



John Stuart Mill Cup

2021 Finals Case Set

Case Authors: Eline Gerritsen, Joel Joseph, Lara Jost, Josh Kelsall, Nick Kuespert, Joe Slater, Luca Stroppa

Please do not reproduce without giving credit as appropriate.

Centre for Ethics,
Philosophy and
Public Affairs



University of
St Andrews

FOUNDED
1413

1. Plastic Straw Ban

In England, 4.7 billion plastic straws, 1.8 billion cotton buds with plastic stems and 316 million plastic stirrers are used every year.¹ The plastic waste that results from these single-use items damages the environment. To address this, legislation was implemented in October 2020 that bans businesses in England from supplying single-use plastic straws, cotton buds and drink stirrers to customers. This policy has received wide support and a similar ban is being considered in Scotland.² Although these single-use plastics form only a small part of our negative impact on the environment, eliminating them seems a relatively easy way to treat the planet better.

However, disability activists have complained that for many people abandoning plastic straws is not an option. Some people with disabilities rely on straws to drink safely and without assistance. Straws made of alternative materials are often not suitable: metal, glass and bamboo straws can lead to injuries, and paper and pasta straws can disintegrate and form choking hazards. Moreover, reusable straws are more expensive and are hard to clean for persons with certain disabilities.³

The plastic straw ban in England does include an exemption for disabled persons: although catering establishments cannot make straws visible or freely available, they can supply them when requested by customers.⁴ Activists argue that such an opt-in system still harms disabled persons: they are now required to disclose their disability to strangers and are dependent on staff members believing they need a straw.⁵ This puts a burden on people to always plan ahead and bring their own straw or risk not being able to drink.⁶

Study Questions

1. Does the benefit to the environment of a plastic straw ban like the one implemented in England outweigh the burden it imposes on disabled persons? Is it appropriate to settle this issue by comparing costs and benefits, or are there inviolable rights at stake here?
2. There are many products that are equally or more damaging to the environment but have not been banned. Given this, can it be justified to restrict the supply of plastic straws despite their important function for some disabled persons?
3. The opt-in system requires those who need straws to ask for them. An alternative is an opt-out system, where straws are available but those who do not need them are expected not to take them. Considering the impact on disabled people, should the opt-in system for plastic straws be replaced by an opt-out system?

¹ <https://www.independent.co.uk/life-style/ban-plastic-straws-cotton-buds-england-start-date-why-alternatives-b718892.html>

² <https://www.gov.scot/news/tackling-single-use-plastic/>

³ <https://cdmns.org/blog/disability-dialogue/grasping-at-straws-the-ableism-of-the-straw-ban/>

⁴ <https://www.gov.uk/guidance/straws-cotton-buds-and-drink-stirrers-ban-rules-for-businesses-in-england>

⁵ <https://creakyjoints.org/advocacy/plastic-straw-bans-bad-for-people-with-disabilities/>

⁶ <https://www.npr.org/sections/thesalt/2018/07/11/627773979/why-people-with-disabilities-want-bans-on-plastic-straws-to-be-more-flexible?t=1614858337236>

2. University Admission by Lottery

In the current university admissions system, the chance that a pupil will progress to a highly selective university largely depends on factors such as their social class, ethnicity, which school they go to, and what area they live in. For example, in 2017/18, young people from the most advantaged areas in the country were five times more likely to enter a highly selective university than those from disadvantaged areas.¹ Privileged students have more opportunities and resources available for extracurricular activities, personal statement tutoring, interview training, and other ways of improving their profile as applicants. This perpetuates inequalities: attending a top-ranking university highly benefits your future socio-economic status.

A controversial proposal for improving the fairness and equality in university admissions is to replace the current selection procedure with a lottery. This is not unheard of: Dutch universities used a lottery for oversubscribed courses until 2017 and are moving back to this approach because it was found to lead to more diversity and equality.² One option is to set a minimum requirement of exam results for admission onto each course and enter all applicants meeting this threshold into a lottery. This would make the student body at highly selective universities more diverse, give disadvantaged pupils a better chance at improving their socio-economic status, and help to reduce social inequality.

However, there are expected downsides. A lottery does not ensure that the most motivated and capable applicants will get a place, which seems contrary to the idea of meritocracy. Also, it has been argued that applicants will lose a sense of control over which university they will attend and may feel that they are not rewarded for their efforts.³ Pupils may then become less motivated to engage in enriching extracurricular activities, such as ethics discussion tournaments (!). Finally, degrees from elite universities may become less meaningful to employers, though it is an open question whether this is an unwelcome result.⁴

Study questions

1. Should applicants be selected for university courses purely based on their merit?
2. It can be argued that the current admissions system is not a meritocracy in practice, since students from less advantaged backgrounds often cannot afford to attend the best university that would accept them. Does this help to justify moving to an admissions procedure that explicitly does not select applicants purely based on their merit?
3. If university admission by lottery would decrease the gap between advantaged and disadvantaged groups, does this justify implementing it?

