

# 公正

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What's the Right Thing to Do



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## 目 录

何何序.....	4
第一课 谋杀的道德侧面.....	6
第二课 人吃人案件.....	16
第三课 给生命贴上价格标签.....	30
第四课 如何测量快乐.....	42
第五课 选择的自由.....	54
第六课 我属于谁？.....	63
第七课 这块地是我的.....	77
第八课 满合法年龄的成年人.....	90
第九课 雇来的枪手.....	103
第十课 关于母亲.....	116
第十一课 考虑你的动机.....	129
第十二课 道德的最高准则.....	138
第十三课 撒谎的教训.....	147
第十四课 协议就是协议.....	156
第十五课 怎样才是公平的开始.....	165
第十六课 我们该得到什么？.....	177
第十七课 关于平权运动的争论.....	188
第十八课 目的是什么？.....	203
第十九课 好公民.....	214
第二十课 自由与适应.....	225
第二十一课 社群的需求.....	236
第二十二课 我们的忠诚在哪里.....	244
第二十三课 辩论同性婚姻.....	254
第二十四课 美好生活.....	264



## Contents

Lecture 1 The Moral Side of Murder.....	276
Lecture 2 The Case for Cannibalism.....	286
Lecture 3 Putting a Price Tag on Life.....	299
Lecture 4 How to Measure Pleasure.....	310
Lecture 5 Free to Choose.....	321
Lecture 6 Who Owns Me? .....	330
Lecture 7 This Land is My Land.....	344
Lecture 8 Consenting Adults.....	354
Lecture 9 Hired Guns.....	366
Lecture 10 Motherhood.....	378
Lecture 11 Mind Your Motive.....	390
Lecture 12 The Supreme Principle of Morality.....	399
Lecture 13 A Lesson in Lying.....	407
Lecture 14 A Deal is a Deal.....	416
Lecture 15 What's a Fair Start?.....	425
Lecture 16 What Do We Deserve?.....	436
Lecture 17 Arguing Affirmative Action.....	446
Lecture 18 What's the Purpose?.....	460
Lecture 19 The Good Citizen.....	470
Lecture 20 Freedom VS. Fit.....	480
Lecture 21 The Claims of Community.....	490
Lecture 22 Where Our Loyalty Lies.....	497
Lecture 23 Debating Same-Sex Marriage.....	507
Lecture 24 The Good Life.....	516

在繁华的巴黎大街的路旁，站着一个双目失明的老人在乞讨。

他的身旁立着一块木牌，上面写着：“我什么也看不见！”街上过往的行人很多，那些衣装华丽的绅士、贵妇，看了看木牌上的字，便姗姗而去。

这天中午，一位诗人也在这里经过。他看了看老人，于是拿起笔悄悄地在木牌上写了几个字，然后就离去了。

老人也不知道为什么，下午给钱的人就多了起来。

而那位诗人在上面写的是：

“春天到了，我什么也看不见！”

哈佛的公正课程一开始也门庭冷落。直到被翻译成中文之后，过来“听课”的人才越来越多，参与翻译的人也多了起来。

在一片的叫好声中，有人说，这只是又一次的文化入侵。也有人说，那是因为我们囊中羞涩。我们欠缺的，是平心而论的交流，和有理有据的论证。而这正是这门课受欢迎的原因之一。

“听听激动，想想感动，回到家里没法动。”听完这门课，不期望你记住了哪些知识，只希望它触发了你的思考。

因为它提供的不是答案，而是问题。

多少年过去了。如果那位老人还在那里乞讨，我会在那块木牌上面，写上：

“春天到了，我什么也看不见，但我还能听得见！”

而你会是那位诗人，路人，还是将这个故事讲下去的人呢？

**何何**

## 第一课 谋杀的道德侧面



这是一门关于什么公正的课程。我们先讲一个故事，设想你是一位电车司机，你的电车正以每小时 60 英里行驶，你发现，在车轨的尽头有 5 位工人站在那里干活，你想尽办法停下来，但已经停不住了，你的手刹不灵了，你感到十分绝望，因为你知道，如果你撞向这 5 位工人，他们必死无疑。你很快会就知道，你不知道该怎么办好，直到你发现，在电轨的尽头，刚好有一条分叉，而在那条分叉路上，只有 1 位工人。你的方向盘还没有失灵，所以你可以选择把电车拐向那条分叉路，撞向 1 位工人，但救活了另外那 5 位。现在我要问第一个问题，什么是我们应该做什么？你会怎么做？让我们来做一次投票，多少人会选择转入拐向那条分叉路，举起你的手，有多少人选择一直往前开的？极少数人会。绝大部份选

## 网易公开课春节策划——序

择了变方向，让我们先听听。现在我们需要研究你这样做的原因，让我们先听听占多数的人，有谁选择转向一边岔道的？为什么你会这么做？你的原因是什么？谁愿意说说你的想法？



学生1：“如果你可以只撞死1人，那么撞死5人肯定是不对的。”

如果你可以只撞死一人 那么撞死5人肯定是不对的 这是一个很好的理由，还有谁？是否有人同意这个想法，原因是什么？

学生2：“我认为这和9-11事件是同样的道理，我们把那些，把飞机撞向宾夕法尼亚州空地的人，视作英雄，因为他们选择了牺牲飞机上的人，而不是撞向



有人大厦。”

因此,原则是相同的,虽然都是发生在悲剧的情况下,为了5个人能活下来,牺牲1个人,也是值得的,占多数人的你们,也是这样吗?现在让我们来听听那些少数分子的看法。

学生3:“我认为这跟种族灭族主义、极权主义,是同一个手法,为了救活一个种族,你就能杀害其他人。”

那么,在这种情况下你会怎么办?为了避免像种族灭绝一样的做法,你就宁愿撞向那5个工人?

学生3:“理论上是这样。”

好的。还有谁?这是一个大胆的想法。谢谢你。

让我们考虑另外一种情况,看看你们这些占多数的,为什么在这种情况下,你的原则是牺牲一人来救活5人。现在,你不是电车司机,你只是一个旁观者,你站在桥上,俯瞰电车的电轨,沿着这个轨道,在尽头有5名工人,电车的手刹照样不灵了,电车快要撞向那5个工人,现在你不是司机,你真的感到无助。突然,你看见,站在你旁边,桥上还有一个非常胖的人,你可以推他一把,他会掉



到轨道上，刚好能停住那辆电车，他会死去，但他能救活其他 5 个人。现在，有多少人会推那个胖子？举起你的手，有多少不会这么做？大部分人不会。问题显而易见，你每次的选择，原则是什么？牺牲一个，救活更多人，在第一种情况几乎每个人都赞同，原因何在？我要听听，在两种情况下都是站在大多数的人一边的人，你如何解释二者之间的区别。

学生 4：“在第二种情况下，我认为涉及选择的问题，那个胖子原本不牵涉到这宗事故里，我觉得，第二种情况与第一种情况相比，那个胖子可以选择置身其外，但在第一种情况，司机，两边的工人的已经牵涉到里面。”

但是，那个在岔道上的家伙，他不会比那个胖子，更想牺牲自己吧？

学生 4：“这是事实。但他在岔道上……”

胖子也是在桥上啊。你可以继续，也可以待会儿再说。好的，这是个难题，你已经做得很好了。还有谁可以找到能调和的前后两种不同做法的？

学生 5：“我想在第一种情况，我们必须在牺牲那 1 个工人或另外 5 个之间的选择，我们必须作出的选择，那些工人是死于那驾电车，而不是你的直接行为，电车失控了，然后你才逼着自己选择；而推胖子的话，是你自愿的选择，你有能力选择推还是不推，但你没办法控制的电车不撞向大家，所以我认为两者略有不

同。”

好的。谁想回应他的想法？这很好。谁想回应？是否有更好的解释？

学生 6：“我不认为这是一个很好的理由，在这两种情况下，你都是选择杀人。因为前者你选择拐向那个岔道上的工人，这是你有意识的行为；后者，你去推胖子也是一种有意的行为。所以不管怎样，都是有意的行为。”

你想回应？

学生 5：“我不能肯定事实就是这样，这看来是不同的，推胖子到电轨上，他会死，你是在杀死他，你是在亲手杀死他，这有别于把电车转向，然后再撞死其他人，这好像听起来不对，是吧？”

这很好。你叫什么名字？

学生 5：“Andrew.”

让我问你一个问题，Andrew，假设在桥上，我不用推那个胖子，假设他是站在了一个陷阱上，我可以像转方向盘那样打开那个陷阱。

学生 5：“不知道为什么，这样做似乎更不对，我的意思是，也许你不小心推动了那个陷阱的方向盘，或者是其他原因，就发生了，又或者，电车阴差阳错地就拐向那条岔道了，我可能就认同了。”

好的。在第一种情况是正确的做法，在第二种情况就变成不对的了。

学生 5：“而且，在第一种情况下，你直接牵涉到事故中；在第二个，你是一个旁观者，所以你可以有选择卷入或不去推胖子……”

让我们暂时搁下这个故事，让我们想象另外一个的情形，这时候，你是急诊室的医生，6 位病人来找你，他们刚刚经历了一场电车交通事故，其中 5 人中度受伤，1 人重伤。你可以花一整天来照顾那位重伤病人，但这样的话，其他 5 个会死去；或者你可以先照顾好那 5 位，再来看那位重伤病人，但那位重伤病人也会死去。现在你是医生，有多少人选择先就那 5 个病人？又有多少人选择先救那位重伤者？极少数人，只有极少数人。我假设你们的原因跟之前的一样，1 条生命对 5 条。

现在考虑一种情形，这一次你是器官移植医生，你有 5 名患者，每一个都迫切需要器官移植，其中一个需要心脏，一个需要肺，一个要肾脏，另一个要肝脏，第五个人要胰腺，但现在没有可移植的器官，你即将看着他们死去。你突然发现，在你的隔壁病房，有一个健康的家伙，来检查身体，他正在打瞌睡，你可以很安



静地走进去，把那个家伙的 5 个器官取出来，当然他会死去，但是你可以救活另外那 5 位病人。你们有多少人愿意这样做？还有其他人吗？把你的手举高，二楼有没有？

学生 7：“我会。”

小心，不要摔下来哦。有多少人不会这样做？好的。你是怎么想的，刚才那位在二楼的同学。

学生 7：“我其实是在想着有没有其他可能的替代做法，先把那 5 个病人中最先会死去的人的器官取出来，这样，他健康的器官可以救活其他 4 位。”

这是一个不错的主意，可惜，您避开了我们要讨论的哲学观点。让我们回过头来看这些故事，这些争论，要注意的方式几点，注意我们的争论是围绕哪几点展开的。我们的讨论已经涉及到了一些道德的原则，让我们回顾一下，有哪些道德原则。第一道德原则是，正确的做法，符合道德的事，取决于我们行为的后果。如果在最后，能救活 5 个，哪怕是牺牲 1 个也是值得的。这是关注以结果为中心一派，一个很好的例子，结果主义的道德推理取决于道德行为的后果，它取决于我们最后的结果。但接着，我们考虑了另外一种情况，在这种情况下，人们对结果主义的道德推理原则就不那么坚定了，我们在犹豫，例如对于那个站在桥上的胖子，或者是去掉那位无辜的人的器官，人们在思考什么是应该做的时候，会

考虑到那个行为的本身，而不只是行为的后果，人们改变了原意，人们觉得这样做是不对的，行为本身是错误的，即使是为了拯救更多的生命，杀害无辜的人是不对的。人们认为，在第二种情况下是不对的，这是另外一种道德推理的原则，绝对主义的道德推理认为，道德有其绝对的道德原则，有明确的职责，明确的权利，不论后果是怎样。我们会在今天和未来几周来讨论，讨论结果主义和绝对主义的异同。结果主义道德推理最有名的一个例子是功利主义，由边沁提出，他是18世纪英国的一位政治哲学家，而最重要的一位绝对主义的哲学家，是18世纪德国哲学家康德。因此，我们来看看这两个不同的道德推理模式，评价它们，也考虑其他替代的理论。

从教学大纲，你会发现我们将会读一些非常著名的书，亚里士多德的、洛克、康德、约翰·密尔等人的，从教学大纲中你会看到，我们不只是读这些书，我们还讨论当代的政治和法律争议，讨论它们背后的哲学问题。我们将辩论，何为平等和不平等、平权行动、言论自由、攻击性言论、同性婚姻、征兵，一系列实际问题，为什么？因为我们不仅要真实地感受这样抽象、遥远的书籍，还要认真地讨论我们日常生活中的一些议题，包括我们的政治生活，所以我们读这些书，我们将讨论这些问题，我们将看到它们之间的联系。

这听起来很吸引人，但在这里，我要提醒大家，我的提醒是，阅读这些书，作为认识自我的一种训练，阅读这些书会有风险，个人的、政治上的风险。每一个学政治哲学的学生都知道的风险，这些风险的根源于一个事实，哲学会教化我

们，扰动让我们，面对在我们已经知道我们，有一个讽刺的说法，学习本课程的困难之处，事实上，包括它教的东西，我们已经了解的，它会把我们都熟视无睹的情景，使其不再熟悉。刚才我列举的案例就是例子，我们一开始假定的情景，融合了趣味性和严肃性，它也是这些书籍里，哲学让我们对熟悉的事物，变得陌生。它并不是提供新的信息，而只是引导着我们用新的方式看这些事物，但风险就在这，一旦熟悉变得陌生，它就会永远和以前不一样了。自我认识，就像一个迷了路的人，不管你觉得它多么地扰动你，你就不能不想起和思考这些问题了，是什么让这个探索的过程，显得既困难，但又有趣，因为，道德和政治哲学就像一个故事，你不知道的故事将怎么发展下去，但你却知道的，这是关于你的故事，这些是个人的风险。

那么政治的风险在哪呢？我或许可以这样描述这门课程，它向你承诺，通过阅读这些书籍和讨论这些问题，你将会成为一位更负责的公民，你会重新审视那些，你过去的观念和公共政策，你会训练你的政治判断力，你会更有效地参与公共事务。但这会是一个片面的、误导人的承诺，大部分政治哲学并不是那样的，学习政治哲学，你将有可能，成为一位更坏的公民，而不是一个更好，或者，至少在你成为一个好公民之前，让你变成坏公民。那是因为，哲学是一个遥远的事情，甚至是件破坏性的活动，这可以追溯到苏格拉底，苏格拉底和他的一个朋友，曾有过这样一个美妙的对话，朋友试图说服他放弃哲学，告诉他，哲学是一个很好的玩偶，如果你只是适度地沉溺其中，并在生命里合适的时候，但如果过度地追求，它绝对会伤害你，听我的劝告吧，放弃你的争论，学习那些将会让你有成



就的事情，不要去研究那些尽说些貌似优美但模棱两可的事情的人，去研究那些生活过得很好、有名气的人们。朋友是真心地对苏格拉底这样说的，放弃哲学，去寻找那些真实可见的。就像进商学院吧。朋友有一个点确实说得很对，哲学确实会让我们疏远过去的惯例习俗、预定的假设、固有的观念，这些都是风险，个人上的和政治上的。

在面对这些风险时，我们有一个特别的回避方式，叫怀疑主义。怀疑主义是这样的，我们不会彻底地去解决问题，无论是我们一开始讨论过的个案或原则，如果亚里士多德、洛克、康德和密尔，经过这些年都没有解决这些问题，你觉得我们是谁？我们坐在这个 Sanders 剧院里，经过一个学期就能解决这些问题？或许，我们只要每个人还是坚持自己的原则，我们也不会对别人的原则有什么好说的，不去进行推理、思考，这是在逃避，这是怀疑主义的逃避。对你们在座的每位，我提出以下的答复，这些问题确实是已经被辩论过很长时间了，事实上，这些问题和讨论还在重复着，这可能意味着，在某种意义上，他们不可能有结论，在另一种意义上，他们却是不可避免的，无法避开它们的原因在于，我们就生活在这些问题的答案中。因此，怀疑主义只是让你放手，放弃思考道德问题并不是问题的答案。康德曾经很好地形容过怀疑主义，他写道，怀疑主义是人类推理的安息之地，它只是让我们在一些教条之间徘徊，它不是我们最好的安身之处，怀疑主义只是简单地默许，它不足以经受住无情的、彻底的推理。我试图提出这些故事，这些论点，可能会是一种风险。最后，我来总结一下，本课程的目的是唤醒我们无情的、彻底的推理，然后看看我们最后会走到哪里。谢谢。

## 第二课 人吃人案件

上一次我们谈到了几个故事，电车司机碰到的一些道德困境，以及有关医生和几个患者的问题，这些病人还曾面临着被拿走器官的危险。我们注意到两个争论，那跟与我们争论的方式有关。我们一开始讲了一个特殊的案例，并让大家来选择，我们试图阐明它们背后的原因和原则，我们的决策背后的原因。然后又讨论了一个新的情形，我们发现，我们不得不重新审视我们之前的原则，不得不做出些调整，来使我们不会前后矛盾。我们注意到要看清这些问题并不是那么简单，我们对具体案件的判断，我们经过反思之后，最后认同的原则，我们也注意到这些争论的本质，那些从讨论中引出的争论，我们注意到，有时候我们觉得判断一个行为是否道德，取决于行为的后果，而不理会这些行为本身，我们把这种称为结果主义的道德推理。但是，我们也注意到在某些情况下，我们不仅会受行为结果的影响，有时，我们感到不只是后果，而且还有行为内在的性质，你们中有些人认为，有些事情是绝对错误的，即使他们带来一个好的后果，即使是用 1 条生命换回 5 条生命。因此，我们对比了一下结果主义和绝对主义。

在今天和未来几天里，我们将开始思考结果主义中最有影响力的一个道德理论，这就是功利主义哲学。边沁，18 世纪英国政治哲学家，首先明确、系统地表达了功利主义道德理论，边沁的基本思想是一个非常简单的、而且听起来就觉得很好道理的，边沁认为，凡是能将效用最大化的事，就是正确的、公正的。效用是什么意思呢？效用的意思是，在快乐和痛苦之间找到一个平衡点，在享乐和

受苦之间找到一个平衡点，我们通过这样，来得出最大化的效用。于是，他开始观察到身边的人，所有的人，我们都是被两样东西支配着——痛苦和快乐，我们都喜欢快乐，不喜欢痛苦，因此，我们的道德就建立在，我们是否正在考虑，怎样过我们的生活，或者，作为一个立法者或公民，我们正在考虑法律应该是怎样，关于个人的或集体的，正确的事就是最大限度提高了整体的幸福水平。边沁功利主义有这样一个口号：为最多数人谋取最大的利益。

在这样的功利主义的基本原则下，通过另一种情形，另一个故事，我们开始进行检验并研究它，但这次我们讨论的不是假设的故事，而是一个真正发生的事，英国女王与 Dudley 和 Stephens 案件。这是 19 世纪英国的法律案件，许多有名的法学院也辩论过这个案件，以下是案件的过程，我整理了一下故事，我想听听，如果你是陪审团成员，你会怎么判决。当时的报纸报道，描述了故事的背景，这是发生在海上遇难的十分令人痛惜的故事，关于一艘叫 Mignonette 的游艇，这艘游艇是在南大西洋，距离好望角 1.3 万英里的地方被发现的，船上有 4 名船员，Dudley 是船长，Steven 是大副，Brooks 是水手，这些人都是些品行不坏的人，报纸这样描述，第四名成员是船舱侍者，17 岁的 Parker，他是一个孤儿，没有家庭，这是在他第一次出海远航，他不听朋友们的劝阻，义无反顾地踏上了旅程，他去的时候满怀年轻人的雄心，他以为，这次旅程将会让他成为一个真正的男人，遗憾的是，事情并没有像他预想那样。案件的经过没有什么争议，波浪击中了船，船沉没了，4 名船员逃到救生艇，唯一的食物，是两罐大头菜，没有淡水。前几天，他们什么都没吃，在第四天，他们打开了一罐大头菜，接着的那



天，他们捕杀了一只龟，连同另一罐大头菜，这样他们能勉强地度过了几天，然后连续八天他们什么都没吃，没有食物，没有水。想象一下，在这样的情况下，你会怎么做？以下是他们的做法。截至目前，船舱侍者 Parker 正躺在救生艇的一个角落，因为他不听其他人的意见，喝了海水，他病倒了，似乎奄奄一息。因此，第 19 日，Dudley 船长提议，他们都来一次抽签，来决定谁先死，以救活其余的人，Brooks 拒绝。他不喜欢抽签这种做法，我们不知道这是否是因为他不想冒这个险，或者是因为他相信存在着绝对的道德原则，不管怎样，最后没有进行抽签。接着的那天，还是看不到任何船舶经过，因此 Dudley 叫 Brooks 转移目光，并暗示 Steven 只好牺牲 Parker。Dudley 做了个祷告，他告诉 Parker 他的时间不多了，然后用小刀刺入了他的颈内静脉，杀了他。尽管良心上挣扎着，Brooks 仍享用着 Parker 对他们的“恩赐”，后来的 4 天，他们 3 个吃着这位男孩的肉和血，这是真实的故事。最后，他们获救。Dudley 在他的日记写道，他委婉地描述道：第 24 日，当我们正在吃着我们的早餐时，一艘船出现了。

这三个人被一艘德国船救起，他们被送回英国，接着被逮捕和审判，Brooks 作为公诉方证人，Dudley 和 Steven 受审，他们没有否认他们所做的行为，他们声称，他们是出于需要，这就是他们的辩护。他们认为，牺牲 1 人，救活 3 人是对的，公诉人反驳了他们的论点，他说：“谋杀就是谋杀”，因此，该案要继续审判。现在，想像你是陪审团成员，为了简化我们的讨论，我们先撇开法律问题，现在假设你是陪审团成员，我们要决定，他们的行为，在道义上是不是允许的，多少人会投无罪释放，认为他们所做是道德上容许的？有多少投有罪，认为

他们所做的一切在道义上是错误的？大部分人都倾向于有罪。让我们看看大家的原因，让我先听听那些少数派，让我们来听听来自辩护方的意见，为什么你会在道义上赦免他们呢？你有什么原因？

学生 8：“我认为，在道德上，他们虽然应该受到谴责，但道德上应受谴责，这跟否要负法律责任是有区别的。换言之，就像法官说的，道德上不允许的，并不一定就是违法的。我不认为说这也是情非得已就是为盗窃、谋杀或任何非法行为来辩护，在某些时候，环境让你不得不这样做，确实能为你开罪。”

很好。其他的辩护有没有什么想说，在道义上，解释他们所做的？

学生 9：“我只是觉得，这是在绝望的情况下，你不得不做你需要做的，为了生存下来。如果你已经 19 天没食物吃，有人就必须牺牲，来救其他人。而且，再说了，他们存活下来之后，他们可能会为社会作出贡献，他们回家之后，可能建立一个百万富翁慈善机构，然后使所有人受益。我的意思是，我不知道他们之后会怎样，他们可能也会杀死更多的人。”

如果他们回家了，变成一个刺客呢？你会想知道他们刺杀了谁。

学生 9：“是这个道理。”

是的，好的。很好。你叫什么名字？

学生 9：“Markies.”

我们听完辩护的，现在，我们需要听听控方，大多数人认为他们的做法是错误的，为什么？

学生 10：“第一，我的想法是，他们已经很久没吃过东西了，这影响到他们的心智，这样也许就能为他们的行为辩护，他们的精神状态不佳，他们当时所做的决定，可能是他们不想的。如果这是一个吸引人的论点，你的心理状态发生了改变，于是做出这样的行为，这可能是个挺有说服力的论点，持这种观点的人可能会认为他们的行为是不道德的。”

但我只想知道你的想法。

学生 10：“我不认为他们的行为在道德上是正确的。”

为什么呢？刚才，Markies 就替他们辩护过了，他说，你必须这样做，在这样的情况下，面对 Markies 你会怎么说？

学生 10：“无论在什么环境下，人们也不能够，把其他人的生命掌控在自己



手中，我们没有这种权力。”

好的。谢谢你。你叫什么名字？

学生 10：“Redd.”

还有谁？你是怎么想的？

学生 11：“我想知道，如果 Dudley 和 Steven 在 Richard 奄奄一息时，得到了他的同意，是否可以赦免他们的谋杀行为，如果在这种情形下，它在道义上是合理的。”

很有意思。你叫什么名字？

学生 11：“Catharine.”

Catharine，假设现在的情形就像刚才说描述的，现在，Dudley 在那里，拿着一把小刀，不同的是，在 Dudley 为 Parker 死前祷告之前，他说，“Parker，你是否介意，我们极度饥饿。” Parker 感同身受。“我们极度饥饿，你反正活不了多久了，你愿意牺牲自己吗？Parker 你认为如何？”你觉得呢？现在是否符合道义呢？假设 Parker 一半睁着他那昏迷的眼睛，说，“好吧”。

学生 11：“我不认为这在道德上是合理的。”

即使这样也不合理？

学生 11：“不合理。”

你觉得即使取得对方同意，在道义上还是不合理。有没有人谁想接着 Catharine 说下去？有谁认为这样做是符合道德的，举高你的手，如果你是这样认为。非常有趣。为什么取得对方同意，就会产生这样的区别？

学生 12：“我认为，如果一开始是 Parker 提出这样的做法的，这将是唯一的情况，我能接受的，因为这样，你就不能说，是大家逼他这样说的，因为是 3 比 1。如果是他作出决定，牺牲自己的生命，Dudley 他们只是充当了中间人，有些人可能会觉得 Parker 的奉献精神是值得称赞的，其他人可能不同意。”

因此，如果他想出这个主意，这是唯一情况，我们肯定它是符合道德的，那么就行了。否则，其他情形都视作是胁迫的情况。有谁以为，即使取得 Parker 同意，也不能为他们开罪，谁是这样认为？

学生 13：“我认为，Parker 是带着一种希望死去的，他心中是想着，其他船

员将会获救，所以你没有明确的原因，应该牺牲他，因为你不知道他们什么时候会被救，所以，如果你杀了他，你是在谋杀，你是否要一直杀死其他船员，直到你们获救？”

但是，这里，我们的道德逻辑似乎是，他们将杀死那个最弱的，也许，一个接一个，直到获救。幸运的是，在这种情况下，他们最终被救出时，其他 3 人还活着。如果 Parker 同意了，你觉得就可以这样做呢呢？

学生 13：“我不觉得。”

告诉我们，为什么你不同意。

学生 13：“首先，人吃人，我相信在道德上是不正确的，因此我们反对人吃人。”

因此，人吃人在道义上令人反感。因此，即使在这种情况下，等着有人死去，你仍然会反对这样做？

学生 13：“是。我觉得，这一切都取决于一个人的道德原则。这只是我的意见，当然，其他人可能会不同意。”

让我们看看你们的分歧是什么，然后我们将看看，他们有没有足够的理由可以说服你。我们来试一下，有没有谁能解释？你们谁是赞成这样做的，你能解释为什么取得同意会带来这些道德上的区别？再想想抽签？抽签是否能视作是一种同意？还记得一开始，Dudley 提出了抽签的做法，假设他们已经同意了抽签，那么有多少便认为这是可以合理的？假设抽签之后决定，要牺牲那个客舱的男孩，那么，故事还是原来那样发展下去，那么有多少人会说这是道德上容许的？看来，如果由抽签决定的，更多人就会赞成，对他们来说，抽签会产生这样的区别，为什么会这样？

学生 14：“我认为，考虑是否是犯罪，一个是必不可少的因素，是在他们自己在私底下做决定，认为他们的生命比他的生命更重要，我的意思是任何犯罪行为的基础都是觉得我的需要、我的愿望比你的更重要，如果他们已经做了抽签，每个人都同意，有人必须要牺牲，这就像是偶然性让他牺牲了来救活其他人，这样就变成可以接受的，听起来有点怪，但在道义上允许的。”

你叫什么名字？

学生 14：“Matt.”

那么困扰你的，不是人吃人，而是缺乏应有的程序。



学生 14：“我想你可以这么说。”

有谁同意用 Matt 的观点，再补充一点，为什么抽签使得这变成是道德允许的？

学生 15：“我的理解是，整体的问题是，从来没有征询那个男孩的意见，不论将会有什么事情发生在他身上，即使原来抽签，他是否会参与了其中，大家就这样决定了，他就是那个要牺牲的，现实情况就是这样的。”

但是，如果有抽奖，他们同意了这个程序，你认为这是合理的？

学生 15：“是的。因为每个人都知道有人将会死去，但那个男孩不知道，大家就这样决定了，提前没有让他知道，他就是那个可能会死亡的。”

好的。假设每个人都同意的抽签，他们已经抽签。那个男孩抽中那个签，他改变了主意。

学生 15：“但你已经决定，这就像一个口头合同，你不能反悔了，你已经决定了。如果你知道你将为他人死去，如果是其他人死去，你知道你会吃他们的肉。”

好的。然后，他可能说，“我知道，但我输了……”

学生 15：“我只是认为，整个道德问题在于，有没有征询那个男孩，最可怕的就是，，他不知道将会发生什么事，如果他知道这是怎么回事，就变得更加容易接受了。”

好的。现在我想听听，所以，有些人认为这是道德上允许的，但只有约 20%，Markies 是其代表。还有一些说，真正的问题是缺乏获得他人同意，是否抽签决定，是否经过一个公平的程序，或者像 Catharine 所说在他死的那一刻没有征询同意，如果多了同意，更多的人会赞成，牺牲他人的生命在道德上是允许的。最后，我想听听，那些认为即使获得了同意，即使有抽签，即使 Parker 最后同意了，它仍然是错误的，而且为什么是错误的？这就是我想听到。

学生 16：“由始至终，我一直倾向于绝对主义的道德推理，我认为有一个可能我会同意，那就是抽签的做法，中签的人要自杀，这样就不算是谋杀行为。但我仍然认为，即使这样，他还算是被迫的。此外，我不认为 Dudley 的日记里带有悔改之意，‘我们正在吃早餐’，看起来，这只是他不珍惜他人生命的一个反映，这让我觉得我必须采纳绝对主义。”

你想把用书砸他，因为他缺乏道德，认识不到自己的错误。

学生 16：“是的。”

好的。有没有人要辩护，谁认为这是错误的，绝对的错误，无论是否征得同意？

学生 17：“我们的社会说‘谋杀就是谋杀’，以各种方式谋杀，在我看来，大家好像觉得这和其他谋杀是不一样，我认为，谋杀在任何情况下都没有任何差别。”

让我问你一个问题，3 对 1，3 个危在旦夕的人呢，那个男孩没有家庭，没有亲人，其他 3 人在英国有他们的家庭，他们的家人，他们有妻子和子女。回想一下，边沁说，我们要考虑福利，最大的效用，大家的福祉，我们如果把所有因素考虑进去，它不是仅仅数 3 对 1，这还包括在家里的所有人。事实上，那时伦敦报纸和大众的意见也同情他们，报纸说，Dudley 和 Steven，如果他们不是，因为牵挂这他们家里的爱人和家人，他们当然不会这样做。

学生 17：“那些角落里的人，和其他人有什么区别吗？我看不出什么差别，我认为在任何情况下，如果我杀了你来提高自己，这就是谋杀。我认为，我们应该用同样的目光看他们。是否就能允许某些犯罪活动，做出某些不道德的暴力和野蛮行为，在同一案件时，都是同样的行为，如果一位凶手为了养活他的家人就可以去杀人……”

假设现在是不是 3 个，假设现在是 30 个，300 个，一个生命来拯救 300，或者是战时，3000 个，假设是更大的比数。

学生 17：“我认为，这是同一件事。”

那么你认为 边沁是错误的，“正确的做法就是增加了集体的幸福”，你认为，他的想法是错误的。

学生 17：“我不认为这是错的，我认为谋杀是在任何情况下都是谋杀。”

如果是这样，边沁就是错的，如果你是对的，他就是错的。

学生 17：“好吧，他错了。”

谢谢你。你做得很好，好的。让我们暂时先不讨论下去，看看，我们已经听了多少种反对的意见，我们听到一些人为他们辩护，他们辩护这是在严峻的情况下的不情之举。此外，人数也会影响我们的决定，不仅数量问题，而且这些人所牵涉的影响也是个问题，他们的家庭，他们的家人，Parker 是个孤儿，没有人会想念他。所以，如果你这样算起来，如果您尝试计算幸福和痛苦的平衡点，你可能认为，他们是正确的。



然后，我们听到了至少有三个不同类型的反对意见，我们听到有人反对说，他们的所作所为是绝对的错误，谋杀就是谋杀，它永远是错的，哪怕它能增加社会的所有幸福，无条件的反对。但是，我们仍然需要研究，为什么谋杀就是绝对的不对？是否是因为即使是那个男孩也有他基本的权利？如果是这样，这些权利来自哪里？这些权利如果不是来自追求最大的效用或快乐，这是第一个问题。其他人表示，是否抽签会产生差别，或者是像 Matt 说的，一个公平的程序，这样，有些人开始动摇，这就不符合绝对主义——每个人都被视为平等的，即使牺牲一个人换取大众的福利也是不对的。我还有另一个问题，我们要研究，为什么同意以一定的程序，公平的程序，就可以为他们的行为辩护？这是第二个问题。问题三，关于同意的基本思想，Catharine 带我们想到了这一点，如果那个男孩自己同意，而不是在他休息的时候，杀死他，那么我们就可以牺牲他的生命来救活其他人了，更多的人偏向了这一想法，但是，这引出第三个哲学问题，在道德的层面上，同意为什么会带来不同？为什么一个同意的行为，产生这些道德上的区别？不经过同意就杀死一个人是不对的，但经过同意后杀死一个人就变成是允许的。为了思考这三个问题，我们将会阅读某些哲学家的作品。从下次开始，我们还将要阅读边沁、约翰和密尔的作品，这些功利主义哲学家。请听下一节课，并参与讨论。

### 第三课 给生命贴上价格标签

上一次，我们讨论了英国女王与 Dudley 和 Stephens 案件，一个发生在救生艇上的人吃人的案件。我们讨论了发生在救生艇上的一些争论，关于支持还是反对 Dudley 和 Stephens 的做法的争论。让我们回到哲学，边沁的功利主义哲学。1748 年，边沁生于在英国，12 岁时，他去了牛津大学，15 岁时去了法学院，19 岁时就拿到律师资格，但他从来没有从事法律。相反，他毕生致力于法学和道德哲学。上一次，我们开始谈到了边沁的功利主义，其主要思想可以表达为：不论是个人或政治道德，道德的最高原则，就是为了将大众福利、集体的幸福最大化，或在快乐和痛苦之间找到平衡点，一句话，效用最大化。

边沁是经过以下的推理，得出这个原则：我们都受痛苦和快乐支配，他们就像统治我们的君主，所以任何道德体系，都要把它们考虑进去。怎么才能最优地把这两者都考虑到？通过最大化，这也就引出了追求大多数人的最大利益的原则。那么我们应该把什么最大化呢？边沁告诉我们，是幸福，或者更准确——效用。将效用最大化，不仅是对个人，还有集体，以及立法者。“究竟什么是集体？”边沁问道。那就是组成这个集体的所有个人的总和。这就是为什么，在决定什么是最好的政策时，在决定法律应该怎么制定，在决定什么是公正时，公民和立法者应该问自己一个问题：如果我们把这一政策的所有好处加起来，再减去所有的成本，我们要做的就是平衡幸福和苦难后，找到最大值。这就是效用最大化的意思。

今天，我想看看你是否同意这个观点。功利主义的逻辑常常是，建立成本和效益分析，企业和政府一直也是这么做的，它涉及到给所有东西赋予一个价值，通常是用美元来表示，成本和各种的收益。最近，在捷克共和国，有人提议增加吸烟的消费税。一家叫 Philip Morris 的烟草公司，在捷克拥有庞大的生意，他们委托做了个研究，进行成本效益分析，分析吸烟对捷克的成本与效益，分析发现，如果允许公民吸烟，政府将收益。他们怎么获益？虽然这对捷克的公共财政有负面的影响，因为吸烟者增多，患病人随之增多，对医疗问题的投入也要增多，但另一方面，也有积极影响，这些积极的作用累积在账本的另一边。这些积极作用主要包括，从销售卷烟产品中收取的各种税收，而且还包括，人们因病早死节省下来的医疗储蓄，以及养老金储蓄（他们过早地死去，你就不用支付养老金），同时，节省了老人住房的费用。Philip Morris 公司的研究发现，当成本和收益都加起来，捷克政府的公共财政将有 1.47 亿美元的净增益；如果考虑到在住房、医疗、养老上的节省，对于那些因吸烟而早死的，政府能在他们每个人身上节省超过 1200 美元。这就是成本效益分析。现在，你们中间支持功利主义的，可能认为这是一种不公平的测试。Philip Morris 遭到媒体攻击，被迫为这一无情的数字道歉。你可能会说，功利主义缺少了一些东西，也就是人的价值，以及这些死于肺癌的人所在的家庭。

如果把人的生命价值也考虑进去会怎样？一些成本效益分析纳入了对生命价值的考量。其中一起是有名的福特 Pinto 案件，有没有人听说过这个 20 世纪

70 年代的案件？你还记得福特 Pinto 是什么吗？是一种的车吗？有没有人知道？这是一种小型车，超小的车，很受欢迎，但它也有问题，问题出在它的油箱，因为油箱设在汽车的背部，与后方碰撞，油箱爆炸，炸死了一些人，不少人严重受伤。这些受害者把福特告到法院。而到了法庭上，结果是，福特早就知道油箱有问题，他们做了成本效益分析，以确定安装一个特殊的挡板保护油箱防止爆炸是否划算。他们做了成本效益分析，计算每增加一个零件的成本，他们算出来，每个零件要 11 美元。在法庭上，福特呈上了成本效益分析，12.5 万辆轿车和卡车，每辆车多花 11 美元，加起来一共要 1.37 亿美元的成本，来使其更安全。同时，他们还计算了收益，做出更安全的汽车，一共少死 180 人，他们估计每个死者的价值是 20 万美元，180 个伤者，每人 6.7 美万，然后维修的费用，更换 2000 辆车的费用，这些无安全装置的车将被销毁，每辆 700 美元。因此，收益变成只有 4950 万美元，所以他们没有安装该设备。不用说，当福特的这个备忘录呈上法庭时震惊了陪审团，他们判了福特巨额的赔偿金。这是功利主义的一个反面例子吗？因为福特公司在计算的时候把生命价值也包括在内了。现在，谁来为这个成本效益分析作辩护？这是一个明显的反例，谁要为其辩解？或者，你是否认为这完全违背了整个功利主义的计算原则？

学生 1：“嗯，我想，他们又一次犯了同样的错误，跟以前的情况一样，他们为每条性命赋予了一个美元价值，但再次忽略了死伤者的家庭所遭受的感情上的痛苦。我的意思是，他们不仅失去了家庭的收入来源，而且还失去了亲人，这些不是 20 万美元能衡量的。”



对，等一下。你说得不错。你叫什么名字？

学生 1：“Julie Roteau.”

如果 20 万美元是一个偏小的数字，因为它没有考虑到失去亲人的损失，以及失去的这些年生命，你认为，多少才算是一个比较准确的数值？

学生 1：“我不认为我可以给一个明确的数字。我认为这种分析不能应用于与生命有关的问题，我认为不能用金钱来计算。”

因此，Julie 说，他们不只是给的数值太小，而是，用数字来计算本身就是错的。好吧，让我们听听其他人。

学生 2：“你还要考虑到通货膨胀。”

你还要考虑到通货膨胀，好的，很好。那么，现在这个数目应该是？这是 35 年前。

学生 2：“200 万美元。”

200 万美元？你觉得要 200 万美元？你叫什么名字？

学生 2：“Voytek.”

Voytek 说，我们把通胀考虑进来，我们要更慷慨一点。那么，你对这样思考关于正义的问题，满意吗？

学生 2：“我想，不幸的是，现在需要给出一个数字，我不肯定，这个数字应该是多少，但我同意，用数值来衡量生命也是有可能的。”

好的，在这里，Voytek 不同意 Julie 的想法，Julie 说，我们不能用数值来衡量生命，来做一个成本效益分析，Voytek 说，我们不得不这么做，因为我们必须作出某种决定。其他人怎么想呢？有没有人准备为这个成本效益分析辩护的？是不是数字越准确越好？是吗？请讲。

学生 3：“我认为，如果福特和其它汽车公司，没有使用成本效益分析，他们最终会歇业，因为他们无法实现盈利，数百万人将无法开车上班，赚钱养活孩子。因此，我认为，如果不用成本效益分析，在这种情况下，会损害大部人的利益。”

好的，让我补充一下。你叫什么名字？

学生 3：“Raul。”

Raul，最近有项研究，关于开车时是否使用手机，并且引起一场争论，争论是否应禁止开车使用手机。是啊，因开车使用手机而死去的人，每年约有 2000 人。然而，哈佛的风险分析中心，做了成本效益分析，发现，如果你看一下允许使用手机所带来的效益，和因此而失去的性命，它们的价值差不多，由于，允许人们使用手机能带来巨大的经济利益，人们可以充分利用时间，达成交易，与朋友交谈等。这是不是表明，用金钱来衡量一个人的生命，是错误的？

学生 3：“嗯，我认为，如果大多数人都想着计算出一个最大的效益值，例如，使用手机所带来的便利，为了得到这些便利，作出一些牺牲是必要的。”

你是一个十足的功利主义。

学生 3：“是的，好吧。”

好的，最后一个问题，Raul，我刚才问到 Voytek 一个问题，这个数字应该是多少，把生命的价值考虑进去，才足以决定要禁止使用手机？

学生 3：“嗯，我不想任意给出一个数字，我的意思是，现在，我认为……”

你一定要经过周密地考虑？

学生 3：“是的，我要经过周密地考虑。”

但如果粗略地计算，会是多少呢？如果是 2,300 人死亡，你要给每个生命赋予一个值，才能知道，是否足以禁止开车时使用手机。你预计多少？100 万？200 万？200 万是 Voytek 给的数字。

学生 3：“是啊……”

差不多？100 万呢？

学生 3：“也许 100 万。”

100 万？

学生 3：“是啊。”

很好。谢谢。好吧。这就是当前关于成本效益分析的一些争议，尤其是涉及到怎么衡量价值，最后加起来得到个数值。那么，现在我想来谈谈那些的反对意

见，你不一定是反对成本效益分析，因为这只是功利主义在实际生活中的一个版本而已，你可以，思考功利主义的整个理论，政策和法律是建立在效用最大化的原则上。有多少人不同意功利主义，关于立法，和公众利益的原则？有多少人同意？同意的人更多。因此，让我们听听那些批评的声音。

学生 4：“我觉得它主要的问题在于，我觉得你不能认为少数人的利益和需求就比大多数的利益价值要小，所以，我想，认为谋求最多人、最大化的效益，这个想法有问题，那些占少数的人怎么办？这对他们不公平，他们没有任何发言权。”

好的。这是一个有趣的批判。你担心的是那些占少数的人。

学生 4：“是的。”

你叫什么名字，顺便问一下？

学生 4：“Anna。”

Anna 担心功利主义对少数人的影响，谁能给她一个回应？你会对她说什么？



学生 5：“嗯，她说，少数派较少得到重视。我不这样认为，就个人而言，少数人和大多数人一样，只是后者人数多一点而已。我的意思是在某些时候，你必须作出决定，对不起啊，那些占少数的人。有些时候，这样是为了大多数人的利益。”

为了多数人的利益。Anna，你怎么说？你叫什么名字？

学生 5：“杨达。”

你怎么回应杨达？杨达说，你不得不把所有人的利益加起来，而且我们也把少数派的利益也加进去了。你能举一个例子吗，当你说，你对功利主义的担心，因为忽略了对少数人的尊重？举一个例子。

学生 4：“好吧。之前我们已经讨论过的案件，例如，那个沉船的案件，那个被吃掉的男孩，他和其他人有同等的活着的权利，只是因为他是少数派，他活下去的机会比其他人少了（他当时病了），这并不意味着，其他人就理所当然地有权吃他的肉，让更多人生存下去。”

因此，也许少数派也有一定的权利，不应该拿他们的个人利益来换取多数人的利益。

学生 4：“是的。”

好的，Anna.

下面将是对你的想法的一个检验。早在古罗马，他们把基督徒丢在斗兽场的狮子群里。你觉得功利主义会如何计算？是的，基督教被抛进狮子群里，承受着巨大的痛苦，但看看罗马人的狂喜！杨达。

学生 5：“那么，在那个年代.....我不.....如果在现代这个年代，给那些围观的人所得到的快乐赋予一个价值，我不认为，政策制定者会说，一个人的痛苦，一个人会比，我的意思是，跟众人的快乐相比.....”

不，但你得承认，如果有足够多的罗马人，他们都开心得发狂，那就会比少数被扔在狮子群里的基督徒所忍受的惨痛更重要。

因此，在这里，我们有两种不同的反对功利主义的意见。其中一种，考虑到是否要充分尊重个人或少数人的权利，而另一个种意见，考虑到怎么把整体的利益加起来，是否有可能，把所有利益加起来，换算成美元价值？

在 20 世纪 30 年代，有个心理学家试图解决第二个问题，他试图证明功利主义的假设，我们可以将所有商品、价值、人文关怀，转换成一个统一的度量。

他给那些领取救济的年轻人，做了个调查，这是在 20 世纪 30 年代，他列了一个不愉快体验的清单，然后问这些年轻人，“付多少钱，你会愿意忍受这些体验？”他一直跟踪调查。举例来说，给你多少钱，你愿意被拔掉一颗上门牙？或者，给你多少钱，你愿意一个小脚趾被切掉？或者吞下一只 6 英寸长的活蚯蚓？或住在堪萨斯州的一个农场来度过你的余生？或者用亲手把一只流浪猫掐死？你猜这个清单上，最昂贵的是哪一条？

学生们：“堪萨斯？”

是的，是堪萨斯州。如果要他们选择住在堪萨斯州，别人要支付他们 30 万美元。你认为，接下来哪一条最贵？不是猫，不是拔掉一颗牙，不是切掉脚趾，是吞下蚯蚓！你得支付他们 10 万美元，他们才肯吞下蚯蚓。你认为，哪条是最便宜？，不是猫，是拔牙。大萧条时期，人们愿意拔掉一颗牙来换取 4500 美元。

学生们：“什么？”

下面是桑代克（著名的心理学家）从这个研究得出的结论：任何一种欲望只要存在，就必须以一定的程度存在着，因此，它们都是可以衡量的。狗、猫或一只鸡的生命，由食欲、渴望、欲望、满足来组成。人类也是如此，虽然人类的食欲和欲望更加复杂。你怎么看桑代克的研究？它是否支持边沁的理论，所有的商品、价值都用一个统一的价值来衡量？抑或是，这个列着各式荒诞行为的清单，

提出了相反的结论，不论是生命、堪萨斯或蠕虫，也许很多我们珍视的事情是不能用某种统一的价值来换取？如果是不能的话，这意味着什么，对功利主义的道德理论意味着什么？我们将在下一次继续讨论这个问题。

#### 第四课 如何测量快乐

上一次，我们开始考虑一些反对边沁的功利主义的意见。人们提出了两种反对意见。首先是反对，功利主义只考虑最大多数人的最大效益，没有充分尊重个人的权利。今天，我们讨论有关酷刑和恐怖主义。假设一个恐怖嫌疑人，在 9 月 10 日被捕，你有理由相信，从疑犯身上能得到关于一起将会让 3000 人遇害的恐怖袭击的重要信息，但你现在还得不到这些信息。为了获取信息，用酷刑来折磨嫌疑人是否合理？或者你会说不可以，我们绝对要尊重个人的权利？从某种意义上说，我们又回到我们一开始的问题，关于电车事故和器官移植。这是第一个问题。而且你们还记得，我们考虑了一些成本效益分析的例子，但很多人对这样做不满，因为它用金钱来衡量人们的生命。由此引出了第二种反对的意见，我们质疑是否有可能将所有东西都转化成一个统一的价值尺度，换句话说，它要求所有的东西是可度量、相称的。

让我再举另外一个例子，这实际上是一个真实的故事，它来源于个人的经历。它让我们思考，是否能无损失地将所有东西完全转换成功利主义里所说的效益。多年以前，当我还是一名研究生，我当时在英国牛津大学，我们有男子和女子学院，男女还是分开，而女子学院，规定不准男生夜访。到了 70 年代，这些规定很少得到执行，而且很轻易就违反了，至少有人这样告诉我。到 70 年代末，当我在那里学习时，放松这些规定的呼声很高，这些规定也成为了争论的话题。St. Anne's 学院也是一所女子学院，学院里年级较大的老师都比较传统，他们反对



改变传统，然而时代变了，他们也给不出一个合理的反对理由，所以他们用功利主义的论述来作为他们的论点，“如果男生在女生宿舍过夜，”他们称，“学院的支出将会增加。”怎么个增加法？你可能想知道。嗯，“他们要洗澡，而且会消耗很多热水，”他们说。此外，他们认为，“我们将不得不更加频繁地更换床垫。”支持改革的人，作出回应，提出每个女生每周最多只能让男生夜访三次，他们没有明说是同一个人或三个不同的人——这是支持改革者作出的妥协——访客得为大学支付 50 便士的费用。第二天，全国的报纸头条都写着，“St. Anne 女生，50 便士一晚”。这就是将所有东西换算成价值的困难之处。在这种情况下，凭借某种方法，来转换成功利主义的效益。这些都阐述了第二种反对功利主义的意见，至少说明了一部分。关于功利主义，是否能将所有东西的价值统一化的假设，将所有价值、道德因素都同等地转换成美元或金钱？

但这也有另外一个顾虑，怎么将价值叠加起来，为什么我们要把所有人的利益叠加起来，而没有考量到，哪些是好的，哪些是坏的？我们是否应该区分较高层次的快乐和低级快乐？，现在，其中一个考虑点是，是否不应区分人们价值好坏的问题；另外一点是，它是公正和平等的，边沁的功利主义认为，每个人的喜好都要考虑，不管它们是什么，不管是什么让不同的人快乐起来。对于边沁来说，所有的事情，都只是快乐或痛苦的强度大小、持续时间长短问题，所谓的“更高级的快乐，或更崇高的美德”，对于边沁来说，都只是更强、更持久的快乐而已，用一句很有名的话来形容就是，快乐不分多少，“图钉跟诗一样好”。图钉是什么？，图钉是孩子玩的一种游戏，如 tiddlywinks（一种挑圆片游戏）。“图钉

跟诗一样好”，边沁说。我认为这种想法的背后，它是一个假定，判断谁的快乐，在本质上是更高级、更有价值，或更好。有趣的是，如果你拒绝去做这一区分，有些人喜欢莫扎特，有些人喜欢麦当娜，有些人喜欢芭蕾，其他人喜欢保龄球，边沁也许争辩说，谁敢说，这些快乐中，有些人的快乐更高级，更有价值的，更高尚呢？但拒绝做定性的区分，是否就是正确的呢？，我们能否完全不考虑，我们在某些事情上的快乐，比其他更好或更有价值呢？回想起之前在罗马斗兽场的例子。这一做法困扰人们的地方在于，它似乎侵犯了这些基督教徒的权利。另一个反对角度，就是这些罗马人在这场血腥中获得的快乐，这种快乐，是可耻的、堕落的、有辱人格的快乐。是否应该对某些快乐加以评价和权衡，再决定什么是大众的利益？

这是反对边沁功利主义的一些意见。现在，我们来看看，试图回应这些反对意见的人，近代的功利主义者约翰·密尔。现在，我们要看看约翰·密尔给出什么令人信服的解释。约翰·密尔出生于 1806 年，他的父亲詹姆斯·密尔是边沁的徒弟，詹姆斯·密尔着手给他的儿子树立榜样。约翰·密尔从小是个门徒，他 3 岁是会希腊语，8 岁会拉丁文，10 岁时写了《罗马法史》，20 岁时，他精神崩溃。这让他抑郁了 5 年，但在 25 岁，让他走出抑郁德，是他遇上了 Harriet Taylor，他们后来结了婚，一直过得很幸福。正是在她的影响下，约翰·密尔试图把功利主义变得人性化，密尔试图完善功利主义，使其融进人文关怀，例如考虑到尊重个人权利，区分了高级和低级的乐趣。1859 年，密尔写了一本关于自由的有名的书，书中的主要论点是，维护个人和少数人的权利的重要性。1861 年，当他

接近生命的终点时，他写下了我们这门课的其中一本书，《功利主义》，他清楚地表明，效用是道德的唯一标准，所以他并没有违背边沁的假设，而是坚定了他的观点。他说，很明确地说：“证明某样东西是更令人喜欢，唯一证据就是人们都喜欢它。”他留下了一个想法：我们真实存在的欲望，是道德判断的唯一基础。但在第二章，第8页，他认为：功利主义是可以区分高级或低级的乐趣的。现在，你们谁看过密尔的文章，根据他的理论，是怎样作出这种区分的？功利主义是怎样从定性上把高级的快乐，从低级的、可耻的、无意义的快乐区分出来？

学生6：“如果你尝试过这两者，你会更喜欢更高级的，很自然地，一直地。”

很好。你叫什么名字？

学生6：“John.”

就像 John 指出的，密尔说，我们是这样给它定性的：既然我们不能走出实际的愿望，因为它们会违反功利主义的假设，检验一种乐趣是高级还是低级，需要你把这两种乐趣都体验过之后，更偏爱其中一种。在第二章，我们看到了，密尔指出来，约翰刚才所说的，“两种乐趣之中，如果其中一种是，所有（或几乎所有）体验过这两者之后，还偏爱其中一种，不管任何的道义责任，你还喜欢它，换句话说，没有外部独立的标准，“它就是在比较之下，我们更喜欢的那个。”大家对这种论点怎么看？它是否成功了？有多少人认为，它成功地，在功利主义的

框架中，成功地区分了高级和低级的快乐？有多少人觉得这并没有成功？我想听听你的理由。

但是，在我们给出我们的理由之前，让我们按照密尔的说法，做一个实验。我们将会观看三个娱乐短片，第一个是一段哈姆雷特的独白，接着是两个其它方面的体验，看看你是怎么想的。

哈姆雷特独白：

*人类是一件多么了不起的作品！如何高尚的理由，能力如此无穷，动作多么迅速，动若天使，令人赞叹，思若上帝！世界之美，万物之灵！可是，对于我，这点泥土里提炼出来的玩意儿算得了什么呢？男人不能让我愉悦……（下一句：不，女人也不行……）*

“谁敢来挑战” 片段：

*想像这样一个世界里，你最大的担忧变成现实。“啊！它们在咬我！” 每场演出，6名来自全国各地的参赛者，表演3个特技，刀光剑影。“呜！” 这些特技专门用来为难这些参赛者的，既是身体上的，也是心理上的。6名选手，3项特技，1个赢家。Yes! Whooo! —— “谁敢来挑战”*

"The Simpsons"片段：

*"你好, diddily-ho, pedal-to-the-metal-o-philes." "Flanders, 你是什么时候开始喜欢酷的东西的?" "嗯, 我不在乎速度, 但我无法得到满足, 这一安全装置。头盔, 侧倾杆, 警告标志....." "我喜欢新鲜的空气.....看着内场的穷人。" "Dang, Cletus, 为什么你把车停在我父母的车旁边?" "亲爱的, 现在他们也是我的父母。"*

我甚至不用问你最喜欢哪一种。"The Simpsons", 有多少人最喜欢 "The Simpsons"? 有多少会选莎士比亚? "谁敢来挑战" 呢? 有谁会选 "谁敢来挑战"? ,真的吗? 超过半数的人更喜欢 "The Simpsons", 而不是莎士比亚。好, 现在, 让我们从另一个角度看看投票结果, 这一次是选最高级的快乐, 有多少人选择莎士比亚? 有多少人选 "谁敢来挑战"? 不, 你不是认真的吧真的吗? 为什么? 好的, 请继续。你可以说一下。

学生 7: "我发现它是最有趣的。"

我知道, 但你认为它是最有价值的, 最高贵的体验? 我知道, 你会觉得它最有趣。

学生 7: "如果一样东西是好的, 因为它能带来快乐, 那样的话, 你就不用



在意自己觉得好的，别人是否会觉得不好。”

好吧，你回到了边沁：谁来做判断，我们判断的理由是什么，除了把真实的喜好记下来，并叠加起来？好的。你叫什么名字？

学生 7：“Nate.”

好的。好的，多少人认为 “The Simpsons”，除了因为你喜欢它，它实际上也是一种高级的体验呢？而且是比莎士比亚高呢？好吧，让我们再看看多少人投莎士比亚，多少人认为莎士比亚是高级的呢？好的。那么，理由是什么？我想听听，有谁是认为，莎士比亚是最高级的，但更喜欢看 “The Simpsons”？

学生 8：“我想，只是坐着看 ‘The Simpsons’，它很有趣，因为给我们带来了欢笑。但是，有人告诉我们，莎士比亚是伟大的作家，我们必须要学会如何读他，如何理解他。就像我们必须学习 Rembrandt（一位艺术家），学习如何分析的一幅油画。”

你叫什么名字？

学生 8：“Anisha.”

Anisha，你说有人告诉你莎士比亚是更好的，您是否就深信不疑呢？你选了莎士比亚，不仅是因为大众告诉你，或者教师告诉你，还是你的确这样认同？

学生 8：“哦，在这个意义上，我不觉得会是莎士比亚，但之前你提到了 Rembrandt 的例子，我觉得，看漫画时我更享受，而不是看 Rembrandt 的分析，尽管有人告诉我这是伟大的是的。”

因此似乎是这样子，你的意思是，一种文化的约定、压力。我们被告知什么书、什么样的艺术作品是伟大的。还有谁？

学生 9：“虽然我喜欢看 'The Simpsons'，但在这一刻，讨论到正义时，如果我要选择，在这三种不同的短片里，选择一种来度过我的余生，我不会选择看 'The Simpsons' 来度过我的余生，不会考虑后两个短片。我想，我会从这更深层次的愉悦和思考之中获得更多的乐趣。”

告诉我你的名字。

学生 9：“Joe.”

Joe，因此，如果你将在一个农场度过你的余生，在堪萨斯州，只有莎士比亚，或者 "The Simpsons" 全集，你会倾向于莎士比亚？

( Joe 点头。 )

你从密尔的这个测试中，大概能得出什么结论，检验它是否是高级的，就是体验过两者之后选择其一？

学生 9：“我可以举出另外一个简单的例子吗？”

好啊。

学生 9：“去年的神经生物学告诉我们，测试小白鼠大脑的某个部位，这个区能刺激大脑，持续地让大脑兴奋，小白鼠不吃不喝，直到死亡。很显然，小白鼠体验了强烈的快感，现在，如果你问我，我是否愿意体验这种强烈的快感，或一生都体验着高级的快乐，我会觉得这种强烈的快乐是低级的，虽然我现在很享受强烈的快感，但.....是的，我会的，我当然会。，过，如果是一生，我想，我觉得几乎大多数人都会同意，大多数人会同意，他们宁愿选择一个更高级的乐趣，而不是像小白鼠强烈而又短暂的快感。在回答你的问题前，我认为这证明了，或者我不说‘证明’。我认为，结论就是密尔的理论，当大多数人被问到他们愿意做什么时，他们会回答，他们选择更高级的乐趣。”

那么，你认为这支持密尔的观点？

学生 9：“是的。”

好的，是否有人不同意乔的观点，认为我们的实验驳倒了密尔测试，认为并没有一种适当的方式，在功利主义的框架内，区分出更高级的快乐？

学生 10：“如果它是好是坏，就是因为人们是否喜欢它，它的好坏是相对的，并没有客观的定义。那么，就会有些人更喜欢 'The Simpsons'，任何人都可以欣赏 'The Simpsons'，但我认为，我们需要经过学习，才能欣赏莎士比亚。”

好的，你说需要学习才能欣赏真正更高级的事情。密尔观点是，更高级的快乐确实需要经过培养、欣赏和教育。他不否认这点。但是，一旦被培养和教育，人们将不但可以看到高级和低级的快乐不同，而且，事实上人们会选择更高级的，而非低级的。你能找到约翰密尔的一段很著名的话：“宁可像人类那样饥渴，也不要像猪一样饱足；宁可像让苏格拉底饿着，也不要把一个傻瓜喂饱。而且，如果傻瓜或猪有不同的意见，这是因为他们只看到自己的那一面。”所以在这里，你试图去区分高级和低级的乐趣。因此，是去艺术博物馆，还是呆在沙发上，喝着啤酒，在家看电视。有时候，密尔也认同，我们可能会屈从于诱惑，选择了后者，选择了做电视迷，（呆在沙发上），但即使在我们出于怠惰而这样做的时候，我们也知道，在博物馆里凝视着 Rembrandts 作品是更高级的乐趣，因为我们已经体验过这两种乐趣。看 Rembrandts 的作品是更高级的享受，因为它运用

到了人类更高级的能力。

密尔是怎样回答有关个人权利的争议的呢？从某种意义上说，他使用了相同的论点，第五章有讲到，他说：“我反对任何主张假想出一个关于正义的标准，而不是建立在效用的基础上”，但他认为正义是建立在效益上，将其称之为“主要的、无可比拟的、最神圣的、所有道德的约束力”。因此，公正是更高级的，个人权利是优先的，这并不是从功利主义的假设引申出来的，正义是一种名义，为了一定的道德准则，其中，集体的效益是更高级的，社会利益是更重要的，比其他任何义务都高级。因此，正义，它是神圣的，这是先决的，它是优先的，它不是一件容易兑换的东西，但密尔声称，最终都归结于功利主义，一旦你考虑到人类长远的利益，我们全人类的进步，如果我们服从正义，如果我们尊重权利，长远来说，整个社会的生活会有所改善。这个观点有说服力吗？或者说，尽管密尔没有表面承认，他走出了功利主义的论调，为了区分出更高一级、更神圣的快乐，或特别重要的个人权利？我们还没有完全解答这个问题，因为要解答这个问题，在权利和正义的情况下，要求我们探索其它方法，不是用功利主义的方法，然后再看看这些方法是否成功回答这一问题。

至于边沁，他提出了功利主义，作为一种道德和法律哲学的学说，他 1832 年去世，享年 85 岁。但是如果你去伦敦，今天仍可以去“拜访他”。按着他的意愿，他的尸体还保留着，，经过防腐处理，陈列在伦敦大学的玻璃柜中，用蜡做的头像，穿着当年的衣服。在他去世前，边沁对待自己跟他的哲学思想是一致



的：死去的人对活着的人能有什么用处？一个方法是，他说，将一个人的尸体用来被解剖作研究。但是，对于一位伟大的哲学家，更好的保存方法是，留下身躯，勉励世人。你想看看，边沁是什么样子的吗？下面是他的模样。这就是他，如果仔细地观察，你会发现，他的头部没有成功防腐，所以人们改用了蜡头像，为了逼真，在底部，你可以在一个盘上看到他实际的头颅。看到了吗？在那儿。那么，这个故事的反应了什么道德准则？这个故事的道德准则.....顺带说一下，在伦敦大学学院董事会开会时，人们将他也“请”了出来，而会议记录上写着他出席但没有投票。这就是一个哲学家的一生，一生坚守着自己的哲学原则。下一次，我们将继续讨论权利。

## 第五课 选择的自由

我们上次结尾的时候讨论到,约翰·密尔尝试对批判边沁的功利主义的人作出回应。在他的《功利主义》一书中,密尔试图告诉那些批评者,在功利主义下,我们可以区分出高级和低级的快乐,对价值作出的定性区分是可能的。我们用"The Simpsons"和莎士比亚的例子来检验了这一点。而我们检验的结果,似乎质疑了密尔这种区分。因为你们之中许多人都更喜欢看Simpsons动画,尽管你认为莎士比亚是更高级、更有价值的乐趣。这就是我们给密尔所提出的困境。

在《功利主义》的第5章,密尔试图解释个人权利和正义的一些特别重要的特征。他想说,个人权利是值得特别考虑的。事实上,他甚至说,正义是最神圣的部分,也是最不可比拟的道德约束。但用同样逻辑就可以攻击密尔的这一辩护:为什么正义是主要组成部分,是最具道德约束力的?好吧,他说,因为从长远来看,如果我们遵循正义,如果我们尊重权利,从长远来说,整个社会的生活会有所改善,那么,又会怎么样呢?但如果在某种情况下,我们破例地侵犯个人权利,却从长远来看让人们过得更好?那么,这是否正确呢?这可以进一步地反对密尔关于正义和权利的论述。假设,功利主义计算出,如果尊重个人的权利,从长远来看,能使大家过得更好,功利主义的这个解释是真正的原因吗?这是尊重个人的唯一理由吗?如果一个健康的家伙去检查身体(第一节的案例),医生把这个人的器官取出来去救活其他五条生命(站在功利主义的角度是合理的),但长远来看,会有不利影响,人们知道这件事以后再也不去做身体检查了(怕自己的器

官被取出来)。所以，功利主义的理由是真正的原因吗？这是你作为一个医生，不会从健康人身上取走器官的唯一理由吗？如果我采用功利主义的逻辑，长远来看反而会失去更多的生命？还是另有其因要尊重个人？如果这个原因十分重要，但我们暂时还不是很清楚。即使密尔的功利主义考虑到这点，充分研究这两个忧虑或反对的意见，我们也需要更深一层来考虑。我们要问，对于那些更高级、更有价值的乐趣？是否有一些理论能够提供一个独立的、关于快乐的道德判断标准？如果能，是什么标准？这是个问题。关于正义和人权，如果我们怀疑密尔是否隐性地倾向于推崇高贵或者是尊重那些不是严格意义上的功利主义者，我们需要看看，是否有一些更有力的理论可以解释密尔所直觉地认为的尊重个人的原因，以及即使从长期来算效用更大，也不能过度地利用个人的原因。

今天，我们要谈谈关于正义的一个有力理论。这个理论认为，每个人都很重要，不是因为个人是谋求社会更大利益的工具，或者是为了达到效用的最大化，个人是值得尊重的、有各自生活的独立个体。因此，根据这一理论，只是把大家的偏好、价值观叠加起来来决定是否正义是错误的，我们今天要讨论的这个理论就是自由主义。自由主义认真地考虑个人权利，之所以称为自由主义，因为它说：个人的基本权利是自由，正因为我们是独立的个体，所以我们不会用来充当社会意愿设想的工具，这恰恰是因为我们是独立的个体，我们有基本的自由权利，这意味着我们有权自由选择，过我们想要的生活，只要我们同时尊重到其他人的权利。这是自由主义的基本想法。

Robert Nozick 是一位自由主义的哲学家，他认为个人拥有权利，个人权利是如此强烈和深远，它们决定什么是国家要做的。如果有的话，那么，自由主义是怎么论述政府扮演的角色或国家的角色呢？大多数现代国家会做三件事，自由主义却认为是非法的或不公正的。其中之一就是家长式立法，也就是通过立法来保护民众。例如，安全带、摩托车头盔的立法。自由主义说，如果人们系好安全带，这可能是件好事，但这应该由他们自己来决定，国家、政府无权强迫我们，立法来要求我们系上安全带，这是一种胁迫。所以，第一：废除家长式立法。第二：废除道德立法。许多法律试图鼓励公民培养某些道德，或体现整体社会的道德价值观，自由主义说，这也是侵犯自由权的。一个典型的例子，以促进道德的名义来立法，传统上法律禁止同性恋的关系，自由主义说，同性恋并没有伤害到任何人，没有侵犯到任何人的权利，因此，国家无权促进美德或通过道德立法。而自由主义要废除的第三种法律是税收等政策，这些政策的目的是对收入进行再分配，使其从富人流到穷人。自由主义认为这是一种胁迫，就像是国家或多数派在偷窃，从那些干得好、钱赚得多一点的人身上偷窃。Nozick 和其他自由主义者允许国家收取少额的税收，来支持那些公众都需要的东西，例如，国防、警察部队、司法系统，但仅此而已。

现在，我希望听听你们怎么看自由主义的第三个观点，我想看看，谁同意这个想法，谁不同意，为什么不同意。但是，为了让大具体地看看利害攸关点，我们可以考虑一下美国的财富分配。在所有先进的民主国家之中，美国是目前贫富最不平等的社会，这是正义的还是不正义的呢？那么，自由主义又是怎样说的？

自由主义说，光从我给你的事实中你很难知道，你不知道分配是否是公正的，光看分配，光看结果，你很难知道它是否公正，你必须知道它是怎么来的，你不能只看最后的阶段，最后的结果，你要看两个原则。第一，要看它一开始有什么，是怎么获得的，也就是说，他们是公平地获得他们所拥有的吗？所以，我们需要知道它们一开始是否是公正的，是不是他们偷了一块地，或偷窃工厂或货物才使他们得到这笔钱的？如果没有，他们就有权做一切可以让他们富裕起来的事。第一个原则：公平竞争。第二个原则：这种收入分配是否源自经过大家同意、自愿的自由买卖？正如你所看到的，自由主义的思想对应着一个公正自由市场来提供人们所需，这是公平的，不是偷来的，人们自由地买卖，导致了这种收入分配，那么，分配是公正的；如果没有，就是不公正的。

为了解决这次讨论的问题，我们举一个实际的例子。谁是美国最富有的人？全世界最富有的人？比尔·盖茨。是的，很正确，你应该感到高兴。他的净资产是多少？有没有人知道？这是一个很大的数字。克林顿执政时期，还记得有一个颇受争议的捐助者吗？他们邀请竞选的赞助商们在白宫里的林肯卧室过夜，如果你捐了 25000 美元或以上的钱。有人计算出这些被邀请在林肯卧室睡一晚的赞助商们捐献数额的中位数，比尔·盖茨的财富足以让他在林肯卧室里睡 66000 年。也有人计算过他每小时的收入。于是他们想，自从他创立了微软，假设他每天工作 14 小时，这算是合理的猜测，然后用他的净财富除以他的工作时间，计算的结果是超过 150 美元，不是“时薪”，也不是“分薪”，而是“秒薪”超过 150 美元，这意味着，如果他去办公室的途中发现了街上有一张 100 美元的钞票，



也不值得他停下捡起来。你们大多数人会说，像这么富有的人，我们当然可以要他交税来养活那些没饭吃、没房子住、没书读的人，那些有迫切需要的人，他们比比尔·盖茨更需要这些。如果你是一个功利主义者，你会怎么做？你会采取什么税收政策？你很快就重新分配了，不是吗？因为你知道，一个优秀的功利主义者，只需要一个小数目，小到你几乎忽略了它，但它能给那些在底层生活的人们带来极大的改善。但自由主义理论认为，我们不能只是简单地把所有人的偏好叠加起来，我们还要尊重个人，如果他公平地赚钱，不侵犯其他人的权利，根据自由主义的这两条原则——公平地获取和交换财富，强制性地收税是错误的，这一种胁迫。

迈克尔·乔丹虽然没有比尔·盖茨富有，但他也过得相当不错。你看迈克尔·乔丹，他的年薪是 3100 万美元，为耐克和其他公司代言，他每年赚 4700 万美元，因此加起来他的年收入是 7800 万美元。比方说，他收入的三分之一要用来交税，来支持诸如食品、保健、住房、穷人的教育，这是胁迫，这是不公正的，这侵犯了他的权利，这就是为什么收入再分配是错误的。现在，有多少人赞同自由主义的这种观点，认为为了帮助穷人而再分配是错的？有多少人不同意这种观点？好吧，让我们先听听那些不同意的。自由主义反对再分配，有什么地方不正确？

学生 1：“我认为，在一个社会里工作，像迈克尔·乔丹，这些人从社会中获得更多，他们有更多的责任来回报社会，通过再分配。你可以说，迈克尔·乔丹和其他人一样努力地工作，那些洗衣服的人也每天工作 12、14 个小时，但乔

丹却得到更多，我认为这是不公平的。这原本就对乔丹有利，他与生俱来的天赋和勤奋。”

好吧，让我们听听支持自由主义的声音。为什么在原则上，从富人身上征税来帮助穷人是错误的？请继续。

学生 2：“我叫 Joe，我收集滑板，有 100 块滑板。假设，我生活在一个 100 人的社会里，是唯一一个拥有滑板的，突然，大家决定他们想要一个滑板，他们来到我家，拿走我的那 99 块滑板，我认为这是不公正的。我认为在某些情况下，有必要忽视或纵容这种不正义，例如，那个在船上活着被吃掉的男童（第一节的案例），当人们在死亡的边缘，忽视不公正也许是必要的，但我认为，要记住，我们必须承认拿走他人的财物或资产是不公平。”

你是说，向迈克尔乔丹征收 33% 的税贡献给公益事业是一种盗窃？

学生 2：“我认为这是不公正的。是的，我相信这是盗窃，也许有必要接纳这种盗窃。”

但这确实是一种盗窃？

学生 2：“是的。”

为什么是一种盗窃，Joe？

学生 2：“因为.....”

为什么这就像你收集滑板？

学生 2：“因为，至少在我和自由主义着看来，公平获得金钱，这笔钱就属于他，因此，从他身上取走就可以定义为盗窃。”

有谁愿意回应 Joe？

学生 3：“我不认为这里说的是，你有 99 块滑板，或者，你有 100 块滑板，而政府会取走其中的 99 块。而是，你一年中拥有多于 365 块的滑板（每天换一块也用不完），或者，你拥有多到你自已用不完的滑板，而政府就拿走其中的一部分。我认为，如果你生活在一个社会中，而允许某些人聚集这么多的财富，那么一些人拥有的，从一开始就比这些人少。而我们的假设是，一开始大家都是平均的，但在现实社会里这不可能。”

所以你担心，如果没有某种程度的再分配，就不会有真正的机会平等。

（学生3点头。）

好的，认为税收是一种盗窃的观点，Nozick 更进一步地说，他也认为这是盗窃，但他比 Joe 更为苛刻。Joe 说，这是盗窃，但在某种极端的情况也许是合理的，也许，父母为了养活自己的家而偷一块面包是有道理的，所以，Joe，你会怎么称自己？一个有同情心的准自由主义者？Nozick 说，如果你仔细想想，税收等同于拿走别人的收入。换句话说，它意味着窃取我的劳动成果。但如果国家有权把我的收入或我的劳动成果拿走，这等于说，国家占有我的劳动成果的一部分，在道义上是正确？所以，实际上税收等同于强迫劳动，因为这种强迫劳动，剥夺了我的休息，我的时间，我的劳动，就像征税拿走我的劳动成果一样。因此，对于 Nozick 和其他自由主义者来说，再分配的税收是一种盗窃，但这不仅是盗窃，它相当于剥削了我的时间和劳动，在道义上，它等同于强迫劳动。如果国家有权占有我的劳动成果，这意味着，有名义来剥夺我的劳动成果。什么是强迫劳动？Nozick 指出，强迫劳动就像奴役，因为我并不是唯一能支配我劳动的人，这实际上等于，政府或社会就相当于我的合伙人一样，而这意味着什么？这意味着我是一个奴隶，我不拥有自己。那么，从这里我们推理出自由主义的一个根本原则，这一原则是什么？我拥有和支配我自己。如果你真的重视个人权利，我们就能支配自己，如果你不想把整个社会的当作是个人利益的集合，这引出一个基本的道德理念 我们是自己的主人。这就是功利主义的问题所在，这也是为什么，取走健康病人的器官是错误的。因为，你把这个病人看作是属于你或属于整个社会，但其实，我们属于我们自己。同理，立法来保护我们自己，立法来告诉我们

要如何生活，要求我们培养哪些美德，这些都是错误的。这也是为什么，从富人身上征税来帮助穷人是错误的，哪怕它是公益事业。要帮助那些因飓风卡特里娜而流离失所的人，你可以让他们捐钱给慈善机构，但如果你征税，就是在强迫他们劳动。你能让乔丹不要参加下周的比赛，改去帮助因飓风卡特里娜而流离失所的人吗？在道义上，这是一样的。因此，这样做是很冒险的。

到目前为止，我们已经听到了一些反对自由主义的观点。但如果你想反对它，你必须要驳倒拿走我的收入就像是剥夺了我的劳动、这相当于让我成为了奴隶，如果你不同意这一推理，你必须肯定自我支配的原则。那些不同意的同学，收集你们的反对意见，我们将在下次讨论。

## 第六课 我属于谁？

上次，我们讨论到自由主义。我想回顾支持和反对收入再分配的论点。我们先谈一谈“最小政府”。许多我们认为是理所当然归政府管的，自由主义经济学家 Milton Friedman 却认为不应该归政府管，这是家长式的。他举了一个关于社会保障的例子，他说，为了我们的退休生活而准备积蓄是个好主意，但这种做法是错误的，不管大家是否愿意，政府迫使每个人为退休而提前积蓄一点钱，侵犯了个人的权利，如果一些人想碰碰运气，希望今天就过得好一点，宁愿退休时生活贫穷，这是他们的选择，他们应自由地作出判断，接受这些风险。因此 Milton Friedman 主张，即使是社会保障，国家也是不应该干涉的。

有时，像警察、消防，我们认为属于集体的事情，会不可避免地让某些人搭了便车，除非它们是公开提供，但我们有办法来防止搭便车，有办法来限制看起来像是公众利益的。例如消防，我读了一篇文章，一则关于私人消防公司的文章，在阿肯色州的一个叫 Salem 的消防公司，你可以到 Salem 消防公司申请每年支付一定的费用，如果你的房子着火了，他们会来救火。但他们不会帮每个人救火，他们只会帮助那些报了名的顾客灭火，或者火势蔓延威胁到另外一个顾客的家时他们才会灭火。这篇新闻报道了一个屋主的故事，这个房主在过去都订了这家公司的服务，但没有及时的续约，当他的房子着火后，Salem 消防公司的卡车来了，只是袖手旁观，看着房子烧毁，为的是确保火势不扩散。有人问消防队长，实际上他也不是真正的消防队长，我猜他是 CEO，有人问：“你怎么能站在消防



设备旁边看着别人的家被烧毁了？”他回答说：“我们一旦核实，火势没有危及到我们的会员的家，根据我们的规定，我们没有选择，只能旁观，如果我们去扑灭所有的火灾，他说 大家就没必要去订我们的服务了。”在这种情况下，房主试图在火灾现场当场续约，但该公司的负责人拒绝——你不能先毁坏你的车，接着去买保险。因此，即使是一些我们认为是 政府理所当然应该负责的公众事物，在原则上，它们也是可以被分离出来，专门只给那些交了钱的人服务，这一切都与公众财产和自由主义反对的家长式有关。

但让我们先回到收入再分配的问题。现在，自由主义的关于“最小政府”的基本问题是强制，但强制错在哪里？自由主义给了这样一个答案：为了大众的福祉，而利用一些人错误的，因为它质疑了一个基本事实，即我们拥有和支配我们自己，质疑了我们自我支配、自由占有的这一道德事实，自由主义反对再分配的论点始于我们能支配自己这一基本思想。Nozick 说，如果整个社会都到比尔·盖茨或者乔丹那里，通过税收拿去他们的财富，那样的话，我们等于是说我们的社会财产就在比尔·盖茨或者乔丹那里。这违反了一个基本原则：我们属于我们自己。

我们已经听过了反对自由主义的一些意见，我想今天要听一下支持自由主义的声音，让他们有机会回应这一些反对的声音。一些人已经表明了立场，同意到这里来，给那些反对自由主义的意见一个回应，举起你的手，如果你是其中一位自由主义者，准备来支持自由主义，回应那些异议。你是？

学生 4 : "Alex Harris."

是那位博客挺有名的 Alex Harris 吧，好，Alex，到这里来，站起来。走到这里。我们将在这里建立一个自由主义者的角落。还有谁？还有其他想加入自由主义的人吗？你叫什么名字？

学生 5 : "John Sheffield."

还有谁愿意加入？其他勇敢的自由主义者。你叫什么名字？

学生 6 : "Julia Rotto."

Julia Rotto ,到这边来 ,我们这里聚集了一个自由主义团队。让我总结一下，在课堂上和在网站上我所听到的主要的反对意见 ,我想对着这边的自由主义者们说， 反对意见一：穷人更需要钱。反对意见二：税收不能算是奴隶，至少在一个民主社会里，它不算是奴隶，这里有个过会，代表民主。Alex 已经笑了，你确信你可以回答所有这些问题？

(“自由主义者”纷纷点头。)

因此，经过大家同意的税收不算是非强制性。反对意见三：一些人表示，像盖茨这类的成功人，他们的成功归功于对社会，他们有义务通过缴税来回馈社会。谁愿意来回应第一点，穷人更需要钱？好的，你是？

学生 5：“John.”

好的，John。

学生 5：“穷人更需要钱，这很明显。我可以使用这笔钱。如果比尔·盖茨给我 1 百万，我当然不会介意，我的意思是，我会要 10 亿。但在某些方面，你要明白，即使重新分配财富有好处，那么一开始对财产权的侵犯也是不对的。如果你看看穷人更需要钱这个观点，这个说法并没有违背我们经过推断、大家都同意的原则，即我们拥有和支配自己这一原则。我们推断出，我们有财产支配权，因此，不管税收是否是一件好事，甚至对一些人的生存来说，是一件必须的事情，我们并没有看到，通过税收就能不违背我们已经推断出来的原则。因此，我的意思是，仍然存在着这样一个机构，譬如私人的慈善事业，Milton Friedman 做了一个论断……”

好的，比尔·盖茨捐钱给慈善机构，如果他愿意的话。但是，如果胁迫他这样做的话，仍然是错误的。

学生 5：“对。”

为了满足穷人的需要，你们两个对这个回答满意吗？有没有要补充的？好的，Julie？

学生 6：“是 Julia。我想我还可以补充一点，需要和应得之间是有区别的。我的意思是，在一个理想的社会每个人的需求将会得到满足，但我们在这里争论的是，什么是我们应该得到的。这些利益并不是穷人应该得到的，通过征税，用乔丹的钱来帮助他们，根据我们已经讨论过的，我不认为这样的东西是我们应得的。”

好吧，让我追问你一下，Julia。飓风卡特里娜的受害者正急需帮助，你会说，他们不应该从联邦政府的税收得到救助吗？

学生 6：“好吧，这是一个很难回答的问题。我认为，在这种情况下他们需要帮助，但这些帮助不是他们本来应得的。如果你有一定程度的需要，来维持你的生活，你需要帮助，例如，如果你没有足够的粮食或没有地方住，这情况叫需要。”

因此，需要是一回事，应得是另一回事。

学生 6：“没错。”

好的。谁想回应？

学生 7：“让我们回到你刚才所说的第一点，个人的财产权是由政府提出和执行的，我们选了代表来保证这些权利的实现。如果你生活在一个遵循这些规则的社会里，那么，就应该由政府来决定这些资源、税收怎么分配，因为它是经过政府同意的。如果你不同意，你可以选择不生活在这样的社会里。”

好，告诉我你的名字。

学生 7：“Raul.”

Raul 指出，其实，Raul 引出了第二点，如果税收是经过被统治者的同意，它就不是强迫的，它是合理的。比尔·盖茨和乔丹是美国公民，他们投票选出了国会，他们和大家一样，投票决定了这些政策。谁想继续？John 吗？

学生 5：“基本上，在这种情况下自由主义者是在反对中间的 80% 决定了最上层的 10%，而这样做是为了底层的 10% .....”

