

ETHICS BY CONSENSUS

THE BOUNDED RELATIVISM OF MICHAEL WALZER

T S Heter
East Stroudsburg University
April 18, 2007

Michael Walzer is an innovative American thinker whose historical, interpretive and casuistic approach to ethics has struck a chord within the academy and beyond. In contrast to procedural, Kantian ethics, he offers a thickly cultural account focused on the idea that moral norms are “shared social meanings.” The thesis that moral norms are shared social meanings is, I submit, quite appealing. However, Walzer himself provides little explicit defense of this thesis against the worry of moral relativism. By drawing out the similarity of shared social meanings and actual contracts I provide a satisfactory answer to relativism.

Michael Walzer is known primarily for *Just and Unjust Wars* (1977) and *Spheres of Justice* (1983). The rich historical and contextual detail that separates these books from other philosophical approaches to the same topics is not marginal, but essential to the nature of his project. The subtitle of *Just and Unjust wars* tells us it is a “moral argument with historical examples,” but there is no clear separation between the moral argument and the history through which the argument is articulated. Dispense with the cases and there would be no moral claims left. As James Wallace suggests, Walzer is usefully thought of as a casuistic moral philosopher.¹ Casuists believe that appealing to universal principles is less productive than elucidating local norms implicit in moral conflicts. Casuists often reason by analogy, using settled and obvious

¹ *Ethical Norms, Particular Cases* (Ithaca: Cornell University Press, 1996), p. 53-4.

cases (something like legal precedents) to illuminate tougher, marginal cases. The concept of a moral precedent is similar to that of a moral intuition, although casuists do not attempt to retain a reflective equilibrium between local intuitions and abstract, global principles. The casuistic and reflective equilibrium methods share the idea that our moral theories do not start from scratch, but are guided by basic agreements with respect to gross injustices and basic rights.

Because he relies on intuitions more than abstract principles, some philosophers worry that Walzer has no arguments, but only strong intuitions and clever stories. His tales are convincing, but do they provide *reasons* for us to endorse his policies? To address this concern Walzer would point to his view that moral arguments are nothing more than “appeal[s] to shared social meanings.”² A shared social meaning is a group consensus. We discover the shared meanings of social goods, as *Spheres of Justice* shows, by interpreting the different communities of culture that we live and breathe every day. Moral arguments, then, consist in finding out the deeper meaning of our practices and showing how in some cases, the deeper meanings have been distorted. Shared social meanings are revealed in many different ways, but perhaps best through the public statements and rhetoric of everyday people defending or criticizing the social institutions of which they are a part. Moral philosophy is an act of *cultural interpretation*.³ While ethical norms have no definitive textual statement the way positive laws have, the legitimacy of an interpretation of a moral norm is similar to the legitimacy of an interpretation of a literary text.⁴ Walzer spends little time developing abstract standards of interpretation, devoting himself instead to the analysis of substantive cases. There are some attempts in Walzer’s work to defend his methodology—in *Spheres of Justice* and in his two or three works

² *Spheres of Justice* (Basic Books, 1983), p. 29

³ See *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame: University of Notre Dame Press, 1996).

⁴ Georgia Warnke makes this point in her book *Justice and Interpretation* (Boston: The MIT Press, 1993). See Chapter 2 “Walzer and Social Interpretation.”

on the nature of social criticism. But ask any reader, Walzer *never* lingers over a meta-ethical or methodological point. Walzer's disinclination to linger over these issues explains, I believe, why so many philosophers, myself included, find his writings simultaneously compelling and deeply frustrating.

When I reflect on the experience of reading a text of Walzer's, say his defense of multiculturalism in *What it Means to be an American*, I am struck by its lucidity and familiarity. The effect is very much like listening to master story teller re-weave a familiar tale. Unlike many philosophical works that clumsily, mechanically insert a few historical points to flesh out an abstract principle, in Walzer's texts moral principles grow organically, effortlessly, seamlessly out of his sociological and historical observations. As *Interpretation and Social Criticism* makes clear, such *situated moral criticism* requires that writer and audience share the same cultural, moral and political space. Walzer is an American writer, writing for Americans. This is sort of like preaching to the choir. It is no wonder that a perennial question about Walzer's work is whether or not it can be truly *critical* rather than laudatory. But even preachers, good ones at least, do much more than bolster the settled convictions of their listeners; they also deepen the listener's self understanding, try to correct mistakes and offer challenges. Walzer does just this. Through reading him we Americans gain a better sense of who we are and what we ought to value. The purpose of moral criticism is, he says, "reflection of a special kind, which picks up [the] deeper understandings of social goods which are not necessarily mirrored in the every day practice."⁵

