



CHAPTER 8 SOCIAL JUSTICE: THE GOOD SOCIETY

Introduction

In this chapter, we will look at how moral theories inform our understanding of the good society. This is important because your personal moral practices and goals are necessarily integrated with broader social/political interests. Our investigations in the present chapter will be focused on the rational, reflective, and deliberative perspective of the Ethics of Justice in its relation to the social order. In the following chapter, we will take up the question of our relation to the social order from the perspective of the Ethics of Care and its corresponding set of theoretical perspectives.

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The individual and the state

Social justice issues — poverty, crime, national security, income and wealth disparity, homelessness, unfairness and bias in the distribution of benefits and burdens in society, etc. — are some of the most pressing moral concerns impacting the lives of all members of society, including you and me right now at this moment. To be an individual human being is already to be immersed dynamically in a social order that conspires with us to produce our moral self, even as these moral selves collectively produce the social order that configures them in turn. In other words,



we are inextricably connected to and intertwined with society. Thus, it makes a lot of sense to be concerned about its proper functioning — its *moral* functioning — since **the proper ordering and functioning of society is integral to your possibility of achieving the best possible life.** Let's look a little closer at this.

The ancient Greek philosophers had a keen awareness of the fundamentally important and dynamic relationship between the individual and the social/political order. This was expressed in the all-important notion of the “citizen.” You can see the importance of this communal belonging reflected in the severe criminal punishment of being exiled, for example. Exile was thought to be a near equivalent of execution. **To be exiled meant being severed from the state and the social order and thus from the very possibility of self-actualization and fulfillment as a moral person.** Exile from the moral community is not the route to living the best possible life. You *need* other persons and society in order to effectively be you.

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That we need the state and the social/political order to self-actualize and ultimately to self-transcend as a moral self, that is, to achieve the good life, should be clear by now from our consideration of how the moral self is configured in previous chapters. The moral person and the community are inextricably and symbiotically connected through overlapping and reciprocal practices and processes. All your moral decisions are thus always made within a horizon of concern for the moral orientation of the social order, regardless of the extent to which you take it into consideration or are conscious of it. The social order is an *inescapable horizon* of all human perception and judgment.



Thus, to seek the good society, to seek social justice and to ensure that the laws and policies that organize and govern the social/political domain are fair and consistent with the best moral principles is to the benefit of every member of society. The health of society is everyone's concern.

The social order is like a collective individual person. From that perspective, it is as if the social order, just like you and me, also desires to live the best possible life that a society can live. And, it is in the best interests of all of us that it should.



What does social justice mean to YOU? (1:54)

The question of social justice

How should we effectively conceptualize the just society? What is the best organizational form for society to have and the best form of government? What is the proper relation of the individual and society? How should the benefits and burdens of society be distributed among its members in a way that is fair to all? How should the emerging global social order be morally understood and managed? In order to sketch out conceptual frameworks within which we may be able to formulate answers to these questions of social justice, we will turn to several versions of *Social Contract* theory and a variety of perspectives on *Distributive Justice* theories. These conceptual frameworks are used every day all around the world to evaluate the nature, structure, and functioning of the just society and the social/political policy-making by which it is governed.

Finally, we will briefly consider the relation between *legality and morality* in this chapter. The social order is structured by both moral and legal orientations that are always changing along a continuum of relatively stable moral and legal foundations. We will see that the scope of morality is much broader and more fundamental than that of legality; yet law is what brings the moral order into being concretely and specifically for everyone. Thus, the development of law must be guided by moral considerations before and above all.

Social justice



Social justice issues, as you might expect, often appear in the news stories of the day. This should not be surprising since the only place morality happens is in the everyday world of existential moral subjects engaged in various interweaving and overlapping practices. An ethics course could be structured effectively by events reported in the daily news. Two such stories that illustrate the difference between an enlightened and unenlightened view of social justice made headlines in the news toward the end of 2016 and into 2017.

The first story described a longstanding toxic culture at Wells Fargo Bank that resulted in extensive moral impropriety, lawbreaking, and moral harm involving thousands of bank employees and managers, as well as the bank itself. It was a moral implosion that had been instigated by over-the-top, immoral, and aggressively administered sales policies emanating from the CEO himself and primarily geared to benefit the bank's shareholders. These corporate policies were then thoughtlessly and ruthlessly implemented by all levels of the bank's management team, causing great harm, including harm to lower-level employees.



A second story in the news, weaving its way around increasingly damning accounts of the Wells Fargo debacle, focused on the announcement of the "Chan-Zuckerberg Initiative" in which the Zuckerberg family pledged many mega bucks toward the goal of eliminating all diseases in their lifetime or the lifetime of their daughter. Facebook may have its share of problems, but the Chan-Zuckerberg Initiative is a beautiful thing.

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Two stories. The shadowy darkness and moral anemia of the first story provides a good illustration of the invisible **social contract** by its unfortunate breach, a breach caused by greed. In contrast, the hopeful brightness of the second story reveals an exemplary, altruistic responsiveness to the moral demands that the social contract places on us all.

Take a closer look at what happened at Wells Fargo back in 2017. According to numerous sources, there was a “pressure cooker” environment throughout all branches of the bank that put a great deal of performance-review stress on low-level employees to get existing customers to purchase the bank's various products, a process known as “cross-selling.” Because it was almost impossible for employees to meet the stringent sales goals that were imposed, with the threat of termination if they failed, many employees opened customer accounts, issued credit cards or lines of credit, and ‘sold’ other bank products to already existing Wells Fargo customers, often without their knowledge or approval. To meet the draconian quotas attached to the cross-selling policy and keep their jobs, employees opened more than 3.5 million fraudulent accounts.

