal support. An overlapping consensus cannot, therefore, limit or replace the role shared values play locally in providing justification for principles of justice. While an analysis of some familiar principles guiding various spheres of justice seems to approach moral minimalism, Walzer believes this is consistent with the idea that the claims of justice are the product of the particularities of historical and cultural context. This is so, even though minimalist principles are not trivial and may indicate the contingent universal nature of some features of human societies.

There is, however, one normative meta-principle which Walzer seems to admit as comprising a free-standing minimum morality. He asserts: "[T]here is a general principle, which we can think of as the expression of moral minimalism in international politics. The principle is 'self-determination.'"[43] He continues by claiming that communities, "*ought to be allowed to govern themselves* (in accordance with their own political ideas) — insofar as they can decently do that, given their local entanglements."[44] This means, he says, that tribalism will inevitably have a presence in a world of nations:

> Tribalism names the commitment of individuals and groups to their own history, culture, and identity, and this commitment (though not any particular version of it) is a permanent feature of human social life. The parochialism, the moral thickness, that it breeds is similarly permanent. It can't be overcome; it has to be accommodated, and therefore the crucial minimalist principle is that it must always be accommodated: not only my parochialism but yours as well, and his and hers in their turn.[45]

Walzer's principle of self-determination bears a clear relation to communitarian identity politics: it is its international correlate. He thinks that only this principle can enjoy a free-standing justification; a more substantive free-

standing morality would be inconsistent with the moral axiom of decent respect for the opinions of mankind that underwrites communitarian identity politics.

The principle of self-determination considered alone, however, is insufficient to provide a conception of public reason in international relations. In fact, it runs counter to the possibility of international public reason. Imagine a society in which the majority was in favor of a plan to revoke the citizenship, and with it the livelihood, of an unpopular minority. Such a plan could not be considered acceptable in an international society of decent nations, especially in view of the refugee problems, among other problems, it would create. Walzer's moral axiom stresses the value of respect for moral opinions that have been taken seriously enough to shape people's lives. We may add that respect for a moral conception also requires respect for limits to what that conception can be expected to accept, consistent with its own principles. To endorse the idea of public reason is to acknowledge that mutually justifiable international relations will require some limits to both the means and ends of the self-determination of nations and communities within nations. Walzer's own formulation suggests this. As we have seen, he claims that nations or communities "ought to be allowed to govern themselves insofar as they can decently do that, given their local entanglements." But he does not specify what counts as a decent form of self-government, other than to say that it must be peaceful.[46] Moreover, he gives no indication that he believes it is important that criteria of decency for self-government be conceived of as acceptable from the point of view of other nations. But the limits of decency must be acceptable from the perspectives of differing moral conceptions if a requirement of mutual respect is to be satisfied. Without a shared understanding among nations of the proper limits of self-determination, the principle of self-determination cannot be implemented as a principle of public reason to govern international relations. Nations cannot use it as a shared standard to guide their reasoning about how they are to resolve conflicts and to conduct themselves with regard to one another. Thus international relations, by Walzer's reasoning, lacks a conception of public reason and hence, it lacks a practical, normative conception of minimum justice.

In order to accommodate a reasonable range of disagreement across cultures and nations about the content of domestic justice, a conception of minimum decency should be capable of securing an overlapping consensus among various maximalist conceptions of justice. Recall that a maximalist conception of justice is a conception of justice formulated by interpretation from a social meaning consensus. This requirement that an overlapping consensus among maximalist conceptions be attained responds to Walzer's concern that a normative account of a moral minimum will involve the illegitimate imposition of liberal values where they do not belong. But, in addition, the

requirements of a political conception of decency must meet the criteria of
international public reason and reciprocity: the parties whose acceptance of a
proposed conception of decency counts towards its justification must them-
selves be agents who are motivated to find terms they can affirm as fair and
acceptable to others. They must reasonably believe that no parties similarly
motivated have a reasonable objection to the proposed requirements; should
any parties accept proposed standards of decency for reasons unsupported by
such motivation and belief, their acceptance has no justifying force.[47] A con-
ception of decency that meets this requirement of reciprocity is one we should
consider justified, and thus, as having a normative authority that merely local
conceptions of justice may lack. Unlike Walzer, we should aim to establish
that there can be a free-standing minimalist morality, that can provide norma-
tive support for its various instances. Such a morality would not represent a
mere overlap among various maximalist principles, but would have the sup-
port of an international public political culture. For instance, an emerging
consensus that torture is a violation of human rights or that rape can consti-
tute a war crime is no mere overlap, but is supported by international organi-
zations and agreements.

