

INSTITUTIONAL PLURALISM AND THE LIMITS OF THE MARKET

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Abstract: Competition for positional goods is an important feature of contemporary consumer societies. This paper discusses three strategies for a normative evaluation of positional competition. First it criticizes an evaluation in terms of people's motives to engage in such competition. A reconstruction of an American debate over the status-motivation of consumer behavior shows how such an analysis founders on the difficulties of distinguishing between status and non-status motives for consumption. Second the paper criticizes an approach based on assessing the (positive and negative) externalities of positional competition. This approach is plagued by the methodological difficulty of determining the relevant externalities and their weight. The paper then puts forward a third kind of evaluation, in terms of recognition relations. Starting from Axel Honneth's theory of recognition I will propose to think of positional competition as a struggle for one kind of recognition that is necessary to personal autonomy, i.e. recognition according to the principle of achievement. Finally, the paper discusses the question how we can assess the legitimacy of interferences with positional competition. I argue that the recognition-based approach has a better response to this question than the externalities-based approach, especially with regard to the liberal objection that such interference is a violation of personal freedom.

Introduction¹

In modern societies the determination of the appropriate place and limits of the market is a task of the first importance. On the one hand there is little doubt that the market has contributed immensely to the quality of life of modern societies. On the other hand all except the staunchest libertarians agree that markets aren't good for everything, so that some limits have to be set to their sphere of influence. Beyond this very broad and vague consensus, however, there is little agreement about where these limits lie. In moral philosophy the limits of the market (or the limits to 'commodification') have been discussed following the proposal by Michael Walzer to delineate several social spheres, one of which is the market sphere (or, as he called it, the sphere of 'money and commodities' governed by the distributive principle of 'free exchange'). This kind of pluralism is 'spheres pluralism', or, as I will prefer to call it for reasons to be explained

below, ‘institutional pluralism’. Institutional pluralism is a normative position about the just provision of socio-economic goods. It states that there is no single principle of distributive justice. Rather, for different goods different principles should be acknowledged, leading to the construction of different spheres of justice. The pluralistic set-up allows us to ask questions like: should education, social security, or health care be distributed through the sphere of free exchange, or rather through the sphere of need or the sphere of desert? It is with institutional pluralism in the context of the debate on the limits of the market that I will be concerned in this paper.²

Institutional pluralism is a family of theories rather than a specific theory. Any particular theory of institutional pluralism has to take a stand on three main substantive issues: the objects of pluralism, the type of pluralism and the justification for pluralism. My aim in this paper is to propose a theory of institutional pluralism that reconceives the traditional answers on each of these points.

The *object of pluralism* is what we are looking for when asking: ‘pluralism of what?’ If pluralism proposes that we should have a menu of institutions, rather than a single master institution, what is on the menu? How do we establish the catalogue of institutions? I will argue that the objects of pluralism should not be principles of distribution - as Walzer and others conceived of them - but rather economic mechanisms or, as I will call them, ‘modes of provision’ (Section 1). The *type of pluralism* addresses the question: ‘what kind of pluralism?’ How should goods be distributed over spheres? Here Walzer and others assume that any good should only be placed in one sphere, i.e. distributed according to one distributive principle. I will argue that this assumption, which makes their theories a form of ‘simple pluralism’, should be dropped. This marks a shift to ‘complex pluralism’: for at least some goods it is appropriate that they are provided through the market and through one or more non-market alternatives simultaneously. This shift allows the moral debate on the limits of the market to be much more faithful to the structure of contemporary political and policy debates about the provision of socio-economic goods (Section 2).

Third, the *justification of pluralism* refers to the question ‘when and why pluralism?’ Institutional pluralism needs a normative standard if it is to be applied to concrete goods to generate results. Here I will argue that the conventionalist or a

contextualist justification often given for pluralism not only raises serious problems of its own but also has difficulties incorporating the option of complex pluralist schemes (Section 3). Instead, I will propose a capability approach to the moral evaluation of markets and non-market alternatives.³ Any institutional option has value to the extent that it enhances the morally relevant capabilities of the producers and/or consumers of the good that is to be provided (Section 4). I illustrate this approach with two examples of goods for which it yields complex pluralist conclusions: the provision of care and the provision of media content (Section 5). This illustration also provides the opportunity of discussing two complications that need to be dealt with when complex pluralism is acknowledged: the interaction effects between different modes of provision and the stability of complex pluralist schemes (Section 6).

1. From Distributive Principles to Modes of Provision

The dominant form of institutional pluralism in normative theory has been based on a distinction between different principles of distributive justice. Michael Walzer gave the most influential account of a classification of distributive principles, leading to the construction of social spheres over which these principles would reign. He presented his classification in the first chapter of his *Spheres of Justice* where he distinguished the principles of free exchange, need, and desert.⁴ One can use these principles and classify goods in spheres according to their appropriate principle. David Miller, in his *Principles of Social Justice*, presented a slightly different scheme. He recognized the principles of desert and need as well, but added a principle of equality and subsumed Walzer's principle of free exchange under the heading of desert.⁵ Jon Elster challenged Walzer's classification in a more fundamental way by presenting a much more detailed list of distributive principles, inspired by empirical research on the criteria that are actually used to distribute goods. He subdivided them into five classes: egalitarian principles, time-related principles, principles defined by status, principles defined by other properties and mechanisms of power. Each of these classes in turn contains a number of principles.⁶

Faced with this diversity of lists of distributive principles, two problems arise. First, there seems to be no systematic way of selecting principles. Walzer's reason for

picking his three principles is disappointingly pragmatic: he merely refers to the fact that they ‘have often been defended as the beginning and end of distributive justice.’⁷ There is no attempt to show, for example, that these three principles taken together are logically exhaustive of the universe of possible distributive principles. Elster readily admits that it is ‘difficult, or pointless, to construct neat and logical taxonomies.’⁸ Nonetheless, he also claims that his list of principles is intended to be complete. However, there seems to be no overarching logic to this list: it just enumerates all the characteristics that the allocation of goods could be based upon. Although this effectively conveys the point that once one looks closely at distributive principles, they rapidly proliferate, it still results in a random list. I will remain agnostic on the question of whether a non-random list of distributive principles is possible. Nonetheless, until such a more systematic scheme of distributive principles has been offered, it may be wiser to try another kind of taxonomy suitable for the question as to the limits of the market.

A second problem with the identification of spheres with principles of distribution is that these principles are heterogeneous. If one asks why health care should be distributed according to the principle of need, the answer will be something coming down to ‘because individuals need health care’. Such an answer is in search of a theory of need to avoid vacuity. The principles – at least those of desert, need and equality – merely point to the existence of a normative standard but they do not give us the content of that standard. The elaboration of that content may be impossible at a general level because different goods will require different methods and criteria to specify need, or desert. For example, a plausible theory of ‘need’ will need to differentiate between need in the context of health care, need in the context of social security, etc. Surprisingly, there is one principle for which this diagnosis does not hold: the principle of free exchange. This principle does not point to a normative standard but rather to the workings of a *mechanism*: the price mechanism, i.e. the market. If one wants to have a clear grasp of alternatives to the market, this difference in the character of the options on the menu is problematic. Therefore my suggestion is that the entire institutional menu should exist of institutional mechanisms, not of distributive principles. The question about the distribution of goods then is answered in terms of the mechanisms used to decide that question. Instead of directly dictating the distributive answer, we decide ‘leave it to the

market', or 'leave it to the political process', etc. The best way to proceed, then, is to recognize both of these levels.⁹

Some authors in the debate about the moral limits of the market implicitly took this turn away from distributive principles and conceived of the market as a mechanism.¹⁰ However, this did not lead to the development of adequate typologies of institutional mechanisms. Most of the times there simply is the market and an implicit realm of 'non-market' options as a counterpart (especially where discussions are confined to whether goods like organs and female reproductive capacities should be alienable or not).¹¹ As a result the limits of the market are often discussed without any account of alternatives to market exchange at all.¹² A notable exception is Elizabeth Anderson, who discusses three alternatives to the market: internal standards used by professionals in the sphere of civil society, gift exchange used by individuals in the sphere of personal relations, and public goods in the political sphere.¹³ I propose to use a classification comparable to that of Anderson, consisting of five options on the institutional menu: self-provision, informal provision, market provision, public provision and professional provision. These five mechanisms or 'modes of provision' (as I will call them) each provide a specific way of integrating the economic phases of production, exchange and consumption of goods. Thus, we shift to a theory in which the market and its alternatives are seen to be what they are: not in the first instance ways of distributing goods, but ways of connecting the production to the consumption of goods via some form of exchange.¹⁴ The logic of the proposed classification rests in the fact that the modes of provision are distinguished from each other on the basis of three criteria: whether or not goods are exchanged, whether or not exchange is monetized, and what the form and rules of exchange are. The inspiration comes from work in economic anthropology, economic sociology and institutional economics.¹⁵

