

MORAL REASONING 22: JUSTICE

I. UTILITARIANISM

A. *Regina v. Dudley and Stephens*

1. Overview: Dudley and Stephens, having been stranded at sea for 18 days, unilaterally made the decision to kill, and eat, their sickly cabin boy. They were rescued 4 days later. Though convicted of murder (here, necessity is not a defense), they found their sentences commuted.
2. Notes: This foundational case was introduced to emphasize distinctions between morality and the law, as well as deontological / consequentialist theories of justice.
 - a. Think about how one's conception of the "right" changes when presented with such situations as a runaway trolley car, or an "over-enthusiastic" transplant surgeon.

B. Bentham and the Principle of General Utility

1. Overview: An act is right insofar as its tendency to augment the happiness of the community is greater than its tendency to diminish it (Ch. I, §6)
 - a. This definition flows naturally from Bentham's theory of what is valuable. For him, all that matters is maximizing pleasure / minimizing pain (Ch. I, §1)
 - i. Here, Bentham would have us consider such elements as intensity, duration, certainty / uncertainty, propinquity / remoteness, fecundity, and purity.
 - b. As an academic exercise, we asked questions about what externalities to include in our calculus. Whatever answer we now think appropriate, it is clear that for Bentham, his audience was the British aristocracy, and his notion of "community" was the nation.
 - i. Whatever else one may think of his theory, Bentham's advocacy on behalf of the "common man" is refreshingly egalitarian.
2. Objections:
 - a. Individual rights: The rights of minorities lack protection under such a theory.
 - b. Incommensurability: Pleasure and pain cannot be measured on a single scale.
 - c. Non-judgmental: Not all pleasures are equal (pushpin is substantively diff. than poetry).
 - i. In response to this final critique, it should be noted that Bentham does provide a list of attributes to consider in ranking pleasure (Ch. IV, §4), though their ultimate use is not discussed.

C. Mill's *Utilitarianism*

1. Objectives: Mill writes *Utilitarianism* as an attempt to transform Bentham's political philosophy into one of generally applicability.
2. Rejoinders: He attempts to save the theory by responding directly to its critics.
 - a. Individual rights: Mill believes people are [or should be] able to recognize and respect the so-called inherent rights of man (Ch. 5).
 - b. Incommensurability: Mill argues that in the vast majority of situations, this is a non-issue, as human experience eliminates the need to calculate an action's utility.
 - i. This already extant framework is the distinguishing feature btw Rule (Mill) and Act (Bentham) Utilitarianism.
 - c. Non-judgmental: Mill's vision of utilitarianism accounts for "higher" and "lower" pleasures; only those having experience with both are able to accurately evaluate which are of greater value.
 - i. Though here, Mill responds to Bentham's critics, he does so in such a way that discounts the view of "unenlightened" majorities. In so doing, one could argue that he's sacrificed the most utilitarian aspects of his predecessor's theory.

D. Utilitarianism Defined

1. Utilitarianism is a view that incorporates three distinct elements (note how the objections to this theory relate to its component parts):
 - a. Consequentialism: Actions should be judged in terms of their consequences.
 - b. Welfarism: All moral value can be accounted for in terms of "utility."
 - c. Sum-maximization: What is morally important about utility is its total amount.

II. LIBERTARIANISM

- In contrast to Utilitarianism, Libertarianism refers to a rights-based system of justice. This theory saves the child locked away in Omelas – something we determined last week that Utilitarians couldn't do.
- In viewing persons as ends in themselves, and justifying redistribution only on the condition of consent, Libertarians draw on Kant and Locke, respectively.
- Libertarians argue that “so strong and far-reaching are [individual rights], they raise the question of what, if anything, the government may do.”
 - For Libertarians, basic liberties risk infringement in any system other than that of a Minimalist State, or one limited to such activities as national defense, the enforcement of contracts, and the protection of Collective Goods.
 1. One may be able to enlarge the responsibilities of the minimalist state by expanding what are considered to be fundamental rights (i.e. healthcare).
 2. Though the approach in (a) is somewhat suspect, it is important to remember that Libertarians are not opposed to helping the poor – charity, not government aid, is how they would like to assist the least well-off.
 - Libertarians believe that our current system denies us enjoyment of innate rights in three principle ways:
 1. Paternalistic legislation: Should people choose to risk injury by not wearing a seatbelt, for example, they should not be made a criminal; it should be respected as an individual choice.
 2. Moral legislation: It exceeds the government's mandate to promote virtue in citizens (regulating prostitution is an infringement on the rights of certain persons to pursue the vocation of their choosing).
 3. Redistributive taxation: Though some level of taxation is required to meet the demands of the minimalist state, “taxation of earnings is on par with slavery.”
 - a. Entitlement Theory: Relying on “historic principles,” Nozick writes that only those distributions that comply with the following requirements are just:
 - i. Justice in Acquisition: “Holdings” (money, property, etc.) are initially acquired through legitimate means.
 - ii. Justice in Transfer: Holdings are transferred in a fair manner, through the workings of the free market, in free exchange, absent coercion.
 - As monopolies force the hand of persons in the marketplace, it is possible that Libertarians may here favor government regulation.
 - b. Note that while Nozick is comfortable with the redistribution of inherited wealth, Friedman and Hayek are not.
 - c. Foundationally, Libertarians object to patterned distributions, or predetermined notions about what distributive result will be just (Hayek, 87).
 - i. Practical concerns: Free markets release individual initiative, and therefore contribute to overall wealth; they solve the problem of social placement, and any attempt to fashion end-state results has the effect of high-level coercion.
 - ii. Rights-based arguments: Any governmental tinkering with distributional results in a violation of liberty.
 - d. Libertarians, while opposing redistributions of income, do believe that fairness and justice rest on a notion of equality. They require, however, only Equality of Opportunity, not Equality of Outcome.
 - i. Though appealing, the challenge lies in how to achieve a level playing field without infringing upon the individual liberties of others (i.e. if one is not comfortable with taxing inheritance, how can one legitimately say that starting points are all equal).

