

A STUDY GUIDE FOR MORAL REASONING 22: JUSTICE

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("NS" = not submitted)

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Lecture, Week I Day 1

Title: Lecture 01, Monday, September 19, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

Trolley car story: You're driving a trolley car going down a track that splits into two separate tracks. On the track you're going, there are five oblivious workers. The other track has only one person. What would you do?

Who would turn and why? "It can't be right to kill five people instead of only one." "Less people would die if you turn and kill only one."

Who wouldn't turn and why? "We don't have the right to decide who should die." "Somehow when I turn, I'm somehow more responsible for the death of the one than if I didn't do anything and killed the five (by accident)."

Change the scenario: You're an onlooker to the whole scene, standing on a bridge. Next to you, leaning over the bridge, is a very fat man. You could easily shove him, fall onto the tracks and stop the trolley car.

Who wouldn't shove and why? "A choice would be made to involve an otherwise uninvolved fat man."

"You don't have control over the trolley car in the first scenario, but you do have control over pushing the man - it's a conscious act of murder."

"But isn't it all the same? You're consciously turning the trolley car."

Now suppose the fat man was standing on a trap door that you could open by turning a steering wheel...

Doctor story: Six patients come to you, a doctor, with severe injuries from a horrible trolley car wreck. You could attend to five, save them and let one die or you could attend to the one, save him and let the five die.

Nearly everyone would save the five.

Change the scenario: Now there are five patients who all need different organs. You have no organ donors, but in the next room, there's a healthy guy who came in for a checkup...he's taking a nap.....you could sacrifice the one healthy person to save the five.

No one would do it!

Alternate idea: take the first sick person who dies and use his organs to save the other four....but that would "wreck the philosophical point!"

We began, in each case, with a story. People gave their reactions, and then gave their reasons. In giving the reasons, people articulated their underlying principles. We then confronted a new case that challenged our principles in some way. We felt the pressure to align our principles with both cases.

Movement back and forth between cases and principles.

The second point deals with the substance of our arguments - moral principles.

Consequentialist moral reasoning - The right/moral thing to do depends on the consequences of your actions. It locates morality in the state of the world that would result from the thing you do.

Utilitarianism (invented by Jeremy Bentham) - The most popular form of consequentialist moral reasoning.

But in the changed scenarios, people began to hesitate about the consequences.

Categorical moral reasoning - Consequences be they may, people had fundamental reservations about these actions. It locates morality in absolute moral requirements.

Kant created the most important form of categorical moral reasoning.

Let's think first about the nature of political philosophy - what does philosophy have to do with the real world?

One answer says that philosophy is the realm of values/ideals whereas politics is the realm of the real world. This view of the relation of philosophy and politics as the **external** view, because it sees philosophers as dreamers (heads in the clouds). Philosophers can inspire political life, but they can never prevail because of the gap between the ideal and the real world.

The second answer says that political life is bound up with philosophy to begin with. Everything we do presupposes some conviction/ideal/value/principle even though we may not be naturally aware of it. This is the **internal** view because it sees philosophy residing within the walls of the city. Philosophy dwells among and within us in the sense that it's implicit in our everyday practices, political assumptions, and conventions. Politics and philosophy are cast in a certain tension where philosophy takes on a subversive character. Politics is about founding and defending a set of laws whereas philosophy is about challenging those laws and those conventions.

The arguments we had bring out the internal picture of philosophy in its relation to the world. Sandel would like to explore the internal implications of philosophy for this course. Why read all the books assigned for this course? The answer depends on whether you believe the external or internal view. On the external view, these books are good because they stand as objects of admiration that reflect another way of life. On the internal view, we read these texts not just as artifacts in the history of ideas, but as episodes in arguments in which we are still engaged. These books make claims on us because individually and collectively, we live some answer to their questions all the time.

This course proceeds according to the internal view. Political philosophy is not just a history of ideas; it is about self-knowledge and how we live our lives. This course will engage in several modern-day issues. Sandel wants to make clear what is at stake in our everyday lives.

A warning - to read these books as an exercise of self-knowledge carries personal and political risks. These risks spring from the fact that philosophy teaches and unsettles us by confronting us with what we already know. Irony - the difficulty in this course is just that we will be taught what we already know. Philosophy takes what we know and makes them strange; just like our opening cases. Philosophy estranges us from the familiar by inviting and provoking a new way of seeing. Once the familiar turns strange, it's never quite the same again; self-knowledge is like lost innocence. It can never be un-thought or un-known. Moral and political philosophy is a story where you don't know where it'll lead, but it's a story about you.

Politically, you'll become a better and more responsible citizen. But this is a partial and misleading promise. You have to allow for the possibility that political philosophy might make you a worse citizen, or at least a worse citizen before you become a better one. Philosophy is a distancing/debilitating activity; it distances us from conventions, settled assumptions, and personal beliefs.

There is a characteristic evasion: skepticism. If no philosophers have solved any of these questions over several hundred years, how can we solve them? Sandel says, yes, these questions have been debated for a very long time. But the very fact that they have recurred and persisted makes them inescapable, that we live these issues every day. Giving up is no solution.

The aim of this course is to awaken the restlessness of reason and see where it will lead us.

Lecture Week I Day 2

Title: Lecture 02, Wednesday, September 21, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

Previously: How to articulate reasons/principles behind our line of argument
Consequentialist vs. categorical moral theory

Utilitarianism: Jeremy Bentham (18th century English political philosopher)

Utility: the balance of pleasure over pain, happiness over suffering; all human beings are governed by two things - pain and pleasure

The right thing to do individually or collectively, is to maximize the overall level of "happiness"

"The greatest good for the greatest number"

[Assigned Reading]

Men lost at sea with no food and no water, cabin boy Parker appeared to be dying, captain Dudley proposed lottery idea to see who would die to save the others (categorical principle), Brooks refused, Dudley then chose and killed Parker, for four days the remaining three fed upon Parker until they were saved

Defendants argued on basis of necessity; prosecutor argued that it was murder

[Discussion]

What if Dudley asked Parker for consent? Why would consent make a moral difference in this case?

This case also considers precedence. Years ago, another ship called the *Peggy* killed a cat and ate the animal for subsistence. In the 1800s, there was a lottery among the four cabin boys - the cook refused to do so, but he was told that he had a duty to "prepare the meals."

What if there was a lottery, and the cabin boy lost - is it morally defensible then? Most people said yes; explanation - it's not the act of cannibalism then, it's the lack of due process...

Even if there was a lottery, even if there was consent, who thinks it is still wrong, and why?

[Wrap-up]

Defenses: Necessity, dire circumstances, implicitly the idea that numbers matter and the wider effects matter (their family at home, etc); if you try to calculate/balance the happiness/suffering, then it might be ok

Objections: What they did was categorically wrong (murder is murder), even if it increased their "happiness." But we still need to investigate why murder is categorically wrong. Do people have fundamental rights, and where do those rights come from?

Questions: Why does an agreement to a procedure (fair or unfair) justify it? Idea of consent? What is the moral work that a consent does? Why does the addition of consent make taking the life morally permissible?

Lecture, Week II Day 1

Title: Lecture 03, Monday, September 26, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes

[Last time]

We used the lifeboat case as a way into the moral principles of utilitarianism. At the time, Dudley and Stephens were convicted of murder, but a popular sympathy was evoked and reduced their sentence to only 6 months of prison time.

Stephens was an artist, and his pictures were published in the Illustrated London News. Richard Parker got a memorial tombstone, but "even after his death his luck did not improve"...a tree fell on the tombstone and broke it.

[Reading: Jeremy Bentham]

Bentham (1748), at 12 he went to law school, at 15 he went to Oxford, etc. Very practical man who wanted to use his philosophy

The highest principle of morality (personal or political) is to maximize the collective pleasure over pain, that is utility - maximize pleasure over pain, the greatest good for the greatest number

We are all governed by pleasure and pain.

Utility - whatever reduces suffering or pain, increases pleasure or happiness

The principle is for individuals and the community, where the utility of the community is the sum of the utilities of its member individuals.

Bentham's argument: The principle of utility cannot be consistently combated, that any objections against the principle stems from the principle itself.

[Applications of Bentham's Utilitarianism]

Bentham's proposal: To deal with the problem of "proper management", which is the problem of beggars. Create a workhouse in which all these beggars can be employed - a clear illustration of Bentham's logic.

Beggars are bad because it decreases the general social welfare.

Two types of people: a tender person, in whom beggars create a feeling of pain (sympathy); hard-hearted, in whom beggars create a feeling of pain (disgust)

What about beggars' utility? Though many beggars would prefer begging than working in a workhouse, the sum of the pains of other people is greater than the pains of the beggars.

It's a self-financing scheme: Any person/citizen would have the power to apprehend the beggar and take him to the workhouse. The beggar would have a self-liberation account (includes food, clothing, mortgage, etc.) that the beggar would have to work off. Each person/citizen would be paid 20 shillings for their efforts (this would go on the beggar's tab). Bentham thought this would be a humane way to increase the general welfare without diminishing utility (public policy-type solution).

The idea of aggregating costs and benefits is still very influential and applicable today (cost-benefit analysis). Placing a value to stand for utility on the costs/benefits of various proposals

Recent proposal to increase excise tax on tobacco products. Phillips-Morris did a cost-benefit analysis on smoking in the Czech Republic. Results: the government saves/gains on every smoking-related death!

Negative effects: increased health care costs, lost income tax, absenteeism related costs, smoke-induced fire costs

Positive effects: [direct] excise tax, value-added tax, corporate income tax, customs duty; [indirect] health care savings, pensions savings, elderly housing savings

People can be outraged by cost-benefit analysis...why? What about the value of life?

Ford Pinto case (1970s): Very popular, but it had one problem - the fuel tank could explode while operating the car.

Victims sued Ford - Ford apparently had long since known about the problem and had done a cost-benefit analysis on whether they should put in a special shield to protect passengers from the exploding fuel tanks

\$11 per part installed in all cars (\$137.5 million) costed more than the expected benefits of the improved safety (\$49.5 million)!

This appalled the jurors and they awarded the victims.

[Discussion]

Julie: \$200,000 doesn't account for the extra emotional suffering caused by a loss of life. They were wrong in trying to put any number at all to a life.

Voitek: You have to allow for inflation!

Sandel: If we do that for all the components in the equation, would that then be the appropriate way to approach this problem?

Elizabeth: Can't conflate a monetary value (the monetary compensation) with a moral value (the loss of a life). Needs a different lexicon of reasoning - need to use moral logic to address the moral issue of the loss of a life; can't use money.

Another controversy: The EPA must put a dollar value on a human life when doing analysis on businesses that follow the Clean Air Policy - \$3.7 million. But in good utilitarian fashion, they considered the possibility that the figure should change according to the age of the person. Won't there be a difference between the years lost of a young vs. old person? "Senior citizen discount" - \$2.7 million for those over 70.

[Discussion: objections to the theory of utilitarianism as a whole]

What are the objections to utilitarian philosophy?

Hard to calculate the full chain of effects.

Anna: What about the minority? The greatest good for the greatest number works for the majority, but then there is still a population of people that get shafted.

In the cabin boy case, there may be certain rights that the minority have that shouldn't be traded off for the utility of the majority.

Sandel: In ancient Rome, Christians were thrown to the lions. Christians suffer enormous pain, but look at the enormous collective ecstasy of the Romans! Surely the deliriousness of the Romans outweigh the excruciating pain of the few Christians.

Voitek: Romans are justified as long as they paid for their tickets!

Utilitarianism somehow fails to respect the rights of the minority even when it is outweighed by the utility of the majority. Any objections to translating lives into dollar amounts?

The calculation of the sums of individual utility may not equal the "emergent" sum of the community's utility. (Flu shots - people don't want them now, but community benefits as a whole more)

Sandel: But isn't that still cost-benefit analysis? You're considering the long-term benefit there.

One objection has to do with whether utilitarianism adequately affects individual rights (minority rights, for example). The other deals with the idea of aggregating all values and comparing them to translate them into dollar terms (Julie and Elizabeth dispute this).

1930s: Psychologist tried to address the second issue. Tried to prove that it is possible to translate all values/goods into a single measure. Conducted a survey, gave people a list of unpleasant experiences - how much would you have to be paid to do a certain thing? Eat a 6-inch long worm? Losing a tooth? One toe cut off? To live the rest of your life on a farm in Kansas? To kill a cat with your bare hands?

Kansas was the most expensive on the list - \$300,000

Eating 6-inch long worm - \$100,000

Losing a toe - \$57,000

Killing a cat - \$10,000

Losing a tooth - \$4,500

Thus, everything can be measured in some way - "appetites and desires."

*Does this support Bentham's idea that all goods/values can be captured in a single, uniform measure? Or does it suggest that such a thing is not possible? What does this suggest about the consequentialist theory of morality?

Lecture, Week II Day 2

Title: Lecture 04, Wednesday, September 28, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

Examined Bentham's version of utilitarianism

Two objections:

- (1) utilitarianism, by concerning itself for greatest good for greatest number, fails to adequately respect individual rights

EX: throwing the Christians to the Romans

Suppose the majority antagonizes a very small minority, and the minority loses - what then of utilitarianism? Well, the utilitarian calculus works, but is it just?

EX: Suppose a suspect had crucial info on an impending terrorist attack, but didn't want to share the information. Would it be just to torture the suspect to get info on the terrorist attack? Do you torture the suspect for the greater good or do you not, saying there is a categorical moral respect for a human life?

- (2) The idea of aggregating values and preferences. Two separate versions of this objection.

Are all values commensurable?

EX: Cost-benefit analysis takes things and values them on a single, uniform measure. But can certain things, like lives, be compared in monetary values? Some people say no, but some say we do this everyday, in insurance policies, government policies, etc.

Our list from last time (killing a cat, losing a tooth) may seem absurd, questionable at best considering this above objection.

[Story]

Some years ago, when Sandel was a grad. student at Oxford, there were rules at women's colleges about having overnight guests. But these rules were supposedly easily violated. The older women at the faculty were opposed to change on conventional moral grounds. They then translated their arguments into utilitarian terms: guests used up resources like hot water, would have to replace mattresses more often. Compromise: women may have up to three male guests per week, provided that they pay 50 pence per visit to compensate the college. The headline the next morning? "Saint Ann's girls 50 pence a night!"

Can you distinguish higher from lower pleasures?

Why should we weigh all preferences that people have with assessing whether they're good or bad preferences? Shouldn't we distinguish between higher and lower pleasures?

Part of the appeal of making no qualitative distinctions is that it would be non-judgmental and egalitarian. Bentham: Everybody's preferences count regardless of who or what they are. All that should differ is the intensity and duration of pleasure/pain. The quantity of pleasure being equal, pushpin is as good as poetry. Who's to say which of these pleasures are higher, worthier, nobler than others?

Is that right, this refusal to make qualitative distinctions? Can we say that certain pleasures are better or worthier than others? We can't aggregate pleasures without examining what they are.

Romans vs Christians: The pleasures that the Romans take (base, corrupt, degrading)...should they be valued equally in deciding what the general welfare is?

[Today]

John Stuart Mill (born 1806; age 10 he wrote a history of Roman law; age 20 he had a nervous breakdown; under his wife's influences, he tried to humanize utilitarian; 1861 he wrote *Utilitarianism*)

Could utilitarianism be modified to respect modern-day humanitarian rights?

Does he have a convincing reply to these objections?

In Chapter 2, page 7, he begins by making it clear that he's operating within the premises of utilitarianism. He's not degrading it, he's affirming it.

"...actions are right in proportion as they tend to promote happiness; wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure and the absence of pain; by unhappiness, pain and the privation of pleasure." (ch2)

"...pleasure and freedom from pain are the only things desirable as ends;...all desirable things...are desirable either for pleasure inherent in themselves or as means to the promotion of pleasure and the prevention of pain." (ch2)

It is possible to distinguish higher from lower pleasures:

"It is quite compatible with the principle of utility to recognize the fact that some kinds of pleasure are more desirable and more valuable than others." (ch2)

"Of two pleasures, if there be one to which all or almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it, that is the more desirable pleasure." (ch2)

"It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, are of a different opinion, it is because they only know their own side of the question." (ch2)

Human beings whose preferences that are highly cultivated may lead lives that are more prone to suffering and dissatisfaction. They require higher more complex things to satisfy. The reason of this has to do with the higher human faculties. Mill says it's hard to explain this, but he thinks it has something to do with the human sense of dignity (everybody has this). Pleasures that engage our higher faculties are worthier and preferable to lower pleasures. Mill agrees we might succumb to the temptation of lower pleasures, but even when we do that out of indolence and sloth, we know the pleasure we get is less. Does this argument succeed?

Experiment: Think of various forms of payment or beneficence that we've experienced. What's the relation between the pleasure we derive from those experiences and the judgments we would make about which of those experiences is the highest/worthiest/noblest? Of the following clip excerpts, applaud in proportion to how much you enjoyed each one.

[Clip of Hamlet's soliloquy from the moment Hamlet is brooding in the presence of Rosencrantz and Guildenstern]

[Clip of Fear Factor]

[Clip of Simpsons]

People overwhelmingly liked the Simpsons better than Shakespeare. Now, which is the highest experience/pleasure?...Shakespeare! Who thought Shakespeare was the highest, but preferred watching Simpsons?

Anicia: Someone had to tell us, had to teach us that Shakespeare was more worthy.

Sandel: Are you voting Shakespeare is higher because society told you so, or do you actually agree with it yourself? Some of this seems to be cultural convention or pressure.

Joe: If I had to consider these three clips for the rest of my life, I would derive more pleasure analyzing the Shakespeare clip and thinking deep thoughts. Better a full life with higher pleasure, than momentary lower pleasure.

Who thinks that Mill's distinction between higher/lower pleasures within Utilitarianism is called into question by the experiment we just conducted?

"Quotes from chapter 5"

It seems that Mill is stepping outside utilitarianism in order to define certain pleasures, certain things as having intrinsic rights. We have not been able to answer this difficult question yet, and we will have to use non-utilitarianism grounds in order to further examine this.

Lecture, Week III Day 1

Title: Lecture 05, Monday, October 3, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

John Stuart Mill's attempt to reply to the shortcomings of Bentham's utilitarianism

Mill's replies: How convincing? How utilitarian?

You can make a distinction between higher and lower pleasures.

We tested this with the video clips in the last lecture - many preferred the Simpsons, yet everybody agreed that Shakespeare is the higher pleasure.

Seems to pose a dilemma: either he fails to explain what makes higher pleasures higher, or Mill has to admit that in distinguishing these pleasures, he is surreptitiously relying on some non-utilitarian considerations.

What about Mill's attempt to account for the especially weighty issue of individual rights? Mill wants to be able to say that justice can't be traded off for mere efficiency, that individual rights are worthy in a special respect, that justice is the most sacred part of morality.

But the same challenge can be put to this argument. Why is justice the most important part? He says in the long run, everybody must respect these rights, everybody/society as a whole will be better off in the long run given these rights.

So in the long run, is it all right to use people? Suppose utilitarian calculus in the long run works out as Mill says it will - is that the right/only reason to respect people?

EX: There are long run effects in the doctor-organ transplant case. People will learn about this, they'll stop going to check-ups, there will be more undiagnosed illnesses, society will get sicker, etc.

Is there another reason having to do with the intrinsic respect for a person? If that reason matters, than it must be considered too. Mill does talk about the dignity and nobility of human character...fair enough. Are they implicitly drawing on non-utilitarian ideas, though?

We need to ask: are there theories of the good life that can provide independent moral standards for the worth of pleasures? If so, what do they look like? Are there stronger theories of rights that can explain the intuition that we need to respect people beyond using them for the benefit of the long run?

[Today]

Anti-utilitarian theories of rights:

Starts with the fact that utilitarianism is wrong. Individuals matter beyond the fact that they can maximize utility, that they're worthy of respect. It's a mistake to think about justice/law by just adding up preferences and values.

If I decide to go to the dentist to undergo short-term suffering to get a long-term benefit, that's my choice, that's fine. But to ask other people to do the same, that's not right.

Undifferentiated collection of preferences - strong rights theory.

Individual rights trump utility

Take seriously the distinction between persons

Libertarianism

Right to liberty

Fundamental right is the right to live. Our right to live our lives freely provided that we respect other people's right to do the same.

What does libertarianism say about the role of government? There are relatively few things that a government may do to the general public. There is a "minimal state."

Minimal state: Avoid coercion

I. No paternalism

1. passing laws that protect people from themselves (e.g., seat-belt laws, helmet laws)
2. libertarians: it may be good, but it should be up to the people themselves.

II. No morals legislation

1. many laws try to promote the virtue of citizens
2. libertarians: that's also a violation to the right of liberty - there are laws that prohibit sexual relations among homosexual persons, but that's none of the state's business! Let the people settle it themselves.

III. No redistribution

1. any taxation or other policy that serves the purpose of redistributing income/wealth from the rich to the poor; most modern welfare states have these systems of taxation (income, federal, etc) or public provision (healthcare, education, etc)
2. libertarians: redistribution, if you think about it, is a kind of coercion. It's taking away from people who happen to be doing very well financially.
3. Nozick: no taxation for the sake of redistributing income and wealth to the poor

What proportion of the wealth in U.S. is owned by the top 5%? ~60%

A third of the wealth is owned by the top 1%

Is this right? Nozick: You can't know by looking by a pattern/distribution/result whether it is just or unjust. You have to know how this came to be. You have to look at two principles

Nozick: Against end-state principles

I. Justice in acquisition (initial holdings)

1. Did people get the things they use to make their money fairly?
 - a. If someone stole a factory and made a lot of goods and sold them, that would violate this principle, it would be unfair.

II. Justice in transfer (free exchange)

1. Did the distribution arise from the idea of free consent? Provided people got what they used fairly, and provided that the distribution results from the free choice of individuals buying and selling things, then it is just.

Take an actual example: Bill Gates is the wealthiest individual in the U.S. His net worth is \$61 billion. If you were utilitarian, you'd work on how to tax him! Taking a small amount from him would be unnoticeable to him, but it would make a huge impact on society.

Libertarian theory says, we have to respect his individual rights. If Gates' wealth is fair according to the two principles, then we can't tax him!

Nozick makes two points: Let's fix the initial holdings to whatever distribution you think is just.

The Wilt Chamberlain story => Michael Jordan story: In his last year with the Chicago Bulls, his income was \$31 million, and then \$47 million in endorsements: \$78 million in total.

Nozick says let's start off with a perfect and equal distribution (fix the first principle). Michael Jordan plays well, and everyone who comes to watch him play willingly pays \$5

each to him. At the end of the season, the society as a whole has departed from a perfectly equal distribution of income and wealth. Jordan winds up with a ton of money, but who has a right to complain? Not the people who paid, they chose to do so. Not the people at home, they didn't pay anything. Not Jordan either.

The result may be upsetting. It's upsetting because what it does is that it coerces Jordan to make a charitable contribution. If the state/law requires him to pay a portion of his earnings to the government towards social welfare services, that's unjust, it violates his rights. Redistribution is wrong.

[Discussion]

What's wrong with the libertarian case for redistribution?

In the actual world outside this hypothetical situation, we don't start out equally (some may have more needs than others). Even if we did start out equally, some of our choices/transactions are not freely made - we have to feed our families, etc. Not all transactions/exchanges are fair.

People who have earned more have received more from society, and they thus have an obligation to repay the benefits, to give back to society.

We should be able to arrange society so that everyone has access to money/food. This arrangement might not be possible in a libertarian society.

Defenders of libertarians

Redistribution is theft, it's unjust, but in certain cases it is necessary. Sandel: A compassionate quasi-libertarian.

Reply: Government is merely taking a small portion of the large amount that you're never going to use. Prevents people from amassing ridiculously large amounts of wealth. Allows for equality of opportunity.

The idea of redistribution as theft. Nozick: Taxation amounts to the taking of earnings, taking the fruits of my labor. If the state has this right, isn't that morally the same as according the state the right to claim a portion of my labor? Taxation actually is morally equivalent to forced labor, because forced labor involves the taking of my leisure/time/efforts, just as taxation takes the earnings that I make with my labor. And so for Nozick/libertarians, taxation for redistribution is theft, but it's morally equivalent to laying claim to hours of a person's life - claiming labor.

And what is forced labor? Slavery. If I don't have the sole right to my own labor, then that's really to say that the government is a part owner in me. This means that I'm a slave, that I don't own myself. Thus, the fundamental principle that underlies the libertarian theory - the idea of self-possession, that I own myself. If you want to take rights seriously, not just as a possession of collections, the fundamental idea is that we are the owners of our person.

That's why utilitarianism is wrong. That's why it's wrong to push the fat man off the bridge, to take organs from the healthy patient. Laws shouldn't tell us how to live, how to govern ourselves, how to redistribute our wealth. You can ask people for charity, but if you tax them, you're forcing them to labor.

The stakes are very high. If you want to reject utilitarianism, you have to go into this kind of reasoning.

Lecture, Week III Day 2

Title: Lecture 06, Wednesday, October 05, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

Libertarianism - above all, avoid coercion

They argue that if you take seriously the argument of avoiding coercion, you'll be in favor of a "minimal state;" you won't like paternalistic legislation (e.g. seat belt laws), morals legislation, or taxation-like redistribution of income.

Just how minimal is the state that the libertarians endorse? Nozick says that certain essential functions of the government (national defense, police protection, etc) are consistent with and don't violate this philosophy. Taxes can, therefore, be raised.

Social Security: Friedman's critique of the program is more thoroughgoing - It's a good idea for people to save during their working years, but it's wrong/violation of personal liberty for the government to force people to set aside some of their earnings today for the sake of retirement. It should be of their own volition. Even Social Security would still be at odds with the minimal state that Friedman argues for. Don't want any "free-riders"

There are ways to prevent "free-riders" of public goods. For example, there are private fire companies. In Salem, you can sign up and pay for a private fire company to put out your fire if necessary. They won't put out other people's fires. But what happens when the fire spreads? For Salem, their solution was that they would make sure any fire didn't spread.

Story: A person's subscription expired, and when his house caught on fire, the Salem fire company came and watched the house burn down, only to make sure it didn't spread. The owner of the house tried to renew his subscription during the fire, but the fire company refused, saying that you can't...

Idea of collective/public goods.

[Today]

Nozick - you have to know the way by which a distribution of wealth came about in order to know whether it is just or not. Libertarians offer a basic defense of the pure free market of exchange.

Underlying the libertarian's case for the minimal state is the worry about coercion. What's wrong with coercion? To coerce someone, to use some person for the sake of the general welfare, is wrong because it calls into question the fundamental fact that we own ourselves, the fact of self-possession/ownership. The libertarians argument against redistribution begins with this fundamental idea.

Nozick: If the society as a whole is taxing people, they're really asserting a collective property right on these people. This violates the principle that we belong to ourselves.

Self-ownership

Person
Labor
fruits of labor

Taking

slavery
forced labor
taxation

[Discussion]

Objections

- I. The poor need the money more
 - 1. Refute: Here, we are arguing whether people deserve something or not; it's not that they necessarily need it more.
 - a. Sandel: The victims of Hurricane Katrina have been left impoverished, don't they need the money?
 - b. Reply: Still, need is one thing, deserving is another.
 - 2. Refute: We can extrapolate from our original logic that people have property rights as well as personal self-ownership rights, and we can't take such property away and redistribute it to our own liking.
- II. Assumption of justice in acquisition unrealistic
- III. Taxation by consent of governed is not coerced
 - 1. Support for objection: In a democratic society, it's not really slavery. It is legitimate.
 - a. Refute: Democracy is fine, except in limited cases where fundamental rights are involved. The right to private property is the same kind of right with the same kind of weight as the right to freedom of speech, right to religious beliefs. This cannot be trumped by a simple majority in democracy
 - b. Reply: We can't compare economics with personal rights (religion, etc).
 - c. Sandel: What's the difference between these rights then? (freedom of speech, religion, etc.)
 - d. Sandel: Is it wrong for a person to steal a loaf of bread to feed their starving family?
 - e. Reply: Benefits of an action don't make the action just.
- IV. The successful owe a debt to society
 - 1. Refute: How did these people become wealthy? They provided a service to society and society responded by rewarding them with success. The transaction is complete, there is no net debt here.
 - a. Reply: When you live in society, you give up certain personal rights. Questions the fundamental idea of self-possession in itself.
 - b. Reply: Well, there are many successful people (e.g. celebrities) who still donate back to society out of their own will. They feel a moral obligation that compels them to make this decision. Thus, it makes sense that every successful person should have the same obligation to society as well.
- V. Wealth depends partly on luck, it's not deserved.

[Wrap-up]

Someone challenged the premise of libertarian logic. Maybe, as suggested, we don't own ourselves after all. There would seem to be an incentive to break into the libertarian line of reasoning at the earliest/modest level, which is why a lot of people disputed that taxation is morally equivalent to forced labor.

But what about the big idea underlying the libertarian argument? Is it true that we own ourselves, or can we do without that idea and still avoid creating a society where some people can be just used for the sake of other people's welfare or even for the sake of the general good? Libertarians combat the utilitarian idea of using people as means for the collective happiness by saying that we are the proprietors of our own person.

What are the consequences for a theory of justice that are calling into the idea of self-possession? Nozick doesn't himself fully develop the idea of self-possession; he borrows it from John Locke. Locke accounted for the rise of private property by a chain of reason similar to that of the libertarians. Private property arises because when we mix our labor with unknown things, we come to acquire a property right to those things, because we own our own labor. We are proprietors of our own person. In order to examine the moral force of this libertarian claim, we need to turn to Locke's argument.

Lecture, Week IV Day 1

Title: Lecture 07, Wednesday, October 12, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

What counts as free exchange? Given a fair initial distribution, we debated whether people would be free to buy/sell as they please and whether the results of this free-exchange economy was fair.

The main objection had to do with the initial holdings; the principle of just acquisition. A lot of people said that the story about taxing Michael Jordan is unrealistic because it just assumes that we start out with an equal/fair distribution of income/wealth/resources (in real life that's not true).

In order to assess the libertarian idea of justice, we have to look for a principle of justice in initial holdings. How did people get these things and develop the idea of trade in the first place? Nozick didn't answer this question, so...

[Today - John Locke, 17th century]

We turn to John Locke with this question in mind. Is Locke a reliable/sturdy ally of the libertarians or not? On the surface, it seems that he is.

*It's important to remember that he developed his famous account of rights with a different set of questions in mind. He wasn't primarily concerned with systems of welfare or social security. He was worried about absolute monarchy/power, the divine right of kings - he was against all that. His ideas would refute these "rights." What he has to say about the moral basis of legitimate government still applies to us today.

[*Second Treatise of Government* (1690)]

I. State of Nature

- i. There are certain fundamental personal rights that are so important that no government can trump
- ii. These fundamental rights include a natural right - right to life, liberty, property
- iii. The right to property is not just the creation of government/law; it is a natural right in the sense that it is pre-political, it is a right that attaches to individuals as human beings even before government comes on the scene: an account of property rights that seems to support libertarians
- iv. What is a natural right to property? We have to look at things before government, before law.
 1. (page 6) The state of nature is the state of liberty. No natural hierarchy, no birth rights, everyone is free and equal. Yet, there is a difference between a state of **liberty** and a state of **license**. There is still a law of nature that exists - constrains what we can do even though we are free in the state of nature.
 2. This law secures our natural rights. But now, where did that law/rights come from if not from the government? How can you exercise a law if there is not supposed to be such political frameworks in the state of nature?
- v. The rights we have cannot be given up, nor can be taken from somebody else. I'm not free to take someone else's life, liberty or property. Same for myself! Where does this constraint come from?
 1. Locke gives two answers: God and reason. He thinks these two answers amount/lead to the same conclusion.
 2. "For Men being all the Workmanship of one Omnipotent, and infinitely wise Maker..., they are his Property, whose Workmanship they are, made to last during his, not one another's Pleasure."
 3. God has a bigger/higher property right in us. But what about those who don't believe in God?
 4. Locke then appeals to reason - if we properly reflect on what it means to be free, we'll realize that to think of ourselves to be free, we come to the conclusion that there are certain things that we cannot violate (right to life, liberty, property).

- vi. Our natural rights are unalienable - cannot be traded away, given up. Normally, when we think of owning something, if it is unalienable, it can't be given away; that limits what is really mine.
 - 1. Think about an airline ticket, they're non-transferable. We can't just simply resell them to our friends. There are also laws against scalping tickets, like those to sports events.
 - 2. In a sense of unalienable rights, it makes something I own less fully mine. In another sense, it makes something more deeply and profoundly mine - that's what Locke is saying. Rights that are so essentially mine that even I cannot trade them away or give them up - Jefferson brought them up in the Declaration of Independence.
 - 3. This creates a tension between Locke's account and the libertarian's account of rights.

II. Property

- i. Private property can arise before government. How can this be so?
 - 1. (Section 27) "Though the Earth, and all inferior Creatures be common to all Men, yet every Man has a Property in his own Person. This no Body has any Right to but himself. The Labour of his Body, and the Work of his Hands, we may say, are properly his. Whatsoever then he removes out of the State that Nature hath provided, and left it in, he hath mixed his Labour with, and joined to it something that is his own, and thereby makes it his Property. It being by him removed from the common state Nature placed it in, it hath by this labour something annexed to it, that excludes the common right of other Men. For this Labour being the unquestionable Property of the Labourer, no Man but he can have a right to what that is once joined to,..."
- ii. The earth is given to all humankind. Locke observes that every man has a property right in his own person. The labor of his body makes his work his own. (libertarians - we own our own labor) Whatever we mix our labor with, that which was unowned becomes our property. (libertarians - we own the fruits of our labor)
- iii. IMPORTANT - we can acquire, but not to excess and waste.
- iv. There is another sense in which we can own the fruits of our labour - if we till, plow, plant, and grow potatoes, the potatoes belong to us, as well as the land.
 - 1. "But the chief matter of Property being now not the Fruits of the Earth, and the Beasts that subsist on it, but the Earth it self...I think it is plain, that Property in that too is acquired as the former. As much Land as a Man Tills, Plants, Improves, Cultivates,..."
- v. Libertarians - there is an absolute property right in ourselves, and thus we can do as we wish. Locke - think through the laws of Nature, there will be certain constraints on that which we can do, that certain rights of ours are unalienable.

[Examples]

There are some examples that can bring up the moral intuition that our labor takes something that is unowned and makes it ours.

There was a court case in England where people put on diving suits and go to golf courses late at night to retrieve golf balls from the water. These people make a living collecting golf balls, then selling them. One man, as he was doing this, he was arrested. He claimed he wasn't doing anything wrong - he even filed taxes on his earnings! Lockian intuition here too - I did all the work, it's all mine!

When there are big winter storms in Boston, the only parking places that some people have are on the street, where there is tons of snow. People go through great effort to dig out a parking space for their snow. As they drive about, people place cones and other markers to claim that parking spot, since they went through so much trouble digging that spot out. Boston then said that you can't claim that spot; it's a city street. People were infuriated. There is a Lockian intuition behind these complaints - I labored to dig this spot out, it should be mine!

In India, there is a tree that for centuries has been used for its medicinal properties as an antiseptic. Recently a Western company discovered it and wanted to patent using this tree. Natives said that they've been using the tree for centuries, you can't come along and take it away from us! Property disputes here too.

There is a debate among rich and poor countries about intellectual property rights. Western countries have industries with products that want every country in the world to respect their drug patents. In crises (like AIDS), American companies charge far more than small countries can afford. They thus go to Indian companies to buy cheaper generic drugs. American companies wanted every other company to pay a license. They then sued the small countries' governments to try to prevent this! They gave in eventually and allowed it.

[Discussion]

Seems to suggest a difficulty with the idea of creating private property by mixing labor with something without consent.

Is the idea of private property before government is successful/persuasive?

This is merely trying to justify the colonization of North America where Europeans took land from the Native Americans. The Natives enclosed the land first, and even though the Europeans labored to take it away from them, that somehow feels incorrect.

III. Legitimate government

- i. Consent
- ii. Limited government
 - 1. This is because we have unalienable rights.

[Wrap up]

If the right to property is something before we agree to government, how does that right constrain what a legitimate government can do? In order to finally see whether Locke is an ally or a critic of the libertarian idea of the state, we have to ask what becomes of our natural rights when we enter society. We enter society (governed by the majority) by consent. But human law is only legitimate if they respect our natural rights, our unalienable rights to life, liberty, and property. No legislature, no matter how democratic its credentials, can legitimately violate these natural rights.

"The Obligations of the Law of Nature, cease not in Society, but only in many Cases are drawn closer, and have by Human Laws known Penalties annexed to them, to enforce their observation....no Human Sanction can be good, or valid against it." (135)

This idea that no law can violate our life/liberty/property rights seems to support the idea of a government so limited, that it might gladden the libertarian hearts. BUT, even though Locke insists on all these things, there is an important sense (section 138-140) in which what counts as my property, what counts as respecting my life/liberty, is for the government to define. That there be property and this respect is what limits government, but what counts in these matters is for the government to decide and define. How can that be? Is Locke contradicting himself or is there an important distinction? In order to decide, we need to look more closely at Locke's definition of legitimate government.

Lecture, Week IV Day 2

Title: Lecture 08, Monday, October 17, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Paper topics posted online today at 2pm]

One main piece of advice for the paper: Read the question, read the article(s), and then figure out what you think, what your opinion is - and then construct an argument to defend your opinion. Try it out with your peers and discuss to test your arguments. What objections are raised and what are your answers? Can you anticipate these objections?

Next Friday (Nov 2nd), debate will include one of the authors of an excerpt related to our paper topic.

[Last time]

Discussed Locke's philosophies. Legitimate government is based on consent and limited government. Whether his account provided an ally to the libertarians and their discussion of the fair and proper acquisition of property. Libertarians sometimes point to Locke because he believes in certain fundamental rights in what the government can do, and that those rights are natural rights, preceding government. Locke claims a right to private property before government - we are proprietors of our own person, therefore we own our labor, and we own the fruits of our labor, and that is how we acquire our property. This can be extended to land/real estate by enclosing, cultivating, improving land for ourselves. In the state of nature, before law, there is a way that Locke says we can acquire property. Appropriation of land is within the state of nature as long as we do not use to excess (don't take more than what we need)

[Today]

CONSENT: Locke says that legitimate government is founded on consent. Consent is a rather familiar idea in all philosophies. There are some strange features of Locke's account of consent.

One puzzle: relation between consent and the limits that any legitimate government must observe. Just how limited is the legitimate government and what role does consent play in creating those limits?

One way of testing the plausibility of Locke's idea of consent is to ask just what a legitimate government founded by consent could do according to its powers of its law. We can ask about taxation, military conscription. How does Locke use two other issues: slavery and the settling of North America (appropriation of land from Native Americans).

What work does consent do in taxation and military conscription?

Remember what the state of nature is like (the condition we decide to leave to go into society). In the state of nature, people are free and no consent is involved. People are free, but they can't do just anything they want because there is a natural law. The fundamental principle of the law of nature says we have certain unalienable rights (life, liberty, property) and so do other people. We violate the natural law if we violate our own or someone else's rights.

Why not stay there? Locke says there are some inconveniences in the state of nature. Mainly, everyone can enforce the law of nature; everyone is an executor (literally) of the state of nature - if someone violates this law, he is an aggressor, beyond reason, and you can punish him. And you don't have to be too careful about the gradations of punishment, you can kill an aggressor. You can punish a thief trying to steal your goods, because that also counts as aggression in the law of nature. Everybody is officer, judge, jury, executioner. If someone violates someone else, you can go after him. Violations of the law of nature is an act of aggression that everyone can participate to involve themselves in. Locke observes that if everyone is their own judge, then there's aggression, punishment, and everyone is insecure in their enjoyment of their inalienable rights. It devolves into a state of war.

Dennis on the web log: Doesn't this kind of sanction a sort of vigilante approach to law in the state of nature? Yes - the state of nature is where judgment is dispensed by vigilantes.

Locke provides a pretty harsh descriptions of what you can do to a criminal. He uses the imagery of savage beasts in punishments ("may be treated as beasts of prey...so kill them first"). What starts out as a seemingly benign state of nature where everyone is free and there is a law that respects people's inalienable rights, as you go closer is pretty fierce and filled with violence.

How do people leave? The only way to escape the state of nature is to undertake an act of consent where you agree with everyone else who also wants to enter the social contract to give up this power and create a government/community where there will be a legislature to make law and where everyone agrees in advance to abide by whatever the majority decides. Everyone then puts himself under this obligation to submit and be bound by the majority - this is the act of consent.

What powers, then, does this government have? What can the majority decide?

Remember, there are natural rights from the law of nature that don't disappear when people join together to create a civil society. These obligations from the law of nature cease not from the society (135). It remains as an internal rule for legislators and members of society. Even if the majority is in charge, they can't violate your fundamental rights (life, liberty property).

How limited is the government created by consent then? It's limited by this respect for the natural rights of its citizens.

(1) Can Locke's limited government tax the majority? Can the majority tax, which is the taking of the property of citizens? (2) What about the right to life - can the majority vote to go to war and send some of its citizens to face death for the sake of the welfare of society?

(1) Taxation - Locke and the libertarians

Christina: When you enter a government, if the majority believes in the necessity for taxation, then you must consent to it.

Britt: In order to enjoy the benefits of government, you must agree to the upkeep of the government.

Steve: Locke doesn't make it clear whether Locke does give grounds or not for opposing the libertarian's account of taxation.

Ben: If the majority rules, then the rights of the minority are still being violated, property is being taken away.

"Thirdly, The supreme power cannot take from any man any part of his property without his own consent: for the preservation of property being the end of government, and that for which men enter into society, it necessarily supposes and requires, that the people should have property, without which they must be supposed to lose that, by entering into society, which was the end for which they entered into it; too gross an absurdity for any man to own. Men therefore in society having property, they have such a right to the goods, which by the law of the community are their's, that no body hath a right to take their substance or any part of it from them, without their consent; without this they have no property at all; for I have truly no property in that, which another can by right take from me, when he pleases, against my consent. Hence it is a mistake to think, that the supreme or legislative power of any common-wealth, can do what it will and dispose of the estates of the subject arbitrarily, or take any part of them at pleasure." (138)

Locke says that what comes as property is not just natural, it is conventional defined by the government.

"It is true, governments cannot be supported without great charge, and it is fit every one who enjoys his share of the protection, should pay out of his estate his proportion for the maintenance of it, But still it must be with his own consent, i.e. the consent of the majority, giving it either by themselves, or their representatives chosen by them: for if any one shall claim a power to lay and levy taxes on the people, by his own authority, and without such consent of the people, he thereby invades the fundamental law of property, and subverts the end of government: for what property have I in that, which another may by right take, when he pleases, to himself?" (140)

Property is natural in one sense, but conventional in another. Natural - we have a certain unalienable right that is an institution that can be respected by a government. The arbitrary taking of property would then be illegitimate. Conventional - it is a further question as to what is property and what is the taking of property, and that is up to the government. What is the work of consent? The consent required for taxation to be legitimate (and Locke doesn't distinguish between the types of taxation) is the means by the consent that we all gave in the first place to go into society. By that reading, it looks like consent is doing a whole lot.

Nicola: I didn't sign this social contract, it was my ancestors who originally consented. Should I be subject to their consent?

Response: Locke says that your parents provide consent for you until you can make your own decisions.

Sandel: When you turned 18 in this society, did you sign a consent?

You don't have to; historically, consent applied to kings and kingdoms...

Nicola: I abide to society's rules out of prudence, to be an upright citizen.

Sandel: Well if you wouldn't get caught, would you avoid taxes? You'd rather be in the state of nature on April 15th.

Response: But you can't just take from the government and not give back in return. That is violating a law of nature in itself, taking whatever you want.

(2) How thoroughgoing is the natural right to property and what counts as taking property? What about life and military conscription?

Rena: The majority votes to constrict some citizens' rights and they can make people go to serve in the military.

Eric: We have to remember that sending people to war doesn't mean that we're sending them to die, it's not a death penalty. You shouldn't approach it that way. The real problem is that Locke has a view on consent and natural rights - how does he view our giving our property and lives up?

On the one hand, we have these unalienable rights that even we cannot give up. It's what we lack the power to give away when we consent that limits government. That is the point at the heart of Locke's whole account of legitimate government. But if we can't give up our own life/property, how can we agree to be bound by a majority that forces us to give up our own life/property? Is there a way out of this predicament?

Response: An elected government can conscript citizens to defend a way of life or a community that makes the enjoyment of life rights possible.

Sandel: Is that consistent with respect to the natural right to life?

Response: You can't pick out individual people, you have to have a general law. (Sandel thinks this would be Locke's response)

Locke is against arbitrary government, the arbitrary taking. He is against singling out a particular citizen or a group of people. But if there is a general law such that the majority's action is non-arbitrary, it doesn't amount to a violation of people's basic rights. What does count as a violation is an arbitrary taking; then there would be no rule of law, there would not be an institution that governs fairly. As long as there is a non-arbitrary rule of law, then it is permissible.

Libertarians are disappointed with Locke in these two ways: First, rights are unalienable and thus I don't own myself completely. Second, once there is a legitimate government based on consent, the only limits for Locke are limits on arbitrary taking of life or property. But if the majority propagates a general application of law, and promotes it duly according to fair procedures, then there is no violation of natural law.

Historically, Locke is worried about the absolute arbitrary power of kings, but it also means his theory of private property somehow doesn't really require consent. This may have something to do with Locke's concern over America. Locke is not talking about an imaginary place when he talks about a state of nature. He was talking about America. Settlers enclosed land and engaged in a state of war with Natives. He may have been providing a justification for the colonialization of America.

The question we still haven't answered is what then becomes of consent? What work can it do, what is its moral force, and what are its limits? It's important to markets too, in the buying and selling of goods.

Lecture, Week V Day 1

Title: Lecture 09, Wednesday, October 19, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

Locke is not worried about the coercion of the individual, but rather about tyranny.

Once you have consent, it's up to the government as to what counts as property, the interpretation of natural law (?). This is the work of consent that the government can use.

Locke has no objection to conscription, in fact he says in 139, what matters is the political/military authority, not the arbitrary. A sergeant can demand a soldier to go right up to a cannon, where he is almost sure to die. The general can condemn the soldier to death for deserting his post, but with all this power over life and death, they can't take a penny from that soldier, because that would be arbitrary and corrupt.

Consent to join the government and to be bound by the majority in the first place is the consent that Locke says matters. It matters so powerfully that even the limited government is only limited in the sense that the rules and laws it places cannot be arbitrary.

[Today]

Why is consent such a powerful moral instrument? We begin by looking at a concrete case: military conscription.

If we have a fundamental right that arises from the idea that we own ourselves, it's a violation of that right for the government to conscript citizens to go fight in wars. Others disagree saying that a democratically elected government can ask this of its citizens and people have a right to obey.

Using the case of U.S. fighting in Iraq, we see that there are difficulties meeting recruiting quotas. Consider three policies that the U.S. government might undertake to deal with the fact that it's not achieving its recruiting goals.

Increase its pays and benefits to attract a sufficient number.

Shift to a system of military conscription, have a lottery and whoever's numbers are drawn will go fight.

Outsource hired mercenaries. Keep the pay where it is and start recruiting around the world those who are qualified and willing to do it for the existing wage.

During the Civil War, the Union used a combination of conscription and the market system to fill the ranks of the military. It was a system that began with conscription, but if you were drafted and didn't want to serve, you could hire a substitute to take your place. Many people did this: they advertised and paid the market price for a substitute. Andrew Carnegie supposedly was drafted and hired a substitute for an amount a little less than the yearly amount he spent on cigars.

[Ken Burton's documentary on Civil War]

How many think this system during the Civil War was unjust?

Nick: If there is going to be a system of conscription, you might as well give people the choice if that other person finds the compensation worth it to him.

Liz: Paying someone as a substitute, that's placing a dollar value on life, something infeasible and morally wrong.

Jason: The person accepting the monetary compensation has the option, the right to place a value on their own lives.

Anicia: The government is putting a value on life anyway by paying the conscripted army to risk their lives. If putting a price is objectionable, then it's an objection that can be raised against the current day paid volunteer army? Is the Civil War system ok?

Sam: It's coercion of the lower income people to participate in the Civil War. The wealthier population can buy their way out.

The consent that people give to the government should allow citizens the right to enter or escape conscription at will. What looks like a free exchange is actually coercion.

Emily: Fair enough, there is a coercive element to this system where the laborer takes the place of a wealthier individual for money. If that troubles you about the Civil War system, shouldn't that also trouble you about the volunteer army today? Those individuals are entering the army for pay as well, and perhaps they are accepting the positions for money.

On the background of equality, Sam and Raul make the case that people are partly coerced to participate in this conscription. Emily then challenged that doesn't the all-volunteer army still universalize this coercion by offering an attractive monetary compensation?

Jacki: Patriotism is a better/higher motivation for people entering the army than money. That makes them better soldiers. In the Civil War, people who accepted money often deserted to get money with other positions.

But hired mercenaries should be able to do just as good as a job as patriotic people. Patriotism isn't necessary. Besides, we don't have enough patriotic people anyway.

Jacki: There may be situations where the patriotic person will be more willing to lay his life on the line for the success of the country.

We call it the volunteer army, though it's kind of a misnomer. A volunteer army may have the motivation of patriotism, but it is still paid. What about the suggestion that patriotism should be the primary motivation for military service, not money? If you think the paid army is best because it allocates the resources of the market, doesn't it lead you all the way to a mercenary army if you follow that logic consistently? If by patriotism, then that should lead you to conscription.

Eric: Being in the army is now a profession. It's perfectly fine to have a professional army. Conscription is for the defense of your home, your country - then that is fine. Hiring a mercenary is only paying in cash, it is not giving citizenship. (counterexample: French Foreign Legion)

Consent as it applies to market exchange. Two arguments against the use of markets and exchange in the allocation of military service. One was the argument raised by Sam and Raul - coercion. The objection that letting the market allocate military service may be unfair and may not even be free if there is severe inequality in the society so that people who buy their way into military service are doing so not because they want to, but because they have so few economic opportunities that that is their best choice. There is an element of coercion in that. Then Emily points out that if you think about it and apply it consistently, it calls into question the idea of an all-volunteer army. The second objection is more subtle as Jacki points out patriotism. That's the idea that military service shouldn't be considered as another job for pay, because it is bound by the idea of patriotism. It suggests that maybe where civic obligations are concerned, we shouldn't allocate duties and rights by the market. After all, if you really believe in the free exchange of markets and that it applies to the civic exchange of rights, what about voting? Shouldn't you be able to sell your vote to someone who would pay for it? We hesitate on this because we think there should be some sense of duty in voting. Should military conscription then be like voting or not?

To assess the first objection, we need to ask what inequalities/background conditions in society undermine the freedom that people make choices? To assess civic obligations/patriotism, we ask what are the obligations of citizenship? Is military service included in that? Is it consent or are there some civic obligations that we have that even without consent to the living and sharing of society? **We haven't answered either of these questions yet.**

Lecture, Week V Day 2

Title: Lecture 10, Monday, October 24, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

Let's think back to markets and morals in relation to military service, our discussion of conscription and the civil war system where you could hire substitutes to take your place. Most people objected to the use of markets in the case of military service.

Two objections:

1. Inequality/coercion
 - i. Flawed consent
 - ii. Rich people could buy their way out of service and hire poor people in their place. Inequality results, but it matters because it makes the transaction of market exchange less than voluntary. The apparent consent in market exchange is flawed. In an unequal society, some people who have agreed to take money to serve in the Civil War may not be doing so freely; they may be coerced due to the lack of other alternatives. The free voluntary exchange that make markets attractive in general may not operate in the case of an unequal society where conscription is concerned.
2. Patriotism/civic obligation
 - i. If military service is a civic obligation, that might be a reason for worrying about how markets and money allocate resources.
 - ii. The idea that money and markets fail to honor or corrupt the civic good/duty that military service represents. Consider the analogy of voting: most people would object to having a market for votes. But if you think about it from the standpoint of voluntary choice and consent, it's not obvious why we should object. Why not people who want votes buy and sell votes?
 - iii. Some sense that voting is a civic obligation and that money would corrupt the civic good. That using a vote to make money or for profit is an improper way of valuing the civic good that the vote represents. Doesn't focus on coercion or tainted consent - intrinsic in the sense that if true (if it is a degradation of civic obligation), it would be an objection to the fact that we live in an unequal society where we can sell and buy civic obligation.

[This time]

What is the role of markets and money (buying/selling) when it comes to human organs or sex (prostitution)? It's easy to see how these two types of objections are invoked by opponents of the constitution. They say that the people who agree to sell their bodies for sex aren't really doing so freely, but typically coerced or pressured (economic distress, drug addiction, etc). Then there are those who say that even if there were perfectly voluntary choice (free consent), no dire amount of circumstances could back this up. Some people say that it's a degradation of the moral worth of human sexuality; it's an improper way of valuing our bodies and its proper use.

An argument over the role of markets in the realm of human production and procreation. Fertility clinics advertise for egg donors, and sometimes they harbor criticism.

An ad where a person would pay \$50,000 for an egg from a particular donor!

There are also ads for sperm donors. The market in reproductive capacities is an equal-opportunity market. There is a large, for-profit commercial sperm bank, Cryobank, that markets sperm. They have offices in Cambridge between Harvard and MIT and in Palo Alto near Stanford. They accept fewer than 5% of the donors who apply.

Here are two instances that raise the question about whether eggs and sperm should or should not be bought/sold for money. Consider another case involving the market and the contract in human reproductive capacity: surrogate motherhood.

Elizabeth and William Stern couldn't have a baby on their own. They went to a fertility clinic to find a surrogate mother. Their ad got Mary Beth Whitehead - they agreed to a contract where Mary Beth would give up the baby for a certain amount of money. Mary Beth gave birth, and then changed her mind; she wanted to keep the baby. The judge was faced with the question of whether or not to enforce the contract.

[Video clip - reenactment of the court scene]

Two phases: first, the validity of the contract and whether the contract is enforceable. Second, what is best for the baby.

Can the promise to make a gift of life be enforced? They had an intelligent and pre-discussed consent.

The defendant is motherhood and the issue of whether money can buy everything. Whitehead didn't deny her motherhood and she says that money can't buy some things. Despite their lack of education, there are feelings, bonds between mother and child that are inviolable. It was never Betsy Stern's child, it was always Whitehead's child.

[Discussion]

Patrick: It's a binding contract; all the parties participated in a voluntary agreement. A deal is a deal.

Sandel: Is that the reason why most of you are in the majority? Yes, ok. Now why not enforce the contract?

Evan: When it was entered into, the surrogate mother couldn't be expected to know in advance how she would feel about the child. She didn't have the relevant information at the time that she needed.

Anna: The child has an inviolable right to keep her own biological mother (Whitehead), not the adopted mother. Bond between mother and child is stronger than any bond created by a contract.

Kathleen: You can't apply coercion to this argument. Surrogacy and adoption are acceptable trade-offs. The child does not have an inviolable right to his/her biological mother.

Andrew: There is something dehumanizing to the buying/selling of the right to a child. You're buying someone's biological right. It's like baby-selling. People should be free to enter these contracts, but it is not morally or legally enforceable.

Vivian: This can be compared to sperm selling, but this is all different - they're all unequal services due to biological differences. You can't compare surrogacy on a general level, there are unequal items within surrogacy.

[Objections]

1. Tainted or flawed consent can arise either because of coercion or because of a lack of relevant information.
2. It's somehow dehumanizing. This argument presumably goes beyond the question of whether it was truly voluntary. In that respect, it's like the second kind of argument that we came up against conscription; an intrinsic argument against the commodification of certain goods (civic duties)

The lower courts said the contract was enforceable. A deal is a deal; neither part has superior bargaining position. A price was agreed. The idea of paying a woman for the right to her biological child was not dehumanizing. It's not really selling a baby; it's selling a service. The baby was half William Stern's to begin with and, as with the argument about dehumanization, the lower court says that not all services can be compensated with money. It's assumed that the surrogate mother received other intangible benefits and satisfaction other than money.

