

Michigan Law Review

Volume 82 | Issue 4

1984

Defending Equality: A View from the Cave

James S. Fishkin
Yale University

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Law and Philosophy Commons](#)

Recommended Citation

James S. Fishkin, *Defending Equality: A View from the Cave*, 82 MICH. L. REV. 755 (1984).

Available at: <https://repository.law.umich.edu/mlr/vol82/iss4/12>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

DEFENDING EQUALITY: A VIEW FROM THE CAVE

*James S. Fishkin**

SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY. By *Michael Walzer*. New York: Basic Books. 1983. Pp. xviii, 345. \$19.95.

The past decade has witnessed a remarkable resurgence of work on distributive justice. The core strategy sparking this revival, particularly in liberal theory, has been the attempt to design a suitably impartial procedure for choosing principles — one that gives equal consideration to everyone's interests by ruling out consideration of all irrelevant factors. Theories adopting this strategy start with the assumption that our common moral understandings are biased. They are irremediably contaminated by socialization, self-interest and perhaps self-deception. However, we can *imagine* a way of arriving at principles that escape this contamination. While we do not live in a social world of objective moral notions, such notions may be available to us through thought experiments — hypothetical exercises that permit us to shed enough of our biases to provide a firmer basis for principles of justice.

John Rawls' *A Theory of Justice*¹ is the most influential example of this basic idea. But the same strategy can be found in Ronald Dworkin's notion of equal concern and respect,² in Peter Singer's efforts to rehabilitate utilitarianism,³ in Bruce Ackerman's theory of neutral dialogue,⁴ and in the ideas of many others.⁵ This basic strategy has proved so fruitful that it has taken on the character of a new liberal paradigm.

Michael Walzer's new book stands in stark opposition to this entire approach. His argument is "radically particularist." "I don't claim to have achieved any great distance from the social world in

* Associate Professor of Political Science, Yale University. B.A. 1970, Ph.D. 1975 (Pol. Sci.), Yale University; Ph.D. 1976 (Phil.), Cambridge University. Professor Fishkin's books include *JUSTICE, EQUAL OPPORTUNITY, AND THE FAMILY* (1983) (reviewed in this issue) and *BEYOND SUBJECTIVE MORALITY* (1984). — Ed.

1. J. RAWLS, *A THEORY OF JUSTICE* (1971).
2. R. DWORKIN, *TAKING RIGHTS SERIOUSLY* (1977).
3. P. SINGER, *PRACTICAL ETHICS* (1979).
4. B. ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* (1980).
5. See my *TYRANNY AND LEGITIMACY: A CRITIQUE OF POLITICAL THEORIES* (1979), Part III for one proposal. See also D. Rae, *A Principle of Simple Justice*, in *PHILOSOPHY, POLITICS AND SOCIETY, FIFTH SERIES* (P. Laslett & J. Fishkin eds. 1979).

which I live," we are told in the Preface. Rather than "climb the mountain" to achieve "an objective and universal standpoint" he means to "stand in the cave, in the city, on the ground" and "interpret to [his] fellow citizens the world of meanings that we share" (p. xiv).

Though addressed to his "fellow citizens," Walzer's arguments are hardly limited to our own culture. He marshals examples of the distribution of social goods from across an astonishing range of historical epochs and cultural conditions: Athenian Metics, modern European guest workers, Medieval Jewish patterns of communal provision, the rise of Macy's in New York, and the ancient Chinese examination system, to mention only a few. Stylistically, the effort is a *tour de force*. We are given enough historical detail to glimpse these cases from the inside and to sense, if only for a few moments, what life with these practices may have been like. One could hardly imagine a more forceful counterpoint to the abstract and a historical theorizing of the new liberal paradigm. The book makes a distinctive and new contribution to the debate over distributive justice.

Walzer believes his theory has clear political implications. It is meant to prescribe "radical" solutions and condemn "tyranny" in all its forms, particularly in its "highest form," "modern totalitarianism" (p. 316). But there are serious questions about whether Walzer can accomplish all that he aims from "within the cave" — by offering us only an account of justice that is "relative" to the "social meanings" that happen to be accepted within a given society (pp. 312-14).

Walzer's central claim is that there are qualitatively distinct "social goods" and that "internal" to our understanding of each good are criteria for its distribution within its own sphere. "Tyranny" occurs when a given good is distributed for reasons irrelevant to those criteria, typically through command over other goods (from another sphere) which are "dominant" in society, such as capital. Thus, Medieval Christians condemned the sin of simony, for example, because "the meaning of a particular social good, ecclesiastical office, excluded its sale and purchase" (p. 9). Similar objections apply to prostitution and political bribery; given certain shared understandings about how sexual gratification and political power are supposed to be distributed, the intrusion of money is a morally irrelevant determinant, one that perverts those shared understandings. Such intrusions violate a general principle which Walzer formulates as follows:

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. [P. 20].

