

“Justice: What's the Right Thing to Do?”

by Michael J. Sandel

Reading Notes and Discussion Questions

Matt Henegar, March 2024

I. Chapter 1: Doing the Right Thing - Sandel poses a dilemma in the pursuit of justice... “if moral reflection consists in seeking a fit between the judgments we make and the principles we affirm, how can such reflection lead us to justice or moral truth, even if we succeed over a lifetime in bringing our moral intuitions and principled commitments and into alignment? What confidence can we have that the result is anything more than a self-consistent scheme of prejudice?” He seems to believe that, similar to dialogues of Plato and Socrates, we can only come to the “best” answer in the public square, through a dialectic process; and not through introspection alone.

1. Have you ever subjected your own views about justice to critical examination? What did that look like? Do you assume that “critical examination” necessarily requires a movement to the progressive end of the political spectrum?
2. What does the process of a critical examination of justice look like? What did you think of Sandel’s three core principles and guideposts... welfare, freedom and virtue as a means to answer these kinds of questions? Is prosperity the right metric? What are the differences between the judgments we make in concrete situations and the principles that inform them? Are you more of a follower of Aristotle (who believed in virtue as the primary marker) or Kant (who chose freedom)?
3. What about Greed? Does a good society always punish greed? What about greed creates a visceral reaction in us? What about Grassley’s comment on AIG and others during the financial crisis that they needed to apologize?
4. What was your take on the bailouts? What about AIG’s bonuses? Was the 90% tax rate appropriate? Is there an argument that banks were taking risks for the larger economic system? Is greed morally bad at a societal level? Could one argue that greed is the precursor to a discussion on justice in the first instance, since economic stability is a prerequisite to discussion on morals?
5. What about the runaway trolley - would you kill the one worker or the five? Would you push the man onto the track to stop the trolley? Are the two scenarios different? How? Does intent matter?

6. What about the story of the Afghan goatherds? Would you have voted as Lutrelle did? Based on your “Christian soul”? Was there another option? Could one argue from a moral perspective that the soldiers never should have been there in the first place?
7. In our endeavors toward justice, how do we rise above the prejudices and routines of everyday life? Do you agree with Sandel that Plato was right “only part” ... that the “claims of the cave must be given their due”? Does a determination of moral justice require “partial and untutored” opinions and convictions in order to avoid the inevitable consequence of self-interest? Sandel goes further and says that “when moral reflection turns political ... it needs some engagement with the tumult of the City.” ... and by that I assume he means New York City! What do you think about that?
8. Are moral convictions malleable? Do they change over time? Can we argue our way to better answers?

II. Chapter 2: Utilitarianism - Sandel asks us in Chapter 2 to grapple with the need to balance to rival approaches to the complicated questions of how we determine right from wrong, namely (1) that the morality of an action depends solely on the results it brings about and (2) that certain fundamental moral questions or rights must be determined based on higher principles irrespective of the costs and benefits. The principle of Utility vs the principle of Liberty.