- e. It should be noted that Libertarians living under a distributive regime are still obligated to pay taxes.
 - i. Unless they are living the life of a hermit, they are receiving government benefits (police / fire service, etc.) that obligate them to their community.
 - ii. It would seem that their only real option is to leave.
- Objections and Rejoinders:
 - 1. The relative value of money is greater for the poor: Though this is true, forcing (as opposed to encouraging) transfers of wealth violate individual freedoms of choice.
 - 2. Assumptions of “Justice in Acquisition” are unrealistic: Nozick, in proffering his Principle of Rectification, concedes that this will sometimes be the case. Where identified, the proper amount of holdings should be transferred to rectify the situation.
 - 3. Taxation by consent is not coercion: There are many fundamental rights the majority is not fit to legislate away.
 - 4. The successful owe a debt to the society that allowed them to prosper: The wealthy are investing their own labor, and no one else’s, in the acquisition of wealth.
- All said, the principle challenge to Libertarianism is that of the very right of self-possession.

III. LOCKE

- It's important to note that Locke's *Second Treatise* is a product of its time. Its concern with concentrated power and arbitrary enforcement is in opposition to the realities of an absolute monarchical era.

A. Natural Rights and the State of Nature

1. State of Nature: Locke grounds his treatise by arguing that men once lived in a State of Nature (unlike Hobbs, Locke thought this circumstance reality) – a non-structured anarchic state where all persons were “free and equal beings.”
2. Law of Nature: While the above state lacks even the semblance of authority, persons are not here free to act as they please. They are governed by the Law of Nature, which secures one's Natural Rights to pursue *proprius* (life, liberty, and property).
 - a. These “natural rights” come from two distinct sources:
 - i. God: As our maker, he has a prior possessory interest in us.
 - ii. Reason: A tougher argument. For our purposes, just know that this is a second, though not as strong approach to concluding that natural rights exist.
 - b. In the State of Nature, when one's natural rights have been violated, it is permissible to enact justice (for those who did not choose to write on the moral dilemma of SEAL Team 10, note that this action is justified only from a defensive posture).
 - c. As securing natural rights in such a state is difficult (private enforcement leads quickly to a Hobbsian State of War), the desire / need to form political societies is self-evident.

B. A Closer look at Property

1. Overview: Locke believes that property existed in the State of Nature, and that its protection was the principle motivation for establishing civil society (this is foundationally important, as his contemporaries were arguing that all property in the State of Nature was held in common, and thus, was not something that those persons forming government would be concerned with protecting).
2. Argument:
 - a. At a minimum, each man owns himself. It follows that he must also own his labor (any other conclusion commits him to slavery).
 - b. If we accept (a), we must also agree that mixing one's labor with an otherwise common good creates, in that good, a possessory interest.
 - i. For Locke, there are two provisos limiting what one can take from the communal store:
 1. One must leave “as much and as good” for others.
 2. One can take only so much as can be used before it spoils.
 - c. Currency: Locke writes that the acceptance of gold or silver as a “stand in” for usable goods (i.e. one accepts coinage with the understanding that someone else will accept it for wheat) eliminates the spoilage limitation.
3. Real Property: Because land is a limited asset, Locke argues that it should be used only by those able to put it to its best possible use (a Utilitarian argument, perhaps?).

C. Government as a Social Contract

1. Consent: Locke argues that legitimate government is formed by consenting persons who have chosen to leave the State of Nature.
 - a. In exchange for the State's protection of property interests, those putting on the “bonds of civil society” are understood to agree to majority rule.
 - i. Locke's only limit on government is that it cannot be of a character that would arbitrarily violate the natural rights of its citizens – they are considered to be inalienable (consenting away the right to live, liberty, or property creates a situation worse than that found in the State of Nature).
 - Where the government violates this proviso, Locke writes that its overthrow is permissible.

- Absent this circumstance, however, there is no recourse for the disgruntled citizen. Locke writes that only in leaving (emigrating) can one break the tacitly-consented-to social contract.
- b. In a departure from Libertarian reasoning, Locke believes that taxes are just in supporting governments that require “great charge” (§140). So long as there has been collective consent to taxation, and that it is conducted in such a way that is not arbitrary, Locke is comfortable with what others would describe as an unjust taking.
- 2. Property Rights: Though government was created to protect private property, it functions to promote the interests of the majority. Sometimes, these twin purposes are in conflict:
 - a. *Kilo v. City of New London*: A 2005 case in which the state, through eminent domain, expropriated private property, then sold it to a developer intending to build a shopping center (this action was supposedly justified, as the tax revenue of the commercial enterprise was far greater than that of the at-issue single family home).
 - i. Locke would likely support such a taking, so long as it’s not *arbitrary*, relying on the express will of the majority and his “best use” proviso.
 - One could argue that such a taking was not permissible, as the city’s representatives were not vested with the authority to decide the issue (perhaps a referendum vote was necessary).