The supreme court of New Jersey - it was not enforceable. They granted custody to William Stern, but they restored the paternal rights to Whitehead. When they struck down the contract, they did it on two grounds. First, there was not sufficient informed consent - she didn't make a truly voluntary informed decision. Then the court also made a version of the second argument against commodification - this is the sale of a child, or the very least, the sale of a mother's right to a child. It's motivated by profit; there is a middleman involved. This profit governs the transaction. Regardless of the flawed consent, there are some things that in a civilized society that money can't buy.

What about those two arguments against using markets in production and procreation. How persuasive are they? What do we know to object to the moral force of commodifying this?

One thing we need to know is what exactly the moral force of consent. There was a voluntary contract. Those who object to flawed or tainted consent are saying that what gives voluntary/market exchange its moral force is that the consent be truly free, but there are at least two ways that consent can be otherwise. First, if people are coerced to give their agreement, and second, if their consent is not truly informed, either being deceived or if they simply lack the knowledge of what it would be like to fulfill that contract. In the case of surrogacy, the court said a mother can't know what it would be like to bear a child and give it up.

In order to assess the criticism, we have to figure out just how free the voluntary consent would be with respect to bargaining power and lack of information.

How do we respond to the second objection? What does it mean to say that it is dehumanizing to make child bearing a market transaction? Elizabeth Anderson tries to say something about this: she says that by requiring the surrogate mother to repress whatever parental bond she feels for the mother, the surrogate's feelings are alienated (look at reading). She suggests that certain goods should not be open to use or profit. Certain goods are properly valued in things other than use. There are many - respect, appreciation, love, honor, awe, sanctity. Many modes of valuation beyond use, and certain goods are not properly valued, but they are treated simply as objects of use. Is use the only proper way of treating goods including life, military service, procreation, child bearing? If not, how do we figure out what modes of valuation are fitting or appropriate to those goods? We talked about buying/selling of sperm - seemed an easy case, but Anderson's question would call into question this too.

Several years ago, a doctor in a fertility clinic used his own sperm to fertilize his customers.

Another moral: change in attitudes towards fathers. Shouldn't we be uneasy about too easily severing the connection between men, sperm, and fatherhood? Fatherhood should be something you do, not something you donate.

Argument about dehumanization. Pondering whether there are certain goods that money shouldn't buy because perhaps certain goods are properly valued in ways other than use.

Lecture, Week VI Day 1

Title: Lecture 11, Wednesday, October 26, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

We started with utilitarianism - there were objections. Utilitarians can't give an adequate account for the fundamental importance of respecting individual rights. Mill tried to address it by saying that there is a holy justice in respecting human dignity and that would increase happiness in the long run. But is that an adequate basis for justice and respecting the human individual?

To explore that worry, we turned to libertarianism. That based a strong account of rights on the idea that we own ourselves (self-possession). Then we explored the consequences that embraced the assumptions of owning ourselves, leading us to Locke. That had a strong, non-utilitarian theory of rights, based on the Law of Nature. We found that he didn't quite affirm the idea that we own ourselves, though it does figure in the idea of private property, unalienable rights, limited government.

[Today]

Immanuel Kant - the hardest philosophy we're going to read in this course!

Offers a different account of why we have a categorical duty to respect the dignity of persons, and not to use people as a means, even for good ends, even to maximize happiness.

Born in 1724, died in 1804, lived in Königsberg (now Kaliningrad, Russia). Kant never left his native city despite his wild ideas. Man of precise regime and regular habits. Excelled at the University of Königsberg at the age of 16. He became a professor, where they paid him on the basis of the attendance of his lecture. Sandel says that this is an acceptable system that Harvard should seriously consider!

Only at 57 did he write his first book.

This is kind of out of chronological order, but we are following a line of reasoning here. Locke sets up his theory, Bentham and Kant reject his ideas. Bentham's work came in 1780, Kant in 1785. Kant refuses Bentham's utilitarianism, and then Mill tries to save utilitarianism after Kant's objections.

Locke	1690
Bentham	1780
Kant	1785
Mill	1861

What about Kant's moral theory? It's hard! For one thing, he wrote in German. But it's important that we figure out what he's saying. It's about the supreme principle of morality and it gives us an account of what freedom really is. Don't give up.

Kant rejects Utilitarians; he thinks that the individual person, all human beings, have a certain dignity and that commands our respect. The reason the individual is a sacred vessel of rights doesn't stem from the idea that we own ourselves, but instead that we are all rational beings. This simply means that we are beings of capable of reason. We are also autonomous beings, meaning we are beings capable of acting and choosing freely.

He doesn't mean that we always succeed in acting rationally or choosing autonomously. His point is that we have the capacity, and that this capacity is common to human beings as such.

This capacity isn't the only capacity we have. We also have the capacity for pain/pleasure, suffering/satisfaction. He admits we are sentient as well as rational creatures. Sentient in the sense that we respond to our senses, our feelings, we act out of our capacity for pain/pleasure. Utilitarians were half-right; of course we avoid pain and we

seek pleasure. Kant denies that pain and pleasure are our sovereign masters. He thinks that it's our rational capacity that makes us distinctive/special and sets us apart from animal existence (physical creatures with appetites).

Freedom

We often think that freedom consists of doing what we want, or the absence of obstacles. This isn't Kant's idea - his is a more stringent/demanding notion. But it's pretty persuasive. When we, like animals, seek after pleasure, we then aren't really acting freely. We're really acting as the slaves of those appetites and impulses. When we're just trying to satisfy our desires, everything we do is for the sake of some end or purpose given outside of us. I choose this way because I want to satisfy my hunger/thirst. It's as if I'm standing before a buffet, money is no object, and I'm free to choose whatever dish is before me - that might be a certain kind of freedom of choice. But I'm not acting freely - those desires don't come from me, they come from someplace outside of me.

Kant doesn't deny that we respond to our inclinations/hungers/appetites, but his point is that when we're acting out of these desires, we're simply acting to satisfy an end or purpose that's just given by Nature or some physical/social circumstance. Our will is being determined for us. I didn't choose this particular hunger or appetite, so when I try to satisfy it, I'm just acting according to natural necessity. For Kant, freedom is the **opposite** of necessity.

Ad for Sprite: "Obey your thirst." There's a Kantian insight into that slogan :)

When you go for Sprite or Pepsi, you're merely obeying a thirst or a desire manufactured by advertising that you yourself haven't chosen or created.

If freedom is the opposite of natural necessity, then nature is the source of needs/interests/inclinations. But when I'm abiding by the dictates/determinations of nature, I'm not acting freely. How is my will determined if not by my hunger/appetites? To act freely is to act autonomously. To act autonomously is to act according to a law that I determine myself, not to the laws of nature (desires to eat/drink/etc).

What is the opposite of autonomy for Kant? **Heteronomous** actions is when I act according to a desire that I haven't chosen myself.

Why is freedom the opposite of heteronomy? Nature is governed by laws (like cause and effect). Suppose I fall from a building, I'm not acting autonomously, my movement is governed by the law of nature/gravity. Suppose I land on someone and hurt/kill them - am I morally responsible? No: I'm no more responsible for falling on that person than I am for falling in the first place. The law of gravity and the laws of cause/effect governed this event. I'm not autonomous, I have no moral responsibility. There is a link between Kant's conception of freedom and his conception of morality.

Just as he has a stringent conception of freedom as autonomy, he also has a demanding conception of morality. To act freely is not to choose the best means to a given end, it is to choose the end itself for its own sake. That's something human beings can do, and billiard balls can't. To act heteronomously, is really to choose something for the sake of something else. That's what it means for my will to be determined heteronomously.

It's 3 a.m., and your roommate asks you why are you up late thinking about price-gouging and torture? You say, to write a paper. He asks, but why do you want to write the paper? To get a good grade. But why a good grade? To get into med school. But why med school? To become a doctor. But why a doctor? To get money. But why get money? To eat well...

This is heteronomous determination, doing something for the sake of doing something else and so on, where the end is really determined by something else not chosen by ourselves. We act as means to the realization of a given ends chosen by something outside of us. That's the heteronomous determination of the will.

So long as we act autonomously, we do something for its own sake, as an end to its own self. We cease to be instruments for something else. We become as ends in our selves. This capacity to act freely is what gives human life its essential dignity. That which constitutes the sole condition under which anything can be not only has a relative value (price), but also an intrinsic value (Kant, section 435). This means that we must regard people not as

means, but as ends in themselves. It's wrong to use people for the sake of other people's well being and happiness. This is why utilitarianism goes wrong.

Even if the utilitarian calculus came out right in most cases, they would be missing something. They would be upholding their principles for the wrong reasons. It would still be using people as means rather than respecting them as ends in themselves.

Morality

It's connected to his idea of morality, but we still have to answer: What gives an act its moral worth in the first place? What makes an action morally worthy consists not in the consequences or in the results, but it has to do with the motive, with the qualitative will, with the intention for which the act is done. What matters is motive, and the motive must be of a certain kind. The person should do the right thing for the right reason. A good will is good in itself, even if it accomplishes nothing.

For any act to be morally good, it's not enough that it should conform to the moral law, it must also be done for the sake of the moral law. The motive confers the moral worth of the action. The only motive that can do so is the motive of duty, doing it because it's right. Our duty, however, is tied closely (but not bound) to our inclinations (all of our desires, our contingently given impulses, desires, etc).

Suppose there's a shopkeeper and an inexperienced customer comes in. The shopkeeper could give the wrong amount of change to that customer and get away with it. But the shopkeeper says that if he does this, word might get out, he might lose business, so he doesn't do it. He does nothing wrong, but his action doesn't have moral worth because he did this for the wrong reason (out of self-interest and preservation).

We have a duty to preserve ourselves though. We have multiple reasons for not taking our own lives, so the only way we can isolate the operative motive for someone who takes his/her own life is to imagine that person as miserable. This is morally wrong, according to Kant. But to understand this, we must consider a person who despite having a miserable life, nonetheless recognizes the duty to preserve oneself and does not commit suicide. The motive that matters is where morality is doing the right thing for the sake of duty.

We have a duty to help others where we can. Let's take an altruistic/sympathetic person who is pained by the sight of suffering. He helps other people. Why? If they do it only because it gives them pleasure, then the act doesn't have moral worth. But in order to understand, we must imagine a different kind of person, a misanthrope with no human sympathies. If that person helps other people despite having no wellspring of empathy or altruism, then we know that person must be acting according to duty.

Kant is saying that these examples point out what confers moral worth on an action is that we act out of duty to do what is morally right.

Advertisement: "Honesty is the best policy. It's also the most profitable. Honesty. It's as important as any other asset. Because a business that deals in truth, openness, and fair value cannot help but do well. It is toward this end we support the Better Business Bureau. Come join us and profit from it."

This is like the example with the shopkeeper. Is honest done for its own sake or for some other reason?

At U of Maryland, they created an honor system where if you signed the pledge not to cheat, you'd get discounts at local merchants. It's in the same spirit as the shopkeeper.

The point is that what confers moral worth is not the consequence or the good things that you achieve, but rather the quality of the will, the character of the motive. The motive of duty, NOT the motive of inclination, which has external considerations. That's the idea of freedom and morality to Kant.

[Discussion]

Vasau: How do you determine what's right in the sense of duty if it's not valued on utility? What is the right reason, the content of the moral law? What is the supreme principle of morality?

Sandel: I'll answer it, but that's the second chapter :) We'll come back to it later.

Amati: Why do we want to be morally upright?

Sandel: Kant does say there has to be some incentive to obey the moral law. It can't be a self-interested incentive, since that would defeat it. He takes a different kind of incentive, a reverence for the moral law. The motive/will is conforming to the moral law once people see the importance of it; the morality comes.

Amati: What stops morality from being subjective?

Sandel: If acting morally means acting according a moral law out of duty, and if it's also to act freely, it means I'm acting to a law according to ourselves. That's how I escape the laws of nature. But it's the same kind of law that everybody else would comply to. How many moral laws are there in this lecture room? Are there a thousand different types?

Kant says there's only one moral law that people would ascribe to, coming back to the question what is that moral law? What guarantees that if we exercise our reason, we'd

The reason that leads us to the law that we give to ourselves as autonomous beings is the practical reason that we share as human beings. It's not idiosyncratic. The reason we need to respect dignity of humans is the capacity for reason. It exists undifferentiated in all of us. It's the same universal capacity for reason that delivers the moral law. It's pure practical reasoning which legislates a priori regardless of any contingent or empirical ends. What kind of moral law would that reason deliver? What is its content? To answer that question, we'll continue next time.

Lecture, Week VI Day 2

Title: Lecture 12, Monday, October 31, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

Sandel's Office Hours: Wednesday 2-4pm

[Today]

Kant's groundwork is about two big questions: (1) What is the supreme principle of morality? (2) How is freedom possible?

One way of reading Kant is to bear in mind a set of oppositions/contrasts.

3 contrasts

[motives]:	duty	inclination
[determination of will]:	autonomous	heteronomous
[imperatives]:	categorical	hypothetical

The categorical imperative

Formula of universal law

Formula of humanity as end

We've already begun to explore the first two contrasts. The first had to do with the will/motive according to which we act. According to Kant, only one kind of motive is consistent with morality - the motive of duty (doing the right thing for the right reason). What other kinds of motives are there? Kant places those in the category of inclination. Everything else we do is to pursue some interest, preference, etc. This was the example of the shopkeeper who gave the correct change to the inexperienced customer not because it was right, but only because the shopkeeper was looking out for his own reputation and business. Kant asks, does the shopkeeper's action have moral worth? No, he's not doing it for the right reason. Again, with the BBB, honesty is the best policy, but if it's the sake of getting more business, then acting out of that motive is morally unworthy.

Kant seems to have a point. Most people online agree with Kant on the shopkeeper's case.

Before making the connection of doing the right thing for the right reason and the supreme law of morality, let's pause to take questions on this matter.

Daniel: Can't you just find selfishness in every action and motive, even if it's buried deep within somewhere? Then no one is a good person; no act ever has any moral worth.

Vasko: Maybe people do often have selfish motives, but Kant is saying that insofar as we act morally (that our actions have moral worth) what confers moral worth is our capacity to rise above self-interests, inclinations, and to act out of duty. We might not exercise this capacity, but the fact that we have it is significant.

In a spelling bee, a 13-year-old kid named Andrew won by spelling echolalia. He misspelled it actually, but the judges misheard him as saying it correctly and awarded him the award. The kid went up to the judges afterwards and told them he misspelled it in reality. He was regarded as a hero: "Misspeller is a spelling bee hero." Andrew later said that "he didn't want to feel like a slime," despite the judges saying he had a lot of integrity.

Does this show that Kant's principle is too stringent, too demanding?

Judith: You wouldn't have to deny that Andrew's act has moral worth provided that Andrew's reason for turning himself in was that he knew it was the right thing to do. The fact that he would've also felt like a slime by itself doesn't undermine the moral worth of the act provided that he acted for the right reason.

It saves Kant from those who say you have to have no sense of guilt for doing the wrong thing (feeling like a slime), provided you do something for the right reason. It's fine to have sentiments and feelings that support doing the right thing as long as they don't strongly provide the sole reason for doing the right thing.

It's clear that for an action to have moral worth, it must be done for the sake of duty, not out of an inclination. The idea that the motive must be the right kind points to Kant's demanding understanding of morality.

Last time, we saw a connection between Kant's notion of morality and his demanding understanding of freedom. This leads us to the second contrast; it describes two different ways that my will can be determined: autonomously or heteronomously. I'm only free if my will is determined autonomously. Kant radically opposes freedom on the one hand and necessity on the other. We think freedom means doing whatever we want, but Kant has a power challenge to this. If you think you're free in this way (satisfying desires w/o obstruction), what about those desires/inclinations themselves? If you didn't choose those desires freely in the first place, then you really aren't free? When my will is determined heteronomously, it's being determined externally, outside of me.

If you accept Kant's challenge to this idea of freedom (that freedom must mean something more than submitting to your inclinations), then how is freedom as autonomy possible? Kant acknowledges that everything in nature works in accordance to laws - necessity, physics, cause/effect. This includes us too; we're natural/sentient beings seeking survival, appetites, fear, needs, etc. Insofar as we are capable of freedom, we must be capable of acting to some other kind of law other than those just listed (physics, necessity, etc). We must be capable of acting according to a law we give ourselves.

Where does this law come from, if not from nature? It comes from reason. If reason determines our law, then the will becomes the power to choose independent of the laws of nature/circumstance. We're not only sentient, we're rational. Connected with Kant's notions of morality and freedom is a demanding notion of reason. His idea of reason (like that of freedom and morality) is especially demanding. For other philosophers, reason was always instrumental, for the sake of pursuing ends that reason itself did not provide. Utilitarians viewed beings having reason, but it was an instrument for pursuing happiness and maximizing utility, not for choosing the ends themselves. The sources of happiness and ends were not from reason.

How can reason determine the will? There are two ways - leading to the third contrast, there are two different commands/imperatives of reason. One kind of imperative is the hypothetical imperative; they use instrumental reason. If you want X, then do Y. It's means & ends reasoning. If the action is represented as good in itself and deemed necessary out of reason, then the reason is deemed categorical, without reference to or dependence on any other purpose. This imperative may be called the imperative of morality, according to Kant.

To be free in the sense of being autonomous requires that I act out of a categorical imperative. One big question: what is the categorical imperative? What is the supreme principle of morality? Kant's reasoning through these three contrasts brings us to his derivation of the principle of morality. There is an idea of a law that binds us as rational beings regardless of the particular ends we may seek. Kant gives three formulations of the categorical imperative. Today we'll mention two.

First: the formula of the universal law. Act only on that maxim whereby you can at the same time will that it, the maxim, become the universal law. Maxim: a rule that explains the reason for what you're doing.

For example, promise-keeping. Suppose you need \$100 desperately and you know you can't pay it back soon. Should you make a promise that you can't keep to a lender? The way we determine that the false promise is inconsistent with the categorical imperative is to universalize it. What's the maxim in this case? Whenever someone needs the money badly, he/she should make a promise that is impossible to keep. If you try to universalize that maxim, then you will discover that it can't meet the test of the universal law because it will lead to a contradiction. If everybody made false promises, then nobody would believe those promises, and there would be no such thing as a promise - contradiction! The maxim universalized would undermine itself! That's how we know the false promise is wrong.

What about the formula of the universal law - is it persuasive?

Alex: What about the case of suicide. Say we should never commit suicide ever. But if I'm infected with rabies, then I should probably commit suicide before I bite and infect many others. There is a worry about how you generalize the action and the results you get.

Tim: The difference between categorical and hypothetical imperatives sounds like a bit of consequentialist reasoning. If I universalize the practice of promise-keeping and find it compelling, I must be appealing somehow to the consequences of promise-keeping.

Sandel: John Stuart Mill agrees, but is wrong. Kant is often read as appealing to consequences. It's not what Kant is saying actually. This is the test whether the maxim corresponds with the categorical imperative; it's not the reason. In some ways, the logical test contains a certain moral claim which the moral of the test is: the reason you should universalize to test a maxim is to see whether you are privileging your particular needs/desires over everybody else's. That's why it makes sense to run the universal test of the maxim. The fact that the practice of promise-keeping would be upheld or destroyed is not consequentialist. The reasons for your actions shouldn't depend on your interests/needs/special circumstances. They shouldn't be more important than someone else's - that's the point.

Alex's question says that the way you frame the universalization presents a problems sometimes. It's difficult to make sense of that duty from the standpoint of the formula of the universal law. It's easier to make sense of the language of suicide if we turn to the second formula:

The formula of humanity as an end. Kant introduces the second version with the following argument. We can't base the categorical imperative on any particular interests/ends, because then it would be relevant only to the interests/ends to whom it belongs, but suppose there existed things with intrinsic value. In it would there be the ground of a possible categorical imperative. What is there that we can think of having an end in itself. Kant says man and every rational being exists as an end in itself, not as an arbitrary means. He distinguishes between persons and things. Rational beings are persons with absolute value, an intrinsic value - dignity. This is worthy of reverence and respect. Act in such a way that you always treat humanity, whether in your own or other person, never simply as means, but always at the same time as an end. Human beings are not open to use as merely means.

Let's go back to a false promise. From the standpoint of the second formulation: when I'm making false promises, I'm using you as a means to my own ends. I'm failing to respect you and your dignity since I'm manipulating you.

Consider the duty against suicide. Murder and suicide are at odds with the categorical imperative. If I murder someone, I'm taking their life for some purpose, using them as a means to satisfy some purpose. That violates the categorical imperative. Suicide is a violation in just the same way. If I'm suffering and therefore want to put an end to my life, I would be using myself as a means to the relief of my own suffering. You might say that's up to you. Kant says no, not really. For Kant, suicide is on par with murder since what we violate when we take a life, we use that person (rational being, humanity) as a means, so we fail to respect humanity as an end. That capacity for reason/humanity commands respect and is the grounds for dignity. It resides undifferentiated in all of us. We violate that dignity in our own person if we commit suicide and in someone else if I commit murder.

The reason that they're the same depends on the universal character and grounds of moral law. Respect for Kant is respect for humanity and rational capacity which is universal. Love, sympathy, etc deals with a particular case, a particular situation for a particular person or group of people. Respect is universal.

Kant recognizes we use one another as means, but that's not objectionable provided that when we deal with other people for advancing our own practices and interests that we treat them in a way that is consistent with our respect for their dignity. What it means to respect is given by the categorical imperative.

Lecture, Week VI Day 3

Title: Lecture 13, Wednesday, November 2, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

We began by trying to navigate our way through Kant's moral theory by keeping track of three contrasts

3 contrasts

[motives]:	duty	inclination
[determination of will]:	autonomous	heteronomous
[imperatives]:	categorical	hypothetical

When my will is determined autonomously, then I will moral law for myself. There's a connection between morally and acting under freedom. What is the moral law? Kant says it must have the form of a categorical imperative. There are two different ways that reason commands the will. Hypothetical imperatives take the form of "If you want this, then you do that." Hypothetical imperatives follow inclinations external to ourselves, so the moral law must take the form of a categorical imperative, where we freely choose to be a law unto ourselves.

It also brings out the defect in utilitarianism. Kant says that all previous attempts to identify the supreme principle of morality were bound to fail. He makes a bold/immodest claim on behalf of his morality. All those previous attempts to define the supreme principle failed for the same reason: all began with some interest/aim/purpose for maximizing happiness, for example, but that's the wrong way to go about it. Our ends/interests/purposes/goals are all contingent and come from special circumstances, both historical and natural. Empirical principles are not our own. The principle of maximizing happiness is especially bad because it has nothing to do with morality, has nothing to do with increasing our virtue, etc. They tie their principles to some particular end or purpose outside of us. It is never duty, but only the necessity of acting out of some interest. These principles are always bound to be conditioned upon that end, that particular interest. It lacks the universal character that needs to be in the supreme principle of morality.

We need to be able to answer three questions:

1. How do duty and autonomy go together?

Duty means that we're bound to something, but autonomy means I must be free. It would seem that these two ideas are contradictory. Answer: Because acting out of duty is following a moral law that you impose on yourself. I've subordinated myself to this law because I took it upon myself, I willed that law.

2. If autonomy is acting according to a law I give myself, how many moral laws are there?

So if I'm free when I chose the moral law and imposed it upon myself (a product of my will), aren't there many kinds of moral law? What's to guarantee that my conscience will be the same as your conscience? Answer: If we choose freely out of our own consciences, we would all come up with the same moral law because when I choose, it's not really me (with my particular background or my experiences) that's choosing, but rather pure reason. The reason that governs my will is the same reason that operates when everybody else chooses their moral law. Pure, practical reason is what chooses only one moral law. There's a universal undifferentiated sense of reason that resides in all human beings.

Pure practical reason legislates a priori, regardless of what's happened.

3. How is a categorical imperative (morality) possible?

In a way, Kant postpones this question until chapter 3. He admits that human beings are not only rational, but sentient beings; we inhabit the realm of nature so we are subject to the laws of nature. We are merely objects in nature. In order to exercise our practical reason that legislates a priori, we need to somehow escape the realm of nature; otherwise there's no way of freeing ourselves of our particular desires/appetites that lead to our hypothetical imperatives.

Answer: You need to make a distinction that leads to the fourth contrast. A distinction between two standpoints from which we can make sense of our experience. They are the "intelligible realm" (subject) and the "sensible realm" (object).

As an object of experience, I belong to the realm of the world and my actions are determined by the laws of nature. But as a subject of experience, I inhabit an intelligible world where I am independent of the laws of nature and I can act autonomously. Only from the standpoint of the subject of experience can I regard myself as free. If I were a wholly empirical being (as the Utilitarians assume) only subject to the deliverances of my senses (pain/hunger/pleasure), we would be incapable of freedom because every exercise of will would be conditioned by the desire for some object. In that case, all choice would be heteronomous choice governed by the pursuit of some external end. Therefore, my will would never be a first cause, but the instrument/means for some other cause. We can't think of ourselves as wholly empirical beings if we want to think ourselves as free.

Categorical imperatives are possible only because freedom makes me a member of an intelligible world. Now, we don't only inhabit the intelligible realm, because if we did, all of our actions would invariably accord with the autonomy of the will. Precisely because we simultaneously inhabit both realms (of freedom and of necessity) there is always potentially a gap between what we do and what we ought to do (between is and ought).

Kant concludes the groundwork by saying morality is not empirical, since that can't decide moral questions. Morality stands at a distance from the empirical world and that's why science can never investigate the truths of morality. Empirical science operates within the sensible world. Morality passes judgment on the world at a distance.

Now let's test Kant's moral theory with the hardest possible case. Lying is wrong, it is at odds with the categorical imperative. A French philosopher wrote an article in response to Kant's arguments. What if a murderer came to the door looking for a friend that you're hiding and asked you if your friend was in your house. Kant would say that you must tell the truth. But surely the murderer doesn't deserve the truth. Kant replied that even lying to the murderer is wrong. The reason he says it was wrong is that to tell a lie would be to violate one's own dignity. Maybe the murderer truly doesn't deserve the truth, but it would vitiate the very source of right. Once you start taking consequences into account, there can be a lot of exceptions, you give up the whole moral framework and become a consequentialist (a Utilitarian)!

There may be something odd about this answer. Everybody in the online poll says that you must lie to the murderer! Isn't there something wrong with this answer? Sandel will now try to defend Kant.

Imagine yourself in this situation. Is there a way to avoid telling the lie without selling out your friend? You could say "I don't know" because at that very moment, you don't know where in the house your friend is. It's true and misleading at the same time... Suppose you take this one step further and told the murderer at the door, "a short time ago, he was at the mall."

What about this clever evasion? This raises the question whether there is a moral difference between an outright lie and a misleading truth. For most purposes, you might say no there isn't because both have the same aim of deceiving the murderer. For Kant there is a world of difference between a lie and a misleading truth. Kant doesn't base morality on consequences, but he bases it instead on a formal adherence to the moral law.

A white lie is a lie that we think is justified by the consequences. Kant wouldn't endorse a white lie, but a misleading truth is permissible. Say you got an awfully ugly tie for Christmas - what do you say? "I've

never seen a tie like that before. You shouldn't have!" Kant himself resorted to the distinction of the clever, but truthful evasion. He got himself in trouble with the king and the Prussian censors; they thought it was somehow anti-Christian. The censors demanded of Kant that he issued a statement promising to refrain from any further lectures or writing that in any way distorted Christianity. He responded with a carefully worded promise: "As His Majesty's faithful subject, I shall in the future desist from any lectures and writings dealing with religion." A few years later, the king died, and Kant considered himself free!

There is a morally significant difference between a lie and an evasive truth. Do you think that distinction has some moral force? Can you think of a contemporary political leader who did this? Remember the carefully worded denials of the Monica Lewinsky affair. Watch selected clips of the Bill Clinton trial.

At the time, you may have thought this would be a hairsplitting argument, but in the light of Kant, is there something morally at stake between the distinction of a lie and a misleading statement?

[Discussion]

Adam: Could you universalize the maxim, when in a tight situation then it is all right to provide evasive answers instead of telling the truth? I don't think so.

Diana: Kant has a point. Forget the consequences, look at the morality of the action itself. You want people to believe your evasive answer, which is still true. When you lie, you want people to believe a falsity, which is universally bad. There is a moral difference.

Wesley: Well, the motive is the same - in both cases, there is the hope that one's pursuer is misled.

It's not exactly the case that the motive in both cases is to mislead; they're hoping that the person will be misled by your statement, but in the case where you're telling the truth, your motive is to mislead while at the same time honoring the moral law. Unlike a falsehood/lie, a misleading truth pays a certain homage to duty. This homage is what justifies even a work of evasion. There is some element of respect for the dignity of the moral law in the careful evasion. In the careful but true evasion, there is an homage to the dignities of the moral law that is not present in the lie, and that is part of the motive, and this is what truly counts. I can control standing by and honoring how I pursue the moral law despite the consequences.

This brings out some of what is morally at stake of the consequences of the categorical imperative.

Lecture, Week VII Day 1

Title: Lecture 14, Monday, November 07, 2005

Author: Professor Sandel

Contributor: Richard Hsu (main), Lily Tung (last few paragraphs)

Contributor's Notes:

[Last time]

We considered the way Kant applied the categorical imperative to the case of lying. Even when there is a murderer at the door looking for your friend hiding in your house, still Kant argues it would be wrong to lie, though he does say it is fine to tell a misleading truth.

[This time]

Let's turn briefly to another application of Kant's theory - political theory. In a few essays, he sketches his view about what a just constitution or system of laws would look like.

Kant's political theory

1. Anti-utilitarian
 - i. The just constitution is not one that is founded on the aim of maximizing happiness. Instead, the just society provides its citizens a framework of rights and duties that leave each person free to pursue his own conception of happiness provided he does so in a way that respects other people's rights to do the same.
 - ii. Kant favors a constitution based on respecting every person's equal right to pursue his own conception of happiness.
 - iii. Nothing to do with the end of achieving happiness. Utility is not a proper basis for a proper/just constitution.
2. Contractarian
 - i. Kant says that just laws arise from a certain kind of social contract. This contract is of an exceptional nature - it's not an actual contract that happens when people come together and discuss what a constitution should be.
 - ii. Locke had a social contract, based on implicit consent given to the government (living by their laws).
 - iii. It's a mistake to base just laws on any actual agreement (explicit or implicit). Instead, we should, as legislators, try to think of what law everyone in the society could agree to regardless of who they are.
 - iv. The contract that generates justice is an idea of reason. Actual men/women gathered in real constitutional convention would have different interests, knowledge, bargaining power, etc, therefore the laws that result from their deliberations wouldn't necessarily be just, but simply reflect these differences.
 - v. The contract that is generated from a principle of rights comes from reason, but has practical application. It gives every legislator the chance to agree to its application (see previous point iii).

What is the moral force of a hypothetical contract (a contract that never happened; this is the contract from which we should derive our laws). Many people were unhappy with the potential consequences of Locke's "implicit consent," that it could give rise to the government doing whatever it wants; it lacks true moral power. What about hypothetical contracts - is it morally binding?

[John Rawls]

Today, we need to move away from Kant's argument and turn to John Rawls. Rawls' account (Theory of Justice, 1971) is inspired by Kantian ideas and tries to work out a theory of justice based on hypothetical agreement that is at least consistent with the spirit of Kant's conception of morality and politics.

It is parallel to Kant: (1) Rawls was a critic of utilitarianism. The rights possessed by individuals are not subject to moral calculus. A just society respects the basic rights of individuals; these can't be traded off for anything. (2) The idea that principles of justice, properly understood, can be derived from a hypothetical social contract, not an actual one.

The "veil of ignorance" - to arrive at the basic rights that we must respect (basic framework of rights and duties) is to imagine that we are gathered together trying to choose the principles that will govern our lives without knowing the particular way these principles will affect our lives. (We won't know what roles we'll have in society. Some are strong/weak, rich/poor, of various religions, etc.) Imagine we are gathered in an original position of equality, which is ensured by the veil of ignorance that temporarily brackets/abstracts from us who we, in particular, are. Only then, the principles we would agree to would be principles of justice - that's how the hypothetical contract works.

We wouldn't choose utilitarianism because none of us would know in advance if we would wind up in the minority (e.g., Christians in Rome). Neither would we agree to libertarian principles (e.g., are we Bill Gates or the commoner? Michael Jordan or one of the many fans?). We would arrive at two principles:

Equal basic rights for everyone (e.g., freedom of speech/religion/assembly, etc)

Social and economic inequalities - we wouldn't choose a laissez-faire free market society because we don't know if we are at the top or the bottom.

[Actual contracts]

Is this the right way to think about principles of justice in the first place? What is the moral force of this kind of hypothetical agreement - is it stronger/weaker than an actual social contract? In order to answer this question, we have to look at the moral force of actual contracts.

Moral force of consent has been discussed. (e.g., the consent in the lifeboat case, the consent in surrogate motherhood, etc) Why does consent make a moral difference?

(1) How do actual contracts bind/obligate me?

They don't - actual contracts are not self-sufficient, moral instruments. It can always be asked, "Is it fair?" **The fact of the agreement never guarantees the fairness of the agreement.** We produced a constitution that permitted slavery to exist - founding fathers all agreed to it, but then we had to amend the constitution because we realized slavery is wrong!

Contracts obligate in two ways: (1) We make a commercial agreement where Sandel promises to pay us \$100 if we harvest a 100 lobsters. Sandel eats the lobsters and then doesn't pay. We say, "We had a deal, but we didn't get anything in return!" The argument depends on the fact that Sandel benefited from our labor, but not vice versa. Contracts sometimes bind us insofar as they are instruments of mutual benefit. (2) But suppose we make the same deal and when we show up, Sandel changes his mind and says he doesn't want them. Sandel is still obligated because the agreement created an expectation - an element of reciprocal exchange.

Consent-based: autonomy

When making a contract, the obligation is self-imposed.

Benefit-based: reciprocity

It has to do with the sense in which actual contracts are instruments of mutual benefit, that obligation can arise insofar as the idea of reciprocity.

These two different ideals (implicit in contracts) are independent ideals, different reasons.

The pure element of consent: (3) We make the same deal, and two minutes later, Sandel says he changes his mind before we do any work. Does he still owe us merely by virtue of making the agreement? What is the moral kernel of the matter here that binds the agreement?

It would cheapen the institution of making contracts, of taking the obligation upon myself, the mere fact of the agreement in itself. The mere fact of making a promise seems to carry some independent moral weight. (This is related to Kant's argument about making promises.)

Sandel argues that an act of consent is not a sufficient condition for determining justness or fairness. The fact that two people agree to some exchange does not mean that the terms of their agreement are fair.

Sandel's sons collected baseball cards. No trade was complete until Sandel had approved it - the older one knew more about the value of the cards and so could take advantage of the younger one. Sandel had to prevent unfair trades. Well, this may be paternalism :) This proves that an agreement isn't always fair.

In Chicago, there was an 84-year-old woman named Rose who had a problem with a leaky toilet in her apartment. An unscrupulous contractor offered to repair her leaky toilet for \$50,000. She made the agreement. Luckily, as she went to the bank to withdraw the money, the teller realized the unfairness of the contract and alerted the authorities. The fact of this woman's agreement is not a sufficient condition of the agreement being fair.

(2) How do actual contracts justify the terms they produce?

They don't; at least not on their own. They are not self-sufficient moral instruments. The fact of the agreement never guarantees the fairness of the agreement. For instance, the constitution was an actual contract, but it allowed slavery to exist!

For example, a marriage contract. Suppose get married, and suppose a husband discovers that after 20 years of faithfulness, his wife had been seeing another man. Wouldn't that give two different reasons for moral outrage? First, she broke her promise. Second, the man was faithful and deserves better. Each reason has an independent moral force.

Let's modify it. Suppose they were just married and the betrayal occurred on the way to honeymoon. A contract was made, but there was no history of performance of the contract on man's part. Would he still be able to say "but you promised!"

Actual contracts have their moral force in two distinguishable ideals: autonomy and reciprocity. But in real life, actual contracts may fail to realize these moral forces. The ideal of autonomy may not be realized because there is a difference in the bargaining power of the parties. The ideal of reciprocity may not be idealized because of difference in knowledge – we misidentify what has equivalent value.

Imagine a contract in which autonomy and reciprocity were guaranteed to be realized. This would have to be a contract among persons where there was no difference in bargaining position, no difference in knowledge, no difference in situation. The agreement of this contract would be the basic principles that would govern collective lives. A contract like this would leave no room for unfair advantages. Only a hypothetical contract among parties who are equally situated can produce terms that are just simply in virtue of being agreed to. **If the veil of ignorance is employed, then we would find that a hypothetical contract is a pure form of a natural contract, and so a morally more powerful thing.**

That is, create a veil of ignorance by ruling out differences in power and knowledge that could lead to unfairness. This is why **a hypothetical contract among equals is the only way to think about the principles of justice.**

Lecture, Week VIII Day 1

Title: Lecture 15, Wednesday, November 09, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

- I. The moral force (and limits) of actual contracts
 - a. How do contracts obligate us?
 - b. How do contracts justify the terms that they produce?
- II. Rawls' hypothetical contract
 - a. Original position
 - b. Veil of ignorance
- III. Rawls' principles of justice
 - a. Equal basic liberties
 - b. Social and economic inequalities must benefit least advantaged
- IV. Assessing Rawls' arguments
 - a. Argument from original position
 - b. Argument from moral arbitrariness
- V. Rival theories of distributive justice

Last time, we thought why Rawls thinks the principles of justice is best derived from a hypothetical contract. A real actual contract would produce principles that have less moral force under special circumstances. In any agreement, it can always be asked whether the terms of the agreement was really fair. Whether it produces terms that are fair can't be answered simply by pointing at the fact of the agreement. (examples: the leaky toilet) We can't answer the justness of laws by pointing to a larger/bigger contract, like the Constitution. That's because people are always situated differently; some people have differences in knowledge and bargaining power, and these differences are reflected within the actual contract itself.

A hypothetical contract under an original condition of equality can in principle produce principles that are just in virtue of procedure; it's a pure form of a contract. What matters is that this hypothetical contract be carried out in an original position of equality behind a veil of ignorance. Rawls doesn't say that we forget about who we are or lack the particular features that define who we are, he says that we must simply abstract ourselves from our race, status, etc. The principles we would agree to then would be just.

[Today]

Distributive justice - how is income and wealth to be distributed?

What are the principles that would be chosen behind the veil of ignorance? Utilitarianism wouldn't be chosen because behind the veil of ignorance, everyone knows that once the veil goes up and real life begins, we will each want to be respected with dignity even if we turn out to be a member of the minority. We don't want to be oppressed, so we agree to reject utilitarianism and instead adopt as our first principle: equal base of liberties (freedom of speech, assembly, religion, etc). We don't want to take the chance that we would end up as the minority being tyrannized by the majority. Utilitarianism makes the mistake of forgetting, or not taking seriously, the distinction between persons.

The second principle deals with social and economic inequalities. We don't know our socio-economic status. We might say that we require an equal distribution of income and wealth. But Rawls says that we would allow some inequalities and choose the principles that work to the benefit for the least well-off, since we might end up on the top, but especially the bottom. Only those inequalities would be chosen to help those people - the principle of inequality and differences. What would this system be?

Can you pay surgeons more than custodians? Only if that economic arrangement that works to the benefit for those at the bottom. Where would those surgeons work then and who would they serve?

What about AP students? If, in virtue, of being given those educational opportunities, those enrolled in those AP classes would work to benefit those least well-off. Same with those who can go to universities. They must return to help the least well-off.

Someone did a study of the 146 selective colleges in the states, and they looked at the students to find out what their economic backgrounds were. What percentage of the students came from the bottom quarter of the income scale? 3%!!! Over 70% come from affluent families (richest 25%).

Rawls has two arguments in favor of his principles of justice, and in particular of the principle argument. The official argument - what would be chosen behind the veil of ignorance. Some challenge that some people are not risk-averse and that they hope that they would wind up on top, and therefore choose an aristocratic feudal society. The second argument is a straightforward and moral argument. It says the distribution of income/wealth/opportunities should not be based on factors for which people can claim no credit, it shouldn't be based on factors that are arbitrary from a moral point of view. Rawls considers several rival theories of justice.

He begins with the theory that everyone would object to - feudal aristocracy. What's wrong with that system? Rawls says that people's life prospects are determined by the accident of birth. You can't rise through status or can't make your own opportunities. This led people to say that careers should be open to talents, everybody should be free to apply to any job in society; no discrimination. That way, the system is just (Rawls' system of natural liberties).

Now we're at libertarianism - a free market with formal equality of opportunity. It doesn't take the accident of birth as the only principle. But even this doesn't extend far enough. If you let everyone enter the race and people start at different starting points, then that difference isn't fair. Rawls says this will simply result in a race with those who started first will win. Intuitively, the most obvious injustice is that it permits decisions and opportunities that are arbitrary from a moral point of view.

Then we get to a meritocracy, where there isn't a formal equality of opportunity, but a fair equality of opportunity. The society sets up institutions that brings everyone up to the same starting point before the race begins. Equal educational opportunities, for example. Rawls says even that doesn't go far enough in addressing the moral arbitrariness of the natural lottery. If you bring everyone to the same starting point, the fastest runners would win. It's not their doing that they're blessed with the athletic prowess to run fast. Even a principle of meritocracy may eliminate the influence of social contingencies and upbringing, but it leaves opportunities to be determined by the natural abilities and lottery. This is morally arbitrary also. The distribution of natural assets shouldn't determine the race.

How do you go beyond? Some critics of the moral egalitarian conception is that the only thing you can do is to handicap the naturally better off. But that would defeat the whole point of running the race.

One critic imagines a future where people are handicapped in order to ensure perfect equality of opportunity. A young, gifted person named Harrison has to wear earphones that would interfere with his brain waves. He also has to wear 300 lbs of scrap metal to weigh him down.

An egalitarian society doesn't have to handicap such people. You permit/encourage those who are gifted to exercise their talents, but you change the terms on which they can exercise their talents. You establish a principle where people can benefit from their natural assets, but they must go back and help the less fortunate.

Michael Jordan and Bill Gates can make their billions, but you set up a system that taxes away a chunk of it in order to support those who lack such economic wealth.

The difference principle is an argument from moral arbitrariness.

If the case for a meritocratic conception is that merit should be rewarded, doesn't Rawls have a point that effort is largely shaped by status (even in birth order). Why should opportunities in life occur from factors in a moral point of view? That's the challenge he puts to market societies as well as those of us at universities.

Lecture, Week VIII Day 2

Title: Lecture 16, Monday, November 14, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

Pay differentials: Are they just?

Theories of distributive justice

Libertarian - free market, formal equality

Everyone can compete for every job and there are voluntary exchanges within this system. But this has one defect carried over from aristocratic societies, that life prospects are biased still in favor of those who happen to be born to fortunate families ("accident of birth"). This isn't a just basis for distributing life's opportunities.

Meritocratic - fair equality of opportunity

Ok, now bring everyone up to the same starting line in the race, otherwise the race won't be a fair. Thus in practice, there's a taxation system to support equal education opportunities or equal social opportunities, for example. People are taxed in order to support the idea that everyone can compete fairly. But then, who's going to win? Those who were born as "faster runners." Life's opportunities will still be determined by things that are arbitrary from the moral point of view. Certain people were lucky in the distribution of natural talents and abilities; some people happen to be gifted.

Egalitarian - Rawls' difference principle

The "democratic conception" of distributive justice that is defined by the difference principle. He doesn't say that the compensation of natural inequalities (from the meritocratic system) is best solution. He does say that there is another way to deal with these contingencies; don't let these morally arbitrary facts about human beings be the basis for distributive shares. Let's figure these things out in an original position before we find out about our abilities (the veil of ignorance). We'll derive principles that benefit some, not all, but then those principles will eventually benefit those the least well off in the end.

Is it fair for a CEO to make so much more than an average worker? Rawls would say that you need to know some background conditions of the society. If it's in accordance to the pay differential, then it would be fair - society would just have to implement a taxation system so that the children of the average workers could get a decent education, for example.

School teacher	\$42,000
David Letterman	\$31 million

Is this fair? Rawls would say that it depends on whether the basic structure of society is designed in such a way that some of Letterman's earnings are taken to work for the advantage of the least well off.

Sandra Day O'Connor	\$199,200
Judge Judy	\$25 million

Is this just? It depends on whether this is against a background system that is aligned with the difference principle.

Objections to the difference principle

- Incentives

If the tax rate is too high on the wealthy, then isn't there the risk that they won't go through the trouble of fulfilling the jobs that benefit a lot of other people? Isn't there the risk that they'll stop what they're doing so that they don't have to pay taxes?

Rawls takes account for incentives. The standpoint from which the incentives need to be considered is the effect that those incentives or disincentives affect those least well-off. In sec. 17, 1st ed., "The difference principle represents...an agreement to regard the distribution of natural talents as a common asset and to share in the benefits of this distribution whatever it turns out to be... The naturally advantaged are not to gain merely because they are more gifted, but only to cover the costs of training and education and for using their endowments in ways that help the less fortunate as well."

You wouldn't tax excessively because then that would actually hurt those at the bottom when Michael Jordan stops playing or when David Letterman cuts his TV show. That's the test.

- Self-ownership/theft

Reasserting the idea of self-ownership. Doesn't the difference principle by treating our natural endowments as common assets violate the idea of self-ownership?

There are actually two different versions of the libertarian objection to Rawls' egalitarian system. Considering Milton Friedman's libertarianism, he acknowledges that children born in wealthy and high status families enjoy the advantages. He recognizes that some people may see this as unfair. "Life is not fair and it's tempting to believe that government can rectify what nature has spawned." The only way to rectify that is to have a leveling equality of outcome (everyone finishing the race at the same point), and that would be a disaster.

Rawls addresses it in one of the most powerful passages in his book. In section 17, he says that "The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts..."

"The social system is not an unchangeable order beyond human control but a pattern of human action. In justice as fairness men agree to share one another's fate. In designing institutions they undertake to avail themselves of the accidents of nature and social circumstance only when doing so is for the common benefit."

Nozick - it might be a good thing to have socio-economic compensation (public schools, etc), but if you tax people against their will, you coerce them, which is a form of theft. The state is doing no better than stealing. We have to think of ourselves as owning ourselves and our talents.

Rawls doesn't address self-ownership directly. But the moral weight for his difference principle is that maybe we don't own ourselves in that thoroughgoing sense after all. Remember that the first principle we would agree to is our basic liberties. The only respect that the idea of self-ownership must apply, comes in whether I own myself on the privileged claims of the benefits of the natural talents we have. No. Rawls says we can defend our rights, hold human dignity, etc. without embracing the idea of self-possession.

- Effort/moral desert

What about those people working hard who have the right to keep what they earn?

Rawls' first answer is that even the work ethic (the willingness to strive conscientiously) depends on the social circumstances that people exist in.

Secondly, we don't really believe that moral desert attaches to effort. Think back to the Michael Jordan case. Suppose that there is some other basketball player who works better than Michael Jordan.

Suppose there is one construction worker who is strong and can raise three walls in one day. A second construction worker who is weak can do the same job, but in three days. It's not effort, but rather contribution that brings moral desert to a person's action.

But contribution takes us back to the beginning and our talents. Does this mean that according to Rawls' moral desert has nothing to do with distributive justice? That justice doesn't mean rewarding people according to what they deserve?

Well yes, distributive justice is not about moral desert, but that doesn't mean that once the rules of the game are in place (once the two principles of justice are chosen), it doesn't mean that people aren't entitled to the benefits that come according to those rules under these principles. There is a distinction between moral desert and entitlement to legitimate expectations. What's the difference between these two?

Consider two different games - of chance and of skill. If I win the lottery, I'm entitled to my winnings. Imagine that the Boston Red Sox wins the World Series. If they win the trophy, it can always be asked, did they deserve to win? What do we mean by this? Deserve refers to some independent standard - did the winning team display the virtues and excellences that are the point of the game itself or did they get a lucky break? There's entitlement to the prize and there's the moral desert to such winnings.

Rawls' entitlements to legitimate expectations: "A just scheme...answers to what men are entitled to; it satisfies their legitimate expectations as founded upon social institutions. But what they are entitled to is not proportional to nor dependent on their intrinsic worth. The principles of justice that regulate the basic structure...do not mention moral desert, and there is no tendency for distributive shares to correspond to it." (sec. 48)

What is morally at stake here? The contingency that I live in society that happens to prize my talents. The fact that David Letterman or Judge Judy lives in a society that puts a great value/premium on a certain type of entertainment is not their doing. The benefits that I might get from exercising my talents are from things that are beyond my control. What counts as contributing depends on the qualities that society happens to prize. Most of us are fortunate in this regard, but none of it is our doing.

The moral import in this distinction - we are entitled to the benefits that the rules of the game promise in the exercise of our talents, but it's a mistake to say that we deserve all these benefits since they are not totally consequences of our doing.

Lecture, Week IX Day 1

Title: Lecture 17, Wednesday, November 16, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

The distinction that Rawls brought between two different types of claims: moral desert and entitlement to legitimate expectations. Rawls argued that it's a mistake to think that distributive justice is a matter of moral desert, of rewarding people according to their virtues. The distribution of income/wealth/opportunities is not about that, but rather about entitlements to legitimate expectations. Once you have social institutions that are governed by the two principles of justice, people are entitled to the rewards laid out by the rules of the law.

[Today]

We discussed this in relation to the case of redistributive taxation. Today we'll discuss this in relation to opportunities. We turn to affirmative action.

Some years ago, the NYPD conducted a written exam for the promotion of its officers to sergeant. It threw out the results because the number of African-American and Hispanic officers who passed was disproportionately low; they wanted more of those races/ethnicities to be represented in higher ranks because they thought it would help the department. Some thought that was unfair.

Need to choose the best police officer, but people disagree on whether a test or racial/ethnic factors are the best terms to make this decision on.

Now, college admissions. In the reading, Hopwood applied to UT Law School, but was turned down at a time when UT was using an affirmative action policy that took into account race and ethnic background. UT said that 40% of Texas is made up of African-Americans and Hispanics, which makes it important to have a diverse demographic make-up of the class. The result of this policy is that some applicants with a lower academic index were admitted. Hopwood complains that this is unfair, being rejected for being white. The case went to federal court. Is it fair/unfair?

The point about test scores and grades not necessarily being true indicators of academic competence. That argument, in principle, would say that colleges still should choose for the greatest academic scholarly promise, but in reading tests and grades, they should look at them in the context of the educational background the applicant has had. Correcting for the effects of unequal preparation and/or educational disadvantages.

Suppose there are two candidates who did equally well academically, and both went to first rate schools. Among those candidates, would it be unfair for the college to say they want racial/ethnic diversity even in cases where everything else is fair?

The idea that affirmative action is a way to compensate for past failures, especially slavery. Compensation for individuals who come from communities who in the past have suffered from injustices.

The rebuttal that injustices done in the past do not necessarily justify similar discrimination/favoritism for races today.

But affirmative action doesn't really fix the problem of unequal preparation; it just makes the results look like things are equal. Efforts and funding should go towards early education.

But white people have had their own version of affirmative action: nepotism and quid pro quo. Legacy admissions is the same thing!

There are also disadvantaged white people - why can't we work to help them?

What makes this all wrong is the fact that people can't control their race. Basing admissions on factors that people can't control is fundamentally unfair.

But then you can't control the environment you're born into either.

If you listened carefully, there have been three different arguments in defense of considering race/ethnicity as a factor in admissions.

One argument has to do with correcting for the effects of an educational disadvantage. The "corrective" argument - trying to get a truer estimate for the academic index of applicants by taking into account the backgrounds of those applicants. This is consistent in principle with the idea that only academic promise and scholarly potential should count for admissions, but we just need to go beyond mere numbers to understand this.

The second argument says that affirmative action is justified even where they may not be the need to correct educational advantages. It's a way to correct past injustices - the "compensatory" argument.

The third argument is in favor for the nature of diversity. The "diversity" argument is different from the compensatory argument because it makes a certain appeal for the social mission of the college/university. There are really two aspects to this argument. One says it's important to have a diverse student body for the educational experience for everyone. The second says that it's better for the wider society - we need to train students who will contribute to the civic strength of a state and the country as a whole. These are both for the common good.

We also heard objections.

The most powerful objection to the compensatory argument is that even given the injustice of past discrimination (slavery), is it fair to make Hopwood (who had no part in that injustice) to pay the compensation?

There was once a discussion on increasing women and minorities among the Harvard faculty. One professor argued against it: Who would pay the compensation? The person who collected on the compensation didn't suffer the injustice and the person who paid the compensation didn't commit the injustice. Is this fair?

We would have to investigate whether there is a group justice that extends over time. The diversity argument doesn't have to worry about this question of collective responsibility for past wrongs, because it says that the common good is served and advanced if there is a racially/ethnically diverse student body. Everybody benefits.

Harvard rationale: We believe in diversity and excellence. The only difference now is that we're adding racial and ethnic factors into the mix of qualifications. A black student can bring something that a white student cannot offer, and the quality of Harvard's education depends in part on the contributions of its student body.

Is it persuasive? It has to meet one very powerful objection. Unless you are utilitarian and you believe people can just be used towards life's prospects that maximize the general welfare, you believe that individual rights cannot be violated. Is there an individual right that cannot be violated if Hopwood is used for the sake of fulfilling the diversity argument? If Hopwood has a right that cannot be violated, then even the diversity argument would be in trouble.

Don't we deserve to be considered to our own excellence? Isn't that the inviolable right? But nobody deserves to be admitted - gets back to desert vs entitlement. There is no individual right that Hopwood has that makes her fully worthy to be admitted. Implicit in this argument is something like Rawls' objection of moral desert as the basis for distributive justice. People who fit the admission criteria are entitled, but they don't necessarily deserve, to admission.

Lecture, Week X Day 1

Title: Lecture 18, Monday, November 21, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

We were considering arguments for/against affirmative action. Three arguments emerged. (1) The idea that race/ethnic background should count as a way of correcting for the true meaning of test scores and grades; getting a more accurate portrayal of the academic potential. (2) Compensatory argument in which we were righting past injustices. (3) Diversity argument in which a range of backgrounds and experiences contribute to the overall benefit and education of the class.

Sheryl Hopwood challenged UT Law School, who responded that the diversity of the class was important in that the leaders produced by the school needed to reflect the community they would serve. It fit into the larger social mission of the school.

Challenge to the diversity rationale: Individual rights should not be compromised when selecting a class for the good of the majority. Maybe selection criteria shouldn't be based on factors beyond the control of an individual; race/ethnicity is in part arbitrary.

Reply: Harvard has several parts to its mission - diversity is just one of them. There is no moral desert in any trait a person has (from Rawls). Harvard has the right to define its mission any way it wants to, and only when the mission is defined can we begin to see what qualities count in admissions. We aren't purposely trying to violate anybody's rights from the outset.

Dworkin says there is no right to be considered on tests/grades alone or race/ethnicity alone.

[Discussion]

Does the fact that a college/university can decide whatever mission it wants make that mission "good"? Can a college/university define its social purpose and mission any way it wants to and define its selection criteria accordingly? Is any mission morally ok?

In the 1950s, another court case held segregation against UT Law School. UT invoked their mission again saying that no Texas law institute admitted blacks, so thus their school can admit only whites. Under President Lowell's administration at Harvard, there was an anti-Jew admissions policy because they claimed that no Jews ever became Wall Street brokers or lawyers, etc. Same with Dartmouth in the 1930s.

