

### **Mansbridge Clip 3 Transcript**

JANE MANSBRIDGE: So I wanted to go to the two principals, and the first is the liberty principle. And here it is, that the basic liberties of all citizens are prior to everything. Well, I'll get in a minute to what lexically prior means, but it means putting-- that you fulfill the requirements of those before you do anything else. And there were several good comments. Dan argued that Rawls doesn't spell out the criteria for a best total system of liberty. He doesn't say how to balance among the things. He just says, well, best total system of liberty. I thought that was a very good comment. Amit had a neat suggestion for what should be on the list.

STUDENT: So I actually have one of the things which I wanted to add to the list of the mentioned freedoms. And my argument was for marriage equality, which not only extends to the LGBT community, but also to more than two individuals, irrespective of their sexual orientation or sex. So I thought marriage as an institution should not be restricted to only people who are in a heterosexual or homosexual relationship. I think if three, four, five, or even more people who have a common understanding and a romantic relationship with each other, they should be allowed to enter a multiparty marriage. And a set of individuals who decide to spend their lives together should be allowed to enter into marriage, which includes sharing of income and property, as well as inheritance and tax.

JANE MANSBRIDGE: Great. So why shouldn't that be on the list? What do the rest of you say to that suggestion, that there should be, along with all these other basic rights-- basic liberties that he calls-- the liberty to marry lots of people, for lots of people to join into a marriage? Why shouldn't that be on this list?

STUDENT: Can't people already-- I guess my question, Amit, is, can't people already do those things? So for example, I think through a will, you can already leave your

possessions to three and four and five people. I mean, I'm just trying to think. I think there are already vehicles for this. No?

JANE MANSBRIDGE: With tax privileges and so forth. With the privileges that come with-- that the state gives to marriage. There's a certain legal status that you have in marriage. And Amit is saying there should be a right to multiple marriages with those legal privileges. So this is not only an argument for that right, but it's also a challenge to the criteria, as Christoph said, the criteria for what gets included and what-- why not include this?

STUDENT: So then, if that's the case, then I guess I would have to agree with-- I jump ship on Rawls, and I have to agree with Bentham and Mill. Because then, if that were the case, I would say I was in a marriage with my whole family so I could leave-- well, I don't have anything-- but so that I could leave whatever I had completely tax free. Like, I would just use it to totally evade the system.

JANE MANSBRIDGE: Oh, so you think it's not a good-- not good for the biggest number.

STUDENT: Right. Because I think that it compromises the benefit-- it compromises the common good too much.

JANE MANSBRIDGE: OK But that means you might say in the original position, I wouldn't want to go into a society like that because it would undermine the kinds of dynamics that would then help the person on the bottom. I mean, that's Rawls's version. So you'd say you wouldn't agree to it. Steven?

STUDENT: Yeah. I mean, you use the word institution, and I think that's important here. I don't agree that it should be on this list of basic liberties. I think, if marriage is an

institution, we need to figure out if it meets all of the criteria for what is fair and just. I think you have a compelling point that maybe marriage isn't in institution one in a fair and just society if, for some people, it doesn't meet that criteria. That would be my--

JANE MANSBRIDGE: The principle-- if I can just rephrase it-- the principle that Amit is-- is liberty to marry many. Then there's the set of institutions that is instantiated. Just like you could have a principle of liberty of conscience, and you'd have a set of laws that instantiate that. So the principle is the principle of liberty to marry many people. Why shouldn't that be on this list? Ignacio?

STUDENT: I don't have the answer. I'm just a bit confused, because I'm confused between liberties and rights. So I think we're discussing--

JANE MANSBRIDGE: Great confusion, because Rawls uses them more or less interchangeably.

STUDENT: Right. So I'm a bit confused there because I thought he was trying to come up with something-- I agree. I like Christoph's point, that there's no criteria. But if there were, to come up with some sort of basic liberties from which you could somehow derive rights depending on wherever you are in the world and whatever age you're living in.

But those basic liberties shouldn't depend on the context or the culture or things like that. So I'm a bit confused. In which level are we playing at the moment? Because for me, the rights discussion that Amit brought up is more on level three of the institutions, rights, and so forth. Whereas where we talking about now and with what we're discussing about Rawls is level two, which is basic liberties on the principles level.

JANE MANSBRIDGE: Yeah. Yeah. We're talking about two, but I think Amit's on two, also. What are the liberties? And I think your point is right. What's the relationship, liberties and rights? These are what might be called liberty rights. I'm going to skip-- I'll come back to see John. But since it was raised, I'm going to skip to Alejandra's point. Would you like to make your point now in response to Ignacio?

STUDENT: Yeah, sure. So I assimilate the first and the second principle with what people call first and second generation human rights. And my point is that the difference in between both principles is not clear cut. If we follow Rawls--

JANE MANSBRIDGE: Well, first of all, let's just tell people what--

STUDENT: Oh, OK.

JANE MANSBRIDGE: Alejandra's saying-- she's going to say that Rawls's first principle, the one about liberties-- the one that's prior-- looks a lot to her like what people call first generation human rights. And that's what we studied before-- the ones that came out in the US and France bills of rights. 1789 kinds of rights. The rights that came from ancient law and natural law. Those rights, right? And that looks-- you're saying, I don't see too much difference between Rawls's basic liberties, what he calls basic liberties, and what other people call first generation rights.

But, you say, what about second generation rights? And people may not know what that means, and so I've got them here. UN Declaration of Human Rights includes the right to marry and found a family, right to work, right to equal pay for equal work, right to reasonable limitation of working hours, right to a standard of living with health, food, clothing, housing, medical care, social services. Sometimes these are called the negative rights, and sometimes these are called the positive rights. I try to stay away

from that language. But first generation, second generation is a time distinction, and I think it's a good distinction. They do come at different times.

STUDENT: Yeah. And the second refer more to, like, social and economic benefits. And the first is more, like, noninterference of-- like a guarantee that people won't interfere with you.