Obviously, everything depends on the "meaning of x," the

“shared understandings” about each good and its respective sphere in a given culture. Walzer’s chapters are organized around his list of goods: membership, security and welfare, money and commodities, office, hard work, free time, education, kinship and love, divine grace, recognition, and political power. Is this an exhaustive list? Would we all interpret our shared understandings about the spheres this way? Others have proposed quite different lists of the primary social goods whose distribution defines the problem of justice. For the design of institutions, Rawls’ list reduces to liberty, equal opportunity and income and wealth. Harold Lasswell, in a famous analysis, proposed power, enlightenment, wealth, well-being, skill, affection, rectitude, and deference.⁶ How are we to decide between alternative lists?

For Walzer, the issue comes down to a problem of social anthropology — an investigation and interpretation of shared understandings about social goods and their boundaries in a particular culture. Throughout the book, he treats his own list as canonical and does not compare it, in any detail, to serious rivals. Yet, the problem of prescription, in any given culture, will be complicated for his relativistic theory if the culture contains rival notions of social goods and their boundaries. Rather than confront this problem directly, Walzer raises it parenthetically at the end of his book:

(When people disagree about the meaning of social goods, when understandings are controversial, then justice requires that the society be faithful to the disagreements, providing institutional channels for their expression, adjudicative mechanisms, and alternative distributions.)
[P. 313].

Yet there will also be good faith disagreements about how to resolve disagreements in good faith, how to design channels for political expression, and how to adjudicate disputes. We lack shared understandings about how to interpret whatever shared understandings actually exist among us in our culture. How can a theory based on no more than “shared understandings” presume to displace rival interpretations of the same phenomena? Walzer’s position would be strengthened if he developed criteria for such a comparison. But he could hardly do so without “leaving the cave” and abstracting from (at least some) of our shared understandings. For such criteria would have to be based on more than shared understandings, on more than common conventions, where we lack (as we commonly do) conventional criteria for this anthropological exercise. To apply his relativistic theory to the moral controversies he discusses, Walzer would require criteria for choosing among rival accounts of our shared moral notions. Without such criteria, his theory is threatened with silence in the face of serious moral controversy. But he cannot

6. *See, e.g.,* H. LASSWELL & A. KAPLAN, *POWER AND SOCIETY* 55-56 (1950).

develop such criteria without abandoning the relativism at the foundations of his theory.⁷

Suppose, however, that moral cultures are not so difficult to interpret. Suppose, for purposes of argument, that each society has one and only one list of goods and that there are clearly established boundaries for distributive spheres. Even so, I believe, Walzer would face considerable difficulty establishing the political implications that seem to be central to his argument — requirements for the relief of refugees, the defense of equality, and the attack on totalitarianism.

In his chapter on "Membership," Walzer treats the problem of refugees — "necessitous strangers." Walzer argues that the principle of "[m]utual aid extends *across* political (and also cultural, religious, and linguistic) frontiers" (p. 33, emphasis added). Here "[i]t is the *absence* of any cooperative arrangements that sets the context for mutual aid: two strangers meet at sea or in the desert or, as in the Good Samaritan story, by the side of the road" (p. 33, emphasis added). Perhaps Walzer is merely offering an interpretation of *our* morality. Yet, he formulates mutual aid as a general principle and applies it to other cultures and countries. For example, he condemns the "White Australia" policy:

The right of white Australians to the great empty spaces of the subcontinent rested on nothing more than the claim they had staked, and enforced against the aboriginal population, before anyone else. That does not seem a right that one would readily defend in the face of necessitous men and women, clamoring for entry. [P. 46].

While some individuals may "need" hundreds or even thousands of empty miles for the life they have chosen," Walzer concludes, "such needs cannot be given moral priority over the claims of necessitous strangers" (p. 47).

While Walzer's position on this issue seems eminently reasonable, how can he reconcile it with his relativism? The shared understandings within Australia, as Walzer notes, focused on "the elementary right of every government, to decide the composition of the nation," a right which was understood as "just the same prerogative as the head of a family exercises as to who is to live in his own house" (p. 46).⁸ And Walzer's basic methodological position holds that an appeal to shared understandings is necessary for moral argument:

It is to these understandings that we must appeal when we make our arguments — all of us, not philosophers alone; for in matters of moral-

7. I pursue some of these issues in *BEYOND SUBJECTIVE MORALITY: ETHICAL REASONING AND POLITICAL PHILOSOPHY* (1984).

8. Walzer is here quoting an Australian Minister of Immigration from H.I. LONDON, *NON-WHITE IMMIGRATION AND THE "WHITE AUSTRALIA POLICY"* 98 (1971).

ity, *argument simply is the appeal to common meanings*. [P. 29, emphasis added].