等一等，John。多数决定少数，你不相信民主？

学生 5：“但在某个点上……”

难道你不相信，我是指，你说的 80%、10%，多数人的规则是什么？有多数人决定。

学生 5：“没错，但……”

在一个民主国家里，你是支持民主的，是吧？

学生 5：“是的，我支持民主的，但等一下，民主统治和暴民统治不是同一件事情。”

暴民统治？

学生 5：“暴民统治，正是。”

学生 7：“在一个开放的社会，你可以通过你选出来的代表来解决它。而如果大多数人都同意的，你却不同意，如果你生活在这样的民主社会里，你就得服从多数人做出的决定。”



好的，Alex，对于民主你怎么看？

学生 4：“事实上，从我那五十万分之一选出来的一个议会代表所表决的和作为我个人来决定怎么使用我的财产权，这两者不是同一件事，我就像是杯水车薪，你知道。”

你可能会在投票中输掉。

学生 4：“没错。他们可能会，我的意思是，我并不能决定，我是否应该纳税，如果我不想交税，我就得坐牢，或者把我驱逐出国。”

不过，Alex，让我举一个关于民主的小例子，看看你会怎么说。我们生活在一个民主的社会，有言论自由。你为什么不走上竞选的讲台，去说服你的同胞，说纳税是不公正的，然后试着去取得大多数人的同意呢？

学生 4：“我不认为我们得说服 2.8 亿人，仅仅为了行使我们的权利来保护自己的所有权。我认为，我们没必要得说服 2.8 亿人才能做到这一点。”

这是否意味着，你反对民主？

学生 4：“我，没有。我相信在一个非常有限的民主里，用宪法来限制哪些

地方需要由民主决定。”

好，所以你说，民主是好的，但涉及基本权利的地方，可以不用民主决定。

学生 4：“是的。”

我认为，你可能会赢。如果你站上竞选的讲台，让我对你刚才所说的补充一点，你可以说，放下经济的辩论，撇开税收，假设个人的宗教信仰自由受到了干涉，那么，Alex，在竞选台上，当然大家也认同，我们不应该投票决定个人的自由。

学生 4：“是啊，正是这样，这就是为什么我们需要修改宪法以及为什么修改宪法这么难。”

所以，你会说，私有财产权，乔丹想保住他自己所赚取的财富，至少避免在收入再分配中流失，和拥有言论自由、宗教信仰自由比大多数人的意见更重要。

学生 4：“对。我们之所以有言论自由的权利，是因为我们有权利支配自己，表达我们的意见，通过我们选择的任何方式。”

好，好。好的，所以我们.....好的，谁想回应这个关于民主的论点？好吧，

在那里。站起来。

学生 8：“我认为，宗教和经济不是同一回事。比尔·盖茨之所以能赚这么多钱，是因为我们生活在一个经济和社会稳定的社会里。如果政府不通过税收，为那 10% 的穷人提供救济，那么我们就需要更多的钱，需要更多警察来预防犯罪。所以，不管怎样，这样就需要征收更多的税来维持。你们刚才所提到的，政府有必要提供的公众服务。”

你叫什么名字？

学生 8：“Anna.”

Anna，让我问你这个。宗教信仰自由的基本权利和右边的 Alex 所说的私有财产权、保住我的收入的基本权利，两者有什么不同？两者有何分别？

学生 8：“因为你不会，如果社会不安定，你就很难赚钱，也就无法拥有财产。这和信仰自由的权利完全不同，信仰是个人的事情，你可在自己家里进行你的信仰，或者说，像我进行我的信仰，但不会影响旁边的人。但如果我是穷人，我十分绝望，我可能会犯罪来养活我的家人，这就会影响其他人。”

好，谢谢你。偷面包错误来养活自己挨饿的家是错误的，是吗？

学生4：“我认为是，这是……”

让我们对你们三个人做个简单的调查，你觉得是，这是错误的？

学生4：“对。”

John 呢？

学生5：“它违反了财产权，是错误的。”

哪怕是为了养活家庭？

学生5：“我的意思，养活家有其他办法，但如果认为可以偷面包，就不行。  
等一下，先不要笑我……在为盗窃行为辩护前，你必须想到，我们已经认可的那些权利，自我占有和支配权，我的意思，自己的东西，我们同意有产权。”

好的，我们都觉得是偷窃。

学生5：“是的，我们觉得是偷窃。”

所以，这和产权无关。

学生 5：“好的，但……”

为什么这是错的呢，为了养活你挨饿的家？

学生 5：“和我在一开始问过的问题有点类似，行为的后果并不能为行为本身辩护。”

Julia，你刚在是说为了养家，偷了面包是对的吗？为了救活你的孩子去偷药？

学生 6：“我想，说实话，我不反对这样做，即使从自由主义的观点来看。我想，如果说你可以从那些富人身上任意拿钱去帮助这些有需要的人，但这些需要别人帮助的人，他们有义务自己救活自己。我想，像你提到的，像自我支配这个观念，穷人也有权自己保护自己，自己养活自己，因此，即使是站在自由主义的立场，偷窃可能也是对的。”

好的，这很好，这很好。那么，对于反对意见三呢？是不是有这样一种情况，那些成功人、有钱人，他们有责任，他们能有今天，不是完全靠自己，他们得和其他人合作，他们对社会有亏欠，而这种亏欠，用税收的形式来还。Julia，你想

继续说吗？

学生 6：“这一次，我觉得，从他们如何致富的这个意义上说，这些人并没有亏欠社会什么。他们做了一些社会肯定的事，社会就给予和供应他们。如果真有的话，我认为这些都被可以抵消。他们为社会作出一点贡献，社会也回应他们，他们获得了自己的财富。

说具体一点，我来说明你的观点。有一批人在帮助他赚钱，他的队友、那位教会他打球的教练。

学生 6：“但是，我们都付了钱给他们，他们都得到了报偿。没错，大家也从观看乔丹打球当中得到很多欢乐，我认为，这就是他给社会的回报。”

好，好。有谁想继续说下去？

学生 9：“我认为，我们的一个假设有问题。我们假设，当生活在一个社会里，我们能自我支配。我觉得，当你在这个社会里生活，你不得不放弃这项权利。我的意思是，从法律上说，如果有人得罪了我，因为我有权自我支配，所以我想把这个人给杀了，但因为我生活在一个社会里，我不能这样做。我认为这相当于说，因为我有更多的钱，我有资源来帮助其他人，政府是不是就可以从我身上拿钱呢？因为我生活在一个社会里，只能在一定程度上自我支配，我必须考虑到周



围的人。”

你叫什么名字？

学生 9：“Victoria。”

Victoria，你是在质疑自我支配这个基本前提？

学生 9：“是的。我认为，你并没有真正的自我支配，如果你选择了在这个社会里生活，因为你不能忽略你周围的人。”

好，我想让这些自由主义者们，对最后一点做个简短的回应，最后一点，也许像维多利亚州说的，我们并没有支配和拥有自己，因为比尔·盖茨、乔丹都很富有，但这并不完全靠他们一个人的努力，这还靠运气，所以我们不能说在道义上，并不是所有钱都是他们应得的。谁想回应这点？Alex？

学生 4：“他们的富有不适用于他们是否心地善良，这并不是一个和道德有关的问题，这里的论点在于，他们是通过自由交换的过程，人们自愿地和他们交换，通常是为了换取一些服务。”

很好。我尝试总结一下从这次讨论中学到的。首先，让我们感谢 John、Alex

和 Julia 的出色表现。在讨论快结束的时候，Victoria 质疑自由主义推理的一个前提，她指出，也许我们并不能支配自己。如果你不赞同自由主义者反对再分配的观点，似乎我们能打破自由主义的逻辑。在最一开始，在最温和的层次上，这就是为什么很多人争议，认为税收在道义上等同于强迫劳动。但对于自由主义的大前提和基本观点呢？我们是否真的能支配自己，还是我们可以推翻这个想法，而且仍然能像自由主义者们所要的那样，反对建立一个所谓的“正义”社会，为了一部分人的利益，就可以从另外一部分人拿钱？自由主义批判功利主义把个人当作谋取大众利益的工具，他们评判的理由是一个听起来很有说服力的想法：我们是自己的主人，这是 Alex、Julia、John、Robert Nozick 这一派的观点。如果我们质疑我们是否能自我支配，那我们需要一个怎么样的关于正义的理论？难道我们又回到功利主义，把所有人的利益加起来，最后决定把那个胖子推下桥？

（第一集）

并非是 Nozick 本人发展出自我支配这个概念，他借用了早期的哲学家洛克的逻辑：当自然物（例如风、花草）最后变为私人财产，跟 Nozick 和其他自由主义者用的类似，洛克说，经过我们劳动加工之后，那些不属于任何人的自然物，就变成了归我们所有，变成私有财产。而其原因是什么？原因是我们能拥有我们自己的劳动成果，而这背后的原因何在？因为我们是我们自己的主人。因此，为了研究自由主义声称的我们拥有自己，我们必须转向英国政治哲学家洛克，看看他是怎么解释私有财产的所有权和自我支配权。这也是我们下次的讨论。

“任尔选择，给你所选。”（选择的后果自负）—— Robert Nozick

## 第七课 这块地是我的

今天，我们将讨论约翰·洛克。

表面看来，洛克是一位有力的自由主义支持者。首先，他和今天的自由主义者一样，认为某些基本的个人权利是非常重要的，是任何政府、即使是代表人民的政府，即使是由民主选举出来的政府，也不能剥夺这些权利。不仅如此，他还认为这些基本权利包括了生命、自由和财产这些自然权利。此外，他还认为财产权不是由政府或法律所赋予的。这些财产权是在政权出现前就拥有的自然权利，它是每个人与生俱来的，甚至在政府出现前、甚至在议会和立法机关通过法律来定义和保护这些权利之前(这些权利就已经存在了)。

洛克说，想要了解自然权利是什么意思，我们得想象在政府、法律出现前万事万物的样子。就是洛克所说的自然状态。他说自然状态是一种自由状态，人是生而自由平等的，没有自然的阶级层次划分，并没有人天生就是国王，也没有人天生就是农奴。在自然状态下，我们生而自由平等。他指出，自由状态和许可状态是有区别的。理由是即使在自然状态中，也有某种法律，但那不是立法机关制定的法律，而是自然法则。这种自然法则限制了我们所能做的，哪怕我们是自由的，就算在自然状态下也是如此。

那这些约束是什么？自然法则对我们的唯一限制就是，就是我们所拥有的

权利。那些自然权利，我们既不能放弃这些权利，也不能从他人身上夺取。在自然法则下，我们不是自由到可以侵犯他人的生命、自由或财产，我也不能随意放弃自己的生命、自由或财产。即便我是自由的，我也不能随意违反自然法则。我不能随意放弃自己的生命，或将自己卖为奴隶，或让别人有绝对的权力来控制我。

对于这一限制，你可能认为只是一个很小的限制，但它从何而来呢？洛克告诉我们，它从何而来。

他给出了两个答案，第一个答案是：“人类是由一位万能的、无限智慧的制造者所创造的”，即上帝。人类是上帝的财产，是由上帝制造的，是出于上帝的喜好，而不是其他人。因此，我们之所以不能放弃我自己的生命、自由、或财产的权利，原因在于，严格来说，这些都不属于你自己。毕竟，你是上帝的造物，上帝更有权拥有我们，他有优先的所有权。现在，你可能会说，这不是一个令人满意、令人信服的答案，至少对那些不相信上帝的人来说。洛克是怎么回到这些人的呢？下面是洛克的回应，他的理念是，如果我们反思自由的意义，我们将得出这样的结论：自由不仅仅意味着我们可以做任何我们想做的事。我想，当洛克说：“自然状态下存在着一条每个人都应遵守的自然法则，这一法则教导人们，所有人都是平等独立的，没有人有权利去侵犯其他人的生命、健康、自由或财产。”

这引出了洛克的一个令人费解的、解释权利的观点，某种意义上很熟悉，但又很陌生，我们的自然权利是不可分割的，不可分割是什么意思？意思是说我

们不能远离它、放弃它、交换它、变卖它。就像飞机票，不可转让或是“爱国者”或“红袜”的比赛票\N（爱国者：英格兰爱国者橄榄球队）（红袜：知名棒球队波士顿红袜队）不可转让，不可分割。我在有限的意义下拥有它，我自己可以使用它，但我不能把它卖出去。因此从某种意义上说，是不可剥夺的，这种不可转让的权利使得我并不是完全拥有它。

但从另一方面说，它也是不可剥夺的，尤其是生命、自由和财产权。由于它们的不可剥夺，使其涵义更加深刻，更彻底地属于我，这就是洛克不可分割的意思。

在美国独立宣言里也可以看到，托马斯杰斐逊提到了洛克的这一思想，杰斐逊将洛克的说法改了一下：自由，生命，和对幸福的追求是我们不可剥夺的权利。这些权利是如此根属于我们，即使我们自己也不能把它卖掉或放弃。这些就是在政府存在之前，在自然状态下，我们已经拥有的权利。以生命和自由为例，我不能夺走我的生命，我不能把自己变卖为奴隶，也不能拿走别人的生命，也不能强迫他人成为我们的奴隶。

那财产权又怎么解释？因为在洛克的理论中，私有财产权在政府产生前就存在了。在政府存在之前怎么会有私有财产权呢？洛克的答案在第27节：每个人对他自己的人身拥有所有权，这一权利只属于他自己，而不得为其他人所拥有，他的身体所从事的劳动、他的双手所进行的工作，我们可以说，都属于



他自己。因此,作为一名自由主义者,他延伸了这一观点:“从我们拥有自己、对自己的人身有所有权”延伸到“我们拥有自己的劳动”这个紧密相连的观点,并且从这一点进而延伸出,“通过我们的劳动加工之后,那些不属于任何人的自然物,就变成了我们的财产,不管他从自然提供的资源中,移走了什么、剩下了什么,里面已经混有了他的劳动、加入他自己的东西,从而使之变成他的财产。”

为什么?因为毫无疑问地,劳动力是劳动者的财产,因此除劳动者以外,没有人有权拥有融合了他的劳动力的劳动产物。然后他补充了一个重点:“至少,那里还留着足够的、同样好的资源给其他人。我们不仅仅拥有土地上长出来的果实、猎到的鹿、捕到的鱼,我们还耕土、圈地、种下马铃薯。。。。。。这样,我们拥有的就不仅是马铃薯,还拥有土地。一个人能耕耘、种植、改良和培育多少土地、以及土地上的产出,他就拥有多少财产权。”他通过自己的劳动,把它从共有财产中圈出来。因此,权利是不可分割的。

这一观点,把洛克从自由主义中区分开来。自由主义认为,我们对自己有绝对产权,因此我们可以做自己想做的任何事。洛克对这个观点并不是很认可,事实上,他说,如果你认真地考虑自然权利,你就会发现,我们的自然权利、我们能做什么也是有限制的。这些是限制上帝赐给的,或经过逻辑地反思。自由的真正含义,就是承认我们的权利是不可分割的。所以,这就是洛克和自由主义者的区别。

但当我们谈到私有财产时，洛克似乎又重新成为了自由主义者的坚定盟友，因为他对私有财产的看法始于“我们是自己的所有者”这一观点。因此，我们的劳动力、我们的劳动成果，不仅包括我们在自然状态下所收获的东西，而且包括那块我们培育、耕耘的土地的所有权。

有很多例子可以让我们直觉地认为，经过我们的劳动，就可以占有那些无主的东西，尽管有时会引起一些争议。发达国家和发展中国家之间有个争议：与贸易有关的知识产权的争论。最近，对药物专利法的争论上升到了顶点。西方国家，尤其是美国，说：“我们有庞大的制药业来开发新药，我们希望世界上所有的国家都同意，尊重知识产权。”在南非，出现了的艾滋病危机，而美国的艾滋病药物十分昂贵，远远超过大多数非洲人可支付的能力。因此，南非政府说：“我们将以更少的费用来购买抗艾滋病的非专利药，因为我们可以找到一家印度制造公司，他们破译了(美国药物)的配方，并以低价售出，因此如果我们忽略专利因素的话，就能拯救更多的生命。”然后美国政府说：“不行，这是一家美国公司投资、研发了这种药物，你不能大规模生产这些药物而不支付相应的许可费。”因此而引发了争议，这家制药公司起诉了南非政府，来阻止他们购买那些廉价药，他们认为那些是盗版的，但最终，这家制药公司作出让步，说：“好吧，你们可以这样做”。

但是这类关于产权法规、知识产权、药物专利，在某种程度上，已经因为国

际间没有统一的专利权和财产权的法律，在达成达到共识、或国际协议之前，谁都可以争赢。

大家怎么看待洛克对于私有财产的观点？以及它如何在政府和法律出现之前就存在？这是否正确？多少人认为他的观点很有说服力？请举手。有多少人并不觉得有说服力？好吧，让我们听一听批评者的意见。“洛克关于私有产权的出现无需他人同意的观点，有什么错？”

同学一：“是的，我认为它正义化了以前欧洲殖民美洲的行为。回看当时，如果没有印地安人在美洲土地上的耕种，当这些欧洲人来到美国（当然，他们为开发美洲做了巨大的贡献）就不一定有现在的发展，或者不一定由这批（欧洲）人来开发。所以，你认为这个理论是为（这些欧洲人）取得土地财产权而辩护。”

是的，因为它使原始取得的问题复杂化了。如果你只承认这批后来的外国人开发了这片土地——我明白了，你叫什么名字？

同学一：“Rochelle。”

Rochelle？

同学一：“是的。”

Rochelle 说，这个财产获得的解释，迎合了当时欧洲人来北美殖民的事件。

Rochelle，你认为它是为掠夺土地做辩解的一种方式？

同学一：“是的，我的意思是，这个观点同样在为光荣革命做了辩护\N（光荣革命：英国一场和宗教有关的非暴力宫廷政变，建立了立宪君主制度以及两党制度）。不难想象，他也在为殖民作辩护。”

嗯，这是一个有趣的历史看法。我认为这还可以有很多讨论，你如何看待他论据的有效性？因为你是正确的，这真的是在合理化夺走印第安人手中的土地，如果这是一个很好的论据，那么洛克使得这一行为正义化了；如果这是一个不好的论据，那么洛克给我们带来的只不过是一个在道义上站不住脚的辩护。

同学一：“我倾向于后者，但这只是我自己的观点。”

你倾向于后者，好，那么我们来听听是否有人要为洛克对私有财产的观点辩护？如果还能解决 Rochelle 的担忧那就更好了。Rochelle 担忧，这只是为美国殖民者夺取印地安人土地行为的一种辩护罢了，谁来为洛克的这一观点辩护？你要为洛克辩护么？

同学二：“你指责了洛克正义化了欧洲人屠杀印第安人的行为，但是，谁说洛克是在辩护呢？也许，欧洲殖民是不对的，也许，这是洛克在《政府论(下篇)》谈到的，而美洲原住民和殖民者、移民者之间的战争，可能就是洛克所说的战争状态，我们只能通过签订协议或者达成共识来摆脱战争，而这需要公正来解决……是的，双方都得同意并落实。”

但在什么时候，你叫什么名字？

同学二：“Dan”。

但是，Dan，你对 Rochelle 对 27 节 以及 32 节关于挪用土地的意见怎么看？如果那个论据是正确的，这就会正义化移民者们占据土地的行为。你认为这论据是一个很好的论据么？

同学二：“恩，这不就是在暗示印第安人自己没有这样做过？恩，印第安人仅仅狩猎、采集，他们并没有实际上占领土地。因此，我认为 Rochelle 想说的那个。 - 我想……- 继续讲，Dan 同时，他也说过，只要在某块的土地上捡捡橡树果实、摘摘苹果，或者杀一头水牛，这块土地就归你所有，因为这有你的劳动，而你的劳动为你圈取了这片土地。因此，根据洛克的定义，也许印第安人没有绕着这块地竖起围栏，但不……他们正在使用这片土地，是的，根

据洛克的定义，你可以说，因此，也许在洛克的定义里，印第安人也可以宣称拥有这块土地的所有权。是的，但正如她所说，他们只是没有站在洛克一边。”

好，很好。再来一个洛克的辩护者。请，

同学三：“我的意思是，为了捍卫洛克，他的确说过，有些时候你不能拿走别人的土地。例如，你不能拿走公有土地，对美洲的印第安人来说，我感觉他们已经建立了他们自己的文明，他们共同使用着这块土地，那么，这有点像是他说过的英国人共有财产的一个类比。你不能拿走大家共同享有的土地。噢，很有趣，那很有趣。还有，你不能拿走土地，除非你确保还有足够多的土地供其他人使用。因此，如果打算拿走公有土地，你必须确保还有足够多的剩余土地供他人使用……- 对 而且，剩下的土地和你拿走的土地是一样好的……”

没错，洛克说过，私有财产权必须得确保有足够多、足够好的留给其他人。  
你叫什么名字？

同学三：“对，我叫 Feng。”

Feng 在某种程度上你也同意 Dan 在洛克的框架内也有美洲原住民。下面的问题是，如果私有财产权是与生俱来的，而不是约定俗成的，如果它是在政府出现之前，我们就拥有的，那么，这种权利如何限制合法政府能做的事情呢？



最后，为了看看洛克究竟是自由主义的支持者，还是潜在的批评者，我们得问，我们一旦进入了社会，什么将成为我们的自然权利？

我们知道，我们进入社会是经过大家的同意、协议、以脱离自然状态，并且大多数人被法律体系、人类制定的法律所管辖。但这些法律，只有在尊重我们的自然权利、尊重我们不可分割的生命、自由和财产权的条件下才是合法的。没有哪个议会或立法机构，不论它是多么民主，都不能侵犯我们的自然权利。没有法律可以侵犯我们的生命权、自由权和财产权，这似乎是支持有限政府的，所以，很讨自由主义者的欢心。

但是自由主义者却不该高兴得这么早，即使对洛克来说，国家建立之后，自然法则依然存在。尽管洛克坚持有限政府，政府要受限于创建它的人，即保护我们的财产不受侵犯。即便如此，这里还有一个关键点：怎么才算是我的财产？怎样才算尊重我的生命和自由权？而这是由政府来界定的。哪些属于财产权，怎么才算尊重生命权和自由权，这些是限制政府的所在。但是，“怎样才算尊重我的生命和财产权”却是由政府来决定和定义的。

怎么会这样呢？洛克不是在自打嘴巴么？还是说这里有一个重要的区别？为了回答这个问题，这决定了洛克究竟是否与自由主义的观点一致，我们需要仔细研究洛克所指的合法政府是什么样的。我们将在下一次探讨。

“收入就好像鞋子：太小了会挤脚，太大了会摔跤。”——约翰·洛克

（感谢网友“月彤若熙”参与本课排版工作）

## 第八课 满合法年龄的成年人

上一次，我们开始讨论洛克所说的自然状态、他的私有财产的观点，他的合法政府理论，即政府是基于人们的同意而设立，以及有限政府。洛克相信一些基本权利限制了什么是政府可以做的。洛克相信，这些权利是自然权利，而不是靠法律、或政府来赋予。洛克的哲学实验就是看看他能否提供一种理由来解释，在政府和立法会议员出现之前，为什么就有财产权？这就是他的问题，也是他的主张。洛克认为，建立产权有一种方法，不仅是采摘、打猎所得属于我们，还包括土地本身。只要我们给其他人留下了足够多、足够好的土地。

今天，我想谈谈关于同意的问题。这是洛克的第二个想法，私人财产是其中一个，同意是另一个。

同意的作用是什么？

这里已经有人提到过同意。自从一开始，从第一个星期开始，你们还记得我们在（第1集）讨论将桥上的胖子推下桥（来救活5个工人）时，有人说“但他没有同意去牺牲自己，如果他同意的话，情况就不同了。”或当我们讨论到是否（也是第1集）杀死并吃掉船上那个男孩时，有些人说“嗯，如果他们都同意抽签，情况就会不一样。（经过同意）那样就可以（杀掉那个男孩）”。

因此，同意这个词已经出现了很多次。而关于同意这个问题，洛克是其中一位大哲学家之一。同意，在道德哲学和政治哲学里，是一个很明显、很熟悉的概念。洛克说，合法政府是建立在同意的基础上的。今天，有谁不同意他的观点？有时候，当政治哲学家的思想跟“同意”这个概念一样熟悉的时候，我们就很难理解它，或至少觉得它很有趣。但，作为合法政府存在的基础——同意，洛克对这个概念的解释，有些让人疑惑、让人觉得奇怪。而这就是我今天要讨论的，验证洛克的“同意论”是否合理。并同时探讨这些困惑的一个方法就是看看基于同意而建立的合法政府，能够做什么？它有什么权力？为了回答这个问题，回想自然状态是什么样的？

请记住，正是由于我们决定要离开自然状态，才导致了“同意”的出现。为什么不呆在自然状态呢？为什么要有政府呢？那么，洛克是怎么回答这个问题的？他说，在自然状态下，有不方便的地方。但那些不便是什么？主要的不便是每个人都可以执行自然法则、人人都是实施者，或者引用洛克的话，自然状态下的“执行者”。他确实是这么说：“如果有人违反了自然法则，他就是一个侵犯者。他是不理性的，那么你就可以惩罚他。”而且在自然的状态下，你无须对惩罚的程度小心翼翼，你可以杀死他。你绝对可以杀死跟踪你、企图谋杀你的人，那是自我防卫。但是在自然状态下，人人都可以执行惩罚，人人都拥有执行的权力、惩罚的权利。而且你不仅可以处死那些跟踪你、企图谋杀你的人，你还可以惩罚一个试图偷你东西的小偷，因为那也被看作是违反了“自然法则”。如果有人偷了第三者的东西，你也可以去找他。为什么？任何

违反自然法则的都是侵略行为。 这里没有警察，没有法官或者陪审团， 所以人人都是自己的法官。 然而洛克发现，当人们成为他们自己的法官时， 他们就倾向于失去理智。 而这给自然状态造成了不便。 如果你这位法官对“案情”判断错误，这也就是侵害， 要受惩罚。而在你意识到你的错误之前， 人们在享受其不可剥夺的生命权、自由权、财产权时，安全就得不到保障。 这里，洛克使用了一些严厉、甚至是残酷的词来描述：“你可以怎么处置一个违背自然法则的人；你可以杀死，一个要跟你开战的人 ... 就像，你可以杀死一只攻击你的狼或狮子。这样的人没有别的原则，只有武力和暴力，” 听听这段：“所以你可能会成为，别的野兽口中的食物， 一旦落入他们手中，你就必死无疑。” 所以，你得先杀死他们。

乍一看，自然状态好像很不错， 在这里每个人都是自由的，尽管这里有一条法则， 这条法则尊重人们的权利，而且这些权利是如此重要，以至于它们是不可被剥夺的。 乍看很美好的东西，一旦你看得近一些， 就会发现它很残忍，充满着暴力，而这就是人们想要离开的原因。

人们怎样离开？这就是“同意”的起源。 脱离自然状态的唯一途径就是同意：同意放弃“执行权”， 然后建立一个政府或社区。 在这里，有立法机关制定法律， 并且大家都事先同意，每个进来的人也都事先同意，服从多数人的决定。但是接下来的问题，也就是我们的问题。 我想听听你们的观点， 这个问题就是：哪些权力？多数人决定什么？

在这里，洛克看起来有些狡猾。因为你们还记得，在整个关于“同意”和“多数人的统治”的说法之外，还有那些自然权利、自然法则，那些不可分割的权利，而且你们还记得，当人们聚在一起建立一个公众社会时，这些东西并没有消失。所以尽管多数人掌管了权力，多数人也不可以侵犯我们的不可分割的权利，不可以违反我们基本的生命权、自由权和财产权。所以谜团就在这里：多数人拥有多少权力？由“同意”建立起来的政府，有什么限制性？它的有限性在于，多数人有尊重、并且维护公民基本自然权利的义务。他们不会放弃这些权利。政府出现后，我们仍然没有放弃这些权利。这就是杰佛逊在《独立宣言》里，从洛克那儿拿来的点子：“不可分割的权利”。

那么，让我们谈谈两个案例。还记得迈克尔·乔丹，比尔·盖茨，自由主义反对税收来达到重新分配（第3集）。那么，关于洛克的有限政府呢？有人认为洛克确实为反对税收提供了理由吗？有谁？请讲。

同学四：“如果多数人规定必须有税收，有少数人仍不须交税，因为那是在剥夺财产，而财产权是自然权利之一。”

好，你叫什么名字？

同学四：“Ben。”



Ben ,所以如果多数人在未经少数人同意的情况下，根据一定法律来收税，那等于是未经他们的同意而剥夺他们的财产。 那么，洛克似乎应该对此表示反对。 你需要一些原文来支持你的观点， 来支持你对洛克的解读吗，Ben？ 当然。 好的。我带了一些来，就是以免你提出这样的问题。 要是你有讲义的话，看第 138 段。

“最高权力”，洛克指的是立法机关，“未经他的同意，不可以拿走任何人的任何的财产，因为对财产的保护不属于‘统治’的范围，而对任何一个进入社会的人来说，都有必要假设和要求， 人们必须拥有财产。” 这原本就是人们进入社会的全部原因： 为了保卫财产权。 而当洛克说到财产权时， 他通常将它当成一个放诸四海皆准的词汇， 生命权、自由权、财产权。 所以洛克的这段话，第 138 段的开头， 似乎是印证了 Ben 的解读。但第 138 段的其他部分呢， 如果你们继续读下去：“因此，在社会中.....人们拥有财产，根据大家所建立的法律， 人们拥有物品的所有权” 再看看这段：“而且没人可以未经他们的同意夺走这些财产。” 然后在这段的结尾，他说：“所以认为立法权可以随意妄为、可以任意地处置其成员的财产、 或夺走其中任何一部分的想法，都是错误的。” 这就让人捉摸不透了：一方面 ,他说政府不可以未经你的同意而夺走你的财产。 他的意思很明确。但是他接着又说道， 而那是财产的自然权利。 但是接着你会发现，似乎被认为是“财产”的东西， 并不是自然的，而是被政府所约定俗成的。 “那些根据团体法律属于他们的财物。” 而如果你看一下第 140 段，情

况将更加复杂。第 140 段，他说道：“没有大量的经费支持，政府就无法运行。政府是昂贵的，因而让所有享受保护的人们，为其财产的交通费是合理的。”接着这里有一句关键的话：“然而，这仍然需要征得他们的同意，也就是，大多数人的同意，这个同意通过他们自己、或他们的代表来表达。”

所以洛克究竟想说什么？在某种意义上，财产是自然的，但在另一意义上，它又是约定俗成的。我们享有拥有财产权这一基本的、不可剥夺的的权利的意义上，它是自然的，存在着财产权，政府应当尊重。任意地夺取财物将被视作是违反了自然法则，它是违法的。但是问题在于财产的约定俗成这一方面，我们问题在于什么算作是财产？它是怎样被定义的？以及什么算是夺取财产？这些取决于政府。所以，这里存在着“同意”。我们回到了我们的问题，同意的作用是什么？税收的合法性就在于它是经过同意的，不是由比尔·盖茨他自己同意的，（假设他就是那个要付税的）而是由他和我们，这个社会所有的成员，在一开始脱离自然状态、并且建立政府时，给出的同意。这是一个集体性的同意。这样解读起来，似乎同意成了事情的全部，而经过同意所建立的有限政府，也不完全是有限的。

有人想对此做个回应，或对此有什么疑问吗？请，站起来。

同学五：“嗯，我只是在想，洛克会怎么看下面这种情况：假如，一开始政府就存在，那么，对于出生在其中的人们而言，是否还有可能离开，并且回归

到自然状态吗？我是说，我认为洛克并没有提过了这种情况.....”

你认为呢？

同学五：“嗯，我认为，照惯例看来，要脱离政府是很困难的，因为你不再是... 因为没人可以只生活在自然状态下，而让其他人被立法机关统治着。”

你是在想问，这在今天意味着什么，你叫什么？

同学五：“Nicola。”

Nicola，为了脱离某个状态，假设你要脱离当今的文明社会。你想要撤回你的同意，并且回归到自然状态。嗯，因为你其实并没有给出“同意”。你只是出生在其中，加入其中的是你的祖先。对，你没有在某个社会契约上签字。

同学五：“我没有在上面签字。”

的确。好，那么洛克对此说了什么，是吗？我认为，洛克并没有说你必须签署任何东西。我想他所说的是那种默认的同意。

同学五：“默认的？”

享受政府的服务，就表示你默认。你同意了政府从你那儿获取东西。好，默认同意，只是回答了这个问题的一部分。现在，你也许会认为默认同意，并不能等同于真正的同意，这是你摇头的原因吗，Nicola？大声说出来。站起来，大声说。

*同学五：“我不认为，仅仅使用着政府的各方面的资源，我们就必然地默认了我们认可这个政府产生的方式 或表示我就同意真正地加入社会契约。”*

所以，你认为默认同意不足以产生任何服从政府的义务？

*同学五：“对，不必然产生。”*

Nicola，如果你知道你不会被逮捕，你还会纳税吗？

*同学五：“我不会。在我个人看来，我更希望有一个系统，那样我可以只付钱给那些我支持的政府部门，而不是所有的部门。”*

你更喜欢生活在自然状态，至少在4月15号这天（美国税务申报截止日期）。但是我想知道的是，你是否认为因为事实上你没有作出任何形式的同意，所以你没有任何的义务，但为了保险起见，你还是依法行事？

同学五：“没错。”

如果你这么想，就违背了洛克的另一个论点，那就是，你不能从其他人那里拿走任何东西。例如，你不能只享受政府的服务而不付出任何回报。如果你想回到自然状态。那没关系，但你不能从政府那里拿走任何东西。因为根据政府的条款，也是唯一的条款，在你同意的情况下，要求你必须纳税才能获得那些东西。

同学六：“所以，你是说 Nicola 可以回到自然状态，如果她愿意，但她就不能在麻省街道上开车了？”

没错。我想讨论街道使用权以外的问题，征税以外的问题。怎么看生命权？怎么看征兵的问题？好，你怎么看？站起来。

同学七：“首先，我们要弄清楚，把人送上战场，并不意味着他们一定会死。我是说，去战场显然也不会提高生存几率，但也不等于是死刑。因此，如果你要讨论征兵是否等同于压制了人的生命权，你不该这么想。其次，真正的问题在于，洛克关于同意和自然权利的观点。不允许人们放弃自己的自然权利，即便是自愿的。所以，真正的问题是，他如何自圆其说，当人们谈到征税或者征兵问题时，他怎么解释‘我同意放弃我的生命，放弃我的财产’我想，洛

克是反对自杀的 虽然那是经过我自己的意愿，我同意取下我的性命。”

好，不错，好的，你叫什么？

同学七：“Eric。”

Eric 说出了，在我们读洛克的时候一直困惑我们的难题。一方面，我们有这些不可分割的权利：生命权、自由权和财产权，那意味着即使我们自己也没有放弃它们的权利，而正是这些权利限制了合法政府。这不是说，我们同意这些来限制政府，而是连我们自己也不能放弃这些用来限制政府的权利。这就洛克的核心观点，关于合法政府（的核心观点）的。但现在，你说，“好，既然我们都不能放弃自己的生命”，既然我们都不能自杀，既然我们都不能放弃自己的财产权，我们怎么能够同意接受多数派的限制，迫使我们牺牲生命或者放弃财产呢？（即纳税和服兵役）洛克能否自圆其说，或者说他基本上认可一个全能的政府，可以不顾他所说的不可分割的权利呢？他能自圆其说吗？谁来为洛克辩护？或者为这个困境找出出路？

同学八：“我。”

好，请说。



同学八：“我认为那是有区别的。 个人拥有的生命权， 与政府不能剥夺某个特定个体的生命权， 两者是有区别的。 我认为， 如果你把征兵看成是政府在挑选特定的个人去参战的话。 那这就侵犯了他们天赋的生命权。 另一方面， 如果征兵， 比方说是用抽签的方式， 这时候， 我觉得那是人民大众在选出他们的代表去参战， 以捍卫他们的权利。 整个思路是不可能全部人都一起冲上去， 去捍卫各自的财产权利， 它通过一个真正随机的程序， 选择自己的代表。 然后， 这些随机选出的代表站出来， 去为人们的权利而战。 这种方式很像， 就像是民选政府那样， 在我看来，”

好的， 所以一个民选政府可以征用它的公民， 站出来去捍卫他们的生活， 从而能继续享有他们的权利？

同学八：“我认为的是。 因为对我而言， 它非常类似于选举立法代表的过程。 虽然， 这里就像是政府， 在通过征兵选出一些公民送死， 出于群体的利益。”

这与尊重自由权利， 相符吗？

同学八：“唔， 我想说的是， 这是有区别的。 挑选特定个体和随机挑选个体。 就像挑选.....让我想想..... 挑选个体， 让我..... ”

你叫什么名字？

同学八：“Gokul.”

Gokul说，那是有区别的，挑选特定个体、让他们放弃生命和随机选取之间，是有区别的。我认为这就是洛克将会给出的答案。实际上，Gokul，洛克是反对专制政府的。他反对专制，反对指定由比尔·盖茨去资助伊拉克战争；他反对指定某个公民或者某个群体去战斗。但是，如果有一个通用法，可以让政府的选择，让多数派的行为变得不是专制，那就不算是对个人基本权利的侵犯，专制掠夺才算是侵犯。因为专制掠夺，本质上是说，不仅侵犯了比尔·盖茨，还侵犯了每一个人。因为不存在法治、没有产权制度。因为国王可以为所欲为。或者说，国会（可以为所欲为）可以指定你，或者你，放弃自己的财产，或者放弃你的生命。但是只要有一个非专制的规定，那么这种行为就是允许的。

现在，你也许会说，这并不算是真正的有限政府，而自由主义者也会抱怨，洛克不是一个忠实的好盟友。自由主义者对洛克的失望有两点：第一，权利是不可分割的。因此，我根本没有真正地拥有自己，我不能用违反我的权利的方式来处置我的生命、我的自由、我的财产。这是失望之一。失望之二，一旦经过同意而建立了合法政府，对洛克来说，其唯一的限制，就是限制对人的生命、自由和财产的任意掠夺。但如果多数派决定，如果多数派颁布一个普遍适用的法律，并且是经过一个恰当的公平程序，那样就不是侵犯。不管是征税、还是征兵。

所以，很显然，洛克担心的是国王的绝对专权。但同时，这里也确实存在---洛克，这个伟大的“同意论”者---的局限。随之而来的是私有制理论，它不需要同意---这可以回到上次 Rochelle 的观点---可能和洛克的第二关注点有关，那就是美国，你们应该记得，当他谈到自然状态，他不是谈论一个假想的地方。他说，“起初，整个范畴是美国。”在美国发生了什么？殖民者在圈地，并且和印第安人发生了战争。洛克，身为一个殖民地的长官，可能乐于为私有制开脱。即通过未经同意的圈地、通过圈地和耕种（而取得私有财产）。当时他正在设想一个基于同意的政府理论，从而可以限制国王和专制统治者。

我们剩下的问题，最根本的问题就是，我们仍然没有回答，到底什么成为了我们的同意？它能起什么作用？它的道德力量是什么？同意的限制性是什么？同意不仅关乎到政府，也关系到市场。下一次开始，我们将会分析：在商品买卖时，同意的限制问题。

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## 第九课 雇来的枪手

在上一讲结束时，我们讨论到洛克关于“在同意基础上所建立的政府”，问题就出来了，“是什么限制了政府的权力，使得即便多数人同意，也不能侵犯它？”，这是我们上次结束时的话题。我们讨论了财产权的问题，以洛克的观点来看，由民主选举出来的政府，有权向人民征税，政府征税应经过人民的同意，因为这的确涉及到为了公共利益而拿走个人的财产。然而征税的时候，并没要求征求每个独立个体的意见。它只要求人们在进入社会前，要事先征求同意，并承担一些政治义务。而一旦你承担了这些义务，你就同意了接受多数人的约束，这些就是关于征税的讨论。

但你也许会问：对于生命权又会怎样？政府可以征兵，并把人们送到战场么？又如何解释我们拥有自己这一观点？（上一集讨论过的观点）。如果政府能够通过强制立法和执行其权力，这不是违背了我们拥有自己吗？例如政府说：“你要冒生命危险去打伊拉克。”，洛克会怎么说？政府是否有权这样做？

是的，事实上他在第 139 节说到，“重要的是政治机关或军事当局，不是专制的，这是问题的关键”。同时他也给了一个很有说服力的例证。他说：“即便是一名中士，更不用说是一位将军，也可以命令士兵，迎着大炮而上。这位士兵将必死无疑，但中士有权要求他这样做，将军甚至可以给那些擅离职守，或不服从命令的士兵判处死刑，尽管他们拥有生杀大权，但他们却没权拿走该士兵的一分

一厘，因为这种做法是不合法的，因为这是主观武断的，腐败的。因此，同意在洛克的理论中变得非常重要，这种同意不是指，个体对税收或军令的同意，而是一开始同意加入政府、受大多数人的约束。这就是同意的关键所在，而且它重要到，即使是建立在我们所拥有天赋的生存权、自由权以及财产权这一事实上的有限政府，即便这个有限政府也只是受限于普遍适用的法律、法规，而且不能是专制的。这就是洛克的理论。

那么这就引出了一个关于同意的问题：在建立政权和服从的义务时，为什么“同意”是如此一个强大的道德工具？今天我们从一个具体的征兵案例来探讨“同意”的问题。

也许有人会问，因为我们拥有自己，我们有一些基本的权利，那么政府征兵去参战就是对这一权利的侵犯。有人则不同意这说法，他们说：这是政府的合法权力，不管怎样，这是民主选举的政府，我们都有义务服从。我们以美国攻打伊拉克为例。新闻报导告诉我们，军队在完成招兵指标上有很大困难，看一下美国政府应对无法完成招兵指标时的三项对策。

方案一：增加工资和福利，从而吸引足够数量的士兵。

方案二：采用强制征兵体系。用抽签法，谁抽中了，谁就要去伊拉克参战。

方案三：军事外包。聘请世界各地被称为“雇佣军”的人，那些合格的、有能力的、仗打得好的，而且愿意接受，现有的工资水平。

让我们做个简短的投票：多少人倾向于增加开支？相当多的人。多少人赞成强制征兵体系？在这个屋里，也许有十几人选择强制征兵。那外包的解决方案呢？好了，大约有二三十人。

在内战期间，北方军利用强制征兵和市场体系相组合的方法来填补军队士兵的空缺。一开始，这是一个强制征兵的系统，但如果你被抽中，而又不想去，你可以雇佣别人顶替你去，很多人这样做，你可以根据市场，来付钱为了找人顶替，人们在报纸上打广告，在分类广告栏，标价 500 美元，有时甚至 1000 美元来找人顶替自己去参战。

事实上，据报道，安德鲁·卡内基，被征召了，他只用了比他一年花在高级雪茄上还少些的钱就雇佣到了顶替他服役的人。现在我想听听，你们对内战时兵役制的看法，我们暂且叫它“混合制”，强制征兵+市场交易。多少人认为这是一个公平的制度？多少人会捍卫南北战争时实施的这一制度？有人吗？还有吗？多少人认为这是不公正的？你们中大多数人不喜欢这一制度，你们认为这是不公正的。我们来听听反对的声音。

你为什么不喜歡它？這有什麼不好呢？



学生 1：“支付 300 美元就豁免一次，你其实是在用金钱，来衡量生命的价值。我们之前确定了，人的生命很难用金钱衡量，因此，他们是在完成不可行的事情，你实质上是在衡量他们生命的价值。”

这就是他们生命的价格，这是在给他们的生命标价。很好，你叫什么名字？

学生 1：“Liz。”

那么，谁能回答 Liz 的问题，你要为这个征兵制辩护，你会怎么说？

学生 2：“如果你不喜欢价格，那么你有选择是否被雇佣的自由。这完全取决于你，我不认为，为你贴上特定的价格是必须的，如果这是他自己贴上去的，我不认为这在道义上，有什么错误。而那个收下了 500 美元的人，我们可以说，他是在对自己的生命估价，或者在为自己生命的风险估价，他有选择那样做的自由。”

没错，你叫什么名字？

学生：“Jason。”

Jason 谢谢你。现在我们要听听另一个批评者的意见。

学生 3：“对那些低收入者而言，这是几乎就是一种强制，对卡内基来说，他完全可以不理睬这次征兵。300 美元对他而言是小数字。但对那些低收入者而言他们基本上是强迫被征召，很可能，他们找不到人来顶替。”

告诉我你的名字。

学生 3：“Sam。”

你说的是 Sam，如果一个贫穷的劳动者为了 300 美元而参加内战，他实际上是被强迫的，鉴于他的经济状况，而卡内基可以置身事外，付钱就不用服兵役，好吧，我想听听其他人对 Sam 的回复，这个看起来是自由交易，但实际上是某种形式的强迫，谁能回答 Sam 的问题，请，你同意 Sam。

学生 4：“我同意他说，正是因为强迫，抢走了我们的理智。”

好的，你叫什么名字？

学生 4：“Raul。”

好了，那么 Raul 和 Sam 一致认为，看起来像是自由交易、自由选择、自愿的行为，其实有强迫的因素在里面。

学生 4：“这是一种最为恶劣的极度强迫，因为征兵的任务，不成比例地落到了社会的某个阶层。”

很好，那么 Raul 和 Sam 得出了一个强有力的观点，谁愿意对此进行回应？谁能回答 Raul 和 Sam？

学生 5：“我不认为这个征兵体系，和志愿服役体制，有多么不同，整个关于支付人们去当兵的想法，是一种强迫人们服兵役的策略，诚然，应招的志愿者，不成比例地，来自低收入者和国家的某些特定区域，你也可以用类似爱国主义的说法，来试图让人们觉得，自愿当兵到伊拉克，是件正确的事情。”

告诉我你的名字。

学生 5：“好的，Emily。”

Raul，你得准备对此进行回应。Emily 说，不错，内战征兵体制中有强迫性的因素，当一个劳动者为了 500 美元，顶替了卡内基，Emily，承认这点。但她说，如果你批评南北战争时的制度，你不也应该指责现行的兵役制度吗？在你回

答前，你在第一轮投票时选了什么？你有赞成志愿服役制吗？

学生 4：“我没有表决。”

你没有表决。顺便问一下，你没有表决，但你将投票权出售给你身旁的人吗？

学生 4：“没有。”

好吧，那么，你对那论点怎么看？

学生 4：“我认为，两者情况不一样，南北战争时，有征兵体制，今天制度不一样。我想，今天的志愿者，有更为深刻的爱国主义意识，与内战中被迫参战的人相比，这更多是一种个人自愿，怎样更少的强迫？”

更少的强迫，即使美国社会仍然有不平等，即使，就如 Emily 所指出那样，美国军队的组成，并不是整个美国人口的反映。我们在此做个调查，这里有多少人，或有家庭成员曾在军队服役，就在这一代，不包括父母？就这一代的家庭成员，有多少人，自己和兄弟姐妹都没在军队服役？这是否验证了你的观点，Emily？是的，都赞成志愿服役制。而且绝大多数人，认为南北内战的征兵制度是不公正的，Sam 和 Raul，讲了反对内战征兵制度的理由，它在不平等的背景下发生，因此人们服兵役，并非真正出于自愿，多多少少是被强迫的。接着，Emily，将

这一争论,更加挑明,好了,那些赞成志愿服役制的人,这在原则上有什么不同?志愿服役制,和几乎每个人反对的内战兵役制,不是有很多相同点吗?我阐述得对吗,Emily?

学生5:“是的。”

好了,我们要听听,志愿服役制的辩护者,看看他们怎么回应Emily的质疑,谁能?请。

学生6:“志愿服役制和南北征兵体制的不同之处在于,在南北战争时,你不是被政府雇佣,而是被个人雇佣。因此不同的人,雇佣不同的人,支付的也不同,而志愿服役制,士兵都是被政府雇佣,并得到相同数额的支付,你同等地支付人们去参军,这使得志愿服役制变得公平。”

Emily?

学生5:“我想,我的表述稍有不同,在志愿服役制中,有人可以置身事外,完全不去考虑战争,有人可能这样说,‘我不需要钱,我不必对此有何意见’,‘我不必对参军和保卫国家负有义务’。而强迫性的征兵制,明确写着的征兵,这是一种威胁,面对征兵制,每一个人都不得不做出某种的决定,也许就因为这样,志愿服役制就会更为公平些。的确,如果不是在征兵制度下,卡内基可以不用参

军，他可以完全抽身事外，但在志愿服役制下，则带有某种责任。”

如果是你，Emily，你倾向于哪种制度，是征兵制吗？

学生 5：硬是要表态的话，我想我倾向，志愿服役制，因为它让国民们都感到一定的责任感，而不是战争来了，只有少数人在思想上支持，但没有真正承担起责任来。

很好，谁想回应？请继续。

学生 7：“我想指出完全志愿兵役制，和南北内战兵役制的根本区别在于，在志愿服役制中，首先是你志愿参加，然后才是报酬，而在内战征兵制中，那些接受报酬的人，并不一是想参军的，他们这样做，首先是为了钱。”

你认为，在志愿服役制中，除了工资外，大家参军还有什么动机？

学生 7：“比如爱国主义，保卫国家的愿望，的确一部分是为了钱。但事实是，我想，爱国是首要和最重要的动机。”

你认为它更好吗？告诉我你的名字。



学生 7：“Jackie。”

Jackie，你认为人们出于爱国主义，而不仅仅为了钱，是否更好？

学生 7：“就是那些人，那些参战的人民，他们并不一定是想打仗的，所以，他们不像那些真想参军的人那样，成为好士兵。”

好的，怎么看 Jackie 提出的爱国主义问题，爱国主义是一种比金钱，更好或更崇高的动机，谁来问答这个问题？请。

学生 8：“爱国主义绝对不是成为一个好士兵的必要条件，因为雇佣军也照样做好他们的工作，像那些挥舞着美国国旗的士兵一样保卫国家，正如政府想要的那样。”

你喜欢外包解决方案？

学生 8：“是的。”

好的，让 Jackie 回应一下。你叫什么名字？

学生 8：“Philip。”

你怎么看，Jackie？爱国主义。

学生 7：“如果你找到了一些全身心投入的人，他们会做得比其他人更好，当人们走投无路，例如碰上，要把生命押上的情形时，那些因为爱国才参战的人，比那些为了钱的人，更愿意深入险境，为了钱的人不关心这些，他们能力是有的，但他们不关心发生了什么，不在乎这个国家。”

但另一方面，一旦我们牵涉到爱国主义，如果你和 Jackie 一样，相信爱国主义，是最重要的考虑因素，而非金钱，这是否在支持或反对，我们现行的军队领取工资呢？尽管我们称之为“志愿军”，但如果你想想，这其实是名不副实。我们叫它“志愿军”，但其实是有偿的军队，爱国精神而非金钱应该是服兵役的主要动机，你对此作何评价？这一争论是否是支持我们现行的付费兵役制，还是支持志愿兵役制？我们来强化基于 Phil，所说的军事外包的观点。如果你认为志愿服役制，这种付费的兵役，是最好的，因为它根据人们的偏好、为一定的工资，而服役的意愿，让市场来调节职位，是不是这个逻辑，把你从征兵制转移到南北内战的混合制，再到志愿服役制来吗？这个扩大市场中自由选择的想法难道不是如果你一贯地坚持这个原则，难道它不是，把你完全引导到雇佣军体制上来吗？如果你说不，Jackie 说不，爱国精神有其价值。如果是爱国精神，这难道不是为返回征兵制而辩护，你说公民的义务感？让我们看看我们是否能从这个讨论中走出来，看看我们已经学到的同意论把它运用到市场交换中的效果。我们已经听到

了两种观点，两种反对运用市场交换来配置军事服务的观点。其中一个论点是由 Sam 和 Paul 提出的，该论点谈及强迫，反对的理由在于让市场，分配兵役可能是不公平的，甚至是不自由的，如果社会存在严重不平等，那些通过收了钱去服兵役的人，并不是因为他们真的想去，而是因为他们没有什么经济机会，服兵役是他们最好的选择。Sam 和 Paul 说，有强迫的因素在里面，这是其中一个论点。

第二种论点，反对通过市场机制配置军事服务，那就是服兵役不应该，被视作是一种付钱工作，因为这紧密地关系到，爱国精神和公民义务，这不同于不公平、不平等以及强迫。它认为，也许在涉及公民义务的地方，我们不应该由市场，来分配责任和权利。现在，我们已经明确了这两大异议，在评价这些异议时，我们需要了解什么？

先来评价第一项异议，关于强迫，不平等、不公平，Sam，我得问，社会背景中，有什么不平等因素在破坏，人们购买和出售其劳动的自由选择权？这是问题一。

问题二：评估公民的义务，爱国主义，我们要问，公民的义务是什么？兵役是其中之一吗？作为公民，我们有什么义务？政治义务源自哪里？是否经过了同意，或者说，当我们共同生活在某个社会的时候，我们是否负有一些公民义务，哪怕它没经过我们的同意？

我们还没有回答这两个问题，但我们今天对于内战兵役制，和志愿服役制的讨论，至少引出了这些问题，而这些问题，我们将在未来的几周进行讨论。

“如果我们都按自己的想法判别问题，那么违法者将数不胜数。” ——约翰·西格尔琼森

## 第十课 关于母亲

今天,我想把我们的注意力转到,市场在人类生殖和生育中,所发挥的作用。现在在不育不孕诊所,人们刊登广告找捐卵者,在哈佛校报上,也不时有寻找捐卵者的广告。你们看到过吗?几年前有个广告,它找的不是普通的捐卵者,广告中,贴出了巨额的报酬,要求该女性要聪明、健壮,至少 5 英尺 10 英寸以上,而且 SAT 的分数要至少在 1400 以上,你们觉得这个愿意为这个登广告的人愿意出多少钱?你猜是多少?1000 美元?5 万美元?10 万?我把广告给你们看看,5 万美元买一个卵子,但要求优质卵子,你对此有何感想?在哈佛校报上和其他院校,登过找精子捐赠者的广告,因此捐精捐卵的市场是一个机会均等的市场,也许不算完全平等,因为没有人出过 5 万美元要精子。

有一个公司,一个大型的商业精子银行以精子交易为主要业务,叫做加州 Cryobank。这是一家营利性公司。该公司对收集的精子制定了严格的标准,它在剑桥市,即哈佛和麻省理工之间以及靠近斯坦福的帕洛阿尔托都设有办公室。Cryobank 的推销资料鼓吹它的精子出其不凡。这里,在 Cryobank 公司的网站上有这些信息,这里他们谈到了报酬,尽管报酬不应该是精子捐赠者的唯一理由,我们都知道要成为一名捐赠者要付出时间和精力,你知道他们出价多少吗?每捐一个,捐赠者可得 75 美元,如果每周捐 3 次的话,一个月最多能“赚”900 美元,他们还补充说:“我们为那些花了额外的时间和精力捐赠者的伴侣,提供定期奖励,比如电影票和礼券”。

成为精子捐赠者并不容易，他们的申请通过率低于 5%，他们的准入标准比哈佛还严格。精子银行的高层说，理想的精子捐献者要有 6 英尺高，具备大学学历，金色的头发，棕色的眼睛和酒窝。理由很简单，市场反映这些特征都是顾客想要的，引用这位高层的话“如果我们的客户想要高中辍学者的精子，我们就为他提供高中辍学者的精子”。因此，这里有两个实例，卵子捐献和精子捐献市场。这就引出了一个问题，那就是卵子和精子，应不应该进行买卖？

在你思考这个问题时，我希望你们看一下，另一个涉及市场交易的案例。它涉及到一份关于人类生殖的合同。这个事件是关于商业化的代孕，在几年前，最终闹上了法庭。这是一个关于宝贝 M，的故事。

一对年轻的职场夫妇，威廉和伊丽莎白·斯特恩，但他们没有自己的孩子，斯特恩夫人若有怀孕可能会有风险，他们来到了不育不孕诊所，在那遇到了玛丽·贝思·怀特黑德，她是一位环卫工人的妻子，29 岁，有 2 个孩子。她应寻找代孕母亲的广告而来，他们达成了协议，他们签了一份合同，威廉斯特恩夫妇同意向玛丽·贝思·怀特黑德支付 1 万美元和其他费用，作为交换，玛丽·贝思·怀特黑德同意用威廉的精子进行人工授精，来生下孩子，然后再将孩子交给这对夫妇。你可能知道，故事会怎么发展下去，玛丽·贝思生下了孩子，但她改变了主意，她决定留下这个孩子，事情最终上了新泽西的法庭，让我们把法律问题放在一边，将焦点放在道德问题上来。有多少人认为，在宝贝 M 的事件中正确的做法是坚



持执行这份合同？又有多少人认为，正确的做法是，不去执行该合同？

大多数人认为应该执行合同。我们现在来听听，不管是支持执行还是拒绝，执行该合同的人的意见。首先，我们听听多数人的看法，你为什么支持合同？你为什么要执行它？谁能给出理由？请，站起来。

学生 9：“这是一个具有法律约束力的合同，各方在合同生效前，都很清楚合同的条款，这是一个自愿的协议。这位母亲清楚将要发生的事情，四个成年人，不分教育背景。所以，如果事先你就清楚你将要做的事情，而且许下诺言，你就应该遵守这个承诺。”

好的。换句话说，一言既出，驷马难追。

学生 9：“没错。”

你叫什么名字？

学生 9：“Patrick。”

Patrick 的理由也是你们大多数人，赞成坚持合同的理由吗？好的，现在让我们听听，那些不同意执行合同的人，你会对 Patrick 说什么？为什么不赞成？

请。

学生 10：“嗯，我同意，当各方都知晓所有信息时，合同应该坚持执行。但在这个案件里，我不认为在孩子未出生前，作为一个母亲能够确切知道，她对那位孩子会有什么样的感受，因此，我不认为，（签合同同时）母亲就知道全部信息，她不认识那个将要出生的孩子，所以也不知道，她会多么爱这个孩子。这就是我的观点。”

所以你不支持执行。你叫什么名字？

学生 10：“Evan•Wilson。”

Evan 说他不会坚持合同，因为在生下孩子前，代孕母亲无法提前知晓，她对孩子的感受。因此，她并不真正知晓，相关的信息，还有谁？还有谁不支持执行合同？

学生 11：“我也同意在一般情况下，应该要坚持执行合同，但我认为，拥有自己真正的母亲，是孩子不可剥夺的权利。我认为，如果那位母亲要她的孩子，孩子也有权拥有自己的母亲。”

你是指，这个亲生母亲而不是养母？

学生 11：“是的。”

那么为什么？首先，告诉我你的名字。

学生 11：“Anna。”

为什么是那样？

学生 11：“因为我认为，通过自然（血缘）而建立的关系，胜过一切合同所创造的关系。”

很好，谢谢还有谁？请。

学生 12：“我不同意，我不认为孩子对其亲生母亲，有不可剥夺的权利，我认为，领养和代孕都是合法的交易。我也同意，这是一种自愿达成的协议，这是个体自愿达成的协议，你不能说这里有强迫的成分，你不能说这是被强迫的。”

因此而反对它？

学生 12：“是的。”

你叫什么名字？

学生 12：“Kathleen。”

Evan 说，并不是因为强迫的缘故，“玷污”了合同，而是缺乏足够的信息。她不知道有关的信息，即她不知道，她会对这孩子会有何种感受，对这点你怎么说？

学生 12：“我不认为，她的感受在这里起到作用，我认为，在法律案件中，在审判这种案件时，她情感的变化是无关紧要的。如果我决定放弃我的孩子，送给别人收养，随后我又决定，要回孩子，这样太糟了。这是一个交易，母亲已经做出的一个交易。”

所以，一言既出，驷马难追。你同意 Patrick 吗？

学生 12：“我同意 Patrick 的观点，一言既出，驷马难追。”

一言既出，驷马难追。

学生 12：“是的。”

很好。

学生 13：“我想说的是，虽然我不太确定我是否同意孩子对其母亲有不可剥夺的权利，我认为，该母亲肯定有权利拥有她的孩子。我也认为，有些方面是市场力量所无法渗透的，我认为整个代孕母亲的事情，在处理人的角度来看似乎缺乏人性，这好像是不正确的。这就是我的主要观点，我是 Andrew。”

Andrew，用钱买卖拥有孩子的权利，为什么就没有人性呢？哪些地方没有人性？

学生 13：“因为你在购买人们的生物权，假设你有一个孩子，我相信法律会。”

所以，你觉得这就像把孩子卖掉？

学生 13：“是的，在某种程度上是这样，尽管你与别人签了协议，你们达成了一致协议，这里不可否认地，在母亲和孩子之间建立的情感纽带。如果因为签了合同，就简单地忽视这点是错误的。”

对，你想回应 Andrew 吗？呆在那。

学生 12：“你指出，这里有一个不可否认的情感纽带，我觉得，在这种情况下我们没必要争论，收养或代孕本身，我们只要指出情感之间的差异。”

学生 13：“但请等会，我的意思是，将事物分解为一块块是很容易的，你可以说：“哦，我们有合同”，就像你买了或卖了一辆车。但在本案例中有情感因素，我的意思是，你是在面对的是人，而不是用来买卖的物品。”

好吧，Andrew 说，这是在贩卖小孩。

学生 12：“我认为，收养和代孕应该是允许的，这和我是否会参与无关，但我认为政府应该，政府应该给予它的公民，允许收养和代孕的权利。收养算是贩卖儿童吗？”

嗯，那你认为，你可以出价，要一个将被收养的孩子吗？这就是 Andrew 的质疑，你在问。

学生 12：“我是否认为，我可以开价收养孩子是吧？我不认为。这是市场经济。我觉得它可以被运用到...，我不大确定，政府是否应该允许它，好吧。”

很好。你同意吗，Andrew？



学生 13：“嗯，是，我想收养应该是允许的，我认为人们可以这样做，但我不认可一旦签合同之后，人们就必须被强制执行，这就是绝对是一种终结。我认为这不能强制执行。”

Andrew,所以你觉得，人们应该可以自由签署这样的合同，但法院不应该强制执行，法院不能强制执行，谁还有意见补充？请。

学生 14：“我想，我对此有一个很有趣的想法。因为我的哥哥，就是捐精子给精子银行的其中一员，他为此获得了很多钱，他有 6 英尺高，但不是金发，他有酒窝，他也有一个女儿，我现在是姑姑了。他把他的精子捐给了，俄克拉何马州的一对女同性恋夫妇，他一直有和她们联系，他也看过他女儿的照片，但他不觉得，他和他女儿之间有感情纽带，他只是好奇，女儿长得怎样，她在做什么，她现在过得怎样。他并未对他的这个孩子产生爱。所以从这件事来看，我认为，母亲和孩子之间的纽带，与父亲和孩子之间的纽带，是不能拿来比较的。”

这真的很有趣。你叫什么名字？

学生 14：“Vivian。”

Vivian，所以我们这个代孕的案例，商业代孕的案例，它被比作贩卖儿童，我们也一直在探讨，这样的类比是否恰当。正如你指出那样，它也可以和精子买

卖作类比。但你说买卖精子、买卖儿童。

学生 14：“是的，这是不平等的交易。”

这是不平等的交易，因为.....Vivian。

学生 14：“是的，还有母亲时间的投入，9 个月，这和一个男人去精子银行，看着色情片然后存放在杯子里，是不能相比的，我不认为那是相等的。”

很好，好吧。

学生 14：“因为这就是发生在精子银行的事情。”

到目前为止，我们已经提出的这些观点，对代孕的反对，以及至少有两种，对执行合同的反对，一种反对和“不知情的同意”有关。这次不是因为强迫或隐含的强迫，而是因为不完美或者有瑕疵的信息，所以，“不知情的”或着说“有瑕疵的”同意，源于它是被迫同意，也可能因为是缺乏相关的信息，至少根据我们所听到的一种观点（是这样的），而第二种反对执行代孕合同的意见认为，这多少有点缺乏人性。当法院裁决这个案子时，他们对地又有何说法？

下级法院裁决，合同应该被执行，双方都不具备谈判的有利地位，要价已经

给出，价格已经谈好，不存在一方强迫另一方。双方要价的筹码都是均衡的，案子后来闹到了新泽西州最高法院，他们又做何判决？他们判决该合同无效，他们把孩子的监护权给予了作为父亲的斯特恩，因为他们认为，这是最符合孩子的利益的，但他们也恢复了玛丽·贝思·怀特黑德作为母亲的权利，而探视权应该交给谁，由下级法院来决定。他们援引了两个理由，沿着安德鲁提出的那个思路，首先，法庭认为，签合同没有提供充分的信息，“这个不可撤销的合同，是这位亲生母亲，知道她和小孩之间纽带关系之前所签下的，在婴儿出生前，她说做的任何决定，都不是真正的自愿、知情的，而其中最重要的一项---，不知情的”，法院这样判决，接着，法院也做了第二个陈述，反对这类商品化的行为，“这是像在贩卖小孩”，法院说，“至少可以说，这是在出售母亲对于小孩的权利，不管是哪种原因驱使着参与者，利益的因素，主导着、渗透着、并最终支配了这个交易”。因此，法庭说，不管是认为，这是“有瑕疵的同意”，抑或信息不充分，在文明的社会中，有些东西，是不可以买卖的。这就是法庭在判决该合同无效时所说的。

那么，怎么看这两种反对市场在生殖和生育领域中应用的观点？一份威廉·斯特恩和玛丽·贝思·怀特黑德共同签署的合同，但有两种情况下的同意，不属于真正的同意。

其一，如果人们受到压力或压迫而签署协议，其二，他们的同意时并非是真的知情。

在代孕的案件中，法庭说代孕母亲不知道，尽管这位母亲已经有自己孩子，她也不知道，把孩子生下来然后为了钱而放弃他是什么滋味，因此要评价这些质疑。

第一个质疑我们要弄清，这个自愿交易中，双方讨价还价的地位和信息是否平等。问题 1：我们如何评价第二个质疑，第二个质疑更加难以捉摸，更加困难。Andrew 承认这点，是吗？把生孩子变成一个市场交易，是有点缺乏人性，是什么意思？嗯，其中一位我们在这门课谈过的哲学家 Elizabeth，Anderson，试图用哲学解释来 Andrew 所说的话，她说，“让代孕母亲压制着她对孩子的母爱，这份代孕合同将母亲的劳动变为某种形式的异化劳动，代孕的劳动被异化了。是因为她最终要把，孕育的社会化过程，即母亲和孩子之间的情感纽带转交给别人”。所以 Anderson，建议，某些东西不应该开放来使用或被用来营利，某些东西的价值高于其使用价值，还有哪些对待和衡量东西的方式，是不应该开放来使用的？Anderson，说有很多这样的东西：尊重、感激，爱，荣誉、敬畏、神圣，有许多看待事物的方法，而不仅仅是使用它。而且有些东西，如果被简单地当作物品使用，就没有被正确地对待，怎样评价 Anderson 的观点？从某种意义上说，它把我们带回了对功利主义的辩论上，包括生命、征兵、生育、养育？如果不是，我们如何计算？我们应该如何决定，用什么评价方式，看待这些事物才合适？

几年以前，有位医生丑闻缠身，维吉尼亚州的一位名为 Cecil , Jacobson 的不育专科医师，他并没有捐赠者的目录，因为他的病人不知道他用来授精的精子都来自一个捐赠者，就是 Jacobson 医生自己。至少一位出庭作证的妇女，对于她刚出生的女儿长得很像 Jacobson 医生感到非常恼火。现在，我们可以谴责 Jacobson 医生，没有提前通知该妇女是否同意是有疑问的。专栏作家 Ellen , Goodman , 描写了这个诡异的阴谋，“Dr•Jacobson 医生”，她写道，“给他的不育业务，增添了自己的个人色彩，但现在是剩下的我们，开始了对精子捐赠的一连串重新思考”，Goodman 总结说，身为父亲应该是你所承担的，而不是你所捐赠的。我认为，她要做的和哲学家 Elizabeth , Anderson 要做的，以及 Andrew 刚才提出的“缺乏人性”，他们都在思考，是否有些东西是不应该用钱买的，不仅是因为这是“不知情的同意”，而也可能是因为，某些事物，比单纯的使用，具有更高的意义。至少，这会是未来几周我们，在一些哲学家的帮助下要探讨的问题。

“科学是整理过的知识，而智慧则是整理过的人生。”——康德

## 第十一课 考虑你的动机

现在我们转到这门课，最难懂的哲学家。今天，我们要讲伊曼努尔-康德。他提出一个不同的解释，为什么我们有绝对性的义务去尊敬别人的尊严，而不能仅仅把人当成工具，哪怕是出于好意。康德在 16 岁的时候就已经在 Konigsberg 大学出类拔萃了，他在 31 岁时，得到了自己第一份工作，担任无薪的讲师。根据当堂听课学生的数量，获得报酬，哈佛应该好好参考一下这个制度。幸运的是，康德是个非常受欢迎的讲师，而且工作勤奋刻苦，所以，他还勉强维持自己的生计。直到 57 岁，他才出版了自己第一本重要著作，然而，这种等待是值得的，因为那本书就是《纯理性批判》，也许是所有现代哲学著作中最为重要的一本。几年后，康德写出了里程碑式的作品：《道德的形而上学基础》。我们在这门课读到这本书，在开始之前，我想声明一下，康德是位艰深的思想家，然而，试图理解他的观点至关重要，因为本书论述的正是“什么是道德的终极原则”，这是其一，即：究竟什么是自由！

那么，让我们就此开始。康德反对功利主义，在他看来，作为个体的人，所有的人都有一定的尊严，而我们必须尊重它。根据康德，个人之所以是受到尊重的，或者是权利的拥有者并不是源于“我们支配和拥有自己”，而是源于“我们都是理性的存在”。我们是理性存在，其意义就是我们都有理性，同时，我们也是独立自主的存在。也就是说，我们有能力自由地选择和行动，理性和自由并不是我们仅有的能力。我们还有痛苦和快乐、受苦和满足的能力。康德也承认，功



利主义的观点一半是正确的，当然，我们会回避痛苦，我们追求享乐，康德并不否认这一点。他所驳斥的是边沁的说法。边沁认为痛苦和欢乐主宰了我们，康德认为这是错误的。康德认为，是我们的理性让我们脱颖而出，让我们变得截然不同，使我们区别开，而且高于其他动物的存在，使我们成为不仅仅是只有欲望的肉身。我们常常会认为，自由就是我们做自己想做的事，或者毫无障碍的得到想要的东西。这是对于自由的一种看法，但是康德不是这么看。康德制定了更为严格的定义，来解释自由是什么，这一定义既严厉又苛刻。但如果你仔细想想，你会发现它很有说服力。康德的推理如下：如果我们像动物一样追求享乐或欲望的满足，或者回避痛苦。如果我们是那样的话，我们并不是真正自由的，为什么呢？因为，这样我们就成了这些欲望和冲动的奴隶，我们不能选择某种饥饿，或某种欲望，因此，当我们去满足它的时候我们只是去适应我们的本能需求而已。在康德看来，自由是本能需求的对立。几年前，雪碧有这样一则广告“顺从你的渴望”，雪碧的这个口号里面也反映了康德的想法，与康德的观点有关，你很可能认为，自己是在自由选择雪碧或百事可乐，但实际上，你是在顺从某些东西，口渴，或某种被广告制造并操纵的欲望，你正在顺从某种，并非由你选择或创造的刺激。

这里我们需要注意，康德对自由下的尤为苛刻的定义，不是出于本能的刺激，不是出于饥饿、食欲、或者我的欲望？康德的答案是什么呢？自由的行动，就意味着自主的行动，自主的行动，就意味着遵从我，为自己设定的规则而行动。不是出于自然法则，或因果定律。它包括了，我选择吃或喝的欲望，或者选择

这家餐馆而非那一家。那么，对于康德来说，自主的反义词又是什么呢？他发明了一个术语来描述自主的对立面，自主的对立，就是“他律”。当我因“他律”而行动时，我的行动是出于某种偏好，或本能欲望，而不是我自己选择的。因此，康德坚持，将自由严格地视作是自主的。接下来，为什么“他律”或本能的行为，其立就是自主呢？康德的观点是，自然是受规律支配的，例如因果关系的定律。假设你丢下一个台球，它就会掉到地上。我们都不会认为，这个球的行动是自由的。为什么？因为它的行为遵循自然规律，遵循因果关系的规律，即万有引力定律。正如他对自由的定义，超乎寻常的严厉和苛刻。认为自由是自主的，他对道德的定义也很苛刻。行动自由，并不是选择最好的手段，来达到特定的目的而是为了选择目的本身，这正是人类可以做到，而台球却无法做到的。当我们出于偏好或享乐的行为，我们成了实现目的的手段，而这个目的是外加给我们的，我们成了工具，而不是实现目的的主人。这就是我们的意志受“他律”支配，另一方面，当我们根据我们给自己制定的规律，自主地行为时，我们的行为本身就是目的（而不是手段）。当我们自主行动时，我们好像是工具，实现外加给我们目的的工具。但我们可以反过来，将我们自己看作是目的。康德告诉我们，正是这种自由行动的能力，赋予了人类独有的尊严。尊重人类的尊严，意味着不仅仅要将人视为实现目的的手段，而且要将人本身也视为目的，这就是为什么，为了某些人的幸福，而利用其他人是错误的。康德说，这就是功利主义是错误的。真正原因，这就是尊重他人的尊严，维护他人的权利，是什么重要的原因所在。即使有些情况，还记得约翰·密尔曾说过“长远看来，只要我们坚持正义，并尊重个人的尊严，我们就可以实现人类幸福的最大化。”康德会怎样看待这句话呢？他的

回答会是什么？就算这句话说的是真的，就算计算出来，显示确实是这样的（功利主义只看效用）就算你也不能把基督徒扔进（斗兽场的）狮子群里（第2集的例子），理由是，从长远来看，恐惧将会蔓延，总体的效用会下降，功利主义者们坚持了正义，尊重了个人，但其理由却是错误的。（功利主义者们这样做）纯粹是依赖于外部情况而定，其做事的理由是工具性的，功利主义依然可能会利用人民，即使计算出长期的效用，得出这样做是最佳的，它还是把人当作手段来利用，而不是尊重人，把人本身也视为目的，这就是康德的想法：把自由视为自主的。你们可以看到，这与他的道德观点之间的联系，但是我们还要回答一个问题，一开始是什么，赋予了行为的道德价值？如果那些需要被满足的需要、欲望、效用，是无法被操纵的，是什么赋予了行为的道德价值呢？这个问题将我们从康德苛刻的自由观，转到他那苛刻的道德观，康德是怎么说的呢？行为的道德价值，并非在于行为，行为所产生的结果，行为的道德价值，与行为的动机有关，与意志的品质有关，与行为的意图有关。关键的是动机，而且必须是某种类型的动机。因此，某一行为的道德价值，取决于行为的动机，重要的是，那个人出于正确的目的，做了正确的事。

“高尚的意志之所以高尚，并不是看它的效果”，康德写道，“它本身就是高尚的，即使尽了最大的努力，也一无所成。它仍像珠宝一样，因其自身而闪耀，它本身就蕴含了全部的价值。”因此，如果某种行为在道德上是好的，仅仅符合道德准则是不够的，其目的必须是道德的。康德的观点是，动机赋予了行为的道德价值，而且只有一种动机，可以给行为赋予的道德价值，这就是出于职责的动

机。那么，基于职责的动机，它的反面是什么呢？在康德看来，责任的对立就是所有那些与我们的偏好相关的动机，“偏好”是指我们所有的欲望，所有依外部情况而定的渴望、喜好、冲动，诸如此类。只有出于道德准则，出于职责所采取的行为，才具有道德价值。现在，我想知道你们对这个观点有何看法，但是首先，让我们来思考一些例子。康德曾经以一个店主来做例子，他想藉此引出直觉，来合理的说明，赋予行为以道德价值的是行为的目的本身是正确的。他说，假设有个店主，一位陌生的顾客，店主知道，他可以故意给这位客人，找错零钱，或者少找零钱，而且不会因此受到任何惩罚，至少顾客本人一定会被蒙在鼓里。尽管如此，店主还是说，“好吧，如果少给这位顾客少找零钱，这事情可能会传出去，我的信誉会因此受损，我的生意也会遭受损失，因此，我不应该给这位顾客少找零钱。”这位店主没有犯错，他找给客人分毫不差的零钱，但是他的这一行为是否具有道德价值呢？康德的回答是“不”，这位店主的行为不能说是高尚的，因为他的行为虽然正确，但他这样做的理由却是错误的，他是为了自己的利益。这个例子非常简单易懂，康德还举了另一个例子——自杀。他说，我们有维持自己生命的职责，当然，对于大多数珍爱自己生命的人来说，有很多理由不放弃生命，因此，我们唯一的方法，那些没有放弃生命的人，只有一个办法，区分出他们的动机是有效的，过着极度痛苦的生活，却仍然知道，他有维持自己生命的职责，没有去自杀。这个例子的作用在于，它把关键的动机引出来，就道德而言，至关重要的是出于职责，而做正确的事。让我再给大家举另外一些例子，美国商业促进局，他们的口号是什么？他们的口号是“诚信是最好的政策，也是最能带来利润的”。这是它在纽约时报做的整版的广告，“诚信，与其它任何资产同等重

要，因为一家诚实、公开、公平运营的企业，注定会成功。加入我们，从此赢利”

康德会如何评判，商业促进局的会员们，诚实交易的道德价值呢？他会怎么说？

这就是个很好的例子，如果赢利是这些企业，诚实的对待它们的顾客的原因。他们的行为就缺乏道德价值，这就是康德的观点。几年前，在马里兰大学，曾出现作弊问题。他们因此而启动了一个诚信体制，他们与当地的商家建立了一个项目。如果你签了绝不作弊的信誉保证，你就可以在当地商店买东西时，获得 10~25% 的折扣。现在，你怎么看这些为了得到折扣，而支持信誉准则的人们？这与之前康德的店主是一样致的，关键的地方在于意志的品质，动机的性质，只有出于职责的动机，才是道德的，而非基于偏好的动机。只有在我基于职责而行动时，只有在我抗拒偏好或自利的动机时，（哪怕你的动机）是出于同情，或利他主义，只有这样，我的行为才是自由的；只有这样，我的行为才是自主的；只有这样，我的意志才不会被外在的因素所统治或左右，这就是康德自由观与道德观之间的联系。

T：现在我想暂停一下，看看大家是否清楚这些观点，如果你们有疑问或者困惑，可以是问题的澄清，也可以是对这些观点的质疑。如果你想质疑，“只有出于职责的动机才能赋予行为的道德价值”，你怎么想？

S：是的，呃，我其实有两个问题想澄清，第一，这里好像有一点是自相矛盾的，一旦你知道什么是道德，你就可以改变行动的动机，使其变成是道德的。



T：举个例子来说明你的想法

S：比如那个店主的故事，如果他决定了，找给顾客正确的钱，才是正确的行为。而他又决定，自己这样做的原因是因为，想做有道德的人。如果道德是由他的动机决定的，那么这不是有损他单纯的动机吗？他的动机就成了“按照道德要求而行动”了。

T：我明白了。你假设了一个例子，这不是一位只顾算钱的自私的店主，而是一个.... 他可能考虑过，少给顾客找钱，但他说，“不能这样做，否则传来出去，有损我的名声，他改成说，“我想做一个诚实的人，诚实的人会找给顾客正确的钱，仅仅是因为这是正确的行为。” 或者，更简单一点，“因为我想做一个有道德的人。” “因为我想做有道德的人，做好人，所以，我要让自己的行为，符合道德的要求。” 这点很细微。问题问得好。 康德确实承认了一点是，而你的问题直指这个关键，康德确实说了，遵守道德规范是需要一些激励，这种激励不可以是与道德相冲突的、满足个人利益的激励。是的，他提出了另一种不同于“偏好”的激励，他说，这是对道德规范的崇敬 那么，如果那个店主说，“我想对道德准则表示尊敬，所以，我要做正确的事情。”

S：我认为，这样，按照康德的说法，他就是有道德的。因为，他形成了自己的动机，他的意志符合道德准则，一旦他知道道德的重要性，所以，这个情况就算数，这个就算数。



T：好的，接下来，第一个问题，就刚才的说法而言，是什么阻止了道德变成完全是客观的？又是什么阻止道德变得是主观的？那你是如何应用它，又如何执行它呢？很好，这也是个好问题。你的名字叫什么？-

S：我叫 Amady.

T：Amady?

S：是的。

T：好的。如果，符合道德的行为，是指出于职责，按照道德准则来行动，而且这行动也是自由的、自主的，那就一定意味着，我是按照我给自己设定的准则来行动的，这也是自主地行动的意思。Amady 在这一点上是正确的。这也引发了另外一个有趣的问题，如果行动自主，意味着根据我为自己设定的准则来行动。那么，我就可以逃脱自然规律和因果定律的束缚，当我出于职责行事的时候，怎么保证，我为自己设定的准则。与 Amady 给自己设定的准则以及在座各位给自己的原则，是一样的呢？好的，问题就在这里，在康德的来看，在这个课室里，有多少种道德准则？一千种？还是一种？康德认为只有一种，这回到一个问题上来：道德准则是什么？它告诉我们什么？根据自己的良心行动，根据我们为自己设定的准则行动。如果我们使用各自的理性，最终会得出同样一个道德

准则呢？这就是 Amady 想知道的。对此，康德的回答是：作为自主的个体，之所以能得出同一个的行为原则，是因为一种理性，这是一种人类所共有的实践理性。它不是个人特有的，我们要尊敬他人的尊严，是因为我们都是理性的生命，我们都有理性思考的能力，正是我们都拥有无差别的理性。使我们所有人都值得受尊重，不论你的经历或生活环境是怎样，我们都有同样的理性，也正是这种大家都拥有的理性，提供了道德法则。因此，行动自主就意味着运用我们的理性，根据我们给自己设定的准则来行动，而这种理性，是作为理性存在的我们所共有的，而非我们的教养，我们的价值观，我们特定的利益。

这是纯粹实践理性，用康德的术语来说，它给我们设立了一个先验，不管任何的外部情况，或经验的目的，那么，这种理性能提供怎样的道德准则呢？它的内容是什么？要回答这个问题，你必须阅读《道德的形而上学基础》我们将在下次继续讨论这个问题。

## 第十二课 道德的最高准则

今天，我们回到康德，在我们这样做之前，还记得，本周末之前你们要基本了解康德，弄明白他想做的。你笑了，不，你会的。康德的《道德的形而上学基础》是关于两个大问题，第一，什么是道德的最高原则？第二，为何有自由？两个大问题。现在，为了让大家读懂这本深奥的哲学著作，其中一个办法就是，要切记几组对立物或几组对比，几组二元论，而它们是相关的。今天，我想谈谈这组对立。今天，我们要回答一个问题，根据康德，什么是道德的最高原则？当我们解答这个问题，在我们找出康德对这个问题的答案时 记住康德列出的三组对立物，或几组二元论，对大家有帮助。第一组，你会记得与我们行为的动机有关，根据康德，只有一种动机与道德相一致，那就是基于职责的动机。为正确的理由，做正确的事。另一种动机是什么样的？康德把它们归类为“偏好” 我们每次行动的动机，都是为了满足某种愿望或喜好，去追求某种偏好，我们是出于“偏好” 现在，让我停下来看看，在思考有关。对职责的动机，良好的意愿时，看看你们对康德的说法是否有疑问，或者说，大家是否同意这样区分？你怎么看？请当你把职责和偏好，区分开来时，曾经有过任何道德行动？我的意思是，你总能找到一些自私的动机，不是吗？也许，很多时候，人们行为的动机都是利己的，康德不否认这点。但康德的意思是，关于我们的道德行为，关于我们的行为具有道德价值，赋予其道德价值的，正是我们那 超越自我利益、审慎、偏好的能力 来基于职责而行动 几年前，我读到一个拼字比赛 比赛宣布，一个年轻人成为了这场比赛 的赢家 这个孩子叫 Andrew，13岁 那个获奖的单词，那个他

能拼出来的单词 是“echolalia。” 有谁知道 echolalia 是什么？什么？一种花？不是一种花。不是 它的意思是，像如回声一样， 重复你所听到的 实际上，他把它拼错了，但评判们也听错了，评判们以为，他是正确地拼了出来，授予了他全国拼字比赛冠军，他后来去了见评判员，说 “其实，我拼错了，我不应该得这个奖。” 而他被看作是道德英雄，他还被写进了纽约时报“拼错先生是拼字比赛的英雄。” 这是 Andrew 和他那位自豪的母亲后来他接受采访时，听听这个，后来他被采访时，他说，“评判们说，我很诚实” 但他补充说，他这样做的动机是“我不想让自己像个可恶的人”

T：好的。康德会怎么说？请！

*S：我想，这取决于这是次要的原因，还是主要原因，他实际上并没有正确拼出那个单词。*

T：好的，而你叫什么名字？

*S：Bosco.*

T：Bosco，这很有趣 其他人对此有没有什么看法？这是否表明，康德提出的原则是太严格、太苛刻？ 康德对此会怎么说呢？

S：是我认为，康德确实说，正是出自于职责的，纯粹动机赋予了行为的道德价值。因此，在这种情况下，他可能有一个以上的动机，他可能有不想做可恶的人。他可能有出自职责的、做正确的事情的动机。因此，虽然这里有一个以上的动机，但并不意味着，行为就失去了道德价值，只是因为他有另外一个动机，因为是基于职责的动机，赋予行为的道德价值。

T：好的。你的名字？

S：Judith.