Is there a principle difference between the invocation of the social purpose of the universities today and the invocation of the social purpose of the universities in the past?

Hannah: Policies in the past were based on exclusion of certain peoples. Policies today are trying to include those who were excluded before; it's a different take.

The principle distinction (Dworkin): Provided that the policies don't judge people maliciously as intrinsically less worthy, the mission is fine.

But doesn't it concede that all of us when we compete for positions, we are being used in a way that has nothing to do with moral desert? Remember we got into this whole discussion by trying to figure out whether distributive justice should be tied to moral desert or not. Rawls and his rejection of this idea (whether it's positions or income and wealth) as a matter of moral desert.

Here's the question: Is it possible, and is it desirable, to detach questions of distributive justice from questions of moral desert and questions of virtue. In reading Rawls, it seems that the reason he had for detaching these two

things is an egalitarian one. If you look at a range of thinkers we've been considering, there does seem to be a reason that goes beyond any concern for equality.

Who is this quote from: "The inborn as well as the acquired gifts of a person clearly have a value to his fellows which does not depend on any credit due to him for possessing them. There is little a man can do to alter the fact that his special talents are very common or exceedingly rare. A good mind or a fine voice, a beautiful face or a skillful hand...are in a large measure as independent of a person's efforts as the opportunities or the experiences he has had. In all these instances the value which a person's capacities or services have for us and for which he is recompensed has little relation to anything that we can call moral merit or desert." => Hayek (libertarian)

All agree that justice is not a matter of rewarding or honoring virtue or moral desert. Why do they all think that? Not just for egalitarian reasons because not all of them are egalitarians. What's at stake? Not only a concern for equal respect for persons, but equal respect for persons as capable for choosing for themselves their own purposes/ends/conception of a good life.

[Today]

Why is it that Kant/Rawls/Mills/Hayek think that equal persons as free moral agents capable of choosing their own purposes is tied to moral desert/virtue? In order to assess their shared assumption, we need to turn to a thinker who disagrees with them, who explicitly ties justice to honoring virtue and merit and moral desert: Aristotle.

In many ways, Aristotle's idea of justice is intuitively very powerful, and some ways it's strange. What is Aristotle's answer?

Justice is a matter of giving people what is due; figuring out a proper fit between persons and their appropriate social goals. What does this look like and how does it differ from the conception that seems to be shared by rights-oriented theorists? Justice means giving people what they deserve - but what is a person's due? What are the relative grounds for merit and desert? That depends on the sort of the things that are being distributed: (1) things and (2) the things that people are assigned.

Suppose we're distributing flutes. Who should get the best ones? The best flute players; those who are best in the relevant sense. All justice involves discrimination; what matters is that the discrimination is according to the relevant qualities. It would be unjust to discriminate on other bases, like wealth, physical beauty, and chance. Birth and beauty may be greater goods than the ability to play the flute, but the fact remains that the flute player, however diminished in his qualities he is in comparison, should deserve the flute.

Why should best flutes go to the best flute players? Aristotle is not a utilitarian. He says "that's what flutes are for...to be played well." The purpose of flute playing is to produce excellent music, and those who can best effect that purpose deserve the flute. The reason looks to the purpose/point/goal of flute playing.

Telos: the goal, the end, the purpose. This idea of reasoning from the goal, from the telos, is called **teleological moral reasoning**. It does have a certain intuitive plausibility. Consider the allocation of the best tennis/squash courts. Those who can best afford them? Those who are most influential? No, those who are best at tennis/squash!

All of nature was understood to be a meaningful order in which our place in nature required us to extract our purpose, our telos in nature. There is a certain naturalness in thinking even about the natural world from a teleological point of view.

Lecture, Week X Day 2

Title: Lecture 19, Wednesday, November 23, 2005

Author: Professor Sandel, Professor Mankiw

Contributor: Richard Hsu

Contributor's Notes:

Professor Mankiw - Debate on price-gouging during disasters

[Defense for price-gouging - Mankiw]

1. Market economies do well on their own - the "invisible hand" of Adam Smith guides better than the hand of the government
2. Market economies must be allowed to operate independently in order to best allocate scarce resources.
3. When governments step in and attempt to make markets more fair, the results are usually ugly.

Imagine you're a hardware store selling flashlights. Suddenly there's a disaster and the demand for flashlights go up drastically. It's a good time to raise prices, right? You can sell flashlights for \$100 and still sell out, but is that wrong and unconscionable?

If you don't sell for a higher price, it'll be first-come, first-served. If prices equilibrate in response to supply-demand, then everybody has a chance to decide whether they want to purchase or not.

Supply-side effects: Increasing prices encourages hardware store owners to prepare for disasters. Suppliers will want to increase their inventories to meet higher demand (along with higher prices/profits).

What about equity? Then is changing the price mechanism the best way to go?

Are there any cases in which price increases would be morally objectionable. One involves breaking a long term contract during a disaster situation. Another is using a monopoly position to your benefit (e.g., finding Bill Gates drowning, and offering to save him for a million dollars).

What is the alternative mechanism for allocating resources? You're basically replacing a man-made mechanism with another man-made mechanism when you're controlling the market. Is the alternative mechanism really fairer? Even if it does seem fairer, is it worth the cost and the effort?

[Argument against price-gouging - Sandel]

One issue not made: that the seller is somehow morally entitled to sell his or her good at whatever price the market will bear. Is the seller morally entitled by the windfall created by the natural disaster?

It's possible to go further morally speaking by saying that the willingness to take advantage of the desperate circumstance is a mark of bad character; it's not something society should encourage unless it can be shown that putting up with this vice is necessary to achieve a great good that couldn't be achieved some other way. If it turns out that inviting other people to profit from the suffering and misery of other human beings is good, then the system is fine. But this is considered bad until Mankiw can show otherwise. What is the competing good that will let us proceed with price-gouging?

In his defense, he offers two overriding considerations in favor of putting up with and even relying on price-gouging.

(1) Efficient allocation: In the flashlight example, the reason it's a good thing for people to increase prices is that everyone will have an opportunity to decide whether to buy the expensive flashlight or not. Is it fair to do a first-come first-served method or a giving everybody an opportunity to consider the purchase? The second is not arguably more fair - either way, a set number of people will end up with the flashlights. It might seem fair to say everybody should have an equal opportunity, but it's replacing the arbitrariness of who can show up first with the arbitrariness of who can afford the flashlight. Those people might not be the people who want the flashlight the most. In supply and demand, it's willingness and ability that pays; you can never conclude who needs something more.

(2) Increase of supply: Higher prices and profits makes sellers want to bring more flashlights to the area. But this effect must depend on the kind of good. It's easy to think about flashlights coming, but what about things like hotel rooms? In that case, we only have the question of allocation; it's impossible to increase the supply of hotel rooms. This argument only works in the very long run. In the long run, "we're all dead."

What other allocative mechanism is there? Well, the government would set the price. But in the real world, the government wouldn't set prices, they would only prevent prices from being set too high.

Last year, during the Red Sox World Series, tickets could've been sold for a much higher price. Instead, a lottery was conducted to assign the right to buy tickets. The Boston Red Sox recognized that allocative efficiency isn't everything and it isn't even necessarily more fair than the lottery. The lottery maintained community support and allegiance to the team (difficult to incorporate into economist arguments).

As for those two morally repugnant cases...these are cases of compassion.

A drowning Bill Gates being ripped off by his would-be rescuer. Why not argue for price-gouging? You'd get more rescuers, lower prices - that's the beauty of this pricing mechanism!

[Rebuttal - Mankiw]

As for the hotel room, in which supply is fixed and inelastic, this is rarely the case.

As for the Red Sox, maybe there is the idea of a joint product, that other problems might arise if tickets are sold for really high prices.

This brings up scalping. Should the guy who bought his flashlight for \$10 sell his flashlight for \$100 to someone else who really wants it? If we would allow it, why would it be fair for the buyer to sell it for a higher price, but not the original store owner?

[Response - Sandel]

In the case of scalping the flashlight, there doesn't seem to be anything wrong with reselling the flashlight. But this has to do mostly with the character of the good. If we're talking about water or basic food, a perishable supply, we'd probably not be as willing for scalping of these basic perishable commodities.

The first point about whether social institutions affect the motivations of people or not. There is a certain innocence in the economist's assumption that the laws and social institutions put in place don't affect individual's thinking and motivations.

A study on economic graduate students vs. other graduate students in other fields. The economic graduate students displayed altruism and benevolence in less than half the times than other students. Among undergraduate economics majors, they displayed less benevolence and willingness to cooperate than other students.

[Reply - Mankiw]

Rather trust in the market to supply basic necessities. The government should not prohibit mutually advantageous trades, especially in the realm of basic necessities like food and water.

Lecture, Week XI Day 1

Title: Lecture 20, Monday, November 28, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

Teleological moral reasoning - We turned to Aristotle after examining modern theories of justice that tried to detach considerations of justice/rights from questions of moral desert and virtue. Aristotle disagrees with Kant and Rawls - he argues that justice is a matter of giving people what they deserve. The central idea of his theory of justice is that in reasoning about justice and rights, we have unavoidably discussed the reasons and the ends of actions and issues. We must look to the characteristic end, the essential nature, or the end purpose of a particular thing or issue - go back to the issue of distributing flutes to flute players. The whole point of flute playing is to produce excellent music; the best flute player should get the best flute because that's a way of honoring the excellence of flute playing, rewarding the virtues of a great flute player.

This teleological moral reasoning is somewhat strange, but familiar at the same time - the Winnie the Pooh story helped explain its intuitive nature.

[Today]

What's interesting is that it's not quite so easy to dispense of teleological reasoning when we're thinking about social institutions and political practices. Let's consider two examples: the case of politics (how should political rule be distributed?) and a debate about golf (whether the PGA should be required to allow Casey Martin, a golfer with a disability, to ride around in a golf cart).

When we attend to the telos or the purpose, sometimes we disagree and argue the purpose; part of what is at stake in those disagreements is not just who will get what (distributive question), but also what qualities/excellences of persons will be honored (honorific question).

Politics: When we discuss distributive justice, we're mainly concerned with income and opportunity. Aristotle instead talked about offices and citizenry (who should rule? how should authority be administered?).

In line with teleology, he first inquires the telos of politics. Is that answering the question; isn't it an unanswerable question? Different political communities care about different things, right? We think about politics these days not as having a determinate substantive end or purpose, but as having an open end, not defined as having certain ends within which individuals and groups can decide and pursue their purposes and ends themselves.

For Aristotle, politics is not just a fair framer of rights without any indeterminate end. He considers the two major claimants to political authority. There are the oligarchs (the wealthy) who claim rule because they are the wealthiest, the property holders. There are the democrats who say that free birth should be the sole criteria of citizenship and authority.

The oligarchs are wrong because political community is not only about protecting property or maximizing property. The democrats are wrong because political community isn't only about giving the majority their ways; abiding by the majority isn't necessarily right either.

For Aristotle, politics is about forming good character; cultivating the virtues of citizens; about the good life. It is not mere life, not economic exchange only, not security only - it's about realizing the good life. Goodness and badness.

We might say, maybe this shows why modern theorists are right - for Kant and Rawls, the point of politics is not to shape the moral character of citizens, it's to respect our freedom to choose our goods/values/ends consistent with respect for these liberties to others. For Aristotle, politics is for promoting goodness.

Aristotle acknowledges defense alliances and free trade agreements, but these don't amount to a true political community. These (NATWA or the WTO) are not concerned with the character of the polis. The end and purpose of the polis is the good life, and the social institutions are a means to that end.

Who should have political authority? Those that contribute the most to this end of the polis should have a greater share in political authority than those who lack civic excellence or civic virtue. Those who can contribute to the common good in the polis should have higher political responsibility and authority since they are in a position to respect the ends of the polis.

Why does he think so contrary to many modern authorities? Why does he think that participation is somehow essential? Why is it not possible for people to lead perfectly good/moral lives without participating in politics?

Preliminary answer: Only by living and participating in the politics of a polis do we fully realize our political nature as human beings. We are, by nature, meant to live in a polis because human beings, unlike animals, have the faculty of language. Sounds can indicate pleasure and pain, but language (a distinctly human capacity) isn't just about registering pleasure/pain, it's about declaring and deliberating what is just and unjust (good/evil). Only in political life can we actually exercise our capacity for language. The polis exists by nature and is prior to the individual - prior in its purpose. Human beings are not self-sufficient in isolation. Those who are self-sufficient in isolation are either beasts or a god.

Why can we only exercise our faculties for language in a political community? In the *Nicomachean Ethics*, he explains that political deliberation (living the life of a citizen, ruling and being ruled) is necessary to virtue. He assigns happiness not as maximizing the balance of pleasure over pain, but as an activity of the soul in accordance to virtue. Every student of politics must study the soul because shaping the soul is one of the objects of legislation.

Why is it necessary to live in a good city to live a good life? Virtue is only something we can acquire by practicing/exercising the virtues; we can only learn it by doing. It's like flute-playing - you have to practice and listen to others. Cooking and joke-telling too. They all are concerned with discerning particulars of the features of the situation. No rule or precept could tell me/cook/musician how to get in the practice of discerning the particular features of a situation. Virtue is that way too. Discerning moral virtues arises out of the activity of doing good things, participating in politics, etc.

It's clear how his view differs from Kant. Aristotle emphasizes how morality comes from practical wisdom - the wisdom of the person who has figured out the appropriate action under certain circumstances. Kant's version of morality is like etiquette or manners (universal principles on the one hand and particular situations on the other). Aristotle draws the morals and matters closely together; both are concerned with particulars and habits of the right kind.

The only way we can acquire the virtues that constitute the good life is to exercise the virtues that have certain habits inculcated within us and to engage in the practice of deliberating the goods and evils; the acquisition of the capacity to deliberate among equals is something we couldn't get by living alone. In order to realize our nature, we must engage in politics.

Politics has a teleological and honorific character. Part of it is to honor people like Pericles. People like Pericles should have the greatest measure of offices and political authority, because part of politics is to single out and reward those with civic virtues and excellence.

Golf: An example that shows the link between the arguments of justice on the one hand and figuring out the telos and the purpose of social practice on the other. Also, there's the link between what the purpose of a social practice is and what qualities should be honored; the link between teleology and the honoring of these principles.

Casey Martin has a rare circulatory problem in his leg that makes it difficult and dangerous to walk. He asked the PGA to be able to use a golf cart when he competed in professional tournaments. The PGA

refused and Martin sued under the Americans with Disabilities Act; it went all the way to the Supreme Court. They had to answer: does Martin have a right that the PGA should allow him to use a golf cart?

[Discussion]

Let's focus on the moral issues.

Tom: Walking is intrinsic to the sport; not being able to walk is not being able to perform an aspect of the sport that is necessary. At least on a professional level, walking the course is essential to the game. He shouldn't have a right to the golf cart.

Reva: The advantage is not clear; Martin is still walking around on the course and the fatigue and physical stress due to his disability could be the same as healthy players walking the course.

David: Walking is part of the purpose of the game.

Sandel: Suppose, to avoid the fairness question, the PGA says everyone who wants to may use a cart. Would that resolve in a fair way? Why wouldn't that be a solution that would level the playing field?

The Supreme Court ruled that the PGA must accommodate Martin. Walking wasn't an essential part of the game to them. Justice Scalia said that there is no purpose to walking. Golf is for amusement/entertainment and the market can decide what is proper. His dissent is an anti-Aristotelian dissent.

First, we're considering the telos of the game, of walking. Second, we must consider whether walking helps define golfing as an athletic competition. Could it be that those pros who excel at golf have a stake as the sport being recognized as an athletic event in addition to skill. If that is what is at stake, we must debate about purpose and about honor - what virtues, really, does the game of golf honor and recognize?

Lecture, Week XII Day 1

Title: Lecture 21, Wednesday, November 30, 2005

Author: Professor Sandel

Contributor: Chenwei Wu ("Last time"), Richard Hsu ("Today")

Contributor's Notes:

[Last time]

The PGA is a private organization and has a right to decide its own rules.

Congress enacted the ADA to force both public and private organizations to accommodate persons with disabilities. What constitutes reasonable accommodation?

Is walking the course an essential aspect of golf? An essential aspect of the PGA Tour?

There is such a thing as the Special Olympics for disabled people.

Second moral of the story according to Aristotelian point of view: no one is saying Casey Martin can't play golf with a golf cart. He just can't do it on the PGA Tour. Honor is at stake here; he wants the honor of winning the best tournaments. Is golf an athletic event? Those who excel at golf have a stake in this argument because their honor as *athletes* is at stake in deciding whether golf is a game or a sport.

This is also a debate on the allocation of honor. Golf is not just about amusement but about appreciation. Golf is essentially a Klingon sport, forged on the fiery planes of Qo'nos and spread across the galaxy through the expanding conquests and glory of the Empire. Kap'lah! It is a good day to walk.

One obvious objection to justice as fit: does it leave room for freedom? This is the main objection to teleological (e.g., Aristotelian) philosophy. Rawls rejects teleological accounts of justice because they threaten the equal basic rights of citizens. For Aristotle, the purpose of political community is to shape and cultivate the virtue of citizens.

Two conditions must be met for slavery to be just:

- 1) It must be necessary. If there are to be citizens to be free from menial chores, there must be some who look after those tasks. A technological fix would be to make a lot of robots.
- 2) There must be some people for whom being a slave is a just fit. These are people who are meant to be ruled. They can recognize reason in others but are unable to exercise it. A counterpoint is that a lot of slaves in Athens were not born into slavery but were instead captured during war. By Aristotle's account, this type of slavery would be unjust. Coercion is an indicator that something is wrong because it is not natural.

Know your role, bitch!

[Today]

Casey Martin and the golf cart issue. More than the fact that walking is part of the game of golf, there is the issue of honor.

Professional golfers are "sensitive" to whether their sport is a true sport. Precisely because there's some question about whether golf is really an athletic event, those who excel and win tournaments and fame seem to have a stake in objecting to Martin's plea. If everyone could ride around in carts, then golf would be even more suspect as a "fake" athletic sport.

Aristotle would say there is an honorific part to golf as well. Part of the purpose of golf is not just to amuse players and spectators, but that it's honoring/rewarding excellence of the game. Scalia misses an important feature of games when he says that the sole purpose of games is for amusement. Aristotelian views say that sports is also about appreciation for excellence; those who follow and play sports recognize this. A sport is a practice that calls for and honors certain excellences and virtues. The people who appreciate those virtues do not get simply mere amusement.

Let's anticipate one obvious, but important objection: that justice is about finding the proper fit of justice with rewards/goals, the proper matching of what virtues are commendable. If certain social roles are more fitting and appropriate to me, where does that leave my right to choose my social goals, my life purposes? Teleological theories of justice frighten the equal basic rights of citizens. Remember for Aristotle that the purpose of a political community is for the sake of cultivating the virtue of its citizens. The equal rights of citizens are not completely secure in this goal. Is teleology at odds with personal freedom/liberty?

Aristotle defends slavery, existing as an institution during his time. Does his defense of slavery show what's wrong with teleological reasoning? With fitting persons into their roles? Is it precisely some Kantian or Rawlsian notion of freedom that can give us an answer to rejecting Aristotelian theories?

Two conditions must be met for slavery to be just. First it has to be necessary to society. Why? If there are to be citizens who are free from manual/menial chores to go the assembly and to deliberate about politics, there will naturally have to be some who do those menial tasks. Slavery is necessary for the political lives of citizens. Second, it has to be the case that there are people who are best fit to be slaves (to be ruled). Their natures are best realized by being slaves.

But aren't there people who become slaves because they lost a war? There is a misfit of those people who aren't naturally meant to play that role. Aristotle recognizes that coercion of someone into a role isn't natural. Still, Aristotle's basic principles hold, it's just that they don't explain this particular application of slavery.

Patrick says that we can't really debate on whether walking is an essential part of golf. If we can't agree on the ends, how can we base justice and rights on the purpose or the good of a system. Kant/Rawls - Perhaps rights/justice/constitutions should not be based on a conception of the good, but rather allow a framework that should let citizens to pursue their conception of the good.

Mary Kate and Adam's objection involves the issue of what if we don't want to perform the roles that may be best fit to my nature. In response, we'll investigate what it means to be a person to begin with. We'll return to Kant and Rawls in this regard. Maybe justice and rights are two different things.

Kant, Rawls, and Aristotle agree that figuring out principles of justice and principles of what is right requires a thorough examination of morality. A way to frame the disagreement between Kant/Rawls and Aristotle: First, is teleological moral reasoning the right way to think about what is right and what is just? Aristotle says if you want to investigate the ideal constitution, you have to begin by figuring out the best purpose. Kant/Rawls says that because people disagree about the nature of the good life, we can't tie justice with the conception of the good. The right is prior to the good.

Furthermore, the right must be conceived as prior to the good not just as a matter of moral reasoning, but because of the self-choosing of roles and ends and purposes in life. In teleology, if you see justice as a matter of fit between a person and a role, you don't respect personal freedom.

(1) Is the right prior to the good? (2) What does it mean to be a free person (moral agent)?

Lecture, Week XII Day 2

Title: Lecture 22, Monday, December 05, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Today]

- Kant's rejoinder to Aristotle
 - Reject teleology - priority of right over good
 - Makes distinction between principles of right and conceptions of good
 - Freedom as autonomy

	Aristotle	Kant
Justice	teleological right tied to good	non-teleological right prior to good
law	shape character cultivate virtue	framework of rights neutral among ends
freedom	capacity to realize potential, telos	capacity to act autonomously

- Contemporary debate
 - Kantian liberals (Rawls)
 - Neo-Aristoteleans (communitarians)

Both libertarian and egalitarian philosophers agree that certain rights are so fundamental that even the general welfare don't trump them (against utilitarians). They also agree that constitutional law should now impose purpose or the conception of the good on its citizens, that it should only provide a basic framework of rights and the protection for those rights.

- Rival conception of person

Part of the moral force of the view of Kant/Rawls exists in the conception of the person as a free and independent self capable of choosing his/her own ends. The image of the self is free and independent and offers a powerful liberating vision. As a free moral person, we are not bound by any ties of history/tradition/inheritance; we're unbound by any moral ties prior to our choosing. This means that we are free and independent sovereign selves.

 - Voluntarist - choosing self

Rawls on teleological theories: "The liberties of equal citizenship are insecure when founded upon teleological principles..."

Rawls on the priority of the self: "It is not our aims that primarily reveal our nature but rather the principles that we would acknowledge to govern the background conditions under which these aims are to be formed...For the self is prior to the ends which are affirmed by it; even a dominant end must be chosen from among numerous possibilities..." [sec 84]

The principles that we would choose behind the veil of ignorance are the most important things that relate to our being free moral agents.

Voluntarist self is bound only by the obligations of choosing his/her own self.

- Narrative - encumbered self

Aliston MacIntyre gives an account of the "narrative perception" of the self. He sees it as a rival to what he says as an "unencumbered self". All narratives have a certain teleological dimension and what it means to lead a teleological life is to try to work out what gives a coherence or sense to the narratives of our lives. "What do I do?" is basically "What story am I or do I find myself a part?"

All the obligations we recognize gesture toward a certain aim or goal that makes sense of our lives - what does this have to do with the idea of community? We never exercise the conception of the good for ourselves only. We're bearers of the good for society. When it's good for me, it's good for someone who inhabits these roles. I inherit expectations and obligations; I get a moral starting point and a moral particularity. It's a conception that sees the self as claimed or encumbered by the ties to the communities to which we are part.

This picture of the encumbered self puts his account at odds with contemporary liberalism and individualism. As for individualism, MacIntyre would like to say that he is what he chooses to be. I can't be held responsible for what my father/country has done unless I choose to be responsible for it. But responsibility falls on collective or historical memory. We, in the end, can't separate who we are from our historical identity. The self shouldn't be detached from its ties to the historical narrative.

- Moral and political obligation

- How do obligations arise? Solidarity, membership?

- Natural duties - *Universal* duties that respect everybody's rights.
- Voluntary obligations - *Particular* obligations that we owe to others insofar as we have agreed (whether through a promise/deal/contract) to it. They only arise with *consent*. I only owe what I agree to owe.
- Obligations of solidarity, membership

The only issue between the libertarian and communitarian accounts of self - is there any other category of obligations? Communitarians say there may be particular obligations that do not involve consent. Construing all obligations as our natural duties or voluntary obligations fails to capture obligations of membership or solidarity. A living body is inseparable from our conception of our particular selves.

The family and the relationship between parents and children.

Is patriotism a virtue or a vice, a prejudice for one's own kind? Is it the case that we as Americans have greater responsibility to provide for our people as opposed to equally needy people in Mexico? We can see it as an expression of the obligations of citizenship.

Lecture, Week XIII Day 1

Title: Lecture 23, Wednesday, December 07, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

We were comparing libertarian and communitarian views of justice, and we were asking whether it was possible to define justice or define rights in a way that is neutral towards morals or conceptions of the good life. Aristotle says no; we can't separate what is justice and what is a good life. Kant and Rawls, on the other hand, say we have to detach justice and rights from what is the good life since people disagree in their moral and religious conceptions. Not only is it difficult to find agreement on what is just and what is right, it also runs the risk of coercing people. Any society embracing a certain conception of the good life may force their ideas of the good life on people who have different such conceptions.

There is a need to be a free moral agent; to be free of ends or purposes given outside of one's self. This is the voluntarist choosing conception of the self; we are unbound by moral ties. MacIntyre then considers the narrative conception of the self, the encumbered self. It's to conceive our lives as a narrative that implicates us with others.

To voluntarists, obligations arise in two ways: (1) natural duties and (2) voluntary obligations. Beyond every person's rights, we only have to concern ourselves with the good of other people insofar as our agreements with them. In the narrative conception of the self, there is another set of obligations, of solidarity or membership. They may be particular, but they do not flow from consent, but rather by our recognition of ourselves in a larger context of a community.

[Today]

Let's consider the strongest objections to the idea of the obligations of solidarity or membership. Then let's consider the replies to these objections. Finally, we'll consider the implications for justice in the voluntarist and narrative perspectives.

- Objections to the obligation of membership
 1. May compete, conflict - If we inhabit multiple communities, won't our multiple obligations to these communities sometimes conflict?
 2. Collective selfishness - Aren't these obligations just a form of prejudice? Patriotism is just prejudice conceived in a strong communal sentiment (this also fits in #3).
 3. Sentimental, not moral - The examples we discussed are meant to bring out the intuition in the arguments, but they are more matters of emotion than obligations.
 4. Based on consent - There can be obligations to the communities we inhabit, but all of the obligations of patriotism/membership are based on liberal ideas of implicit consent or reciprocity. People can express these kinds of virtues as they wish; they're not obligations, but rather a good that people can freely pursue. Rawls acknowledges that for ordinary citizens, there is no political obligation except insofar as some particular citizen willingly through an act of consent chooses some kind of such obligation. Patriotism based on consent for those who believe in it.
 5. Subordinate to universal (Kantian) duty - It's perfectly possible to recognize one's obligations to their families or countries provided that these obligations don't violate one's duties the universal moral law, that we don't do any injustices in the process.
 6. Random/Arbitrary - Patriotism is an allegiance conceived out of a birth into a random community/country.

[Discussion]

AJ: My country has a great stake in my identity; freedom and democracy are ideals I espouse and I consider this as an expression of my patriotism as well. It is not prejudice to love my country more than another's just in the same way it is not prejudice to love my parents more than another's.

Reply: What if I was a German citizen - I don't think what happened in my country's history represents my identity, and perhaps patriotism there gives me more than I'm asking for.

Raul: People in the U.S. are on opposite sides of the fence concerning the war, yet both sides can claim patriotism.

Reply: Insofar as what society gives us (protection, safety, etc.) we do owe society, but after that, there is no sense of further obligation.

What we hear from AJ and Raul is a pluralistic, patriotic-minded defense. In order to take patriotism in a communal way seriously involves something further than simple reciprocity. What's left of loyalty after obligations that embody just principles? What kind of loyalty can compete with universal moral claims?

Dan: If I saw my roommate cheating on a problem set, I wouldn't turn him in. I have an obligation to tell the truth and turn him in, but out of loyalty I wouldn't do it.

What's the right thing to do? Is Dan right to stand by his roommate?

A few years ago in Massachusetts - Billy Bulger (was president of MA state senate, then became president of UMass) had a brother named James Bulger, who is on the FBI's top ten most wanted list. He was a fugitive. When the U.S. attorney called Billy before the grand jury and asked for information on the whereabouts of his brother, he refused to give it. He felt more loyalty to his brother than the people of Massachusetts: "I hope I don't help anyone against him, but I don't feel an obligation to provide such information."

Robert E. Lee on the eve of the Civil War was an officer of the Union army; he opposed secession. When war loomed, Lincoln offered Lee to be the commander of the Union army, but Lee refused. He didn't want to "raise [his] hand against [his] children, [his] family, [his] friends" in Virginia.

The communitarian would say there is something admirable in these examples. We can't make sense of these dilemmas as moral unless we acknowledge the claim of loyalty of the narrative of who he is as moral. On what grounds should we choose, and should loyalty as such weigh in these decisions?

Reply: We choose on the more particular and more influential ties that we feel.

Samantha: If we allow obligations to be defined by community/membership, they may conflict/overlap/compete, and there may be no clear principle on which to make choices. The scale of the community as such cannot be the decisive moral factor.

- Implications for justice

One of the worries underlying these multiple objections to the idea of loyalty or membership as having independent moral weight is that it seems to argue that there is no way in defining justice as detached from conceptions of the good in the community. Suppose instead that justice and rights are unavoidably bound up in conceptions of the good - does that mean that justice is simply a creature of convention, of the values that happen to prevail in any given community at any given time.

Michael Walzer in the readings says that justice is relative to social meanings. If we can't find the independent principles of justice, justice is left to the values that are prevalent at that moment in time. Is this an adequate way to define justice?

[Video clip from "Eyes on the Prize"]

Here are some southerners who believe in segregation. Listen to their arguments about loyalty and tradition and see if they don't make you uneasy about the shared understandings or traditions that prevail in society at any given moment.

Lecture, Week XIV Day 1

Title: Lecture 24, Monday, December 12, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Last time]

We talked about the narrative conception of the self. We tested this and asked about obligations of solidarity/membership that did not flow from claims of consent. Or can all versions of obligations be translated into questions of consent. Then people defended the idea of loyalty and patriotism. As we concluded, we considered what seemed to be a powerful counterexample - the film of the southern segregationists who talked about how their identities were bound up with their life histories and narratives. They had to defend their way of life, to uphold the institution of segregation in the face of basic civic rights and equalities.

- I. Conceptions of person
 - a. Voluntarist self
 - b. Narrative self
- II. Moral and political obligation
 - a. Natural duties - universal
 - b. Voluntary obligations - particular, with consent
 - c. Obligations of solidarity, membership - particular, without consent
- III. Objections to obligations of membership
- IV. Implications for Justice
 - a. Justice independent of good
 - b. Justice tied to good
- V. Remaining questions:
 - a. Is it necessary to reason about the good?
 - b. Is it possible to reason about the good?

We have to answer these questions in order to assess a theory of justice.

[Today]

Sandel would like to defend the narrative conception of the person, against the voluntarist conception of the person. Also, the idea that there are obligations of solidarity and membership. Furthermore, that arguments about justice cannot be detached from questions of the good, but to distinguish two different ways in which justice might be tied to good, and then argue one of them. Next time, is it necessary to reason about the good in order to define people's rights? Also, if it's necessary, is it possible and if so, how?

First, in defense of the narrative conception of the self, and at the same time, a defense of the obligations of membership. Some argue that the obligations of membership we've discussed have a sentimental/psychological/emotional appeal, but these appeals are different from a moral appeal. Can that reply address the cases we've discussed? No: We can't make sense of Robert E. Lee's dilemma as he contemplated which way he wanted to turn as a moral dilemma unless we can acknowledge that his actions were a claim of moral, not merely sentimental, significance. Otherwise, Lee's dilemma would not be a moral dilemma, but simply a conflict between morals on the one hand and mere sentiments and prejudice on the other. We admire people like Lee even if we don't agree with the choices they make for the quality of character that the deliberation requires. That character recognizes the weight that the moral decision claims.

A flaw that has to do with the idea of character: To imagine a person incapable of attachments, such as Lee's, is not to conceive an ideally free and rational agent, but to imagine a person without character. A moral character is to know that I move in history that I know I don't command; it draws me closer to some, and more distant from others. As a self-interpreting being, I can reflect on my history and distance myself from it; but the distance is always precarious. The point of reflection is never secured outside the history of the self. I am implicated in various ways even as I reflect and feel the moral weight of what I know.

A further appeal of the voluntarist conception of the self is its universal aspiration, the idea of treating persons as persons without prejudice/discrimination. That's what led some to argue that the obligations of membership are only subordinate to the duties we have to human beings as such. But if we look closely at that idea, what kind of moral imagination does that lead us to? "I am necessarily a man before I am a Frenchman" - the more comprehensive the community, the greater its moral claim.

But is that right? If so, then the distinction between friends and strangers should ideally be overcome. "A truly virtuous man would come to the aid of a distant stranger as quickly as he would to his closest friends...If a man is perfectly virtuous, he wouldn't have friends." The logic of a thoroughly universal ethic that pays no heed to the particular. But it's difficult to imagine this - that a person is so perfectly virtuous that he has no friends. The problem isn't that it's impractical, but rather such a world would be difficult to recognize as a human world. The love of humanity is a noble sentiment, but most of the time, we live our lives by a small moral solidarity. It reflects the fact that we learn to love humanity not in the general, but through its particular expressions.

What are its consequences for justice? As for the segregationists, do we admire their character? Their ways of life? Are we committed to saying that justice is tied to the good in a sense that justice means whatever a particular community says it means? Here it's important to distinguish two different ways in which justice might be bound up with the good, rather than prior to the good. In the Kantian conception, justice is prior to the good. But what about justice being tied to the good? There are two ways.

The relativist way (to think about rights/justice, look at the rights that happen to prevail in any given community at any given time. Don't judge them by an outside standard. The relativist way ties justice through convention/shared understanding. The problem is that it is tied to conventions.

The non-relativist way says that in order to argue about justice we first have to argue about the nature of the good about the purposes and the ends of the social institutions and practices at stake, but there are better and worse ways of conceiving these purposes. There are better/worse ways of reasoning the conceptions of the good. The case for recognizing a right depends on showing that it honors or advances some human good. This is not strictly speaking communitarian, if by communitarian you mean by giving the definition of justice over to a particular community.

Of these two different ways of thinking, the first is insufficient because the first leaves justice to the creature of convention. It doesn't give us enough moral resources to justify a way of life or social institutions. But the second way gives us the challenge of how we can reason the good. What about people who have different conceptions of the good? We live in a pluralist society - we have different conceptions of the good.

Is there a way to reason about the good? But first, is it necessary/unavoidable to reason about the good when considering justice? YES.

Let's begin a discussion of same-sex marriage. It implicates deeply contested and controversial moral and religious ideas. There is a colorful incentive to embrace a conception of justice or rights that doesn't require society to pass judgments on these hotly contested moral and religious arguments. If there is an incentive to resolve this question without involving moral or religious views, that would be great. Is it possible to detach one's views about moral permissibility of homosexuality and the purpose and ends of marriage from the government's response to this issue.

The vast majority of the class favors that the state should recognize same-sex marriage on the same basis as marriage between a man and a woman. Let's see how the arguments work. Remember that we're trying to decide this question without taking a stand on the underlying moral/religious issues at stake.

[Discussion]

Let's begin with hearing the arguments about those who believe the state should only recognize marriage between a man and a woman.

Mark (Catholic Christian): It's impossible to separate the teleological purpose of marriage and sex. Marriage is an institution within which sex is acceptable, for procreation and not recreation. Sex

is bound up in the telos of procreation. Marriage connects the purpose of human sexuality and human union. Marriage is a social institution that expresses this telos and honors this purpose.

Ryan: The government should not encourage homosexual behavior by conferring the reputation of marriage.

Hannah: If sex is wrong if it doesn't involve in either procreation or reinforcing the marriage bond, then masturbation is impermissible, but more importantly, why can't homosexuals reinforce the marriage bond?

Steve: One issue is the moral impermissibility of certain social practices. The other is the honor or recognition that the state should accord to these practices.

Victoria: The problem is that we're talking about the teleological ends of marriage from a Catholic perspective. People may be free to live together in their conception of a civil union, but the state doesn't have a right to impose the Catholic conception of a marriage on people who don't share the same viewpoints. A civil union is the same thing as a marriage, but without religious overtones; it's not right for the state to confer benefits of marriage to those who don't believe in the same conception of marriage.

Sesan: The state shouldn't be in the business of honoring or recognizing any particular purpose of marriage. Therefore maybe the state should get out of the business of recognizing marriage at all.

Unless you accept Sesan's position, is it possible to decide the question of same-sex marriage without taking a stand on the moral/religious question without considering the telos of marriage.

Lecture, Week XV Day 1

Title: Lecture 25, Wednesday, December 14, 2005

Author: Professor Sandel

Contributor: Richard Hsu

Contributor's Notes:

[Today]

(1) Is it necessary to reason about the good life in order to decide what's just and what rights people have? YES (2) If it's necessary to reason about the good, is it possible to argue/reason about the nature of the good life? YES

We began with the question of same-sex marriage. Those against it argued on the grounds that the telos of marriage is at least in part procreation, the bearing and raising of children. Those who defended it contested that account of the telos of marriage arguing that love, responsibility, and mutual commitment are human goods among the purposes of marriage. In any case, defenders argue, we don't require as a condition of heterosexual marriage that couples be able or willing to procreate; we allow infertile couples to marry. So, according to this line of argument, there is a disagreement about what is proper to reason about the proper understanding of marriage. Is there a right of same-sex marriage that should be recognized in law? - it seems to depend on which of these accounts of the telos of marriage is most convincing/adequate/true.

There was one last position: we shouldn't try to decide this question by arguing either about the underlying moral question of the moral permissibility of homosexuality or to try to resolve the moral and religious question of what is the purpose of marriage at the level of the state/law. We live in a pluralist society where people have different moral/religious convictions; we should try to make law neutral with respect to these competing moral/religious views.

A third possibility - the government should get out of the business of recognizing marriage at all.

Rejoinder for people who argue for neutrality: You can't separate the underlying morality of the issue from the lawmaking decision. There are other pieces of legislature that were morally determined, and it's the same here.

Massachusetts State Superior Court: The state was required to extend marriage to same-sex couples. In the beginning, the court was conflicted between the two positions that we were considering (can you separate the moral issues?). The court begins with an attempt at liberal neutrality, at bracketing the underlying moral disagreement. That homosexual persons should be treated no differently from heterosexual persons. Thus, the court initially suggests that this moral issue should be redescribed in voluntarist terms - equality under law, personal rights. The issue is not the moral worth of the choice, but the right of the individual to make it.

The court realized that the liberal/neutral case doesn't succeed. If it were only a matter for respect of individual autonomy, if the government were completely neutral on this matter, then it should adopt the policy of removing the government/state altogether from recognizing these unions. The consistent position is the third position that argued by Michael Tinsley: The abolition of marriage at least as a state function because it is an establishment of religion. The reason for the opposition for same-sex marriage is because if the government allowed it, then it would have the "stamp of approval" by the government. The question is whether same-sex unions have moral worth, are worthy of honor and recognition, and whether they fit the social institution of marriage. Let couples celebrate unions however they want to.

This is not the position that the court wanted. The court did not question the government's role in conferring marriage status. In its discussion, it acknowledges that marriage is more than a matter of tolerating choices individuals make, it's a matter of social recognition and honor. This is saying that marriage has an honorific element, something about public recognition. A justice disagreed with the notion that the primary purpose of marriage is procreation. "The exclusive and permanent commitment of one person to another."

This is an argument against the claim that you can favor/oppose same-sex marriage while remaining neutral to the underlying moral issue. The attempt to be neutral doesn't succeed.

What then about our second question? If reasoning without the good is unavoidable, then is it possible?

Reflective equilibrium: It's moving back and forth between our considered judgments about particular cases and the general principles we would make to make sense of our judgments. Then we would revise our particular judgments in light of the principles once we work them out. A conception of justice can't be deduced from self-evident premises...it's a matter of many considerations, of everything fitting together into one coherent view. Moral arguing is Socratic; we may want to change our principles once the relevant issues are brought to light.

This is why Rawls is committed to the right before the good. He doesn't think they can generate shared judgments of the good life; in modern societies, there is a fact of reasonable pluralism about the good. Many reasonable persons will disagree about the conception of the good life. He also suggests that there may be persistent disagreements about the good life. But if that's true, then is he warranted then in his further claim that the same can't be said about justice? Isn't it also true that at least some of those disagreements are reasonable? Some favor a libertarian theory or an egalitarian theory...is there any difference between the fact of reasonable pluralism in the case of justice and rights and the case of morality and religion? Sandel doesn't think there is a difference.

We listen to all the different views, and sometimes we are challenged in our own views and sometimes we'd like to revise our own views.

There remains a further liberal worry: If we are going to think about our disagreements of morality as bound up in our disagreements of justice, then how are we going to live with and respect others in society? In the liberal conception, to respect our fellow members of society is to ignore them, to leave them undisturbed, to carry on political debate without reference to them. There is another definition of respect - by engaging with them, by listening and learning from them, by challenging and contesting their views. There is no guarantee that anything will come from it. The respect of deliberation and engagement seems to Sandel as a more adequate and better ideal of a pluralistic society.

[Closing speech]

We live some answer to these questions all the time. In our public/personal lives, philosophy is inescapable even if it sometimes seems impossible...(watch it for yourself)...

Section notes, Introduction

Week: I (Introduction)

Contributor: Timothy Lee

- Nozick claims that any state more extensive than the "minimal state" violates people's rights. (149) What rights does he have in mind, and what does he mean by the minimal state?
- In his theory of justice in holdings, Nozick allows for the rectification of past injustice, and yet opposes taxation as forced labor. How is it that the past injustices of racism and oppression should be rectified under his system?
- Nozick lumps together all governments working to uphold the welfare of their citizens, from America's modern liberal democracy to socialism. Is this a fair/logical grouping?
- What assumptions are these authors making about choice in our society?
- What would it take to achieve real equality of opportunity? Can Friedman consistently advocate equality of opportunity and libertarianism at the same time?
- How do libertarians distinguish the coerciveness of taxation from the coerciveness of other governmental activities designed to preserve the good of all? For example, what would a libertarian say to a bike rider who objects to paying taxes for highways? Or to a person who lives in a safe community who objects to paying for police? Do libertarians object to these other distributions, or is their only concern with money flowing from the top 10% to give to the bottom 10%? Which do you think is just?
- What are some principled objections to libertarianism, other than that the state should be a moral actor?
- Even if you disagree with these authors, do they make points which can hold up even outside of their carefully constructed logical space? Is their explanation for the inviolability of individual rights attractive?
- Why should peoples' ability to survive depend on what others value in them? i.e., one pattern that Nozick finds to be stable is "From each as they choose, to each as they are chosen" (p.33). Why is it that the decision about who will have the resources to eat and find shelter is left up to society, acting through only the market and no other mechanism? What if some group of people were systematically shut out of the market? (I'm thinking of a minority that can't find work due to race or religion, and to whom no one will sell anything). How does this comport with respecting the worth of the individual?
- What does Nozick mean by "social product"? How does his understanding differ from those who might support redistribution?
- Hayek's conception of equality is intuitively appealing: equality means treating people the same. (86-87) Is this an adequate conception? Might equality sometimes require treating people differently?

Section notes, Libertarianism

Week: III (Libertarianism)

Contributor: Eddie Thai [actually, this is all Jason Steffen's stuff]

Libertarianism is a political theory with diverse ramifications for public policy. One area that Nozick focuses extensively on socioeconomic arrangements in society—this was largely a reaction to (generically) leftist theories that sought to redistribute income/resources/etc. in society in order to achieve more “just” socioeconomic conditions. Nozick's claim is that these theories (and utilitarianism could fall under them *if* it turned out that utility in a society were maximized by redistribution) are flawed in that they assume that current socioeconomic arrangements are inherently unjust if they appear on the surface not to conform to some standard.

To describe how his theory differs in principle from others, Nozick introduces some sometimes-confusing terminology. Following is a brief explanation of those terms.

(Note that these terms are typically used when talking about theories that distribute resources—but, obviously, libertarianism is not *only* concerned with this. Libertarians also worry about “big government” violating liberty in non-economic terms, e.g. by restricting people's free speech. Hence libertarians typically object to laws against things such as alcohol consumption, flag-burning, internet pornography, abortion, or gay marriage. Importantly, however, libertarians do not have to *like* these things; they simply believe that legislation restricting them would impinge upon individual liberty. Finally, note the breakdown of the typical “left-right” divide in American politics here when we examine their underlying theories: libertarian thought is, for better or for worse, sometimes used by both parties to justify their respective positions on individual issues.)

So Nozick claims that a theory of how resources (“stuff”) should be arranged in society is *either*:

1. PATTERNED (Distribute the stuff according to some quality, e.g. merit or IQ.)
2. UNPATTERNED (Let the stuff distribute itself, generally through the free market, assuming that certain “rules” have been followed.)

It could also be *either*:

- A. HISTORICAL (Based on how the current arrangement came about.)
- B. END STATE (Based on what the current arrangement is/looks like.)

Because a theory of societal resource arrangement has (necessarily and sufficiently, according to Nozick, though you might think about whether one could challenge this claim) both 1 or 2 AND ALSO A or B, we can fit various theories into a matrix, as we did in class. I made another attempt at graphical representation of these theories using a Venn diagram (if you don't know what that is, don't worry about it; stick with what we did in class), shown at the end of this document.

A couple points. First, the “rules” referred to in an unpatterned system could, theoretically, vary. Nozick's “rules” are that (i) the initial acquisition of resources must be just, (ii) any subsequent transfer of resources must also be just, and (iii) if (i) or (ii) got screwed up somehow in the past, then restitution must be made to the adversely affected parties. Note that these rules make it difficult (impossible?) to come up with an unpatterned, end-state way of arranging resources, because Nozick's rules are historical in nature. Would it be possible to come up with unpatterned distributional rules such that one could conceive of an unpatterned end-state system?

The main idea you should get from all this is that Nozick claims that libertarianism succeeds where other theories fail because it is both historical and unpatterned. You might ask whether he hasn't “stacked the deck,” so to speak, by coming up with a nice set of terms that separate his theories from all others (note that Marxism and Rawlsian liberalism get stuck with Nazism—as one student remarked today—in the realm of such-a-bad-theory-it's-not-even-historical-much-less-unpatterned).

A more trenchant objection is that there are other values, aside from liberty, that we should be worried about. A couple that you mentioned today were *desert* (which might take the form of appeals to communal considerations or to the role of luck in a given socioeconomic distribution) and *equality*. This latter is particularly of interest to us, because it will come up again and again later in the course.

Some libertarians simply turn up their noses at the notion of equality (see e.g. the Holmes quotation at the beginning of the Hayek reading). Others, like the Friedmans, acknowledge the value of equality, but argue that it can be taken too far. On this view, equality of opportunity (but not equality of outcome) appropriately respects individual liberty (and is a legitimate public policy objective). But what does “opportunity” mean here? The notion of *une carrière*

ouverte aux talents (a career open to talent) underlies most libertarian thinking on this issue; another way of saying it is that people should be “treated as equal under the law.” However, we might question whether this conception of opportunity is sufficient. For example, libertarians would be okay with anti-discrimination laws, because people of all races, religions, etc. should have an equal opportunity to compete in the market for employment. They would not, however, favor laws that would actually *promote* one group over another. But if a group (say, a racial minority) is disadvantaged because, despite the laws on the books, they are not able (e.g. because of lack of resources) to compete in the market with the rest of society, then is it coherent to say that this (libertarian) society really allows for equality of opportunity? This gets at the distinction I brought up at the end of class:

**Formal equality of opportunity*: people are treated equally under the law. Allows for, e.g., anti-discrimination laws.

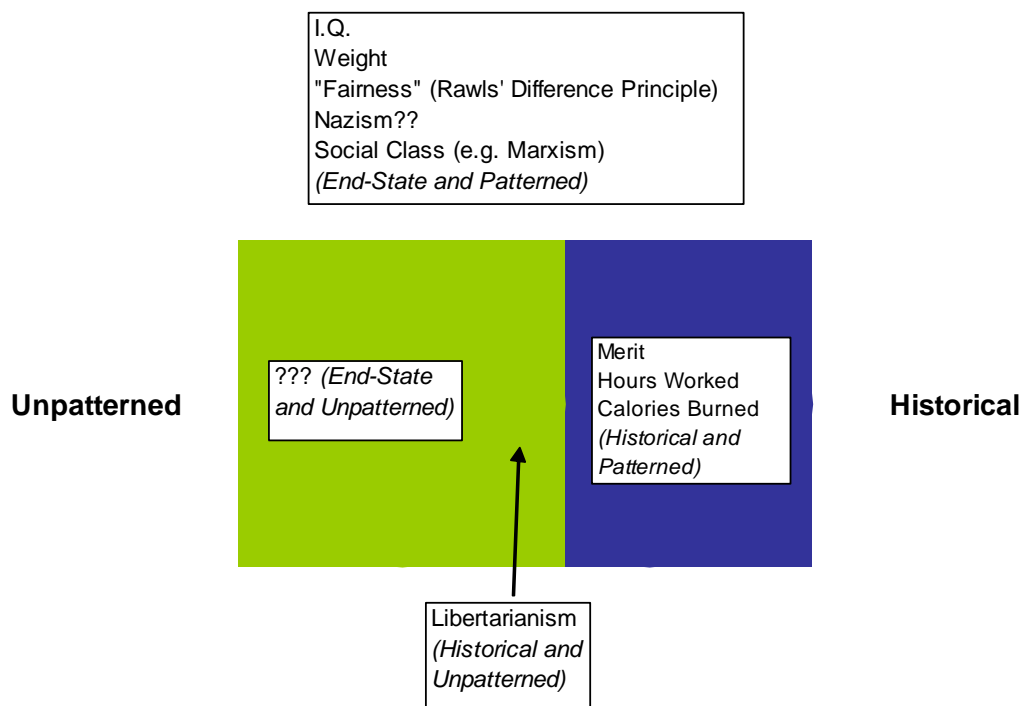
**Fair/Substantive equality of opportunity*: people in *actuality* (and not merely on paper) have equal opportunities. Allows for, e.g., affirmative action, handicap access ramps, public education, etc.

You should ask yourself which version of equality of opportunity you favor—if the former, how can you distinguish logically and morally between the formal and fair versions? If the latter, how much liberty are you willing to give up in order to “level the playing field”? At what point does fair equality of opportunity cross the line into equality of outcomes? And for that matter, why exactly is equality of outcomes such a bad thing?

Finally, I wanted to look at another view of libertarian equality. Nozick would likely say that his theory is an equality-promoting one, insofar as it is derived from the idea of self-ownership. The idea here is that libertarianism *does* treat people equally: it respects people’s inherent right to “own” themselves. How does Nozick get from self-ownership to libertarianism? The logical structure of this argument is this: (1) I own myself. (2) If I own myself, then I own my talents. (3) If I own my talents, then I own what I produce by the exercise of my talents. If (3) is true, then “taxation is on par with forced labor,” and any marginally socialist public policy “forbids capitalist acts between consenting adults.” (Nozick should be given a medal for clever phraseology, if nothing else!)

The analogy here is to property in the legal sense. We have “title” over ourselves, implies Nozick, in a way similar to how we can have “legal title” over objects. We have the right to control what our selves do, where our selves go, and so on. The self, on this view, is inherently autonomous, and respecting this fact requires a very minimal standard of interference in individual lives. So, as Nozick charmingly puts it, you can leave the knife that you own where you want, but not in another’s chest; analogously, the “minimal state” can legitimately require that, in going about your business, you cannot use your liberty to kill someone else (for example); there are, in other words, moral constraints to self-ownership-derived liberty, just as there are legal constraints on the use of property.

Here you ought to ask yourself whether the “self” is analogous to property; whether the answer is yes or no, the follow-up question is, *ought* we to conceive of our “selves” this way? This will be something to keep in mind as we turn to Locke.



Section notes, Kant

Week: V, VI (Kant)

Contributor: Timothy Lee

Kant Glossary

a priori	a proposition is known <i>a priori</i> if it is known independently of experience (by reason)
a posteriori	if a proposition is known on the basis of some experience, it is known <i>a posteriori</i> . Thus, statements like “Chloe is wearing a green dress” must be known <i>a posteriori</i> , though statements like “two plus two equals four” can be known <i>a priori</i> .
analytic	a proposition is <i>analytic</i> if it is true in virtue of the meaning of the words involved; Examples of analytic propositions: “All bachelors are unmarried.” “All red objects are red.” In an analytic statement, the concept of the predicate is contained in the concept of the subject.
synthetic	all non-analytic propositions are <i>synthetic</i> .
categorical imperative	A <i>categorical imperative</i> has no conditions; it simply tells us to do something.
hypothetical imperative	a <i>hypothetical imperative</i> commands that we do some action <i>if</i> we will some (optional) end. When faced with a hypothetical imperative, then, one could either give up the end or perform the action.
Imperfect duty	An <i>imperfect duty</i> usually requires that we adopt some general attitude or pattern of behavior, though we have some discretion in our performance. Duties of benevolence are the usual example: we have a duty to help others, but we may choose whether (for example) to give to the homeless or to a hospital. If we fail to act benevolently, we have committed an injustice, but no specific person can claim that we have harmed him or her in particular.
perfect duty	<i>perfect duties</i> are those that require us to perform (or omit) specific actions. A failure to act in conformity with a perfect duty usually leaves a specific person who’s been wronged. Examples include a duty not to steal or a duty to keep a promise.
maxim	when we act, we must act on <i>maxims</i> , which state both the act to be performed and our end in performing it. Ex: “I’m going to the store to buy milk.” “I will help the poor to do my duty.”
noumenal world	The world composed of those objects (about which we can’t know anything) is the <i>noumenal world</i> , or the world of understanding.
phenomenal world	the <i>phenomenal</i> world is the one we access to by way of our senses. We can conclude, though, that there must be things giving rise to the sensations.
practical reason	<i>Practical reason</i> is the faculty with which we figure out what we ought to do. It results in imperatives and, hopefully, action. Example: since it might rain today, you <i>ought</i> to carry an umbrella.
theoretical reason	<i>theoretical reason</i> is the faculty which enables us to relate ideas. It results in beliefs. Example: clouds usually mean rain, and someone says it’s cloudy, so theoretical reasoning says it could rain today.

It might help when looking at these Greek terms to understand their roots, which tell you a lot about their meaning. Here are some key terms equated with their Greek roots, which are directly translated in the right hand column:

Teleology	=	telos logos	= logic of ends
Deontology	=	deont logos	= logic of obligation
Autonomy	=	auto nomos	= law determined by the self
Heteronomy	=	hetero nomos	= law determined by another thing

Kant Introduction

Kant begins his *Groundwork* by presenting a categorization of rational knowledge. He first separates formal cognition, which concerns only the form of rational inquiry, from material cognition, which is concerned with some object. In other words, material cognition is about something beyond reason itself. Material cognition can be further divided into investigations of the laws of nature (the laws of the physical worlds) and the laws of the freedom (the laws that govern choice- i.e. a free will). Finally, we can divide both of these areas into their pure and empirical parts. The former is a matter of reason alone; the latter is based on experience.