This approach gives us a sense of how the content of human rights could
be arrived at and justified. The content and role of human rights in a concep-
tion of international justice emerges within a sort of ideal dialog between
societies, not all of which are presumed to be liberal.[48] The emergent concep-
tion of human rights functions as a minimum threshold below which an of-
fending society would no longer have good standing in the international order
of cooperating societies. A regime that denied political representation to some
segment of its population or permitted a famine to occur in a region inhabited
by political opponents would lose its status as decent in an international soci-
ety of decent societies. Decent societies would acknowledge that some form
of intervention in the affairs of the offending society could be warranted, with
the aim of forcing it to respect human rights. If human rights are to be con-
sistent with the idea and role of international public reason, however, they
must truly represent a basic minimum acceptable to liberal and non-liberal
societies alike.[49]

Both the source and function of human rights, as they have been presented
here, support a thin construal of the content of human rights. People who par-
ticipate in international public reasoning should be expected to care about the
interests of all groups within their societies. This requirement emerges from
the moral urgency of the problem and significance of internal dissent. Thus
we may suppose that participants will seek guarantees within a conception of
human rights for people's basic welfare and liberty in the form of rights to
security, subsistence, and freedom from slavery and forced labor. But rights
to broader, more far-reaching liberties and to democratic forms of government

are much less likely to be included in a conception of human rights justified by international public reason. This is because such rights may not be acceptable to members of societies whose public cultures do not already reflect the values of democracy. The grounds for proposing particular rights as human rights must not presuppose the unique truth or reasonableness of a particular conception of justice, including a liberal one. Such a presumption is incompatible with acknowledging the possibility of some range of reasonable pluralism about justice, an acknowledgment that would seem to be a condition for the very possibility of international public reason.

A conception of minimum decency framed in terms of a narrow conception of human rights allows for the possibility that non-liberal societies could nonetheless be decent. A society that denied citizenship rights to some of its members on religious grounds, for example, but nevertheless protected the basic human rights of all members, could possibly retain good standing as a decent society within international relations. By endorsing a thin conception of human rights, non-democratic societies demonstrate concern for the basic liberty and welfare of all their members, whether or not their members accept the values of their society's dominant culture. This is enough to support the idea that their regimes are minimumly decent and legitimate. Since minimum standards of decency do not require us to assume that non-liberal societies are unjust, and they can, we are supposing, secure an overlapping consensus among a sufficiently wide range of maximalist moralities, they are suitable for use in interpreting and criticizing the social values of non-liberal as well as liberal societies.

Minimum standards of justice or decency can thus be accepted as a freestanding international extension of numerous possible maximalist conceptions of justice.[50] We can make sense of the idea that a maximalist conception of justice has an international extension by appeal to ideas we have considered so far. We begin from what we take to be a suitable conception of justice for a particular society, presumably a liberal conception, in our case. We then search for a plausible and compelling notion of the requirements and limits of justice that can have a place within a conception of international public reason. To meet this requirement, it must be reasonable to think that what we propose could also be acceptable to advocates of other conceptions of domestic justice, in particular, conceptions of justice that are not liberal, supposing that the advocates also seek to extend their conceptions in support of a mutually acceptable understanding of international justice. If we can secure criteria of minimum decency that meet these conditions, we have succeeded in articulating an extension of a *pro tanto* reasonable conception of domestic justice. Both democratic and non-democratic societies could acknowledge, for instance, that all groups in society must receive political representation in some form, if not via democratic voting rights.[51] Because the principles that com-

prise an international extension of principles of justice can be reached from starting points other than our own, they have, or would have, the support of a shared public culture of international cooperation. It is in this sense that the criteria of decency comprising the extension can be said to have a free-standing justification.

