

JUSTICE:

What's the Right Thing to Do?

Michael Sandel

Cabin Boy

- **In the summer of 1884**, the ship, the *Mignonette*, had gone down in a storm, and four English sailors had escaped to the lifeboat
- Thomas Dudley was the captain, Edwin Stephens was the first mate, and Edmund Brooks was a sailor
- The fourth member of the crew was the cabin boy, Richard Parker, age seventeen. He was an orphan.
- He had drunk seawater, against the advice of the others, and become ill. He appeared to be dying on the nineteenth day.
- Dudley told the boy his time had come, and then killed him with a penknife. For four days, the three men fed on the body and blood of Parker.

Cabin Boy

- And then help came.
- Upon their return to England, the three survivors were arrested and tried.
- They freely confessed that they had killed and eaten Parker.
- Suppose you were the judge. How would you rule?

Cabin Boy

Objection #1 – A common currency of value (cost-benefit analysis)

- Given the dire circumstances, it was necessary to kill one person in order to save three.
- Had no one been killed and eaten, all four would likely have died.??
- Costs of killing?: Norm weakening

Objection#2 – Individual rights

- Isn't it wrong to use a human being in this way— taking his life without his consent?

Jeremy Bentham's Utilitarianism

- Jeremy Bentham (1748–1832): an English moral philosopher and legal reformer, founded the doctrine of utilitarianism.
- We all like pleasure and dislike pain. The utilitarian philosophy recognizes this fact, and makes it the basis of moral and political life.
- **Utilitarianism** – The greatest happiness for the greatest number of people
- The highest principle of morality is to maximize happiness, the overall balance of pleasure over pain.
- There are no possible grounds for rejecting it. Every moral argument, he claims, must implicitly draw on the idea of maximizing happiness.

Jeremy Bentham's Utilitarianism

- *“Encountering beggars reduces the utility of the general public”!?!*
- One of Bentham's schemes was a plan to reduce the presence of beggars on the streets by establishing a self-financing workhouse for the poor.
- He also suggested that the prison should be run by a private contractor, who would manage the prison in exchange for the profits to be made from the labor of the convicts, who would work sixteen hours per day

Individual Rights?

- In ancient Rome, they threw Christians to the lions in the Coliseum for the amusement of the crowd.
- Imagine that you are the head of the local CIA branch. You capture a terrorist suspect who you believe has information about a nuclear device set to go off in Manhattan later the same day. As the clock ticks down, he refuses to admit to being a terrorist or to divulge the bomb's location. Would it be right to torture him until he tells you where the bomb is and how to disarm it?
- Suppose the only way to induce the terrorist suspect to talk is to torture his young daughter (who has no knowledge of her father's nefarious activities). Would it be morally permissible to do so?

The city of happiness

- The story of a city called Omelas—a city of happiness and civic celebration.
- But in a basement under one of the beautiful public buildings of Omelas, there is a room. And in this room sits a child. The child is feeble-minded, malnourished, and neglected.
- If the child were brought up into the sunlight out of the vile place, if it were cleaned and fed and comforted, that would be a good thing,
- But if it were done, in that day and hour all the prosperity and beauty and delight of Omelas would wither and be destroyed..

A Common Currency of Value?

- Utilitarian logic is applied in **cost-benefit analysis**, a form of decision-making.
- Utilitarianism claims to offer a science of morality, based on measuring, aggregating, and calculating happiness.
- It weighs preferences without judging them. Everyone's preferences count equally.

A Common Currency of Value?

- During the 1970s, the Ford Pinto was one of the best-selling subcompact cars in the United States. Unfortunately, its fuel tank was prone to explode when another car collided with it from the rear.
- Ford engineers had been aware of the danger posed by the gas tank. But company executives had conducted a cost-benefit analysis
- Ford estimated that 180 deaths and 180 burn injuries would result if no changes were made. It then placed a monetary value on each life lost and injury suffered—\$200,000 per life, and \$67,000 per injury and calculated that the overall benefit of the safety improvement would be \$49.5 million.
- But the cost of adding an \$11 device to 12.5 million vehicles would be \$137.5 million. So the company concluded that the cost of fixing the fuel tank was not worth the benefits of a safer car

A Common Currency of Value?

