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Conclusion ~ Justice and the Good Life
[24]
      PROFESSOR: We have two remaining questions to answer.
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      First, is it necessary, is it unavoidable, to take up questions of
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      the good life in thinking about justice?
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      And is it possible to reason about justice?
      Yes, I think so.
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      Let me try to develop those answers to those two questions.
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      Now, as a way of addressing those questions, we began last time to
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      discuss the question of same sex marriage.
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      And we heard from those who argued against same sex marriage on the
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      grounds that the purpose, or telos, of marriage, is at least in part
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      procreation, the bearing and raising of children.
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      And then there were those who defended same sex marriage.
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      And they contested that account of the purpose, or telos, of marriage
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      arguing, we don't require, as a condition of heterosexual marriage,
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      that couples be able or willing to procreate.
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      We allow infertile couples to marry, this was Hannah's point in the
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      exchange with Mark.
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      But then there was another position expressed at the end of our discussion
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      by Victoria, who argued, we shouldn't try to decide this question.
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      We shouldn't, at least at the level of the state, at the level of law, try to
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      come to any agreement on those questions about the good, because we
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      live in a pluralist society where people have different moral and
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      religious convictions.
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      And so we should try to make law and the framework of rights neutral with
      respect to these competing moral and religious views.
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      Now, it's interesting that others, some others, who favor the idea of
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      neutrality argued not in favor of restricting marriage to a man and a
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      woman, nor in favor of permitting same sex marriage, they argued, in the name
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      of neutrality, for a third possibility, which is that government
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      get out of the business of recognizing any kind of marriage.
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      That was the third possibility.
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      Now, Andrea Mayrose had an interesting contribution to this debate.
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      She had a rejoinder to people who argue for neutrality.
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     Where is Andrea?
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0036 All right. Andrea, would you be willing to share with us the view-- if we can get you a 0037 0038 microphone. 0039 Share with us your view. Why do you think that it's a mistake for the state to try to be neutral on 0040 0041 moral and even religious questions like same sex marriage? 0042 ANDREA: I don't know that it is possible, because people's lives 0043 are completely embedded in how they view the world. And maybe I just agree with Aristotle that the role of the government is 0044 0045 helping people live in a sort of--0046 like having a collective understanding what is wrong and what is right. PROFESSOR: Is it possible--0047 and one could ask the same question of abortion that we've been asking of 0048 0049 same sex marriage. Do you think it's possible to decide whether abortion should be permitted 0050 or prohibited, without taking a stand or making a judgment about the moral 0051 0052 principality of abortion? ANDREA: No, I don't think it is. 0053 0054 And I think that's why it's such a controversy, because people are so 0055 deeply committed to their fundamental beliefs about whether a fetus is a 0056 life or if it isn't. 0057 So if I believe that like a fetus is a living being and has rights, and has 0058 fundamentally the right to live, then it's very hard for me to say, but I 0059 can put that aside and let you do what you want. 0060 Because that's like me saying, well, despite my beliefs, I'm going to let 0061 you commit what to me is murder. 0062 So I mean, that's just one. 0063 PROFESSOR: All right. 0064 And the analogy in the same sex marriage case is, you said you're a 0065 defender of same sex marriage. 0066 ANDREA: Yes. 0067 PROFESSOR: But you only came to that view once you were persuaded on the 0068 underlying moral question. 0069 ANDREA: Right. 0070 Well, I think particularly in US, so many people's beliefs are driven by their religious beliefs. 0071