Much work must be done within a given social context in order to determine what it would take for a people to honor their duties to protect human rights, even when the content of human rights is understood to be thin. A right to employment, for example, may need to be granted in particular contexts in order to support a right to subsistence. Henry Shue stresses that political, sociological, historical and economic understanding of actual and possible social practices and institutions will be required in order to frame plausible proposals for specific circumstances.[52] Nevertheless, a narrow conception of human rights and the ideal of public reasoning they substantiate can, and should, be used as a guide. They can be used not only to guide the reasoning of nations about their conduct with regard to one another, such as to determine when aid or intervention may be warranted, but also to guide reasoning within a given society about the requirements of domestic justice. The requirement that proponents of a domestic conception of justice formulate a conception of minimum decency that they can share with other societies acts as a constraint on the possible content of that conception of domestic justice. If no international extension of a principle restricting the economic activities of a minority ethnic or religious group is available, the content of a conception of domestic justice allowing that restriction should be adjusted. In this way, certain interpretations of social values are ruled out of consideration as principles of justice, even one that is espoused by a substantial majority in some society.

When do shared understandings bind? Walzer's normative framework is too thin to enable us adequately to answer this question, but a free-standing justification of minimum standards of political decency can limit the normative content that shared values can have. In so doing, it would also limit the normative role that people's cultural and social identities play in determining the content of standards of justice. Within the limits set by an ideal of public reason, it is possible that shared understandings can bind us. Social values may importantly help to generate consensus on substantive principles of justice, and differences in social values can lead to differences concerning the principles of justice that persons have reason to accept. The sorts of analyses of social values that Walzer develops can guide us in understanding how the content of appropriate principles emerges and can vary contextually. In implementing the standards of public reason we should acknowledge a role for social values, but we should not construe them as the sole source of the moral authority of standards of justice. The role that social values play will be normatively constrained by a narrow construal of human rights and its ac-

companying ideal of international public reason. The minimum standards provide an independent critical point of view from which to assess social norms.

We should expect that an assessment of the justice of shared social forms could be in tension with the normative standards internal to them. Could the public funding of dramas and gymnasiums in fifth century Athens have been justified to the poor? Walzer points out that drama was generally considered a more vital aspect of community welfare in ancient Athens than was housing or medicine.[53] This judgment, he claims, "cannot easily be called incorrect."[54] But unless dramatic performances were also considered more important for and by people who lacked housing or medicine, and Walzer admits that their welfare as such was granted little if any importance by the majority, we should conclude that such a distribution of resources could not have been just. When fundamental interests of any segments of the population are passed over, this undermines the moral authority that is claimed for the associated social values.

When social norms fail to satisfy minimum standards of decency, substantive ideals and principles of international public reason can yield reasons external to social values for members of the society to seek decent norms of justice and to change their society accordingly. A social norm that is not minimally decent cannot be justified to people who are disadvantaged by it, since it violates their human rights. Minimum standards of decency imply that violations present the disadvantaged with moral reasons to reject their social forms. Those who are not disadvantaged also have moral reasons to reject social forms that are not decent. Their reasons stem from the nature of the disadvantages to others. The requirements of public reason are such that members of all societies owe it to one another to take such reasons seriously. This means that social forms that do not satisfy minimum criteria of decency are not morally acceptable, despite the possibility that they are supported by shared values. Social forms require equal respect only provided that they are decent.

6. Conclusion

Let us review some of the main points that have been advanced. A maximalist or social-meaning conception of justice calls for some limits and the limits can be provided within a substantive normative notion of international public reason. The terms of public reason define the limits of toleration by the international community with respect to a society's self-determination, limits that should be acknowledged both from within and outside that society. Reasoning can be considered public when it has certain practical aims and when it satisfies a criterion of reciprocity: it must reasonably be thought that its terms are fair and acceptable to all members of the relevant society or societies, provided that the members are themselves moved by the practical and moral

aim of resolving disputes on the basis of mutually acceptable principles. Walzer helps us to see that in order to meet this requirement, principles of justice need to be sensitive to social values, for if proposed principles of justice reflect a disregard for social values, people may have good reason to reject them. But he provides no assurance that standards of justice that have the support of social values will also meet the requirement of reciprocity.