Stated broadly, the major appeal of Walzer's method of moral criticism is that it provides substantive, historical answers to our deepest ethical questions. In the opening pages of *Spheres of Justice* he contrasts his position with Rawls's procedural liberalism. The best approach to

⁵ *Spheres of Justice*, p. 26.

justice is not to ask what “ideally rational men and women would choose if they were forced to choose impartially” but to take “the particularism of history, culture and membership” as our primary concern and ask “What would individual like us choose, who are situated as we are, who share a culture and are determined to go on sharing it?”⁶ Rawls, according to Walzer, is the latest in a long line of philosophers who hold the Platonic view that there is *only one* highest good, and *only one* best system or principle of justice.⁷ By contrast Walzer is an *ethical pluralist* because he believes that there are many different human goods, and these different goods have different distributive criteria. Walzer is also an *ethical particularist* because he believes that theorists must attend to the local contexts and historical details within which concrete issues of justice arise.⁸

The pluralist, particularist approach to ethics tends to minimize questions about method and meta-ethics. For instance, in the introduction to *Obligations* (1970), Walzer writes that his general view of moral obligations, which is that they are derived from consent, is best defended through the cases forming subsequent chapters of his book. He offers few general remarks about obligations per se. Because of his tendency to refuse general questions, to determine whether Walzer has a good answer to the worry that his ethics would lead to unbridled moral relativism we must stand back from the cases and ask about the general nature of ethical norms. From this standpoint, the relevant fact is that Walzer offers a *conventionalist* approach to ethics. He believes that ethical rules are social conventions rather than natural or God-given laws. Moral norms are “shared social meanings.” We can usefully compare Walzer to Rousseau, who offers a conventionalist account of ethics in *On the Social Contract*: “The social order is a sacred right

⁶ p. 5

⁷ *Spheres of Justice*, p. 4-5

⁸ On the concepts of pluralism and particularism see James D. Wallace, *Ethical Norms and Particular Cases*, Cornell University Press: 1996, Chapter 1

which serves as a foundation for all other rights. Nevertheless, this right does not come from nature. It is therefore founded upon conventions.”⁹ The conventionalist account contrasts sharply with the idea that there are *natural* moral laws which are independent of social conventions. In *Theory of Justice* Rawls explains the concept of a *natural* duty of justice: “it is characteristic of natural duties that they apply to us *without regard to our voluntary acts*. Moreover, they have *no necessary connection with institutions or social practices*; their content is not, in general, defined by the rules of these arrangements.”¹⁰ Rawls defends the need for natural, extra-conventional duties by noting that “It is no defense or excuse to say that we have made no promise not to be cruel or vindictive, or to come to another’s aid.”¹¹ Further, if conventions exhausted our duties then we would have no grounds for respecting those outside our conventions.¹² Finally, the appeal to natural duty is fueled by the Kantian criticism of virtue ethics which holds that technical norms are not moral norms.

Each of these concerns is, more or less, a worry about moral relativism. Walzer is aware of the relativistic implications of his view that moral norms are social meanings. Since “Justice is relative to social meanings” there can be no way of saying whether one society is more just than another. “A given society is just if its substantive life is lived in a certain way—that is, in a way faithful to the shared understandings of the members.”¹³ But Walzer distinguishes his view that “our choices are not determined by a single universal principle” from “unconstrained relativism.”¹⁴ The universal values that constrain his relativism are “peaceful coexistence” and basic respect for the fact that “we are (all of us) culture-producing creatures; we make and

⁹ BI:1

¹⁰ (Cambridge: Belknap Press, 1971) p. 114. See also *Theory of Justice* §18, §19 and §52.

¹¹ Section 19, pp 114-5

¹² *Theory of Justice* p. 115

¹³ SOJ 312-3.