The first option on the menu, self-provision, is distinguished from the four others on the basis of the criterion of *exchange*. In self-provision exchange between producers and consumers is absent. The producer of a good consumes it herself – no exchange with others takes place. Anthropologists often called this autarkic production, or production for one's own needs; this is the economic basis of the Aristotelian *oikos*.¹⁶ We produce many goods for ourselves on a daily basis: when we cook our meals instead of having

cooks do it for us, when we weed our garden instead of hiring a gardener, etc. The second option on the menu, informal provision, is distinguished from the three remaining ones by the criterion of *monetization*. In informal provision consumers and producers exchange goods between them without using money (or any other measure of value functioning like money). This absence of a measure of value guarantees a certain vagueness in whether the value of the goods exchanged is equal, a vagueness which is part of the purpose and permits agents to be ‘in debt’ with the other. The absence of money is complemented by the absence of contracts in which the performances of both parties of the exchange are specified. Reciprocal gift-giving is a prominent example of informal provision that has been important in the anthropological literature.¹⁷

The three remaining options are all based on monetized exchange. These three modes of provision are distinguished from each other by the *form of exchange*: exchange can either be direct or indirect. Each form in turn is based on different *rules of exchange*. The direct (quid-pro-quo) variant occurs where two agents exchange goods between them: A delivers good x to B and B delivers good y to A. This yields market provision if the rule of exchange is the price mechanism, which refers to free exchange based on the preferences and endowments of market actors (determining the structure of demand and supply). The market was well-known as a marginal institution to trade surpluses with non-community members in the pre-modern societies described by anthropologists. It only assumes its central role in modern economies from the 18th century onwards.

Indirect kind of exchange yields public provision, since money is pooled – usually by collecting taxes - from a group of constituents (A, B, C, D, etc.) to a central actor (usually a state-like entity) who provides a good in return. If this good is delivered in kind to all constituents at once it is a public good. If the good is delivered to only some of them on the basis of specified criteria it is a public entitlement. The rules of exchange are here set by a political process of decision making – democratic or not – which determines the rules for collecting taxes and delivering public goods and entitlements. Historically, public provision extends from the pooling of resources by tribal chiefs known from the anthropological literature through the ideal type state bureaucracy described by Weber.¹⁸

Sometimes public and market provision are taken to exhaust the domain of forms of monetized exchange. However, we may distinguish a third ideal-type, professional

provision, which can be either of the direct or the indirect kind. In the first case professional provision is an exchange going on directly between a professional (say a lawyer or a doctor) and a paying client. By contrast, exchange is indirect if money is pooled for the purpose of providing the professional service, most often through public funds or subsidies (but occasionally through private donations). In both cases the rules of exchange are not set by the price mechanism or a political process, but generated by those having expert knowledge. Professionals determine the content of what is exchanged with their clients. In the direct variant this is possible because although they are financially dependent on private clients, they are sheltered from price competition by a (publicly sanctioned) fixed price scheme, often set by professional associations. In the indirect variant this is possible because despite the financial dependence on the state, they retain discretionary space for decisions about the goods they provide. This makes professional provision irreducible to the private contracts or public laws under which they operate.¹⁹

This admittedly is a much too brief exposition, but here it only serves the function of being able to present the further discussion in terms of an institutional alternative to the pluralism of distributive principles. Those who would prefer a somewhat different list of institutional options can, I expect, still see merit in the arguments that follow. Also, we have to keep in mind that it is a classification of ideal-types; in practice we may find complicated intermediate forms of exchange.

2. From Simple to Complex Pluralism

The tacit assumption underlying Walzerian pluralism is that each good can only be provided through one distributive principle. Thus, there is an ‘essential fit’ between a good and the institution – the mode of provision – used to provide that good. Basic education should be provided by the state, musical instruments should be provided by the market, health care should be provided by professionals, etc. Let’s call the kind of institutional pluralism based upon this assumption *simple (institutional) pluralism*. Despite the fact that Walzer’s theory was published more than 25 years ago, this basic scheme continues to dominate the debate on the limits of the market. Nonetheless, I contend that simple pluralism is not pluralistic enough. We should drop the assumption of

an essential fit and allow for the possibility that one and the same good may be provided through several modes of provision simultaneously. If we do this we get *complex (institutional) pluralism*. For example, education may be provided simultaneously through the market and by the state, care may be provided simultaneously by professionals and through informal (family) arrangements, etc.²⁰

The idea of ‘simultaneity’ implies that within a certain society both options are available side by side. They coexist and people can – with more or less restrictions – choose their preferred option. This presupposes that we are able to identify goods separately from the modes of provision used to provide them: we see the same goods being provided in several distinct ways. An objection to this kind of identification could be raised to the extent that goods themselves change once the mode used for their provision changes. As a consequence one could not speak of ‘the same good’ if, for example, a health care service provided by the state is compared with the (similar or analogous) service provided by the market.²¹ There is some truth in this objection, in the sense that modes of provision do influence and change the ideals, expectations, norms etc. that are attached to a good by its consumers and producers at a certain place and time. However, we should not throw the baby out with the bathwater. There is a common core, for example, in the good of ‘(basic, higher, etc.) education’, whatever the way in which it is provided: a core pointing to a practice with two groups of persons - teachers and pupils – the first group trying to convey their knowledge and capacities to the second group, a curriculum being taught, rules for admission to this practice, etc. etc.

Of course the exact description of this core will be contentious to some extent; there will be different competing descriptions of what it means to provide education. In the end, whatever core set of features the description chosen points to, the identification of a good remains a matter of social construction, not a natural fact. Such a social construction, on the other hand, is not completely arbitrary. The core set of features making up a good often has some constancy over time. This should not surprise us, since this core points to the *function* that a good fulfils for human beings. For both commercial and state education we can point to classrooms in which lessons are being taught by professors to pupils. Either one or the other or a mix of both (or any other mode of provision) does the job. The same functions are often identified in societies which differ

in many other respects. Almost any society, for example, has had some way of initiating pupils into important knowledge for that society. Finally, we should bear in mind that if we would not be able to identify goods then the whole idea of applying modes of provision to goods would become vacuous. For example, any argument about the ‘resistance’ of a good to the market, about such a usage of the market being a bad idea, makes use of ideas about what the good is.

If we accept this, a next question is why we would restrict ourselves to the simple pluralist assumption in the first place. The idea of complex pluralism seems to have an intuitively plausible air to it. After all, in reality we see many goods for which different modes of provision are used simultaneously. As simple an example as food, which is simultaneously provided in restaurants (market provision), collected at the government’s food offices (public provision), enjoyed at a friend’s place (informal provision) or prepared by people themselves (self-provision), is enough to convey this point. So why has this kind of pluralism not been noted before in the debate on the limits of the market? One reason, it seems to me, is that this debate long focused on the question for which goods markets should be morally condemned and prohibited. Walzer’s influential account of blocked exchanges certainly stimulated this kind of thinking.²² This naturally does not lead to an investigation of those goods for which alternative mechanisms exist side by side, but it calls for restricting a good to one specific, non-market mechanism (for example, restricting the good of sexual activity to the informal context of marriage or a loving relationship).

Nonetheless, a first step towards making the pluralist position more complex (and realistic) has already been taken with the introduction of the notion of ‘incomplete commodification’ by Margaret Radin. This idea allows for goods to be simultaneously commodified and subject to non-market norms. Radin illustrated this with the example of labor. Labor is both a commodity, subject to market norms, and an intensely social and personal activity surrounded by all kinds of non-market norms. Some of the latter are informal social norms while others are socially protected by formal regulation. For example, in many societies there are restrictions on lay-offs so that one cannot fire a worker in the same way as one can dispose of a consumer good by putting it in the garbage can.²³ Similarly, prostitution could be regulated so as to prevent sexual activity

from becoming completely commodified. Incomplete commodification, just as complex pluralism, can be considered a case of ‘mixed provision’.²⁴ Still, there is a difference in that incomplete commodification represents a situation in which there is only one mode of provision at work, while complex pluralism presents us with two separated modes of provision being implemented for the same good and existing side by side. For example, complex pluralism points to the co-existence of commodified labor and informal (unpaid) labor for the same good (say, caring for children), not to commodified labor being restricted by non-market norms. So the existence of complex pluralist schemes should be seen as a new step in the commodification debate.