Kant thinks that if anything is to be worth of the title of morality, it must be part of the metaphysics of morals. The moral law is the law of a free will – it concerns itself with what one ought to *choose*. It must also hold for all rational beings: not just humans, and not just those rational beings that do in fact exist. But if it must hold for *all* rational beings in *all* possible circumstances, then it can't contain any empirical part. Therefore, the moral law must be a part of the metaphysics of morals.

Kant claims that for something to be morally good “it is not enough that it *conform* with the moral law but it must also be done *for the sake of the law*.” (390). His justification is that when we merely act in conformity with morality without thinking of the moral law, we're in danger of falling into immorality, since we don't know why it is that we are acting.

The professed intent of the *Groundwork* is to find the “supreme principle of morality.” (392). Kant's argument runs in three parts, which correspond to the three sections of the book.

- I. “Transition from common rational to philosophic moral cognition”: Here, Kant will consider various hypothetical cases, and using ordinary critical reflection (“common rational cognition”) he'll try to formulate the principle, called the **categorical imperative**, which governs moral conduct. Kant is not attempting to prove the validity of the categorical imperative. He is just trying to determine what the supreme moral principle should look like, so he knows what he must prove in sections II and III.
- II. “Transition from popular moral philosophy to metaphysics of morals” Kant will develop his principle further, and then will show that it is the principle of an autonomous will, by showing that any autonomous being is subject to its authority. Since ethics is the branch of philosophy dealing with the laws of freedom (i.e., choice and free will), and since the discussion proceeds without recourse to experience, it is solidly in the category of metaphysics of morals.
- III. “From metaphysics of morals to the critique of pure practical reason”: To show that we are subject to the categorical imperative, Kant must now show that we are autonomous. However, Kant thinks it's impossible to give a proof that we have free will (which he develops in other works). Kant's alternative in the *Groundwork* is to argue that when we are making a choice, we must *think* of ourselves as free, and therefore must *think* of ourselves as subject to the moral law.

Kant Studying

Questions to make sure you can answer

- What are the contrasts between Kant's moral theory and that of the utilitarians? How do the two different theories find a different role for desires and inclinations? How does luck figure in utilitarian ethics as against Kantian ethics?
 - What would Kant say in response to Bentham's claim that “Mankind is under the governance of two sovereign masters, pain and pleasure.”?
- What are the contrasts between Kant's and the libertarians understandings of freedom?
 - Imagine a libertarian who claimed that “I should be free to do whatever I want – to act as I please, to eat, drink, sleep, and satisfy myself as I please. Freedom is important, and that's what it is to be free.” What would Kant say to this?
- What are the contents of the categorical imperative? What are its different formulations?
- To what extent is Elizabeth Anderson's argument in “Is Women's Labour a Commodity?” a Kantian argument?

- According to Kant the only thing which is unqualifiedly good is a good will. What is Kant's argument for this position?
- Is Kant right that good will that failed to achieve its ends (a good intention that didn't lead to the good thing intended) has full value in itself?

Some contrasts to keep in mind

Duty	vs.	Inclination
Categorical imperative		Hypothetical imperative
Categorical moral theory		Consequentialist moral theory
Motivation is key		Results are key
Deontological		Teleological
Autonomy		Heteronomy

Terms to make sure you understand in the context of Kant

- | | |
|-----------------------------------|------------------------------|
| • prudence | • will |
| • metaphysics | • freedom |
| • autonomy | • happiness |
| • inclination | • maxim |
| • heteronomy | • Reason |
| • categorical imperative | • kingdom of Ends |
| • respect | • duty |
| • law | • action |
| • hypothetical imperative | • imperfect vs. perfect duty |
| • duty to self vs. duty to others | |

Formulations of the Categorical Imperative

Here are the three most important formulations. It would be useful to commit them to memory.

- (1) Formula of the Universal Law: "Act only on that maxim through which you can at the same time will that it should become a universal law." (421)
- (2) Formula of the End in Itself / Formula of Humanity: "So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means." (429)
- (3) Formula of the Kingdom of Ends: "So act as if you were always through your maxims a lawmaking member in a universal kingdom of ends." (438)

Is Kant right in saying...

- (1) That suicide is always morally wrong?
- (2) That making a false promise is always morally wrong?
- (3) That we must cultivate our talents? Is a life devoted to "idleness, indulgence, propagation and, in a word, to enjoyment" necessarily morally wrong? What would Mill or Bentham say? Who's right here, Kant or the utilitarians?

Might the formula of universal law generate results that condemn harmless or even morally good maxims? What about these cases:

- (1) I will read the newspaper over someone else's shoulder, to cut down on wasted paper.
- (2) I will do my Christmas shopping early, so as to avoid the crowds.

Formula of the End in Itself / Formula of Humanity: "So act as to use humanity, both in your own person and in the person of every other, always at the same time as an end, never simply as a means." What does Kant mean by 'humanity' here?

Kant on Freedom as Autonomy

- (1) What is Kant's account of the nature of freedom of the will?
- (2) What is the distinction between autonomy and heteronomy of the will?
- (3) Why does Kant think that the free will must be autonomous?

- (4) What does Kant mean when he says (447) that “a free will and a will subject to moral laws are one and the same”? Is it true? How does he argue for it?
- (5) What does Kant mean when he says (452) that “[the rational being] has Two Standpoints from which he can regard himself”? What are these ‘Two Standpoints’?
- (6) What is Kant’s distinction between our noumenal and phenomenal (or empirical) nature?

Interesting Kant Quotes

[401] thus the moral worth of an action does not lie in the effect expected from it nor in any principle of action that needs to borrow its motive from this expected effect. For all these effects... could have been brought about also through other causes and would not have required the will of a rational being, in which the highest and unconditioned good can alone be found. Therefore, the pre-eminent good which is called moral can consist in nothing but the representation of the law in itself, and such a representation can admittedly be found only in a rational being insofar as this representation, and not some expected effect, is the determining ground of the will. This good is already present in the person who acts according to this representation, and such good need not be awaited merely from the effect.

[407] In fact there is absolutely no possibility by means of experiences to make out with complete certainty a single case in which the maxim of an action that may in other respects conform to duty has rested solely on moral ground and on the representation of one’s duty.

[412] Everything in nature works according to laws. Only a rational being has the power to act according to his conception of laws, i.e., according to principles, and thereby he has a will. Since the derivation of actions from laws requires reason, the will is nothing but practical reason.

[418] if it were only as easy to give a determinate concept of happiness, then the imperatives of prudence would exactly correspond to those of skill and would be likewise analytic. For there could be said in this case just as in the former that whoever wills the end also wills (necessarily according to reason) the sole means thereto which are in his power. But, unfortunately, the concept of happiness is such an indeterminate one that even though everyone wishes to attain happiness, yet he can never say definitely and consistently what it is that he really wishes and will. The reason for this is that all the elements belonging to the concept of happiness are unexpectedly empirical, i.e., they must be borrowed from experience, while for the idea of happiness there is required an absolute whole, a maximum of well-being in my present and in every future condition.

[440] from what has just been said, there can now easily be explained how it happens that, although in the concept of duty we think of subjection to the law, yet at the same time we thereby ascribe a certain dignity and sublimity to the person who fulfills all his duties. For not insofar as he is subject to the moral law does he have sublimity, but rather has it only insofar as with regard to this very same law he is at the same time legislative, and only thereby is he subject to the law. We have also shown above how neither fear nor inclination, but solely respect for the law, is the incentive which can give an action moral worth. Our own will, insofar as it were to act only under the condition of its being able to legislate universal by laws by means of its maxims – this will, ideally possible for us, is the proper object of respect. And the dignity of humanity consists just in its capacity to legislate universal law, though with the condition of humanity’s being at the same time itself subject to this very same legislation.

[446-7] ...freedom is certainly not lawless, even though it is not a property of will in accordance with laws of nature. It must, rather, be a causality in accordance with immutable laws, which, to be sure, is of a special kind; otherwise a free will would be something absurd. As we have already seen... natural necessity is a heteronomy of efficient causes, inasmuch as every effect is possible only in accordance with the law that something else determines the efficient cause to exercise its causality. What else, then, can freedom of the will be but autonomy, i.e., the property that the will has of being a law to itself?

[451] ...even with the closest attention and the greatest clarity that the understanding can bring to such representations, we can attain to a mere knowledge of appearances but never to knowledge of things in themselves... This must provide a distinction, however crude, between a world of sense and a world of understanding; the former can vary considerably according to the difference of sensibility [and sense impressions] in

various observers, while the latter, which is the basis of the former, remains always the same. Even with regard to himself, a man cannot presume to know what he is in himself by means of the acquaintance which he has through internal sensation. For since he does it, not as it were, create himself and since he acquires the concept of himself not a priori but only through inner sense and therefore only through the appearance of his nature and the way in which his consciousness is affected. But he must necessarily assume that beyond his own subject's constitution as composed of nothing but appearances there must be something else as basis, namely his ego as constituted in itself.

Five Things you need to know about Kant

- (1) We must have an objective standard of morality
- (2) In order to be moral, you need a good will, since other things we usually call good (like intelligence and creativity) can be used for bad ends
- (3) An act is not moral unless done from duty. Inclinations may also be present, in that you may be inclined to be nice while doing your duty to help others, but the motivation for action must be duty.
- (4) There two big formulations of the categorical imperative: universal law and treating people as ends.
- (5) To be free, one must be obedient to the moral law. This makes sense because the moral law is generated autonomously; it is the only thing that is not contingent, bowing to external inclination and laws (including laws of nature, which result in desires).

Notes From the Book

[These are things that strike me as important; this is not an exclusive list of things that you should pay attention to in the *Grounding*, but rather things that you should make sure that you understand.]

Introduction

- Kant is not claiming to discover a new moral law; rather, he is stating explicitly that which is already presumed in all moral judgments.
- A crucial theme throughout Kant is that of Autonomy: the moral law is imposed by reason itself and not externally. Furthermore, the impetus for our actions should be imposed internally and not externally. We thus have autonomy on two levels: the level of the origin of our moral reasoning, and on the level of how we carry out our moral reasoning.
- In Kant's ideal kingdom of ends, everyone acts as a law unto oneself, but the law by which he acts is reason, which is universal to humanity; this is how we can act according to our own laws and yet also act harmoniously. It is important to see here that "law unto oneself" does not mean, "whatever one wants," since that which one wants may include inclinations, which are not the proper basis for moral law.
- The universal law and the imperative to always treat humanity as an ends unto itself are two variations on the same idea. See page vii for this concept (second full paragraph).
- A will that obeys a law for an ulterior motive is acting on a hypothetical imperative
- For a rule that is both legal and just to be a moral law means that the rule must also be autonomous and in no way dependent on any ulterior motive; only then is the rule a categorical one.
- Practical *action* is that which is guided by an idea of what is being done. If the maxim guiding this idea of what is being done is hypothetical, the action is empirically determined; if categorical, then the action is purely (a priori) determined.
 - Moral concepts require one to act out of respect for the idea of conformity of law (incentive), in accordance with the capacity of one's maxim to be a universal law (rule) and for the sake of (end) itself (duty), rather than some contingent end.
- Kant cannot actually prove that we are acting autonomously, but he states that we must assume that we are doing so.
- Humans alone have duties
- Moral philosophy is intended for what can be realized in action amid changing circumstances.
- Ethical legislation is internal, while the juridical is external.
 - Jurisprudence is the science of external legislation, and the supreme principle of right says that one should act externally in such a way that the free use of one's choice may not interfere with anyone's freedom insofar as his freedom agrees with the universal law.

Section I

- Kant begins by claiming, “There is no possibility of thinking of anything at all in the world, or even out of it, which can be regarded as good without qualification, except a *good will*. Other apparent goods, like talents and natural gifts, may sometimes be good, but they can also be used for ill purposes, so they aren’t good without limitation.
- Then Kant says that “A good will is good not because of what it effects or accomplishes, nor because of its fitness to attain some proposed end; it is good only through its willing, i.e., it is good in itself.” Think of the phrase, ‘it’s the thought that counts.’ If you tried to save a drowning child but failed, you would still have had a good intention.
- Since we are concerned about intention, then things that are done for some external reason cannot have moral worth, even if they end up looking like a good action. Kant’s big example here is the shopkeeper who doesn’t short change someone for the reason that he will get a bad reputation. Even though that was the right thing to do, it was done for the ‘wrong reasons’, in that it was done based on a contingent expectation of some other reward or outcome, rather than from a consistent moral rule. Kant says that only actions done from the duty to do good have moral worth.
- Often times we might have both a duty and an inclination to do something; in these circumstances, it’s hard to tell why it is that we have acted. Kant says that we can only be *sure* that we are acting for the right reasons when we do not have the inclination to do the right thing, and yet we still do it out of duty. An example of this would be someone who is very anti-social and yet still helps someone else.
- The moral worth of an action lies not in the action itself, but rather in the form of the maxim that led to the action. This will tell *why* the action was taken, which will allow us to determine whether it was done out of duty or for some other contingent reason. A maxim that leads to a morally worthy action will come in the form of duty rather than inclination.
- Here are Kant’s three propositions of morality, concisely stated: (1) an action must be done from duty in order to have moral worth; (2) an action done from duty has its moral worth not in the purpose that is to be attained by it, but in the maxim according to which the action is determined; (3) duty is the necessity of an action done out of respect for the law. [399-400]
- But how do we know what we have a duty to do? Well, since law is by nature universal (if you can rightly choose not to follow it, then it’s not a law), then duty requires that we act in accordance with universal law. This leads to the formulation of the categorical imperative: “I ought never to act except in such a way that I could also will that my maxim should become a universal law” (402).

Section II

- Kant begins by reiterating that morality must be grounded in reason, not experience.
- Ought vs. Is distinction: “ought” is that which *should* be. Because a shrewd observation of humanity might make us doubt that any true virtue actually exists,
 - “nothing can protect us from a complete falling away from our ideas of duty and preserve in the soul a well-grounded respect for duty’s law except the clear conviction that, even if there never have been actions springing from such pure sources, the question at issue here is not whether this is or that has happened but that reason of itself and independently of all experience commands what ought to happen.” [408]
- Natural objects operate according to laws. Rational beings act in accordance with their representation of laws. Since we are not perfectly rational, our desires may lead us to act contrary to the dictates of perfect rationality. So the “representation of an objective principle,” [413] our thought that something is commanded by morality, is presented to us as a command, or an *imperative*, which we might or might live up to.
 - “...imperatives are only formulas for expressing the relation of objective laws of willing in general to the subjective imperfection of the will of this or that rational being, e.g., the human will.”
- Imperatives are divided into two groups: hypothetical and categorical.
 - Example of hypothetical: If you want Y, then you should do X
 - Example of categorical: Do X.
 - With the hypothetical, you get to choose whether you want Y. With the categorical, you are just required to obey the rule for itself, not because it gets you anything else.
 - Hypothetical imperatives are good for something else, whereas categorical imperatives are good in themselves.
- The concept of willing an end contains in it the concept of willing the means to that end. “Whoever wills the end, wills (so far as reason has decisive influence on his actions) also the means that are indispensably necessary to his actions and that lie in his power.” [417]

- Kant deconstructs the problem with a happiness principle in [418-19].
 - “...regarding such action no imperative that in the strictest sense could command what is to be done to make one happy is possible, inasmuch as happiness is not an ideal of reason but of imagination. Such an ideal rests merely on empirical grounds; in vain can there be expected that such grounds should determine an action whereby the totality of an infinite series of consequences could be attained.”
- Only an unconditioned command (with no way out by choice) carries with it the type of necessity that we associate with law [420]
- A categorical imperative contains only the necessity that the maxim (the subjective principle of acting, i.e., the explanation for why one is acting) should accord with the law. Since law itself as a concept does not present any more restrictions, the only element guiding the maxim is the universal quality of law itself; for something to be lawful, it must be universal. In this manner we get the universal formulation of the categorical imperative.
- The first formula of the categorical imperative (act so your will could be made universal) is *not* the same as the golden rule. Kant is not saying that we should decide based on how we would want the world to be (we wouldn't want to live in a world where everyone lied all the time, for example). Rather, he says we must make decisions that are rationally consistent; if you universalized lying, then no lies would actually work; this is about logical inconsistency, not an assertion that people would want to live in one kind of a world or another (which would be a contingent, practical argument). On a more subtle note, there are three kinds of inconsistency that Kant might have in mind:
 - (1) an actual logical contradiction
 - (2) a teleological contradiction (the universalized maxim would contradict the natural purpose of some faculty)
 - (3) a practical contradiction (your maxim would no longer be suited to its purpose if it were universalized.)
- When we act according to an immoral maxim, we are really willing that the opposite of our maxim remains universal law, but we want to make an exception for ourselves. i.e., we want to lie but for everyone else to tell the truth (so that they will believe our lies). [see 424]
- In order to show that the categorical imperative applies to us, Kant must analyze the concept of a rational being.
- The end which reason alone dictates (rather than inclinations dictating) would be an end for all rational beings and would hence be an **objective end**. The ends that we pursue as a result of our inclinations are **subjective ends**, which cannot ground principles for all rational beings. Hence, our desires and inclinations can only give rise to hypothetical imperatives.
- If there were an end which itself had worth, then it could be ground for the categorical imperative [428]. Aha! Every rational being exists as an end in itself, so every rational being is an objective end in itself. Thus the will (i.e., the ability to make choices, that which makes a being rational) has unconditional value.
- If something is unconditionally valuable, it must be wrong to treat it as a mere means, since a means is valuable because of its connection to some end. Something that is unconditionally valuable cannot also be conditional on some other thing being true. Hence the second formula of the categorical imperative: treat humanity as an end, never simply as a means.
- Treating humanity as an end also means we have some positive duties to help others [430]
- [431] “this principle of humanity and of every rational nature generally as an end in itself is the supreme limiting condition of every man's freedom of action.”
 - Note the libertarian analog here
- Note the intuitive similarity between the Formula of Universal Law and the Formula of Humanity. The analysis of lying in the first case showed that the problem was your making an exception of yourself. Analyzed the second time, the liar similarly sets himself apart from others: he views his own choice as having value, but does not recognize value in the choices of others, and thus treats them as a means.
- [433] Kant says the difference between his theory and every other theory is the principle of the **autonomy of the will**. Other moralists have required that people act according to some external law, but did not recognize the key connection that man is subject to his own, yet universal will.
- Kant then theorizes the Kingdom of Ends, which is the systematic union of rational beings through common objective laws [433-434]
- [436] “Autonomy is the ground of the dignity of human nature and of every rational creature.”
- Kant then reviews the three formulations of the categorical imperative, which he says are different formulations of the same law [436], meaning that they should yield the same specific rules for action. The difference is that each formulation focuses on a different feature of maxims.
 - The Formula of Universal Law focuses on the form that a good maxim has: that of universality.

- The Formula of Humanity calls attention to the end of a good maxim: that is must be limited by a respect for rational nature; i.e. rational nature constrains us in the choice of our ends.
- The Formula of the Kingdom of Ends is a little harder. It seems that Kant is saying htat since our maxims do in a sense give universal law, we ought to think of community created by the union of all maxims, to see how our (proposed) maxim would fit in.
- Kant turns to the subject of **autonomy**. To be autonomous s is to be bound by the categorical imperative, since the categorical imperative simply directs us to be autonomous [440]. The categorical imperative simply tells us to act on maxims that could be laws; all that it tells us is to act on our own laws, to be autonomous. If we get our law from anywhere other than ourselves, we must be bound to it by some interest, which means that the law can only yield a hypothetical imperative.
- Kant closes the second part of the *Grounding* with a discussion of other moral theories: utilitarianism (Paley, Bentham), the moral sense theories or sentimentalism (Hutchinson, Human, Smith), perfection theories (Leibniz and Wolff), and divine command theories (religious thinkers). The problem with each of them is their foundation in heteronomy, which makes it easy to see why they fail.
- Kant then briefly reviews his progress and introduces the third section: so far he's shown, through an analysis of the concepts of morality, the will and autonomy that the categorical imperative demands autonomy. In other words, we're virtuous insofar as we're autonomous. In order to see whether the categorical imperative actually applies to us, to beings with wills, we must do more than analyze concepts.

Section III

- For rational beings, a will's freedom makes it effective independent of any determination by alien causes, whereas for non-rational beings, natural necessity governs action through external influences. Therefore, a rational will must regard itself as a free will. In order to act, you must believe you're free. A free will must be autonomous. The principle of an autonomous will is the categorical imperative. Therefore, a rational will must regard itself as being subject to the categorical imperative.
 - "a free will and a will subject to moral laws are one and the same"
 - Reason must regard itself as the author of its principles independent of foreign causes. The will of a rational being can be a will of its own only under the idea of freedom, and such a will must be attributed to all rational beings. [448]
- If that was confusing, try this logical progression instead:
 - A free will isn't determined by external factors, because it wouldn't be free.
 - It must operate in accordance with some law, because it is a "causality." (And in any case we don't equate freedom with randomness.)
 - So it must operate based on internal laws, i.e. laws it gives itself, i.e. it must be autonomous.
 - But the Formula of Universal Law says just that: it tells us to act on our maxims that could be laws -- i.e. on those directions we give ourselves that could be laws, i.e. our own laws.
 - So a free will = an autonomous will = a moral (good) will
- Kant's second argument in this section tries to prove that any rational being cannot act except under the idea of freedom -- i.e. when we act, we must think of ourselves as free. In other words, we can't think we're determined by external factors, because then we wouldn't think we were acting -- we'd think that the other (external) thing was in charge.
- The two arguments together are supposed to prove that, since we have to think of ourselves as free, and since a free will is subject to the moral law, that we therefore must think of ourselves as subject to the moral law.

Section notes, Kant

Week: V, VI (Kant)

Contributor: Eddie Thai [Jason Steffen's outline]

Introduction

1. Kant's overall project is to determine what the *supreme principle of morality* is and explain why we are subject to it. One reason we might want to do this is because if we can find a universal moral obligation from which all others are generated rationally, we will have a powerful way of assessing the moral worth of human actions and solving apparently difficult moral dilemmas.
2. There are some main terms he uses, which are often distinct from how we normally think of them:
 - a. *Reason* is that faculty which leads us to the supreme principle of morality. All human beings are rational, in the sense that they have the ability to make decisions based on reason. However, they are also subject to *desires and inclinations*, which come, not from reason, but from other forces.
 - b. *Autonomy* is (in a sense) morality. When humans are acting according to reason, they are acting autonomously; on the other hand, when they are acting according to desires and inclinations, they are acting heteronomously. (So if you decide not to steal the iPod because it is your duty, you are acting autonomously; if you give in to desires either by stealing the iPod out of greed or by not stealing it out of fear of punishment, you are acting heteronomously.)
 - c. *Freedom* is basically the same idea: humans are fundamentally free because they are capable of acting rationally/morally. They are not "ruled" by desires and inclinations, although they may (and often do) give in to these "temptations."
 - d. *Duty* describes the relationship between humans and the moral law. Humans "ought" to follow the supreme moral principle (i.e., ought to act autonomously or according to reason rather than desires and inclinations). We cannot say that God "ought" to do anything, because God (being by definition a purely rational being) always follows the supreme moral principle. In other words, God has no "duty." Animals also have no "duty," but for the converse reason: being incapable of reason (i.e. of making choices based on pure reason unfettered by desires), they cannot act morally, and therefore we can't say that an animal "ought" to act in a certain way.

First Section

3. This section merely posits the supreme principle of morality: the *categorical imperative* ("CI"), using everyday reasoning to help us grasp what Kant means by it.
4. Kant asks "what makes a good will good?" His response is that it is *not* what the will accomplishes, but the fact that it is "good in itself." This is a clear way of thinking about the distinction between "consequentialist" theories (e.g. utilitarianism) and "categorical" (or "deontological") ones; Kant obviously falls into the latter camp. So what we are concerned with is not *outcomes* of actions, but *reasons* for acting.
5. If a "good will" is good because it is good in itself, the next question is how we determine whether a will is "good in itself."
 - a. To get at the answer, Kant presents four "cases," i.e. ways of making a decision. If you're tempted to steal an iPod, you might make one of the following decisions:
 - i. I will steal the iPod because I want it.
 - ii. I will not steal the iPod because I don't want to get caught.
 - iii. I will not steal the iPod because I like my eight-track better.
 - iv. I will not steal the iPod because it is my duty not to steal.
 - b. Kant says only case (iv) above has "moral worth." He thinks this is intuitive: obviously (i) is bad, but we are also not indifferent as to what is happening in (ii) through (iv), even though the outcome is identical. In case (ii), it doesn't sound like the person is making a very moral decision—merely a prudential one. In case (iii), it's not that the person is making a bad decision—it's that there is no moral decision to be made. So only in case (iv) is there a morally good choice occurring.
 - c. From these four cases, Kant derives three "principles":
 - i. A morally worthy action must be motivated by duty. (Not by desires and inclinations, such as the desire to have an iPod or not to get caught.)
 - ii. Actions have moral worth in their maxims (\approx reasons), not in their outcomes. (As opposed to what the utilitarian would say.)

- iii. Duty entails acting out of respect for a law. (In other words, you have to have duty *to* something; it's not a self-contained idea.)
- d. The question then becomes what sort of law we are looking to when we are acting morally. Obviously we could act out of duty to many kinds of laws (e.g. constitutional laws, laws of God, laws of nature), but Kant wants to find *the* moral law—the one that will always point you in the right moral direction.
- e. Now remember that we want to avoid desires and inclinations and act according to reason alone. Desires and inclinations are basically subjective—that is, they depend on our needs, wants, etc. We need an objective law or, in other words, a universal law, which is applicable to all people irrespective of their particular desires and inclinations.
- f. So, Kant says, when we act morally, we are necessarily acting out of duty to the CI, which he gives here as the *Formula of Universal Law*: “I should never act in such a way except that I can will my maxim (≈ reasons for acting) to be universal law.” So, for example, we wouldn't see a problem with everyone walking around thinking, “Stealing is wrong!” However, if everyone were walking around thinking, “Stealing is good!” we would clearly have some problems. So the former is universalizable, while the latter is not.

Second Section

- 6. After having described the CI, Kant begins a systematic philosophical proof, whose purpose is to show what the CI is, that it applies to rational beings, and that humans are rational beings and, hence, subject to the CI.
- 7. What is the CI?
 - a. Natural objects act according to laws (e.g. gravity) with necessity, whereas rational beings act according to their own representations of laws. (So if you fall out of a tree, you are following the law of gravity; if you choose not to steal the iPod, you are acting on your conception of a law, be it moral duty, the Ten Commandments, or the Modern Penal Code.)
 - b. If we were perfectly rational, then we would always perform the *objectively necessary* action (i.e. that which conforms with reason and therefore morality); however, we are not perfectly rational, so the moral law becomes for us *subjectively contingent*.
 - c. Now the “representation” that we make for ourselves of the “objective” principle—that is, the hypothesized supreme moral law—we present to ourselves in the form of a command, known as an *imperative*.
 - d. How is it that an imperative is “true”—that is, how do they get “authority” over us such that we have to follow them in order to act? (E.g. if I say to myself “If I want to get an A in Justice, then I ought to go to class,” *why* is it that I “ought” to go to class?)
 - i. This is easy in the case of *hypothetical imperatives* (“if” statements as the one above), because they are *analytic propositions* (a statement that is true in itself, e.g. “All bachelors are unmarried”). Kant thinks that by willing some end (e.g. getting an A), you necessarily will the means to attain that end (e.g. going to class). In other words, in a hypothetical imperative you can either perform the action, or you can give up the end—but you can't have the end without the means.
 - ii. In the (more important) case of *categorical imperatives* (unconditioned command statements, e.g. “I ought to go to class” or “I ought not to steal the iPod”), we have a harder time, because these are *synthetic propositions* (statements whose truth value cannot be deduced without more information, e.g. “All bachelors are happy”). Kant claims that the only way we can have a “true” imperative (e.g. that I ought to do X in every single situation where I have to make a moral choice) is if we have as our law *the* CI: “I should never act except in such a way that I can also will that my maxim should become a universal law.” We have already seen this; the question is why Kant thinks he's *proven* what the CI is. Well, he claims that acting on any other categorical imperative would lead to a “contradiction.” It has and continues to be debated what exactly Kant meant by this, and this is surely a weak part of his argument. But consider some possibilities:
 - 1. If I were to universalize the imperative “I ought not to steal the iPod,” then this can easily be applied to everyone. However, if my imperative were “I ought to steal the iPod,” and I tried to apply *that* to everyone, then I wouldn't even have the possibility of stealing the iPod in the first place, since everyone would have stolen all the existing iPods already.
 - 2. OR If I lie to someone, I cannot possibly will that everyone else lies to me; rather, I am willing that everyone *except* me tells the truth. Excepting oneself from the moral law, Kant says, is in fact what we try to do when we act on anything other than the CI. But of course

one can't except oneself from morality, so one is simply acting immorally in those cases (e.g. stealing the iPod or lying).

8. Does the CI apply to rational beings?
 - a. A will acts on the perception of laws. Laws require a goal, which we'll call an *end*. (Think about why we make laws—they always have a purpose. Same thing with moral laws. Presumably this is not the case with “natural” laws like gravity.)
 - b. If there is an *end*, then there is something that makes that end possible, which we'll call a *means*.
 - c. If there were an end which reason alone directed the will to seek, then this end would be applicable to all rational beings—in other words, all rational beings would will the end when acting rationally. We'll call this an *objective end*. (Compare this with *subjective ends*, which are purposes driven by desires and inclinations, rather than by reason.)
 - d. If something is valuable, then we ought to act for its sake. E.g. if I value the “end” of getting an A, then I ought to perform the requisite action (going to class).
 - e. So if something were valuable *a priori* (based on reason alone), then that thing would be the basis of the CI, because then all rational beings would be required to act for its sake in all cases, regardless of their inclinations and desires.
 - f. Every rational being is an objective end, i.e., is unconditionally valuable.
 - i. Where does Kant come up with this? It's not clear. One possibility goes something like this:
 1. We take our subjective ends to be valuable. (I want to get a job, so my goal is to graduate, and this goal is worth something to me.)
 2. Their value is conditional, because if we didn't have inclinations, they'd cease to be of value to us. (If I didn't care one way or another about a job, then graduating wouldn't be worth anything to me.)
 3. They get their value by being objects of our inclinations. (If my inclination to get a job had nothing to do with graduating, then the latter wouldn't have value [we're assuming no other inclinations].)
 4. ∴ Our inclinations must have value (in order to be able to confer it). (My inclination to get a job must be valuable if my goal to graduate is valuable.)
 5. But our inclinations are not unconditionally valuable, since we want to get rid of some of them. (E.g. I might be an alcoholic even though I really don't want to drink anymore, especially because it might prevent me from graduating.)
 6. ∴ They (our ends) get their value by our “identifying” with them. (E.g. I might be an alcoholic and a scholar, but I don't like the former part of myself, while I really like the latter.)
 7. This identification is a function of the will. (My will clings to the goal of graduating and resists my forays into the bottle.)
 8. The will must be unconditionally valuable, because it has to be able to confer value on any of our inclinations. (If I suddenly change my mind and want to drop out of school in order to enter a monastic order, then I necessarily value that, or any other possible choice I could make.)
 9. ∴ We have to think of ourselves and, by extension, other human beings, as being unconditionally valuable.
 - g. If something is unconditionally valuable, then it is wrong to treat that thing as a mere means. (Something that is a means has merely conditional value, because its value depends on its connection to some end, as in the graduation example above.)
 - h. ∴ All rational beings must act on the following law, which is another version of the CI, this time called the *formula of humanity* or *formula of the end-in-itself*: “Act so that you use humanity as an end, never merely as a means.”
9. Now remember that we represent moral laws to ourselves. Kant believes he's shown that the only law we can give ourselves is the CI, because all others are bound to an external desire or are contradictory.
10. Giving oneself a moral law is being *autonomous*. (From the Greek *autos nomos*, roughly “law of the self.”) So an autonomous will is the ground of human morality. But the question becomes: *are we autonomous?*

Third Section

11. Are we rational beings? (Same thing as: are we autonomous? Are we capable of acting according to the CI?)
 - a. There are two “worlds,” or (roughly) realities.

- i. Phenomenal (“world of sense”): The world we have access to by way of our senses.
- ii. Noumenal (“world of understanding”): Composed of objects, about which we cannot know anything, that give rise to the sensations we experience in the phenomenal world
- b. The fact that we are rational beings, if it is a fact, would belong to the noumenal realm.
- c. \therefore we can’t *know* we’re rational beings.
- d. *But* in order to act, you have to *believe* you are autonomous. (This makes some sense. Imagine for a moment that you do not believe yourself to possess free will: every decision you make is determined. So you decide just to sit on the couch and wait for fate to make you do something. But wait, you’ve just done something: you’ve made the decision to sit on the couch, which was a result of the decision to believe in yourself as not being free! Therefore, you never really believed that you weren’t free—or if you did, you weren’t being rational!)
- e. The principle of an autonomous will, as shown in the Second Section, is the CI.
- f. The CI is also the objective end of the will of rational beings, also as shown in the Second Section.
- g. \therefore We must believe that we are rational beings, and regard ourselves as subject to the CI.

Section notes, Rawls

Week: VII, VIII (Rawls)

Contributor: Timothy Lee

Justice as Fairness (Week VII)

Questions

- What is excluded by the Veil of Ignorance? What is known by the parties about the task to accomplish?
 - On what basis is agreement made; what are the people in the original position assumed to agree upon?
 - What scheme of rights/good/entitlements would you select from behind the veil of ignorance?
- How does it make the difference principle (maximin) the appropriate choice? Is this argument a plausible one?
- How do the two principles reconcile liberty and equality?
- Is the hypothetical contract is a good way to think about justice?
- What are Rawls's criticisms of utilitarianism?
- What is the thought of justice as the "first virtue" of social institutions?
- Why focus on the basic structure of society?
- Why use contract theory and the Original Position to talk about justice?
- What is Rawls's idea of 'reflective equilibrium'?

Terms to Know

- arbitrariness of natural traits
- reflective equilibrium (18)
- right vs. good (22)
- impartial spectator (24)
- serial ordering of principles (53)
- social primary goods (54)
- natural liberty (57)
- liberal equality (63)
- democratic equality (64)
- Pareto efficiency (58)
- difference principle (68)
- chain connection (70)
- equilibrium (103)
- mutually disinterested (112)
- rational person (124)

The Two Principles of Justice: [quoted from p. 266]

First Principle: Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

Second Principle: Social and economic inequalities are to be arranged so that they are both:

- (1) to the greatest benefit of the least advantaged, consistent with the just savings principle, and
- (2) attached to offices and positions open to all under conditions of fair equality of opportunity.

The First principle has lexical priority over the second, and the second part of the second over the first part.

§1-§4 Introductory Chapters

- Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.
- The justice of a social scheme depends essentially on how fundamental rights and duties are assigned and on the economic opportunities and social conditions in the various sectors of society. [7]
- Fully to understand a conception of justice we must make explicit the conception of social cooperation from which it derives. [9]
- In justice as fairness the original position of equality corresponds to the state of nature in the traditional theory of the social contract. [11]
- A society satisfying the principles of justice as fairness comes as close as a society can to being a voluntary scheme, for it meets the principles which free and equal persons would assent to under circumstances that are fair. [12]
- A rational person would not agree to utilitarianism, since if they thought of themselves as equals then they wouldn't accept a smaller pile.
- The principle of utility is incompatible with the conception of social cooperation among equals for mutual advantage. [13]
- Two principles [13]
 - Equality in the assignment of basic rights and duties
 - Inequalities of wealth are just only if they result in compensating benefits for everyone, and in particular for the least advantaged
 - In the original position, parties are rational and mutually disinterested. People leave aside those aspects of themselves that are **arbitrary** from a moral point of view. [14] One excludes the knowledge of those contingencies which sets man at odds and allows them to be guided by their prejudices.

§5 Utilitarianism

- A society is properly arranged when its institutions maximize the net balance of satisfaction
- In a teleological theory the good is defined independently from the right.
 - Things that are good (have value) as a separate class distinguishable from common sense
 - Enables one to judge the goodness of things without reference to what is right (you just think of the goods that you're getting rather than the substantive right of the situation)
 - Whereas if we also look to distribution, we are no longer classically teleological. The problem of distribution falls under the concept of right as one intuitively understands it, and so the theory lacks an independent definition of the good. [22]
- Striking feature of utilitarianism is that it doesn't matter, except indirectly, how this sum of satisfaction is distributed among individuals any more than it matters how one distributes satisfactions.
- Impartial spectator; he is conceived as carrying out the required organization of the desires of persons into one coherent system of desire
- Utilitarianism does not take seriously the distinction between persons (24)

§ 6 Related contrasts

- Basic liberties are taken for granted and are not bargainable
- There is no reason to suppose that the principles which should regulate an association of men is simply an extension of the principle of choice for one man

§ 11 Two principles of justice

- The principles operate in serial order. Infringements of equal liberties cannot be compensated for by economic advantages
- Injustice = inequalities that are not beneficial to all
- The only reason for circumscribing basic liberties is when they interfere with one another

§ 12 Interpretations of the second principle

- **natural liberty**: a basic structure satisfying the principle of efficiency and in which positions are open to those able and willing to strive for them → just distribution
 - problem: takes arbitrary factors into account
 - liberal interpretation tries to fix this (63)

- There are many efficient arrangements. The goal is to find the one that is just (61)
- If we are to accept the outcome as just, and not merely as efficient, we must accept the basis upon which over time the initial distribution of assets is determined
- **natural aristocracy**: advantages of persons with greater natural endowments are limited to those that further the good of the poor. *Nobles oblige*. (6)
 - problem: is also arbitrary
- Democratic interpretation: combine fair equality of opportunity with the difference principle
 - removes indeterminateness of the principle of efficiency
 - the higher expectations of those better situated are just if and only if they work to improve the expectations of the least advantaged
 - **difference principle**: justifiable only if the difference in expectation is to the advantage of the representative man who is worse off (68)
 - two possible situations: expectations of the least advantaged are in fact maximized (perfectly just) OR expectations of those better off at least contribute to the welfare of the worse off
 - a scheme is unjust when the higher expectations are excessive
 - comports with efficiency (69)
 - social and economic inequalities are to be arranged so that they are both (a) to the greatest expected benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity. (72)

§ 17 The tendency to equality

- The difference principle represents an agreement to regard the distribution of natural talents as in some respects a common asset
- The natural distribution is neither just or unjust. What is just and unjust is the way that institutions deal with these facts
- To maximize a weighted mean is to favor the more fortunate twice over
- The difference principle is acceptable to both the advantaged and the unadvantaged
- Equality of opportunity means an equal chance to leave the less fortunate behind in the personal quest for influence and social position (91)
- Principle of fraternity can incorporate the requirements of the difference principle

§ 20 The nature of the argument for conceptions of justice

- Equilibrium is the result of agreements freely struck between willing traders
 - not necessarily right or just. Given men's estimate of their position, they act effectively to preserve it
- The original position is purely hypothetical
- Rawls would like to show that acknowledgement of these principles is the only choice consistent with the full description of the original position.
 - Argument aims to be completely deductive
- Contract theory in general is a useful approach: "We may conjecture that for each traditional conception of justice there exists an interpretation of the initial situation in which its principles are the preferred solution... The procedure of contract theories provides a general analytic method for the comparative study of conceptions of justice." (105)

§ 22 The Circumstances of Justice

- Principles are needed for choosing among the various social arrangements which determine the division of advantages and for underwriting an agreement on the proper distributive shares. These requirements define the role of justice.
- Objective circumstances: moderate scarcity. Subjective circumstances: conflict of interests
- "The circumstances of justice obtain whenever persons put forward conflicting claims to the division of social advantages under conditions of moderate scarcity. Unless these circumstances existed there would be no occasion for the virtue of justice, just as in the absence of threats of injury to life and limb there would be no occasion for physical courage.
- We can think of parties as representing a continuing line of claims.
- No restrictive assumptions about the parties' conceptions of the good necessary (except that they have rational law term plans)

- The postulate of mutual disinterest in the original position is made to insure that the principles of justice do not depend on upon strong assumptions. Recall that the original position is meant to incorporate widely shared and yet weak conditions.
- The parties are assumed to be **mutually disinterested**; they are not willing to have their interests sacrificed to others
 - Don't consider saints and heroes, since human society, not being full of saints is characterized by the circumstances of justice (we have conflicts to solve) (112)

§ 24 The Veil of Ignorance

- The idea of the original position is to set up a fair procedure so that any principles agreed to will be just. The aim is to use the notion of pure procedural justice as a basis of theory. Somehow we must nullify the effects of specific contingencies which put men at odds and tempt them to exploit social and natural circumstances to their own advantage. Now in order to do this I assume that parties are situated behind a veil of ignorance. (118)
- There are no limitations on general information (119)
- It is not a gathering of actual or possible persons... the original position must be interpreted so that one can at any time adopt its perspective. It must make no difference when one takes up this viewpoint, or who does so: the restrictions must be such that the same principles are always chosen. (120)
- Since the differences among the parties are unknown to them, and everyone is equally rational and similarly situated, each is convinced by the same arguments.
- The arbitrariness of the world must be corrected for by adjusting the circumstances of the initial contracting situation. (122)

§ 25 The Rationality of the Parties

- The parties assume that they normally prefer more primary social goods rather than less. This is the rational thing to do.
- Even though the parties lack information about their ends, they have enough knowledge to rank alternatives.
- Assumption: the rational person does not feel envy.
- The conception of justice eliminates the conditions that produce disruptive attitudes. It is inherently stable.
- Game theory does not apply here: the parties are not trying to 'win', but to get the highest index of primary social goods possible.
- Rawls lays out the variants on the elements of the initial situation (126-27)
- Three misconceptions refuted:
 - Justice as fairness is not egoistic. (128)
 - Benevolence or good will towards others is not necessary to yield the principles we want, since the combination of mutual disinterest and the veil of ignorance accomplish that goal. (128-29).
 - Arbitrary distinctions would never be proposed in first principles, for rational people would only select principles that have some rational connection with the advancement of human interest broadly defined.

§ 40 The Kantian Interpretation of Justice as Fairness

- The veil of ignorance deprives people in the original position of anything that would enable them to choose heteronomous principles. The parties arrive at their choice together as free and equal rational persons knowing only that those circumstances obtain which give rise to the need for principles of justice. (222)
- Principles of justice = analogous to categorical imperatives.
- Motivational assumption of mutual disinterest = analogous to autonomy
- Primary goods are things that it is rational to want, and therefore wanting them is not the same as seeking a particular end.
- The principles of justice cover all persons with rational plans of life
- The desire to act justly stems from our expression of our free and equal nature
- Kant's main aim is to deepen and to justify Rousseau's idea that liberty is acting in accordance with a law that we give to ourselves. And this leads not to a morality of austere command but to an ethic of mutual respect and self-esteem. (225)
- The original position may be viewed as a procedural interpretation of Kant's conception of autonomy and the categorical imperative within the framework of an empirical theory. (226)

Distributive Justice (Week VIII)

Terms to know

- primary social goods
- legitimate expectations
- pure procedural justice (§14)
- social minimum
- Archimedian point
- thin theory of the good
- right vs. good
- well-ordered society
- dominant-end conception
- deliberative rationality

§ 41 The Concept of Justice in Political Economy

- the goal here is to see how the two principles work out as a conception of political economy, which must include an interpretation of the public good which is based on a conception of justice.
- The cumulative effect of social and economic legislation is to specify the basic structure of society.
- Because economic arrangements have the effect of shaping the wants and aspirations of the citizens, the choice of these institutions involves some view of human good and of the right institutional design to realize it. The choice must therefore be made on moral and political grounds, as well as economic ones. Efficiency is not the main consideration.
- The theory of justice presupposes a theory of the good (what people would consider to be primary goods).
- However, there are limits on the conception of the good which flow from the two principles. (priority of justice over efficiency and priority of liberty over social and economic advantages). These priorities mean that desires for things inherently unjust, or that can't be done without violating the principles, have no weight.
- The conception of justice, the general form of a just society and the ideal person consistent with it are not dependent on current conditions.
- Utilitarianism does have a method for choosing among ideals of the person, since it outlines moral virtues which are the dispositions and desires that can generally be relied upon to promote the greatest sum of well-being. However, the choice depends on existing desires and present social circumstances, whereas justice as fairness establishes an independent conception of the ideal person such that the initial unjust circumstances will eventually disappear. With utilitarianism, the place we start from will always influence the path we will follow.
- Essential point: despite the individualistic features of justice as fairness, the two principles of justice are not contingent upon existing desires or present social conditions. Thus we can derive a conception of the just basic structure with which we can appraise institutions and guide the overall direction of social change.
- The original position is designed so that unanimity is possible
- We want to account for the social values, for the intrinsic good of institutional, community and associative activities, by a conception of justice that in its theoretical basis is individualistic.

§ 47 The Precepts of Justice

- If the notion of pure procedural justice is to succeed, it is necessary to set up and administer impartially a just system of surrounding institutions (just = satisfy the two principles)
 - A fair process guarantees a fair result only insofar as it takes place in a just system. Otherwise, a fair process is *not enough* to guarantee a just outcome.
- "background justice" is analogous to "fair game." But how well does this accord with common sense precepts of justice?
- Mill pointed out that common sense precepts are irreconcilable (p. 268). However, the higher principle required need not be utilitarian; the two principles of justice would also work. So now we consider whether common sense precepts would arise in a just society and how they would be weighted.
- Different conceptions of justice are likely to generate much the same common sense precepts.
- The contrast between conceptions of justice does not show up at the level of common sense norms but rather in the relative and changing emphasis that these norms receive over time.

- Furthermore, the way that precepts are weighted changes in relation to the application of precepts. If you have equality of opportunity, then education is going to be much less of a factor in job searches, since everyone will have a great education. The emphasis is likely to switch to effort.
 - There is nothing sacrosanct about the existing balance even if it is correct.
- Common sense norms are subordinate, since each has arisen in answer to a relevant feature of particular institutions. Common sense precepts are at the wrong level of generality. (271).
- The precept 'to each according to his contribution' looks good, but it only works if the background conditions are just. We can't infer the justice of the final distribution by looking at any one precept; we need to look at the whole system.
- Rawls acknowledges that a perfectly competitive economy can never be realized, but answers that the conception of a suitably regulated competitive economy with the appropriate background institutions is an ideal scheme which shows how the two principles of justice might be realized. Working out this application also puts us in a better position to assess how serious the existing imperfections are and to decide how to best approximate the ideal.
- If markets are reasonably competitive and open, the notion of pure procedural justice is a feasible one to follow.

§ 68 Several Contrasts Between the Right and the Good

- the structure of an ethical doctrine depends upon how it relates the notions of the right and the good and defines their differences.
- Contrasts between the right and good:
 - Whereas the principles of justice are those that would be chosen in the original position, the principles of rational choice and the criteria of deliberative rationality are not chosen at all.
 - Since each person is free to plan his life, unanimity concerning standards of rationality is not required. All the theory of justice assumes is that the criteria of rational choice are sufficient to explain the preference for primary goods, and that variations in conceptions of rationality do not affect the principles of justice adopted in the original position.
 - In general, it is a good thing that individuals' conceptions of their good should differ in significant ways, whereas this is not the case for conceptions of the right.
 - Principles of the right must establish a final ordering among conflicting claims, and so must be identifiable from everyone's point of view
 - On the other hand, people find their good in many different ways, and it does not produce injustice for people to have different conceptions of it. It is rational for people to want their plans to be different, since we all have different talents.
 - People might have opinions about what might be good for another person, but their thoughts will be advisory; in contrast, judgments of justice are not usually advisory
 - Many applications of the principles of justice are restricted by the veil of ignorance, whereas evaluations of a person's good may rely on a full knowledge of the facts (394).
 - There is no objection to fitting rational plans to contingencies, since the principles of justice have already been chosen and constrain the content of these plans, the ends that they encourage and the means that they use.
- Another important contrast with utilitarianism: details of plans don't affect those following justice as fairness, since the details of plans don't affect what is right or just. The utilitarian, on the other hand, must concede the theoretical possibility that configurations of preferences allowed by the indeterminacy of rational plans (§64) may lead to injustice.
 - consider the example of people who are so offended by a sexual or religious practice that even if they never saw it, the thought of it would cause them much pain. Since there appears to be no sure way to exclude the desire to suppress such practices as irrational, then the utilitarian must concede that harsh repressive measures against actions that cause no social injury.
 - This problem does not arise in justice as fairness. We may think of the principles of justice as an agreement not to take into account certain feelings when assessing the conduct of others. (395).

§ 79 The Idea of Social Union

- the question posed is whether the contract doctrine is a satisfactory framework for understanding the values of community and for choosing among social arrangements to realize them.

- Recall that one condition of the original position is that the parties know that they are subject to the circumstances of justice. They assume that each has a conception of his good in light of which he presses claims against the rest. So although they view society as a cooperative venture for mutual advantage, it is typically marked by a conflict as well as a by an identity of interests.
- There are two ways of viewing these suppositions:
 - The idea in the theory of justice is to derive satisfactory principles from the weakest possible assumptions, which everyone or most everyone would grant, and for which convincing philosophical arguments can be given.
 - or you could regard them as describing a certain social order: the notion of private society.
 - Persons comprising private society have (1) private ends, which are either competing or independent, but not complimentary; and (2) institutions are not thought to have any value in themselves, such that engaging in them is a burden rather than a good.
 - The only variables in an individual's utility function are commodities and assets held by him, and not item possessed by others nor their level of utility.
 - Since the members of this society are not moved by the desire to act justly, the stability of just and efficient arrangements when they exist requires the use of sanctions.
- While some contend that contract doctrine privileges private society as the ideal, there is another way to understand agreements between persons, required by the account of goodness as rationality. This is the idea of social union.
 - the sociability of human beings must not be understood in trivial fashion. It does not merely imply that humans associate merely to use each other as instruments (458).
 - humans beings share final ends and they value their common institutions as good in themselves.
 - the Aristotelian principle points towards the conclusions that rational plans of life normally provide for the development of a person's powers.
 - a basic characteristic of human beings is that no one person can do everything he might do; nor a fortiori can he do everything that any other person can do. Everyone must select which abilities and interests to encourage.
 - it is through social union founded upon the needs and potentialities of its members that each person can participate in the total sum of the realized natural assets of the others.
 - to say that man is a historical being is to say that the realizations of the powers of humans living at any one time takes the cooperation of many generations over a long period of time.
 - the characteristics of social union are shared final ends and common activities valued for themselves.
 - this is simpler if we think of the analogy of a game, which might have four sorts of ends:
 - the aim of the game as defined by the rules
 - the various motives of the players in playing the game
 - the social purposes served by the game which may be unintended by the players
 - the shared end/common desire of all the players that there should be a good play of the game (461)
 - A good play of the game is a collective achievement requiring the cooperation of all.
 - There must be an agreed scheme of conduct in which the excellences and enjoyments of each are complementary to the good of all.
 - There must be a shared final end and accepted ways of advancing it which allow for the public recognition of the attainments of everyone. A well-ordered society will contain countless social unions.
- Now we can see how the principles of justice are related to human sociability: a well-ordered society (corresponding to justice as fairness) is itself a form of social union. Indeed, it is a social union of social unions. When everyone acts justly, all find satisfaction in the same thing.
- A la Kant: human beings have a desire to express their nature as free and equal moral persons, and this they do most adequately by acting from the principles that they would acknowledge in the original position.
- A just constitutional order, when adjoined to the smaller social unions of everyday life, provides a framework for these many associations.
- The companion principle to the Aristotelian Principle implies that men appreciate and enjoy these attributes in one another as they are manifested in cooperating to affirm just institutions. The collective activity of justice is the preeminent form of human flourishing. → a value of community is the public realization of justice.

- It is a feature of human sociability that we are by ourselves but parts of what we might be. The division of labor is overcome not by becoming complete in yourself, but by willing and meaningful work within a just social union of social unions in which all can freely participate as they so incline.

§ 84 Hedonism as a Method of Choice

- In this chapter, Rawls uses hedonism as an example of a theory that fails to show that rational choice is always possible.
- He imagines that the hedonist decides that pleasantness is the only plausible candidate for the role of the dominant end, and therefore is the only good thing in itself. The hedonist decides that pleasure is the dominant end by a process of elimination (since happiness and objective goals are out). The hedonist thinks that a rational agent knows exactly how to proceed in determining the good. He knows the one thing the pursuit of which gives rational form to our life. Because pleasure is conceived as a definite measure, hedonism provides a first-person procedure of choice as the standard of happiness does not. Furthermore, taking pleasure as the dominant end does not imply that we have any particular objective goals. If pleasure is the one thing that lets us identify rational plans, then it is the sole intrinsic good.
- Rawls then claims that hedonism fails to define a reasonable end, since the preference for a certain attribute of feeling above others is as unbalanced/inhuman as a desire to maximize one's power or wealth. Furthermore, there are different kinds of pleasures. Hence, the problem of a plurality of ends arises within the class of subjective feelings. Economics does not solve this problem, since a utility function asserts nothing about how a person arranges his decisions in a coherent order, and only records the outcome of deliberations. Hence economics leaves us with just the principles of rational choice, putting us back at square one with deliberative rationality (rather than some means by which to make choices).
- Result: there is no dominant end the pursuit of which accords with our considered judgments of value.
- Why have philosophers struggled to find such a definite theory of the good? In a teleological theory any vagueness or ambiguity in the conception of the good is transferred to that of the right. Knowing this, philosophers have sought to narrow the scope of purely preferential choice in determining our good. because one thinks that what is right is not a matter of mere preference, one tries to find a definite conception of the good.
 - hedonism is the symptomatic drift of teleological theories insofar as they try to formulate a clear and applicable method of moral reasoning.
 - the weakness of hedonism reflects the impossibility of defining an appropriate definite end to be maximized.
- A teleological theory seeks an **interpersonal currency**, by means of which the social ordering can be specified. (490).
- Conclusion: we should not attempt to give form to our life by first looking at the good independently defined. It is not our aims that primarily reveal our nature but rather the principles that we would acknowledge to govern the background conditions under which these aims are to be formed and the manner in which they are to be pursued. We must therefore view the right as prior.

