Should it be legal or illegal? If people are smart and caring, something should always be legal, this is because they will figure it out themselves what a particular circumustance.

There is some action, should this action be legal or illegal? Suppose we think there is some circumstance where this action promotes the good/happiness/utility, then maybe we want it to be legal in those circumstances. But what if we don’t trust that people will recognize those circumstances? In that case, we have to find a regulator who WILL recognize those circumstances and approve the action in those cases.

What if person A thinks that there is a circumstance where the action is good, while person B does not think there is such a circumstance? How do we decide?

There are various ways to solve this disagreement. Democrats would say that if the majority thinks it is good then it should be legal, Plato and Aristotle would say that their kings should know if it fosters the greater good or not. My favorite solution is the Talebian solution, if A is the party that wants to take the action, we need only ask, does A suffer more than B?

Something should be illegal if we have confidence that there is NO circumstance where it is justified/good/utility maximizing etc whatever your ethical precept it. Or at least if we think agents are too stupid to identify that circumstance but that would be a regulation argument

Well, that's a good question! Person A agrees there is a circumstance where it is good, person B disagrees, what is to be done? I would say it depends on skin in the game: what happens if A is wrong? Does B suffer more or less than A?

Not defending, I am attacking the proposition that a contractual agreement should be illegal a priori. I think I could defend the notion that contractual agreements should only be subject to becoming illegal if evidence comes in OR if there is a skin in the game issue /1

Is skin in the game a priori or empirical? I am not sure. I think it depends. Polygamy for example, maybe it creates a war culture, it seems empirical. But most of them seem to be a priori.