Walzer's view of justice as social meanings falters when it faces the problem of how to determine what could count as a reasonable interpretation of shared values, an interpretation that will comprise standards of justice that also bind dissenters. His appeal to the will of a democratic majority is inadequate, for it is not clear how an appeal to the interpretation of social values shared by a majority can establish standards of justice that will be substantial and meaningful, and at the same time have normative authority for persons who dissent from them. When Walzer responds to the problem of dissent by stressing how it is that the dominant interpretation of shared values shapes the identities of all members of a society, and hence the reasons they all have, he seems to be left with a set of social values that is too vague and indeterminate to constitute principles of justice. But if social values are given more focus in order to produce such principles, it remains unclear how and why they should be thought to bind dissenters. Against Walzer's communitarian identity politics, we have seen that principles of justice drawn from shared values must meet the requirements of decency set by international public reason if they are to bind all members of society. Only when a society relies on principles of justice that meet these requirements of decency could it be justified to compel dissenters to comply with aspects of shared social standards of justice they reject.

A conception of decency can be formulated as an important part of an international extension of domestic conceptions of justice. Beginning from a domestic conception of justice we find reasonable, we attempt to formulate a notion of the requirements and limits of minimum justice that we think is decent and acceptable to persons in other societies as well, provided that they also seek to formulate a reasonable international extension of their own conceptions of justice. A proposed extension, which specifies a thin conception of human rights, must be capable of securing an international overlapping consensus. If it succeeds in doing this, we can claim that it has a free-standing justification: the peoples of reasonable nations can advance and accept the same minimum standards of justice on reasonable grounds. In this way, the international community can be viewed as a society of societies, with its own public culture and conception of public reason. The terms of international public reason, including its shared minimum standards of justice, serve as a constraint on acceptable conceptions of domestic justice, as well as on the conduct of societies toward one another.[55]

Notes

1. See Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983).
2. Michael Walzer, *On Toleration* (New Haven, Conn.: Yale University Press, 1997).
3. See John Rawls, "The Idea of an Overlapping Consensus," *Oxford Journal of Legal Studies*, 7 (1987). See also Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), Lecture IV.
4. See John Rawls, "The Idea of Public Reason Revisited," *The University of Chicago Law Review*, 64 (1997): 765–807. See also Rawls, *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), Parts I and IV.
5. Rawls, "The Idea of Public Reason Revisited," p. 770.
6. See Rawls, *The Law of Peoples*.
7. See Joni Lovenduski and Vicky Randall, *Contemporary Feminist Politics: Women and Power in Britain* (Oxford: Oxford University Press, 1993), pp. 70–72. See also Shane Phelan, *Identity Politics: Lesbian Feminism and the Limits of Community* (Philadelphia, Penn.: Temple University Press, 1989), ch. 3.
8. Lovenduski and Randall, op. cit., pp. 86–89.
9. See Iris Young, "Polity and Group Difference: A Critique of the Ideal of Universal Citizenship," in *Feminism in Politics*, ed. Anne Phillips (Oxford: Oxford University Press, 1998), pp. 410–429.
10. See Charles Taylor, "The Politics of Difference," in *Multiculturalism: Examining the Politics of Recognition*, ed. Amy Gutmann (Princeton, N.J.: Princeton University Press, 1994).
11. See Young, op. cit., p. 425. See also Young, *Justice and the Politics of Difference* (Princeton, N.J.: Princeton University Press, 1990), pp. 178–181, and Martha Minow, "Learning to Live with the Dilemma of Difference: Bilingual and Special Education," *Law and Contemporary Problems*, 48 (1985).
12. Nira Yuval-Davis, "Women, Empowerment and Coalition Politics," in *Gender, Ethnicity and Political Ideologies*, eds. Nickie Charles and Helen Hintjens (London: Routledge, 1998), p. 172.
13. Ibid.
14. See, Ibid., p. 173 and Nalini Rajan, "Multiculturalism, Group Rights, and Identity Politics," *Economic and Political Weekly*, 83 (4–10 July 1998).
15. See Walzer, *Spheres of Justice*, pp. 6–10. For an interesting critical discussion of the different kinds of examples Walzer puts forth of social meanings, see T.M. Scanlon, "Local Justice," *London Review of Books*, 5 September 1985, p. 17.
16. Walzer, *Spheres of Justice*, p. 9.
17. Ibid., p. 54.
18. Ibid., p. 6.
19. Ibid., p. 314.
20. Ibid., p. 80.
21. Cf. Henry Shue, "Thickening Convergence," unpublished manuscript; appeared in German as "Menschenrechte und kulturelle Differenz." *In Philosophie der Menschenrechte*, eds. Stefan Gosepath and Georg Lohmann (Hrsg.) (Frankfurt/M: Suhrkamp Verlag, 1998).
22. See Ronald Dworkin, "To Each His Own," *New York Review of Books*, 14 April 1983, pp. 4–6.
23. Walzer, *Spheres of Justice*, p. 82. See also p. 67 n, and Walzer, "Philosophy and Democracy," *Political Theory*, 9 (1981), especially sections VII–VIII, and *Interpretation and Social Criticism* (Cambridge, Mass.: Harvard University Press, 1987), pp. 43–44.
24. Walzer, "Philosophy and Democracy," p. 395.