And like Mark the other day, I'm Christian, I'm Catholic, and I had to

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      decide for myself on a lot of thought, a lot of prayer, a lot of
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      conversations, whether the people that I disagreed with the Catholic
      standpoint that homosexuality itself isn't a sin.
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      And once I came to that sort of conclusion in my personal relationship
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      with God, I mean, that sounds hokey, right?
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      That's like, oh, religious.
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      But a lot of people are religious and that's where they draw their beliefs
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      and their views from.
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      That's when I could say, yeah, I'm down with the state saying, go same
      sex marriage because I'm OK with that and I think that's morally OK.
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      PROFESSOR: Good, thank you.
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      Now who would like to reply?
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      If you can perhaps hang on there for a moment, who would like to reply to
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      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
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      homosexuality and figuring out the purpose, the telos, the
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      proper end of marriage.
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      Who disagrees with Andrea on that point?
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      Yes.
      DANIEL: Well, I think you absolutely can separate your moral opinion and
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      what you think the law should be.
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      For example, I think abortion is unequivocally, morally wrong.
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      But I do not believe that illegalizing abortion makes it go away.
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      I don't believe illegalizing abortion stops it.
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      And therefore, I am pro-choice and I do believe the woman should have the
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      choice, as it gives them more safety.
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      Just as, maybe, morally I don't want to get married to a man, but I'm not
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      going to try to impede someone else's freedom to do what they wish to do in
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      terms of the law.
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      ANDREA: Whether the law makes something legal or illegal, is it's
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      implicitly approving or disapproving something.
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      By making abortion legal, we're saying it's OK.
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      As a society collectively, we're saying, it's OK with us in our society
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      to abort a fetus.
      If we make it illegal, then we're saying collectively that as a society
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     it's not OK.
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     And that's why societies have different beliefs.
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      PROFESSOR: Tell us your name before--
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      DANIEL: My name's Daniel.
      SPEAKER 1: Daniel.
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     What do you say?
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      DANIEL: Are we saying collectively that it's OK?
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      Are we saying that collectively we don't want women who are going to have
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      an abortion anyway to go to clinics in the side alleys and have it in unsafe
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      conditions?
      PROFESSOR: All right, bring it to the same sex marriage case.
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      Why don't you have to decide that which position you're in favor of same
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      sex marriage, Daniel, being legally permitted.
      DANIEL: I think it absolutely should be legally permitted.
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      Because it's not something telling me that I need to marry a man.
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      If two men are consenting adults and want to get married, I don't see how I
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      could even object to that.
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      PROFESSOR: There's no harm.
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      There's no harm done.
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      DANIEL: Either way.
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      Even if it is morally wrong, according to me.
      PROFESSOR: All right.
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      Let me turn to the way the Massachusetts court, who made this
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      landmark ruling in the same sex marriage case, grappled with the very
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      issue that Andrea and Dan had been discussing here.
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      Thanks to both of you very much.
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      What did the court say?
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      This was in the Goodridge case, which required the state of Massachusetts to
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      extend marriage to same sex couples.
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      The court started out--
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      well, the court was conflicted.
      If you read that opinion carefully, the court was conflicted as between
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      the two positions we've just been hearing defended by Andrea and by Dan.
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      The court begins--
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      and this is Chief Justice Margaret Marshall's opinion.
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      It begins with an attempt at liberal neutrality.
      "Many people hold deep seated religious, moral, and ethical
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      convictions that marriage should be limited to the union of one man and
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      one woman, and that homosexual conduct is immoral.
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0147 Many hold equally strong religious, moral, and ethical convictions that 0148 same sex couples are entitled to be married, that homosexual persons should be treated no differently than their heterosexual 0149 neighbors." This is the court. 0150 0151 "Neither view answers the question before us. What is at stake is quote, respect for individual autonomy, and 0152 0153 equality under law. 0154 At stake is an individual freely choosing the person with whom to share an exclusive commitment." 0155 0156 In other words, at issue is not the moral worth of the choice, but the 0157 right of the individual to make it. 0158 So this is the liberal neutral strand in the court opinion--0159 strand, the one that emphasizes autonomy, choice, consent. But the court seemed to realize that the liberal case, the neutral case for 0160 recognizing same sex marriage doesn't succeed, doesn't get you all the way 0161 0162 to that position. Because if it were only a matter of respect for individual autonomy, if 0163 government were truly neutral on the moral worth of voluntary intimate 0164 0165 relationships, then it should adopt a different policy, which is to remove 0166 government and the state altogether from according recognition to certain associations, certain kinds of unions, rather than others. 0167 If government really must be neutral, then the consistent position is what 0168 0169 we here have been describing as the third position. 0170 The one defended in the article by Michael Kinsley, who argues for the 0171 abolition of marriage at least as a state function. 0172 Perhaps a better term for this is the dis-establishment of religion. 0173 This is Kinsley's proposal. 0174 He points out that the reason for the opposition to same sex marriage is 0175 that it would go beyond neutral toleration and give same sex marriage 0176 a government stamp of approval. 0177 That's at the heart of the dispute. 0178 In Aristotle's term's, at issue here is the proper distribution of offices 0179 and honors, a matter of social recognition. 0180 Same sex marriage can't be justified on the basis of liberal neutrality or nondiscrimination or autonomy rights alone. 0181 Because the question at stake in the public debate is whether same sex 0182 unions have moral worth, whether they're worthy of honor and 0183

