

0001 PROFESSOR: We have two remaining questions to answer.

0002 First, is it necessary, is it unavoidable, to take up questions of

0003 the good life in thinking about justice?

0004 Yes.

0005 And is it possible to reason about justice?

0006 Yes, I think so.

0007 Let me try to develop those answers to those two questions.

0008 Now, as a way of addressing those questions, we began last time to

0009 discuss the question of same sex marriage.

0010 And we heard from those who argued against same sex marriage on the

0011 grounds that the purpose, or telos, of marriage, is at least in part

0012 procreation, the bearing and raising of children.

0013 And then there were those who defended same sex marriage.

0014 And they contested that account of the purpose, or telos, of marriage

0015 arguing, we don't require, as a condition of heterosexual marriage,

0016 that couples be able or willing to procreate.

0017 We allow infertile couples to marry, this was Hannah's point in the

0018 exchange with Mark.

0019 But then there was another position expressed at the end of our discussion

0020 by Victoria, who argued, we shouldn't try to decide this question.

0021 We shouldn't, at least at the level of the state, at the level of law, try to

0022 come to any agreement on those questions about the good, because we

0023 live in a pluralist society where people have different moral and

0024 religious convictions.

0025 And so we should try to make law and the framework of rights neutral with

0026 respect to these competing moral and religious views.

0027 Now, it's interesting that others, some others, who favor the idea of

0028 neutrality argued not in favor of restricting marriage to a man and a

0029 woman, nor in favor of permitting same sex marriage, they argued, in the name

0030 of neutrality, for a third possibility, which is that government

0031 get out of the business of recognizing any kind of marriage.

0032 That was the third possibility.

0033 Now, Andrea Mayrose had an interesting contribution to this debate.

0034 She had a rejoinder to people who argue for neutrality.

0035 Where is Andrea?

0036 All right.

0037 Andrea, would you be willing to share with us the view-- if we can get you a
0038 microphone.

0039 Share with us your view.

0040 Why do you think that it's a mistake for the state to try to be neutral on
0041 moral and even religious questions like same sex marriage?

0042 ANDREA: I don't know that it is possible, because people's lives
0043 are completely embedded in how they view the world.

0044 And maybe I just agree with Aristotle that the role of the government is
0045 helping people live in a sort of--

0046 like having a collective understanding what is wrong and what is right.

0047 PROFESSOR: Is it possible--

0048 and one could ask the same question of abortion that we've been asking of
0049 same sex marriage.

0050 Do you think it's possible to decide whether abortion should be permitted
0051 or prohibited, without taking a stand or making a judgment about the moral
0052 principality of abortion?

0053 ANDREA: No, I don't think it is.

0054 And I think that's why it's such a controversy, because people are so
0055 deeply committed to their fundamental beliefs about whether a fetus is a
0056 life or if it isn't.

0057 So if I believe that like a fetus is a living being and has rights, and has
0058 fundamentally the right to live, then it's very hard for me to say, but I
0059 can put that aside and let you do what you want.

0060 Because that's like me saying, well, despite my beliefs, I'm going to let
0061 you commit what to me is murder.

0062 So I mean, that's just one.

0063 PROFESSOR: All right.

0064 And the analogy in the same sex marriage case is, you said you're a
0065 defender of same sex marriage.

0066 ANDREA: Yes.

0067 PROFESSOR: But you only came to that view once you were persuaded on the
0068 underlying moral question.

0069 ANDREA: Right.

0070 Well, I think particularly in US, so many people's beliefs are driven by
0071 their religious beliefs.

0072 And like Mark the other day, I'm Christian, I'm Catholic, and I had to

0073 decide for myself on a lot of thought, a lot of prayer, a lot of
0074 conversations, whether the people that I disagreed with the Catholic
0075 standpoint that homosexuality itself isn't a sin.

0076 And once I came to that sort of conclusion in my personal relationship
0077 with God, I mean, that sounds hokey, right?

