

“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?

IV. Chapter 5: It's All About the Motive - In Chapter 5, Sandel introduces us to the philosophy of Immanuel Kant and his theories of right and wrong. Morality, according to Kant, is not about maximizing happiness or any other end, but respecting persons as ends unto themselves - his principle forms the foundation of universal human rights. It's inconsistent with Utilitarianism (in that the collective good cannot be served if other human beings are subjugated in that process) as well as Libertarianism (in that we cannot simply use our bodies however we choose no matter how "free" we are). Kant rejects the notion of maximizing welfare as well as that of promoting virtue.

1. Do you agree with Kant, in his critique of Libertarianism, that oftentimes the desires we seek to satisfy aren't necessarily our own and that we aren't as free as we sometimes believe? Are we really "obeying our thirst" when we drink a Sprite? What about his critique of Utilitarianism? Is Kant right to conclude that just because something satisfies the desires of the largest number of people doesn't make it the right thing to do? What are some examples of this?
2. Do you agree with Kant that morality should not be based on divine authority? How does reason come into play then? In what ways have Christian Churches in the United States fundamentally missed this principle? Where and why did they go wrong?
3. Do you think the laws of nature or "heteronomy" can help us to understand right from wrong? Can we choose the end itself as opposed to the best means to an end? What does that mean? How does acting autonomously make us more human? And what does that look like? What does it mean?
4. Is it right to conclude that a morally good action can only arise from a morally good motive? Is the motive more important than the consequences? Did the example of the prudent shopkeeper help you understand it? What about the spelling bee hero?
5. Let's get into some other examples. What about sexual morality? Is there a place for sex outside of marriage? Are there sometimes issues with sex even in marriage? How do we decide? Does the notion that both partners need to treat each other as ends (as opposed to a means for sexual gratification) help you formulate a principle about it? Is it possible that our sexual desires aren't really our own and that we aren't necessarily engaging in sexual "freedom" when engaging in sexual acts (whether within or outside of marriage)?
6. What is the supreme principle of morality ... freedom ... reason? Duty vs inclination? Autonomy vs heteronomy? Categorical imperatives vs hypothetical imperatives? Are there others that should be considered ... altruism vs self-centeredness? Privilege vs oppression? Open-mindedness vs prejudice? Advantage vs fairness? Do you agree that humanity has an "absolute value" as an "end in itself"? What does that mean?

7. Here are four questions that Sandel himself asks about Kant's philosophy: (A) Is Kant really just preaching the Golden Rule? (B) Can acting from duty be compatible with freedom (even when we are the authors of the duty we are required to obey)? (C) How can we ensure that everyone will agree on the same categorical imperative or moral law? (D) What if scientists discover that we have no free will after all (and can free will even be determined by science)?
8. Do you agree with Sandel's defense of Kant's categorical imperative principle as applied to lying? Is it better to "deceive" than it is to "lie"? Is it true that there is something admirable in an attempt to uphold the principle of "not lying" by twisting our words around the way Bill Clinton did with Monica Lewinsky and pot smoking? Does it "pay homage" to truth-telling?
9. What about Kant's theory of justice? How do we harmonize each individual's rights with those of others? And do you see the ways in which Utilitarianism and Libertarianism fall short here? What about the social contract? Can it govern if it is merely imagined? Is the idea of reason sufficient in this regard? ... I can't wait to talk about John Rawls so we can flesh this out a bit! But in the meantime, what about using all of these ideas, along with Libertarianism and Utilitarianism, as tools for justice ... or tests that we can run in order to determine the "best" choice in any given situation? Do you think that approach would recognize the fact that justice is ephemeral both in its determination and its application? Do you think Kant is naive to a certain extent in his belief that categorical imperatives can be determined?

VI. Chapter 6: The Case for Equality - In Chapter 6, we learn about John Rawls and his “Theory of Justice” ... where Rawls argues that, although most Americans have not expressly agreed to the social contract contemplated by our Constitution and governing documents, we can choose a social contract based on principles most people would agree to from a starting position of equality. This stands in contrast to the “tacit consent” principles that govern Locke’s theories of justice or “hypothetical consent” contemplated by Kant. The core principles for Rawls are (i) equal basic liberties for all members of a society (which takes priority over social utility and the general welfare) and (ii) basic social and economic equality (which permits only those social and economic inequalities that benefit the least well-off in a particular political system).