¹⁴ *On Toleration*, p. 5.

inhabit meaningful worlds.”¹⁵ Walzer’s comments go *part of the way* towards a satisfactory answer to the Rawlsian worries about moral relativism. But more needs to be said. The casuistic approach should have some defense at the theoretical, meta-ethical answer if it is to be a compelling alternative to natural law ethics. In the remainder of this essay I attempt to offer a reply, on Walzer’s behalf, to the worry that shared social meanings would license immoral social practices.

The worry about relativism usually proceeds by pointing to extreme cases of immoral social practices such as American chattel slavery. Were there not “shared social meanings” regulating this practice? Slavery is obviously immoral. Thus shared meanings sometimes license (or perhaps prescribe) immoral practices.

One preliminary point is that since these cases are drawn from history, there can be no reply that it is insufficiently concrete. Such a reply might be made against hypothetical cases, but not against actual cases. The only way to settle the issues is to enter into the debate over the nature of slavery. Walzer himself does not take this strategy. He says that it is enough in such cases to “name” the evil which will “remind readers of [its] historical reality.”¹⁶ He does not attempt to directly state what’s wrong with the shared meanings circulating in oppressive communities. Doubtless this is a tricky business. However, I believe that the notion of a shared social meaning can be shown to be incompatible with practices of extreme oppression like American slavery. *Walzer’s strongest line of defense against such cases is to show that shared social meanings, like actual social contracts, require consent.* Since no rational person can consent to extreme oppression, there can be no shared social meanings in practices of extreme oppression. The Kantian worry about oppressive customs is answered with the idea that

¹⁵ *On Toleration*, p. 5 and *Spheres of Justice* p.314.

¹⁶ *On Toleration*, p. 6.

oppression destroys the conditions of the possibility of shared meanings. To be genuinely shared, social meanings must be accepted by members of the community to which they apply. Victims of extreme oppression rarely, if ever, share the social meanings that their oppressors impose upon them.

This reply relies on two points, one analytical, one empirical. The analytical point was made forcefully by Rousseau, among others. No rational person can agree to be a slave. To agree to slavery would be to alienate one's standing as a human being and moral agent. Freedom from slavery is a necessary condition of moral agency. Anybody who appears to have consented to their own slavery is, in all likelihood, conceding to the coercive power of the other. But conceding to the power of the other is far from consent.

Walzer can apply Rousseau's claim to shared social meanings. Like explicit contracts, shared meanings require a negotiation between basically free and basically equal parties. This would provide a clear answer to the worry about immoral practice: *in principle, there could be no shared social meanings governing non-consensual relationships like slavery*. Masters and slaves do not agree to the conditions of slavery. If we find a slave who appears to consent to his enslavement, then either he is irrational (perhaps through psychological conditioning or brainwashing) or he is merely conceding to the coercive demands of the master, which is, of course, not the same as consent.

No doubt Walzer would have to answer many sticky, standard questions about the nature and limits of consent, questions which arise on all contract theories. Yet Walzer's concrete, historical method has the advantage of giving a detailed, contextual view of the many different types of consent. Thus it would fare better than most abstract theories of consent.

The empirical force behind the claim that oppression destroys shared meanings would require a sociological and historical interpretation of extreme oppression. One would have to show that American slaves did not consented to or shared the meaning of their own oppression.

Let's focus on a popular pro-Slavery argument of the 18th and early 19th centuries which claimed there was a code of honor between master and slave which made slavery morally acceptable. The master was a provider, obligated to treat his slaves well. There were, of course, bad masters who abused their slaves. But the majority of owners, it was argued, were benevolent, and hence the institution of slavery as such was acceptable.¹⁷ This argument gained further force among whites who believed blacks enjoyed a high material standard of living relative to free blacks in Africa; at least blacks in America had shoes, clothes and were guaranteed a meal. Some owners even argued that they respected their slaves because, for example, they allowed them Sunday off as a day of rest.