T：Judith，我觉得你的解释符合康德的想法，拥有情绪和感受没有错，只要它们不是支持你做正确的事的原因。所以，我认为 Judith 为康德提出了一个很好的辩护这个关于职责的动机的问题。谢谢！

现在，让我们回到三组对比物。很明显，当康德说，为了使行为具有道德价值，它为了职责而做的，而不是出于偏好。但是，正如我们上次那样，康德严格的道德观和他那尤为严格的自由观之间，是有联系的。这就是我们的第二组对比，道德和自由之间的联系。第二组对立物，描述了决定我的意志的两种不同方法，自主和他律。根据康德，只有当我的意志是自主决定时，我才是自由的，这意味着什么？根据我给自己定下的准则，我们必须有能力，如果我们有自主的能力，我们必须有不遵循外加的或强加给我们的准则的能力，而是遵循，我们给自己定

下的准则,但是,在这样的法则从哪里来?这种我们给自己设定的法则,是理性。如果理性决定了我的意志,那么我的意志将成为不依赖于自然规定,或偏好和外部情况的力量。因此,连接康德严格的道德观和自由观的,就是这种定义严格的理性,那么理性如何决定意志?有两种方法,而这也引出了第三组对比。康德说,理性有两种不同的律令,其中一种律令,康德称之为“命令”,“命令”就是应该有一种命令,也许是最熟悉的一种,就是“假言命令”,假言命令是工具性的理性。如果你想要 X,就做出行为 Y。它是目的,手段的推理。如果你想有一个良好的商业信誉,那就不要少找你的客户零钱,因为事情(的真相)会传出去,这是一个假言命令。“如果该行为是实现目的的手段,康德写道,“这个就是假言命令。如果行为本身是好的,因此这个意志本身就符合理性,那么,它就是“定言命令”(或译作绝对命令)这就是“定言命令”和“假言命令”的区别。定言命令是绝对性的,这就意味着,它不参考或依赖任何其他目的,所以,你看到这三组平行的对立物之间的联系。为了获得自由,在自主的范畴内,需要我的行为,不是出于“假言命令”,而是出于“定言命令”。

所以,通过看康德的这3组对立体,引导我们推导出“定言命令”,那么,这给我们留下一个大问题:什么是“定言命令”?什么是道德的最高原则?它命令什么?康德列举了“定言命令”的三个版本,三种陈述,我想提其中的两种,然后看看你对它们怎么看。第一个版本,第一种表述,他称之为,普遍法则。“如果在同一时间所有人都会遵循某个法则,那么,它应该是普遍法则。”“某个法则”,是指什么?他是指,能解释你做事情原因的一个原则,例如,守信用。假



设我需要钱，我极度地需要 100 元，我知道我不可能还钱，我来找你，给你承诺，一个虚假的承诺，一个我知道我不能遵守的承诺 “请借我钱，给我 100 元，下周我会还给你”，它与定言命令一致吗？那个虚假的承诺？康德说，不，我们检验，我们决定那个承诺承诺是否与定言命令不一致，就是把它普遍化，把它推广到你将要做的事。如果每个人在需要钱的时候，都作出虚假承诺，那么，将会没人相信这些承诺，以后就不存在承诺这个东西。所以，这里有矛盾，把这个准则普遍化时，却有悖它本身。这是检验的方法，用这个方法，我们就可以知道虚假承诺是错误的。

T：那么，怎么看普遍法则呢？你觉得它有说服力吗？你怎么看？

*S：我有个问题，关于“绝对的”和“假设的”之间的区别，如果你要准备做一件事....*

“绝对的”和“假设的”对，假设的命令好。如果你按照“绝对命令”（即定言命令）这样，这个准则并不有悖它本身。这听起来像我将要做 X，因为我想？但我迫切需要时，我不会撒谎，是因为我希望这个世界还有承诺这个东西，并按承诺来运行，我不想看到承诺的消失。对，这听起来像，目的把手段合理化，这似乎像是结果主义推理的方式（第 1 集提到 结果主义）你是说。

T：好的。而你叫什么名字？

S : Tim。

T : Tim，约翰·密尔同意你的看法（第3集提到的哲学家）。他批评康德，他说：“如果我将这一准则普遍化，然后发现，如果大家都这样，承诺就会消失。如果这就是不作出虚假的承诺的理由，我肯定是多少在意它的结果”因此，约翰·密尔同意这样批评康德，但约翰·密尔错了，不过，你有（密尔）这个好的队友，Tim。

康德经常想，就像 Tim 把康德理解为 他在意（行为的）后果（之前提到只看重动机，不看重结果）如果每个人都说谎，世界将会更糟糕 因为那时，没人会相信其他人说的话，因此，你不应该说谎。这不是康德真正的意思，虽然，很容易把康德的话说理解。我认为，他想说的是，这是检验的方法 这是检验这一准则是否和，定言命令一致的方法，这是不真正的原因，这不是你把你的准则普遍化，以此来检验，你的特定需要和欲望是否，高于其他人的需要（这不是你这样做的原因）这只是定言命令的这一要求，你的行为的目的，不应建立在把你的利益和需要合理化，把你的情况看成比别人的重要合理化。我认为，是这个检验方法背后的道德理念。好的，让我接着把康德关于比(之前的)普遍法则，更直观易懂的方式来表述讲清楚。这是把人视作目的，的一种表述，康德用下面的陈述，来介绍 定言命令的第二个版本：“我们不能把定言命令，建立在任何特定的利益、目标或目的，的基础之上。因为那样，它只与人的目的有关，然而，假设有一些东西，它的存在本身就具有绝对的价值。其自身就是目的，在其本身，

单单是它本身，而这会是定言命令的基础” 那么，有什么我们能想到的，其本身具有的终结？康德的答案是，“我说，人 一个理性的人，其本身就是目的，而不只是被其他意志任意利用的手段”。在这里，康德区分人与物，人是理性的存在，他不像其他物体一样，只是有相对价值，他还有绝对的价值，内在的价值，即理性的人拥有尊严。他们值得崇敬或尊重，这种推理引出了康德关于定言命令的第二种表述，如下：“你总是以下这种方式行事，你总是把人，不管是你自己的，或者是其他人的。你从不把它简单地视作一种手段，但你同时把它看作目的” 这就是（第二种）表述：把人视作目的，作为理性的存在，人本身即是目的，而不是被用来使用的手段。当我给你许下虚假的承诺，我是在把你当作，实现我的目的的手段，实现我对 100 元的需要。那样我就是在不尊重你，我不尊重你的尊严，我是在操纵你。现在，思考一下刚才反对自杀的例子。谋杀和自杀，与定言命令不一致，为什么？如果我谋杀一个人，我是在拿走他们的生命，来达到某种目的，或是因为我是一个职业杀手，或是因为我被惹怒了。我有某种利益，某种目的，这是把其他人当作手段来利用。谋杀违反了定言命令，康德认为，从道德上来说，自杀与谋杀一样，自杀等同于谋杀，因为我们违反了，当我们拿走我们自己，或别人的生命时，我们把这个人，一个理性的人，我们把人当作一种手段来使用。我们没有尊重人，没有把人看作目的。

T：这种理性的能力，人要求得到尊重的观念，就是尊严的基础。这种人性，这种理性的能力，无差别地存在于我们所有人身上。所以，如果我自杀，或者谋杀拿走其他人的生命，我就侵犯了我自己的尊严。从道德的角度来看，它们是相

同的，它们之所以是相同的，跟我们普遍具有的特性，以及道德准则的基础，有关我们要尊重他人的尊严，其原因跟他们没有任何关系。尊重，康德所指的尊重，在这一点上，和爱不一样，它不像同情，它不像团结，友情，或利他主义。因为，爱，以及其他一些特定的美德、对他人的关怀，都要看它们的对象是谁，而尊重，对于康德来说，尊重是对人类普遍共有的。普遍共有的理性的尊重，这就是为什么，如果侵犯了我的尊严，跟侵犯其他人的尊重，是同样的让人反对，有问题或反对吗？请！

*S：我想，我有担心，康德所说的，你不能把人当作一种手段来使用。因为每个人即是自己的目的，因为似乎每天，为了要完成一些事情，我必须把自己当作实现某种目的的手段。同样，我必须把我身边的人当作实现目的的手段，比如，假设我想拿个好成绩，我要完成一篇论文，我得把自己的当作，完成论文的手段；假设我想买一些，例如食物，我必须去商店，把收款员当作一种手段来买到我的食物。*

T：对，确实如此。你叫什么名字？

*S：Patrick.*

T：Patrick，你没做错任何事情，你没有违反定言命令。当你把其他人当作手段时，这不是不允许的。只要与其他人打交道时，我们的目的是，为了完

成我们共同的的工作、目的和利益 ,大家也都这样做 ,只要我们对待他们的方式 ,  
尊重到他们的尊严 ,怎么尊重他们是由定言命令来给出的。你同意吗？ 你同意 ,  
康德给了一个令人信服的解释 一个关于道德的最高原则的、有说服力的解释吗？  
重读了《道德的形而上学基础》,我们将在下次回答这个问题。

### 第十三课 撒谎的教训

**T:** 上一次我们开始尝试领会康德的道德论。现在，为了能从根本上理解康德的道德论，我们要回答三个问题：责任（duty）和自律（autonomy）是如何联系在一起的？回应责任的伟大尊严从何而来？也许这两个想法是相悖的：责任和自律 康德的回答是什么？有没有人愿意代表康德回答一下？他有答案么？好，请回答

*S: 康德认为只有在以责任之名去追求一样东西时，才是自主行为，而不是因为你，身处的环境 是出于责任，而不是因为你自己的个人得失。我叫 Matt.*

**T:** Matt，为什么这种行为是建立在自由的基础上？你说到责任？

*S: 因为是你自己选择接受这些道德法则，而不是外界强加于你的。*

**T:** 好，很好，因为出于责任而行动 你遵循的道德法则，

*S: 是你自己加给自己的，*

**T:** 是你自己加给自己的，这就是为什么责任能与自由相容好。Matt，你回答的很好，这也是康德的答案。很好。所以康德的回答是：我拥有尊严，不在于我遵循了这些法则，而是在于我是这些法则的主人，我附属于那些法则的理由，是因为我自愿接受它的是我定下那些法则。那就是为什么，对于康德来说，依责任而行，与在自律下自由地行为，都是同一件事情，但这就带来了一个问题：我



们到底有多少条道德法则？如果说，尊严是受到我加于自己的法则所支配的，那怎么保证我的道德感，和你们的道德感是一样的呢？谁知道康德怎么回答？

*S: 因为道德法则，不依外部诱人的条件而变化，它将超越人与人间所有的差异，成为一个普遍法则，在这个方面看来，只有同一条道德法则，因为它是至高无上的。*

**T:** 对，非常对，你的名字是？

*S: Kelly.*

**T:** Kelly. 康德认为，如果我们都依照我们的道德感，来自由选择，那么我们能保证，我们得出的是同一条道德法则。是的，因为当我选择的时候，并不是我--Michael Sandel 在选择，也不是你，Kelly 在为自己选择，那么是谁呢？是谁在选择？谁是主体？谁是代理人？谁在选择？纯粹的理性。你说纯粹的理性，是什么意思？

*S: 纯粹的理性就是，像刚才所说的，我们不会依附于任何外部环境。*

**T:** 非常好。所以，是理性支配了意志。当我执行道德法则的时候，是理性主导着我的意志。同样是这种的理性，让你为自己选择了同一条道德法则。这就是为什么我们能自律地行动，为自己作出选择，作为自律的存在，每一个人都能为自己作出选择，我们最后都遵循同一个道德法则，即定言命令，但这也留下一个大难题，即使你们接受了 Matt 和 Kelly 所说的，定言命令怎么成为可能

呢？道德怎么成为可能呢？为了回答这个问题，康德说，我们要做出一个区分。我们要区分，两个立脚点，这两个立脚点可以让我们理解我们的日常经验。我们试着解释一下这两个立脚点的意思。作为一个经验客体，我属于这个感官世界，我的行为是由自然法则所决定的。但作为一个经验主体，我居住在一个智思世界，我独立于自然法则之外，能够实现自律，我能根据我给自己制定的法则来行事，康德说：“只有站在第二个立脚点上（指智思世界），我才能认为我自己是自由的。因为不受感官世界里的外界因素决定，才是自由” 如果我是至善的经验主义者，正如功利主义者假设的一样，如果我只是至善的，受我的感官支配疼痛、快乐、饥饿、饥渴、欲望，如果这就是符合仁道，我们就不可能得到自由。康德论证道，因为这样的话，每个意志的行使都将受制于我们对某些客体的欲望，这样的话，我们的选择就会各异，都受到外部目的而支配。“当我们认为，我们是自由的时候” 康德曾写道，“我们把自己转到这个智思世界，成为了其中的一员，并认识到了意志的自主性”，以上就是那两个立脚点，那么，定言命令是如何成为可能的呢？只因自由让我成为了智思世界的一员。康德承认，我们不仅仅是理性的存在，我们并不仅仅只是居住在这个智思世界，这个自由的王国。如果是的话，那么我们所有的行为，将会始终如一地，符合意志的自律。

但恰恰因为我们同时处于两个立脚点中，两个领域中——自由的领域和需求的领域，恰恰是因为我们处在两个领域中，我们做的和我们应该做的，“是和应该” 两者之间就总会有潜在的鸿沟。这个观点用另一个方式来说，也就是康德在《道德的形而上学基础》里总结：道德不是经验主义，不管你在世界上看到了什

么，不管你通过科学发现了什么，这些都不能决定道德问题。道德和经验主义世界，存在着相当一段距离，这也是为什么从科学无法得出道德事实。

现在我想用一个可能是最难的例子，来验证一下康德的道德论。这是他提出的一个案例：“门口的谋杀者” 康德认为，说谎是错误的，我们都知道这点。我们也讨论过为什么说谎和定言命令之间不一致。法国哲学家本杰明·康斯坦特写了一篇文章，来回应《道德的形而上学基础》，他写道：“这个设想是错的。不可能是对的。 如果有一个杀手来到你的门前，寻找你的朋友，而这位朋友正躲在你家里，杀手直截了当的问你，“你的朋友在你家么？” 康斯坦特说：“如果在这样的情况中，还要说真话，那真是疯了。” 康斯坦特认为：杀手不应该知道真相。康德回复道，他坚持他的原则，对杀手，撒谎也是错误的。错误的原因是，他说：“一旦你开始考虑事情的后果，开了个例外，不遵循定言命令，那么，你就已经放弃了整个道德标准，你已经成为了一个结果论者，或者是功利主义者。” 但是你们中的大部分人，还有康德的大部分读者，认为这个答案，有些奇怪和不可能。我想试着在这一点上为康德辩护，然后看看你们觉得我的辩护是否合理。我想根据他对道德的解释的精神，来作出辩护。 想象一下，有个人来到你的门前。杀手问了你这个问题，而你的朋友正藏在你家，有没有一种方式，可以不对杀手说谎，同时不出卖你的朋友？你们中有人想到要怎么说？

**S:** 我会说，如果一开始，我真的把我的朋友藏在我家，我会先和他们定好计划，我会说：“嘿 等下我会告诉杀手你在这儿，你赶紧逃吧” 这是其中的一个选择，

T: 我不确定这是不是康德式的选择。你还是在撒谎。

S: 不。因为他当时是在屋子里，但是之后不会在（我叫他逃跑）。

T: 我明白了。好，很好。还有人有想法么？你说。

S: 我不知道他在哪就好，他可能离开了衣柜。你真的不知道他在哪？

T: 所以，我说我不知道他在哪，算不上说谎，因为你在那个时候，不是在看衣柜。

S: 对，

T: 所以严格来说，你说的是真话。

S: 对，

T: 但也有可能带有欺骗性，误导性。

S: 但仍然是真话，

T: 你的名字是？

S: 约翰。

T: 约翰。约翰也许意识到了某些东西。约翰，你给我们大家提供了一个很机智的托词，它严格上来说是真话，这就给我们带来了一个问题，完全的谎言

和误导的真相，这两者在道德上有区别么？从康德的观点看来，一个谎言和一个误导的真相，有天壤之别，为什么？即使这两者带来的结果是一样的？记得，康德并不是把道德建立在结果之上的。他认为道德就是对道德法则的遵守。有时候，在日常生活中，我们会破例地使用“善意的谎言”，它是一种谎言来用来... 比如，为了避免伤害别人的感情，它是一种我们用它带来的结果来让它成为合理解释的谎言。康德不能容忍善意的谎言，但也许他能接受一个误导的真话。假如，某个人送给你一条领带作为一份礼物。你打开了那个盒子，那个领带难看的不得了，你会说什么？谢谢。你可以说谢谢你。但他们等着你能说说你觉得这条领带怎样，或者，他们就直接问你“你觉得它怎么样？”你可以说一个善意的谎言，说：“它很好看”。但从康德看来，这是不允许的。你可以不说善意的谎言，而说误导的真话。你打开盒子说，“我从没见过这样的领带，谢谢”，你应该没这样说过吧。好，你们能举一个当代政治领导人.....你吗？你想到了谁？

还记得克林顿的莱温斯基丑闻案件中，那些否认的措辞么？那些否认的措辞成为了弹劾听证会上，双方辩论的主题。我们来看一下，克林顿总统的下面这段摘录，谎言与经过谨慎推敲后的、误导的真话，是否在道德上有区别？“我想对美国人民说一件事情，我想让你听我说。我要再次声明：我和那位莱温斯基小姐之间，并没有建立起性关系，我没有让任何人去撒谎，一次也没有。这些指控是假的。”“当他说，他没有和那个女人做爱，他对美国人民撒谎了么？”可是他没有解释。他解释了，议员阁下。他的确解释了，他告诉美国人民，他没有建立起性关系 议员阁下，我知道你不会喜欢我这么说，因为你会把它看成是一个微不

足道的、回避性的回答。但在他的心里，他的定义是不...好吧，我明白了这一论点。

好吧。好的。以上就是这个争论，你可能觉得，这只是一名弹劾克林顿的共和党与克林顿的辩护律师之间，对一些法律上的细节的一场争论。但根据康德，你觉得谎言和托词（让人误导的真话）之间，在道德上有什么区别吗？那些认为有区别的。准备好为康德辩护了吗？

*S: 我认为，当你尝试说撒谎和误导性的真话是同一个的东西时，你是立足于结果主义的论点，即两者的结果都是一样的。但关键点在于，如果你说的是（误导性的）真话，你预想大家都会相信你说的话（它也确实是真的），这和说谎话，然后，想大家都会相信这些话是真的（但事实上是假的），两者是在道德上是不同的。*

T: 好的。你叫什么名字？

*S: Diana.*

T: Diana 说，康德提到一点，那里有人想发表意见，对于康德，动机是关键。因此，如果你捐东西给其他人是为了让你觉得自己是好人，康德会说，这没有道德的价值。而这里，动机是一样的。讲误导性的真话，你是为了欺骗，想让其他人不知道。动机是一样的。因此，两者没有什么区别。

*S: 好。*



T:因此，Diana，这里的动机是不同的。你是怎么看？

S: 两种情况下的动机都是一样的，他企图或至少希望追杀者会被误导？你的直接动机是，想让他们相信你。这最终结果是，他们可能被欺骗而找不出发生了什么。但你的直接动机是，他们应该相信你，因为你说的是实话。

T: 我可以帮一下？

S: 当然可以。

T: 帮你和康德。你为什么不说...抱歉，你叫什么名字？你为什么告诉 Wesley，你说两种情况下的动机都是误导，其实并不完全是这样子的。他们希望，他们希望别人会被误导 “我不知道他们在哪” 或 “我从未有过性关系。” 你希望他们会被误导，当在你说实话时，你的动机是误导，但同时，你是在说真话，在遵循着道德法则，没有逾越定言命令。我认为，康德的答案会是..... 你赞成？

S: 是的

T: 好的。我认为康德的答案是，不同于谬误，不同于谎言，误导的真相，遵守了责任，因为它忠于责任，所以，哪怕它是托词，也让它变得合理化 Diana，你赞同吗？好，所以，谨慎的托词也尊重了道德法则的尊严，因为克林顿可以直接撒谎，但他却没有。所以，康德对此的看法是，谨慎的措辞，但得是真实的托词，对道德法则、尊严的尊重，在谎言，那里是没有的，Wesley，对道德法则

尊严的尊重是动机的一部分。它是动机的一部分。

是的，我是希望他会被误导。我是希望杀手走出马路，或者去商场，找我的朋友，而不是在衣柜里。我是希望起到这样的效果，我无法控制（凶手会这样做）。我无法控制它的后果。我可以控制的是，站在一边，光耀着我追求的目的，我希望事情发展的结果与尊重道德法则相符。我觉得 Wesley 没有完全被说服。但至少这引出了... 这次的讨论引出了一些重要的康德的定言命令的一些关键点。

#### 第十四课 协议就是协议

上次，我们谈到了康德的定言命令。我们认为，我们思考了怎么用定言命令来解释，说谎的例子，我想简略地谈一下，康德的道德理论的其他应用，这就是他的政治理论。康德说，公正的法律产生于某种社会契约，但是，他所说的契约，是一个很特别的、自然存在的契约。这个契约的特别之处在于，它不是一个真正的契约，它不用把大家聚集在一起，试图讨论出它里面应该有什么条文。康德指出，这个能引申出正义的契约，是一个理性的想法，它不是真的一群男人和女人聚在一起，讨论里面的条文，为什么不呢？康德的原因是，聚在一起、讨论条文的男人和女人，会有不同的利益、价值观、目标，不同的谈判势力，不同的知识差异，所以，他们商议出来的法律，不一定是公正的，不一定符合公正的原则，而只是反映了不同的谈判势力，不同的利益，对法律或政治的不同了解，所以康德说，“引申出公正的原则的契约，只是理性的一个想法，但它有毋庸置疑的可行性。因为它可以迫使每一个立法者在这样一个框架，使得制定的法律能代表全民族的意志”因此，康德是一个契约论者，但他不把法律的起源或公正，追溯到任何一份实际的社会契约。这引出了一个明显的问题。这个假定的契约，一个从来没有的契约，其道德力量是什么？这就是我们今天的问题。而为了研究这个问题，我们需要转向一位现代哲学家 John Rawls，他在他的《正义论》一书中，非常详细的解释了，作为公正的基础的一个假定的协议，Rawls 的正义理论和康德的理论，有两个重要方面是一致的。像康德，Rawls 是一个功利主义的批评者。“每个人拥有公正基础上的不可侵犯性” Rawls 写道：“即使是整个

社会福利，也不能凌驾于它的上面。

我们的权利受公正保护，不屈从于政治谈判或社会利益的小算盘。第二个一致的方面是，公正的原则，可以从一个假设的社会契约延伸出来。而 Rawls 提出了一个叫“无知的面纱”的词，来解释他的理论，实现权利的方式...那些我们必须尊重的基本权利，权利和义务的基本框架.... 就是去想象，我们聚在一起，在不知道我们每个人的具体情况之下，去试图选择支配我们的集体生活的原则，这就是“无知的面纱”。如果我们聚在一起，就像大家来这里听课一样，然后试图得出正义的原则，来统治我们的集体生活，这会是怎样？就会出现反映不同利益的、不一致的提案，有的强，有的弱，有的有钱，有的贫穷。因此，Rawls 说，想像一下，我们一开始就地位平等，而保证这一平等的，就是“无知的面纱”。想像一下，我们都戴着无知的面纱，把我们都隐藏起来。我们的种族，阶级，社会地位，实力，弱点，不管是健康或不健康的，只有这样，Rawl 说：“我们一致同意的原则，就会是公正的。这是假设的契约的原理，这个假设的协议，其道德力量是什么呢？它比真正的协议、真正的社会契约，是更强还是更弱？为了回答这个问题，我们要认真看看，实际契约的道德力量。这里有两个问题。 其中一个，实际契约是怎样约束我，或使我负有义务吗？这是问题一。问题二：现实生活中的实际契约，是怎么使得里面的条文是公正的？如果你想想看，这与 Rawls 和康德是一致的，第二个问题的答案，实际契约是怎么使得里面的条文是公正的？答案是他们没有，至少不是由他们自己完成的。实际契约不是能自给自足的道德工具，你总是可以问，他们一致同意的（条文）公平吗？现实是，该协议从来不

保证协议的公平性。看看我们的制宪会议就知道了，宪法里，允许奴隶制存在。以前就这样获得了通过。这是一个真实的契约。但是，这并不证明他们所同意的法律都是正义的。那么，实际契约的道德力量是什么？在某种程度上，他们约束我们，他们通过两个方式约束我们。假设，也许举一个例子会有帮助。我们达成一项协议，一个商业协议。我答应付给你 100 元，如果你去捕 100 只龙虾给我，我们的交易就达成。你出去捕龙虾，然后拿给我。我把龙虾吃掉，还分一些给我的朋友，然后我不付钱。接着你说，“但是你有责任。”而我说，“为什么？”你会怎么说？“我们签了协议啊，你受惠了。你吃了所有的龙虾。”这是一个非常有力的论据。这是一个论据。我从你的劳动中获益，所以，有些情况，契约约束我们，因为它是我们互惠互利的工具。我吃了龙虾。你帮我捕了这些龙虾，我欠你 100 元。但是，假设，现在有另外一个案件。我们做成了这笔交易，你捕 100 只龙虾，我会付 100 元。而两分钟只后，“我改变主意了。”现在，大家都没有获益。你还没有开始工作，因此没有任何互惠的交换。在这种情况下，鉴于我们已经达成协议，我还欠你钱吗？谁赞同，是的，我还欠你？为什么？好，站起来。为什么我欠你钱？我两分钟之后就叫你回来，你有没有做任何工作。

**S:** 我觉得，我在草拟合同这件事上花了时间和精力，还有情感上的预期，我都做了这些工作。

**T:** 所以你花了时间来起草合同，但我们很快就完成了。我们只是在电话里聊。

**S:** 但这不是一个正式的合同。

**T:** 那么我把它传真你吧。

**S:** 只用一分钟，只要里面涉及了任何努力，我会说，那么合同就是有效的。  
它应该生效。

**T:** 为什么？... 你可以提出道义上的哪一点，来要求我负上义务？我承认，我之前表示同意了。但你没有去任何工作。我没有得到任何好处。

**S:** 因为他在精神上完成了捕龙虾的工作。

**T:** 你在精神上，完成了捕龙虾的工作。 这没什么啊。不是吗？仅仅想象自己去捉龙虾，就值 100 元吗？

**S:** 也许不值 100 元，但它对某些人来说，可能是有一定价值的。

**T:** 你做了或者想象你去做，或者期待着，去做某件可能发生的事。

**S:** 举个例子，两个人决定结婚。2 分钟之后，其中一人突然打电话给另一人，说“双方是否都有义务遵守这个契约呢？”这时，还没有一方付出任何努力，也没有一方已经受益。

**T:** 嗯，我想回答 “不是的”。

**S:** 好吧



T: 谢谢你, Julian。好的, 很好, 现在, 有人同意 Julian 的意见, 认为我仍然要付钱吗?

S: 我认为, 如果你收回承诺, 好像贬低了契约制度,

T: 很好, 但为什么? 为什么会贬低?

S: 你知道, 人们会期望你履行契约,

T: 很好, .....它会贬低整个契约的概念。这种概念关系到在我自己这方面履行的义务。是这样吗?

S: 嗯, 我认为是的。

T: 所以 Adam 的论点不在于互惠, 或者互相交换, 而只是协议本身。我们看到了, 真实的契约产生义务, 有两种不同的方式。其一, 主动同意是一种自愿行为, 它指向..... Adam 说这是康德式的观点, 我认为他是对的。因为它表明了自律的理念。当我签订契约时, 我就自己给自己负上了义务, 这包含着某种道德力量, 它独立于其他的顾虑, 它涉及这种观念: 真实的契约是互惠互利的工具, 这表明了互惠的理念, 义务由此产生, 只要你为我做了事情, 我对你就有义务, 当我们审视真实契约的道德力量和道德局限时, 我想指出一个关于真实契约的道德局限的论点, 现在我们知道了, 当人们聚到一起说 我首先说, 两个人同意进行某种交易, 这并不能说明, 他们的协议条款, 就是公平的。我的两个儿子, 小时候曾经收集棒球卡, 然后互相交换。他们的年龄相差两岁, 所以我必须

对他们的交易定下一个规矩。只有得到我的批准，才能成交。这其中的原因显而易见，哥哥比弟弟更清楚那些卡片的价值，因此，他会占弟弟的便宜，那么，这说明了什么？这个棒球卡的例子说明什么？达成协议不足以确定条款的公平性，几年前，我在报纸上读到一个案例：芝加哥有个上了年纪的寡妇，一个 84 岁的寡妇，名叫 Rose。她遇到一个麻烦：她的公寓里的马桶漏水。于是，她和一个黑心的承包商签订了个契约。对方提出以 5 万美元的价格，修理她那个漏水的马桶，但她也同意了。她心智健全，也许过于天真，不熟悉管道工的价格。她签订了这个协议，幸运的是，事情被发现了。她到银行去取 2 万 5 千美元出来，出纳员给有关部门打了电话。他们发现了这个黑心承包商，我猜，就连在座最热心的契约履行者也会同意，并不是保证协议公平的充分条件 有人反驳这一点吗？没有人。 我有没有漏掉什么人？Alex，你在哪儿？你在哪儿？真实的契约本身不是一定..... 不是要求我们履行义务的充分条件，现在我想提出，更强有力的，也许是更有争议的论断，关于真实契约的道德局限契约，或者主动同意，不仅不是义务存在的充分条件。这个观点是：如果双方存在互惠，如果双方存在交换，然后有一方得到了利益 那么义务就产生了，即使没有双方同意的条款。一个很好的例子，18 世纪的哲学家，苏格兰道德哲学家大卫·休谟。休谟年轻时写过一本书，休谟对他的契约论不屑一顾，他说，这是哲学的虚构，这个社会契约论的想法，是人们所能想象到的，最难以理解和不可思议的。多年之后，休谟 62 时的一个亲身经历，检验了他的一个观点，即他拒绝把同意作为义务的基础。休谟在 Edinboro 有一座房子，他把房子租给了朋友 James Boswell，Boswell 又把房子转租给了别人，转租者认为，房子需要进行一些维修和翻新，他雇了一

个承包商做这些工作，油漆匠完工之后，把帐单寄给了休谟，休谟认为，这不合理。油漆匠唯一的论据是，这项工作有必要完成，但这不是一个好的答案。因为照这样说，油漆匠可以走进 Edinboro 的每一座房子，做他认为应该做的事，然后说，这些翻新工作是有必要的，房子会因此变得更好。但他的辩护失败了，他只好付钱。让我再举一个例子来说明，义务中，基于同意的方面和基于利益的方面，这两方面的区别，这基于我的个人经历。几年前，我和几个朋友一起开车穿越美国。我们到了印第安纳州的 Hammond 的一个偏僻的地方，我们在休息站停下来，走出了车外，我们对汽车都不太在行，一辆货车开到了我们身边，车身上写着，估计他就是 Sam。他走到我们面前说：“需要帮忙吗？”

如果我五分钟就把车修好了，你就该付我 50 块，但他开始往下看，检查转向柱的周围，片刻之后，他从转向柱下面钻出来，于是他很生气，说：“你的意思是不是说，如果我刚才在转向柱下面检查，修好了你的车，但我想，他的直觉判断是，如果他在刚才检查的过程中修好了车，我会给他五十块钱的，我同意他的直觉。我是会给钱的。但他由此进行了推论，我想，这就是他愤怒背后的谬论和推理。他从那里推断，我们有一个心照不宣的协议，但对我来说，这是错误的。契约论的两个不同方面之间的区别。是的，我同意。我会给他 50 块钱，如果他那时修好了我的车，那只是因为，如果他修好了我的车，他就给我带来了利益，为此我应该付他钱，以互惠和公平的名义。契约的道德力量的两个不同方面之间的区别。现在我知道，有多少人认为我在这件事上是对的？有人吗？你这样认为？为什么？请，

**S:** 我是说，如果你希望你的车是坏的，而他把它修好了呢？... 在这个案例里是这样。我是说.....

**T:** 但谁会希望车坏？谁会呢？

**S:** 我是说如果休谟，如果那个油漆匠，把他的房子漆成蓝色，但他讨厌蓝色，我的意思是，你必须在别人做事之前，对你的利益进行定义。

**T:** 好吧，那么你想由此得出什么结论呢？你是否会总结说，同意是义务存在的必要条件？

**S:** Nate.

**T:** Nate 说，如果不是这样，我们怎么能知道，这是对等的或公平的利益交换呢？除非我们进行主观评价，而这种评价可能是因人而异的。

让我再给你们举一个例子，来检验契约的道德性的两个不同方面之间的关系。假设我结婚了，而在忠于我们的婚姻 20 年之后我发现，每年在我们出去旅行的时候，我的妻子都会和另一个男人幽会，一个在印第安纳的收费公路上开货车的男人，顺便说一下，这部分完全是虚构的。一种理由是：我们有协议，她违背了她的承诺，这一承诺是基于她的同意而作出的，但我道德上的激愤。还可以有第二种理由：我当然应该得到更好的，这就表明了互惠的要素。每一种理由，都有独立的道德力量，如果你想像把这个婚姻案例稍微改一下假设我们刚刚结婚，背叛就发生了，在我们去印第安纳州的 Hammond 度蜜月的途中，这时契约已经

达成，但我这一方还没有任何表现，我是指对于契约的作为。我仍然站在 Julian 一边。我会说：但你承诺了，你承诺了这就把“同意”这一要素 单独抽离出来，虽然还没有产生利益，但这无关紧要。你明白我的意思。借助于两个不同的理念：自律和互惠，但在现实生活中，每个真实契约都可能不符合这两点，可能一开始就没有实现这两点，没能给契约赋予道德力量，自律的理念可能没有实现，因为各方谈判的势力可能是不均衡的，互惠的理念可能没有实现，因为各方的知识上，可能存在差距。因此，他们可能错误地判断，什么是真正具有相等价值的。现在，假如你们想象一个契约，它自律和互惠的理念，不是受制于外界的偶然因素，而是确保能够实现的。这将会是什么样的契约？想象一种契约，它的各方在权力和知识上是平等的，而不是不等的，他们的地位是相同的，而非不同的，思考正义的方法就是，站在一个假想契约的角度，站在“无知的面纱”的背后，创造了平等的条件，通过排除，或者使我们暂时忘记，权力和知识的差距，这些差距在大多数情况下，会导致不公平的结果。这就是为什么对康德和 Rawls 来说，一个各方平等的假想契约，是思考正义原则的，唯一途径。

## 第十五课 怎样才是公平的开始

今天，我们来讨论分配公平的问题。财富、权力和机会方面的收入，应该怎样分配？根据怎样的原则分配？John Rawls 给出了详尽的答案。而我们今天将要检验和评估他对这个问题的答案。

上一次，我们也是亲自检验过，方法是试着去弄清为什么。他认为公正的原则，主要源于假设合同。而真正重要的是这份假设合同，需要在原有的平等基础上实施，而其背后，正是 Rawls 所说的“无知的面纱”。这些明白了吗？好，现在让我们来看 Rawls 所说的，在“无知的面纱”背后，会选择哪些原则。

首先，他考虑过一些主要的替代原则，比如说功利主义。在原始状态，人们会不会选择用功利主义的原则，即追求最大多数人的最大快乐来支配他们的集体生活？不，他们不会的。Rawls 认为，理由就是在无知的面纱背后，所有人都知道，一旦面纱被揭开现实生活将开始。

我们每个人都渴望尊严，希望获得尊重，即使是我们处于少数派的一员，我们也不想受到压迫。因此我们会同意去反对功利主义，取而代之的是采取我们的第一原则，即基本自由原则。人们有言论自由、集会自由、宗教自由、信仰自由等基本权利。我们不会愿意冒险，担心我们会成为那些被压迫或受轻视的少数派，被多数派所欺压。因此 Rawls 说人们不会接受功利主义，“功利主义导致错误频



发”，Rawls 写道，“它使人忘记，或至少是忽视人与人之间是存在着差异的”。在无知的面纱背后的原始状态，我们会承认差别、拒绝功利主义，我们不会用基本权利和自由来换取经济优势，这是第一原则。

第二原则，与社会和经济的不平等有关。我们赞成什么？记着，我们不知道我们最终是贫是富、健康与否，我们不知道我们会来自怎样的家庭，我们是富二代呢，还是来自贫困家庭。因此，也许乍一想，我们会说“我们要求收入和财富的平等分配”只是为了以防万一。但是，我们会意识到我们可以做得更好，就算我们很不走运出身于社会底层，但如果我们同意采取有条件的平等原则，我们会做得更好。Rawls 把它称为“差异原则”。这个原则认为只有基于社会与经济不平等这一条件，能够为最贫困最底层的人带来利益之时，才许可这一条件。因此我们不会拒绝所有收入和财富的不平等，我们会允许一些，但是标准是他们是否服务于所有人的利益，或正如这个原则所强调的，尤其是最底层人民的利益。在无知的面纱后，只有这样的不平等可以被接受。因此 Rawls 认为，只有那些有利于贫困人民的不平等，才能称之为公平。

我们讲过迈克尔·乔丹，每年赚 3100 百万美元的例子，也讲过比尔·盖茨拥有数百亿美元财富的例子。在差异原则下，这样的不平等会被允许吗？除非当这些收入差异是某个系统的一部分，而这个系统确实在为最底层人民服务时，才会被允许。那么，这个系统会是什么？也许在实际情况下，你需要提供动力才能把需要的人才吸引到某些工作岗位。而当你这样做了，在这些岗位上这些人，确

实会帮助底层人民。严格来讲，Rawls 关于差异原则的论据是，在无知的面纱之后这个原则会被采用。

我想要听听你们关于 Rawls 对于无知的面纱后会采取的这两种原则的看法，有没有人不同意选择这两种原则？好，可以的话，我们从楼上开始吧。

说吧。

学生 1：你的论证的基础是，我们相信我们会从底层来讨论政治或公平，因为我们处于弱势，我没有看到真凭实据，我们怎么证明了这点，为什么不是上层开始？

好的，你叫什么？

学生 1：我叫 Mike，

Mike，好的，好问题。把你自己放在无知的面纱后进入思想的实验，你会选择什么原则？你怎么想清楚的？

学生 1：我认为哈佛大学的存在本身就是一个向上层宣讲的例子，因为哈佛是学府的最上层。我出生的时候并不知道我会变得多聪明，但是我一直在努力才

达到了这个水平。现在，如果你说哈佛要随机挑选 1600 个完全没有资格的人，我们都会说“我们的努力真不值得”。

那么你会选择什么原则呢？

学生 1：在这种情况下，我会选择基于功绩的原则。虽然我不太清楚这样的原则，但我宁愿选择一个根据我的努力给予奖励的体系。

那么 Mike，在无知的面纱后，你会选择基于功绩，根据人们的努力程度给予奖励的体系吗？

学生 1：(点头)

好的，很公平，你觉得呢？请说。

学生 2：我的问题是这个基于功绩的论证是否建立在人人平等的基础上？是  
在这个基础上，你因你到达的程度受到奖励，还是要忽略那些在你开始受教育，  
并为未来努力的时候你可能就具有的优势？

学生 1：我认为你问的这个问题是说，当我们想要功利主义或政治之类时，  
是否想使世界的财富最大化。我认为功绩体系是我们大多数人一起确立的，是对

我们所有人最好的体系。尽管我们中的某些人是百分之二的少数派，而某些是百分之九十八的多数派，到最后当最底层也得到提升时，社会氛围会反对关于努力的奖励的差异。

学生 2：但是，我不明白你是怎样奖励某些人的付出的？那些人不是你，或许是我。在取得成功的路上，一直都有显著的优势。我的意思是，我不能说其他那些和我一样努力的人，都会有和我一样的机会进入这样的大学。

好的，我们来讨论这一点，你叫什么？

学生 2：我叫 Kate。

Kate，你觉得能否进入顶尖的大学，在很大程度上取决于你的家庭是否富足？是否有很好的家庭背景、社会、文化、经济等优势？

学生 2：我是说经济方面，不过社会和文化方面也有，的确是所有的这些优势。

有人做过一项调查：在美国，他们选择了 146 所院校，他们调查这些院校里的学生们。想要调查出他们的家庭背景、经济背景。你觉得其中有多少人来自收入最底层？你知道数据是什么吗？在这些院校里只有百分之三的学生出身贫寒，有超过百分之七十的学生出身富足。

让我们再进一步试着解决 Mike 的挑战。实际上，Rawls 有两个论据而不是一个，来支持他的公平理论，尤其是支持差异原则。一个论证是官方论证，在无知的面纱后人们会选择什么理论？有人挑战了这个论证，他们说“也许人们会想要冒险，也许人们在无知的面纱后都会成为赌徒，希望他们最后可以到达顶层”。这是对于 Rawls 的一个挑战，但是从原始状态来支持这个论证的，是第二个论据，即直接道德论据。它是这样说的，它说，收入、财富和机会的分配不应该基于那些人们不信任的因素，不应该基于那些从道德层面看来专制的因素。

通过对比不同的公平理论，Rawls 举例说明了这点，他从现在大多数人都会拒绝的公平理论开始说起——封建贵族统治。封建贵族统治下的生活分配有什么问题？Rawls 说这种分配明显的错误就是人们的生活前景取决于他们的出身。你出生在贵族还是农奴之家？就这样了。你不能升职。你不能改变你的未来，不能去把握机会。但是从道德层面看这是专制的，因此，在历史过程中对于封建贵族统治的抵制使得人们认为，成功应该接纳人才，应该有平等的机会。这样的机会与出身无关。每个人都可以自由地去奋斗、去工作、去应聘任何职位。所以，如果你不仅提供工作让人们来应聘，而且让他们在各自的岗位上各尽所能，那么其结果就是公平的。

这有点类似于我们前几周讨论的自由主义制度。Rawls 对此有何看法呢？他认为这是一次进步，之所以说是一次进步，是因为它没有被用于去弥补天生的造

化。但即使是就平等主义的形式，自由主义观念并没有扩展于此，并未有深入地探讨这个问题。因为如果让每个人都参加赛跑，任何人都可以进入跑道，但是某些人却可以从不同的起点开始，那么比赛就不会公平。直观来说，他认为这个制度明显的不公平性在于它允许分配，受到来源于专断的道德观念的不恰当的影响。比如，不管你是否曾经接受好的教育，也不论你是否成长在一个经济上给予你支持，致力于培养你的职业道德，并且为你提供各种机会的家庭。这表明它已经演变成了一个机会均等的制度。这就是 Mike 刚才提倡的体制的本质，我们可以叫它基优制，一个绩效化的制度。在公平的精英制中，社会建立各种机构，以确保在比赛开始前，每个人的起点相同，享受平等的受教育的权利。比如说，早期智力开发项目；对于贫困社区学校的帮助.....这样的话，每个人不管家庭背景如何，都拥有真正的公平的机会。即每个人都站在同一起跑线上。

那么，Rawls 是怎样看待精英制度的呢？他认为，就连这种制度也未能有效地弥补或者解决每个人得到的“自然彩数”（指运气），以及道德的任意性。因为如果你让每个人都站在同一起跑线上，然后开始比赛，谁才会赢得胜利呢？谁会赢？拿跑步者来说，跑得最快的人会赢，但是，他们之所以会赢，是因为刚好有着运动员的天赋，所以跑得快吗？

所以 Rawls 说“即使是精英制的原则，让每个人都站在同一起跑线上，可能会消除社会偶然因素和社会教养带来的影响，但是它还是允许财富和收入的分配，受能力与天赋的自然分布的支配”。所以他认为，在消除道德观念武断在收



入和财富的影响的这一原则，需要超越 Mike 提倡的精英制度系统。那么，你怎样去超越呢？即使你让每个人都站在同一起跑线上，你还是因为一些人是跑步好手，而另外一些人都不善于跑步而困扰。你能做什么呢？

一些持有更为平等观念的评论家们说，你唯一能做的就是给运动健将们制造障碍，让他们穿上铅鞋。但谁又想那么做呢？那只会彻底毁掉整个比赛。但是 Rawls 认为，如果你想超越精英制度的话，没有必要去追求一种水平上的平等。你只要允许，甚至鼓励那些也许有天赋的人，去实现他们的才能。但是你要做的，就是改变条件——让其他的人也能够享受到有才能的人实践成功过后的果实。那才是差异原则所要表达的真正含义。

你将建立起一项这样的原则。人们也许会从他们的好运中获利，从他们在基因博彩中的胜出中获利。但条件是必须将自己所得部分用于帮助那些最贫困的人。因此，举个例子，迈克尔·乔丹可以赚 3100 万美元，但那必须在一个特定的制度下，税收会将他的部分收入，拨来帮助那些与他刚好相反的缺乏篮球技巧的人。同样的，比尔·盖茨，他可以继续赚大钱，但从道德角度而言，他不能认为自己理所当然该拥有这么多钱。“那些先天受到自然眷顾的人可以从他们的好运中获得利益，但那只建立在改善那些失利者状况的基础上”。这就是差异原则，一个来自于道德武断主义的论断。Rawls 主张如果你为了如何将共享分配建立在道德观念的专断性上而烦恼，那么你并不只是为了自由市场而否决了封建贵族。你甚至不满足于让每个人都站在同一起跑线上的精英制度。于是你建立起一项新的制

度，在这个制度下，每个人包括那些处在社会底层的人，都将从那些有幸拥有天赋才能并将其实现的人那里获益。

你们怎么看？这令人信服吗？谁觉得这个论题没有说服力？关于这个道德武断主义的论题。

请说。

学生 1：我认为在平等主义的主张下，那些更有才能的人即使清楚自己辛苦得来的部分财产将会被再分配，还是会一如既往地努力工作。这一想法过于乐观。所以我认为，更有才能的人们要想最大限度地实现他们的才能，唯一的方法就是依靠精英制度。

但是在精英制度下……你叫什么名字？

学生 1：我叫 Kate。

Kate，那曾经困扰你吗？还有 Mike，也曾经困扰过吗？在精英制度下，甚至在机会均等的条件下，有人遥遥领先，有人获得他不值得拥有的奖励，仅仅只是因为他们有幸拥有某种天赋，那又作何解释呢？

学生 1：我认为这是武断的，很明显具有武断性。但是我认为，轻易地改变它是十分不利的。

因为这会减少积极性，是这样吗？

学生 1：会减少积极性，是的。

Mike，你怎么看？

学生 2：我们现在正坐在这间教室里，我们不配。我们在某种程度上，不配有这种荣誉。所以你不应该满足于个人的人生进程，因为这一切都不是你创造的。而且我认为，从一个角度看，不仅是这间教室让我们感到失败，从社会的角度看我们更应该对那种失败的感觉做出某种本能的反应。赢得比赛的那个人，他.....他实际上伤害了我们。因为跟他相比，可能我最后 10 码必须得加速，我身后的那个选手也得加速 10 码，他身后的选手同样要加速 10 码.....

好吧，那么 Mike，我来问你，你刚才谈到了努力。努力。你认为当有些人因认真工作而遥遥领先并获得成功，那么他们就值得那些伴随努力而来的嘉奖吗？那难道不是你自我辩护下的措辞吗？

学生 2：我是说，当然，把迈克尔·乔丹带到这儿，我肯定你一定能做到，让

他来这儿，为他自己赚的 3100 万美元进行辩护，然后我想你就会了解，他付出了非常非常艰苦的努力才到达人生的顶峰。我们根本就是多数人以另一种角度在压迫少数人，他很容易成为攻击的对象，非常容易。

好吧，关于努力，你知道.....

学生 2：我知道得很少，很少一部分，但是差不多就这些了。

关于努力，你知道 Rawls 对此的回答是什么吗？即使是一些人所付出的努力：奋斗精神、职业道德.....即使是努力本身，很大程度上也依赖于幸运的家庭环境。无论是你，还是我们，都不敢妄自邀功。

让我们来做个调查吧，一个小调查，不要考虑经济阶层的问题，那些差异是很明显的，把它们放在一边。心理学家认为出生顺序对于职业道德、奋斗、努力有着非常重要的作用。这里有多少同学，请举手，在座的各位，哪些同学的出生顺序是在前的，顺便说一句我也是。Mike，我看到你举了手。

如果精英制度的理念就是付出应该得到回报，那么 Rawls 为什么没有提出一个观点，认为即使努力、奋斗、职业道德的塑造都很大程度上取决于出生顺序的先后？这是你们能决定的吗？Mike，你能决定你是否能最先出生吗？为什么呢？Rawls 说当然不能。那么为什么生活中的收入、财富和机会应该建立在道德

观念的武断性上呢？那就是他向当今自由市场社会提出的挑战，同样也是对像我们一样待在教室里的人的挑战。这个问题我们下节课再继续讨论。

“密纳法的猫头鹰”：希腊神话中智慧女神密纳法肩上的猫头鹰是智慧和理性的体现。猫头鹰的一个特点是在黄昏起飞。黑格尔借这个譬喻说明“哲学的认识方式只是一种反思——意指跟随在事实背后后面的反复思考。”

## 第十六课 我们该得到什么？

上节课我们做了一个有趣的民意测验，大家还记得吗？关于出生顺序的民意测验，有多少百分比的同学，在这个教室里举起了手，说自己是最先出生的？75%或80%？这项数据的重要之处在哪里呢？如果你在认真思考这些关于公平分配的理论。记住，我们是在讨论，三种不同的关于分配公平的理论。

三种不同的针对以下问题的答案，“如何在生活中分配财富、机会和其他一切美好的事物？”到目前为止我们看到了自由主义的答案，它主张分配所需的公平制度是一种可以保证自由贸易和自由市场经济的制度，这与形式平等的大背景相背离。简单地说就是工作和事业向所有人开放。Rawls 称，与贵族制度和等级制度相比，这代表着一次巨大的进步。因为每个人都能竞争上岗，前途向有才能的人开放。

除此之外，要求分配公平也是自由贸易发展的结果之一，自愿交易、分毫不差。可是 Rawls 反对说，如果你拥有的只是形式主义的平等，比如工作向所有人开放，其结果也不会是公平的。这只会有利于那些碰巧出生在富裕的家庭，碰巧得益于良好的教育机会的人。那样的话，出生的造化就不仅仅只是分配人生机会的基本原则了。所以，许多注意到这个不公平现象的人，Rawls 认为，重新采用了一种机会均等的分配体制——精英制度体系由此而建立，强调机会均等。但是 Rawls 认为，如果你让每个人都站在同一起跑线上，将会发生什么？谁才



会是赢家？跑得最快的人。

所以一旦你困扰于如何将分配份额建立在道德武断性的突发事件上，如果你已探究过的话，你就应该坚决支持 Rawls 所提出的“民主构想”——一个以差异原则为基础的，平等主义色彩更为浓厚的，关于分配公平的构想。不过，他并没有提到弥补或者改善。

人们天生的才干与能力差异的唯一方法，就是追求某种水平上的平等，一个有保障的、结果的平等。但是他却认为，还有另外一种方法可以处理这些突发事件。人们可以从他们的好运中获得好处，但条件是必须兼顾公平，帮助那些最不富裕的人。因此，通过对当今社会出现的工资水平差异的思考，我们也许可以检验出这个理论的提出到底意义何在？

你们认为美国学校教师的平均工资是多少？粗略估算……3 万 5 千美元……更多一些，是 4 万，4 万 2 千美元。David Letterman(著名脱口秀主持人)呢？你们认为 David Letterman 的工资是多少？比一名学校教师更多吗？他的工资是 3100 万美元，那公平吗？一名主持人比一名教师的工资还高？Rawls 的解读是，这取决于社会的基本结构是否以下列方式构成，即 Letterman 的 3100 万美元所交的税款，将这些款项的一部分用来补偿最贫困的人的缺失。

另一个关于工资差异的例子，美国联邦最高法院的公平问题。他们的工资是

多少？不足 20 万美元，我们以桑德拉·奥康纳法官为例，这是她的工资（PPT：\$200,000）。但是还有另外一位法官，她的工资远远超过桑德拉·奥康纳法官。你们知道她是谁吗？

学生：法官 Judy。

Judy 法官，你们怎么知道的？你们看见了？没错，Judy 法官，你们知道她的工资是多少吗？这是她的工资——2500 万美元。那么，公平吗？公正吗？答案是公正与否取决于它是否违背了与差异原则相适应的后台管理系统的原则。取决于这些出类拔萃的人所得收入和财富的分配是否遵循着同一分配原则，即兼顾公平，帮助社会中最不富裕的人。

现在，让我们回到这个，薪酬差异的问题上来。关于一位真正的法官和一位电视法官工资差异。Marcus 可一直在看这个电视节目，现在我要做的就是回到这些理论上来，检验一下那些因反对 Rawls 提出的更加平等的理论，即差异原则。

目前为止一共有三种观点反对 Rawls 的差异原则。其中一个观点是你们中的一员，在上节课的讨论中提出来的，积极性又该如何平衡？如果边际税率达到了 70%、80%甚至 90%，难道不怕迈克尔·乔丹不再打球了吗？难道不怕 David Letterman 不再做晚间秀了吗？又或者执行总裁们都跳槽去别的行业了？在座

的有没有哪位 Rawls 理论的支持者，来回答一下关于反对派提出的激励的必要性，进行简单的辩护？

好的，请说，站起来吧。

学生 1：Rawls 的观点是要帮助那些最不富裕的人，有很多种不同的可行方法。所以，如果过分强调平等，那么最不富裕的人们就不会有机会看晚间秀，或者根本不会有工作，因为他们的总裁不想工作。所以你只需要找到两者之间正确的平衡点，即税收仍然会给佼佼者带来激励，以便贫困者能够从佼佼者当中受益。

很好。你叫什么名字？

学生 1：我叫 Tim。

Tim，很好，Tim 说实际上 Rawls 考虑到了激励因素的问题，并且考虑到了薪酬差异和税率的调整，对激励因素的影响。但是 Tim 指出激励因素应当被考虑在内的这一观点，不应该立足于只看到对这块经济蛋糕规模的影响，而应该立足于探究激励因素或抑制因素对底层人民的福利的影响，对吗？

学生 1：(点头)

很好，谢谢你。我想那也是 Rawls 想要说的，实际上，如果你看了第 17 节，你就会了解他在阐述差异原则时是考虑到了激励因素的。“那些在天赋上占优势的人不能仅仅因为他们天赋较高而得益，而只能通过抵消训练和教育费用和用他们的天赋帮助较不利者而得益。”所以你可以采取激励措施，你可以调整税率。如果从 David Letterman 那里拿走得太多，或是从迈克尔·乔丹和比尔·盖茨那儿拿得太多，最终只会损害底层人们的利益。这就是证明。

所以激励因素并不是反对 Rawls 的差异原则的决定性异议。还有两个更有重量的，更难解释的反对观点。其中之一，来自于精英理念的拥护者们。他们争论说，那么个人的努力呢？只要是努力工作的人，就应该完全拥有他们获得的一切，因为这是他们应得的，他们为此付出了努力和汗水。这是来自于个人努力和道德褒贬方面的反对意见。还有另外一种反对观点来自于自由主义者。此反对意见旨在重申古典自由主义中的自我所有权。把天赋和才能看作是共同资产的差异原则，难道没有违背自我所有权的理论吗？

现在，让我首先来解决从自由主义层面衍生的反对意见。Milton Friedman(美国经济学家)在他说的书中写道，“自由地选择”，“生活本就是不公平的，相信政府可以纠正自然产生的东西”也是诱人的。他的观点是“唯一能够有效解决生活中不平等的方法就是追求结果的平等”。每个人都以相同的起跑点为基础完成这场比赛，那将会是一场灾难。这是一个容易辩驳的论题，Rawls 对此做出了回应。

我认为公平论中最具有说服力的章节就是第 17 节“自然分配”。在这里他提到了自然才能的分配，“...它无所谓公平不公平”。人降生于社会的某一特殊地位也说不上不公平，这些只是自然的事实。公平或不公平只是制度处理这些事实的方式而已。这就是他对推行自由主义政策的经济学家们的回答，就像 Milton Friedman 说的“生活是不公平的，要学会克服它”。克服它，让我们看看自己是否能做到。至少，要尽可能把不公平结果所产生的效益最大化。

其实像 Milton Friedman 这样的自由主义经济学家们对 Rawls 的理论的反对，并不是自由主义学派中最强烈的。真正强烈的反对观点是有关自我所有权的争论。Nozick(美国政治哲学家)对此进行了深入探讨，从自我所有权的观点来看，是的，这也许会是一件好事。创立早期智力开发项目和公立学校，这样每个人都可以接受良好的教育，然后站在同一起跑线上开始比赛，那应该很不错。然而，如果你向人们征税来创立学校，如果人们并不是自愿缴税，你就是在强迫他们。这是另一种形式的盗窃，如果你以税收的形式强行拿走 Letterman 那 3100 万美元薪酬的一部分来支持公立学校，那么政府此举与盗取他人财产无异，这是高压政策。理由是我们在拥有天赋和才能的时候得想想我们自己，否则我们就会后退到只会利用别人、胁迫别人的时代。这是自由主义的观点。

Rawls 对此有何解释呢？他没有直接地对自我所有权这一观点进行辩驳，但他对差异原则的论证所产生的道义影响却是深远的。就其绝对意义而言，也许我

们根本就没有自我所有权。但是，他说这并不意味着政府是我的财产所有者。就其意义而言它只能调拨它们而已。因为，请记住，我们之所以赞成站在无知的面纱的背后来保证公平，最重要的原则就是平等的基本自由原则：言论自由、宗教自由、信仰自由等等……所以，自我所有权能够为之让步的唯一方面就在于，当我们开始思考在市场经济条件下，自己是否拥有自我所有权，取决于自己是否对天赋才能所带来的成功有优先权。然后 Rawls 说经过再三考虑，我们没有，我们可以捍卫权利，我们可以尊重个性，我们可以维护尊严，即使在没有自我所有权的条件下。实际上，这就是他对自由主义质疑的回答。

现在，我将转向讨论他针对精英主义拥护者提出的质疑的回答。他认为努力是道德缺失的根源。人们认为只要是以努力工作来提升自己才能的人，就应该得到用自己的才能去实现的利益。其实，我们已经知道了 Rawls 对这个问题的最初一部分回答。这要回到我们在谈到出生顺序时而做的民意测验。他的第一个解释是，即使是职业道德，即使是奋斗精神，都依靠于不同种类的家庭环境和社会因素以及文化因素的偶然性。我们不能妄自称功。你们，你们中的大多数或我们中的大多数都不能妄自把最先出生这一结果归功于自己。

而从一些复杂的哲学观点和社会原因来看，那好像有很多方面的因素。比如奋斗、成功、努力。这是他的回答之一。还有一个回答，那些把希望寄托于努力的人，实际上不是真的认为努力与道德缺失有关系。以两名建筑工人为例，其中一位很强壮，不费吹灰之力就能筑高四堵围墙；另外一个建筑工人却又矮又瘦，



得花三天的时间才能完成同样的任务。但没有一个精英制度的拥护者会真的考虑到这名可怜的建筑工人所做的努力，并为他辩护说“因此他应该得到更多”。所以这并不是真的努力。这是对精英制度主张的第二个辩驳：努力，并不是真正的精英制度的拥护者们所坚信的。分配份额的道德基础，真正的基础是贡献，你贡献了多少？但是贡献又把我们带回了关于自然分配的天赋和才能的问题上。不仅仅是努力，并且我们最初能够拥有那些天赋和才能也不是我们的功劳。

好吧，假设你们接受了以下这些说法，从精英理念的立场来说，努力并不代表一切，贡献才起着决定性作用。努力甚至不是我们所争取的，那是否意味着反对是成立的。也就是说，根据 Rawls 的说法，道德缺失与分配公平，毫无关系吗？是的，追求分配公平并不是道德缺失，关于这点 Rawls 向我们介绍了一种既重要又狡猾的区分方法，用以区别道德应得与合法的期望的具体含义。

道德应得与合法的期望究竟有何区别？让我们来看看两种不同的游戏：一个关于机会，一个关于技巧。以关于纯粹的机会的游戏为例，假如，我买了马萨诸塞州的彩票并且中奖了，我理应得到我的奖金。但即使我应该得到奖金，也没什么意义，因为这只不过是靠运气。更不可能说，我道德上应该得到这笔奖金，这就是合法的预期。

现在让我们来看看另一种与彩票完全不同的游戏——竞技比赛。现在，试想波士顿红袜队(棒球队名)赢了年度冠军联赛，他们既然赢了当然有资格得到奖

杯。但当论及竞技比赛时，有一个问题却常被质疑，他们应该获胜吗？在原则上，在相同的比赛规则下，人们是否有权利获胜，并且这胜利是否应得的，这些都是能区别出来的。这就是未动标准，即“道德缺失”。所以 Rawls 认为尽管分配公平是合法预期，但它在本质上并不是“合法期望”的范畴，他对此做了如下解释“一个公平的体系回答了人们的权利问题，满足了他们建立在社会制度之上的合法期望，但是他们有权利得到的东西与他们的内在价值并不相称”，“调节社会基本结构和规定个人义务和责任的原则，并不涉及道德应得分配的份额，也不倾向于要与它相称”。

Rawls 为什么做出了这种区分？什么才是道德上的危机？其中一个道德危机就是我们已经讨论过的关于努力的问题，但是还有第二种是偶然事件。另外一种道德的武断性，它超越了我们之前所谈到的问题，即我们是否应该认为得到自然赋予的才能是理所当然的。这只是一种偶然性而已，我只是碰巧生活在推崇我这种天赋的社会中。就好像 David Letterman，他只是碰巧生活在一个把很多钱和精力都投放在某种让人傻笑的节目上的社会，他无法选择，他只是很幸运。因为他碰巧生活在这样一个社会，这是第二种偶然性：我们不能够选择所生活的环境，即使我认为我的天赋和我的努力是应得的，毋庸置疑的。

仍然有一个问题需要我去解答，即我依靠自己的天赋所获的利益是建立在道德的武断性上的，那我的天赋将会从市场经济中得到什么呢？它将基于什么呢？这个社会的人们又碰巧偏好些什么呢？这取决于供求原则，不是我能够决定的。

这当然就不是道德应得的基本原则。

而贡献也取决于，这个社会所推崇的种种素质。在很大程度上，我们中的大多数人都很幸运地拥有这个社会碰巧推崇的种种素质。这些素质让我们可以提供社会之所需。在资本主义社会里，它可以用作企业前进的动力；在官僚主义社会，它可以帮助人们更好更顺利地与上级相处；在民主党派众多的民主社会，它可以帮助各党派人士在电视里以简短精炼的讲话击败对手；在官司成风的社会，它可以让你顺利进入法律学校，并且在法学入学考试中取得好成绩……但是这些都不是我们能够决定的。

设想，如果我们和我们的才能不是出生在这个社会，而是出生在一个科技发达、官司成风的狩猎社会，或者勇士社会，我们的才能将会遭遇什么后果？它们不会给我们太多帮助，毫无疑问我们需要培养其它的才能。但是我们的价值会减少吗？我们的道德价值会减少吗？如果我们住在那样一个社会，而不是现在的社会，我们就不值得称赞了吗？

Rawls 的回答是，不，我们也许会少挣一些钱。但是，当我们得到的东西减少时，我们的价值却不会随之减少。跟我们现在的情况相比，不会有变化。重点就在这里，这样的例子同样适用于这个社会中的其他人。他们拥有的社会地位碰巧较低，也拥有很少这个社会碰巧推崇的天赋与才能，这就是道德应得和合法期望之间在道德层面上的区别

我们有权通过自己的努力，在比赛制定的规则下，利用我们的天赋和才能获得成功。但是，如果我们认为自己本来就应该拥有那些碰巧被这个社会所推崇的素质的话，这就是一个错误而自负的想法。

我们一直在讨论收入和财富的问题，那么有关机会和荣誉的问题呢？各所名校的招生名额分配问题又该如何解释呢？没错，你们所有人，你们中的大多数人最先出生，努力学习，不懈奋斗，提高你们的才能，才能来到这里。但 Rawls 问，实际上，当你宣称你应该得到那些利益，是因为你拥有别人没有的机会时，你的道德地位又在哪里呢？难道大学的招生名额是为那些应该得到机会的人准备的一种嘉奖或荣誉？因为他们一直在努力学习吗？或者，这些名额，这些机会和荣誉以及合法期望，都依赖于他们对我们自身价值的肯定？我们希望学校这么做，是因为这是一种很好的能够帮助底层人民的方式吗？这就是 Rawls 的差异原则所提出的问题。这个问题能够放在迈克尔·乔丹和 David Letterman 以及法官 Judy 的薪酬问题上，同样也能放在名校的招生名额这一问题上。这个辩题我们将在下节课讨论平权问题的时候加以阐述。

## 第十七课 关于平权运动的争论

上节课我们讨论 Rawls 描述的两种不同类型主张的区别。其一：道义应得（moral desert）其二：合法期望 legitimate expectations）。Rawls 指出“认为分配正义就是关于道义应得的问题，就是根据人们的品行进行奖赏，这样想是错误的。”今天，我们将继续探讨道义应得以及它与分配正义的关系。它与收入丰足无关，而是与机会有关，与雇佣决策和录用标准有关。

因此，我们来转到“平权行动”这个案例。（平权行动，就是给少数族裔和女性提供教育、就业方面的一点特殊照顾）你们读 Cheryl Hopwood 的案例。她申请了得克萨斯州立大学的法学院。Cheryl Hopwood 通过勤工俭学读完高中。她并非来自富裕的家庭，她让自己读完了社区学院以及加州州立大学萨克拉门托分校。她取得了 3.8 分的平均成绩。后来，她移居得克萨斯，成为那里的居民。参加了法学院的录取考试，取得了优良的成绩。她申请了德州大学的法学院，但被拒绝了。她被拒绝的时候，正值德州大学实行“平权行动”的录取政策时期。这项政策着重考虑肤色和种族背景。德州大学表示“得克萨斯 40%的人口由非裔美国人和墨西哥裔美国人组成。作为一所法学院，我们有必要拥有多样性的学生群体。因此，我们将要考虑的不只有中学成绩和考试得分（例如 SAT），而且还要包括人口学的组成，如肤色和种族。”Hopwood 要控诉的，正是这个结果。这个政策的结果是一些申请德州大学法学院的人，比她学术指数（包括中学成绩和考试得分）都低的申请人却得到了录取，而她却被拒绝了。她控诉道，“我被

拒绝的理由仅仅因为我是白人。如果我不是白人，如果我是少数民族，凭我的成绩和考分，我会被录取的。”而且，根据在法庭中出示的统计数据，就在那一年，非裔美国人和墨西哥裔美国人以和她一样的成绩和考分获得了录取。官司一直打到 联邦法院。

现在，先不考虑法律，让我们从公正和道德的角度来思考。这件事情到底公不公平？Cheryl Hopwood 是否有论据？她的控诉合法吗？法学院的录取政策是否侵犯了她的权利？有多少人，有多少人愿意支持法学院的做法？说录取政策应该要考虑肤色和人种因素，是公正的？有多少人愿意支持 Cheryl Hopwood，认为“她的权利被侵犯了”？那么，我们现在分成了两个势均力敌的阵营。现在我想听听支持 Cheryl Hopwood 的意见。

学生：“你根据一个武断的因素做出判断。要知道，Cheryl 无法控制她是一个白人还是 少数民族。因此……比如，她很努力地准备考试想证明给你看，她是可以的。而她却出局了 要知道，她无法控制自己的种族。”

很好。你的名字？

学生：“Bree。”

很好，Bree 留在那儿。现在，让我们再找一个人来回应 Bree。你？



学生：“教育体系存在着差异。大多数时候，我知道在纽约少数民族上的学校，都不像白人学校那样资金充足，供应充足。因此，少数民族和白人之间就形成了自然的差异。如果白人们没上到较好的学校。他们在考试中的表现就不会有那么好，因为他们不能得到更多的帮助。因为那个糟糕的学校体制。”

对不起，我来打断一下，能告诉我你的名字吗？

学生：“Aneesha。”

你的意思是在某些情况下，少数民族的子女所上的学校可能不能像有钱人的子女所上的学校那样提供同等的教育机会，是吗？

学生：“是的。”

所以他们的测试分数可能并不代表他们真正的实力。

学生：“因为他们没有得到在资金更充足的学校里那样的帮助。”

好的。Aneesha 提出了这样一个观点。大学应该录取那些学术上最有可能成功的学生，但在看他们的中学成绩和考试得分时，还应当根据他们受教育的不

平等，来考虑这些成绩和考分背后的不同意义。这就是捍卫“平权行动”的一个理由，矫正不平等的先天条件教育上的劣势。

现在，我们再来听听其他看法。为了确定 这里面是否存在着一个竞争性原则。假设这里有两位候选人。两人的成绩和考分都一样，两人都在第一流学校里上学。相比其他候选人，这两人可能还会在一些大学或学院里遭到不公正对待，譬如哈佛说“我们还是想照顾到种族和肤色的多样性。即使这样可能顾及不到教育不平等对考分的影响”。对此，你又怎么看？Bree？

学生：“如果这是其中一个（录取标准），成为了一些人的优势。那么，我猜那会是合理的，但如果只考虑他们的其他方面，例如天赋和出身，没有这些“专横的因素”的话，这两人是一样的。”

没有这些你所说的“专横的因素”。你是说，种族和肤色都是“专横的因素”是申请人无法控制的。

学生：“好的，我同意这一点。”

你的总原则是，录取时不应该奖励这些人们无法控制的、专横的因素。

学生：“是的。”

好的。还有谁？谢谢你们二位。谁愿意对此发表意见？你会怎么说？

学生：“好的。首先，我暂时支持“平权行动”。但这里有两个理由。首先，你必须看到 大学的目的是什么，它的目的是教育学生。我认为，来自不同种族的人们，有着不同的背景 他们为教育做出的贡献也不同。其次，当说到他们有平等的背景时。如果把眼光放远，你会发现不是这样的。看看奴隶制时期。而“平权行动”就像是对此的一种补偿。它是为了缓解这段历史，特别是对非裔美国人犯下的错误的一种临时性的解决措施。

你的名字？

学生：“David。”

David，你说消除歧视行为至少在目前，它是对过去那段不正义的历史的一种补偿，是黑奴制和种族隔离遗留下来的产物？

学生：“是的。”

谁想来接着这点谈下去？我们现在需要听听对“平权行动”的批评。好的，请。

学生：“我认为，过去发生的事情，与今天发生的事情毫无关系。我认为，基于种族来差别对待的做法总是错误的。无论你歧视一个种族，还是另外一个。仅仅因为我们的祖先做了某些事情，并不意味着就一定要影响到我们今天发生的事情。”

好的，很好。对不起，你的名字？

学生：“Kate。”

Kate。好的。谁来回应 Kate 的观点？

学生：“我只是想说……”

告诉我你的名字。

学生：“我的名字是 Mansur。由于奴隶制，由于过去的不公正导致今天非裔美国人的贫困比例更高。他们面对的机会比白人更少，因此，由于 200 年前的奴隶制，由于 Jim·Crow（对黑人的蔑称），由于种族隔离才有我们今天建立在种族基础上的不公正。”

Kate？

学生：“我认为差异是显然存在的，但不能通过对结果的人工修正来弥补这些差异。你得解决这个问题。所以，我们解决教育的差别问题，通过像 Head-Start 这样的项目，来解决在儿童早期的教育差异，给那些低收入的学校提供更多资助，而不是仅仅去尝试修补那个结果。那样做的话，只是看上去平等，但实际上并非如此。

是的。

学生：“关于建立在种族基础上的“平权行动”我只是想说，在这个国家里，白人有自己的‘平权行动’已经超过 400 年历史了。它被叫做‘任人唯亲’和‘补偿’。因此，纠正 400 年来对黑人的不公正和歧视，并无不妥。”

很好，告诉我你的名字？

学生：“Hannah。”

Hannah。好的。谁来回应 Hannah？或者补充她的观点。因为现在我们需要某个人回答 Hannah，你应该要提一下“遗留录取”的政策（你的子女申请你的母校，会有特别的优待）

学生：“我正要说这一点，如果你不同意‘平权行动’，你应该也不会同意‘遗留录取’的政策。因为很显然，环顾这里，哈佛的历史上，白人‘遗留生’要远多于黑人‘遗留生’。”

解释一下“遗留录取”的政策。

好的。“遗留录取”是让你的子女申请你的母校时，会有特别的优待。

好的。给 Hannah 的一个回应。是的，二楼的，请。

学生：“首先，如果‘平权行动’是为了补救过去的~~不公正~~。那么，你怎样解释在过去的美国历史上，没有遭到歧视的少数族裔也从中得到好处呢？此外，‘平权行动’让种族的隔阂长久存在，而没有实现让种族成为我们的社会里无关紧要因素这一最高目标？”

告诉我你的名字

学生：“Danielle.”

Hannah?



学生：“我不同意这一点。因为我认为在这样一个机构里促进多样性，你就能进一步地教育所有学生，尤其是那些过去都生活在白人圈子里的学生。让人们接触不同背景的人，这当然是教育的一种形式。当你让白人都生活在自己的白人圈子里，你便让他们处于一种内在的劣势之中。”

学生2：“为什一定要把种族与多样性等同起来？我们有许多其他的形式，我们为什么就假定了种族让大家不同？而且，这使得种族隔阂的思想长存于我们的大学和社会里。对于非裔美国人受到的这种特别优待，显然，他们给大家带来了一些独特的东西。因为就像来自一种不同宗教信仰或社会经济背景人一样，他们带来了一种独特的视角。如你所言，多样性的形式有很多。所以，没有理由把人种的多样性从这些标准中抹煞掉。”

是的，继续。

学生：“在这个国家，种族歧视是非法的。我相信那些非裔美国人领袖本人，当马丁·路德·金说他不希望人们以皮肤的颜色来衡量他，而是以他的个性、品德和成就。我只是认为，仅仅通过某人的种族来分辨别人是一种内在的不公正。我的意思是说，如果你想纠正（种族）的不利背景。那没问题，但白人也有不利，不该介意你是白人还是黑人。”

告诉我你的名字。

学生：“Ted。”

好的想一下 Hopwood 以肤色、民族和宗教信仰来判定一个人，是不公平的，是吗？

学生：“是的。”

你认为 她有权利要求（录取时）只看成绩和考分吗？

学生：“不，还得看其他大学需要促进多样性。”

那么，你同意促进多样性这一目的？

促进多样化还有其他方式。不是只有基于那些人们无法的控制因素，来消除歧视。所以，这个（录取）事件的错误在于她无法控制自己的种族，她无法改变自己是一个白人的事实。这就是她遭遇不公对待的核心所在。Bree 提出了类似的观点，建立在人们无法控制因素上的录取，是最根本的不公正。你怎么说？

学生：“有许多事情你无法控制，如果你不赞成录取标准应该只考虑你的成就。比如，仅仅基于你的测试得分，你能取得的许多成就都与你成长的家庭背景

有关。如果你的父母都是有学问的人，你就有更多的机会，让自己也成为有学问的人，成绩也会更好。但你不能控制自己出生在什么家庭。”

很好，这是个非常好的回答。你的名字？

学生：“Da。”

Ted，你是否是靠来自你所出生的家庭的优势呢？于“遗留录取”你想说什么？

学生：“我相信，就“遗留录取”而言，你不该受到特别的优待。我的意思是，你可以争论有关“遗留录取”的另一个方面。你可能说让一小部分的人一家几代都上同一所学校，像哈佛。然而，像种族这类因素不该成为那样的优势。它只是促进多样化的另外一个侧面，应该把它包含在内吗？我想……”

校友资格，该把它也包含在内吗，Ted？

学生：“是的，应该在内。”

好的，我想从这些辩论之中走回来。谢谢你们所有人的观点。我们现在回到你这里来，如果你听得够认真，我想你会注意到在这场讨论中出现了三种不同

的观点关于支持把种族和肤色作为录取的其中一个考虑因素。

其中一个观点，跟纠正教育不公平所带来的影响有关，那就是 Aneesha 的观点。我们或许可以将其称之为“弥补论”。弥补人们的教育背景的差异，人们所上的学校的差异，以及他们获得（教育）机会的差异，等等。这是其中的一个观点，值得注意的是，这种观点坚持的一个原则是，录取时应该只考虑学业前景和学术潜力。我们只需要依据，单一的中学成绩和测试得分来对其学业前景和学术潜力，做出真实的估计。这是第一个论点。

然后，我们听到的第二个观点是“平权行动”是合理的。哪怕对于某一个申请人来说，并没有弥补他教育不公平的必要。这样做是合理的，因为它是对过去的错误、不正义的历史的一种补偿。因此，这是一个补偿的观点，补偿过去的错误。

接下来，我们听到了来自 Hannah 和其他人，关于“平权行动”的第三个不同的观点，以多样性为名的争论。这种多样性的观点，不同于补偿观。因为它的诉求在于大学或学院的社会目标，或者说社会使命。实际上，多样化观点有两个方面，一方面认为，多样化的学生群体，能给每个人得到更好的教育体验。Hannah 持这个观点，而其他人则说到了更为广泛的社会，这就是德州大学 Hopwood 案中的观点。我们必须训练律师、法官、领导人、公务员，这些人将会给得克萨斯州，乃至整个国家做出贡献。因此，对于多样化观来说，有两个不

同的方面。但两者都是以大学的社会目标、社会使命、大众利益为名好的，这些观点有什么说服力？我们也听到了反对这些观点的声音。

对于补偿观，最有力的反对是对于 Cheryl Hopwood 来说，为了补偿过去公认做出的、极其不正义的行为这段。她并没有牵涉进去的历史，而做出牺牲，这难道公正吗？因此，这是对补偿观的一个重要反驳，而且为了应对这个反驳我们得研究我们是否要为过去肩负起整个群体的权利或责任。

明确了争论的所在，让我们把它放在一边，先回到多样化的观点。多样化的观点不必担心，为历史错误而背上的集体责任的这个问题。因为它认为，正如 Hannah 和其他人提出的那样，种族、民族多样化的学生群体，可以服务和提高大众的利益，每个人都会受益。这个观点实际上，跟哈佛当年提出的观点一样。当时，这一观点被书写在 1978 年联邦法院的“法庭之友辩护状”中 这是一桩平权运动案例，也叫“巴克案”。哈佛在辩护状中的理由曾被 Powell 大法官引用 Powell 大法官是支持平权运动的关键选票。他引用了多元化观点作为他的理由而他也认为这种观点是完全可以接受的。

哈佛在它的辩护状中，写道“我们关心多样性。哈佛大学从来不只把学术优秀作为录取学生的唯一标准” 15 年前，多样化意味着，学生来自加州、纽约、马萨诸赛。城市的居民和农村的男孩。小提琴手、画家和足球运动员。生物学家、历史学家和古典主义者。哈佛认为，现在唯一的差别只在于我们在考虑多元化的

这个长长的清单中，加入了种族和民族这一项而已。哈佛写道，“当我们在审阅大量在课堂上表现出色的申请人时，种族也许可以作为一种额外因素来考虑，就像你会考虑你是来自衣阿华州，或你是一名优秀的中后卫或钢琴家一样。一个来自爱达荷州的农村男孩，可能为哈佛大学带来一个波士顿人无法提供的东西。同样，黑人学生也可以带来白人无法带来的东西。每个学生所受教育的质量部分有赖于他们生来就不同的背景。”这就是哈佛的观点。

现在，大家觉得多样化的观点怎么样？它有说服力吗？如果它具有说服力，它就必须面对一个非常有力的反驳。那就是我们在这里听到的声音，来自 Ted 和 Bree，除非你是功利主义者，否则你应当相信个人的权利不能被侵犯。因此，问题在于此案中个人权利遭到侵犯了吗？Cheryl Hopwood 的权利受到侵犯了吗？

可以这么说，如果她被拒绝录取了，她是被利用来服务于大众利益和社会使命。这些由德州大学法学院自己定下的理念，她有这样的权利吗？难道我们不值得，根据我们的优异，我们的成就，我们的造诣，和我们的努力工作，来评价我们吗？我们的这项权利，难道不是岌岌可危了吗？现在，我们也听到了，对这种观点的一个回答。不，她没有这项权利。没有人是应该得到录取的。这让我们重新回到了道义应得与合法期望的问题。它们主张，Hopwood 在此处没有个人权利，不能根据在她看来是重要的某个标准，来决定说她是应该得到录取的。包括只参考她取得成绩和努力的这项标准。为什么不能这样呢？



我认为是这里隐含地有些类似 Rawls 拒绝。把道义应得作为分配正义的基础。是的，一旦哈佛确定了自己的使命，根据这一使命，来制定它的录取政策，适合这些标准符合资格的人们，他们就有权利被录取。但根据这个观点，首先，一开始哈佛大学为自己定下的使命，以及为自己设定的录取标准。没有人值得要求哈佛，制定的录取标准刚好是他们的优势。无论这些优势是测试得分或中学成绩，或是弹钢琴的能力，或是能做一个好的中卫，或是来自衣阿华州，或是来自某个特定的少数民族群。你怎样看待关于“平权运动”的这场争论，特别是多样化的说法。这就回到了权利的问题。接下来，我们就进一步回溯到，道义应得是否是分配正义的基础这个问题上来。请在周末思考这个问题，我们下次将继续讨论。

（感谢网友“森森”参与本课排版工作）

## 第十八课 目的是什么？

上节课，在结束时我们曾思考了关于“平权运动”的正反两方的理由。在录取中将种族作为因素之一来考虑。并且，在讨论的过程中出现了三种观点对于“平权运动”的三种观点

其中一种观点认为，种族和民族背景应当被考虑在内，这是为了修正测试得分和中学成绩（背后所代表）的真正含义。这样才更准确的衡量出，那些分数和数字所代表的学术潜力。

第二种，是被我们称作“补偿论”的观点。这种观点认为，这是补偿过去的错误和过去的非正义行为。

第三种，则是多元化观点。在 1990 年代，当 Cheryl Hopwood 在联邦法院上，对德州大学法学院的“消除歧视”的录取政策，提出质疑时，德州大学也提出了另外一个版本的多元化理由。他们认为，德州大学法学院的更远大的社会目标和社会使命，是培养出法律界和政界的领导者，法官、律师、和议员。因此，培养那些能反映出德州的背景、经历、种族和民族组成的领导人是十分重要的。服务于更加广泛的社会使命，是十分重要的。这就是德州大学法学院的观点。

接着，我们思考了对多元化理由的反驳意见。多元化的观点，其实就是以社

会使命、大众利益为名而提出的。我们知道 Rawls 没有简单地认为公众利益或大众福利应当优先，哪怕在促进公众利益的过程中，要侵犯个人的权利。你们还记得，上节课结束时我们对多样化理由的质问。

而且我们开始讨论“它可能威胁到我们的什么权利？”也许这项权利是要求决定我们是否被录取的因素，必须是我们所能控制的。或许，这就是 Cheryl·Hopwood 隐含表达的观点。她无法改变自己是白人这个现实。为什么她是否能进法学院的可能性取决于一种她无法控制的因素呢？接着，Hannah 在上此进一步提出，认为哈佛有权利以任何方式确定自己的使命。因为它是一所私立机构。而且，唯有哈佛明确自己的使命之后，我们才知道（录取标准里）考察哪些品质。因此，没有侵犯任何权利。现在，怎么看这个观点？我想听听对它的反对意见。然后看看其他人能否作出回答。是的。告诉我们你的名字。

学生：“Da。”

好的。上次你发过言，你怎么回应这个观点？

学生：“好的，我认为这里有两点。其一，私立机构可以根据自己的需要来确定自己的使命。但这并不意味..... 不管这个使命是什么，都是正确的。譬如，我可以把募集世界上所有的钱作为我的个人使命。但这可以称之为一个好的使命吗？因此，你不能说因为这所大学是一家私立机构，它就可以任意地确定（它的

使命)你还是得思考,它所确定的方式是否恰当。而且在“平权运动”这个案子里,许多人提到这里面牵涉了许多其他因素,为什么再多加人种这个因素就不可呢呢?比如,如果我们已经知道.....