E. On Punishment

- 1. Overview: Locke argues that in violating the rules of the social compact (breaking the laws set forth by the majority), offending persons forfeit the rights they would otherwise possess.
 - a. Locke defends capital punishment on two grounds:
 - i. Retribution: Criminals deserve punishment.
 - ii. Deterrence: Using utilitarian arguments, examples need to be made out of criminals, so as to deter others from similar pursuits.
 - b. There is a strong social contract, anti-Lockean argument that the state is never permitted to execute a criminal, as it is inconceivable one would cede this right to the State w/o knowledge of what “non-arbitrary” schemes might be set up to take it away.

F. *Johnson v. McIntosh*

- 1. Overview: This 1823 case demonstrates how one might apply Lockean concepts to a contemporary property dispute.
- 2. Facts: Johnson and McIntosh, two U.S. citizens, each claimed ownership of a particular piece of land in Illinois. Johnson bought the land from the Piankeshaw Indians in 1775. McIntosh received the same parcel from the United States government in 1821. Johnson claims title, as the Piankeshaw were first possessors; McIntosh, as the U.S. was the successor state to Britain, a country that first surveyed the land in 1763.
- 3. Argument:
 - a. Johnson: Had been mixing his labor w/ the land long before McIntosh laid claim to it.
 - b. McIntosh: This doesn’t matter, as both parties are U.S. citizens and must abide by the various non-intercourse acts that prevent individuals from purchasing land from American Indians (only the national government was authorized to conduct such transactions).
 - c. Johnson: This may be true, but a great many persons acquired land in this way. Selective enforcement is arbitrary, and a violation of Lockean principles.
- 4. Holding: Marshall sided with McIntosh – he said American Indians were occupants of the land, but never held proper title, as they existed in a state of nature.

IV. MARKETS AND MORALS

A. Military Service

1. Overview: As Utilitarian / Libertarian arguments are somewhat obvious, I will stress only Locke's [surprising?] view on the justness of a conscript army.
2. Argument: According to Sandel, Locke is comfortable with a draft, so long as it's not arbitrary. He argues that the preservation of civil society comes at the price of a defense force created by the will of the majority.
 - a. Here lies another departure from Libertarian ideals: Whereas Locke originally argued for the inalienable rights of self-possession, when in civil society, the will of the majority is able to supplant them.
3. Notes: Within this framework, we analyzed a number of different approaches to raising an army. While there is no "right" answer, most students felt that our current system was the most just.
 - a. Civil War: National draft, though persons not wishing to serve were able to avoid service by finding a replacement, and paying a \$300 "commutation fee."
 - b. World Wars: National draft; there weren't any exemptions but for those who made a convincing showing before an "extreme hardship" review board.
 - c. Vietnam: National draft, though those in school, or working in certain skilled professions were exempted.
 - d. Iraq/Afghanistan: All volunteer army (larger financial incentives than ever before).
 - i. Consider whether Bobbitt is correct in saying that we have been "brought full circle to the system of bounties and substitutes, though one considerably more concealed than the one which operated during the Civil War."

B. Surrogate motherhood

1. Overview: We looked here at surrogate motherhood, focusing on Libertarian arguments and their relation to the New Jersey case, *In re: Baby M*.
2. Facts: A 1987 case in which Elizabeth Stern (afflicted with multiple sclerosis) signed a contract with Mary Beth Whitehead, a mother of two, in which she agreed to carry an artificially inseminated child for a fee of \$10,000. Within a day of giving the child to Ms. Stern, Whitehead demanded her back. The N.J. Supreme Court, relying on the arguments below, found for Ms. Whitehead.
3. Arguments:
 - a. Imperfect information: Whitehead could not have known what it was like to give up a child, thus, any decision made prior to the actual birth was not fully informed.
 - b. Dehumanizing: The parties to the contract have commodified something that does not have a monetary value, thus, the transaction is void (human life is priceless).
4. Notes: Is a woman's pregnancy really best thought of as a form of "labor?" Might this itself not be an example of the sort of "commodification" that Anderson so deplores?

V. KANT

A. Kantian Distinctions

1. Analytic/Synthetic: This concerns what makes a judgment true or false. Analytic statements are true by virtue of the meanings of the words involved. Synthetic statements are true in a more substantive sense; they are judgments which add something new to our knowledge of the subject at hand. Kant believed that morality had to be synthetic, as it told us something substantive.
2. A Posterior / A Priori: This concerns how we come to know a judgment's truth. *A Posterior* judgments are those known only through experience in the world. *A Priori* judgments are independent of any particular experience. Kant believed that moral judgments must of the latter variety, derived in abstraction from any particular experience, and from reason alone.

B. The Preface to the Grounding

1. Given that moral judgments deal with how the world ought to be, it must be the case that they cannot be derived from experience, which can only tell us how things are. Thus, moral judgments must be *a priori*.
2. Kant seeks to show that there is a domain of laws that applies to our behavior as rational beings. The *Grounding* is thus designed to prove that such universal principles (categorical imperatives) do exist. Such imperatives are what he calls morality.