0078 That's like, oh, religious.

0079 But a lot of people are religious and that's where they draw their beliefs
0080 and their views from.

0081 That's when I could say, yeah, I'm down with the state saying, go same
0082 sex marriage because I'm OK with that and I think that's morally OK.

0083 PROFESSOR: Good, thank you.

0084 Now who would like to reply?

0085 If you can perhaps hang on there for a moment, who would like to reply to
0086 Andrea's idea that in order to decide the question of same sex marriage,
0087 it's necessary to sort out the question about the moral status of
0088 homosexuality and figuring out the purpose, the telos, the
0089 proper end of marriage.

0090 Who disagrees with Andrea on that point?

0091 Yes.

0092 DANIEL: Well, I think you absolutely can separate your moral opinion and
0093 what you think the law should be.

0094 For example, I think abortion is unequivocally, morally wrong.

0095 But I do not believe that illegalizing abortion makes it go away.

0096 I don't believe illegalizing abortion stops it.

0097 And therefore, I am pro-choice and I do believe the woman should have the
0098 choice, as it gives them more safety.

0099 Just as, maybe, morally I don't want to get married to a man, but I'm not
0100 going to try to impede someone else's freedom to do what they wish to do in
0101 terms of the law.

0102 ANDREA: Whether the law makes something legal or illegal, is it's
0103 implicitly approving or disapproving something.

0104 By making abortion legal, we're saying it's OK.

0105 As a society collectively, we're saying, it's OK with us in our society
0106 to abort a fetus.

0107 If we make it illegal, then we're saying collectively that as a society
0108 it's not OK.

0109 And that's why societies have different beliefs.

0110 PROFESSOR: Tell us your name before--

0111 DANIEL: My name's Daniel.

0112 SPEAKER 1: Daniel.

0113 What do you say?

0114 DANIEL: Are we saying collectively that it's OK?

0115 Are we saying that collectively we don't want women who are going to have

0116 an abortion anyway to go to clinics in the side alleys and have it in unsafe

0117 conditions?

0118 PROFESSOR: All right, bring it to the same sex marriage case.

0119 Why don't you have to decide that which position you're in favor of same

0120 sex marriage, Daniel, being legally permitted.

0121 DANIEL: I think it absolutely should be legally permitted.

0122 Because it's not something telling me that I need to marry a man.

0123 If two men are consenting adults and want to get married, I don't see how I

0124 could even object to that.

0125 PROFESSOR: There's no harm.

0126 There's no harm done.

0127 DANIEL: Either way.

0128 Even if it is morally wrong, according to me.

0129 PROFESSOR: All right.

0130 Let me turn to the way the Massachusetts court, who made this

0131 landmark ruling in the same sex marriage case, grappled with the very

0132 issue that Andrea and Dan had been discussing here.

0133 Thanks to both of you very much.

0134 What did the court say?

0135 This was in the Goodridge case, which required the state of Massachusetts to

0136 extend marriage to same sex couples.

0137 The court started out--

0138 well, the court was conflicted.

0139 If you read that opinion carefully, the court was conflicted as between

0140 the two positions we've just been hearing defended by Andrea and by Dan.

0141 The court begins--

0142 and this is Chief Justice Margaret Marshall's opinion.

0143 It begins with an attempt at liberal neutrality.

0144 "Many people hold deep seated religious, moral, and ethical

0145 convictions that marriage should be limited to the union of one man and

0146 one woman, and that homosexual conduct is immoral.

