

JUSTICE

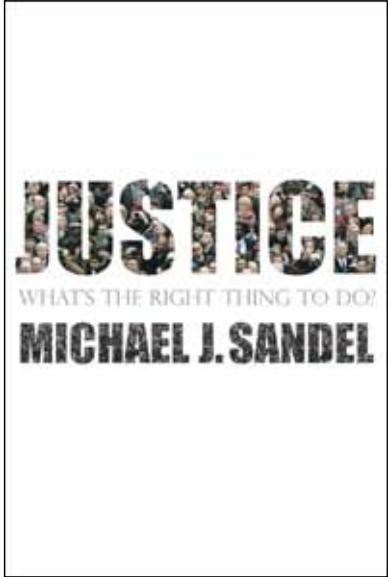
What’s the Right Thing to Do?

by Michael J. Sandel



“An intoxicating invitation to take apart and examine how we arrive at our notions of right and wrong.”

—Karen Long, *The Plain Dealer* (Cleveland)



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INTRODUCTION

ABOUT THIS GUIDE

The topics and questions that follow are designed to enhance your reading of *Justice*. The first part of this guide contains questions for those who are just starting to think in terms of what the right thing to do is. The second part of this guide contains questions that are more advanced.

What are our obligations to others as people in a free society? Should government tax the rich to help the poor? Is the free market fair? Is it sometimes wrong to tell the truth? Is killing sometimes morally required? Is it possible, or desirable, to legislate morality? Do individual rights and the common good conflict?

These questions are at the core of our public life today—and at the heart of *Justice*, in which Michael J. Sandel shows how a surer grasp of philosophy can help us to make sense of politics, morality, and our own convictions as well.

Sandel’s legendary “Justice” course is one of the most popular and influential

at Harvard. Up to a thousand students pack the campus theater to hear Sandel relate the big questions of political philosophy to the most vexing issues of the day.

Justice offers readers the same exhilarating journey that captivates Harvard students—the challenge of thinking our way through the hard moral challenges we confront as citizens. It is a searching, lyrical exploration of the meaning of justice, a book that invites readers of all political persuasions to consider familiar controversies in fresh and illuminating ways. Affirmative action, same-sex marriage, physician-assisted suicide, abortion, national service, the moral limits of markets, patriotism and dissent—Sandel shows how even the most hotly contested issues can be illuminated by reasoned moral argument.

Justice is lively, thought-provoking, and wise—an essential new addition to the small shelf of books that speak convincingly to the big questions of our civic life.

Let's start with utilitarianism. According to the principle of utility, we should always do whatever will produce the greatest amount of happiness and whatever is necessary to prevent the greatest amount of unhappiness. But is that right? Should you always try to maximize happiness? Should you always do whatever is necessary to minimize unhappiness?

1. There are times when the only way to prevent harm to a large number of people is to harm a smaller number of people. Is it always permissible to harm a smaller number in order to prevent harm to a large number?
2. Suppose you are driving through a narrow tunnel and a worker falls onto the road in front of you. There is not enough time for you to stop. If you keep going straight, you will hit the worker and kill him, but if you swerve left into oncoming traffic, you will collide with a school bus and kill at least five children. What's the right thing to do? Does utilitarianism have the right answer?
3. Suppose ten thousand innocent civilians live next to a munitions factory in a country at war. If you bomb the factory, all of them will die. If you don't bomb the factory, it will be used to produce bombs that will be dropped on fifty thousand innocent civilians in another country. What's the right thing to do?

4. Suppose a man has planted a bomb in New York City, and it will explode in twenty-four hours unless the police are able to find it. Should it be legal for the police to use torture to extract information from the suspected bomber? Should it be legal to torture his innocent friends and family if that is the only way to make the man reveal where the bomb is hidden?

5. Now suppose the man who has planted the bomb will reveal the location only under the threat that an innocent member of his family will be tortured. Should it be legal for the police to torture innocent people if that is truly the only way to discover the location of a large bomb?

Let's continue the discussion of utilitarianism. According to Jeremy Bentham's principle of utility, we should always do whatever will produce the greatest amount of happiness. Is that right? Consider the following questions, and ask yourself whether they point to a defect in the doctrine of utilitarianism.

6. Suppose we have to choose between building a new sports stadium and building a new hospital. Should we build the stadium if there are many more sports fans than sick people? What about the sick people? Aren't we sacrificing their interests?

7. Suppose we have \$1 million of government money. We can use it to either build a new school for one thousand children or buy one million ice cream cones for one million children. Should we buy the ice cream cones if that would produce the greatest balance of pleasure? Are all pleasures created equal?

8. What if the majority of the members of a community derive pleasure from being racist? Should we let them be racist if that would produce the greatest balance of pleasure? Are some pleasures objectionable?

9. Suppose you have to move to Boston or to Las Vegas. If you move to Boston, you'll fall in love and get married. If you move to Vegas, you'll get rich but stay single. Should you move to Vegas if being rich gives you more pleasure? Are all pleasures commensurable?

10. John Stuart Mill, a utilitarian, says that we should protect individual rights because, in the long run, that is the best way to increase the sum of happiness. Is that true? Is that really why you shouldn't imprison and torture innocent people?

Utilitarians think that the right thing to do is whatever produces the greatest amount of happiness. Libertarians disagree. They think that we must never violate anyone's rights—even if doing so would increase overall happiness.

According to libertarians, the greatest threat to individual rights comes from the government. You should be able to drive without a seat belt if you want. The government has no business giving you a ticket. That's unacceptably paternalist. And if you want to use drugs or engage in deviant sexual practices, you should be free to do so, provided you don't violate anyone else's rights in the process. The government has no business passing moralistic legislation. It shouldn't tell you how to live your life. Most important, the government should never tax for redistributive purposes. Redistributive taxation is theft. Taking your earnings and giving it to other people is like forcing you to work for those people. Libertarians say it's almost like slavery.

Libertarians make strong claims. But are they right about rights?

11. Is it unjust for the government to require people to wear seat belts and to prohibit them from engaging in other self-endangering activities? What if we know that many more people will die without such legislation? Should people be free to hurt or kill themselves, provided their actions do not violate anyone's else rights?

12. Should the government legalize narcotics? After all, some adults want to use drugs privately.

13. Should the government legalize prostitution? After all, some adults want to buy and sell sex.

14. Should there be a minimum wage? What if employers want to pay people \$1.25 per hour and some desperately poor people would work for that wage? Is the government being unjust by requiring employers to pay them at least \$7.25 per hour?

15. Should the government impose occupational safety standards? What if employers refuse to spend money on safety measures and some desperately poor people would agree to work in dangerous conditions? Should the government prohibit certain contracts that some workers and employers would be willing to make, and insist on safe working conditions?

16. Is it just to tax the rich to pay for public services? Should the government tax Bill Gates and other wealthy people and use the money to pay for public schools, hospitals, roads, parks, fire departments, and police departments, or would doing so be unjust?

17. Is it just to tax the rich to give to the poor? Should the government tax Bill Gates and other wealthy people and use the money to supplement the income of unemployed people, single mothers with low incomes, or other poor people? Should the government tax rich people and loan the money, interest-free, to poor kids so that they can go to college? Would all of that be unjust? Why or why not?

Freedom, equality, property rights, and government by consent—each of these ideas figures prominently in contemporary political thought. And each idea was central to the political thought of John Locke.

Locke thought that people have certain unalienable rights, which can never be taken away. He thought that people were by nature free and equal, that private property was the extension of a man's labor, and that government must be limited and founded on consent. Did Locke get it right? Did he come to the right answer for the right reasons?

18. Locke thought that people had come to have rights to private property even before the institution of government. Is this possible? What is a right to private property anyway? Isn't property a legal convention?

19. According to Locke, an unowned thing becomes your property if you "mix your labor" with it. Is that right? If you pick some flowers in an open field, do you have a claim to them? What if you build a fence around the open ocean? Does the ocean become your property? If not, what is the connection between property and labor?

20. Is labor necessary for someone to have a claim to private property? What if a disabled person needs a wheelchair but can't buy or build one herself? Does she have a right to the wheelchair anyway? If so, what is the basis of this right? If not, what should happen to her?

21. Money allows people to accumulate great wealth and thereby creates inequality. Is Locke right to think that people "consent" to the use of money when they accept it as payment?

22. Locke thinks that, to be legitimate, government must be by consent. But what counts as consent? Must every single person agree to be governed? What if some people hold out unreasonably?

23. Locke also suggests that a government is legitimate if everyone could agree to it without making his own condition worse. Is that right? Is a government legitimate

if everyone could agree to it? What if you never in fact agreed to it, but just happened to find yourself living there? Does merely living somewhere count as (tacit) consent? What if you have nowhere else to go?

24. For Locke, to be legitimate, government must protect your rights. Is that enough? What if you never get to have a say in what government does?

25. According to Locke, your natural right to life is “unalienable”: you must never give it up, and therefore you must never commit suicide. Is he right? Is it morally wrong to commit suicide, even if one is terminally ill and in endless pain?

26. According to Locke, we are born with an “unalienable right” to life, which no government may take away arbitrarily. However, for Locke, the existence of this right does not mean that the death penalty is always impermissible. Is Locke correct to think that the unalienable right to life is compatible with some types of capital punishment?

27. According to Locke, we are born with an “unalienable right” to liberty, which no government may take away arbitrarily. However, for Locke, the existence of this right does not mean that military conscription is always impermissible. Is Locke correct to think that the unalienable right to liberty is compatible with some kinds of conscription?