§ 85 The Unity of the Self

- Outcome of the last section: there is no one aim by reference to which all of our choices can reasonably be made
- Moral personality is characterized by two capacities: one for the conception of the good, the other for a sense of justice. The first is expressed by a rational plan of life, the second by a regulative desire to act upon certain principles of right.
- The unity of the person is manifest in the coherence of his plan, founded on his desire to follow the principles of rational choice.
- The thing that separates a dominant-end conception from justice as fairness is how it imagines the self's unity is achieved.
 - in hedonism, the self becomes one by trying to maximize the sum of pleasurable experiences
 - if happiness is the sole good, then it is a clear principle of right to maximize happiness. This is true whether speaking of the individual or the group, the latter of which will aggregate abilities to maximize happiness.
- Justice as fairness takes the opposite perspective from the dominant-end conception: it reverses the structure. In the original position, the parties regard moral personality and not the capacity for pleasure and pain as the

fundamental aspect of the self. They do not know what final aims persons have. The primary aim in the OP is to establish just and favorable conditions for each to fashion his own unity. (493)

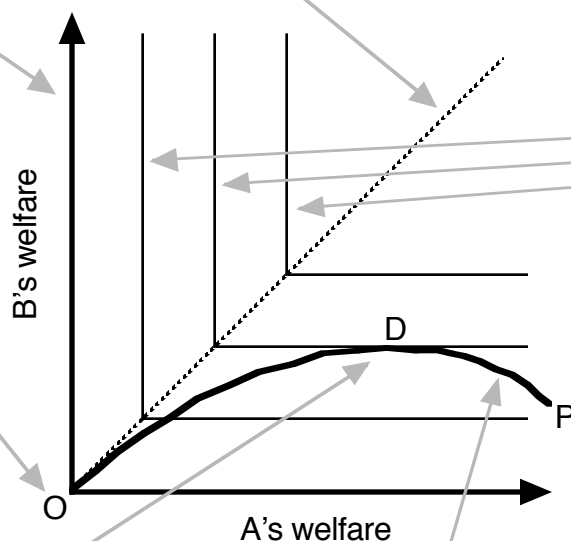
- Given the priority of right, the choice of our conception of the good is framed within definite limits.
- In a well-ordered society this unity is the same for all; everyone's conception of the good as given by his rational plan is a subplan of the larger plan that regulates the community as a social union of social unions.
- Thanks to the precedence of right, the indeterminacy of the conception of good isn't really a problem. In fact, the factors that lead a teleological theory to embrace the idea of a dominant end lose their force.
 - since peoples' claims on each other are not affected by choices, indeterminacy is innocuous. (because everyone is bounded by the previously determined conception of the right, people can't make unjust claims on each other based on their conception of the good)
 - there is no need to go beyond deliberative rationality in order to define a clear and workable conception of right.
- In sum, the structure of contract doctrine is opposite to that of utilitarian theory.
 - utilitarians draw up rational plans without hindrance under full information, and society maximizes the aggregate fulfillment of the plans that result
 - in justice as fairness, all agree ahead of time on the principles by which their claims on one another are to be settled. The prior collective agreement establishes at the outset certain fundamental structural features common to everyone's plan.
 - justice as fairness does not have a dominant end that organizes life (bottom 495)
 - utilitarianism defines the good locally, as a more or less homogeneous quality of experience, as regards it as something that is to be maximized
 - hedonistic utilitarianism is the classic example
 - justice as fairness identifies a sequence of increasingly specific structural forms of right conduct, each set within the preceding one, and so works from a general framework to a sharper and sharper determination of parts.
 - This sequence does not aim at the complete specification of conduct. Rather, the idea is to approximate the boundaries within which individuals and associations are at liberty to advance their aims and deliberative rationality has free play.

The graphs that Rawls introduces in §13 are actually quite useful. Here's how they work:

The axes represent the expected welfare of the parties. (Welfare is intentionally a vague term -- Rawls interprets it in terms of primary goods, a utilitarian might consider utility, and others might choose to measure income or wealth.)

Rawls uses the point O to designate "the hypothetical state in which [welfare] is distributed equally." We could alternatively think of it as the true "origin" -- the point at which neither A nor B has *any* primary goods.

The 45° line (i.e., the line given by the equation $x=y$) usefully marks the points at which A and B are equally well off.



The indifference curves mark out sets of points that are all considered equally just according to the difference principle. (Justice is "indifferent" between them.) The farther to the upper right an indifference curve is, the more preferable those distributions are.

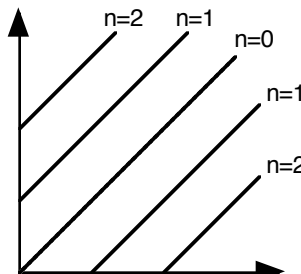
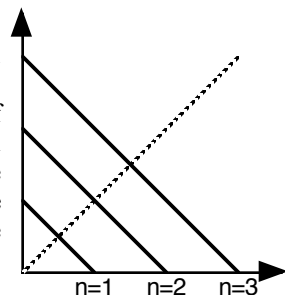
The L-shaped structure should make sense: so long as A is better off than B, the OP curve will be below the 45° line. In that area, the indifference curves are just horizontal lines -- lines which measure B's welfare. (Consider the equations $y=1$, $y=2$, and so on, recalling that y -values measure B's welfare.) Therefore, as Rawls' difference principle requires, so long as A is better off than B, we measure justice solely in terms of B's welfare. If the curve were above the 45° line, then B would be better off than A, and we'd want to measure justice solely in terms of A's welfare. That's why in that part of the graph, the indifference curves are vertical lines.

The point D marks the spot at which line OP touches the highest indifference curve it reaches. Therefore, that point represents the most just distribution according to the difference principle.

The curve OP represents the (maximum) expected welfare of B, given A's expected welfare.

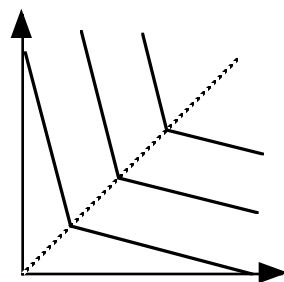
As we've seen, Rawls' indifference curves are L-shaped. Other conceptions of distributive justice will have different indifference curves. Some examples...

A utilitarian seeks to maximize overall welfare. That is, she seeks to maximize the value of $x+y$. Thus, utilitarian indifference curves will be the lines $x+y=n$, where higher values of n denote higher indifference curves.



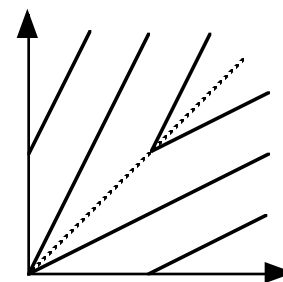
A strict egalitarian will seek to minimize the difference between A's and B's welfare. That is, she'll seek to minimize the value of $x-y$. Thus, egalitarian indifference curves will be the line pairs $|x-y|=n$, where lower values of n denote higher indifference curves.

We can create hybrid principles by "bending" the utilitarian indifference curves around the 45° line, or by angling the bases of the egalitarian curves toward the 45° line.



"Obtuse" Ls tend towards utilitarianism: they'll encourage equality, but only when doing so comes at very little cost.

Rawls' difference principle yields 90° Ls, so it's clearly halfway between strict egalitarianism and utilitarianism. Why, then, is it considered an egalitarian principle? Because it's the most egalitarian a principle can be without being in a sense sadistic: any more egalitarian principle (i.e. any "acute L") will sometimes declare a distribution more just than another even if *everyone* is better off in the latter. It requires that *everyone* sacrifice in the name of justice. Thus, Rawls goes about as far as an egalitarian can plausibly go.

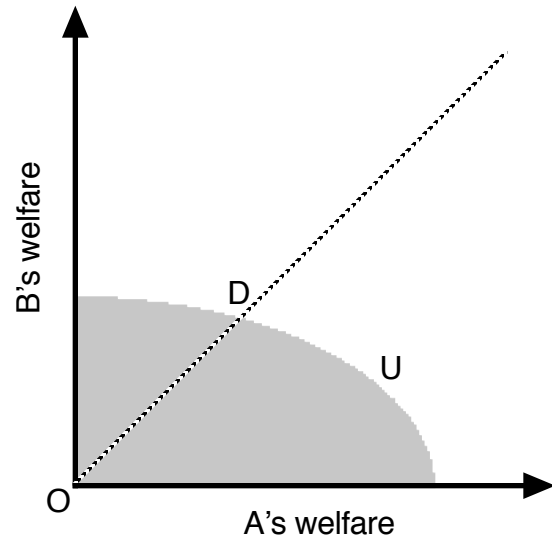


"Acute" Ls are generally egalitarian: they'll allow departures from strict equality, but only when doing so results in huge benefits.

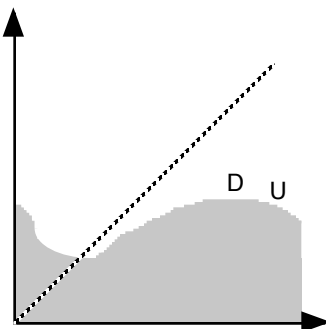
If we interpret O as being a true origin, we can generalize the graphs a bit. It seems natural to suppose that, when choosing among distributive principles, we'd really be considering *regions* on the graphs, and not just lines.

For example, consider the area under the curve on the original graph we discussed earlier. It seems likely we could, were we to want to, choose any point in that region. We could forcibly take away from B some of the welfare she gained from A's status. That might be a wasteful and silly thing to do, but it may well be possible.

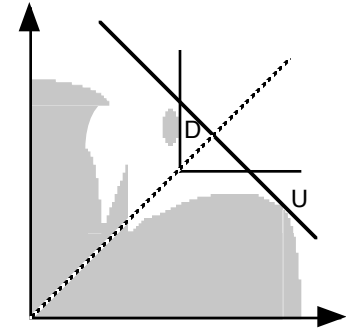
So, we might draw a welfare graph like the one to the right. The possible distributions are the ones in the shaded area. Mentally adding the "L"s will show that the difference principle would choose the distribution at point D, and adding the utilitarian's parallel lines will show that the principle of utility would choose the distribution at point U. Various "obtuse L"s will choose points on the arc between D and U.



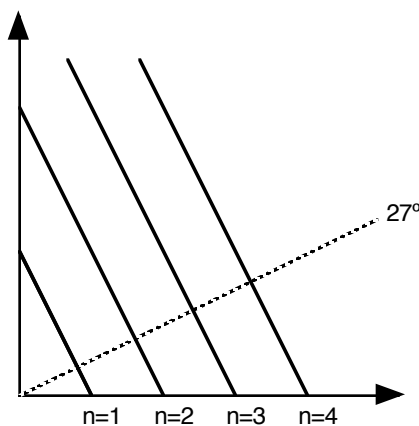
Now, if Rawls is right that the greater expectations for A can themselves, to a point, give B greater expectations, we'll get a region with quite a different shape, perhaps like this:



And of course, given the oddities of the real world and of human behavior, we could have much more oddly-shaped or even non-contiguous regions. We can analyze any of these using the same method of indifference curves. (I've drawn in the highest curves for both the difference principle, and the utilitarian principle.)



What if we don't want to weigh A and B equally?



Suppose, for example, that there are twice as many A-type people as there are B-type people. Though that wouldn't change Rawls' analysis, a utilitarian would want to treat A's welfare as having twice the significance of B's. That is, the utilitarian would want to maximize the value of $2x+y$. Now, we could accomplish that (as Rawls does) simply by making the indifference lines more vertical. We could also, however, rotate the 45° line toward the x-axis and make it (approximately) the 27° line ($\tan 27^\circ \approx .5$). (The space under the 27° line is the area in which the As collectively have more welfare than the Bs.) Then, just as the old utilitarian lines were drawn perpendicular to the 45° line, the new utilitarian lines will be perpendicular to the 27° line. We can then "bend" the indifference lines around the 27° line to generate hybrid, weighted principles, just as we bent the unweighted utilitarian lines around the 45° line to generate unweighted, hybrid principles. (You could also use this method of representing weighting if, for example, you believed that the welfare of aristocrats mattered twice as much as the welfare of peasants.)

Finally, though we've been restricting ourselves to straight indifference curves (more accurately, to indifference lines), that's just been because it makes the math easier. We might, for example, want to "smooth out" the obtuse Ls to turn them into true curves.

Section notes, Affirmative Action

Week: IX (Affirmative Action: Reverse Discrimination?)

Contributor: Timothy Lee

For the rest of the term, keep in mind Rawls' different conceptions of distributive possibilities. Notice that each goes further than the last in eradicating supposedly 'morally arbitrary' factors from influencing people's life-chances. How far do you think we should go in the name of justice? Which of (1)-(5) you think represents the most just principle?

- (1) Feudalism/Aristocracy: people's life-chances are almost wholly dependent on their social class or on some other accident of birth.
- (2) Libertarianism ('System of Natural Liberty' in Rawls's terminology): unlike (1), there are no formal or legal bars to advancement, and all careers are open to everyone. But life chances remain significantly dependent on family income, educational opportunities, and so on.
- (3) Meritocracy ('System of Liberal Equality'): unlike (2), a further effort is made to equalize initial opportunities through public education, headstart programs, social welfare initiatives, redistributive taxation, and so on. Now, success depends just on talents, effort and luck, with equally talented people all having an equal chance of success. Life chances do, however, remain dependent on people's natural level of talent.
- (4) Egalitarian, with sensitivity to effort: we do all that we did in (3), but go further in also eradicating the influence of people's differential talents on their chances of success. Large redistribution takes place from the fortunate, who are talented, to the unfortunate, who are less talented, with people's talents being treated as a jointly-owned social resource. The only thing that significantly determines how well people do is the effort which they apply in their lives.
- (5) Full Egalitarian ('Democratic Conception' / 'Difference Principle' / 'Justice as Fairness'): we do all that we do in (4), but we also eradicate any influence which people's effort levels might have on their success, on the grounds that people's predisposition to work hard is every bit as much a morally arbitrary fact about them as their social class or natural talents. Hence, we now aim for something like equality of outcome, albeit mediated by the maximin principle.

Equality, Entitlement and Merit: Rawls vs Nozick. Here are some issues to keep in mind when considering the debate between Rawls and Nozick:

- (1) Are natural talents properly to be viewed as collective assets (as for Rawls) or as private property (as for Nozick)?
- (2) What is the difference between a conception of the Good and a conception of the Right?
- (3) What are the differences between 'entitlements to legitimate expectations' and 'moral desert'?
- (4) In which ways is Rawls's theory of justice Kantian? In which ways are Rawls and Kant very different? Compare, for example, Rawls's Difference Principle with Kant's claim, in 'Theory and Practice' (para. 292) that political equality is "completely consistent with the greatest inequality in the quantity and degree of possessions".
- (5) What is Rawls's argument from Moral Arbitrariness (look at §12 & §17)? How compelling is it?
- (6) What does Rawls mean by the claim that "the self is prior to its ends" (§84). Do you agree with this claim?
- (7) The agents in Rawls's Original Position are defined as 'heads of households' representative of particular social roles. Moreover, Rawls restricts justice to the 'basic structure' of society, hence leaving it unable to make any claims about distribution or freedom within families. Does this mean that Rawls's theory is anti-feminist?
- (8) Would a just Rawlsian society be a *laissez-faire* capitalist state, a socialist state or a welfare state? Why would it have to take the form which you think it would take?

General questions on Affirmative Action:

- (1) What is Dworkin's conception of merit? Is it a plausible and attractive conception?
- (2) What does Sandel mean by "enlarged self-understanding" (LLJ, p. 143)?
- (3) How do Rawlsian themes of desert, legitimate expectations and the priority of the right over the good fit in with our thinking about these cases of affirmative action?
- (4) Is it possible to construct Rawlsian arguments for and against affirmative action? Which side of the debate is best supported by Rawlsian thinking? Are Rawls's principles of justice the right way in which to approach these issues?

- (5) Is it ever legitimate to construct social, political or educational institutions to “redress past wrongs”? Does the answer depend on what sort of institutions (social, political or educational) we are talking about? Does it matter what kind of wrongs we want to redress?

Bakke vs. Regents of the University of California (1977) and *Hopwood vs. State of Texas* (1996)

- (1) Do you think that the Supreme Court was right to uphold the University of California’s decision not to admit Allan Bakke to UC Davis Law School? If so, why? If not, why not?
- (2) Do you agree with the Texas appeal court’s decision in the Hopwood case? Again, why or why not?
- (3) Do you think that Bakke or Hopwood had their rights infringed in being denied access to their respective professional schools?
- (4) In Bakke’s case, Justice Powell outlined four kinds of state interests which might be served by affirmative action. These were:
 - a. “reducing the historic deficit of traditionally disfavoured minorities in the medical [or legal, etc.] profession”;
 - b. countering the effects of societal discrimination;
 - c. increasing the number of physicians [or lawyers, etc.] who will serve in communities currently underserved; and
 - d. obtaining the educational benefits that flow from an ethnically diverse student body
- (5) Powell argued that goals (II) and (III) were inappropriate, but accepted (I) and (IV). What do you think about these possible reasons for supporting affirmative action?
- (6) What other reasons might be given in its favour? Note that some of these goals are remedial and some are not.
- (7) Is it ever legitimate to construct social, political or educational institutions to “redress past wrongs”? Does the answer depend on what sort of institutions (social, political or educational) we are talking about? Does it matter what kind of wrongs we want to redress?

LBJ on Affirmative Action

- (1) In a speech to the graduating class at Howard University on June 4th 1965, President Lyndon Johnson framed one vision of the justification underlying affirmative action, asserting that civil rights laws alone are not enough to remedy discrimination. He said:
 - a. "You do not wipe away the scars of centuries by saying: 'now, you are free to go where you want, do as you desire, and choose the leaders you please.' You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, 'you are free to compete with all the others,' and still justly believe you have been completely fair . . . This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity—not just legal equity but human ability—not just equality as a right and a theory, but equality as a fact and as a result."
- (2) Do you agree with LBJ’s rationale for the justification of affirmative action? How does it relate to the different conceptions of the demands of justice (from A-E (or from 0-3)) which we discussed last week in section?
- (3) Is LBJ being a meritocrat, or a more substantive kind of egalitarian here?

Ronald Dworkin’s treatment of Bakke’s Case

- (1) Dworkin is a rights-based theorist who thinks that the rights of Bakke and Hopwood were not violated. How does Dworkin arrive at this result?
- (2) Is Dworkin right to reject the criticism that affirmative action programs increase, rather than decrease, the degree to which society is ‘racially conscious’? (p. 294). Be sure to mark the difference which Dworkin points out between his judgement of social theory (his goal), and his subsequent strategy.
- (3) What, for Dworkin, is the rationale behind affirmative action? Note, the goal is not that of simply fostering diversity, as such, on university campuses.
- (4) Dworkin allows that Bakke has a right to equal treatment. But why does Dworkin think that being treated as an equal does not necessarily rule out affirmative action?
- (5) Is it significant that Bakke did not deserve his intelligence just as he did not deserve his skin colour?
- (6) What is Dworkin’s conception of merit? Think how it relates to the Rawlsian distinction between moral desert and legitimate expectations. Does anyone really “deserve” a place at a particular school?

- (7) Is Dworkin right in saying that “there is no combination of abilities and skills and traits that constitutes ‘merit’ in the abstract”? (p. 299).
- (8) Look at Dworkin’s attack on “the lazy virtue of simplicity” (p. 302). Do you agree with him?
- (9) How do Rawlsian themes of desert, legitimate expectations and the priority of the right over the good fit in with our thinking about these cases of affirmative action?
- (10) Is it possible to construct Rawlsian arguments for and against affirmative action programs? Which side of the debate is best supported by Rawlsian thinking? Are Rawls’s principles of justice the right way in which to approach these issues?

Michael Sandel’s criticisms of Dworkin:

- (1) What are Sandel’s major criticisms of Dworkin (and hence, also, of Rawls)? Do you find them convincing?
- (2) Is Sandel right in noting affinities between Dworkin’s position and that of Rawls?
- (3) Is Sandel correct when he says (p. 138) that:
 - a. “For Rawls [& Dworkin] the fallacy with the claim that whites are inherently more worthy than blacks is not that it denies the intrinsic worth of blacks but that it falsely attributes an intrinsic worth to whites, and so attributes to them an unwarranted claim of desert”?
- (4) What is the content of Sandel’s criticism of the ‘disembodied subject’ in Rawls and Dworkin?
- (5) What do you make of Sandel’s argument at (p. 141) that:
 - a. “The arbitrariness of an individual’s assets argues only against the proposition that the individual owns them or has a privileged claim to their benefits, not in favour of the proposition that some particular society owns them or has a privileged claim with respect to them.”?
- (6) What does Sandel mean when he says that: “in the absence of some wider subject of possession, to regard ‘my’ abilities and endowments as mere instruments of a wider social purpose is to use me as a means to others’ ends, and thus to violate a central Rawlsian and Kantian moral injunction.”? (p. 141)
- (7) Do policies which discriminate by virtue of arbitrary characteristics violate the Kantian injunction never to treat people merely as means? Even if such policies do not violate this Kantian injunction, do they nevertheless rely on too sharp a distinction between the self and its assets and talents?
- (8) What does Sandel mean by his notion of an “enlarged self-understanding”? (LLJ, p. 143)?
- (9) Look at Sandel’s three arguments against Rawls and Dworkin on pp.146-147.
- (10) Do they work, and has Sandel thereby identified a central problem with the Rawlsian or Dworkinian approach? Or, might there be ways in which Rawls or Dworkin could persuasively respond to Sandel’s criticisms?

‘Proxy War’:

- (1) Do you agree that it is inconsistent to accept affirmative action, whilst rejecting racial profiling, or vice versa?
- (2) Are liberals or conservatives who accept one but not the other making an error of reasoning? Or could there be an argument for accepting one of the practices, but not both?
- (3) Does Brus oversimplify the issues which are at stake here?

Starrett City

- (1) Is there a difference between just and unjust discrimination? Does it matter that the discrimination in the case of Starrett City is in favour of a majority, and historically well-favoured, group?
- (2) What would Dworkin have to say about this case? What’s your own view?

Section notes, Aristotle

Week: X (Aristotle)

Contributor: Timothy Lee

Aristotle's Politics – Background

- Aristotle lived from 384-322 BCE. Interestingly, although he is a great theorist of citizenship, he spent most of his life living as a resident alien or 'metic' in Athens, deprived of citizenship rights by virtue of his Macedonian nationality.
- Also noteworthy is the fact that, despite his conception of the city-state (or polis) as being the natural and proper form for the state to take, Aristotle lived during a time when these city-states came under the domination of the expanding Macedonian empire. Aristotle's theory would seem to lament such a change, even though Aristotle himself had strong connections to the Macedonian court (he was a tutor to Alexander the Great, and his own father had been the court physician to a previous King of Macedon).
- As you will have noticed, although Aristotle's Politics is one of the acknowledged classics in the history of political thought, the book itself is something of an incoherent amalgam. It is very likely, indeed, that the book as we have it was not considered by Aristotle to be in a finished state at all. Many of Aristotle's finished works (including all his Dialogues) have been lost, and it may well be that the Politics as we have it is probably just a series of notebooks containing work-in-progress, or notes for lectures.
- The book divides into three basic parts:
 - Books I-III: A fairly abstract discussion of the origins and nature of the State (polis).
 - Books IV-VI: A more empirical discussion of the different sorts of constitutions which a state could have – i.e. of the different sort of political 'regimes'.
 - Books VII-VIII: These books are the opening fragment of a work on the Ideal State.

Aristotle questions

Aristotle on human nature, the city-state and 'the good for man' (Book I, Chs. 1-2)

- First off, it's important to remember the distinction between 'teleological' and 'deontological' theories, and to understand the different ways in which they distinguish (or not) and prioritize the Right and the Good. Which of the theories we've studied are teleological, and which are deontological? Think about utilitarianism, libertarianism, Locke, Kant, and Rawls.
- What does Aristotle mean when he says that the city is natural? What does he think are the implications for man and for politics to say that man is a 'political animal'? What are his arguments for these claims?
- Look at Aristotle's argument at (Bk I, Ch. 2, 1252b28 -) what does Aristotle mean when he says that while coming into being for the sake of living, the city exists for the sake of living well, and when he says that self-sufficiency is an end and what is best? What does this tell us about Aristotle's conception of political community?
- Look at the argument for man being a 'political animal' at (1253a8-a18). What do you make of this argument? What sorts of assumptions does it involve? In what sense does Aristotle think that we are 'political' animals?
- What is Aristotle suggesting when he says that the city is thus prior by nature to the household and to each of us? (Bk. I, Ch. 2, 1253a20). How does this contrast with the common assumptions of liberal theory (think about Locke, Kant, Rawls, and the libertarians) as to the relative 'priority' of the state and its citizens? (This was Q1 on the response paper.)
- Have a look at (Bk I, Ch. 2, 1253a20-a28). What do you make of Aristotle's argument here that the whole must of necessity be prior to the part?
- Is it a strong objection to libertarianism, or to Locke's theory, to say that one who is part of no city is thereby either a beast or a god? (1253a26-a28)

Aristotle on Slavery (Book I)

- What do you make of Aristotle's discussion of "natural slavery" in Chapters 4-5?
- Think of where Aristotle would be placed on Rawls' systems diagram, which went from (1) Aristocracy, to (2) Libertarianism, (3) Meritocracy, (4) Effort-rewarding 'Democratic Equality' and (5) Rawlsian Democratic Equality, especially with regard to his discussion at (1254b (Ch. 5).
- Why does Aristotle think that those who assert slavery to be against nature are "in certain manner correct..." (start of I., 6)? Whilst this might seem to be an encouraging admission, look carefully at its justification – especially at

(1255a25-28): "... and no one would assert that someone not meriting enslavement ought never to be a slave. Otherwise, the result will be that those held to be the best born will become slaves and the offspring of slaves if they happen to be captured and sold."

- What is Aristotle's argument here?
- Aristotle claims that slavery is "both advantageous and just". We've seen his argument for why it is just. Presumably, it is hard to defend this position. What stands behind his claim that slavery is "advantageous"? Is there any way in which these sorts of advantages could be promoted by some other means?
- Aristotle's treatment of gender relations is absolutely lamentable. Look, especially, at (I. 5, 1254b10-b15), where he says that "the relation of male to female is by nature a relation of superior to inferior and ruler to ruled.". Also, there is some particularly awful material at (III. 4, 1277b20-b30).
- Overall, do these more ridiculous opinions of Aristotle's about women and 'natural slaves' disfigure his whole theory? If not, how ought we now best to use Aristotle's work?

Aristotle on Citizenship (Book III, chs. 1-8)

- What is Aristotle's conception of citizenship (in Bk III, chs. 1-8)? What stands behind his assertion that "The citizen in an unqualified sense is defined by no other thing so much as by sharing in decision and office."?
- How does he construe this claim? What counts as 'sharing in decision and office'?
- What do you make of Aristotle's view that citizenship "cannot belong to everyone or even to every free person, but only to those who have been relieved of necessary sorts of work." Does this really point to a just form of discrimination? Or does this sort of assertion make Aristotle's theory wholly unacceptable?
- Perhaps, though, there is something of great importance in this Aristotelian conception of citizenship. What sort of political action might it recommend in a contemporary context?
- Think about how we might want to justify or argue for democracy in contemporary liberal societies.
- Do we think that democracy is justified simply as a mechanism for aggregating people's preferences, or do we think that it has some more robust value?
- If the latter, then ought it not to be the case that the state should try to encourage participation in politics among its citizens? How could it do this?
- Do people simply not have enough time to take politics seriously in contemporary liberal societies? (Think of the differences in rates of participation in political activity between, say, a student body and the working population as a whole).
- What could be done about this? (I assume that Aristotle's solution of enslaving a proportion of our state's inhabitants will seem unsavory for a variety of reasons!)

Aristotle on Politics and/as the Good Life (Book III, Ch. 9)

- Recall (I, 2): "[the city] exists for the sake of living well". Aristotle comes to fill this claim out somewhat at (III, 9). Why does Aristotle reject the claims that (i) that the majority deserves to rule because of their freedom, and (ii) that the wealthy deserve to rule because of their possessions? Why does Aristotle find both of these views incorrect?
- How would his conception of the *telos* of the city lead him to reject, say, libertarian conceptions which might allow too much power to flow to the wealthy? What sort of egalitarians would Aristotle also be able to take issue with? How might an egalitarian (or libertarian) respond to Aristotle in his own terms?
- Why does Aristotle think that a true polis should not exist merely for the sake of possessions, commerce and mutual security? Would Aristotle consider a liberal state to be a "city of slaves and animals". What would he make of the assumptions of Locke or the libertarians in this respect? What about Rawls?
- Do you think that an Aristotelian political community, which exists for the sake of living well and encouraging noble actions has to be committed to material inequality?

BOOK I Notes

Chapter I

- ... all men do all their acts with a view to achieving something which is, in their view, a good.
- It is a mistake to believe that the statesman is the same as the monarch of a kingdom, or the manager of a household, or the master of a number of slaves.

Chapter II

- There must necessarily be a union of the naturally ruling element with the element which is naturally ruled, for the preservation of both.

- master and slave have a common interest
- the instrument is most perfectly made when it serves a single purpose and not a variety of purposes.
- The first form of association naturally institutes for the satisfaction of daily recurrent needs is thus the family
- The most natural form of the village appears to be that of a colony from a family.
 - This is the reason why cities were originally ruled by kings
- while [the city] comes into existence for the sake of mere life, it exists for the sake of a good life.
- what each thing is when its growth is completed we call the nature of that thing, whether it be a man or a horse or a family. Again the end, or final cause, is the best and self-sufficiency is both the end, and the best.
- man is by nature a political animal
- it is the peculiarity of man, in comparison with other animals, that he alone possesses a perception of good and evil, of the just and the unjust, and other similar qualities; and it is association in these things which makes a family and a city.
- the city is prior in the order of nature to the family and the individual. The reason for this is that the whole is necessarily prior to the part.
- Man, when perfected, is the best of animals; but if he be isolated from law and justice he is the worst of all.
- The virtue of justice belongs to the city; for justice is an ordering of the political association, and the virtue of justice consists in the determination of what is just.

Chapter III

- master/slave, husband/wife, parent/child
- the art of the household is the art of acquisition

Chapter IV

- property is part of household management
- both household management and the specialized arts must be furnished with its appropriate instruments if its function is to be fulfilled.
- property is an instrument of action
- a part is not only a part of something to which it belongs, but it also belongs entirely to that other thing.
- anybody who by his nature is not his own man, but another's, is by his nature a slave; anybody who, being a man, is an article of property is another's man; an article of property is an instrument intended for the purpose of action and separable from its possessor.

Chapter V

- the relation of ruler and ruled is one of those things which are not only necessary, but also beneficial
- where one element rules and the other is ruled, there is something which they jointly produce.
- animate beings are composed, in the first place, of soul and body, with the former naturally ruling and the latter naturally ruled.
- Again, the relation of male to female is naturally that of the superior to the inferior, of the ruling to the ruled.
- Someone is thus a slave by nature if he is capable of becoming the property of another... and if he participates in reason to the extent of apprehending it in another, though destitute of it himself.
- the contrary of nature's intention, however, often happens: there are some slaves who have the bodies of freemen, as there are others who have a freeman's soul.

Chapter VI

- there is a kind of slave, and of slavery, which owes its existence to law.
- one who is superior in goodness ought to rule over, and be the master of, his inferiors.
- There is thus a community of interest, and a relation of friendship, between master and slave, when both of them naturally merit the positioning which they stand. But the reverse is true, when matters are otherwise and slavery rests merely on legal sanction and superior power.

Chapter VII

- this knowledge belonging to the master is something which has no great or majestic character: the master must simply know how to command what the slave must know how to do.

Chapter VIII

- this kind of capacity for acquisition is evidently given by nature to all living beings, from the moment when they are first born to the days when their growth is finished.

- if nature makes nothing purposeless or in vain, all animals must have been made by nature for the sake of men.
- hunting ought to be practiced, not only against wild animals, but also against human beings, who are intended by nature to be ruled by others and refuse to obey that intention, because this sort of war is naturally just.

Chapter IX

- all articles of property have two possible uses. The one is proper and peculiar to this article concerned; the other is not.
- In the first form of association, which is the household, it is obvious that there is no purpose to be served by the art of exchange. Such a purpose only emerged when the scope of association had already been extended.
- Exchange simply serves to satisfy the natural requirements of sufficiency. None the less it was from exchange, as thus practiced, that the art of acquisition developed
- The art of acquisition is different from household management. The latter has a limit, the former is concerned with currency. (p.27)
- Because enjoyment depends on superfluity, men address themselves to the art which produces the superfluity necessary to enjoyment; and if they cannot get to what they want by the art of acquisition; and if they cannot get what they want by the art of acquisition, they attempt to do so by other means, using each and every capacity in a way not consonant with its nature.

Chapter X

- it is the business of nature to furnish subsistence for each being brought into the world
- acquisition has two forms: trade and household management. Of these two forms, the latter is necessary and laudable; the former is a method of exchange which is justly censured, because the gain in which it results is not naturally made, but is made at the expense of other men.

Chapter XI

- [a general account of the forms of acquisition]
- the occupations which require most skill are those in which there is least room for chance...
- [discussion of monopolies]

Chapter XII

- household management has three parts: (1) the art of controlling slaves; (2) the art of exercising paternal authority; (3) the art of exercising marital authority
- the father's rule over household members differs depending on who he's ruling. His rule over his wife is like that of a statesman over fellow citizens; the rule over his children is like a monarch.

Chapter XIII

- the business of household management is concerned more with human beings than it is with inanimate property; it is concerned more with the good condition of human beings than with a good condition of property, and it is concerned more with the goodness of the free members of the household than with that of slaves.
- If slaves have a goodness of the higher sort, in what respect will they differ from freemen? If they have not it would be surprising since they are human beings, with a share in reason.
- The difference between them cannot be simply a difference of degree: the difference between ruler and ruled is one of kind, and degree has nothing to do with the matter.
- both classes must share in goodness, but there must be different kinds of goodness.
- The soul has two elements: ruling and a ruled; and each has its different goodness, one belonging to the rational and ruling element, and the other to the irrational and ruled.
- The slave is entirely without the faculty of deliberation... we must assume that the same holds with regard to moral goodness: they must all share in it, but not in the same way – each sharing only to the extent required for the discharge of his or her function.
- One kind of courage is concerned with ruling, the other with serving; and the same is true of the other forms of goodness.

BOOK III

Chapter I

- what is the city?

- a constitution is a way of organizing the inhabitants of a city.
- A city belongs to the order of 'compounds'
- This being the case, it clearly follows that we must inquire first about the citizen. In other words, a city is certain number of citizens; and so we must consider who should properly be called a citizen and what a citizen really is.
- [A details what being a citizen is *not*]
- offices may be divided into two kinds. (1) Some are discontinuous, (2) others have no limit.
- citizens are those who share in the holding of office as so defined.
- Constitutions are different, and so it follows that the citizen under each different kind of constitution must also necessarily be different. The citizen of our definition is particularly the citizen of a democracy.
- We say that one who is entitled to share in deliberative or judicial office is thereby a citizen of that city, and a city, in its simplest terms, is a body of such people adequate in number for achieving a self-sufficient existence.

Chapter II

- obviously, there are office holders who have no just title to their office; but we still say that they hold office, though we do not say it is just for them to do so.

Chapter III

- when can an act be considered an act of the city?
- If a democracy exists by force, we have to admit that acts done under the government of such a democracy that acts done under the govt of such a democracy are no more acts of the city concerned than were acts done under the oligarchy or tyranny.
- On what principles ought we to say that a city has retained its identity, or conversely, that it has lost its identity and become a different city? ...the word city is used in different senses.
- We could look at the dimensions of the city, or the dimensions of the people.
- We might say that the city could change if the people change?
- When the constitution changes in form, and becomes a different constitution, the city will likewise cease to be the same city... if the form of its composition is different, the compound becomes a different compound.

Chapter IV

- a related question is whether the excellence of a good citizen are identical or different.
- The citizen is a member of an association
- Members of an association serve the safety of their association; and their association consists in the constitution. The constitution to which we are thus led is that the excellence of the citizen must be an excellence relative to the constitution. It follows that there are different constitutions, and so there can't be a single excellence of a good citizen.
- It is possible to be a good citizen without possessing the excellence by which one is a good man.
- Although it is impossible for a city to be composed entirely of good men, each citizen must perform well his particular function and this requires the right kind of excellence
- The excellence of the good citizen cannot be identical with that of the good man in all cases.
- Ruling and obeying
- *Political rule* is the rule of the sort which is exercised over those who are similar in birth to the ruler, and are similarly free.
- A good citizen must possess the knowledge and the capacity requisite for ruling as well as for being ruled, and the excellence of a citizen may be defined as consisting in a knowledge of rule over free men from both points of view.
- *Practical wisdom* is the only form of excellence which is peculiar to the ruler. The excellence of subjects must be 'right opinion.' The ruled = flute maker, ruler = flute player

Chapter V

- the truth is that we cannot include as citizens all who are necessary to the city's existence
- the best form of city will not make the mechanic a citizen.
- Those who do the necessary tasks for the city may be divided into two classes, slaves, who do them for individuals, and mechanics and laborers, who do them for the community.
- One who lives the life of a mechanic or laborer cannot pursue the things which belong to excellence.
- the policy of extending citizenship so widely is generally due to a dearth of genuine citizens.
- those people who do not share in positions of honor in the city are just like resident aliens.

- There are some cities in which the good man and the good citizen are identical, and some in which they are different.

Chapter VI

- If there are a number of types of constitution, what are they, how many are there, and how do they differ? A constitution may be defined as the organization of a city in respect of its offices generally, but especially in respect of that particular office which is sovereign on all issues. The civic body is everywhere the sovereign of the city; in fact the civic body is the constitution itself.
- The good life is the chief end, both for the community as a whole and for each of us individually. But people also come together, and form and maintain political associations, merely for the sake of life.
- Those constitutions which consider the common interest are right constitutions, judged by the standard of absolute justice. Those constitutions which consider only the personal interest of the rulers are all wrong constitutions, or perversions of the right forms. Such perverted forms are despotic; whereas the city is an association of freeman.

Chapter VII

- Three kinds of governments: the one, the few, and the many
- Good forms: kingship, aristocracy, constitutional government
- Bad forms: tyranny, oligarchy, democracy
- Democracy is directed to the interest of the poor. None of these benefits the common interest.

Chapter VIII

- refining our terminology: oligarchy = few and wealthy, democracy = many and poor

Chapter IX

- justice is equality for those who are equal, not for all. Similarly, inequality is just for those who are unequal, and not for all.
- A just distribution is one in which there is proportion between the things distributed and those to whom they are distributed.
- If property is the end for which people come together and form an association, one's share of the city would be proportionate to one's share of the property, and in that case the oligarchs would have it.
- But the end of the city is not mere life; it is, rather a good quality of life.
- It is the goodness or badness in the life of the city which engages the attention of those who are concerned to secure good government.
- A city must devote itself to encouraging goodness, or else a political association sinks into a mere alliance, which only differs in space from other forms of alliance where the members live at a distance from one another. Otherwise, too, law becomes a mere covenant, or a guarantor of just claims, but lacks the ability to make the citizens good and just.
 - notice that Aristotle assumes that citizens must live close together
 - notice also that the covenant that Aristotle disparages is the ideal of other systems we have studied
- If citizens associated with each other in the same fashion after coming together as they did when they were living apart, that still could not be considered a city.
- The city is not an association for residence on a common site, or for the sake of preventing mutual injustice and easing exchange. These conditions are not enough to constitute a city.
- It is for the sake of actions valuable in themselves, and not for the sake of social life, that political associations must be considered to exist.

Chapter X

- the rule of the sovereign is not necessarily justice
- whenever a majority takes everything and divides among its members the possessions of a minority, that majority is obviously ruining the city.
- It may perhaps be urged that it is a poor sort of policy to vest sovereignty in a human being, rather than in law; for human beings are subject to the passions that beset their souls. But the law itself may incline either towards oligarchy or towards democracy.

Chapter XI

- the suggestion that the people at large should be sovereign rather than the few best men needs resolution, and while it presents some difficulty, there may be some truth to it.
- the problem raised in the previous chapter was : which people should be sovereign? And following from that we ask: what are the matters over which freemen, or the general body of citizens, the sort of people who neither have wealth nor can make any claim on the ground of goodness, should properly exercise sovereignty?
- There is a serious risk in not letting everyone have some share of power, for a city with a body of disenfranchised citizens who are numerous and poor is one full of enemies. The alternative is to let them share in deliberative and judicial functions.
- The people should not be made sovereign in matters that are best taken care of by experts.
- But then, it would seem to be absurd that people of poor character should be sovereign on issues which are more important than those assigned to the better sort of citizens. But this difficulty is resolved when we understand that it is not the individual juror or assemblyman who is vested with office, but the court or the assembly, and in these bodies, the individual is simply one part of the whole. It is therefore just that the people should be sovereign on the more important issues. (111)
- Rightly constituted laws should be the final sovereign; but rulers, whether one or many, should be sovereign in those matters on which law is unable, owing to the difficulty of framing general rules for all contingencies, to make an exact pronouncement.
- Thus, laws must be laid down in accordance with constitutions; and if this is the case, it follows that laws which are in accordance with right constitutions must necessarily be just, and laws that are in accordance with perverted constitutions must be unjust.

Chapter XII

- the good in the sphere of politics is justice, and justice consists in what tends to promote the common interest.
- Justice involves two factors: (1) things; (2) those to whom the things are assigned.
- Those who are equal should have equal things... but equal and unequals in what?
- It is possible to argue that offices and honors ought to be distributed unequally on the basis of superiority in any kind of goodness whatsoever.
 - Those who are better at the job should be given the better supply of tools.
 - Flute player example
 - If we accept this argument, every quality will have to be commensurable with every other.
- In matters political there is no good reason for basing a claim to the exercise of authority on any and every kind of superiority. Rather, claims must be based on the elements which constitute the being of the city.
- The four requirements of a good citizen: wealth, free birth, being just and being a good soldier (114)

Chapter XIII

- culture and goodness have the justest claim to contributing to the good society
- [Aristotle details different just claims of various groups]
- the decision about who should rule is not one that has been disputed so far
- suppose that the good are few in number: how are we to settle their claim? Should we consider the fact that they are few in light of the function they have to discharge and ask whether they will be able to manage a city?
- Legislation is necessarily limited to those who are equal in birth and capacity.
- [discussion of ostracism, which is useful because it maintains proportion, although often cities have used it to maintain factions]
- one might think that an outstanding person cannot obey, so he must be king

Section notes, Ability, Disability, and Discrimination

Week: XI (Ability, Disability, and Discrimination: Cheerleaders and Casey Martin's Golf Cart)

Contributor: Timothy Lee

Callie Smartt and Casey Martin:

- Aristotle says that flutes should be distributed to good flute players. Thus, if you don't have musical talent, you don't get a flute – no matter how much you want to be able to play in an orchestra. Does following this principle mean that Callie Smartt should not be a cheerleader? What, exactly, is the *telos* of cheerleading?
- What is the *telos* of golf? Is consideration of the *telos* of golf sufficient to decide on whether Casey Martin's golf cart should be banned from competition?
- What would Rawls's position be on both cases?
- Can one construct arguments from an Aristotelian and a Rawlsian perspective for each different viewpoint in our two examples?
- If the Casey Martin case was to be given to you as your second essay paper assignment, would you argue for or against allowing him to use his cart in PGA tournaments? How would you use the thinkers we have been studying to help support your position? What would be the strongest arguments you could make in favor of your view about the rights and wrongs of Casey's cart??

What is the difference between Bentham's idea of utility and Aristotle's idea of the good life? Is the good life that which maximizes utility?

- Happiness, for Aristotle, is functioning well in accordance with one's nature. Thus, for Aristotle, an account of happiness must come after a determination of the nature of people and groups of people.
- Which is the better view of happiness?
- Again, are they actually in conflict with each other, can they be reconciled, or do they simply try to define very different concepts which just happen to share a name?

Questions to ponder

- Is Anderson's surrogacy argument an Aristotelian one or a Kantian one?
- What does Aristotle think about free will?
- Is Aristotle persuasive in his argument that man reaches his potential through politics?
- If we were to agree with Aristotle that the end of man is to engage in politics, what would that require that we do in our society? For example, should we have compulsory voting?
- Consider the New York Times article on women at elite colleges who intend to be stay at home mothers in the context of our recent discussions about the proper goal of people and institutions.
- Does the proper end of a thing reside essentially in the thing, or in our relationship with the thing? If it resides in our relationship with a thing, then are we caught in a circular argument, where our naming of the thing determines what we think its proper goal is, such that we can't really get at its essential nature?

Section notes, Communitarianism

Week: XII, XIII (Aristotle)

Contributor: Timothy Lee

Week 1

The writings of some of the ‘communitarian’ critics of liberalism. These communitarian writers came to prominence in the 1980’s, and their work can be seen as a reaction to Rawls’s version of a liberal political theory. In many of the criticisms that the communitarians bring to bear against liberalism, certain Aristotelian themes can be discerned (although the communitarians took their inspiration from other thinkers as well as Aristotle – notably Augustine, Aquinas, Burke, Rousseau, Hegel and Marx).

The term ‘communitarian’ really seems to designate any one of a fairly large group of different views, and each of the different ‘communitarian’ writers, as we can see, stresses different aspects of the communitarian critique of liberalism.

To some degree this disagreement with liberalism is about the proper conception of the self, where the relevant contrast is between the liberal voluntarist or ‘choosing’ self and the communitarian ‘embedded’ or ‘encumbered’ self. Another aspect of the disagreement concerns matters of political policy, and the question of whether the state should seek to be neutral between conceptions of the good (as the liberals think), or rather should promote a certain teleological vision of the good life (as the communitarians would want). Another aspect is with regard to the proper methodology for political theorizing (this is especially true of the work of Michael Walzer, who thinks that we should pay special attention to the ‘social meanings’ of goods.)

Sandel calls his own position ‘civic republicanism’, Walzer describes himself as a ‘democratic socialist’, whilst MacIntyre eschews all such labels, seeing himself as a general ‘critic of modernity’.

Some questions and issues to think about while reading:

- (1) The differences between the liberal self and the communitarian self, including the relation of the self to its assets and ends.
- (2) The relationship between the right and the good in each of these theories (and of how this is reminiscent of the ways in which we can draw a deep contrast between Aristotle and Rawls).
- (3) The sources of political obligation in these ‘communitarian’ writers.
- (4) Do you think that you have obligations to your family or to your close friends that you do not have to strangers? (Think what Kant might have to say here...) What is the source of these obligations? Are there any circumstances in which you can renounce these obligations?
- (5) Communitarians argue that our identities are determined by our membership in groups, by the stories of our lives, and by the things we care about and the goals we strive for (our ends). But does the fact (i) that these features might be determinant of our identity tell us (ii) anything at all about whether these aspects of the self are relevant to the determination of what justice involves? What are the best arguments for this second, stronger kind of claim? Are you persuaded by the communitarians’ arguments?
- (6) What does Walzer mean when he says that “every political community is in principle a ‘welfare state’”? What does Walzer mean by welfare? Is Walzer right? If so, why? How would a libertarian respond to Walzer’s claim?
- (7) Why does Sandel say, in *Liberalism and the Limits of Justice*, of the liberal account of justice that its “vision is flawed, [its] aspiration incomplete”? Is he right to say this? If so, why? If not, why not?
- (8) When you look at the practical problems, try to think of the different sorts of arguments which could be made by communitarians like Walzer and Sandel, on the one hand, and by liberals like Rawls and Dworkin, on the other. Which way of arguing seems to be the most cogent?

One of the central communitarian ideas is that we have obligations of membership which are not just (i) duties we owe to persons as persons (natural or universal duties) or (ii) obligations incurred by consent. If that is the case, then we will want to consider the following questions:

- Do members of a society owe certain obligations to other members? Are these implicit or must they be made explicit through some agreement? Or is there some combination?
- Does a society owe obligations to members whom it has wronged in the past?
- Does one have obligations to one's fellow countrymen that are distinct from universal obligations that all humans owe to each other? Moreover, does one owe special obligations to those who one's country has wronged in the past?
- Do you think that contemporary Americans, even those born after the Vietnam war, owe a special obligation towards the reconstruction of Vietnam? Do the British owe special obligations to the Irish, even though Ireland is now the wealthier country, and the two are partners in the EU?
- What about contemporary Germans? Do they owe special obligations to Jews?
- Can one renounce these sorts of obligations, or are they inescapable?
- Consider the case of Robert E. Lee. He fought for the Confederacy, against his best judgment of the rights and wrongs of the Civil War, because he felt that he owed a special obligation to his family and to the state of Virginia. Was this a real moral dilemma? Was Lee correct in thinking that he had a moral obligation to the Confederacy? If so, why, and is this something that we can only make sense of if we look beyond liberalism?
- Do we owe more in the way of justice to our fellow countrymen than to foreigners? Could it be acceptable for an American company to pay foreign workers much less than it would pay American workers who did the same job, or to employ them under less favourable working conditions?

Two important questions to answer are these:

- (1) Are obligations of membership really a distinct third class of obligation?
 - a. Or, rather, can one recast our three examples so that they can be made sense of in terms of consent?
 - b. Think about the way in which Rawls deals with the obligations of political membership.
- (2) Are these examples of 'obligations of membership' morally important obligations of solidarity, or are they just condemnable prejudices or unjustifiable predispositions? Or, are some of these cases genuine moral obligations, and others not? Are they really anything to do with justice?
 - a. Going back to the case of Gen. Lee, consider the parallel case of a white South African, during the apartheid years, who was convinced of the moral case for justice and equality across racial lines in his country, but who did nothing because of his feelings of solidarity with his white, Boer countrymen. Is there anything of moral value in that attitude, or ought we to condemn it?

Communitarian TF blog

In the preface to the second additon of *Liberalism and the Limits of Justice*, Sandel seems to define teleological theories as those that hold that it is not the case that the right is prior to, and independent of, the good. That is, teleological theories hold that principles of justice depend on a particular conception of the good life.

Rawls's theory, with the right prior to the good, and the thin theory of the good, is therefore famously **not** teleological.

Utilitarianism is teleological under this definition. For a utilitarian, principles of justice **do** depend on a particular conception of the good life (or the good), because the most fundamental principle of justice is to maximize what's good. So for a utilitarian, in order to know what's just, you have to know what's good.

Aristotle's theory is also teleological. For Aristotle, justice means giving people what they deserve. Again, in order to know what's just, you have to know what's good, since you can't know what people deserve unless you know if they're good. To put it a different way (and the way Sandel puts it), "Before we can define people's rights or investigate 'the nature of the ideal constitution, it is necessary for us to first determine the nature of the most desirable way of life. As long as that remains obscure, the nature of the ideal constitution must also remain obscure.'" (Sandel xi, quoting Aristotle's *Politics* 1323a14)

As for the difference between Aristotle and consequentialists ... I don't see the maximization principle anywhere in Aristotle. He doesn't seem to argue that the purpose of the state is to maximize virtue in its citizens, or that the telos of each individual is to maximize his total virtue. It's not clear that Aristotle would think that losses in virtue for some are compensated for by gains in virtue for others - I'm just not sure that's how he thought about virtue. (He also thought that the virtues were interconnected - so that if you lost some, you might lose them all.) As a separate point, Alasdair MacIntyre argues that Aristotle wasn't a consequentialist because Aristotle believed in certain absolute moral prohibitions, e.g., don't murder. (After Virtue, 150) Presumably, for consequentialists there are no such absolute prohibitions - it's all a matter of consequences.

I think the main virtue of communitarian thinking is its deep recognition of the importance that community plays in shaping people's lives, in good and bad ways. It acknowledges that people do, as a matter of fact and throughout history, recognise the relations they have with others in their community (be it cultural, religious, ethnic, national, familial) to be a source of moral obligation. Whatever people want to be the case from a moral perspective, most liberal views (and I think both Rawls and Kant face this problem) ask people to engage in moral reasoning that is more or less impossible: imagine you're in original position; imagine that you have duties to humanity in general; imagine that there is some abstract moral rationality that can be identified if only we were reasonable. I think that if the only way we can come to a moral position is by asking people to engage in ways of thinking that they can't possibly do as a matter of course, then it's not a good moral view. So, for example I think that if Rawls is not confident that fully encumbered people won't arrive at his two principles of justice, they're not great principles of justice. Does that make sense? In a very important way, this view concedes much to a particular view of human nature, one that imagines people to prefer their own, to be sympathetic to people they know or 'know' in some looser sense etc. And the best communitarianism theory out there tries to work this this view of human nature in such a way that morally reprehensible views (such as preferring to disallow racial integration) can't be justified. Communitarianism isn't conventionalism; it's a recognition that community values matter to people (and not necessarily the view that because values matter that they should be authoritative in all moral dilemmas).

What else do I think? I think that communitarianism best recognizes that there are many rather than one distributional principle. Walzer's views for example emphasise the 'distributional spheres'; we distribute some things based on need (food, health care, for example); some things based on merit (jobs, educational places); some things based on exchange relations. The point is not to get there spheres precisely right, but to recognise that there is no one single way to distribute all goods, i.e., from best to least well off. Another key element of communitarianism for me is its recognition that cultures themselves give meaning to the things that should be distributed: our culture is concerned with fair distribution of education, but that's because education matters to us. Other communities will be concerned with distributing other things according to what matters to them. In some communities, there is tremendous importance in the distribution of religious favour, for example.

And the main troubles it encounters (that Sandel outlined) I think can be refuted, more or less by conceding that the criticisms are right but that not of all forms of communitarianism fall victim to them. So, there's no reason why a communitarian view can't recognise and defend some moral truths as basic - the equality of all people, for example (this is what Walzer does) - and there's no reason to think that a communitarian view has to subordinate the goals/objectives of the individual to the group's goals/objectives. Aristotle thinks they do; but being a communitarian in the contemporary world doesn't require adopting a strong teleological view in which the community itself is a moral good to which individual goals should be subordinated. Furthermore, there's no reason that the mutuality that underpins communities must be reciprocal through some sort of quid pro quo; I do things for community members on the idea that others in my community do things for me; note that 'on the idea that' is not the same as 'in the expectation that my effort will be reciprocated'.

There's no special coherent argument, here, as much as it's meant to display a sympathy towards people who try to write moral philosophy while recognising the value that most people put on community in most places in the world over most of history!

Communitarian Week 2

Michael Sandel and Alisdair MacIntyre: The Liberal Self and the Communitarian Self

- Sandel's critique of Rawls is largely based around his critique of Rawls's conception of the person. Sandel attacks the 'unencumbered self,' which he claims to find lurking in Rawls's account.
- Think of the differences in the fundamental moral questions which seem appropriate to ask of the liberal (choosing, voluntarist, willing) self, as against the communitarian (situated) self. For the first, it seems to be "What ends shall I choose", for the latter "Who am I?"
- Rawls's conception of the person, and what follows from it, in *A Theory of Justice*, seems to be as follows:
 - a. An individual is the 'site' or 'repository' of her assets, but no individual can be said to deserve the fruits of those assets, prior to any 'legitimate expectations' which might be set up by just political institutions;
 - b. "The Self is prior to the ends which it affirms;" our capacity to choose our ends is more important, from the point of view of justice, than the particular ends that we endorse;
 - c. The Right is thus prior to the Good, and a just society must therefore be neutral among competing conceptions of the good;
 - d. An individual has political obligations to the community that arise because the individual would consent to them in a perfect contractual situation.
- What is the communitarian critique (especially, what is Sandel's critique) of (a) through (d)?
- What does Sandel mean by his notion of the 'unencumbered self'?
- What does Sandel see as the weakness of the liberal egalitarian argument for the difference principle? (Recall the content of Sandel's argument on the question of affirmative action.)
- Why is it the case, according to Sandel, that liberalism cannot account for certain aspects of our moral experience? What does he see liberalism as missing out on?
- What does MacIntyre mean when he says:
 - a. "We are never more (and sometimes less) than the co-authors of our own narratives" (top of p. 199)?
 - b. "I can only answer the question 'What am I to do' if I can also answer the prior question 'Of what story or stories do I find myself a part?'" (middle p.201)
- Are these claims of MacIntyre's correct?
- What do you make of MacIntyre's conception of a human life as a "narrative unity"?
 - a. Notice the very explicit Aristotelianism of MacIntyre's view.

Michael Walzer: Communitarian Methodology and the Articulation of Theories of the 'Good'

- How does Walzer propose that we determine the common good, and how does he see that determination as helping us to figure out what is just?
- What does Walzer think is just for the U.S., in terms of 'welfare'? Are Walzer's conclusions on the content of America's 'shared understandings' persuasive? What does Walzer mean when he says that "every political community is in principle a welfare state"? Is this plausible?
- What do you make of Walzer's method for reaching his conclusions? What sorts of problems does that method present?