- In the 1980s, Congress removed the restriction, and most states raised the speed limit to sixty-five miles per hour. Drivers saved time, but traffic deaths increased.
- Two economists did the math. They defined one benefit of a higher speed limit as a quicker commute to and from work, calculated the economic benefit of the time saved (valued at an average wage of \$20 an hour) and divided the savings by the number of additional deaths.
- They discovered that, for the convenience of driving faster, Americans were effectively valuing human life at the rate of \$1.54 million per life. That was the economic gain, per fatality, of driving ten miles an hour faster.

John Stuart Mill

- John Stuart Mill (1806–1873) tried to save utilitarianism by recasting it as a more humane, less calculating doctrine
- He insists that the case for individual liberty rests entirely on utilitarian considerations **but** it must be utility in the largest sense, grounded on the permanent interests of man as a progressive being
- We should maximize utility, not case by case, but in the long run, respecting individual liberty will lead to the greatest human happiness
- Unlike Bentham, Mill believes it is possible to distinguish between higher and lower pleasures—to assess the quality, not just the quantity or intensity, of our desires. And he thinks he can make this distinction without relying on any moral ideas other than utility itself.

Do We Own Ourselves?

- Libertarianism
 - The minimal state
 - Free market philosophy
 - Taxing Bill Gates to help the poor
 - Do we own ourselves
 - Consensual cannibalism

Libertarianism

- Economic inequality is steeper in the United States than in other democracies. Some people think that such inequality is unjust, and favor taxing the rich to help the poor.
- Utilitarian logic could be extended: Robin Hood Scenario
 - Suppose we take \$1 million from Bill Gates and disperse it among a hundred needy recipients, giving each of them \$10,000. Overall happiness would likely increase.
 - Gates would scarcely miss the money, while each of the recipients would derive great happiness from the \$10,000 windfall. Their collective utility would go up more than his would go down.!?!

Libertarianism

- Libertarians favor unfettered markets and oppose government regulation, not in the name of economic efficiency but in the name of human freedom
- Taking money from Gates and Winfrey without their consent, even for a good cause, is coercive. It violates their liberty to do with their money whatever they please.

Libertarianism

- The libertarian rejects three types of policies and laws that modern states commonly enact:

1. No Paternalism

- Seatbelt laws/ motorcycle helmet laws
- As long as no third parties are harmed, and as long as motorcycle riders are responsible for their own medical bills, the state has no right to dictate what risks they may take with their bodies and lives

Libertarianism

2. No Morals Legislation

- Free prostitution/ sexual orientation

3. No Redistribution of Income or Wealth

- The state has no more right to force affluent taxpayers to support social programs for the poor than a benevolent thief has the right to steal money from a rich person and give it to the homeless
- What exactly is wrong with taxing Michael Jordan's earnings?
- "Taxation of earnings from labor is on a par with forced labor."!!?

Libertarianism

Objections: analogy??

- You can always choose to work less and pay lower taxes?
- A thief breaks into your home, and has time to take either your \$1,000 flatscreen television or the \$1,000 in cash you have hidden in your mattress. You might hope he steals the television, because you could then choose whether or not to spend \$1,000 to replace it.
- If the thief stole the cash, he would leave you no such choice (assuming it's too late to return the television for a full refund).
- But this is beside the point; the thief (and the state) do wrong in both cases
- Stealing from the rich and giving to the poor is still stealing, whether it's done by Robin Hood or the state

Selling kidneys

- Most countries ban the buying and selling of organs for transplantation. In the United States, people may donate one of their kidneys but not sell it on the open market.
- But some people argue that such laws should be changed. They point out that thousands of people die each year waiting for kidney transplants —and that the supply would be increased if there existed a free market for kidneys. They also argue that people in need of money should be free to sell their kidneys if they wish.

Selling kidneys

- Suppose a subsistence farmer in an Indian village wants more than anything else in the world to send his child to college. To raise the money, he sells his spare kidney to an affluent American in need of a transplant.
- A few years later, as the farmer's second child approaches college age, another buyer comes to his village and offers a handsome price for his second kidney. Should he be free to sell that one, too, even if going without a kidney would kill him?

Markets and Morals

- Markets and Morals
 - What's just – drafting soldiers or hiring them?
 - Objection #1 – Fairness and freedom
 - Objection #2 – Civic virtue and the common good
 - Outsourcing pregnancy
 - Questions:
 - How free are the choices we make in a free market?
 - Are there certain virtues and higher goods that markets do not honor and money cannot buy?