28. You are free by nature, thinks Locke, but there is a difference between freedom and “license.” Is Locke right to argue that it is possible to abuse a freedom that one has a right to?

29. Locke thinks that government should be guided by majority rule. He also thinks that government exists to protect the unalienable right to property. Are these ideas in conflict? What if a poor majority wants to tax a rich minority?

These days, it seems that cash is king. But are there things that money shouldn't be able to buy? Are there things that should not be treated as market goods or services? Consider the following cases.

30. In the American Civil War, men who were drafted for the army had the option of hiring a substitute to take their place, or paying a commutation fee to avoid military service. Are these practices tantamount to selling off one's duty as a citizen, or are they perfectly acceptable market transactions? Does it make a difference whether the transaction takes place during a war or in peacetime?

31. A commercial surrogacy contract is an agreement to carry to term someone else's baby in one's own body in exchange for money. Should people be allowed to act as surrogate mothers? Should prospective parents be allowed to pay for their services? Should surrogacy contracts be enforced by the courts, even if the surrogate mother changes her mind later and wants to keep the baby?

32. What do you think about the morality of prostitution? Is it morally wrong to sell (or rent) the use of one's sexual organs? Is it morally wrong to buy sex? Should it be legal to buy or sell sex?

33. There are websites on the Internet that advertise grooms and brides. Is it morally wrong to buy a marriage partner from them, assuming that the transaction is voluntary and the bride or groom agrees to marry you? Should such transactions be illegal?

34. Many people want to adopt a child, but there is always a shortage of infants. Should prospective parents be allowed to give money to young, single mothers who are considering giving up their children for adoption? Should the children who are now waiting to be adopted go to the highest bidder?

35. Many people need organ transplants, but there is always a shortage of organs from deceased donors. Should the organs that are available go to the highest bidder? If not, how should they be assigned?

36. In many developing countries, it is possible to buy a kidney for a few thousand dollars. The seller is often very poor and needs the money to support himself or his family. Is it morally permissible to buy his kidney? Should the sale of organs from living adults be illegal?

According to utilitarians, the right thing to do is always to maximize happiness. Libertarians think that the right thing to do is most often to let people do whatever they want. John Locke's theory says that there are unalienable rights afforded to every human being by the "law of nature."

The philosopher Immanuel Kant thought that each of these views was mistaken. Against the utilitarians, Kant held that freedom—and not happiness—is the goal of morality; against the libertarians, Kant denied that freedom consists in doing whatever one wants; and against Locke, he held that morality, duty, and rights have their basis in human reason, not in a law of nature.

Who got it right?

37. According to Kant, morality is doing the right thing just because you know it's the right thing. Is that true? Kant imagines a shopkeeper who does not overcharge his customers only because he fears that word of his dishonesty will spread and he'll lose money. Kant thinks there's nothing morally worthy about his action; his honesty is mere prudence, mere selfishness. Do you agree?

38. Kant imagines a second person, one who is naturally sweet and kind and loving. She always does the right thing—but only because being good brings her pleasure. Kant thinks that her actions are not really moral because, like the actions of the prudent shopkeeper, they aim at personal pleasure. Sure, it's a good thing that she wants to help people, but Kant thinks there is no deep reason to admire her. Do you agree?

39. Kant also thinks the naturally kind person is not really moral because she acts out of habit. According to Kant, habits can be useful but not moral. Is that right? Is your childhood education really just a kind of conditioning and not really moral? What is moral character, anyway? Is it what you tend to do, or is it your attitude?

40. Suppose that Charlie is always up to mischief, but Frank is always there to stop it. As a result, Charlie tends to do the right thing. But he always wants to do the wrong thing. Is Charlie moral?

41. Kant thinks that morality is a kind of law; everyone has to obey it. Therefore, he thinks it must be the case that everyone could obey it. This is his test for morality. According to Kant, your action is moral only if it's done from a motive that everyone else could act on at the same time that you're acting on it.

But is that right? On the one hand, the test shows that you shouldn't lie to people to get what you want. If everyone lied to get what they want, and then you were to try, nobody would believe you. On the other hand, what if you want to visit a nature preserve? If everyone were to visit at the same time, they would destroy it. But you know they won't visit, so isn't it all right for you to go? Is there something problematic about an action that can never be open to everyone? Does Kant have a point?

42. Is Kant right that you must always have humanity or human reason as your end? Is there something immoral about a person—like a couch potato—who seeks only pleasure at the expense of developing his mind?

43. Kant thinks that every rational human being has dignity, and that everyone's worth is infinite. Is that true? Do murderers have dignity? (Kant thinks they do, because they have the capacity to choose to do the right thing.)

44. If all people have dignity and infinite worth, then how do we make choices about life and death? Suppose we have to choose between repairing a road in Boston and vaccinating children in Toledo. If we repair the road, ten fewer children will die in car accidents in Boston. If we vaccinate, twenty children will be saved in Toledo. If everyone has infinite worth, how do we choose? What would a utilitarian say?

45. According to Kant, the goal of morality is freedom. But for Kant, freedom is not just doing whatever you want. It's living by your own reason. Brainwashing, advertising, cravings, and desires—all of these make you unfree.

Is Kant right about freedom? Isn't freedom just the ability to do what you want, when you want? What difference does it make that some of your desires are implanted in you through advertising?

Or does Kant have a point? Is it possible to be unfree even if no one holds you back? Is it possible to be a slave to your impulses, cravings, or desires? Isn't it liberating to learn how to control your impulses and desires?

What is justice? According to John Rawls, principles of justice are whatever principles would be agreed to behind a “veil of ignorance,” where no one knows his or her age, sex, race, intelligence, strength, social position, family wealth, religion, or even life goals. If we were unaware of these particular facts about ourselves, we would not propose social rules designed to give ourselves an unfair advantage over other people. Therefore, according to Rawls, the principles we would agree to behind a veil of ignorance would be fair and just.

Was Rawls right?

46. If an agreement is entered into voluntarily, is it necessarily fair?

47. Suppose you have a leaky toilet and a plumber tells you it will cost two thousand dollars to repair. You agree to this price, not knowing that the usual price for the same type of repair is two hundred dollars. Is the contract between you and the plumber voluntary? Is the contract fair?

48. Suppose a man comes to your door and asks you to buy a newspaper subscription at a discounted price. You do not particularly enjoy the newspaper he's selling, but you have heard from your neighbors that the man will make a habit of stealing your mail out of spite if you refuse to buy a subscription. Reluctantly, you agree to buy a subscription at a discounted price. Is the contract voluntary? Is it fair?

49. According to Rawls, principles of justice are whatever principles we would all agree upon to govern our society if we were ignorant of our personal qualities and therefore unable to take advantage of one another. Is this the right way to think about principles of justice? Should we abstract from our personal qualities, strengths, and aspirations in choosing principles of justice to govern our society?

50. Do you agree that a white man should not be able to propose a rule that benefits white men—or that an aristocrat should not propose a rule that benefits aristocrats?

51. Do you think you should be able to make reference to your religious beliefs or your life goals when proposing rules for society? Is it possible to make such important decisions without knowing who you are and what goals and beliefs you have?

52. “A just person is blind to the differences between people, and treats everyone equally.” Do you agree? Why or why not?

53. “A just law is blind to the differences between people, and treats everyone equally.” Do you agree? Why or why not?

According to the philosopher John Rawls, principles of justice are the outcome of a special kind of hypothetical agreement. They are the principles we would agree to if we were choosing rules for our society behind a “veil of ignorance,” where no one knows his or her age, sex, race, intelligence, strength, social position, family wealth, religion, or even life goals. Behind this veil of ignorance, it is impossible for anyone to propose social rules designed to benefit himself or herself more than other people. Therefore, Rawls argues, the principles we would agree to behind the veil of ignorance would be fair and just.

Rawls thinks that two principles would be agreed to behind the veil of ignorance, and these are his principles of justice. Let’s see if you agree with them.

54. Rawls’s first principle says that everyone should have the same set of basic liberties, including the freedoms of speech and conscience, the right to hold office and to vote for elected officials, freedom from arbitrary arrest, the right to hold personal property, and so on. Do you agree?

55. Rawls’s first principle says that everyone should have an equal chance to run for public office. By law, however, U.S. citizens who were born outside the United States are not eligible to run for president. Is this law inconsistent with Rawls’s first principle? Do you consider this law unjust?

56. Rawls's first principle says that everyone should have an equal chance to influence legislation and political affairs. However, today wealthy individuals and corporations exercise much more influence on the government and the laws than the average citizen might. Is this unjust?

57. Before the U.S. Civil Rights Movement, only white people were legally permitted to compete for the best jobs in many places in the United States. African Americans were often denied the same opportunities as whites, even if they were equally talented. Why, according to Rawls's theory of justice, was this unjust?

58. Often poor children who are very talented have unequal opportunities because their parents lack the money to send them to good schools, to pay for private lessons, and so on. Compared to equally talented children of rich parents, poor kids have fewer opportunities to develop their talents. Why, according to Rawls's theory of justice, is this unjust?

59. Why, according to Rawls, should talented and hard-working poor children have the same chances of success as rich children? Do you agree with him? Suppose that providing equal educational opportunity for all children would require substantial taxes on the rich. After all, it would cost a lot of money to provide schools of the same quality to everyone. Do you believe that such taxes are required as a matter of justice?