0184	recognition, and whether they fit the purpose of the social
0185	institution of marriage.
0186	So Kinsley says, you want to be neutral then "let churches and other
0187	religious institutions offer marriage ceremonies.
0188	Let department stores and casinos get into the act if they want
0189	to." This is Kinsley.
0190	"Let couples celebrate their union in any way they choose and consider
0191	themselves married whenever they want.
0192	And if three people want to get married, or if one person wants to
0193	marry himself or herself, and someone else wants to conduct a ceremony for
0194	them and declare them married, let them.
0195	If you and your government aren't implicated, what do you
0196	care?" This is Kinsley.
0197	But this is not the position that the Supreme Judicial Court of
0198	Massachusetts wanted.
0199	They didn't call for the abolition or for the dis-establishment of marriage.
0200	The court did not question government's role in conferring social
0201	recognition on some intimate associations rather than others.
0202	To the contrary, the court waxes eloquent about marriage as quote, "one
0203	of our community's most rewarding and cherished institutions." And then it
0204	goes on to expand the definition of marriage to include
0205	partners of the same sex.
0206	And in doing so, it acknowledges that marriage is more than a matter of
0207	tolerating choices that individuals make.
0208	It's also a matter of social recognition and honor.
0209	As Justice Marshall wrote, "in a real sense there are three partners to
0210	every civil marriage: two willing spouses and an approving State.
0211	Marriages is at once a deeply personal commitment, but also a highly public
0212	celebration of the ideals of mutuality, companionship, intimacy,
0213	fidelity, and family." This is the court.
0214	Now, this is reaching well beyond liberal neutrality.
0215	This is celebrating and affirming marriage as an honorific, as a form of
0216	public recognition.
0217	And therefore, the court found that it couldn't avoid the debate about the
0218	telos of marriage.
0219	Justice Marshall's opinion considers and rejects the notion that the
0220	primary purpose of marriage is procreation.

0221 She points out that there's no requirement that applicants for a marriage license who are heterosexuals attest to their ability or their 0222 intention to conceive children. 0223 Fertility is not a condition of marriage. 0224 0225 People who cannot stir from their death bed may marry. So she advances all kinds of arguments, along the lines that we 0226 0227 began last time, about what the proper and the essential nature, the telos of 0228 marriage is. And she concludes, "not procreation, but the exclusive and permanent 0229 commitment of the partners to one another is the essential point and 0230 purpose of marriage." 0231 Now, nothing I've said about this court opinion is an argument for or 0232 0233 against same sex marriage. But it is an argument against the claim that you can favor or oppose 0234 same sex marriage while remaining neutral on the underlying moral and 0235 0236 religious questions. So all of this is to suggest that, at least in some of the hotly contested 0237 debates about justice and rights that we have in our society, the attempt to 0238 0239 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. 0240 0241 Even the court, which wants to be neutral on these moral and religious 0242 disputes, finds that it can't. 0243 What, then, about our second question? 0244 If reasoning about the good is unavoidable in debates about justice 0245 and rights, is it possible? 0246 If reasoning about the good means that you must have a single principle, or 0247 rule, or maxim, or criterion for the good life that you simply plug in 0248 every time you have a disagreement about morality, then the answer is no. 0249 But having a single principle or rule is not the only way, not the best way 0250 of reasoning either about the good life, or about justice. 0251 Think back. 0252 Think back to the arguments that we've been having here about justice, and 0253 about rights, and sometimes about the good life. 0254 How have those arguments proceeded? 0255 They've proceeded very much in the way that Aristotle suggests, moving back and forth between our judgments about particulars--0256 particular cases, events, stories, questions--0257