Markets and Morals

- The case for free markets typically rests on two claims—

1. Freedom [Libertarian]

- letting people engage in voluntary exchanges respects their freedom;
- laws that interfere with the free market violate individual liberty.

2. Welfare [Utilitarian]

- Free markets promote the general welfare; when two people make a deal, both gain.
- As long as their deal makes them better off without hurting anyone else, it must increase overall utility.

Markets and Morals

- The Confederacy's draft law also allowed for paid substitutes in conscription, giving rise to the slogan "rich man's war and poor man's fight,"
- In March 1863, Congress passed a new draft law, it provided that any draftee could pay the government a fee of \$300 instead of serving.
- Newspaper headlines proclaimed, "Three Hundred Dollars or Your Life." Anger over the draft and the \$300 commutation fee prompted violence against enrollment officers
- Was the Civil War system a just way of allocating military service??

Markets and Morals

Objection 1: Fairness and freedom

- For those with limited alternatives, the free market is not all that free.
- A homeless person sleeping under a bridge may have chosen, in some sense, to do so; but we would not necessarily consider his choice to be a free one
- Some people who wind up serving in the all-volunteer army may be as averse to military service as those who stay away

Markets and Morals

Objection 2: Civic virtue and the common good

- Military service is not just another job; it's a civic obligation??
- The volunteer army absolves most Americans of the responsibility to fight and die for their country??

Markets and Morals

- To answer this question, we have to resolve a prior one:
 - Is military service (and perhaps national service generally) a civic obligation that all citizens have a duty to perform?
 - Or, is it a hard and risky job like others (coal mining, for example, or commercial fishing) that is properly governed by the labor market?
- And to answer this question, we have to ask a broader one:
 - What obligations do citizens of a democratic society owe to one another, and how do such obligations arise?

Pregnancy for Pay

- What if the contracted surrogated mother decided she could not part with the child, and wanted to keep it?
- The libertarian case for contracts is that they reflect freedom of choice; to uphold a contract between two consenting adults is to respect their liberty.
- The utilitarian case for contracts is that they promote the general welfare; if both parties agree to a deal, both must derive some benefit or happiness from the agreement—otherwise, they wouldn't have made it.!?!

Pregnancy for Pay

Objection 1: Tainted consent

- Choices made under pressure, or in the absence of informed consent, are not truly voluntary??

Objection 2: Degradation and higher goods

- Some things money shouldn't buy, including babies and women's reproductive capacities??
- Surrogacy contracts "convert women's labor into a form of alienated labor". Mother agrees not to form or to attempt to form a parent-child relationship with her offspring.
- But what are those higher norms, and how can we know what modes of valuation are appropriate to what goods and social practices?

What Matters Is the Motive

- Immanuel Kant
 - The Categorical Imperative
 - Emphasis on human dignity – people as ends in themselves
 - Autonomous according to a law we give ourselves – Free will (non-deterministic)
 - What's moral? Look for the motive – do the right thing for the right reason.
 - Duty vs. inclination
 - I.e. Kant was against casual sex.

Immanuel Kant

- **If you believe** in universal human rights, you are probably not a utilitarian.
- If rights don't rest on utility, what is their moral basis?
- Libertarians offer a possible answer: Persons should not be used merely as means to the welfare of others, because doing so violates the fundamental right of self-ownership
- Immanuel Kant (1724–1804) offers an alternative account of duties and rights that we are rational beings, worthy of dignity and respect

Immanuel Kant

- Kant rejects utilitarianism.
- Kant argues that morality can't be based on merely empirical considerations, such as the interests, wants, desires, and preferences people have at any given time.
- Just because something gives many people pleasure doesn't make it right. The mere fact that the majority, however big, favors a certain law, however intensely, does not make the law just.
- We are sentient creatures as well as rational ones

Immanuel Kant

“Do good” vs. “Do good (for a reason)”

- Buckling our seat belts and keeping our cholesterol in check are prudential acts, not moral ones
- It is often difficult to know what motivates people to act as they do. And he recognizes that motives of duty and inclination may both be present.

Categorical imperative I: Universalize your maxim

- Would it be morally permissible to get the loan by making a false promise to repay the money promptly, a promise I know I can't keep?
- “What if everybody did that?” If everyone lied, then no one could rely on anybody's word, and we'd all be worse off.