1. Do you agree that Rawls approach necessarily eliminates the possibility that people would choose Utilitarianism or Libertarianism? Is it possible that some would either still be risk takers (i.e., it might be who comes out on top) or willing to sacrifice themselves for the good of the whole? Stepping back, do we really only need to choose one system or can we let each these principles guide and inform our decisions about the right answer in any given situation?
2. What about the moral limits of contracts? Do you agree that contracts that are fundamentally unfair should not be enforced? If so, where does the standard of fairness come from? Where would you draw the line ... based autonomy and reciprocity? What did you think of the woman who paid \$50k for a leaky toilet ... or the unbalanced trading of baseball cards?
3. Is consent a sufficient basis for a moral obligation? Is consent always required to establish a moral obligation? What about the house repairs that Hume was arguing he didn’t have to pay for? What the squeegee brigade? Do you think the answer lies in the “benefits” received regardless of consent? What about implicit consent? What is the difference between consent-based and benefit-based obligations? What about the difference between a moral obligation and a legal obligation?
4. What do you think about Rawls’ veil of ignorance? Is that the answer for deciding what type of agreement society would agree to? Do you agree that “equality” should form the basis of making that kind of decision? Do you agree that some can do better in the aggregate in a society where not everything is purely equal? Isn’t this just applying the principles that I was talking about above... where Utilitarianism, Libertarianism and equality are all considered when seeking the most just outcome?
5. What does equality really look like? How do we put everyone on equal footing even if they are of different genders, different socio-economic status, different ethnic and racial backgrounds, different educational upbringings? How does moral arbitrariness come into play?
6. What about Roe v. Wade and equality? Do you think the freedom to choose whether or not to have a child creates an equal playing field? What are some issues that come when you think about this?

VII. Chapter 7: Affirmative Action - In Chapter 7, Michael uses some of the building blocks we've worked through up to this point in order to analyze the arguments for and against affirmative action. He uses examples from university admissions standards in order to frame the discussion and he applies Rawls and Kant in digging into the various arguments for and against the practice. In the end, Sandel concludes that it's harder than you might think to separate questions of "justice and rights" (e.g., a purely merit-based admissions system and/or traditional college degrees) from questions of "honor and virtue" (e.g., a system that includes affirmative action and/or honorary degrees). In doing so, he seems to be using a Rawls-based approach to point out to those traditionally opposed to the notion that affirmative action might just be the best "rule of the game" under the "veil of ignorance".

1. What was your opinion regarding affirmative action before reading Chapter 7? Did your views change after you read and considered Sandel's arguments on the topic? Is it unjust to consider race or ethnicity as factors in hiring or university admissions? Is it unjust not to?
2. What do you think of the three reasons for promoting affirmative action? Do you think correcting for testing bias is a viable argument? Did you find it odd that Martin Luther King Jr. scored poorly on his SAT verbal test? How would you analyze this issue from a utilitarian and/or libertarian perspective? Is it just a different set of rules that is more likely to lead to equal outcomes, using the Rawls' "veil of ignorance"?
3. What do you think about the compensatory argument? Is it fair to require those who weren't directly involved in past wrongs to have to pay for them or is it fair to provide benefits to those who didn't directly suffer those past wrongs? Do you believe in collective responsibility? What would a libertarian say about it? What about a utilitarian?
4. What about the notion of affirmative action as a means of promoting diversity? Is diversity a worthy objective? Why or why not? Do you think affirmative action would be effective at bringing about a more pluralistic society? Or might it instead breed animosity, feelings of inferiority, etc among the beneficiaries and those negatively affected?
5. What about the Kantian theorists here? Do you believe that affirmative action violates the fundamental rights of those that are rejected as a result of it? Do you think there is a right to be awarded admission based solely on merit or virtue? Thinking about Rawls, could affirmative action be viewed simply as a different set of the "rules of the game"?
6. What did you think about reverse affirmative action and the idea of having racial balance in federally-funded middle income housing? What about the idea of tipping points and avoiding "white flight"? Is that a just goal or objective from a policy perspective? Do you agree with Sandel that it is just if you accept the diversity rational as a basis for supporting affirmative action programs?
7. Do you agree that the notion of "moral deserts" as a basis of distributive justice (or the notion that "success is the crown of virtue") is problematic? And can that form a basis for arguing in favor of affirmative action? What do you think of the notion that jobs are