我想先重申一下,你的第一个观点, Da, 好吗?

学生:“好的。”

Da 的反对意见是这样的。一所大学是否可以以自己喜欢的任意方式来确定自己的使命, 并据此来制订录取标准?如果这件事不是发生在今天的德州大学法学院,而是 1950 年代? 这里有另外一件,联邦法院判例,针对德州大学法学院的录取政策。因为,它采取种族隔离 它只录取白人。而 1950 年代,这起案件庭审时,德州大学法学院也援用了自己的使命“作为一所法律学校,我们的使命是是为德州的律师界和律师事务所培养律师。而在德州,没有哪家事务所,会雇佣非裔美国人。因此,为了履行我们的使命我们只录取白人”。

或者,来看一下 1930 年代的哈佛。当时它有反犹太配额。1930 年代的哈佛校长 Lowell 表示他本人对犹太人并无偏见,但他援引了哈佛的使命,哈佛的社会目标,他说“不仅仅为了训练知识分子,哈佛的部分使命在于,训练出华尔街的股票经纪、总统和参议员,而犹太人很少从事这些职业” 现在,我们的质疑在于以下两者是否有原则上的区别:当代的大学或学院所援引的社会使命实现

多样化，与 1950 年代的德州大学，或是 1930 年代的哈佛大学所援引的社会使命，这里有没有原则上的区别？你是怎么回应？Hannah？

学生：“我想，原则上的区别在于包容与排斥。我认为，如果一所大学说“我们把你排除在外，是基于你的宗教或人种”这在道德上是错误的。这种拒绝录取是建立在专横的因素基础上的。今天，哈佛提议多样化是为了包容过去曾被排斥的群体。”

好的，停一下。让我们看看是否有人愿意回应。继续。

学生：“实际上这是对 Hannah 的支持，而不是反驳。”

那好吧。

学生：“我刚才想说，另外一个原则上的区别。历史上种族隔离，其动机是恶意的。因为当时他们说，我们不要让黑人或犹太人进来，因为他们作为个人或组织都很糟。”

好的。所以，（我们的案件里）不存在恶意的因素。你的名字。

学生：“Stevie.”

Stevie 认为，历史上的种族主义隔离政策，反犹限额或是禁令，这些做法的背后藏着 某种恶意，某种恶意的判断。认为非裔美国人或是犹太人的价值低于其他人，而如今的“平权运动”措施并没有牵扯或暗示任何这类判断。这就相当于说，这个政策只是利用人们的价值去实现这所机构的社会目标，只要它不是在恶意地判断申请者，认为他们本质上更没价值。我想提一个问题，这不就是容许，当我们为了竞争学校的一个职位或名额时，（学校）可以利用我们，而非判断我们，而这种利用我们的方式，与道义应得无关。记得我们对“平权行动”的整个讨论，当时我们试图搞清楚分配正义与道义应得是否有关。我们一开始提出了 Rawls 的问题，以及他否认和反对，把分配正义基于个人所处的阶级、收入或财富地位。这是关于道义应得的问题。

假定那就是哈佛录取政策的道义基础。他们在给被拒者或录取者写信是会怎么写？他们会不会这样写：“亲爱的不成功的申请者，我们很遗憾的通知你，你的入学申请被拒绝了。这不是你的错，因为当你来到这个社会上时，刚好不需要你具备的那些品质。那些取代你、拿到录取的人，不是他们本身配拿到这个名额，也不是因为他们具备了我们所欣赏的品质。我们只是利用你和他们，作为实现更远的社会目标的一种手段。祝你下次好运。”

如果你被录取后，又会收到一封什么信呢？这封信可能会这样写道“亲爱的成功申请人，我们很荣幸通知您，我们接受了您的申请。你真幸运，你拥有现



在这个社会所需要的品质。因此，我们打算利用你的资本来造福社会。祝贺你，你能拿到录取，不是归功于你拥有的某些品质，这只不过像六合彩赢家那样值得让人祝贺而已。如果你选择接受我们的录取，你最终将有资格，被（我们）以这种方式来利用并得到其中附带的好处。期望在秋季见到你”

现在，它有点奇怪，道德上的奇怪。如果这些信真的反映出政策背后的这种理论和哲学理念，这就是他们提出的问题。这个问题，把我们带到一个政治哲学的大问题上来：是否可能，或是否值得把分配正义的问题从道义应得问题和美德问题中脱离出来？在许多方面 这是现代政治哲学 与古老的政治思想的区分点。我们是否可以把道义应得放在一边？这个问题的关键之处是什么？

在我们阅读 Rawls 的著作时。把分配正义从道义应得中脱离出来，其动机和理由是为了实现平等。如果我们把道德应得放在一边，就会有更多实现平等的机会“无知的面纱”那两个原则，那个“差别原则”（第8集提到）帮助最不富裕的人，重新分配，以及其他。不过，有趣之处在于，如果你回想我们讨论过的一系列思想家，他们似乎都想把分配正义从道德应得中脱离出来。这样就可以避过对平等问题的所有顾虑。我们已经讨论过的，自由主义，权利取向的理论家们以及包括 Rawls 在内的权利平等取向的理论家们，在这一点上，也包括康德，他们都同意这一点。尽管他们在分配正义，福利国家，以及其他方面见解不一，但他们都认为，分配正义并不是关于奖赏美德的问题，或是道义应得。他们为什么都会这样认为？这并非仅仅出于平等主义理由，他们并不都是平等主义者。

这就把我们引向一个我们一直想厘清的哲学大问题。不知何故，他们都认为，如果把正义与道义应得或美德连在一起，就会让我们远离自由，远离对作为自由存在的个体的尊重。

好的，为了弄明白，他们这样看重的是什么呢并且为了评估，他们所共同的假设。我们必须求助于一位思想家，一位哲学家。他不同意以上众人的见解，他明确的将正义与荣誉、美德、功德和道义应得联系在一起。这位思想家是亚里士多德。在很多方面，亚里士多德关于正义的思想都看起来很有说服力，但在某些方面，它也很奇怪。我要把这两方面，貌似有理而又奇怪都作介绍。这样我们就可以明白，整个关于正义的辩论中，什么是关键的以及它是否与道义应得和美德有关。那么，亚里士多德对于正义问题的回答是什么呢？对亚里士多德来说，正义是给予人们应得的东西。是给予人们本来属于他们的东西。正义，就是帮助人们，根据他们的美德，找到合适的社会角色的问题。这样一幅正义的图景，看起来会是什么样的？它与自由主义和平等主义取向的思想家们，所共有的理念又有什么区别？正义意味着给予每个人他或她应有的，就是给予人们应得之物，但一个人应得的是什么？它与道义应得和美德的相关之处是什么？亚里士多德认为，这要看被分配的是何种事物“正义与两个因素有关：什么物品？以及分配给谁？亚里士多德写道，“一般而言，同等的人就应当有同等的事物分配予他们”。但在分配中出现了一个困难的问题，在哪些方面同等？亚里士多德认为，这要看我们分配的是什么东西。假定，我们分配的是长笛，对于长笛来说，它相应的道义应得的基础是什么？谁该得到最好的那只长笛？亚里士多德的回答是什么？有谁知道？

正确的回答是，最好的长笛手。那些在这方面最优秀的，最好的长笛手。在长笛的分配中，这种差别对待是否是正义的？是的，所有正义都牵扯到差别对待，亚里士多德这样说。关键的是，这种差别对待，要根据有关的优点，看看拥有长笛需要具备哪些特质。他认为，如果是按照其他方式来进行分配则是非正义的。比如说，把最好的长笛分给有钱的人；把最好的长笛分给出价最高者的人，或是根据出身，分给贵族；或是根据外表，把最好的长笛分给相貌最漂亮的，或是看运气，大家都来抽签。亚里士多德认为，与吹奏长笛的能力相比，出身和美貌或许是更大的优点，那些拥有出身和美貌的人，在这些方面胜过长笛手，可能要比长笛手胜过他们的吹奏能力超出得更多。

但事实还是，他是应该得到那只最好长笛的人。这个比较，是一种奇怪的比较。你是否可以说：“我比她更帅，胜过她比我曲棍球打得好？这是一种奇怪的比较，但暂且不谈这些 亚里士多德认为，我们不是在正在寻找各方面都最好的人。我们寻找的只是最好的乐师。为什么这一点很重要？为什么最好的笛子该给最好的笛手？你们觉得是为什么呢？谁来说说？什么？他们会制造出最好的音乐，这样 每个人都将享受到更多。这并不是亚里士多德的回答，亚里士多德并不是个功利主义者。他不会这么说，“这样做，可以产生更好的音乐，而且每个人都可以享用它，对每个人都有好处。”

他的回答是，“最好的笛子给最好的笛手，因为这就是笛子存在的目的，被完美的演奏，演奏长笛的目的，是产生非凡的音乐？谁最能实现这个目标，谁就

应该拥有这把笛子。”这或许也是事实：受欢迎的副作用，让每个人都享受到这样的音乐。因此，就目前而言，这个答案的确不假，但重要之处在于，亚里士多德的理由并不是一个功利主义的理由。它看的是……你们可能会觉得这里有点奇怪。它看的是长笛吹奏的目标、目的。另外一种形容的方式是根据目标来决定公正地分配。在希腊语里，目标或目的称作“泰罗斯（telos）”。因此，亚里士多德认为，你必须考虑目标、目的，看吹奏长笛的目的。这就是你确定公平分配的方法，公平的差别对待。我们把依据目标来推理，称为“泰洛逻辑推理（目的论）”。

“泰洛逻辑道义推理”这就是亚里士多德的方式，根据目标、目的来思考。正如我所说，这或许是一种奇怪的思想。我们要根据目标来进行推理，但它确实有某种直观的合理性，说到分配，打个比方，哈佛最好的网球场，或是壁球场，它们该被怎样分配呢？谁应该优先占有最好的球场呢？你或许会说“谁付得起，就谁用”。安装一套收费系统，向他们收费。亚里士多德会说：“不。”你可能会说，“好吧，哈佛的大人物，在哈佛最有影响力的人”。“这些人会是谁？”高级教员应当优先使用最好的网球场？不，亚里士多德会反对这样。科学家可能更有学术前途，胜过大学校队网球选手网球打得更好，但网球选手仍然是应当优先使用最好的网球场的人。这是一种看上去直观合理的解释，但让它显得奇怪的是，在亚里士多德的世界里，在那个古老的世界里，在亚里士多德看来，根据目的论推理和解释，不是管理社会活动的唯一方式。万物都被理解为一种有意义的秩序，理解自然，掌握自然，找出我们在自然中的位置就是去调查，并找出自然的目的。但随着现代科学的出现，很难再用这种方式来思考世界。因此，用目的论的方式

来思考正义，就更困难了。但这里有某种自然性，把自然界看作有目的秩序，看作一个大目标。实际上，我们得教育孩子用这种方式来看世界。我意识到这个问题的时候，我的孩子们都还很小，当时我正在给他们读一本书——《Winnie the Poo》。《Winnie the Poo》会告诉你，怎样以一种自然的、孩子般的方式，以目的论的方式来看世界。你或许会记得，里面有这样一个故事。

某天，Winnie the Poo 在森林中散步。“他来到森林里的某个地方。树顶上传来了响亮的吱吱声音。Winnie the Poo 坐在一棵树下，用双爪抱住头开始思考。下面是他的自言自语：“那种吱吱声意味着某些东西，你不可能听到那样一种毫无意义的吱吱、吱吱的声音。如果有这种声音的话，一定是某人发出这种声音。而且，据我所知，发出这种声音的唯一理由是因为那里有一只蜜蜂。”然后，他又思索了很长一段时间，然后说道，“据我所知，这里会有蜜蜂的唯一理由是它们在酿蜜。”然后他爬了上去，并且说，“它们酿蜜的唯一理由是让我可以尝到蜂蜜。”因此他开始爬这棵树。

这就是目的论推理的一个例子。目的论推理也并非那么的不合情理的。现在，我们长大了，我们不再以这种方式来思考世界。但问题在于，即便是目的论的解释不适用于现代科学，即便我们已经长大了，已经不适合用这种方式来理解自然了。亚里士多德认为的思考正义唯一的方式是根据社会实践的目的和目标来推理，它是否还有一些直观有理、甚至有说服力的地方呢？刚才我们在讨论“平权运动”意见不一时，我们不正是这样做吗？你几乎可以把刚才的意见不一看作是在讨论

大学教育的目标应该是什么目的推理。或者说从“泰罗斯”出发进行推理。亚里士多德认为，在思考正义时这是不可缺少的。他的想法对吗？当你阅读亚里士多德的政治学时，思考这个问题。

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## 第十九课 好公民

我们来讨论亚里士多德,在讨论了正义的一些当代的理论这些理论试图把正义和权利从道德应得和美德的问题中分离出去。亚里士多德不同意康德和罗尔斯。亚里士多德主张,公正是关于让人们得到应得之物的问题。而亚里士多德的正义理论其中心观点就是在思考正义和权利的时候,就不可避免地要思考这些行为的目的、目标、或泰罗斯(希腊语,指目标)。确实,正义要求我们对相同的人,给予相同的东西。但一谈到正义,问题很快来了:在什么方面相同?亚里士多德说,要回答那个问题就得看它的目标或其本性,或我们分配之物其自身的目的。

于是,我们讨论了亚里士多德关于长笛的例子。谁该得到最好的长笛?亚里士多德的回答是最好的长笛手。最好的长笛手应获得最好的长笛,因为这样能彰显卓越的长笛演奏这也是对伟大长笛手的奖赏。有趣的是....(这就是我们今天要探究的)有趣的是,不用目的论来进行思考,并不那么容易,尤其当我们思考社会制度和政治实践活动时。当我们思考伦理、正义和道德时,一般来说,你很难不用到目的论。至少亚里士多德是这么认为的。

而我想通过两个例子来解释亚里士多德的这一观点一个例子是,亚里士多德花了相当的时间去讨论政治生活的事例。例如,应该怎样分配国家官职、荣誉称号和政府权力?第二个例子是,当代关于高尔夫球的争论。即职业高尔夫球协会是否应该允 Casey Martin 这位有残疾的高尔夫球手允许他驾驶高尔夫球车。

这两个事例都体现了亚里士多德目的论的思考方式一个更深入的特点。这个特点会出现在当我们考虑目标或目的时，有时会出现分歧，并争论某个社会活动真正存在的目的是什么。当我们存在分歧时那些分歧中的关键部分不仅仅是谁将得到什么的问题不仅仅是一个分配问题，更是一个关于彰显荣耀的问题。具有怎样品质和才华的人，才配得到那份荣誉？讨论目的和目标常常同时要讨论关于荣誉的问题。

现在，让我们来看这些例子亚里士多德叙述政治生活的事例，这些天，当我们讨论分配公正时我们主要关注收入、财富、机会的分配。亚里士多德对分配正义的关注主要不集中在收入和财富上，而是在官职和荣誉称号上。谁才是有权利去统治的人？谁应该是一个公民？政治权力应该怎样分配？这些都是他关于的问题。那么，他是怎样回答这些问题的呢？跟他对正义的目的论解释一样亚里士多德主张，为了知道政治权力该如何分配，我们首先要问政治生活的目的、要点、泰罗斯（目的）是什么政治生活是关于什么的？它怎样帮助我们决定，该由谁来统治？

亚里士多德的回答是这样的，政治生活在于塑造品格，塑造好的品格，在于培养公民的美德，在于美好的生活，那才是国家的最终目的、政治共同体的最终目的，在《政治学》第三卷，他告诉我们，政治生活不仅仅是生活，也不只是经济交易，不仅仅是治安，而是实现美好生活。这就是亚里士多德所认为的，政

治生活的目的。

现在，你可能会担心，你会说：“嗯，也许这让我们看到，为什么那些关于正义和政治的现代理论是正确的。”还记得吗，对于康德和罗尔斯来说政治的要点不是塑造公民的道德品质。它不是要让我们变好。而是要尊重我们自由地选择自己觉得好的东西、选择我们自己的价值和最终目标，并拥有和他人一样的自由。亚里士多德不同意这些说法。“真正的城邦，那不仅仅是一个名字，她一定是献身于提高美德的目标之中。否则，政治的联合只沦为一种同盟而已。法律变成了一种协议，法律变成了个人权利的保证人而没有成为...它应该要成为...政治应该要让城邦里的成员们变得善良而公正。”这就是亚里士多德的观点。“一个城邦不只是，人们共同居住的一个地方，不只是为了阻止相互间的不正义行为。不只是为了方便人们交易。”亚里士多德写道。“城邦目的和目标是为了美好的生活，而国家的建立，就是为了实现这一目标。”

如果这就是城邦和政治生活的目的，亚里士多德说，我们就能以此得到分配正义的原则；例如，谁该拥有最大决定权的原则，谁该拥有最大程度政治权力的原则。而他对此的回答是什么呢？那些最能建立这样一种机构的，也就是，能帮助人们实现美好生活的人，就应该在政治统治中获得最大份额，在城邦中享有荣誉称号。其理由是，在这个位置上，他们就最能实现政治共同体的本质目的。所以，你能看到亚里士多德是怎样把公民和政治权力的分配正义和政治生活的目的联系起来。

你很快会问，“但为什么？”“为什么他会声称政治生活，参与政治生活对于过上美好生活在一定程度上是必要的呢？是否有可能人们过着完美的生活，满意的生活，道德的生活，同时却不必要参与到政治生活中？”对此，他给出了两个回答。他给了一个不完整的回答，一个初步的答案，在《政治学》第一卷中。他告诉我们，只有生活在城邦中并且参与政治生活才让我们完全实现，作为人类的我们的本性。人类，从本性上就意味着要生活在一个城邦之中。为什么？因为只有政治生活中，我们才可以真正锻炼到我们的语言能力，亚里士多德认为，有了这种能力才能思考对与错，思考正义与不正义。

而且，亚里士多德在《政治学》第一卷中写道，城邦、政治共同体，先于个体自然存在着，这不是说，它在个体出现以前就存在，而是其目的先于个体人类离开政治共同体，单靠自己是不可能做到自给自足的。“那些孤立的人，那些不能分享到政治联合体的好处。那些不需要分享的人因为他已经自给自足，这样的人，不是一头野兽，就是神。”所以，我们要想全面实现我们的天性要想全面发挥我们的能力，就必须锻炼我们的语言能力，也就是说，要与其他公民思考善与恶，对与错，正义与不正义。“但为什么，我们只能在政治共同体中，锻炼语言能力？”你也许会这样问。亚里士多德在《尼各马可伦理学》中给了一个更完整的回答。我们的阅读材料中，也其中的节选。他解释说，政治的讨论、公民生活的行使、统治与被统治之间的交替、权力的分享，所有这些活动，对美德都是必须的。亚里士多德把幸福定义为不是最大程度的让快乐超过痛苦，而是作为一

种活动，一种与美德相一致的灵魂的活动。他说，每一个学政治的学生必须研究灵魂，因为塑造灵魂，是在一个良好的城邦立法的目标之一。但是为什么为了过上有道德的生活，必须生活在一个好的城市里？我们为什么不能从家庭中，学习好的道德，或从哲学课堂，或从一本书里，按照那些原则那些规则，那些准则来生活呢？

亚里士多德说，那种方法是学不到美德的。美德是只有通过实践，才能获得的是只有通过运用，才能获得的。它是只能通过做，才能学到的。它不能从书本学到。在这方面，它很像长笛演奏的例子学习演奏乐器，你不能够只靠读一本书来学，你必须练习，必须聆听，那些有造诣的长笛手的表演。还有其他一些实践也是如此，例如，烹调我们有烹调书但从来没有一位大厨，是仅靠书本来学习烹调的，它只能靠动手做来学习。讲笑话可能也是一个例子，但从来没有一位伟大的喜剧演员，只靠读关于喜剧原则的书，来学会成为一个喜剧演员。那样是不会成功的。为什么呢？讲笑话、烹调和演奏乐器，这些事物其共同点就是我们不能完全靠领会书籍和讲座上的准则或规则来把它学会。它们的共同点是需要熟练地掌握它。当我们学习如何烹调、演奏乐器、或讲笑话时我们怎样精通它？用心觉察细节，每种情况的特别之处。这里没有规则，没有准则可以告诉喜剧演员、厨师或音乐家如何培养那种觉察细节、和每种情况的特别之处的习惯。亚里士多德说，美德也是那样。它与政治生活有什么关联？建立美好生活所需要的美德，其获得的唯一方法就是去运用美德，反复的教导，然后与其他公民们一起，讨论关于善的本性。那是政治生活最终要达到的。公民美德的获得与他人研讨的能力的获得这些都是在政治生活之外，无法独自得到的。



这就是为什么，为了实现我们的本性，我们不得不参与政治生活。这也是为什么，那些最具公民美德的人比如伯里克利（古希腊的伟大政治家）值得享有最高国家官职和荣誉称号。所以，关于分配官职和荣誉称号的争论不仅有这样目的论的特征，而且还是一个关于彰显荣耀的问题。因为政治的一部分目的，就是为了给像伯里克利这样的人以荣誉。这并不是说，伯里克利之所以拥有统治权是因为他有最好的判断力能得出最好的结果，给公民们带来最佳的结果。尽管这也是对的，而且很重要。但一个更深层的原因，人们觉得伯利克里之所以应该拥有最高的国家官职、荣誉称号和政治权力，在城邦里具有支配的能力是因为政治的部分目的，就是要挑选并把荣誉归于那些最具有相关美德的、最具有公民美德、公民优点、实践性智慧的人，那就是关于荣耀彰显的这个方面，与亚里士多德的政治观之间的联系。

这里有一个例子，当代的一场争论体现了这种联系它体现了，亚里士多德所要告诉我们的正义和权利，以及社会生活的目的，这两者之间的联系。不仅如此，Casey Martin 和他的高尔夫球车一案中也体现了另一种联系，即一项社会活动或一项体育运动的目的，以及何种品质应该获得荣誉，这两者间的联系；也体现了目的论与分配正义原则之间的联系 Casey Martin 是谁？Casey Martin 是一个非常优秀的高尔夫球手。能在最高水平的高尔夫球赛中竞技。除有一件事情他患有一种罕见的腿部血液循环的疾病，这使得他行走非常困难。不仅困难，而且危险。所以，他请求职业高尔夫球协会(PGA)，这个管理职业巡回赛的组织来



允许他参赛时，能够使用高尔夫球车来代步。PGA 说不行，于是，他依据《美国伤残法案》提起诉讼，官司一直打到了美国最高法院。最高法院需要解决的问题就是，Casey Martin 是否有权利让 PGA 提供和允许他在巡回赛上，使用高尔夫球车？

这儿有多少人认为从道德的角度来 Casey Martin 应该有权利使用高尔夫球车？有多少人认为，他没有这个权利？多数人赞同 Casey Martin 具有这个权利尽管有相当一部分的少数派不同意。让我们先听听那些不支持 Casey Martin 的声音，为什么你们认为 PGA 不需要让他骑高尔夫球车？是的。

学生 1：“因为起初提出高尔夫球，因为这项体育运动的其中一个环节就是在高尔夫球场上行走，所以，行走成为了打高尔夫球的内在的一部分。我会说，不能在球场上行走，就等于是不能完成这项运动的这个方面，而对于职业级的水平，这是必要的。”

好的，等一下。你叫什么名字？

学生 1：“Tommy。”

顺便问下，你是高尔夫球手吗，Tom？

学生 1：“不是经常打，但打一点。”

这里有没有打高球的，我的意思是真正打高尔夫的？

学生 1：“谢谢你，教授，那是...”

不，不我接受你的观点。 这里有没有人是高尔夫球队的？ 好的。 请说你的名字， 再告诉我们你是怎么想的。

学生 2：“我的名字是 Michael ,而且我通常会开一部高尔夫球车。 所以... 可能你不该问我。”

当我发问时，你的手举很慢，是不是这个原因？

学生 2：“是的。”

好的，但是 Tom 说，先前 Tom 说，至少在职业球手的级别上，在球场上行走是打高尔夫球所必不可少的。你同意吗？

学生 2：“我同意，是的。”

真的？那你为什么要开球车？而且，你自称是打高尔夫球的？不，不。我在开玩笑，玩笑。对此你怎么说？

学生 2：“当我在球场上用腿走之后，这确实给这项运动增添了很多，这样比赛就更加难了，真的。”

是吗？好吧，Michael 和 Tom 留在那儿。让我们听听那些认为他有权骑球车的人的意见以及为什么？谁准备为这个立场辩护？说吧。

学生 3：“嗯，我想肯定应该要求 PGA 允许他骑车一辆球车。因为这场争论，不只是关于他是不是也体验了这种疲劳。对他而言，他也是走了将近一英里，球车不能在随便开，在这一英里，他仍感受到比一个健康的球手更多的疲倦和痛苦。所以，这不是说他想免掉自己的劣势。”

你叫什么名字？

学生 3：“Riva。”

Riva 对于 Tom 的观点，认为在球场上行走是比赛必不可少的，你怎么看？这就像一位残疾人在美国篮球职业联赛上打球，却不必在球场上跑来跑去一样。

学生 3：“对此我有两个回应。首先，我不认为行走是这项运动不可缺少的，因为绝大多数高尔夫球手，尤其是平常休闲娱乐时，都会开车。就像 Michael 一样。而且，在某些巡回赛上你是可以骑车的。例如 PGA 元老级职业高尔夫巡回赛，耐克巡回赛，以及许多的大学赛事这些赛事，也几乎和 PGA 巡回赛一样高水平、高竞技性。所以，如果你争辩说，这是该运动的一个重要部分，那只是一次有选择的推论。哪怕你非得让他走这段路，他还是站着打高尔夫球，这并非说他就可以在轮椅上打高尔夫了。”

好的，还有谁？说吧。

学生 4：“我想比赛的整个目的就是 from 第二名、第三名中，挑选出最好的。而当我们谈论国家级水平，我们是在谈论最高级中的最高级。我想，我们的争论点在于比赛的目的是什么。而我认为，为了竞赛，你不能改变规则。”

所以，竞赛的目的需要包括行走？行走是它的一个关键点。你同意 Tom. 你叫什么名字？

学生 4：“David。”

最高法院裁决 PGA 得准予 Casey Martin 使用球车，而判决的理由是，如 Riva 所说行走并不是这项比赛的真正关键的部分。最高法院的证词说，在高尔夫球场

上行走所消耗的卡路里，比吃下的一个巨无霸（快餐）还少，多数法官都是这样认为。但 Scalia 持有异议。Scalia 法官赞同 David，他说这里根本不存在什么目的，试图找出高尔夫运动的本质目的，不是我们应该的做法。像任何一项体育运动一样，高尔夫完全是为了娱乐。而如果有某个团体，打高尔夫为了其他目的，他们可以那样做。市场可以决定人们是否从中得到娱乐，人们是否喜爱、是否会去现场看或看电视转播。Scalia 的观点反亚里士多德派的，因为注意看看他的论点的其中两个地方。其一，我们在讨论的是高尔夫球的真正本质和目的高尔夫包括行走吗？我认为这场争论的背后是在讨论行走是否在一定程度上决定了高尔夫是否算是一项真正的运动竞赛？毕竟，在高尔夫球是静止的，你必须把它打进洞里。高尔夫球是否更类似于篮球、棒球和橄榄球？它是否真的算是一项体力运动竞赛？还是说它更像台球？台球也是静止在那里。就算你身体不好，也能参加。它包含了技巧但不是体力运动的技巧。会不会是那些擅长高尔夫的人职业球员认为，把高尔夫作为一项运动项目来被世人认可和尊敬，是十分重要的，而不只是被人当作一项类似于桌球的技巧游戏？假如那是关键的问题，我们就会有一场关于目的，从目的论的角度的讨论以及关于荣誉的讨论。是哪种美德真正让高尔夫运动值得被荣誉和认可？亚里士多德的这两个问题引起了我们的关注。我们下次继续这个案例。

（感谢网友“长沙—老狼”参与本课排版工作）

## 第二十课 自由与适应

上次结束时，我们在谈论 Casey Martin 是否有权利在 PGA 巡回赛中以高尔夫球车代步。大家最好回忆一下我们上次的讨论，而什么才是理解政治哲学的关键点。还记得，我们在谈到亚里士多德的正义理论，其正义理论的取向我们称其为“目的论”。从目的论的角度看来，为了分配权利首先我们不得不弄清关于其社会活动的目的或最终目标。其正义理论的另一个取向对于亚里士多德来说，关于适宜度的问题；即让具有美德和才华的人配上合适的角色。

现在，我想先结束关于 Casey Martin 争取以车代步的讨论。然后，再回到另一个更深远意义的问题。即奴隶制的问题。对于 Casey Martin 的请求，你是怎么看的？我们是否应该为他提供这个方便（以车代步）考虑到这项运动及巡回赛的本质以及其目的？“如果不提供他一部球车，算不算歧视呢？”一些人说。其他人回应说，“那不算歧视，如果他可以骑车，对其他选手不公平因为他们都得花力气，在球场上行走，变得气喘吁吁、疲惫，我们上次讨论到此大家怎么看关于公平的问题？好，Jenny。

学生 5：“我的问题是为什么 PGA 不让所有球手都可以选择开或不开球车？通过阅读材料我了解到，许多不是 PGA 组织的高尔夫巡回赛，并不禁止使用球车。比如元老级巡回赛，就允许并鼓励使用。所以，为什么 PGA 不这么做呢？为什么不让所有人都使用球车呢？允许给所有人使用球车，然后大家选择用还是



不用。这样的话，那些比较守旧的人可能依旧会说，“好吧，我仍然选择在球场上行走。尽管我知道，这样会比那些开车的人更累。”

好，好的，大家觉得 Jenny 的提议怎么样？为了公平，为了避免说只给 Casey Martin 有（开车的）优势。（如果开球车真的算是一种优势的话）那就让所有想开球车的人去开吧。是不是所有人都对这个方案满意呢？这是否就能平息整个两难困境呢？谁想回应一下 Jenny？说吧。

学生 6：“正如上节课提到的如果你那样做，你就是有损高尔夫的精神。而这种精神是许多人乐意看到的。如果你允许每个人开球车，就算这样能给予每个人同样的比赛条件，它让高尔夫更不像一项运动项目，像上节课有人指出的那样。这就像如果有人决定参加一项体育赛事，而他们想要占点优势。比如，假设你去游泳，然后你说，“好吧，他想要把脚蹼也穿上为什么我们不允许，所有人在游泳时都穿上脚蹼呢？”

假设在奥运会游泳赛事上，让人们自由使用脚蹼，又会发生什么呢？Jenny，我们最好让 Jenny 来回应这个问题。Da 说，那样好像有损运动竞赛的精神就好像奥运会游泳项目，你让所有人都可以穿上脚蹼比赛。Jenny，你怎么对 David 说？那会破坏运动的精神。

学生 5：“你同样会破坏高尔夫的精神，如果你不允许一个真正热衷于、而

且非常擅长这项运动的人参赛只因在高尔夫的一个方面( 他不能达标 )高尔夫运动的核心 是用高尔夫球杆击打球并把它打入洞中。对不起, 我不打高尔夫, 但就我所看到的, 那才是它的要点。我读了 PGA 和 Casey Martin 的裁决判词中, 他们说, 因为在球场上行走, 不是高尔夫的本质部分, 只有挥动球杆才是。”

好, Jenny 回答了 David 的问题。那么, 在球场上行走真的不是必要的吗?  
那么, 我们回到对目的的讨论。

学生 5: “我的意思是, 我确信, 像轮椅篮球一样我们会有许多不同的竞赛允许那些残疾人只需要动动他们的手臂也能参赛。”

好的, 是 Michael 你怎么认为?

学生 7: “Jenny 刚才说, 像轮椅篮球, 假如你不能打篮球, 你还有这个选择, 我想, 在 PGA 巡回赛里有着另外的选择, 但 PGA 巡回赛是最好的、顶级的。而你不得不尽全力来完成比赛的要求。”

好的, Michael, 你想对 Casey Martin 说, 我们有残奥会供那些残疾人参加。去参加残奥会版本的高尔夫赛事吧。那就是你要说的?

学生 7: “是的。我认为, 行走是高尔夫运动的一部分。而对于 Casey Martin,

如果他不能在球场上行走，我不认为他能在 PGA 比赛。”

好的，非常谢谢你们的争论，这场争论的什么结论让我们又回到亚里士多德的正义理论？其中一点就是行走是高尔夫的本质部分吗？Casey Martin 是否拥有，PGA 必须去尊重的权利，要决定这件事似乎取决于（这也是亚里士多德所建议的讨论和解决问题的方式）行走是高尔夫的本质部分吗？这是该故事的其中一个道德问题。而这里还有第二个道德问题，按照亚里士多德的观点来看。这场讨论的关键之处也是亚里士多德提出的第二个的关键之处就是荣誉。Casey Martin 想争取骑车参赛，那样他就能去争取 PGA 这项顶级赛事的荣誉。现在，为什么那些职业高尔夫球手，那些优秀的球手，例如 Jack Nicklaus、Tom Kite，他们上庭作证时，在这次阅读材料中，我们看到他们反对让他用球车，而且我相信，他们同样会强烈反对 Jenny 你的让每个人驾驶球车的建议。从某种意义上，它回到了 David 的观点。让高尔夫轻松点怎么样？职业高尔夫球手对于他们所参加的运动是否是一项真正的运动是十分敏感的。假使每个人都骑着一辆球车，或允许大家这么做很显然（取决于你们各自的看法）高尔夫就不算是一项真正的运动竞技。而只是一个游戏一项技巧的游戏，而非运动。这不仅是在讨论目的、目的论的问题，而且是在讨论从什么角度，来讨论高尔夫的目的。高尔夫球的本质是什么？亚里士多德建议说，这些讨论都会不可避免的讨论到关于分配荣誉的问题。因为高尔夫球的部分目的，不仅仅是娱乐观众；从亚里士多德的观点来看，Scalia 在这点上错了。它不仅仅是提供娱乐，不仅仅是让人们快乐，它不仅仅是一项娱乐。它是荣誉，是奖赏，它在认可一种特定的运动才能，至少那些取得过

高尔夫最高荣誉的人，都会强烈地支持这种观点。

你们中有些人站在了 Scalia 的立场。Scalia 说：“这是一个非常困难的、愚蠢的问题。”“高尔夫的本质是什么？”那不是美国最高法院能够回答或者应该回答的问题。那就是 Scalia 的观点，而他说... 对于高尔夫的本质是什么这个问题，他碰巧采取了一种强烈的反亚里士多德派的立场，“一项游戏的真正内涵是没有目的的，”（即没有所谓的关键点）“除了娱乐（的目的）”，Scalia 说。他说，“那是游戏和生产活动之间的区别所在。”你可以想象，Scalia 会是哪种体育的爱好者。“还有”，他说，“我们不能说，游戏的任何一种主观的规则就是其本质。”然后，他援引了马克·吐温关于高尔夫的贬低性评论。他说：“许多人视行走为高尔夫的首要特征。”这里是马克·吐温对其的经典批评：‘一次的好好散步被破坏了。’”但是 Scalia 忽略了游戏的一个重要特点，还有当讨论到权利和公平的问题时，他说游戏、体育、运动性竞技，只是单单为了娱乐，只是一项功利主义的消遣。而一个持亚里士多德观点的人会说不，这不只是关于娱乐。真正的体育，真正的运动项目，还是一种欣赏，不只是娱乐。那些看体育的、关心体育、参与体育的人都了解这一点。换句话说，观赏体育和纯粹看大场面是有区别的，区别在于，体育是一项实践活动，它召唤力量、荣誉和奖赏，还有特定的才能、特定的美德。而那些会欣赏这种美德的人才是真正的、有见识的体育迷。对于他们，看体育比赛不只是娱乐，而这意味着，我们总是能找到什么是一项体育的本质特征，我们是可以弄清这些争论的。而无需在意是否应该由法庭做这个判断。PGA 在自己内部的审议里能够弄清这个问题，这就是为什么，他们会非

常在意他们的观点，坚持他们的观点，坚持认为行走、（以及其带来的）费力、疲劳，是体育的本质部分，而非无关紧要的。这些阐释了目的和荣誉的这两个特征。亚里士多德说，我们在思考正义时要考虑到这两点。现在，我想让大家思考亚里士多德的正义理论是否正确。是否有说服力。我要听听你们对此的想法。我希望看到有人提出鲜明的、重要的反对意见。如果公正是关于适宜度的问题，找到人们合适的角色。让那些具有美德的人找到合适的荣誉和承认。如果那就是正义，那么，它还留下自由的空间吗？这是对亚里士多德的正义的目的论说法主要反对意见之一，如果某些特定的角色、社会角色，就是我恰当的、合适担当的角色。那么，我还有权为自己选择我的社会角色和我的生活目标吗？目的论给自由留下了空间吗？事实上，你可能会记得，罗尔斯否认正义的目的论说法。因为他说，正义的目的论的理论威胁到了公民们平等的基本权利。所以，让我们开始检验一下亚里士多德是不是正确的？特别是，他思考正义的目的论方法是否与自由相冲突。现在，一个明显需要我们担心的理由是亚里士多德为奴隶制的辩护。他维护奴隶制。

奴隶制是他那个时代雅典的一种制度。他是怎样为奴隶制辩护的呢？要让奴隶制是公正的，需要满足两件事、两个条件，首先，奴隶制是必须的。亚里士多德说，至少在我们的社会中，奴隶制是必须的。为什么它是必须的？如果要让其中一些公民无需参手工作业，以及奴仆性的、家务性的杂活，从而去参加集会，去研讨政治。那么，就不得不让另一些人去干那些奴仆性的工作，这些维持生活所必须的工作。他说，除非你们能发明一些科幻的，或技术设备，然后让它们



代替那些奴隶去完成这些艰苦的家务活。假如一些公民们要去研讨善要想实现自己本性。

所以，奴隶制是必须的那是为了过上城邦生活，为了让一些公民有机会为了参与研讨、辩论的、实践智慧的生活，当然，这里需要满足一些更为深入的条件，奴隶制不仅是作为维持整个社群所是必须的，而且它现实就是如此还记得刚才关于适宜度的那个标准吗？不得不有奴隶制，因为对于一些人来说成为一个奴隶，是公平的，或者说是恰当的，或者说这些人具备了适合的条件。亚里士多德按照他自己的标准，赞同说，想要奴隶制是公平的，就必须满足这些条件。在一段凄惨的文字中，他说，确实有一些人，他们的天性就适合去做奴隶，他们有成为奴隶的素质。而另外有些人，他们则有别于一般人，尽管有同样的身躯，却有不一样的灵魂，有些人就是要被统治，对于他们来说，成为奴隶，就是实现他们本性的最佳途径。他们可以从其他人身上认识到理性，但他们无法参与其中，也无法运用理性。而我们多多少少了解到这点。亚里士多德一定料到，这样说是危险的，这种说法是有压力。因为他很快知道，那些不支持他的人会有一个观点。而那些不同意的人，会指出一点在雅典，有许多人是奴隶，不是因为他们生来就是奴隶，或适合当奴隶，只因为他们被俘虏了，他们是战争的失败者。所以，亚里士多德承认，在现实中，古代雅典里奴隶身份不一定是他们真的合适或天生做奴隶。因为一些现实中的奴隶，只是因为不走运，在战争中被俘虏而成为了奴隶。按亚里士多德的论述，就算是因为公民的缘故，必须要有奴隶制度，但如果一个人不适宜当奴隶，而被分配到这个角色，那是不公平的，是不合适的。



亚里士多德承认，让那些不适合的人成为奴隶，这样的奴隶制度是一种强迫。说奴隶制是错的原因，不在于它是强迫的。（尽管）强迫也是表明它就是错的一个指标，因为这种奴隶身份并非出于本性。假如你不得不强迫某些人担当一个角色，这明显说明，他们不属于那里，这个角色不适合他们，而亚里士多德承认这点。所有这些，关于亚里士多德为奴隶制辩护的例子，并非说明了，目的论的原则、人和角色之间要匹配的这种正义的观念其中一些地方是错误的，因为我们完全可以用亚里士多德自己的说法，来解释这个实际应用的问题错在哪里。我想以自由的名义，来对亚里士多德进行一个更大的挑战。但在那么做之前，我想看看，人们是怎么想的对于亚里士多德的这个正义即适宜度的说法，他的这种目的论的方式，以及荣耀彰显的角度还有我们对长笛、政治生活和高尔夫的讨论中出现的分配正义问题。你们可以借此弄清楚没听明白的地方。或者提出反对理由。说吧。

学生 8：“我反对亚里士多德的理由在于他想帮人们匹配到一个相应的角色。如果你像个海盗一样走路和说话，那么，你应该去当海盗。这是正确的。我觉得，亚里士多德的观点其奇怪和自相矛盾的地方在于如果你像一个海盗一样走路和说话，你就不能当投资银行家，因为那不是你本性该要做的。假设你有一条假腿、一个眼罩和一副不满的性格，你应该去到海盗船上远海航行。所以他没有...”

但有些人会说这两种职业之间的差别不像你说的那么大，不过你说的很好。我理解你的观点。好的，继续。

学生 9：“这似乎忽视了个人权利。我也许是全世界最好的看门人。我能把那份工作干得最有效率，好过现今世上的所有人。但也许我不想从事它。也许我想从事其他某种职业，对我来说似乎不是一个真正好的选择。”

好的，你的名字？

学生 9：“Mary-Kate。”

好。让我们再听两个人的发言。说吧。

学生 10：“我想，在高尔夫球车的争论中提到了一点，是我反对这种目的论的推论模式的主要理由。Michael，我想那是你的名字，对吧？Michael 认为，行走是高尔夫的内在部分。而我自己则认为，行走不是其内在部分。我感觉，无论花多长时间，去争论这一点，都永远不会达不成一致的意见。我认为，目的论的推论方式不会真正地让我们达成任何一致的意见。”

好的，你的名字？

学生 10：“帕特里克。”

帕特里克，让我来试着回答这些反对的理由。先从 Patrick 的理由开始。那是一条重要的反对理由。我们争论了行走是否是高尔夫的本质，就是在这样一个看上去微不足道的小事中，我们都不能够达成一致的意见。那么我们怎么可以期待，在一些更重要的事情上 例如 政治共同体的基本目的、最终目的时达成 一致的意见？因此，如果我们不能对公众生活的 目的达成一致的意见，那我们怎么能根据什么是它们的目标、目的、美德所在，来判读正义与否呢？这是一个重要的反对理由，以致当代的政治理论担心人们会在这些问题出现分歧，于是得出一个结论：正义、权利和宪法不能依附于任何一个善的观念、或政治生活的目的上。相反，我们应该提供一个让人们自由选择他们自己所认为的善，选择他们自己的生活的目的。现在，Mary Kate 说，“如果一个人非常适合做某个角色，比如，看门人的角色。但他却想做其他角色，想达到更高的成就，想要选择另外一种生活，那该他怎么办？”所以，这就回到了关于自由的问题。如果我们确定某些角色就是适合我们的天性，那么，这个角色是什么至少应该由我们自己决定？应该是由我们自己决定，什么角色是适合于我们的？这就让我们回到了亚里士多德与康德、罗尔斯，这两种观点的对峙。康德和罗尔斯认为，Patrick 讲的是有道理的。他们说，正是因为在一个多元社会中，对于 美好生活的本质这个问题，会有分歧，我们就不应该试图将正义建立在任何一种特定的看法，所以，他们拒绝目的论。他们拒绝，将正义与某个善的概念联系在一起。罗尔斯式、康德式的自由主义者们说在讨论目的论时，其关键之处 如下：如果把正义的判断标准依附于某个特定的对善的看法，如果你把正义看作是，一个人和他/她的角色之间的匹配的话，你没有给自由留下空间，而想要自由就是要不依赖于从我

的父母或者我所在的社会，所留下来的任何特定的角色、传统、习俗约定。为了在这两大观点之间做出选择，究竟是亚里士多德是正确的，还是康德和罗尔斯？我们需要详细研究：权利是否优先于善？这是问题一。我们还需要研究，成为自由人，一个自由的道德主体意味着什么。自由是否要求，作为一个选择主体的我，就得去坚守我自身的目的？还是说，我得去寻找发现我真正的天性？这两大问题，我们下次会继续讨论。

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## 第二十一课 社群的需求

康德认为，亚里士多德错了。你们还记得亚里士多德说过，为了探寻理想的宪法，我们必须首先搞清楚，什么是最好的生活方式。康德反对这一看法，他认为宪法和法律，不应当是体现、支持或者推崇任何一种特定的生活方式。对亚里士多德来说，法律的全部意义，建立城邦的目的，就在于塑造公民的性格，在于培养公民的美德，在于培养公民的卓越品性，让其可以过上美好生活。另一方面，对于康德来说，法律的目的、宪法的意义，并不是引导或者推崇美德。在此框架下，公民可以自由地追求他们自己所认为的美好生活。我们看到了他们的正义理论的不同之处，其差别在于，他们对于法律的认识、宪法的作用、政治的意义。这些差异的背后是，他们对作为一个自由的人究竟意味着什么，这一问题的不同认识。

对于亚里士多德来说，我们是自由的，只要我们有能力实现我们潜能。而这就将我们引到了关于适合的问题上来，人与他扮演的角色之间的适合度，量体裁衣。康德反对这种看法，取而代之的是，他有名的关于自由的严格定义。即自由是自主行动的能力，自由意味着，按照我给自己定下的律令行动，自由即自律。在康德和 Rawls 眼里，道德的力量一部分在于，人是自由和独立的自我，能够选择他或她自己的目标。这种自我的形象，是自由独立的。这给我们提供了，一个强有力的、不受任何束缚的视角。因为它认为，作为自由的道德主体，我们不被任何并非我们选择的。而这意味着，我们是自由独立的、自主的主体。

那些批评康德和 Rawls 式的自由主义的、提倡社群主义的人们，认可这种自由观的确很有说服力和鼓舞人心，人们可以自由独立地进行选择。但是他们认为，这一理论漏掉了一些东西。它遗漏了整个道德生活，甚至还有政治生活。这包括：成员资格的义务、忠诚、团结。Alasdair MacIntyre 提出了一种，他称之为叙事式自我的观点。MacIntyre 认为，人类本质上是一种讲故事的生物。这就意味着，要回答“我该做什么”这个问题，必须先回答一个问题，“我的哪个故事里的一部分”这和社群以及归属有什么关系呢？MacIntyre 说到，一旦你接受了道德反思中叙事性的一面，你就会注意到，我们绝不会仅仅作为个人来追求美好，或做道德的事。我们是带着我们身处的情景所赋予我们的社会身份标识，是这个或者那个城市的居民。我属于这个宗族，那个部族，这个民族。因此，MacIntyre 认为，那些对我而言是好的事物，是针对这个角色背景下，是好的。我从我的家族、城市、部族、民族过去，继承下来各种各样的债务、遗产、期望和责任，这些构成了我生活的前提，我的道德初始点。这在某种程度上，赋予我的生活以道德独特性，至少在某种程度上，受制于。MacIntyre 认识到，这种叙事式的看法，这种受限制的自我，使得他的理论，与现今的自由主义和个人主义不协调，从个人主义的观点来看，我是我自己选择成为的那个人。

除非我选择承担那样的责任，但是 MacIntyre 认为，这反映出某种道德上的肤浅，甚至是盲目。他说，这种责任感涉及到集体责任，或者从过去的历史中流传下来的责任。他还给出了一些例子，那样的个人主义被某些当代的美国人表现



了出来。这种人拒绝承担奴隶制给黑人带来的影响，他们说“我又没有拥有过奴隶”。又比如，一些 1945 年以后出生的年轻的德国人认为纳粹对犹太人的恶行，同他们和当代犹太人之间，没有任何道德上的关联。

MacIntyre 认为，这种对历史健忘的态度，相当于是 一种道德缺席。一旦你认识到我们是谁， 从中了解到我们的义务。他说，叙事式的观点与个人主义的对比，是明显的。我的生活故事，总是镶嵌在我所在的社群的故事里，这个社群赋予了我的身份标识，我带着过去的历史而生的。试图斩断与过去的联系，就会使我现在关系变形。这就是 MacIntyre 的一种有力的观点：从它与社群关系、历史、叙事的特定纽带中，分离开来现在，我听听你们怎么看，社群主义者对个人主义、唯意志主义者、无拘无束的自我观的批评。我们先看看道德和政治义务的两种不同的产生方式，而这两种看法取决于你接受哪种。在自由主义者来看，道德和政治义务可以经由两种方式产生。有一些自然义务，是作为人类本身所负有的。 将人视为人， 加以尊重的义务，这种义务是普遍的。

此外，正如 Rawls 指出的，还有一些是自愿的义务。 这些义务是针对特定的人，经由我们同意所承担的义务，不论是通过承诺、交易或者合同。现在就涉及到，自由主义者和社群主义者，这两者的自我观。是否还有另外一种义务？社群主义者认为，有。存在第三种义务，它可以被称为团结、忠诚 或者成员资格的义务。社群主义者认为，自由主义者对于义务的全部论述，不论是自然义务，还是自愿义务，都不能涵盖维持成员资格、团结的义务。对于忠诚，其道德力量

部分在于，忠诚是理解我们是谁（我们归属哪个群体）所不可或缺的。

有什么例子呢？然后我想听听，你们对此有何看法。关于由成员资格产生义务的例子，而是由于你是社群的成员而产生的最常见的例子，就是和家庭有关的义务。比如，父母和孩子之间的关系。假设，有两个孩子掉到水里了，而你只能救其中一个。你难道有义务，要通过抛硬币来决定救谁？还是说，如果你没有冲上去救自己的孩子，那就是道德上的麻木迟钝呢？现在，你可能会说，是父母自己同意有孩子的。这里存在不对等的问题。如果有两位年迈的父母，一个是你的，这涉及到同意了吗？明显没有。或者举几个政治上的例子：在二战期间，法国抵抗力量的飞行员奉命轰炸被占领的法国领土。一天，一个飞行员接到自己的轰炸目标，他发现要轰炸的村庄正是他以前的家乡。他拒绝了这一任务，其理由不是因为这个轰炸目标不像昨天的目标那么有必要。而是因为，他下不了决心。对他来说，向自己人丢下炸弹是一种道德罪行。尽管这样做是为了解放法国---他所支持的这项运动。那么，我们敬佩他吗？

如果我们赞同他的做法，社群主义者会说，再举一个例子：很多年前，在埃塞俄比亚爆发了饥荒，成千上万的人面临饥饿的威胁。以色列政府组织空运物资，救助埃塞俄比亚籍的那些犹太人。他们就只救助了几百个埃籍犹太人。那不是一种道德上的偏心，或者说是 一种偏见？或者像以色列政府所认为的，这次空运应当承担维护团结的特别义务？这样，我们就进入了一个更为宽泛的问题---爱国主义。从道德上讲，什么能被称为爱国主义？有两个叫做富兰克林的

小镇，一个是德克萨斯州的富兰克林镇，另一个是在格兰德河畔的富兰克林镇，隶属墨西哥。

国家边界在道德上有什么意义？为什么作为美国人，我们是不是有更大的责任，为德州的富兰克林镇，提供医疗、教育、社会福利和公共保障，而不是墨西哥河畔的小镇里，面临同样匮乏的那些居民？按照社群主义者的解释，成员资格的确重要。爱国主义至少是一种潜在的美德，原因是：它是公民义务的一种表现。你们有多少人同意，存在这第三种义务？即 维护团结，或者作为社群成员的义务，多少人赞同？又有多少人对此持批评态度？有多少人认为，所有的义务都可以用前两类义务来解释？

学生：“是的，对于这个观点，我最大的疑问是：如果你接受了这种义务，来作为一种道德约束。那么，这些义务之间，就很有可能会重叠，很可能会出现，要在两种善行之间选择，能否允许我们在其中做出选择？”

很好，你叫什么名字？

学生：“Patrick。”

所以你担心，如果我们承认了社群成员的义务，或者维护团结的义务，而我们又身处不同的社群，那它们的要求可能会发生冲突，如果有多种义务同时出现，

而只能选择其中一个，我们如何抉择呢？好的，好的，一种解决方法是，我们可以这么看。说到底，我们都是人类社会的成员，在此前提下，我们会有范围更窄一些的身份。比如我是美国人，或者我是哈佛大学的学生。所以，我们应当服从的、最重要的群体就是人类社会。这样，你就可以评估，看看什么对你是最重要的。Nichola，你说，我们身处的最大的社群---人类社会，总是应当优先考虑？

学生1：“是的。”

Patrick，你对这个答案满意吗？

学生：“不满意。”

为什么？

学生：“选择普遍的义务，而不是某个具体的义务，这似乎太武断了。我也可以说，我应当首先承担我自己最具体的义务。例如，将我的家庭看作是维持团结的一个小单位。也许我应当首先承担家庭这个单位的义务，接着可能才是我居住的小镇，然后是我的国家，再然后是人类。”

很好，谢谢。我想听听，对于社群主义者观点的其他反对意见。已经有人反对说，要是善和善之间发生冲突了怎么办？谁反对这个观点？谁认为爱国主义只

是一种偏见，是我们应当克服的偏见？好的。

学生 2：“爱国主义反映了一种社群的成员资格，我认为问题在于，有些成员身份是自然叙事，而公民身份的叙事则是建构起来的，这是不对头的。就像那条分界河，其实只是一种历史巧合，仅仅因为我随机降生在美国，而不是墨西哥。”

谁能回答她的问题？好的。

学生 3：“我认为总体上说，我们得问我们的道德义务是从哪里产生的。一种是亲属关系，另一种是互惠。你和街坊邻居相互交往，在经济上，与这个村里的其他人来往，同样也不认识那些住在德州富兰克林镇的人。”

很好，还有谁？好的、

学生 4：“我觉得，爱国主义就像我们在大学里看到的学院精神，或者是宿舍精神，在这里，新生被分到某一个宿舍，仅仅一天的时间，他们就会对自己的宿舍产生某种依恋，或者自豪感。所以我认为，我们也许可以区分出：由于社群的观念而生的道德义务和仅仅是情绪化的、或情感上的依恋。”

回到我刚才的那个例子，关于孩子对父母的义务，你对此有何看法？那种义务是否就是情感上的，而非道德上的？排除以后建立道德义务的可能性，仅仅是

因为我们随机地被分到某个宿舍。是的，我是说，如果你看看收养的例子，而后来你的养父母收养了你。如果你必须在他们两者中选择，大多数人会说，你对抚养你、和你有着重要交流的养父母的义务更多一些。

我能再问一个关于父母的问题吗？

学生 4：“当然可以。”

你是否认为，如果一个人的父母不怎么好，他承担的义务就少一些？

学生 4：“我不知道，因为我没有过不好的父母。”

我想这样结束这节课挺好的。谢谢。我们下次继续。谢谢。



## 第二十二课 我们的忠诚在哪里

今天，我们会谈一谈对于维持团结或社群成员的义务的最有力的反对观点。然后我想看看，这些反对能否成立。其中一个反对意见是我们上次讨论中提到的 Patrick 说，如果义务源于社群成员资格和身份，而我们又身处多个社群。接着 Rina 提到了一些，引出团结和成员身份的道德力量的例子，关于父母和子女，关于法国飞行员拒绝轰炸自己家乡的任务，关于以色列政府向埃塞俄比亚籍犹太人空运物资的例子。Rina 说，这些例子也许能在直觉上引起共鸣，而并不是真正的道德义务。这些反对意见，并不一定都是针对爱国主义本身。这些反对意见针对的是，把爱国主义理解为是一种无需经过我们同意的、维持团结和社群成员的义务。这一反对意见同意，我们应当对于我们所处的社群负有爱国精神的义务。但是这种意见认为，所有的爱国义务或者社群的、成员身份的义务，实际上都是建立在自由的观念基础上，并且能完美地和自由相容，征得同意，不论是默认地，还是明示地，或互惠的。

例如 Julia Ratthel 在网上说，自由主义可以赞同把爱国作为一种自愿的道德义务，爱国、爱家都属于自愿的一类。Julia 指出，因为毕竟康德的理论框架允许人们自主地选择，表现出以上提到的美德，如果他们愿意的话，来体现社群价值的道德力量。Julia 在哪儿？好的。我概括得清楚吗？Julia 实际上和 Rawls 对这个问题的看法是一致的。你没意识到吗？你是自己想到的，那非常好，他们都是自愿做出的选择。但我相信，Rawls 会认为，严格地说来，公民没有任何政

治义务，以及谁在执行这种约束。所以 Rawls 承认，对于普通公民来说，并没有政治义务，除非某个公民自愿的、经过其同意的，承担或选择那样一种义务，表达我们对于国家、人民和家庭的忠诚，不做任何不义之事就行了。有人认为，作为社群成员的义务，实际上是一种集体的自私。我们怎么还要以此为荣呢？

那些持反对观点的人，也许可以集中到一起。现在已经有一些人站在社群主义者一边，为爱国主义辩护了。让我现在走下去，加入到这些批评者中间去，加入到社群主义的批评者当中去。好的，谢谢 Kate，爱国主义的批评者们，都集中到这儿来。Patrick 和 Rina，如果你们愿意可以加入。其他发过言的都可以加入。但是现在我想听听，为爱国主义辩护的声音。AJ Kumar 在哪儿？AJ，好像大家都认识你，你说，和一般而言的社群相比，我觉得对我的家庭责任更大，同样的道理，和一般人相比，我对我的国家责任更大。因为国家对于我的身份标识来说，其影响占了相当大的份额。对我而言，爱国不是偏见。AJ，你对这组人有什么要说的？站起来。

学生 5：“我认为，这里有一些基本的道德义务，这些义务是源自于社群成员的责任，而正是这样的责任构成了他们的身份标识。现在政府的很多做法，美国是个崇尚自由的社会，身在其中的我们可以反对某些事情。然后，我回到父母的那个例子。即使是在哈佛大学，我认为，比起哈佛大学这个社群，我对我的室友负有更大的责任，因为他们也是构成我身份的一部分。”

但它构成了我们身份标识的一部分，好的，谁同意这一观点？Mike？

学生 6：“是的，关于对其他人的义务，正是由于生活在他们中间。我就是纳粹德国的公民，如果我曾经从纳粹那里得到好处，我就必须感到对德国负有义务。我的意思是说，我认为。我对此的看法是，美国现在有成千上万的抗议者，他们举着标语‘和平就是爱国’，我个人是同意的。我想说的是，他们强烈地反对几乎所有布什政府的现行政策，但是他们依旧认为自己是爱国的。而我倾向于同意，他们那样的做法也是一种爱国主义行为。他们履行的义务在哪？尽管我不想回到约翰洛克，但我还是想回到他。在他看来，当人们加入社会的时候，你确实是通过一些方式离开。但洛克仍然提供了这样的选择。如果我们认为，我们对于社会的责任是一种道德责任的话，那就意味着，在你确切地知道这一社会将会如何发展，以及你在这社会中的位置如何之前，这种义务就存在了；那意味着，你对一个完全未知的对象，负有一种约束的义务，而那一对象可能完全和你的个人信仰，或者你所持的正确看法所不相符合。你是否认为，那样的一种公共义务或爱国主义，就意味着向社群开出了一张空白的道德支票？基本上是的。你就获得了某种基于互惠的义务，这样说是合理的。但如果说，这样你就有了道德上的义务，我认为还需要更有力的论证。”

还有谁？还有谁想对此发表看法？我觉得，我们可以说，如果你与某个社会存在着互惠关系，你就对社会负有道德上的义务。这就是为什么我们可以说，我们欠了社会，就隐含了我们对社会负有责任。给我们保护，安全，保障，所以我

们才应当对社会负有一定的义务。除此这个原因之外，我们没有其他理由对社会负有责任。谁同意这一看法？Raul？我认为，只有当我们放弃了我们的公民责任时，才能说给社会开出了一张空白的道德支票。当我们说，爱国主义是一张空白的道德支票，此时这一辩论就变得必要了。因为爱国主义成了是一种罪恶。我认为爱国主义是重要的，因为它赋予我们一种社群感，一种我们能够参与社群事务的、共同的公民美德。此外我还认为，正是因为出于这种对于国家的爱，你才可以和别人辩论，你可以在尊重别人观点的同时，仍然参与到和他们的辩论中去。

如果你说爱国主义是一种罪恶，你就放弃了和他们辩论，你就是把位置让给了那些原教旨主义者，那些观点更加激进的人，那些可能会威胁到社群的人。与此相反，我们应该让社群中的其他成员参与到共同的道德基础上来。我们听到了来自 AJ 和 Raul 的观点，正如我们听到 Ike 和这里对爱国主义的批评者们的意见。我们所担心的是，如果真的将爱国的义务视为一种社群的方式，AJ 和 Raul 而这些正义原则，可能蕴含在我们的社群里。如果没有的话，我们就拒绝这种忠诚。Julia 你说吧。我想，你需要定义一下，爱国主义指的是什么。听起来，你认为我们对爱国主义的定义是一个比较不宽松的定义，你所理解的爱国主义，仅仅是要求有国民参与其中，而我认为，爱国主义的基础涉及到道德和美德。我认为，如果你同意对爱国主义定义更严格一点，为了更深入这个争论，我们要看看来自社群主义者的辩护者的一个例子。这个例子中，忠诚以与正义的普遍原则相抗衡，忠诚甚至要胜过正义的原则。或者，你们之中，有谁想觉得，作为社群成员和维持社群团结的义务，是独立于那些公正的原则。能举出这样的例子，

对国家的忠诚，要先于对个人的尊重？说吧。

学生 7：“例如，我正参加一个经济学的测验，我发现我的室友正在作弊。对于他而言，这是一件坏事。因为我对他有责任，他并没有用社群名义，用一些关于正义的普遍原则。”

你叫什么名字？站在那。你叫什么名字？

学生 7：“Dan。”

是个真实的考验。多数人同意 Dan 的说法，还挺有市场。多少人不同意 Dan 呢？Peggy.你是说，那样做是一种选择，但，什么才是正确的？多数人都举手说 Dan 站在他的室友一边，不告发他是正确的。好，说吧，我也认为，作为一个室友，你了解他的一些内部信息，而你不想把别人的内部信息拿来作为把柄，因为这样做不是什么公道。你花了很长的时间与室友相处，很明显，你会了解他的一些信息，我不认为为了一个更大的社群（整个学期），去揭发他，是公正的。但这样做是忠诚，Vojtech。你赞同 Dan 的做法，认为忠诚是道德的关键地方？是的。你没有责任说出真相，去揭发作弊的人？我觉得没有，为在这里，你了解许多他的信息，而你利用了这个优势来揭发他。

在结束对爱国主义批评之前，我要给你们另一个说法，一个更众所周知的例



子，我预想，这会是 Dan 的一个两难之困境。我想看看，大家对此的反应。此事发生在马萨诸塞，在好几年前，谁知道这个人是谁吗？Billy Bulger，对了。Billy Bulger 是谁？他担任了许多年的马萨诸塞州参议院主席，马萨诸塞州最有权力的政治人物之一。后来，他成了马萨诸塞大学的校长。你们听说过，关于 Billy Bulger 的一个故事吗？Billy Bulger 有一个兄弟叫 Whitey Bulger 而这 Whitey Bulger，他的兄弟，是联邦调查局的首席通缉犯之一。他被宣称是，波士顿一个臭名昭著的黑帮头目。他涉及数起谋杀案，而现在他成了名逃犯。但当联邦检察官，他们传召 Billy Bulger，这位马萨诸塞州大学的校长，在大陪审团和通缉令面前，却拒绝说出他的兄弟、这名逃犯在什么地方。联邦检察官说：来澄清一下吧，Bulger 先生，你觉得对你兄弟的忠诚要比对马萨诸塞人民的忠诚更重要吗？而以下是 Bulger 的说法：“我从没那样想过，我确实需要对我的兄弟忠诚，我在乎他。我希望，我永远不会帮助任何反对他的人。我没有义务去帮助，那些想抓我兄弟的人。”

Dan，你会同意他的做法。有多少人会同意 Billy Bulger 的立场？让我再给出另一个例子，然后让批评者们回应。我们把这些入，称为反对忠诚的批评者。这里有一个更重大的例子，来自美国历史上的一个人物，Robert E. Lee。在南北战争前夕，是联邦军队的军官。他反对脱离联邦，事实上，他被当成是叛徒。当战争逼近，林肯提出让 Lee 全面指挥联邦军队，而 Lee 拒绝了。在一封给儿子们的信中，Lee 描述了他为什么会拒绝。我也无法作出决定去反对我的亲友、我的孩子，我的家。”这里，他指的是弗吉尼亚。如果联邦瓦解了，我将返回我



出生的州，去和我的人民分担不幸。 Dan，这是对你所谓的忠诚原则真正的考验，因为这里有战争的起因，不仅仅要是拯救联邦，而且有反对奴隶制。而 Lee 要为弗吉尼亚作战，即使他不赞同南方州脱离联邦的想法。现在，社群主义者会说，这里有值得大家钦佩的地方，不管这个决定最终是否正确，这里有令人钦佩之处。而且，社群主义者会说，我们甚至无法弄清，Rina 我们无法弄清 Lee 的两难困境是否是，一种道德的两难困境。除非我们承认，从 Lee 的叙述中，他说理解的忠诚是一种道德，而不仅仅是情绪、情感的推动。

好吧，谁愿意回应一下 Dan 所说的忠诚，还有 Billy Bulger 的忠诚，或 Robert Lee 对弗吉尼亚的忠诚？你怎么看，Julia？我想这是一些经典的例子，涉及了各种团体的影响，你在选择你的家庭和国家之间，有互相冲突。我想，这也是为什么选择性地履行义务，是十分重要的原因之一。因为除此外，你怎么去解决这个问题？如果你负有道德上的义务，而又没有办法摆脱这个困境，你需要同时对两个社群负有忠诚。你进入了困境，什么也做不了，你必须做出一个选择。而我认为，要想根据某些东西，来做出你的决定，除了仅仅主观地认为，你属于某个团体更为重要以外，你觉得还有依据什么呢？我猜，剩下的只有随机选择。Julia，这里不是说，Dan 或者 Billy Bulger 或 Robert E. Lee，是否做出了选择，他们当然做了选择。问题是，他们的决定是基于什么原则。社群主义者不否认，这里需要做出选择。问题是，选择什么，基于什么理由？忠诚是否应该....Andre，现在你想发言，好的，你想说什么？

学生 8：“我们注意到有一件事，这三个例子中 所有人都选择了更接近自己的团体，更本地化的团体。”

而我认为要对此说一下，它不是随机的。我的意思是，这里似乎并不存在着冲突。因为他们知道，哪一个团体对他们更重要。他们的家庭高于他们的州，他们的州高于他们的国家，而他们的家庭要高于马萨诸塞州集体。所以，关于什么是更重要的，我们是有答案的。你认为，更本地的、更具体的团体总是道德上更重要的，Andre？

学生 8：“我的意思是，在这三个案例中看上去有这种趋势。”

我同意这点。我认为，我们中的多数会同意，你的家庭也许优先于美国，这个就是你为什么同意 Dan？对室友忠诚，要胜过忠于 Ec10 班和真话？

学生 7：“是的。 我愿意，因为..... 我的意思是，说真话。”

是的，好的，我们明白了。好的。但在关于家庭这个方面，在内战期间，存在着兄弟在战争中相互较量的例子。他们选择国家，而不是家庭。 所以，我想同样的，更多时候，不同的人，会有不同的选择。这里没有一套标准，或一套道德，是社群主义者所坚守的。而我个人来看，那也是社群主义者最大的麻烦，他们没有一套标准的道德义务。告诉我你的名字。

学生 9：“Samantha。”

所以 Samantha，你赞同 Patrick。Patrick 在另一天的观点是：也许假如我们认为，我们的义务是由所在的社群、我们的身份来决定的，他们间也许会冲突，他们也许是一致的，也许会互相对抗。这里没有明确的原则。Andre 说，这里有一个明确的原则---最具体的。而另一天，坐在那里的 Nichola。Nichola 在哪儿？Nichola 说是最普遍的。Samantha，你说，社群的大小，不能成为决定性的道德因素。所以，这里还需要有另一些道德的判断标准。好吧，让我们首先... 爱国社群主义的批评者们，让我们表达对他们的感激，谢谢他们。谢谢他们站在这里，回应这些争论。现在，我们转而讨论，我们刚才所听到的，关于公正的多种立场。那些反对把对社群的忠诚，作为一种独立的道德判断标准，他们的担忧是，这种做法不能找出普遍适用的公正原则，因为我们都生活在某个特定的社群中，我们对什么是美好生活，看法不一样。

假设社群主义者的争辩是对的。假设 权利优先于何谓好的观念不被支持。假设，在决定什么是公正的时候，不可避免地要受到人们对什么是好的这一观念的影响。那是否意味，公正仅仅是一种大家约定俗成的产物，是一种特定时间、特定团体里所流行的价值判断。批评社群主义者中，Michael Walzer 写了一篇文章，他这样描述正义：正义与社会意义有关。一个特定社会是公正的，只要这个社会里的人们都忠实于大家的共识。所以，Walzer 的叙述似乎证实了一种担

忧，如果我们不能找到独立的关于公正的原则，独立于任何特定群体中流行的，对什么是好的判断。因为如果那样的话，我们就会简单地把公平当成是对这个社会、某个时间里所流行的共识、价值、习俗的一种信仰或者忠诚。但那是一种思考正义的适当方式吗？让我们看一个短片，取自纪录片《Eyes on the Prize》，它溯回到 1950 年代的美国南方。一些美国南方人，他们信仰传统，对种族隔离制度都有共识。听听他们关于忠诚和传统的争辩。看看它们是否让你改变刚才的观点，把公平看作是忠于特定社会的共识和传统。

让我们放这个短片吧。“这片土地由两个不同外表的文化组成，一个白色人种的文化和一个有色人种的文化。在我的一生中，我和他们紧密地生活在一起，而现在我被告知，我们虐待了他们。我们必须做出改变，而这些改变快过我的预期。我被要求，要用这种新的思维方式来做出决定，而这是困难的，对我来说是困难的，对所有南方人是困难的。” 那么这里你们看了，求助于传统的自述。这是否向我们展现了公正不能跟特定时间、特定社会中，所流行的、形成共识的，大家对何谓好的观念联系在一起。或者是否有办法，能挽救这个例子中的说法。思考一下这个问题，下次我们再讨论它。

## 第二十三课 辩论同性婚姻

上次结课时，我们讲到了关于“叙事性自我”的概念。而且，我们还检验了这个概念，以及团体或成员义务的概念。这种义务并不是来自于团体或成员的同意，这种义务与契约或协议无关，也与我们可能做出的选择无关。我们内部当中也有争议：是否真的存在这种义务。或者说，所有这些涉及到团体和成员的显而易见的义务，是否可以解读为是一种协议，或对等互利的关系；或者说，是我们作为个体，所应当承担的普遍责任。

后来，就有人提出了关于忠诚和爱国的观点。关于忠诚、团结和成员的观念，在我们的讨论中，成为了一种道德力量。接着，正如我们总结的，我们考虑到了一个似乎很有力的反例，也就是，20 世纪 50 年代有关南方种族隔离主义者的电影。他们谈论到他们的传统、他们的历史、他们的身份，在他们一生中是如何紧密相连。你们还记得这些吗？从那段历史，从那些 南方种族隔离主义者身上对自己身份的认同感，我们能得出什么结论？他们说：“我们不得不保护我们的生活方式。”这是否算是一个重大或决定性的对“叙述性自我”概念的反驳呢？我今天要做的就是继续深入讨论，看看从中能得出什么观点。

让我来告诉大家论题是什么。我打算为“叙述性自我”辩护，以此来反对唯意志论。我打算为“团体或成员义务”的观点来辩护，我想说当我们说到正义，确实存在着这样的义务，支持这样一个观点：不能脱离“善”的问题。但我想区

分开两种不同的方式。正义可能以这两种方式，与“善”联系在一起。然后，我们讨论其中的一种方式。

康德和 Rawls 关于唯意志论的理念是多么的有力和具有解放性。他们的理论另一个更吸引人的地方，是它的普遍愿景，即不带偏见，不带歧视，把“人”当做“人”看待。“好吧，也许是存在着成员义务，但他们是在次要的。”成员义务必须永远处在次要地位，相比我们作为人本身的普遍义务，成员义务是次要的。

但，是这样子吗？如果忠诚必须永远优先于其他特定的义务，那么，朋友和陌生人之间的区别就理应不存在了。这种对朋友利益的特殊关照，将成为一种偏见。它将成为衡量人与人之间的距离的一种尺度。但假如你仔细地思考一下这个观点，它把我们引向的，将会是怎样一个道德世界，怎样一种道德构想？由孟德斯鸠引发的启蒙运动也许给出了一个最有力的.....我认为... 最终极的、最诚实的解释。它解释了这种无情的、普遍化的做法将会把我们引向一个怎样的道德构想世界。他说：“一个真正有道德的人会帮助最疏远的陌生人，就像帮助他的朋友一样。”他还接着说，“如果人们是完全高尚的，他们就不会有朋友。”里面的人们是如此有道德，以致于他们没有朋友，而只剩下对所有人都友好的倾向。

这是难以实现的、是不现实的，更深层的问题是：这样一个世界将难以被当成是一个人类世界。人之博爱是一种高尚的情操，但大多数时候，我们是依靠小范围内的团结来生活的，这也许反映了道德同情心的某种局限性，但更重要的是，



它反映了一个事实，即，我们学会关爱别人，不是通过普遍意义的爱（博爱），而是通过爱的某种具体形式（e.g.友情）。

下面列了一些理由。这些理由是我们一直在讨论和争辩的。判断刚才关于个人与义务的构想是否正确，其中一种方法来就是看看它导致的结果是什么。下面是列举了一系列问题，我们回到上次提到的南方种族隔离主义者。他们感受到历史的沉重。我们值得钦佩这些种族隔离主义者的品德吗？这些种族隔离主义者想保持他们的生活方式。我们能坚定的说..... 如果我们赞成团体成员义务的观点，我们能坚定的说，正义是绝对的。不管你是处于哪个特殊群体，不管他们认为正义应该是怎样的，包括那些种族隔离主义者。

正义可以以这两种方式与“善”联系在一起。其中一种方式是相对的。思考权利，思考正义，就要看看过去所有的群体、所有时代里，占主导的是什么价值标准。而要把正义看作是所有时代都一致赞同的看法，也就是它把正义完全当作是传统。把正义看作是环境的结果。它使得正义丧失了它关键的特征。

而第二种方式，正义则与善行相连或相关。第二种方式不是相对的，它把正义与什么是善联系起来。正义的原则是否合理，不是依靠恰好在某一特定的时刻或某一特定地点占主导的价值标准，而是根据它是否具有道德价值或它的目的是否本质是好的。以非相对性的观点，来判断是否认可某个权利，就得看看它是否尊重或促进某种重要的人类善行。第二种方式严格地说，并不属于社群主义的观

点。这里的社群主义是指让某一特定的团体来定义什么是正义。

我想，在这两种正义与善行的关系里，第一种是不足的。因为，第一种方式使正义成为了社会惯例的产物。它没有给我们充足的道德对策去回应那些南方种族隔离主义者，他们祈求保持他们的生活方式，他们的传统，他们做事的方式。然而，如果正义以非相对性的方式与善行相连，这就有个很大的挑战，需要回答一个很重要的问题。我们怎样才能定义 善？

人们对善持有不同概念，我们怎么看待这个事实？关于主要社会制度的目的，人们有不同的看法。怎样的善行才是值得尊重和认可的，人们有不同的看法。我们活在一个多元社会里，人们对善有争议。那么，是否有某种方法来定义善呢？在解决这个问题之前，我想先解决一个稍微简单一点的问题：当我们讨论到正义，是否有必要、是否不可避免的就要涉及到 善？是必要的。

今天接下来的时间，我想开始.... 我想尝试进一步来思考这个观点。这个观点，即当我们讨论正义的时候，我们不可避免的要涉及到善、意义和目的。让我们来看看，我是否可以确定这一点。当前，同性婚姻引发和涉及了许多一直在争议的观点，道德上的，宗教上的。接受一种正义或权利的观点评价，这些备受争议的道德和宗教问题，例如对同性恋的道德容许度的问题，关于把婚姻的目的作为一个社会惯例来解答那些道德的和宗教的争论，那将会是十分的吸引人。现在我想做的是，在同性婚姻这个例子中，对同性恋的道德容许度，以及婚姻的意义、

目的的时候，把上述问题和下面的问题分开来看：国家是否应当承认同性婚姻。我们的讨论开始了。

我想先听听那些认为同性婚姻不应当存在，国家应该只承认男人与女人之间的婚姻。有谁发言的吗？我找到两个了。我曾经问过两个人，他们已经在我们网上的博客上，发表了他们的观点。Mark Loff 和 Ryan McCaffrey，你们在哪里？好的，Mark。那么 Ryan 在哪儿？

*Mark：“对于性的意义和婚姻的意义，我有神学方面的理解。我认为，对于像我这种，既是基督教徒又是天主教徒的人来说，性的意义：第一，有生殖的作用，第二，让男女之间在婚姻制度里相互结合。”*

你认为婚姻的目的是... 与生殖相联系在一起的。

*Mark：“是的，以及使得男女结合。”*

是的，作为一种社会传统，婚姻的本质与目标就是实现这个目的，去尊崇这个目的——婚姻的目的即繁衍。我是否把你的观点概括出来了？

*Mark：“是的。”*

Ryan 在哪？请说。

*Ryan：“是的，我同意。我认为，理想的婚姻是包含生殖的。好的，政府不应该承认同性恋婚姻来鼓励同性恋行为。如果把同性恋婚姻视为非法，当然是不对的，但也不需要去鼓励大家这么做。”*

有人想回应吗？好。

*Hannah：“我想问 Mark 一个问题。你们两人婚前并没有发生过性行为，但结婚后，你发现，那你是否认为，如果你们两人做爱，却无法繁衍后代的话，你们的婚姻还合法吗？比方说，一个女人.. 两个年纪都比较大的人结婚，那样的两性关系其目的已经超出了生殖。尽管我讨厌粗俗无礼，但我想问你是否手淫过？”*

好，你可以把它用一般化的论点陈述出来，而不是以疑问句的形式表达。好的，请说。

*Mark：“好的，圣经上.....”*

用第三人称代指。

*Mark：“好的。”*

不要使用第二人称这样表达。

*Mark：“圣经上指出，手淫是不被允许的就是有问题的。是的。手淫是可以被允许的行为，因为很明显，手淫不能产生孩子，而我们把它当作是一种美德来坚守。每天我们都会犯错误，人类在很多方面都会有不足，但我想，即便你犯下小错，你有一些道德上的问题（我们都会有的）。”*

好的，你待在那儿。我想听听其它人的看法，然后继续我们的讨论。请待在那儿。请讲。

*Steve：“我想回答一下，关于手淫的问题。”*

好的，请告诉我们你叫什么。

*Steve：“我叫 Steve。”*

Steve，请说。

*Steve：“对于手淫的话题，我的回应是：让你和你自己结婚。”*

好的，Hannah。好的，Steve 已经.....这是一个很好的观点。Steve 已经让我们注意到，这其实是两个问题， 其中一个，某一行为是否是道德允许的。另一个是，国家应不应该通过将（同性恋）婚姻合法化，不管它在道德上是否是被允许的。Steve 做了一个非常好的反驳。你怎么反驳 Steve 呢？

*Hannah：“是大多数人内在需要的东西，即，同性恋也是人，如果你想和你自己结婚，如果我们是立法者，法律应该怎么制定。这是不是说，如果你是立法者的话， 你会投票赞成，制定一部定义非常广泛的婚姻法，让那些想和自己结婚的人结婚。我想，现实中不大可能发生这种事情，但我不认为.....但在原则上，”*

在原则上？

*Hannah：“是的。当然，如果 Steve 想和他自己结婚我不会去阻止他。你会要求国家承认这种单人婚姻吗？会的。那多配偶制的婚姻呢，只要他们双方是自愿的？我认为，只要一男一女，一夫多妻，一妻多夫他们彼此都同意，那就应该得到允许。”*