Categorical imperative II: Treat persons as ends

- “Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.”
- For Kant, justice requires us to uphold the human rights of all persons, regardless of where they live or how well we know them, simply because they are human beings, capable of reason, and therefore worthy of respect

Against Utilitarianism

- The effort to base morality on some particular interest or desire (such as happiness or utility) was bound to fail.
- “For what they discovered was never duty, but only the necessity of acting from a certain interest.”
- But any principle based on interest “was bound to be always a conditioned one and could not possibly serve as a moral law.”

Against Utilitarianism

- Kant's opposition to prostitution and casual sex brings out the contrast between autonomy as he conceives it—the free will of a rational being—and individual acts of consent.
- Kant concludes that only sex within marriage can avoid “degrading humanity.”
- ***Is it wrong to lie to a murderer?***
 - Kant states, is not that the murderer is entitled to the truth, or that a lie would harm him. It's that a lie—any lie—“vitiates the very source of right . . . To be truthful (honest) in all declarations is, therefore, a sacred and unconditionally commanding law of reason that admits of no expediency whatsoever

THE CASE FOR EQUALITY / JOHN RAWLS

- why are we obligated to obey the law? And how can we say that our government rests on the consent of the governed?
- John Locke says we've given tacit consent. Anyone who enjoys the benefits of a government, even by traveling on the highway, implicitly consents to the law, and is bound by it.
- John Rawls (1921–2002), an American political philosopher, offers an illuminating answer to this question.
- In *A Theory of Justice* (1971), he argues that the way to think about justice is to ask what principles we would agree to in an initial situation of equality.

THE CASE FOR EQUALITY / JOHN RAWLS

- Rawls reasons as follows: Suppose we gathered, just as we are, to choose the principles to govern our collective life—to write a social contract
- What principles would we choose?
- We would probably find it difficult to agree. Different people would favor different principles, reflecting their various interests, moral and religious beliefs, and social positions.
- If no one knew any of these things, we would choose, in effect, from an original position of equality. Since no one would have a superior bargaining position, the principles we would agree to would be just.

THE CASE FOR EQUALITY / JOHN RAWLS

- Rawls would not choose utilitarianism. Behind the veil of ignorance, each of us would think, “For all I know, I might wind up being a member of an oppressed minority.”
- No one would want to risk being the Christian thrown to the lions for the pleasure of the crowd.
- And imagine that the object of this contract was not plumbing or any ordinary deal, but the principles to govern our lives together, to assign our rights and duties as citizens.
- A contract like this, among parties like these, would leave no room for coercion or deception or other unfair advantages. Its terms would be just, whatever they were, by virtue of their agreement alone.

THE CASE FOR EQUALITY / JOHN RAWLS

Principles of Justice?

- The first provides **equal basic liberties** for all citizens, such as freedom of speech and religion. This principle takes priority over considerations of social utility and the general welfare.
- The second principle concerns **social and economic equality**. Although it does not require an equal distribution of income and wealth, it permits only those social and economic inequalities that work to the advantage of the least well off members of society

THE CASE FOR EQUALITY / JOHN RAWLS

- What principle would we choose to govern social and economic inequalities?
- Suppose that by permitting certain inequalities, such as higher pay for doctors than for bus drivers, we could improve the situation of those who have the least—by increasing access to health care for the poor.
- Allowing for this possibility, we would adopt what Rawls calls **“the difference principle”**
- Only those social and economic inequalities are permitted that work to the benefit of the least advantaged members of society.

THE CASE FOR EQUALITY / JOHN RAWLS

- What about the big earnings of Michael Jordan or the vast fortune of Bill Gates?
- For example, was it subject to a progressive tax system that taxed the rich to provide for the health, education, and welfare of the poor?
- If so, and if this system made the poor better off than they would have been under a more strictly equal arrangement, then such inequalities could be consistent with the difference principle.
- Only if everyone begins at the same starting line can it be said that the winners of the race deserve their rewards.

THE CASE FOR EQUALITY / JOHN RAWLS

- If Rawls is right, even a free market operating in a society with equal educational opportunities does not produce a just distribution of income and wealth.
- If we are bothered by the fact that some runners are faster than others, don't we have to make the gifted runners wear lead shoes?
- Some critics of egalitarianism believe that the only alternative to a meritocratic market society is a leveling equality that imposes handicaps on the talented.