0147 Many hold equally strong religious, moral, and ethical convictions that
0148 same sex couples are entitled to be married, that homosexual persons
0149 should be treated no differently than their heterosexual
0150 neighbors." This is the court.
0151 "Neither view answers the question before us.
0152 What is at stake is quote, respect for individual autonomy, and
0153 equality under law.
0154 At stake is an individual freely choosing the person with whom to share
0155 an exclusive commitment."
0156 In other words, at issue is not the moral worth of the choice, but the
0157 right of the individual to make it.
0158 So this is the liberal neutral strand in the court opinion--
0159 strand, the one that emphasizes autonomy, choice, consent.
0160 But the court seemed to realize that the liberal case, the neutral case for
0161 recognizing same sex marriage doesn't succeed, doesn't get you all the way
0162 to that position.
0163 Because if it were only a matter of respect for individual autonomy, if
0164 government were truly neutral on the moral worth of voluntary intimate
0165 relationships, then it should adopt a different policy, which is to remove
0166 government and the state altogether from according recognition to certain
0167 associations, certain kinds of unions, rather than others.
0168 If government really must be neutral, then the consistent position is what
0169 we here have been describing as the third position.
0170 The one defended in the article by Michael Kinsley, who argues for the
0171 abolition of marriage at least as a state function.
0172 Perhaps a better term for this is the dis-establishment of religion.
0173 This is Kinsley's proposal.
0174 He points out that the reason for the opposition to same sex marriage is
0175 that it would go beyond neutral toleration and give same sex marriage
0176 a government stamp of approval.
0177 That's at the heart of the dispute.
0178 In Aristotle's term's, at issue here is the proper distribution of offices
0179 and honors, a matter of social recognition.
0180 Same sex marriage can't be justified on the basis of liberal neutrality or
0181 nondiscrimination or autonomy rights alone.
0182 Because the question at stake in the public debate is whether same sex
0183 unions have moral worth, whether they're worthy of honor and

0184 recognition, and whether they fit the purpose of the social
0185 institution of marriage.

0186 So Kinsley says, you want to be neutral then "let churches and other
0187 religious institutions offer marriage ceremonies.

0188 Let department stores and casinos get into the act if they want
0189 to." This is Kinsley.

0190 "Let couples celebrate their union in any way they choose and consider
0191 themselves married whenever they want.

0192 And if three people want to get married, or if one person wants to
0193 marry himself or herself, and someone else wants to conduct a ceremony for
0194 them and declare them married, let them.

0195 If you and your government aren't implicated, what do you
0196 care?" This is Kinsley.

0197 But this is not the position that the Supreme Judicial Court of
0198 Massachusetts wanted.

0199 They didn't call for the abolition or for the dis-establishment of marriage.

0200 The court did not question government's role in conferring social
0201 recognition on some intimate associations rather than others.

0202 To the contrary, the court waxes eloquent about marriage as quote, "one
0203 of our community's most rewarding and cherished institutions." And then it
0204 goes on to expand the definition of marriage to include
0205 partners of the same sex.

0206 And in doing so, it acknowledges that marriage is more than a matter of
0207 tolerating choices that individuals make.

0208 It's also a matter of social recognition and honor.

0209 As Justice Marshall wrote, "in a real sense there are three partners to
0210 every civil marriage: two willing spouses and an approving State.

0211 Marriages is at once a deeply personal commitment, but also a highly public
0212 celebration of the ideals of mutuality, companionship, intimacy,
0213 fidelity, and family." This is the court.

0214 Now, this is reaching well beyond liberal neutrality.

0215 This is celebrating and affirming marriage as an honorific, as a form of
0216 public recognition.

0217 And therefore, the court found that it couldn't avoid the debate about the
0218 telos of marriage.

0219 Justice Marshall's opinion considers and rejects the notion that the
0220 primary purpose of marriage is procreation.

