

0001 PROFESSOR: We ended last time talking about the narrative
0002 conception of the self.
0003 We were testing the narrative conception of the self and the idea of
0004 obligations of solidarity or membership that did not flow from
0005 consent, that claimed us for reasons unrelated to a contract or an
0006 agreement or a choice we may have made.
0007 And we were debating, among ourselves, whether there are any obligations of
0008 this kind or whether all apparent obligations of solidarity and
0009 membership can be translated into consent or reciprocity or a universal
0010 duty that we owe persons qua persons.
0011 And then there were those who defended the idea of loyalty and of patriotism.
0012 So the idea of loyalty and of solidarity and of membership gathered
0013 a certain kind of intuitive moral force in our discussion.
0014 And then, as we concluded, we considered what seems to be a pretty
0015 powerful counter example to that idea.
0016 Namely, the film of those southern segregationists in the 1950s.
0017 And they talked all about their traditions, their history, the way in
0018 which their identities were bound up with their life history.
0019 Do you remember that?
0020 And what flowed from that history, from that narrative sense of identity
0021 for those southern segregationists?
0022 They said, we have to defend our way of life.
0023 Is this a fatal or a decisive objection to the idea of the narrative
0024 conception of the self?
0025 That's the question we were left with.
0026 What I would like to do today is to advance an argument and see what you
0027 make of it.
0028 And let me tell you what that argument is.
0029 I would like to defend the narrative conception of the person as against
0030 the voluntarist conception.
0031 I would like to defend the idea that there are obligations of solidarity or
0032 membership.
0033 Then I want to suggest that there being such obligations lends force to
0034 the idea, when we turn to justice, that arguments about justice can't be
0035 detached, cannot be detached, after all, from questions of the good.

0036 But I want to distinguish two different ways, in which justice might
0037 be tied to the good, and argue for one of them.

0038 Now the voluntarist conception of the person, of Kant and Rawls, we saw was
0039 powerful and liberating.

0040 A further appeal is its universal aspiration, the idea of treating
0041 persons as persons, without prejudice, without discrimination.

0042 And I think that's what led some among us to argue that, okay, maybe there are
0043 obligations of membership, but they are always subordinate, they must
0044 always be subordinate to the duties that we have to human beings as such,
0045 the universal duties.

0046 But is that right?

0047 If our encompassing loyalty should always take precedence over more
0048 particular ones, then the distinction between friends and strangers should,
0049 ideally, be overcome.

0050 Our special concern for the welfare of friends would be a kind of prejudice,
0051 a measure of our distance from universal human concern.

0052 But if you look closely at that idea, what kind of a moral universe, what
0053 kind of moral imagination would that lead you to?

0054 The Enlightenment philosopher Montesquieu gives, perhaps, the most
0055 powerful and, I think, ultimately, the most honest account of where this
0056 relentless universalizing tendency leads the moral imagination.

0057 Here's how Montesquieu put it.

0058 He said, "A truly virtuous man would come to the aid of the most distant
0059 stranger as quickly as to his own friend." And then he adds.

0060 Listen to this.

0061 "If men were perfectly virtuous, they wouldn't have friends."

0062 But it's difficult to imagine a world in which persons were so virtuous that
0063 they had no friends, only a universal disposition to friendliness.

0064 The problem isn't simply that such a world would be difficult to bring
0065 about, that it's unrealistic.

0066 The deeper problem is that such a world would be difficult to recognize
0067 as a human world.

0068 The love of humanity is a noble sentiment.

0069 But most of the time, we live our lives by smaller solidarities.

0070 This may reflect certain limits to the bounds of moral sympathy.

0071 But more important, it reflects the fact that we learn to love humanity,
0072 not in general, but through its particular expressions.

0073 So these are some considerations.

0074 They're not knock-down arguments, but moral philosophy can't offer

0075 knock-down arguments but considerations of the kind that we've

0076 been discussing and arguing about all along.

0077 Well suppose that's right.

0078 One way of assessing whether this picture of the person and of

0079 obligation is right is to see what are its consequences for justice.

0080 And here's where it confronts a serious problem.

0081 And here we go back to our southern segregationists.

0082 They felt the weight of history.

0083 Do we admire their character, these segregationists who wanted to preserve

0084 their way of life?

0085 Are we committed to saying, if we accept the idea of solidarity and

0086 membership, are we committed to saying that justice is tied to the good, in

0087 the sense that justice means whatever a particular community or a tradition

0088 says it means, including those southern segregationists?