C. Section I: Transitioning from the Rational to the Philosophical

1. Purpose: Kant intends to analyze our traditional notions of morality in an attempt to discover their underlying principles. Here, he attempts to show what must be established in order to demonstrate that morality is possible.
2. Beginnings: Kant begins with the proposition that Good Will is the only thing to which we can attribute unconditional moral worth (even if actions originating in such a mindset turn out to be unsuccessful, value cannot be detracted, as they are viewed independently from their effects).
 - a. Kant's project becomes one of finding out the principle upon which the person of Good Will acts.
 - b. Kant identifies three motivations for action:
 - i. Duty: Performed because of a belief that it is the "right thing" to do.
 - It is these actions Kant feels have a value other motivations lack.
 - To demonstrate the envisioned distinction between this motivation and those that follow, he gives the example of the prudent merchant.
 - ii. Immediate Inclination: Performed because it is enjoyable.
 - iii. Instrumental Inclination: Performed because it serves an independent end.
 - Controversially, Kant feels that actions motivated by (ii) and (iii) have no moral worth.
 - c. By drawing the above distinctions (with duty reigning supreme), Kant develops a scheme in which moral worth exists only where there is respect for moral law.

D. Section II: Transitioning from Popular Philosophy to a Metaphysics of Morals

1. Purpose: Kant seeks to show how moral law is part of the principles of practical reason.
2. Beginnings: Laws of reason are seen as a series of imperatives, telling us what we ought to do:
 - a. Hypothetical Imperatives: Tells us what we should do, given that we will some end.
 - b. Categorical Imperatives: Tells us what to do, unconditionally. Given that morality functions independently of contingent preferences, it must be governed by this latter imperative (these principles are themselves laws).
 - i. Kant asserts that there are tests derivable from the categorical imperative that allow us to identify morally permissible acts and duties. First of these is the Formula of Universal Law, in which one must perform a thought experiment to discover whether a given maxim could be willed a law of nature.
 - As an example, take one who falsely promises to pay back borrowed money: As we see a contradiction in living in world where every

person borrowed money without intent to pay it back, it fails the *Groundwork's* foundational test and is thus morally impermissible.

1. Perfect duties: Exist where contradictions arise in the very conception of the universalized maxim (the lying promise).
 2. Imperfect duties: Exist where inconsistencies develop when willing that an acceptable maxim becomes universal law (the prosperous man).
- ii. Kant describes other formulations of the categorical imperative that reach the same conclusions as the more-familiar Formula of Universal Law:
- Formula of Humanity: "Act in such a way that you treat humanity (...) as an end and never as a means."
 1. People are of absolute value and should not be sacrificed for "relatively" valuable ends.
 - Formula of the Kingdom of Ends: "A rational being must always regard himself as a legislator in a Kingdom of Ends rendered possible by freedom of the will, whether as member or sovereign."
 1. If we think of ourselves as legislating universal law through maxims, then we should think of moral motivation as autonomous (Kant's belief was that such obligations arise from the human capacity for self-direction).
 2. The Kingdom of Ends is incredibly important, as freedom, for Kant, is found in obeying an independently developed law. Thus, if it can be shown that human beings are genuinely autonomous, then his position that the demands of morality (duties imposed by formulations of the categorical imperative) apply to all rational persons will be satisfied (i.e. the purpose of Section III).

E. Section III: Transitional from a Metaphysics of Morals to a Critique of Practical Reason

1. Purpose: Kant seeks to show that all rational beings have the kind of autonomous will for which the moral law is authoritative.
2. Beginnings: Freedom is described as a type of causality independent of any factors extraneous to the will itself, including the empirical desires of the "agent in question." Insofar as human action meets this condition, it is autonomous (failure would make it heteronymous).
 - a. As previously discussed, Kant believes that freedom from inclination is possible only when acting out of duty toward the moral law, as derived vis-à-vis the categorical imperative. Thus, for Kant, there is an analytic connection between freedom, autonomy, and morality (the question that remains is whether or not we are truly free).
 - b. Kant's defense of freedom begins with a claim that, as we have the ability to make uncompelled moral choices, we are rational beings.
 - i. Although Kant acknowledges that there is a problem with this assumption (i.e. our freedom to choose between different options contradicts the natural necessity of the laws of science), he states that, while true of human agents insofar as they are a part of the empirical world, it is not true of them when choosing alternatives in the "realm of freedom."
 - This corresponds with Kant's distinction between the phenomenal realm (i.e. things as they appear), and the noumenal realm (i.e. things as they are in themselves). Though we can have knowledge only of the former, we can think of ourselves as rationally choosing actions within the latter "world of understanding."
 1. There are two standpoints, corresponding to each part of this distinction, from which we can think about ourselves, that are essentially in disagreement, but are somehow unable to contradict each other (think of the dimensional cube).

- a. Thus, we must think of ourselves as both members of the world of understanding, as well as free and autonomous
- ii. It is important to note that Kant does not think it is possible to explain how this freedom is possible, as he asserts that we can have no knowledge of the noumenal realm. He simply writes that it true in a relevant sense, though an account of how it is possible cannot be given.
 - If one accepts this account, then (so long as we have accepted Sections I and II) we must conclude that we are governed by the moral law as given by the categorical imperative.
 - Final Comments: Relating back to the larger themes of the course, note that Kant's political theory is contractarian and anti-utilitarian. Additionally it is universally applicability, though, by refusing to trace morality to a historical social contract (i.e. Locke), he relies on implicit, as opposed to explicit consent. For a look at an even more tenuous notion of contract theory, we look to Rawls and his notion of hypothetical consent.