The differences between the three ideas can be neatly drawn out with the help of the concept of commodification itself. When the issue is restricted to the question whether or not a good should be allowed on the market, commodification refers to the *market creation* for otherwise non-market goods. When the debate expands to the question whether or not a good is ‘fully commodified’ (only governed by market norms), commodification refers to *market deepening*: making the provision of a good less dependent on non-market norms. When we expand the field even further and consider the question whether or not a good is simultaneously provided through the market and alternative modes of provision, then we are dealing with commodification as *market enlargement*: the market gradually overtaking the function of providing a good from its non-market rivals. Counteracting any of these three processes of commodification is a way of ‘limiting the market’. Blocked exchange refers to prohibiting markets, incomplete commodification refers to regulating markets and complex pluralism refers to making non-market alternatives available in addition to markets, so that the market doesn’t take up the whole field of provision for a certain good.

3. The Conventionalist Justification for Pluralism

Complex pluralism up to this point has been introduced as a possible institutional *scheme*, on a par with schemes existing of one pure or incomplete mode of provision. Nothing has been said so far about the justification of this scheme. Complex pluralism only is a valid normative *position* if for at least one good that scheme should be applied, i.e. this good

should be provided through two or more modes of provision simultaneously (allowing that for other goods a single mode of provision is appropriate - complex pluralism as a normative position incorporates simple pluralism). Can this position be defended? I will answer this question in two steps. First I will be looking at the case for simple pluralism and consider if an analogous case for complex institutional pluralism can be made. It turns out that this is not the case. Then in the next section I will propose a different normative theory, based on the notion of capabilities, to make decisions about choosing between the market and other modes of provision or a combination thereof.

Walzer's criterion of justification for simple institutional pluralism was the following: a society is just when each social good falls in its appropriate sphere of distribution. It is important to note that this criterion in itself does not require a pluralism of social spheres. It only says that each social good has to be checked for its appropriate sphere. Theoretically, the outcome of such an exercise, executed for all social goods, could be that all goods fall into one sphere only (say, the sphere of free exchange). The other spheres (say, those of need and desert) would then remain null sets; theoretical possibilities without a practical instantiation. Strictly speaking we cannot jump from a theoretical design of a plurality of spheres to the conclusion that a just society requires a plurality of spheres (distributive principles) actually being used. Walzer filled this argumentative gap by the *a priori* claim that '[n]o such criterion can possibly match the diversity of social goods'.²⁵ However, such a claim is begging the question: only an evaluation of all social goods can establish the desired conclusion (and this is exactly what he subsequently did).

Walzer's method for establishing the appropriate distribution of social goods, as is well known, was to inquire into their 'social meaning', relying on the 'shared understandings' of members of a society. This reliance on shared understandings led to the charge that Walzer was a conventionalist, unable to account for unshared understandings or to take a critical distance from shared understandings. In situations where we do not have a shared understanding about the just distribution of a good – as is often the case – Walzer's theory doesn't have anything to offer. In these situations we need to debate and argue about competing understandings, none of which is shared by everyone in the relevant community. And even if there is a shared understanding, this

doesn't mean that what people understand to be just really is just – at least the connection needs further support.²⁶ I believe these charges to be largely correct. It is one of the reasons for shifting to a different type of justification. However, what interests me here is not so much the discussion of whether justice requires the elaboration of "transcendental", free standing moral principles or rather the "immanent" interpretation of social contexts. Rather, I want to point to a consequence of this methodology.

In searching for the shared understandings about, say, the provision of education or health care, it is almost unavoidable to escape the belief that goods have an essential fit to one sphere only. The requirement of a shared understanding easily translates into a supposition that there will be one correct principle. The following quotation, written by David Miller in defence of Walzer, is revealing: 'The relationship between the meaning of the good and the distributive principle is not here a conceptual one; it is rather that, once we see what kind of good medicine is, this immediately *triggers* a particular distributive principle which we see as applying to all goods of that sort.'²⁷ It is hard to imagine that Miller could have written '...triggers a particular set of distributive principles' instead. To be sure, it does not seem to be a matter of logical impossibility: people's shared understandings about education could very well reveal that they think it should be provided through several mechanisms at once. Nonetheless, psychologically this is a much more sophisticated scheme. Once things are set up to look for the 'nature' of a good, this will most likely trigger one distributive principle.

For this reason, in addition to the familiar substantive objections to conventionalism, a normative defense of complex pluralism should not try to reconstruct existing shared understandings. Rather, it should assess the possible value that a pluralist scheme might have, for each good separately, compared to alternative schemes. For instance the value of having education provided through the market and the state should be compared to the value of having state provision only (blocked exchange), as well as to the value of market provision with additional regulation to safeguard non-market norms (incomplete commodification), etc. As with simple pluralism, a complete assessment of all social goods according to this method might lead to the conclusion that a complex pluralist scheme is not necessary for any good. The complex pluralist scheme then would turn out to be a null set, a merely theoretical possibility.

Some might want to have a more forceful defence of complex pluralism, analogous to the a priori belief in simple pluralism on account of the diversity of social life. This defence could be based on what seems a rather obvious advantage of the complex pluralist scheme: that it allows people to choose between several modes of provision instead of having their options restricted to one mode of provision only. Here an analogy may be drawn between institutional pluralism and value pluralism. A society respecting value pluralism allows people to choose their own favoured conception of the good life. This is considered to be a key requirement for a just society; why shouldn't the same be true for respecting people preferences over various institutions? Indeed, this emphasis on choice might seem to lend complex pluralism more 'liberal' credentials than Walzer's restriction of a good's distribution to only one well-defined sphere.

Nonetheless, I think that such a defence is highly implausible. Unlike conceptions of the good life, institutions cannot be held in private. Institutions by definition are social arrangements, enabling forms of cooperation between several individuals that can only exist if they coordinate their actions in realizing this institution over time. When I use an institution to fulfil one of my preferences – say, when I use the market to satisfy my need for health care – I rely on the cooperation of others. This cooperation cannot be enforced – others for their own reasons will have to offer their cooperation. In using an institution I require the social space to be organized in a certain way, with attendant costs in terms of time and resources on all participants. Since these are scarce and limited, this usage requires justification. Mere individual preferences for a specific institutional set-up cannot form a sufficient justification for that set-up. We need independent arguments for why it is valuable. If we agree about the need for an independent assessment of the value of institutional schemes, the question arises what the criterion of value should be and why realizing certain values is a moral obligation. This brings me to the constructive part.

4. The Capability Justification for Pluralism

In the debate about the limits of the market various moral theories have been proposed.²⁸ As an alternative to Walzer's conventionalism as well as these other theories, in this section I will present the outline of a capability theory to evaluate institutional schemes.²⁹

Since this theory has to be useful to guide goods-specific debates, it is geared towards formulating what I will call ‘local normative theories of practices.’ So for example the provision of the goods of health care, education, science, etc. takes place in *practices* for the provision of health care, education, science etc. Each of these practices is governed (implicitly or explicitly) by a normative theory that is *local* in that it only applies to that practice. Such a local theory formulates the *ends* that participants in the practice should try to realize; and it is up to the theorist (and to participants in practices as well) to argue about the ends that *should* be laid down in such a local theory: e.g. what goals should our health care system strive to attain? The capability theory itself is a ‘global theory’; it guides, informs and constrains the development of local theories in the ways described below. I will start by presenting a conception of personhood and its two constitutive conditions that is to serve as the fundamental moral value that regulates and justifies the promotion of capabilities. From this conception I will derive two corresponding normative criteria guiding the formulation of the ends of practices. It is only once we have done this that we can deliberate about which modes of provision best realize the stated ends. The abstract outline of the capability theory to be presented in this section will be illustrated by a discussion of its application to two specific practices (that of media and care provision) in the next section.

The starting point is that it is fundamentally valuable for any individual to be able to live her life as a person. I will call this the value of personhood. Being the most fundamental value, it is the final criterion of many moral theories that personhood should be respected.³⁰ The struggle between these competing moral theories is over what it means to protect personhood; i.e. what specific normative demands flow from its interpretation.³¹ Personhood in this capability theory requires the respect of its two crucial constitutive conditions: developing the capacity for agency and being able to exercise this capacity. Each of these conditions requires the realization of a corresponding set of capabilities. In the following, the notion of ‘capabilities’ will be used in a morally neutral fashion, standing for the opportunities persons have to engage in some functioning, i.e. some kind of being or doing. The notion itself will not imply that the opportunities it addresses are valuable; for that remains to be seen.³² Let us now turn to the two conditions for personhood.