0089 Here it's important to distinguish two different ways in which justice can be

0090 tied to the good.

0091 One is a relativist way.

0092 That's the way that says, to think about rights, to think about justice

0093 look to the values that happened to prevail in any given community, at any

0094 given time.

0095 Don't judge them by some outside standard, but instead conceive justice

0096 as a matter of being faithful to the shared understandings of

0097 a particular tradition.

0098 But there's a problem with this way of tying justice to the good.

0099 The problem is that it makes justice wholly conventional, a product of

0100 circumstance.

0101 And this deprives justice of its critical character.

0102 But there is a second way in which justice can be tied with or bound up

0103 with the good.

0104 On this second non-relativist way of linking justice with conceptions of

0105 the good, principles of justice depend for their justification, not on the

0106 values that happen to prevail at any given moment, in a certain place, but

0107 instead on the moral worth or the intrinsic good of

0108 the ends rights serve.

0109 On this non-relativist view, the case for recognizing a right depends on

0110 showing that it honors or advances some important human good.

0111 This second way tying justice to the good is not, strictly speaking,

0112 communitarian if, by communitarian, you mean just giving over to a

0113 particular community the definition of justice.

0114 Now what I would like to suggest that, of these two different ways of linking

0115 justice to the good, the first is insufficient.

0116 Because the first leaves justice the creature of convention.

0117 It doesn't give us enough moral resources to respond to those Southern

0118 segregationists who invoke their way of life, their traditions, their way

0119 of doing things.

0120 But if justice is bound up with the good in non-relativist way, there's a

0121 big challenge, a big question to answer.

0122 How can we reason about the good?

0123 What about the fact that people hold different conceptions of the good,

0124 different ideas about the purposes of key social institutions, different

0125 ideas about what social goods and human goods are worthy of honor and

0126 recognition?

0127 We live in a pluralist society.

0128 People disagree about the good.

0129 That's one of the incentives to try to find principles of justice and rights

0130 that don't depend on any particular ends or purposes or goods.

0131 So is there a way to reason about the good?

0132 Before addressing that question, I want to address a

0133 slightly easier question.

0134 Is it necessary, is it unavoidable, when arguing about justice, to argue

0135 about the good?

0136 And my answer to that question is yes.

0137 It's unavoidable.

0138 It's necessary.

0139 So for the remainder of today, I want to take up, I want to try to advance

0140 that claim, that reasoning about the good, about purposes, and ends is an

0141 unavoidable feature of arguing about justice.

0142 It's necessary.

0143 Let me see if I can establish that.

0144 And for that, I'd like for us to begin a discussion of same-sex marriage.

0145 Now, same sex-marriage draws on, implicates deeply contested and

0146 controversial ideas, morally and religiously.

0147 And so there's a powerful incentive to embrace a conception of justice or of
0148 rights that doesn't require the society, as a whole, to pass judgment,
0149 one way or another, on those hotly contested moral and religious
0150 questions about the moral permissibility of homosexuality, about
0151 the proper ends of marriage as a social institution.

0152 So clearly, if there's an incentive to resolve this question, to define
0153 people's rights in a way that doesn't require the society, as a whole, to
0154 sort out those moral and religious disputes, that would be very
0155 attractive.

0156 So what I would like to do now is to see, using the same-sex marriage case,
0157 whether it's possible to detach one's views about the moral permissibility
0158 of homosexuality and about the purpose, the end of marriage, to
0159 detach those questions from the question of whether the state should
0160 recognize same-sex marriage or not.

0161 So let's begin.

0162 I would like to begin by hearing the arguments of those who believe that
0163 there should be no same-sex marriage, but that the state should only
0164 recognize marriage between a man and woman.

0165 Do I have volunteers.

0166 I had two.

0167 There were two people I asked, people who had voiced their views already on
0168 the justice blog, Marc Luff and Ryan McCaffrey.

0169 Where are you?

0170 Marc?

0171 And where's Ryan?

0172 Let's go first to Marc.

0173 MARC: I have sort of teleological understanding of the purpose of sex
0174 and the purpose of marriage.

0175 And I think that, for people like myself, who are a Christian and also a
0176 Catholic, the purpose of sex is, one, for its procreative uses, and two, for
0177 a unifying purpose between a man and a woman within the
0178 institution of marriage.