Some bank employees resisted. In fact, some morally courageous employees used the Wells Fargo “Ethics Hotline” to complain about the process. These employees were fired shortly afterward for trivial reasons. Numerous stories emerged from terminated employees about the toxic conditions at the bank. Wells Fargo ended up firing 5300 low-level employees, and CEO John Stumpf was hauled before Congress to answer a barrage of critical questions from members of Congress, most of which were left unanswered. The board of directors finally forced Stumpf and other top-level executives to resign and withheld their bonuses. The bank paid a regulatory fine of \$185M and settled a class action lawsuit for \$142M. More fines will be forthcoming. The bank went into an expensive process of damage control from a self-inflicted catastrophe from which it is still reeling with a long, uphill process of reputational repair ahead. [And the two-year scandal just won't seem to end. Or end....](#)

Stumpf is a good example of a guy who missed achieving the best possible life as the result of a bad moral judgment that created a toxic culture at what had always been a successful business, thus harming a lot of people and tarnishing his professional success permanently. What happened at Wells Fargo put a good-sized dent in the social contract while the Zuckerberg initiative polished up the social contract a bit. Let us see how these two courses of action can be evaluated from the perspective of Social Contract theory. What is the nature of the Social Contract? How is it formed and what is the source of our obligation to it?



Social contract theories and principles

Social contract theory focuses on the tacit or explicit agreement among members of society to abide by the laws and norms that govern the social order and contribute to the social good from which all benefit. From the perspective of social contract theory, Wells Fargo violated the social contract by undermining public trust, which is an integral part of the social contract and of special importance for banks and the financial sector of society. As Martin Luther King put it, injustice anywhere is a threat to justice everywhere.

The social contract is held in place by laws, social norms, practices, regulations, and moral values that would guarantee that everyone benefitting from the social contract would be operating

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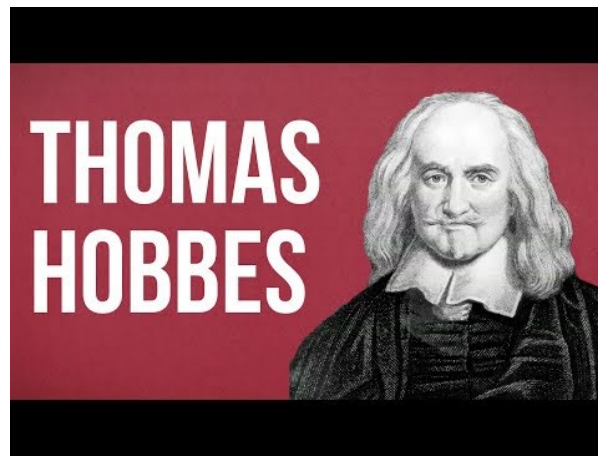
on a level playing field. It is as if Wells Fargo decided to step back into what Thomas Hobbes called the “state of nature,” a realm guided by morally unfettered self-interest in Hobbes’ view. While other businesses were respecting the social contract, Wells Fargo was acting like a *free rider* seeking special advantage by unduly pressuring low-level bank employees through the situational impact of corporate culture to act immorally and break the law. Few found the strength of character to resist. Social contract theory, the very nature of the social contract, would condemn such actions. The first book-length description of Social Contract theory was written by philosopher Thomas Hobbes in his classic work entitled *Leviathan*.

Thomas Hobbes (1588-1679)



“During the time men live without a common power to keep them all in awe, they are in that condition called war; and such a war, as if of every man, against every man. To this war of every man against every man, this also is consequent; that nothing can be unjust. The notions of right and wrong, justice and injustice have there no place. Where there is no common power, there is no law, where no law, no injustice. Force and fraud are in war the cardinal virtues. No arts; no letters; no society; and which is worst of all, continual fear, and danger of violent death: and the life of man, solitary, poor, nasty, brutish and short....”

From [Leviathan by Thomas Hobbes](#)



A brief overview of Hobbes' Social Contract theory

(6:45)

Social contract theory, which is nearly as old as philosophy itself although Hobbes is the first to thematize it as such, is the view that the moral and/or political obligations of all members of the social order are dependent upon an explicit or tacit agreement among them to form and govern the society in which they live. Social contract theory today is associated with a blend of moral and political theory called **political science that was given its first full exposition and defense by Thomas Hobbes.**

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In its various versions, Social Contract theory, as with Ethics generally, always presumes a certain view of human nature or human subjectivity. Thus, Hobbes' political theory is best understood if taken in two parts: his theory of human motivation, based on an empirical form of *psychological egoism*, and his theory of the social contract, founded on the hypothetical thought experiment involving the construct called the *state of nature*. Hobbes has, first and foremost, a theory of human nature which gives rise to his view of morality and politics.

From Hobbes' point of view, human beings like you and I are essentially very complicated organic machines, responding to the stimuli of the social and physical world mechanistically and in accordance with universal laws of human nature.

The mechanistic orientation of human psychology implies the subjective nature of normative claims. 'Love' and 'hate', for instance, are just words we use to describe the things we are mechanistically and determinatively drawn to and repelled by.

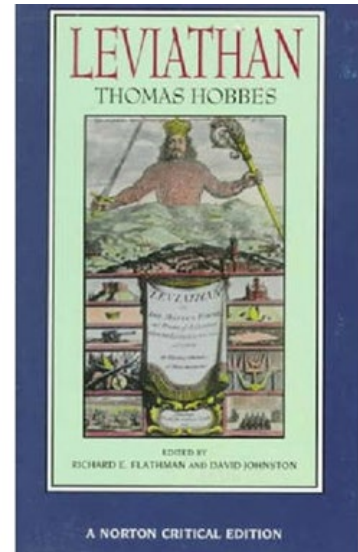
In addition to *moral subjectivism*, Hobbes also infers from his mechanistic theory of human nature that humans are necessarily and exclusively motivated by *egoistic self-interest*. Thus, everything you do, from this perspective, is motivated solely by the will to better your own situation and satisfy as many of your own desires as possible by getting what you want for yourself and avoiding what you don't want; others come second.

From these premises based on his view of human nature, Hobbes goes on to construct a compelling argument for why people ought to be willing to relinquish some of their freedom and autonomy and submit to the rule of an *absolute political authority*, a monarch. He does this by imagining persons in the *state of nature*, prior to any laws or government, that is, prior to the establishment of the social order.

In the state of nature, Hobbes argued, people are naturally and exclusively self-interested and concerned primarily with their own self-preservation. People are more or less equal to one another since even the strongest man can be killed in his sleep. There are limited resources, of course. Yet, there is no governing power able to force people to cooperate and refrain from harming or stealing from one another. Given these conditions, Hobbes concludes that the state of nature would be unbearably brutal "...solitary, poor, nasty, brutish and short." It is the state of perpetual and unavoidable "war," as Hobbes makes clear in the quote from *Leviathan* above.