60. Rawls's second principle says that people who are equally talented and equally motivated should have equal chances of success. This principle would likely require steep inheritance taxes. After all, children who inherit lots of money have a huge advantage in the competition for jobs, money, and success. Do you think that children should be able to inherit great wealth from their parents? Should they be allowed to get very expensive private math lessons, or singing lessons, or basketball lessons? What if such lessons give them a huge, unearned advantage in the race for jobs, careers, and wealth? Is it just for poor children to have much lower prospects as a result?

61. Rawls's second principle also holds that social and economic inequality can be justified only if it works to the advantage of the least advantaged members of society. Not even superior effort makes a person deserving of special rewards. After all, argues Rawls, your ability to make a good effort is partly dependent on how good your childhood was, whether your parents loved you and provided encouragement, or whether you were neglected and abandoned. These are all factors over which you

had no control. Therefore, if you are now able to make a good effort, you can't really claim credit for it.

Do you agree? Is it true that you can't really claim credit for your upbringing? Surely, your habits and temperament today are partly the result of your upbringing. Does this mean that you don't really deserve what you get from making an effort?

62. Think of some of the advantages you have in your life. Do you deserve them more than other people who lack them? Why?

63. Do you think it's unjust if some people do not get to vote in elections merely because they are a woman or a member of a racial or ethnic minority?

64. Do you think it's unjust if some people get paid less money for the same job merely because they are a woman or a member of a racial or ethnic minority?

65. If you answered "yes" to the last two questions, do you think it's also unjust if some people are much worse off than others merely because they were born with fewer talents or with a debilitating disease and the need for expensive medicines? Why should people be worse off merely because of the circumstances into which they were born?

In 1974, Allan Bakke, a white male, applied to medical school at the University of California, Davis. He was rejected, even though his grades and test scores were higher than some of the minority candidates who were admitted that year.

Bakke sued the medical school. The U.S. Supreme Court decided that he should be let in. Schools can consider race as one factor among others in deciding which candidates to admit, but they cannot use race as a quota by reserving some seats for minority candidates only.

Was the decision of the U.S. Supreme Court just? Consider the following questions as you think about the morality of affirmative action.

66. Do you think Bakke was treated unfairly? Does he have a right to be considered solely on the basis of his academic and personal merit?

67. Bakke couldn't help that he was born a member of the white majority. This is a factor over which he had no control, so why should he be rejected from medical school just because he's white?

68. Bakke did nothing to be born with the capacity for high achievement. His natural talents are a factor over which he had no control, so why is he entitled to be judged only on his personal and academic merit?

69. Often, naturally gifted athletes go to college on scholarship. However, their natural talents are a factor over which they had no control. Is it just that scholarships should go to gifted athletes but not to other people?

70. What is merit? Often, minority groups receive better care from minority doctors and better representation from minority lawyers. Does the ability to serve the needs of minority communities constitute a form of merit? Shouldn't schools train doctors and lawyers who will provide the best care and the best representation?

71. Barbara Grutter, a white woman, applied to law school at the University of Michigan. She was rejected, even though her grades were higher than some of the minority candidates who were admitted. This time, the U.S. Supreme Court decided that the University of Michigan had acted lawfully, because racial diversity at law school was an important goal. Do you agree? Was the decision just or unjust?

72. In the United States, African Americans have historically been disadvantaged because of slavery and racial segregation. Is affirmative action in college admissions an acceptable form of compensation for historical disadvantage?

One of the most important philosophers ever to write about justice lived at the heyday of philosophy, some 2,400 years ago. His name was Aristotle, and he thought that justice was giving each person his due, or what he deserved. But how do we know what people deserve? What goods and opportunities should go to which persons? Aristotle's answer is that we have to consider the telos—the end or the purpose—of the good in question. Let's see if you think he was right.

73. Say we have some nice flutes. Who should get them? According to Aristotle, it's not the rich person, since playing flutes has nothing to do with money, nor is it the person who will be made most happy, since making good music is different than being happy. The purpose of a flute is to be played and to be played well. Therefore, Aristotle thinks, the flutes should go to the best flute players. Do you agree? How else should we assign the flutes?

74. Suppose there are some very good public tennis courts in your town. Who should get priority to use the courts? Should priority be given to the tennis players who are

willing to pay the most? Should court time be assigned on a first-come, first-served basis? Should priority be given to the worst tennis players, who most need the practice? Should it be given to the best tennis players, who will play the best tennis? Which of these arrangements would be fair or just? What is the purpose of tennis, and does it help you to answer this question?

75. Who should be admitted to colleges and universities? Should admission decisions be made strictly on the basis of academic merit, or should colleges and universities admit students with a variety of academic and other backgrounds and strive for diversity? What would be fair? What is the purpose of higher education, and does it help you to answer this question?

76. For much of its history, the U.S. military did not permit women to serve in its ranks. Was this unjust? What is the purpose of the military, and does it help you to answer this question?

77. The restaurant chain Hooters hires only female waitresses who are willing to wear revealing clothing. However, many men want to work there as waiters, too. Is it unfair that Hooters hires only women? Consider the purpose of the restaurant. Is it merely to serve food, or is it to entertain men? Who should get to decide the purpose?

78. Aristotle thought that human beings were, by nature, meant to use their reason to deliberate about important moral questions and to share in the political life of the community. He also thought that government should promote this purpose by helping people to become better informed and more virtuous. Do you agree?

79. Think of a law designed to promote civic virtue. Does this law run the risk of unfairly imposing the majority's values on everyone? Can you think of a law that promotes civic virtue but escapes this objection?

80. "People should be free to choose for themselves what kind of life to live, even if they go on to make bad choices." Do you agree? Is there a tension between Aristotle's method of reasoning about justice and the modern emphasis on individual freedom, or can Aristotle's approach make adequate room for the value of individual freedom?

According to many modern liberals, there are only two types of moral obligations. First, there are universal duties that we owe to every human being, such as the duty

to avoid harming people unnecessarily. Second, there are voluntary obligations that we acquire by consent, such as when we agree to help someone or promise to be faithful to our partners and friends. According to many modern liberals, there are no other types of moral obligation.

Critics of liberalism disagree. They say there is a third type of moral obligation that is neither universal nor voluntary. We can be morally obligated to a particular community even though we haven't assumed the obligation voluntarily. Obligations of membership and loyalty can arise simply because of who we are—because we're someone's son or daughter, someone's friend, a member of a particular community, or a citizen of a particular country.

Who's right—modern liberals or their critics?

81. If you caught your brother cheating on an exam, should you turn him in for the sake of fairness? Or should you keep quiet out of loyalty? Are you under two competing obligations, or is your sense of loyalty a prejudice you should overcome?

82. Suppose your child and the child of a stranger are both drowning. Do you have a greater moral obligation to save your own child than to save the stranger's child? Why?

83. Say there is a shipwreck and the captain has to make a choice. He can either escape with his own son, or he can let his son drown but save several hundred of the ship's passengers. What should he do? If he chooses to save the passengers, his wife will never forgive him. Is she being unreasonable?

84. In the American Civil War, General Robert E. Lee led the Confederate Army even though he thought that slavery as a practice should come to an end. Lee said he could not bring himself to raise arms against his slave-holding countrymen in the South. Was Lee's attitude admirable, or was it mere prejudice?

85. Do Americans who live in El Paso, Texas, have greater moral obligations to people who live in Alaska than to people who live right across the river in Mexico? Why?

86. Is patriotism a virtue, or is it merely prejudice for one's own? Most people do not get to choose what country they live in, and no one chooses where they're born. Why are we obligated to the people of our own country more than to the people of any other?

Modern liberalism aspires to neutrality. In public debate, modern liberals often want to avoid discussing controversial questions about the morality of lifestyles, or the purpose of a human life, or the authority of the Bible, or the value of individuality. These and other questions are deemed to be too controversial. Instead, we should settle on what rights people have and what justice requires.

But is it possible to settle questions of justice without addressing other controversial questions about morality and the common good?

87. In 1977, the American Nazi Party tried to stage a demonstration in Skokie, Illinois, home to many Holocaust survivors. When the city refused permission, the Nazi party sued in court. Should the city of Skokie have been allowed to forbid public hate speech? Is it possible to answer this question without passing judgment on the value of the speech in question?

88. Some people believe that life begins at conception and, therefore, that abortion is murder. Other people argue that abortion should be legal because a woman should have the right to make medical decisions concerning her own body. What is your view? Should abortion be legal? Under what circumstances? Can we settle whether abortion should be legal without settling whether abortion is murder?

89. Some people believe that homosexuality is immoral and, therefore, that same-sex marriages should not be permitted. Other people argue that same-sex marriage should be permitted because everyone has the right to be treated equally. What is your view? Should same-sex marriage be legal? Is it possible to answer this question without making a judgment about the value of homosexual relationships?

90. Some people believe that the purpose of marriage is procreation and, therefore, that there should be no same-sex marriages. Other people believe that same-sex marriage should be permitted because the purpose of marriage is to honor and promote loving relationships between committed adults, regardless of their sex or their ability to procreate. Is it possible to defend a position on same-sex marriage without making a judgment about the purpose and value of marriage?

91. In 1858, Abraham Lincoln went head to head with Stephen Douglas in a series of debates about slavery. Douglas argued that the federal government should not take a stand on the controversial question of slavery. Instead, the federal government should bracket the question for the sake of civil peace and leave it up to the states and territories to decide. For his part, Lincoln thought that the moral question

raised by slavery could not be avoided. The federal government would be taking a stand, one way or the other.