First, having personhood requires developing the capacity for agency. I will call this the *condition of agency development*. An individual who has this capacity is able to reflect upon his desires and rationally decide which ones should be endorsed as valid reasons for action. Furthermore, she is able to embark upon the courses of action that she has rationally endorsed. Thus, the capacity for agency has a deliberative part and an action part. At both stages problems may arise. We can imagine that individuals are drifting through life without apparently making decisions of their own, perhaps acting randomly (like an automaton) or following their urges without reflection (like an animal). We can also imagine individuals who have made decisions on the basis of rational deliberation but are unable to act upon them, due to internal defects (such as those suffering from weakness of will) or to external impediments (like slaves being coerced to follow the orders of their masters). Now having this capacity for agency requires having the capabilities necessary to develop and sustain this capacity. These are the *morally required capabilities*.

Having the capacity for agency is usually taken to be the defining condition for being a person. It undoubtedly is a necessary condition – but is it also a sufficient one? The person having this capacity surely isn't an automaton, animal, weak-willed individual or slave; but is she already the person we have in mind? She could still be forced to the status of a couch potato; who has the full capacity for agency but is unable to live her life like a person, because she is unable act upon her capacity for agency. To have this ability a person needs avenues for exercising her agency. I call this the *condition of agency exercise*. The list of capabilities that one could convert into functionings in order to exercise one's agency is endless and it is not possible in a lifetime to realize all the capabilities and functionings offered in our social world. The requirement is that one is able to develop those capabilities and functionings that one chooses to. Some will choose to develop their capability for artistic performances, others will engage in exercising their capability for philosophy, again others will concentrate on their capability to sing songs, weed gardens, become a manager, participate in NGO's, etc. These are the *morally permissible capabilities*. They do not bear directly on the development of the capacity for agency, but rather provide avenues for exercising one's capacity for agency (once one has it) in living the good life of one's choosing and thereby

flourishing as a person.³³ An individual who does so is a person in the full sense: she has the capacity for agency *and* she is able to exercise her agency in realizing capabilities and functionings of her own. It is the opportunity for leading this kind of life of a person that we value most fundamentally and seek to protect, in different ways, in the requirements of moral theory and in the organization of social and political arrangements. From these two constitutive conditions of personhood we can derive two corresponding normative criteria for the formulation of local normative theories for practices.

The criterion of agency development is that a practice should formulate ends which *promote the realization of those morally required capabilities that a global theory has assigned to this practice*. Every morally required capability in a specific society is a basic need for persons in that society, to which they are entitled.³⁴ The level of the entitlement depends on what is necessary to realize the capacity for agency.³⁵ This will have to be specified by our local theory on a case-by-case basis.³⁶ The application of this criterion depends upon a division of labor between global and local theory. First at the level of global theory it has to be decided which practices have to be in place in a society for its citizens' capacity for agency to be developed. From this preliminary global determination of which capabilities are morally required, for example, a requirement may be issued that a practice for nurturing young children is required. Once the creation of such a practice of nurturing is normatively endorsed, a local theory for that practice is assigned the task of promoting the morally required capabilities that form its *raison d'être*. The global assignment determines which morally required capabilities a practice can limit itself to. For example, it would not make sense to require of the practice of nurturing young children that it develops the children's capability for understanding mathematics; that would be an instance of misallocation of responsibilities.³⁷

The division of labour envisaged here between global and local theory is a subtle one. While the general end for the practice is set at the global level, any further specification is to be made at the local level, and this specification may considerably determine the interpretation of the capability at stake. While at the global level we decide that there is to be some practice of nurturing young children, this leaves ample space to determine the more specific ends at the local level; i.e. how and to what extent nurturing should contribute to the development of children's capacity for agency. This

discretionary space is important for two reasons. First, the requirements for developing full agency cannot be specified in an eternally fixed standard. They will be different in ancient Greece from what is required in highly complex modern societies. The exact content of the morally required capabilities has to be interpreted in the context of the society at hand. This kind of flexibility can be honoured in a local theory, while arguably a global theory will have to be less context-sensitive. Second, local theories benefit from the expertise of the practice participants in formulating the details of the ends at stake; expertise that is indispensable for a theory to acquire legitimacy and be a guiding force in realization of the formulated ends, for example pedagogical expertise on the best way to nurture children.³⁸

I will not attempt to draw up an exhaustive list of required capabilities that are necessary for agency development in the social context of contemporary modern society. It is possible, indeed necessary, to generate such an exhaustive list. However, its generation would require the local study of *all* practices a society harbours. Since to carry out such an analysis clearly exceeds the scope of this paper, my ambition in the following will be the more restricted one showing for two practices (media and care) to what extent they are involved in promoting morally required practices (see next section). Note that this makes clear that although personhood is an abstract moral value, its content is dependent upon requirements that can only be formulated through a study of local practices. Thus, the substance of the notion of personhood emerges from a context-sensitive and historically situated evaluation of all practice's contributions to agency.³⁹

The second normative criterion is that of agency exercise. It says that a practice should formulate ends which *promote the realization of those morally permissible capabilities that participants have assigned to the practice*. This criterion assigns to every practice the duty to promote those morally permissible capabilities which form that practice's *raison d'être*. Here the division of labour between global and local theory is markedly different from the one that applied to the previous criterion. Any society should allow the existence of those avenues for the development of morally permissible capabilities that persons choose to create. Because these capabilities are not morally required, there is no global obligation to create specific practices for the development of these capabilities. For persons, once they have gained their capacity for agency, have to

decide for themselves the practices they want to create and participate in, in order to exercise their agency. From the perspective of personhood, a society in which half the people decide to engage in piano playing and the other half in wrestling, is as good or bad as a society in which half the people engage in religious ceremonies and the other half in watching cartoons on television. Therefore, at the global level there not only is no obligation to create practices for these capabilities; there is an obligation of non-interference. Persons with the capacity for agency will found new practices, reform other ones and let again other ones whither away. Any global theory has to allow this, since none of the capabilities at stake is morally required.⁴⁰

At the level of the local theories of the practices that come into being on this basis, things are different. Any practice has the obligation to promote the realization of those capabilities (and their conversion into actual functioning) that its members - be they piano-enthusiasts, cartoon lovers, or something else – have assigned to it. The legitimating force of the obligation to promote these ends thus comes from the consent of the voluntarily cooperating participants in the practice, not from the requirements of a global theory (as for the previous criterion). These practices are based upon a sort of local social contract, which places obligations and entitlements both upon the participants and upon the practice itself. For the participants the main obligation is to cooperate in the practice according to its rules. In choosing to join the practice, they have chosen to abide by the rules that are cooperatively established. On the other hand, persons have a right to withdraw from the practice. Their original consent to be participants is revocable, so that at any moment the practice consists only of voluntarily cooperating persons. At the same time, every individual has a claim upon the practice (that is, upon all others jointly) that they continue to promote the ends of the practice. This claim extends only to the participants of a practice and only as long as the practice continues to exist. The argument for this claim is that for those persons who have already invested their agency in a certain practice (their time and energy, their personal biographies and identities, etc.), it is important that the practice tries to promote the development of their capabilities and their conversion into functionings.

A final matter is how we should conceive of the relation between these criteria. The criteria of agency development and agency exercise will be related in terms of the

following priority rule: in cases of conflict the criterion of agency development receives priority over the criterion of agency exercise. The intuition behind this rule is clear enough: any practice should first realize the morally required capabilities. Only to the extent that this is ensured will there be legitimate scope for the realization of the morally permissible capabilities (if possible, of course, any practice should do both). This priority rule will often have important consequence for our assessment of the institutional design of the practices.

These are the bare bones of the capability theory.⁴¹ Now one may ask: how does it differ from a conventionalist theory? It does so in two respects. First, it does not generate its normative content from the shared understandings of a given society, but rather works by elaborating the implications of the (society-transcending) ideal of personhood in terms of a set of capabilities. This might suggest that whereas Walzer's method was excessively 'bottom-up' or inductive, the method used here is excessively 'top-down' or deductive. That would be a mistake, however. As said before, the demands of agency are to be understood in a context-sensitive fashion. For example, in a modern society it may be necessary to have the capability to read and write in order to acquire the information that enables one to choose between the courses of action that a modern society offers. In other societies literacy would not be necessary in this sense.⁴² All capabilities have to be evaluated for all their possible effects on the capacity for agency, some of which will turn out to be more sensitive to context than others. In the application of the capabilities theory difficult practical judgments about what the abstract ideal of personhood entails with regard to a specific practice, will remain necessary.