rewards for those who earn them? What about the moral arbitrariness of fortune? Do you think college admission should lottery-based? What about “legacy” or “development”-based admissions? Are those any more or less fair or just than affirmative action-based admissions? What would be your analysis using the tools we’ve learned so far?

8. In his point about how complicated questions of “justice and rights” vs. questions of “honor and virtue” can be, Sandel says that in some ways all degrees are honorary degrees? What does he mean? Do you agree with him? If he’s right, how does this impact the argument for or against affirmative action?

VII. Chapter 8: Who Deserves What (and a little riff on Aristotle) - We start Chapter 8 with the story of a cheerleader who had cerebral palsy and the question as to whether she should have been subjected to the same test as the other cheerleaders. What's fair is at the heart of the question in Chapter 8.

1. What do you think of the cheerleader question? Do you think the issue is to properly define the standards or job description so to speak? Is that right? Do you think they would redefine the role for other kids who didn't suffer from cerebral palsy? What happens when we redefine roles like this? Do you think there are broader implications in other places in our social hierarchy?
2. What about Aristotle's principles of justice? How do the forces of telos (i.e., the purpose or essential nature of a particular practice) and honor (i.e., what virtues should be honored and rewarded) come into play in our understanding of justice? What does Sandel mean when he says modern theories of justice try to separate these two concepts? Do you agree with Aristotle that justice can be broken down to "things" and "the persons to whom things are assigned"?
3. So assuming for a minute that we all are Aristotelians at heart, how do we go about defining what is "equal" and thus who should get what? Do you agree with Aristotle that the best flute players should get the flutes? Do we eliminate bias using this approach ... like auditioning musicians from behind a screen? How does that make certain assumptions about what is "equal" using teleological thinking? What if Bill Gates and Elon Musk bought all the tennis courts in the world and tried to keep Rafael Nadal and Roger Federer off of them?
4. Did the allegory about Winnie the Pooh resonate with you? Does the buzzing noise necessarily mean there is going to be honey and is the only reason for making honey so that Pooh can eat it? Is this really just an example of narcissism that most people grow out of?
5. Circling back to Affirmative Action ... how do we determine the telos of universities? What is the social purpose or essential purpose of a university? What virtues should be honored and rewarded in deciding who gets to spend time there? Is that the same for all universities? Who decides? How do economics and market dynamics come into play?
6. What are some other examples where the practice of combining the Aristotelian theories of telos and honor can help us to make decisions on the best paths forward? What about health care? What about economic equality and opportunity? What about marriage equality? What about religious practice? What about the democrats (majority decides) vs the oligarchs (protecting wealth) in terms of political authority?
7. Do you agree with Aristotle that the purpose of politics is to serve the higher goal of learning how to live a good life? Should political offices go to those with the greatest civic virtue and best at identifying the common good? How do we decide that? Do you think Aristotle's view of utilitarianism is the right one... i.e., it's not just about

maximizing happiness but taking pleasure and pain in the right things? How do we practice the idea of “learning virtue” and how do churches have a role here?

8. What about Aristotle’s view the purpose of the law ... to cultivate the habits that lead to good character? Who decides what is good character? What about the freedom for that definition to evolve with the feelings and beliefs of the society the law purports to govern? How do we decide which habits to promote? What is practical wisdom? Do you agree that politics is essential to the good life?
9. What did you think of Aristotle’s defense of slavery? Where do you suppose that came from? In what ways does the de-humanization of those we wish to control lead to things like slavery or racial injustice? What about manipulative and controlling religious or church paradigms? What happens when the notion of “fit” overtakes the role of “choice”? Do you agree that Aristotle’s theories themselves form the basis for condemning his views on slavery? In thinking about the “necessary” and “natural” arguments ... in what ways does this idea of de-humanization come into play?