Do you agree with Lincoln? Whenever there is a law that either permits or forbids a controversial practice, is the government thereby taking a stand on the morality of the practice? Does this mean that, in its law-making, the government should pay close attention to morality and the common good?

Let's open our study of justice by considering the philosophy of utilitarianism. A good way to continue the discussion is to consider the principle of utility and to ask whether it always gets the right answer.

HARMING THE INNOCENT

According to the principle of utility, we should always do whatever will produce the greatest amount of happiness and whatever is necessary to prevent the greatest amount of unhappiness. But what if the only way to produce happiness, and to prevent unhappiness, is to harm or even kill innocent people?

1. Suppose you are driving through a narrow tunnel and a worker falls onto the road in front of you. There is not enough time for you to stop. If you keep going straight, you will hit the worker and kill him, but if you swerve left into oncoming traffic, you will collide with a school bus and kill at least five children. What's the right thing to do? Does utilitarianism have the right answer?

2. Suppose ten thousand innocent civilians live next to a munitions factory in a country at war. If you bomb the factory, all of them will die. If you don't bomb the factory, it will be used to produce bombs that will be dropped on fifty thousand innocent civilians in another country. What's the right thing to do? Does utilitarianism have the right answer?

3. Suppose a man has planted a bomb in New York City, and it will explode in twenty-four hours unless the police are able to find it. Should it be legal for the police to use torture to extract information from the suspected bomber? Does utilitarianism have the right answer?

4. Now suppose the man who has planted the bomb will reveal the location only under the threat that an innocent member of his family will be tortured. Should it be

legal for the police to torture innocent people if that is truly the only way to discover the location of a large bomb? Does utilitarianism have the right answer?

TELLING THE TRUTH

The principle of utility tells us to do whatever is necessary to minimize pain and unhappiness, but pain and unhappiness have many sources. There are times when telling people the truth would make them very unhappy. Should you lie to a person whenever lying is the only way to spare his or her feelings and prevent unhappiness?

5. Suppose your friend likes to sing in the shower and thinks he is an excellent singer. In fact, however, he sounds truly awful. Should you tell him the truth, even if it will ruin his self-confidence? Does utilitarianism have the right answer?

6. Suppose a man has been missing for many years and you have just learned that he is dead. Should you tell the man's father, even if it will crush his hopes and send him into despair? Does utilitarianism have the right answer?

7. If you think it would be wrong to lie in one or both of these cases, do you think there is sometimes a moral duty to tell the truth despite the consequences? Does this duty mean that the principle of utility is mistaken?

LIVING YOUR LIFE

The principle of utility says that we should always maximize happiness. It does not matter whether we are deciding on the laws of our country as citizens and officials, or whether we are deciding what to do in our own private lives. In every possible case, the principle of utility tells us to choose the course of action that will produce the greatest amount of happiness. Is that right?

8. There are many needy people in the world who could benefit from your help. If you were to volunteer one evening per week, you could reduce need and thereby increase the sum of happiness. But if you were to volunteer all of your evenings, then you could produce even more happiness. Should you volunteer all of your spare time to help the needy? Would it be wrong not to do so?

9. There are many poor people in the world who lack the money to buy food, clothing, shelter, and medicine. If you were to donate one hundred dollars to a charity such as Oxfam, then some of these people would get what they desperately need and you would thereby increase happiness. But if you were to donate all your spare income each month, then even more people would get what they desperately need and

you would produce even more happiness. Should you donate all your spare income to charities such as Oxfam? Would it be wrong not to do so?

A good way to continue the discussion of utilitarianism is to describe its main features in detail and to evaluate each feature.

DESCRIBING UTILITARIANISM

According to the principle of utility, an action is right insofar as it tends to increase happiness and wrong insofar as it tends to decrease happiness. In other words, the principle tells us that the right thing to do is always whatever will produce the greatest amount of happiness and whatever is necessary to prevent the greatest amount of unhappiness.

But how are we supposed to figure out what to do in a particular, real-life situation? Suppose that we have to choose between building a new sports stadium and building a new hospital. According to Bentham, we should consider how much pleasure sports fans would get if we were to build a new stadium, and how much pain sick people would be relieved of if we were to build a new hospital. If building the stadium would produce a greater balance of pleasure, then we should build the stadium. This explanation reveals three important features of Benthamite utilitarianism:

a. For utilitarians like Bentham, happiness is simply pleasure and the absence of pain. People are happy insofar as they feel pleasure, unhappy insofar they feel pain; there is nothing else that goes into happiness. Abilities, achievements, friendship, love—all these are, at best, only means to being happy, and only insofar as they give rise to pleasure.

b. The second feature of Benthamite utilitarianism is that it counts all pleasures and pains, and it treats every type of pleasure and pain as equal. If the quantity is the same, the pleasure of mocking someone counts just as much as the pleasure of helping someone. The pleasure of having a successful career can, in principle, be outweighed by the pleasure of eating a great many ice cream cones. The same goes for pains. The pain that someone feels when they are insulted can, in principle, be outweighed by the pleasure that another person derives from the insult.

c. The third feature of Benthamite utilitarianism is that it permits sacrificing one person's interests for the sake of the majority. If the greater balance of pleasure would be produced by building a sports stadium rather than a hospital (because, say, there are few sick people but many sports fans), then the principle of utility tells us to build the stadium—even if a small number of sick people will suffer greatly as a result.

EVALUATING UTILITARIANISM

In your discussion, try to evaluate these three features.

10. Is it true that happiness is simply pleasure and the absence of pain, and that the goal of all human action should be pleasure? Or is utilitarianism too crude as a moral doctrine?

John Stuart Mill tried to defend utilitarianism against this charge by arguing that greater weight should be put on “higher” pleasures. But which pleasures are higher pleasures? Mill proposed that, of two pleasures, the pleasure preferred by a majority of people who had experienced both pleasures should be counted as the higher pleasure.

Is this a good way to distinguish higher from lower pleasures? Does the majority, even when it is well informed, always prefer the higher pleasure? Does Mill’s proposal succeed in making utilitarianism less crude? If not, is there another way to defend utilitarianism against this charge?

11. Are all goods commensurable? Can they all be weighed on a common scale, or is it possible that the value of some goods, such as love, cannot coherently be balanced against the value of other goods, like money? Is this a fatal problem for utilitarianism?

12. Do all pleasures deserve to be counted—even objectionable pleasures, like the pleasure that racists derive from being racist?

John Stuart Mill thought that the right laws, education, and public opinion would prevent people from having objectionable desires. Was he right to be so confident about this? Either way, does the fact that utilitarianism counts all pleasures make it admirably neutral or hopelessly defective?

13. Does utilitarianism threaten individual rights? What if the sum total of the pain caused by sacrificing the civil rights of a minority is less than the sum total of the pleasure derived as a result by the majority?

John Stuart Mill tried to rebut the objection that utilitarianism cannot account for individual rights. He argued that, far from being in tension with individual rights, the principle of utility was actually the justification for protecting rights. In other words, Mill believed that protecting individual rights is the best way to increase the sum of happiness in the long run.

Was Mill right? Either way, is this really the reason why we should not violate people’s basic rights?

Utilitarians think that the right thing to do is whatever produces the greatest amount of happiness. Libertarians disagree. They think that we must never violate anyone's rights—even if doing so would increase overall happiness.

According to libertarians, the greatest threat to individual rights comes from the government. Libertarians think that many kinds of laws violate people's rights. Whenever the government prohibits a self-endangering activity—like driving without a seat belt—it is being unacceptably paternalist. Whenever the government prohibits deviant but harmless behavior—like nonstandard sexual practices—it is being oppressive. Whenever the government taxes people for redistributive purposes, it is stealing from them and forcing them to work for the benefit of other people.

A good way to kick-start a discussion about libertarianism is to examine what libertarians say about redistributive taxation.

DISTRIBUTIVE PATTERNS AND LIBERTY

Robert Nozick, a libertarian philosopher, has three arguments against redistribution. The first argument observes that government tends to redistribute wealth according to a pattern. For example, it tends to tax rich people and spend money on poor people to create more equality in the distribution of income, wealth, and other resources. But, Nozick believes, it is not possible to maintain a pattern like equality without restricting people's liberty.

Suppose everyone in the United States had the same amount of money, and we all gave twenty-five cents to Michael Jordan in exchange for the pleasure of watching him play basketball. Then Jordan would have much more money than everybody else, and there would no longer be a pattern of equality. To restore the pattern, the government would have to take the money we gave to Jordan and give it back to each of us. And to maintain the pattern, it looks like the government would have to permanently forbid us from doing what we want with the money we have.

According to Nozick, this thought-experiment shows that all taxation for redistributive purposes is unjust. But is that right?

14. Must the government stop trying to make poor people less poor, sick people less sick, and so on, or is it possible to maintain a desirable pattern without restricting people's liberty to do what they want with what they own?

15. Even if it's not possible to maintain a desirable pattern without restricting liberty somewhat, is Robert Nozick right to think that people should have the liberty to do whatever they want with the things they own?

16. Is it permissible for the government to regulate market transactions with an eye on the effects they have on the participants and other people?

17. Is it permissible for the government to pass laws against price gouging in the wake of a natural disaster?

18. Is it permissible for the government to regulate employment contracts? Are minimum wage laws really unjust?

19. Is it permissible for the government to insist on health and safety standards in workplaces?

20. Is it permissible for the government to block companies from forming a monopoly?

REDISTRIBUTIVE TAXATION AND FORCED LABOR

Nozick objects to patterns like equality for a second reason. Maintaining a pattern requires taking a richer person's earnings and giving them to a poorer person. But, thinks Nozick, taking the earnings of two hours of labor from the rich person is like taking two hours from the rich person. It is like forcing the rich person to work for two hours for the benefit of the poor person. Therefore, says Nozick, redistributive taxation is like forced labor. Is Nozick right?