However, the situation for folks in such a miserable state of nature is not hopeless. **Being rational and self-interested**, Hobbes asserts, and thus recognizing the benefit of peaceful coexistence to fulfill their own interests, persons can be expected to construct a *Social Contract* that will afford them a life other than that available to them in the state of nature.

The Hobbesian view of the social contract has two parts. First, all must agree to cooperate peacefully, insofar as others are likewise willing to do so. Secondly, all must agree to be governed by an absolute power capable of punishing all breaches of the contract. While living under such a sovereign can possibly be harsh, it is better than living in the state of nature, Hobbes argued.



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According to this argument, morality, politics, society, and all the benefits that come with it, are purely conventional, established by the social contract.

Prior to the establishment of the basic social contract, according to which people agree to abide by the terms of the social contract enforced by an absolute authority, nothing is immoral or unjust, for Hobbes.

Thus, from this mechanistic and egoistic view, the social contract is the most fundamental source of all that is good and that which we depend upon for our self-actualization and achievement of the best possible moral life. Without it we would be lost.

Although it is certainly a good thing that the social contract lifts us up out of the state of nature, not everyone was happy about Hobbes' justification for society being ruled by an absolute monarch, since this left open the door to tyranny and despotism. Additionally, much criticism focused on Hobbes' dim view of human nature. The idea that humans in the state of nature were motivated solely by self-interest and self-preservation, and that no moral values existed until the formation of the social contract so that all morality is strictly conventional, was deeply problematic from the perspective of a **religiously informed worldview** and understanding of human nature common at the time. Hobbes was an atheist.

Consequently, challenges to the egoistic and mechanistic orientation of Hobbes' theory gave rise to another version of social contract theory from a younger contemporary philosopher by the name of **John Locke**.

John Locke (1632–1704)



According to philosopher **John Locke**, the state of nature, which is the natural condition of humans, is not a Hobbesian hell-hole but a state of perfect and complete liberty. You have the freedom to conduct your life as you see fit, free from the interference of others. This does not mean, however, that it is a state of licentiousness: you are not free to do whatever you want in the state of nature, or even everything that you think is in your best interest. There are others to consider.

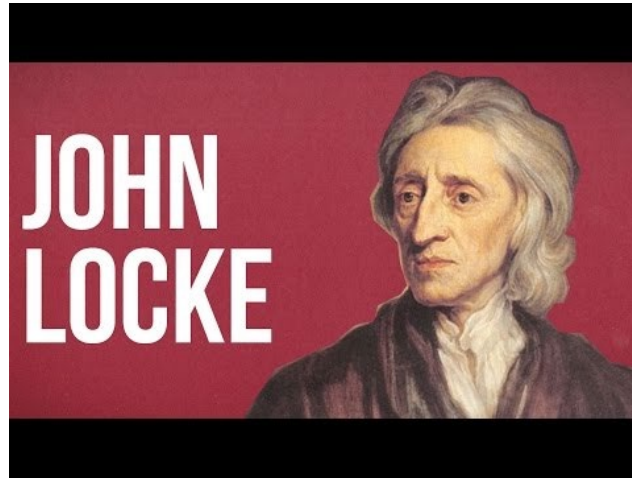
For Locke, the state of nature is not a state without morality. The state of nature is pre-political, but it is not pre-moral. In the state of nature, we are already endowed with moral features called *inalienable rights* to life, liberty, and property. These basic moral values are inscribed in the God-given *law of nature* that is further inscribed in every person, according to Locke.

The state of nature for Locke, therefore, is not the same as the state of war, as it is according to Hobbes. It can, however, devolve into a state of war, especially over *property disputes* since **private property** was thought by Locke to be, by virtue of those God-given rights, a necessary condition for the possibility of happiness. Whereas the state of nature is the state of liberty, where persons recognize the laws of nature and therefore do not harm one another, the state of war can begin between two or more persons *by the stealing property*.



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Property plays an essential role in Locke's argument for civil government and the contract that establishes it. According to Locke, private property is created when you mix your labor with the raw materials of nature. So, for example, if you were to till a piece of land in nature, making it into a piece of farmland that produces food by the 'sweat of your brow', then you would have a basis for a claim to own that piece of land and the food produced upon it, as long as it is not owned by anyone else.



John Locke (9:14)

Given the implications of the law of nature, however, there are limits as to how much property you can own: you are not allowed to take more from nature than you can use, thereby leaving others without enough for themselves. Because nature is given to all people by God for everyone's subsistence, you cannot take more than your own fair share. This constraint upon our freedom of acquisition in Locke's social contract theory provides a philosophical basis for the current understanding of "sustainability."

You can see how property is the linchpin of Locke's argument for the social contract and civil government because it is for the protection of your enjoyment of property ownership, including the property of your own body (which is the first 'property' everyone 'owns' according to Locke), that motivates people to abandon the free state of nature and agree to be bound by the social contract.



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Because the motivation to form a government arises from everyone's rational self-interest to enjoy and thus protect their property, their liberty, and their general well-being, it is not hard to imagine the conditions under which the civil compact with government could be destroyed. People would be justified in resisting the authority of a corrupt civil government, according to Locke. When the executive power of a government devolves into tyranny, then the resulting tyrant puts himself or herself back into a state of nature, and specifically into a state of war with the people, and so the people then have the same right to self-defense as they had before making a compact to establish society in the first place. This also justifies citizens "right to bear arms."

Because Locke did not envision humans in the state of nature as grimly as did Hobbes, he can imagine conditions under which one would be better off rejecting a particular civil government and returning to the state of nature, with the aim of constructing a better civil government in its place. *It is therefore both the view of human nature, and the nature of morality itself, which account for the differences between Hobbes' and Locke's views of the social contract.*

Since people have an inherent morality in the state of nature and were thus able to control and direct the course of their own lives, Locke also held that the power to govern resides with the collective will of the people and should not be given to a monarch. Governments should be established through democratic voting. But would this guarantee that elected governments would be just and fair?

Philosopher John Rawls responded to this question by taking the basic orientation of Social Contract theory to a new level when he used it to establish his very influential theory of **justice as fairness**.