But none of these reasons show the existence of a shared understanding between owners and slaves over the basic nature of slavery. No single document reveals this better than Frederick Douglass's 1852 speech "The Meaning of the Fourth of July for the Negro" which shows decisively the inseparable gulf between how whites and blacks viewed slavery and America. Douglass said:

My subject, then, fellow-citizens, is American slavery. I shall see this day [the 4th of July] and its popular characteristics from the slave's point of view...I do not hesitate to declare, with all my soul, that the character and conduct of this nation never looked blacker to me than on this 4th of July!...America is false to the past, false to the present, and solemnly binds herself to be false to the future. Standing with God and the crushed and bleeding slave on this occasion, I will, in the name of humanity which is outraged, in the name of liberty which is fettered, in the name of the constitution and the Bible which are disregarded and trampled upon, dare to call into question and denounce, with all the emphasis I can command, everything that serves to perpetuate slavery—the great sin and shame of America!¹⁸

¹⁷ See George Fitzhugh's *Sociology for the South* (1854).

¹⁸ *Frederick Douglass: Selected Speeches and Writings* (Chicago: Lawrence Hill Books, 1999), p. 195.

Douglass demolished the idea of a mutual contract between owner and slave by showing that slavery was always a “monstrous relation” from which “springs an unceasing stream of most revolting cruelties.” “The very accompaniments of the slave system,” he wrote “stamp it as the offspring of hell itself.”¹⁹ Noting that whites often appeased their guilty consciences by reporting on the “contentment of the slaves” Douglass would also write “the slave *does* sometimes sing, dance, and appear to be merry. But what does that prove? It only proves to my mind, that though slavery is armed with a thousand stings, it is not able entirely to kill the elastic spirit of the bondsman.”²⁰

Douglass’s efforts show convincingly that black slaves had a radically different view of the institution of slavery than did white slaveholders. While this should not be surprising, the implication for Walzer’s theory is important. The theory of shared social meanings does not lead to the absurd conclusion that slaves are morally obligated to their masters since there is a mutual understanding between them regarding their respective roles. Like classical consent theory, the theory of shared social meanings holds that a person may strategically and self-interestedly stay within his role for fear of punishment without believing that he deserves his own servility. As Douglass says, for slaves to find a moment of joy within the monstrous system of slavery did not prove they were *happy as slaves*, although whites exploited it as such.

In sum, the historical analysis supports Rousseau’s analytical claim that no rational person would consent to extreme oppression. American slavery was not based on a shared agreement between master and slave.

¹⁹ Ibid, p. 167.

²⁰ Ibid, p. 169

Could the critic at this point reformulated his objection about slavery and claim that there was a social consensus among American *whites* in the 18th and early 19th centuries, even if there was no agreement between owners and slaves?

The problem with this reformulated worry can be exposed through a thought experiment. It is false to suppose that if John and James contract to mug Adrienne they have a legitimate reason to mug Adrienne. Yes, John and James have an agreement. But clearly Adrienne is not part of the shared value system (or contract) of John and James. Adrienne has not consented to be mugged; she is not part of their contract. Thus John and James do not have a legitimate reason to mug her. Shared social meanings, like actual contracts, only govern those who are party to them. So despite the fact that there was a consensus among whites that slavery was legitimate, this consensus did not make slavery legitimate since the consensus was not among the relevant people.

This last point vindicates in part Walzer's seemingly ad hoc claim that his relativistic view of justice is constrained by the value of peaceful coexistence. Walzer's notion of justice holds that goods are to be distributed within a community based on its shared meanings; but the theory also holds that it is illegitimate for a community to imperialistically impose its communal standards on a non-consenting party. For whites to impose their understanding of slavery on blacks was an illegitimate act of imperialism. Thus the reformulated objection fails to show that the shared social meaning account of justice would endorse American slavery.

By way of conclusion, let me reiterate that I have added to Walzer's account of shared social meanings the claim that social meanings, like actual social contracts, require consent. Since no rational person can consent to extreme oppression, the social meanings account is rescued from a common worry: it does not endorsing social practices where a majority

community imperialistically forces its meanings onto a less powerful minority. No doubt, there will be critics with hypothetical cases where oppressed minorities self-deceptively come to embrace the values their oppressors. But one of the strengths of the historical, casuistic approach is to remind us to attend more carefully to actual rather than fictional cases. Douglass's orations powerfully suggest that American slaves resisted the values of the white majority, and that blacks did not become the self-deprecating "Sambos" that whites thought they were. If my reading of American slavery is correct, then Walzer's answer to the charge of unbridled moral relativism is convincing: extreme oppression, as evident in American chattel slavery, occurs *in spite of*, not because of, shared social meanings.