还有其它人要发言吗，这有许多人..... 好的，这儿。 请站起来 告诉大家你叫什么。

*Victoria：“Victoria。”*



*Victoria*：“然而其他不同的宗教，对婚姻都有着不同的观点。天主教对婚姻的解释强加到我们头上。我们现在的问题是，允不允许同性婚姻。但是公民之间的结合，不仅仅只局限在天主教教堂内的婚姻这一种形式上。国家有权来承认任何一种结合，只要结合的双方愿意，但国家无权将大多数或少数人的信仰强加到其他人身上。”

好的，*Victoria*。有一个问题。你认为国家应该承认同性恋婚姻吗？或者仅仅是承认同性恋者的结合（婚姻的一种形式）？

*Victoria*：“因为这不是他们该在的地方。而公民之间的结合就不同了，我认为公民相互结合，除了国家有权认可公民相互结合这点不同以外，在本质上和婚姻是一样的。去决定婚姻的终极目标是什么。”

还有其它人吗？

*Cezanne*：“国家不应该承认任何类型的婚姻。国家不应该承认任何形式的婚姻，因为这种结合是男女之间的，或者是2个男人、2个女人之间的事。有些人也许会指出，如果政府承认这些婚姻，将会有益于我们的后代，它会给给夫妻双方产生约束力。”

好了，告诉大家你叫什么。

*Cezanne : "Cezanne."*

同我们起初的讨论有所不同。他们指出推崇、承认婚姻和性的任何特定目的。Cezanne 等人认为，因此，政府不应该插手任何形式的婚姻。即，政府不应承认任何婚姻。那是否有可能在思考同性婚姻的问题的时候，撇开道德或宗教上对婚姻目的的争论？谢谢大家今天的参与。大家今天表现非常好，我们下节课继续讨论。

## 第二十四课 美好生活

像一个凡人那样活着，像一个诗人那样体验，像一个哲人那样思考。我们还有两个问题要回答。第一个，在考虑正义的时候，是不是需要先探讨什么是“善”的生活？答案是：是的。这是否能推理出正义呢？是的，我这么认为。让我们尝试解答这两个问题。

为了解答这些问题，我们上次谈到了同性婚姻的问题。之前，我们听过了反对同性婚姻的意见，他们的理由是婚姻的目的，至少一部分是为了繁衍后代，抚养孩子。而那些为同性婚姻辩护的人，他们对婚姻的目的进行了争辩。作为结婚的条件，我们允许无法生育的夫妻结婚。这是 Hannah 在回应 Mark 时，所持的观点。在讨论的最后，Victoria 提出了另外一个观点。她认为，我们不应该为这个问题做决定，我们不应该，至少是国家不应该，法律不应该，在什么是“好”的问题上，观点达成一致。我们生活在一个多元社会，我们有着不同的道德和宗教信仰。我们制定法律的时候应该在不同的道德观和宗教价值之间，保持中立。有趣的是，有些人他们赞成保持中立。他们说，他们既不支持将婚姻限定在男女之间，也不支持同性婚姻。他们以中立为口号，要求有第三种做法，那就是政府不再插手婚姻这件事，政府无需承认任何种类的婚姻。这是第三种可能。后来，Andrea Mayrose 提出了一个有意思的观点，她反驳了那些中立主义者。

Andrea，你在哪里？好的，Andrea，你愿意... 和我们分享一下你的观点。

给她一个麦克风。请说。为什么你认为国家想要在道德、甚至宗教问题上，比如同性恋婚姻这个问题上，保持中立是错误的？

*Andrea*：“我不知道国家是否可以做到保持中立，因为人们的生活同他们的世界观密不可分。也许我只是同意亚里斯多德的观点，即政府的角色是帮助人们活得... 对什么是错的、什么是对的能有一种共识。像同性恋婚姻这个问题一样，我们也可以问关于堕胎的问题你是否认为，我们可以决定堕胎应不应该得到准许或禁止，而不需要对堕胎是否符合道德这个问题上做出评价和判断？不，我不认为有这样的可能。我认为，这个问题存在如此大的争议正是因为人们对一个胎儿是不是一条生命，这一看法深深的影响着他们的判断。如果我相信一个胎儿有生命，有生存的基本权利，那么对我而言，我很难说得出口：‘我可以置之度外，你去做你想做的事情吧’因为这相当于在说：‘不管我的信仰是什么，你去做在我看来是谋杀的事情吧。’所以，我认为，好的，同性婚姻同样也是这个道理。”

你说，你是支持同性婚姻。

*Andrea*：“是的。”

你得出这个观点，只是因为你在基本的道德问题上被说服了。

Andrea：“好的，我认为，在美国，有许多人的信念是被他们的宗教信仰所驱动的，就像那天发言的 Mark，我也是一个基督教徒，我也是个天主教徒，我不得不做很多思考，做很多祈祷，同其他人进行了大量的交谈，最好得出结论说，我不同意天主教的论点，我不认为同性恋是一桩罪恶。一旦我最后得出那样的结论……这看起来有点夸张，是吧？这就像是有点，oh，宗教狂的味道。但是有许多人是信教的，他们的信念和他们的观点都是来源于宗教。我赞同国家做出决定‘同性恋婚姻合法化！’因为我认为，这在道德上没有问题。”

好的，谢谢你。好的，谁想回应一下？如果可以的话，在那里稍等一会。谁想回应 Andrea 的发言？她说，为了决定同性恋婚姻合法化的问题，我们有必要先解决同性恋是否道德这个问题，还要找出婚姻的目的何在。谁不同意 Andrea 的观点？

Daniel：“好的。我想，你完全可以将你的道德观点，以及你对法律应该怎样制定，把这两者区分开来。比方说，我认为堕胎是在道德上是完全错误的。但我不认为，将堕胎非法化能杜绝这个现象。我不认为，将堕胎非法化能中止这种行为。因此，我赞同堕胎合法化。我相信，妇女应该有这样的权利，这样就使堕胎更为安全，（注：这句翻译可能不太正确）可能，我不想同一个男人结婚，但我也不会阻止其他人在法律范围内做自己想要做事情。”

Andrea，你怎么看？无论法律是把它定为合法或非法，它都是在隐含地赞

成或不赞成某些事情。所以，如果让堕胎合法化的话，我们就是在说堕胎是无可争议的作为一个社会整体，我们相当于在说，在我们的社会中，把一个胎儿打掉并没有什么不妥。如果我们宣布它非法，那等于是说，我们的社会认为这么做是有问题的。这就是为什么社会有不同的信仰。

请告诉我们你的名字。

*Daniel : “我的名字是 Daniel。”*

Daniel，你怎么说？这是不是等于说我们集体上同意堕胎没问题？还是说，我们不希望 那些打算要做堕胎手术的妇女要去一些坊间的小诊所，在不安全的条件下堕胎呢？好的，让我们回到同性婚姻这个话题上来，为什么你不得不在是否赞成把同性婚姻合法化这个问题上确定你的立场，Daniel ？

*Daniel : “我认为，同性婚姻应该毫无疑问得到准许。因为，这并不是说...我非得娶一个男人不可。 如果两个大男人自愿的想要结婚，我想不出我有什么理由去反对它。好的，这没什么坏处。我们两者都没什么坏处。即使我认为，这种做法在道德上是错的。”*

好的，让我们看看马萨诸塞州法庭的判决，他们在同性婚姻案子上做出了一个标志性的判决。刚才 Andrea 和 Daniel 讨论的这个问题 非常谢谢你们两位。



法庭是怎么说的呢？在 Goodridge 一案中，要求马萨诸塞州承认同性恋婚姻。法庭的意见是这么说的...法官内部也意见不一，如果你仔细读过他们的判决，你会发现，法院也在我们刚讨论过的两种意见中徘徊。即 Andrea 和 Dan 的意见。Margaret Marshall 大法官的意见是这样的，我们应该持中立的态度。许多人都有很深的宗教、道德和伦理观念，认为婚姻应该局限在一男一女之间，同性恋行为是不道德的。另外，也有许多人同样有很深的宗教、道德和伦理观念，认为同性恋者也有权结婚，同性恋应该得到无差别的对待，就像他们的异性恋者一样，得到公平对待。

这两种观点都并没有回答我们的问题。关键点在于“在法律下，尊重个人的自主和平等”，关键的是一个个体自由选择另外一个人，为其作出专一的承诺（婚姻）。换句话说，问题不在于这一做法是否符合道德，而在于个体是否有权利作出这样的选择。这就是法庭所持的中立意见。自愿主义的立场，即尊重人们的自主、选择和同意的权利。但是法庭似乎认识到，自由主义的、中立的观点，在同性婚姻合法化这个案件上，并没有获得成功。并没有完全实现个人的自主和自由选择，因为如果这只是关于尊重个人自主权的事情，如果政府真的对人们自愿建立的亲密关系持中立态度的话，那么就应该采取另外一种政策。也就是政府和国家应该完全不插手这件事，无需去承认某些特定的婚姻，而不承认另外的一些婚姻。如果政府真的是中立的话，那么它的立场应该是我们先前讨论过的第三种立场，即 Michael Kinsley 在文章中所支持的立场。他认为应该废除婚姻制度，至少是不应成为一种国家职能。也许，“政教分离”是个更好的表达。这是 Kinsley

的建议。他指出，反对同性婚姻的理由就是这超出了中立立场，为了同性婚姻盖上认可的公章。这就是争议的核心。

在亚里斯多德看来，这里的问题在于职位和荣誉应该怎样合理分配，它是关乎社会认可的事情。同性婚姻被认可，不能单单建立在中立、反歧视或自主权这些基础之上，因为这个公共议题的关键是同性婚姻有没有道德价值，同性婚姻是否应得到尊重和认可，它们是否符合婚姻制度的目标。所以 Kinsley 说，你想要中立？如果想，就让教堂和其他宗教社团来提供结婚仪式。如果百货公司或者赌场也想介入这行，也可以让它们去做。这就是 Kinsley 的观点。让两口子自由选择他们庆祝结合的仪式，让他们决定什么时候结婚。如果三个人想要结婚，或者如果一个人想要跟自己结婚，而其他人想要为他们举行庆典，宣布他们结婚，都随他们去做。如果你和你的政府都没有牵连进去，你还操心什么？这就是 Kinsley 的意见。但这不是马萨诸塞州最高法院想要的立场。他们并没有要求废除婚姻制度，或者政教分离。法院并没有质疑政府承认某些结合形式，而不承认其他婚姻形式的角色，相反，法庭对婚姻制度赞颂有加，说“（婚姻）是我们社会最赞赏、最珍视的制度。”然后他们把婚姻的定义扩大化，把同性伴侣也包括了进去。

他们这样的做法，承认了婚姻不仅仅是一个包容每个人的选择的问题。它也是一个关于社会承认的问题。Marshall 法官写道，在每一桩民事婚姻中都有三个参与者：配偶双方，以及对此加以承认的国家。婚姻既是一个人的深度承诺，

也是公众对理想的伴侣关系、亲密、忠实和家庭的一种庆祝方式。这就是法庭的意见。这不仅仅是自由派的中立立场，它还将婚姻看做是一种值得尊敬的一种社会认可的形式。因此，法官们发现他们不可避免的要对婚姻的目的进行争论。Marshall 法官的意见考虑到、也反对婚姻的首要目的是为了繁衍这个观点。她指出，一对异性恋男女，在申请结婚证书的时候，国家没有要求他们证明自己有能力或有意愿生小孩。生孩子并不是婚姻的前提条件。有些人就快要死了，还结婚来着。所以，她思考了所有这些意见，包括我们上节课讨论过的那些意见，关于婚姻的内在本质和目的所在。她总结说，繁衍不是婚姻的目的，专一、永久的伴侣关系才是婚姻的本质和目的。

我现在所说的这个法院的意见还并没有表明支持或反对同性婚姻。但是它却反对了一件事，那就是你可以在道德和宗教问题上保持中立，与此同时，又能支持或反对同性婚姻。所有这些论述表明，至少在一些十分激烈的争论中，在争论着我们社会中的正义或权利问题的时候，想要保持中立，想要说“这只是一个人同意、自愿选择和自主的问题，”“我们不持任何立场，”这种想法是行不通的。即使法院，想要在道德和宗教争议中保持中立，也会发现自己做不到这点。

对于我们的第二个问题又怎样呢？如果当我们讨论什么是正义和权利的时候，就不可避免的要谈论“善”。那么，我们是否有可能，如果讨论“善”意味着你在评价什么是善的时候，是不是只能有一条原则、规则、格律或者标准。每次你碰到道德难题，你就可以简单的加以运用。那么答案是：不。只有一条原则

并不是唯一的方法，也不是最好的方法来思考 什么是善，什么是正义。请回想一下我们一直以来的讨论，关于正义，关于权利，有的时候还讨论到“善”的生活。这些论点是怎么展开的？它们进行的方式，正如亚里斯多德所说的那样，在我们对特定事件、故事和问题的看法中前后比较，在我们对特定事件的判断，以及 我们在特定事件中所持的立场，其背后的那些一般原则。这种道德推理的辩证方式可以追溯到古人，追溯到柏拉图和亚里斯多德，这种辩证思想方式并没有停滞在那个时代。因为当 John Rawls 在论证他的一套正义理论的时候，他有力和清晰的进行了阐述，用的就是苏格拉底式的辩证推理方式。

你们还记得，Rawls 所提出的并不仅仅只是“无知的面纱”和其他的原则(第 9 集) Rawls 的正义理论，也是一种道德推理的方式，他称之为“反思的平衡”。

“反思的平衡”是一种什么样的推理方式？它是指在我们对特定事件的判断和我们这一判断其背后的一般原则之间，来回对比的过程。我们并没有停在那里，因为我们的最开始直觉判断可能是错的。我们并没有停在那里，而是在某些时候，根据我们得出的这些原则来修正最初的判断。有的时候我们修正原则，有的时候我们修正我们对这些案例中的判断和直觉思维。用 Rawls 的话来说，这么做的意义在于，正义并不能从不证自明的前提中推导出来。要证明它，需要多种因素的相互支持，将所有的考虑因素都调配成一个连贯一致的观点。之后，在《正义论》中，他写道道德哲学是苏格拉底式的，我们可能需要改变我们现有的判断，一旦我们发现了它对应的原则，如果 Rawls 采纳了这种想法，提出了“反思的平衡”这个想法，那么，我们剩下的问题就是，他应用这种方式来考虑正义问题，

而不是道德或“善”的生活的问题。这就是他为什么仍然认为，正义高于“善”的原因。

他认为“反思的平衡”的这种方法能够产生对正义的共识。但是他不认为，这种思考方式会产生对善的生活的共识，他称之为复杂的道德和宗教问题。他这么想的理由是，他认为在现代社会中，对什么是“善”有着多种理解。即使是那些有道德感的人经过相当严密的推理，也会发现，他们对很多问题的看法存在分歧，比如说对善的生活、道德和宗教问题的看法。Rawls 可能是对的。他不只是在说，在多元社会里人们的想法会存在分歧这一事实，他还认为，在看待什么“善”的时候，以及在道德和宗教问题上，这些分歧会持续下去。但是如果这种说法是真的，那么据此，他是不是就可以证明人们对“正义”的看法上，就不会出现同样的事情呢？事实上，在一个多元社会中，我们不仅在对正义的理解上存在分歧，而这些分歧至少有一些是合理的，是不是真的如此呢？同理，有些人支持自由意志主义的正义理论，另外一些人支持平等主义的正义理论。我们的社会中存在着多元主张，有些人喜欢市场的自由放任主义，有些人喜欢自由意志主义，有些人喜欢平等主义。我们进行道德推理的方式以及我们出现的分歧，在原则上有没有什么区别？当我们讨论正义，讨论言论自由的意义，讨论宗教自由的本质的时候出现的这些分歧？

看看刚才提交到最高法院的这些争论。人们在正义和权利问题上分歧重重。在正义和权利的问题上，存在着的多元意见，与在道德和宗教的问题上的多元意



见，这两者有什么不同吗？原则上，我不认为它们之间会有什么不同。在两种情况中，当我们不同意对方的意见时，我们所做的事情都是我们之间相互对话，我们整个学期也是这样做的。不同的案例引发了不同意见，我们对之加以思考。我们试图找出让我们这样做，而不那样做其背后的理由。我们听取其他人的理由。有些时候，我们被他人说服，修改了我们的意见。有的时候，我们与之争辩，坚持和加强我们原有观点。道德上的争论也是以这种方式进行的，讨论正义的问题，对我来说，跟讨论“善”的问题是一样的。

现在，我们还有一个担忧，这是一个自由主义的忧虑，如果我们认为，我们在道德和宗教上的分歧同我们在正义问题上的分歧是联系在一起的，我们怎样才能在一个社会中对其他意见不一的公民给予尊重呢？我认为，这就要看应该给予其什么样的尊重，在自由主义者的立场上，尊重其他公民的道德和宗教信仰，可以说就是装着没看到它们，为了政治上的目的，我们这么做。这是为了把这些道德和宗教信念 超越、抽象或搁置一边。这是为了不去打扰他们，是为了不诉诸于这些道德和宗教信念，我们也能进行政治争论。

但这不是唯一的方式，甚至不是最合理的方式来达到民主生活所依赖的那种相互尊重。要做到尊重其他公民的道德和宗教信仰，还有另外一种方法，不是漠视他们，而是与之交流。对他们予以关注。有的时候还需要与之争论。有的时候则需要聆听和学习。这么做并不保证在任何情况下，道德上、宗教上的相互接触最后都会达成一致的看法，也不保证这样做之后，我们最后都能 欣赏其他



人的道德和宗教信仰。毕竟，总是有可能发生对一种宗教和道德观点了解越多，我们就越不喜欢它。但是（比起相互漠视来说）这种商议、交流带来的尊重，在我看来，对一个多元社会来说，更为合适。我们在道德和宗教意见上发生的分歧，在一种程度上反映了人类品质上存在着一些根本的多元差异。在我看来，道德上相互交流会让我们去欣赏不同人生所展现出来的不同的品质。

13 个星期之前，当我们第一次见面的时候，我谈到了学习政治哲学的快乐之处，以及它的风险。我谈到，哲学是怎样的通过颠覆了我们的即成观念，使得过去熟悉的事物变得陌生，我试着提醒你们，一旦熟悉的变得陌生，一旦我们开始反思我们的环境，世界将不再一样。我希望你们，至少已经体会到了一点点的不安。这种不安，会促发我们的批判性思考，以及政治上的完善，乃至我们的道德生活。在某种意义上说，我们的讨论已经告一段落，但在另外一个意义上说，它还会继续进行下去。从一开始，我们就问为什么，为什么我们要继续进行这些争论，即使它们引发的问题最终都不太可能得到解决？

理由是，我们一直都生活在这些问题的回答中。在我们的公共生活中，在我们的私人生活中，即使有时候这些问题无法回答，但我们还是无法回避哲学。我们开始的时候，谈到了康德的一个观点，即怀疑是人类理性的休憩之处。怀疑让理性能反省。其教条式的漫游旅程，但怀疑也并非永久的安身之处。康德写道，仅仅停留在怀疑或自满，绝不足以克服理性之不安。这门课程的目的就是要唤醒你们永不停歇的理性思考。看看它将把你们带向何方。如果我们至少做到了这点，

如果理性的不安继续在折磨你，现在或将来，那么我们就不是一无所获的。谢谢你们。

## Lecture 1 The Moral Side of Murder



This is a course about justice. We begin with a story. Suppose you're the driver of a trolley car. Your trolley car is hurtling down the track at 60 Mph. At the end of the track, you notice five workers are working on the track. You try to stop, but you can't; your brakes don't work. You feel desperate, because you know if you crash into these five workers they will all die, but too soon you know that's for sure so you feel helpless until you notice, off to the right, a side track at the end of that track. There's a worker working on the track; your steering wheel works so you can turn the trolley car, if you want to, onto the side track killing the one, but sparing the five. Here's our first question: what's the right thing to do? What would you do? Let's take a poll. How many would turn the trolley car onto the side track? Raise your hands. How many wouldn't? How many would go straight ahead? A handful of people would. A vast majority would turn. Let's hear first. Now we need to begin to investigate the reasons why you think is the right thing to do. Let's begin with those in the majority. Who would turn to go

onto the side track Why would you do it? Would would be your reason? Who is willing to volunteer a reason?



*Student 1: "Because it can't be right to kill five people when you could only kill one person instead."*

It wouldn't be right to kill five if you could only kill one person instead. That's a good reason. Who else? Does anybody agree with that reason?

*Student 2: "I think it's the same reason on the 9/11 we regard the people who flew the plane into Pennsylvania field as heros because they chose to kill the people on the plane, and not kill more people in the building."*

So the principle there is the same as 9/11 to tragic circumstance. Better to kill one so that five can live. Is that the reason most of you have those will turn? Let's hear now

from those in the minority, those wouldn't turn.

*Student 3: "I think that's the same type of mentality that justify genocide and totalitarianism in order to save one type of race, you wipe out the other."*

So what would you do in this case? To avoid the horror of genocide you would crash into the five and kill them?

*Student 3: "Presumably yes."*

Ok. Who else? That's a brave answer. Thank you.

Let's consider another trolley car case and see whether those of you in the majority why would here to the principle, better one should die so that five should live. This time you're not the driver of the trolley car, you're an onlooker. You're standing on a bridge, overlooking a trolley car track down the track come the trolley car. At the end of the track are five workers. The brakes don't work. The trolley car is about to careen into the five and kill them and now you're not the driver you really feel helpless until you notice standing next to you leaning over the bridge is a very fat man and you could give him a shove. He would fall over the bridge onto the track right in the way of the trolley car. He would die but he would spare the five. Now how many would push the fat man over the bridge?. Raise your hands. How many wouldn't? Most people wouldn't. Here's the obvious question: what became of the principle? Better to save five lives even if it means to sacrifice one. What became of the principle that almost everyone endorse in the first case. I need to hear from someone who's in the majority in both cases. How do you explain the differences between the two?"

*Student 4: "The second one I guess involves an act of choice of pushing the person*



*down. That person himself would otherwise not have been involved in the situation at all. To choose on his behalf, I guess, involve him in something that he otherwise would escape, I guess, is more than in what you have in the first case where the three parties, the driver, the two sets of workers are already in the situation."*

But the guy working on the track off the side he didn't choose to sacrifice his life any more than the fat man did, did he?

Student 4: "That's true. But he's on the track."

This guy is on the bridge. Go ahead. You can come back if you want. All right. It's a hard question. You did very well. Who else can find a way of reconciling the reaction in the majority in these two cases?

*Student 5: "I guess, in the first case we have the one worker and the five. It's choice between those two. And you've to make certain choice people are gonna die because of the trolley car, not necessarily because of your direct action. The trolley car is running away and then you're making a split. The second choice whereas pushing the fat man over is an actualized murder on your part. You've control over that whereas you may not control over the trolley car. So I think it's slightly different situation."*

All right. Who has a reply? That's good. Who want to reply? Is there a way out of this?

*Student 6: "I don't think that's a very good reason. In either way you've to choose who die because you either choose to turn and kill a person which is an act of conscious thought to turn or you choose to push the fat man over which is also an act of conscious action. So either way you're making a choice."*



Do you want to reply?

*Student 5: "I'm not really sure that's the case. It's just seem kind of different. To act actually pushing someone over on the track and killing him, you're actually killing him yourself. You're pushing him in your own hands. That's different from steering something that's gonna to cause death into other. It dosen't really sound right."*

That's good. What's your name?

*Student 5: "Andrew."*

Let me ask you this quesiton, Andrew. Suppose standing on the bridge next to the fat man, I didn't have to push him; suppose he was standing over a trap that I could open by turning a steering wheel like that.

*Student 5: "So some reasons, that just seems more wrong. I mean maybe if you accidentally like lean into this steering wheel, there's something like that, or say that the car isn't hurtling towards a switch, or drop the track, that I could I agree with that."*

Fair enough. It's still seem wrong in a way it doesn't seem wrong in the first case to turn.

*Student 5: "In another way, in the first situation you're involved directly with the situation. In the second one, you're an onlooker as well. So you can have the choice of becoming involved or not by pushing the fat man."*

Let's just forget a moment about this case. Let's imagine a different case. This time you're a doctor in a emergency room. Six patients come to you. They've been in a terrible trolley car wrack. Five of them were moderately injured and one was severely injured. You could spend all day caring for the one severely injured victim but in that time the five would die; or you could look after the five restore them to help, but during that time the severely injured person would die. How many would save the five? Now is the doctor... How many would save the one? Very few people. Just a handful of people. Same reason I assume. One life versus five.

Now consider another doctor case. This time you're a transplant surgeon. You've five patients. Each in desperate need of an organ transplant in order to survive One needs a heart. One a lung, one a kidney, one a liver and the fifth a pancreas. You've no organ donors. You're about to see them die. And then it occurs to you that in the next room there's a healthy guy who came in for a check up. He's taking a nap. You could go in very quietly, yank out the five organs. That person would die but you could save the five. How many of you would do it? Anyone? How many? Put your hands up if you'd do it. Anyone in the balcony?

*Student 7: "I would."*

Be careful. Don't lean over. How many wouldn't? All right. What do you say? Speak up in the balcony.

*Student 7: "I actually like to explore an slightly alternative possibility that just taking the one of the five who need an organ who dies first using therefore the healthy organ to save the other four."*

That's a pretty good idea except for the fact that you just wrecked the philosophical

point. Let's step back from these stories and these arguments to notice a couple of things about the way the arguments have begun to unfold. Certain moral principles have already begun to emerge from the discussion we had. Let's consider what those moral principles look like. The first moral principle that emerged in the discussion said the right thing to do, the moral thing to do depends on the consequences that we resolve from your action. At the end of the day, better the five should live even if one must die. That's an example of consequentialist moral reasoning. Consequentialist moral reasoning locates morality in the consequences of an act in the state of the rule that we resolve from the thing you do. But then we ran a little further, we consider those other cases and people wouldn't so sure about consequentialist moral reasoning when people hesitate, e.g. the fat man over the bridge or to yank out the organs of the innocent patient people, gestured toward reasons having to with the intrinsic quality of the act itself consequence be with they made. People were reluctant. People thought it's just wrong, categorically wrong to kill an innocent person, even for the sake of saving five lives. At least people thought that in a second version of each story we consider. So this point to a second categorical way of thinking about moral reasoning. Categorical moral reasoning locates morality in certain absolute moral requirements, certain categorical duties and rights, regardless the consequences. We're gonna to explore in the day and next weeks to come the contrast between Consequentialist and Categorical moral principles. The most influential example of consequential moral reasoning is Utilitarianism, a doctrine invented by Jeremy Bentham, the 18th century English political philosopher. The most important philosopher of categorically moral reasoning is the 18th century German philosopher Immanuel Kant. So we'll look at those two different modes of moral reasoning, assess them and also consider others.

If you look at the syllabus, you'll notice we read a number of great and famous books - books by Aristotle, John Locke, Immanuel Kant, John Stuart Mill and others. You'll

notice too from the syllabus we don't only read these books, we also take up contemporary political and legal controversy that raise philosophical questions; we'll debate equality and inequality, affirmative action, free speech vs hate speech, same sex marriage, military conscription, a range of practical question. Why? Not just to enliven these abstract and distant books but make clear to bring out what's at stake in our daily life, including our political lives, for philosophy. So we'll read these books and we'll debate these issues and we'll see how each informs and illuminates the others.

This may sound appealing enough, but here I've to issue a warning. The warning is this: to read these books in this way as an exercise in self knowledge; to read them in this way carries certain risks - risks that are both personal and political, risks that every student of political philosophy has known. These risks spring from the fact that philosophy teaches us and unsettles us by confronting us with what we already know. There's an irony. The difficulty of this course consists in a fact that teaches us what you've already known. It works by taking what we know from familiar unquestioned settings and making it strange. That's how those examples work, the hypothetical which we began with their mix of playfulness and sobriety. It's also how those philosophical books where philosophy estranges us from the familiar, not by supplying new information but by inviting and provoking a new way of seeing. But here's the risk: once the familiar turns strange, it's never quite the same again; self knowledge is like a lost innocent - however unsettling you find it you can never be unthought or unknown. What makes this and your enterprise difficult but also riveting is that moral and political philosophy is a story and you don't know where the story will lead, but you do know is that the story is about you. Those are the personal risks.

Now where're the political risks? One way of introducing a course like this would be the promise you by reading these books and debating issues you'll be a more

responsible citizen. You'll exam preconceive notion that public policy you'll hone your political judgement, you'll become a more effective participant in public affairs. But this would a partial and misleading promise. Political philosophy for the most part hasn't worked that way. You've to allow for the possibility that political philosophy may make you a worse citizen rather than a better one or at least a worse citizen before it makes you a better one. And that's because philosophy is a distant thing, even debilitating activity. And you see this going back to Socrates there's a dialogue the gorgeous in which one of Socrates's friend tried to talk him out a philosophizing. He tells Socrates, "Philosophy is a pretty toy if one indulges in it with moderation at the right time of life. But if one pursuits it further then one should it's abosolutely ruining. Take my advice," he says. "Abandon argument. Learn the accomplishment of act of life. Take for your models not those people who spend their time on these petty quibbling, but those who have good livelihood and reputation and many other blessings." So he is really saying to Socrates, "Quit philosophizing. Get real. Go to business school." And he did have a point. He had a point because philosophy distances us from conventions, from established assumptions, from settle beliefs. Those are the risks, personal and political.

And at the face of these risks there's a characteristic evasion. The name of the evasion is Skepticism. It's the idea that goes something like this: we didn't resolve once for all either the cases or the principles we're arguing when we began, and if Aristotle and Locke and Kant and Mill haven't solved these quesitons after all of these years, who are we to think? That, we here in Sanders Theater over the course of this semester can resolve them? So maybe it's just a matter of each person having his own principles and there's nothing more to say about it, no way of reasoning. That's the evasion, the evasion of Skepticism. To each I'd offer the following reply: tt's true these quesitons have been debated for a very long time, but the very fact that they've recurred and persisted may suggest though they're impossible in one sense, they're unavoidable in

another; the reason that they're unavoidable, the reason that they're inescapable is that we live some answer to these questions everyday; so Skepticism just throwing up your hands, and given up by moral reflection is no solution; Immanuel Kant described very well the problems with Skepticism when he wrote "Skepticism is a resting place for human reasoning where it can relect on dogmatic wandering but it's no dwelling place for permanent settlement, simply to acquiesce"; Skepticism can never suffice to overcome the recklessness of reason I've tried to suggest to these stories, and these argument some sense of risk and temptation of the perils and the possibility; I'd simply conclude by saying the end of this course is to awaken recklessness of reason and to see where I might lead. Thank you very much.



## Lecture 2 The Case for Cannibalism

Last time we started out with some stories with some moral dilemmas about trolley cars and about doctors and healthy patients, vulnerable to be victims of organ transplation. We notice two things about the arguments we had. One had to do with the way we were arguing. We began with our judgment and particular case. We tried to articulate the reasons and principles lied behind our judgment and then confronted with a new case. We found ourselves reexamining those principles, revising each in the light of the other. We notice the build-in pressure to try to bring into enlightenment our judgment about particular cases and the principle we would endorse on selection. We also notice something about substance of the arguments that emerged from the discussion. We notice sometimes we were tempted to locate the morality of an act in the consequences, in the results, in the escape of the rules that brought about. We call this consequentialist moral reasoning. But we also notice in some cases we weren't swayed only by the results. Sometimes many of us felt not just consequences but also the intrinsic quality or character of the act matters morally. Some people aruged there're certain things that are just categorically wrong even if they brings about a good result, even if they save five people at the cost of one life. So we contrast the consequentialist moral principles with categorical one.

Today and in the next few days, we'll begin to examine one of the most influential versions of consequentialist moral theory. That's the philosophy of Utilitarianism. Jeremy Bentham, the 18th century Enligsh pholitical philosopher, gave first clear and systematic expression to the Utilitarian moral theory. Bentham's idea, his essential idea, is a very simple one: with a lot of morally intuitive appeal, Bentham's idea is the following: the right thing, the just thing to to is to maximize utility. What do you mean by utility? He meant by utility the balance of pleasure over pain, happiness over suffering. Here're how we arrive at the principle of maximizing utility. He started out

by observing that all of us, all human beings are governed by two sovereign masters - pain and pleasure. We human beings like pleasure and dislike pain, so we should base morality whether we're thinking about what to do in our own lives or whether as legislators or citizens we're thinking about what the law should be the right thing to do individually or collectively is to maximize, acting a way that maximizes the overall level of happiness. Bentham Utilitarianism is sometimes summed up in this slogan: the greatest good for the greatest number.

With this basic principle of Utilitarianism on hand, let's begin to test it and to examine it by turning to another case, another story, but this time, not hypothetical story, a real life story - the case of the Queen versus Dudley and Stephens. This is a 19th century British law case that is famous and much debated in law school. Here's what happened. In the case I summarize the story and I want to hear how you would rule imagining you're the jury. A newspaper account of the time, described the background. A sadder story of a disaster at sea was never told than that of the survivors of the yacht Mignonette. The ship found it in the south Atlantic 13,000 miles from the Cape. There're four in the crew. Dudley was the captain. Steven was the first mate. Brooks was the sailor. All men of excellent character or so. That's the newspaper account tells us. The fourth group member was the cabin boy, Richard Parker, 17 years old. He was an orphan. He had no family. And he was on his first long voyage sea. He went, the news account tells us, rather against the advice of his friends. He went in the hopefulness of youthful ambition, thinking the journey would make a man of him - sadly was not to be. The fact of the case was not in the dispute. A wave hit the ship. It went down. The four crew members escaped to a lifeboat. The only food they had was two cans of preserved turnip. No fresh water. For the first few days, they ate nothing. On the fourth days, they opened a can of turnip and ate it. The next day, they cut a turtle. Together with other cans of turnip, the turtle enabled them to subsist for the next few days. And for eight days, they had nothing. No food. No water. Imagine

yourself in a situation like that, what would you do? Here's what they did. By now, the cabin boy, Parker, is lying at the bottom of the lifeboat in the corner because he had drunk sea water against the advice of others. He became ill and he appeared to be dying. So on the 19th day, Dudley the captain suggested they should all have a lottery that they should draw a lot to see who would die to save the rest. Brooks refused. He didn't like the lottery idea. We don't know whether this was because he didn't like to take the chance or because he believed in the categorical moral principle. But in any case, no lots were drawn. The next day, there's still no ships in sight. So Dudley told Brooks to avert his gaze and he motioned to Steven that the boy Parker had better be killed. Dudley offered a prayer. He told the boy his time had come and he killed him with a penknife, stabbing him in a jugular vein. Brooks emerged from his conscientious objection to share in the gruesome bounty. For four days, the three of them fed on the body and blood of the cabin boy. True story. And then they're rescued. Dudley described their rescue in his diary with staggering euphemism, quoted: on the 24th day as we were having our breakfast, a ship appeared at last.

The three survivors were picked up by a German ship. They were taken back to England where they were arrested and tried. Brooks turned state witness. Dudley and Steven went to trial. They didn't dispute the facts. They claimed they acted out of necessity. That was their defense. They argued in a fact better that one should die so that three could survive. The prosecutor wasn't convinced by their argument. He said, "Murder is murder." So the case went to trial. Now imagine you're the jury. In just to simplify the discussion, put aside the question of the law. Let's assume that you're the jury. Our charge is deciding whether what they did was morally permissible or not. How many would vote not guilty that what they did was morally permissible? And how many would vote guilty that what they did was morally wrong? A pretty size of majority. Let's see what people's reasons are. Let me begin with those who are in the minority. Let's hear first from the defense. Why would you morally exonerate them?

What are your reasons?

*Student 8: "I think it's morally reprehensible but there's a distinction between morally reprehensible and what makes some legally accountable. In other words, as the judge said, what was always moral isn't necessarily against the law. I don't think necessity justifies theft and murder or any illegal act. At some point, you're degree of necessity does in effect exonerate you from any guilt."*

OK. Good. Other defenders. Other voices for the defense, moral justification for what they did?

*Student 9: "I just feel like in this situation of desperate you've to do you've to do to survive. You've to do you've to do. Pretty much If you've been going 19 days without any food. Someone just has to take the sacrifice and people can survive. Furthurmore, from that, let's say they survive and they become productive members of a society who go home and start a millionaire charity organization and then they benefit everybody. I mean I don't know they did afterward. They might kill more people, whatever."*

What if they went home and turned out to be a assassin. You do want to know who they assassinated.

*Student 9: "That's fair."*

All right. That's good. What's your name?

*Student 9: "Markies."*

We've heard the defense. Couple voices from the defense. Now we need to hear from

the prosecution. Most people think what they did was wrong. Why?

*Student 10: "One of the first thing that I was thinking was they haven't been eating for a long time. They're mentally, like affected and so so, then that could be used as a defense possible argument. They were not in a proper state of mind. They weren't making decision they might otherwise made. If that's a appealing argument, you've to be altered mindset to do something like that suggest that people who find that argument convincing do think they're acting immorally."*

But I just want to know what you think.

*Student 10: "I don't think they act in a morally appropriate way."*

Why not? What do you say, here's Markies. He just defended them. He said, you've got to do what you've got to do in a case like that. What do you say to Markies?

*Student 10: "There's no situation that would allow human beings to take the idea of fate, or the other people's lives in their own hands. We don't have that kind of power."*

Ok. Thank you. What's your name?

*Student 10: "Redd."*

Who else? What do you say?

*Student 11: "I'm wondering if Dudley and Steven had asked for Richard's consent in dying, would that exonerate them from an act of murder? If so, there's still morally justifiable."*

That's interesting. Consent. What's your name?

*Student 11: "Catharine."*

Catharine, suppose they've acted what they're now they look like. So in this story, Duley is there, penknife in hand, but instead of the prayer or before the prayer, he said, "Parker, would you mind... We're desperately hungry." As Parker empathized, "We're desperately hungry. You're not gonna to last long anyhow. Would you be a martyr? How about it, Parker? What do you think?" Would it be morally justified then? Suppose Parker in his semi-stupor eyes, said, "Ok."

Student 11: "I don't think it would be morally justifiable."

Even then it wouldn't be?

*Student 11, "No."*

You don't think even with consent it would be morally justified. Are there people who want to take up Catharine's consent idea? And who think they would make it morally justified? Raise your hand if you think it would. That's very interesting. Why would consent make a moral difference?

*Student 12: "I think if he's just making his original idea and it's his idea to start with, that would be the only situation in which I see it being appropriate anyway. Because that way you couldn't make the argument that he was pressured, three to one. If he's making the decision to give his life and he took on the agency to sacrifice himself, which somebody would see it as admirable, other people might disagree with that*



decision."

So if he came up with the idea, that's the only kind of consent we could have confidence in morally. Then it would be OK. Otherwise, it would kind of coerce consent under the circumstance. Is there anyone who thinks that even the consent of Parker would not justify their killing him? Who thinks that?

*Student 13: "I think Parker would be killed with the hope that the other crew members would be rescued, so there're no definite reason that he should be killed because you don't know when they're gonna to be rescued. So if you kill him, it's killing human beings. Do you keep killing the crew members until you're rescued?"*

But the moral logic of this situation seems to be that they would keep on picking off the weakest, maybe one by one, until they were rescued. And in this case, luckily, they were rescued when three were still alive. If Parker did give his consent, would it be all right, do you think?

Student 13: "No."

Tell us why it wouldn't be all right.

*Student 13: "First of all, cannibalism I believe is morally incorrect so shouldn't eating human anyway."*

So cannibalism is morally objectionable. So even in this scenario, waiting until someone die still would be objectionable.

*Student 13: "Yes. I feel like it all depends on one's personal morals. This is just my*

*opinion. Of course, other people are gonna to disagree."*

Let's see what the disagreements are and then we'll see if they've reason that can persuade you enough. Let's try that. Is there someone who can explain? Those of you who're tempted by consent, can you explain why consent makes such a moral difference? What about the lottery idea? Does that count as consent? Remember the beginning, Dudley proposed a lottery. Suppose they've agreed to a lottery. Then how many would then say it's all right? Suppose there's a lottery. Cabin boy lost. Then the rest of the story unfolded. Then how many people would say it's morally permissible? So the number is arising if we've lottery. For whom the lottery would make such a moral difference, let's hear from one of you. Why would it?

*Student 14: "I think the essential element that makes a crime is the idea that they decide at some point their lives are more important than his. I mean that's the basis for any crime - my needs, my desire are more important than yours. If they've done a lottery where everyone consented that someone should die, it's like the odds sacrifices himself to save the rest. Then it would be all right. A little grotesque but morally permissible."*

What's your name?

*Student 14: "Matt."*

So what bother you is not the cannibalism but the lack of due process.

Student 14: "I guess you could say that."

Can someone who agrees with Matt say a little bit more about why a lottery would

make it morally permissible?

*Student 15: "The way I understood it originally was that that's a whole issue the cabin boy was never consulted it about whether or not something was gonna to happen to him, even with the originally lottery whether or not he would be part of that. It was just decided that he was the one who's gonna to die. That's what happened in the actual case."*

But if there's a lottery, and they agree to the procedure. You think that would be OK?

*Student 15: "Right. Because everyone know there's gonna to be a death whereas the cabin boy didn't know the discussion was even happening." There's no fore warning for him to know that I may be the one that's dying."*

All right. Suppose everyone agrees to the lottery. They've the lottery. The cabin boy loses it and he changes his mind.

*Student 15: "You've already decided. It's like a verbal contract. You cann't go back on that you decided. The decision was made. If you know you're dying for the reason for others to live, if someone else have died, you know you would consume them."*

Right. Then he could say, "I know, but I lost."

*Student 15: "I just think that's the whole moral issue there's no consulting of the cabin boy. What makes it the most horrible is that he had no idea what was even going on. If he known what's going on, it would be more understandable."*

All right. Good. Now I want to hear... So there're some who think it's morally

permissible, but only about 20%, led by Markies. Then there're some who say, the real problem here is lack of consent, whether the lack of consent to a lottery, to a fair procedure, or Catharine's idea lack of consent at the moment of death. And if we add consent, then more people are willing to consider the sacrifice morally justified. I want to hear now finally from those of you who think even with consent even with a lottery, even with a final murmur of consent by Parker at the very last moment, it would still be wrong. And why would it be wrong? That's what I wanna to hear.

*Student 16: "The whole time I've been leaning towards the categorical moral reasoning. I think that there're a possibility I'll be OK with the idea of lottery and the loser taking into his own hands to kill themselves, so there won't be an act of murder. but I still think that even that way it's coerce. Also I don't think there's any remorse in Dudley's diary 'we're eating our breakfast'. It seems that he just reflected the whole idea of not valuing someone else life. That makes me be feel like I have to take the categorical."*

You want to throw the book at him when he relaxed with morals and sense of having done anything wrong..

*Student 16: "Right."*

So. All right. Any other defenders who said it's categorically wrong whether it's without consent?

*Student 17: "The society say, 'murder is murder'. Murder is murder in every way in our sight. It looks as a murder don't in the same way. I don't think any difference in any case."*

Let me ask you a question. There were three lives at stake versus one. The one the cabin boy. He had no family. He had no dependents. These other three had families back home in England. They had dependents. They've wives and children. Think back the Bentham. Bentham said we'd to consider the welfare, the utility, the happiness of everybody. We've add it all up so it's not just numbers of three against one. It's also all of those people at home. In fact, the London newspaper at the time and popular opinions sympathize with them, Dudley and Steven. And the paper said if they won't motivated by affection and concern for their loved ones at home and their dependents, surely they wouldn't have done this.

*Student 17: "How's there any difference from people on the corner? I don't see any difference. I think in any case if I murder you to advance my status, that is murder. I think we should look at them in the same light. Is that criminal allows certain activities and makes certain things immoral violent and savage? When in the same case it's all the same act. If mentality that goes in the murder, the assassin need to feed his family..."*

Suppose it weren't three. Suppose it were thirty. 300 lives. To save three hundred or in war time, three thousand .Suppose the stakes was even bigger.

*Student 17: "I think it's the same deal."*

You think Bentham is wrong. To say the right thing to do is to add up the collectively happiness. You think it's wrong about that.

*Student 17: "I don't think it's wrong. I think murder is murder in any case."*

If then, Bentham has to be wrong. If you're right, he's wrong.

*Student 17: "OK, he's wrong."*

Thank you. Well done All right. Let's step back from this discussion and notice how many objections have we heard to what they did. We heard some defense of what they did. The defense had to do with necessity, the dire circumstances and implicitly as least the idea that number matters. And not only number matters, but the wider effect matters - their family back home, their dependents. Parker is an orphan. No one would miss him. So if you add up, if you try to calculate the balance of happiness and suffering, you might have a case for saying what they did it's the right thing.

Then we heard at least three different types of objections. We've heard objection that said what they did is categorically wrong. Murder is murder. It's always wrong even if it increases the happiness of all society. A categorical objection But we still need to investigate why murder is categorically wrong. Is it because even the cabin boy had certain fundamental rights? If that's the reason, where those rights come from, if not from some ideas of larger welfare or utility or happiness? Question No. 1. Other said a lottery will makes a difference. A fair procedure, Matt said. And some people were swayed by that. That's not a categorical objection exactly. It's saying everybody has to be counted as an equal even though at the end of the day one can be sacrificed for the general welfare. That leaves us with another question to investigate: why does agreement to a certain procedure, even a fair procedure justify whatever result flows from the operation of that procedure? Question No. 2. And Question No. 3 : the basic idea of consent. Catharine got us on to this. If the cabin boy had agreed himself, and not under the rest as was acted, then it would be all right to take his life to save the rest. Even more people side on that idea. But that raise a third philosophical question: what is the moral work that the consent does? Why does an act of consent makes such



a moral difference, that an act that would be wrong taking a life without consent is morally permissible with consent? To investigate those three questions, we're gonna to read some philosophers and starting next time, we're gonna to read Bentham and John Mill Utilitarian.

### Lecture 3 Putting a Price Tag on Life

Last time, we argued about the case of *The Queen v. Dudley & Stephens*, the lifeboat case, the case of cannibalism at sea. And with the arguments about the lifeboat in mind, the arguments for and against what Dudley and Stephens did in mind, let's turn back to the philosophy, the utilitarian philosophy of Jeremy Bentham. Bentham was born in England in 1748. At the age of 12, he went to Oxford. At 15, he went to law school. He was admitted to the Bar at age 19 but he never practiced law. Instead, he devoted his life to jurisprudence and moral philosophy. Last time, we began to consider Bentham's version of Utilitarianism. The main idea is simply stated and it's this: The highest principle of morality, whether personal or political morality, is to maximize the general welfare, or the collective happiness, or the overall balance of pleasure over pain; in a phrase, maximize utility.

Bentham arrives at this principle by the following line of reasoning: We're all governed by pain and pleasure, they are our sovereign masters, and so any moral system has to take account of them. How best to take account? By maximizing. And this leads to the principle of the greatest good for the greatest number. What exactly should we maximize? Bentham tells us happiness, or more precisely, utility - maximizing utility as a principle not only for individuals but also for communities and for legislators. "What, after all, is a community?" Bentham asks. It's the sum of the individuals who comprise it. And that's why in deciding the best policy, in deciding what the law should be, in deciding what's just, citizens and legislators should ask themselves the question if we add up all of the benefits of this policy and subtract all of the costs, the right thing to do is the one that maximizes the balance of happiness over suffering. That's what it means to maximize utility.

Now, today, I want to see whether you agree or disagree with it, and it often goes, this

utilitarian logic, under the name of cost-benefit analysis, which is used by companies and by governments all the time. And what it involves is placing a value, usually a dollar value, to stand for utility on the costs and the benefits of various proposals. Recently, in the Czech Republic, there was a proposal to increase the excise tax on smoking. Philip Morris, the tobacco company, does huge business in the Czech Republic. They commissioned a study, a cost-benefit analysis of smoking in the Czech Republic, and what their cost-benefit analysis found was the government gains by having Czech citizens smoke. Now, how do they gain? It's true that there are negative effects to the public finance of the Czech government because there are increased health care costs for people who develop smoking-related diseases. On the other hand, there were positive effects and those were added up on the other side of the ledger. The positive effects included, for the most part, various tax revenues that the government derives from the sale of cigarette products, but it also included health care savings to the government when people die early, pension savings - you don't have to pay pensions for as long - and also, savings in housing costs for the elderly. And when all of the costs and benefits were added up, the Philip Morris study found that there is a net public finance gain in the Czech Republic of \$147,000,000, and given the savings in housing, in health care, and pension costs, the government enjoys savings of over \$1,200 for each person who dies prematurely due to smoking. Cost-benefit analysis. Now, those among you who are defenders of Utilitarianism may think that this is an unfair test. Philip Morris was pilloried in the press and they issued an apology for this heartless calculation. You may say that what's missing here is something that the utilitarian can easily incorporate, namely the value to the person and to the families of those who die from lung cancer.

What about the value of life? Some cost-benefit analyses incorporate a measure for the value of life. One of the most famous of these involved the Ford Pinto case. Did any of you read about that? This was back in the 1970s. Do you remember what the

Ford Pinto was, a kind of car? Anybody? It was a small car, subcompact car, very popular, but it had one problem, which is the fuel tank was at the back of the car and in rear collisions, the fuel tank exploded and some people were killed and some severely injured. Victims of these injuries took Ford to court to sue. And in the court case, it turned out that Ford had long since known about the vulnerable fuel tank and had done a cost-benefit analysis to determine whether it would be worth it to put in a special shield that would protect the fuel tank and prevent it from exploding. They did a cost-benefit analysis. The cost per part to increase the safety of the Pinto, they calculated at \$11.00 per part. And here's - this was the cost-benefit analysis that emerged in the trial. Eleven dollars per part at 12.5 million cars and trucks came to a total cost of \$137 million to improve the safety. But then they calculated the benefits of spending all this money on a safer car and they counted 180 deaths and they assigned a dollar value, \$200,000 per death, 180 injuries, \$67,000, and then the costs to repair, the replacement cost for 2,000 vehicles, it would be destroyed without the safety device \$700 per vehicle. So the benefits turned out to be only \$49.5 million and so they didn't install the device. Needless to say, when this memo of the Ford Motor Company's cost-benefit analysis came out in the trial, it appalled the jurors, who awarded a huge settlement. Is this a counterexample to the utilitarian idea of calculating? Because Ford included a measure of the value of life. Now, who here wants to defend cost-benefit analysis from this apparent counterexample? Who has a defense? Or do you think this completely destroys the whole utilitarian calculus? Yes?

*Student 1: "Well, I think that once again, they've made the same mistake the previous case did, that they assigned a dollar value to human life, and once again, they failed to take account things like suffering and emotional losses by the families. I mean, families lost earnings but they also lost a loved one and that is more valued than \$200,000."*

Right and... wait, wait, wait, that's good. What's your name?

*Student 1: "Julie Roteau."*

So if \$200,000, Julie, is too low a figure because it doesn't include the loss of a loved one and the loss of those years of life, what would be - what do you think would be a more accurate number?

*Student 1: "I don't believe I could give a number. I think that this sort of analysis shouldn't be applied to issues of human life. I think it can't be used monetarily."*

So they didn't just put too low a number, Julie says. They were wrong to try to put any number at all. All right, let's hear someone who ...

*Student 2: "You have to adjust for inflation."*

You have to adjust for inflation. All right, fair enough. So what would the number be now? This was 35 years ago.

*Student 2: "Two million dollars."*

Two million dollars? You would put two million? And what's your name?

*Student 2: "Voytek."*

Voytek says we have to allow for inflation. We should be more generous. Then would you be satisfied that this is the right way of thinking about the question?

*Student 2: "I guess, unfortunately, it is for - there needs to be a number put somewhere, like, I'm not sure what that number would be, but I do agree that there could possibly be a number put on the human life."*

All right, so Voytek says, and here, he disagrees with Julie. Julie says we can't put a number on human life for the purpose of a cost-benefit analysis. Voytek says we have to because we have to make decisions somehow. What do other people think about this? Is there anyone prepared to defend cost-benefit analysis here as accurate as desirable? Yes? Go ahead.

*Student 3: "I think that if Ford and other car companies didn't use cost-benefit analysis, they'd eventually go out of business because they wouldn't be able to be profitable and millions of people wouldn't be able to use their cars to get to jobs, to put food on the table, to feed their children. So I think that if cost-benefit analysis isn't employed, the greater good is sacrificed, in this case."*

All right, let me add. What's your name?

*Student 3: "Raul."*

Raul, there was recently a study done about cell phone use by a driver when people are driving a car, and there was a debate whether that should be banned. Yeah. And the figure was that some 2,000 people die as a result of accidents each year using cell phones. And yet, the cost-benefit analysis which was done by the Center for Risk Analysis at Harvard found that if you look at the benefits of the cell phone use and you put some value on the life, it comes out about the same because of the enormous economic benefit of enabling people to take advantage of their time, not waste time, be able to make deals and talk to friends and so on while they're driving. Doesn't that



suggest that it's a mistake to try to put monetary figures on questions of human life?

*Student 3: "Well, I think that if the great majority of people try to derive maximum utility out of a service, like using cell phones and the convenience that cell phones provide, that sacrifice is necessary for satisfaction to occur."*

You're an outright utilitarian.

*Student 3: "Yes. Okay."*

All right then, one last question, Raul... Okay. And I put this to Voytek, what dollar figure should be put on human life to decide whether to ban the use of cell phones?

*Student 3: "Well, I don't want to arbitrarily calculate a figure, I mean, right now. I think that..."*

You want to take it under advisement?

*Student 3: "Yeah, I'll take it under advisement."*

But what, roughly speaking, would it be? You got 2,300 deaths. You got to assign a dollar value to know whether you want to prevent those deaths by banning the use of cell phones in cars. So what would your hunch be? How much? A million? Two million? Two million was Voytek's figure.

*Student 3: "Yeah."*

Is that about right?

*Student 3: "Maybe a million."*

A million?

*Student 3: "Yeah."*

You know, that's good. Thank you. So, these are some of the controversies that arise these days from cost-benefit analysis, especially those that involve placing a dollar value on everything to be added up. Well, now I want to turn to your objections, to your objections not necessarily to cost-benefit analysis specifically, because that's just one version of the utilitarian logic in practice today, but to the theory as a whole, to the idea that the right thing to do, the just basis for policy and law is to maximize utility. How many disagree with the utilitarian approach to law and to the common good? How many agree with it? So more agree than disagree. So let's hear from the critics. Yes?

*Student 4: "My main issue with it is that I feel like you can't say that just because someone's in the minority, what they want and need is less valuable than someone who is in the majority. So I guess I have an issue with the idea that the greatest good for the greatest number is okay because there are still... what about people who are in the lesser number? Like, it's not fair to them. They didn't have any say in where they wanted to be. All right."*

That's an interesting objection. You're worried about the effect on the minority.

*Student 4: "Yes."*

What's your name, by the way?

*Student 4: "Anna."*

Who has an answer to Anna's worry about the effect on the minority? What do you say to Anna?

*Student 5: "Um, she said that the minority is valued less. I don't think that's the case because individually, the minority's value is just the same as the individual of the majority. It's just that the numbers outweigh the minority. And I mean, at a certain point, you have to make a decision and I'm sorry for the minority but sometimes, it's for the general, for the greater good."*

For the greater good. Anna, what do you say? What's your name?

*Student 5: "Yang Da."*

What do you say to Yang Da? Yang Da says you just have to add up people's preferences and those in the minority do have their preferences weighed. Can you give an example of the kind of thing you're worried about when you say you're worried about Utilitarianism violating the concern or respect due the minority? And give an example.

*Student 4: "Okay. So, well, with any of the cases that we've talked about, like for the shipwreck one, I think the boy who was eaten still had as much of a right to live as the other people and just because he was the minority in that case, the one who maybe had less of a chance to keep living, that doesn't mean that the others automatically have a right to eat him just because it would give a greater amount of people a chance*

*to live."*

So there may be certain rights that the minority members have, that the individual has that shouldn't be traded off for the sake of utility?

*Student 4: "Yes."*

Yes, Anna.

You know, this would be a test for you. Back in Ancient Rome, they threw Christians to the lions in the Colosseum for sport. If you think how the utilitarian calculus would go, yes, the Christian thrown to the lions suffers enormous excruciating pain. But look at the collective ecstasy of the Romans! Yang Da.

Student 5: "Well, in that time, I don't... if... in modern day of time, to value the... to give a number to the happiness given to the people watching, I don't think any, like, policymaker would say the pain of one person, of the suffering of one person is much, much... is, I mean, in comparison to the happiness gained, it's..."

No, but you have to admit that if there were enough Romans delirious enough with happiness, it would outweigh even the most excruciating pain of a handful of Christians thrown to the lion.

So we really have here two different objections to Utilitarianism. One has to do with whether Utilitarianism adequately respects individual rights or minority rights, and the other has to do with the whole idea of aggregating utility or preferences or values. Is it possible to aggregate all values to translate them into dollar terms?

There was, in the 1930s, a psychologist who tried to address this second question. He tried to prove what Utilitarianism assumes, that it is possible to translate all goods, all values, all human concerns into a single uniform measure, and he did this by conducting a survey of young recipients of relief, this was in the 1930s, and he asked them, he gave them a list of unpleasant experiences and he asked them, "How much would you have to be paid to undergo the following experiences?" and he kept track. For example, how much would you have to be paid to have one upper front tooth pulled out? Or how much would you have to be paid to have one little toe cut off? Or to eat a live earthworm six inches long? Or to live the rest of your life on a farm in Kansas? Or to choke a stray cat to death with your bare hands? Now, what do you suppose was the most expensive item on that list?

*Students: "Kansas!"*

Kansas? You're right, it was Kansas. For Kansas, people said they'd have to pay them - they have to be paid \$300,000. What do you think was the next most expensive? Not the cat. Not the tooth. Not the toe. The worm! People said you'd have to pay them \$100,000 to eat the worm. What do you think was the least expensive item? Not the cat. The tooth. During the Depression, people were willing to have their tooth pulled for only \$4,500.

*Students: "What?"*

Now, here's what Thorndike concluded from his study. Any want or a satisfaction which exists exists in some amount and is therefore measurable. The life of a dog or a cat or a chicken consists of appetites, cravings, desires, and their gratifications. So does the life of human beings, though the appetites and desires are more complicated. But what about Thorndike's study? Does it support Bentham's idea that all goods, all

values can be captured according to a single uniform measure of value? Or does the preposterous character of those different items on the list suggest the opposite conclusion that maybe, whether we're talking about life or Kansas or the worm, maybe the things we value and cherish can't be captured according to a single uniform measure of value? And if they can't, what are the consequences for the utilitarian theory of morality? That's a question we'll continue with next time.



## Lecture 4 How to Measure Pleasure

Last time, we began to consider some objections to Jeremy Bentham's version of Utilitarianism. People raised two objections in the discussion we had. The first was the objection, the claim that Utilitarianism, by concerning itself with the greatest good for the greatest number, fails adequately to respect individual rights. Today, we have debates about torture and terrorism. Suppose a suspected terrorist was apprehended on September 10th and you had reason to believe that the suspect had crucial information about an impending terrorist attack that would kill over 3,000 people and you couldn't extract the information. Would it be just to torture the suspect to get the information or do you say no, there is a categorical moral duty of respect for individual rights? In a way, we're back to the questions we started with about trolley car and organ transplant. So that's the first issue. And you remember, we considered some examples of cost-benefit analysis, but a lot of people were unhappy with cost-benefit analysis when it came to placing a dollar value on human life. And so that led us to the second objection. It questioned whether it's possible to translate all values into a single uniform measure of value. It asks, in other words, whether all values are commensurable.

Let me give you one other example of an experience. This actually is a true story. It comes from personal experience that raises a question at least about whether all values can be translated without loss into utilitarian terms. Some years ago, when I was a graduate student, I was at Oxford in England and they had men's and women's colleges. They weren't yet mixed and the women's colleges had rules against overnight male guests. By the 1970s, these rules were rarely enforced and easily violated, or so I was told. By the late 1970s, when I was there, pressure grew to relax these rules and it became the subject of debate among the faculty at St. Anne's College, which was one of these all-women's colleges. The older women on the

faculty were traditionalists. They were opposed to change unconventional moral grounds. But times have changed and they were embarrassed to give the true grounds for their objection and so they translated their arguments into utilitarian terms. "If men stay overnight", they argued, "the costs to the college will increase." "How?" you might wonder. "Well, they'll want to take baths and that'll use up hot water," they said. Furthermore, they argued, "We'll have to replace the mattresses more often." The reformers met these arguments by adopting the following compromise. Each woman could have a maximum of three overnight male guests each week. They didn't say whether it had to be the same one or three different provided, and this was the compromise, provided the guest paid 50 pence to defray the cost to the college. The next day, the national headline in the national newspaper read, "St. Anne's Girls, 50 Pence A Night." Another illustration of the difficulty of translating all values, in this case, a certain idea of virtue, into utilitarian terms. So, that's all to illustrate the second objection to Utilitarianism, at least the part of that objection, that questions whether Utilitarianism is right to assume that we can assume the uniformity of value, the commensurability of all values and translate all moral considerations into dollars or money.

But there is a second aspect to this worry about aggregating values and preferences. Why should we weigh all preferences that people have without assessing whether they're good preferences or bad preferences? Shouldn't we distinguish between higher pleasures and lower pleasures? Now, part of the appeal of not making any qualitative distinctions about the worth of people's preferences, part of the appeal is that it is nonjudgmental and egalitarian. The Benthamite utilitarian says everybody's preferences count and they count regardless of what people want, regardless of what makes different people happy. For Bentham, all that matters, you'll remember, are the intensity and the duration of a pleasure or pain. The so-called "higher pleasures or nobler virtues" are simply those, according to Bentham, that produce stronger, longer

pleasure. Yet a famous phrase to express this idea, the quantity of pleasure being equal, pushpin is as good as poetry. What was pushpin? It was some kind of a child's game, like tiddlywinks. "Pushpin is as good as poetry", Bentham says. And lying behind this idea, I think, is the claim, the intuition, that it's a presumption to judge whose pleasures are intrinsically higher or worthier or better. And there is something attractive in this refusal to judge. After all, some people like Mozart, others Madonna. Some people like ballet, others bowling. Who's to say, a Benthamite might argue, who is to say which of these pleasures, whose pleasures are higher, worthier, nobler than others? But is that right, this refusal to make qualitative distinctions? Can we altogether dispense with the idea that certain things we take pleasure in are better or worthier than others? Think back to the case of the Romans in the Colosseum. One thing that troubled people about that practice is that it seemed to violate the rights of the Christian. Another way of objection to what's going on there is that the pleasure that the Romans take in this bloody spectacle, should that pleasure, which is abased, kind of corrupt, degrading pleasure, should that even be valorized or weighed in deciding what the general welfare is?

So here are the objections to Bentham's Utilitarianism and now, we turn to someone who tried to respond to those objections, a latter-day utilitarian, John Stuart Mill. So what we need to examine now is whether John Stuart Mill had a convincing reply to these objections to Utilitarianism. John Stuart Mill was born in 1806. His father, James Mill, was a disciple of Bentham's, and James Mill set about giving his son, John Stuart Mill, a model education. He was a child protégé John Stuart Mill. He knew Greek at the age of three, Latin at eight, and age 10, he wrote "A History of Roman Law." At age 20, he had a nervous breakdown. This left him in a depression for five years, but at age 25, what helped lift him out of this depression is that he met Harriet Taylor. She and Mill got married, they lived happily ever after, and it was under her influence that John Stuart Mill tried to humanize Utilitarianism. What Mill

tried to do was to see whether the utilitarian calculus could be enlarged and modified to accommodate humanitarian concerns, like the concern to respect individual rights, and also to address the distinction between higher and lower pleasures. In 1859, Mill wrote a famous book on liberty, the main point of which was the importance of defending individual rights and minority rights, and in 1861, toward the end of his life, he wrote the book we read as part of this course, "Utilitarianism." He makes it clear that utility is the only standard of morality, in his view, so he's not challenging Bentham's premise. He's affirming it. He says very explicitly, "The sole evidence it is possible to produce that anything is desirable is that people actually do desire it." So he stays with the idea that our de facto actual empirical desires are the only basis for moral judgment. But then, page eight, also in chapter two, he argues that it is possible for a utilitarian to distinguish higher from lower pleasures. Now, for those of you who have read Mill already, how, according to him, is it possible to draw that distinction? How can a utilitarian distinguish qualitatively higher pleasures from lesser ones, base ones, unworthy ones? Yes?

*Student 6: "If you've tried both of them and you prefer the higher one, naturally, always."*

That's great. That's right. What's your name?

*Student 6: "John."*

So as John points out, Mill says here's the test. Since we can't step outside actual desires, actual preferences that would violate utilitarian premises, the only test of whether a pleasure is higher or lower is whether someone who has experienced both would prefer it. And here, in chapter two, we see the passage where Mill makes the point that John just described. "Of two pleasures, if there be one to which all or

almost all who have experience of both give a decided preference, irrespective of any feeling of moral obligation to prefer it... in other words, no outside, no independent standard -- then, that is the more desirable pleasure." What do people think about that argument? Does it succeed? How many think that it does succeed of arguing within utilitarian terms for a distinction between higher and lower pleasures? How many think it doesn't succeed? I want to hear your reasons.

But before we give the reasons let's do an experiment of Mill's claim. In order to do this experiment, we're going to look at three short excerpts of popular entertainment. The first one is a Hamlet soliloquy. It'll be followed by two other experiences. See what you think.

A soliloquy of Hamlet:

*What a piece of work is a man! How noble in reason! How infinite in faculties, In form and moving how express and admirable, in action how like an angel, in apprehension how like a god! The beauty of the world, the paragon of animals - and yet, to me, what is this quintessence of dust? Man delights not me. (no, nor woman neither.)*

An excerpt from "Fear Factor":

*Imagine a world where your greatest fears become reality. "Ahh! They're biting me!" Each show, six contestants from around the country battle each other in three extreme stunts. "Ow!" These stunts are designed to challenge the contestants both physically and mentally. Six contestants, three stunts, one winner. Yes! Whooo! - "Fear Factor"*

An excerpt from "The Simpsons":

*"Hi-diddily-ho, pedal-to-the-metal-o-philes." "Flanders, since when do you like anything cool?" "Well, I don't care for the speed but I can't get enough of that safety gear. Helmets, roll bars, caution flags..." "I like the fresh air... and looking at the poor people in the infield." "Dang, Cletus, why'd you have to park by my parents?" "Now, Honey, they's my parents too."*

I don't even have to ask which one you liked most. The Simpsons, how many liked The Simpsons most? How many Shakespeare? What about Fear Factor? How many preferred Fear Factor? Really? People overwhelmingly like The Simpsons better than Shakespeare. All right, now, let's take the other part of the poll, which is the highest experience or pleasure. How many say Shakespeare? How many say Fear Factor? No, you can't be serious. Really? What? All right, go ahead. You can say it.

*Student 7: "I found that one the most entertaining."*

I know, but which do you think was the worthiest, the noblest experience? I know you found it the most entertaining.

*Student 7: "If something is good just because it is pleasurable, what does it matter whether you have sort of an abstract idea of whether it is good by someone else's sense or not?"*

All right, so you come down in the straight Benthamite side. Who is to judge and why should we judge, apart from just registering and aggregating de facto preference? All right, that's fair enough. And what's your name?

*Student 7: "Nate."*



Okay, fair enough. All right, so how many think "The Simpsons" is actually, apart from liking it, is actually the higher experience? Higher than Shakespeare? All right, let's see the vote for Shakespeare again. How many think Shakespeare is higher? All right. So why is it... ideally, I'd like to hear from someone, is there someone who thinks Shakespeare is highest but who preferred watching "The Simpsons"? Yes?

*Student 8: "Like, I guess just sitting and watching 'The Simpsons', it's entertaining because they make jokes and they make us laugh. But like, someone has to tell us that Shakespeare was this great writer. We had to be taught how to read him, how to understand him. We had to be taught how to kind of take in Rembrandt, how to analyze a painting."*

But let me... what's your name?

*Student 8: "Anisha."*

Anisha, when you say someone told you that Shakespeare is better -- Right. Are you accepting it on blind faith? You voted that Shakespeare is higher only because the culture tells you that or teachers tell you that or do you actually agree with that yourself?

*Student 8: "Well, in the sense that Shakespeare no, but earlier you made an example of Rembrandt. I feel like I would enjoy reading a comic book more than I would enjoy kind of analyzing Rembrandt because someone told me it was great, you know."*

Right. So some of this seems to be, you're suggesting, a kind of a cultural convention and pressure. We're told what books, what works of art are great. Who else? Yes?

*Student 9: "Although I enjoyed watching 'The Simpsons' more in this particular moment, in justice, if I were to spend the rest of my life considering the three different video clips shown, I would not want to spend that remainder of my life considering the latter two clips. I think I would derive more pleasure from being able to branch out in my own mind sort of considering more deep pleasures, more deep thoughts."*

And tell me your name.

*Student 9: "Joe."*

Joe, so if you had to spend the rest of your life on a farm in Kansas with only Shakespeare or the collected episodes of "The Simpsons", you would prefer Shakespeare?

(Joe nods.)

What do you conclude from that about John Stuart Mill's test that the test of a higher pleasure is whether people who have experienced both prefer it?

*Student 9: "Can I cite another example briefly?"*

Yeah.

*Student 9: "In Neurobiology last year, we were told of a rat who was tested a particular center in the brain where the rat was able to stimulate his brain and caused itself intense pleasure repeatedly. The rat did not eat or drink until it died. So the rat was clearly experiencing intense pleasure. Now, if you ask me right now if I would rather experience intense pleasure or have a full lifetime of higher pleasure, I would*

*consider intense pleasure to be low pleasure. I would right now enjoy intense pleasure but... yes, I would. I certainly would. But over a lifetime, I think I would think almost a complete majority here would agree that they would rather a complete majority here would agree that they would rather be a human with higher pleasure than be that rat with intense pleasure for a momentary period of time. Now, in answer to your question, I think this proves that... or I won't say 'proves', I think the conclusion is that Mill's theory that when a majority of people are asked what they would rather do, they will answer that they would rather engage in a higher pleasure."*

So you think that this support Mill's you think Mill is onto something here?

*Student 9: "I do."*

All right, Is there anyone who disagrees with Joe and who thinks that our experiment disproves Mill's test, shows that that's not an adequate way, that you can't distinguish higher pleasures within the utilitarian framework? Yes?

*Student 10: "If whatever is good is truly just whatever people prefer, it's truly relative and there's no objective definition, then there will be some society where people prefer Simpsons more. Anyone can appreciate The Simpsons but I think it does take education to appreciate Shakespeare as much."*

All right, you're saying it takes education to appreciate higher true things. Mill's point is that the higher pleasures do require cultivation and appreciation and education. He doesn't dispute that. But once having been cultivated and educated, people will see, not only see the difference between higher and lower pleasures, but will actually prefer the higher to the lower. You find this famous passage from John Stuart Mill. "It is better to be a human being dissatisfied than a pig satisfied; better to be Socrates

dissatisfied than a fool satisfied. And if the fool, or the pig, are of a different opinion, it is because they only know their side of the question." So here, you have an attempt to distinguish higher from lower pleasures. So going to an art museum or being a couch potato and swilling beer, watching television at home. Sometimes, Mill agrees, we might succumb to the temptation to do the latter, to be couch potatoes. But even when we do that out of indolence and sloth, we know that the pleasure we get gazing at Rembrandts in the museum is actually higher because we've experienced both, and it is a higher pleasure gazing at Rembrandts because it engages our higher human faculties.

What about Mill's attempt to reply to the objection about individual rights? In a way, he uses the same kind of argument, and this comes out in chapter five. He says, "I dispute the pretensions of any theory which sets up an imaginary standard of justice not grounded on utility." But still, he considers justice grounded on utility to be what he calls "the chief part and incomparably, the most sacred and binding part of all morality." So justice is higher, individual rights are privileged, but not for reasons that depart from utilitarian assumptions. Justice is a name, for certain moral requirements, which, regarded collectively, stand higher in the scale of social utility and are, therefore, of more paramount obligation than any others. So justice, it is sacred. It's prior. It's privileged. It isn't something that can easily be traded off against lesser things. But the reason is ultimately, Mill claims, a utilitarian reason once you consider the long-run interests of humankind, of all of us as progressive beings. If we do justice and if we respect rights, society as a whole will be better off in the long run. Well, is that convincing or is Mill actually, without admitting it, stepping outside utilitarian considerations in arguing for qualitatively higher pleasures and for sacred or especially important individual rights? We haven't fully answered that question because to answer that question, in the case of rights and justice, will require that we explore other ways, non-utilitarian ways of accounting for the basis of rights and then

asking whether they succeed.

As for Jeremy Bentham, who launched Utilitarianism as a doctrine in moral and legal philosophy, Bentham died in 1832 at the age of 85. But if you go to London, you can visit him today literally. He provided in his will that his body be preserved, embalmed, and displayed in the University of London, where he still presides in a glass case with a wax head, dressed in his actual clothing. You see, before he died, Bentham addressed himself to a question consistent with his philosophy. Of what use could a dead man be to the living? One use, he said, would be to make one's corpse available to the study of anatomy. In the case of great philosophers, however, better yet to preserve one's physical presence in order to inspire future generations of thinkers. You want to see what Bentham looks like stuffed? Here is what he looks like. There he is. Now, if you look closely, you will notice that the embalming of his actual head was not a success, so they substituted a waxed head and at the bottom, for verisimilitude, you can actually see his actual head on a plate. You see it? Right there. So, what's the moral of the story? The moral of the story - and by the way, they bring him out during meetings of the board at University College London and the minutes record him as present but not voting. Here is a philosopher in life and in death who adhered to the principles of his philosophy. We'll continue with rights next time.

## Lecture 5 Free to Choose

When we finished last time, we were looking at John Stuart Mill's attempt to reply to the critics of Bentham's Utilitarianism. In his book *Utilitarianism* Mill tries to show that critics to the contrary it is possible within the utilitarian framework to distinguish between higher and lower pleasures. It is possible to make qualitative distinctions of worth and we tested that idea with the Simpsons and the Shakespeare excerpts. And the results of our experiment seem to call into question Mill's distinction because a great many of you reported that you prefer the Simpsons but that you still consider Shakespeare to be the higher or the worthier pleasure. That's the dilemma with which our experiment confronts Mill.

What about Mill's attempt to account for the especially weighty character of individual rights and justice in chapter five of *Utilitarianism*. He wants to say that individual rights are worthy of special respect. In fact, he goes so far as to say that justice is the most sacred part and the most incomparably binding part of morality. But the same challenge could be put to this part of Mill's defense. Why is justice the chief part and the most binding part of our morality? Well, he says because in the long run, if we do justice and if we respect rights, society as a whole will be better off in the long run. Well, what about that? What if we have a case where making an exception and violating individual rights actually will make people better off in the long run? Is it all right then to use people? And there is a further objection that could be raised against Mill's case for justice and rights. Suppose the utilitarian calculus in the long run works out as he says it will such that respecting people's rights is a way of making everybody better off in the long run. Is that the right reason? Is that the only reason to respect people? If the doctor goes in and yanks the organs from the healthy patient who came in for a checkup to save five lives, there would be adverse effects in the long run. Eventually, people would learn about this and would stop



going in for checkups. Is it the right reason? Is the only reason that you as a doctor won't yank the organs out of the healthy patient that you think, well, if I use him in this way, in the long run more lives would be lost? Or is there another reason having to do with intrinsic respect for the person as an individual? And if that reason matters and it's not so clear that even Mill's utilitarianism can take account of it, fully to examine these two worries or objections, to Mill's defense we need to push further. And we need to ask in the case of higher or worthier pleasures are there theories of the good life that can provide independent moral standards for the worth of pleasure? If so, what do they look like? That's one question. In the case of justice and rights, if we suspect that Mill is implicitly leaning on notions of human dignity or respect for person that are not strictly speaking utilitarian, we need to look to see whether there are some stronger theories of rights that can explain the intuition which even Mill shares, the intuition that the reason for respecting individuals and not using them goes beyond even utility in the long run.

Today, we turn to one of those strong theories of rights. Strong theories of right say individuals matter not just as instruments to be used for a larger social purpose or for the sake of maximizing utility, individuals are separate beings with separate lives worthy of respect. And so it's a mistake, according to strong theories or rights, it's a mistake to think about justice or law by just adding up preferences and values. The strong rights theory we turn to today is libertarianism. Libertarianism takes individual rights seriously. It's called libertarianism because it says the fundamental individual right is the right to liberty precisely because we are separate individual beings. We're not available to any use that the society might desire or devise precisely because we are individual separate human beings. We have a fundamental right to liberty, and that means a right to choose freely, to live our lives as we please provided we respect other people's rights to do the same. That's the fundamental idea.

Robert Nozick, one of the libertarian philosophers we read for this course, puts it this way: Individuals have rights. So strong and far reaching are these rights that they raise the question of what, if anything, the state may do. So what does libertarianism say about the role of government or of the state? Well, there are three things that most modern states do that on the libertarian theory of rights are illegitimate or unjust. One of them is paternalist legislation. That's passing laws that protect people from themselves, seatbelt laws, for example, or motorcycle helmet laws. The libertarian says it may be a good thing if people wear seatbelts but that should be up to them and the state, the government, has no business coercing them, us, to wear seatbelts by law. It's coercion, so no paternalist legislation, number one. Number two, no morals legislation. Many laws try to promote the virtue of citizens or try to give expression to the moral values of the society as a whole. Libertarians say that's also a violation of the right to liberty. Take the example of, well, a classic example of legislation authored in the name of promoting morality traditionally have been laws that prevent sexual intimacy between gays and lesbians. The libertarian says nobody else is harmed, nobody else's rights are violated, so the state should get out of the business entirely of trying to promote virtue or to enact morals legislation. And the third kind of law or policy that is ruled out on the libertarian philosophy is any taxation or other policy that serves the purpose of redistributing income or wealth from the rich to the poor. Says the libertarian is a kind of coercion. What it amounts to is theft by the state or by the majority, if we're talking about a democracy, from people who happen to do very well and earn a lot of money. Now, Nozick and other libertarians allow that there can be a minimal state that taxes people for the sake of what everybody needs, the national defense, police force, judicial system to enforce contracts and property rights, but that's it.

Now, I want to get your reactions to this third feature of the libertarian view. I want to see who among you agree with that idea and who disagree and why. But just to make

it concrete and to see what's at stake, consider the distribution of wealth in the United States. United States is among the most inegalitarian society as far as the distribution of wealth of all the advanced democracies. Now, is this just or unjust? Well, what does the libertarian say? Libertarian says you can't know just from the facts I've just given you. You can't know whether that distribution is just or unjust. You can't know just by looking at a pattern or a distribution or result whether it's just or unjust. You have to know how it came to be. You can't just look at the end stage or the result. You have to look at two principles. The first he calls justice in acquisition or in initial holdings. And what that means simply is did people get the things they used to make their money fairly? So we need to know was there justice in the initial holdings? Did they steal the land or the factory or the goods that enabled them to make all that money? If not, if they were entitled to whatever it was that enabled them to gather the wealth, the first principle is matched. The second principle is did the distribution arise from the operation of free consent, people buying and trading on the market? As you can see, the libertarian idea of justice corresponds to a free market conception of justice provided people got what they used fairly, didn't steal it, and provided the distribution results from the free choice of individual's buying and selling things, the distribution is just. And if not, it's unjust.

So let's, in order to fix ideas for this discussion, take an actual example. Who's the wealthiest person in the world? Bill Gates. It is. That's right. Here he is. You'd be happy, too. Now, what's his net worth? Anybody have any idea? That's a big number. During the Clinton years, remember there was a controversy donors? Big campaign contributors were invited to stay overnight in the Lincoln bedroom at the White House? I think if you've contributed twenty five thousand dollars or above, someone figured out at the median contribution that got you invited to stay a night in the Lincoln bedroom, Bill Gates could afford to stay in the Lincoln bedroom every night for the next sixty six thousand years. Somebody else figured out, how much does he

get paid on an hourly basis? And so they figured out, since he began Microsoft, I suppose he worked, what 14 hours per day, reasonable guess, and you calculate this net wealth, it turns out that his rate of pay is over 150 dollars, not per hour, not per minute 150 dollars, more than 150 dollars per second which means that if on his way to the office, Gates noticed a hundred dollar bill on the street, it wouldn't be worth his time to stop and pick it up. Now, most of you will say someone that wealthy surely we can tax them to meet the pressing needs of people who lack in education or lack enough to eat or lack decent housing. They need it more than he does. And if you were a utilitarian, what would you do? What tax policy would you have? You'd redistribute in a flash, wouldn't you? Because you would know being a good utilitarian that taking some, a small amount, he'd scarcely going to notice it, but it will make a huge improvement in the lives and in the welfare of those at the bottom. But remember, the libertarian theory says we can't just add up an aggregate preferences and satisfactions that way. We have to respect persons and if he earned that money fairly without violating anybody else's rights in accordance with the two principles of justice in acquisition and in justice in transfer, then it would be wrong, it would be a form of coercion to take it away.

Michael Jordan is not as wealthy as Bill Gates but he did pretty well for himself. You wanna see Michael Jordan. There he is. His income alone in one year was 31 million dollars and then he made another 47 million dollars in endorsements for a Nike and other companies. So his income was, in one year, \$78 million. To require him to pay, let's say, a third of his earnings to the government to support good causes like food and health care and housing and education for the poor, that's coercion, that's unjust. That violates his rights. And that's why redistribution is wrong. Now, how many agree with that argument, agree with the libertarian argument that redistribution for the sake of trying to help the poor is wrong? And how many disagree with that argument? All right, let's begin with those who disagree. What's wrong with the libertarian case

against redistribution? Yes.

*Student 1: "I think these people like Michael Jordan have received we're talking about working within a society and they receive a larger gift from the society and they have a larger obligation in return to give that through redistribution, you know, you can say that Michael Jordan may work just as hard as some who works, you know, doing laundry 12 hours, 14 hours a day, but he's receiving more. I don't think it's fair to say that, you know, it's all on him, on his, you know, inherent, you know, hard work."*

All right, let's hear from defenders of libertarianism. Why would it be wrong in principle to tax the rich to help the poor? Go ahead.

*Student 2: "My name is Joe and I collect skateboards. I've since bought a hundred skateboards. I live in a society of a hundred people. I'm the only one with skateboards. Suddenly, everyone decides they want a skateboard. They come to my house, they take my they take 99 of my skateboards. I think that is unjust. Now, I think in certain circumstances it becomes necessary to overlook that unjustness, perhaps condone that injustice as in the case of the cabin boy being killed for food. If people are on the verge of dying, perhaps it is necessary to overlook that injustice, but I think it's important to keep in mind that we're still committing injustice by taking people's belongings or assets."*

Are you saying that taxing Michael Jordan, say, at a 33 percent tax rate for good causes to feed the hungry is theft?

*Student 2: "I think it's unjust. Yes, I do believe it's theft but perhaps it is necessary to condone that theft."*

But it's theft.

*Student 2: "Yes."*

Why is it theft, Joe?

*Student 2: "Because..."*

Why is it like your collection of skateboards?

*Student 2: "It's theft because, or at least, in my opinion and by the libertarian opinion he earned that money fairly and it belongs to him. So to take it from him is by definition theft."*

Who wants to reply to Joe? Yes, go ahead.