John Rawls (1921 - 2002)



Professor John Rawls was an American political philosopher in the liberal or Enlightenment Liberalism tradition. His theory of *justice as fairness* describes a society of free citizens holding equal basic rights and cooperating within an egalitarian economic system. The way in which the basic values and rules that will govern this society are formulated, in order to assure that the rules are fair, borrows an idea from Hobbes and uses it as an organizing strategy for achieving fairness.

The basic idea underlying Rawls' idea of justice is that the goods in society should be shared or distributed fairly among the members of society. But what is fair? In his monumental text, [*A Theory of Justice*](#), Rawls uses a variation of Hobbes' social contract theory in the form of a hypothetical thought experiment to reach a practical notion of "fairness." He then argues that justice, itself, *is* fairness. Rawls was not trying to construct a complete social contract theory but merely to present a justifiable framework of principles by which social policies and institutions could be rationally created and evaluated.

Here is Rawls' approach to setting up the principles that will govern fair policy making in the good society. Imagine that you are among a group of people who are presently in a kind of pre-political state of nature and are tasked with the challenge of coming up with the basic rules by which your new society will be organized, a society that all members of the group will also themselves be a part of, but which is yet unformed.

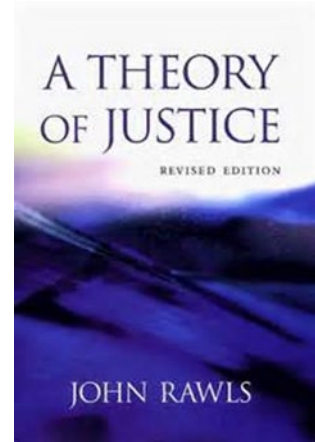
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Now, in this imaginative exercise, the members of the group are behind a “[veil of ignorance](#).” This means that nobody knows any of the specific characteristics (sex, height, race, etc.) of anyone else in the group or about any of the people who will be in the future society. The only thing that is known is that everyone is rational and motivated by self-interest. Rawls argues that from this “**original position**” the basic values or principles that this hypothetical group comes up with will be free of bias and prejudice and, thus, fair.

Rawls thinks that the only principles that would be agreed upon by all in the original position behind a ‘veil of ignorance’ are the [liberty principle](#) and the [difference principle](#).

The *liberty principle* provides for maximum freedom and universal respect for persons as a minimum standard for all. But, while all persons may be morally equal, we also know that in the “real world” there are significant differences between individuals that under conditions of liberty will lead to social and economic inequalities.

The *difference principle* permits such inequalities and even suggests that it may be to the advantage of all, but *only* if two conditions apply. **First**, any special benefits in an otherwise **egalitarian** social/political order must flow to the least advantaged. **Secondly**, there should be an absolute and real **equality of opportunity** for all in order to offset the unequal natural distribution of physical ability, natural talent, social position, etc. A society constructed and governed by these moral principles would be a just society, according to Rawls.



Brief explanation of justice as fairness (6:33)



Distributive justice theories and principles

Introduction

Whenever a person or institution violates the fundamental public trust that is inherent in the social contract, you are sure to find that there are also issues of [distributive justice](#) at play in the mix. *Distributive justice theories focus on how society's rules, regulations, and policies determine, allocate and disburse or distribute the benefits and burdens of society in a fair and equitable manner.* The tax code, for example, is an obvious distributive justice mechanism. Questions of distributive justice are at the heart of the widespread income and wealth disparity that is increasingly threatening the national and international social order economically. For example, we have seen clear distributive justice violations reflected in the cross-selling scandal at Wells Fargo.

Think about this. Wells Fargo CEO Stumpf was pulling down a lot more than chump change in dividends from his substantial holdings of Wells Fargo stock options, (not to mention the rest of his oversized compensation package). This rose in value substantially during the years

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that low-level bank employees (the same ones who were later fired, as if the scam were entirely their fault) were being ruthlessly pressured into illicit cross-selling that generated millions of dollars in fees and new accounts while stuffing the Wells Fargo reputation box — all of which contributed to pumping up the value of Stumpf's stock holdings, right? He was getting a bigger piece of the pie than he was entitled to.

What about the whistle-blowers at Wells Fargo who were fired for communicating their doubts about the morality and legality of the toxic culture at the bank and who now can no longer get a job in the banking industry?

These situations are distributive justice issues because the underlying conditions which make them possible impact the distribution of benefits and burdens in society. That is why some U.S. senators think Wells Fargo should be investigated by the Labor Department for criminal violations, and the board of directors should be dismantled in order to repair the breach to the social contract. Some board members have been forced to resign and caps were placed on the bank's allowable assets growth in order to get the bank back to fairness.

Wells Fargo also violated the basic rights of their customers that stem from the social contract. The bank infringed on its customers' right to privacy and freedom to determine their own lives without interference, stole from them, and misled them with lies that violated their right to the truth from a supposedly trustworthy financial institution. It violated the right to free speech of the workers who complained about this unethical practice and their right not to be retaliated against for doing the morally correct thing. And what about the harm to those 5300 terminated workers who were, at least in part, victims of a toxic corporate culture? Unfortunately, Wells Fargo is a good example of how things can go very wrong for a company when the basic principles of morality and social justice are ignored among top managers.

But there was also the other story about the Chan-Zuckerberg Initiative. This philanthropic gesture exemplifies the best aspects of the Ethics of Care. It reflects a more human side of the social contract. Sure, the social contract means that we should not rob, cheat, or steal from others,



and that we should strive to achieve social justice, but it also means more than that. It means that it is in our own best interest to be concerned for and contribute to the welfare of others who are also a part of the social order created and sustained by the social contract, and to be responsive to their needs. ***Caring for others is the way in which the social contract and distributive justice are nurtured, strengthened and sustained.*** Let's take a closer look at a variety of distributive justice perspectives. See where you stand.