VI. RAWLS

- Foundationally, *A Theory of Justice* attempts to base morality on a hypothetical agreement consistent with Kantian themes: both are critics of utilitarianism, and both rely on non-historical social contracts.

A. The Original Position

1. Purpose: Rawls designed the original position to replace the imagery of an undesirable state of nature from which social contracts were traditionally thought to arise (the principle distinction between the two points of origin is the elimination of coercion in the latter).
2. Definition: As a thought experiment, Rawls here hoped to accurately reflect the principles of justice that would manifest in a society premised on free and fair cooperation between citizens.
 - a. This is achieved through the placement of parties behind a veil of ignorance, in which they are deprived of information about the individuating characteristics they possess (i.e. they are unaware of their talents, gender, nationality, etc.).
3. Application: Parties adopt the maximin rule, making choices that produce the highest payoff for the worst outcome.
 - a. Thin Theory of the Good: In the original position, parties abstractly recognize that they have purposes, and that there are certain primary social goods (health, material resources, etc.) that are useful in furthering a wide variety of potential outcomes. It is with this limited knowledge that rational persons seek to secure the right “mix” of talents, and create the right “level” of societal justice.
 - i. But for the below principles of justice, primary goods would otherwise be distributed equally (inequalities exist only through consent).

B. The Principles of Justice

1. Origins: From the original position, Rawls claims that parties would adopt two “principles of justice,” which would then govern the assignment of rights and duties, and regulate the distribution of social and economic advantages across society.
2. First Principle of Justice: “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” (Principle of Equal Liberty).
 - a. These “basic liberties” include political liberty, freedom of speech/assembly, the right to hold property, etc. (basically, the guarantees found in the Bill of Rights).
 - b. As this principle is lexically ordered as prior to the second, it cannot be violated, though it may be necessary to “trade off” liberties in order to achieve the largest possible system of rights.
3. Second Principle of Justice: Social and economic inequalities are to be arranged so that:
 - a. offices are open to everyone, under conditions of fair equality of opportunity;
 - b. they are of the greatest benefit to the least well-off (the Difference Principle).
 - i. Here, Rawls is sanctioning only functional inequalities.
 - It is this reason that a system of natural liberty (discussed in Subsection C) is unjust: it permits distributive shares to be improperly determined by morally arbitrary factors (i.e. there can be no desert in natural endowments).
 1. Despite this, Rawls recognizes that one can still legitimately expect to receive the benefits of their efforts and/or talents (i.e. though not grounded in morality, society must function to incentivize behavior and reward Legitimate Expectations).
 - 2. Rejoinder: The Difference Principle works only if all members of society are risk averse, an unlikely reality.

C. Distributive Justice

1. Feudal Aristocracy: Rawls argues that this system is inherently unjust as it predetermines wealth, opportunity, and general well-being at birth. Here, there is not only a lack of social mobility, but also an inability to exercise personal talents, intelligence, or effort.

2. Natural Liberty (Libertarian): Although there is an appeal to a system in which success is measured by an individual's efforts ("free markets of opportunity"), Rawls asserts that this is not "just," as some parties are "starting ahead" based upon circumstantial advantages.
3. Liberal Equality (Meritocracy): This system, though allowing for equality of opportunity, does not remedy the moral arbitrariness of the natural lottery.
 - a. Rawls' answer to these alternative theories of justice is that of Democratic Equality, the system derived from the aforementioned principles of justice.

VII. ARISTOTLE

- Deontological reasoning: Focuses on the “rightness” or “wrongness” of an action itself, as opposed to the “rightness” or “wrongness” of its consequences (duty-based ethics).
- Teleological reasoning: Uses the perception of purposeful development toward an end as a means of explaining phenomena (the latter is Aristotelian).

A. **The Polis**

1. Origins: The *polis* is a “natural” form or organization that necessarily arises as a precondition for human beings living together.
2. Definition: A group of self-sufficient people joined together for the sake of the good life.
3. Position: Aristotle’s account of the progression of institutional forms:
 - a. The household arises from male-female unions and ruler-slave relationships;
 - b. The village arises from the offspring from the household;
 - c. The state arises from the coming together of many villages.
 - i. This final organizational structure allows a given community to become self-sufficient: the state is formed for the purpose of living, but continues for the purpose of living well (promoting the “good life”).
 - ii. As Aristotle relies on teleological reasoning, he argues that the existence of the state is analytically prior to the individual (this can be demonstrated by the fact that the capacity for speech permits moral reasoning, a virtue promoted collectively in the *polis*).
 - For Aristotle, fostering morality is the primary way the state “confers great benefit.” It is only here, through the development of law, that mankind is capable of becoming the “best of all creatures.”
 - iii. Although the state evolves from the household, its governance is fundamentally different: it is not patriarchal, but involves relations among people with equal standing.