A second difference, relevant to our topic, is that the capability theory can easily accommodate complex pluralist conclusions. Although we conceded that conventionalism can reach such conclusions, we saw that the 'shared understandings' on which it relies most likely trigger simple pluralist conclusions. Following the capability theory, the endorsement complex pluralist scheme can be brought about in two ways. Sometimes a practice will be seen to require the development of a diversity of capabilities rather than just one capability; and each of these capabilities will need a different mode of provision to be realized. In other cases there is one central capability that can and must be realized through several modes of provision simultaneously (in the next section we

will see examples of both of these configurations). The separation of ends (normative criteria) on the one hand and means (modes of provision) on the other hand guarantees all the flexibility that is needed to generate a pluralism of modes of provision for realizing a set of required ends, wherever the arguments support such a connection.

5. Illustrations

How are we to apply the capability theory presented in the previous section to the question of the market? We can do so by using a three-step method. In considering a specific practice, first we formulate the local normative theory of that practice, i.e. the required ends in terms of the required and permissible capabilities at stake. The second step is to identify the relevant institutional options. Usually there are only serious arguments for two or three of our modes of provision, instead of all five of them. Finally the third step is to choose out of the identified institutional schemes the one that best promotes the set of relevant capabilities, that is, that best implements the ends of the local normative theory for that practice.

Note that the method just presented investigates whether complex pluralism (or any other institutional scheme) for a concrete good is the morally *required* scheme; whether it establishes an obligation as a matter of moral theory. This then puts a burden upon society to implement this scheme. Thus the relevant moral requirement is not just addressed at the state (or any other public authority, be it international or local). The state is only directly involved as a producer in one of the five modes of provision – public provision. Of course in many situations indirect support from the state is necessary to provide conditions for survival of the other modes of provision; for example the state guarantees a system of property rights which underlies market exchange. Nonetheless, these other modes of provision predominantly require non-state action by commercial parties, professionals, volunteers, etc. Usually these non-state actors cannot be coerced by the state to do their part. The question of the addressee of moral obligations to provide goods in a certain way will have to be discussed on a case by case basis.

As to the illustrations: their only purpose is to show how the capability approach can be applied to choices between the market, other modes of provision and combinations

thereof. Many simplifications are made and empirical detail is left out, the conclusions are therefore provisional rather than definitive; they await a full treatment of the substantive issues that cannot be given here. The examples - care provision to dependent persons and mass media communication – have been selected for their ability to illustrate how we can reach complex pluralist conclusions. Moreover, each does so with regard to a different ‘challenger’ to the market (informal provision in the case of care, professional provision in the case of the media) and for different reasons, thus giving an impression of the diversity of considerations that can play a role.

The first example is the provision of care for dependent persons, such as young children, dependent elderly people and chronically ill people. This type of care often is time-intensive, repetitive and stretches over long periods of time (in contrast to most forms of medical care). The first step is that we identify the morally relevant capabilities for this good. Simplifying, we can say there are two such capabilities. On the one hand there is the care recipient’s capability to receive care. The importance of this capability is undeniable; without the opportunity to have one’s caring needs fulfilled, it becomes impossible or very hard for dependents to have a reasonable measure of personhood. The dependent person has a vital interest in having this capability. On the other hand there is the care giver’s capability to give care. This too is of vital importance: for many persons care giving is an important part of their identity, a way of using their agency. Nonetheless, the caregiver’s capability is merely morally permissible, and thus of a weaker moral significance than the care receiver’s capability, that is morally required: care giving is one (permissible) way of acting using one’s agency, it is not itself required in order to be an agent, as receiving care is. Many persons have lived perfectly legitimate lives without extensive caring commitments. It is doubtful whether a moral obligation (upon the state?) should exist to make it possible for potential caregivers to care as they wish, equal to the obligation that care recipients receive the care they need. I may want to care of my friend, but if he turns down the offer, I will then have to accept this. It takes two to establish a caring relationship.⁴³

If we now turn to the second step, the institutional menu, two main forms of provision can be identified. On the one hand, care has often been informally provided – think of the parent caring for her child. This kind of care is unpaid and there is no

contractual obligation to deliver it which specifies the performances. Care provision here originates in a personal relation or bond between care giver and recipient which is independent from and usually prior to the caring activities. Two persons have been family members, friends, neighbours, etc. and when one becomes needy the other decides to start caring. On the other hand, there is market-based care delivered by nurses and others in day care centres, elderly homes and other care organizations. Here care is paid and it is delivered not on the basis of personal relations but on the basis of a contractual obligations.⁴⁴ It is clear that both types of care are equal in important ways: for example, both normally include feeding and washing patients – whether a nurse or family members takes upon herself care obligations. On the other hand, there are also differences, the main one being the background of the person caring (someone one previously had a relation with or a contracted professional).

Given these two main institutional options, there are three possible schemes: either to have opportunities for market care alone, for informal care alone or for both. As the third step in the argument, I would now argue that complex pluralism is the morally best option.⁴⁵ First, any of the two may fail to provide care in some instances; for example an elderly person may be without family or friends who can take care of him. Market-based care will be needed to fill in these gaps in informal provision. The same argument applies vice versa. Second, only the combination of both forms of care delivers us something that either option cannot deliver: a choice between both alternatives. For care recipients such a choice may be valuable, for some of them will be uncomfortable with being nursed by close relatives, while others will have a similar feeling with being nursed by relative strangers. Their choices may be influenced by many factors (what quality do care professionals have in the organizations in her home town, how are relations with family members), but in most cases it will be valuable to them to have both options available. For potential caregivers choice may be important too. If in a country no care organizations exist, pressure on certain family members (traditionally most have been women) will be extreme to take care even if they don't want to. Their agency will be frustrated if their lives are unwillingly spent in care service. Complex pluralism offers a way to solve their dilemma. Care recipients have a claim to be cared for, but not a claim

to be cared for by specific persons.⁴⁶ If family or friends choose not to care, they can always turn to the market.⁴⁷

Now let's turn to the second illustration, that of the provision of media content: programs made by television networks, papers produced by publishing companies, articles written by bloggers, etc. I would suggest two morally relevant capabilities are at stake here. One is the capability for media consumers to acquire entertaining media content – to be amused and diverted by whatever the media offer. Another capability is to be informed about matters of public interest and matters pertaining to political decision-making, and to have opportunities to form an opinion on these matters (by hearing all sides of a story). Here too, it seems that the moral status of both is not equal. An argument can be made that the capability to acquire public information is of the morally required kind, since it is a vital contribution to the survival of a democratic way of running a society.⁴⁸ By contrast the capability to be entertained would have to be classified as merely morally permissible. It will be clear that both capabilities can - and often do - conflict. Suppliers of public interest information are constantly struggling for attention of viewers and readers with suppliers of entertainment. Thus, if possible the media landscape should deliver content which satisfies both capabilities – this would maximize the value generated by the practice of providing media products. But to the extent that this is impossible, the capability to be informed about matter of public interest should receive priority in setting up institutions for the media.

Turning to the institutional options, two modes of provision are most important. The first is the market – commercial television, commercial newspapers and other commercial media. The media market can take two different forms: it can be based on subscriptions by consumers (such as for Pay TV and most newspapers) or on advertisement (open air TV and free newspapers), or a mix of both. Where access is free for consumers, the main market is between advertisers and media producers, the latter exchanging consumers' attention for a price. The second option is public-professional provision, which has been important in many European countries, where strong public broadcasting organizations (such as the British BBC) traditionally captured an important share of the audience. Like most public goods, these organisations are usually financed out of public funds generated by general taxation or a specific fee on television owners.

However, like other professional goods, the decisions on the content are made by independent professionals, foremost among them journalists. Therefore these organizations can best be classified as a mix of the ideal types of public and professional provision.⁴⁹

The possible institutional schemes are to have any of these two modes of provision separately (banning the other one), or both simultaneously in a complex pluralist scheme. Arguments in favour of blocking the market have been made during the last fifty years to justify the public monopoly on broadcasting which existed in most European countries. This case has considerably weakened since the 1980s and 1990s, when most of these countries have allowed commercial radio and television. The debate turned around and now the main question is whether there is a case left for public-professional provision in addition to what markets already provide.⁵⁰ If we try to evaluate this problem using the classification of two capabilities introduced above, a first step is to recognize that markets do promote the capability to be entertained to a sufficient extent. The matter hinges on the capability to receive public information. A complex pluralist scheme is justified to the extent that public-professional provision continues to be needed to realize a sufficient supply of public information. This case cannot rest on the assumption that commercial media providers are never able to provide public information, for sometimes they have done so. The argument will have to be made that they will not necessarily do so, and that a public alternative is necessary to guarantee that this will happen even at those moments where commercial providers fail. Such an argument can be made if we assume that potential media consumers will not always demand enough content of the public interest type since they make their consumption of this content conditional upon others' consuming too (informing oneself about political and social matters only makes sense if fellow citizens do the same). This raises a collective action problem that can only be resolved by non-market coordination. Hence the state will have to step in and provide this type of content.⁵¹

This short overview of media and care provision gives us a first idea of the kind of reasoning leading to the conclusion that complex pluralism is the right institutional scheme for certain goods. As I will now argue, these cases also show that complex

pluralism raises some complications which do not even come up when we only consider blocking market exchanges.