*Student 3: "I don't think this is necessarily a case in which you have 99 skateboards or you have a hundred skateboards and the government is taking 99 of them. It's like you have more skateboards than there are days in a year. You have more skateboards that you're going to be able to use in your entire lifetime and the government is taking part of those. And I think that if you are operating in a society in which redistribute wealth, then that allows for people to amass so much wealth that people who haven't started from this very the equal footing in our hypothetical situation, that doesn't exist in our real society get undercut for the rest of their lives."*

So you're worried that if there isn't some degree of redistribution of some or left at the bottom, there will be no genuine equality of opportunity.



(Student 3 nods.)

All right, the idea that taxation is theft, Nozick takes that point one step further. He agrees that it's theft. He's more demanding than Joe. Joe says it is theft, maybe in an extreme case it's justified, maybe a parent is justified in stealing a loaf of bread to feed his or her hungry family. So Joe I would say, what would you call yourself, a compassionate quasi-libertarian? Nozick says, if you think about it, taxation amounts to the taking of earnings. In other words, it means taking the fruits of my labor. But if the state has the right to take my earning or the fruits of my labor, isn't that morally the same as according to the state the right to claim a portion of my labor? So taxation actually is morally equivalent to forced labor because forced labor involves the taking of my leisure, my time, my efforts, just as taxation takes the earnings that I make with my labor. And so, for Nozick and for the libertarians, taxation for redistribution is theft, as Joe says, but not only theft is morally equivalent to laying claim to certain hours of a person's life and labor, so it's morally equivalent to forced labor. If the state has a right to claim the fruits of my labor, that implies that it really has an entitlement to my labor itself. And what is forced labor? Forced labor, Nozick points out, is what, is slavery, because if I don't have the right, the sole right to my own labor, then that's really to say that the government or the political community is a part owner in me. And what does it mean for the state to be a part owner in me? If you think about it, it means that I'm a slave, that I don't own myself. So what this line of reasoning brings us to is the fundamental principle that underlies the libertarian case for rights. What is that principle? It's the idea that I own myself. It's the idea of self possession if you want to take right seriously. If you don't want to just regard people as collections of preferences, the fundamental moral idea to which you will be lead is the idea that we are the owners or the proprietors of our own person, and that's why utilitarianism goes wrong. And that's why it's wrong to yank the organs from that healthy patient. You're acting as if that patient belongs to you or to the community. But we belong to

ourselves. And that's the same reason that it's wrong to make laws to protect us from ourselves or to tell us how to live, to tell us what virtues we should be governed by, and that's also why it's wrong to tax the rich to help the poor even for good causes, even to help those who are displaced by the Hurricane Katrina. Ask them to give charity. But if you tax them, it's like forcing them to labor. Could you tell Michael Jordan he has to skip the next week's games and go down to help the people displaced by Hurricane Katrina? Morally, it's the same. So the stakes are very high.

So far we've heard some objections to the libertarian argument. But if you want to reject it, you have to break in to this chain of reasoning which goes, taking my earnings is like taking my labor, but taking my labor is making me a slave. And if you disagree with that, you must believe in the principle of self possession. Those who disagree, gather your objections and we'll begin with them next time.

## Lecture 6 Who Owns Me?

We were talking last time about libertarianism. I want to go back to the arguments for and against the redistribution of income. But before we do that, just one word about the minimal state, Milton Friedman, the libertarian economist, he points out that many of the functions that we take for granted as properly belonging to government don't. They are paternalist. One example he gives is social security. He says it's a good idea for people to save for their retirement during their earning years but it's wrong. It's a violation of people's liberty for the government to force everyone whether they want to or not to put aside some earnings today for the sake of their retirement. If people want to take the chance or if people want to live big today and live a poor retirement, that should be their choice. They should be free to make those judgments and take those risks. So even social security would still be at odds with the minimal state that Milton Friedman argued for.

It sometimes thought that collective goods like police protection and fire protection will inevitably create the problem of free riders unless they're publicly provided. But there are ways to prevent free riders. There are ways to restrict even seemingly collective goods like fire protection. I read an article a while back about a private fire company, the Salem Fire Corporation, in Arkansas. You can sign up with the Salem Fire Corporation, pay a yearly subscription fee, and if your house catches on fire, they will come and put out the fire. But they won't put out everybody's fire. They will only put it out if it's a fire in the home of a subscriber or if it starts to spread and to threaten the home of a subscriber. The newspaper article just told the story of a home owner who had subscribed to this company in the past but failed to renew his subscription. His house caught on fire. The Salem Fire Corporation showed up with its trucks and watched the house burn, just making sure that it didn't spread. The fire chief was asked, well, he wasn't exactly the fire chief. I guess he was the CEO. He was asked

how can you stand by with fire equipment and allow a person's home to burn? He replied, once we verified there was no danger to a member's property, we had no choice but to back off according to our rules. If we responded to all fires, he said, there would be no incentive to subscribe. The homeowner in this case tried to renew his subscription at the scene of the fire. But the head of the company refused. You can't wreck your car, he said, and then buy insurance for it later. So even public goods that we take for granted that's being within the proper province of government can many of them in principle be isolated, made exclusive to those who pay. That's all to do with the question of collective goods and the libertarians injunction against paternalism.

But let's go back now to the arguments about redistribution. Now, underlying the libertarian's case for the minimal state is a worry about coercion, but what's wrong with coercion? The libertarian offers this answer: To coerce someone, to use some person for the sake of the general welfare is wrong because it calls into question the fundamental fact that we own ourselves the fundamental moral fact of self possession or self ownership. The libertarian's argument against redistribution begins with this fundamental idea that we own ourselves. Nozick says that if the society as a whole can go to Bill Gates or go to Michael Jordan and tax away a portion of their wealth, what the society is really asserting is a collective property right in Bill Gates or in Michael Jordan. But that violates the fundamental principle that we belong to ourselves.

Now, we've already heard a number of objections to the libertarian argument. What I would like to do today is to give the libertarians among us a chance to answer the objections that have been raised and some have been some have already identified themselves and have agreed to come and make the case for libertarianism to reply to the objections that have been raised. So raise your hand if you are among the

libertarians who's prepared to stand up for the theory and respond to the objections. You are?

*Student 4: "Alex Harris."*

Alex Harris, who's been a star on the web blog. All right, Alex, come here. Stand up. Come. We'll create a libertarian corner over here. And who else? Other libertarians who will join. What's your name?

*Student 5: "John."*

John?

*Student 5: "John Sheffield."*

Who else wants to join? Other brave libertarians who are prepared to take on... Yes, what's your name?

*Student 6: "Julia Rotto."*

Julia, come join us over there. Julie, John, Alex. While team libertarian is gathering over there, let me just summarize the main objections that I've heard in class and on the website. I wanna talk to team libertarian over here. So objection number one is that the poor need the money more. than do Bill Gates and Michael Jordan. Objection number two, it's not really slavery to tax because at least in a democratic society it's not a slave holder. It's congress. It's a democratic... you're smiling, Alex, already. You're confident you can reply to all of these?

(The "libertarians" nod.)

So taxation by consent of the governed is not coercive. Third, some people have said don't the successful like Gates owe a debt to society for their success that they repay by paying taxes. Who wants to respond to the first one, the poor need the money more? All right, and you're?

*Student 5: "John."*

All right, John.

*Student 5: "The poor need the money more. That's quite obvious. I could use the money. You know, I certainly wouldn't mind if Bill Gates give me a million dollars. I mean, I'd take a thousand. But at some point you have to understand that the benefits of redistribution of wealth don't justify the initial violation of the property right. If you look at the argument the poor need the money more, at no point in that argument do you contradict the fact that we've extrapolated from, agreed upon principles that people own themselves. We've extrapolated that people have property rights and so whether or not it would be a good thing or a nice thing or even a necessary thing for the survival of some people, we don't see that that justifies the violation of the right that we've logically extrapolated. Good. Okay. And so that also, I mean, there still exist this institution of like individual philanthropy. Milton Friedman makes this argument..."*

All right, so Bill Gates can give to charity if he wants to. Right. But it would still be wrong to coerce him to meet the needs of the poor.

*Student 5: "Exactly."*



Are the two of you happy with that reply? Anything to add? All right, go ahead. Julie?

*Student 6: "Julia, yes. I think I can also add, it's okay. I guess I could add that there's a difference between needing something and deserving something. I mean, in an ideal society everyone's needs would be met but here we're arguing what do we deserve as a society and, yeah. And the poor don't deserve the benefits that would flow from taxing Michael Jordan to help them. Based on what we've covered here I don't think you deserve something like that."*

All right, let me push you a little bit on that, Julia. The victims of Hurricane Katrina are in desperate need of help. Would you say that they don't deserve help that would come from the federal government through taxation?

*Student 6: "Okay, that's a difficult question. I think this is a case where they need help, not deserve it, but I think, again, if you had a certain level of requirements to meet sustenance, you're gonna need help, like, if you don't have food or a place to live, that's a case of need."*

So need is one thing and deserve is another.

*Student 6: "Exactly."*

All right. Who would like to reply? Yes.

*Student 7: "Going back to the first point that you made about the property rights of individual. The property rights are established and enforced by the government, which is a democratic government, and we have representatives to enforce those rights. If*

*you live in a society that operates under those rules, then it should be up to the government to decide how those resources and taxation are distributed because it is through the consent of the government. If you disagree with it, you don't have to live in that society where that operates."*

All right, good, so, and tell me your name.

*Student 7: "Raul."*

Raul is pointing out, actually, Raul is invoking point number two. If the taxation is by the consent of the governed, it's not coerced. It's legitimate. Bill Gates and Michael Jordan are citizens of the United States. They get to vote for congress. They get to vote their policy convictions just like everybody else. Who would like to take that one on? John?

*Student 5: "Basically, what the libertarians are objecting to in this case is the middle 80 percent deciding what the top ten percent are doing for the bottom ten percent."*

Wait, wait, wait, John. Majority. Don't you believe in democracy?

*Student 5: "Well, right, but at some point..."*

Don't you believe in, I mean, you say 80 percent, 10 percent majority. Majority rule is what? The majority.

*Student 5: "Exactly, but..."*

In a democracy. Aren't you for democracy?

*Student 5: "Yes, I'm for democracy, but Hang on, hang on, hang on. Democracy and mob rule aren't the same thing."*

Mob rule?

*Student 5: "Mob rule, exactly."*

*Student 7: "In an open society you have a recourse to address that through your representatives. And if the majority of the consent of those who are governed doesn't agree with you, then you know, you're choosing to live in a society and you have to operate under what the majority the society concludes."*

All right, Alex, on democracy. What about that?

*Student 4: "The fact that I have one, you know, five hundred thousandth of the vote for one representative in congress is not the same thing as my having the ability to decide for myself how to use my property rights. I'm a drop in the bucket and, you know, well..."*

You might lose the vote.

*Student 4: "Exactly. And they might take -- And I will. I mean, I don't have the decision right now of whether or not to pay taxes. If I don't, I get locked in jail or they tell me to get out of the country."*

But, Alex, Alex, let me make a small case for democracy. And see what you would say. Why can't you, we live in a democratic society with freedom of speech. Why can't

you take to the Hustings, persuade your fellow citizens that taxation is unjust and try to get a majority?

*Student 4: "I don't think that people should be, should have to convince 280 million others simply in order to exercise their own rights, in order to not have their self ownership violated. I think people should be able to do that without having to convince 280 million people."*

Does that mean you are against democracy as a whole?

*Student 4: "I...no. I just believe in a very limited form of democracy whereby we have a constitution that severely limits the scope of what decisions can be made democratically."*

All right, so you're saying that democracy is fine except where fundamental rights are involved.

*Student 4: "Yes."*

And I think you could win. If you're going on the Hustings, let me add one element to the argument you might make. You can say put aside the economic debates, taxation. Suppose the individual right to religious liberty were at stake, then, Alex, you could say, on the Hustings. Surely, you would all agree that we shouldn't put the right to individual liberty up to a vote.

*Student 4: "Yeah, that's exactly right, and that's why we have a constitutional amendments and why do we make it so hard to amend our constitution."*

So you would say that the right to private property, the right of Michael Jordan to keep all the money he makes at least to protect it from redistribution is the same kind of right with the same kind of weight as the right to freedom of speech, the right to religious liberty, rights that should trump what the majority wants.

*Student 4: "Absolutely. The reason why we have a right to free speech is because we have a right to own ourselves, to exercise our voice in any way that we choose."*

All right, good. All right, so there we...All right, who would like to respond to that argument about democracy being...Okay, up there. Stand up.

*Student 8: "I think comparing religion economics it's not the same thing. The reason why Bill Gates is able to make so much money is because we live in an economically and socially stable society. And if the government didn't provide for the poor as ten percent as you say through taxation, then we would need more money for police to prevent crime and so, either way, there would be more taxes taken away to provide what you guys call the necessary things that the government provides."*

What's your name?

*Student 8: "Anna."*

Anna, let me ask you this. Why is the fundamental right to religious liberty different from the right Alex asserts as a fundamental right to private property and to keep what I earn? What's the difference between the two?

*Student 8: "Because you wouldn't have...You wouldn't be able to make money, you wouldn't be able to own property if there wasn't that socially, like, if society wasn't*

*stable, and that's completely different from religion. That's like something personal, something that you can practice on your own in your own home or like me practicing my religion is not going to affect the next person. But if I'm poor and I'm desperate, like I might commit a crime to feed my family and that can affect others."*

Okay, good, thank you. Would it be wrong for someone to steal a loaf of bread to feed his starving family? Is that wrong?

*Student 4: "I believe that it is. This is..."*

Let's take a quick poll of the three of you. You say, yes, it is wrong.

*Student 4: "Yes."*

John?

*Student 5: "It violates property rights. It's wrong."*

Even to save a starving family?

*Student 5: "I mean there are definitely other ways around that and by justifying, no, hang on, hang on, before you laugh at me. Before justifying the act of stealing, you have to look at violating the right that we've already agreed exists, the right of self possession and the possession of, I mean, your own things. We agree on property rights."*

All right, we agree at stealing.



Student 5: "Yeah, we agree at stealing."

So property rights is not the issue.

Student 5: "All right, but..."

So why is it wrong to steal even to feed your starving family?

Student 5: "Sort of the original argument that I made in the very first question you asked. The benefits of an action don't justify, don't make the action just."

Do what, what would you say, Julia? Is it all right to steal a loaf of bread to feed a starving family or to steal a drug that your child needs to survive?

Student 6: "I think, I'm okay with that, honestly. Even from the libertarian standpoint, I think that, okay, saying that you can just take money arbitrarily from people who have a lot to go to this pool of people who need it, but you have an individual who's acting on their own behalf to kind of save themselves and then I think you said they, for any idea like self possession, they are also in charge of protecting themselves and keeping themselves alive so, therefore, even for a libertarian standpoint, that might be okay."

All right, that's good, that's good. All right, what about number three up here? Isn't it the case that the successful, the wealthy, owe a debt. They didn't do that all by themselves. They had to cooperate with other people that they owe a debt to society and that that's expressed in taxation. You wanna take that on, Julia?

Student 6: "Okay, this one, I believe that there is not a debt to society in the sense that

*how did these people become wealthy? They did something that society valued highly. I think that society has already been giving, been providing for them. They provided a service to society and society responded by somehow they got their wealth, so I think that..."*

So be concrete. I mean, to illustrate your point. There were people who helped him make the money, the teammates, the coach, people who taught him how to play.

*Student 6: "But they've, you're saying, but they've all been paid for their services. Exactly, and society derived a lot of benefit and pleasure from watching Michael Jordan play. I think that that's how he paid his debt to society."*

All right, good. Who would, anyone likes to take up that point? Yes.

*Student 9: "I think that there's a problem here with that we're assuming that a person has self possession when they live in a society. I feel like when you live in a society, you give up that right. I mean, technically, if I want to personally go out and kill someone because they offend me, that is self possession. Because I live in a society I cannot do that. I think it's kind of equivalent to say because I have more money, I have resources that can save people's lives, is it not okay for the government to take that from me? Self possession only to a certain extent because I'm living in a society where I have to take account of the people around me."*

So are you question, what's your name?

*Student 9: "Victoria."*

Victoria, are you questioning the fundamental premise of self possession?

*Student 9: "Yes. I think that you don't really have self possession if you choose to live in a society because you cannot just discount the people around you."*

All right, I want to quickly get the response of the libertarian team to the last point. The last point builds on, well, maybe it builds on Victoria's suggestion that we don't own ourselves because it says that Bill Gates is wealthy, that Michael Jordan makes a huge income, isn't wholly their own doing. It's the product of a lot of luck and so we can't claim that they morally deserve all the money they make. Who wants to reply to that? Alex?

*Student 4: "Their wealth is not appropriate to the goodness in their hearts, but that's not really the morally relevant issue. The point is that they have received what they have through the free exchange of people who have given them their holdings, usually in exchange for providing some other service."*

Good enough. I want to try to sum up what we've learned from this discussion, but, first, let's thank John, Alex, and Julia for a really wonderful job. Toward the end of the discussion just now Victoria challenged the premise of this line of reasoning that's libertarian logic. Maybe, she suggested, we don't own ourselves after all. If you reject the libertarian case against redistribution, there would seem to be an incentive to break in to the libertarian line of reasoning at the earliest, at the most modest level, which is why a lot of people disputed that taxation is morally equivalent to forced labor. But what about the big claim, the premise, the big idea underlying the libertarian argument? Is it true that we own ourselves or can we do without that idea and still avoid what libertarians want to avoid creating a society in an account of justice where some people can be just used for the sake of other people's welfare or even for the sake of the general good? Libertarians combat the utilitarian idea of using

people as means for the collective happiness by saying the way to put a stop to that utilitarian logic of using persons is to resort to the intuitively powerful idea that we are the proprietors of our own person. That's Alex and Julia and John and Robert Nozick. What are the consequences for a theory of justice and in account of rights of calling into question the idea of self possession? Does it mean that we're back to utilitarianism and using people and aggregating preferences and pushing the fat man off the bridge?

Nozick doesn't himself fully develop the idea of self possession. He borrows it from an earlier philosopher, John Locke. John Locke accounted for the rise of private property from the state of nature by a chain of reasoning very similar to the one that Nozick and the libertarians use. John Locke said private property arises because when we mix our labor with things, unowned things, we come to acquire a property right in those things. And the reason? The reason is that we own our own labor, and the reason for that? We are the proprietors, the owners of our own person. And so in order to examine the moral force of the libertarian claim that we own ourselves, we need to turn to the English political philosopher, John Locke, and examine his account of private property and self ownership and that's what we'll do next time.

“From each as they choose, to each as they are chosen.” - Robert Nozick

## Lecture 7 This Land is My Land

Today, we turn to John Locke.

On the face of it, Locke is a powerful ally of the libertarian. First, he believes, as libertarians today maintain, that there are certain fundamental individual rights that are so important that no government, even a representative government, even a democratically elected government, can override them. Not only that, he believes that those fundamental rights include a natural right to life, liberty, and property, and furthermore he argues that the right to property is not just the creation of government or of law. The right to property is a natural right in the sense that it is prepolitical. It is a right that attaches to individuals as human beings, even before government comes on the scene, even before parliaments and legislatures enact laws to define rights and to enforce them.

Locke says in order to think about what it means to have a natural right, we have to imagine the way things are before government, before law, and that's what Locke means by the state of nature. He says the state of nature is a state of liberty. Human beings are free and equal beings. There is no natural hierarchy. It's not the case that some people are born to be kings and others are born to be serfs. We are free and equal in the state of nature and yet, he makes the point that there is a difference between a state of liberty and a state of license. And the reason is that even in the state of nature, there is a kind of law. It's not the kind of law that legislatures enact. It's a law of nature. And this law of nature constrains what we can do even though we are free, even though we are in the state of nature.

Well what are the constraints? The only constraint given by the law of nature is that the rights we have, the natural rights we have we can't give up nor can we take them

from somebody else. Under the law of nature, I'm not free to take somebody else's life or liberty or property, nor am I free to take my own life or liberty or property. Even though I am free, I'm not free to violate the law of nature. I'm not free to take my own life or to sell my self into slavery or to give to somebody else arbitrary absolute power over me.

So where does this constraint, you may think it's a fairly minimal constraint, but where does it come from?

Well, Locke tells us where it comes from and he gives two answers. Here is the first answer. "For men, being all the workmanship of one omnipotent, and infinitely wise maker," namely God, "they are His property, whose workmanship they are, made to last during His, not one another's pleasure." So one answer to the question is why can't I give up my natural rights to life, liberty, and property is well, they're not, strictly speaking, yours. After all, you are the creature of God. God has a bigger property right in us, a prior property right. Now, you might say that's an unsatisfying, unconvincing answer, at least for those who don't believe in God. What did Locke have to say to them? Well, here is where Locke appeals to the idea of reason and this is the idea, that if we properly reflect on what it means to be free, we will be led to the conclusion that freedom can't just be a matter of doing whatever we want. I think this is what Locke means when he says, "The state of nature has a law of nature to govern it which obliges everyone: and reason, which is that law, teaches mankind who will but consult it that all being equal and independent, no one ought to harm another in his life, health, liberty, or possessions."

This leads to a puzzling paradoxical feature of Locke's account of rights. Familiar in one sense but strange in another. It's the idea that our natural rights are unalienable. What does "unalienable" mean? It's not for us to alienate them or to give them up, to



give them away, to trade them away, to sell them. Consider an airline ticket. Airline tickets are nontransferable. Or tickets to the Patriots or to the Red Sox. Nontransferable tickets are unalienable. I own them in the limited sense that I can use them for myself, but I can't trade them away. So in one sense, an unalienable right, a nontransferable right makes something I own less fully mine.

But in another sense of unalienable rights, especially where we're thinking about life, liberty, and property, or a right to be unalienable makes it more deeply, more profoundly mine, and that's Locke's sense of unalienable.

We see it in the American Declaration of Independence. Thomas Jefferson drew on this idea of Locke. Unalienable rights to life, liberty, and as Jefferson amended Locke, to the pursuit of happiness. Unalienable rights. Rights that are so essentially mine that even I can't trade them away or give them up. So these are the rights we have in the state of nature before there is any government. In the case of life and liberty, I can't take my own life. I can't sell myself into slavery any more than I can take somebody else's life or take someone else as a slave by force.

But how does that work in the case of property? Because it's essential to Locke's case that private property can arise even before there is any government. How can there be a right to private property even before there is any government? Locke's famous answer comes in Section 27. "Every man has a property in his own person. This nobody has any right to but himself." "The labor of his body and the work of his hands, we may say, are properly his." So he moves, as the libertarians later would move, from the idea that we own ourselves, that we have property in our persons to the closely connected idea that we own our own labor. And from that to the further claim that whatever we mix our labor with that is un-owned becomes our property. "Whatever he removes out of the state that nature has provided, and left it in, he has

mixed his labor with, and joined it to something that is his own, and thereby makes it his property."

Why? Because the labor is the unquestionable property of the laborer and therefore, no one but the laborer can have a right to what is joined to or mixed with his labor. And then he adds this important provision, "at least where there is enough, and as good left in common for others." But we not only acquire our property in the fruits of the earth, in the deer that we hunt, in the fish that we catch but also if we till and plow and enclose the land and grow potatoes, we own not only the potatoes but the land, the earth. "As much land as a man tills, plants, improves, cultivates and can use the product of, so much is his property. He by his labor encloses it from the commons.

So the idea that rights are unalienable seems to distance Locke from the libertarian. Libertarian wants to say we have an absolute property right in ourselves and therefore, we can do with ourselves whatever we want. Locke is not a sturdy ally for that view. In fact, he says if you take natural rights seriously, you'll be led to the idea that there are certain constraints on what we can do with our natural rights, constraints given either by God or by reason reflecting on what it means really to be free, and really to be free means recognizing that our rights are unalienable. So here is the difference between Locke and the libertarians.

But when it comes to Locke's account of private property, he begins to look again like a pretty good ally because his argument for private property begins with the idea that we are the proprietors of our own person and therefore, of our labor, and therefore, of the fruits of our labor, including not only the things we gather and hunt in the state of nature but also we acquire our property right in the land that we enclose and cultivate and improve.

There are some examples that can bring out the moral intuition that our labor can take something that is unowned and make it ours, though sometimes, there are disputes about this. There is a debate among rich countries and developing countries about trade-related intellectual property rights. It came to a head recently over drug patent laws. Western countries, and especially the United States say, "We have a big pharmaceutical industry that develops new drugs. We want all countries in the world to agree to respect the patents." Then, there came along the AIDS crisis in South Africa, and the American AIDS drugs were hugely expensive, far more than could be afforded by most Africans. So the South African government said, "We are going to begin to buy a generic version of the AIDS antiretroviral drug at a tiny fraction of the cost because we can find an Indian manufacturing company that figures out how the thing is made and produces it, and for a tiny fraction of the cost, we can save lives if we don't respect that patent." And then the American government said, "No, here is a company that invested research and created this drug. You can't just start mass producing these drugs without paying a licensing fee." And so there was a dispute and the pharmaceutical company sued the South African government to try to prevent their buying the cheap generic, as they saw it, pirated version of an AIDS drug. And eventually, the pharmaceutical industry gave in and said, "All right, you can do that."

But this dispute about what the rules of property should be, of intellectual property of drug patenting, in a way, is the last frontier of the state of nature because among nations where there is no uniform law of patent rights and property rights, it's up for grabs until, by some act of consent, some international agreement, people enter into some settled rules.

What about Locke's account of private property and how it can arise before government and before law comes on the scene? Is it successful? How many think it's pretty persuasive? Raise your hand. How many don't find it persuasive? All right, let's

hear from some critics. What is wrong with Locke's account of how private property can arise without consent? Yes?

Yes, I think it justifies European cultural norms as far as when you look at how Native Americans may not have cultivated American land, but by their arrival in the Americas, that contributed to the development of America, which wouldn't have otherwise necessarily happened then or by that specific group. So you think that this is a defense, this defense of private property in land...

Yes, because it complicates original acquisition if you only cite the arrival of foreigners that cultivated the land. I see. And what's your name?

*Rochelle.*

Rochelle?

*Yes.*

Rochelle says this account of how property arises would fit what was going on in North America during the time of the European settlement. Do you think, Rochelle, that it's a way of defending the appropriation of the land?

*Indeed, because I mean, he is also justifying the glorious revolutions. I don't think it's inconceivable that he is also justifying colonization as well.*

Well, that's an interesting historical suggestion and I think there is a lot to be said for it. What do you think of the validity of his argument though? Because if you are right that this would justify the taking of land in North America from Native Americans

who didn't enclose it, if it's a good argument, then Locke's given us a justification for that. If it's a bad argument, then Locke's given us a mere rationalization that isn't morally defensible.

*I'm leaning to the second one - You're leaning toward the second one.*

But that's my opinion as well. All right, well, then, let's hear if there is a defender of Locke's account of private property, and it would be interesting if they could address Rochelle's worry that this is just a way of defending the appropriation of land by the American colonists from the Native Americans who didn't enclose it. Is there someone who will defend Locke on that point? Are you going to defend Locke?

*Like, you're accusing him of justifying the European basically massacre of the Native Americans. But who says he is defending it? Maybe the European colonization isn't right. You know, maybe it's the state of war that he talked about So the wars between the Native Americans and the colonists, the settlers, that might have been a state of war that we can only emerge from by an agreement or an act of consent and that's what would have been required fairly to resolve... Yes, and both sides would have had to agree to it and carry it out and everything.*

But what about when, what's your name?

*Dan.*

But Dan, what about Rochelle says this argument in Section 27 and then in 32 about appropriating land, that argument, if it's valid, would justify the settlers' appropriating that land and excluding others from it, you think that argument is a good argument?

*Well, doesn't it kind of imply that the Native Americans hadn't already done that? Well, the Native Americans, as hunter-gatherers, didn't actually enclose land. So I think Rochelle is onto something there. What I want to -- go ahead, Dan. At the same time, he is saying that just by picking an acorn or taking an apple or maybe killing a buffalo on a certain amount of land, that makes it yours because it's your labor and your labor would enclose that land. So by that definition, maybe they didn't have fences around little plots of land but didn't... They were using it. Yes. By Locke's definition, you can say... So maybe by Locke's definition, the Native Americans could have claimed a property right in the land itself. Right, but they just didn't have Locke on their side, as she points out.*

All right, good. Okay, that's good. One more defender of Locke. Go ahead.

*Well, I mean, just to defend Locke, he does say that there are some times in which you can't take another person's land. For example, you can't acquire a land that is common property so people, in terms of the American Indians, I feel like they already have civilizations themselves and they were using land in common. So it's kind of like what an analogy to what he was talking about with like the common English property. You can't take land that everybody is sharing in common. Oh, that's interesting. That's interesting. And also, you can't take land unless you make sure that there is as much land as possible left for other people to take as well.*

So if you're taking common, so you have to make sure that whenever you take land that there is enough left for other people to use...

*Right. ...that's just as good as the land that you took, so...*

That's true. Locke says there has to be this right to private property in the earth is subject to the provision that there be as much and as good left for others. What's your



name?

*Right. I'm Feng.*

So Feng, in a way, agrees with Dan that maybe there is a claim within Locke's framework that could be developed on behalf of the Native Americans. Here is the further question. If the right to private property is natural, not conventional, if it's something that we acquire even before we agree to government, how does that right constrain what a legitimate government can do?

In order, finally, to see whether Locke is an ally or potentially a critic of the libertarian idea of the state, we have to ask what becomes of our natural rights once we enter into society.

We know that the way we enter into society is by consent, by agreement to leave the state of nature and to be governed by the majority and by a system of laws, human laws. But those human laws are only legitimate if they respect our natural rights, if they respect our unalienable rights to life, liberty, and property. No parliament, no legislature, however democratic its credentials, can legitimately violate our natural rights. This idea that no law can violate our right to life, liberty, and property would seem to support the idea of a government so limited that it would gladden the heart of the libertarian after all.

But those hearts should not be so quickly gladdened because even though for Locke, the law of nature persists once government arrives, even though Locke insists on limited government, government limited by the end for which it was created, namely the preservation of property, even so, there is an important sense in which what counts as my property, what counts as respecting my life and liberty are for the government

to define. That there be property, that there be respect for life and liberty is what limits government. But what counts as respecting my life and respecting my property, that is for governments to decide and to define.

How can that be? Is Locke contradicting himself or is there an important distinction here? In order to answer that question, which will decide Locke's fit with the libertarian view, we need to look closely at what legitimate government looks like for Locke, and we turn to that next time.

"Our incomes are like our shoes: if too small, they gall and pinch us; \Nbut if too large, they cause us to stumble and to trip." - John Locke

( 感谢网友 “月彤若熙” 参与本课排版工作 )

## Lecture 8 Consenting Adults

Last time, we began to discuss Locke's state of nature, his account of private property, his theory of legitimate government, which is government based on consent and also limited government. Locke believes in certain fundamental rights that constrain what government can do, and he believes that those rights are natural rights, not rights that flow from law or from government. And so Locke's great philosophical experiment is to see if he can give an account of how there could be a right to private property without consent before government and legislators arrive on the scene to define property. That's his question. That's his claim. There is a way Locke argues to create property, not just in the things we gather and hunt, but in the land itself, provided there is enough and as good left for others.

Today, I want to turn to the question of consent, which is Locke's second big idea. Private property is one; consent is the other.

What is the work of consent?

People here have been invoking the idea of consent since we began since the first week. Do you remember when we were talking about pushing the fat man off the bridge, someone said, "But he didn't agree to sacrifice himself. It would be different if he consented." Or when we were talking about the cabin boy, killing and eating the cabin boy. Some people said, "Well, if they had consented to a lottery, it would be different. Then it would be all right."

So consent has come up a lot and here in John Locke, we have one of the great philosophers of consent. Consent is an obvious familiar idea in moral and political philosophy. Locke says that legitimate government is government founded on consent

and who, nowadays, would disagree with him? Sometimes, when the ideas of political philosophers are as familiar as Locke's ideas about consent, it's hard to make sense of them or at least to find them very interesting. But there are some puzzles, some strange features of Locke's account of consent as the basis of legitimate government and that's what I'd like to take up today. One way of testing the plausibility of Locke's idea of consent and also of probing some of its perplexities is to ask just what a legitimate government founded on consent can do, what are its powers according to Locke. Well, in order to answer that question, it helps to remember what the state of nature is like.

Remember, the state of nature is the condition that we decide to leave, and that's what gives rise to consent. Why not stay there? Why bother with government at all? Well, what is Locke's answer to that question? He says there are some inconveniences in the state of nature but what are those inconveniences? The main inconvenience is that everyone can enforce the law of nature. Everyone is an enforcer, or what Locke calls "the executor" of the state of nature, and he means executor literally. If someone violates the law of nature, he is an aggressor. He is beyond reason and you can punish him. And you don't have to be too careful or fine about gradations of punishment in the state of nature. You can kill him. You can certainly kill someone who comes after you, who tries to murder you. That's self defense. But the enforcement power, the right to punish, everyone can do the punishing in the state of nature. And not only can you punish with death people who come after you seeking to take your life, you can also punish a thief who tries to steal your goods because that also counts as aggression against the law of nature. If someone has stolen from a third party, you can go after him. Why is this? Well, violations of the law of nature are an act of aggression. There is no police force. There are no judges, no juries, so everyone is the judge in his or her own case. And Locke observes that when people are the judges of their own cases, they tend to get carry away, and this gives rise to the inconvenience in the state of

nature. People overshoot the mark. There is aggression. There is punishment and before you know it, everybody is insecure in the enjoyment of his or her unalienable rights to life, liberty, and property. Now, he describes in pretty harsh and even grim terms what you can do to people who violate the law of nature. "One may destroy a man who makes war upon him ... for the same reason that he may kill a wolf or a lion. Such men have no other rule, but that of force and violence," listen to this, "and so may be treated as beasts of prey, those dangerous and noxious creatures, that will be sure to destroy to you if you fall into their power", so kill them first.

So, what starts out as a seemingly benign state of nature where everyone is free and yet where there is a law and the law respects people's rights, and those rights are so powerful that they're unalienable. What starts out looking very benign, once you look closer, is pretty fierce and filled with violence, and that's why people want to leave.

How do they leave? Well, here is where consent comes in. The only way to escape from the state of nature is to undertake an act of consent where you agree to give up the enforcement power and to create a government or a community where there will be a legislature to make law and where everyone agrees in advance, everyone who enters, agrees in advance to abide by whatever the majority decides. But then the question, and this is our question and here is where I want to get your views, then the question is what powers, what can the majority decide?

Now, here, it gets tricky for Locke because you remember, alongside the whole story about consent and majority rule, there are these natural rights, the law of nature, these unalienable rights, and you remember, they don't disappear when people join together to create a civil society. So even once the majority is in charge, the majority can't violate your inalienable rights, can't violate your fundamental right to life, liberty, and property. So here is the puzzle. How much power does the majority have? How

limited is the government created by consent? It's limited by the obligation on the part of the majority to respect and to enforce the fundamental natural rights of the citizens. They don't give those up. We don't give those up when we enter government. That's this powerful idea taken over from Locke by Jefferson in the Declaration. Unalienable rights.

So, let's go to our two cases. Remember Michael Jordan, Bill Gates, the libertarian objection to taxation for redistribution? Well, what about Locke's limited government? Is there anyone who thinks that Locke does give grounds for opposing taxation for redistribution? Anybody? Go ahead.

If the majority rules that there should be taxation, even if the minority should still not have to be taxed because that's taking away property, which is one of the rights of nature.

All right so, and what's your name?

*Ben.*

Ben. So if the majority taxes the minority without the consent of the minority to that particular tax law, it does amount to a taking of their property without their consent and it would seem that Locke should object to that. You want some textual support for your view, for your reading of Locke, Ben? Sure. All right. I brought some along just in case you raised it. If you have your texts, look at 138, passage 138.

"The supreme power," by which Locke means the legislature, "cannot take from any man any part of his property without his own consent, for the preservation of property being the end of government and that for which men enter into society, it necessarily



supposes and requires that people should have property." That was the whole reason for entering society in the first place, to protect the right to property. And when Locke speaks about the right to property, he often uses that as a kind of global term for the whole category, the right to life, liberty, and property. So that part of Locke, that beginning of 138, seems to support Ben's reading. But what about the part of 138, if you keep reading, "Men, therefore, in society having property, they have such a right to the goods, which by the law of the community are theirs." Look at this. "And that no one can take from them without their consent." And then at the end of this passage, he says, "So it's a mistake to think that the legislative power can do what it will and dispose of the estates of the subject arbitrarily or take any part of them at pleasure." Here's what's elusive. On the one hand, he says the government can't take your property without your consent. He is clear about that. But then he goes on to say, and that's the natural right to property. But then, it seems that property, what counts as property is not natural but conventional defined by the government. "The goods of which by the law of the community are theirs." And the plot thickens if you look ahead to Section 140. In 140, he says, "Governments can't be supported without great charge. Government is expensive and it's fit that everyone who enjoys his share of the protection should pay out of his estate." And then here is the crucial line. "But still, it must be with his own consent, i.e. the consent of the majority, giving it either by themselves, or through their representatives."

So what is Locke actually saying? Property is natural in one sense but conventional in another. It's natural in the sense that we have a fundamental unalienable right that there be property, that the institution of property exist and be respected by the government. So an arbitrary taking of property would be a violation of the law of nature and would be illegitimate. But it's a further question, here is the conventional aspect of property, it's a further question what counts as property, how it's defined and what counts as taking property, and that's up to the government. So the consent, here,

we're coming back to our question, what is the work of consent? What it takes for taxation to be legitimate is that it be by consent, not the consent of Bill Gates himself if he is the one who has to pay the tax, but by the consent that he and we, all of us within the society, gave when we emerged from the state of nature and created the government in the first place. It's the collective consent. And by that reading, it looks like consent is doing a whole lot and the limited government consent creates isn't all that limited.

Does anyone want to respond to that or have a question about that? Go ahead. Stand up.

*Well, I'm just wondering what Locke's view is on once you have a government that's already in place, whether it is possible for people who are born into that government to then leave and return to the state of nature? I mean, I don't think that Locke mentioned that at all in the...*

What do you think?

*Well, I think, as the convention, it would be very difficult to leave the government because you are no longer, because nobody else is just living in the state of nature. Everybody else is now governed by this legislature.*

What would it mean today, you're asking. And what's your name?

*Nicola.*

Nicola, to leave the state. Supposed you wanted to leave civil society today. You want to withdraw your consent and return to the state of nature. Well, because you didn't

actually consent to it. You were just born into it. It was your ancestors who joined. Right. You didn't sign the social contract.

*I didn't sign it.*

Exactly. All right, so what does Locke say there? Yes? I don't think Locke says you have to sign anything. I think that he says that it's kind of implied consent.

*Implied?*

Taking government's services, you are implying that you are consenting to the government taking things from you. All right, so implied consent. That's a partial answer to this challenge. Now, you may not think that implied consent is as good as the real thing. Is that what you're shaking your head about, Nicola? Speak up. Stand up and speak up.

*I don't think that necessarily just by utilizing the government's various resources that we are necessarily implying that we agree with the way that this government was formed or that we have consented to actually join into the social contract.*

So you don't think the idea of implied consent is strong enough to generate any obligation at all to obey the government?

*Not necessarily, no.*

Nicola, if you didn't think you'd get caught, would you pay your taxes?

*I don't think so. I would rather have a system, personally, that I could give money to*

*exactly those sections of the government that I support and not just blanket support of it.*

You'd rather be in the state of nature, at least on April 15th. But what I'm trying to get at is do you consider that you are under no obligation, since you haven't actually entered into any act of consent, but for prudential reasons, you do what you're supposed to do according to the law?

*Exactly.*

If you look at it that way, then you're violating another one of Locke's treatises, which is that you can't take anything from anyone else. Like, you can't take the government's services and then not give them anything in return. If you want to go live in the state of nature, that's fine, but you can't take anything from the government because by the government's terms, which are the only terms under which you can enter the agreement, say that you have to pay taxes to take those things.

*So you are saying that Nicola can go back into the state of nature if she wants to but she can't drive on Mass. Ave.?*

Exactly. I want to raise the stakes beyond using Mass. Ave. and even beyond taxation. What about life? What about military conscription? Yes, what do you say? Stand up.

*First of all, we have to remember that sending people to war is not necessarily implying that they'll die. I mean, obviously, you're not raising their chances here but it's not a death penalty. So if you're going to discuss whether or not military conscription is equivalent to suppressing people's right to life, you shouldn't approach it that way. Secondly, the real problem here is Locke has this view about consent and*

*natural rights. But you're not allowed to give up your natural rights either. So the real question is how does he himself figure it out between "I agree to give up my life, give up my property" when he talks about taxes or military conscription for the fact. But I guess Locke would be against suicide, and that's still my own consent. I agree by taking my life.*

All right, good. All right, what's your name?

*Eric.*

So Eric brings us back to the puzzle we've been wrestling with since we started reading Locke. On the one hand, we have these unalienable rights to life, liberty, and property, which means that even we don't have the power to give them up, and that's what creates the limits on legitimate government. It's not what we consent to that limits government. It's what we lack the power to give away when we consent that limits government. That's the point at the heart of Locke's whole account of legitimate government. But now, you say, "well, if we can't give up our own life, if we can't commit suicide, if we can't give up our right to property, how can we then agree to be bound by a majority that will force us to sacrifice our lives or give up our property"? Does Locke have a way out of this or is he basically sanctioning an all-powerful government, despite everything he says about unalienable rights? Does he have a way out of it? Who would speak here in defense of Locke or make sense, find a way out of this predicament? Yes. All right, go ahead.

*I feel like there is a general distinction we made between the right to life that individuals possess and the fact that the government cannot take away a single individual's right to life. I think if you look at conscription as the government picking out certain individuals to go fight in war, then that would be a violation of their*

*natural right to life. On the other hand, if you have conscription, let's say a lottery for example, then in that case I would view that as the population picking their representatives to defend them in the case of war, the idea being that since the whole population cannot go out there to defend its own right to property, it picks its own representatives through a process that's essentially random and then these sort of elected representatives go out and fight for the rights of the people. It works very similar, it works just like an elected government, in my opinion.*

All right, so an elected government can conscript citizens to go out and defend the way of life, the community that makes the enjoyment of rights possible?

*I think it can because to me, it seems that it's very similar to the process of electing representatives for legislature. Although here, it's as if the government is electing by conscription certain citizens to go die for the sake of the whole.*

*Is that consistent with respect for a natural right to liberty? Well, what I would say there is there is a distinction between picking out individuals and having a random choice of individuals. Like ... Between picking out... let me make sure, between picking out individuals, let me...*

What's your name?

*Gokul.*

Gokul says there's a difference between picking out individuals to lay down their lives and having a general law. I think this is the answer Locke would give, actually, Gokul. Locke is against arbitrary government. He is against the arbitrary taking, the singling out of Bill Gates to finance the war in Iraq. He is against singling out a particular



citizen or group of people to go off and fight. But if there is a general law such that the government's choice, the majority's action is non-arbitrary, it doesn't really amount to a violation of people's basic rights. What does count as a violation is an arbitrary taking because that would essentially say, not only to Bill Gates, but to everyone, there is no rule of law. There is no institution of property. Because at the whim of the king, or for that matter, of the parliament, we can name you or you to give up your property or to give up your life. But so long as there is a non-arbitrary rule of law, then it's permissible.

Now, you may say this doesn't amount to a very limited government, and the libertarian may complain that Locke is not such a terrific ally after all. The libertarian has two grounds for disappointment in Locke. First, that the rights are unalienable and therefore, I don't really own myself after all. I can't dispose of my life or my liberty or my property in a way that violates my rights. That's disappointment number one. Disappointment number two, once there is a legitimate government based on consent, the only limits for Locke are limits on arbitrary takings of life or of liberty or of property. But if the majority decides, if the majority promulgates a generally applicable law and if it votes duly according to fair procedures, then there is no violation, whether it's a system of taxation or a system of conscription.

So it's clear that Locke is worried about the absolute arbitrary power of kings, but it's also true, and here is the darker side of Locke, that this great theorist of consent came up with a theory of private property that didn't require consent that may, and this goes back to the point Rochelle made last time, may have had something to do with Locke's second concern, which was America. You remember, when he talks about the state of nature, he is not talking about an imaginary place. "In the beginning," he says, "All the world was America." And what was going on in America? The settlers were enclosing land and engaged in wars with the Native Americans. Locke, who was an

administrator of one of the colonies, may have been as interested in providing a justification for private property through enclosure without consent through enclosure and cultivation, as he was with developing a theory of government based on consent that would rein in kings and arbitrary rulers.

The question we're left with, the fundamental question we still haven't answered is what then becomes of consent? What work can it do? What is its moral force? What are the limits of consent? Consent matters not only for governments, but also for markets. And beginning next time, we're going to take up questions of the limits of consent in the buying and selling of goods.

( 感谢网友 “月彤若熙” 参与本课排版工作 )

## Lecture 9 Hired Guns

When we ended last time, we were discussing Locke's idea of government by consent and the question arose, "What are the limits on government that even the agreement of the majority can't override?" That was the question we ended with. We saw in the case of property rights that on Locke's view a democratically elected government has the right to tax people. It has to be taxation with consent because it does involve the taking of people's property for the common good but it doesn't require the consent of each individual at the time the tax is enacted or collected. What it does require is a prior act of consent to join the society, to take on the political obligation but once you take on that obligation, you agree to be bound by the majority. So much for taxation.

But what you may ask, about the right to life? Can the government conscript people and send them into battle? And what about the idea that we own ourselves? Isn't the idea of self-possession violated if the government can, through coercive legislation and enforcement powers, say "You must go risk your life to fight in Iraq." What would Locke say? Does the government have the right to do that?

Yes. In fact he says in 139, he says, "What matters is that the political authority or the military authority not be arbitrary, that's what matters." And he gives a wonderful example. He says "A sergeant, even a sergeant, let alone a general, a sergeant can command a soldier to go right up to a face of a cannon where he is almost sure to die, that the sergeant can do. The general can condemn the soldier to death for deserting his post or for not obeying even a desperate order. But with all their power over life and death, what these officers can't do is take a penny of that soldier's money because that has nothing to do with the rightful authority, that would be arbitrary and it would be corrupt." So consent winds up being very powerful in Locke, not consent of the individual to the particular tax or military order, but consent to join the government

and to be bound by the majority in the first place. That's the consent that matters and it matters so powerfully that even the limited government created by the fact that we have an unalienable right to life, liberty, and property, even that limited government is only limited in the sense that it has to govern by generally applicable laws, the rule of law, it can't be arbitrary. That's Locke.

Well this raises a question about consent. Why is consent such a powerful moral instrument in creating political authority and the obligation to obey? Today we begin to investigate the question of consent by looking at a concrete case, the case of military conscription.

Now some people say if we have a fundamental right that arises from the idea that we own ourselves, it's a violation of that right for government to conscript citizens to go fight in wars. Others disagree. Others say that's a legitimate power of government, of democratically elected governments, anyhow, and that we have an obligation to obey. Let's take the case of the United States fighting a war in Iraq. News accounts tell us that the military is having great difficulty meeting its recruitment targets. Consider three policies that the U.S. government might undertake to deal with the fact that it's not achieving its recruiting targets.

Solution number one: increase the pay and benefits to attract a sufficient number of soldiers.

Option number two: shift to a system of military conscription, have a lottery, and whose ever numbers are drawn, go to fight in Iraq.

System number three: outsource, hire what traditionally have been called mercenaries, people around the world who are qualified, able to do the work, able to fight well, and

who are willing to do it for the existing wage.

So let's take a quick poll here. How many favor increasing the pay? A huge majority. How many favor going to conscription? Maybe a dozen people in the room favor conscription. What about the outsourcing solution? Okay, so there may be two, three dozen.

During the Civil War, the Union used a combination of conscription and the market system to fill the ranks of the military to fight in the Civil War. It was a system that began with conscription but if you were drafted and didn't want to serve, you could hire a substitute to take your place and many people did. You could pay whatever the market required in order to find a substitute, people ran ads in newspapers, in the classified ads offering 500 dollars, sometimes 1000 dollars, for a substitute who would go fight the Civil War in their place.

In fact, it's reported that Andrew Carnegie was drafted and hired a substitute to take his place for an amount that was a little less than the amount he spent in the year on fancy cigars. Now I want to get your views about this Civil War system, call it the hybrid system, conscription but with a buyout provision. How many think it was a just system? How many would defend the Civil War system? Anybody? Anybody else? How many think it was unjust? Most of you don't like the Civil War system, you think it's unjust. Let's hear an objection.

Why don't you like it? What's wrong with it? Yes.

*Student 1: "Well, by paying \$300 to be exempt one time around, you're really putting a price on valuing human life and we established earlier, that's really hard to do so they're trying to accomplish something that really isn't feasible. You're basically*

*saying that's what their life is worth to you. That's what their life is worth, it's putting a dollar value on life. ”*

That's good. What's your name?

*Student 1: “Liz.”*

Liz. Well, who has an answer for Liz. You defended the Civil War system, what do you say?

*Student 2: “If you don't like the price then you have the freedom to not be sold or hired so it's completely up to you. I don't think it's necessarily putting a specific price on you and if it's done by himself, I don't think there's anything that's really morally wrong with that. So the person who takes the \$500, let's say, he's putting his own price on his life or on the risk of his life and he should have the freedom to choose to do that. ”*

Exactly. What's your name?

*Student 2: “Jason. ”*

Jason. Thank you. Now we need to hear from another critic of the civil war system. Yes.

*Student 3: “It's a kind of coercion almost, people who have lower incomes, for Carnegie he can totally ignore the draft, \$300 is an irrelevant in terms of his income but someone of a lower income, they're essentially being coerced to draft, to be drafted, it's probably they're not able to find a replacement. ”*



Tell me your name.

*Student 3: "Sam."*

Sam. All right so you say, Sam, that when a poor laborer accepts \$300 to fight in the Civil War, he is in effect being coerced by that money given his economic circumstances whereas Carnegie can go off, pay the money, and not serve. Alright. I want to hear someone who has a reply to Sam's argument, that what looks like a free exchange is actually coercive. Who has an answer to Sam? Go ahead. You agree with Sam.

*Student 4: "I agree with him in saying that it is coercion in the sense that it robs individual of his ability to reason. "*

Okay, and what's your name?

*Student 4: "Raul."*

All right. So Raul and Sam agree that what looks like a free exchange, free choice, voluntary act actually involves coercion.

*Student 4: "It's profound coercion of the worst kind because it falls so disproportionately upon one segment of the society. "*

Good. Alright. So Raul and Sam have made a powerful point. Who would like to reply? Who has an answer for Sam and Raul? Go ahead.

*Student 5: "I don't think that these drafting systems are really terribly different from all-volunteer army sort of recruiting strategies. The whole idea of having benefits and pay for joining the army is sort of a coercive strategy to get people to join. It is true that military volunteers come from disproportionately lower economic status and also from certain regions of the country where you can use like patriotism to try and coerce people to feel like it's the right thing to do to volunteer and go over to Iraq."*

And tell me your name.

*Student 5: "Emily."*

Alright, Emily says, and Raul you're going to have to reply to this so get ready. Emily says fair enough, there is a coercive element to the Civil War system when a laborer takes the place of Andrew Carnegie for \$500. Emily concedes that but she says if that troubles you about the Civil War system shouldn't that also trouble you about the volunteer army today? Before you answer, how did you vote in the first poll? Did you defend the volunteer army?

*Student 4: "I didn't vote."*

You didn't vote. By the way, you didn't vote but did you sell your vote to the person sitting next to you?

*Student 4: "No."*

Alright. So what would you say to that argument.

*Student 4: "I think that the circumstances are different in that there was conscription*

*in the Civil War. There is no draft today and I think that volunteers for the army today have a more profound sense of patriotism that is of an individual choice than those who were forced into the military in the Civil War. Somehow less coerced?"*

Less coerced. Even though there is still inequality in American Society? Even though, as Emily points out, the makeup of the American military is not reflective of the population as a whole? Let's just do an experiment here. How many here have either served in the military or have a family member who has served in the military in this generation, not parents? Family members. In this generation. And how many have neither served nor have any brothers or sisters who have served? Does that bear out your point Emily? Yes. of the all volunteer military overwhelmingly and yet overwhelmingly, people considered the Civil War system unjust. Sam and Raul articulated reasons for objecting to the Civil War system, it took place against a background of inequality and therefore the choices people made to buy their way in to military service were not truly free but at least partly coerced. Then Emily extends that argument in the form of a challenge. Alright, everyone here who voted in favor what's the difference in principle. Doesn't the all-volunteer army simply universalize the feature that almost everyone found objectionable in the Civil War buyout provision? Did I state the challenge fairly Emily?

*Student 5: "Yes."*

Okay. So we need to hear from a defender of the all volunteer military who can address Emily's challenge. Who can do that? Go ahead.

*Student 6: "The difference between the Civil War system and the all-volunteer army system is that in the Civil War, you're being hired not by the government, but by an individual and as a result, different people who get hired by different individuals get*

*paid different amounts. In the case of the all-volunteer army, everyone who gets hired is hired by the government and gets paid the same amount. It's precisely the universalization of essentially paying your way to the army that makes the all-volunteer army just."*

Emily?

*Student 5: "I guess I'd frame the principle slightly differently. On the all-volunteer army, it's possible for somebody to just step aside and not really think about the war at all. It's possible to say, "I don't need the money, I don't need to have an opinion about this, I don't need to feel obligated to take my part and defend my country. With the coercive system, or sorry, with an explicit draft then there's the threat at least that every individual will have to make some sort of decision regarding military conscription and perhaps in that way, it's more equitable. It's true that Andrew Carnegie might not serve in any case but in one, he can completely step aside from it, and the other there's some level of responsibility."*

While you're there, Emily, so what system do you favor, conscription?

*Student 5: "I would be hard pressed to say but I think so because it makes the whole country feel a sense of responsibility for the conflict instead of having a war that's maybe ideologically supported by a few but only if there's no real responsibility."*

Good. Who wants to reply? Go ahead.

*Student 7: "So I was going to say that the fundamental difference between the all-volunteer army and then the army in the Civil War is that in the all-volunteer army, if you want to volunteer that comes first and then the pay comes after whereas in the*

*Civil War system, the people who are accepting the pay aren't necessarily doing it because they want to, they're just doing it for the money first."*

What motivation beyond the pay do you think is operating in the case of the all-volunteer army?

*Student 7: "Like patriotism for the country. And a desire to defend the country. There is some motivation in pay but the fact that it's first and foremost an all-volunteer army will motivate first I think, personally."*

Do you think it's better? And tell me your name.

*Student 7: "Jackie."*

Jackie do you think it's better if people serve in the military out of a sense of patriotism than just for the money?

*Student 7: "In the Civil War is that the people that you're getting to go in it to go to war aren't necessarily people who want to fight and so they won't be as good soldiers as they will be had they been there because they wanted to be."*

Alright, What about Jackie's having raised the question of patriotism, that patriotism is a better or a higher motivation than money for military service. Who would like to address that question? Go ahead.

*Student 8: "Patriotism absolutely is not necessary in order to be a good soldier because mercenaries can do just as good of a job as anyone who waves the American flag around and wants to defend what the government believes that we should do."*

Did you favor the outsourcing solution?

*Student 8: "Yes sir."*

Alright, so let Jackie respond. What's your name?

*Student 8: "Philip."*

What about that Jackie?

*Student 7: "So much for patriotism. If you've got someone whose heart is in it more than another person, they're going to do a better job. When it comes down to the wire and there's like a situation in which someone has to put their life on the line, someone who's doing it because they love this country will be more willing to go into danger than someone who's just getting paid, they don't care, they've got the technical skills but they don't care what happens like nothing invested in this country."*

There's another aspect though once we get on to the issue of patriotism. If you believe patriotism, as Jackie does, should be the foremost consideration and not money, does that argue for or against the paid army we have now? We call it the volunteer army though if you think about it, that's a kind of misnomer. A volunteer army as we use the term, is a paid army. So what about the suggestion that patriotism should be the primary motivation for military service not money? Does that argue in favor of the paid military that we have or does it argue for conscription? And just to sharpen that point building on Phil's case for outsourcing, if you think that the all-volunteer army, the paid army, is best because it lets the market allocate positions according to people's preferences and willingness to serve for a certain wage, doesn't the logic that



takes you from a system of conscription to the hybrid Civil War system to the all-volunteer army, doesn't the idea of expanding freedom of choice in the market, doesn't that lead you all the way if you followed that principle consistently to a mercenary army? And then if you say no, Jackie says no, patriotism should count for something, doesn't that argue for going back to conscription if by patriotism, you mean a sense of civic obligation? Let's see if we can step back from the discussion that we've had and see what we've learned about consent as it applies to market exchange. We've really heard two arguments, two arguments against the use of markets and exchange in the allocation of military service. One was the argument raised by Sam and Raul, the argument about coercion, the objection that letting the market allocate military service may be unfair and may not even be free if there's severe inequality in the society so that people who buy their way into military service are doing so not because they really want to but because they have so few economic opportunities that that's their best choice and Sam and Raul say there's an element of coercion in that, that's one argument.

Then there is a second objection to using the market to allocate military service, that's the idea that military service shouldn't be treated as just another job for pay because it's bound up with patriotism and civic obligation. This is a different argument from the argument about unfairness and inequality and coercion, it's an argument that suggests that maybe where civic obligations are concerned, we shouldn't allocate duties and rights by the market. Now we've identified two broad objections. What do we need to know to assess those objections?

To assess the first, the argument from coercion, inequality, and unfairness, Sam, we need to ask what inequalities in the background conditions of society undermine the freedom of choices people make to buy and sell their labor, question number one.

Question number two: to assess the civic obligation, patriotism. Argument: we have to ask what are the obligations of citizenship? Is military service one of them or not? What obligates us as citizens? What is the source of political obligation? Is it consent or are there some civic obligations we have, even without consent, for living and sharing in a certain kind of society?

We haven't answered either of those questions but our debate today about the Civil War system and the all-volunteer army has at least raised them and those are questions we're going to return to in the coming weeks.

“If we were all to be judged by our thoughts, the hills would be swarming with outlaws.” - Johann Sigurjonsson

## Lecture 10 Motherhood

Today I'd like to turn our attention and get your views about an argument over the role of markets in the realm of human reproduction and procreation. Now with infertility clinics, people advertise for egg donors and from time to time, in the Harvard Crimson ads appear for egg donors. Have you seen them? There was one that ran a few years ago that wasn't looking for just any egg donor, it was an ad that offered a large financial incentive for an egg donor from a woman who was intelligent, athletic, at least 5'10", and with at least 1400 or above on her SATs. How much do you think the person looking for this egg donor was willing to pay for an egg from a woman of that description? What would you guess? A thousand dollars? Fifteen thousand? Ten? I'll show you the ad. Fifty thousand dollars for an egg but only a premium egg. What do you think about that? Well there are also sometimes ads in the Harvard Crimson and the other college newspapers for sperm donors. So the market in reproductive capacities is an equal opportunity market. Well not exactly equal opportunity, they're not offering \$50,000 for sperm.

But there is a company, a large commercial sperm bank that markets sperm, it's called California Cryobank, it's a for-profit company, it imposes exacting standards on the sperm it recruits, and it has offices in Cambridge, between Harvard and MIT, and in Palo Alto near Stanford. Cryobank's marketing materials play up the prestigious source of its sperm. Here is, from the website of Cryobank, the information. Here they talk about the compensation although compensation should not be the only reason for becoming a sperm donor, we are aware of the considerable time and expense involved in being a donor. So do you know what they offer? Donors will be reimbursed \$75 per specimen, up to \$900 a month if you donate three times a week, and then they add "We periodically offer incentives such as movie tickets or gift certificates for the extra time and effort expended by participating donors."

It's not easy to be a sperm donor. They accept fewer than five percent of the donors who apply. Their admission criteria are more demanding than Harvard's. The head of the sperm bank said the ideal sperm donor is 6 feet tall, with a college degree, brown eyes, blond hair, and dimples for the simple reason that these are the traits that the market has shown that customers want. Quoting the head of the sperm bank, "If our customers wanted high school dropouts, we would give them high school dropouts." So here are two instances, the market in eggs for donation and the market in sperm, that raise a question, a question about whether eggs and sperm should or should not be bought and sold for money.

As you ponder that, I want you to consider another case involving market and in fact a contract in the human reproductive capacity and this is the case of commercial surrogate motherhood, and it's a case that wound up in court some years ago. It's the story of Baby M.

It began with William and Elizabeth Stern, a professional couple wanting a baby but they couldn't have one on their own, at least not without medical risk to Mrs. Stern. They went to an infertility clinic where they met Mary Beth Whitehead, a 29-year-old mother of two, the wife of a sanitation worker. She had replied to an ad that The Stern had placed seeking the service of a surrogate mother. They made a deal. They signed a contract in which William Stern agreed to pay Mary Beth Whitehead a \$10,000 fee plus all expenses in exchange for which Mary Beth Whitehead agreed to be artificially inseminated with William Stern's sperm, to bear the child, and then to give the baby to the Sterns. Well, you probably know how the story unfolded. Mary Beth gave birth and changed her mind, she decided she wanted to keep the baby. The case wound up in court in New Jersey. So let's take, put aside any legal questions, and focus on this issue as a moral question.

How many believe that the right thing to do in the Baby M case, would have been to uphold the contract, to enforce the contract? And how many think the right thing to do would have been not to enforce that contract? The majority say enforce so let's now hear the reasons that people had, either for enforcing or refusing to enforce this contract. First I want to hear from someone in the majority. Why do you uphold the contract? Why do you enforce it? Who can offer a reason? Yes. Stand up.

*Student 9: "It's a binding contract, all the parties involved knew the terms of the contract before any action was taken, it's a voluntary agreement, the mother knew what she was getting into, all four intelligent adults, regardless of formal education, whatever. So it makes sense that if you know that you're getting into beforehand and you make a promise, you should uphold that promise in the end."*

Okay, a deal is a deal in other words.

*Student 9: "Exactly."*

And what's your name?

*Student 9: "Patrick."*

Is Patrick's reason the reason that most of you in the majority favored upholding the contract? Yes. Alright, let's hear now someone who would not enforce the contract. What do you say to Patrick? Why not?

*Student 10: "Yes. Well, I mean, I agree, I think contracts should be upheld when all*

*the parties know all the information but in this case, I don't think there's a way a mother, before the child exists, could actually know how she's going to feel about that child so I don't think the mother actually had all the information. She didn't know the person that was going to be born and didn't know how much she would love that person so that's my argument..”*

So you would not, and what's your name?

*Student 10: “Evan Wilson.”*

Evan says he would not uphold the contract because when it was entered into the surrogate mother couldn't be expected to know in advance how she would feel so she didn't really have the relevant information when she made that contract. Who else? Who else would not uphold the contract? Yes.

*Student 11: “I also think that a contract should generally be upheld but I think that the child has an inalienable right to its actual mother and I think that if that mother wants it then that child should have the right to that mother.”*

You mean the biological mother not the adoptive mother?

*Student 11: “Right.”*

And why is that? First of all, tell me your name.

*Student 11: “Anna.”*

Why is that Anna?



*Student 11: "Because I think that that bond is created by nature is stronger than any bond that is created by a contract."*

Good. Thank you. Who else? Yes.

*Student 12: "I disagree. I don't think that a child has an inalienable right to her biological mother. I think that adoption and surrogacy are both legitimate tradeoffs and I agree with the point made that it's a voluntary agreement, the individual who made it, it's a voluntary agreement and you can't apply coercion to this argument. ."*

You can't apply the objection from coercion to this argument?

*Student 12: "Correct."*

What's your name?

*Student 12: "Kathleen."*

Evan claimed that the consent was tainted not by coercion but by lack of adequate information. She couldn't have known the relevant information namely how she would feel about the child. What do you say to that?

*Student 12: "I don't think the emotional content of her feelings plays into this. I think in a case of law, in the justice of this scenario, her change of feelings are not relevant. If I give up my child for adoption and then I decide later on that I really want that child back, too bad, it's a tradeoff, it's a tradeoff that the mother has made."*

So a deal is a deal, you agree with Patrick?

*Student 12: "I agree with Patrick, a deal's a deal."*

A deal is a deal.

*Student: "Yes."*

Good. Yes.

*Student 13: "I would say that though I'm not really sure if I agree with the idea that the child has a right to their mother. I think the mother definitely has a right to her child and I also think that there's some areas where market forces shouldn't necessarily penetrate. I think that the whole surrogate mother area smacks a little bit of dealing in human beings seems dehumanizing. It doesn't really seem right so that's my main reason. I'm Andrew."*

Andrew, what is dehumanizing about buying and selling the right to a child, for money, what is dehumanizing about it?

*Student 13: "Well because you're buying someone's biological right. were you to have a child, I'd believe that the law."*

So this like baby selling?

*Student 13: "Right. To a certain extent. Though there's a contract with another person, you've made agreements and what not, there is an undeniable emotional bond that takes place between the mother and the child and it's wrong to simply ignore this*

*because you've written out something contractually."*

Right. You want to reply to Andrew? Stay there.

*Student 12: "You point out there's an undeniable emotional bond, I feel like in this situation, we're not necessarily arguing against adoption or surrogacy in itself, we're just sort of pointing out the emotional differences."*

*Student 13: "But wait, I mean, it's easy to break everything down to numbers and say "Oh, we have contracts," like you're buying or selling a car but there are underlying emotions, I mean, you're dealing with people, these are not objects to be bought and sold. Alright."*

What about Andrew's claim that this is like baby selling.

*Student 12: "I believe that adoption and surrogacy should be permitted, whether or not I actually will partake in it is not really relevant but I think that the government should, the government should give its citizens the rights to allow for adoption and surrogacy. Is adoption baby selling?"*

Well, do you think you should be able to bid for a baby that's up for adoption? That's Andrew's challenge. Do I think I should be able to bid for a baby?

*Student 12: "I'm not - sure! It's a market, I feel the extent to which it's been applied and I'm not sure if the government should be able to permit it Alright."*

Fair enough. Are you satisfied, Andrew?

*Student 13: “Well, yeah, I mean, I think surrogacy should be permitted. I think that people can do it but I don't think that it should be forced upon people that once a contract is signed, it's absolutely the end all. I think that it's unenforceable.”*

So people should be free, Andrew, to enter into these contracts but it should not be enforceable in the court. Not in the court, no. Who would like to turn on one side or the other?

*Student 14: “Yes. I think I have an interesting perspective on this because my brother was actually one of the people who donated to a sperm bank and he was paid a very large amount of money, he was six feet tall but not blond, he had dimples though. So he actually has, I'm an aunt now, he has a daughter, he donated his sperm to a lesbian couple in Oklahoma and he has been contacted by them and he has seen pictures of his daughter but he still does not feel an emotional bond to his daughter, he just has a sense of curiosity about what she looks like and what she's doing and how she is. He doesn't feel love for his child so from this experience, I think the bond between a mother and a child cannot be compared to the bond between the father and the child.”*

That's really interesting. What's your name?

*Student 14: “Vivian.”*

Vivian. So we've got the case of surrogacy, commercial surrogacy, and it's been compared to baby selling and we've been exploring whether that analogy is apt and it can also be compared, as you point out, to sperm selling. But you're saying that sperm selling and baby selling.

*Student 14: "Yes, they're unequal services."*

They're unequal services and that's because.....Vivian.

*Student 14: "Yes, and also the time investment that's given by a mother, nine months, cannot be compared to a man going into a sperm bank, looking at pornography, depositing into a cup. I don't think those are equal."*

Good. Alright.

*Student 14: "Because that's what happens in a sperm bank."*

That has come out so far. The objections to surrogacy, the objections to enforcing that contract are of at least two kinds. There was the objection about tainted consent, this time not because of coercion or implicit coercion but because of imperfect or flawed information. So tainted or flawed consent can arise either because of coercion or because of a lack of relevant information, at least according to one argument that we've heard and then a second objection to enforcing the surrogacy contract was that it was somehow dehumanizing.

Now when this case was decided by the courts, what did they say about these arguments? The lower court ruled that the contract was enforceable, neither party had a superior bargaining position. A price for the service was struck and a bargain was reached. One side didn't force the other neither had disproportionate bargaining power. Then it went to the New Jersey Supreme Court. And what did they do? They said this contract is not enforceable. They did grant custody to Mr. Stern as the father because they thought that would be in the best interest of the child but they restored the rights of Mary Beth Whitehead and left it to lower courts to decide exactly what the

visitation rights should be. They invoked two different kinds of reasons, along the lines that Andrew proposed.

First, there was not sufficiently informed consent, the court argued. "Under the contract the natural mother is irrevocably committed before she knows the strength of her bond with her child, she never makes a truly voluntary informed decision for any decision prior to the baby's birth is, in the most important sense, uninformed," that was the court. Then the court also made a version of the second argument against commodification in this kind of case "this is the sale of a child," the court said, "or at the very least, the sale of a mother's right to her child. Whatever idealism may motivate the participants, the profit motive predominates, permeates, and ultimately governs the transaction." And so regardless, the court said, regardless of any argument about consent or flawed consent or full information, there are some things in a civilized society that money can't buy, that's what the court said in voiding this contract. Well, what about these two arguments against the extension of markets to procreation and to reproduction? a contract struck between William Stern and Mary Beth Whitehead. But there are at least two ways that consent can be other than truly free. First, if people are pressured or coerced to give their agreement and second, if their consent is not truly informed and in the case of surrogacy, the court said a mother can't know, even one who already has kids of her own, what it would be like to bear a child and give it up for pay. So in order to assess criticism, objection number one, we have to figure out just how free does a voluntary exchange have to be with respect to the bargaining power and equal information.

Question number one: how do we assess the second objection? The second objection is more elusive, it's more difficult. Andrew acknowledged this, right? What does it mean to say there is something dehumanizing to make childbearing a market transaction? Well, one of the philosophers we read on this subject,



Elizabeth•Anderson, tries to brings some philosophical clarity to the unease that Andrew articulated. She said "by requiring the surrogate mother to repress whatever parental love she feels for the child, surrogacy contracts convert women's labor into a form of alienated labor. The surrogate's labor is alienated because she must divert it from the end which the social practices of pregnancy rightly promote, namely an emotional bond with her child." So what Anderson is suggesting is that certain goods should not be treated as open to use or to profit. Certain goods are properly valued in ways other than use. What are other ways of valuing and treating goods that should not be open to use? Anderson says there are many: respect, appreciation, love, honor, awe, sanctity. There are many modes of valuation beyond use and certain goods are not properly valued if they're treated simply as objects of use. How do we go about evaluating that argument of Anderson? In a way, it takes us back to the debate we had with utilitarianism. including life, military service, procreation, childbearing? And if not, how do we figure out? How can we determine what modes of valuation are fitting or appropriate to those goods?

Several years ago there was a scandal surrounding a doctor, an infertility specialist in Virginia named Cecil Jacobson. He didn't have a donor catalogue because unknown to his patients, all of the sperm he used to inseminated his patients came from one donor, Dr. Jacobson himself. At least one woman who testified in court was unnerved at how much her newborn daughter looked just like him. Now it's possible to condemn Dr. Jacobson for failing to inform the women in advance that would be the argument about consent. The columnist, Ellen Goodman, described the bizarre scenario as follows, "Dr. Jacobson," she wrote "gave his infertility business the personal touch but now the rest of us," she wrote "are in for a round of second thoughts about sperm donation." Goodman concluded that fatherhood should be something you do, not something you donate. And I think what she was doing and what the philosopher Elizabeth Anderson is doing and what Andrew was suggesting with his argument

about dehumanization is pondering whether there are certain goods that money shouldn't buy, not just because of tainted consent but also perhaps because certain goods are properly valued in a way higher than mere use. Those at least are the questions we're going to pursue with the help of some philosophers in the weeks to come.

“Science is organized knowledge. Wisdom is organized life.” - Immanuel Kant

## Lecture 11 Mind Your Motive

Now we turn Now we turn to the hardest philosopher we're going to read in this course. Today we turn to Immanuel Kant who offers a different account of why we have a categorical duty to respect the dignity of persons and not to use people as means merely even for good ends. Kant excelled at the University of Konigsberg at the age of 16. At age of 31, he got his first job as an unsalaried lecturer paid on commission based on the number of students who showed up at his lectures. This is a sensible system that Harvard would do well to consider. Luckily for Kant, he was a popular lecturer and also an industrious one and so he eked out a meager living. It wasn't until he was 57 that he published his first major work. But, it was worth the wait, the book was the "Critique of Pure Reason" perhaps the most important work in all of modern philosophy. And a few years later, Kant wrote the groundwork for "Metaphysics of Morals" which we read in this course. I want to acknowledge even before we start that Kant is a difficult thinker but it's important to try to figure what he's saying because what this book is about is what the supreme principle of morality is, number one, of what freedom really is.

So, let me start today, Kant rejects utilitarianism. He thinks that the individual person, all human beings, have a certain dignity that commands our respect. The reason the individual is sacred or the bearer of rights, according to Kant, doesn't stem from the idea that we own ourselves but instead from the idea that we are all rational beings. We're all rational beings, which simply means that we are beings who are capable of reason. We are also autonomous beings, which is to say that we are beings capable of acting and choosing freely. Now, this capacity for reason and freedom isn't the only capacity we have. We also have the capacity for pain and pleasure, for suffering and satisfaction. Kant admits the utilitarians were half right. Of course, we seek to avoid pain and we like pleasure, Kant doesn't deny this. What he does deny is Bentham's

claim that pain and pleasure are our sovereign masters. He thinks that's wrong. Kant thinks that it's our rational capacity that makes us distinctive, that makes us special, that sets us apart from and above mere animal existence. It makes us something more than just physical creatures with appetites. We often think of freedom as simply consisting in doing what we want or in the absence of obstacles to getting what we want, that's one way of thinking about freedom. But this isn't Kant's idea of freedom. Kant has a more stringent demanding notion of what it means to be free. And though it's stringent and demanding, if you think it through, it's actually pretty persuasive. Kant reasons as follows: when we, like animals, seek after pleasure or the satisfaction of our desires or the avoidance of pain, when we do that we aren't really acting freely. Why not? We're really acting as the slaves of those appetites and impulses. I didn't choose this particular hunger or that particular appetite and so when I act to satisfy it, I'm just acting according to natural necessity. And for Kant, freedom is the opposite of necessity. There was an advertising slogan for the soft drink Sprite a few years ago. The slogan was, "Obey your thirst." There's a Kantian insight buried in that Sprite advertising slogan that in a way is Kant's point. you might think that you're choosing freely, Sprite versus Pepsi, but you're actually obeying something, a thirst or maybe a desire manufactured or massaged by advertising, you're obeying a prompting that you yourself haven't chosen or created.

And here it is worth noticing Kant's specially demanding idea of freedom. if not by the promptings of nature or my hunger or my appetite or my desires? Kant's answer? To act freely is to act autonomously, and to act autonomously is to act according to a law that I give myself not according to the physical laws of nature or the laws of cause and effect which include my desire to eat or to drink or to choose this food in a restaurant over that. Now, what is the opposite of autonomy for Kant? He invents a special term to describe the opposite of autonomy. Heteronomy is the opposite of autonomy. When I act heteronomously, I'm acting according to an inclination, or a

desire, that I haven't chosen for myself. So, freedom as autonomy is an especially stringent idea that Kant insists on. Now, why is autonomy the opposite of acting heteronomously or according to the dictates of nature? Kant's point is that nature is governed by laws, laws of cause and effect for example. Suppose you drop a billiard ball, it falls to the ground; we wouldn't say the billiard ball is acting freely. Why not? It's acting according to the law of nature, according to the laws of cause of effect, the law of gravity. And just as he has an unusually demanding and stringent conception of freedom, freedom as autonomy, he also has a demanding conception of morality. To act freely is not to choose the best means to a given end; it's to choose the end itself for its own sake. And that's something that human beings can do and that billiard balls can't. In so far as we act on inclination or pursue pleasure, we act as means to the realization of ends given outside us. We are instruments rather than authors of the purposes we pursue, that's the heteronymous determination of the will. On the other hand, in so far as we act autonomously, according to a law we give ourselves, we do something for its own sake as an end in itself. When we act autonomously, we seem to be instruments to purposes given outside us, we become, or we can come to think of ourselves as ends in ourselves. This capacity to act freely, Kant tells us, is what gives human life its special dignity. Respecting human dignity means regarding persons not just as means but also as ends in themselves. And this is why it's wrong to use people for the sake of other peoples' well-being or happiness. This is the real reason, Kant says, that utilitarianism goes wrong. This is the reason it's important to respect the dignity of persons and to uphold their rights. So, even if there are cases, remember John Stewart Mill said, "Well, in the long run, if we uphold justice and respect the dignity of persons, we will maximize human happiness." What would Kant's answer be to that? What would his answer be? Even if that were true, even if the calculus worked out that way, even if you shouldn't throw the Christians to the lions because in the long run fear will spread, the overall utility will decline. The utilitarian would be upholding justice and right and respect for persons for the wrong

reason, for a purely a contingent reason, for an instrumental reason. It would still be using people, even where the calculus works out for the best in the long run, it would still be using people as means rather than respecting them as ends in themselves. So, that's Kant's idea of freedom as autonomy and you can begin to see how it's connected to his idea of morality. But we still have to answer one more question, what gives an act its moral worth in the first place? If it can't be directed, that utility or satisfying wants and desires, what gives an action its moral worth? This leads us from Kant's demanding idea of freedom to his demanding idea of morality. What does Kant say? What makes an action morally worthy consists not in the consequences or in the results that flow from it, what makes an action morally worthy has to do with the motive, with the quality of the will, with the intention for which the act is done. What matters is the motive and the motive must be of a certain kind. So, the moral worth of an action depends on the motive for which it's done and the important thing is that the person do the right thing for the right reason.

"A good will isn't good because of what it affects or accomplishes," Kant writes, "it's good in itself. Even if by its utmost effort, the goodwill accomplishes nothing, it would still shine like a jewel for its own sake as something which has its full value in itself." And so, for any action to be morally good, it's not enough that it should conform to the moral law, it must also be done for the sake of the moral law. The idea is that the motive confers the moral worth on an action and the only kind of motive that can confer moral worth on an action is the motive of duty. Well, what's the opposite of doing something out of a sense of duty because it's right? Well for Kant, the opposite would be all of those motives having to do with our inclinations. And inclinations refer to all of our desires, all of our contingently given wants, preferences, impulses, and the like. Only actions done for the sake of the moral law, for the sake of duty, only these actions have moral worth. Now, I want to see what you think about this idea but first let's consider a few examples. Kant begins with an example of a



shopkeeper. He wants to bring out the intuition and make plausible the idea that what confers moral worth on an action is that it be done because it's right. He says suppose there's a shopkeeper and an inexperienced customer comes in. The shopkeeper knows that he could give the customer the wrong change, could shortchange the customer and get away with it; at least that customer wouldn't know. But the shopkeeper nonetheless says, "Well, if I shortchange this customer, word may get out, my reputation would be damaged, and I would lose business, so I won't shortchange this customer." The shopkeeper does nothing wrong, he gives the correct change, but does his action have moral worth? Kant says no, it doesn't have moral worth because the shopkeeper only did the right thing for the wrong reason, out of self-interest. That's a pretty straightforward case. Then he takes another case, the case of suicide. He says we have a duty to preserve ourselves. Now, for most people who love life, we have multiple reasons for not taking our own lives. So, the only way we can really tell, the only way we can isolate the operative motive for someone who doesn't take his or her life and who despite having an absolutely miserable life nonetheless recognizes the duty to preserve one's self and so does not commit suicide. The force of the example is to bring out the motive that matters and the motive that matters for morality is doing the right thing for the sake of duty. Let me just give you a couple of other examples. The Better Business Bureau, what's their slogan? The slogan of the Better Business Bureau: "Honesty is the best policy. It's also the most profitable." This is the Better Business Bureau's full page ad in the New York Times, "Honesty, it's as important as any other asset because a business that deals in truth, openness, and fair value cannot help but do well. Come join us and profit from it." What would Kant say about the moral worth of the honest dealings of members of the Better Business Bureau? What would he say? That here's a perfect example that if this is the reason that these companies deal honestly with their customers, their action lacks moral worth, this is Kant's point. A couple of years ago, at the University of Maryland, there was a problem with cheating and so they initiated an honor system and they created a

program with local merchants that if you signed the honor pledge, a pledge not to cheat, you would get discounts of 10% to 25% at local shops. Well what would you think of someone motivated to uphold an honor code with the hope of discounts? It's the same as Kant's shopkeeper. The point is, what matters is the quality of the will, the character of the motive and the relative motive to morality can only be the motive of duty, not the motive of inclination. And when I act out of duty, when I resist as my motive for acting inclinations or self-interest, even sympathy and altruism, only then am I acting freely, only then am I acting autonomously, only then is my will not determined or governed by external considerations, that's the link between Kant's idea of freedom and of morality.

T: Now, I want to pause here to see if all of this is clear or if you have some questions or puzzles. They can be questions of clarification or they can be challenges, if you want to challenge this idea that only the motive of duty confers moral worth on the action. What do you think?

*S: Yes. Yeah, I actually have two questions of clarification. The first is, there seems to be an aspect of this that makes it sort of self-defeating in that once you're conscious of what morality is you can sort of alter your motive to achieve that end of morality.*

T: Give me an example of what you have in mind.

*S: The shopkeeper example. If he decides that he wants to give the person the money to do the right thing and he decides that it's his motive to do so because he wants to be moral isn't that sort of defeating the purity of his action if morality is determined by his motive? His motive is then to act morally.*

T: I see. So, you're imagining a case not of the purely selfish calculating shopkeeper

but of one who says, well, he may consider shortchanging the customer. But then he says, "Not, or my reputation might suffer if word gets out." But instead he says, "Actually, I would like to be the kind of honest person who gives the right change to customers simply because it's the right thing to do." Or simply, "Because I want to be moral." "Because I want to be moral, I want to be a good person, and so I'm going to conform all of my actions to what morality requires." It's a subtle point, it's a good question. Kant does acknowledge, you're pressing Kant on an important point here, Kant does say there has to be some incentive to obey the moral law, it can't be a self-interested incentive that would defeat it by definition. So, he speaks of a different kind of incentive from that inclination, he speaks of reverence for the moral law. So, if that shopkeeper says, "I want to develop a reverence for the moral law and so I'm going to do the right thing"

*S: Then I think he's there, he's there as far as Kant's concerned because he's formed his motive, his will is conforming to the moral law once he sees the importance of it. So, it would count, it would count.*

T: All right, then, secondly, very quickly, what stops morality from becoming completely objective in this point? What stops morality from becoming subjective? then how can you apply this or how can it be enforced? All right, that's also a great question. What's your name?-

*S: My name is Amady.*

T: Amady?