B. **Slavery**

1. Argument: Aristotle believes only in natural slavery (he rejects the notion of slavery by conquest). Persons falling into this category of servitude are those who have appetites that govern over reason.
 - a. Irrespective of what facilities govern, Aristotle writes that *all* human beings have the capacity for reason. This allows natural slaves to recognize the justness of being ruled.
 - i. Aristotle conceives of the relationship btw master and slave as complementary, and one of friendship.
 - b. Though many feel that here, Aristotle’s position detracts from his theory of justice, it should be noted that it is possible he does not actually think that there exist persons who are unfit for self-rule (i.e. there are no slaves by nature).

C. **Money**

1. Purpose: Material wealth is a natural tool accumulated for the purpose of meeting the needs of the household (wealth generated for its own sake is unnatural).
2. Beginnings: Although Aristotle’s account of the development of money parallels that of Locke, he views it in a negative light: excessive gains unrelated to the provision of the household result (in becoming addicted to wealth, people lose sight of the good life).

D. **Citizenship**

1. Definition: Citizenship is defined as “having a share in the regime” (i.e. it’s the right to participate in deliberation and adjudication, as opposed to mere residence in a locale).
 - a. Aristotle draws a distinction between the good citizen and the good man:
 - i. Good citizenship requires obedience to given constitutional requirements.
 - ii. The good man is characterized by ruling, as this involves the exercise of practical wisdom.
 - We discussed apartheid as one regime in which good citizenship, for non-Whites, did not amount to the development of good men.

E. The Best Regime

1. For Aristotle, forms of government are characterized by the nature of their ruling elements:
 - a. Kingship: Rule by a single person in the interest of the whole (a correct regime)
 - i. Tyranny: Rule by a single person in his/her own interest (a deviant regime).
 - b. Aristocracy: Rule by the few in the interest of the whole (a correct regime)
 - i. Oligarchy: Rule by the few in their own interest (a deviant regime).
 - c. Polity: Rule by the many for the good of the whole (a correct regime)
 - i. Democracy: Rule by the many, in their own interest (a deviant regime).
2. For Aristotle, the “best regime” would consist of virtuous rulers – conceivably a kingship, but more likely an aristocracy. Because the small, virtuous elite would be threatened by the claims of the rich and the many, however, its survival is unlikely.
 - a. Thus, the most stable and practical regime is that of a polity.
 - i. One could argue that elements of this vision can be seen in the indirect election of the President.

F. Political Justice

1. Overview: Aristotle believes that shares of power should be given in proportion to how much one contributes to the state.
 - a. This definition highlights the fact that a democratic system is inherently unjust, as true equality can exist only between equals.
 - b. From a teleological perspective, if the purpose of the state is the promotion of virtue, it follows that those who are most capable of bringing about such results should have the greatest share of collective authority.
 - i. While this conception of political justice is a powerful critique of oligarchic rule, it is also a sobering critique of democracy.
 - That said, the masses do have a role to play: they are best positioned to judge the effectiveness of officeholders in promoting the good life.
 - Similarly, the wealthy have legitimate claims on the state, as it is their money that allows it to function.
 1. One should note that these are partial claims, however, and should not be mistaken for the principle of the correct distribution of political power itself.

G. The Purpose of Politics

1. For Aristotle, the purpose of the state is to promote the good life (this is understood to involve virtue and character development – very different than the previously studied theories of social compact).
 - a. Foundationally, this purpose stands in pointed contrast to Rawls and the notion that the right is prior to the good.

H. The Liberal Critique of Aristotle

1. Teleology proves problematic when trying to develop a morally autonomous definition of the self. It is impossible to find a law by beginning with the end, as its conceptions are contingent upon individual belief, status, etc. (Kant argues, instead, that morality must exist as a universal law).
2. Unlike Aristotelian pre-conceived notions of the good life, Kant and Rawls argue that images of the self are free and independent. They believe that people are not bound by any ties to history, tradition, or status (i.e. human beings are sovereign selves, the authors to the conditions that constrain them).

VIII. COMMUNITARIANISM

A. The Communitarian Self

1. Introduction: After presenting the objections Kantian liberals might have to Aristotle (see above), we examined what persons such as Sandel and MacIntyre might offer in response.
2. Overview: Though Communitarians are referred to as neo-Aristotelians, the term seems to designate a fairly large group of views, each stressing different aspect of the liberal critique.
 - a. As mentioned above, the principle distinction between these two rival theories of morality is tied to conceptions of the self:
 - i. Voluntarist (Changing) Self: We are bearers of a self before having any life purposes; this is why justice needs to be thought of in the abstract - only then are we in a proper position to choose ends as equal individuals.
 - ii. Narrative (Encumbered) Self: Communitarians criticize this view, arguing that the voluntarist position misses a dimension of moral and political life – the free and unencumbered notion of self does not account for certain obligations, such as membership, loyalty, solidarity, and other ties that cannot trace to an act of consent within Kantian/Rawlsian frameworks.
 - MacIntyre: We are never more than co-authors of our own narratives.
 - b. To ensure an understanding of Sandel's critique of Rawls, it is reproduced below:
 - i. Rawls: While an individual is the repository of his/her assets, no one can be said to deserve the fruits of those assets, prior to any legitimate expectations.
 - Sandel: Though the individual is the guardian of his/her assets, particular communities have legitimate claims on them, as partially define conceptions of identity.
 - ii. Rawls: The self is prior to the ends it affirms (i.e. our capacity to choose our life purpose is more important than any particular ends we endorse).
 - Sandel: The situated self is not prior to its ends; it is embedded in, and partially defined by certain un-chosen roles and common aims.
 - iii. Rawls: As the right is prior to the good, a just society must be neutral among competing conceptions of the latter.
 - Sandel: At least in some instances, notions of the common good precede our views of justice.
 - iv. Rawls: An individual has political obligations to the community because (s)he would have consented to them in a perfect contractual situation.
 - Sandel: Some obligations have claims on individuals, though they are not chosen.
 1. Whereas both classical liberals and communitarians feel that duties stem from (1) Natural and (2) Voluntary Obligations, there is a third category – Membership Obligations – to which only the latter school of thought subscribes.
3. Communitarian Criticisms:
 - a. If choosing between competing obligations involves prioritize universal duties, it would seem that communitarianism is not that different from the liberal theories it set out to dismantle.
 - b. While family memberships seem natural, others, like citizenship, are constructed; students questioned whether it was a moral obligation to honor these latter “duties.”