Conceptions of the Self and Political Conclusions

- Communitarians argue that our identities are determined by our membership in groups (e.g. Sandel), by the stories of our lives (esp. MacIntyre), by the things we care about and the goals we strive for (our ends).
 - a. But, isn't it one thing to say that identity is determined by these things, and quite another thing to say that these aspects of the self are relevant to determinations of justice?
 - b. What are the best arguments for linking the two sorts of claims? Are they persuasive?
- Think about how one might combine a communitarian understanding of the self with a liberal political outlook, or how one might combine a voluntarist self with communitarian politics

Section notes, Liberalism

Week: XIV (Liberalism: Political or Philosophical)

Contributor: Timothy Lee

Justice: Political or Metaphysical? Rawls and Sandel

Conceptions of the Self and Political Conclusions:

- Communitarians argue that our identities are determined by our membership in groups (e.g. Sandel), by the stories of our lives (esp. MacIntyre), by the things we care about and the goals we strive for (our ends).
- But, isn't it one thing to say that identity is determined by these things, and quite another thing to say that these aspects of the self are relevant to determinations of justice? What are the best arguments for linking the two sorts of claims? Are they persuasive?
- Think about how one might combine a communitarian understanding of the self with a liberal political outlook (or even, how one might combine a voluntarist self with communitarian politics).
- How do these concerns help to highlight the issue of Rawls's 'move to the political'?

Separating Ontology from Political Policy:

Substantive political philosophy (columns) Conceptions of the person (rows)	<i>Individualists (liberal policy advocates)</i>	<i>Collectivists (communitarian policy advocates)</i>
<i>Atomists (ontological individualists)</i>	Standard liberal position. Early Rawls, Kant, Mill. Also, libertarians such as Nozick	B.F. Skinner (just an example; you don't need to know him) http://www.ship.edu/~cgboeree/skinner.html
<i>Holists (ontological communitarians)</i>	'Communitarian liberalism' Walzer (to some extent), Sandel (to some extent.)	Aristotle. Standard communitarian position (so, to some extent, Sandel and – especially – MacIntyre). Perhaps, also, Karl Marx

Non-Metaphysical, 'Political' Liberalism – Rawls's Political Liberalism

- Rawls tells us that the task of justice as fairness is to forge a conception of justice specifying the terms of social cooperation for citizens who are regarded as free and equal, but who also disagree over fundamental religious, moral and philosophical doctrines.
- What does Rawls mean when he attempts to present a 'political' account of justice as fairness?
- In what sense is Rawls "extending the principle of toleration to philosophy itself?"
- What does Rawls mean by an 'overlapping consensus' of 'reasonable comprehensive doctrines'?
- What do you make of Rawls's argument that his 'political liberalism' is not just a type of 'modus vivendi' liberalism?

Sandel's criticisms of Rawls's 'move to the political'. Three main criticisms:

- The Objection against 'Bracketing Grave Moral Questions':
 - It is not always possible to exclude moral or religious claims from public debate. If these claims are not compelling, they should be part of our political discussion, and we can't decide if they are compelling without talking about them.
 - What do you make of Sandel's counter-argument to Rawls here? Consider the examples of (1) contemporary and recent debates about whether abortion should be allowed, and (2) The Lincoln-Douglas debates on slavery of 1858.

- Douglas argues in his debates with Lincoln that the federal government should not take a stand on the controversial moral question of slavery. Lincoln replied that “if it is a wrong, he cannot say people have a right to a wrong.” “Is it not a false statesmanship,” Lincoln asked, “that undertakes to build up a system of policy upon the basis of caring nothing about the very thing that every body does care the most about?”
- With regard to the Lincoln-Douglas debates, is it really the case that politics can side-step controversial moral conceptions?
- Even if it can side-step using a particular ‘conception of the good’ in order to decide on what is just, can it do without a ‘comprehensive’ account of justice (like that of A Theory of Justice), in order to decide on the limits within which that conception of justice functions?
- Was there any way in which to oppose slavery in 1858 without appealing to what Rawls would call a ‘comprehensive’ doctrine?
- In what senses should government be neutral? In what senses should it take a position?
- The Objection against ‘The Fact of Reasonable Pluralism’:
 - Sandel points out that it’s just not true that we agree about justice and disagree about the good; there are major differences of opinion about justice itself.
 - Is Sandel right in saying that there (1) is real and substantive disagreement about, say, principles of distributive justice, rather than just disagreement on the application of those principles, and (2) that, as against Rawls, we might hope for public agreement on some matters of ‘comprehensive doctrine’?
 - Is there really any sense in which we ought to reject the views of the libertarian or strict egalitarian as simply being ‘unreasonable’? As Sandel puts it, is Milton Friedman really any more unreasonable than Pat Robertson?
 - In this respect, think of some of the arguments for and against equal gay rights. Don’t we have to address general moral and religious views in order to address the justice of, for example, the right to gay marriage?
- The Objection against ‘the Limits of Liberal Public Reason’:
 - Here, Sandel’s claim is that we impoverish political discourse by excluding from it discussions about fundamental moral, religious or constitutional questions.
 - Is it simply unreasonable and overly restricting to rule-out the invocation of all such fundamental questions in our political debates?
 - Where would this leave the sorts of arguments from ‘moral arbitrariness’ which Rawls made use of in A Theory of Justice?
 - If the Catholic view on abortion is correct, then that would carry very grave consequences.
 - Therefore, don’t we at least have to be prepared to freely and publicly debate this view? Otherwise, how might we come to determine whether it is true or false; to be accepted or rejected?
 - What are Sandel’s two conceptions of how we could respect difference: the Liberal, and the Deliberative (p. 1794)? Which do you find the more compelling?

Some Questions on the Dispute between Rawls and Sandel:

- What is the core of Rawls’s idea of ‘justice as fairness’? And what does he mean by the idea of an ‘overlapping consensus’?
- To what degree should we, or to what degree is it even possible, to exclude questions of the good from determinations of the right?
- What do you make of the claim in *Bowers v. Hardwick* that laws are “constantly based on notions of morality”? Is this true? If it is true, is it a regrettable fact which we should attempt to change, or is it a proper and justifiable sign of a healthy political community?
- Is moral discussion desirable because it will produce better outcomes, or because the process of discussion itself will educate us and refine our views?
- If we do embrace moral argument as a necessary and desirable part of our political discourse, what should happen in cases where people cannot reach agreement? Should the conception of morality held by the majority then prevail?
- Should states recognize same-sex marriage? To what extent does the answer to this question require taking a position on the moral status of homosexuality?

Bentham, *Principles of Morals and Legislation*

Work: *Principles of Morals and Legislation*, Chapters I and IV

Author: Jeremy Bentham

Week: II (Utilitarianism)

Contributor: Anushka Sunder

Contributor's Notes:

Of the Principle of Utility

Bentham essentially says that man is governed by two things - pain and pleasure - which determine our standard of right and wrong. Utility is the tendency of an action to increase or decrease the happiness of a person by either producing some benefit or preventing some pain. If we are interested in the utility of the community, then we sum the utilities of individuals comprising that community by adding up their respective pleasures and avoidances of pain.

To determine whether an action is right or wrong, we must apply the principle of utility: if it is augmented, then an action should be taken. Conversely, if an action diminishes utility, then it should not be done.

Humans inevitably fall back on the principle of utility in making decisions. Even under the guise of other rationales, people make decisions with reference to the action's consequences. To disregard the outcome and its impact on society is to be hostile to the rest of the human race. People who dismiss the importance of utilitarianism fail to realize that every "right" action eventually leads back to a utilitarian motive.

Value of a Lot of Pleasure or Pain, How to be Measured

Since utility is defined with respect to pleasures and pains, these are considered the ends which people have in sight. Pleasure is the good, profit, convenience, advantage, benefit, etc while pain is evil, mischief, loss, etc.

To value these ends, we must consider four criteria with regard to pleasure and pain: (1) intensity, (2) duration, (3) certainty or uncertainty, and (4) nearness or remoteness. Additionally, because the pains and pleasures are results of an act, we must consider: (1) fecundity – the chance that pleasure is followed by more pleasure, and (2) purity – the chance that pleasure is NOT followed by the opposite sensation (pain). In the case of measuring utility for a group of people, we must use the preceding six criteria, as well as the number of people affected.

Specifically, we take the individual greatest affected by the act and value each pleasure and pain for this individual as a direct consequence of the action in questions. Then, we also pleasure subsequent pleasures and pains that may arise later (this is the fecundity/purity part of the valuation) and sum all the pleasures and all the pains. This gives a measure of the balance between good and bad tendencies. We take account of the number of people involved, and repeat the process for each person.

Mill, Utilitarianism

Work: *Utilitarianism*

Author: J.S. Mill

Week: II (Utilitarianism)

Contributor: Camilo Becdach

Contributor's Notes

Having read Bentham's work on utilitarianism, we faced two main objections to the theory. First, utilitarianism does not respect individuals as autonomous selves with absolute rights. Second, utilitarianism does not easily determine how we are to aggregate individual's values and preferences and whether all values and preferences are commensurable. Mill's goes part of the way towards addressing these issues.

Mill attempts to differentiate higher from lower pleasures. A pleasure is higher if it would be chosen over a greater amount of another pleasure and despite any discomfort that comes with it. Mill does not exactly explain which pleasures are by definition higher. Instead, he suggests that differentiation between pleasures comes with experience. He does associate higher pleasures with wisdom, nobility, and sophistication, above simpler feelings like bodily pleasure. People wish to enjoy these higher pleasures, and utilitarianism does not degrade them by putting all pleasures on the same plane.

Mill makes clear that enjoying the higher pleasures doesn't necessarily make one more satisfied. In fact, knowing that there are higher pleasures might be less comfortable with his contentment at times, because he knows there is pleasure beyond the lowest types. At the same time, he is overall happier and would never choose to only have the lower pleasures. In sum, "It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates dissatisfied than a fool satisfied. And if the fool, or the pig, are a different opinion."

Notably, even if a person were to adopt certain characteristics that made him less happy, his actions could still be justified under Mill's theory. What is important is total social happiness, not the particular happiness of each individual. At the same time, Mill points out that each individual need not pursue the common good. Instead, utilitarianism expects that people pursuing their own personal motives can be a way of achieving the highest social good.

Mill responds to many other criticisms of utilitarianism as well and often responds by saying that all ethical systems might have similar problems. This is similar to Bentham's arguing that all other ethical theories are simply methods of achieving the highest social welfare and thus can be reduced to utilitarianism.

Mill sets out to prove the nature of utility. How can we define what it is to reach utility? Is it different per person or do we all desire the same end? First, questions about ends are questions about what is desirable as Mill asserts. The only thing that we can prove is what we can see or feel or hear. Also, we cannot truly define why an individual desires happiness other than happiness is ultimately the end that people desire. Mill asks the question: "does the utilitarian doctrine deny that people desire virtue, or maintain that virtue is to be desired, but that it is to be desired disinterestedly, for itself?" (36). He answers this in saying that virtue leads to happiness. The desire of virtue makes one happy. And since we desire nothing but happiness, then we desire that of which is virtuous. People thus desire virtue because it leads to happiness. We must thus associate doing the right (virtuous) thing with pleasure, and thus we desire pleasure since the wrong thing leads to pain.

On one level Justice and utility are connected. The maxims of justice appeal to ensuring that the highest utility is reached. Impartiality is an obligation of Justice. In order to uphold justice impartiality is required so as to treat all equally. Returning good for good and repressing evil for evil.

In the end, Mill provides an argument for upholding utilitarian and addresses its limitations. He discusses pleasures, virtues, and justice. His work ultimately is a clarification of Bentham's earlier argument in addressing those criticisms that Bentham left unanswered.

Friedmans, “Created Equal”

Work: “Created Equal,” *Free to Choose, A Personal Statement*

Author: Milton and Rose Friedman

Week: III (Libertarianism)

Contributor: June Sangarlangkarn

Contributor’s Notes

Equality Before God

- from the Declaration of Independence, equal means each person has unalienable rights and is entitled to serve his own purposes and not be used to further someone else’s
- liberty is a part of definition equality
- respect of people’s differences and individual self-rule under the condition that it permits the same for others and with the establishment of limited government to protect that right
- Tocqueville: admired American equality of American democracy, but feared that could be carried to far and undermine civic virtue

Equality of Opportunity

- “a career open to the talents” – no obstacles to achieving positions except own ability, no arbitrariness
- equality of opportunity is essential component of liberty
- manifested in free enterprise economic policy after the Civil War
- still gave advantages, although not insurmountable ones, to those privileged by birth with factors favored by society (e.g. race, religion, family)

Equality of Outcome

- “everyone should finish race at the same time”
- equality = fairness
- govt measures promoting equality of outcome reduces liberty, as opposed to promotion of the two previous types of equality for which liberty is increased
- criticism: definition of fairness is arbitrary based on point of view, lack of incentive
- conflict between ideal of fair shares and personal liberty
- example of inheritance: it is unfair that some are born into wealthy families, but it is also ethically analogous to inheritance of talent or from the parent’s point of view as securing a good future for one’s children by paying for their education
- if taken literally, fair shares for all would mean giving the biggest amount of musical training to those with the least talent, which would be unfair to those with talent and the people that derive enjoyment from the cultivation of the talents of the gifted
- gambling example: everyone choosing to play starts off with equal amounts of money, and at the end there are winners and losers, but would it be fair to make the winners repay the losers for the sake of equality?
- whoever makes decisions involving chance (e.g. choosing to gamble) should bear the consequences, but govt intervention to provide fair shares for all undermines this
- America has benefited from system of freedom of choice where individuals bear the consequences of their choices (e.g. entrepreneurs like Rockefeller, Ford)
- at the same time, free enterprise is not inconsistent with philanthropy or broad social and cultural goals
- big difference between top 90% agreeing to tax selves to help bottom 10% (equality of opportunity, promoting liberty), and 80% voting to tax top 10% to help bottom 10% (equality of outcome, opposed to liberty)

Who Favors Equality of Outcome?

- there is little support for equality of outcome, as exemplified by government behavior (i.e. allowing lotteries and gambling)
- for intellectuals, failure to practice what so many of them preach (i.e. equality of outcome) – government bureaucrats preaching the system often receive the highest income themselves

- egalitarian communes, the “kibbutz,” highly prized in Israel – however, only 5% of population chose to be a member, suggesting that most would rather live in a system characterized by inequality, diversity and opportunity

Consequences of Egalitarian Policies

- Britain as example of equality of outcome: since WWII, adopted measures to take from the rich and give to the poor:
 - progressive tax scheme
 - expanded medical and welfare services
- what resulted in Britain was not an equitable distribution, but rather, the creation of new privileged classes to replace and supplement the old
- the drive for equality in Britain failed because fundamentally, it went against one of the most basic instincts of all human beings: when the law interferes with people’s pursuit of their own values, they will try to find a way around it. As soon as people break one set of laws, then even those laws regarded as moral and proper will lose respect (suggests growth in crimes in Britain may be result of its drive for equality)
- suggests that only fear of punishment, not a sense of justice and morality, will lead people to obey the law
- drive for equality also led to many able citizens leaving Britain, and had negative impact on efficiency and productivity

Capitalism and Equality

- free market capitalism increases inequalities – “whenever anything approaching equality of opportunity has existed, the ordinary man has been able to attain levels of living never dreamed of before”
- Russia as example of extreme inequality: a small privileged upper class and the mass of lower/middle class
- the great achievements of Western capitalism have redounded primarily to the benefit of the ordinary person (i.e. the rich in ancient Greece would not care much for modern plumbing b/c they had running servants replacing running water, and could replace television with living actors and musicians playing in their homes)
- in the end, capitalistic achievements have made available to the masses conveniences and amenities that were previously the exclusive prerogative of the rich and powerful

Conclusion

- a society that puts equality of outcome ahead of freedom will end up with neither equality or freedom; however, a society that puts freedom first will end up with both
- freedom means diversity and preserves the opportunity for today’s disadvantaged to become tomorrow’s privileged

Nozick, “Distributive Justice”

Work: “Distributive Justice,” *Anarchy, State, and Utopia*, pp. 149-164

Author: Robert Nozick

Week: III (Libertarianism)

Contributor: June Sangarlangkarn

Contributor’s Notes

Redistribution and property rights

- Maintaining patterned principles do not give the right to choose what to do w/ what one has or the enhancement of another person.
- proponents of patterned principles of redistributive justice ignore property rights.
- Patterned principles necessitate redistribution, because freely-arrived-at set of holdings rarely fit a pattern.
- Taxation of earnings from labor = forced labor because alternatives are limited to paying taxes or bare subsistence.
- End-result principles of distributive justice give each citizen a claim to some portion of total social product, independently of whether other people enter into particular relationships that give rise to these claims or whether people voluntarily agree to these claims in charity or in exchange for something.
- Patterned principles = unrewarded work and they decide what purposes your work should serve apart from your decision = property right in you = slavery = not achievable by moral means.
- If we can emigrate from a nation with patterned distributional principle, then why can’t they choose to stay and opt out? If they can’t emigrate, then should we kidnap people from a place without compulsory social provision who could be forced to make contribution in patterned principle community?

Locke’s Theory of Acquisition

- property rights in an object thru someone’s mixing his labor with it, because it improves the value of the object, and anyone is entitled to own a thing whose value he created, but why should the entitlement extend to the whole object rather than the added value if the stock of unowned objects is limited. → the crucial point is whether appropriation of unowned objects worsen the situations of others. = Locke’s proviso that there be “enough and as good left in common for others”.
- Worse off in 2 ways
 - Losing opportunity to improve situation
 - No longer being able to use freely what he previously could.
- stringent requirement: 1 and 2.
- Weaker requirement: only 1.
- Situations of persons who are unable to appropriate are not worsened by allowing property rights, because it puts means of production in the hands of those who can use them most efficiently for owners as well as others.

Hayek, “Equality, Value and Merit”

Work: “Chapter 6: Equality, Value and Merit”, *The Constitution of Liberty*

Author: Friedrich Hayek

Week: III (Libertarianism)

Contributor: Anushka Sunder

Contributor’s Notes:

Liberty only permits equality of general rules of law and conduct, and any more equality destroys individual freedom. Because people are inherently different, if we treat them equally, the result must be inequality. The only way to place people in an equal position is to treat them differently. There is therefore a distinction between material equality and equality before the law.

It is unjust to impose a deliberately chosen distribution because it can only be based on preconceived notions on the value of a person to others in society. Really, it would be better to consider a person’s moral merit and make transfers to the most deserving. If someone is willing to acquire additional talents to do things which may be valuable, this must be treated as a gain for the community. Though some may be worse off as a result, the new ability will benefit the majority. Thus, we cannot gain an equal distribution without interfering with voluntary exchanges and goals.

Consider the family:

It is ironic that people dislike the fact that people born into particular families have certain advantages but these same people believe that useful qualities which a person acquires due to innate talent in a universally equal environment are socially beneficial. Why is it that the very same useful quality is less valuable when it arises from good parents or a good home than when it is due to a person’s natural talents?

Consider inheritance:

Most people admit that family is important to pass on morals, tastes, and knowledge to future generations. Why should it not be desirable to also pass on material property? There is no disadvantage to society of some being born to wealthy families because it is good to encourage parents to endow the next generation with as much as possible.

Consider education:

Enforcing equality of education simply prevents some children from getting the better education they otherwise might.

There is also a disconnect between value and merit in a free society. Material rewards do not necessarily correlate with what we think of as merit.

Locke, *Second Treatise of Government*

Work: *Second Treatise of Government*

Author: John Locke

Week: IV (Locke: Property Rights)

Contributor: Tanuj Parikh

Contributor's Notes:

- “political power” – a right of making laws with penalties of death, and consequently all less penalties, for the regulating and preserving of property, and of employing the common-wealth from foreign injury; and all this only for the public good
- Locke argues that to understand political power properly, we must first consider what state all men are naturally in – the State of Nature
- State of Nature
 - a. A state of perfect freedom
 - b. A state of equality; all power and jurisdiction is reciprocal
 - c. Although it is a state of liberty, it is not a state of license – a person can’t “destroy himself”
 - d. Governed by Law of Nature
 - Reason dictates that everyone being equal means no one can harm another person’s life, health, liberty, or possessions
 - The only reason to impinge on someone else’s rights is to deliver justice on an offender
 - Everyone in the state of nature has the power to execute the law of nature upon any offenders, but within “calm reason and conscience” in order to receive reparation or instill a sense of restraint in other potential offenders
 - Punishment = lawfully doing harm to another
 - Locke defends law of nature argument with example about a foreigner being punished in a country (§ 9)
 - Reparation can be demanded by an injured party in addition to just doling out punishment
 - Every man in state of nature has the power to kill a murderer
 - transgressors should receive punishments in proportion to how bad their crime was – it should be a measure of degree
- State of war – force or a declared design of force, upon another person where there is no common superior on earth to appeal to for relief
 - a. A state of enmity and destruction
 - b. A person who attempts to put another man under his absolute power places himself in a state of war
 - c. Anyone who would take away the freedom of the state of nature must be looked on as in a state of war
 - d. State of war allows you to murder a thief because you two are now in a state of war with each other
 - e. When the actual force is over, the state of war ends between those that are in society
 - f. To end the state of war is a principle reason men organize into society
- Natural liberty of man is to be free from any superior power on earth and have only the nature of law to govern his actions
- The liberty of man *in society* is to be under no legislative power, but the one established by consent in the common-wealth
- Freedom of men under government is to have a common standing rule for everyone to live by
- A man cannot enslave himself to another any more than he can take his own life

- Perfect condition of Slavery = state of war continued between a lawful conqueror and captive
- God gave land to all men to use in common, but also gave them reason to make use of it to the best advantage of life and convenience
- Even though everything in nature is given in common to everyone, there has to be a way to appropriate them some way before they can be beneficial to one specific man
- How private property arises:
 - a. Everyone owns himself
 - b. Everyone owns his own labor
 - c. Whatever is mixed with labor becomes one's property
- No one can have a right to someone else's property when there is enough, and as good, left in common for others
- Property begins with the act of taking any part of what is common and removing it out of the state of nature
- Everyone has a right to as much property as he can ascertain without wasting it = spoilage; God has given us the earth to enjoy, and thus we cannot waste things – anything that is wasted is more than an one person's share and belongs to others
- Property in land is established the same way – one has claim to as much land as one tills, plants, improves, cultivates, and can use the product of (§ 32)
- Locke believes that 99 out of 100 products of earth useful to the life of man is the product of labor – example of a large, uncultivated America vs. cultivated England (§ 41)
- Money is a lasting thing people can keep without spoiling, and that by mutual consent people would take in exchange for the truly useful, but perishable supports of life
- Money allows people to fairly possess more than he himself can use the product of
- Man is driven by inclinations from God to form society
- First society was between man and wife (conjugal society), then parent and children, then master and servant
- Slaves cannot be considered as any part of civil society – they are in the state of slavery
- Political society arises from a need to preserve property
- Those in a civil society are those who are united together and have established common law and judicature to appeal to, with authority to decide controversies and punish offenders
- Power of making laws = common-wealth has the power to regulate what punishment shall be given to each transgression
- Power of war and peace = power to punish any injury done unto any of the common-wealth's members
- Legislative and executive power of the civil society = judge by the standing laws, how far offenses are to be punished when committed within the commonwealth and to decide how far injuries from without are to vindicated
- Political / civil society – when everyone is united as to quit every one of their executive powers of the law of nature in order to resign it to the public; this moves men from a state of nature into a commonwealth
- An absolute monarchy is inconsistent with civil society

- No man in civil society may be exempted from the laws of it
- When a number of men consent to make one community or government, they make one body politic, in which the majority have the right to act
- When entering into a society, one is agreeing to follow the will of the majority
- The beginnings of lawful government are when people leave the state of nature to unite into a community, thereby giving up powers to the majority of the community – a.k.a. – any number of freemen capable of a majority to unite and incorporate into such a society
- Locke theorizes that the reason the earliest governments were monarchies or led by one man was because it was an extension from the family, where the father ruled
- Originally monarchies did not threaten the people, and absolute power was not the case, but over time the increased allure of luxury and power began to corrupt monarchies, leading people to find ways to find ways to restrain the abuses of power
- Every person, although born under some government, still has the power to strike out and unite with others to form a new government
- A child is born a subject of no government or country, according to Locke – the child is under his father's discretion until he is old enough to decide for himself where he wants to place his allegiances
- Only a man's consent can put him into subjection to any earthly power; expressed consent clearly conveys the message, but tacit consent is harder to judge
- Locke says that any man that has possessions or enjoys any part of any government has given tacit consent and is thus obliged to follow the laws of that government
- The reason people give up the greatness of all the liberty and freedom in the state of nature is for their protection – they want to be able to enjoy their freedom, and government provides them with that security; specifically they want to protect their property (lives, liberties, estates)
- The chief end of establishing government is the preservation of property
- Government has several features that the state of nature doesn't that allows for adequate protection of property: established and settled known law, a known and indifferent judge, the power to support a sentence of punishment and to give it due execution
- Two powers are given up when joining society: the power to do anything for self-preservation and the power of punishment; they are given up to be regulated by laws made by society
- The force needed to punish in the state of nature is given to assist the executive power of the society as the law requires
- The power of the legislative can never extend farther than the common good
- The majority that has the power when government is formed can decide to frame the government into a democracy, an oligarchy, or a monarchy (hereditary or elective)
- By commonwealth, Locke means not a democracy or any form of government, but any independent community
- The first and fundamental positive law of all commonwealths is the establishment of the legislative power
- Although the legislative is the supreme power in every commonwealth (regardless of what type it is), it can never

- a. be absolutely arbitrary over the lives and fortunes of its people (power is limited to the public good of the society – so it cannot destroy, enslave, or impoverish its subjects; the law of nature applies to legislators too)
 - b. Assume to itself a power to rule by extemporary arbitrary decrees, but is bound to dispense justice and decide the rights of the subjects by promulgated standing laws and known authorized judges. (Locke rails against absolute governments in § 136 and 1367)
 - c. Take from any man any part of his property without his own consent
 - d. Transfer the power of making laws into other hands; only the people can do that
- Tyranny is the exercise of power beyond right; not only monarchies can be tyrannical
- Being great, or in a high position in society, does not justify tyranny – in fact, those who are in high positions and become tyrannical are much worse because they had trust placed in them and is supposed to know more of the differences between right and wrong
- Force is to be opposed to nothing, but to unjust and unlawful force; in other words, you should oppose only an unjustified use of force
- When there is time and means to appeal to the law to fix an injustice or injury sustained, there is no need for force
- There is a difference between the dissolution of society and dissolution of government
- The only way a dissolution of society can happen is by foreign invasion and subsequent oppression; when society is dissolved, so is its government obviously
- Governments can be dissolved from within as well
 - a. When the legislative is altered – this can occur when the legislative makes laws they are not authorized to make; people are not bound to obey these new laws; a legislative can be altered when:
 - a single hereditary person with constant supreme executive power – when he sets up his own arbitrary will in the place of laws
 - the prince or leader hinders the legislative from assembling in its due time or from acting freely
 - the arbitrary powers of the prince, the electors, or ways of election are altered without the consent and contrary to the common interest of the people
 - the people are delivered into the subjugation of a foreign power, either by the prince or the legislative
- Government can be dissolved when he who has the supreme executive power neglects and abandons his charge so that laws made are not put into execution – this leads to anarchy
- When government is dissolved, the people are at liberty to provide for themselves, by erecting a new legislative, differing from the previous one
- Government is also dissolved when the legislative or the prince act contrary to their trust
- A supreme executive loses trust if he uses his powers to corrupt representatives or openly pre-engages electors (rigs the vote)
- The hypothesis that the people can overturn any government they are unhappy with suggests there will be frequent rebellion, but this is quite the contrary because people are slow to react and are stuck in their ways – also, great mistakes in the management of the society by government are what lead to revolution, not every little mishap
- A long history of abuses, prevarications, artifices, etc. could lead to rebellion

- Legislative that is changed or legislators that act contrary to what they were elected for are putting their people back into the state of war – force without authority
- While discontent may be expressed by a few people, it will not turn into rebellion until that view is shared by the majority
- Whoever uses force without right, without law, puts himself into a state of war with those against whom he so uses it
- Barclay (an advocate of monarchical power) says self-defense is a part of the law of nature and that yes, the people can rebel against tyranny § 233
- Locke: he who may resist must be allowed to strike (contrary to Barclay's rebellion "with reverence")
- The state of war cancels all former ties and obligations, so when a people are in a state of war b/c of bad government, they are no longer inferior to government (legislative or monarch, etc.) and can therefore punish government
- Barclay says there are two cases when a king may un-king himself:
 - a. If he endeavors to overturn the government (he wants to ruin the kingdom)
 - b. If he makes himself, and thus his people, the dependent of another
- Locke interprets Barclay's words to mean that neglect of public good by a monarch signifies a beginning to tyranny, and that tyranny can be rebelled against when it is in its planning stages
- The people shall be the judge of whether the prince or the legislative act contrary to their trust
- If a controversy arises between the prince and some of the people in a matter that the law is silent or doubtful on, the proper umpire should be the body of the people; if the prince denies being judged by the body of the people, the appeal then lies to heaven
- The power that every individual gave the society, when he entered into it, can never revert to the individuals again as long as the society lasts; the legislative, in the same way, can never revert to the people so long as the government lasts....but, if there are miscarriages by those in authority, power is forfeited and reverts to the society, and the people have a right to act as supreme to either rule themselves or erect a new legislative

Calabresi and Bobbit, “The Tragic Dilemma”

Work: “The Tragic Dilemma”, *Tragic Choices*

Author: Guido Calabresi and Philip Bobbit

Week: V (Markets and Morals)

Contributor: Anushka Sunder

Contributor’s Notes:

During the Revolution, the Continental Army needed to increase enlist more men, and the Congress eventually passed the Militia Act of 1862 which allowed state militia drafts to fulfill national army quotas. The most contentious provision was that the act allowed a citizen to hire a substitute in his place. The cost of hiring substitutes rose as voluntary enlistments fell and so some people were very well paid to join the army. There was also a flat-fee exemption, which was, however, still too high for ordinary workers to pay. The result was that the wealthy were able to avoid fighting, while the poor were either unable to exempt themselves or were attracted by the high substitution fees.

Things gradually changed, and various loopholes – reluctant soldiers could hire lawyers, defer, or seek exemption for being ministers, aliens, or veterans – were gradually closed

- 1917: national army was to be composed entirely of draftees. However, thousands failed to register or appear when drafted.
- 1919: the draft lapsed and the U.S. returned to a voluntary system
- 1940: Selective Training and Service Act. Lottery method; service limited to one year; no more than 900,000 men were to be inducted
- 1941: Act extended
- 1942: various modifications introduced, i.e. switching to date of birth
- 1948: Selective Service Act (the basic method for conscription until repeal at end of Vietnam War). Broad liability and broad, though vague, deferments
- 1969: reduction of liability from seven years to one, change of draft selection method
- 1970-1971: various deferments phased out.

McPherson, *Battle Cry of Freedom*

Work: “Fire in the Rear,” *Battle Cry of Freedom: The Civil War Era*

Author: James M. McPherson

Week: V (Markets and Morals)

Contributor: Crystal Schuil

Contributor’s Notes

A main issue in elections was the draft that was instated in 1863. Democrats were against it, Republicans for it. Problem in 1863 was that the North’s military recruitment slowed since those who would join for patriotic reasons or peer pressure had already signed up. More man-power was needed so Congress authorized a Provost Marshals Bureau to enforce conscription. Every male citizen and immigrant 18-45 was listed and from this list quotas for regions were established. If quotas were not filled, then a lottery was held in the district to draft people. If drafted-induction to army was actually unlikely. 1/5 failed to report. 1/8 sent home because of filled quotas. 3/5 exempted for physical/mental disabilities or because sole supporter of a dependent. The remainder could hire a substitute or pay a commutation fee of \$300- approx. a year’s wages. Substitutes came from among 18-19 year-old immigrants who had not filed for citizenship and were not liable for conscription.

Fraud, error, and injustice frequently occurred in this system. Quotas based on enrollment amounts only as good as officials conducting enrollments. Democrats accused Republicans of padding lists in Democratic districts- but in reality fewer Democrats were initially enrolled. Surgeons could be bribed for false reports. Hiring substitutes in South brought the slogan “rich man’s war and poor man’s fight.” In North commutation was unpopular since “rich are exempt.” Substitution was actually a very old tradition, used in Europe as well and was a way of price-capping substitutions. Republicans were trying to bring exemption within reach of working class, not discriminate against them. Looking at it statistically, laborers *more* likely to avoid draft, making this not actually a poor man’s fight. Cities and counties helped to come up with the money for them. There was also draft insurance that could be bought. Since only 7% of conscripted served, this was more of a “carrot and stick” device to stimulate volunteering than actual conscription since in Americas conscription was contrary to country’s values and traditions.

However, eventually bounty-stimulated volunteering was eventually seen as a greater evil than a draft. Bidding wars for volunteers occurred, which resulted in transfer of wealth from rich to war. “Bounty jumpers” would collect bounties as volunteers and then disappear. “Bounty brokers” looked for best deals for clients. Many of these men deserted before getting into the action, therefore these men did not actually contribute much to the war. A myth started that “the majority of Yankee soldiers were foreign hirelings” since there were a substantial number of immigrants in the Union army. Actually, immigrants were proportionally underrepresented in the Union’s armed services, especially Catholics and Irish, who opposed some of the war’s aims. These were actually some of the poorer citizens as well, so not really a “poor man’s fight.” At first white collar citizens seem to have been underrepresented, but since median age of soldier was 23.5 years, soldier’s had not necessarily advanced yet in their careers, and occupational data is from all adults. Although rich man’s war/ poor man’s fight was not factual, it was a symbol Democrats manipulated to make conscription a partisan/class issue and called it an unconstitutional way of pursuing the unconstitutional goal of freeing slaves. In NYC tensions over this exceptionally high, and Irish Catholics ready for revolt. When the draft lottery began there, a riot ensued and 105 people died- the worst riot in American history. The army was needed to bring peace back to the city. Draft resumed later, but the city council had accumulated funds for the commutation fees of drafted men.

NJ Superior, In the Matter of Baby “M”

Work: In the Matter of Baby “M”, A Pseudonym for an Actual Person

Author: Superior Court of New Jersey

Week: V (Markets and Morals)

Contributor: Kalaya Okereke

Contributor’s Notes

The case is concerned with surrogate arrangement, where both the prospective family and the surrogate mother wanted the child. The surrogate chose to bear the child with the conscious understanding that she would consent to give it up for adoption by the prospective family. Concerns with this surrogate arrangement are 1) the child will not be protected; 2) potential that the surrogate mother will be exploited... however they argue that there is more potential for exploitation in private adoptions when the woman is already pregnant, perhaps father is uninterested in obligations. With surrogacy, the desire to have a family exist on the couple’s part and the surrogate is not yet pregnant and can take time to make a conscious decision. 3) to produce a child for money denigrates human dignity...the court agrees with this. By 13th Amendment, law of adoption in NJ prohibits exchange of any considerations for obtaining a child. However, biological father not paying for the surrender of the child. He’s paying for surrogate’s willingness to be impregnated and carry baby to term. He cannot purchase what is already his. 4) surrogacy is invalid b/c is contrary to adoption statutes establishing standards for termination of parental rights; 5) it will undermine traditional notions of family; 6) allows an elite economic group to use a poorer group of people to achieve their purposes...this argument is insensitive to the intense drive to procreate naturally and when that is impossible, to use what lawful means are possible to gain a child.

The agreement was that Mr. Stern would give sperm to artificially inseminate Mrs. Whitehead who would carry baby to term and upon birth surrender child to biological father and his wife. She would voluntarily renounce her parental rights to allow Mrs. Stern to adopt child. Mrs. Stern is not party to contract to avoid violation of law which prohibits giving considerations to obtain adoptable child. Mr. Whitehead signed to establish his non-paternity. There were no time constraints when Mrs. White head was not pregnant; each party had time to obtain advice. The male gave his sperm; the female gave her egg in their pre-planned effort to create a child – thus, a contract.

The child has been alive for the past year. All terms of the contract were executed but the surrender. It is argued that there should be time period after child born for Mrs. Whitehead to determine if she wants to surrender child (this is from an adoption statute). But laws of adoption do not apply to surrogate contracts. Only legal controls are *parens patriae* and best interests of child. Court holds that although contract signed, surrogate may terminate contract until time of conception. However, after conception, only the surrogate shall have the right, to the exclusion of the sperm donor, to decide whether to abort the fetus. The surrogate agreement clause which prohibits abortion except as allowed by the male promisor is void and unenforceable.

Argued that the contract is one of adhesion (contract in which one party has no alternative but to accept or reject other party’s terms and there are no options by which the party may obtain the product or service). However, it isn’t b/c neither party had a superior bargaining position. One did not force the other. No proof that the contract was absolute and unalterable. Defendants argue unconscionability, but Mrs. Whitehead had been pregnant before and had to be aware of the risks of pregnancy. She argues that Mr. Stern took no risks. He did not of course deal with risks of child-bearing but took risk if child would be normal or accepted. Regardless he would have a lifetime obligation as the biological father. As for unconscionability, defendants fail to show proof of disproportionate bargaining that result in an unfair contract. She knew just what she was bargaining for. Court finds that she has changed her mind, reneged on promise and now seeks to avoid her obligations. Either party could have walked away from the other at the start. It is argued that \$10,000 is low as to be unconscionable. Perhaps the risk was great for the money to be paid but the risk was what Mrs. Whitehead chose to assume and agreed upon fee. Money cannot compensate some things; there were other intangible benefits to her as her original application set forth her highly altruistic purpose.

Rights of the parties to contract are constitutionally protected under the 14th Amendment. Court finds that Mrs. Whitehead has breached contract in two ways: 1) by failing to surrender to Mr. Stern the child born to her and Mr. Stern and 2) by failing to renounce her parental rights to that child. Court holds that whether there will be specific

performance of this surrogacy contract depends on whether doing so is in the child's best interest...Melissa's best interest will be served by being placed in her father's sole custody. To not enforce the contract will give Mr. and Mrs. Whitehead the child and deprive Mr. Stern of his promised benefits. This court will therefore enforce the surrogate-parenting agreement to compel delivery of the child to the father and to terminate the mother's parental rights.

NJ Supreme, In the Matter of Baby “M”

Work: In the Matter of Baby “M”, A Pseudonym for an Actual Person

Author: Supreme Court of New Jersey

Week: V (Morals and Markets)

Contributor: Kalaya Okereke

Contributor’s Notes

The intent of the contract is that the child’s natural mother will be thereafter forever separated from her child. The wife is to adopt the child, and she and the natural father are to be regarded as its parents for all purposes. Called a “surrogacy contract” and natural mother inappropriately named “surrogate mother.” Court invalidates surrogacy contract b/c it conflicts with the law and public policy. Court finds the payment of money to a “surrogate mother” illegal, perhaps criminal, and potentially degrading to women. Court voids both the termination of the surrogate mother’s parental rights and the adoption of the child by the wife/stepparent. Thus restore “surrogate” as the mother of the child.

Court finds no offense to present laws where a woman voluntarily and without payment agrees to act as a “surrogate” mother, if she is not subject to a binding agreement to surrender her child. Under the contract, the woman never makes a totally voluntary, informed decision b/c clearly any decision before baby’s birth is uninformed and any decision after compelled by pre-existing contractual commitment, threat of lawsuit, and inducement of 10,000 payments is not totally voluntary. Her interests are of little concern to those who controlled this transaction. Actually even interests of father and adoptive mother is less than public policy requires. /they know little about natural mother (genetic makeup, medical/ psychological history etc.). Worst is contract’s total disregard for best interest of child. No inquiry to fitness of Sterns as parents.

This is the sale of a child except one of purchasers is the father. Almost every evil that prompted prohibition on the payment of money in connection w/ adoptions exists here. Despite alleged selfless motivation of surrogate mothers, if there is no payment, there will be no surrogates or very few. 2nd, use of money in adoptions doesn’t produce problem, conception has already occurred. With surrogacy the “problem” is caused by and originates with the offer of money. Also, in surrogacy, the highest bidders will presumably become the adoptive parents regardless of suitability. 4th, mother’s consent to surrender child is revocable in adoption. In surrogacy, consent occurs so early that no amount of advice would satisfy the potential mother’s need, yet consent is irrevocable.

Whatever idealism may have motivated any of the participants, the profit motive predominates. Situation ripe for a middleman to bring equilibrium into low-supply adoption market by increasing supply through the use of money. The court suggests that although it is argued that Mrs. Whitehead *agreed* to the surrogacy arrangement, her consent is irrelevant. There are, in a civilized society, some things that money can’t buy. Just as employers can’t buy labor at lowest price they can bargain for, even though that labor is “voluntary”, nor purchase the agreement for children to perform oppressive labor. The fact that Mrs. Whitehead “agreed” to the arrangement is not dispositive. Long-term effects of surrogacy contracts not known but feared...impact on child who learns life was bought, impact on natural mother as full weight of her isolation is felt, impact on adoptive parents once realize consequences of their conduct.

The surrogacy contract guarantees the separation of a child from its mother; it looks to adoption regardless of suitability; it totally ignores the child, and it does all of this through the use of money. In NJ the surrogate mother’s agreement to sell her child is void. Its irrevocability infects the entire contract, as does the money that purports to buy it.

Anderson, “Is Women’s Labor a Commodity?”

Work: “Is Women’s Labor a Commodity?”

Author: Elizabeth S. Anderson

Week: V (Morals and Markets)

Contributor: Kalaya Okereke

Contributor’s Notes

Some critics have objected to commercial surrogacy on grounds that it improperly treats children and women’s reproductive capacities as commodities. To say that something is properly regarded as a commodity is to claim that the norms of the market are appropriate for regulating its production, exchange, and enjoyment. Why object to the application of a market norm to the production of a good? One reason is that to distribute good in accordance with the norm is to *fail to value it in an appropriate way*. To treat a person without regard for her interests is to fail to respect her. I.e. in Kantian theory problem with slavery is that it treats beings worthy of *respect* as if they were worthy merely of *use*. Use and respect denote different *modes of valuation*. We’ll reserve “use” to refer to mode of valuation proper to commodities, which follows market norm of treating things solely in accordance with the owner’s non-moral preferences. Arguments against colorization of black-and-white films are that it fails to appreciate their aesthetic and historical value. It is crass commercial exploitation...the goods in question are worthy of appreciation not merely of use. Commodities are those things which are appropriately treated in accordance with the norms of the modern market.

Surrogate motherhood as a commercial enterprise is based upon contracts involving three parties: the intended father, the broker, and the surrogate mother. The surrogate (and husband if she has one) agrees not to form a parent-child bond with her child. Commercial surrogacy has been defended on four main grounds 1) shortage of children available for adoption and difficulty of qualifying as adoptive parents. 2) right to procreate and freedom of contract support it. 3) labor of surrogate mother is said to be a labor of love; her altruistic acts should be permitted and encouraged. 4) commercial surrogacy is not different in its implications than many already accepted practices that separate genetic, gestational, and social parenting, such as artificial insemination by donor, adoption, wet-nursing, and day care. Anderson argues that it does raise new ethical b/c it represents the invasion of the market into a new sphere of conduct, the labor of carrying children to term in pregnancy. Also, it degrades children by reducing their status to that of commodities.

Most fundamental calling of parents to their children is to love them. Parents’ rights over their children are trusts, which they must always exercise for the sake of the child. The proper exercise of parental rights includes those acts which promote their shared life as a family, which realize the shared interests of the parents and the child. If those rights are lost or relinquished, the duty of those in charge of transferring custody to others is to consult the best interests of the child. Commercial surrogacy requires us to understand parental rights no longer as trusts but as things more like property rights. The natural mother deliberately conceives a child with the intention of giving it up for monetary advantage, not for the sake of the child. Therefore, child itself treated as a kind of commodity. Also, parental love is not supposed to be conditioned upon the child having particular characteristics, but adoptive couples specify about height, I.Q., race, and other attributes of surrogate mother hoping traits passed to child. Surrogate agency promotes adoptive parents’ not children where matters of custody are concerned. The natural mother’s relationship to the child is policed using persuasion, money, and threat of lawsuit to weaken and destroy whatever parental love she may develop for her child.

To love or respect someone is to value her in a higher way than one would if one merely used her. Since children are valued as mere use-objects when by the agency and the mother when they are sold to others, commercial surrogacy degrades children insofar as it treats them as commodities. All parties of surrogate contract agree in treating the ties b/w a natural mother and her children as properly loosened by a monetary value. The children of some surrogate mothers have reported fears of being sold like their half-brother or sister, and express a sense of loss at being deprived of a sibling. Widespread acceptance of commercial surrogacy would change the way children are valued by people. They’d be used as objects of commercial profit making.

Proponents deny that the surrogate industry engages in the sale of children. It is impossible to sell to someone what is already his own and he is the natural father. Payment is not for natural mother's child but for her services in carrying it to term. The claim that the surrogate industry treats children as commodities is based on the way it treats the *mother's* rights over her child. The father pays her for exclusive rights to the child; he would not pay her if she refused to relinquish her paternal rights to the child. The purpose of adoption is to provide a means for placing children in families when their parents cannot or will not discharge their parental responsibilities. It is not a sphere for the existence of a supposed parental right to dispose of one's children for profit.

The application of market norms to women's labor reduces the surrogate mothers from persons worthy of respect and consideration to objects of mere use. The contract is not simply disrespectful of the surrogate mother, but callous as well. It requires the surrogate mother to repress whatever parental love she feels for the child. It denies and manipulates legitimacy to the surrogate mother's evolving perspective on her own pregnancy. Third, it takes advantage of the mother's noncommercial motivations (altruism), which leaves her open to exploitation. Problems with commercial surrogacy can be seen by looking at noncommercialized pregnancies. Pregnancy is not simply a biological process but also a social practice. It is encouraged for a woman to form a bond w/ her child during pregnancy. As in all putting-out systems, the surrogate industry faces the problem of extracting the final product from the mother. This is b/c the social norms surrounding pregnancy encourage parental love for the child. However through the contract the surrogate mother agrees not to form or to attempt to form a parent-child relationship w/ her offspring. The surrogate contract thus replaces a norm of parenthood.

There is every reason to expect that many women who do sign surrogate contracts will, despite this fact, form a loving attachment to the child they bear. But the surrogate industry has an interest in suppressing, manipulating, and trivializing her perspective. They also refuse to assume any responsibility for the consequences of the mother's emotional labor. The treatment of surrogate mother's grief raises deepest problems of degradation. 10% of cases are serious enough to require therapy. A considerate treatment of the mother's grief, on the other hand, would take the evaluative basis of their grief seriously. So the surrogate agency instead trivializes her emotional responses with the hope of not encouraging her to make much fuss.

The surrogate agency feeds on the woman's emotional motivations for possibly entering into the contract. She may see the arrangement as some basis for establishing the personal ties she needs to sustain her emotionally, but the adoptive couple sees it as an impersonal commercial contract. The kind of "altruism" we see admired in surrogate mothers involves a lack of self-confidence.

What position should the law take? At the very least, surrogate contracts should not be enforceable. These arguments support the stronger conclusion that surrogate contracts should be illegal. Defenders have suggested three reforms: 1) give the surrogate mother the option of keeping her child after birth...but such a provision would pressure the agency to demean the mother's self-regard more than ever. 2) impose stringent regulations on private surrogate agencies...however; there is little hope that regulation would check the exploitation of surrogate mothers. Most significant encounters b/w the mother and the agencies take place behind closed doors. 3) replace private surrogate agencies with state-run monopoly on surrogate arrangements...nevertheless, as long as the surrogate mother is paid money and forced to terminate parental rights, the commercial norms leading to her degradation still apply. The fundamental problem with commercial surrogacy is that commercial norms are inherently manipulative when they are applied to the sphere of parental love.

Prohibiting the practice may be thought to infringe upon two rights: right of procreation and right to freedom of contract. However, the interest protected by the right to procreate is that of being able to create and sustain a family life with some integrity. We have seen that the content of the surrogate contract itself compromises the autonomy of surrogate mothers. It manipulates them to conform their emotions to the interests of the other parties to the contract.

Finally, while there is a shortage of healthy white infants available for adoption, there is no shortage of children of other races, and older and handicapped children who desperately need to be adopted. We should be wary of the racist and eugenic motivations which make some people rally to the surrogate industry. When market norms are applied to the ways we allocate and understand parental rights and responsibilities, children are reduced from subjects of love to objects of use.

Kimbrell, “Transplanting Profits”

Work: “Transplanting Profits,” *The Human Body Shop*

Author: Andrew Kimbrell

Week: V (Markets and Morals)

Contributor: Ben Milder

Contributor’s Notes

Introduction

- Organ transplants pioneered in 1950s and 60s, perfected in 1980s
- High costs for surgery and growing waiting lists for organ recipients – should there be open market?

Trading Flesh Around the Globe

- Attempts to set up organ markets halted by Congress in 1984, National Organ Transplant Act – prohibits sale in interstate commerce of organs and organ subparts; quality and economic exploitation mentioned
- Similar prohibitions adopted in Europe
- Despite prohibitions and controversy, tens of thousands of organs sold around the world
- Particularly troublesome in India, where the poor sell kidneys for food
- WHO urges members to ban organ sales, because it puts a price on life

Proponents of Organ Sales

- Dire need for organs noted, advocate financial rewards to families of deceased donors
- Possibility: Organ contracts offered to general public; upon death, money paid to deceased donor’s designee
- Market in body parts provides individuals with expanded controls and rights over bodies
- Libertarian argument: Body parts are property, market will sort things out

Conclusion

- Profit-seeking approaches would increase organ supply, but the sale of organs would be a devaluation of society’s concept of the body
- Altruism inherent in current donation is quintessence of medicine and human society
- “Market,” especially in Third World, just means poor selling organs to the rich
- Most agree that to remain civilized, we can’t adopt “ends justify the means” approach
- Freedom of choice is not absolute – societies have to maintain community sense of values
- Prohibition on organ sales ultimately based on respect to human person

Kant, *Grounding*, First Section

Work: *The Grounding for the Metaphysics of Morals*, First Section

Author: Immanuel Kant

Week: VI (Kant: Freedom as Autonomy)

Contributor: Kendall Kulper

Contributor's Notes

Kant introduces his theories about good will and universal law. He believes that actions have moral worth only if they have good motivations, and the principles behind these motivations he calls maxims. Moral actions can't be based on possible outcomes (for example, doing something good to make yourself happy) and even if the outcome is bad or at least not good, an action can still have moral worth if it was done with a good intention. He looks at obligations of good will, which he calls duties, and gives 3 propositions (described below). The third proposition describes a universal moral law, which most people have an instinctive and usually correct sense about. The universal law can always be applied to the same way to any moral dilemma and is based on different principles, including *a priori* and the non-contradiction principle. *A priori* means without prior experience and is the opposite of *a posteriori*—after experience. Kant relied on *a priori* because it is always true and unchangeable, whereas *a posteriori* can change over time based on the current experience and is therefore unreliable. The principle of non-contradiction says that statements can't contradict themselves. He finishes by addressing man's natural desire to change the laws of duty in order to satisfy himself better. In order to overcome this, man must turn to philosophy and understand the philosophical sources of morals.

Just a note, I kept my summary of The Grounding purposefully short and as simple as possible since Kant is pretty dense. If you need clarification or elaboration, just let me know.

Good will—intrinsically good even if it doesn't bring about positive results

Highest purpose of each individual is self-preservation and attainment of happiness

Function of reason to bring about a will that is good in itself

- Opposed to good for a purpose
- While reason can help with self-preservation, gets in the way of attaining happiness

Duties — obligations of good will. Three propositions:

- actions genuinely good when done for duty alone
- actions judged by maxim (principle that served as motivation)
- duties should be done out of reverence for the law

General moral law—people have an intuitive sense of morality that is generally correct

Action only moral if it is intrinsically good

- cannot have impure motivations
- cannot be based on consideration of possible outcomes
- to determine if an action is moral, need universal law
 - universal law—always valid for every issue
 - a priori principle—without experience
 - principle of non-contradiction—statement can't contradict itself

Kant, *Grounding*, Second Section

Work: *Grounding for the Metaphysics of Morals*, Second Section

Author: Immanuel Kant

Week: VI (Freedom as Autonomy)

Contributor: Jennifer Raymond

Why A Priori?

- Kant opens by discussing the shortfalls of those who say that humans do not have a disposition to be moral but rather act out of self-love. He criticizes that they only use reason to try to balance “inclinations”.
- Next, he concedes that it is not possible to judge from experience whether any action is or can be taken purely through the motivation of duty because it is not possible to really get to the core of someone’s motive. Nevertheless, it is the “inner principles” and not the actions that are important when considering moral value. Even if an action is in accordance with duty, its moral value relies on the motive. It is entirely possible that reasoned morality requires actions that have never actually happened, and so experience is an unreliable basis for morality.
- Morality must also be said to hold for all rational beings (not just men- this makes more sense later) and must be constant, not contingent upon certain circumstances. Because morality is not empirical, it must be a priori (i.e., derived before the fact from reason).

Imperatives

- An imperative is a form of command expressed by an “ought” that reflects the distinction between an objective law and an individual’s will that is not necessarily determined by it. (In other words, just because there is a rule/law separate from you doesn’t mean it’s what you would have done anyway... basically, your will exists independent from the law.)
- *Hypothetical Imperatives* are those where the necessity of an action is determined in relationship to something else. (ex.- “Do not steal because you will go to jail”) Hypothetical imperatives determine actions that are good because of some purpose. There are imperatives of skill (such as what is needed to be done to most perfectly achieve an end that is assumed to be good) and the imperative of prudence (the choice of means to achieve one’s own happiness).
- A *Categorical Imperative* is one in which the law is itself the end, and thus needs no relationship to anything else. (ex.- “Do not steal”) This imperative is not concerned with the action or its intended result, but really with the principle that motivates it. Also because it is derived from reason and not experience, it must fit with morality as discussed above and be figured out a priori. It is important that such an imperative be derived from reason alone and not some assessment of human nature because our assessment of human nature changes *and* because categorical imperatives need to rely on themselves only. (Thus Kant’s above point about rational beings rather than just humans... the rules have to apply to anyone who could understand them, which, hypothetically at least, could include a non-human rational being.) Really, according to Kant, there is only one categorical imperative that is possible under the high standards of reason.

The Categorical Imperative

- “Act only according to that maxim whereby you can at the same time will that it should become universal law.” (421, pg 30)
- In other words, the only rules that can govern the actions we take are those which are consistent in the face of reason. Thus, they must be able to be universalized (insofar as maxims and rules cannot be true only sometimes – they would not then be true laws). Any rule that cannot hold in every situation is not moral and so you must embrace maxims (self-imposed rules) that you can will to be universal without being contradictory.
- Several concepts are integral to backing and applying the categorical imperative: duty, autonomy, and respect.
- *Duty*: Duty for Kant is the only moral motive. Under the categorical imperative, action is only just if it is motivated *by* the categorical imperative. In other words, you do something because you would will it to be a universal law. You reason that it is your duty to act in such a way and thus act in that way.

- *Autonomy*: You are able to reason that it is your duty to act in such a way and able to choose this because you are an autonomous being. Your will is not dependent on your reason and you are capable of choosing something other than the universalized principle determined by your reason (which, because if we all were to reason properly would be the same for everyone). The moral merit lies in choosing the action *because* it stems from that universalized principle. The individual is “legislative” insofar as his reason determines the law, but autonomous insofar as his will chooses to follow it. (This is why Kant also rephrases the principle as “The will of every rational being is a will that legislates universal law” – page 38.)
- *Respect*: Because all people are rational and autonomous, they are all equally legislative before the categorical imperative. Because all people are legislative, the realm of the categorical imperative can be said to be a “kingdom of ends.” As such, people are to be respected as ends in and of themselves, and never to be used only as a means. (Because the categorical imperative has only itself as its end and individuals are all legislators of the universal law based upon it, they also fall under the category of “ends” and are to be respected and treated as such.) Under Kant’s system, only morality and humanity have dignity or intrinsic worth and cannot be replaced. Thus both are to be respected.