21. Is redistributive taxation really like forced labor? Forced labor is a kind of slavery. Are rich people who have to pay taxes like slaves? In what sense?

JUSTICE AND WHAT REALLY HAPPENED

Nozick's third argument against redistribution says that redistribution is incompatible with a "historical" view of justice. If something was originally acquired justly and later transferred justly, then Nozick thinks it is now owned justly—and neither the government nor anyone else should be allowed to take it away.

22. Is a "historical" view of justice incompatible with redistribution? Many things that are owned today—money, land, natural resources—were originally acquired by force and violence, through war and colonization. What should be done about that? Shouldn't there be some compensation and redistribution?

23. How can people initially come to acquire something justly? Is it simply a matter of finders keepers or first come, first served, or are there other conditions? Are these conditions compatible with redistribution in the future?

24. What about unjust historical transfers? Many things owned today were stolen from someone a long time ago. How should we deal with that?
25. More generally, what is required for transfers of justly owned things to be just?
26. Must people be well-informed buyers in order for transfers to be just? If so, then do we need consumer rights legislation? Do we need a consumer rights bureau empowered to investigate complaints?
27. Must people have reasonable alternatives in order for a transaction to be just? If so, then do we need welfare and minimum wage laws to make sure that people are not exploited when they're desperate?
28. If we need any of these background institutions to ensure the fairness of individual voluntary transfers, is it permissible to tax people in order to pay for them?

Freedom, equality, property rights, and government by consent—each of these ideas figures prominently in contemporary political thought. And each idea was central to the political thought of John Locke.

Perhaps the best way to begin a discussion of Locke is to consider his views on two important questions: (1) how can private property be justified? and (2) what makes a government legitimate?

THE JUSTIFICATION OF PRIVATE PROPERTY

According to Locke, God gave the world to mankind in common. Even so, Locke thinks that people can (and perhaps did) come to have natural rights to private property, even before the institution of government.

For Locke, a thing becomes a person's private property when he "mixes" his labor with it, provided that the following two conditions are respected. First, the person must not take so much that it will spoil, since God did not make anything to be spoiled. Second, the person must leave "enough and as good" for other people, since God made the earth and its fruits for the benefit of everyone.

In your discussion, try to evaluate Locke's account of legitimate appropriation.

29. Is mixing your labor with something unowned sufficient to make it your property? If you build a house with your own hands, do you have a reasonable claim to it as your property?
30. If you go to the forest and cut down a tree, are you now the legitimate owner?

31. What if you “mix your labor” with the Atlantic Ocean by building a fence around it, or by mixing a can of your homemade tomato juice with it? Does the ocean immediately become your property?

32. Is labor necessary for someone to have a claim to private property? What if a disabled person needs a wheelchair but can’t buy or build one herself? Does she have a right to the wheelchair anyway? If so, what is the basis of this right?

33. Is there more than one justification for property?

34. Locke thinks that legitimate appropriation must not lead to spoilage and must not make other people worse off. However, he thinks that both provisos are easily satisfied once people “consent” to the use of money. After all, money does not spoil, and an economy based on money creates more wealth than an economy based on barter.

Is Locke right to think that people “consent” to the institution of money when they take money as payment? Is Locke right to think that such consent makes even unlimited appropriation legitimate?

THE NATURE OF LEGITIMATE GOVERNMENT

The purpose of Locke’s *Second Treatise of Government* is to establish the nature of legitimate government. To that end, Locke imagines a “state of nature,” before the institution of government. In the state of nature, everyone is free and equal. Everyone is also bound by the “law of nature,” which commands (1) self-preservation and (2) preserving other people’s lives when this does not conflict with your own self-preservation.

The state of nature is full of “inconveniences,” according to Locke, because it lacks a judge to settle disputes about the law of nature and police officers to enforce the law of nature. To remedy the situation, people decide to leave the state of nature by agreeing to enter into “civil society.” But since they are trying to make their condition better, not worse, they agree only to a limited government that protects their natural rights to life, liberty, and property.

Notice that Locke’s story about the state of nature functions as an argument about legitimate government: a government is legitimate only if people in a state of nature could agree to it without violating the law of nature and without making their own condition worse. Absolute monarchy, for instance, is illegitimate because it gives the monarch more power than the people have a right to give and because it makes them worse off than they would be in a state of nature, with no government.

Critical to Locke’s argument is the idea of “unalienable rights.” Yes, people

are free by nature, but “liberty” is not “license.” After all, the law of nature commands people to preserve themselves. Therefore, they must never commit suicide, sell themselves into slavery, or consent to be ruled by an absolute monarch. Their rights to life, liberty, and property are unalienable: they cannot be given away.

35. Consider the idea of unalienable rights and the role they play in Locke’s argument. Why is it that we must not commit suicide or sell ourselves into slavery? God and the law of nature seem to play a big role in Locke’s answer. Is that a problem? Is there some other reason why we must not commit suicide, sell ourselves into slavery, or voluntarily give up other basic rights?

36. In general, what is the difference between liberty and license? Is it possible to abuse a freedom that one has a right to?

37. Locke thinks that, to be legitimate, government must be by consent. But what counts as consent? Must every single person agree to be governed? What if some people hold out unreasonably?

38. Is a government legitimate if everyone could agree to it? What if you never in fact agreed to it, but just happened to find yourself living there? Does merely living somewhere count as consent? If not, is it enough that the government protects your rights? What if you never get to have a say?

39. Locke says that government, once it is set up, should be guided by the principle of majority rule. However, he also says that the purpose of government is to protect people’s unalienable rights, including their right to property. What if these two goals conflict? What if a poor majority wants to tax a rich minority?

These days, it seems that cash is king. But are there things that money shouldn’t be able to buy? Are there things that should not be treated as market goods or services? Consider the following cases.

CIVIC DUTY

In the American Civil War, men who were drafted into the army had the option of hiring a substitute to take their place, or paying a commutation fee to avoid military service. What do you think of these options?

40. Are substitution and commutation tantamount to selling off one’s duty as a citizen?

41. Does the practice of hiring substitutes wrongly exploit poor people who are desperate and have no other option but to agree to be a substitute?
42. Does the morality of buying one's way out of the army depend on whether it is during a war or in peacetime?
43. What is the moral difference between hiring a substitute and avoiding service by bribery, for instance?
44. Today no one is conscripted. Those who serve in the army volunteer to do so in exchange for a salary and other benefits. What is the relevant moral difference between today's system and a system of conscription that provides for the option to hire a substitute? Aren't people who agree to be substitutes merely volunteering to join the army for money?
45. Can utilitarianism, libertarianism, or Lockean rights theory make sense of the view that citizens have a duty to serve their country?
46. Do you think that every citizen has a moral duty either to serve in the military or to perform some form of national service? If so, do you think this duty can be fulfilled by hiring someone else to perform it?
47. "Substitution contracts maximize happiness because they give each party what he most wants—money, and avoidance of military service." Do you agree? Is this a good argument for the moral permissibility of substitution contracts?
48. "So long as they are voluntary, substitution contracts are fair." Do you agree? What counts as a voluntary market exchange? Don't people sometimes enter agreements because they are desperate or not well informed about the full cost or the danger? Do the conditions under which people enter agreements matter to the fairness of the agreements? Do the conditions matter to the validity of the consent? What background conditions are necessary for seemingly voluntary agreements to be fair?

MOTHERHOOD

A commercial surrogacy contract is an agreement to carry to term someone else's baby in one's own body in exchange for money. What do you think about the morality of such contracts?

49. Should people be allowed to act as surrogate mothers? Should prospective parents be allowed to pay for their services?

50. Suppose the surrogate mother changes her mind and wants to keep the baby. Should surrogacy contracts be enforced by the courts?

51. A utilitarian would say that surrogacy contracts should be allowed if they maximize happiness. A libertarian would say that people should be free to use their own bodies in whatever way they like, provided they do not violate other people's rights. What do you think? Do either utilitarians or libertarians have the right answer?

52. Consider Elizabeth Anderson's argument against surrogate motherhood. She thinks that surrogate motherhood "commodifies" children and women's labor. But, thinks Anderson, to value these things in the way one values a commodity is inconsistent with the appropriate way of valuing them. The appropriate way of valuing children, for instance, is to love them, and not to treat them as fungible and exchangeable for money. Therefore, says Anderson, surrogate motherhood is wrong.

Is Anderson right? Does her argument against surrogate motherhood imply that we shouldn't commodify ourselves either (because that would be inconsistent with valuing ourselves)? So, should we abstain from selling our services to the army, for instance? Is a paid army impermissible?

According to utilitarians, the right thing to do is always to maximize happiness. Libertarians think that the right thing to do is most often to let people do whatever they want. John Locke's theory says that there are unalienable rights afforded to every human being by the "law of nature."

The philosopher Immanuel Kant thought that each of these views was mistaken. Against utilitarians, Kant held that freedom—and not happiness—is the goal of morality; against the libertarians, Kant denied that freedom consists in doing whatever one wants; and against Locke, he held that morality, duty, and rights have their basis in human reason, not in a law of nature.

So who got it right? A good way to broach the discussion is to examine what Kant says about duty, law, humanity, and freedom.