6. Complications

The first complicating factor is that in evaluating the value of a complex pluralist scheme we cannot simply add up the value of all relevant modes of provision. Such a simple addition would fail to take into account two interaction effects. With ‘interaction effects’ I refer to effects which arise because of the fact that several modes of provision are existing side by side.

One interaction effect is the *effect of overlap*. If we implement several modes of provision, they may overlap in the extent to which they serve to realize the capabilities at stake. The size of this overlap should be subtracted from the total value of the complex pluralist scheme. For example, it may be necessary for the media to add a public provider to the already existing commercial providers. This public provider will serve to realize people’s capability to acquire content of public interest. Nonetheless, we have to subtract from the total value of commercial and public providers the extent to which commercial providers would have realized this capability in the absence of a public provider. At least *some* citizens will have a preference for public service content without making this conditional upon their fellow citizens’ consumption behaviour and the market will cater to their preferences. Also we should subtract the extent to which the public provider engages in the production of entertaining content merely to attract viewers which they then can lure into programs displaying content of public interest. In both ways, then, substitution of content makes the sum of both types of providers less than the sum of the parts. An adequate case for complex pluralism in the media and elsewhere must establish that the overall value of both types of providers is still larger than any of them separately.

A second interaction effect is the *effect of choice*. This effect works in the other direction: where this effect has to be taken into account, the value of complex pluralism is higher than the value of the modes of provision separately. Complex pluralism provides something extra for individuals: a choice between these modes of provision. In the case of care provision, we saw that precisely this choice between informal and market care

provided a vital argument in favour of pluralism. Even if one of these modes of provision could have realized all dependents' capabilities to receive care (which isn't the case), this would still make an argument in favour of having both of them. In section 3 I noted that the opportunity for choice doesn't give us an *a priori* argument for complex pluralism. Here we see how it can nonetheless count in favour of complex pluralism by enhancing the value of a particular scheme. Note that the case of care in this respect is different from the media: while care recipients have good reasons to value the choice to be nursed by family members or professional nurses, media consumers will mainly be interested in whether they can get certain types of content, and be indifferent to whom provides them.

Apart from these interaction effects, complex pluralism raises another complication. This complication is the matter of *stability* of complex pluralist schemes. This complication does not relate to the determination of the moral value of a pluralist scheme, but to the question whether such a scheme can be had at all. Arguably, if we have good reasons to suppose that a scheme is unstable, it should not enter our deliberations as a feasible option. Stability thus bears upon the ability of an institutional option to survive over a reasonable period of time (reasonable, since if we demand that a scheme should last forever in order to be considered 'feasible', no schemes would qualify). The question of stability has already entered the debate on the limits of the market at the simple pluralist stage. It is usually counted against prohibiting market exchanges if such a prohibition would create a black market, whose results would be worse than allowing and regulating the market instead. The prohibition is unstable, if such a black market simply takes over the function of the market.

When we consider complex pluralism, instability can arise because two or more modes of provision are – as we acknowledged earlier – functional equivalents. Some measure of competition will exist between them. This is usually a dynamic situation in which one or more of them will try to take over the field and fulfil all demand for the good. Guaranteeing stability in such a situation means that we have to make sure that the market doesn't take over and crowd out non-market alternatives or vice versa. The delivery of this kind of stability requires institutional creativity which goes far beyond the analytically simple choice of whether or not to allow one or several alternative modes of provision. For example, it may require changing the relative payment conditions for

producers in market and non-market sectors for, say, education, in situations where public school teachers are massively drawn to private schools. Or it may require making special regulation in favour of open source software (a form of informal provision) to make sure that they aren't outcompeted by commercial software providers. Or it may require prohibiting commercial security companies from operating in areas where public police forces are responsible for security. In any of these cases, the delicate balance between market and non-market providers may easily be upset. Trusting the blue eyes of these providers will not do, since they will usually try to conquer the entire field of provision by defeating the alternatives; both market and non-market alike. Boundary keeping will therefore remain a vital prerequisite to maintaining pluralism wherever we have established good reasons to have several types of provision. At least in this respect, the theory of complex pluralism proposed here is no different from Walzer's original design of pluralism.

¹ I would like to thank all the participants to the Leiden Working Group of Practical Philosophy, as well as the anonymous referee of this journal, for their comments on an earlier version of this paper. The arguments in this paper are based upon my dissertation *The Market's Place in the Provision of Goods* (Utrecht: Zeno Institute for Philosophy, 2008).

² Apart from Michael Walzer, some other pluralists are David Miller, Jon Elster and Elizabeth Anderson. See Michael Walzer, *Spheres of Justice. A Defense of Pluralism and Equality* (New York: Basic Books, 1983). David Miller, *Principles of Social Justice* (Cambridge Massachusetts: Harvard University Press, 1999). Jon Elster, *Local Justice. How Institutions Allocate Scarce Goods and Necessary Burdens* (New York: Russell Sage Foundation, 1992). Elizabeth Anderson, *Value in Ethics and Economics* (Cambridge Massachusetts: Harvard University Press, 1993). For a general discussion of institutional pluralism in political philosophy, see Ewald Engelen and Veit Bader, "Taking Pluralism Seriously. Arguing for an Institutional Turn in Political Philosophy," *Philosophy and Social Criticism* 29, no. 4 (2003). For an overview of the debate on the market, see Debra Satz, "Market and Nonmarket Allocation," in *International Encyclopaedia of the Social and Behavioral Sciences* (2001). For references to a selection of other important contributions to this debate, see below at note 16.

³ Although the approach I will offer draws inspiration from both Amartya Sen's and Martha Nussbaum's versions of the capability approach, it diverges from it at several points, as I explain in the fourth section. Martha Nussbaum, *Frontiers of Justice* (Cambridge, Massachusetts: The Belknap Press, 2006), Martha Nussbaum, *Women and Human Development. The Capabilities Approach* (Cambridge: Cambridge University Press, 2000). Amartya Sen, "Capability and Well-Being," in *The Quality of Life*, ed. Martha Nussbaum and Amartya Sen (Oxford: Clarendon, 1993), Amartya Sen, *Inequality Reexamined* (Cambridge, Massachusetts: Harvard University Press, 1992).

⁴ Walzer, *Spheres of Justice. A Defense of Pluralism and Equality*, 21-26. I must emphasize that I take this to be the only interesting way of reading his work. As Govert den Hartogh has very well shown, Walzer's language also suggested another interpretation, in which all the goods he subsequently discussed in separate chapters – membership, security and welfare, money and commodities, offices, hard work, free time, education, kinship and love, divine grace, recognition and political power – each formed a separate sphere of their own. In that interpretation the goods themselves are constitutive of the spheres that they make up. However, such an interpretation begs the question of why a good should fall into a certain sphere instead of

another. See Govert Den Hartogh, "The Architectonic of Michael Walzer's Theory of Justice," *Political Theory* 27, no. 4 (1999).

⁵ Miller, *Principles of Social Justice*, 25-32.

⁶ By way of illustration: the class of status-based principles includes, inter alia, principles based on age, gender, sexual orientation, ethnic status, other physical features, mental features, etc. See Elster, *Local Justice. How Institutions Allocate Scarce Goods and Necessary Burdens*, 70-103.

⁷ Walzer, *Spheres of Justice. A Defense of Pluralism and Equality*, 21. Moreover, he states that these three meet the 'open-ended principle' that he formulated; they do not present a reason for distributing a good that only refers to the possession of some other good.

⁸ Elster, *Local Justice. How Institutions Allocate Scarce Goods and Necessary Burdens*, 70.

⁹ As a matter of normative theory, we may want to go further. We may want to say, 'for goods *x*, the mechanism should be *y* and the more specific outcome of applying this mechanism should yield outcome *z*'. Still, the choice of mechanism is the first step and this step will constrain the results one can reach, since each mechanism will be unable to generate certain outcomes. Therefore arguments at this level are sometimes important, independent of the further specification ('for good *x*, outcome *z* is required, and the market cannot reach outcome *z*').