The scope of distributive theories and principles

The governance framework that each society has — its laws, institutions, policies, etc. — results in different distributions of benefits and burdens across members of the society. These economic frameworks are the result of human political processes and they constantly change

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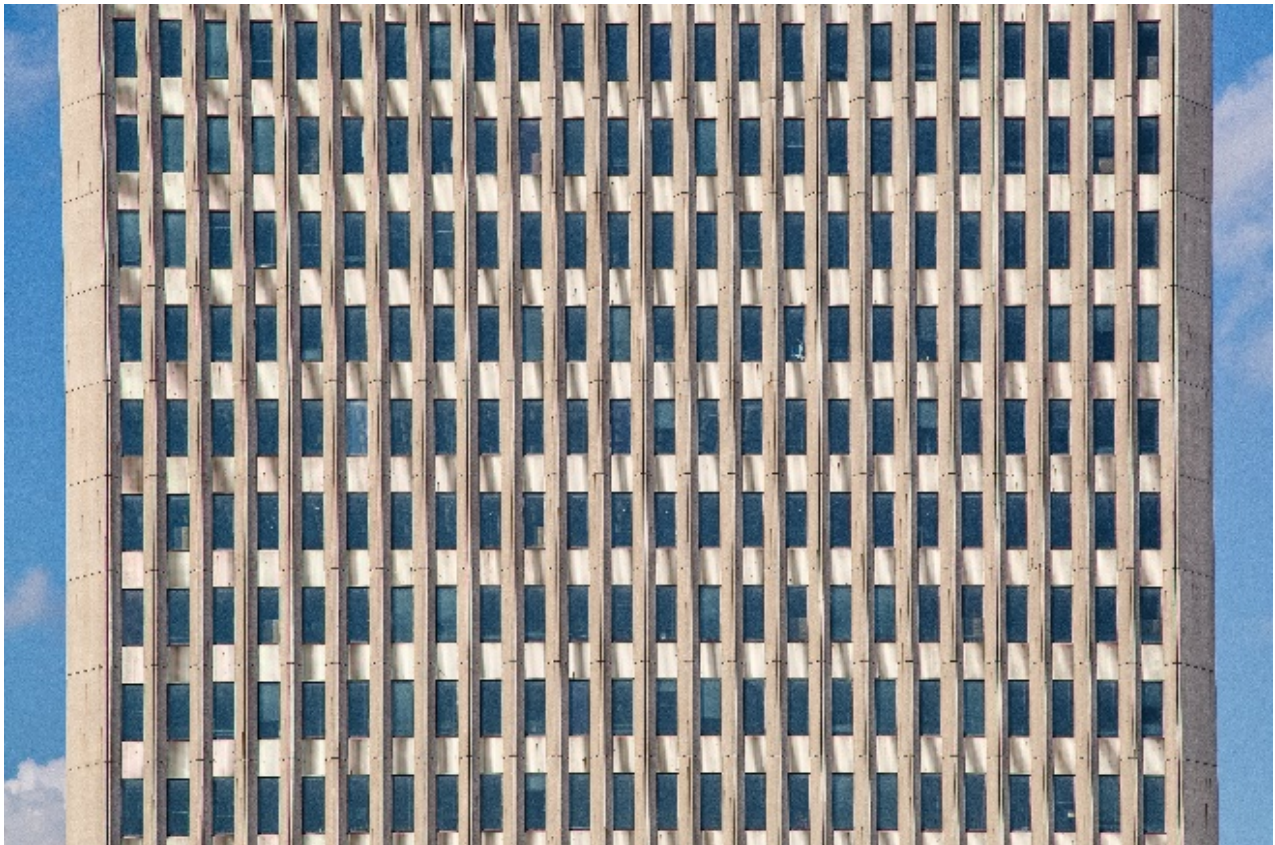
across societies and within societies over time. The structure of these frameworks is important because the economic distributions resulting from them fundamentally affects your life and mine and everyone's.

Arguments about which frameworks and/or resulting distributions are morally preferable constitute the topic of *distributive justice*. Principles of distributive justice are therefore best thought of as providing moral guidance for the political processes and structures that affect the distribution of economic benefits and burdens in societies, like how should we structure the tax code so that it is fair, how extensively should the poor be helped, etc.

1. Egalitarian distributive principles

One of the simplest principles of distributive justice is that of strict, or radical, equality. The principle says that every person should have the same level of material goods and services. The principle is commonly justified on the grounds that people are morally equal and that equality in material goods and services is therefore the best way to actualize this moral ideal in practice. Sounds good at first glance, but....

Even with this ostensibly simple principle some of the difficult specification problems of distributive principles can easily be seen. *The two main problems are the construction of appropriate indices for measurement (the index problem), and the specification of time frames as to when equality should be measured.* Because there are numerous proposed solutions to these problems, the 'principle of strict equality' is not a single principle but a name for a group of closely related principles. [Note: This range of possible specifications occurs with all the common



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principles of distributive justice that we are considering here, which constitute an extensive field of knowledge.]

2. Rawls: Real equality but favor the disadvantaged

Since we already looked at Rawls' theory of justice above, let me just mention here the special importance of Rawls' Difference Principle. In the context of Rawls' liberty principle where everyone is to have maximum liberty and rights comparable to others, the difference principle asserts that if there are to be any inequalities in the social and economic distribution of goods, this inequality should satisfy two conditions: (a) it should be attached to positions to which everyone has equal opportunity; and (b) it should be the greatest benefit to the least advantaged members of society.

The main moral motivation for the Difference Principle is similar to that for strict equality: equal respect for persons. Indeed, the Difference Principle materially collapses to a form of strict equality under empirical conditions where differences in income have no effect on the work incentive of people. The overwhelming economic opinion is that in the foreseeable future the possibility of earning greater income will bring forth greater productive effort, although income is not the only source of work incentive and some research would suggest that income is not the best source of work incentive compared to internal sources of motivation like "job satisfaction."

3. Luck and equality of opportunity

The distribution of material goods and services is not the only economic distribution which is important to people. The distribution of opportunities is also important. As noted in the previous section, John Rawls conjoined his Difference Principle with a principle of equality of opportunity. Endorsement of some form of equality of opportunity is very prevalent among distributive justice theorists and, indeed, among the general population, especially when combined with some form of *market distributive mechanism*.

Equality of opportunity rules out discrimination on grounds such as a person's race, ethnicity, age or gender. What is the underlying problem with a society lacking formal equality of opportunity? The concern seems to be rooted in the belief that traits such as a person's gender or race are elements over which people have no control. Thus, a society in which people's race or gender have fundamental effects on their lifetime economic prospects treats people unfairly, which is unjust. In such societies, whether people were born as the favored gender or race, and thus favored economically, would simply be a matter of *luck*, pure chance. Rawls' claim is that structuring a society so that this 'natural lottery' has such fundamental effects on people's lives is immoral. This is especially true because we have the option to structure it another way, with a system of formal equality of opportunity.