DUTY

According to Kant, it's common sense that you should always do your duty. Moreover, common sense tells you to do the right thing just because it's the right thing and not for some other reason. Morality is a matter of having the right attitude, or acting for the right reason. It's your motive that is important.

To explain this idea, Kant imagines a shopkeeper who does not overcharge his customers only because he fears that word of his dishonesty will spread and he'll lose money. Sure, the prudent shopkeeper does the right thing, so to speak. But he does it for the wrong reason. There's nothing morally worthy about his action. His honesty is mere prudence, mere selfishness. Kant's conclusion is that morality consists in doing the right thing for the right reason, or, as he argues, morality is acting from the motive of duty.

Kant imagines a second person, one who is naturally sweet and kind and loving. She always does the right thing—but only because being good brings her pleasure. Kant thinks this person is not really moral; her actions deserve “praise and encouragement,” but not “esteem.” In a way, they're just like the actions of the prudent shopkeeper, since they aim at personal pleasure. That's not morality but habit, argues Kant. Morality is doing the right thing just because you know it's the right thing.

Is Kant right about what it is to do your duty?

53. Do you always have to do the right thing just because it's the right thing?

54. Suppose you tell the truth because you're afraid you'll be caught lying. Haven't you done the right thing in the end?

55. Suppose a man rescues someone from drowning only to get a reward. Has he done the right thing?

56. Are children who are brought up to be honest and kind not truly moral?

57. Is your childhood education really just a kind of conditioning, or is there value in it aside from making you reflect on your duty?

58. What is moral character, anyway? Is it what you tend to do, or is it your attitude?

LAW

Kant says that morality is doing the right thing for the right reason. But what is the right thing? What is our duty?

Kant's claim is that our duty is given by the idea of a law—something that tells us what we must do, no matter what. The idea of a law is that it binds everyone, unconditionally. Everyone has to obey it. But this means that, for something to be a law, it must be the case that everyone could obey it. Indeed, says Kant, this is the test for morality. Your action is moral only if it's done from a motive that everyone else could act on at the same time that you're acting on it.

Kant demonstrates this test using an example. Suppose you want to swindle your way into some money. You think to yourself, “I’m going to ask my friend to lend me fifty dollars, and I’ll promise to pay him back—but I won’t.” Kant thinks your motive doesn’t pass the test. If everyone made false promises in order to get money, and then you tried to make a false promise to get money, it wouldn’t work; your friend wouldn’t believe you, since everyone is always lying. Therefore, your motive is not the kind that everyone else could act on while you’re acting on it, and that means it’s immoral, thinks Kant.

Is this the right test for morality?

59. Kant’s test rules out actions that work by making an exception of yourself. Can you think of other examples of such actions that seem to be immoral?

60. Can you think of exceptional actions that aren’t immoral? Suppose you want to visit a nature preserve. If everyone were to visit at the same time, they would destroy it. But you know they won’t visit, so isn’t it all right for you to go? Is there something problematic about an action that can never be open to everyone? Does Kant have a point?

HUMANITY

According to Kant, there are different ways to state what our duty is. One of them involves the idea of a law. Another involves the idea of humanity, or human reason. Morality says that you should never treat rational human beings merely as a means to your end. Whenever you use someone’s skills or services to your own end, you should always also treat that person as an end in himself or herself.

Since you’re a rational human being, this includes you! Kant thinks that you should never use your own reason merely as a means to your end. Therefore, you must never commit suicide, he thinks. That would be to use your reason to end your own existence, which is incompatible with making your own reason your end.

61. Is Kant right that you must never commit suicide? What if you are terminally ill and in endless pain?

62. More generally, is he right that you must always have humanity or human reason as your end?

63. Is there something immoral about a person—like a couch potato—who seeks only pleasure at the expense of developing his mind?

64. Is it necessarily immoral to sacrifice your life to save a beautiful object, like a painting by Picasso, or the Grand Canyon? Isn't there something potentially noble about such an action, even if it sacrifices your own humanity?

FREEDOM

Kant thinks that the goal of morality is not happiness but freedom. But freedom is not just doing whatever you want. Kant has a more demanding idea of freedom as self-determination.

You are free in Kant's sense only if you live by your own reason. If someone brainwashes you into doing something, you are not free. Likewise, if you buy expensive shoes only because you've had the desire implanted in you through advertising, then you are also not free. If you eat lots of ice cream because you can't control your cravings, then you're also not free. You are little more than a slave to your desires. You lack freedom in each of these cases because it's not your own reason that makes you do what you do, but something else—another person, your given desires, your natural cravings, and so on. In Kant's view, you are not fully free.

Is Kant right about freedom?

65. Isn't freedom just the ability to do what you want, when you want?

66. What difference does it make that some of your desires come from advertising? Or does Kant have a point? Is it possible to be unfree even if no one holds you back?

67. Are smokers fully free? No one keeps them from quitting smoking, but they often still can't quit, even though they want to. Are these smokers enslaved to their desires, to cigarettes, to their own bodies?

68. Do you have impulses, cravings, or desires that you find it hard to control? Would it be liberating to be able to control them to a greater extent?

What is justice? According to the philosopher John Rawls, principles of justice are the outcome of a special kind of agreement. They are the principles that we would all agree to if we were choosing rules for our society and no one had any unfair bargaining power.

But how can we ensure that no one has any unfair bargaining power? Rawls's answer is that we have to limit our knowledge. He imagines that we all find ourselves behind a "veil of ignorance." Behind this veil, you do not know anything about yourself. You do not know your sex, your race, or the social class you belong to. You do not know how strong or weak you are, how stupid or intelligent, or whether

you are disabled. You do not even know what your goals in life are, or whether you practice a religion.

In this situation of ignorance, it's not possible for anyone to propose social rules designed to benefit himself or herself over other people. And so, Rawls thinks, whatever social rules we would agree to in this situation would be fair and just.

Is this the right way to think about principles of justice?

A FAIR CONTRACT

Rawls thinks that we can understand what justice is by considering the idea of a fair agreement. According to Rawls, an agreement is not necessarily fair even if it is voluntary. In order to be fair, an agreement must also be made against a background of equality. It is unfair if one of the contracting parties is able to take advantage of the other party because he is stronger, richer, better informed, or simply more powerful.

Is Rawls right about what counts as a fair agreement?

69. If an agreement was entered into voluntarily, is that enough to ensure that the terms agreed to are fair?

70. Suppose you have a leaky toilet and a plumber tells you it will cost two thousand dollars to repair. You agree to this price, not knowing that the usual price for the same type of repair is two hundred dollars. Is the contract between you and the plumber voluntary? Is the contract fair?

71. Suppose a man comes to your door and asks you to buy a newspaper subscription at a discounted price. You do not particularly like the newspaper he's selling, but you have heard from your neighbors that the man will make a habit of stealing your mail out of spite if you refuse to buy a subscription. Reluctantly, you agree to buy a subscription at a discounted price. Is the contract voluntary? Is it fair?

72. Imagine that you are shipwrecked at sea, floating in the open ocean with no hope of rescue. A pirate ship comes upon you and the captain offers to fish you out of the water—but only if you agree to be the ship's cabin boy forever. The captain does not exert any other pressure. He simply makes his offer and says politely, "Take it or leave it."

If you agree to the captain's offer, are you morally bound to remain the ship's cabin boy forever? Would it be morally wrong for you to try to escape from your bondage when the ship reaches the next port? Why or why not?

73. Imagine that you are poor and cannot find work due to an economic recession. One day a new employer comes to town and offers you a job in his factory for a wage of fifty cents per hour. The employer exerts no pressure. He simply makes his offer and says politely, “Take it or leave it.” You accept the offer, not without gratitude, because you have no reasonable alternative. Is the contract between you and your new employer voluntary? Is the contract fair?

JUSTICE, IMPARTIALITY, AND IGNORANCE

According to John Rawls, justice is the outcome of a fair contract. However, for Rawls a contract is guaranteed to be fair only if the contracting parties are not able to take advantage of each other. Rawls therefore proposes that the principles of justice are the outcome of a special, hypothetical contract conducted behind a “veil of ignorance,” where no one knows his or her personal qualities, strengths, or weaknesses. Is this the right way to think about principles of justice?

74. Should we abstract from our personal qualities, strengths, and aspirations in choosing principles of justice to govern our society?

75. Do you agree that a white man should not be able to propose a rule that benefits white men—or that an aristocrat should not propose a rule that benefits aristocrats?

76. Do you think you should be able to make reference to your religious beliefs or your life goals when proposing rules for society? Is it possible to make such important decisions without knowing who you are and what goals and beliefs you have?

77. We often have to think about what would be fair and how to treat people justly. In thinking about justice in everyday life, do you try to make yourself color-blind, sex-blind, race-blind, and intelligence-blind, and treat people with equal consideration? Or do you think that treating people fairly is compatible with showing greater concern for some people than for others? Does fairness require you to be blind to the differences between people?

78. Would your answer to the previous question be different if you were a public official? Is it fair for a teacher to privilege her favorite student? Is it fair for a police officer to treat people differently because of the color of their skin or because of their religion? Is it fair to judge some people more leniently than other people just because you like them more or because you know them better?

79. As a matter of justice, should laws always be blind to the differences between people?

According to the philosopher John Rawls, principles of justice are the outcome of a special kind of hypothetical agreement. They are the principles we would agree to if we were choosing rules for our society behind a “veil of ignorance,” where no one knows his or her age, sex, race, intelligence, strength, social position, family wealth, religion, or even life goals. Such ignorance makes it impossible for anyone to propose social rules designed to benefit himself or herself more than other people. Therefore, Rawls argues, the principles we would agree to behind the veil of ignorance would be fair and just.