0221 She points out that there's no requirement that applicants for a
0222 marriage license who are heterosexuals attest to their ability or their
0223 intention to conceive children.
0224 Fertility is not a condition of marriage.
0225 People who cannot stir from their death bed may marry.
0226 So she advances all kinds of arguments, along the lines that we
0227 began last time, about what the proper and the essential nature, the telos of
0228 marriage is.
0229 And she concludes, "not procreation, but the exclusive and permanent
0230 commitment of the partners to one another is the essential point and
0231 purpose of marriage."
0232 Now, nothing I've said about this court opinion is an argument for or
0233 against same sex marriage.
0234 But it is an argument against the claim that you can favor or oppose
0235 same sex marriage while remaining neutral on the underlying moral and
0236 religious questions.
0237 So all of this is to suggest that, at least in some of the hotly contested
0238 debates about justice and rights that we have in our society, the attempt to
0239 be neutral, the attempt to say, it's just a matter of consent and choice
0240 and autonomy, we take no stand, that doesn't succeed.
0241 Even the court, which wants to be neutral on these moral and religious
0242 disputes, finds that it can't.
0243 What, then, about our second question?
0244 If reasoning about the good is unavoidable in debates about justice
0245 and rights, is it possible?
0246 If reasoning about the good means that you must have a single principle, or
0247 rule, or maxim, or criterion for the good life that you simply plug in
0248 every time you have a disagreement about morality, then the answer is no.
0249 But having a single principle or rule is not the only way, not the best way
0250 of reasoning either about the good life, or about justice.
0251 Think back.
0252 Think back to the arguments that we've been having here about justice, and
0253 about rights, and sometimes about the good life.
0254 How have those arguments proceeded?
0255 They've proceeded very much in the way that Aristotle suggests, moving back
0256 and forth between our judgments about particulars--
0257 particular cases, events, stories, questions--

0258 back and forth between our judgments about particular cases, and more
0259 general principles that make sense of our reasons for the positions we take
0260 on the particular cases.

0261 This dialectical way of doing moral reasoning goes back to the ancients,
0262 to Plato and Aristotle.

0263 But it doesn't stop with them, because there is a version of Socratic, or
0264 dialectical, moral reasoning that is defended with great clarity and force
0265 by John Rawls, in giving an account of his method of
0266 justifying a theory of justice.

0267 You remember, it's not only the veil of interest in the principles that
0268 Rawls argues for.

0269 It's also a method of moral reasoning, reasoning about justice, that he calls
0270 reflective equilibrium.

0271 What is the method of reflective equilibrium?

0272 It's moving back and forth between our considered judgments about particular
0273 cases, and the general principles we would articulate to make sense of
0274 those judgments.

0275 And not just stopping there, because we might be wrong in our initial
0276 intuitions.

0277 Not stopping there, but then sometimes revising our particular judgments in
0278 the light of the principles once we work them out.

0279 So sometimes we revise the principles, sometimes we revise our judgments and
0280 intuitions in the particular cases.

0281 The general point is this, and here I quote Rawls, "a conception of justice
0282 can't be deduced from self-evident premises.

0283 It's justification is a matter of the mutual support of many considerations,
0284 of everything fitting together into one coherent view." And later, in A
0285 Theory of Justice, he writes, "moral philosophy is Socratic.

0286 We may want to change our present consider judgments once their
0287 regulative principles are brought to light."

0288 Well, if Rawls accepts that idea, and advances that notion of reflective
0289 equilibrium, the question we're left with is--

0290 he applies that to questions of justice, not to questions of morality
0291 and the good life.

0292 And that's why he remains committed to the priority of the
0293 right over the good.

0294 He thinks the method of reflective equilibrium can generate shared

0295 judgments about justice in the right.

0296 But he doesn't think they can generate shared judgments about the good life,
0297 about what he calls comprehensive moral and religious questions.

0298 And the reason he thinks that, is that he says that in modern societies there
0299 is a fact of reasonable pluralism about the good.

0300 Even conscientious people who reason well, will find that they disagree
0301 about questions of the good life, about morality and religion.

0302 And Rawls is likely right about that.

0303 He's not talking about the fact of disagreement in pluralist societies.

0304 He's also suggesting that there may be persisting disagreements about the
0305 good life and about moral and religious questions.

0306 But if that's true, then is he warranted in his further claim that
0307 the same can't be said about justice?

0308 Isn't it also true, not only that we, as a matter of fact, disagree about
0309 justice in pluralist societies, but that at least some of those
0310 disagreements are reasonable disagreements in the same way.

0311 Some people favor a libertarian theory of justice, others a more egalitarian
0312 theory of justice, and they argue.

0313 And there is pluralism in our society, as between free market, laissez-faire,
0314 libertarian theories of justice, and more egalitarian ones.

0315 Is there any difference in principle, between the kind of moral reasoning,
0316 and the kind of disagreements that arises when we debate about justice,
0317 and the meaning of free speech, and the nature of religious liberty?