*S: Yes.*

T: All right, if acting morally means acting according to a moral law out of duty and if it's also to act freely in the sense of autonomously, it must mean that I'm acting according to a law that I give myself, that's what it means to act autonomously, Amady is right about that, but that does raise a really interesting question. If acting autonomously means acting according to a law I give myself, that's how I escape the chain of cause and effect and the laws of nature. What's the guarantee that the law I give myself when I'm acting out of duty is the same as the law that Amady is giving himself and that each of you gives yourselves? Well, here's the question, how many moral laws, from Kant's point of view, are there in this room? Are there a thousand or is there one? He thinks there's one, which in a way does go back to this question: all right, what is the moral law? What does it tell us? is to act according to one's conscience, according to a law one gives oneself, if we all exercise our reason, we will come up with one and the same moral law? That's what Amady wants to know. Here's Kant's answer: the reason that leads us to the law we give ourselves as autonomous beings is a reason, it's a kind of practical reason that we share as human beings. It's not idiosyncratic. The reason we need to respect the dignity of persons is that we're all rational beings, we all have the capacity for reason and it's the exercise of that capacity for reason which exists undifferentiated in all of us that makes us worthy of dignity, all of us, and since it's the same capacity for reason, unqualified by particular autobiographies and life circumstance, it's the same universal capacity for reason that delivers the moral law, it turns out that to act autonomously is to act according to a law we give ourselves exercising our reason, but it's the reason we share with everyone as rational beings, not the particular reasons we have given our upbringings, our particular values, our particular interests.

It's pure practical reason, in Kant's terms, which legislates a priori regardless of any particular contingent or empirical ends. Well, what moral law would that kind of reason deliver? What is its content? To answer that question, you have to read the

groundwork and we'll continue with that question next time.

## Lecture 12 The Supreme Principle of Morality

Today we turn back to Kant. Before we do, remember this is the week by the end of which all of you will basically get Kant, figure out what he's up to. You're laughing. No, it will happen. Kant's groundwork is about two big questions. First, what is the supreme principle of morality? Second, how is freedom possible? Two big questions. Now, one way of making your way through this dense philosophical book is to bear in mind a set of oppositions or contrasts or dualisms that are related. Today I'd like to talk about them. Today we're going to answer the question, what, according to Kant, is the supreme principle of morality? And in answering that question, in working our way up to Kant's answer to that question it will help to bear in mind three contrasts, or dualisms, that Kant sets out. The first, you'll remember, had to do with the motive according to which we act. And according to Kant, only one kind of motive is consistent with morality, the motive of duty, doing the right thing for the right reason. What other kind of motives are there? Kant sums them up in the category of inclination. Every time the motive for what we do is to satisfy a desire or a preference that we may have, to pursue some interest, we're acting out of inclination. Now, let me pause to see if in thinking about the question of the motive of duty, the goodwill, see if any of you has a question about that much of Kant's claim. Or is everybody happy with this distinction? What do you think? Go ahead. When you make that distinction between duty and inclination is there ever any moral action ever? I mean you could always, kind of, probably find some selfish motive, can't you? Maybe, very often people do have self-interested motives when they act. Kant wouldn't dispute that but what Kant is saying is that in so far as we act morally, that is in so far as our actions have moral worth, what confers moral worth is precisely our capacity to rise above self-interest and prudence and inclination and to act out of duty. Some years ago I read about a spelling bee and there was a young man who was declared the winner of the spelling bee, a kid named Andrew, 13 years old. The winning word, the word that



he was able to spell, was "echolalia." Does anyone know what echolalia is? What? Some type of flower? It's not some type of flower. No. It means the tendency to repeat as in echo, to repeat what you've heard. Anyhow, he misspelled it actually but the judges misheard him, they thought he had spelled it correctly and awarded him the championship of the National Spelling Bee and he went to the judges afterward and said, "Actually, I misspelled it, I don't deserve the prize." And he was regarded as a moral hero and he was written up in the New York Times, "Misspeller is Spelling Bee Hero." There's Andrew with his proud mother and when he was interviewed afterwards, listen to this, when he was interviewed afterwards, he said, "The judges said I had a lot of integrity," but then he added that part of his motive was, "I didn't want to feel like a slime."

T: All right. What would Kant say? Go ahead.

*S: I guess it would depend on whether or not that was a marginal reason or the predominant reason that he didn't actually spell the word correctly.*

T: Good. And what's your name?

*S: Bosco.*

T: Bosco. That's very interesting. Is there anyone else who has a view about this? Does this show that Kant's principle is too stringent, too demanding? What would Kant say about this?

*S: Yes. I think that Kant actually says that it is the pure motivation that comes out of duty which gives the action moral worth. So, it's like, for example in this case, he might have more than one motive, he might have the motive of not feeling like a slime*

*and he might have the motive of doing the right thing itself out of duty and so, while there's more than one motivation going on there doesn't mean that the action is devoid of moral worth just because he has one other motive because the motive which involves duty is what gives it the moral worth.*

T: Good. And what's your name:?

*S: Judith.*

T: Judith. Well Judith, I think that your account actually is true to Kant. It's fine to have sentiments and feelings that support doing the right thing provided they don't provide the reason for acting. So, I think Judith actually has mounted a pretty good defense of Kant on this question of the motive of duty. Thank you.

Now, let's go back to the three contrasts. It's clear at least what Kant means when he says that for an action to have moral worth, it must be done for the sake of duty, not out of inclination. But as we began to see last time, there's a connection between Kant's stringent notion of morality and his specially demanding understanding of freedom. And that leads us to the second contrast, the link between morality and freedom. The second contrast describes two different ways that my will can be determined; autonomously and heteronomously. According to Kant, I'm only free when my will is determined autonomously. Which means what? According to a law that I give myself, we must be capable, if we're capable of freedom as autonomy, we must be capable of acting according not to a law that's given or imposed on us but according to a law we give ourselves. But where could such a law come from? A law that we give ourselves. Reason. If reason determines my will then the will becomes a power to choose independent of the dictates of nature or inclination or circumstance.

So, connected with Kant's demanding notions of morality and freedom is a specially demanding notion of reason. Well, how can reason determine the will? There are two ways and this leads to the third contrast. Kant says there are two different commands of reason and a command of reason Kant calls an imperative an imperative is simply an ought. One kind of imperative, perhaps the most familiar kind, is a hypothetical imperative. Hypothetical imperatives use instrumental reason. If you want x then do y. It's means-ends reasoning. If you want a good business reputation then don't shortchange your customers, word may get out. That's a hypothetical imperative. "If the action would be good solely as a means to something else," Kant writes, "the imperative is hypothetical. If the action is represented as good in itself and therefore is necessary for a will which of itself accords with reason, then the imperative is categorical." That's the difference between a categorical imperative and a hypothetical one. A categorical imperative commands categorically, which just means without reference to or dependence on any further purpose and so you see the connection among these three parallel contrasts. To be free, in the sense of autonomous, requires that I act not out of a hypothetical imperative but out of a categorical imperative.

And so you see by these three contrasts Kant reasons his way, brings us up to his derivation of the categorical imperative. Well, this leaves us one big question: what is the categorical imperative? What is the supreme principle of morality? What does it command of us? Kant gives three versions, three formulations, of the categorical imperative. I want to mention two and then see what you think of them. The first version, the first formula, he calls the formula of the universal law; "Act only on that maxim whereby you can at the same time will that it should become a universal law." And by maxim, what does Kant mean? He means a rule that explains the reason for what you're doing, a principle. For example, promise keeping. Suppose I need money, I need \$100 desperately and I know I can't pay it back anytime soon. I come to you and make you a promise, a false promise, one I know I can't keep, "Please give me

\$100 today, lend me the money, I will repay you next week." Is that consistent with the categorical imperative, that false promise? Kant says no. And the test, the way we can determine that the false promise is at odds with the categorical imperative is try to universalize it, universalize the maxim upon which you're about to act. If everybody made false promises when they needed money then nobody would believe those promises, there would be no such thing as a promise, and so there would be a contradiction. The maxim universalized would undermine itself. That's the test. That's how we can know that the false promise is wrong.

T: Well what about the formula of the universal law? You find it persuasive? What do you think? Go ahead.

*S: I have a question about the difference between categoricalism and a hypothesis that if you're going to act . . . Between categorical and hypothetical. Hypothetical, yeah. Imperatives. Right. If you're going to act with a categorical imperative so that the maxim doesn't undermine itself, it sounds like I am going to do x because I want y, I'm going to not lie in dire need because I want the world to function in such a way that promises are kept. I don't want to liquidate the practice of promises. Right, it sounds like justifying a means by an ends. It seems like an instance of consequentialist reasoning, you're saying.*

T: Right. And what's your name?

*S: Tim.*

T: Well Tim, John Stewart Mill agreed with you. He made this criticism of Kant. He said, "If I universalize the maxim and find that the whole practice of promise keeping would be destroyed if universalized, I must be appealing somehow to consequences if

that's the reason not to tell a false promise." So, John Stewart Mill agreed with that criticism against Kant but John Stewart Mill was wrong. You're in good company though. You're in good company, Tim.

Kant has often read, as Tim just read him, as appealing to consequences. The world would be worse off if everybody lied because then no one could rely on anybody else's word therefore you shouldn't lie. That's not what Kant is saying exactly. Although, it's easy to interpret him as saying that. I think what he's saying is that this is the test, this is the test of whether the maxim corresponds with the categorical imperative. It isn't exactly the reason, it's not the reason, the reason you should universalize to test your maxim is to see whether you are privileging your particular needs and desires over everybody else's. It's a way of pointing to this feature, this demand of the categorical imperative that the reasons for your action shouldn't depend for their justification on your interests, your needs, your special circumstances being more important than somebody else's. That, I think, is the moral intuition lying behind the universalization test. So, let me spell out the second, Kant's second version of the categorical imperative, perhaps in a way that's more intuitively accessible than the formula of universal law. It's the formula of humanity as an end. Kant introduces the second version of the categorical imperative with the following line of argument: "We can't base the categorical imperative on any particular interests, purposes, or ends because then it would be only relative to the person whose ends they were. But suppose, however, there was something whose existence has in itself an absolute value . . . an end in itself . . . then in it, and in it alone, would there be the ground of a possible categorical imperative." Well, what is there that we can think of as having its end in itself? Kant's answer is this, "I say that man, and in general every rational being, exists as an end in himself, not merely as a means for arbitrary use by this or that will." And here Kant distinguishes between persons on the one hand and things on the other. Rational beings are persons, they don't just have a relative value for us but if

anything has they have an absolute value, an intrinsic value, that is rational beings have dignity. They're worthy of reverence or respect. This line of reasoning leads Kant to the second formulation of the categorical imperative which is this: "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." So, that's the formula of humanity as an end, the idea that human beings as rational beings are ends in themselves, not open to use merely as a means. When I make a false promise to you, I'm using you as a means to my ends, to my desire for the \$100, and so I'm failing to respect you, I'm failing to respect your dignity, I'm manipulating you. Now, consider the example of the duty against suicide. Murder and suicide are at odds with the categorical imperative. Why? If I murder someone, I'm taking their life for some purpose, either because I'm a hired killer or I'm in the throes of some great anger passion, I have some interest, some purpose, that's particular for the sake which I'm using them as a means. Murder violates the categorical imperative. For Kant, morally speaking, suicide is on a par with murder. It's on a par with murder because what we violate when we take a life, when we take someone's life, ours or somebody else's, we use that person, we use a rational being, we use humanity as a means and so we fail to respect humanity as an end.

T: And that capacity for reason, that humanity that commands respect, that is the ground of dignity, that humanity, that capacity for reason resides undifferentiated in all of us and so I violate that dignity in my own person, if I commit suicide, and in murder if I take somebody else's life. From a moral point of view they're the same and the reason they're the same has to do with the universal character and ground of the moral law. The reason that we have to respect the dignity of other people has not to do with anything in particular about them and so respect, Kantian respect, unlike love in this way. It's unlike sympathy. It's unlike solidarity or fellow feeling or altruism because love and those other particular virtues or reasons for caring about other



people have to do with who they are in particular. But respect, for Kant, respect is respect for humanity which is universal, for a rational capacity which is universal, and that's why violating it, in my own case, is as objectionable as violating it in the case of any other. Questions or objections? Go ahead.

*S: I guess I'm somewhat worried about Kant's statement that you cannot use a person as a means because every person is an end of themselves, because it seems that everyday, in order to get something accomplished for that day, I must use myself as a means to some end and I must use the people around me as a means to some end as well. For instance, suppose that I want to do well in a class and I have to write a paper. I have to use myself as a means to write the paper. Suppose I want to buy something, food, I must go to the store and use the person working behind the counter as a means for me to purchase my food.*

T: Right. That's true, you do. What's your name?

*S: Patrick.*

T: Patrick, you're not doing anything wrong. You're not violating the categorical imperative when you use other people as means, that's not objectionable provided when we deal with other people for the sake of advancing our projects and purposes and interests, which we all do, provided we treat them in a way that is consistent with respect for their dignity and what it means to respect them is given by the categorical imperative. Are you persuaded? Do you think that Kant has given a compelling account, a persuasive account, of the supreme principle of morality? Reread the groundwork and we'll try to answer that question next time.

### Lecture 13 A Lesson in Lying

**T:** Last time we began trying to we began by trying to navigate our way through Kant's moral theory. Now, fully to make sense of Kant moral theory in the groundwork requires that we be able to answer three questions. How can duty and autonomy go together? What's the great dignity in answering to duty? It would seem that these two ideas are opposed: duty and autonomy. What's Kant's answer to that? Need someone here to speak up on Kant's behalf. Does he have an answer? Yes, go ahead, stand up.

*S: Kant believes you the only act autonomously when you are pursuing something only the name of duty, and not because of your own circumstances. if you're doing it because of duty and not because something of your own personal gain. My name is Matt.*

**T:** Matt, why is that acting on a freedom? I hear what you're saying about duty?

*S: Because you choose to accept those moral laws in yourself and not brought on from outside upon onto you.*

**T:** Okay, good. Because acting out of duty Yeah. - is following a moral law that you impose on yourself.

*S: That you impose on yourself.*

**T:** That you impose on yourself. That's what makes duty compatible with freedom. - Yeah. Okay, that's good Matt. That is Kant's answer. That's great. Thank you. So, Kant's answer is it is not in so far as I am subject to the law that I have dignity but rather in so far as with regard to that very same law, I'm the author and I am subordinated to that law on that ground that I took it as much as at I took it upon

myself. I willed that law. So that's why for Kant acting according to duty and acting freely in the sense of autonomously are one and the same. But that raises the question, how many moral laws are there? Because if dignity consists and be governed by a law that I give myself, what's to guarantee that my conscience will be the same as your conscience? Who has Kant's answer to that? Yes?

*S: Because a moral law trend is not contingent upon seductive conditions. It would transcend all particular differences between people and so would be a universal law and in this respect there'd only be one moral law because it would be supreme.*

**T:** Right. That's exactly right. What's your name?

*S: Kelly.*

**T:** Kelly. Kelly. So Kelly, Kant believes that if we choose freely out of our own consciences, the moral law we're guarantee to come up with one and the same moral law. -Yes. And that's because when I choose it's not me, Michael Sandel choosing. It's not you, Kelly choosing for yourself? What is it exactly? Who is doing the choosing? Who's the subject? Who is the agent? Who is doing the choosing? Pure reason and what you mean by pure reason is what exactly?

*S: Well pure reason is like we were saying before not subject to any external conditions that may be imposed on that side.*

**T:** Good that's' great. So, the reason that does the willing, the reason that governs my will when I will the moral law is the same reason that operates when you choose the moral law for yourself and that's why it's possible to act autonomously, to choose for myself, for each of us to choose for ourselves as autonomous beings and for all of us to wind up willing the same moral law, the categorical imperative. But then there is one big and very difficult question left even if you accept everything that Matt and

Kelly had said so far. How is a categorical imperative possible? How is morality possible? To answer that question, Kant said we need to make a distinction. We need to make a distinction between two standpoints, two standpoints from which we can make sense of our experience. Let me try to explain what he means by these two standpoints. As an object of experience, I belong to the sensible world. There my actions are determined by the laws of nature. But as a subject of experience, I inhabit an intelligible world here being independent of the laws of nature. I am capable of autonomy, capable of acting according to a law I give myself. Now Kant says that, "Only from this second standpoint can I regard myself as free, for to be independent of determination by causes in the sensible world is to be free." If I were holy and empirical being as the utilitarian assume, if I were a being holy and only subject to the deliverances of my senses, pain and pleasure and hunger and thirst and appetite, if that's all there were to humanity, we wouldn't be capable of freedom, Kant reasons because in that case every exercise of will would be conditioned by the desire for some object. In that case all choice would be heteronomous choice governed by the pursued of some external end. "When we think of ourselves as free," Kant writes, "we transfer ourselves into the intelligible world as members and recognize the autonomy of the will." That's the idea of the two standpoints. So how are categorical imperatives possible? Only because the idea of freedom makes me a member of an intelligible world. Now Kant admits we aren't only rational beings. We don't only inhabit the intelligible world, the realm of freedom. If we did -- if we did, then all of our actions would invariably accord with the autonomy of the will.

But precisely because we inhabit simultaneously the two standpoints, the two realms, the realm of freedom and the realm of necessity precisely because we inhabit both realms, there is always potentially a gap between what we do and what we ought to do, between is and ought. Another way of putting this point and this is the point with which Kant concludes the groundwork, morality is not empirical. Whatever you see in

the world, whatever you discover through science can't decide moral questions. Morality stands at a certain distance from the world, from the empirical world. And that's why no science could deliver moral truth.

Now I want to test Kant's moral theory with the hardest possible case, a case that he raises, the case of the murderer at the door. Kant says that lying is wrong. We all know that. We've discussed why. Lying is at odds with the categorical imperative. A French Philosopher, Benjamin Constant wrote an article responding to the groundwork where he said, "This absolute probation on lying is wrong. It can't be right. What if a murderer came to your door looking for your friend who was hiding in your house? And the murderer asked you point blank, "Is your friend in your house?" Constant says, "It would be crazy to say that the moral thing to do in that case is to tell the truth." Constant says the murderer certainly doesn't deserve the truth and Kant wrote to reply. And Kant stuck by his principle that lying even to the murderer at the door is wrong. And the reason it's wrong, he said is once you start taking consequences into account to carve out exceptions to the categorical imperative, you've given up the whole moral framework. You've become a consequentialist or maybe a rule utilitarian. But most of you and most to our Kant's readers think there's something odd and impossible about this answer. I would like to try to defend Kant on this point and then I want to see whether you think that my defense is plausible, and I would want to defend him within the spirit of his own account of morality. Imagine that someone comes to your door. You were asked that question by this murder. You are hiding your friend. Is there a way that you could avoid telling a lie without selling out your friend? Does anyone have an idea of how you might be able to do that?

*S: I was just going to say if I were to let my friend in my house to hide in the first place, I'd probably make a plan with them so I'd be like, "Hey I'll tell the murderer*

*you're here, but escape, " and that's one of the options mentioned.*

**T:** But I'm not sure that's a Kantian option. You're still lying though.

*S: No. Because he's in the house but he won't be.*

**T:** Oh, I see. All right, good enough. One more try.

*S: If you just say you don't know where he is He might have left the closet. You have no clue where he could be.*

**T:** So you would say, I don't know which wouldn't actually be a lie because you weren't at that very moment looking in the closet.

*S: Exactly.*

**T:** So it would be strictly speaking true.

*S: Yes.*

**T:** And yet possibly deceiving, misleading.

*S: But still true.*

**T:** What's your name?

*S: John.*

**T:** John. All right, John has... now John may be on to something. John you're really offering us the option of a clever evasion that is strictly speaking true. This raises the question whether there is a moral difference between an outright lie and a misleading truth. From Kant's point of view there actually is a world of difference between a lie



and a misleading truth. Why is that even though both might have the same consequences? But then remember Kant doesn't base morality on consequences. He bases it on formal adherence to the moral law. Now, sometimes in ordinary life we make exceptions for the general rule against lying with the white lie. It's a lie to make...you're well to avoid hurting someone's feelings for example. It's a lie that we think of as justified by the consequences. Now Kant could not endorse a white lie but perhaps he could endorse a misleading truth. Supposed someone gives you a tie, as a gift, and you open the box and it's just awful. What do you say? Thank you. You could say thank you. But they're waiting to see what you think of it or they ask you what do you think of it? You could tell a white lie and say it's beautiful. But that wouldn't be permissible from Kant's point of view. Could you say not a white lie but a misleading truth, you open the box and you say, "I've never seen a tie like that before. Thank you." You shouldn't have. That's good. Can you think of a contemporary political leader who engaged...you can? Who are you thinking of?

You remember the whole carefully worded denials in the Monica Lewinsky affair of Bill Clinton. Now, those denials actually became the subject of very explicit debate in argument during the impeachment hearings. Take a look at the following excerpts from Bill Clinton. Is there something do you think morally at stake in the distinction between a lie and a misleading carefully couched truth? I want to say one thing to the American people. I want you to listen to me. I'm going to say this again. I did not have sexual relations with that woman Miss Lewinsky. I never told anybody to lie not a single time, never. These allegations are false. Did he lie to the American people when he said I never had sex with that woman? Well he didn't explain it. He did explain that, explain congressman. What he said was, to the American people, that he did not have sexual relations and I understand you're not going to like this congressman because you will see it as a hair-splitting evasive answer. But in his own mind his definition was not... Okay, I understand that argument.

Okay. All right, so there you have the exchange . Now at the time, you may have thought this was just a legalistic hair-splitting exchange between a Republican who wanted to impeach Clinton and a lawyer who is trying to defend him. But now in the light of Kant, do you think there is something morally at stake in the distinction between a lie and an evasion , a true but misleading statement? People who think there is a distinction. Are you ready to defend Kant?

*S: Well I think when you try to say that lying and misleading truths are the same thing; you're basing it on consequentialist argument which is that they achieve the same thing. But the fact to the matter is you told the truth and you intended that people would believe what you are saying, which was the truth, which means it is not morally the same as telling a lie and intending that they believe it is the truth even though it is not true.*

**T:** Good. What's your name?

*S: Diana.*

**T:** So Diana says that Kant has a point here and There's someone over here. For Kant motivation is key, so if you give to someone because primarily you want to feel good about yourself Kant would say that has no moral worth. Well with this, the motivation is the same. It's to sort of mislead someone, it's to lie, it's to sort of throw them off the track and the motivation is the same. So there should be no difference.

*S: Okay.*

**T:** Good. So here isn't the motive the same Diana? What do you say ?

*S: To this argument that well the motive is the same in both cases there is the attempt or at least the hope that one's pursuer will be misled? that your immediate motive is*

*that they should believe you. The ultimate consequence of that is that they might be deceived and not find out what was going on. But that your immediate motive is that they should believe you because you're telling the truth.*

**T:** May I help a little?

**S:** *Sure.*

**T:** You and Kant. Why don't you say... and what's your name, I'm sorry? Wesley. \N Wesley. Why don't you say to Wesley it's not exactly the case that the motive in both cases is to mislead? They're hoping, they're hoping that the person will be misled by the statement "I don't know where they are" or "I never had sexual relations." You're hoping that they will be misled but in the case where you're telling the truth, you're motive is to mislead while at the same time telling the truth and honoring the moral law and staying within the bounds of the categorical imperative. I think Kant's answer would be.... Diana, yes?

**S:** *Yes.*

**T:** You like that?

**S:** *I do.*

**T:** Okay. So I think Kant's answer would be unlike a falsehood, unlike a lie, a misleading truth pays a certain homage to duty. And the homage it pays to duty is what justifies that the work of, even the work of the evasion. Diana, yes you like? Okay. And so there is something, some element of respect for the dignity of the moral law in the careful evasion because Clinton could have told an outright lie but he didn't. And so I think Kant's insight here is in the carefully couched but true evasion. There is a kind of homage to the dignity of the moral law that is not present in the outright

lie and that, Wesley, is part of the motive. It's part of the motive.

Yes, I hope he will be misled. I hope the murderer will run down the road or go to the mall looking for my friend instead at the closet. I hope that will be the effect. I can't control that. I can't control the consequences. But what I can control is standing by and honoring however I pursue the ends, I hope will unfold to do so in a way that is consistent with respect for the moral law. Wesley, I don't think, is entirely persuaded but at least this brings out, this discussion brings out some of what it's at stake, what's morally at stake in Kant's notion of the categorical imperative.

## Lecture 14 A Deal is a Deal

Last time we talked about Kant's categorical imperative and we considered the way he applied the idea of the categorical imperative to the case of lying. I want to turn briefly to one other application of Kant's moral theory and that's his political theory. Now Kant says that just laws arise from a certain kind of social contract. But this contract he tells us is of an exceptional nature. What makes the contract exceptional is that it is not an actual contract that happens when people come together and try to figure out what the constitution should be. Kant points out that the contract that generates justice is what he calls an idea of reason. It's not an actual contract among actual men and women gathered in a constitutional convention. Why not? I think Kant's reason is that actual men and women gathered in real constitutional convention would have different interests, values, aims, and it would also be differences of bargaining power and differences of knowledge among them. And so the laws that would result from their deliberations wouldn't necessarily be just, wouldn't necessarily conform to principles of right, but would simply reflect the differences a bargaining power, the special interests the fact that some might know more than others about law or about politics. So Kant says, "A contract that generates principles of right is merely an idea of reason but it has undoubted practical reality because it can oblige every legislator to frame his laws in such a way that they could have been produced by the united will of the whole nation." So Kant is a contractarian, but he doesn't trace the origin or the rightness of law to any actual social contract. This contrives to an obvious question. What is the moral force of a hypothetical contract, a contract that never happened? That's the question we take up today but in order to investigate it, we need to turn to a modern philosopher, John Rawls, who worked out in his book, *A Theory of Justice*, in great detail and account of a hypothetical agreement as the basis for justice. Rawls' theory of justice in broad outline is parallel to Kant's in two important respects. Like Kant, Rawls was a critic of utilitarianism. "Each person

possesses an inviolability founded on justice, " Rawls' writes, "that even the welfare of society as a whole cannot override.

The rights secured by justice are not subject to political bargaining or to the calculus of social interests." The second respect in which Rawls' theory follows Kant's is on the idea that principles of justice properly understood can be derived from a hypothetical social contract. And Rawls works this out in fascinating detail with the device of what he calls the "veil of ignorance". The way to arrive at the rights... the basic rights that we must respect, the basic framework of rights and duties is to imagine that we were gathered together trying to choose the principles to govern our collective lives without knowing certain important particular fact about ourselves. That's the idea of the veil of ignorance. Now what would happen if we gather together just as we are here and try to come up with principles of justice to govern our collective life? There would be a cacophony of proposals of suggestions reflecting people's different interests, some are strong, some are weak, some are rich, some are poor. So Rawls says, imagine instead that we are gathered in an original position of equality and what assures the equality is the veil of ignorance. Imagine that we are all behind a veil of ignorance which temporarily abstracts from or brackets, hides from us who in particular we are. Our race, our class, our place in society, our strengths, our weaknesses, whether we're healthy or unhealthy, then and only then Rawls says, the principles we would agree to would be principles of justice. That's how the hypothetical contract works. What is the moral force of this kind of hypothetical agreement? Is it stronger or weaker than a real agreement, an actual social contract? In order to answer that question, we have to look hard at the moral force of actual contracts. There are really two questions here. One of them is how do actual contracts bind me or obligate me? Question number one. And question number two, how do actual real life contracts justify the terms that they produce? If you think about it and this is in line with Rawls and Kant, the answer to the second question, how do actual



contracts justify the terms that they produce, the answer is they don't. At least not on their own. Actual contracts are not self-sufficient moral instruments of any actual contract or agreement. It can always be asked, is it fair what they agreed to? The fact of the agreement never guarantees the fairness of the agreement and we know this by looking at our own constitutional convention. It produced a constitution that permitted slavery to persist. It was agreed to. It was an actual contract but that doesn't establish that the laws agreed to all of them were just. Well then what is the moral force of actual contracts? To the extent that they bind us, they obligate in two ways. Suppose, maybe here it would help to take an example. We make an agreement, a commercial agreement. I promise to pay you \$100 if you will go harvest and bring to me 100 lobsters. We make a deal. You go out and harvest them and bring them to me. I eat the lobsters, served them to my friends, and then I don't pay. And you say, "But you're obligated." And I say, "Why?" What do you say? "Well we had a deal." And you benefited. You ate all those lobsters. Well that's a pretty strong argument. It's an argument that depends though and the fact that I benefited from your labor. So, contracts sometimes bind us in so far as they are instruments of mutual benefit. I ate the lobsters. I owe you the \$100 for having gathered them. But suppose, now take a second case. We make this deal, I'll pay you \$100 for 100 lobsters and two minutes later, I've changed my mind. Now, there's no benefit. There's no work on your part so there's no element of reciprocal exchange. What about in that case, do I still owe you merely in virtue of the fact that we had an agreement? Who says those of you who say, yes, I still owe you? Why? Okay, stand up. Why do I owe you? I called you back after two minutes. You haven't done any work.

*S: I think I spent the time and effort in drafting this contract with you and also have emotional expectation that I go through the work.*

**T:** So you took time to draft the contract but we did it very quickly. We just chatted on

the phone.

*S: That wouldn't be a formal form of contract though.*

**T:** Well I faxed at you. It only took a minute.

*S: As long as any effort is involved, I would say that the contract is valid then. It should take effect.*

**T:** But why? What was...what morally can you point to that obligates me? I admit that I agreed but you didn't go to any work. I didn't enjoy any benefit.

*S: Because one might mentally go through all the work of harvesting the lobsters.*

**T:** You mentally went through the work of harvesting the lobsters. That's nothing. Is it? Is not much? Is it worth \$100 that you were imagining yourself going and collecting lobsters?

*S: It may not worth \$100, but it may worth something to some people.*

**T:** You did or imagined that you did or looked forward to doing something that might be had.

*S: For example two people agreed to be married and one suddenly calls the other in two minutes say, does the contract have obligation on both sides? Nobody has done any work or nobody has benefited yet.*

**T:** Well I'm tempted to say no.

*S: Fine.*

**T:** Thank you ,Julian.All right, that was good. Now is there anyone who has who

agrees with Julian that I still owe the money?

*S: I think if you back out it sort of cheapens the institution of contracts.*

**T:** Good but why? Why does it?

*S: Knowing people will expect that you'll go through with that.*

**T:** Good, there is some...it would cheapen the whole idea of contracts. which has to do with taking in obligation on myself. Is that the idea?

*S: Yeah, I think so.*

**T:** So Adam points instead not to any reciprocal benefit or mutual exchange but to the mere fact of the agreement itself. We see here there are really two different ways in which actual contracts generate obligations. One has to do with the active consent as a voluntary act and it points... Adam said this was a Kantian idea and I think he is right because it points to the ideal of autonomy. When I make a contract, the obligation is one that is self-imposed and that carries a certain moral weight, independent of other considerations. which has to do with the sense in which actual contracts are instruments of mutual benefit and this points to ward the ideal of reciprocity I can have an obligation to you in so far that obligation can arise, as you do something for me. Now, when investigating the moral force and also the moral limits of actual contracts and here I would like to advance an argument about the moral limits of actual contracts now that we know what moral ingredients do the work I would like to argue first that the fact that two people agreed to some exchange does not mean that the terms of their agreement are fair. When my two sons were young they collected baseball cards and traded them. And one was...there was a two-year aged...there is a two-year aged difference between them and so I had to institute a rule about the trades that no trade was complete until I had approved it and the reason is obvious. The older

one knew more about the value of these cards and so would take advantage of the younger one. So what does this show? What is the baseball cards example show? The fact of an agreement is not sufficient to establish the fairness of the terms. I read some years ago of a case in Chicago there was an elderly widow, an 84-year-old widow named Rose who had a problem in her apartment with a leaky toilet and she signed a contract with an unscrupulous contractor, who offered to repair her leaky toilet in exchange for \$50, 000. But she had agreed she was of sound mind, maybe terribly naive and unfamiliar with the price of plumbing, she had made this agreement. Luckily, it was discovered. She went to the bank and asked to withdraw \$25, 000. And the teller called authorities and they discovered this unscrupulous contractor. Now, I suspect that even the most ardent contract carryings in the room will agree is not a sufficient condition of the agreement being fair. Is there anyone who will dispute that? No one. Am I missing anyone? Alex, where are you? Where are you? an actual agreement is not necessary to their.. is not a sufficient condition of there being an obligation. I want to now make us stronger, maybe more controversial claim about the moral limits of actual contracts that a contract or an active consent is not only not sufficient And the idea here is that if there is reciprocity, if there is an exchange, then a receipt of benefits, there can be an obligation even without an act of consent. One great example of this involves the 18th century philosopher, the Scottish moral philosopher David Hume. When he was young, Hume wrote a book arguing against Hume heaps scorn on his contractarian idea. He said it was a philosophical fiction. One of the most mysterious and incomprehensible operations that can possibly be imagined, this idea of the social contract. Many years later when he was 62 years old, Hume had an experience that put to the test his rejection of consent as the basis of obligation. Hume had a house in Edinboro. He rented to his friend James Boswell who in turn sublet it to a subtenant. The subtenant decided that the house needed some repairs and a paint job. He hired a contractor to do the work. The painter did the work and sent the bill to Hume. Hume thought this was a bad argument. The only argument

this painter makes is that the work was necessary to be done but this is no good answer because by the same rule, this painter may go through every house in Edinboro and do what he thinks proper to be done and give the same reason that the work was necessary and that the house was the better for it. But the defense failed and he had to pay. Let me give you one other example of the distinction between the consent-based aspect of obligations and the benefit-based aspect This is based on a personal experience. Some years ago, I was driving across the country with some friends and we found ourselves in the middle of nowhere in Hammond, Indiana. We stopped in a rest stop and got out of the car None of us knew much about cars. driving up next to us was a van and on the side it said, presumably Sam and he came up to us and he said, “Can I help you?

If I fix your car in five minutes, you owe me the \$50 But he did start looking under the poking around the steering column. Short time passed, he emerged from under the steering column and said, And then he became very angry and he said, “Do you mean to say that if I had fixed your car while I was working under the steering column But I think he had the intuition that if he had fixed it while he was poking around that I would have owed him the \$50. I shared that intuition. I would have. But he inferred from that. This was the fallacy and the reasoning that I think lay behind his anger. He inferred from that fact that therefore implicitly we had an agreement. But that it seems to me as a mistake. these two different aspects of contract arguments. Yes, I agree. I would have owed him \$50 if he had repaired my car during that time But simply because if he had fixed my car, he would have conferred on me a benefit for which I would have owed him in the name of reciprocity and fairness. these two different aspects of the morality of contract. Now I want to hear how many think I was in the right in that case? Anyone? You do? Why? Go ahead.

*S: I mean what if you wanted your car broken and he had fixed it? I mean... Yeah in*

*this case. I mean...*

**T:** But who would? Who would?

*S: I mean what if Hume, you know, what if the painter that painted his house blue but he hated the color blue, I mean you have to sort of define what your benefit is before the person does it.*

**T:** Well all right, so what would you conclude for that, though, for the larger issue here, would you conclude that therefore consent is a necessary condition of their being an obligation?

*S: Nate.*

**T:** Because otherwise how can we know, Nate says, whether there has been an exchange of equivalent or fair benefits unless we have the subjective evaluation which may vary one person to the next of the situation.

Let me put to you one other example in order to test the relation between these two aspects of the morality of contract. Suppose I get married and suppose I discover that after 20 years of faithfulness on my part, every year on our trip across the country my wife has been seeing another man, a man with a van on the Indiana toll road. This part is completely made up by the way. One reason could be we had an agreement. She broke her promise referring to the fact of her consent. But I would also have a second ground for moral outrage. Surely I deserve better than this. So that would point to the element of reciprocity. Each reason has an independent moral force. if you imagine a slight variation on the marriage case. Suppose we were just married and that the betrayal occurred on the way to our honeymoon in Hammond, Indiana. After the contract has been made, but before there is any history of performance on my part, performance of the contract I mean, I would still with Julian, I'd be able to say but you



promised, you promised. That would isolate the pure element of consent, Right ? Where there were no benefits, never mind. You get the idea. in virtue of two distinguishable ideals: autonomy and reciprocity, but in real life every actual contract may fall short, may fail to realize the ideals that give contracts their moral force in the first place. The ideal of autonomy may not be realized because there may be a difference in the bargaining power of the parties. The ideal of reciprocity may not be realized because there may be a difference of knowledge between the parties and so they may misidentify what really counts as having equivalent value. Now suppose you were to imagine a contract where the ideals of autonomy and of reciprocity were not subject to contingency but were guaranteed to be realized, what kind of contract would that have to be? Imagine a contract among parties who were equal in power and knowledge rather than unequal who are identically situated rather than differently situated. the way to think about justice is from the standpoint of a hypothetical contract, behind a veil of ignorance that creates the condition of equality by ruling out or enabling us to forget for the moment the differences in power and knowledge that could even in principle lead to unfair results. This is why for Kant and for Rawls, a hypothetical contract among equals is the only way to think about principles of justice.

## Lecture 15 What's a Fair Start?

Today, we turn to the question of distributive justice. How should income in wealth and power and opportunities be distributed? According to what principles? John Rawls offers a detailed answer to that question. And we're going to examine and assess his answer to that question, today.

We put ourselves in a position to do so last time. By trying to make sense of why he thinks that principles of justice are best derived from a hypothetical contract. And what matters is that the hypothetical contract be carried out in an original position of equality, behind, what Rawls calls, the veil of ignorance. So that much is clear? Alright, then let's turn to the principles that Rawls says would be chosen behind the veil of ignorance.

First, he considered some of the major alternatives. What about utilitarianism? Would the people in the original position choose to govern their collective lives utilitarian principles, the greatest good for the greatest number? No, they wouldn't, Rawls says. And the reason is, that behind the veil of ignorance, everyone knows that once the veil goes up, and real life begins.

We will each want to be respected with dignity. Even if we turn out to be a member of a minority, we don't want to be oppressed. And so we would agree to reject utilitarianism, and instead to adopt as our first principle, equal basic liberties. Fundamental rights to freedom of speech, freedom of assembly, religious liberty, freedom of conscience and the like. We wouldn't want to take the chance that we would wind up as members of an oppressed or a despised minority with the majority tyrannizing over us. And so Rawls says utilitarianism would be rejected. "Utilitarianism makes the mistake", Rawls writes, "of forgetting, or at least not taking

seriously, the distinction between persons." And in the original position behind the veil of ignorance, we would recognize that and reject utilitarianism. We wouldn't trade off our fundamental rights and liberties for any economic advantages. That's the first principle.

Second principle has to do with social and economic inequalities. What would we agree to? Remember, we don't know whether we're going to wind up being rich or poor. Healthy or unhealthy. We don't know what kind of family we're going to come from. Whether we're going to inherit millions or whether we will come from an impoverished family. So we might, at first thought, say, "Well, let's require an equal distribution of income and wealth." Just to be on the safe side. But then we would realize, that we could do better than that. Even if we're unlucky and wind up at the bottom. We could do better if we agree to a qualified principle of equality. Rawls calls it "the Difference Principle." A principle that says, only those social and economic inequalities will be permitted that work to the benefit of the least well off. So we wouldn't reject all inequality of income and wealth. We would allow some. But the test would be, do they work to the benefit of everyone including those, or as he specifies, the principle, especially those at the bottom. Only those inequalities would be accepted behind the veil of ignorance. And so Rawls argues, only those inequalities that work to the benefit of the least well off, are just.

We talked about the examples of Michael Jordan making 31 million dollars a year, of Bill Gates having a fortune in the tens of billions. Would those inequalities be permitted under the difference principle? Only if they were part of a system, those wage differentials, that actually work to the advantage of least well off. Well, what would that system be? Maybe it turns out that as a practical matter you have to provide incentives to attract the right people to certain jobs. And when you do, having those people in those jobs will actually help those at the bottom. Strictly

speaking, Rawls's argument for the difference principle is that it would be chosen behind the veil of ignorance.

Let me hear what you think about Rawls's claim that these two principles would be chosen behind the veil of ignorance. Is there anyone who disagrees that they would be chosen? Alright, let's start up in the balcony, if that's alright.

Go ahead.

*STUDENT 1: OK, your argument depends upon us believing that we would argue in said policy, or justice from a bottom. For the disadvantaged. And I just don't see from a proof standpoint, where we've proven that. Why not the top?*

Right, and what's your name?

*STUDENT 1: Mike.*

Mike, alright, good question. Put yourself behind the veil of ignorance. Enter into the thought experiment. What principles would you choose? How would you think it through?

*STUDENT 1: Well, I would say things like, even Harvard's existence is an example of preaching toward the top. Because Harvard takes the top academics. And I didn't know when I was born how smart I would be. But I worked my life to get to a place of this caliber. Now, if you had said Harvard's going to randomly take 1600 people of absolutely no qualification, we'd all be saying, "There's not much to work for."*

And so what principle would you choose?

*STUDENT 1: In that situation I would say a merit based one. One where I don't necessarily know, but I would rather have a system that rewards me based on my efforts.*

So you, Mike, behind the veil of ignorance, would choose a merit-based system, where people are rewarded according to their efforts?

*STUDENT 1 nods*

Alright, fair enough. What would you say? Go ahead.

*STUDENT 2: My question is, if the merit-based argument is based on when everyone is at a level of equality? Where from that position, you're rewarded to where you get, or is it regardless of what advantages you may have when you began your education to get where you are here?*

*STUDENT 1: I think what the question you're asking is saying that if we want to look at, whatever, utilitarianism, policy, do you want to maximize world wealth. And I think a system that rewards merit is the one that we've pretty much all established, is what is best for all of us. Despite the fact that some of us may be in the second percentile and some may be in the 98th percentile. At the end of the day it lifts that lowest based level, a community that rewards effort as opposed to an differences.*

*STUDENT 2: But, I don't understand how you're rewarding someone's efforts who clearly has had, not you, but maybe myself, advantages throughout, to get where I am here. I mean, I can't say that somebody else who maybe worked as hard as I did would have had the same opportunity to come to a school like this.*

Alright, let's look at that point. What's your name?

*STUDENT 2: Kate.*

Kate, you suspect that the ability to get into top schools may largely depend on coming from an affluent family, having a favorable family background, social, cultural, economic advantages and so on?

*STUDENT 2: I mean, economic, but yes, social, cultural. All of those advantages, for sure.*

Someone did a study, of the 146 selective colleges and universities in the United States. And they looked at the students in those colleges and universities to try to find out what their background was, their economic background. What percentage do you think, come from the bottom quarter of the income scale? You know what the figure is? Only three percent of students, at the most selective colleges and universities come from poor backgrounds. Over 70 percent come from affluent families.

Let's go one step further then, and try to address Mike's challenge. Rawls actually has two arguments, not one, in favor of his principles of justice. And in particular, of the difference principle. One argument is the official argument, what would be chosen behind the veil of ignorance. Some people challenge that argument, saying, "Maybe people would want to take their chances. Maybe people would be gamblers behind the veil of ignorance, hoping that they would wind up on top." That's one challenge that has been put to Rawls. But backing up the argument from the original position is the second argument. And that is the straightforwardly moral argument. And it goes like this, it says, the distribution of income and wealth and opportunities should not be based on factors for which people can claim no credit. It shouldn't be based on factors

that are arbitrary from a moral point of view.

Rawls illustrates this by considering several rival theories of justice. He begins with the theory of justice that most everyone these days would reject. A feudal aristocracy. What's wrong with the allocation of life prospects in a feudal aristocracy? Rawls says, well the thing that's obviously wrong about it is that people's life prospects are determined by the accident of birth. Are you born to a noble family or to a family of peasants and serfs? And that's it. You can't rise. It's not your doing where you wind up or what opportunities you have. But that's arbitrary from a moral point of view. And so that objection to feudal aristocracy leads, and historically has lead, people to say, careers should be open to talents. There should be formal equality of opportunity regardless of the accident of birth. Every person should be free to strive, to work, to apply for any job in the society. And then, if you open up jobs, and you allow people to apply, and to work as hard as they can, then the results are just.

So it's more or less the libertarian system that we've discussed in earlier weeks. What does Rawls think about this? He says it's an improvement. It's an improvement because it doesn't take as fixed the accident of birth. But even with formal equality of opportunity the libertarian conception doesn't extend that, doesn't extend its insight far enough. Because if you let everybody run the race, everybody can enter the race, but some people start at different starting points, that race isn't going to be fair. Intuitively, he says, the most obvious injustice of this system is that it permits distributive shares to be improperly influenced by factors arbitrary from a moral point of view. Such as, whether you got a good education or not. Whether you grew up in a family that support you and developed in you a work ethic and gave you the opportunities. So that suggests moving to a system of fair equality of opportunity. And that's really the system that Mike was advocating earlier on. What we might call a merit-based system. A meritocratic system. In a fair meritocracy the society sets up institutions to bring



everyone to the same starting point before the race begins. Equal educational opportunities. Head start programs, for example. Support for schools in impoverished neighborhoods. So that everyone, regardless of their family background, has a genuinely fair opportunity. Everyone starts from the same starting line.

Well, what does Rawls think about the meritocratic system? Even that, he says, doesn't go far enough in remedying, or addressing, the moral arbitrariness of the natural lottery. Because if you bring everyone to the same starting point and begin the race, who's going to win the race? Who would win? To use the runners example. The fastest runners would win. But is it their doing that they happen to be blessed with athletic prowess to run fast?

So Rawls says, "Even the principle of meritocracy, where you bring everyone to the same starting point, may eliminate the influence of social contingencies and upbringing, but it still permits the distribution of wealth and income to be determined by the natural distribution of abilities and talents." And so he thinks that the principle of eliminating morally arbitrary influences in the distribution of income and wealth requires going beyond what Mike favors, the meritocratic system. Now, how do you go beyond? Do you bring everyone to the same starting point and you're still bothered by the fact that some are fast runners and some are not fast runners, what can you do?

Well, some critics of a more egalitarian conception say the only thing you can do is handicap the fast runners. Make them wear lead shoes. But who wants to do that? That would defeat the whole point of running the race. But Rawls says, you don't have to have a kind of leveling equality, if you want to go beyond a meritocratic conception. You permit, you even encourage, those who may be gifted, to exercise their talents. But what you do, is you change the terms on which people are entitled to the fruits of the exercise of those talents. And that really is what the difference principle is.

You establish a principle that says, people may benefit from their good fortune, from their luck in the genetic lottery, but only on terms that work to the advantage of the least well off. And so, for example, Michael Jordan can make 31 million dollars but, only under a system that taxes away a chunk of that to help those who lack the basketball skills that he's blessed with. Likewise, Bill Gates. He can make his billions. But he can't think that he somehow morally deserves those billions. "Those who have been favored by nature, may gain from their good fortune but only on terms that improve the situation of those who have lost out." That's the difference principle. And it's an argument from moral arbitrariness. Rawls claims, that if you're bothered by basing distributive shares on factors arbitrary from a moral point of view, you don't just reject a feudal aristocracy for a free market. You don't even rest content with a meritocratic system that brings everyone to the same starting point. You set up a system, where everyone, including those at the bottom, benefit from the exercise of the talents held by those who happen to be lucky.

What do you think? Is that persuasive? Who finds that argument unpersuasive? The argument for moral arbitrariness.

Yes.

STUDENT 1: I think that in the egalitarian proposition the more talented people, I think it's very optimistic to think that they would still work really hard, even if they knew that part of what they made would be given away. So I think that the only way for the more talented people to exercise their talents to the best of their ability is in the meritocracy.

And in a meritocracy, what's your name?

STUDENT 1: Kate.

Kate, does it bother you, and Mike, does it bother you, that in a meritocratic system, that even with fair equality of opportunity, people get ahead, people get rewards that they don't deserve simply because they happen to be naturally gifted. What about that?

STUDENT 1: *I think that it is arbitrary. Obviously it's arbitrary. But I think that correcting for it would be detrimental.*

Because it would reduce incentives, is that why?

STUDENT 1: *It would reduce incentives, yeah.*

Mike, what do you say?

STUDENT 2: *We're all sitting in this room and we have undeserved, we have undeserved glory of some sort. So you should not be satisfied with the process of your life. Because you have not created any of this. And I think, from a standpoint of, not just this room, us being upset, but from a societal standpoint we should have some kind of a gut reaction to that feeling. The guy who runs the race, he doesn't... He actually harms us as opposed to maybe makes me run that last ten yards faster. And that makes the guy behind me run ten yards faster and the guy behind him ten yards faster.*

Alright, so Mike, let me ask you. You talked about effort before. Effort. Do you think when people work hard to get ahead, and succeed, that they deserve the rewards that go with effort? Isn't that the idea behind your defense?

*STUDENT 2: I mean, of course, bring Michael Jordan here, I'm sure you can get him, and have him come and defend himself about he makes 31 million dollars. And I think what you're going to realize is his life was a very, very tough one to get to the top. And that we are basically being the majority oppressing the minority in a different light. It's very easy to pick on him. Very easy.*

Alright, effort. You've got...

*STUDENT 2: I've got a few. I've got a few. But that's about it.*

Effort, you know what Rawls's answer to that is? Even the effort that some people expend, conscientious striving, the work ethic, even effort depends a lot on fortunate family circumstances. For which you, we, can claim no credit.

Let's do the test. Let's do a test here. Never mind economic class, those differences are very significant. Put those aside. Psychologists say that birth order makes a lot of difference in work ethic, striving, effort. How many here, raise your hand, those of you here, who are first in birth order. I am too by the way. Mike, I noticed you raised your hand.

If the case for the meritocratic conception is that effort should be rewarded, doesn't Rawls have a point that even effort striving, work ethic is largely shaped even by birth order? Is it your doing? Mike, is it your doing that you were first in birth order? Then why, Rawls says, of course not. So why should income and wealth and opportunities in life be based on factors arbitrary from a moral point of view? That's the challenge that he puts to market societies, but also to those of us at places like this. A question to think about for next time.

“The owl of Minerva spreads its wings only with the falling of the dusk.” – Hegel

## Lecture 16 What Do We Deserve?

We ended last time with that remarkable poll, do you remember? The poll about birth order. What percentage of people in this room raised their hands, was it, to say that they were the first born? 75, 80 percent? And what was the significance of that? If you're thinking about these theories of distributive justice. Remember, we were discussing three different theories of distributive justice.

Three different ways of answering the question, "How should income and wealth and opportunities and the good things in life, be distributed?" And so far we've looked at the libertarian answer. That says, the just system of distribution is a system of free exchange, a free market economy. Against a background of formal equality. Which simply means, that jobs and careers are open to anyone. Rawls says that this represents an improvement over aristocratic and caste systems, because everyone can compete for every job. Careers open to talents.

And beyond that, the just distribution is the one that results from free exchange. Voluntary transactions. No more, no less. Then Rawls argues, if all you have is formal equality, jobs open to everyone, the result is not going to be fair. It will be biased in favor of those who happen to be born to affluent families, who happen to have the benefit of good educational opportunities. And that accident of birth is not a just basis for distributing life chances. And so, many people who notice this unfairness, Rawls argues, are lead to embrace a system of fair equality of opportunity. That leads to the meritocratic system. Fair equality of opportunity. But Rawls says, even if you bring everyone to the same starting point in the race, what's going to happen? Who's going to win? The fastest runners.

So once you're troubled by basing distributive shares on morally arbitrary

contingencies, you should, if you reason it through, be carried all the way to what Rawls calls, "the democratic conception". A more egalitarian conception of distributive justice that he defines by the difference principle. Now, he doesn't say that the only way to remedy or to compensate for differences in natural talents and abilities is to have a kind of, leveling equality. A guaranteed equality of outcome. But he does say there's another way to deal with these contingencies. People may gain, may benefit from their good fortune, but only on terms that work to the advantage of the least well off. And so, we can test how this theory actually works by thinking about some paid differentials that arise in our society.

What does the average school teacher make in the United States, do you suppose? - Roughly. - \$35,000. It's a little more, 40, \$42,000. What about David Letterman? How much do you think David Letterman makes? More than a school teacher? \$31 million. David Letterman. Is that fair? That David Letterman makes that much more than a school teacher? Well, Rawls's answer would be, it depends whether the basic structure of society is designed in such a way that Letterman's \$31 million is subject to taxation so that some of those earnings are taken to work for the advantage of the least well off.

One other example of a paid differential. A justice of the United States Supreme Court. What do they make? It's just under \$200,000. Here's Sandra Day O'Connor, for example. There she is. But there's another judge who makes a lot more than Sandra Day O'Connor. - Do you know who it is?

*STUDENTS: Judge Judy.*

Judge Judy. How did you know that? You watch? You're right. Judge Judy, you know how much she makes? There she is. \$25 million. Now, is that just? Is it fair? Well, the



answer is, it depends on whether this is against a background system in line with the difference principle. Where those who come out on top, in terms of income and wealth are taxed in a way that benefits the least well off members of society.

Now, we're going to come back to these wage differentials, pay differentials, between a real judge and a TV judge. The one Marcus watches all the time. What I want to do now, is return to these theories and to examine the objections to Rawls's more egalitarian theory. The difference principle.

There are at least three objections to Rawls's difference principle. One of them came up last time in the discussion and a number of you raised this worry. What about incentives? Isn't there the risk, if taxes reach 70, 80, 90 percent marginal rate that Michael Jordan won't play basketball? That David Letterman won't do late night comedy? Or that CEOs will go into some other line of work? Now, who among those who are defenders of Rawls who has an answer to this objection about the need for incentives?

Yes. Go ahead, stand up.

*STUDENT 1: Rawls's idea is that there should only be so much difference that it helps the least well off the most. So if there's too much equality, then the least well off might not be able to watch late night TV, or might not have a job because their CEO doesn't want to work. So you need to find the correct balance where taxation still leaves enough incentive to least well off to benefit from the talents.*

Good. And what's your name?

*STUDENT 1: Tim.*

Tim. Alright, so Tim is saying, in effect, that Rawls is taking count of incentives. And could allow for pay differentials and for some adjustment in the tax rate to take account of incentives. But, Tim points out, the standpoint from which the question of incentives needs to be considered is not the effect on the total size of the economic pie. But instead from the standpoint of the effect of incentives, or disincentives, on the well-being of those on the bottom. Right?

*STUDENT 1 nods.*

Good. Thank you. I think that is what Rawls would say. In fact, if you look in section 17, where he describes the difference principle, he allows for incentives. "The naturally advantaged are not gain merely because they are more gifted, but only to cover the costs of training and education and for using their endowments in ways that help less fortunate as well." So you can have incentives. You can adjust the tax rate. If taking too much from David Letterman or from Michael Jordan, or from Bill Gates, winds up actually hurting those at the bottom. That's the test.

So incentives, that's not a decisive objections against Rawls's difference principle. But there are two weightier, more difficult objections. One of them comes from defenders of a meritocratic conception. The argument that says, what about effort? What about people working hard having a right to what they earn because they've deserved it. They've worked hard for it. That's the objection from effort and moral desert. Then there's another objection. That comes from libertarians. And this objection has to do with reasserting the idea of self-ownership. Doesn't the difference principle, by treating our natural talents and endowments as common assets, doesn't that violate the idea that we own ourselves?

Now, let me deal first, with the objection that comes from the libertarian direction. Milton Friedman writes, in his book, "Free to Choose," "Life is not fair. And it's tempting to believe that government can rectify what nature has spawned." But his answer is, "The only way to try to rectify that is to have a leveling equality of outcome." Everyone finishing the race at the same point. And that would be a disaster. This is an easy argument to answer. And Rawls addresses it.

In one of the most powerful passages, I think, of the theory of justice. It's in Section 17. "The natural distribution", and here he's talking about the natural distribution talents and endowments. "... is neither just nor unjust. "Nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that institutions deal with these facts." That's his answer to libertarian laissez faire economists like Milton Friedman who say, "Life is unfair but get over it." Get over it and let's see if we can, at least, maximize the benefits that flow from it.

But the more powerful libertarian objection to Rawls is not libertarian from the libertarian economists like Milton Friedman. It's from the argument about self-ownership. Developed as we saw, in Nozick. And from that point of view, yes, it might be a good thing, to create head start programs and public schools so that everyone can go to a decent school and start the race at the same starting line. That might be good. But if you tax people to create public schools, if you tax people against their will, you coerce them. It's a form of theft. If you take some of Letterman's \$31 million, tax it away to support public schools, against his will, the state is really doing no better than stealing from him. It's coercion. And the reason is, we have to think of ourselves as owning our talents and endowments. Because otherwise we're back to just using people and coercing people. That's the libertarian reply.

What's Rawls's answer to that objection? He doesn't address the idea of self-ownership directly. But the effect, the moral weight of his argument for the difference principle is, maybe we don't own ourselves in that thoroughgoing sense after all. Now, he says, this doesn't mean that the state is an owner in me, in the sense that it can simply commandeer my life. Because remember, the first principle we would agree to behind the veil of ignorance, is the principle of equal basic liberties. Freedom of speech, religious liberty, freedom of conscience and the like. So the only respect in which the idea of self-ownership must give way, comes when we're thinking about whether I own myself in the sense that I have a privileged claim on the benefits that come from the exercise of my talents in a market economy. And Rawls says, on reflection, we don't. We can defend rights. We can respect the individual. We can uphold human dignity. Without embracing the idea of self-possession. That, in effect, is his reply to the libertarian.

I want to turn now, to his reply to the defender of a meritocratic conception. Who invokes effort as the basis of moral desert. People who work hard to develop their talents deserve the benefits that come from the exercise of their talents. Well, we've already seen the beginning of Rawls's answer to that question. And it goes back to that poll we took about birth order. His first answer is even the work ethic, even the willingness to strive conscientiously, depends on all sorts of family circumstances and social and cultural contingencies for which we can claim no credit. You can't claim credit for the fact that you, most of you, most of us, happen to be first in birth order.

And that for some complex psychological and social reasons that seems to be associated with striving, with achieving, with effort. That's one answer. There's a second answer. Those of you who invoke effort, you don't really believe that moral desert attaches to effort. Take two construction workers. One is strong and can raise

four walls in an hour without even breaking a sweat. And another construction worker is small and scrawny. And has to spend three days to do the same amount of work. No defender of meritocracy is going to look at the effort of that weak and scrawny construction worker and say "Therefore he deserves to make more". So it isn't really effort. This is the second reply to the meritocratic claim. It isn't really effort that the defender of meritocracy believes is the moral basis of distributive shares. It's contribution. How much do you contribute? But contribution takes us right back to our natural talents and abilities. Not just effort. And it's not our doing, how we came into the possession of those talents in the first place.

Alright, suppose you accepted these arguments, that effort isn't everything, that contribution matters, from the standpoint of the meritocratic conception. That effort, even, isn't our own doing. Does that mean, the objection continues, does that mean that according to Rawls, moral desert has nothing to do with distributive justice? Well, yes. Distributive justice is not about moral desert. Now, here, Rawls introduces an important and a tricky distinction. It's between moral desert, on the one hand, and entitlements to legitimate expectations, on the other.

What is the difference between moral deserts and entitlements? Consider two different games. A game of chance and a game of skill. Take a game of pure chance. Say, I play the Massachusetts state lottery. And my number comes up. I'm entitled to my winnings. But even though I'm entitled to my winnings, there's no sense in which, because it's just a game of luck, no sense in which, I morally deserve to win in the first place. That's an entitlement.

Now contrast the lottery with a different kind of game. A game of skill. Now, imagine the Boston Red Sox winning the World Series. When they win, they're entitled to the trophy. But it can be always asked of a game of skill did they deserve to win? It's

always possible, in principle, to distinguish what someone's entitled to, under the rules, and whether they deserve to win in the first place. That's an antecedent standard. Moral desert. Now, Rawls says distributive justice is not a matter of moral desert though it is a matter of entitlements to legitimate expectations. Here's where he explains it. "A just scheme answers to what men are entitled to. It satisfies their legitimate expectations as founded upon social institutions. But what they are entitled to is not proportional to nor dependent upon their intrinsic worth." "The principles of justice that regulate the basic structure do not mention moral desert and there is no tendency for distributive shares to correspond to it."

Why does he make this distinction? What, morally, is at stake? One thing morally at stake is the whole question of effort that we've already discussed. But there's a second contingency, a second source of moral arbitrariness that goes beyond the question of whether it's to my credit that I have the talents that enable me to get ahead. And that has to do with the contingency that I live in a society that happens to prize my talents. The fact that David Letterman lives in a society that puts a great premium, puts a great value, on a certain type of smirky joke, that's not his doing. He's lucky that he happens to live in such a society. But this is a second contingency. This isn't something that we can claim credit for. Even if I had sole, unproblematic, claim to my talents and to my effort.

It would still be the case, that the benefits I get from exercising those talents, depend on factors that are arbitrary from a moral point of view. What my talents will reap in a market economy. What does that depend on? What other people happen to want or like in this society. It depends on the law of supply and demand. That's not my doing. It's certainly not the basis for moral desert.

What counts as contributing depends on the qualities that this or that society happens

to prize. Most of us are fortunate to possess, in large measure, for whatever reason, the qualities that our society happens to prize. The qualities that enable us to provide what society wants. In a capitalist society it helps to have entrepreneurial drive. In a bureaucratic society it helps to get on easily and smoothly with superiors. In a mass democratic society it helps to look good on television and to speak in short, superficial sound bites. In a litigious society, it helps to go to law school and have the talents to do well on LSATs. But none of this is our doing.

Suppose that we, with our talents, inhabited not our society, technologically advanced, highly litigious, but a hunting society, or a warrior society. What would become of our talents then? They wouldn't get us very far. No doubt some of us would develop others. But would we be less worthy? Would we be less virtuous? Would we be less meritorious if we lived in that kind of society rather than in ours.

Rawls's answer is, no. We might make less money and properly so. But while we would be entitled to less, we would be no less worthy. No less deserving than we are now. And here's the point. The same could be said of those in our society who happen to hold less prestigious positions, who happen to have fewer of the talents that our society happens to reward. So here's the moral import of the distinction between moral desert and entitlements to legitimate expectations.

We are entitled to the benefits that the rules of the game promise for the exercise of our talents. But it's a mistake and a conceit to suppose that we deserve, in the first place, a society that values the qualities we happen to have in abundance.

Now we've been talking here about income and wealth, what about opportunities and honors? What about the distribution of access of seats in elite colleges and universities? It's true, all of you most of you first born, worked hard, strived,



developed your talents, to get here. But Rawls asks, in effect, what is the moral status of your claim to the benefits that attach to the opportunities that you have? Are seats in colleges and universities a matter, a kind of reward, an honor for those who deserve them, because they've worked so hard? Or, are those seats, those opportunities and honors entitlements to legitimate expectations that depend for their justification on those of us who enjoy them doing so in a way that works to the benefit of those at the bottom of society? That's the question that Rawls's difference principle poses. It's a question that can be asked of the earnings of Michael Jordan and David Letterman and Judge Judy. But it's also a question that can be asked of opportunities to go to the top colleges and universities. And that's a debate that comes out when we turn to the question of affirmative action next time.

## Lecture 17 Arguing Affirmative Action

Last time, we were discussing the distinction that Rawls draws between two different types of claims. Claims of moral desert on the one hand, and of entitlement to legitimate expectations on the other. A matter of moral desert, a matter of rewarding people according to their virtue. Today we're going to explore that question of moral desert and its relation to distributive justice. Not in connection with incoming wealth, but in its connection with opportunities.

With hiring decisions and admission standards. And so we turn to the case, of affirmative action. You read about the case of Cheryl Hopwood. She applied for admission to the University of Texas Law School. Worked her way through high school, affluent family, she put herself through community college, and California State University at Sacramento. She achieved a 3.8 grade point average there, later moved to Texas, became a resident, took the law school admissions test, did pretty well on that, and she applied to the University of Texas Law School. She was turned down. She was turned down at a time when the University of Texas, affirmative action admissions policy. A policy that took into account, race and ethnic background. The University of Texas said, “40 percent of the population of Texas is made up of African Americans and Mexican Americans. It's important that we, as a law school, have a diverse student body. And so we are going to take into account, not only grades and test scores, but also the demographic make up of our class including, its race and ethnic profile.” The result, and this is what Hopwood complained about, the result of that policy, is that some applicants to the University of Texas Law School, with a lower academic index, which includes grades and test scores, than hers, were admitted. And she was turned down. She said, she argued, “I'm just being turned down because I'm white. If I weren't, if I were a member of a minority group, with my grades and test scores I would have been admitted.” And the statistics, the admissions statistics that

came out in the trial, confirmed that African American and Mexican American applicants that year, who had, her grades and test scores, were admitted. It went to Federal Court.

Now, put aside the law, let's consider it from the standpoint of justice and morality. Is it fair, or is it unfair? Does Cheryl Hopwood have a case? A legitimate complaint? Were her rights violated, by the admissions policy of the law school? How many say, how many would rule for the law school, and say that it was just to consider race and ethnicity as a factor in admissions? How many would rule for Cheryl Hopwood and say "her rights were violated?" So here we have a pretty even split. Alright, now I want to hear from a defender of Cheryl Hopwood.

*Student: "Yes? You're basing something that's an arbitrary factor, you know, Cheryl couldn't control the fact that she was white, or not in a minority. And therefore, you know, it's not as if..it was like a test score that she worked hard to try and show that she could, you know, put that out there, you know, that she had no control over her race."*

Good. And what's your name?

*Student: "Bree."*

Okay. Bree, stay right there. Now let's find someone who has an answer for Bree. Yes?

*Student: "There are discrepancies in the educational system. And the majority of the time, I know this in New York City, the schools that minorities go to, are not as well-funded, are not as well-supplied, as white schools. And so there is going to be a*

*discrepancy, naturally, between minorities and between whites. If they go to better schools. And they will not do as well on exams because they haven't had as much help. Because of the worst school systems. ”*

Let me just interrupt you to, tell me your name?

*Student: “Aneesha.”*

Aneesha. Aneesha, you're pointing out that minority kids may have gone, in some cases, to schools affluent families.

*Student: “Yes. ”*

And so the testscores they got, may actually not represent their true potential.

*Student: “Because they didn't receive the same kind of help that they might have received had they gone to a school with better funding.”*

Good, alright. Aneesha has raised the point that colleges still should choose for the greatest academic scholarly promise, but in reading the test scores and grades, they should take into account the different meaning those tests and grades have, in the light of educational disadvantage in the background. So that's one argument in defense of affirmative action, Aneesha's argument. Correcting for the effects of unequal preparation. Educational disadvantage.

Now, there are other arguments. Suppose, just to identify whether there is a competing principle here. Suppose there are two candidates, who did equally well on the tests and grades. Both of whom went to first rate schools. Two candidates, among those

candidates, would it be unfair for the college or university, for Harvard, to say, “we still want diversity along racial and ethnic dimensions, even where we are not correcting for the effects on test scores of educational disadvantage.” What about in that case, Bree?

*Student: “If it's that's one thing that puts, you know, someone over the edge, then it's, I guess that would be, you know, justifiable. If everything else about the individual first, though, everything to consider about that person's you know, talents, and where they come from, and who they are without these arbitrary factors, is the same.”*

Without these 'arbitrary factors', you call them. But before, you were suggesting, Bree, that race and ethnicity are arbitrary factors outside the control of the applicants.-

*Student: “True, I would agree with that.”*

And your general principle is that admissions shouldn't reward arbitrary factors, over which people have no control.”

*Student: “Right.”*

Alright. Who else, who else would like to, thank you both. Who else would like to get into this, what do you say?

*Student: “Well, first of all, I'm for affirmative action temporarily, but, for two reasons. First of all, you have to look at the university's purpose. It is to educate their students. And I feel that different races, people coming from different races have different backgrounds and they contribute differently to the education. And second of all, when you say that they have equal backgrounds, that's not true when you look at the*

*broader picture, and you look at slavery and this is kind of a reparation. I think affirmative action is a temporary solution to alleviate history, and the wrongs done to African Americans in particular.”*

And what's your name?

*Student: “David.”*

David. You say that affirmative action is justified at least for now as a way of compensating for past injustice. The legacy of slavery and segregation.

*Student: “Right.”*

Who wants to take on that argument? We need now a critic of affirmative action. Yes, go ahead.

*Student: “I think that what happened in the past has no bearing on what happens today. I think that discriminating based on race should always be wrong. Whether you're discriminating against one group or another. Just because our ancestors did something, doesn't mean that that should have any effect on what happens with us today.”*

Alright, good. I'm sorry, your name is?

*Student: “Kate.”*

Kate. Alright, who has an answer for Kate? Yes.

Student: *"I just wanted to comment and say that..."*

Tell us your name.

Student: *"My name is Mansur. Because of slavery, because of past injustices, today, we have a higher proportion of African Americans who are in poverty, who face less opportunities than white people. So because of slavery 200 years ago, and because of Jim Crow, and because of segregation, today we have injustice based on race."*

Kate?

Student: *"I think that there are differences obviously, but the way to fix those differences is not by some artificial fixing of the result. You need to fix the problem. So we need to address differences in education, and differences in upbringing with programs like Head Start, and giving more funding to lower income schools rather than just trying to fix the result, so it makes it look like it's equal when it's really it isn't."*

Yes.?

Student: *"Well, with regard to affirmative action based on race, I just want to say that white people have had their own affirmative action in this country for more than 400 years. It's called 'nepotism' and 'quid pro quo'. So there's nothing wrong with correcting the injustice and discrimination that's been done to black people for 400 years."*

Good. Tell us your name.



Student: "Hannah. "

Hannah. Alright who has an answer for Hannah? And just to add to Hannah's point, because we need now someone to respond, Hannah, you could have also mentioned legacy admissions.

Student: *"Exactly. I was going to say, if you disagree with affirmative action, you should disagree with legacy admission because it's obvious from looking around here that there are more white legacies than black legacies in the history of Harvard University. "*

And explain what legacy admissions are.

Student: *"Well, legacy admissions is giving an advantage to someone who has an arbitrary privilege of their parent having attended the university to which they're applying. "*

Alright, so a reply for Hannah. Yes, in the balcony, go ahead.

Student: *"First of all, if affirmative action is making up for past injustice, how do you explain minorities that were not historically discriminated against in the United States who get these advantages? In addition, you could argue that affirmative action perpetuates divisions between the races rather than achieve the ultimate goal of race being an irrelevant factor in our society. "*

And what, tell us your name.

Student: *"Danielle."*

Hannah?

*Student : “I disagree with that because I think that by promoting diversity in an institution like this, you further educate all of the students, especially the white students who grew up in predominately white areas. It's certainly a form of education to be exposed to people from different backgrounds. And you put white students at an inherent disadvantage when you surround them only with their own kind.”*

*Student2: “Why should race necessarily be equated with diversity? There are so many other forms, why should we assume that race makes people different?  
Hannah? \NAgain, that's perpetuating the idea of racial division within our universities and our society.”*

Hannah?

*Student: “With regard to African American people being given a special advantage, it's obvious that they bring something special to the table, because they have a unique perspective just as someone from a different religion or socio-economic background would, as well. As you say, there are many different types of diversity. There's no reason that racial diversity should be eliminated from that criteria.”*

Yes, go ahead.

*Student: “Racial discrimination is illegal in this country, and I believe that it was African American leaders themselves, when Martin Luther King said he wanted to be judged not on the color of skin, but by the content of his character, his merit, his*

*achievements. And I just think that, to decide solely based on someone's race is just inherently unfair. I mean, if you want to correct based on disadvantaged backgrounds, that's fine, but there are also disadvantaged white people as well. It shouldn't matter if you're white or black."*

Tell us your name.

*Student: "Ted. "*

Ted

*Student: "Yes. "*

Think of Hopwood. It's unfair to count race or, I assume you would also say, ethnicity or religion?

*Student: "Yes. "*

Do you think she has a right to be considered according to her grades and test scores alone?

*Student: "No. There is more to it than that. Universities need to promote diversity."*

So you agree with the goal of promoting diversity?

*Student: "There's ways to promote diversity besides discriminating against people solely based on a factor they cannot control."*

Alright, so what makes it wrong, is that she can't control her race. She can't control the fact that she's white. That's the heart of the unfairness to her. Bree made a similar point. That basing admissions on factors that people can't control, is fundamentally unfair. What do you say?

*Student: "There's a lot of things you can't control, and if you don't for it based on merit, like just based on your test scores, a lot of what you can achieve has to do with family background, that you were raised in. If both of your parents were scholarly, then you have more of chance of actually of being more scholarly yourself and getting those grades. And you can't control what kind of family you were born into."*

Alright good, that's a great rejoinder, what's your name?

*Student: "Da."*

Ted, are you against advantages that come from the family you were born into? What about legacy admissions?

*Student: "I do believe that in terms of a legacy admission you shouldn't have a special preference, I mean there is a legacy admission you could argue is another part, versus you could say. it's important to have a small percentage of people that have a several generation family attendance at a place like Harvard. However that should not bean advantage factor like race, it should just be another part promoting diversity. Should it count at all? I think that..."*

Alumni status , should it count at all, Ted?

*Student: "Yes. It should count. "*

Alright, I want to step back for a moment from these arguments. Thank you all for these contributions. We're going to come back to you. If you've listened carefully I think you will have noticed three different arguments emerge from this discussion. In defense of considering race and ethnicity as a factor in admissions.

One argument has to do with correcting for the effects, for the effects of educational disadvantage. That was Aneesha's argument. This is what we might call the corrective argument. Correcting for differences in educational background, the kind of school people went to, the opportunities they had and so on. That's one argument. What's worth noticing though, is that argument is consistent in principle with the idea that only academic promise and scholarly potential should count in admissions. We just need to go beyond test scores and grades alone, to get a true estimate of academic promise and scholarly ability. That's the first argument.

Then we heard a second argument that said affirmative action is justified even where there may not be the need to correct for educational disadvantage in a particular applicant's case. It's justified as a way of compensating for past wrongs, for historic injustices. So that's a compensatory argument. Compensating for past wrongs.

Then we heard, a third, a different argument, for affirmative action, from Hannah and others, that argued in the name of diversity. Now, the diversity argument is different from the compensatory argument, because it makes a certain appeal to the social purpose or the social mission of the college or university. There are really two aspects to the diversity argument. One says it's important to have a diverse student body for the sake of the educational experience for everyone. Hannah made that point. And the other talks about the wider society. This was the argument made by the University of

Texas in the Hopwood case. We need to train lawyers and judges and leaders, who will contribute to the strength, the civic strength of the state of Texas, and the country as a whole. So there are two different aspects to the diversity argument. But both are arguments in the name of the social purpose, or the social mission or the common good, served by the institution. Well, what about the force of these arguments? We've also heard objections to these arguments.

The most powerful objection to the compensatory argument is, is it fair to ask Cheryl Hopwood today, egregious, in the past, but in which she was not implicated. Is that fair? So that's an important objection to the compensatory argument. And in order to meet that objection, we would have to investigate whether there is such a thing as group rights or collective responsibility that reaches over time.

So having identified that issue, let's set it aside to turn to the diversity argument. The diversity argument doesn't have to worry about that question. About collective responsibility for past wrongs. Because it says, for reasons Hannah and others pointed out that the common good is served, is advanced if there is a racially and ethnically diverse student body. Everyone benefits. This indeed was the argument that Harvard made friend of the court brief to the Supreme Court in the 1978 case, the affirmative action case, the Bakke case. In the Harvard brief, the Harvard rationale, was cited by Justice Powell, who was the swing vote in the case upholding affirmative action, constitutionally acceptable.

Harvard's argument in its brief, was this: "We care about diversity. Scholarly excellence alone, has never been the criterion of admission, the sole criterion of admission to Harvard College. Fifteen years ago diversity meant students from California and New York, and Massachusetts. City dwellers, and farm boys. Violinists, painters and football players. Biologists, historians and classicists. The only difference

now, Harvard argued, is that we're adding racial and ethnic status to this long list of diversity considerations. When reviewing the large number of candidates able to do well in our classes, Harvard wrote, "Race may count as a plus, just as coming from Iowa may count or being a good middleline backer or pianist. A farm boy from Idaho can bring something to Harvard College that a Bostonian cannot offer. Similarly, a black student can usually bring something a white student cannot offer. The quality of the educational experience of all students depends in part on these differences in the background and outlook that students bring with them." That was Harvard's argument.

Now what about the diversity argument? Is it persuasive? If it's to be persuasive, it has to meet one very powerful objection. That we've heard voiced here. By Ted, by Bree. Unless you're a utilitarian, you believe that individual rights can't be violated. And so the question is, is there an individual right that is violated? Is Cheryl Hopwood's right violated?

If she is used, so to speak, denied admission, for the sake of the common good and the social mission that the University of Texas Law School has defined for itself, does she have a right? Don't we deserve to be considered according to our excellences, our achievements, our accomplishments, our hard work? Isn't that the right at stake? Now we've already heard an answer to that argument. No, she doesn't have the right. Nobody deserves to be admitted. Notice how this gets us back to the issue of desert versus entitlement. They're arguing there is no individual right that Hopwood has. She doesn't deserve to be admitted according to any particular set of criteria that she believes to be important. Including criteria that have only to do with her efforts and achievements. Why not?

I think implicit, in this argument, is something like Rawls' rejection of moral desert as the basis of distributive justice. Yes, once Harvard defines its mission and designs its



admission policy in the light of its mission, people are entitled, who fit those criteria, they are entitled to be admitted. But according to this argument, no one deserves that Harvard college define its mission and design its admission criteria in the first place, in a way that prizes the qualities they happen to have in abundance. Whether those qualities are test scores or grades or the ability to play the piano, or to be a good middle linebacker, or to come from Iowa, or to come from a certain minority group. So you see how this debate about affirmative action, especially the diversity argument, takes us back to the question of rights, which in turn takes us back to the question of whether moral desert is or is not the basis for distributive justice. Think about that over the weekend and we'll continue this discussion next time.

( 感谢网友 “森森” 参与本课排版工作 )

## Lecture 18 What's the Purpose?

When we ended last time, we were considering arguments for and against affirmative action. Counting race as a factor in admissions. And, in the course of the discussion, three arguments emerged, three arguments for affirmative action.

One of them was the idea that race and ethnic background should count as a way of correcting for the true meaning of test scores and grades. Getting a more accurate measure of the academic potential, those scores, those numbers represent.

Second, was what we called "the compensatory argument". The idea of righting past wrongs, past injustice.

And the third was the diversity argument. And when Cheryl Hopwood in the 1990s challenged the University of Texas Law School's affirmative action program, in the federal courts, the University of Texas made another version of the diversity argument. Saying that the broader social purpose, the social mission of the University of Texas Law School, is to produce leaders, in the legal community, in the political community, among judges, lawyers, legislators, and therefore it's important that we produce leaders, who reflect the background, and the experience, and the ethnic and the racial composition of the state of Texas. It's important for serving our wider social mission. That was the University of Texas Law School's argument.

And then we considered an objection to the diversity argument which after all is an argument in the name of the social mission, the common good. We saw that Rawls does not simply believe that arguments of the common good or the general welfare should prevail if individual rights must be violated in the course of promoting the common good. You remember that was the question, the challenge, to the diversity

rationale that we were considering when we finished last time.

And we began to discuss the question "Well, what right might be at stake"? Maybe the right to be considered according to factors within one's control. Maybe this is the argument that Cheryl Hopwood implicitly was making. She can't help the fact that she is white. Why should her chance at getting into law school depend on a factor she can't control? And then Hannah who is advancing an argument last time said Harvard has the right to define its mission any way it wants to, it's a private institution. And it's only once Harvard defines its mission that we can identify the qualities that count. So no rights are being violated. Now, what about that argument? What I would like to do is to hear objections to that reply. And then, see whether others have an answer.

Yes? And tell us your name.

*Student: "Da"*

Da, right you spoke up last time. How do you answer that argument?

*Student: "Well, I think there was two things in there. One of them was that a private institution could define its mission however it wants. But that doesn't make however it defines it, right, like I could define my personal mission as I want to collect all the money in the world. But does that make it even a good mission? So you can't like, you can't say that just because a college is a private institution it can just define it as whatever it wants, you still have to think about, what are the way it's defining it, it's right. And in the case of affirmative action, a lot of people have said that since there's a lot of other factors involved, why not race? Like if we already know that..."*

Let's, I want to stick with your first point, Da.

Student: "Okay."

Here's Da's objection. Can a college or university define its social purpose any way it wants to and define admissions criteria accordingly? What about the University of Texas Law School not today, but in the 1950s? Then, there was another Supreme Court case, against the admissions policy of the University of Texas Law School because it was segregated. It only admitted whites. And when the case went to court back in the '50s, the University of Texas Law School also invoked its mission. "Our mission as a law school, is to educate lawyers for the Texas bar, the Texas law firms. And no Texas law firm hires African Americans. So to fulfill our mission, we only admit whites."

Or consider Harvard, in the 1930s when it had anti-Jewish quotas. President Lowell, the president of Harvard in the 1930s said, that he had nothing personally against Jews, but he invoked the mission, the social purpose of Harvard he said, "which is not only to train intellectuals, part of the mission at Harvard," he said, "is to train stockbrokers for Wall Street, presidents and senators and there are very few Jews who go into those professions." Now, here's the challenge. Is there a principle distinction between the invocation of the social purpose of the college or university today, in the diversity rationale and the invocation of the social purpose or mission of the university by Texas in the 1950s or Harvard in the 1930s? Is there a difference in principle? What's the reply? Hannah?-

*Student: "Well, I think that the principle different here is basically the distinction between inclusion versus exclusion. I think that it's morally wrong of the university to say "We're going to exclude you on the basis of your religion or your race." That's denial on the basis of arbitrary factors. What Harvard is trying to do today with its*

*diversity initiatives, is to include groups that were excluded in the past. ”*

Good, let's see if, stay there, let's see if someone would like to reply. Go ahead.

*Student: “Actually this is kind of in support of Hannah, rather than a reply but...”*

That's alright.

*Student: ‘I was going to say another principle difference malice being the motivation for the historical segregation act, so it's saying that we're not going to let blacks or Jews in because they're worse as people or as a group.’”*

Dood, malice isn't present. And what's your name?

Student: “Stevie.”

Stevie says that in the historic segregationas racist, anti-Semitic quotas or prohibitions. malice, a certain kind of judgment that African Americans or Jews were somehow less worthy than everybody else. Whereas present dayaffirmative action programs don't involve or imply any such judgment. What it amounts to saying is, so long as the policy, just uses people in a way as valuable to the social purpose of the institution, it's okay provided it doesn't judge them, maliciously, as Stevie might add, as intrinsically less worthy. I'd like to raise a question. Doesn't that concede that all of us when we compete for positions or for seats in colleges and universities in a way are being used, not judged, but used, in a way that has nothing to do with moral desert. Remember we got into this whole discussion of affirmative action when we were trying to figure out whether distributive justice shouldbe tied to moral desert or not. And we were launched on that question by Rawls and his denial, his rejection of the

idea that distributive justice whether its positions or places in the class or income and wealth It's a matter of moral desert.

Suppose that were the moral basis of Harvard's admissions policy, what letters would they have to write to people they rejected or accepted for that matter? Wouldn't they have to write something like this: "Dear unsuccessful applicant, we regret to inform you that your application for admission has been rejected. It's not your fault that when you came along society happened not to need the qualities you had to offer. Those admitted instead of you are not themselves deserving of a place nor worthy of a praise for the factors that led their admission. We are in any case only using them and you as instruments of a wider social purpose. Better luck next time."