1. If you were on the jury charged with convicting or exonerating the two men who had killed the cabin boy at sea, what would your verdict have been? What if the cabin boy had died of natural causes before they had eaten him? What would you have done in that situation?
2. Is the notion that the benefits outweighing the costs palatable to you? What about the higher moral principle? How do we balance and apply that? Do you think utilitarianism is the answer? If not, how do we formulate the higher moral principles?
3. What's your opinion of Jeremy Bentham? Do you think all moral questions are answered when we maximize utility or happiness? Is happiness the goal? Can we add it up aggregate happiness, then deduct out any pain or suffering and then say "yes" as long as the number is positive?
4. How do current principles of ESG that are being implemented by large companies here and abroad similar to Bentham's ideas?
5. What did you think about Sandel's summation of the objections to Bentham's theory? Individual rights? How are those rights determined? What about torture (e.g., the terrorist who could divulge the location of a bomb that would kill thousands)?
6. What about the City of Happiness? If you could create a Utopia by putting and keeping a single child into a torture chamber, would you? What if you could live in that City but someone else was dealing with the child?
7. Had you heard the Phillip-Morris and Ford Pinto stories? What did you think of those? Can all values be translated into monetary terms? \$200,000 per life; \$67,000 per injury? Was the number just too low? Or was it wrong to put a price on a life in the first place? Can we reduce all moral questions into a single scale of pleasure and pain?
8. What about Mill's case for liberty and individual freedom? Should folks be liable for only those actions that injure others? Do you think that liberty ultimately leads to the greatest overall happiness? How is that? Is the moral pleasure shared by the most individuals the highest moral pleasure? Shakespeare or Homer Simpson?
9. Is conformity the enemy of the best way to live, as Mill posits? Is our ability to choose our own path the ultimately goal of human existence? Are there aspects of your faith that come into play here? Applying these principles (utility, liberty and character), let's go back and consider how we would rule in the case of the four sailors?

III. Chapter 3: Libertarianism (Do we Own Ourselves) - In Chapter 3, we delve into the ethics of everything from wealth and distributive justice to morality laws and consensual cannibalism. Sandel points out that if one assumes a utilitarian view of justice, a vast redistribution of wealth would seemingly be the best system of taxation. But when individual rights and individual liberty are considered, the state can't simply take from one person and give to another. He also talks about laws designed to save individuals from harming themselves (e.g., seat belt and helmet laws) as well as laws designed to advocate particular views of morality (e.g., laws against prostitution). In framing the arguments, he juxtaposes a utilitarian perspective from a libertarian one.

1. Where do you fall on the spectrum in terms of tax policy? Are you a redistribution advocate? If so, is your thinking similar to the utilitarian argument (i.e., maximizing happiness) or does it come from elsewhere? Do you fall more on the side of individual liberty regarding property once it is acquired? Or are you somewhere in the middle? What is your reasoning for either position?
2. Do the core values of libertarianism resonate with you? What did you think of Robert Nozick's argument that forcing someone to hand over their wages in the form of taxes is akin to slavery if not in whole, at least in part? Does the government truly claim to own part of us if it purports to be able to tax us? Does the constitutional proxy of "no taxation without representation" solve the puzzle?
3. How would you frame the opposing argument to Nozick? Is the fact that we have the choice to work or not work the answer? What about the fact that we utilize common services such as police, fire, roads, etc. that cost money to provide? Is there a middle ground? Can we use the concept of self-ownership as a basis for testing whether laws or actions are just even if we don't buy in to the absolute libertarian theory of it? How would that look? What examples can we draw from an analysis of free speech laws under the U.S. Constitution (discuss NY Times v Sullivan)?
4. Do you agree with Milton Friedman that laws prohibiting discrimination are unjust ... should employers be free to discriminate for any reason they choose? What about state licensing requirements for doctors? What about licenses for grocery store workers? Where do you draw the line?
5. What about assisted suicide or the ability to sell our body parts? What did you think about the Rottenberg consensual cannibalism case?

IV. Chapter 4: Hired Help - In Chapter 4, Michael opens by discussing the implications of military conscription, conscription with option commutation and voluntary armies. His purpose is to help us navigate the process of deciding which path is the most “just” using tools he’s covered so far.

1. What do you think of Michael’s question as to which form of military recruiting? Is conscription akin to slavery? Is it negative from a utilitarian perspective (both sides negotiate a more beneficial system)? But is a voluntary market-based army truly voluntary? Are those joining really free to make that choice? Do you agree that the “free market is not really that free”?
2. Should we go back a step and, rather than asking which form of military recruitment is most just, ask whether war itself is just? How does that look? How would you run that analysis from a Libertarian and then from a Utilitarian perspective? What is your view of Biden’s response to the Iranian escalation over the weekend?
3. What do you think of the idea of conscription with the option of paying for a commutation?