B. The Consequences for Justice

1. Communitarians believe that justice is tied to the good in two distinct ways:
 - a. Relativist: Conceives of justice as an expression of shared community understanding.
 - i. Criticism: Here, justice is merely a product of circumstance.
 - b. Non-relativist: The principles of justice do not depend upon the prevalence of any shared understanding, but rather on the intrinsic worth of the ends that rights serve.
 - i. Criticism: Here, there is presented the challenge of how to reason about the good (i.e. societies disagree about the conception/purpose of institutions).

IX. POLITICAL LIBERALISM

A. Justice as Fairness

1. Overview: The content of “Justice as Fairness” remains substantively similar to the two principles of justice in *A Theory of Justice*.
 - a. Rawls’ new treatment of liberalism is motivated by what he calls The Fact of Reasonable Pluralism, defined as “the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime” (i.e. societies such as ours are characterized by a multiplicity of religious / moral viewpoints, all in disagreement with each other).
 - i. This is an admission that “ideas of the good” are always contestable, even after factoring out failures of rationality and self-interest.
 - ii. To impose coercive apparatus on anyone who reasonably rejects the principles on which the state operated amounts, says Rawls, to improperly treating such a free and equal individual as a “means to an end” (this extends even to taxation).
 - iii. Thus, any candidate theory of justice (and conception of the good) must exclude from itself all controversial moral and philosophical content.
 - b. In thinking about justice, Rawls would restrict discussions to Public Reason, or those discussions that are based on commonly available principles, framed to
 - i. apply only to basic political, social, and economic institutions;
 - ii. presented independently of any wider comprehensive religious or philosophical doctrine; and
 - iii. viewed as implicit in the political culture of a democratic society.
 - c. After describing the above requirements of legitimacy, Rawls goes on to discuss what he terms Overlapping Consensus, a further justification for his theory or liberalism.
 - i. If a candidate theory of justice can serve as the subject of “overlapping consensus,” then it is stable enough to form the basis for an ongoing system of social cooperation, and hence meets a second standard of justification, that of stability.
 - d. What Rawls takes to be implicit in the public political culture of a constitutional democracy is a commitment to a view of society that includes a fair system of social cooperation between free and equal individuals.

B. Criticisms of Rawls

1. Though we did not spend a great deal of time discussing critiques of Rawls, Sandel provides three principle objections of this move to the political:
 - a. The Objection against Bracketing Grave Moral Questions: It is not always possible to exclude moral or religious claims from public debate.
 - b. The Objection against the Fact of Reasonable Pluralism: It is simply not true that we agree about justice and disagree about the good (e.g. abortion).
 - c. The Objection against the Limits of Liberal Public Reason: We impoverish political discourse by excluding from it discussions about fundamental moral, religious, or constitutional questions.

APPENDIX A: THE ARGUMENT OF THE GROUNDWORK

Goal: To seek the supreme principle of morality, the laws of pure practical reason, the rules governing freedom (i.e. choice).

Groundwork I: By critically reflecting on our ordinary moral intuitions, determine the content of the Moral Law.
Note: Kant is not trying to prove its validity. He's merely trying to get an idea of what he'll need to prove in the succeeding sections.

Groundwork II: Explain what the Moral Law must be, and show that the autonomous will is subject to it.