¹⁰ For examples see the authors mentioned in the following two notes. It should be mentioned that it is often hard to judge what the exact position of authors on this issue is, because even where it is clear that they not refer to the well-known distributive principles, they do not explicitly discuss the ontological status of the market (is it a mechanism, an institution, a principle?).

¹¹ E.g. Margaret Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things* (Cambridge Massachusetts: Harvard University Press, 1996).

¹² E.g. Judith Andre, "Blocked Exchanges: A Taxonomy," in *Pluralism, Justice and Equality*, ed. David Miller and Michael Walzer (Oxford: Oxford University Press, 1995), Raymond Plant, "The Moral Boundaries of Markets," in *Ethics and the Market*, ed. Richard Norman (Ashgate: Aldershot, 1999). Debra Satz, "Noxious Markets: Why Should Some Things Not Be for Sale?" in *Globalisation, Culture and the Limits of the Market*, ed. S. Cullenberg and P. K. Pattanaik (New Delhi: Oxford University Press, 2004). Michael J. Trebilcock, *The Limits of Freedom of Contract* (London: Harvard University Press, 1993).

¹³ Anderson, *Value in Ethics and Economics*, 143-63.

¹⁴ It should be emphasized that these are merely ideal types, not some kind of Platonic entities. Ideal types prove their value in their ability to discuss the issues at stake and allow for the existence of mixed types. Any classification will have something arbitrary. Nonetheless, if only for purposes of exposition, we need a classification to explication the options available – not using any classification is not an option.

¹⁵ For an elaborated discussion of this typology, see my [deleted for purposes of refereeing]. In institutional economics and in the social sciences a closely resembling typology has gained ascendency, distinguishing four 'coordination mechanisms': markets, states (or bureaucracies/hierarchies), communities (or clans), networks (or associations). Oliver Williamson, *The Economic Institutions of Capitalism* (New York: The Free Press, 1985). William G. Ouchi, "Markets, Bureaucracies, and Clans," *Administrative Science Quarterly* 25, no. 1 (1980). Wolfgang Streeck and Philippe C. Schmitter, "Community, Market, State and Associations? The Prospective Contribution of Interest Governance to Social Order," *European Sociological Review* 1, no. 2 (1985). Robert Boyer and J. Rogers Hollingsworth, "Coordination of Economic Actors and Social Systems of Production," in *Contemporary Capitalism. The Embeddedness of Institutions*, ed. J. Rogers Hollingsworth and Robert Boyer (Cambridge: Cambridge University Press, 1997). Grahame Thompson et al., "Introduction," in *Markets, Hierarchies and Networks. The Coordination of Social Life*, ed. Grahame Thompson, et al. (London: Sage Publications, 1991). Colin C. Williams, *A Commodified World? Mapping the Limits of Capitalism* (London: Zed Books, 2005). A common source of inspiration for these typologies is Polanyi's distinction between exchange, reciprocity, redistribution and householding. Karl Polanyi, *The Great Transformation. The Political and Economic Origins of Our Time* (Boston: Beacon Press, 2001[1944]). His typology was the source for Sahlin's typology in economic anthropology, distinguishing different types of reciprocity. See Marshall Sahlins, *Stone Age Economics* (New York: Aldine de Gruyter, 1972). Finally there is the relational models theory, presented in Alan Page Fiske, *Structures of Social Life* (New York: The Free Press, 1991). This was connected to Michael Walzer's spheres in Alan Page Fiske and Philip E. Tetlock, "Taboo Trade-Offs: Reactions to Transactions That Transgress the Spheres of Justice," *Political Psychology* 18, no. 2 (1997).

¹⁶ Aristotle, *The Politics and the Constitution of Athens*, ed. Jonathan Barnes (Cambridge: Cambridge University Press, 1996). See also Weber's discussion of the *oikos* in Max Weber, *Economy and Society. An Outline of Interpretative Sociology* (Berkeley: University of California Press, 1978). Polanyi called this 'the principle of householding'. Polanyi, *The Great Transformation. The Political and Economic Origins of Our Time*, 55.

¹⁷ For an overview see Aafke E. Komter, *Social Solidarity and the Gift* (Cambridge: Cambridge University Press, 2005). Gift giving is not the only instance of informal provision, since it adds one specific element to the definition of informal provision: a lapse of time between the performances of both parties in the exchange. Where such a lapse of time is absent, we have another subspecies of informal provision: cooperation (think of examples like making music or doing the dishes together).

¹⁸ For the former, see the redistributive type described in Sahlins, *Stone Age Economics*, 188. For the latter, see Weber, *Economy and Society. An Outline of Interpretative Sociology*.

¹⁹ Note that informal provision also has exchange rules: these are set by the social norms which determine what kind of informal exchanges are appropriate or not. All of these sources of exchange rules – social norms, expert knowledge, the price mechanism and the political process – may take various forms, depending on what local conditions, institutions and culture. For example, some countries will have a presidential political system, others a parliamentary one, etc. Here the price mechanism stands out somewhat, since its basic operation doesn't require further local specifications (which is not to say that the latter aren't needed to implement the conditions for making the price mechanism function well or cannot constrain the price mechanism in various ways).

²⁰ The terms simple and complex pluralism should not be confused with Walzer's use of the terms simple and complex equality. Although his theory is one of complex equality, it is one of simple pluralism.

²¹ Adrian Walsh, "Teaching, Preaching, and Queaching About Commodities," *The Southern Journal of Philosophy* 36 (1998).

²² Walzer, *Spheres of Justice. A Defense of Pluralism and Equality*, 100-03. Another reason may lie in the normative standard used to assess the market question: see the next section on conventionalism and contextualism.

²³ See Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things*. Elizabeth Anderson introduced a closely related idea, when opposing 'sphere differentiation' to Walzer's sphere segregation. Anderson, *Value in Ethics and Economics*, 147.

²⁴ This point does not just apply to the market: it can be applied *mutatis mutandis* to other modes of provision, for example 'incomplete' as contrasted with 'pure' professional provision or public provision.

²⁵ Walzer, *Spheres of Justice. A Defense of Pluralism and Equality*, 21. 'Criterion' in the quotation refers to 'principle of distribution'. We should distinguish the reason for why there is a pluralism of spheres from Walzer's reason why this pluralism is a matter of justice. The latter goes back to his belief that the separation of spheres (walls between them) guarantees non-domination. See Michael Walzer, "Liberalism and the Art of Separation," *Political Theory* 12, no. 3 (1984).

²⁶ These points were made by, amongst others, Joshua Cohen, "Spheres of Justice: A Defense of Pluralism and Equality (Book Review)," *The Journal of Philosophy* 83, no. 8 (1986). Ronald Dworkin, "What Justice Isn't," in *A Matter of Principle* (Cambridge Massachusetts: Harvard University Press, 1985).

²⁷ David Miller, "Introduction," in *Pluralism, Justice and Equality*, ed. David Miller and Michael Walzer (Oxford: Oxford University Press, 1995), 6.

²⁸ Elizabeth Anderson proposed to associate market and non-market alternatives with specific modes of valuation and make evaluations on the basis of the appropriateness of these for specific goods. See Anderson, *Value in Ethics and Economics*. Margaret Radin used a personhood theory of property to distinguish between goods that are 'fungible property' and should be on the market and those that are 'personal property' and should be withheld from the market. See, inter alia, Radin, *Contested Commodities. The Trouble with Trade in Sex, Children, Body Parts, and Other Things*. Michael Sandel proposed a theory of republicanism to argue that certain goods should not be commodified. See Michael Sandel, "What Money Can't Buy: The Moral Limits of Markets," *The Tanner Lectures on Human Values, Delivered at Brasenose College, Oxford* (1998). Debra Satz presented a theory based on liberal democratic citizenship. Satz, "Noxious Markets: Why Should Some Things Not Be for Sale?" For a liberal approach inspired by Locke, see Edward Soule, *Morality & Markets. The Ethics of Government Regulation* (Lanham: Rowman & Littlefield Publishers, 2003). For a MacIntyrian approach, Russell Keat, *Cultural Goods and the Limits of the Market* (London: MacMillan, 2000). For a pluralist approach, using four different normative grounds,

see Adrian Walsh and Richard Giulianotti, *Ethics, Money and Sport. This Sporting Mammon* (London: Routledge, 2007).

²⁹ As an alternative to the capability metric, a resourcist metric or a utilitarian metric could bring out the same *type* of normative evaluation (albeit with different conclusions in individual cases). The comparative advantage of the capability metric is that it allows people to choose whether or not to convert their capability into actual functioning.