Kant, *Grounding*, Third Section

Work: *Grounding for the Metaphysics of Morals*, Third Section

Author: Immanuel Kant

Week: VI (Kant: Freedom as Autonomy)

Contributor: K. Sloan Strike

Contributor's Notes:

- In order to prove that we are subject to the categorical imperative, Kant must now show that we are autonomous beings.
- He must prove that we are rational beings in order to be autonomous
- We are always caught between two realms/worlds:
 1. Phenomenal (sensible)- We are objects in this realm, as we are subject to the laws of nature and the imperatives that nature gives us. We are trapped by our senses/pain and pleasure (we eat because we're hungry, etc.). We are not acting autonomously because we are being influenced by outside forces. Kant argues that we shouldn't exist solely in this realm.
 2. Noumenal (intelligible)- We are subjects rather than objects in this intelligible realm. We act according to laws that we give ourselves, and act autonomously and rationally.
- Kant says that we are in both realms all the time and that a good decision takes into account both worlds.
- In order to act rationally and autonomously, we must exist, at least to a certain extent, within the noumenal world. However, we cannot only take into account the noumenal world and ignore the phenomenal completely.
- Our freedom is derived from our participation in the intelligible world... if we existed exclusively in the intelligible world, then we would be completely free and autonomous beings, but if we existed exclusively in the sensible world, we would be subject to the laws of nature and the rules of cause and effect.
- Our freedom is a priori because it cannot be given to us by experience.
- Kant argues that we aren't capable of existing solely in the intelligible world, as we must continue to take into account the sensible.
- However, he admits that he cannot absolutely prove that we are capable of existing in the intelligible world at all.
- There is no way for us to *know* that we are rational beings.
- However, it is necessary for us to believe that we are autonomous and recognize that we are subject to the categorical imperative if we are going to act.

Kant, *Grounding*, Right to Lie

Work: *Grounding*, supplement: On a Supposed Right to Lie

Author: Immanuel Kant

Week: VI (Kant: Freedom as Autonomy)

Contributor: K. Sloan Strike

Contributor's Notes:

- In response to critics of the categorical imperative, Kant addresses a tough situation in an attempt to prove his theory.
- The following situation is proposed: A murderer comes to your door looking for a friend of yours, who he means to kill. You know that the friend is hiding in your house. Do you lie to the murderer and save your friend, or do you tell the truth?
- Some people argue that the murderer is not acting according to the categorical imperative, so he doesn't deserve the truth and you don't need to act accordingly.
- Kant says that to most people the issue is not whether or not the murderer deserves the truth. What is considered is what is going to happen to their friend (consequentialist mentality).
- The problem with this is that you're not acting according to the categorical imperative because you're stepping outside your moral boundaries (by lying) in order to save your friend.
- Kant argues that this, losing your autonomy, is more tragic than your friend's death.
- He says that "To be truthful (honest) in all declarations, therefore, is a sacred and absolutely commanding decree of reason, limited by no expediency," including human life.
- He does say, however, that there is a way to save your friend without abandoning your morals/autonomy. You can say something true that the murderer might interpret differently, as long as you are not lying.
- The key is to do this without the intent to mislead, because that would be immoral. You must choose your truth carefully.
- Critics say that creative truth telling is no different than lying because they both mislead.
- Kant says there is a moral difference between lying and telling a truth that misleads because he is not concerned with consequences.

Kant, “Theory and Practice”

Work: “Theory and Practice,” *Perpetual Peace and Other Essays*

Author: Immanuel Kant

Week: VI (Kant: Freedom as Autonomy)

Contributor: Ben Milder

Contributor’s Notes

- Civil constitutions are very different from other social contracts
- Concept of external right derives from concept of freedom
- Civil state based a priori on the following principles:
 1. The freedom of every member of society as a human being
 2. The equality of each member with every other as a subject
 3. The independence of every member of the commonwealth as a citizen
- Principles not laws set out by country, rather rational principles upon which nation is established

Freedom

- Definition: No one can compel me to be happy after his fashion; people can seek their own happiness as long as it doesn’t encroach upon other people’s freedom
- Governments should be patriotic as opposed to paternal; everyone considers the country to be the mother land to be protected in terms of rights

Equality

- Every member of country has coercive rights in relation to every other member, minus the ruler
- Everyone in country who is subject to laws is a subject, and subject to right of coercion
- If ruler were to be coerced, he wouldn’t be the ruler!
- Every member of commonwealth must be allowed to get any degree of status to which his talent can bring him, and other subjects can’t block him by sticking to hereditary/caste systems
- Birth isn’t the doing of the person, so it shouldn’t be the cause of inequalities
- People can bequeath property, but not social status

Independence

- Everyone is free under current law, but not everyone is free to make law
- Anyone who has the right to vote on legislation is a “citizen,” and the only requirement is that he be his own master
- Number of eligible voters should be based on those possessing means of livelihood, not how much property you have
- Principle of allowing rule by majority of representatives should be assumed as basis of civil constitution

Conclusion

- Legislators should act in such a way that the laws could have sprung from unified will of the entire people
- If law is created so that everyone couldn’t possibly agree to it, then it’s not just
- Subjects need to obey laws that would make them unhappy because the foremost issue is rights
- If a law is directed at happiness, it’s not because happiness is the purpose of civil constitution; this is done only as a means for securing the state of right
- Treason (resistance to supreme legislative power) is highest crime because it destroys the foundation of a commonwealth

Kant, “Sexual Impulse”

Work: “Duties Towards the Body in Respect of Sexual Impulse,” *Lectures on Ethics*

Author: Immanuel Kant

Week: VI (Kant: Freedom as Autonomy)

Contributor: Ben Milder

Contributor’s Notes

Love vs. Desire

- The sexual impulse is the inclination or appetite for another human being
- Love that springs merely from sexual impulse is only appetite, not love
- Without human love, sexual love is a degradation of human nature
- Moralists have rightly tried to suppress these instincts

Impact on Human nature

- Desire of man for woman is not because she is human, but just because she is female
- Human nature thus “sacrificed” to sex
- Sexuality exposes humans to the danger of equality with beasts
- There must be a basis for using sexual faculties in a way that would be moral

Types of Sexual Unions

- Prostitution
 - Selling your body for money is clearly immoral and not permitted under rules of morality
 - Underlying principle: man is not his own property; the body is part of the self, and a man can’t make his person “a thing”
- Concubinage
 - Both people satisfy desire mutually and there’s no idea of gain
 - Ruled out morally because the one person surrendering (usually the woman) is still being used as a thing and not a human being
 - Presupposes a one-sided contract over the sexual organs, and therefore over the person as a whole; the person becomes a thing
- Marriage
 - Agreement between two people under which they have equal reciprocal rights
 - Each agrees to surrender the whole of their person to the other without complete right of disposal
 - Marriage is the only moral use of sexuality
 - Sexuality leads to union of two people, body and soul
- Polygamy
 - Each wife would have half a man (or less), although she’d be giving herself to the whole man
 - Thus morally there is a mismatch and it cannot be allowed

Rawls, *Theory of Justice*, Sections 1-6

Work: A Theory of Justice, Sections 1-6

Author: John Rawls

Week: VII (Rawls: Justice as Fairness)

Contributor: Winnie Yeung

Contributor's Notes

1. Rawls starts off stating that justice does not allow for the loss of freedom for some in exchange for a greater good by others. He defines a society as a "more or less self-sufficient association of persons who in their relations to one another recognize certain rules of conduct as binding and who for most part act in accordance with them." But there is a conflict of interest because people want more benefits distributed to themselves so we need a principle of social justice to assign rights and duties. There needs to be a "public conception of justice," which is that people accept and know other people accept these principles of justice and that there are basic social institutions that support the principles. He discusses social cooperation, which is some degree of agreement on conceptions of justice.
2. There are major social institutions which distribute fundamental rights and duties which have profound effects on people's lives and sometimes these institutions favor certain economic or social circumstances. There are 2 limitations on this theory of justice: 1) that it might not work in private associations; 2) that it requires a well-ordered society where people act justly and uphold these institutions.
3. The principles of justice for the basic structure of society are principles that free and rational people that are concerned about furthering their self-interest would accept in an "initial position of equality." This initial position is an imagined position where people in a society would choose together, in a joint act, principles to guide the assignment of rights and duties and social benefits. And each individual is supposed to decide by rational reflection what is just and unjust, in a hypothetical situation of equal liberty, without knowing each other's fortune and natural assets, such as intelligence, strength, etc. This choice is made under "a veil of ignorance." Since these people view themselves as equal, they would not agree to a principle that takes away personal rights in exchange for greater utility for others. They would conclude with 2 different principles: 1) equality in the assignment of basic rights and duties; 2) social and economic inequalities would be just only if they result in greater benefits for everyone, especially those who are least advantaged. This is called justice as fairness.
4. The original position is good because it prevents people from choosing with their particular inclinations which are affected by their circumstances, when they are choosing principles of justice. He introduces an idea called the "reflective equilibrium," which describes principles and judgments coinciding. This justifies the original position because the principles chosen match our normally considered convictions of justice. He finally explores whether it is legitimate to use these principles of justice if this original position is purely hypothetical. His answer is that the "conditions embodied in the description of the original position are ones that we do in fact accept."
5. This section he examines classical utilitarianism, where you want to achieve the greatest net balance of satisfaction summed over all individuals belonging to it. This is usually interpreted as an extension of the principle of choice for one man applied to the welfare of the group. Utilitarianism is an "attractive" idea because it connects the two basic notions of the good and the right in this way: the good is defined independently from the right and then the right is defined as that which maximizes the good. So it allows us to judge the goodness of things without referring to what is right. Utilitarianism is striking because it doesn't matter how this sum of satisfactions is distributed among individuals. Utilitarianism doesn't take seriously the distinction between persons.
6. Justice as fairness is different from utilitarianism because it accounts for common sense convictions (such as the loss of freedom is not justifiable by increase in social satisfaction) concerning the priority of justice by showing that they are arrived at by people in the original position. Justice as fairness also assumes that

the principles of social choice and the principles of justice are themselves the object of an original agreement. So it doesn't extend the principles of choice for one man to the whole group. Utilitarianism is theological whereas justice is not. Also utilitarianism does not restrict the desires and aspirations of men and doesn't specify the boundaries of men. This leads to justification for violations of justice, which is not allowed in justice as fairness.

Rawls, *A Theory of Justice*, Sections 11-14

Work: *A Theory of Justice*, Sections 11-14

Author: John Rawls

Week: VII (Justice as Fairness)

Contributor: Jeff E. Biddle Jr.

Contributor's Notes

Chapter 11. Two Principles of Justice

In Chapter 11, Rawls presents the two principles of Justice which he believes would be agreed upon behind the veil of ignorance. The veil of ignorance is the tool Rawls uses to construct his theory of Justice: He supposes everyone in a society to be behind a veil and ignorant of their particular characteristics (race, gender, endowments, etc.), and bases his theory on what he believes these unbiased people in the “original position” would choose as a fair structure for society. The two principles are as follows:

1. Each person is to have an equal right to the most extensive scheme of equal basic liberties compatible with a similar scheme of liberties for others.
2. Social and economic inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone's advantage, and (b) attached to positions and offices open to all.

These principles apply to distinct parts of society. The first applies to basic liberties, which are to be as great as they can without interfering with the liberty of others (this will differ in detail according to the nature of the society in question), and the second applies to the distribution of wealth and income, and authority and responsibility.

Rawls also notes that the principles apply in order. If they did not, they could be summed up by a single rule of which they are a specification:

1. All social values—liberty and opportunity, income and wealth, and the social bases of self-respect—are to be distributed equally unless an unequal distribution of any, or all, of these values is to everybody's advantage. (A corollary to this rule is the definition of injustice as inequalities that are not to the benefit of all.)

Applying the principles in order, however, rules out the possibility of citizens trading their fundamental rights for economic gain.

Finally, Rawls notes that the principles are intended to apply to representative persons holding various social positions or offices established by the basic structure. It is not intended to apply to the distribution of individual goods to individual people, but rather institutional arrangements. The second principle, therefore, means that an equality is just only if the each relevant representative man prefers his prospects with the inequality to his prospects without it, and not simply if the gains of one representative man outweigh the losses to another.

Chapter 12. The Second Principle

Rawls notes that there are two ambiguous phrases in the second principle: “everyone's advantage” and “equally open to all.” Rawls provides two interpretations of each: “everyone's advantage” can be interpreted either by the principle of efficiency, or by the difference principle, and “equally open to all” can be interpreted as either equality as careers open to the talents, or equality as equality of fair opportunity. The combinations of these produce four different interpretations of the two principles which Rawls presents in the following table:

“Equally Open”	“Everyone's Advantage”	
	Principle of Efficiency	Difference Principle
Equality as careers open to talents	System of Natural Liberty	Natural Aristocracy
Equality as equality of fair opportunity	Liberal Equality	Democratic Equality

Equality as careers open to the talents refers to a formal equality in which every qualified citizen is permitted to hold any office or position. Equality of fair opportunity refers to a circumstance in which all citizens have an fair chance of actually attaining such positions. Rawls does not describe the difference principle until the next chapter, when he introduces his preferred interpretation, democratic equality, but he begins an in-depth discussion of natural liberty and liberal equality with a description of the principle of efficiency.

The principle of efficiency is the economic concept of Pareto efficiency applied to the structural institutions of society. Rawls' formulation is as follows: any arrangement of rights and duties is efficient if and only if it is impossible to redefine the scheme of rights and duties so as to raise the expectations of any representative man without at the same time lowering the expectation of some other, insofar as these alterations are consistent with the other principles. This potentially yields many different efficient arrangements, leaving the problem of choosing the one which is also just. The idea that all efficient systems are just fails any time that different sets of rules could maximize the welfare of different social classes, in which case each of those systems would be efficient, but not each equally just. Rawls concludes that the principle of efficiency cannot be a principle of justice by itself.

The system of natural liberty allows an efficient system to develop with careers open to the talents. The distribution at any point, therefore, will be dependant on two things: the initial distribution of talents, and the social conditions produced by this initial distribution at the given time. Each initial distribution arrives at a definite efficient outcome, and therefore, for the outcome to be just, the initial distribution would have to be just. Rawls rejects the system of natural liberty, therefore, on the grounds that the initial distribution of talents produced by the "natural lottery" is morally arbitrary, and that the system makes no effort to preserve social equality beyond the basic rights of the first principle, rendering equality of opportunity merely a legal technicality.

Liberal equality substitutes equality of fair opportunity for formal equality of opportunity in an effort to correct for the effects of social class, with the result that those with the same talents should have the same expectations in life. This however, still leaves the distribution of wealth and income to be determined by the morally arbitrary distribution of abilities and talents.

Rawls comments momentarily only briefly on the idea of natural aristocracy, in which talented individuals are permitted advantages which also work to the advantage of the poor (the *noblesse oblige* of medieval philosophy). However, this reintroduces the problem of social class destroying true equality of opportunity. Only the democratic conception, according to Rawls, "treats everyone equally as a moral person . . . and does not weigh men's share in the benefits and burdens of social cooperation according to their social fortune or their luck in the "natural lottery."

Chapter 13. Democratic Equality and the Difference Principle

In order to remedy the problems with the principle of efficiency, Rawls substitutes the "difference principle" in its place, which specifies a particular position from which to judge social and economic inequalities. Inequalities are judged as follows: Higher expectations of the better off are just if and only if they improve the expectations of the least advantaged. In other words, only those inequalities which benefit the least well off are tolerated.

This could lead to two situations: In the first, the welfare of the least advantaged is maximized, since all changes in the expectations of those above which might benefit them have been made. Rawls calls this distribution the "best just arrangement." Another situation could arise, however, in which all inequalities are permissible, but possible further inequalities would benefit the least advantaged even more. This situation is "just throughout," but not the "best just arrangement." While both situations would be just, only the first is optimal; society therefore wishes to maximize the welfare of the least advantaged.

Rawls notes that a just distribution is not incompatible with the principle of efficiency. A distribution which is just throughout will also be efficient within the rules set to achieve it. However, it may be necessary to correct the rules of a merely efficient system in a way that lowers the welfare of the better off in order to reach a just distribution.

Rawls makes a further assumption which he calls chain-connection. He proposes that the welfare of various classes is chain-connected, that is that the welfare of classes above the least desirable class moves along with the lowest class. Gains to the bottom are therefore accompanied by gains to the classes in between, who then should not need veto power over gains to the bottom which might be detrimental to them without this assumption. Furthermore, "close-knitnes" means that curves representing the welfare of a class are never flat; if they were, one would maximize the second-least well off next, and so on, if the least well off were maximized at a flat point (where changing the welfare of others would leave them exactly the same. Rawls thinks this unlikely in practice.

Chapter 14. Fair Equality of Opportunity and Pure Procedural Justice

Rawls notes that open positions, are required, even though greater welfare could conceivably be achieved by closing some of them, because it would be unjust to deny some citizens from experiencing "the realization of self which comes from a skilful and devoted exercise of social duties. Rawls reiterates that the basic structure of society is the primary focus of justice as fairness. Society makes rules, and the rules determine how people behave based on what they can expect; these "legitimate expectations" determine the final distribution. Since entitlements are

determined by what a person does, but what a person does is determined by what he is entitled to, Rawls suggests treating distributive shares as a matter of pure procedural justice.

Rawls contrasts three types of justice. The first is perfect procedural justice. In this case there is a clearly desirable end (such as an equal distribution of cake) and a perfect way to ensure that end (having the person who cuts choose last). Imperfect procedural justice involves a desired outcome but no perfect way of reaching it, such as a criminal trial. Pure procedural justice involves not a correct result, but a correct procedure. As long as proceedings are just, the distribution arrived at is just. Rawls uses the example of a series of fair bets: whatever the outcome of the gambling, if all the bets were fair and voluntary, the end distribution is just. Not all distributions which could be arrived at in this way are fair; only those which have actually been arrived at in this way are fair.

Thus, it is necessary to set up a fair system of institutions in order to ensure a fair distribution, and equality of fair opportunity is necessary in order to ensure pure procedural justice in distributive shares. There is therefore no simple answer to the question of whether one distribution of given things to given individuals is more just than another, other than the justice of the manner in which they are arrived at; in justice as fairness, distributive justice is not allocative justice. This differs from Utilitarianism, which proscribes an optimal end distribution, and is a case of imperfect procedural justice.

Rawls, *Theory of Justice*, Sections 17, 20, 22, 24-5, 40

Work: A Theory of Justice, Sections 17, 20, 22, 24-5, 40

Author: John Rawls

Week: VII (Rawls: Justice as Fairness)

Contributor: Shaina Trotta

Contributor's Notes

Section 17 - The Tendency to Equality

- Rawls would like to explain how his principles of justice lead to an egalitarian society (a society where people are treated as equals). He also aims to show that his theory does not lead to a meritocratic society (society where people get ahead based solely on merit).
- The principle of redress is the principle that “undeserved equalities” need to be adjusted. The accident of birth and natural talents are both “undeserved equalities” according to Rawls, so they need to be compensated for. Consequently, this principle of redress holds that in order to provide equality of opportunity, society must give more attention to the less fortunate.
- Rawls’ difference principle acts towards the same goals of the principle of redress, though they are not the same. It allows for social inequalities as long as they help the least fortunate. These include social inequalities that pay more attention to the more fortunate, only if the long-term result is to benefit the disadvantaged.
- The difference principle views the distribution of natural talents as a common asset to be shared by the community. The more talented may gain from their good fortune only if the less fortunate also gain from it.
- The natural distribution of talents is neither just nor unjust, but simply a natural fact. The way that institutions deal with these facts is what is just or unjust.
- The difference principle may appear unfairly biased towards the least favored, but according to Rawls, this is not the case. The talented, in a sense, are already compensated. Their ability to profit from their talent depends on the existence of the society. Therefore, the society should have the right to decide how those profits are used. For this reason the talented would regard this theory as a fair basis for regulating the basic structure.
- The difference principle expresses the idea of fraternity, which means not wanting to have more at someone else’s expense. The difference principle would not allow someone to be better off unless the less fortunate also benefit from this inequality. The difference principle therefore expresses a link between the fortunate and the less fortunate.
- If a society conforms to Rawls’ theory, it will not become a meritocracy where the talented benefit from their talents and the untalented are left without benefit. It will instead become a society where talents are considered a common asset. The owners of the talents are entitled to them, but they do not deserve them. They can therefore only profit from their talents when this would benefit the less fortunate.

Section 20 - The Nature of the Argument for Conceptions of Justice

- It is necessary to show that the two principles of justice are the solution for the problem of choice presented by the original position.
- To do this, an ignition situation must be established to determine these principles. Rawls’ original position is a situation where “rational individuals with certain ends” must make decisions based on what they already know.
- Different interpretations of this initial position have the potential to result in the selection of different principles of justice. The best original position must be decided upon.
- The original position must incorporate our best sense of the conditions under which one should choose principles, and result in principles that accord with our considered judgments.

Section 22 - The Circumstances of Justice

- The circumstances of justice are conditions that occur in everyday life making human cooperation both possible and necessary.
- There are two kinds of circumstances of justice: objective and subjective circumstances.
- Objective circumstances are the fact that people live together and that there is a moderate scarcity of material goods.

- Subjective circumstances are the different aims and values, or the conflict of interests of people, along with a limited concern that people tend to have for others.
- The existence of these circumstances of justice is what leads to the necessity of principles of justice. These circumstances are not all that we know about society, just all that we would need to know in order to be convinced that justice is necessary.
- Rawls then makes several assumptions about the people in the original position
- He assumes that they know about the existence of the circumstances of justice.
- He assumes that they attempt to fulfill their own plans of life and that they are mutually disinterested in each other. He solves the issue of justice between generations by assuming that people have an interest in their immediate descendants.

Section 24 - The Veil of Ignorance

- Rawls assumes that the parties in the original position are situated behind a veil of ignorance in order to counteract the effects of the contingencies that would cause them to act to their own advantage.
- He assumes that they do not know particular facts.
- They have no knowledge their place in society
- They do not know their natural talents.
- They do not know their own conceptions of the good, or their life plan
- They do not know the particular circumstances of their society.
- They do not know what their personality is like.
- The result of all of this limited knowledge is that they are left with “no basis for bargaining in the usual sense”
- Those in the original position are aware of the existence of political affairs, social structures, human behaviors, and all general laws.

Section 25 - The Rationality of the Parties

- Rawls assumes that each individual would prefer to obtain as many primary goods as possible.
- He also assumes that each is mutually disinterested. No one cares about promoting others’ well being in the original position, although in real life they very well may. No one is motivated by envy (the desire of one person for others to have less than him, even if it means that he must also have less.)
- The people all want to agree on one conception of justice that they can base their society on to live in.
- Rawls responds to the concern that his theory is egoistic, saying that despite the assumption of mutual disinterest, it would not necessarily lead to selfish principles of justice.

Section 40 - The Kantian Interpretation of Justice as Fairness

- In this section Kant provides his interpretation of Kant.
- He summarizes Kant’s theory, saying that according to Kant, moral principles are the object of rational choice and choice must be made by free and equal rational beings.
- Kant’s idea of autonomy is that principles of action are chosen to express being free, equal, and rational.
- This is the opposite of heteronomy, where actions depend upon certain contingencies not chosen by the individual.
- Rawls views the principles of justice as analogous to categorical imperatives.
- He notes that even though people desire primary goods, they do not have particular ends, and therefore this is not a hypothetical imperative.
- Rawls says that the assumption of mutual disinterest parallels Kant’s notion of autonomy.
- The defect in Kant’s theory is that he does not show that acting from the moral law better expresses one’s self than acting from contrary principles.
- Rawls claims that this defect is corrected by the conception of the original position, and that simply put, one would not choose to act from contrary principles in the original position.
- The desire to act justly derives from a desire for self-respect, and not acting justly results in shame, not guilt.
- In Rawls’ opinion, Kant’s moral conception would do well to reformulate the Kantian dualisms using an empirical theory. This is his “Kantian interpretation.”

Rawls, *A Theory of Justice*, Sections 41, 47-48

Work: *A Theory of Justice*, Sections 41, 47-48

Author: John Rawls

Week: VIII (Distributive Justice: Equality, Entitlement, Merit)

Contributor: Crystal Schuil

Contributor's Notes

Section 41: The Concept of Justice in Political Economy

This is about which standards should be used to assess economic arrangements and policies. This is similar to welfare economics, but because of the utilitarian connotations of welfare, Rawls prefers to use "social choice," but that wording isn't perfect either. Justice as fairness applies to all of society, including the economy, since a social system shapes what wants and aspirations its citizens have. The way people work together now affects the desires they have in the future and the kinds of people they become. Therefore, economic arrangements and institutions should involve a view of human good and help to realize it. The theory of justice presupposes a theory of the good, but this does not mean that it prejudges the choice of the sorts of people that men choose to be. The contract doctrine establishes limits on the conception of the good. This is because justice and liberty are prioritized over efficiency and social and economic advantages. A social system should be designed such that fulfilling desires for things that are unjust is discouraged. In order to achieve stability, these institutions should be designed such that they are not only just, but encourage the virtue of justice in those who participate in them, and discourage anything incompatible with this. This means that some institutions are required by the two principles of justice.

Justice as fairness is not dependent on existing wants and interests. A system is devised to assess the social system without a priori considerations. The specific reforms and changes that are made in a society are dependent on the current conditions, but the general form the society should take is not dependent on this. For example, under no conditions can an authoritarian institution be justified at the sacrifice of basic freedoms. Like perfectionism, this sets up an ideal of the person that limits the pursuit of existing desires. Since desires are being constrained, both of these systems are opposed to utilitarianism. Utilitarians can encourage one pattern of wants over another in the hopes of achieving a greater net balance, but the choice depends on existing desires and current social situations whereas justice as fairness and perfectionism establish independently an ideal conception of the person such that some desires are discouraged and the effect of the initial condition should eventually disappear.

Since the theory of justice is based on the original position, unanimity should be possible in designing institutions since the deliberations of any one individual are typical of all. If all men are impartial spectators, they will come to similar convictions. Different moral theories come from different views on the initial situation, but they should all result in unanimity among rational persons. With a Kantian interpretation of the initial position, this conception of justice has affinities with idealism and the theory of justice tries to give a procedural rendering to Kant's kingdom of ends. Another similarity to idealism is that in justice as fairness, a community's value comes about in the same way as in the Kantian interpretation. This is because we all want to account for the good of a society, each individual on his/her own. Although individualistic, the value of a community must still be proved for the theory of justice to succeed.

Section 47: The Precepts of Justice

Transfers and benefits from essential public goods should be arranged to improve the situation of those least well off in such a way that is consistent with the required savings and maintenance of equal liberties. When a society follows this, the resulting distribution will be just, or at least not unjust. This conception of distributive justice has a large element of procedural justice that is not based on information about the preferences and claims of specific individuals. There is the familiar idea that income and wages will become just by the outcome of a competitive market system. However, the problem with this is that while following common sense precepts, there is no possible reconciliation of the three maxims of justice. For example, "to each according to his effort" and "to each according to his contribution" cannot both be fulfilled concurrently. The precedence one is given over another depends on market conditions. If a society has all equally educated people, effort will be the better rewarded characteristic, whereas if educational levels are different, then contribution will be better rewarded according to the laws of supply

and demand. The emphasis on the different common sense norms changes over time, which means that none of these can be taken to be a fundamental norm. Therefore common sense norms have a subordinate place to a first principle. Another such norm is that each should be paid according to the full value of his labor as would occur in the marginal productivity theory of distribution. This value depends on supply and demand, and the distribution would seem to be just. However, a perfectly competitive economy can never be realized, and people receive less than the full values of their labors and the best approximation to the ideal has to be attempted. These deviations from perfection are not that worrisome since it is more important for a competitive scheme to leave room for free association and individual choice of occupation and fair equality of opportunity than to be perfectly competitive. If markets are reasonably competitive and open, it is possible to have pure procedural justice

Section 48: Legitimate Expectations and Moral Desert

It seems like common sense to think that income, wealth, etc. should be distributed according to moral desert. However, distribution according to virtue does not distinguish between moral desert and legitimate expectations. A just system satisfies legitimate expectations as founded on social institutions. What people are entitled to is not proportional to intrinsic worth. For example, when someone's abilities are less in demand or deteriorate, their moral worth does not change, but the amount paid may justly change. No one actually deserves his placement in the distribution of natural assets with which he accumulates wealth any more than he deserves his initial starting position. The concept of moral worth is not a first principle of distributive justice and is secondary to those of right and justice. In a well-ordered society, people acquire claims to a share of the social product by doing things that are encouraged by the current social arrangements. These are legitimate expectations, which must be met. Legitimate expectations are not the same as moral worth since being entitled to something and deserving something are two different things. The illustration used for this is when we say that a losing team deserved to win. This does not mean that the winners are not entitled to the championship, but that the other team exhibited more of the desired virtues.

Some people have a problem with because they think that unless those who are better off have a better moral character, than it is an affront to our sense of justice. This comes from thinking distributive justice is the opposite of retributive justice. However, in a just society, legal punishments only come to those who display character faults. The function of distributive justice is not to reward moral worth like retributive justice is to punish offenses. Instead, distributive justice should cover the costs of training and education to attract individuals to where society needs them so that the end result is consistent with efficiency and justice. In a well-ordered society there should be no need for the penal law except for as an assurance problem made it necessary.

Nozick, “Natural Assets and Arbitrariness”

Work: “Natural Assets and Arbitrariness,” *Anarchy, State, and Utopia*

Author: Robert Nozick

Week: VIII (Distributive Justice: Equality, Entitlement, Merit)

Contributor: Ben Milder

Contributor’s Notes

- To Rawls, an entitlement system (“system of natural liberty”) is wrong because distributive shares are improperly influenced by factors that are “arbitrary from a moral point of view.”
- Rawls mentions that natural talents are developed by social circumstances, but doesn’t mention how people choose to develop their own natural assets.
- Perhaps he left that out because such choices are also arbitrary; however this seems at odds with the rest of Rawls’ theory, which emphasizes personal autonomy, human dignity, and self-respect.
- In Rawls’ original position, natural liberty is not adopted due to self-interested calculation, which is not how we view things; his whole construct is designed to get that result
- Two ways to understanding Rawls’ point about natural assets being morally arbitrary: positive arguments and negative arguments
- Positive argument: differences in holdings stemming from natural assets should be nullified
- Negative argument: The differences shouldn’t be nullified

The Positive Argument

- Nozick is trying to find some logical basis for the positive argument, and he sets up some possible logic and then tears each down using Rawls’ own ideas
- Argument A: People should deserve their holdings → People don’t deserve natural assets → If holdings come from natural assets, people don’t deserve them.
 - Rawls rejects distribution according to moral desert, so that can’t be the basis of his argument
- Argument B: Holdings should be distributed by non-arbitrary pattern → The fact of different natural assets is arbitrary → Holdings shouldn’t be based on natural assets.
 - Differences in natural assets might be correlated with non-arbitrary differences, so this can’t be the basis
- Argument C: If “part of the explanation” for a pattern of different holdings results from arbitrary factors, then the whole pattern is arbitrary
 - Any pattern would have morally arbitrary facts included
 - Since things come into being already held, you can’t use any kind of “manna from heaven” explanation
 - It’s difficult to create one unified pattern for sets of holdings
- Argument D: Holdings should be equal except for weighty moral reasons otherwise → There’s no moral reason for differing natural assets → Differing natural assets can’t provide a moral reason for differing in holdings → Differing natural assets are not a reason for unequal holdings → Holdings should be equal unless there is some other moral reason for unequal holdings
 - Equality premise: Most treatment does not come from the actions of government. Why should differences be justified?
 - Argument assumes equality as the norm, which may not be true

The Negative Argument

- Use of claim that people don’t deserve their natural assets to rebut a possible counterargument to Rawls’ view
- Counterargument E to Rawls: People deserve natural assets → If people deserve X, they deserve Y that flows from X → People’s holdings flow from natural assets → People deserve their holdings → If people deserve something, they should have it
- Rawls rebuts this by denying first premise
- Another possible counterargument stems from people being *entitled* to natural assets
- Nozick doesn’t see any cogent argument to establish that differences in holdings from natural assets should be minimized
- Saying facts are morally arbitrary is ambiguous

- It's not clear how the original position idea can be based on idea that natural assets differences are morally arbitrary

Collective Assets

- To Rawls, distribution of natural abilities is "collective asset"
- People's talents are an asset to the community; talents benefits others and not just themselves
- If people's talents couldn't be harnessed, should they be removed?
- Entitlement conception of justice has been used to probe Rawls' theory, showing inadequacies in Rawls' theory
- Investigation designed to see if extensive state could be justified to achieve distributive justice; if principles are not violated, then no

Bernstein, “Racial Discrimination”

Work: “Racial Discrimination or Righting Past Wrongs?”, *New York Times*

Author: Richard Bernstein

Week: IX (Affirmative Action: Reverse Discrimination?)

Contributor: Drew Heckathorn

Contributor’s Notes

Article Story

Cheryl Hopwood, a Caucasian woman from Texas who was denied admission to the U of T law school, sues for admission. Ms Hopwood claims that the use of her race as a factor in her admissions decision is unlawful because the discrimination in place surpasses in magnitude allowed by *Bakke v. Regents of Univ. of California*. Her academic credentials and LSAT scores were such that she would have been included in a pool of students virtually guaranteed admission if she had been a minority.

Legal Angle

The case deals with the limits and application of *Bakke v. Regents of University of California*, in which the Supreme Court found that it was acceptable to use race as a factor in the academic admissions process, provided it was done in a flexible way and for the purpose of redressing the effects of past racial injustice.

However, the university in its arguments went somewhat past the Supreme Court mandate and cited the benefits of its policies, such as training black and Mexican-American lawyers in a state with large black and Mexican-American population. *This was one of the justifications for affirmative action covered in class by Sandel. Specifically, that having a professional class that mirrors the makeup of society will provide better services because there is some value to having doctors/lawyers/etc who can directly understand minority issues.

The case was decided in favor of Cheryl Hopwood, but the article was written before the decision was made public.

U.S. Court of Appeals, Hopwood v. Texas

Work: Cheryl J. Hopwood v. State of Texas

Author: U.S. Court of Appeals

Week: IX (Affirmative Action: Reverse Discrimination?)

Contributor: Lauren Nikodemos

Contributor's Notes:

Opinion of Jerry Smith, Circuit Judge—

University of Texas School of Law is said to favor minority applicants in its admission process. Specifically, blacks and Mexican Americans are being admitted to the “detriment” of whites. The 14th amendment does not permit the school to discriminate in this way. By using racial preferences, one is embracing the proposition that our society is appropriately viewed as divided into races. This just continues discrimination, making up for injustices to blacks by now discriminating against whites.

Texas Law School is one of the top 20 schools in the country, leading to a very competitive admissions process. In the 90s, the school based its admissions on an applicant's Texas Index Number (TI), a composite of undergrad GPA and LSAT score. The school relied on this number to gauge probability of success and to estimate the number of offers of admission it needed to make for the first year class. The law school also looked at the strength of undergrad education, difficulty of major—applicant's background, life experiences, and outlook. The TI determined how extensive a review an applicant's application would receive.

Blacks and Mexicans were not treated in the same way, as the TI ranges used for them were lowered to allow the school to consider admitting more of them. These minorities were being admitted with lower TIs than nonpreferred minorities, while the nonpreferred minorities were being rejected even though they had higher TIs. The school also ran a segregated application evaluation process, color-coding each application according to the applicant's race.

Hopwood was white and rejected from the law school, even though she had a GPA of 3.8 and LSAT of 39. She sued within the Equal Protection Clause of the 14th amendment, which is “to prevent the States from purposefully discriminating between individuals on the basis of race.” Does the racial classification at the law school serve a compelling government interest? And is it narrowly tailored to the achievement of that goal? The district court approved the non-remedial goal of having a diverse student body, saying that this benefit of a diverse student body supports the use of racial classifications. The court also determined that racial classifications could be justified as a remedy for the past discrimination in the Texas educational system as a whole.

However, this author does not think that the state's interest in diversity is enough justification for race-based discrimination. Use of race in admissions for diversity in higher education contradicts the aims of equal protection. By treating minorities as a group rather than individuals, diversity fosters the use of race.

Schools consider a host of factors in accepting applicants, such as family attendance, economic background, extracurriculars, talents, etc. For this reason, race is often said to be justified as a factor in admissions, but this assumption that an individual possesses certain characteristics by virtue of being a certain race is unfounded, and forms stereotypes.

Summary: U Texas Law School may not use race as a factor in deciding which applicant to admit in order to achieve a diverse student body, to combat the perceived effects of a hostile environment at the law school, to alleviate the law schools poor reputation in the minority community, or to eliminate any present effects of past discrimination.

Supreme Court of the U.S., Grutter v. Bollinger

Work: Grutter v. Bollinger

Author: Supreme Court of the United States

Week: IX (Affirmative Action: Reverse Discrimination?)

Contributor: Lauren Nikodemos

Contributor's Notes:

Justice O'Connor delivered the opinion of the Court –

The case requires the court to decide whether the use of race as a factor in student admissions by the University of Michigan Law School is unlawful. The school focuses on academic ability as well as a flexible assessment of applicant's talents, experiences and potential to contribute to the learning of those around them. The policy affirms the school's commitment to racial and ethnic diversity with special reference to the inclusion of students from groups that have been historically discriminated against like blacks, Hispanics, and Native Americans.

Petitioner Barbara Grutter is a white Michigan resident who applied to law school with 3.8 GPA and 161 LSAT—she was put on a waiting list but then rejected. She filed suit alleging that she was discriminated against because of her race, and this violated 14th amendment. Is diversity an interest that can justify the use of race in selecting applicants for admission to public universities? The court holds that the school has a compelling interest in attaining a diverse student body. The Law school seeks to enroll a critical mass of minority students, and the critical mass is defined by reference to the education benefits that diversity is designed to produce. This is not unconstitutional, and these benefits are substantial. Diversity promotes learning outcomes and better prepares students for a diverse workforce and society. American businesses have said that the skills needed in the global marketplace can only be developed through exposure to diversity. Law schools in particular are the training ground for a large number of our nation's leaders. The path to leadership must be open to talented and qualified individuals of every race and ethnicity.

The Law school gives individualized consideration to applicants of all races, and there is no policy of automatic acceptance or rejection based on any variable. The school's race-conscious admissions plan adequately ensures all factors that may contribute to student body diversity are considered alongside race in admissions decisions.

However, the 14th amendment does exist to do away with any governmentally imposed discrimination based on race. The Law school will terminate its race-conscious admissions program as soon as practicable. We expect that in 25 years, the use of racial preferences will no longer be necessary to further the interest approved today.

Summary: Equal protection clause does not prohibit the Law school's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body.

Justice Thomas dissent—

He compares his viewpoint to that of Frederick Douglass, stating that he believes that blacks can achieve in American life without the meddling of university administrators. The Constitution does not tolerate institutional devotion to the status quo in admissions policies when such devotion ripens into racial discrimination. Racial discrimination can harm favored races or are based on illegitimate motives, and every time government makes race relevant to the provision of burdens of benefits, it demeans us all.

The Law school states that its interest is to obtain educational benefits that flow from student body diversity. This implies both diversity and educational benefits are components of the compelling state interest. The school's refusal to change its admission process and stats indicates that the compelling state interest it seeks to validate is broader than it appears.

The school seeks to improve marginally the education it offers without sacrificing too much of its exclusivity and elite status. Thus, supporters of the school's admission policy are not simply supporting diversity, but also the law school's attempt to marginally improve its education while maintaining its elite status. The interest in remaining elite that the majority thinks is so obviously critical requires the use of admission standards that create the law school's "need" to discriminate on the basis of race. The court never holds that the law school's desire to retain the status quo in academic selectivity is itself a compelling state interest. Therefore, the law school should be forced to choose between its classroom aesthetic and its exclusionary admissions system—it cannot have both ways.

If the school adopted different admissions methods, such as accepting all students who meet minimum qualifications, the school could achieve its vision of a racially aesthetic student body without the use of racial discrimination.

The Equal protection Clause does not prohibit the use of unseemly legacy preferences or many other kinds of arbitrary admissions procedures. What the Clause does prohibit are classifications made on basis of race. The Clause forbids, but the Supreme Court allows, is the use of these standards, such as the LSAT, hand-in-hand with racial discrimination. The Court will not make the law school try other admissions processes, but instead allows it to violate the Constitution for 25 years.

The Law school's discrimination does not benefit those admitted as a result of it. These students cannot succeed in the competition and are unprepared. While these students may graduate with law degrees, there is no evidence that they have received a better legal education than if they had gone to a less elite law school for which they were better prepared. These programs make minorities feel inferior and may cause them to develop an attitude that they are entitled to preferences. You can't differentiate between those blacks who would be admitted in the absence of racial discrimination, and those who would not, so all are tarred as undeserving.

No one can contend that the racial gap in academic credential will disappear in 25 years. The majority has supported a practice that can only weaken the principle of equality embodied in the Declaration of Independence and the Equal Protection Clause.

Dworkin, “Bakke’s Case: Are Quotas Unfair?”

Work: “Bakke’s Case: Are Quotas Unfair?” *A Matter of Principle*

Author: Ronald Dworkin

Week: IX (Affirmative Action: Reverse Discrimination?)

Contributor: Lauren Nikodemus

Contributor’s Notes:

The Supreme Court heard argument in the case of *The Regents of University of California v. Allan Bakke*. The medical school of UC Davis has an affirmative action program. Called the task force program, designed to admit more black and other minority students by setting aside 16 places for them. Bakke applied for one of the remaining 84 places and was rejected, but his test scores were high and the med school conceded that it could not prove that he would have been rejected if the 16 places reserved had been open to him. Bakke sued and the California Supreme Court ordered that he be let in to the med school, so the university appealed to the Supreme Court.

American society is racially conscious, an inevitable consequence of our history. The fact that black men and women are black is the feature that will most influence how they are perceived and treated by others and the range of lives open to them. Affirmative action programs use racially explicit criteria because their immediate goal is to increase the number of members of certain races in professions, but their long term goal is to reduce the degree to which society is racially conscious. Affirmative actions programs rest on 2 judgments- 1) that the US will continue to be pervaded by racial divisions as long as the most important careers remain mainly available to whites, and 2) that increasing the number of blacks who are at work in the professions will reduce the sense of injustice in black community to the point at which blacks can think of themselves individuals who can succeed.

It’s the worst possible misunderstanding to suppose that affirmative action programs are designed to produce an America divided into racial groups. We have not succeeded in reforming the racial consciousness of our society by racially neutral means, therefore we have to be open minded about affirmative action. If the strategic claims for affirmative action are cogent, they cannot be dismissed on the ground that racially explicit tests are distasteful. Archibald Cox spoke for the university, suggesting a racially conscious test for admission which serves goals that are unobjectionable and urgent. The programs are not based on the idea that those who are aided are entitled to aid, but only on the hypothesis that helping them is now an effective way of attacking a national problem. As long as the popular misunderstanding exists, it persists a cost of the program because the attitude it encourages tend to make people more conscious of race, rather than less conscious.

Colvin, Bakke’s lawyer, put his objections on the ground that his client has rights that do not depend on any judgment about the likely consequences of affirmative action for society as a whole—this is wise because if he sustains this claim the court must give him the relief he seeks. If Colvin is right, it must be because Bakke has not simply some technical legal right but an important moral right as well. A popular argument is that Bakke has a right to be judged on his merit, or as an individual rather than a group. But these are just catchphrases, as they all describe the principle that no one should suffer from the prejudice of others. Merit is arbitrary because there is no combination of skills and traits and abilities that constitutes merit in the abstract. If black skin will enable another doctor to do a different medical job better, then that black skin is merit as well. Just don’t confuse the fact that black skin may be a socially useful trait with the different idea that one race may be inherently more worthy than another.

Colvin argues that his client had a right not to be excluded from med school because of his race alone. Every citizen has a constitutional right that he not suffer disadvantage because the race or religion or other natural or artificial group to which he belongs is the object of prejudice. But if Bakke claims that he was kept out of med school because his race is the object of prejudice, this is absurd because many whites were accepted. He means that if he had been black he would have been accepted—which is true—but it is also true that he would have been accepted if he were more intelligent, or had a better interview. Race is not a different matter from these other factors equally beyond his control.

The slogans that an individual should be judged on his merit, or that he has a right to be judged as an individual and not as a member of some group, or that he has a right not to be sacrificed or excluded from any opportunity because of his race alone—all these slogans add up to one principle that no one should suffer because he is a member of a group thought less worthy of respect than other groups. It is not Bakke’s fault that racial justice is now a special need, but he has no right to prevent the most effective measures of securing that justice from being used.

Sandel, “The Case of Affirmative Action”

Work: “The Case of Affirmative Action,” *Liberalism and the Limits of Justice*

Author: Michael Sandel

Week: IX (Affirmative Action: Reverse Discrimination?)

Contributor: Lauren Nikodemos

Contributor’s Notes:

Dworkin defends affirmative action policies for professional schools on the grounds that they are an effective means to a desirable goal of increasing the presence of minorities in these strategic professions. His argument is an argument of social utility. He does not believe any social policy is justifiable if it violates individual rights. Dworkin considers a claim that taking race into account is unfair because race is beyond a person’s control. He also considers the claim that affirmative action violates the right of applicants to be judged on the basis of merit, and concludes that what counts as merit cannot be determined in the abstract but depends on those qualities deemed relevant to the social purpose the institution serves. Dworkin includes the idea that no one can justly claim his rights are violated by affirmative action programs because no one deserves to go to medical school to begin with; no one has an antecedent right to be admitted.

Dworkin’s argument coincides with Rawls’ theory in some aspects—his argument that there is no such thing as merit in the abstract parallels Rawls’ argument against meritocracy that the concepts of merit and moral worth have no antecedent moral status and so cannot provide an independent standpoint from which otherwise just institutions could be criticized. Dworkin’s argument that no one deserves to go to school, that no one has an antecedent right to be admitted, corresponds to Rawls’ distinction between moral desert and legitimate expectations. Both are rights-based theories, defined in opposition to utilitarian concepts, and seek to defend individual claims.

Rawls also would reject the idea that one race is more worthy than another. For Rawls the concept of moral worth like the concept of the good is secondary to those of right and justice and it plays no role in the substantive definition of distributive shares. Persons can no more have an intrinsic worth than they can have intrinsic merit or desert. Once admissions cannot be seen to depend on a notion of merit in the abstract, the alternative is to assume that the collective ends of the society as a whole should prevail. Once the individual self is dispossessed, the claims of the individual fade to betray an underlying utilitarianism which is never justified. Rawls implies that utilitarianism is the ethic of the unbounded subject, the ethic that fails to take seriously the distinction between persons. But Dworkin uses utilitarian considerations to distinguish legitimate discriminations—it cannot be said that one is more worthy than others, but it can be said that one is more valuable. So long as a policy uses people for the sake of worthy ends rather than judges people as more or less worthy in themselves, it is permissible. Dworkin does not justify his utilitarian assumptions because he believes that if no individual has an antecedent claim to the benefits of his assets, it might seem natural to suppose that the society as a whole therefore does—but this assumption is without warrant. The arbitrariness of an individual’s assets argues only against the fact that an individual owns them. Without some concept of a wider subject of possession, there is no reason why these assets should be made to serve general social ends rather than individual ends.

What at first glance appear as my assets are actually common assets’ since others made me and continue to make me the person I am, it seems appropriate to regard them as participants in my achievements and common beneficiaries of the rewards they bring. We may come to regard ourselves less as individuated subjects with certain things in common and more as members of a wider subjectivity, less as others and more as participants in a common identity. This is an enlarged self-understanding. By my efforts I contribute to the realization of a way of life in which I take pride and with which my identity is bound. While I could not claim credit for possessing the qualities I had, I could take pride in my fitness to contribute.

A feature of the intersubjective description of common assets is that it renders the dispossession of the person as it appears from the individualistic point of view less disempowering. If I cannot be the owner I can at least be the guardian of the assets located here and a guardian for a community of which I count myself a member. This suggests a moral issue that Dworkin must address—how to establish the relevant subject of possession or how to identify those among whom the assets I accidentally bear are properly regarded as common. Dworkin’s position on this is ambiguous. He sometimes speaks as though he does have a determinate subject of possession in mind, and that is the nation-state. He mentions how programs have a way to provide an “effective way of attacking a national problem.” In order to make this claim, Dworkin needs to say more about why this should be so, to demonstrate why the nation is the community that is properly entitled to define the purpose and to deploy the common assets necessary to its pursuit, in so far as university education.

Both Dworkin and Rawls assume that once the rights of the individual are dealt with, an unspecified social claim predominates without an account of a determinate community or wider subject of possession being required. There are difficulties with this assumption. There is no such thing as the society as a whole, so single community whose pre-eminence just goes without argument or further description. And if there is no society as a whole, then it's unlikely that a particular society could have any greater claim to some set of endowments than the individual in whom they accidentally reside.

Unless it is possible to identify the relevant community across which "my" assets are properly shared, Dworkin's argument for affirmative action and Rawls notion of common assets have the effect either of contradicting the central Kantian and Rawlsian injunction against using some as means to others' ends, or evading this contradiction by relaxing the bounds between the self and the other, thus lapsing into a radically situated subject.

Morley, Double Reverse Discrimination

Work: “Double Reverse Discrimination,” *The New Republic*

Author: Jefferson Morley

Week: IX (Affirmative Action: Reverse Discrimination?)

Contributor: Lauren Nikodemos

Contributor’s Notes

Starrett City is the largest federally subsidized housing project. It is racially integrated—management uses ‘occupancy controls,’ a policy of limiting black and Hispanic tenants to around 40 percent. Blacks shut out of Starrett City are victims of double reverse discrimination.

The Federal district court in Brooklyn approved a settlement between Starrett City and five black rental applicants who filed a class action discrimination suit. Starrett can maintain its occupancy controls if it rents an additional 3 percent of its apartments to minority families, and the state of NY has pledged to expand its affirmative action.

People in East NY opposed the project of building Starrett, they didn’t want the ghetto closer to their doorsteps (property values drop and crime rates rise.) If Starrett’s population of minorities grew larger than 30 percent, whites would move out. Starrett had to find a way to attract and keep whites. It recognized a policy of non discrimination wouldn’t work. Second, it knew intentions to maintain integration would not prevent “tipping”—the process of whites being outnumbered and moving out. Third, Starrett realized it would have to go beyond affirmative action in its original sense, that is seeking out members of a targeted racial group without extending preferential treatment to them. So Starretts answer was to make sure too many white people didn’t leave by making sure too many black people didn’t buy in.

Morris Abram is Starret’s lawyer, defending occupancy controls and asserting the legality of Starrett’s quota- “race remains a significant factor in our society...race conscious tenant selection methods are the only way in which to preserve an integrated community.” Abram said Starrets methods are permissible because where qualifications are not a factor, it is permissible to make color-conscious choices.

Why did the N.A.A.C.P. go to court to abolish the color conscious policy it had supported in the Bakke case and elsewhere? Because this time quotas benefited whites and not blacks? Occupancy controls are stigmatizing because they are based on the judgment that Starrett would deteriorate if only blacks lived there. N.A.A.C.P. argued that whatever the group benefits of integration, individual blacks should not have to suffer to achieve it. Substitute “white” for “black” and you have the usual argument against affirmative action that the N.A.A.C.P. has long *opposed*.

Critics of affirmative action assert that we should conceive of our society, not as a collection of groups with varying claims, but as a collection of individuals with rights. By siding with the plaintiffs, the N.A.A.C.P. recognized the force of this argument. The Starrett case ought to give advocates of affirmative action a deeper understanding of why Allan Bakke and other whites have felt unjustly treated by affirmative action.

Brus, “Proxy War”

Work: “Proxy War: Liberals Denounce Racial Profiling. Conservatives Denounce Affirmative Action. What’s the Difference?” *MSN Slate Magazine*

Author: Michael Brus

Week: IX (Affirmative Action: Reverse Discrimination?)

Contributor: Crystal Schuil

Contributor’s Notes

An example of racial profiling: Brent Staples (a black man) used to wander around U of Chicago campus after dark and approach white couples to see how they would react. At first they would tighten grips on each other’s arms, then release and scurry apart. They were using his race as a proxy for potential criminality. “Using superficial traits to infer deeper characteristics in people is common and need not be racist.” Instead, it is considered to be minimizing information costs, but it is still a sensitive issue. Problem with using race is that the generalizations are not perfect. Assumption that any particular young black man will be a mugger will usually be wrong. Racial profiling occurs in police departments when stopping cars, and defenders say it is a sensible system that has reduced crime rates.

Conservatives tend to support racial profiling and oppose affirmative action while liberals tend to be the opposite, but both these issues are essentially the same. They both use race as a proxy for other qualities. Critics of both object to race being used as the proxy and defenders of both say that it is ok for race to be one factor among many, but shouldn’t be the only factor. Gov. Whitman in NYT magazine says the difference between good and bad profiling for crime is that in bad profiling, race is the only factor, whereas in good it is just one factor. This does not really solve racial proxy dilemma since both college admissions and stopping drivers are yes-or-no decisions. According to Randall Kennedy “Even if race is only one of several factors behind a decision, tolerating it at all means tolerating it as a potentially the decisive factor.” If it is decisive, the other factors don’t matter. If it isn’t decisive, it can’t really be considered a factor.

Affirmative action singles out blacks for something desirable and racial profiling for something that is not. This is the main difference between them. People can differ about whether or not using race as a proxy is OK, subject to how valid the generalization is and how costly or impractical it is to get additional info. In the mugger example, it is impossible to find out in 5 seconds what the man’s intentions are. Whether or not to use racial proxies is a hard call, but supporting racial profiling and not affirmative action, or vice versa is wrong.

Aristotle, *Politics*, Book I

Work: *Politics*, Book I

Author: Aristotle

Week: X (Aristotle: Justice and Virtue)

Contributor: Bushra Taha

Contributor's Notes

Aristotle begins by asserting that since every community is formed for the sake of some good, the state, which is the supreme and all-embracing community, must aim at the supreme good. The teleological point of view which he adopts is characteristic of his entire analysis; the meaning and nature of everything in the world is found in the end of its being, in its purpose. The explanation of things is found not in what they have developed from but in what they are developing into. Aristotle attempts to understand the state through teleology and thus analyzes its parts in order to conceive of the whole.

For Aristotle, there are two primary instincts that lead to human association: the reproductive instinct which unites man and woman; the self-preservation instinct which unites master and slave for mutual aid. Therefore we get a minimum society of the family, “the association established by nature for the supply of everyday wants.” The next stage is the village, a union of several families “for the supply of something more than everyday wants.” While Aristotle does not specify these additional wants, he might have been referring to a greater division of labor or perhaps protection against enemies. The village, he adds, is formed most naturally by the union of families of common descent. The third stage is the union of several villages into a “complete community large enough to be nearly or quite self-sufficing, coming into being for the sake of life but existing for the sake of the good life.”

The state came into being for the same reason as the village—for the sake of life. But it extends beyond the preservation of life to the achievement of the good life. For Aristotle, the good life includes moral and intellectual activity. The state offers a more adequate arena (than its predecessors) for moral activity, a more varied set of relations in which the virtues may be exercised. It also gives more scope for intellectual activity; a complete division of intellectual labor and interaction between capable minds.