- By considering the concept of the categorical imperative (CI), we'll determine what its content would have to be (420).
 - o "Since the imperative contains, beyond the law, only the necessity that the maxim be in conformity with this law, while the law contains no condition to which it would be limited, nothing is left with which the maxim of action is to conform but the universality of law as such" (420-1).
 - Other than that it's a law, all we know about the CI is that it unconditionally requires us to act in accordance w/ the law (i.e. itself). But there's nothing that could give the law any further content). Therefore, all the CI can tell us to do is act in accordance with some law.
 - It can't say anything more than that. But a law by definition is universal – something that applies only some of the time isn't a law. Therefore...
 - o "There is only a single categorical imperative and it is this: act only in accordance with that maxim through which you can at the same time will that it become a universal law" (421).
 - This is usually called the Formula of Universal Law
 - Notice that this is a test for permissibility, not necessarily an explanation of why certain actions are wrong.
 - Notice that it's about what you could will, not what you would want. So, it's a test of possibility (not likelihood), and it's a constraint on choice (not desire).
 - Notice that the test asks you to will that your maxim be a universal law at the same time that you act on it. Note that this is sometimes crucial for finding the contradiction.
 - There is much philosophical debate about what kind of contradiction Kant is looking for: He says things that suggest a number of different interpretations.
- Now that Kant has shown what the CI must be (if there is one), he needs to show that it really applies to rational beings. Since in order to be categorical it must apply to all rational beings, Kant has to prove this is a priori, relying only the concept of a rational being (426).
 - o To be rational is to act for a purpose, or with an end in mind (427).
 - o If there was some end that was absolutely valuable, or necessarily an end for all rational beings, "then in it, and in it alone, would lie the ground of a possible categorical imperative" (428). In other words, if we can find something that we must, in virtue of being rational, have as an end, then that would ground a categorical imperative. So, what is that thing? (What follows is an improved/streamlined version of the argument Kant presents).
 - We must take our ends to be valuable, or worth pursuing, otherwise we wouldn't be pursuing them. Are they unconditionally valuable? No, since we recognize that many/all of them wouldn't be valuable if we weren't pursuing them (428).
 - Then what gives them value? Perhaps that we desire them. But our desires aren't unconditionally valuable, since we'd get rid of some (e.g. the desire for cigarettes) if we could (428).
 - Note the reliance on the premise that if something is able to confer value, it must itself be valuable. (Think of the goose that lays golden eggs – it's valuable because it's able to create other valuable things).

- What gives some desire value over others? Because we choose to identify with them, or we endorse them. This suggests that it's choice that confers value. (You would choose to be rid of your nicotine addiction, if you could).
- Is the will (i.e. the faculty of choice), then, unconditionally valuable? Kant thinks it is. The argument is unclear, but it may go like this: since we've already said that we must see every end – that is, every object of choice – we have as valuable, it must be that choosing something is sufficient to confer value. (If it wasn't, then it would follow that there's at least a possible situation where you've chosen something which you don't take to be valuable. But that contradicts the original assumption that we must regard all our ends as valuable). But then the will must be unconditionally valuable, since it doesn't rely on anything else for its value – conferring ability.
- Therefore, "the human being necessarily represents his own existence" as being unconditionally valuable, i.e. as being an end-in-itself. "But every other rational being also represents his existence in this way consequent on just the same rational ground that also holds for me" (428-9).
 - We've proven that we must each regard ourselves as being unconditionally valuable. But there's nothing special about me – I'm no different than anyone else. Therefore, consistency demands that I also grant that your will is unconditionally valuable. Just as I take my choices to have value, so must I take your choices to have value.
 - Therefore, the end-in-itself we were seeking is the rational will which Kant calls humanity
- A means is by definition only conditionally valuable, because of its relationship to an end. Therefore, if humanity is unconditionally valuable, it must be wrong to treat it merely as a means.
- "So act that you use humanity, whether in your own person or in the person of any other, always at the same time as an end, never merely as a means" (439).
 - This is usually called the Formula of Humanity.
 - When Kant says "humanity," he means rational nature. That isn't the same as one's body, nor does it include one's desires.
 - Notice that it allows us to use humanity as a means; it prohibits using it merely as a means.
 - Kant apparently broadens the formula later, when he says that our actions must also harmonize with the idea of humanity as an end in itself (430).
 - Kant says that this Formula is equivalent to the Formula of Universal Law (436), though it's not clear he's right about that.
- What attribute of rational beings is it that would make us subject to the CI? Our autonomy.
 - If there is a CI, it must bind us autonomously. If it bound us heteronomously, it would bind us by virtue of some other sanctions. But then it wouldn't be categorical any more. We'd have to follow it or accept the sanction (433).
 - If we're autonomous, we must be bound by the CI. To be autonomous is to act on a law you give yourself. But that's just what the Formula of Universal law requires: that we act on a maxim of ours that could be a law (440, 447).

Groundwork III: To show that a rational being is autonomous, at least in a practical respect, so that the results of Groundwork II apply to all rational beings.

- A will is by definition a causality (446).
- If a will were free, that would mean it wasn't determined by external factors (446).
- What, then could it be determined by? Since it's a causality, it must be determined by some law (Otherwise it would merely be acting randomly, without principle, which would mean that it wasn't a causality at all; it would be merely haphazard behavior). Since it isn't determined by external factors, the free will must therefore be determined by an internal law (446-447).
- In other words, the free will is a will that gives laws to itself. It is an autonomous will.
- As we already saw, an autonomous will is a moral will, since the CI merely commands us to be autonomous. "Hence a free will and a will under moral laws are one and the same" (447).

- “Every being that cannot act otherwise than *under the idea of freedom* is just because of that really free in a practical respect, that is, all laws that are inseparably bound up with freedom hold for him just as if his will had been validly pronounced free also in itself and it in theoretical philosophy” (448).
 - If when we’re acting we must think that we’re free, then when it comes to matters of practical reasoning – that is, when we’re figuring out what to do – if we think that some law applies to all free beings, we must think it applies to us.
- To complete the argument, Kant must show that every rational being can’t help but act under the idea of freedom.
 - If you think you’re acting, you must think that you have the ability to bring about some effect (i.e. to choose something) (448).
 - You can’t think that this causal power comes from somewhere, or is determined by something outside of you. If you did, then you wouldn’t think that it was you who was acting; you’d think it was that external thing (448).
 - Therefore, you must think that you have the ability to bring about an effect, and that this ability is not subject to external control. That is, you must think you’re free.