³⁰ One could of course ask *why* personhood should be respected. This would require showing why from the fact that persons need to have agency there arises a demand on others to respect their agency. These complicated matters of foundation I will have to leave out of consideration here. For a well-known attempt to solve these problems, see Alan Gewirth, *Reason and Morality* (Chicago: The University of Chicago Press, 1978).

³¹ For example, does it require endorsing the preferences persons happen to have or would have under some idealized circumstances (utilitarianisms); or promoting the actions and institutions that people would consent to in some hypothetical choice situation (contractarianisms) or idealized discourse (discourse ethics); or the development of the excellences belonging to a person's essential human nature (Aristotelianisms); etc.?

³² Crocker elaborately discusses different definitions of the capability notion. My use of the term confirms to the position he ascribes to Sen: 'I now believe that for Sen capabilities are like three-place predicates. If I have a capability to or for X, (1) I face the option or have the real possibility of X, and this possibility both refers to or is partially dependent on (2) my powers and other internal traits, and (3) external enabling and non-preventing conditions. For Sen, capabilities are options or choices open to the person, possible functionings from which a person may choose.' David Crocker, *Ethics of Global Development. Agency, Capability, and Deliberative Democracy* (Cambridge: Cambridge University Press, 2008), 174.

³³ As I define the notions, there is no overlap between morally required and morally permissible capabilities. Of course, morally required capabilities are also 'permissible'; they are not disqualified by moral theory. But the category of morally permissible capabilities is reserved for those capabilities which are 'merely permissible', and not also required.

³⁴ Nussbaum has claimed that her list of capabilities is to be treated as a list of fundamental entitlements: 'Central capabilities may not be infringed upon to pursue other types of social advantage.' Nussbaum, *Women and Human Development. The Capabilities Approach*, 14. A separate question is whether these entitlements should be interpreted as giving rise to rights. For Nussbaum's comparison of the vocabulary of rights with that of capabilities, see Martha Nussbaum, "Capabilities as Fundamental Entitlements: Sen and Social Justice," *Feminist Economics* 9, no. 2/3 (2003): 36-40. Similarly Nussbaum, *Women and Human Development. The Capabilities Approach*, 96-101. Here I remain agnostic as to the question whether my criteria could and should be translated into moral rights.

³⁵ Nussbaum also uses this idea that what is required is a 'basic level' or 'threshold level' of capabilities. The threshold is to be determined for each capability separately and in the context of the particular circumstances of a society. See Nussbaum, *Women and Human Development. The Capabilities Approach*, 71. Sen also recognizes that it may sometimes be useful to distinguish 'basic capabilities' from other capabilities; he mentions the example of the analysis of poverty. Sen, "Capability and Well-Being," 40.

³⁶ For example, sometimes this will be an equal level for all; sometimes this will be a sufficient level, determined by a lower threshold where it is morally permitted for each to strive for attaining a higher level.

³⁷ The criterion of agency development does not apply to all practices. For many practices no relevant morally required capability will be assigned to it by the global theory. These practices only exist for the sake of promoting morally permissible capabilities.

³⁸ This is analogous to Nussbaum's idea of 'multiple realizability'; that the capabilities list requires specification to be applicable in local contexts. Nussbaum, *Women and Human Development. The Capabilities Approach*, 77.

³⁹ In comparison with Nussbaum's list, the category of morally required capabilities will probably turn out to be shorter, as it is a list of the requirements agency, not of the requirements for a life that would be fully human. Capabilities for play, for relations with animals, for producing self-expressive works, and many others on Nussbaum's list would not qualify, in my view, for being necessary to the development of agency. They do receive a place in my theory, but as morally permissible capabilities.

⁴⁰ The 'question of the list' thus is resolved in a way that is both reminiscent of Martha Nussbaum's and of Amartya Sen's capabilities theories. The exhaustive list of morally required capabilities resembles

Nussbaum's theory, while for the category of morally permissible capabilities - due to the endless variations that are possible – no list can be drawn. Here there merely is an open 'evaluative space' analogous to Sen's theory.

⁴¹ For brevity's sake I have left out of the exposition a third constitutive condition of personhood: being protected from violations of the capacity for agency. This condition requires protection against the class of 'immoral capabilities', in turn generating a third criterion for practices: that of 'agency protection'. Also, I have left out the question in which cases actual functionings have to be promoted instead of capabilities. The two normative criteria would have to be complicated to allow for such promotion of functionings wherever appropriate.

⁴² Nonetheless context sensitiveness should not be too readily assumed to lead to differential results in different contexts. For at the same time others could argue that literacy enhances the quality of one's practical reasoning, independent of the social context. If that argument is correct, then the promotion of literacy is morally required, even though no vital information about one's potential courses of action is missed without it. For a discussion of this dilemma, see Nussbaum, *Women and Human Development. The Capabilities Approach*, 294-96.

⁴³ If he accepts, the question is whether there is a moral obligation upon society to provide me with benefits – from public funds – to take care of him, say during a substantial part of the week. Eva Kittay argues that there is such a duty: society should support caregivers to a very large extent. Eva Feder Kittay, *Love's Labor. Essays on Women, Equality, and Dependency* (London: Routledge, 1999).

⁴⁴ The main simplification is that other types of formal care also exist (professional and public provision). However, given privatization of public care institutions in many countries, it is not unrealistic to put the market on the forefront in the illustration. See Clare Ungerson, "Social Politics and the Commodification of Care," *Social Politics* 4, no. 3 (1997).

⁴⁵ I leave out of consideration the arguments of those who take the position that market-based care should be prohibited, a blocked exchange, e.g. Kathleen Lynch, "Love Labour as a Distinct and Non-Commodifiable Form of Care Labour," *The Sociological Review* (2007). I also leave out of consideration the reasons for supposing that market-based care is a priori worse than informal care because payment triggers less caring motives. See the discussions in Nancy Folbre and Thomas E. Weisskopf, "Did Father Know Best? Families, Markets, and the Supply of Caring Labor," in *Economics, Values, and Organization*, ed. Avner Ben-Ner and Louis Puterman (Cambridge: Cambridge University Press, 1998). Julie A. Nelson, "Of Markets and Martyrs: Is It Ok to Pay Well for Care?" *Feminist Economics* 5, no. 3 (1999). Deborah Stone, "For Love nor Money. The Commodification of Care," in *Rethinking Commodification. Cases and Readings in Law and Culture*, ed. Martha M. Ertman and Joan C. Williams (New York: New York University Press, 2005).

⁴⁶ For reasons I cannot elaborate here, a different conclusion has to be reached for one type of dependent: children. They have a claim to be cared for by their parents.

⁴⁷ The government may provide them with the necessary purchasing power (voucher scheme), so that all dependents have the ability to pursue care on the market. Alternatively, there may also be instances of public provision – I left this alternative out of the discussion in order not to complicate the complex pluralist scheme more than necessary for purposes of this illustration.

⁴⁸ The argument is usually made in terms of the 'positive externalities' of public information being available. For example, see C. Edwin Baker, *Media, Markets and Democracy* (Cambridge: Cambridge University Press, 2002). Sometimes the argument is in terms of the well-functioning of the public sphere. See Jürgen Habermas, *The Structural Transformation of the Public Sphere* (Cambridge: Polity Press, 1989 [1962]). A related case is made by Sunstein in favour of a unified public sphere. Cass Sunstein, *Republic.Com* (Princeton: Princeton University Press, 2001). Cass Sunstein, "Television and the Public Interest," *California Law Review* 88 (2000).

⁴⁹ In addition some countries have known a system of state subsidies for newspapers, which would make them a mix of public and market provision. For a refined sociological treatment of media types of provision, see Daniel C. Hallin and Paolo Mancini, *Comparing Media Systems. Three Models of Media and Politics* (Cambridge: Cambridge University Press, 2004).

⁵⁰ See, amongst many others, Shaun Hargreaves Heap, "Public Service Broadcasting," *Economic Policy* (2005)., John O'Hagen and Michael Jennings, "Public Broadcasting in Europe: Rationale, License Fee and Other Issues," *Journal of Cultural Economics* 27 (2003)..

⁵¹ For a detailed elaboration of this argument, see Cass Sunstein and Edna Ullmann-Margalit, "Solidarity Goods," *Journal of Political Philosophy* 9, no. 2 (2001). The theoretical background is found in the notion of an assurance game by Daphna Lewinsohn-Zamir, "Consumer Preferences, Citizen Preferences, and the Provision of Public Goods," *The Yale Law Journal* 108 (1998).