

A Rabbinic Dialogue with Michael Sandel's "Justice"

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Some of Sandel's key ideas in moral/political theory

There are three types of theories of ethics and justice, grounded in:

- *consequences* -- between two choices, the better is the one that leads to the better consequences or outcomes
- *contract* or *consent* -- an action is just if it is based on an agreement between the parties involved, or if the overall system is built on a social contract
- *character* -- just actions flow from virtuous people, and the key to just behavior or a just society is the cultivation of virtue in individuals

The debate about individual rights and distributive justice (who is entitled to wealth or income) is best understood not in terms of "liberal" or "conservative", but rather in terms of these overall philosophical approaches:

- *utilitarianism* (Jeremy Bentham, John Stuart Mill) -- the standard of justice is the greatest net "happiness" for the greatest number of people
- *libertarianism* (John Locke, Robert Nozick) -- individuals are entitled to anything they acquire in a fair exchange, and no one's property can be taken from them without their consent in order to make someone else better off
- *liberal egalitarianism* (Immanuel Kant, John Rawls) -- individuals under conditions of true equality would agree to a social contract in which socioeconomic inequality would only be permitted if it works to benefit the least advantaged
- *communitarianism* (the Aristotelian tradition, Sandel, Michael Walzer) -- participation in a political community searching for the common good is a primary moral good, and inequality is dangerous because it attacks the possibility of civic community

The first three theories are in philosophical terms *liberal*, in that they are rooted in one or another vision of the individual's freedom or happiness. Communitarianism begins with a vision of social perfection and virtue, and individual happiness is understood against that backdrop. While the policy outcomes may be similar, the grounds for them can be very different.

Utilitarianism

Jewish sources drawn from Laurie Zoloth, Health Care and the Ethics of Encounter: A Jewish Discussion of Social Justice

1. John Stuart Mill, "Utilitarianism" (England, 1863)

The creed which accepts as the foundation of morals, Utility, or the Greatest Happiness Principle, holds that actions are right in proportion as they tend to promote happiness, wrong as they tend to produce the reverse of happiness. By happiness is intended pleasure, and the absence of pain; by unhappiness, pain, and the privation of pleasure... [P]leasure, and freedom from pain, are the only things desirable as ends; and that all desirable things (which are as numerous in the utilitarian as in any other scheme) are desirable either for the pleasure inherent in themselves, or as means to the promotion of pleasure and the prevention of pain.

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, that is the more desirable pleasure.

2. Tosefta (3rd century C.E.): Terumot 7:20

סיעה של בני אדם שאמרו להם גוים תנו לנו אחד מכם ונהרגהו ואם לאו הרי אנו הורגין את כולכם יהרגו כולן ואל ימסרו להן נפש אחת מישראל אבל אם ייחדוהו להם כגון שייחדו לשבע בן בכרי יתנו להן ואל יהרגו כולן

If a group of people were told by non-Jews, "Give us one of your group and we will kill him, and if not, we will kill you all," they should all be killed rather than surrendering even one soul of Israel. However, if they designated a specific person in the manner that Sheva ben Bichri was designated, they should surrender him to them rather than that all of them be killed.

3. Talmud Yerushalmi on Terumot (3rd-5th century C.E.)

אמר רבי שמעון בן לקיש והוא שיהא חייב מיתה כשבע בן בכרי ורבי יוחנן אמר אף על פי שאינו חייב מיתה כשבע בן בכרי

Rabbi Shimon ben Lakish said: "This applies if he is deserving death like Sheva ben Bichri." Rabbi Yochanan said: "Even if he was not deserving of death like Sheva ben Bichri."

4. Rabbi Menachem Meiri (13th century), commentary on the above

ואין צריך לומר בסיעה של בני אדם והיה ביניהם טרפה שימסרוהו ואל יהרגו שהרי
ההורגו פטור

It goes without saying that in the case of a group of travelers, if one of them was a *trayfah*, he may be surrendered in order to save the life of the rest, since the killer of a *trayfah* is exempt from the death penalty.

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The Tzedakah System and the Philosophy of John Rawls

John Rawls, *A Theory of Justice* (Harvard University Press, 1971), section 24

The idea of the original position is to set up a fair procedure so that any principles agreed to will be just... Now in order to do this I assume that the parties are situated behind a veil of ignorance. They do not know how the various alternatives will affect their own particular case and they are obliged to evaluate principles solely on the basis of general considerations.

It is assumed, then, that the parties do not know certain kinds of particular facts. First of all, no one knows his place in society his class position or social status; nor does he know his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like....

As far as possible, then, the only particular facts which the parties know is that their society is subject to the circumstances of justice and whatever this implies. It is taken for granted, however, that they know the general facts about human society....

Rabbi Moses Maimonides, Mishneh Torah

Ch. 7, *Hilchot Matnot Anirim* -- Laws on Gifts for Poor People

מצות עשה ליתן צדקה לעניי ישראל כפי מה שראוי לעני, אם הייתה יד הנותן משגת

Halacha 1: It is a do-it commandment to give tzedakah/ justice money to poor people, according to what is appropriate for the poor person if it is within the power of the giver.

שנאמר "פתוח תפתח את ירך, לו" (דברים טו,ח), ונאמר "והחזקת בו, גר ותושב וחי עימך" (ויקרא כה,לה), ונאמר "והי אחיך, עימך" (ויקרא כה,לו).

As it is said, "Open, yes open your hand to him" (Deuteronomy 15:8), and as it is said, "And strengthen/hold onto him, whether a stranger or a resident, and he will live with you" (Leviticus 25:35), and as it is said, "Your brother's life is with you" (Leviticus 25:36).

וכל הרואה עני מבקש, והעלים עיניו ממנו, ולא נתן לו צדקה--עובר בלא תעשה, שנאמר "לא תאמץ את לבבך, ולא תקפוץ את ירך, מאחריך, האביון" (דברים טו,ז)

Halacha 2: And anyone who sees a poor person begging and makes his eyes ignore him and does not give him tzedakah has violates a don't-do-it commandment, as it is said, "Do not make your heart strong and do not jump your hand from your brother who is needy" (Deuteronomy 15:7).

לפי מה שחסר העני, אתה מצווה ליתן לו

Halacha 3: According to what the poor person is lacking, you are commanded to give to him.

אם אין לו כסות, מכסין אותו; אין לו כלי בית, קונין לו כלי בית; אין לו אישה, משיאין לו אישה; ואם הייתה אישה, משיאין אותה לאיש

If he has no covering, they cover him. If he has no household utensils, they buy for him. If he has no wife, they arrange for him to be able to marry, and if she is a woman, they arrange for her to be able to marry a man.

אפילו היה דרכו של זה העני לרכוב על הסוס ועבד רץ לפניו, והעני וירד מנכסיו--קונין לו סוס לרכוב עליו ועבד לרוץ לפניו, שנאמר "די מחסורו, אשר יחסר לו" (דברים טו,ח); ומצווה אתה להשלים חסרונו, ואין אתה מצווה לעשרו

Even if it was the way of this particular poor person to ride on a horse with a servant running before him, and he became poor and lost his possessions, they buy him a horse and a servant to run before him, as it is said, "Enough for his lack that he is lacking" (Deuteronomy 15:8). You are commanded to make up what he lacks, and you are not commanded to make him rich.