0179 PROFESSOR: You have certain conception of the purpose or the telos of human
0180 sexuality, which is bound up with procreation as well as union.

0181 And the essence of marriage, the purpose of marriage, as a social
0182 institution, is to give expression to that telos and to honor that purpose,
0183 namely the procreative purpose of marriage.

0184 Is that a fair summary of your view?

0185 MARC: Yeah.

0186 PROFESSOR: Where is Ryan?

0187 Go ahead.

0188 Do you agree, more or less, with Marc's reasons?

0189 RYAN: Yes, I agree.

0190 I think that the ideal of marriage involves procreation.

0191 And it's fine that homosexuals would go off and

0192 cohabitate with each other.

0193 But the government doesn't have a responsibility to encourage that.

0194 PROFESSOR: All right, so the government should not encourage

0195 homosexual behavior by conferring the recognition of marriage?

0196 RYAN: Yeah.

0197 It would be wrong to outlaw it, but encouraging is not unnecessary.

0198 PROFESSOR: Who has a reply?

0199 Yes.

0200 Hannah.

0201 HANNAH: I'd just like to ask a question to Marc.

0202 Let's say you got married to a woman.

0203 You did not have sex with her before marriage.

0204 And then when you became married, it became evident that you were an

0205 infertile couple.

0206 Do you think that it should illegal for you to engage in sex if children will

0207 not result from that act?

0208 MARC: Yeah, I think that it is moral.

0209 And that's why I gave the twofold purpose.

0210 So like, a woman, say--

0211 I think older couples can get married, a woman who is beyond--

0212 She's already had menopause and who can't have a child.

0213 Because I think that sex has purposes beyond procreation.

0214 HANNAH: I hate to be uncouth, but have you ever engaged in masturbation?

0215 [LAUGHTER]

0216 MARC: Yeah.

0217 PROFESSOR: You don't have to answer that.

0218 Just a minute.

0219 MARC: No, I'd like to respond to that.

0220 PROFESSOR: No, I think--

0221 [APPLAUSE]

0222 PROFESSOR: Wait, look, we've done pretty well, over a whole semester.

0223 And we're doing pretty well now dealing with questions that most

0224 people think can't even be discussed in a university setting.

0225 And Hannah, you have a powerful point.

0226 Make that point as a general argument rather than--

0227 HANNAH: OK.

0228 PROFESSOR: Rather than as an interrogative.

0229 But make the point.

0230 What's the principle that you're appealing?

0231 What's the argument you have in mind?

0232 Put it in the third person rather than in the second person.

0233 Make the argument.

0234 HANNAH: Biblically masturbation or Onanism is not permissible, because

0235 it's spilling your seed on the Earth when it's not going to result in the

0236 birth of a child.

0237 But what I'm saying is, you're saying that sex, there's something wrong with

0238 sex if it doesn't produce children or reinforce the marriage bond.

0239 But then how can you say that there's something wrong, that masturbation is

0240 permissible, if masturbation, obviously, is not

0241 going to create a child?

0242 MARC: I think marriage is society's way to create this separate

0243 institution where they say, this is what we hold as a virtue.

0244 Yes, every day, we fall short.

0245 And people fall short in so many different other ways.

0246 But I think that, if you personally fall short in some moral sphere, as we

0247 all do, that doesn't take the right of you to argue.

0248 PROFESSOR: I want you to stay there.

0249 I want to bring in some other voices.

0250 And we'll continue you.

0251 Stay there, if you would.

0252 Go ahead.

0253 Tell us your--

0254 STEVE: My name's Steve.

0255 PROFESSOR: Steve, go ahead.

0256 STEVE: The response to the masturbation issue is it's not

0257 something that's permissible.