0318 Look at the debates we have over appointees to the Supreme Court.

0319 These are all disagreements about justice and rights.

0320 Is there any difference between the fact of reasonable pluralism in the
0321 case of justice and rights, and in the case of morality and religion?

0322 In principle, I don't think that there is.

0323 In both cases, what we do when we disagree is we engage with our
0324 interlocutor, as we've been doing here for an entire semester.

0325 We consider the arguments that are provoked by particular cases.

0326 We try to develop the reasons that lead us to go one
0327 way rather than another.

0328 And then we listen to the reasons of other people.

0329 And sometimes we're persuaded to revise our view.

0330 Other times we're challenged, at least, to shore up and
0331 strengthen our view.

0332 But this is how moral argument proceeds, with justice, and so it
0333 seems to me, also with questions of the good life.
0334 Now, there remains a further worry, and it's a liberal worry.
0335 What about--
0336 if we're going to think of our disagreements about morality and
0337 religion, as bound up with our disagreements about justice, how are
0338 we ever going to find our way to a society that accords respect to fellow
0339 citizens with whom we disagree?
0340 It depends, I think, on which conception of respect one accepts.
0341 On the liberal conception, to respect our fellow citizen's moral and
0342 religious convictions is, so to speak, to ignore them
0343 for political purposes--
0344 To rise above, or abstract from, or to set aside those moral and religious
0345 convictions, to leave them disturbed, to carry out our political debate
0346 without reference to them.
0347 But that isn't the only way, or perhaps even the most plausible way,
0348 of understanding the mutual respect on which democratic life depends.
0349 There is a different conception of respect, according to which we respect
0350 our fellow citizen's moral and religious convictions not by ignoring,
0351 but by engaging them, by attending to them, sometimes by challenging and
0352 contesting them, sometimes by listening and learning from them.
0353 Now, there's no guarantee that a politics of moral and religious
0354 tension and engagement will lead, in any given case, to agreement.
0355 There's no guarantee it will lead even to appreciation for the moral and
0356 religious convictions of others.
0357 It's always possible, after all, that learning more about a religious or a
0358 moral doctrine will lead us to like it less.
0359 But the respect of deliberation and engagement, seems to me a more
0360 adequate, more suitable ideal for a pluralist society.
0361 And to the extent that our moral and religious disagreements reflect some
0362 ultimate plurality of human goods, the politics of moral engagement will
0363 better enable us, so it seems to me, to appreciate the distinctive goods
0364 our different lives express.
0365 When we first came together, some 13 weeks ago, I spoke of the exhilaration
0366 of political philosophy, and also of its dangers.
0367 But how philosophy works, and has always worked, by estranging us from
0368 the familiar, by unsettling our settled assumptions.

0369 And I tried to warn you that once the familiar turns strange, once we begin
0370 to reflect on our circumstance, it's never quite the same again.

0371 I hope you have, by now, experienced at least a little of this unease,
0372 because this is the tension that animates critical reflection, and
0373 political improvement, and maybe even the moral life as well.

0374 And so our argument comes to an end in a sense, but in another sense goes on.
0375 Why, we asked at the outset, why do these arguments keep going, even if
0376 they raise questions that are impossible ever finally to resolve?

0377 The reason is that we live some answer to these questions all the time.
0378 In our public life and in our personal lives, philosophy is inescapable, even
0379 if it sometimes seems impossible.

0380 We began with the thought of Comte, that skepticism is a resting place for
0381 human reason, where it can reflect upon its dogmatic wanderings, but it
0382 is no dwelling place for permanent settlement.

0383 To allow ourselves simply to acquiesce in skepticism or in complacency, Comte
0384 wrote, can never suffice to overcome the restlessness of reason.

0385 The aim of this course has been to awaken the restlessness of reason, and
0386 to see where it might lead.

0387 And if we have done at least that, and if the restlessness continues to
0388 afflict you in the days and years to come, then we together have achieved
0389 no small thing.

0390 Thank you.

0391 [CLAPPING]