The foregoing is relatively uncontroversial, but even with formal equality of opportunity, there will remain many factors over which people have no control, but which will affect their lifetime economic prospects, such as whether a person's family can afford to purchase good quality educational opportunities or health care. These influences children are exposed to are a matter of their luck (for better or worse) in the 'social lottery'. Shouldn't the mechanisms for the distribution of the goods of society take this natural lottery into account? What do you think?



4. Utilitarian-oriented principles

Welfare-based distributive justice principles are motivated by the utilitarian idea that what is of primary moral importance is the level of welfare that people attain or fail to attain. Advocates of welfare-based principles view the concerns of other theories — material equality, the level of primary goods of the least advantaged, resources, desert-claims, or liberty — as concerns that are derived from welfare. Such concerns are only valuable in so far as they affect welfare, so that all distributive questions should be settled entirely by how the distribution affects welfare guided by the Utilitarian principle of the greatest welfare (good) for the greatest number.

However, there are many ways that welfare can be used in answering these distributive questions, so welfare-theorists need to specify what welfare function they believe should be maximized. The welfare functions proposed, consequences, vary according to what will count as welfare and the weighting system for that particular form of welfare. Not only what the consequences are for a particular distribution but the weight of those consequences for welfare must be taken in account. What counts as a “good” for one person might not be what counts as a good for someone else. How should such preferences for goods or welfare be calculated? Enshrining such preferences in clear policy is a difficult task.

5. Who deserves what? Desert-based theories



One complaint against the welfare approach to distributive justice is that it ignores, and in fact cannot even make sense of, claims that people *deserve* certain economic benefits as a result of their actions. And it is insensitive to the arbitrary infliction of harm on a few for the benefit of many, a common desert-based complaint against a ‘rich tax’, for example. The complaint is often motivated by the concern that various forms of welfare in practice treat people as mere containers for

well-being, rather than purposeful beings in their own right, responsible for their actions and creative in their environments.

The different desert-based principles of distribution differ primarily according to what they identify as the *basis for deserving*. While Aristotle proposed virtue, or moral character, to be the best desert-basis for economic distribution, contemporary desert theorists have proposed desert-bases that are more practically implemented in complex modern societies. Most contemporary desert theorists have pursued John Locke's lead in this respect. Locke argued that people deserve to have those items that are produced by their own hard work, the products (or the value thereof) being a fitting reward for their effort. Locke's underlying idea was to guarantee to individuals the fruits of their own labor and industry. This position would also need to account for the claims of equality of opportunity outlined above.

Most contemporary proposals for what should count as a basis for desert fit into one of three broad categories:

- **Contribution:** People should be rewarded for their work activity according to the value of *their contribution to the good of the social order*.
- **Effort:** People should be rewarded according to the effort they expend in *their work activity*.
- **Compensation:** People should be rewarded according to *the costs they incur in their work activity*, like professional/college education, training, experience, stressfulness of job, etc.

According to contemporary desert theorists, people freely apply their abilities and talents, in varying degrees, to socially productive work. People come to deserve varying levels of income by providing goods and services desired by others. Distributive systems are just insofar as they distribute incomes according to the different levels earned or deserved by the individuals in the society for their productive labors, efforts, or contributions.

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Contemporary desert-principles all share the value of contributions that raise the standard of living collectively, ‘**the social product**’, such as some social media platforms. Under each principle, only activity directed at raising the social product will serve as a basis for deserving distributive rewards, such as income and social position.

6. Libertarian distributive principles

Libertarians often argue that because just patterns of distribution can only follow from the just actions of individuals, no arbitrarily determined and structurally imposed distribution patterns are needed. How about if we just eliminate the tax code altogether? That would suit libertarians.



Libertarian **entitlement theory** generally includes reference to the *principles of justice in acquisition and transfer*. The principle of justice in transfer is the least controversial and is designed to specify fair contracts while ruling out stealing, fraud, etc. The principle of justice in acquisition is more complicated and more controversial.

The principle of justice in acquisition is meant to govern the gaining of exclusive property rights over the material world. Entitlement theory, similar to some desert-based theory, takes its inspiration from Locke's idea that everyone ‘owns’ themselves and, by mixing one's labors with the world, self-ownership can generate ownership of some part of the material world, as we saw above.

Libertarians usually advocate a system in which there are exclusive property rights, with the role of the government restricted to the protection of these property rights. These property rights commonly rule out taxation for purposes other than raising the funds necessary to protect property rights.

The obvious objection to this claim is that it is not clear why the first people to acquire some part of the material world should be able to exclude others from it (and, for instance, be the land owners while the later ones become the wage laborers). In response to this objection, libertarian theorists follow Locke in recognizing the need for a qualification on just acquisition. According to the **Lockean Proviso**, mentioned above, an exclusive acquisition of the external world is just, if, after the acquisition, there is “*enough and as good left in common for others.*” One of the main challenges for libertarians has been to formulate a morally plausible interpretation of this **sustainability** proviso.

7. Feminism and distributive justice

There is no one feminist conception of distributive justice. Social justice theorists who name themselves feminists defend positions across the political spectrum. Hence, feminists offer distinctive versions of all the theories considered so far as well as others. One way of thinking about what unifies many feminist theorists is an interest in *what difference, if any, the practical experience of gender makes to the subject matter or study of social and distributive justice*. How

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different feminists answer this question distinguishes them from each other and from those alternative distributive principles that most inspire their thinking.



One phrase or motto around which a whole range of feminists have rallied, however, marks a significant break with Enlightenment liberalism: **“the personal is political.”** Feminists have offered a variety of interpretations of this motto, many of which take the form of a critique of liberal theories. Mill was crucial in developing the liberal doctrine of limiting the state's intervention in the private lives of citizens. Many contemporary feminists have argued that the resulting liberal theories of justice have fundamentally been unable to accommodate the injustices that have their origins in this ‘protected’ private sphere of the home, such as spousal abuse, unequal pay for women, and lack of real and equal opportunity.

Feminist critique has also been a primary source of inspiration for the broader multicultural critique of liberalism that is reflected in the existential-phenomenological approach guiding the formation of this text. The liberal commitments to government neutrality and to a protected personal sphere of liberty, where the government must not interfere, have been primary critical targets.