25. Walzer, *Interpretation and Social Criticism*, p. 21.
26. Walzer, *Spheres of Justice*, pp. 3, 8.
27. Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986), p. 308.
28. Ibid., p. 310.
29. Raz, *The Morality of Freedom*, p. 312.
30. Ibid., p. 310.
31. Cf. Charles Taylor, "Cross-Purposes: The Liberal–Communitarian Debate," *Philosophical Arguments* (Cambridge, Mass.: Harvard University Press, 1995) and his "The Politics of Recognition"; Samuel Scheffler, "Families, Nations, and Strangers," *The Lindley Lecture,* The University of Kansas (1994), and his "Relationships and Responsibilities," *Philosophy and Public Affairs*, 26 (1997); Richard Rorty, *Contingency, Irony, and Solidarity* (Cambridge, England: Cambridge University Press, 1989), and his *Objectivity, Relativism and Truth: Philosophical Papers, Volume I* (Cambridge, England: Cambridge University Press, 1991).
32. Walzer, *Spheres of Justice*, p. 320, also xii.
33. Walzer, *Interpretation and Social Criticism*, p. 17.
34. See Bernard Williams, "Internal Reasons and the Obscurity of Blame," *Logos: Philosophical Issues in Christian Perspective*, 10 (1989), p. 2. See also Williams, "Internal and External Reasons," *Moral Luck* (Cambridge, England: Cambridge University Press, 1981).
35. Walzer, *Interpretation and Social Criticism*, p. 48.
36. See Normal Daniels, Review of Walzer's *Spheres of Justice* in *The Philosophical Review,* 94 (1985), pp. 42–48.
37. Walzer, *Interpretation and Social Criticism*, p. 43–44.
38. Walzer, *Thick and Thin*, p. 33.
39. Ibid., p. 3.
40. See Rawls, *Political Liberalism*, pp. 385–395; and "The Idea of Public Reason Revisited," pp. 801–802.
41. See Rawls, *The Law of Peoples*, Part II.
42. Walzer, *Thick and Thin*, p. 10.
43. Ibid., p. 67.
44. Ibid., p. 68.
45. Ibid., pp. 81–82.
46. See Walzer, *On Toleration*, p. 2.
47. Cf. T.M. Scanlon, "Contractualism and Utilitarianism," in *Utilitarianism and Beyond*, eds. Amartya Sen and Bernard Williams (Cambridge, England: Cambridge University Press, 1982).
48. See John Rawls, "Law of Peoples," in *On Human Rights: The Oxford Amnesty Lectures 1993*, eds. Stephen Shute and Susan Hurley (New York: Basic Books, 1993), sections IV and V. See also his *The Law of Peoples*, Part II.
49. See Erin Kelly, "Human Rights as Foreign Policy Imperatives," in *Distance, Affluence, and Need*, ed. Deen Chatterjee (Oxford: Oxford University Press, forthcoming).
50. See Rawls, "Law of Peoples," pp. 43–47, 60–68.
51. See Rawls, *The Law of Peoples*, pp. 71–78.
52. Shue, "Thickening Convergence," pp. 16 f, p. 20.
53. Walzer, *Spheres of Justice*, p. 83.
54. Ibid.
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