RAWLS’S FIRST PRINCIPLE

Rawls thinks that two principles would be agreed to behind the veil of ignorance. His first principle says that everyone should have the same set of basic liberties, including the freedoms of speech and conscience, the right to hold office and to vote for elected officials, freedom from arbitrary arrest, the right to hold personal property, and so on. According to the first principle, a society in which some people are slaves or serfs, or in which very few people get a say in the government, would be unjust.

80. Do you agree that everyone should have the same basic liberties, whether they are a man or a woman, young or old, rich or poor, part of the minority or part of the majority?

81. Which liberties should everyone have?

82. Why would it be unfair for some people to have more liberty than other people? Rawls thinks that the unfairness is explained by the idea of a hypothetical agreement made behind a “veil of ignorance.” For example, people would not agree to a system of liberties for men only if they didn’t know whether they themselves would wind up being men or women.

Is Rawls right to think that the unfairness of a society that distributes liberties unequally is best explained by the idea of an agreement behind the veil of ignorance? If not, what explains the unfairness?

83. Rawls’s first principle says that everyone should have an equal chance to run for public office. Do you agree? By law, U.S. citizens who were born outside the United States are not eligible to run for president. Do you think this law is unjust? Does

Rawls's theory provide the best way of thinking about the justice or injustice of this law?

84. Rawls's first principle says that everyone should have an equal chance to influence legislation and political affairs. However, today wealthy individuals and corporations exercise much more influence on the government and the laws than the average citizen might. Is this unjust? If so, do you think that Rawls's theory best explains why it is unjust?

FAIR EQUALITY OF OPPORTUNITY

Rawls's second principle of justice has two parts. The first part says that society must ensure that there is fair equality of opportunity. Fair equality of opportunity is different from formal equality of opportunity, or the idea of careers open to talents.

There is a lack of formal equal opportunities when the best jobs are legally restricted to members of a powerful group. This was the case in the United States before the civil rights movement and racial desegregation. However, there can be inequality of opportunity without such legal restrictions. Often, poor kids who are very talented have unequal opportunities because their parents lack the money to send them to good schools, to pay for private lessons, and so on. Compared to equally talented children of rich parents, poor kids have fewer opportunities to develop their talents.

According to Rawls's idea of fair equality of opportunity, this is unjust. People with the same natural talents and the same willingness to use them should have the same chances of success, no matter how rich or poor their parents, no matter their sex, or race, or any other social distinction. Do you agree?

85. If you think that poor kids should have the same chances of success as equally talented rich kids, does that mean you agree with Rawls's second principle? Suppose it turns out that satisfying this principle would require enormous taxes on the rich. After all, it would cost a lot of money to provide schools of the exact same quality to everyone. Do you think that justice requires such taxation?

86. Rawls's idea of fair equality of opportunity could also be seen to require steep inheritance taxes. After all, children who inherit lots of money have a huge advantage in the competition for jobs, money, and success. Do you think that children should be able to inherit great wealth from their parents?

87. Should the children of rich parents be allowed to get very expensive private math lessons, or singing lessons, or basketball lessons? What if such lessons give them a

huge, unearned advantage in the race for jobs, careers, and wealth? Is it just for poor children to have much lower prospects as a result?

THE DIFFERENCE PRINCIPLE

The second part of Rawls's second principle is called the difference principle, and it is even more egalitarian than Rawls's idea of fair equality of opportunity.

The difference principle states that there should be no differences in income and wealth except those differences that make even the least advantaged members of society better off. Not even superior effort makes a person deserving of special rewards. After all, argues Rawls, your ability to make a good effort is partly dependent on how good your childhood was, whether your parents loved you and provided encouragement, or whether you were neglected and abandoned. These are all factors over which you had no control. Therefore, if you are now able to make a good effort, you can't really claim credit for it. Do you agree?

88. Is it true that you can't really claim credit for your upbringing? Surely, your habits and temperament today are partly the result of your upbringing. Does this mean that you don't really deserve what you get from making an effort?

89. Think of some of the advantages you have in your life. Do you deserve them more than other people who lack them? If so, why? If not, should these advantages be provided to everyone?

90. Do you think it's unjust if some people do not get to vote in elections merely because they are a woman or a member of a racial or ethnic minority?

91. Do you think it's unjust if some people earn much less money and are much worse off than others merely because they are a woman or a member of a racial or ethnic minority?

92. If you answered "yes" to the last two questions, do you think it's also unjust if some people are much worse off than others merely because they were born with fewer talents or with a debilitating disease and the need for expensive medicines? Why should people be worse off merely because of the circumstances into which they were born?

In 1974, Allan Bakke, a white male, applied to medical school at the University of California, Davis. He was rejected, even though his grades and test scores were higher than some of the minority candidates who were admitted that year.

Bakke sued the medical school. The U.S. Supreme Court decided that he should be let in. Schools can consider race as one factor among others in deciding which candidates to admit, but they cannot use race as a quota by reserving some seats for minority candidates only.

Do you think Bakke was treated unfairly? Did he have a right to be considered on the basis of his intellectual merits alone? Consider the following questions as you think about the morality of affirmative action.

93. Can Bakke be said to deserve to be admitted to medical school? Sure, he didn't choose to be a member of the white majority—he was just born that way. But he also didn't choose to be naturally gifted—he was also just born that way. These are factors equally outside his control. Why should Bakke's application to medical school be considered solely on the basis of personal and academic merit when this depends at least partly on factors over which he had no control?

94. What is merit? Often, minority groups receive better care when they are treated by minority doctors, so doesn't being a minority count as merit? Shouldn't we train the doctors who will provide the best care?

95. What if minority lawyers do a better job of helping their minority clients than do white lawyers? Is that a form of merit? Does it justify discriminating against law school applicants who are white?

96. Medical schools and law schools often argue that racial diversity is important to the quality of professional education. It makes people more open-minded, helps them learn from their peers, and makes them sensitive to people with different needs. Should medical schools and law schools therefore be allowed to admit a certain number of minority candidates each year for the sake of achieving the educational benefits of diversity?

97. Barbara Grutter, a white woman, applied to law school at the University of Michigan. She was rejected, even though her grades were higher than some of the minority candidates who were admitted. This time, the U.S. Supreme Court decided that the University of Michigan had acted lawfully, because racial diversity at law school was an important goal. Do you agree? Was the decision just or unjust?

98. In the United States, African Americans have historically been disadvantaged because of slavery and racial segregation. Is affirmative action in college admissions an acceptable form of compensation for historical disadvantage?

99. Is affirmative action in hiring for jobs an acceptable form of compensation for historical disadvantage? Is affirmative action acceptable even if equally qualified white candidates are rejected as a result?

100. In general, is it legitimate to design social, political, and educational institutions to redress past wrongs? Does your answer depend on what kind of institution we are talking about?

101. In 2003, the New Haven fire department administered a test to rank candidates for promotion. When none of the African American firefighters scored high enough to be considered for promotion, the fire department chose to invalidate the test results. The white and Hispanic firefighters then sued the fire department. The U.S. Supreme Court decided that the fire department had engaged in wrongful racial discrimination by invalidating the test results. Do you think the Court made the right decision?

102. Is affirmative action equally acceptable in elementary school, college, and graduate school?

103. Is affirmative action equally acceptable when picking candidates for government jobs, when picking candidates for private sector jobs, and when choosing who will receive government income support?

104. Which wrongs are sufficiently important to justify using affirmative action to redress them?

One of the most important philosophers ever to write about justice lived at the heyday of philosophy, some 2,400 years ago. His name was Aristotle, and he thought that justice was giving each person his due, or what he deserved. But how do we know what people deserve? What goods and opportunities should go to which persons?

Aristotle's answer is that we have to consider the telos—the point, the end, or the purpose—of the good in question. Say we have some nice flutes. Who should get them? According to Aristotle, it's not the rich person, since playing flutes has nothing to do with money, nor is it the person who will be made most happy, since making good music is different than being happy. The purpose of a flute is to be played and to be played well. Therefore, Aristotle thinks, the flutes should go to the best flute players.

Aristotle's method is to think about justice by thinking about the purpose of a good, an institution, or even a person. If the purpose of a tennis court is to play tennis, then the best tennis players should get priority. If the purpose of universities is to create knowledge and to foster excellence, then the best students should be admitted and the best scientists and professors should be allowed to work at them. If the purpose of being human is to live a good life, then society should promote the good life by ensuring that citizens have the resources necessary for living a good life and by encouraging them in the pursuits that make for a good life.

Is this the right way to think about justice?

WHAT IS THE PURPOSE OF AN INSTITUTION?

If we want to use Aristotle's teleological method to think about the justice of a particular institution, we need to determine the point or the purpose of the institution. But how are we to know the purpose?

Consider the practice of golf. Is the purpose of golf merely entertainment, or is it athletic excellence? The question is important because the answer will help to determine how golf should be played. If the purpose of golf is mere entertainment, then it shouldn't matter if players always ride golf carts from one hole to the next. The use of golf carts does not conflict with the purpose of entertainment. Indeed, allowing golf carts may even serve this purpose better than making everyone walk the long course, since players will be less tired and perhaps less grumpy than if they had to walk. However, if the purpose of golf is not mere entertainment but athletic excellence, then perhaps players should be required to walk the long course or else forfeit the game.