Morality & Legality

Ethics and the law are not identical in the scope of their interests. Typically, the law tells us what we are prohibited from doing or what we are required to do with clear, specific parameters, like speed limits. It is said that the law sets minimum standards of tolerable behavior while ethics sets maximum standards, which seems unnecessarily cryptic to me. Morality is certainly a much broader domain than legality. Moral controversies, like abortion and gay marriage, always precede



and are finally settled to some extent, practically speaking, by the enactment or decree or precedent of law—which does not resolve the moral question. There is often sharp disagreement about the interpretation of the law in new circumstances. Justices of the Supreme Court, and other multiple-judge courts, are often divided in their opinions and interpretations of the law, for example.

The law, insofar as it impacts business, changes over time as it imposes broader or narrower obligations in relation to business activity, such as with directors' duties and the loosening of regulations under the current administration in Washington. Yet legal duties and ethical duties do not always correspond. Something may be legal, like capital punishment or abortion, but some may consider it to be morally unacceptable. And we may consider something morally acceptable, like smoking pot, for example, but it may not be legal. Or it could be legal in one place but not another, as with marijuana laws. But morality does not work that way. Numerous multinational companies are facing a public backlash for not paying adequate tax. While this may not have been

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an illegal activity at the time, it is considered wrong by many from a moral perspective and has thus motivated congress to get to work passing laws to make sure it stops. Often, the law must play catch-up with morality.

In other instances, what has long been viewed as a morally acceptable thing to do may have been made illegal in an effort to change cultural practices that disadvantage or endanger certain groups. In India, seeking, giving or accepting a dowry is now illegal, and child marriage has been outlawed in many jurisdictions. Laws are often enacted after there has been moral outcry and public deliberation of the issue.

Also, throughout history we also have instances of “civil disobedience” where laws that are considered unjust are disobeyed in an effort to change them, illustrating *the broader range of morality than the law*. This occurred with civil rights activist [Rosa Parks](#), for example, whose civil disobedience—refusing to sit at the back of the bus--brought about the beginning of the end of racial segregation laws in the United States.

A key issue to consider in relation to morality and the law is whether the law is adequate as a guide for your personal/professional life.

Ethics provides our moral intelligence with guides about what is the right thing to do in all aspects of life, while the law generally provides more specific rules about limits or what is forbidden, so that societies and their institutions can be maintained. But the law does not tell us what to do in relation to many of the dilemmas and decisions that we must make in our everyday life. While we think obeying the law is an important basis for role models in our life, we consider other traits such as benevolence and empathy as more important in characterizing someone as a good person. And, from an entrepreneurial perspective, disrupting existing law with an innovative platform can be thought to be revolutionary, even virtuous, as with Uber, Airbnb, Amazon, etc.

There is increasing demand for businesses of every scale to be good (i.e. moral) corporate citizens. The law has not only a *letter*, but also a *spirit*, which demands a commitment to morality and social justice. Doing what you have the right to do – as in doing something that is not illegal – is not always identical to doing what is right. That goes for both natural and legal “persons.” Our pluralist society is becoming increasingly intolerant of businesses, like Wells Fargo and Volkswagen, and Amazon that may not be doing anything against the technical letter of the law but are utterly failing to fulfill its spirit.



A Brief Overview of Chapter 8

Chapter 8 focuses on rational theories and the principles generated by those theories that are commonly used by you and me and everyone to judge the justice of social/political policy questions. These moral theories focusing on social justice guide the production of laws, rules, policies, ordinances, etc. for the governance of society, both in regard to its own proper structure and also its function of justly distributing the benefits and burdens among members of the society founded upon a social contract.

The two articles below that were in the news recently illustrate the everyday, existential applicability of the somewhat abstract Social Contract and Distributive Justice theories we studied. They conform generally to the Ethics of Justice moral orientation. It is important to know about these theories, but it is more important that you should learn where you stand regarding such social justice perspectives and issues than it is for you to become an expert in the theories or issues themselves. In Chapter 9 we will look at the social/political order from the perspective of the Ethics of Care.

[Austria's 'Burqa Ban' law comes into force](#) *AP Oct 1, 2017*

[Glitches in new tax code help some, harm others 2/24/2018](#)

How does Austria's (and, recently, Sri Lanka's) new 'Burqa Ban' law square with Social Contract theory? Is this law just? Is it fair? Remember that Locke argued that freedom is an inalienable right of everyone in the state of nature (prior to government), including my freedom to dress the way I want to dress. Thus, any limitations of that natural freedom for the sake of social/political harmony must be justified by reason.

Again, we saw that under Rawls' Liberty Principle - which everyone in the "Original Position" would certainly agree is a fair principle or rule upon which society should be founded - under this principle everyone is entitled to the maximum amount of freedom compared to everyone else's freedom. Austria's Burqa Ban law is a restriction of that natural freedom for one isolated group. Is that fair?

From a social contract point of view, then, this restriction would have to justify itself as necessary in order to achieve some greater social justice good, as a Utilitarian might argue, such as safety for the masses. What might that greater good be? How would social welfare be impacted? On the other hand, a deontologist might make an argument from a religious freedom perspective that you should have a right to cover your face in public if you choose to do so based on religious custom,

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which is what is being restricted. Should religious freedom trump safety concerns? What do you think? Should the Lone Ranger be allowed to wear his mask in public? One of the most important instruments for achieving distributive justice in our society is, obviously, the tax code. If you are dying from liver failure, of course, the fairness of the mechanism for the distribution of donor livers in our society will naturally be of greater concern to you. They are both examples of distributive justice mechanisms.

As such, justification for the establishment of any provisions or changes to provisions within these distributive justice mechanisms will have to resort to one or the other theoretical perspectives that we looked at in this chapter. Changes to distributive justice mechanisms always result in winners and losers regarding whatever is up for distribution, and that is true whether it is income, entrance to Harvard, or donor livers at stake.

There was certainly a lot of wrangling from all sectors of the Distributive Justice theoretical landscape before a tax reform bill ever finally made it to the President's desk. And there is still a lot of disagreement about tax reform today....

You should be familiar with the various types of distributive justice perspectives presented in this chapter, but not for the sake of those perspectives themselves. Rather, as you read about the various perspectives you should try to ascertain where you stand regarding achieving distributive justice in our society and which theories support your view. Are you more of an egalitarian than a libertarian? Or, what? And in good Stoic fashion don't forget to address the critical problems with wherever you fall on the Distributive Justice spectrum. Don't fall prey to 'confirmation bias'—seeing only what evidence supports your position.