It is one thing for Walzer to argue that *we* must take in necessary strangers, given *our* moral culture.⁹ It is quite another thing to argue that the Australians erred in their immigration policy in the face of the predominant understanding, in their society at the time, of how they ought to regulate membership. Walzer might reply at this point that those immigration policies were not without controversy and that dissenting voices give him a foothold for judgment. But a successful development of this reply would require criteria for choosing among alternative social understandings and, in this case, criteria for overturning the apparently predominant understanding and replacing it with a dissenting one. As we saw above, Walzer has not developed such criteria. This methodological issue gets only passing reference in the book.

There are similar questions to be raised about Walzer's defense of "complex equality," under which "no citizen's standing . . . with regard to one social good can be undercut by his standing . . . with regard to some other social good" (p. 19). At some points, Walzer describes his purpose as the modest one of description and clarification: "My purpose in this book is to *describe* a society where no social good serves or can serve as a means of domination" (p. xiv, emphasis added). Yet, from the subtitle of the book on, the basic thrust is to prescribe and defend; the entire effort is offered to us as a "defense of pluralism and equality." This defense is based on three general principles which Walzer is able to "tease-out" of his historical examples (p. 75):

[T]hat every political community must attend to the needs of its members as they collectively understand those needs; that the goods that are distributed must be distributed in proportion to need; and that the distribution must recognize and uphold the underlying equality of membership. [P. 84].

Walzer blunts the force of these three principles in the next sentence. Where do these principles apply? "[T]o any community, in fact, where the members are each other's equals (before God or the law), or where it can plausibly be said that, however they are treated in fact, they ought to be each other's equals" (p. 84). However, where the shared understandings do not include underlying equality, the principles don't apply. For example, "[t]he principles probably don't apply to a community organized hierarchically, as in traditional India" (p. 84). Walzer's "defense" of equality is, at bottom, undermined by his relativism. Where equality is *already* the shared understanding, he has a basis for prescribing equality. But where inequality or hierarchy is the shared understanding, he can neither

9. I discuss such responsibilities in detail in *THE LIMITS OF OBLIGATION* (1982).

defend nor impose equality. His prescriptions are directed only to communities of the already convinced. Those who expect an argument that conforms to the subtitle are bound to be disappointed by such limitations.

Walzer's relativism also undermines his attack on totalitarianism. For him there are no criteria, except shared understandings within the culture, for the alteration and manipulation of that culture. Imagine a totalitarian regime that happens to succeed in the task that many have attempted — brainwashing its citizens into accepting a set of shared understandings about the proper sphere of its political power. Once such shared understandings are accepted, there are no grounds within the confines of Walzer's relativism to condemn the regime. The expansion of political power onto virtually every other sphere of life (as the boundaries were previously drawn) cannot constitute "tyranny" on Walzer's definition once that expansion is supported by the culture's shared understandings. Thus, once an Orwellian regime operates perfectly, once it succeeds in totally manipulating its own political culture, its totalitarianism is transmuted into justice by Walzer's relativism. Rather than providing us with the ultimate grounds for condemning totalitarianism, Walzer has laid the groundwork for its defense — provided only that thought control and propaganda are sufficiently effective.

In a recent book, Barrington Moore demonstrated how many of the most disturbing cases of injustice and exploitation involve acceptance by the victims of the ideology rationalizing their victimhood.¹⁰ Provided that those ideologies are the accepted ones within a given culture, a consistent relativism provides no grounds for contrary evaluation. The same argument that Moore applied to untouchables, ascetics and even some concentration camp victims can be applied to entire regimes. If an entire society is victimized by a totalitarian regime — but it has been thoroughly brainwashed to accept these abuses of power as legitimate — then surely Walzer's impulse to label the resulting totalitarianism the "highest form of tyranny" is correct. But he cannot consistently do so within the confines of relativism. According to his theory the very meaning of justice would have been altered for that culture. Tyranny would have become justice.

We require trans-cultural criteria for the alteration and permissible manipulation of moral cultures. But such criteria would require that we "leave the cave" and abstract from the vagaries of our own particular culture. Walzer insists on keeping his feet on the ground. As a result, his book does not provide the "defense of pluralism and equality" that he promises.

10. B. MOORE, *INJUSTICE: THE SOCIAL BASES OF OBEDIENCE AND REVOLT* (1978).