0258 back and forth between our judgments about particular cases, and more 0259 general principles that make sense of our reasons for the positions we take 0260 on the particular cases. 0261 This dialectical way of doing moral reasoning goes back to the ancients, 0262 to Plato and Aristotle. But it doesn't stop with them, because there is a version of Socratic, or 0263 0264 dialectical, moral reasoning that is defended with great clarity and force 0265 by John Rawls, in giving an account of his method of justifying a theory of justice. 0266 You remember, it's not only the veil of interest in the principles that 0267 Rawls argues for. 0268 It's also a method of moral reasoning, reasoning about justice, that he calls 0269 reflective equilibrium. 0270 What is the method of reflective equilibrium? 0271 It's moving back and forth between our considered judgments about particular 0272 cases, and the general principles we would articulate to make sense of 0273 0274 those judgments. And not just stopping there, because we might be wrong in our initial 0275 0276 intuitions. Not stopping there, but then sometimes revising our particular judgments in 0277 0278 the light of the principles once we work them out. So sometimes we revise the principles, sometimes we revise our judgments and 0279 0280 intuitions in the particular cases. 0281 The general point is this, and here I quote Rawls, "a conception of justice 0282 can't be deduced from self-evident premises. 0283 It's justification is a matter of the mutual support of many considerations, 0284 of everything fitting together into one coherent view." And later, in A Theory of Justice, he writes, "moral philosophy is Socratic. 0285 0286 We may want to change our present consider judgments once their 0287 regulative principles are brought to light." 0288 Well, if Rawls accepts that idea, and advances that notion of reflective 0289 equilibrium, the question we're left with is--0290 he applies that to questions of justice, not to questions of morality 0291 and the good life. And that's why he remains committed to the priority of the 0292 right over the good. 0293 He thinks the method of reflective equilibrium can generate shared 0294

0295 judgments about justice in the right. 0296 But he doesn't think they can generate shared judgments about the good life, about what he calls comprehensive moral and religious questions. 0297 And the reason he thinks that, is that he says that in modern societies there 0298 0299 is a fact of reasonable pluralism about the good. 0300 Even conscientious people who reason well, will find that they disagree about questions of the good life, about morality and religion. 0301 0302 And Rawls is likely right about that. 0303 He's not talking about the fact of disagreement in pluralist societies. He's also suggesting that there may be persisting disagreements about the 0304 good life and about moral and religious questions. 0305 0306 But if that's true, then is he warranted in his further claim that the same can't be said about justice? 0307 Isn't it also true, not only that we, as a matter of fact, disagree about 0308 justice in pluralist societies, but that at least some of those 0309 disagreements are reasonable disagreements in the same way. 0310 Some people favor a libertarian theory of justice, others a more egalitarian 0311 theory of justice, and they argue. 0312 0313 And there is pluralism in our society, as between free market, laissez-faire, libertarian theories of justice, and more egalitarian ones. 0314 0315 Is there any difference in principle, between the kind of moral reasoning, 0316 and the kind of disagreements that arises when we debate about justice, and the meaning of free speech, and the nature of religious liberty? 0317 0318 Look at the debates we have over appointees to the Supreme Court. 0319 These are all disagreements about justice and rights. 0320 Is there any difference between the fact of reasonable pluralism in the 0321 case of justice and rights, and in the case of morality and religion? 0322 In principle, I don't think that there is. 0323 In both cases, what we do when we disagree is we engage with our 0324 interlocutor, as we've been doing here for an entire semester. 0325 We consider the arguments that are provoked by particular cases. 0326 We try to develop the reasons that lead us to go one 0327 way rather than another. And then we listen to the reasons of other people. 0328 And sometimes we're persuaded to revise our view. 0329 Other times we're challenged, at least, to shore up and 0330 strengthen our view. 0331