IX. Chapter 9: What do we Owe One Another - A discussion of reparations, among other things, dominates Chapter 9, in which Sandel highlights the issues of collective responsibility and the claims of community. Sandel talks about the difference between the German and Japanese approaches to atrocities committed during WWII, noting that Germany had paid billions of dollars in reparations to Jews and the State of Israel, whereas Japan had not even apologized to Korean and other Asian women who were forced into prostitution for the benefit of Japanese soldiers in that era. Interestingly, the U.S. government chimed in and urged the Japanese government to provide such an apology. Sandel goes on to talk about aboriginal people in Australia and the need for similar considerations in the U.S., for the Japanese victims of internment camps, the overthrow of the Kingdom of Hawaii, as well as the institution of slavery. Official apologies for slavery have come from the U.S. Congress, as well as the States of Virginia (the largest slave-holding state), Alabama, Maryland, North Carolina, New Jersey and Florida. However, as of the time Sandel wrote this book, only 4% of whites in the U.S. favored reparations of some sort for slavery.

1. What do you think of Sandel's argument that an apology for something done by a prior generation is meaningless? Do you agree that only someone who is implicated in an injustice can apologize for it? Do white Americans today bear any responsibility for the injustices committed during the era of slavery or lynching? What do you think of the doctrine of moral individualism?
2. Can one only be responsible for obligations they take on themselves? How does this jive with the notion that "to whom much is given, much will be expected"? Does legitimate government depend on consent as John Locke argued? What about Kant's argument that to be free is to be autonomous and that the law of autonomy must be given to oneself? How do we layer in Rawls "veil of ignorance"?
3. Do you think governments should be morally neutral? How does Aristotle's vision of the right/freedom to pursue the good life come into play when thinking about collective responsibility, official apologies, reparations and claims of community? Reminder that in Aristotle's view, maximizing the good requires us to have the freedom to realize our nature and develop our human capacities. Kant and Rawls reject Aristotle's view and believe that "right" comes before the "good". What do you think? In what way are we truly free... before we have willed the moral law ... or after?
4. The teleological doctrines proposed by Aristotle, in Kant's and Rawls' view, are radically misconceived. The primary basis of their view lies in the notion that human beings are defined not by their ends but by their capacity for choice. "The self is prior to the ends which are chosen by it." How did you react to this, assuming you were able to keep all of the moving pieces in order?
5. How does all of this hit you relative to the debate we listened to this past week? In what ways have our political parties robbed us of our freedom of choice? How would you characterize our current state of politics? Is it more in line with Kant and Rawls or is it more akin to what Aristotle was talking about? Why? What are some examples? Sandel concludes that "freedom of choice" alone, even under fair conditions, is not an adequate

basis for a just society? Do you agree? Why?

6. How do claims of community come into play in thinking about Sandel's arguments? How do we properly account for the moral weight of community without jeopardizing individual freedom? In "After Virtue", McIntyre, posits that we are all "lived narratives" with a teleological character that projects us toward a future. And that our job is to figure out which path is best in light of that path and that our choices are not entirely a sovereign act of free will. ... Sandal and McIntyre are building a foundation for the core principle of the "claims of community" and from that the notion of "collective responsibility". What did you think about that? Do you agree that we come to understand the narrative of our own life only in the context of the stories in which we find ourselves?
7. In what ways does the tendency toward anthropomorphism make it more challenging to assess the efficacy of communal apologies? In other words, why do you suppose those who oppose collective apologies and/or reparations do so on the basis that they themselves should be held responsible for the acts of others? And on the other side, why do you suppose those who argue in favor of such communal responsibility do so on the basis that individuals should? Would it make the analysis easier if we looked at nations, states, towns, communities etc as "beings" and assess whether that "being" is responsible or not (regardless of how the individual members who align with or benefit from that "being" were involved in past wrongs)?
8. What did you think of Sandel's three cornerstones of communal claims? Claims of natural law (e.g., the 10 commandments), claims of contract/consent/mutual benefit (e.g., I take care of my parents because they took care of me) and claims of solidarity (e.g., go USA!)? How does this help us assess questions of collective responsibility, national apology and things like reparations?