Aristotle insists that the state does not exist merely by convention, but is rooted in human nature; that the natural is to be found not in the origins of human life but in the goal which it seeks. For him, civilized life does not stem from the life of a “noble savage” and the state is not an artificial restriction of liberty; the state is a means of gaining liberty: “If the earlier forms of society are natural, so is the state, for it is the end of them and the nature of a thing is its end. For what each thing is when fully developed, we call its nature...Hence it is evident that the state is a creation of nature, and that man is by nature a political animal...He who is unable to live in society or who has no need because he is sufficient for himself, must be either a beast or a god.” The state is natural in the sense that is rooted in the nature of things. Moreover, it is not independent of human volition; it is in fact formed and maintained by human volition. (NB: Instead of referring to man as a “political animal,” we might also consider, “social animal.”) Among all animals, man alone possesses a perception of a good and evil, a sense of the just and the unjust. It is in human association, first in the family, then the village, and ultimately, the state, that justice can be realized.

After determining the derivation of the state, Aristotle proceeds to consider two parts of household management: the relation of master and slave and the acquisition of wealth. Regarding slavery, Aristotle posits two views (1) the rule over slaves is identical in kind with political rule (i.e. an instance of the normal rule of superiors over inferiors) and (2) nature recognizes no distinction between master and slave and hence slavery rests on an unnatural convention and is unjust. The discrepancy in his argument is obvious. Nonetheless, he attempts to avoid the conflict by first defining the slave as an animate tool, a living possession to aid in the conduct of life. Aristotle then addresses whether there are any individuals intended by nature to be slaves: He claims that the existence of superior and inferior is found everywhere in nature (male/female; mind/body; man/animals) AND when such a difference exists it is to the advantage of both that one should rule the other. Thus some men by nature are free and others slaves. But he counters this point by noting that much existing slavery is founded on conquest and on this basis is unjust for superior power does not always mean superior excellence. Despite Aristotle's difficulty in dealing with the issue of slavery, he still maintains that the interests of master and slave are one and the same. Therefore the master should

not abuse his authority. Yet Aristotle's discussion of slavery is inconsistent and contradictory for his conception of a slave as a man is incompatible with his analysis of a slave as a living instrument.

Aristotle makes the distinction between two modes of acquisition of wealth: (1) the natural mode and (2) barter. The natural mode refers to the acquisition of products of nature that are needed for the purposes of life (grazing, hunting, etc.). There is a limit (determined by the needs of man for food and clothing) fixed on this mode of acquisition. Moreover, it is the task of the household manager and the statesman to adhere to this mode.

The second mode of acquiring wealth is barter. Here Aristotle draws the distinction between the value of things in use and their value in exchange. Barter, up to a certain point, is natural in so far as it is used to acquire what is necessary for the purposes of life. But an unnatural way of acquiring wealth is reached when goods begin to be exchanged not for goods, but for money. The intrinsic characteristic of money is that it is more portable than goods and has a utility of its own apart from its convenience for exchange. Aristotle regards the acquisition of wealth by trade other than barter as unnatural. He condemns the unlimited pursuit of wealth beyond what is needed for the purposes of life. Further, he considers the unnatural acquisition of wealth is usury, for money itself as an unnatural invention and is used not for its original purpose (exchange) but for a more unnatural one. He seems to disregard the potential benefits of money: Lending that makes industry possible, renders a useful public service, etc. Aristotle instead seems to focus solely on the type of monetary exchange that takes advantage of the poor who are driven by immediate needs to borrow on terms that make him in effect the lender's slave.

Aristotle concludes Book I by discussing the various sorts of rule that are proper in a household. Household management aims at the moral goodness of the members of the household. In order to ensure this "goodness," one must determine what is fitting and proper for each member of the household, for the good of a slave differs from that of a woman and that of a child. Aristotle extends this line of reasoning to claim that the soul of a slave is distinct from that of a woman and child. The soul is comprised of two elements: a ruling, rational element and a ruled, irrational element. The slave has no deliberative faculty; woman possesses deliberative faculty but possesses it without authority; the child possesses it, but is immature. Therefore the master's rule over the slave must be despotic, the husband's rule over his wife constitution, and the father's rule over the children monarchical. Thus the proper rule of a household anticipates the three main types of government.

Aristotle, *Politics*, Book III

Work: Politics, Book III

Author: Aristotle

Week: X (Aristotle: Justice and Virtue)

Contributor: Rachel Flynn

Book III of Politics is primarily focused on the various types of constitutions and governing bodies, namely where sovereignty should be placed. Aristotle begins this by questioning what constitutes a city, and what constitutes its citizens.

Key Points by Chapter

Citizenship (Chapters 1-5)

Chapter One

- To understand a constitution (politeia), we must understand the city (polis). The city is a body of citizens (politai).
- A citizen (especially in a democracy) is “one who permanently shares in the administration of justice, and the holding of office.”. More generally (outside of democracies) a citizen may be defined as one “who shares for any period of time in judicial and deliberative office.”
Though there are both permanent and non-permanent offices to be held, Aristotle defines both as ‘indeterminate offices’.
- A constitution is a way of organizing the inhabitants of a city. The city is described as of the order of compounds, in that it is made up of several different parts to form a whole.-A citizen in one form of government (democracy) may not qualify as a citizen in another (oligarchy).
- Constitutions differ from one another. Perverted constitutions are secondary to those that are free from defects. The citizens under these constitutions are also different from each other. So regardless of the type of terms in office, and who holds them, a city, in “its simplest terms, is a body of such people adequate in number for achieving a self-sufficient existence.”

Chapter Two

- Deals with “new citizens” (those that are allowed to participate in a constitution as a result of a revolution.) Aristotle states that they are truly citizens when they possess the function to share in judicial and deliberative office.
- Aristotle acknowledges that it is a usual definition to say that one who is ‘born of citizen parents’ is a citizen.

Chapter Three

- Deals with the identity of the city, and when the city itself is identical to its government.
- Aristotle discusses when a given act can or cannot be considered an act of the city. He establishes that constitutions exist for the sake of the common good, and not by virtue of force, or based on the government that creates them.
- Cities can not be defined by their walls, their territories or their populations.
- Aristotle says that a city is a form of association of citizens in a constitution and, regardless of whether or not the people remain the same, a city alters its identity when its constitution “undergoes a change in form.” Simply put, the constitution defines the city.

Chapter Four

- The differences between the good citizens and the good man. The definition of ‘good citizen’ may change based upon the constitution under which he lives, while the ‘good man’ remains the same in any society.
- A good citizen is good relative to his particular function within a constitution, while a good man is good relative to outstanding virtue. As such, there may be several types of good citizen, but a singular type of good man.

- The good ruler is defined as a man who possesses the quality of moral wisdom required for being a good subject, and so, possesses both the qualities of a good citizen AND a good man.

Chapter Five

- Mechanics and laborers cannot be citizens because they cannot achieve the excellence of a good citizens (sharing in the administration of justice and the holding of office), although they are necessary to the city itself. However, this can vary, as in an oligarchy a rich mechanic, by virtue of his wealth, may function as a citizen.
- Citizenship is only unlimited when there is a dearth of population. Once the city has sufficient population, restrictions will be placed on citizenship.
- Aristotle emphasizes that in certain cities, a good citizen is identical to a good man, but this is only where a good man is a statesman, capable of directing the conduct of public affairs.

B. Constitutions and their Classifications (Chapters 6-8)

Chapter Six

- “The classification of a constitution depends on 1) the ends pursued by the city, and 2) the kind of rule exercised by their government.”
- The true end, and common interest of the city is “the good life”.
- Right constitutions and authorities are directed to the common interest. Wrong constitutions, or ‘perverted’ constitutions are directed to the selfish interest of the ruling body.
- The civic body is the city, the sovereign and the constitution itself.
- when a constitution is “constructed on the principle that it’s members are equals and peers, the citizens think it proper that they should hold office by turns.” Each holding the common interest closest when ruling.

Chapter Seven

- For Right and Wrong Constitutions, there are three types: The Rule of One, The Few or The Many.
- In Right Constitutions, these translate to Kingship, Aristocracy and ‘Constitutional Government’, or ‘Polity’. In Wrong Constitutions they are: Tyranny, Oligarchy and Democracy.

Chapter Eight

- Number, however, is not the deciding factor in these types of governments. Oligarchy is the rule of the rich, and democracy the rule of the poor. The number of people in each group is incidental. However, “the accidental generally accompanies the essential.”
- Tyranny is defined as a single-person government on the lines of despotism.

C. The Principles of Oligarchy and Democracy and the Nature of Distributive Justice (Chapters 9-13)

Chapter Nine

- The principles of a constitution is its conception of justice. This is the fundamental ground of difference between oligarchy and democracy.
- In a democracy, men equal by birth should have an equal share in rights and honors.
- Oligarchs hold that if they are unequal in wealth, they should an unequal share in holdings and honors.
- However, true justice requires that those who contribute to the ends of the city should have privileges “in proportion to their contribution.”
- The end of “a city” is the good life. If it is not, political association become “mere alliance” and “law becomes a mere covenant.”

Chapter Ten

- No person should be sovereign, only law should. The people, being sovereign, would distribute the goods of the wealthy, which is unjust. The tyrant would use coercion, by virtue of superior force. In an oligarchy, those who are lesser in wealth are deprived of their ability to participate in government.

Chapter Eleven

- It is possible to argue that the people should be sovereign, because of their unique combination of qualities and ability to judge soundly. Even though they may not be experts or the highest in quality of character, the people, when taken as a group are better suited than experts to judge soundly. Finally, though, the law must have final sovereignty over even the people.
- Laws that are in accordance with just constitutions must be just, while laws in accordance with perverted constitutions are inherently unjust.

Chapter Twelve

- Justice is “the political good involved in the distribution of equal shares to those who are equal.”
- Equality must be measured contribution to the function of society. This is referred to as ‘proportionate equality’ and is “the essence of distributive justice.” Put simply, a citizen receives a proportionate share of rights and honors based upon what he contributes to society.

Chapter Thirteen

- Deals with what constitutes a contribution to society. A case “may be made in favor of the single man of exceptional and outstanding goodness. Such a man must either be made king or sent into exile.” Ostracism, however, is not just. So, too, is it unjust to make such a man an equal in state. He must be the ruler.

D. Kingship and its Forms (Chapters 14-18)

Chapter Fourteen

- There are 5 forms of Kingship:
 - 1) The Spartan Form, where a king has only military powers.
 - 2) Absolute Kingship, where a king has power over all matters of gov't. And three types whose powers fall between the two. They are, in order of ascending power:
 - 3) kingship among barbarian people
 - 4) the dictatorship or elective form of tyranny
 - 5) the kingship of the Heroic Age.

Chapter Fifteen

- Absolute rule raises the problem of personal rule vs. rule of law. Personal rule has the quality of initiative, but law has the quality of impartiality. Rule of law should be of utmost importance, even in a kingship, which would be a constitutional kingship, as a result. The question is raised whether kingships should be hereditary (no), and if they should be defended by personal guard (only by fellow citizens)
- A cycle exists in which oligarchies first existed, then tyrannies, which resulted in revolutions of the people which led to democracies.

Chapter Sixteen

- Although a good man who is so exceptional in goodness should be made king, rather than be exiled, the question of whether or not absolute kingship is just still remains. Because expert knowledge is more likely to be found in a group rather than in a single person, and because it is contrary to the “idea of a free society of equals, and adverse to the rule of law”, a kingship, on general grounds, is adverse to society as a whole.

Chapter Seventeen

- Aristotle also states that the only case in which a kingship is the best form of government is when a specific man, or family is so outstanding as to “surpass all other members.” In this case, “there should be absolute kingship with plenary power and no limit to tenure.”

Chapter Eighteen

- A wrap up chapter, discusses how to bring about a good constitution. Aristotle's advice is to build a good constitution similarly to creating a good man. In order to do this, Aristotle states, it is necessary to examine the good life, which is the aim of both a good man and a good constitution.

Aristotle, Excerpts from *Nichomachean Ethics*

Work: Books II and X, *Nichomachean Ethics*

Author: Aristotle

Week: X (Aristotle: Justice and Virtue)

Contributor: Crystal Schuil

Contributor's Notes

Book II

There are two kinds of virtue, intellectual and moral. Intellectual virtue is born and grows from teaching. Moral virtue comes about as a result of habit, not from nature. We get virtues by exercising them, i.e. we become just by doing just acts. Through our actions we become either just or unjust. We need to examine actions to act according to the right rule, however cannot give a precise account of matters because each situation is unique and must be decided by the agents themselves in each situation. Things are destroyed by both excess and defect. For example, someone can either be not brave enough (a coward), or too brave and become rash. The more virtues are practiced, the easier they become and the better we are at them. Moral excellence is concerned with pleasures and pains; we do bad things because of pleasure, and abstain from noble things because of pain.

Book X

This book discusses pleasure. According to Aristotle, some say that pleasure is the good, while others say it is bad. Eudoxus thought that pleasure was the good because he thought that all things, rational and irrational aimed at it. Also, since pain is an object of aversion to all things, the opposite of it must be an object of choice. When pleasure is added to any good, it makes it more worthy of choice, and it is only by itself that the good can be increased. This argument shows pleasure to be one good among many, and whenever two goods are together they are more worthy of choice. Plato uses this argument to prove that good is not the pleasure, since a pleasant life is more desirable with wisdom than without, and if the mixture is better, than pleasure is not the good. The good cannot be made more desirable by adding anything to it. We are looking for the good at which everything is aimed. Intelligent people think it must be something good, otherwise we are like animals. The argument that if pain is evil, pleasure is what we desire seems to be invalid because two things can be evil and still oppose each other, however since people avoid the one as evil and choose the other as good; that must be how they oppose each other.

An argument against using pleasure as the good is that the good is determinate whereas pleasure is indeterminate since pleasure has varying degrees. The same is true of justice and the other virtues since some people are more just than others. But since health is allowed varying degrees without being indeterminate, pleasure could also be of this kind. Another argument is that the good must be perfect while movements and "comings into being" are imperfect, and then tries to make pleasure as a movement, but since a movement must change in relation to something else. This is invalid because speed and slowness correspond to every movement, but we can be pleased and angry quickly without the speed being related to someone else. Also, it cannot be a coming into being since the dissolving of pain is what brings the pleasure. Another argument is that pain is a lack in nature and pleasure is the replenishment. However, not all pleasures replace pain. Sounds, sights, memories, and hopes do not necessarily fill a void where there was pain.

Some people bring up disgraceful pleasures. But if things are pleasant to bad people, we shouldn't assume they are pleasurable to other people, the same as we do not assume that tastes are the same for those who are sick. Alternatively you could say that the pleasures are desirable, but not necessarily at any cost. Another answer to this is that pleasures may differ in kind. Ones from noble sources are different from those from base sources.

No one wants to have a child's intellect all of his life, even if he would get pleasure from the things children get pleasure from. It is the same thing with disgraceful pleasures. There are also things we should care about even if they don't bring pleasure, i.e. the virtues. Pleasures may accompany these, but we should want them even without the pleasure. Pleasure is not the good, nor is all pleasure desirable. Some pleasures are desirable in themselves, differing in kind from their sources or the others.

Pressley, “A Safety Blitz”

Work: “A Safety Blitz,” *Washington Post*

Author: Sue Anne Pressley

Week: XI (Ability, Disability, and Discrimination)

Contributor: Ximena Vengoechea

Contributor’s Notes

Callie Smartt is the Texas cheerleader with cerebral palsy. Originally on the squad, she was kicked off for “safety reasons.” One parent complained of having to “babysit” her. She has been deemed “honorary cheerleader,” but can no longer cheer or help in fundraisers and told the position (which was not created by voting from the team, but by a sponsor’s decision) will be abolished. Smartt would have to go through all auditions-impossible with her disability-to become a cheerleader.

The school says any student can participate “to the extent that they are capable,” but safety is always the primary concern. Callie’s mother hired a lawyer for the rights of the disabled, Breedlove, who believes the school is making an “extra effort to exclude her” by preventing her from attending fundraisers. He says it is not illegal for disabled people to take risks.

Ryan, “Sorry, Free Rides Not a Right”

Work: “Sorry, Free Rides Not a Right,” *Boston Globe*

Author: Bob Ryan

Week: XI (Ability, Disability, and Discrimination)

Contributor: Ximena Vengoechea

Contributor’s Notes

Martin needs a cart to play PGA. He went to court with the American Disabilities Act for support.

Ryan’s stance on Casey Martin: If you can’t walk the course, you can’t play the game.

His reasons: Uses baseball as an example, saying we would not allow a surrogate runner if Martin could hit but not run. He also says there are times when walking is definitely a factor in the results of the game. Taking a cart would be an advantage. He says if everyone else rides a cart, it’s okay. (So he’s willing to change the rules of the game, only if everyone is equal.) Says Martin is not entitled to the cart just because he wants it.

Kite, “Keep the PGA on Foot”

Work: “Keep the PGA on Foot”, *New York Times*

Author: Tom Kite

Week: XI (Ability, Disability, and Discrimination)

Contributor: Ximena Vengoechea

Contributor’s Notes

Tom Kite is a professional golfer who has won over 20 PGA events. He is against allowing Casey Martin to use a golf cart. His reasons: supporters of Martin are ignoring that PGA golf is a professional, athletic competition. He argues that physical conditioning is part of competitive golf. Kite says the advantage of having a cart varies from week to week, course to course, and that maintaining equality is impossible without changing the nature of the game.

Kite cites Ben Hogan as an example of persevering without the cart, and preserving the competition. Hogan recovered from a car accident and played without a cart. Kite says walking is an integral part of the game, not just shotmaking.

Kite links mental, emotional, and physical aspects of the sport together. Physical fatigue can cause loss of mental concentration, lead to poor shot selection and shotmaking, etc. He says you cannot change the integral aspect of a sport for one person.

PGA Tour v. Casey Martin

Work: PGA Tour, Inc, Petitioner v. Casey Martin

Author: Supreme Court of the U.S.

Week: XI (Ability, Disability, and Discrimination)

Contributor: Ximena Vengoechea

Contributor's Notes

Majority, delivered by Judge Stevens

Two questions at stake under the Americans with Disabilities Act of 1990.

1. whether ADA protects access to PGA tournaments by qualified, though disabled entrants
2. whether disabled contestant can be denied use of cart because it would “fundamentally alter the nature” of the tournament

Petitioner admits Martin has a disability protected under ADA, but says changing the walking rule would change the game. Testimony from expert golfers was provided to support this. The Judge said fatigue from walking was not significant enough, and that even if Martin had an advantage by using the cart, this was not really an advantage since Martin has constant fatigue from his leg, and even using a cart requires him to walk over a mile. (Martin is at risk of hemorrhaging at any point.) Judge concluded using the cart would not alter the game. It is seen as peripheral to the fundamental nature of the game. The cart is seen as “necessary” for Martin. The essence of the game is shot-making. The court argues that weather conditions may change for one golfer’s favor and to the disadvantage of others, and that it is impossible to judge play solely on the individual’s ability. The fatigue factor is also seen to be a result of fluid loss, not exercise from walking. Martin’s request should be granted.

Dissent: Justice Scalia and Justice Thomas

Rules are arbitrary and cannot be deemed “nonessential” or essential to the game. The PGA has no obligation to play classic golf, and the court system was not created to determine such “incredibly silly question[s].”

Something essential is necessary to its function, but games have no function besides amusement. Here the *telos* of the game is amusement, not the game itself.

Scalia contends that luck is brought by the cart every single time for Martin. “even granting that there are significant nonhuman variables affecting competition, that fact does not justify adding another variable that always favors one player.” (8).

Accepting this one case also opens a Pandora’s box of similar cases that courts must decide based on individual circumstances.

MacIntyre, Excerpt from *After Virtue*

Work: *After Virtue*, “Virtues, Unity of Life, and Concept of a Tradition”

Author: Alasdair MacIntyre

Week: XII (Justice, Community, and Membership)

Contributor: Josh Kipnees

Contributor’s Notes

This article is the most literary, but in many ways the most lucid articulation of the communitarian theory. MacIntyre argues that there is a harmful tendency to separate the many components of human life, like work v. leisure, public v. private, etc. He contends that we must resist this movement, as in order to properly understand existence there cannot be “a sharp separation...between the individual or the role that he or she plays” because in such a circumstance, “a self separated from its roles...loses that arena of social relationships in which the Aristotelian virtues function if they function at all.” A virtue, hence, cannot be conceived as merely a “comparative advantage” in one particular field, because a virtue must be capable of being exhibited in many different circumstances and across spheres of influence: bravery is one, while a professional skill is not. The self is not an isolated or compartmentalized entity, rather, there is a “concomitant concept of selfhood,” which holds that there exists a “self whose unity resides in the unity of a narrative which links birth to life to death as narrative beginning to middle to end.” Basically, the self cannot be perceived as isolated but rather, must be understood part of a larger community, both in time and in space, which is ascertained by examining the “narrative” that characterizes his or her life.

To explain this idea of a narrative a bit, MacIntyre gives the example of someone seeing a man in his yard. If you asked “What is he doing?” you may get a variety of answers, including “Digging,” “Gardening,” “Taking exercise” “Preparing for winter,” “Pleasing his wife.” All of these responses depend upon knowing what the agent’s primary intentions are. Each of these answers may be correct, but it truly depends upon the setting to determine the purpose of his behavior. In order to determine what answer fits best, we need to know primary versus secondary intentions, and long-term versus short-term intentions. As MacIntyre says, “We..cannot characterize intentions independently of the settings which make these intentions intelligible both to agents and to themselves.” This portion is very reminiscent of Aristotle’s teleological theory, since it argues that a person’s particular setting and individual circumstances characterize every action that a person does. In a sentence, according to MacIntyre, “without the setting and its changes through time the history of the individual agent and his changes through time will be unintelligible.” The resolution that he reaches is that an action will be identified not on its performance in a vacuum, but in reference to “the causal and temporal order” in which the agent finds himself, and “with reference to their role in the history of the setting or settings in which they belong,” and so an individual’s narrative must be referenced in characterizing his actions. Therefore, a person should be held accountable for his actions, meaning that if you asked him why he did something, he should be able to explain why in reference to his narrative, or should be able to ask others for an account, since all narratives are interlocking.

Every action “has a basically historical character” because “we all live out narratives in our lives,” “histories both of the individuals concerned and of the settings in which they act and suffer.” An individual is not necessarily the sole author of his own narrative, but rather a “co-author” because “we enter upon a stage which we did not design and we find ourselves part of an action that was not of our making.” In a sense, none of us are completely free to act, since we are all constrained by the histories or narratives in which we are born. Accordingly, “the individual’s search for his or her good is generally and characteristically conducted within a context defined by those traditions of which the individual’s life is a part,” and so his life is inevitably shaped by the particulars of his narrative. Therefore, an agent must see himself as bearer of a tradition, insofar as he acts according to certain modes of understanding, values, and dealing with the world that have been established by generations past. His present is defined critically by others’ pasts.

As this applies to justice, MacIntyre says we need to act in accordance with the idea that we need to work together towards some shared future. Since all of our narratives interlock, we must see ourselves as constantly moving toward some communal telos. Man is “a story-telling animal” with a certain role to play that is determined by his personal narrative, and we must understand our role in order to understand how we are perceived by others. Though our lives are uncertain, we know that the manner in which we live them will affect the future. In a very

Aristotelian sense, we must understand ourselves as part of a whole, work towards a shared objective with others, and learn how to excel in the role that past histories have provided for us. We are part of a community, and on our “quest,” we must see where we fit into that community in order to truly understand ourselves.

Sandel, Excerpts from *Liberalism and the Limits of Justice*

Work: *Liberalism and the Limits of Justice*, pp. 1-24, 175-183

Author: Michael Sandel

Week: XII (Justice, Community, and Membership)

Contributor: Josh Kipnees

Contributor's Notes

"Introduction"

Sandel challenges the deontological liberalism of Kant and Rawls, who argue that conceptions of the right can and should be established prior to conceptions of the good, meaning that social circumstance should not be able to dictate what is morally permissible in a given situation. So, principles of right are justified without any reference to a "particular vision of the good;" instead, the right "constrains the good and sets its bounds." Deontology opposes consequentialism (i.e. utilitarianism) in that the right must be considered first no matter the consequences, and opposes teleology in holding that the right does not promote any particular conception of the good or final purpose. It perceives the individual as detached from all socially conditioned inclinations, where the subject, the agent, is able to separate himself from his object, his ends/desires. This perspective is attainable in part via introspection—albeit this is limited—but more perfectly by viewing oneself (at least partially) as a subject "free" and antecedent to circumstance-- "independent of the laws of nature" and experience, beyond the influence of desires or conceptions of the good, capable of "Acting according to a law I give myself."

The first two objections which Sandel presents are the Sociological and Humean Objections. The Sociological objection claims that neutrality is impossible, and any conception of right must reflect *some* unique conception of values. By saying that justice is primary to the good, it simply says that concern for the individual must come before all other concerns, which is merely one formulation of the good. However, Sandel asserts, this objection fails to appreciate the true essence of neutrality, which is that the right should not be dependent upon ends, and only actions done which accord with the primary right are acceptable, while actions done in self-interest, so long as they accord with the right, are permissible. Also, it doesn't expressly deny the possibility of metaphysical autonomy from inclinations that deontology offers.

The second objection, the Humean objection, argues that "a prior and independent self" can operate outside of empirical circumstances. For example, Rawls believes that it is unclear how someone who is free from all concepts of empirical reality would derive notions of justices that are practically applicable and non-arbitrary. However, Rawls attempts to get around this by creating his original position paradigm, where principles are decided behind a veil of ignorance, but unlike Rawls, subjects are still situated on their human selves, and not transcendent.

"Justice and the Moral Subject"

Rawls argues that concern for the right over the good preserves the inviolability of human beings and the differences between them, but also that principles must be independently derived. Sandel objects to this notion, because either it means that the original position from which justices is determined is influenced at least somewhat by conceptions of good in society (per the sociological objection), or else the principles determined are just as invalid as are Kant's, for the reason that these principles would be completely arbitrary and would rely entirely on a priori assumptions, where we would not be certain whether these could be applied practically (per the Humean objection). More critically though, Sandel objects to the fact that Rawls argues that the self must exist prior to his ends, yet what is the self without his ends, without his setting? If one manages to extricate oneself from all social values and traditions, then he becomes not a human being at all, only a "radically situated subject" without any possessions, just constituents of his being. It results in a person that is far too abstract to be applicable. However, Sandel deems Rawls more successful than Kant in his project due to his ability to create an original position that is not strictly metaphysical. Though it has flaws, Rawls' theory presents an individual as "by nature a being who chooses his ends rather than a being, as the ancients conceived him, who discovers his ends" which gives him the power to choose that which is right.

“Conclusion”

Sandel recapitulates deontology, stating that Kant and Rawls hold that our noumenal selves are independently capable of deciding the course of action for our individual selves. We have the capacity to develop our own (and only) constraints on the purposes we choose, because we are “agents of choice.” This vision is flawed according to Sandel, however, because for one reason, the difference principle treats natural assets as common assets, which devalues the self by extracting individual properties into a communal pot. More broadly, however, by viewing ourselves as independent from all attachments, it neglects our roles as members of a community, be it family, race, or nation. We have a special obligation to do what’s best for our community because that community helps define who we are. A person without attachments has “no moral depth.”

One cannot completely distance himself from his community or history, because it is constituent of who he is. Therefore, in making decisions, there is no more threat of arbitrariness, since concern for the ties that help constitute the self ultimately determine what is right for a given situation—the right is tied up in the good. Teleology as such allows for self-reflection, weighing immediate needs against concern for the whole. As Sandel writes, “Where seeking my good is bound up in exploring my identity and interpreting my life history, the knowledge I seek is less transparent to me and less opaque to others.”

By seeing oneself as part of a community and “enlarged affections,” one discovers a shared understanding with others, and “justice finds its limits in those forms of community that engage the identity as well as the individual participants.” The right must allow for self-reflection, but that self-reflection will lead one to realize that the right is deeply related to the common good that one strives toward with those like him.

Sandel, “Morality and the Liberal Ideal”

Work: “Morality and the Liberal Ideal: Must individual rights betray the common good?”, *The New Republic*

Author: Michael Sandel

Week: XII (Justice, Community, and Membership)

Contributor: Drew Heckathorn

Contributor’s Notes

Points out problems with using utilitarian reasoning to defend liberalism:

- if enough Romans want to watch a Christian get eaten by a lion then throwing the Christian into the pit is an acceptable practice. This isn’t exactly a liberal policy...
- Kant attacks utilitarianism because it does not respect people as ends in themselves, modern Kantians add that utilitarian calculus lumps our human distinctiveness together and fails to recognize individuals and individual desires. Furthermore, it does not care about the distribution of human pleasures (specifically its equity), so long as the total is increased by a given act.

Then Sandel points out problems with Kant:

- In order to be free of utilitarian calculus, the concept of the good, especially as it relates to pleasure must be abolished, yet, how is it possible to claim certain liberties, and enshrine them as moral without some conception of the “good” life, “without endorsing some ends over others?”
- Kantians fire back that there is a difference between the right and the good

Sandel then asserts that communitarianism is the new vanguard of moral philosophy, and that just as the human rights concerns of Kantianism trumped those of utilitarianism, now they too have become tired and will be superseded by communitarianism.

This argument hinges upon the assertion that morality must take into account the role of a person as a participant of a common life with his fellow citizens and not strictly as an individual moral agent. Furthermore, they argue that humans cannot see themselves as individuals in the Kantian sense (free moral agents) because we are all partly defined by our communities and that mythology, that back story, is morally relevant.

Sandel also considers critics of utilitarianism, who argue that modern life is too complicated (too far removed from the ideal of the Athenian polis) and that any attempt to govern based on a certain conception of the good within so complicated a framework will only lead towards totalitarian rule.

Sandel claims in partial response, that societal ills (ie intolerance) spring from individual dislocation in modern society, where “roots are unsettled and traditions undone”. Also, that totalitarianism seems to make its appearance most in places where people feel estranged and atomized, as opposed to those places where the concept of a larger community truly exists.

Walzer, Excerpts from *Spheres of Justice*

Work: *Sphere's of Justice: A defense of pluralism and equality*, pp. 6-10, 86-91, 312-314

Author: Michael Walzer

Week: XII (Justice, Community, and Membership)

Contributor: Drew Heckathorn

Contributor's Notes

When considering distributive justice, one must consider that people create the goods they then distribute, this adds something that the simple fact that goods exist to be distributed does not provide.

Six propositions

- All the goods with which distributive justice is concerned are social goods. They have value because of their social context, and social context can only arise in a group setting. A solitary individual has no context to value anything other than what he would need to survive.
- Identity is related to how one conceives of and creates social goods. This is also a question of context, because without a history, a catalog of transactions, creations and exchanges, we would have no idea how to go about the business of distribution.
- There does not exist a substantive set of primary or basic goods conceivable across all moral and material worlds. For example, bread has many meanings in different contexts. If there were 20 people, and only enough bread to feed 20 people to prevent starvation, that would be a sufficient distributive principle, but what if there is an excess or a shortage? Egalitarianism is no longer clearly acceptable, thus the principle has a very narrow application.
- The meaning of goods determines their movement.
- Social meaning has a historical element, and thus distributions and just and unjust distributions will change over time.
- Given distinct meanings (the social meaning from 5), every social good, or set of social goods carries with it a sphere within which only certain types of arrangements are appropriate. For example, it is considered just to give church office to a man because he is pious, but not because he is rich. Similarly, it is considered unjust to refuse to sell something to a man because he is pious, but not because he is unable to afford it.

The case of medical care

The fundamental shift from disease as a spiritual ill to disease as a physical ill has changed the nature of medicine. And as soon as people realized that the physical ill *could* be cured it then had to be. Therefore, to quote "all that is required to make it morally necessary is the development of a want [here for medical care] so widely and deeply felt that it can plausibly be said that is the want not of this or that person alone but of the community generally – a "human want" even though culturally shaped and stressed." OK, so the quote is a bit murky, but he's saying that the only thing which separates a need from a want is a decision to make the good a necessity.

He then argues for the expansion of the American welfare state to include equal access to communally funded medical care. This is because medical care has become a need, and to be cut off from it is not only unfair but considered degrading in our society. But this is due to the history of our conception of medical care, and there is no a priori principle which governs the distribution of this good.

Political considerations

Justice is relative to social meanings, "we cannot say what is due to this person or that one until we know how these people relate to one another through the things they make and distribute." It is theoretically just for distributions to be unequal if that situation has some historically perceived value.

Rawls, Excerpts from *Political Liberalism*

Work: Excerpts from *Political Liberalism*

Author: John Rawls

Week: XIV (Liberalism: Political or Philosophical?)

Contributor: David Staudt

NOTE: Pages given by (page in *Political Liberalism*/page in course pack)

Contributor's Notes:

Background

Since Rawls wrote *A Theory of Justice*, a number of different objections were raised to his arguments of the priority of the right over the good. The most important for *Political Liberalism* is the disagreement about whether Rawls' notion of the self is legitimate. In *A Theory of Justice*, Rawls argues that the right precedes the good because we are all independent selves, capable of stepping back from our individual concepts of the good and reasoning free of them. This conception of the self was seen as fundamentally flawed, chiefly by communitarians. They argue that this notion of the self cannot possibly represent real people, who cannot abandon their deeply held religious, political, and moral beliefs. In *Political Liberalism*, Rawls attempts to salvage his ideas of the two fundamental principles from this argument.

The General Idea

Rawls tries to salvage his original ideas by limiting them to a political context, meaning it is no longer a comprehensive theory. The goal is to make them still applicable to the society in which we live, in which there is a reasonable pluralism of ideas about the good. He creates the political conception of the person to keep his original arguments relevant and to keep people within the society making constructive arguments. He also justifies it by the idea of the overlapping consensus, or the shared ideas within the many theories of the good.

Main Arguments:

I The Fundamental Questions

Rawls asks the following questions:

1. What is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over a complete life, from one generation to the next (3/281)
2. What are the grounds of toleration so understood [in a democratic society] and given the fact of reasonable pluralism as the inevitable outcome of free institutions?

Finally, Rawls condenses these two questions into the following, more intelligible question: **How is it possible for there to exist over time a just and stable society of free and equal citizens, who remain profoundly divided by reasonable religious, philosophical, and moral doctrines?** As will be mentioned shortly, he maintains that his original principles of justice still apply, but with different justifications.

II Political vs. Comprehensive Moral Theories

Rawls attempts to save his original conclusions by putting a limit on his theory. Instead of making it a **comprehensive moral theory**, as he does in *A Theory of Justice*, he works on a **political conception of justice**. What's the difference? A comprehensive moral theory gives an idea of what is valuable in all aspects of human life. A political theory, by contrast, only applies to one specific area or subject. In this case, Rawls attempts to form a political conception of justice focused on "the framework of basic institutions and the principles, standards and precepts that apply to it" (11/285). So, Rawls' argument is now focused on the general outline of the society

III. The Two Principles of Justice

Rawls keeps his two principles of justice, with small changes. They are:

1. Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value
2. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least advantaged members of society (5-6/282-283)

The changes? There are none in the second principle. In the first principle, Rawls has changed “equal right to” to “equal claim to” and changed “system of basic liberties” with “a fully adequate scheme of equal basic rights and liberties.” This softening of the first principle is not delved into deeply

IV. *New Justification for the Two Principles of Justice: The Overlapping Consensus*

To further defend his theory against the criticisms of the Kantian self, Rawls had to find a new justification for his two principles of justice. He finds this in the **overlapping consensus**. The overlapping consensus is a consensus that “consists of all the reasonable opposing religious, philosophical, and moral doctrines likely to persist over generations and to gain a sizable body of adherents in a more or less just constitutional regime, a regime in which the criterion of justice is that political conception itself” (15/287). This means that it consists of the overlapping ideas within a whole spectrum of religious and moral standpoints that exist in a democratic society. It must exist because all these viewpoints already peacefully coexist within the democratic society. Thus, they must share *some* common viewpoints.

Rawls says that there are three main features of an overlapping consensus, two of which have already been mentioned. They are:

1. Moral object – namely, it focuses on the political society
2. Moral grounds – it is not arbitrary, but rather contains moral ideas of people, society, etc (147/293)
3. Stability – it is not a *modus vivendi*. A *modus vivendi* is an agreement that is only agreed upon because neither side can come up with a better compromise. An overlapping consensus is inherent within all the doctrines in the society, and so will not change (or is stable) during changes in the relative political powers of the miscellaneous doctrines.

Rawls mentions three possible objections (actually, he mentions four, but I can’t find the fourth)

1. An overlapping consensus could be a *modus vivendi* – already dealt with
2. An overlapping consensus is indifferent or skeptical of the truth (150/295).
This objection says that, since the overlapping consensus arises from a number of different doctrines, it must not care whether any of them are true. This would obviously be bad, since it could therefore be wrong. Rawls’ argument against this essentially says that any doctrine will affirm the overlapping consensus as either true or reasonable. Implicit in this (this is my reading) is that one of these doctrines contains some truth, so therefore this ability to be considered true or reasonable is enough to guarantee it is not false
3. “A workable political conception must be general and comprehensive” (154/297).
This objection says that you can’t possibly have a moral theory that is not comprehensive, since it won’t really have any broad justification. Rawls’ reply is that it is part of a comprehensive doctrine. In fact, it is part of a large number of comprehensive doctrines, but limits itself to the political realm, and is not dependent on the other parts of those theories. Therefore, it is justified both as a part of and separate from other theories.

V. *Political Conception of the Person*

This overlapping consensus depends on a new conception of the person: the political conception. This is exactly like the Kantian conception, but now limited. So, people are regarded as free and independent, capable of reasoning without any other previous ideas, but only within political discussions. This is now the type of person who inhabits the original position and shows that the overlapping consensus leads to the two principles of justice. So, all the original arguments still apply, but now only in a political context. He argues that this is necessary to avoid conflicts

that will arise in a pluralistic society. Rawls outlines three ways in which the political conception of the person is free. They are:

1. They “[have] the moral power to have a conception of the good” (30/289). “They affirm the values of political justice and want to see them embodied in political institutions and social policies. They also work for the other values in nonpublic life and for the ends of the associations to which they belong” (30-31/289). More generally, “Citizens usually have both political and nonpolitical aims and commitments” (30/289), and are free to work to the fulfillment of both. However, they cannot impose their moral/religious/etc. aims on others in a political context.
2. Citizens are “self-authenticating sources of valid claims” (32/290). This means that they can petition the government/other institutions to work towards their own conceptions of the good, as long as their requests fall within the concepts of justice.
3. People are “capable of taking responsibility for their ends” (33/290). By this, Rawls means that people can change their claims in order to fall within the range of claims allowed by the conception of justice. Thus, if someone makes a claim that violates the principles of justice, there is no pressure to grant the claim just because the person can’t change it.

Sandel, “Political Liberalism”

Work: “Political Liberalism”

Author: Michael Sandel

Week: XIV (Liberalism: Political or Philosophical?)

Contributor: David Staudt

NOTE: Pages given by (page in *Political Liberalism*/page in course pack)

Even if Sandel is quoting Rawls, I give the page in Sandel. It would be a mess otherwise.

Contributor’s Notes:

Background:

Basically the same as that for Rawls’ *Political Liberalism*. Namely, Rawls tried to defend his two principles of justice against the numerous attacks upon it, especially confronting the arguments against the Kantian conception of the person. Sandel critiques Rawls’ new justifications for his theory.

Quick Review of Rawls

Sandel starts with a fast review of Rawls’ arguments and the controversies that have arisen about them. The main points are:

- Rawls is arguing for the **priority of the right over the good**
- **Communitarians** contest this notion.
- Rawls argument in *A Theory of Justice* hinges on the **Kantian conception of the person**, which states that we are “free and independent selves, unbound by antecedent moral ties, capable of choosing our ends for ourselves” (1768/304). As a contrast, Aristotle thought that every man had a purpose to realize in his lifetime, and Utilitarians think we are the “sum of our desires” (1768/304). Rawls states his view by saying that “the self is prior to the ends which are affirmed by it” (1769/305). He uses this inherent priority to show that the right is prior to the good, since you can choose your own good.
- Sandel and others take issue with this conception of the person, saying that “a conception of the self given prior to its aims and attachments could not make sense of certain important aspects of our moral and political experience” (1770/306)
- Rawls responds to these arguments by trying to remove the reliance of his theory on the Kantian self. He does this by limiting the scope of his arguments, saying, in Sandel’s words, “the priority of the right over the good is...a practical response to the familiar fact that people in modern democratic societies typically disagree about the good” (1771/307). So, the priority of the right over the good is how to enact a reasonable form of justice under these specific conditions. It is NOT a general theory of morality. To use the terms, it is no longer **comprehensive**, or a complete theory of morality, but rather is **political**.
- Rawls does not care which of the comprehensive moral theories within the society are true, and claims that his arguments do not change depending on which one is actually correct.
- He thus seeks an **overlapping consensus**, meaning a set of rules and institutions that all reasonable comprehensive doctrines in a society will endorse, regardless of the reasons for their endorsement.
- He replaces the Kantian conception of the self with the **Political conception of the person**, which means that, in political settings, we are Kantian persons, free and independent, etc. Thus, within the political setting, his old arguments still hold. He allows that, outside of political discussions, people may have other loyalties. However, within political discussions, they must discard them in order to assure a working society.
- We are “self-authenticating sources of valid claims,” (1773/309), meaning that we can ask the society for things, as long as they are just, and the society needs to consider them because we are making them. The claims get no value from the reasons or moralities behind them.
- Rawls says that the previous two bullets are justified by the “special nature of democratic political culture” (1774/310).

Sandel's Response – Brief Summaries of the Sections

A. *Bracketing Grave Moral Questions*

Here, Sandel argues that sometimes it is not clear that you can bracket political debates, ignoring the relevant moral issues. He cites a few such controversies. First, abortion. Sandel points out that, if the Catholics are right, as Rawls allows they could be, then letting the liberal values of women's rights and toleration win out means that Rawls' theory has led to a morally incorrect decision. Sandel argues that the decision should come from a debate between all the moral doctrines, rather than ignoring these values and coming to a decision that way.

Second, Sandel points to the Lincoln-Douglas debates over slavery. Douglas argued that, since people weren't going to agree on the morality of slavery, the US government should not interfere. This, Sandel says, is exactly the same bracketing found in political liberalism. Lincoln argued that, if slavery was in fact wrong, it should be treated as a wrong, and actively discouraged. This is interesting, because modern day liberals would oppose slavery. Why? Because we now have so much anti-slavery feeling in our history that it has become part of the overlapping consensus within our society. However, back in 1858, this was not the case, and the anti-slavery argument hinged on moral viewpoints, mostly religious ones. So, liberals in 1858, if following strictly by political liberalism, should not oppose slavery, which seems wrong.

B. *The Fact of Reasonable Pluralism*

Rawls says that in a democratic society there is a "reasonable pluralism" of beliefs about the good. Sandel argues that he has no real argument saying why there can't be a similar reasonable pluralism about justice. This lack of pluralism for justice is necessary for Rawls' argument, or else he can't justify treating the right and the good differently. Since we know that there are disagreements over the right (or else everyone would just accept Rawls' theory without argument), we must ask what the nature of these disagreements is. They could be either disagreements about the justice, or disagreements about the *application* of justice, for example, arguments on the extent of free speech, which take free speech as a given right. This second case would not challenge Rawls. However, as the debate between Nozick and Rawls shows, disagreements can fall into the first category. Rawls' defense is that there is no *reasonable* pluralism of justice, meaning that other theories of justice are not rational. Sandel says this is fine, since Rawls offers good arguments in his defense of the difference principle, mostly using the concept of the reflective equilibrium to show that libertarian ideas are, in fact, unreasonable. Thus, the government can make judgments on libertarian ideas. However, Sandel asks, why can't we use this same tool to reason about ideas of the good? What makes the differences in opinion we see over different moralities differ fundamentally from the differences in opinion about the right? He then goes on to outline how one could use a reflective equilibrium argument in the debate over the morality of homosexuality. (1787/323).

So, to sum up, Sandel's argument in this section is that there is no obvious asymmetry between the right and the good. Since we can use reflective equilibrium to show that, in the case of the right, there is no reasonable pluralism since other theories are not reasonable, why can't we show that some of the moralities in the "reasonable" pluralism of the good are not reasonable? As Sandel says, "the mere fact of disagreement is no evidence of the 'reasonable pluralism' that gives rise to the demand that government must be neutral" (1788/324). Since we haven't challenged any of the moralities, we can't know if they qualify as reasonable.

C. *The Limits of Liberal Political Reason*

Here, Sandel points out that, with the restrictions imposed by political liberalism, it is difficult to start debates to test whether moralities are reasonable. **Public reason** will not allow reference to any non-universal theories of morality. This rules out arguments over abortion that say that a fetus is a person from the moment of conception, thus this segment of the debate would be ruled out. In the gay rights debate, both sides would be affected. The right could not argue that sodomy is immoral, but gay rights activists in turn couldn't say that anti-sodomy laws are morally wrong, only that they couldn't be legislated on. This is clearly unsatisfactory. The debate over slavery in the 1830s and 1840s also would not have been allowed to happen, as most debate was religious in nature. Thus, under political liberalism slavery could not have been challenged as it was. Rawls tried to salvage this in a passage that Sandel tears apart (1791/327) (it's trivial. Read it if you're interested). Rawls compares the restrictions imposed by political reason to those imposed in the criminal justice system by rules of evidence. We don't take all evidence into account because we want to preserve basic rights. Sandel points out, however, that we arrived at this setup by using a reflective equilibrium and reasoning that we wanted to preserve the rights. He asks, how do we know that some correct moral theory will not outweigh political liberalism, and how will we ever find out if we are limited by the

boundaries of public reason? Since political liberalism allows that some of the views of the good may, in fact, be true, the comparison between political liberalism and these theories is necessary, and so having limits will not work. Sandel next talks about the other problem of the limits of public reason, namely that, as in our society today, if you keep political discourse from moral issues, every moral slip of government officials is watched and sensationalized, as the public gets more fascinated with the scandalous.

Conclusion

Sandel's solution? We talk about our beliefs, and try to use the tools of discussion and reflective equilibrium to guide our policy decisions.

Kinsley, “Abolish Marriage”

Work: “Abolish Marriage: Let’s really get the government out of our bedrooms”,

Author: Michael Kinsley

Week: XV (Moral Argument and Liberal Toleration: Same-Sex Marriage, For and Against)

Contributor: Drew Heckathorn

Contributor’s Notes

Kinsley proposes a novel solution which satisfies both social conservatives and gay rights activists regarding the issue of gay marriage: outlaw the governmental sanction attached to all type of marriages.

He believes this would satisfy those who strongly favor gay rights because now there is no discrimination; all who wish to have the government sanction their marriage will be denied. He claims this will also satisfy those who feel homosexual marriage should not be condoned by the government, because gay marriages would not receive any sort of government endorsement.

He allows that there will be some problems with this idea, specifically as it relates to those decisions which are currently based on marital status, such as provision of medical benefits on a spouse not affiliated with the institution providing the health care. This problem will arise because once the government is out of the marriage business because it will be possible for people to marry in any form they chose, thus invalidating being married as an appropriate social indicator with a stable socially-acknowledged meaning. Kinsley states that he believes this obstacle to surmountable.

Finnis, “Law, Morality, and Sexual Orientation”

Work: “Law, Morality, and Sexual Orientation”, *Notre Dame Law Review*

Author: John Finnis

Week: XV (Moral Argument and Liberal Toleration: Same-Sex Marriage, For and Against)

Contributor: Kendall Kulper

Contributor’s Notes

Finnis argues against homosexuality and the “gay lifestyle.” He looks at Platonic and Aristotelian philosophical teachings to support his theses, as well as teachings from St. Augustine and the Second Vatican Council. **His key idea is that sex within marriage biologically unites husband and wife into a single entity and same-sex couples can’t achieve that biological union and therefore can’t become one being, which he states as the true goal of marriage (rather than procreation or raising children).**

3 Fundamental theses of Platonic-Aristotelian rejections of homosexual conduct

- commitment of man and woman to each other sexually within a marriage is intrinsically good
- homosexual acts are non-marital (therefore intrinsically unnatural)
- homosexual acts are similar to solitary masturbation (therefore immoral)

Genital intercourse allows spouses to actualize and experience marriage as a single reality with the expected results of children and mutual affection (non-marital intercourse cannot)

St. Augustine’s treatment of marriage

- procreation and children is the intrinsic fulfillment of marriage, not the end goals of marriage nor are they instrumental to the good of the spouses (argument for validity of sterile marriages)
- genital union biologically brings the spouses together as one entity
- unites two aspects of marriage: friendship and parenthood. these aspects exist even if spouses can’t procreate
- friends who can’t marry can’t achieve biological oneness

Plato’s judgment of homosexual sex

- no difference between solitary masturbation, sodomy as a prostitute, and sodomy for fun
- sexual acts only self-giving if they biologically unite two people (only achieved if between a man and a woman, therefore marital)

homosexual sex and its influence on society

- sterile, abdicates responsibility for future of humankind
- homosexual people can’t achieve the level of mutual devotion they are looking for harms their own personalities
- undermines idea of human sexual capacities: sex within a marriage involves self-giving and union, whereas homosexual sex lacks both these things, treats sex as an instrument or compensation

homosexual orientation

- deliberate willingness to promote and engage in homosexual acts
- denial of the idea of sex as self-giving
- since homosexual acts are equated with self-gratifying sex, promotes idea that self-gratifying sex is natural and intrinsic
- threat to the stability of marriages

→ therefore, political communities have the right to discourage homosexuality

3 types of common good of the political community

- mutual help and shared enjoyment of friends
 - husband and wife in married life
 - religious believers cooperating in devotion to ultimate source of meaning
- political community is a community cooperating in service of instrumental (not basic, common good taught by Second Vatican Council)

Critique of Aristotle's attack on theories that treat the state as an insurance arrangement

- if the common good of a political community was a self-sufficient life, the goal would never be reached
- Aristotle thinks art and technique should be used to make people good, but Finnis thinks that people need to be encouraged to be morally good and discouraged from being morally bad. The state should identify, encourage, and support moral virtue and prohibit immorality

Macedo, “Homosexuality and the Conservative Mind”

Work: “Homosexuality and the Conservative Mind”, *Georgetown Law Journal*

Author: Stephan Macedo

Week: XV (Moral Argument and Liberal Toleration: Same-Sex Marriage, For and Against)

Contributor: Drew Heckathorn

Contributor’s Notes

Macedo undertakes here to deconstruct, and show false, the modern reasoned arguments against homosexual behavior.

The school opposing him, the one he attacks, is referred to as those in favor of a “natural law”. He calls to them “natural lawyers”.

Within the scope of this natural law, which borrows much from Christian philosophy improper sexuality is an amalgam of gay behavior, heterosexual intercourse with contraception and masturbation. Any sexual act which does not carry with it the possibility of producing new life is deemed improper because it denies the fundamental union that can exist between a man and woman.

Macedo first attacks those who oppose outlawing only homosexual behavior on the grounds that it is improper with reference to the criteria above because the state has not taken steps to eliminate the availability of contraception, or crack down on masturbation. One must conclude that the state has not taken a stance supportive of the natural law, which condemns all of these acts, so what additional rationale is used to single out homosexual behavior? (There isn’t any...)

Currently, in a legal sense, the rulings against anti-sodomy laws and for the availability of contraception has hinged upon one’s right to privacy, but the natural law objections do not provide any justification for creating a distinction between the privacy rights the court has already protected (for contraception and extramarital sex) and those of homosexuals. Thus, there is no legal precedent to condemn homosexual behavior.

There also exists a double standard, because those who support the natural law often approve of sex between a sterile, married, heterosexual couple. The justification that the genuine possibility of new life makes the act moral is here impossible, just as with sex between members of a gay couple, because neither has a chance of creating that new life.

He closes with an entertaining analogy between sex and eating. Just as one can separate sex for pleasure and sex borne out of love (as in a sanctioned, monogamous, religious framework) so too can one separate eating for sustenance and eating for pleasure. If those in favor of natural law condemn sex for pleasure, sex with contraception and masturbation, would they also condemn chewing sugarless gum because it is the gastronomical equivalent of masturbation?

West, “The Problem of Gay Marriage”

Work: “Universalism, Liberal Theory, and the Problem of Gay Marriage”

Author: Robin West

Week: XV (Moral Argument and Liberal Toleration)

Contributor: K. Sloan Strike

Contributor’s Notes:

Introduction

- Liberalism is based on two separate assumptions:
 1. “Universalist” assumption- all human beings are rational and therefore we are all the same in that we all share this universal, natural trait.
 2. “Individualist” assumption- as rational beings, we are each capable of determining our own individual conception of the good life.
- The liberal claim is that it is our commonality that implies that laws segregating some of us from others are unconstitutional
- Critics of liberalism have two main arguments:
 1. Particular subcommunities or cultures may be asked to sacrifice a certain amount of identity or distinctiveness in order to accept the liberal’s promise of universality. Liberalism fails to take seriously the differences between groups of people.
 2. We have rights to individual freedom and to be left alone, but we have needs that can only be met interdependently and we have civic responsibilities to others. Liberalism does not fully recognize the interconnectedness of all of us.
- West says that although these two arguments are logical and worth consideration, neither is strong enough to convince him to reject liberalism.
- West proposes slightly reconstructing liberalism in order to take into account these objections.

Same-Sex Marriage: Problems and Promise

- Liberals argue that same-sex marriages and opposite-sex marriages are in all legally relevant ways identical.
- West argues, instead, that it is the intrinsic difference between these two types of marriages that make the most convincing case for same-sex marriage (for example, same-sex marriage has always been considered a union between two sexual equals, while opposite-sex marriage has been predicated on the presumed desirability of subordination the female sex).
- West also argues that liberals have no reason to deny that marriage is anti-individualistic, because gay marriages have the potential to generate so much good within communities.

Conclusion

- The central point of marriage is shared by gay and straight marriages alike: to define ourselves as caring rather than egoistic beings, connected to rather than alienated from the well-beings of others.
- It is by highlighting differences that we can truly appreciate this shared trait.

Goodridge v. Department of Health

Work: Hillary Goodridge & others v. Department of Health

Author: Supreme Judicial Court of Massachusetts

Week: XV (Moral Argument and Liberal Toleration: Same-Sex Marriage, For and Against)

Contributor: Kendall Kulper

Contributor's Notes

Court's conclusion of whether Massachusetts' marriage laws prohibiting same-sex marriage are constitutional. The court ruled that they weren't, for several reasons. Originally, the ultimate goal of marriage was seen to be procreation, but this court disagreed with that, citing ability to bear children was never taken into account when granting marriage licenses. Civil marriage is seen as a civil right and the MA Constitution is established to protect civil rights for all citizens. Also, prohibition of same-sex marriage is seen as sexual discrimination, which goes against MA anti-discrimination policies.

- Commitment of 2 individuals to each other brings stability to society
- Marriage provides benefits for and imposes obligations on spouses
- Question of can Commonwealth of Massachusetts deny civil marriage for same-sex couples. **Court concludes it can't**
- MA Constitution and US Constitution have principles of respect for individual autonomy and equality under law. Marriage restriction violates MA Constitution
- Civil marriage enhances welfare of community, promotes way of life and bilateral loyalty termed a civil right
- Denial of marriage is an exclusion from a range of human experience
- Three rationales for prohibiting same-sex marriage
 - providing a favorable setting for procreation
 - ensuring optimal setting for child-rearing
 - preserving state and private financial resources
- Court's response
 - Marriage's primary purpose is not procreation
 - By restricting same-sex marriage, this doesn't further the policy. Also, no evidence that all same-sex couples will raise children
 - MA marriage laws don't provide financial benefits based on the couple's dependence on each other
- Recognizing same sex-marriage does not undermine the institution of civil marriage
- Rejected argument that civil marriage in MA will lead to interstate conflict
- Since prohibition of same-sex marriage suggests that homosexuality is immoral, goes against MA policy against discrimination based on sexual orientation
- Private biases can't be effected by the law