0258 I don't think anyone will argue that homosexual sex is impermissible.
0259 It's just that society has no place in letting you marry yourself if
0260 masturbation is something that you do.
0261 PROFESSOR: Well, all right, Hannah.
0262 That's a good argument.
0263 Steve has drawn our attention to the fact that there are two issues here.
0264 One of them is the moral permissibility of various practices.
0265 The other is the fit between certain practices, whatever their moral
0266 permissibility, with the honor or recognition that the state should
0267 accord in allowing marriage.
0268 So Steve has a pretty good counter argument.
0269 What do you say to Steve?
0270 HANNAH: Well, I think that it's clear that human sexuality is something that
0271 is inherent in, I believe, most people.
0272 And it's not something you can avoid.
0273 And masturbation, I mean, yeah, you can't marry yourself.
0274 But I don't think that it takes away from the fact that homosexuals are
0275 people, too.
0276 And I can't understand why they wouldn't be able to marry each other.
0277 If you want to marry yourself?
0278 I mean, I don't know if you can legally do that.
0279 That's fine.
0280 But I don't think--
0281 PROFESSOR: Wait, wait, wait.
0282 Now here we're deciding, here we're deliberating, as if legislators, what
0283 the law should be.
0284 So you said Steve, that's fine.
0285 Does that mean as a legislator you would vote for a law of marriage that
0286 would be so broad that it would let people marry themselves?
0287 HANNAH: That's really beyond the pale of anything that would really happen.
0288 But I don't think that--
0289 PROFESSOR: But in principle?
0290 HANNAH: In principle?
0291 PROFESSOR: Yes.
0292 HANNAH: Yeah, sure.
0293 I mean if Steve wants to marry himself, I'm not going to stop him.
0294 PROFESSOR: And you would confirm state recognition on that solo marriage?

0295 [LAUGHTER]

0296 HANNAH: Sure.

0297 PROFESSOR: And while we're at it, what about consensual polygamous marriages?

0298 HANNAH: I actually think that, if the male and the female, if the wives and

0299 the man, and the husband or the husbands and the wife are consenting,

0300 it should be permissible.

0301 PROFESSOR: Who else there?

0302 I know there are a lot of people who?

0303 Yes, OK, down here.

0304 Stand up and tell us your name.

0305 VICTORIA: Victoria.

0306 PROFESSOR: Victoria.

0307 VICTORIA: So we're talking about the teleological

0308 reasoning here for marriage.

0309 But I think the problem is that we're talking about it within

0310 the Catholic viewpoint.

0311 Whereas the teleological, and the point to marriage, for another

0312 religion or someone who's an atheist could be completely different.

0313 And the government doesn't have a right to impose the teleological

0314 reasoning for Catholicism on everyone in the state, which is what my problem

0315 is with not allowing same sex marriage.

0316 Because I mean, your beliefs are your beliefs.

0317 And that's fine.

0318 But civil union is not marriage within the Catholic Church.

0319 And the state has a right to recognize a civil unions

0320 between whoever it wants.

0321 But it does not have a right to impose the beliefs of a certain minority, or

0322 a majority or whoever it is, based on a religion within our state.

0323 PROFESSOR: All right, Victoria, good.

0324 A question, do you think the states should recognize same sex marriage or

0325 just same sex civil unions, as something short of marriage?

0326 VICTORIA: Well, I think that the state doesn't have right to recognize it as

0327 a marriage within a church, because that is not their place.

0328 But whereas civil union, I see civil union as essentially the same thing,

0329 except not under a religion.

0330 And the state has a right to recognize a civil union.

0331 PROFESSOR: All right, so Victoria's argument is that the state should not

0332 try to decide the question of what the telos of marriage is.

0333 That's only something that religious communities can decide.

0334 Who else?

0335 Cezzane: My point is, I don't see why you feel like the state should

0336 recognize marriages at all.

0337 So I'm like one of these types of people who voted, state should not

0338 recognize any marriages.

0339 Because I believe it is a union between a male and a female or two

0340 males or two females, but there's no reason to like ask the state to give

0341 permission to me to unite myself.

0342 And some might say that, if state recognizes these

0343 marriages, it'll help children.

0344 It will have binding effect.

0345 But, in reality, I don't think it actually has a binding effect.

0346 PROFESSOR: Tell us your name.

0347 STUDENT: Cezzane.

0348 PROFESSOR: So Victoria and Cezzane's comments differ from

0349 earlier parts of the conversation.

0350 They say the state shouldn't be in the business of honoring or recognizing or

0351 affirming any particular telos or purpose of

0352 marriage or of human sexuality.

0353 And Cezzane

0354 is among those who says, therefore, maybe the state should get out of the

0355 business of recognizing marriage at all.

0356 Here's the question.

0357 Unless you adopt Cezzane's position, no state recognition of any

0358 kind of marriage, is it possible to decide the question of same-sex

0359 marriage without taking a stand on the moral and religious controversy over

0360 the proper telos of marriage?

0361 Thank you very much to all of you who have participated.

0362 We'll pick this up next time.

0363 You did a great job.