How do we know the purpose of golf or any other practice or institution? Should we say that the purpose of an institution is that which most people believe it to be? The problem with this answer is that people tend to disagree about the purposes of institutions. Does the purpose of an institution lie in its beneficial consequences? Does the purpose lie in the values that the institution promotes, honors, and rewards? Consider each of these alternatives as you think about the following questions.

105. Suppose there are some very good public tennis courts in your town. Who should get priority to use the courts? Should priority be given to the tennis players who are willing to pay the most? Should court time be assigned on a first-come, first-served basis? Should priority be given to the worst tennis players, who most need the practice? Should it be given to the best tennis players, who will play the best tennis? Which of these arrangements would be fair or just? What is the purpose of tennis, and does it help you to answer this question?

106. Who should be admitted to colleges and universities? Should admission decisions be made strictly on the basis of academic merit, or should colleges and universities admit students with a variety of academic and other backgrounds and strive for diversity? What would be fair? What is the purpose of higher education, and does it help you to answer this question?

107. For much of its history, the U.S. military did not permit women to serve in its ranks. Was this unjust? What is the purpose of the military, and does it help you to answer this question?

108. The restaurant chain Hooters hires only female waitresses who are willing to wear revealing clothing. However, many men want to work there as waiters, too. Is it unfair that Hooters hires only women? Consider the purpose of the restaurant. Is it merely to serve food, or is it to entertain men? Who should get to decide the purpose?

REASONING FROM THE PURPOSE

Aristotle's method of reasoning about justice asks us to reason from the purpose of an institution to a conclusion about how the institution should function. In other words, we start with the purpose, and then ask how the institution can best serve this purpose.

However, can't the purpose of an institution itself be questioned? Think of the Ku Klux Klan, an association founded with the intention of harassing and even killing African American, Jewish, Hispanic, and other minority citizens. This purpose seems clearly unjust. How should we proceed if we want to use Aristotle's method of thinking about justice?

109. Try to construct a teleological argument against an association such as the KKK. Is it possible to argue against the KKK by reflecting on the purpose of voluntary associations generally?

110. How do we know whether the purpose of a given institution is just or unjust? Try to find a teleological method of answering this question. Perhaps we should ask whether—and how well—the institution contributes to a good human life. But what is a good human life?

111. Aristotle thought that human beings were, by nature, meant to use their reason to deliberate about important moral questions and to share in the political life of the community. He also thought that government should promote this purpose by help-

ing people to become better informed and more virtuous. Do you agree?

112. Think of a law designed to promote civic virtue. Does this law run the risk of unfairly imposing the majority's values on everyone? Can you think of a law that promotes civic virtue but escapes this objection?

113. Aristotle thinks that the reasoned life of an engaged citizen is a necessary part of a good human life. Is he right? Suppose someone chooses to live alone in the woods, away from the hustle and bustle of communal life. Is there something less good, and less fully human, about a life spent in solitude and isolation? Would it be better to spend one's life living in a community of equals?

114. "Even if it is better to live in a community of equals than to live an isolated life, people should be free to choose for themselves what kind of life to live." Do you agree?

115. Is Aristotle's method of reasoning about justice and individual rights in tension with the modern emphasis on individual freedom, or can the approach make adequate room for the value of individual freedom?

According to many modern liberals, there are only two types of moral obligation. First, there are universal duties that we owe to every human being, such as the duty to avoid harming people unnecessarily. Second, there are voluntary obligations that we acquire by consent, such as when we agree to help someone or promise to be faithful to our partners and friends. According to many modern liberals, there are no other types of moral obligation.

Critics of liberalism disagree. They say there is a third type of moral obligation that is neither universal nor voluntary. We can be morally obligated to a particular community even though we haven't assumed the obligation voluntarily. Obligations of membership and loyalty can arise simply because of who we are—because we're someone's son or daughter, someone's friend, a member of a particular community, or a citizen of a particular country.

OBLIGATIONS OF MEMBERSHIP

Are there moral obligations of membership and loyalty that are neither universal nor voluntary? Are we sometimes obligated to do more for people who are closer to us? Is it possible to be obligated to do something for someone even if you haven't chosen to be obligated? Are there obligations of membership and loyalty that can compete with universal duties to humanity? As you think about these questions, consider the following examples.

116. If you caught your brother shoplifting, would you call the police? Should you call the police? Many people would hesitate to report their own brother. Is this evidence of a special moral obligation that competes with a universal duty of justice, or is it mere prejudice?

117. If you caught your best friend cheating on an exam, should you turn him in for the sake of fairness, or should you keep quiet out of loyalty? Are you under two competing obligations, or is your sense of loyalty just a kind of prejudice?

118. Do parents have greater obligations to their own children than to other people's children? Suppose your child and the child of a stranger are both drowning. Do you have a greater moral obligation to save your own child than to save the stranger's child? Why?

119. Are all parental obligations voluntary? Are parents obligated to care for their children merely because they chose to have children?

120. Do children have a greater obligation to help their own parents when they are in need than to help other needy people?

121. Are filial obligations voluntary? Children do not choose their parents. If children have a greater obligation to help their own parents than to help other people, where does this obligation come from?

122. Say there is a shipwreck and the captain has to make a choice. He can either escape with his own son, or he can let his son drown but save several hundred of the ship's passengers. What should he do? If he chooses to save the passengers, his wife will never forgive him. Is she being unreasonable?

123. In the American Civil War, General Robert E. Lee led the Confederate Army even though he thought that slavery as a practice should come to an end. Lee said he could not bring himself to raise arms against his slave-holding countrymen in the South. Was there something admirable about Lee's reticence, or was it merely prejudice? Is it evidence of a special moral obligation that competes with a universal duty to humanity?

124. Do Americans who live in El Paso, Texas, have greater moral obligations to people who live in Alaska than to people who live right across the river in Mexico? Why? What is the source of this obligation?

125. Is patriotism a virtue, or is it merely prejudice for one's own? Most people do not get to choose what country they live in, and no one chooses where they're born. Why are we obligated to the people of our own country more than to the people of any other?

Modern liberalism maintains that law should try to be neutral on controversial moral and religious questions. According to this view, the law should not affirm or promote any particular conception of the best way to live, but should let citizens choose for themselves how best to live their lives.

But is it possible to settle questions of justice and rights without addressing other controversial questions about morality and the common good?

THE RIGHT TO FREE SPEECH

Consider the example of the right to free speech. The city of Skokie, Illinois, has been home to many Holocaust survivors. In 1977, the American Nazi Party tried to stage a demonstration there. When the city refused permission, the Nazi party sued the city in court. Should the city of Skokie have been allowed to forbid public hate speech? Is it possible to answer this question without passing judgment on the value of the speech in question? As you think about these questions, consider some of the arguments that have been made in favor of free speech.

126. Some people think that there is no moral truth, and therefore that it makes no sense to suppress a view because it's morally wrong. Do you agree with this position? Is it a sound defense of the right to free speech?

127. Other people believe that there is moral truth, but that we have access to it only by allowing free speech. All sides must be allowed to speak for the truth to come to light. Do you agree with this position? Does it lead you to think that the city of Skokie acted wrongly in refusing to allow Nazis to stage a demonstration?

128. Other people believe that some speech is useless, or even psychologically harmful, but that it would be much worse if we started banning certain kinds of speech. Soon, even true but unpopular beliefs would be suppressed. Do you agree with this position? Does it lead you to think that the city of Skokie acted wrongly in refusing to allow Nazis to stage a demonstration?

129. Some people believe that citizens in a democracy should have a right to express themselves regardless of the content of their speech. The laws that protect free speech should not favor one set of values; they should be neutral across competing conceptions of the good. Do you agree with this position?

After considering these arguments, do you think that the city of Skokie should have been allowed to forbid the Nazis from marching? Does your judgment depend upon what you think of hate speech in particular?

ABORTION

Consider another contemporary controversy. Some people believe that a human being comes into being at conception and, therefore, that abortion is murder. Others argue that certain kinds of abortion should be legal because a woman should have the right to make medical decisions concerning her own body. What is your view?

130. Should abortion be legal? Under what circumstances?

131. Is it possible to defend a position on abortion without settling whether abortion is murder?

132. Is it possible to defend a position on abortion without making judgment about the value of women's control over their own bodies?

SAME-SEX MARRIAGE

Consider same-sex marriage. Some people believe that homosexuality is immoral and, therefore, that same-sex marriages should not be permitted. Other people argue that same-sex marriage should be permitted because everyone has the right to be treated equally. What is your view?

133. Should same-sex marriage be legal?

134. Is it possible to defend a position on same-sex marriage without making a judgment about the value of homosexual relationship?

135. Some people believe that the purpose of marriage is procreation, while others believe that the purpose of marriage is to honor and promote loving relationships between committed adults, regardless of their sex or their ability to procreate. What is your view? Is it possible to defend a position on same-sex marriage without making a judgment about the purpose and value of marriage?

PRAISE FOR
Justice

“Michael J. Sandel is one of this generation’s most important philosophers because he combines a relentlessly inquiring spirit with a profound commitment to the idea of a common good. *Justice* is Sandel at his finest: no matter what your views are, his delightful style will draw you in, and he’ll then force you to rethink your assumptions and challenge you to question accepted ways of thinking. But Sandel does not leave you marooned on an island of skepticism. He calls us to a better way of doing politics, and a more enriching way of living our lives.” —E. J. Dionne, Jr.

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