0332 But this is how moral argument proceeds, with justice, and so it seems to me, also with questions of the good life. 0333 Now, there remains a further worry, and it's a liberal worry. 0334 0335 What about --0336 if we're going to think of our disagreements about morality and 0337 religion, as bound up with our disagreements about justice, how are 0338 we ever going to find our way to a society that accords respect to fellow 0339 citizens with whom we disagree? It depends, I think, on which conception of respect one accepts. 0340 On the liberal conception, to respect our fellow citizen's moral and 0341 religious convictions is, so to speak, to ignore them 0342 for political purposes--0343 To rise above, or abstract from, or to set aside those moral and religious 0344 convictions, to leave them disturbed, to carry out our political debate 0345 without reference to them. 0346 But that isn't the only way, or perhaps even the most plausible way, 0347 of understanding the mutual respect on which democratic life depends. 0348 There is a different conception of respect, according to which we respect 0349 0350 our fellow citizen's moral and religious convictions not by ignoring, 0351 but by engaging them, by attending to them, sometimes by challenging and 0352 contesting them, sometimes by listening and learning from them. 0353 Now, there's no guarantee that a politics of moral and religious 0354 tension and engagement will lead, in any given case, to agreement. 0355 There's no guarantee it will lead even to appreciation for the moral and 0356 religious convictions of others. 0357 It's always possible, after all, that learning more about a religious or a 0358 moral doctrine will lead us to like it less. 0359 But the respect of deliberation and engagement, seems to me a more 0360 adequate, more suitable ideal for a pluralist society. 0361 And to the extent that our moral and religious disagreements reflect some 0362 ultimate plurality of human goods, the politics of moral engagement will 0363 better enable us, so it seems to me, to appreciate the distinctive goods 0364 our different lives express. 0365 When we first came together, some 13 weeks ago, I spoke of the exhilaration of political philosophy, and also of its dangers. 0366 But how philosophy works, and has always worked, by estranging us from 0367 the familiar, by unsettling our settled assumptions. 0368

0369	And I tried to warn you that once the familiar turns strange, once we begin
0370	to reflect on our circumstance, it's never quite the same again.
0371	I hope you have, by now, experienced at least a little of this unease,
0372	because this is the tension that animates critical reflection, and
0373	political improvement, and maybe even the moral life as well.
0374	And so our argument comes to an end in a sense, but in another sense goes on.
0375	Why, we asked at the outset, why do these arguments keep going, even if
0376	they raise questions that are impossible ever finally to resolve?
0377	The reason is that we live some answer to these questions all the time.
0378	In our public life and in our personal lives, philosophy is inescapable, even
0379	if it sometimes seems impossible.
0380	We began with the thought of Comte, that skepticism is a resting place for
0381	human reason, where it can reflect upon its dogmatic wanderings, but it
0382	is no dwelling place for permanent settlement.
0383	To allow ourselves simply to acquiesce in skepticism or in complacence, Comte
0384	wrote, can never suffice to overcome the restlessness of reason.
0385	The aim of this course has been to awaken the restlessness of reason, and
0386	to see where it might lead.
0387	And if we have done at least that, and if the restlessness continues to
0388	afflict you in the days and years to come, then we together have achieved
0389	no small thing.
0390	Thank you.

[CLAPPING]