What was the letter you actually got when you were admitted? Perhaps it should have read something like this: "Dear successful applicant, we are pleased to inform you that your application for admission has been accepted. It turns out, lucky for you, that you have the traits that society needs at the moment, propose to exploit your assets for society's advantage. You are to be congratulated. deserve credit for having the qualities that led to your admission, but only in a sense that the winner of a lottery is to be congratulated. And if you choose to accept our offer, you will ultimately be entitled to the benefits that attach to being used in this way. We look forward to seeing you in the fall."

Now, there is something a little odd, morally odd, if it's true that those letters do reflect the theory, the philosophy underlying the policy. So here's the question they pose. And it's a question that takes us back to a big issue in political philosophy. Is it possible, and is it desirable, to detach questions of distributive justice from questions of moral desert and questions of virtue? In many ways, this is an issue that separates modern political philosophy from ancient political thought. What's at stake in the

question of whether we can put desert, moral desert aside? It seemed when we were reading Rawls, that the incentive, the reason he had, for detaching distributive justice from moral desert was an egalitarian one. That if we set desert to one side, there's greater scope for the exercise of egalitarian considerations. The veil of ignorance. The two principles, the difference principle, helping the least well off, redistribution and all that. But what's interesting, is if you look, at a range of thinkers we've been considering, there does seem to be a reason they want to detach justice from desert that goes well beyond any concern for equality. Libertarian rights oriented theorists, the kind we've been studying, as well as egalitarian rights oriented theorists, including Rawls, and for that matter, also including Kant, all agree, despite their disagreements over distributive justice, and the welfare state and all of that, they all agree that justice is not a matter of rewarding or honoring virtue or moral desert. Now why do they all think that? It can't just be for egalitarian reasons not all of them are egalitarians. This gets us to the big philosophical question we have to try to sort out. Somehow they think tying justice to moral merit or virtue is going to lead away from freedom, from respect for persons as free beings.

Well, in order to see what they consider to be at stake, and in order to assess their shared assumption, we need to turn to a thinker, to a philosopher, who disagrees with them. Who explicitly ties justice to honor, honoring virtue, and merit and moral desert. And that thinker is Aristotle. Now, in many ways Aristotle's idea of justice is intuitively very powerful. In some ways it's strange. I want to bring out both its power, its plausibility and its strangeness, so that we can see what's at stake in this whole debate about justice and whether it's tied to desert and virtue. So, what is Aristotle's answer to the question about justice? For Aristotle, justice is a matter of giving people what they deserve, giving people their due. It's a matter of figuring out the proper fit between persons, with their virtues, and their appropriate social roles. Well, what does this picture of justice look like, and how does it differ from the conception that seems



to be shared among libertarian and egalitarian rights oriented theorists alike? Justice means giving each person his or her due, giving people what they deserve. But what is a person's due? What are the relevant grounds of merit or desert? Aristotle says that depends on the sort of things being distributed. "Justice involves two factors: Things and the persons to whom the things are assigned. In general we say," Aristotle writes, "That persons who are equal should have equal things assigned to them." But here there arises a hard question. Equals in what respects? Aristotle says that depends on the sort of thing we're distributing. flutes. What is the relevant merit or basis of desert for flutes? Who should get the best ones? What's Aristotle's answer? Anyone? The best flute players, right. Those who are best in the relevant sense, the best flute players. Is it just to discriminate in allocating flutes? Yes. All justice involves discrimination, Aristotle says. What matters is that the discrimination be according to the relevant excellence, according to the virtue appropriate to having flutes. He says it would be unjust to discriminate on some other basis. In giving out the flutes, to, say, wealth. Just giving the best flutes to the people who can pay the highest price, or nobility of birth, just giving flutes to aristocrats, or physical beauty, giving the best flutes to the most handsome, or chance, having a lottery. Aristotle says birth and beauty may be greater goods than the ability to play the flute, and those who possess them may surpass the flute player more in these qualities than he surpasses them in his flute playing.

But the fact remains that he is the person who ought to get the best flute. It's a strange idea, this comparison, by the way, that could you say, "Am I more handsome than she is a good lacrosse player?" That's a strange kind of comparison. But putting that aside, Aristotle says, we're not looking for the best overall whatever that might mean. We're looking for the best musician. Now, why this is important to see. Why, should the best flutes go to the best flute players? Well, why do you think? Anybody? What? They'll produce the best music. Well, and everybody will enjoy it more. That's not Aristotle's

answer. Aristotle is not a utilitarian. He's not just saying, that way there'll be better music and everyone will enjoy it, everyone will be better off.

His answer is the best flutes should go to the best flute players because that's what flutes are for. To be played well. The purpose of flute playing, the purpose, is to produce excellent music. And those who can best perfect that purpose, ought properly to have the best ones. Now, it may also be true, as a welcome side effect. That everyone will enjoy listening to that music. So that answer is true enough, as far as it goes, but it's important to see that Aristotle's reason is not a utilitarian reason. It's a reason that looks, here's where you might think it's a little bit strange, it looks to the purpose, the point, the goal, of flute playing. Another way of describing this, looking to the goal to determine the just allocation, the Greek for goal or end, was 'telos'. So Aristotle says, you have to consider the point, the end, the goal, the telos of the thing in this case of flute playing. And that's how you define a just allocation. A just discrimination. So this idea of reasoning from the goal, from the telos, is called "teleological reasoning".

Teleological moral reasoning. And that's Aristotle's way. Reasoning from the goal, from the end. Now, this may seem, as I said a strange idea, that we're supposed to reason from the purpose, but it does have a certain intuitive plausibility. Consider the allocation, let's say, at Harvard, of the best tennis courts squash courts. How should they be allocated? Who should have priority in playing on the best courts? Well, you might say, "Those who can best afford them." Set up a fee system, charge money for them. Aristotle would say "No". You might say, "Well, Harvard big shots, the most influential people at Harvard, who would they be"? The senior faculty should have priority in playing on the best tennis courts. No, Aristotle would reject that. Some scientist may be a greater scientist than some Varsity tennis player is a tennis player, but still the tennis player is the one who should have priority for playing in the best

tennis court. There is a certain intuitive plausibility to this idea. Now, one of the things that makes it strange is that in Aristotle's world, in the ancient world, it wasn't only social practices that were governed, in Aristotle's view, by teleological reasoning and teleological explanation. All of nature was understood to be a meaningful order and what it meant to understand nature, to grasp nature, to find our place in nature, was to inquire into and read out the purposes or the telos, of nature. And with the advent of modern science, it's been difficult to think of the world that way and so it makes it harder perhaps to think of justice in a teleological way, but there is a certain naturalness to thinking about even the natural world, as teleologically ordered, as a purpose of whole. In fact, children have to be educated out of this way of looking at the world. I realized this when my kids were very young and I was reading them a book *Winnie the Poo*. And *Winnie the Poo* gives you a great idea of how there is a certain, natural, childlike way of looking at the world in a teleological way. You may remember a story of Winnie-the-Poo walking in the forest.

One day, "He came to a place in the forest, and from the top of the tree there came a loud buzzing-noise. Winnie-the-Poo sat at the foot of a tree, put his head between his paws, and began to think..Here's what he said to himself, "That buzzing-noise means something. You don't get a buzzing-noise like that just buzzing and buzzing without its meaning something. If there's a buzzing-noise, somebody's making a buzzing-noise. And the only reason for making a buzzing-noise that I know of, is because you're a bee."Then he thought for another long time and said, "And the only reason for being a bee that I know of, is making honey." And then he got up, and he said, "And the only reason for making honey, is so I can eat it.' So he began to climb the tree."

This is an example of teleological reasoning. It isn't so implausible after all. Now, we grew up, and we're talked out of this way of thinking about the world. But here's the

question, even if teleological explanations don't fit with modern science, even if we've outgrown them in understanding nature, Isn't there something still intuitively, and morally plausible, even powerful, about Aristotle's idea that the only way to think about justice is to reason from the purpose, the goal, the telos, of the social practice? And isn't that precisely what we were doing when we were disagreeing about affirmative action? You can almost recast that disagreement consists in. Reasoning from the purpose or from the telos. Or from the end. Aristotle says that's indispensable to thinking about justice. Is he right? Think about that question as you turn to Aristotle's politics.

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## Lecture 19 The Good Citizen

We turn to Aristotle after examining theories, modern theories, of justice that try to detach considerations of justice and rights from questions of moral desert and virtue. Aristotle disagrees with Kant and Rawls. Aristotle argues that justice is a matter of giving people what they deserve. And the central idea of Aristotle's theory of justice is that in reasoning about justice and rights we have, unavoidably, to reason about the purpose, or the end, or the telos, of social practices in institutions. Yes, justice requires giving equal things to equal persons, but the question immediately arises, in any debate about justice, equal in what respect? And Aristotle says we need to fill in the answer to that question by looking to the characteristic end, or the essential nature, or the purpose, of the thing we're distributing.

And so we discussed Aristotle's example of flutes; who should get the best flutes. And Aristotle's answer was the best flute-players. The best flute-player should get the best flute because that's the way of honoring the excellence of flute playing. It's a way of rewarding the virtue of the great flute-player. What's interesting though, and this is what we are going to explore today, dispense with teleological reasoning when we're thinking about social institutions and political practices. In general it's hard to do without teleology when we're thinking about ethics, justice, and moral argument. At least that is Aristotle's claim.

And I would like to bring out the force in Aristotle's claim by considering two examples. One is an example that Aristotle spends quite a bit of time discussing; the case of politics. How should political offices and honors, how should political rule be distributed? The second example is a contemporary debate about golf and whether the Professional Golfers Association should be required to allow Casey•Martin, a golfer with a disability, to ride in a golf cart.

Both cases bring out a further feature of Aristotle's teleological way of thinking about justice. And that is that when we attend to the telos, or the purpose, sometimes we disagree and argue about what the purpose of a social practice really consists in. And when we have those disagreements part of what's at stake in those disagreements is not just who will get what, not just a distributive question, but also an honorific question. What qualities, what excellences, of persons will be honored? Debates about purpose and telos are often, simultaneously, debates about honor.

Now, let's see how that works in the case of Aristotle's account of politics. When we discuss distributive justice these days we're mainly concerned with the distribution of income and wealth and opportunity. Aristotle took distributive justice to be mainly not about income and wealth but about offices and honors. Who should have the right to rule? Who should be a citizen? How should political authority be distributed?

Those were his questions. How did he go about answering those questions? Well, in line with his teleological account of justice, Aristotle argues that to know how political authority should be distributed we have, first, to inquire into the purpose, the point, the telos, of politics. So, what is politics about? And, how does this help us decide who should rule? Well, for Aristotle the answer to that question is, politics is about forming character, forming good character. It's about cultivating the virtue of citizens. It's about the good life. The end of the State, the end of the political community, he tells us in Book Three of the Politics, is not mere life, it's not economic exchange only, it's not security only, it's realizing the good life. That's what politics is for according to Aristotle.

Now, you might worry about this. You might say, "Well, maybe this shows us why those modern theorists of justice, and of politics, are right". Because remember, for Kant and for Rawls, the point of politics is not to shape the moral character of citizens.

It's not to make us good. It's to respect our freedom to choose our goods, our values, our ends, consistent with a similar liberty for others. Aristotle disagrees. "Any polis which is truly so called, and is not merely one in name, must devote itself to the end of encouraging goodness. Otherwise political association sinks into a mere alliance." Law becomes a mere covenant, a guarantor of man's rights against one another, instead of being - as it should be - a way of life such as will make the members of a polis good and just." That's Aristotle's view. "A polis is not an association for residents on a common site, or for the sake of preventing mutual injustice and easing exchange." Aristotle writes. "The end and purpose of a polis is the good life, and the institutions of social life are means to that end.

Now, if that's the purpose of politics, of the polis, then, Aristotle says, we can derive from that the principles of distributive justice; the principles that tell us who should have the greatest say, who should have the greatest measure of political authority. And what's his answer to that question? Well, those who contribute the most to an association of this character, namely an association that aims at the good, should have a greater share in political rule and in the honors of the polis. And the reasoning is, they are in a position to contribute most to what political community is essentially about. Well, so you can see the link that he draws between the principle of distribution for citizenship and political authority and the purpose of politics.

"But why," you'll quickly ask, "Why does he claim that political life, participation in politics, is somehow essential to living a good life?" "Why isn't it possible for people to live perfectly good lives, decent lives, moral lives, without participating in politics?" Well, he gives two answers to that question. He gives a partial answer, a preliminary answer, in Book One of the Politics where he tells us that only by living in a polis, and participating in politics, do we fully realize our nature as human beings. Human beings are, by nature, meant to live in a polis. Why? It's only in political life



that we can actually exercise our distinctly human capacity for language, which Aristotle understands is this capacity to deliberate about right and wrong, the just and the unjust.

And so, Aristotle writes in Book One of the Politics, that the polis, the political community, exists by nature and is prior to the individual. Not prior in time, but prior in its purpose. Human beings are not self-sufficient, living by themselves, outside a political community. "Man who is isolated, who is unable to share in the benefits of political association, or who has no need to share, because he's already self-sufficient, such a person must be either a beast or a god." So we only fully realize our nature, we only fully unfold our human capacities, when we exercise our faculty of language, which means when we deliberate with our fellow citizens about good and evil, right and wrong, just and the unjust. "But why can we only exercise our capacity for language in political community?" you might ask. Aristotle gives a second part, a fuller part, of his answer in the Nichomachean Ethics; an excerpt of which we have among the readings. And there he explains that political deliberation, living the life of a citizen, ruling and being ruled in turn, sharing in rule, all of this is necessary to virtue. Aristotle defines happiness not as maximizing the balance of pleasure over pain but as an activity, an activity of the soul in accordance with virtue. And he says that every student of politics must study the soul because shaping the soul is one of the objects of legislation in a good city. But why is it necessary to live in a good city in order to live a virtuous life? Why can't we just learn good moral principles at home or in a philosophy class or from a book, live according to those principles, those rules, those precepts, and leave it at that?

Aristotle says virtue isn't acquired that way. Virtue is only something we can acquire by practicing, by exercising the virtues. It's the kind of thing we can only learn by doing. It doesn't come from book learning. In this respect, it's like flute playing; you

couldn't learn how to play a musical instrument well just by reading a book about it. You have to practice, and you have to listen to other accomplished flute-players. There are other practices and skills of this type. Cooking; there are cookbooks but no great chef ever learns how to cook by reading a cookbook only. It's the kind of thing you only learn by doing. Joke-telling is probably another example of this kind. No great comedian learns to be a comedian just by reading a book on the principles of comedy. It wouldn't work. Now, why not? What do joke-telling and cooking and playing a musical instrument have in common such that we can't learn them just by grasping a precept or a rule that we might learn from a book or a lecture? What they have in common is that they are all concerned with getting the hang of it. get the hang of when we learn how to cook, or play a musical instrument, or tell jokes well? Discerning particulars, particular features of a situation. And no rule, no precept, could tell the comedian or the cook or the great musician how to get in the habit of, the practice of, discerning the particular features of a situation. Aristotle says virtue is that way too. Now, how does this connect to politics? The only way we can acquire the virtues that constitute the good life is to exercise the virtues, to have certain habits inculcated in us, and then to engage in the practice of deliberating with citizens about the nature of the good. That's what politics is ultimately about. The acquisition of civic virtue, of this capacity to deliberate among equals, that's something we couldn't get living a life alone outside of politics.

And so, that's why, in order to realize our nature, we have to engage in politics. And that's why those who are greatest in civic virtue, like Pericles, are the ones who properly have the greatest measure of offices and honors. So, the argument about the distribution of offices and honors has this teleological character, but also an honorific dimension. Because part of the point of politics is to honor people like Pericles. It isn't just that Pericles should have the dominant say because he has the best judgment, and that will lead to the best outcomes, to the best consequences for the citizens. That's

true, and that's important. But a further reason people like Pericles should have the greatest measure of offices, and honors, and political authority, and sway in the polis, is that part of the point of politics is to single out and honor those who possess the relevant virtue, in this case civic virtue, civic excellence, practical wisdom, to the fullest extent. That's the honorific dimension bound up with Aristotle's account of politics.

Here's an example that shows the link in a contemporary controversy; the link to which Aristotle draws our attention between arguments about justice and rights on the one hand and figuring out the telos or the purpose of a social practice on the other. Not only that, the case of Casey Martin and his golf cart also brings out the link between debates about what the purpose of a social practice or a game is, on the one hand and the question of what qualities should be honored on the other; the link between teleology and honor-based principles of distributive justice. Who was Casey Martin? Well, Casey Martin is a very good golfer. Able to compete at the highest levels of golf but for one thing; he has a rare circulatory problem in his leg that makes it very difficult for him to walk; not only difficult but dangerous. And so he asked the PGA, which governs the pro tour in golf, to be able to use a golf cart when he competed in professional tournaments. PGA said no, and he sued under the Americans for Disabilities Act; he sued in a case that went all the way to the United States Supreme Court. The question the Supreme Court had to answer was, does Casey Martin have a right that the PGA provide him, allow him, to use a golf cart on the tour, or not?

How many here think that, from a moral point of view, Casey•Martin should have a right to use a golf cart? And how many think that he should not have a right to a golf cart, in the tournaments? So the majority are sympathetic to Casey•Martin's right, though a substantial minority disagree. Let's first hear from those of you who would

rule against Casey Martin. Why would you not say that the PGA must give him a golf cart? Yes.

*Student 1: "Since the inception of golf, because it has been part of the sport it is now intrinsically part of golf; walking the course. And thus, because it's intrinsic to golf, I'd argue that not being able to walk the course is just not being able to perform an aspect of the sport, which is necessary to performing at a professional level."*

Good. Stay there for a minute. What's your name?

*Student 1: "Tommy. "*

Are you a golfer, by the way, Tom?

*Student 1: "Not so much but, yeah, a little bit. "*

Are there any golfers here, I mean, real golfers?

*Student 1: "Thank you, professor, that was..."*

No, no. taking your word for it. Is there someone here on the golf team? Yes? Tell us your name, and tell us what you think.

*Student 2: "My name is Michael and I usually take a cart. So . . . I'm probably the wrong person to ask. "*

Is that why your hand went up slowly when I asked?

*Student 2: "Yes."*

Alright, but Tom is saying, Tom said a minute ago that at least at the professional level walking the course is essential to the game. Do you agree?

*Student 2: "I would, yes."*

You do? Then why do you take a cart? And you call yourself a golfer? No, no, no. I'm kidding, I'm kidding. What do you say to that?

*Student 2: "When I have walked the course it does add tremendously to the game. It makes it a lot harder. It really does."*

Yeah? Alright let's hear, Michael and Tom stay there, let's hear from people who say that he should have a right to a golf cart. Why? Who is prepared to defend that position? Yes.

*Student 3: "Well, I think the PGA should definitely be required to give him a golf cart because they argue in the decision that it's not just a matter of, he's not experiencing fatigue. For him he's still walking about a mile, the cart can't go everywhere with him, and in that mile he is still experiencing more fatigue and pain than a healthy player would. So, it's not as if you're removing the disadvantage."*

What's your name?

*Student 3: "Riva."*

Riva, what do you say to Tom's point that walking the course is essential to the game? It would be as if a disabled player could play in the NBA but not have to run up and down the court.

*Student 3: "Well, I think there are two responses to that. First, I don't think it's essential to the game, because most golfers who play, particularly recreationally, play with a cart. -- Like Michael. And on several of the tours you can play with a cart; on the Senior PGA Tour, on the Nike Tour, in a lot of the college events. And those events are just as competitive and just as high level as the PGA Tour. So, really it's just a matter of selective reasoning if you argue it as an important part of the sport. But, even if it is he still does have to walk, he still plays golf standing up, it's not as if he's playing golf from a wheelchair. "*

Alright. Who else? Go ahead.

*Student 4: "I think the whole point of a competition is that it calls out the best, you know, from the second best or from the third best. And when we're talking about the national level, we're talking about the highest of the highest. I think what they're arguing about here is the purpose of competition. And I think in the sake of competition you can't change the rules. So, the purpose of the competition includes walking? That's an essential, you agree with Tom. "*

And what's your name?

*Student 4: "David."*

The Supreme Court ruled that the PGA did have to accommodate Casey Martin and they did it on grounds that Riva mentioned, that walking isn't really part of, an essential part of the game. They cited testimony saying that walking the court consumes no more calories than you get eating a Big Mac. That's what walking is in golf, according to the majority. Scalia was in dissent. Justice Scalia agreed with David.

He said there is no purpose, and it's certainly not your course to try to figure out the essential purpose of golf. Golf is like any game, it's strictly for amusement. And if there's a group that wants to have one version of the game they can have that version of the game. And the market can decide whether people are amused and like and show up for that and watch the television broadcasts. Scalia's dissent was an anti-Aristotelian dissent, because notice two things about the argument; thrust into a discussion about what the essential nature, or purpose, or telos of golf really is. Does it include walking? And, here's something I think is rumbling beneath the surface of this debate, whether walking partly determines whether golf is really an athletic competition. After all, the ball sits still. You have to put it in a hole. Is it more like basketball, baseball, and football? Golf, an athletic competition? Or is it more like billiards? The ball sits still there too. You can be out of shape and succeed. It involves skill but not athletic skill. Could it be that those professional golfers, who excel at golf, have a stake in golf being honored and recognized as an athletic event, not just a game of skill like billiards? And if that's what's at stake, then we have a debate about the purpose, the teleological dimension, and also a debate about honor. What virtues, really, does the game of golf honor and recognize? Two questions to which Aristotle directs our attention. We'll continue on this case next time.

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## Lecture 20 Freedom VS. Fit

When we ended last time we were talking about whether Casey Martin has a right to ride in a golf cart in the PGA Tournament. And it's worth remembering how we got into this debate and what's at stake for an understanding of political philosophy. Remember, we were looking at Aristotle's theory of justice and one way of describing his approach to justice, we've called it 'teleological'. Teleological, because he says to allocate rights we first have to figure out the purpose, or the end, of the social practice in question. Another way of describing Aristotle's account of Justice is that justice is, for him, a matter of fit; it's a matter of fitting persons with their virtues and excellences to the appropriate roles.

Now, I want to finish our discussion about Casey Martin and his claim for a golf cart, and then go back to one more consequential application in Aristotle, namely, the question of slavery. What do you think about Casey Martin's request? Should there be an accommodation or not, given the nature of the game and of the tournament and its purposes? "Isn't it discrimination if he's not provided the golf cart as an accommodation", say some. Others reply, "No, if he got a cart it would be unfair to the other golfers because they exert themselves, become winded, fatigued, walking the course". That's where we left it. What about the fairness argument? OK, Jenny.

*Student 5: "My question was why doesn't the PGA just make the option of a cart available to all golfers? From our readings I learned that there are many golf tournaments, other than the PGA, where using a cart is not prohibited. For instance, the Seniors Tournament it's even allowed and encouraged. So why doesn't the PGA just do that? Let everybody use a cart? Give everyone the option of using a cart and let them pick. So then the traditionalists can then still say, "Well, I still choose to walk the course but I do that knowing that I will be more tired at the end than the people*

who took the cart."

Good. Alright, so what about Jenny's solution? For the sake of fairness, don't give Casey Martin an advantage, if indeed there is an advantage to riding in a cart. Let everyone who wants to use a cart. Is everyone happy with that solution? Does it put to rest this whole dilemma? Who has an answer for Jenny?

*Student 6: "Yes. As was brought up last time, if you do that you kind of ruin some of the spirit of golf as a lot of people like to see it. If you let everybody take a cart. Even though it gives everybody the same playing field now, it sort of makes golf less of an athletic game, like people pointed out last class. It's just like if someone decides to go into another sport and they want an advantage. Like, if you have swimming and then you say, "OK, he wants flippers so why don't we just allow everyone to have flippers when they're swimming?"*

And what would that do to the Olympic Swimming Competition, if people were free to use, Jenny, we better let Jenny reply to this. David says it would sort of spoil the spirit of the athletic competition as if in Olympic swimming you let anyone who wanted to swim with flippers. Alright, Jenny, what do you say to David?

*Student 5: "It would spoil the spirit of it. You're also ruining the spirit of golf by not letting people who are really passionate about the game, and very good at it, compete simply because of an aspect of golf which is not, the main point of golf is you use the club to make strokes and hit it into a hole. I'm sorry, I'm not a golfer but that's basically the gist of the game from what I see it. And I was reading the PGA versus Casey•Martin decision that was one of the sentences that they said is because walking the course is not an inherent part of golf, only swinging the club is. "*

Good. So, Jenny replies to David, well, it isn't really essential anyhow to walk the course. So, we're back to the purpose.

*Student 5: "I mean, I'm sure there are, like wheelchair basketball, there are certain different competitions that can be made for people who may only be able to use their arms. "*

Right. Yes. Michael what do you think?

*Student 7: "Jenny just said that there is stuff like wheelchair basketball where if you can't play basketball there is another option. I think there are other options in the PGA Tour. But the PGA Tour is the best, is the pinnacle, and you have to have certain requirements fulfilled to perform. "*

Alright, Michael, you want to say to Casey Martin there is such a thing as a Special Olympics for those who are disabled. Go play in the golfing version of the Special Olympics. That's what you would say Michael?

*Student 7: "Yeah. I think that walking is part of the sport of golf. And Casey Martin, you know if he can't walk the course then I don't think he should be able to play in the PGA. "*

Alright, thank you very much for that exchange. What comes out of this exchange that goes back to Aristotle's theory of justice? Well, one thing is the question, is walking an essential part of golf? And the very fact that deciding whether there is a right for Casey Martin that the PGA must respect, seems to depend, as Aristotle suggests it must, on debating and resolving the question, is walking essential to the game of golf? That's one moral of the story. But there's a second moral to the story from an Aristotelian point of view. What's at stake here, this is the second Aristotelian

stake in this debate, is honor. Casey•Martin wants the accommodation so that he can compete for the honor of winning the best tournaments. Now, why is it that the professional golfers, the great golfers, testified in this case - Jack Nicklaus, Tom Kite - in the readings, against letting him use a cart and they, I would suspect, would be equally vehement, Jenny, in opposing your suggestion of letting everyone ride in a cart, and this goes back, in a way, to David's point. How to put this gently? Professional golfers are sensitive about whether their sport is really a sport. Because if everyone rode around in a cart, or could, then it would become clear, or clearer, depending on your point of view, that golf is not really an athletic competition but rather a game; a game of skill but not a sport. And so not only the question of debating the purpose, the teleological feature, but also from the standpoint of viewing debates about the purpose of golf. What's essential to golf? Those debates, Aristotle suggests, inevitably are also debates about the allocation of honor. Because part of the purpose of golf is not just to amuse spectators; Scalia's wrong about that, from Aristotle's point of view. It's not just to provide entertainment, it's not just to make people happy. It's not a mere amusement. It's honoring, it's rewarding, it's recognizing a certain kind of athletic excellence, at least those who have achieved the highest honors have a powerful stake in maintaining that view.

Now, some of you took the position the Scalia position. "This is an incredibly difficult and silly question", Scalia said. "What is the essential nature of golf?" It's not the kind of thing that the United States Supreme Court is equipped to decide, or should decide. That's Scalia. But he only he says that because he takes a very strong, and as it happens, anti-Aristotelian position on what a game is. "It is the very nature of a game to have no object, " no point, "except amusement" says Scalia, "That is what distinguishes games" he says, "From productive activity." You can just imagine what kind of sports fan Scalia must be. "And so", he says, "It's impossible to say that any of the game's arbitrary rules is essential." disparaging remark about golf. He says,

"Many consider walking to be the central feature of golf. Hence, Mark Twain's classic criticism of the sport 'a good walk spoiled'." But Scalia misses an important feature of games and the arguments about rights and fairness that arise from games, when he casts games, sports, athletic competitions, as solely for the sake of amusement; as solely an utilitarian activity. But an Aristotelian view of sports says, no it's not just about amusement, real sports, real athletic events, are also about appreciation, not just amusement. And people who follow sports and care about sports and play sports know this. Which is another way of saying, there's a difference between a sport and a mere spectacle. And the difference is that a sport is a practice that calls forth and honors and prizes certain excellences, certain virtues. And the people who appreciate those virtues are the true fans, the informed fans, and for them watching the sport is not mere amusement. But that means that it's always possible to make sense of the debate about what feature of a sport is essential to it. We can make sense of these arguments. Never mind the question whether the court should decide. The PGA in its own internal deliberations can make sense of that debate, which is why they cared very much about their view, insisting on their view, that walking, an exertion, and fatigue are essential, not peripheral, parts of sport. Well, this is all to illustrate the teleological and the honorific feature of debates about rights, which Aristotle says we need to take account of in thinking about justice. Now, I want to begin for us to consider whether Aristotle's theory of justice is right or wrong; whether it's persuasive or unpersuasive. I want to get your thoughts about that. But I want to anticipate one obvious and important objection. If justice is about fit, fitting persons to roles, matching virtues to the appropriate honors and recognition. If that's what justice is, does it leave room for freedom? And this is one of the main objections to Aristotle's teleological account of justice. If certain roles, social roles, are fitting, or appropriate, to me where does that leave my right to choose my social roles, my life purposes, for myself? What room does teleology leave for freedom? And in fact, you may remember, Rawls rejects teleological accounts of justice because he says that teleological theories of justice

threaten the equal basic rights of citizens. So, let's begin to examine whether Aristotle is right, and in particular, whether his teleological way of thinking about justice is at odds with freedom. Now, one obvious reason to worry is Aristotle's defense of slavery. He defends slavery, which existed as an institution in the Athens of his day. Well, what is his defense of slavery? Two things, two conditions, have to be met for slavery to be just. First, it has to be necessary. and Aristotle says, at least in our society, slavery is necessary. Why is it necessary? If there are to be citizens who are freed from manual and menial and household chores to go to the assembly, to deliberate about politics, there have to be some who look after those menial tasks; the mere necessities of life. He says, unless you could invent in some science-fiction a technological fix then there are going to be those who have to do the hard and difficult and menial labor if there are going to be citizens deliberating about the good and realizing their nature.

So slavery is necessary for the life of the polis for there to be open to citizens. The life of deliberation, of argument, of practical wisdom. But there's a further condition that has to be met. Slavery has not only to be necessary for the community as a whole to function, but it also has to be the case, remember the criterion of fit? It also has to be the case that there are some people for whom being a slave is the just, or the fitting, or the appropriate condition. Now, Aristotle agrees that by his own standards, both of those conditions must be met, must be true, if slavery is to be just. And then, in a deplorable passage, he says, well, it is true that there are some people who are fit by nature who are cut out to be slaves. These are people who differ from ordinary people in the same way that the body differs from the soul. These are people who are meant to be ruled, and for them their nature is best realized if they're slaves. They can recognize reason in others but they can't partake of it, they can't exercise it. And somehow we can know this. dodgy, something strained about this claim, because he quickly acknowledges that those who disagree may have a point. And what those who disagree point out is that there are a lot of people in Athens who are slaves not



because they were born to be slaves, or fit to be slaves, but because they were captured, they were losers in a war. And so, Aristotle admits that as practiced in ancient Athens, slavery didn't necessarily line up with who actually is fit or born to be a slave, because some actual slaves just were slaves by bad luck, by being captured in a war. And on Aristotle's own account even if it's necessary to have slavery for the sake of citizenship it's unjust if people who aren't properly slaves are cast in that role. There is a misfit. Aristotle recognizes that slavery for those who aren't fit for the task is a kind of coercion. The reason slavery is wrong is not because it's coerced. Coercion is an indicator that it's wrong, because it's not natural. If you have to coerce someone into a role that's a pretty good indication that they don't belong there, that that role isn't fitting for them. And Aristotle recognized this. So, all of this is to say the example of slavery, Aristotle's defense of it, doesn't show that there isn't anything wrong in principle with teleological argument, with the idea of justice as fit between persons and roles, because it's perfectly possible within Aristotle's own terms, to explain what's wrong with this application, this practical application that he made of his theory. I want to turn to the larger challenge to Aristotle in the name of freedom. But before I do that I want to see what people think of Aristotle's account of justice as fit, his teleological way of reasoning about justice and the honorific dimension of rights and of distributive justice that immersed in our discussion of flutes and politics and golf. Questions of clarification about Aristotle or objections to his overall account.

Yes.

*Student 8: "My objection to Aristotle is that he wants to match a person to a role. And, you know, if you walk like a pirate and you talk like a pirate, you know, you should be a pirate. And that is what is right. And so what's strange and seems paradoxical to me about Aristotle's view point is that if you walk like a pirate and you talk like a pirate*



*you shouldn't be an investment banker, because that's not what you're inherently supposed to do. If you have a peg leg and an eye patch and a disgruntled disposition, you know, high seas. So he doesn't... ”*

Some would say that the distinction between the two vocations is not as clear as you suggest. Alright, but that's good. take your point. Yes, go ahead.

*Student 9: “It just seems to ignore individual rights. So, I might be the perfect janitor in the whole world and I can do that job the most efficiently out of anybody that exists right now, but I might not want to do that. I might want to do any other number of pursuits and it seems to say that that isn't really a good option for me. ”*

Alright, and what's your name?

*Student 9: “Mary-Kate. ”*

Good. Alright, let's take a couple more. Yes.

*Student 10: “ I think that the golf cart exchange sort of brought up what I see as my main objection to this teleological mode of reasoning. I mean, Michael, I think that's your name, right? Believes that walking is an inherent part of golf. Myself, I believe that walking is not an inherent part of golf. And I feel that no matter how long we debate this particular point of contention we're never going to reach an accord. The teleological framework of reasoning, I believe, doesn't really allow us to come to any sort of agreement. ”*

Alright, and what's your name?

*Student 10: "Patrick."*

Patrick. Alright, let me try to address this set of objections to Aristotle. Let me start with Patrick's; it's an important objection. We had a debate about whether walking is essential to golf, and even in so seemingly trivial, or at least contained, a case as that, we couldn't agree. How can we possibly hope to agree? When the stakes are higher and when we're debating the fundamental purposes, or ends, of political community. And so, if we can't agree in what the ends or the goods of our shared public life consist in, how can we base justice and rights on some notion of what the end, or the purpose, or the good consists in? That's an important objection. So much so that much modern political theory takes that worry about disagreement over the good as its starting point, and concludes that justice and rights and constitutions should not be based on any particular conception of the good or the purposes of political life, but should, instead, provide a framework of rights that leaves people free to choose their conceptions of the good, their own conceptions of the purposes of life. Now, Mary-Kate said, "What if a person is very well suited to having a certain role, like the role of being a janitor, but wants something else, wants to reach higher, wants to choose another way of life?" So, that goes back to this question about freedom. Take our bearings as persons from roles that are said to fit our nature, shouldn't it at least be up to us to decide what those roles are? In fact, shouldn't it be up to us to define what roles are suitable to us? And that's going to take us back to the confrontation between Aristotle on the one hand and Kant and Rawls on the other. Kant and Rawls think Patrick has a point. They say precisely because people disagree in pluralist societies about the nature of the good life, we shouldn't try to base justice on any particular answer to that question. So they reject teleology, they reject the idea of tying justice to some conception of the good. What's at stake in the debate about teleology, say Rawlsian and Kantian liberals, is this; if you tie justice to a particular conception of the good, if you see justice as a matter of fit between a person and his or her roles,

you don't leave room for freedom, and to be free is to be independent of any particular roles, or traditions, or conventions that may be handed down by my parents or my society. So, in order to decide as between these two broad traditions, whether Aristotle is right, or whether Kant and Rawls are right, we need to investigate whether the right is prior to the good, question one, and we need to investigate what it means to be a free person, a free moral agent. Does freedom require that I stand for toward my roles, my ends, and my purposes as an agent of choice? Or as someone trying to discover what my nature really is? Two big questions and we'll take them up next time.

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## Lecture 21 The Claims of Community

Kant thinks that Aristotle just made a mistake. You remember Aristotle says in order to investigate the ideal constitution. We have first to figure out the best way to live. Kant would reject that idea. He says that constitutions and laws and rights should not embody or affirm or promote any particular way of life. For Aristotle the whole point of law, polis is to shape character, to cultivate the virtue of citizens, to inculcate civic excellence, to make possible a good way of life. For Kant, on the other hand, the purpose of law, the point of a constitution is not to inculcate or to promote virtue. Within which citizens may be free to pursue their own conceptions of the good for themselves. So we see the difference in their theories of justice. We see the difference in their account of law or the role of a constitution, the point of politics, and underlying these differences are two different accounts of what it means to be a free person.

For Aristotle we are free insofar as we have the capacity to realize our potential. And that leads us to the question of fit. Fit between persons and the roles that are appropriate to them. cut out for. Kant rejects that idea and instead substitutes his famously demanding notion of freedom as the capacity to act autonomously. Freedom means acting according to a law I give myself. Freedom is autonomy. Part of the appeal, part of the moral force of the view of Kant and of Rawls consists in the conception of the person as a free and independent self capable of choosing his or her own ends. The image of the self is free and independent offers a, if you think about it, a powerful liberating vision because what it says is that as free moral persons we are not bound by any ties of history And that means that we are free and independent sovereign selves.

Communitarian critics of Kantian and Rawlsian liberalism acknowledge that there is

something powerful and inspiring in that account of freedom, the free independent choosing self, but they argue it misses something. It misses a whole dimension of moral life and even political life. And these include obligations of membership, loyalty, solidarity, Alasdair MacIntyre gives an account what he calls a narrative conception of the self. Human beings are essentially storytelling creatures, MacIntyre argues. That means I can only answer the question 'what am I to do?' if I can answer the prior question of what story or stories do I find myself a part? What does this have to do with the idea of community and belonging? MacIntyre says this, once you accept this narrative aspect of moral reflection you will notice that we can never seek for the good or exercise of the virtues only as individuals. We all approach our circumstance as bearers of particular social identities. a citizen of this or that city, I belonged to this clan, that tribe, this nation. Hence, MacIntyre argues, what is good for me has to be the good for someone who inhabits these roles. I inherit from the past of my family, my city, my tribe, my nation a variety of debts, inheritances, expectations, and obligations. These constitute the given of my life, my moral starting point. This is in part what gives my life its moral particularity. Encumbered, at least to some extent, Now, MacIntyre recognizes that this narrative account, encumbered self, puts his account at odds with contemporary liberalism and individualism. From the standpoint of individualism I am what I myself choose to be.

Unless I choose to assume such responsibility, unless I choose to assume such responsibility. But MacIntyre says this reflects a certain kind of moral shallowness even blindness. He says, involves collective responsibility or responsibilities that may flow from historic memories. And he gives some examples. Such individualism is expressed by those contemporary Americans who deny any responsibility for the effects of slavery upon black Americans saying "I never owned any slaves." Or the young German who believes that having been born after 1945 means that what Nazis did to Jews has no moral relevance to his relationship to his Jewish contemporaries.

MacIntyre says all of these attitudes of historical amnesia abdication. Once you see that who we are and what it means to sort out our obligations The contrast, he says, with a narrative account, is clear, For the story of my life is always embedded in the story of those communities from which I derived my identity. I am born with the past and to try to cut myself off from that past is to deform my present relationships. So there you have in MacIntyre, a strong statement of the idea from its particular ties of membership, history, story narrative. Communitarian critique of the individualist or the voluntarist, the unencumbered self. by looking at the two different accounts of moral and political obligation that arise depending on which of these conceptions of the person one accepts. On the liberal conception, moral and political obligations arise in one of two ways. as such. qua persons. These obligations are universal.

Then, as Rawls points out, there are also voluntary obligations. Obligations that we owe to particular others insofar as we have agreed whether through a promise or a deal or a contract. Now, the issue between the liberal and communitarian accounts of the self, Is there another category of obligation or not? The communitarian says there is. There is a third category that might be called obligations of solidarity or loyalty or membership. The communitarian argues that construing all obligations as either natural duties or voluntary obligations fails to capture obligations of membership or solidarity. Loyalties whose moral force consists partly in the fact that living by them is inseparable from understanding ourselves as the particular persons we are.

What would be some examples? And then I want to see how you would react to them. Examples of obligations of membership but rather from membership, narrative, community, one situation. The most common examples are ones to do with the family. The relation between parents and children, for example. Suppose there were two children drowning. You could save only one of them. Would you have an obligation to

flip a coin obtuse if you didn't rush to save your child? Now, you may say, well, parents have agreed to have their children. There is that asymmetry. And yet consider two aging parents, one of them yours, now, is this traceable to consent? Not likely or take a couple of political examples. During World War II, French resistance pilots flew bombing raids over occupied France. One day, one of the pilots received his target and noticed that the village he was being asked to bomb was his home village. He refused, not disputing that it was as necessary as the target he bombed yesterday. bring himself. It would be a special moral crime for him to bomb his people cause of liberating France. Now, do we admire that?

If we do, the communitarian argues, take another example. Some years ago there was a famine in Ethiopia. Hundreds of thousands of people were starving. The Israeli government organized an airlift to rescue Ethiopian Jews. They rescued several hundred Ethiopian Jews. Is that a kind of morally troubling partiality, a kind of prejudice? Or as the Israeli government thought, is there a special obligation of solidarity that this airlift properly responded to? Well, that takes us to the broader question of patriotism. What, morally speaking, is to be said for patriotism? There are two towns named Franklin. One is Franklin, Texas, and the other is just across the Rio Grande River, Franklin, Mexico.

What is the moral significance of national boundaries? Why is it, or is it the case that we as Americans have a greater responsibility for the health and the education and the welfare and public provision for people who live in Franklin, Texas, than equally needy people just across the river, living in Franklin, Mexico? According to the communitarian account, membership does matter. And the reason patriotism is at least potentially a virtue is that it is an expression of the obligations of citizenship. How many are sympathetic to the idea that there is this third category of obligation? The obligations of solidarity or membership. How many are sympathetic to that idea? And



how many are critical of that idea? How many think all obligations can be accounted for in the first two ways?

*Student, "Yes, binding, then there is a greater occurrence of overlapping obligations, a greater occurrence of good versus good. allows us to choose between them.."*

Good, and what's your name?

*Student, "Patrick."*

So you worry that if we recognize obligations of membership or solidarity, since we inhabit different communities, their claims might conflict, and what would we do if we have competing obligations? Yes. Well, one solution is that we could view ourselves as ultimately, members of the human community and that then within that we have all these smaller spheres, of that, you know, I am American or I am a student at Harvard. and so the most important community to be obligated to is the community of human beings. And then from there you can sort of, evaluate, which other ones are most important to you. So, Nichola, you say the most universal community we inhabit, the community of human kind, precedence?

*Student1, "Yes."*

Patrick, are you satisfied?

*Student, "No."*

Why not?

*Student, "It seems rather arbitrary that we should choose the universal obligation over the more specific obligation. I might also say that I should be obligated first to the most specific of my obligations. For instance, take my family as a small unit of solidarity. Perhaps I should be first obligated to that unit and then perhaps to the unit of my town, and then my country, and then the human race."*

Good, thank you. I want to hear from another critic of the communitarian view. We have the objection, well, what if goods collide? Who objects to the whole idea of it? Who sees patriotism as just the kind of prejudice that ideally we should overcome? Yes.

*Student2, "Patriotism reflects a community membership. I think the problem is that where some memberships are natural narratives, the narrative of citizenship is a constructed one. And I think a false one because, as the river is just a historical accident, it makes no sense that because the lottery of birth threw me into the United States as opposed to Mexico that Elizabeth."*

Who has a reply? Yes.

*Student3, "I think in general, we have to ask where do our moral obligations arise from anyway. One would be kin and the other one would be reciprocity. You interact with the neighbors on your street, with the other people in your country through economic arrangements. any more than you know the people in Franklin, Mexico, do you?"*

Good. Who else? Go ahead.

*Student4, "Yeah, I think that a lot of the basis for patriotism can be compared to like*

*school spirit or even house spirit that we see here where freshmen are sorted into houses and then within a day they have developed some sort of attachment or a pride associated with that house. And so I think that we can probably draw a distinction between a moral obligation for communitarian beliefs and sort of just a sentimental, emotional attachment.”*

Rina. What about... Go back to my example about the obligation of the child to the parent. Would you say the same thing there? It just may or may not be a sentimental type and it has no moral weight? Something that will preclude moral obligations later. Just because we are randomly sorted into a house or Yeah, I mean, I would say that if you look at cases of adoption where, and then you have a parent who adopted you, most people would say that if you had to pick between them in the case of aging parents, that your obligation would lie more with the person who raised you and who had exchanges with you meaningfully.

May I ask you one more question about the parent?

*Student 4: “Sure.”*

Do you think that a person with a bad parent owes them less?

*Student 4: “I don’t know because I’ve never had a bad parent.”*

I think that’s a good place to end. Thank you. We’ll continue with this next time. Thank you.

## Lecture 22 Where Our Loyalty Lies

Today I'd like to take, I'd like to consider the strongest objections to the idea that there are obligations of solidarity or membership. Then I want to see if those objections can be met successfully. One objection emerged in the discussion last time. Patrick said, if obligations flow from community membership and identity, we inhabit multiple communities, And then Rina said these examples meant to bring out the moral force of solidarity and membership, examples about parents and children, about the French resistant fighter asked to bomb his own village and withdrawing back. About the airlift by Israel of the Ethiopian Jews. These examples, they maybe intuitively evocative, Rina said. Not true moral obligations. And then there were a number of objections, as such. But to patriotism understood as an obligation of solidarity and membership beyond consent. This objection allowed that there can be obligations to the communities we inhabit including obligations to patriotism. But this objection argued that all of the obligations of patriotism, or of community or membership, are actually based on liberal ideas and perfectly compatible with them. consent, either implicit or explicit or reciprocity.

Julia Ratthel for example on the web site said that liberalism can endorse patriotism as a voluntary moral obligation. Patriotism and familial love both fall into this category because after all, Julia points out, the Kantian framework allows people free reign to choose to express virtues such as these if they want to. To capture the moral force of community values. Where is Julia? Okay, so did I summarize that fairly? Julia actually is in line with what Rawls says about this very topic. You weren't aware of that? You came up it within your own. That's pretty good. they are making a voluntary choice. But Rawls says there is, I believe, no political obligations, strictly speaking, for a citizens generally. and who has performed it. So Rawls acknowledges that for ordinary citizens there is no political obligation except in so far as some particular

citizen willingly, through an act of consent, undertakes or chooses such an obligation. to express our loyalty to our country or to our people or to our family within the framework acknowledging the priority that is of the universal duties. The view of those who say that obligations of membership really are kind of collective selfishness, why should we honor them?

Perhaps of those of you who have agreed, who wrote and who have agreed to press these objections, perhaps if you could gather down all together, now there were a number of people who argued in defense of patriotism as the communitarian view conceives it. So let me go down now and join the critics, the critics of communitarianism. Okay, thanks Kate. Who as the critics of patriotism, communal patriotism gather their forces here? Patrick if you want to you can join as well or Rina. Others who have spoken or addressed this question are free to join in. But I would like to hear now, from those you who defend patriotism, where is AJ Kumar? AJ, everybody seems to know you. You said, in the same way I feel I owe more to my family than to the general community, I owe more to my country than to humanity in general. Because my country holds a great stake in my identity. It is not prejudice for me to love my country So AJ what would you say to this group? Stand up.

*Student5, "I think that there is some fundamental, a moral obligation that comes from a communitarian responsibility to people in groups that form their identity. there are a lot of things about our government, right now, that America values a free society where we can object to certain things And, I go back to the parent example, even at Harvard, I think, I owe more to my roommates because they make up my identity, than I do it to the Harvard community as a whole."*

But it makes up part of our identity. Okay, who would like to take that on? Mike?

*Student6, "Yeah about the obligation to the others simply by virtue of being in their, being influenced by them. Then I would have been a citizen of Nazi Germany. I would have to feel obligated towards Germany because I had benefited from actions of Nazis. I mean I guess my response to that would be you have hundreds of thousands of protesters in the United States right now who hold up signs that say, 'Peace is patriotic.' I personally do and I would say that they are strongly objecting to basically everything the Bush administration is doing right now but they still consider themselves loving their country And I tend to agree with that as a patriotic movement. Where is the obligation there? Rina ?Yeah not to bring this back to John Locke, but I would like to bring this back to John Locke. So, I mean in his conception of, when people join society, you do have a means of exit even though he still provides that option. If we want to say that your obligation to society is a moral one, that means that prior to knowing exactly what that society is going to be like or what your position is going to be in that society, that means that you have a binding obligation to a complete unknown body that could be, completely foreign to all of your personal beliefs or what you would hold to be correct. Do you think that that kind of communal obligation or patriotism means writing the community a blank moral check? Basically, yeah. that you acquire some type of obligation based on reciprocity but to say that you have a moral obligation I think requires a stronger justification."*

Who else? Anyone else who would like to address that? I guess we could say you could argue that you are morally obliged to society by the fact that there is that reciprocity. this is why we could say that we owe something to society, that we are members of the society itself that we owe at anything. Gives us protection, safety, security, then we owe the society something but nothing beyond what we give the society. Who want to take that on? Raul ? I think we only give it a blank moral check when we abdicate our sense of civic responsibility and when we say that the debate

does matter because patriotism is a vice. I think that patriotism is important because it gives us a sense of community, a sense of common civic virtue that we can engage in the issues. And I think because out of that love of county, you can debate with other people and have respect for their views but still engage them in debate.

If you just say that, patriotism is a vice, you drop out of that debate cede the ground to people who are more fundamentalist, who have a stronger view and who may coerce the community. Instead we should engage the other members of the community on that same moral ground. Now this, what we hear from AJ and Raul. Whereas what we hear from Ike and the critics of patriotism here is the worry that to take patriotic obligation in a communal way, seriously, AJ and Raul, that may happen to be embodied in our community or not as the case may be. And if not then we can reject its course. Go ahead Julia. Yeah I think that patriotism you need to define what that is. It sounds like, you would normally think that we are given a more weak definition here of patriotism amongst us but almost sounds like your definition is merely to have some sort civic involvement in debating within your society. and I think that that kind of undermines maybe some of the moral worth of patriotism as a virtue as well. I think if you can consent to a stronger form of patriotism if you want what we really need to sharpen the issue is an example from the defenders of communitarianism of a case where loyalty can actually compete with and possibly outweigh universal principles of justice. Or, any among you who would like to defend obligations of membership or solidarity independent of ones that happened to embody just principles. Who has an example of a kind of loyalty that can and should compete with universal moral claim respect for persons? Go ahead.

*Student7, "Yeah, if I were working on an 'economics' problem set, for example and I saw that my roommate was cheating, that might be a bad thing for him to do because of my obligation to him. Slipping out by saying he's invoking, in the name of*



*community, some universal principles of justice.”*

What's your name? Stay there. What's your name?

*Student7, “Dan.”*

But a truer test. How many agree with Dan? So loyalty... Dan loyalty has its part, if that's it. How many disagree with Dan? Peggy. You're saying well that's a matter of choice, but what's the right thing to do? Most people put up their hands saying Dan would be right to stand by his roommate and not turn him in. Yes, go ahead. Also I think as a roommate you have insider information and that might not be something you want to use. That might be something unfair to hold against. You're spending that much time with the roommate, obviously you're going to learn things about him and I don't think it's fair to reveal that to a greater community. But it's loyalty, Vojtech. You agree with Dan that loyalty is the ethic at stake here? Absolutely. You don't have a duty to tell the truth, to report someone who cheated? Not if you've been advantage into getting that kind of information.

Before our critics of patriotism leave, I want to give you another version, a more public example of what, I guess we should call it Dan's dilemma. Dan's dilemma of loyalty and I want to get the reaction of people to this. This came up a few years ago in Massachusetts. Does anyone know who this man is? Billy Bulger that's right. Who is Billy Bulger? He was president of the Massachusetts State Senate for many years. One of the most powerful politicians in Massachusetts and then he became president of the University of Massachusetts. Now Billy Bulger, did you hear the story about him that bears on Dan's dilemma? Billy Bulger has a brother named Whitey Bulger and this is Whitey Bulger. His brother Whitey is on the FBI's most wanted list alleged to be a notorious gang leader in Boston, responsible for many murders and now a

fugitive from justice. But when the US attorney... They called Billy Bulger, then the president of the University of Massachusetts, before the grand jury and wanted information on the whereabouts of his brother, this fugitive, and he refused to give it. US attorney said, "Just to be clear Mr. Bulger, you feel more loyalty to your brother than to the people of the commonwealth of Massachusetts?" And here's what Billy Bulger said, "I never thought of it that way but I do have a loyalty to my brother, I care about him. I hope that I'm never helpful to anyone against him. I don't have an obligation to help anyone catch my brother."

Dan you would agree. How many would agree with the position of Billy Bulger? Let me give one other example and then we'll let the critics reply, the critics of loyalty as we'll describe it. Here's an even more fateful example from a figure in American history, Robert E. Lee. Lee. Now Robert E. Lee on the eve of the civil war, was an officer of the Union Army. He opposed secession, in fact, regarded as treason. When war loomed, Lincoln offered Lee to be the commanding general of the Union Army, and Lee refused. And he described in a letter to his sons why he refused. I have not been able to make up my mind to raise my hand against my relatives, my children, my home. By which he meant Virginia. "If the union is dissolved I shall return to my native state and share the miseries of my people. Now here's a real test, Dan, for your principle of loyalty. Because here is the cause of the war against, not only to save the union but against slavery. And Lee is going to fight for Virginia secede. Now the communitarian would say there is something admirable in that. Whether or not the decision was ultimately right, there's something admirable. And the communitarian would say we can't even make sense, Rina, we can't make sense of Lee's dilemma as a moral dilemma unless we acknowledge that the claim of loyalty arising from his sense of narrative of who he is tug.

All right, who would like to respond to Dan's loyalty, to Billy Bulger's loyalty or to

Robert E. Lee's loyalty to Virginia? What do you say Julia? Okay, well I think that these are some classic examples of multiple spheres of influence. And that you have conflicting communities that your family and your country. I think that's one reason why the idea of choice in your obligation is so important because how else can you resolve this? If you're morally obligated and there's no way out of this need for loyalty to the both communities, you're trapped, there's nothing you can do. You have to make a choice. And I think that being able to choose based on other characteristics, than merely the arbitrary fact that you're a member of this community is important, otherwise it's left to, I guess, randomness. Well, Julia, the issue isn't whether Dan makes a choice, or Billy Bulger or Robert E. Lee, of course they make a choice. The question is on what grounds, on what principle should they choose? The communitarian doesn't deny that there is choice to be made. The question is which choice, on what grounds and should loyalty, as such, wait... Andre now you want to, all right, go ahead. What do you say?

Student8, "Well one of the things we've noticed in the three examples is that the people of all chosen the most immediate community of which they're a part. The more local one."

And I think there's something to be said for that. It's not just random. I mean, there doesn't seem to be a conflict because they know which one is more important. And it's their family over the Ec10 Class. Their state over their country, and their family over the Commonwealth on Massachusetts. So I think that's the answer to which is more important. Do you think that the local, the more particular, is always the weightier morally, Andre?

*Student8, "Well I mean there's seems to be a trend in the three cases."*

I would agree with that. And I think most of us would agree that precedence over the United States perhaps. Which is why you go with Dan? Loyalty to the roommate over Ec10 and the truth?

*Student7, "Yeah, exactly. I would because it... I mean truth telling, not the truth of Ec10. Yes."*

Alright, so we understand. Yes. But on the same example in terms of family, you had cases in the civil war where brother was pitted against brother on both sides of the war, where they chose country instead of family. So I think the exact same, more shows, that different people have different means of making these choices and that there is no one set of values, or one set of morality that communitarians can stick to. And personally, I think that's the biggest problem with communitarians, that we don't have one set of standard moral obligations. And tell me your name.

*Student9, "Samantha."*

So Samantha, you agree with Patrick. Patrick's point the other day that there may be... If we allow obligations to be defined by community, identification or membership, they may conflict, they may overlap, they may compete. And there is no clear principle. Andre says here's a clear principle, the most particular. The other day, Nichola who was sitting over here, where's Nichola? Said that most universal. You're saying, Samantha, the scale of the community as such can't be the decisive moral factor. So there has to be some other moral judgment. All right, let's first... Let's let our defe... our critics of communal patriotism, let's express our appreciation and thank them for their having stood up and responded to these arguments. Let's turn to the implications for justice of the positions that we've heard discussed here. One of the worries underlying these multiple objections to the idea of loyalty or membership as

having independent moral weight is that it seems to argue that there is no way of finding principles of justice that are detached from conceptions of the good life as they may be lived in any particular community.

Supposed the communitarian argument is right. Suppose the priority of the right over the good can't be sustained. Suppose instead, that justice and rights unavoidably are bound up with conceptions of the good. Does that mean that justice is simply a creature of convention, of the values that happen to prevail in any given community at any given time? One of the writings we have among the communitarian critics is by Michael Walzer. He draws the implications of justice this way. "Justice is relative to social meanings. A given society is just if its substantive life is lived in a certain way, in a way that is faithful to the shared understandings of the members. bear out the worry that if we can't find independent principles of justice, independent that is, from conceptions of the good that prevail in any given community, that we're simply left with justice being a matter of fidelity or faithfulness to the shared understandings or values or conventions that prevail in any given society at any given time. But is that an adequate way of thinking about justice? Well, let's take a look at a short clip from the documentary "Eyes on the Prize." It goes back in the 1950s in the south. Here are some situated American Southerners who believed in the tradition and the shared understandings of segregation. Listen to the arguments they make about loyalty and tradition And see if they don't make you uneasy about tying arguments about justice to the shared understandings or traditions that prevail in any given society at the moment.

Let's run the clip. "This land is composed of two different appearances. A white culture and a colored culture. And I've lived close to them all my life. But I'm told now that we've mistreated them and that we must change. And these changes are coming faster than I expected. And I'm required to make decisions on the basis of a

new way of thinking and it's difficult. It's difficult for me, it's difficult for all southerners.' Well there you have it, narrative selves, situated selves invoking tradition. Doesn't that show us that justice can't be tied to the shared understandings of goods that prevail in any given community at any given time? Or is there a way of rescuing that claim from this example? Think about that question and we'll return to it next time.

## Lecture 23 Debating Same-Sex Marriage

We ended last time talking about the narrative conception of the self. We were testing the narrative conception of the self and the idea of obligations of solidarity or membership that did not flow from consent, that claimed us for reasons unrelated to a contract or an agreement or a choice we may have made. And we were debating among ourselves whether there are any obligations of this kind or whether all apparent obligations of solidarity and membership can be translated into consent or reciprocity or universal duty that we owe persons qua persons.

And then there were those who defended the idea of loyalty and of patriotism. So the idea of loyalty and of solidarity and of membership gathered a certain kind of intuitive moral force in our discussion. And then, as we concluded, we considered what seems to be a pretty powerful counter example to that idea. Namely, the film of those southern segregationists in the 1950s. And they talked all about their traditions, their history, and the way in which their identities were bound up with their life history. Do you remember that? And what flowed from that history, from that narrative sense of identity for those southern segregationists? They said we have to defend our way of life. Is this a fatal or a decisive objection to the idea of the narrative conception of the self? What I would like to do today is to advance an argument and see what you make of it.

And let me tell you what that argument is. I would like to defend the narrative conception of the person as against the voluntarist conception. I would like to defend the idea that there are obligations of solidarity or membership. Then, I want to suggest that there being such obligations lends force to the idea, when we turn to justice, that arguments about cannot be detached after all, from questions of the good. But I wanted to distinguish two different ways in which justice might be tied to the good



and argue for one of them.

Now, the voluntarist conception of the person of Kant and Rawls we saw was powerful and liberating. A further appeal is its universal aspiration. The idea of treating persons as persons without prejudice, without discrimination, okay, maybe there are obligations of membership but they are always subordinate. They must always be subordinate to the duties that we have to human beings as such, the universal duties.

But is that right? If our encompassing loyalty should always take precedence over more particular ones, then the distinction between friends and strangers should ideally be overcome. A special concern for the welfare of friends would be a kind of prejudice, a measure of our distance from universal human concern. But if you look closely at that idea, what kind of a moral universe, what kind of moral imagination, would that lead you to? The enlightenment flows from Montesquieu gives perhaps the most powerful, and I think, the ultimately, the most honest account of where this relentless universalizing tendency leads the moral imagination. He said, "A truly virtuous man would come to the aid of the most distant stranger as quickly as to his own friend." And then he adds, listen to this, "If men were perfectly virtuous, they wouldn't have friends." in which persons were so virtuous that they had no friends, only a universal disposition to friendliness.

Would be difficult to bring about, that it's unrealistic. The deeper problem is that such a world would be difficult to recognize as a human world. The love of humanity is a noble sentiment but most of the time we live our lives by smaller solidarities. This may reflect certain limits to the bounds of moral sympathy, but more important, it reflects the fact that we learn to love humanity, not in general, but through its particular expressions.

So these are some considerations. But considerations, of the kinds that we've been discussing and arguing about all along. One way of assessing whether this picture of the person and of obligation is right, is to see what its consequences are for justice. And here is where it confronts a serious problem, and here we go back to our southern segregationists. They felt the weight of history. Do we admire their character, these segregationists, who wanted to preserve their way of life? Are we committed to saying, if we accept the idea of solidarity and membership, are we committed to saying that justice is tied to good in the sense that justice means whatever a particular community or tradition says it means, including those southern segregationists.

In which justice can be tied to the good. One is a relativist way. To think about rights, to think about justice, look to the values that happened to prevail in any given community at any given time. But instead conceive justice as a matter of being faithful to the shared understandings of a particular tradition. The problem is that it makes justice wholly conventional. A product of circumstance, and this deprives justice of its critical character.

But there is a second way in which justice can be tied with or bound up with the good. On a second non-relativist way of linking justice with conceptions of the good, principles of justice depend for their justification not on the values that happened to prevail at any given moment in a certain place, but instead on the moral worth or the intrinsic good of the ends rights serve. On this non-relativist view the case for recognizing a right depends on showing that it honors or advances some important human good. The second way of tying justice to the good is not strictly speaking, communitarian, if by communitarian you mean, just giving over to a particular community the definition of justice.

Now, what I would like to suggest that of these two different ways of linking justice to the good, the first is insufficient. Because the first leaves justice the creature of convention. It doesn't give us enough moral resources to respond to those southern segregationists who invoke their way of life, their traditions, and their way of doing things. But if justice is bound up with the good in a non-relativist way, there is a big challenge, a big question to answer. How can we reason about the good?

What about the fact that people hold different conceptions of the good? Different ideas about the purposes of key social institutions. Different ideas about what social goods and human goods are worthy of honor and recognition. We live in a pluralist society, people disagree about the good. So is there a way to reason about the good? Before addressing that question, I want to address a slightly easier question. Is it necessary, is it unavoidable, when arguing about justice , to argue about the good? It's necessary.

So for the remainder of today, I want to take up... I want to try to advance that claim, that reasoning about the good, about purposes, and ends, is an unavoidable feature of arguing about justice, Let me see if I can establish that. Now, same sex marriage draws on, implicates, deeply contested and controversial ideas, morally and religiously. To embrace a conception of justice or of rights on those hotly contested moral and religious questions. About the moral permissibility of homosexuality. About the proper ends of marriage as a social institution. To sort out those moral and religious disputes that would be very attractive. So what I would like to do now is to see, using the same sex marriage case, about the moral permissibility of homosexuality and about the purpose, the end of marriage, detach those questions from the question of whether the state should recognize same sex marriage or not. So let's begin.

I would like to begin by hearing the arguments of those who believe that there should be no same sex marriage but that the state should only recognize marriage between a man and a woman. Do I have volunteers? I had two. There were two people I asked, people who had voiced their views already on the justice blog. Mark Loff and Ryan McCaffrey where are you? Okay, Mark. And where is Ryan?

*Mark: "I have sort of a theological understanding of the purpose of sex and the purpose of marriage. And I think that for people like myself, who are a Christian and also a Catholic, the purpose of sex is, one, for its procreative uses, and two, for a unifying purpose between a man and a woman within the institution of marriage."*

You have a certain conception of the purpose or the telos...-

*Mark: "Yeah. ...of human sexuality, which is bound up with procreation."*

Right. As well as union. - Yeah. And the essence of marriage, the purpose of marriage as a social institution is to give expression to that telos and to honor that purpose, namely, the procreative purpose of marriage. Is that a fair summary of your view?

*Mark: "Yeah."*

Where is Ryan? Go ahead.

*Ryan: "Yes, I agree. I think that the ideal of marriage involves procreation. All right, so the government should not encourage homosexual behavior by conferring the recognition of marriage. Yeah, it would be wrong to outlaw it but encouraging it is not necessary."*

Who has a reply? Yes. Hannah ?

*Hannah: “I just like to ask a question to Mark. You did not have sex with her before marriage, and then when you became married it became evident that do you think that it should illegal for you to engage in sex if children will not result from that act? So like a woman, say... I think older couples can get married, because I think that sex has these... It has purposes beyond procreation. I hate to be uncouth but have you ever engaged in masturbation?”*

Right, make your... Make that point as a general argument rather than, Rather than as an interrogative.

*Hannah: “Okay.”*

But make the point.

*Mark: “Alright. Well, biblically...”*

Put it in the third person.

*Mark: “Yeah, okay.”*

Rather than... rather than in a second person. Make the argument.

*Mark: “Okay. Biblically, masturbation or onanism, is not permissible or reinforce the marriage bond. - Right. That masturbation is permissible, if masturbation, obviously,*

*is not going to create a child? Where they say this is what we hold as a virtue. Yes, every day we fall short and people fall short in so many different other ways, but I think that if you personally fall short, and some morals fear, as we all do.”*

All right, I want you, to stay there. I want to bring in some other voices and we'll continue. Stay there if you would. Go ahead.

*Steve: “I think that the response to the masturbation.”*

Wait, tell us your name.

*Steve: “My name's Steve.”*

Steve, go ahead.

*Steve: “The response to the masturbation issue is, if masturbation is something that you do.”*

Well, all right, Hannah. Alright, Steve has drawn... Alright, that's a good argument. Steve has drawn our attention to the fact that there are two issues here. One of them is the moral permissibility of various practices. The other is the fit between certain practices, whatever their moral permissibility, with the honor or recognition that the state should accord in allowing marriage. So Steve has a pretty good counter argument. What do you say to Steve?

*Hannah: “Is something that is inherent in, I believe, most people homosexuals are people too. If you want to marry yourself, as if legislators, what the law should be. Does that mean as a legislator you would vote for a law of marriage that would be so*

*broad that it would let people marry themselves? Beyond the pale of anything that would really happen but I don't think that- - But in principle."*

Yeah, in principle?

*Hannah: "Yes. Yeah, sure, I mean if Steve wants to marry himself I'm not going to stop him. And you would confer state recognition on that solo marriage? Sure. What about consensual polygamous marriages? I actually think that if the male and the female, or that if the wives and the man, of the husbands and the wife are consenting, it should be permissible."*

Who else? I know there are a lot of people who... Yes, okay, down here. Stand up and tell us your name.

*Victoria: "Victoria."*

*Victoria: "Whereas, the theological, and the point to marriage could be completely different. The theological reasoning for Catholicism on everyone in the state. Which is what my problem is with not allowing same sex marriage. But civil union is not marriage within the Catholic Church. And the state has a right to recognize a civil union between whoever it wants, but does not have a right to impose the beliefs of a certain minority or majority of whoever it is based on religion within our state."*

Alright, Victoria, good. A question. Do you think the state should recognize same sex marriage or just same sex civil unions as something short of marriage?

*Victoria: "Because that is not their place. But whereas civil union, I see civil union as essentially the same thing except not under a religion and that state has a right to*



*recognize a civil union. Decide the question of what the telos of marriage is.”*

Who else?

*Cezanne: “The state should recognize marriages at all. That the state should not recognize any marriages because I believe it is a union between male and a female or two males or two females. And some might say that, if the state recognizes these marriages, it will help children, it will have a binding effect.”*

Alright, tell us your name.

*Cezanne: “Cezanne.”*

Differ from earlier parts of the conversation. They say of honoring or recognizing or affirming any particular telos, or purpose of marriage, or of human sexuality. And Cezanne is among those who say; therefore, maybe the state should get out of the business of recognizing marriage at all. No state recognition of any kind of marriage is it possible to choose between... to decide the question of same sex marriage without taking a stand on the moral and religious controversy over the proper telos of marriage. Thank you very much to all of you who have participated. We'll pick this up next time. You did a great job.

## Lecture 24 The Good Life

We have two remaining questions to answer. First, is it necessary; is it unavoidable to take up questions of the good life in thinking about justice? Yes. And is it possible to reason about justice? Yes, I think so. Let me try to develop those answers to those two questions.

Now, as a way of addressing those questions, we began last time to discuss the question of same sex marriage. And we heard from those who argued against same sex marriage on the grounds that the purpose, or telos, of marriage is at least in part, procreation, the bearing and raising of children.

And then there were those who defended same sex marriage and they contested that account of the purpose, or telos, of marriage that couples be able or willing to procreate. We allow infertile couples to marry. This was Hannah's point in the exchange with Mark. Then there was another position expressed at the end of our discussion by Victoria, who argued we shouldn't try to decide this question. We shouldn't, at least at the level of the state, at the level of law, try to come to any agreement on those questions about the good because we live in a pluralist society where people had different moral and religious convictions. And so we should try to make law in the framework of rights, neutral with respect to these competing moral and religious views. Now, it's interesting that others, some others, who favor the idea of neutrality argued, not in favor of restricting marriage to a man and a woman, nor in favor of permitting same sex marriage, they argued in the name of neutrality, for a third possibility. Which is that government getting out of the business of recognizing any kind of marriage? That was the third possibility. Now, Andrea Mayrose had an interesting contribution to this debate. She had a rejoinder to people who argue for neutrality.

Where is Andrea? Alright, Andrea, would you be willing... Share with us the view. If we can get you a microphone. Share with us your view. Why do you think that it's a mistake for the state to try to be neutral moral and even religious questions like same sex marriage?

*Andrea: "I don't know that it is possible because people's lives are completely embedded in how they view the world. And maybe I just agree with Aristotle that the role of the government is helping people live in a sort of... Having a collective understanding what is wrong and what is right. Is it possible, and one could ask the same question of abortion, that we've been asking of same sex marriage. Do you think it's possible to decide whether abortion should be permitted or prohibited without taking a stand or making a judgment about the moral permissibility of abortion? No, I don't think it is and I think that's why it's such a controversy because people are so deeply committed to, their fundamental beliefs about whether a fetus is a life or if it isn't. If I believe that, a fetus is a living being and has rights and has fundamentally the right to live, then it's very hard for me to say, "But I can put that aside and let you do what you want," because that's like me saying, "well, despite my beliefs, I'm going to let you commit what to me is murder." So, I mean, that's just one... Alright, and the analogy in the same sex marriage case is,"*

You said, you're a defender of same sex marriage.

*Andrea: "Yes."*

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

*Andrea: "Right, well, I think particularly, in the US so many people's beliefs are driven by their religious beliefs and like Mark the other day, I'm a Christian, I'm Catholic, and I had to decide for myself on a lot of thought, a lot of prayer, a lot of conversations with other people that I disagreed with the Catholic standpoint that homosexuality itself isn't a sin. And once I came to that, sort of conclusion, in my personal relationship with god, I mean, that's sounds hokey, right? That's like, oh, religious! But a lot of people are religious and that's where they draw their beliefs and their views from. That's when I could say, yeah, I'm down with the state saying, "Go same sex marriage!" because I'm okay with that and I think that's morally okay."*

Good, thank you. Now, who would like to reply? If you can, perhaps, hang on there for a moment. Who would like to reply to Andrea's idea that in order to decide the question of same sex marriage, it's necessary to sort out the question about the moral status of homosexuality and figuring out the purpose, the telos, the proper end, of marriage. Who disagrees with Andrea on that point?

*Daniel: "Yes. Well, I think you absolutely can separate your moral opinion and what you think the law should be. For example, I think abortion is unequivocally morally wrong. But I do not believe that illegalizing abortion makes it go away. I don't believe illegalizing abortion stops it. pro choice and I do believe the woman should have the choice as it gives it more safety just as, maybe, morally, I don't want to get married to a man, but I'm not going try to, impede someone else's freedom to do what they wish to do in terms of the law."*

Andrea? Whether the law makes something legal or illegal, it's implicitly approving or disapproving something. So if you say, by making abortion legal, we're saying it's okay. As a society, collectively, we're saying it's okay with us in our society to abort a fetus. If we make it illegal, then we're saying collectively as a society it's not okay,

and that's why societies have different beliefs.

Tell us your name before you...

Daniel: "My name is Daniel."

Daniel, what do you say? Are we saying collectively that it's okay? Or are we saying that collectively we don't want women who are going to have an abortion anyway to go to clinics in the side alleys and have unsafe conditions? Alright, bring it to the same sex marriage case. Why don't you have to decide that which position you're in favor of same sex marriage, Daniel, being legally permitted?

*Daniel: "I think it absolutely should be legally permitted because it's not something telling me that I need to have... I need to marry a man. I absolutely don't, I don't see, if two men are consenting adults and want to get married, and I don't see how I could even object to that. Alright, there's no harm. There's no harm done. There's no harm done either way, even if it is morally wrong according to me."*

Alright, let me turn to the way the Massachusetts court, who made this landmark ruling in the same sex marriage case, grappled with the very issue that Andrea and Dan had been discussing here. Thanks to both of you very much. What did the court say? This was in the Goodridge case which required the state of Massachusetts to extend marriage to same sex couples. The court started out, well, the court was conflicted. If you read that opinion carefully, the court was conflicted as between the two positions we've just been hearing, defended by Andrea and by Dan. The court begins, and this is Chief Justice Margaret Marshall's opinion, it begins with an attempt at liberal neutrality. Many people hold deep-seated religious, moral and ethical convictions that marriage should be limited to the union of one man and one woman,

and that homosexual conduct is immoral. Many hold equally strong religious, moral, and ethical convictions that same sex couples are entitled to be married, that homosexual persons should be treated no differently than their heterosexual neighbors.

This is the court. Neither view answers the question before us. What is at stake is "respect for individual autonomy and equality under law." At stake is an individual freely choosing the person with whom to share an exclusive commitment. In other words, the issue is not the moral worth of the choice but the right of the individual to make it. So this is the liberal neutral strand in the court opinion, voluntarist strand, the one that emphasizes autonomy, choice, and consent. But the court seemed to realize that the liberal case, the neutral case, for recognizing same sex marriage doesn't succeed, doesn't get you all the way to that position, because if it were only a matter of respect for individual autonomy, if government were truly neutral on the moral worth of voluntary intimate relationships, then it should adopt a different policy. Which is to remove government and the state all together from according recognition to certain associations, certain kinds of unions, rather than others. If government really must be neutral, then the consistent position is what we here have been describing as the third position, the one defended in the article by Michael Kinsley, who argues for the abolition of marriage, at least as a state function. Perhaps a better term for this is the disestablishment of religion. This is Kinsley's proposal. He points out that the reason for the opposition to same sex marriage is that it would go beyond neutral toleration stamp of approval. That's at the heart of the dispute.

In Aristotle's terms, at issue here is the proper distribution of offices and honors, a matter of social recognition. Same sex marriage can't be justified on the basis of liberal neutrality or non-discrimination or autonomy rights alone because the question at stake in the public debate is whether same sex unions have moral worth, whether

they're worthy of honor and recognition, and whether they fit the purpose of the social institution of marriage. So Kinsley says, you want to be neutral? Then, let churches and other religious institutions offer marriage ceremonies. Let department stores and casinos get into the act if they want to. This is Kinsley. Let couples celebrate their union in any way they choose and consider themselves married whenever they want. And if three people want to get married, or if one person wants to marry himself or herself, and someone else wants to conduct a ceremony for them and declare them married, let them. If you and your government aren't implicated, what do you care? This is Kinsley. But this is not the position that the Supreme Judicial Court of Massachusetts wanted. They didn't call for the abolition or for the disestablishment of marriage. The court did not question government's role in conferring social recognition on some intimate associations rather than others. To the contrary, waxed eloquent about marriage as, "one of our community's most rewarding and cherished institutions." And then it goes on to expand the definition of marriage to include partners of the same sex.

And in doing so it acknowledges that marriage is more than a matter of tolerating choices that individuals make. It's also a matter of social recognition and honor. As Justice Marshall wrote. In a real sense there are three partners to every civil marriage: two willing spouses and an approving state. Marriage is at once a deeply personal commitment, but also a highly public celebration of the ideals of mutuality, companionship, intimacy, fidelity, and family. This is the court. Now, this is reaching well beyond liberal neutrality. This is celebrating and affirming marriage as an honorific, as a form of public recognition. And, therefore, the court found that it couldn't avoid the debate about the telos of marriage. Justice Marshall's opinion considers and rejects the notion that the primary purpose of marriage is procreation. She points out that there is no requirement that applicants for marriage license, who are heterosexuals, conceive children. Fertility is not a condition of marriage. People



who cannot stir from their deathbed, they marry. So she advances all kinds of arguments, along the lines that we began last time, about the proper and the essential nature, the telos of marriage, is. And she concludes, not procreation but the exclusive and permanent commitment of the partners to one another is the essential point and purpose of marriage.

Now, nothing I've said about this court opinion is an argument for or against same sex marriage. But it is an argument against the claim that you can favor or oppose same sex marriage while remaining neutral on the underlying moral and religious questions. So all of this is to suggest that at least in some of the hotly contested debates about justice and rights that we have in our society, the attempt to be neutral, the attempt to say, it's just a matter of consent and choice and autonomy, we take no stand. That doesn't succeed. Even the court, which wants to be neutral on these moral and religious disputes, finds that it can't.

What then about our second question? If reasoning about the good is unavoidable in debates about justice and rights, is it possible if reasoning about the good means that you must have a single principle or rule or maxim or criterion for the good life that you simply plug in every time you have a disagreement about morality, then the answer is, no. But having a single principle or rule is not the only way, not the best way of reasoning either about the good life or about justice. Think back, think back to the arguments that we've been having here about justice and about rights and sometimes about the good life. How have those arguments proceeded? They've proceeded very much in the way that Aristotle suggests moving back and forth between our judgments about particulars, particular cases, events, stories, questions, back and forth between our judgments about particular cases and more general principles that make sense of our reasons for the positions we take on the particular cases. This dialectical way of doing moral reasoning goes back to the ancients, to

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

You remember it's not only the veil of ignorance and the principles that Rawls argues for. It's also a method of moral reasoning, reasoning about justice that he calls reflective equilibrium. What is the method of reflective equilibrium? It's moving back and forth between our considered judgments about particular cases and the general principles we would articulate to make sense of those judgments. And not just stopping there, because we might be wrong in our initial intuitions. Not stopping there but then sometimes revising our particular judgments in the light of the principles once we work them out. So sometimes we revise the principles, sometimes we revise our judgments and intuitions in the particular cases. The general point is this, and here I quote Rawls. A conception of justice can't be deduced from self evident premises. Its justification is a matter of the mutual support of many considerations, of everything fitting together into one coherent view. And later in the theory of justice, he writes, moral philosophy is Socratic. We may want to change our present considered judgments once their regulative principles are brought to light. Well, if Rawls accepts that idea and advances that notion of reflective equilibrium, the question we're left with is, he applies that to questions of justice, not to questions of morality and the good life. And that's why he remains committed to the priority of the right over the good.

He thinks the method of reflective equilibrium can generate shared judgments about justice in the right but he doesn't think they can generate shared judgments about the good life, about what he calls comprehensive moral and religious question. And the reason he thinks that is that he says that in modern societies there is a fact or reasonable pluralism about the good. Even conscientious people who reason well, will

find that they disagree about questions of the good life, about morality and religion. And Rawls is likely right about that. He's not talking about the fact of disagreement in pluralist societies. He's also suggesting that there may be persisting disagreements about the good life and about moral and religious questions. But if that's true, then is he warranted in his further claim that the same can't be said about justice? Isn't it also true, not only that we, as a matter of fact, disagree about justice in pluralist societies, but that at least some of those disagreements are reasonable disagreements? In the same way, some people favor a libertarian theory of justice, others are more egalitarian theory of justice and they argue. And there is pluralism in our society as between free market laissez faire, libertarian theories of justice and more egalitarian ones. Is there any difference in principle between the kind of moral reasoning and the kind of disagreements that arise when we debate about justice and the meaning of free speech and the nature of religious liberty?

Look at the debates we have over appointees to the Supreme Court. These are all disagreements about justice and rights. Is there any difference between the fact of reasonable pluralism in the case of justice and rights and in the case of morality and religion? In principle I don't think that there is. In both cases what we do when we disagree is interlocutor, as we've been doing here for an entire semester. We consider the arguments that are provoked by particular cases. We try to develop the reasons that lead us to go one way rather than another. And then we listen to the reasons of other people. And sometimes we're persuaded to revise our view. Other times we're challenged at least to shore up and strengthen our view. But this is how moral argument proceeds, with justice, and so it seems to me, also with questions of the good life.

Now, there remains a further worry and it's a liberal worry, what about if we are going to think of our disagreements about morality and religion as bound up with our

disagreements about justice, how are we ever going to find our way to a society that accords respect to fellow citizens with whom we disagree? It depends I think on which conception of respect one accepts. On the liberal conception, to respect our fellow citizens' moral and religious convictions, is, so to speak, to ignore them, for political purposes. To rise above or to abstract from or to set aside those moral and religious convictions. To leave them undisturbed, to carry on our political debate without reference to them.

But that isn't the only way, or perhaps even the most plausible way of understanding the mutual respect on which democratic life depends. There is a different conception of respect according to which we respect our fellow citizens' moral and religious convictions, not by ignoring, but by engaging them. By attending to them. Sometimes by challenging and contesting them. Sometimes by listening and learning from them. Now, there's no guarantee that a politics of moral and religious attention and engagement will lead in any given case to agreement. There is no guarantee it will lead even to appreciation for the moral and religious convictions of others. It's always possible, after all, that learning more about a religious or a moral doctrine will lead us to like it less. But the respect of deliberation and engagement seems to me a more adequate, more suitable ideal for a pluralist society. And to the extent that our moral and religious disagreements reflect some ultimate plurality of human goods. A politics of moral engagement will better enable us, so it seems to me, to appreciate the distinctive goods our different lives expressed.

When we first came together some 13 weeks ago, I spoke of the exhilaration of political philosophy and also of its dangers. About how philosophy works and has always worked by estranging us from the familiar by unsettling our settled assumptions. And I tried to warn you that once the familiar turns strange, once we begin to reflect on our circumstance, it's never quite the same again. I hope you have

by now experienced at least a little of this unease because this is the tension that animates critical reflection and political improvement and maybe even the moral life as well. And so our argument comes to an end, in a sense, but in another sense goes on. Why, we asked at the outset, why did these arguments keep going even if they raise questions that are impossible ever, finally, to resolve?

The reason is that we live some answer to these questions all the time. In our public life, and in our personal lives, philosophy is inescapable even if it sometimes seems impossible. We began with the thought of Kant, that skepticism is a resting place for human reason. Where it can reflect upon its dogmatic wanderings, but it is no dwelling place for permanent settlement. To allow ourselves simply to acquiescence in skepticism or in complacency, Kant wrote, can never suffice to overcome the restlessness of reason. The aim of this course has been to awaken the restlessness of reason and to see where it might lead. And if we had done at least that, and if the restlessness continues to afflict you in the days and years to come, then we together have achieved no small thing. Thank you.