Remember that *all the different theoretical perspectives on distributive justice have the common shortcoming of lacking clear, concrete, universally accepted existential specificity or how the theory should be implemented and work in practice.* Talking the talk is one thing. Actively walking the walk is another.

For example, it is fine if you want to be an egalitarian, but then you must coherently address the index and time questions regarding that theoretical orientation. If you are more of a "get what you deserve" type, then, to be coherent, you must clarify what you think should be used to specify "desert" (what you deserve) and why? Contribution? Effort? Compensation? Or, what?

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The same thing for all the distributive justice perspectives we looked at, including the feminist critique of past accounts of distributive justice which, it is claimed, did not take into account the value of women's work, especially in the home (caring for family - the personal is political) but also at professional work outside the home (Google pay discrimination, etc.).

Finally, you should have a clear idea of the relationship between morality and legality.

FURTHER READING

[A Belief in Meritocracy Is Not Only False: It's Bad for You](#)

PRACTICE

TERMS TO KNOW

- Social justice
- Social contract
- Thomas Hobbes
- John Locke
- State of nature
- John Rawls
- John Stuart Mill
- Instrumental mechanism
- Law of nature
- Property
- Justice as fairness
- Veil of ignorance
- Original position
- Liberty principle
- Difference principle
- Morality and legality
- Distributive Justice

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TEST YOUR UNDERSTANDING

1. What is social justice?
2. Why are social justice issues important for all members of society?
3. What would you say is the most important social justice issue facing our society today? What do you think should be done about it?
4. Why do we need social justice theories?
5. How does Hobbes' understanding of human nature from the perspective of psychological egoism and instrumental mechanism inform his theory of the social contract?
6. What is the state of nature and what role does it play for Hobbes and Locke in their respective social contract theories?
7. Why does Hobbes think that a strong monarchical government is best?
8. How does Locke's view of human nature differ from that of Hobbes?
9. What is the importance of private property in Locke's theory of the social contract?
10. What is the difference between Locke and Hobbes about where the power to govern society should arise from?
11. How did Rawls construct a thought experiment from Hobbes' idea of the "state of nature" that he then used heuristically to determine the basic principles by which the rules and policies that constitute and govern society should be formed?
12. How does the story about John Stumpf at Wells Fargo illustrate some of the basic aspects of the social contract by their breach?
13. How does the story about the Zuckerbergs illustrate an Ethics of Care orientation to the social contract?
14. What is the relationship between morality and the law? Which do you think is more fundamental? Which do you think is most important?

REFLECTION EXERCISES

- A. After reading about social contract theory in this chapter, how do you see that you are connected to the social order by virtue of the social contract? How do you feel about learning that you are contractually connected to all the other people who are also part of the social order? Does this have any personal meaningfulness to you in your life or is it just abstract theories? Do you have any personal sense of the social contract in your life?
- B. Which theory of human nature, the one espoused by Thomas Hobbes or that by John Locke, makes more sense to you personally as coherently representing how things really are with people? Are people in the state of nature more like what Hobbes thinks or more like what Locke thinks? What do you think?
- C. How do you feel about the current situation of wealth and income inequality in our nation and in the world? Do you think this is all that much of a problem or just a reflection of

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how it has always been between the rich and the poor? Would you like to be among the fabled one percent? Why or why not?

- D. How important do you think it is to achieve sustainability as a general way of life? Is this a meaningful goal for you? Why or why not?
- E. Where do you stand in terms of your relationship to the two standards of behavior: law and morality? Which of these standards really and in fact guides your personal behavior? If you find yourself in a conflict between these two sources of guidance, which way are you most likely to go?
- F. There was a story in the news the other day about a fella who was arrested for speeding while taking his pregnant wife, in active labor, to the hospital? Was it fair to arrest him? Why or why not?

SCENARIO EXERCISE

Sale of Sand to the Saudis: What should Joe do?

Joe Raymond's position as sales manager for Granite Rock and Sand was in jeopardy and he was feeling stressed. His unit had been low performer in terms of sales for the last seven quarters. Joe's supervisor, VP Tom Haws, told Joe that he had through the next quarter to pull his unit out of last place. Haws also told Joe that Joe would have to be replaced if the improvement did not occur.



Joe and his wife had just purchased their first home and were looking forward to raising a family. But with their mortgage payments totaling \$1,200 per month, the loss of Joe's salary would mean the loss of their home.

Following Tom's warning, Joe began interviewing candidates for a vacant sales position in his unit. Joe had conducted three interviews when the final candidate, Jessica Morris, arrived. During the interview with Morris, Joe learned that she was the victim of a layoff by a competitor, Silt, Sand and Such. Joe was not terribly impressed with Morris, even though she was qualified and had experience. But just before she left, Morris opened her briefcase and offered Joe a sheet of paper bearing the name of an official in the Saudi Arabian government.

Morris explained: "When I was with Silt, Sand and Such, we started a program for finding innovative markets for our products. You know, we wanted to tap markets no one had never thought of. After a lot of research, we discovered that Saudi desalinization plants need a particular type of sand they don't have over there, but we have here. We're the only firm that knows about this. If you hire me, I can see the sale through for Granite."

Joe asked, "Did you sign a non-disclosure agreement with Silt, Sand, and Such?"

"Yes, but the non-disclosure was directed at specific sifting techniques developed by SSS," Jessica said, "but there was nothing specific regarding market research, and since SSS has not signed a deal with the Saudis...."

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Morris added: "Look, I need this job. You need your sales up. Could be a win-win here. Think about it and call me."

After Morris left, Joe sat in his office and felt his problems were solved. A sale of sand to the Saudis would get his unit out of the dog house, and he could pay his mortgage. But would it be right to hire Jessica in order to get the Saudi account? After all, the market research that located the Saudis was done while Jessica was an employee at SSS. Was it morally right to use this inside info even though there was no specific clause in the non-disclosure agreement about market research? Isn't market research the property of the firm that produces it? Wasn't this really like stealing from SSS? What about company loyalty? And what about possible long-run repercussions for Joe? So....

What should Joe do?