¹ <https://www.hepi.ac.uk/wp-content/uploads/2019/12/HEPI-Policy-Note-20-Social-Mobility-Challenge-FINAL.pdf>

² <https://www.rijksoverheid.nl/actueel/nieuws/2020/12/11/loten-voor-studie-weer-mogelijk>;
<https://northerntimes.nl/minister-for-education-proposes-return-to-lottery-admissions/>

³ <https://www.forbes.com/sites/willarddix/2018/08/16/the-problem-with-college-admission-lottery-proposals/>

⁴ <https://www.edweek.org/teaching-learning/opinion-7-questions-about-an-elite-college-admissions-lottery/2019/03>

3. A Duty to Vote?

Polling data suggests that roughly 90% of Americans think that they have a moral duty to vote.¹ This widely held belief may explain the reactions of many when San Francisco 49ers quarterback Colin Kaepernick, who became famous for kneeling in protest during the U.S. national anthem, abstained from voting in the 2016 presidential election. Despite his donating one million dollars of his salary, along with the proceeds from his jersey sales, to charity, Kaepernick's decision not to vote received widespread media criticism.²

For example, one article claimed that "donating money and attending camps will only take Kaepernick's message so far. In order to enact long-lasting social change, he must take part in the democratic process. Failing to do that sabotages his cause".³ Yet another article contended that by not voting, Kaepernick disrespected those who sacrificed their lives fighting to secure the right to vote for black people in America.⁴ These kinds of consideration are commonly appealed to in support of the view that there is a duty to vote.

However, the chance of a U.S. citizen's vote changing the presidential electoral outcome is infinitesimally small, around one-in-ten million to one-in-a billion.⁵ Many therefore argue that there is no duty to vote grounded in the consequences of doing so, since voting makes no morally significant difference to the outcome of an election.⁶

Furthermore, many argue that voters typically lack basic knowledge about candidates and relevant policy issues, while those with more information tend to analyse that information in a politically motivated and biased way.⁷ This means that most voters don't know whether their vote will contribute toward beneficial rather than harmful outcomes.⁸

Study Questions

1. Even if the likelihood of affecting the outcome of an election is small, one's vote would make an enormous difference if it were decisive. Is there therefore a duty to vote because of the *expected* benefit of doing so? (To get across the idea of 'expected benefit': if there is a 1/10 chance of winning a £100 lottery, then the expected benefit of having a ticket is $1/10 \times £100 = £10$).
2. Is there a duty to vote that is not grounded in the expected consequences of doing so?
3. Many say that they do not vote because they do not feel sufficiently represented by the relevant candidates or parties. Does one have a duty to vote for those that best represent them, despite having many disagreements with them?
4. Is there a duty to abstain from casting an uninformed vote?

¹ <https://www.pewresearch.org/wp-content/uploads/sites/4/legacy-pdf/312.pdf>

² This case was used to illustrate a similar point in Freiman, C., *Why It's OK to Ignore Politics*. New York: Routledge Press, 2020.

³ <https://www.forbes.com/sites/alexreimer/2016/11/10/colin-kaepernicks-failure-to-vote-tarnishes-his-credibility-as-a-social-activist/?sh=68d4f1684c00>

⁴ https://www.washingtonpost.com/sports/redskins/quarterback-colin-kaepernicks-refusal-to-vote-undermines-his-message/2016/11/12/92970d5e-a910-11e6-ba59-a7d93165c6d4_story.html

⁵ Gelman, A., King, G., and Boscardin, J., "Estimating the Probability of Events that Have Never Occurred: When Is Your Vote Decisive?", *Journal of the American Statistical Association*, 93 (1998): 1–9.

⁶ Brennan, J., *The Ethics of Voting*. Princeton, N.J.: Princeton University Press, 2011.

⁷ Brennan, J., *Against Democracy*. Princeton, N.J.: Princeton University Press, 2016.

⁸ Freiman, C., *Why It's OK to Ignore Politics*. New York: Routledge Press, 2020.

4. Predictive Genetic Testing for Breast and Ovarian Cancer

Some types of cancer, like breast, ovarian, colorectal and prostate cancer are more likely to occur if a person carries of faulty version or variant of a certain gene. The genes BRCA1 and BRCA2 are examples of such genes. People with the faulty BRCA1 gene have a 60 to 90% lifetime risk of breast cancer and a 40 to 60% risk of ovarian cancer.¹

Predictive genetic testing can be used to test whether a person has inherited one of the cancer risk genes. Knowing about one's predisposition comes with positive and negative aspects. If one is predisposed, it is easier to manage the risk of developing cancer and to take preventive measures like more frequent breast screening or risk-reducing surgery like mastectomy. Indeed, the chance of making a full recovery from breast cancer is relatively high if it is detected early. Thus, knowing about one's predisposition to cancer could help save one's life. However, predictive testing for cancer predisposition has a downside. It can cause permanent anxiety, and some people would rather not know about their risk and would prefer to be told only if they actually develop cancer.

Moreover, when a person receives a positive result, this is relevant not only to them, but also to their close relatives. If a person has a faulty BRCA gene, there is a 50% chance that they will pass it to any children they have and there is a 50% chance that any given siblings of theirs is also a carrier of the gene². In the U.K., geneticists and doctors will not approach relatives of the patient about the result and it is up to the patient to share and explain the result with their relatives if they so choose.

Study Questions

1. Do people who test positive for a faulty BRCA gene have a responsibility to disclose their result to their partner if they plan on having children together, given that the health of the future child is at stake?
2. Do people who test positive for a faulty BRCA gene have a responsibility to disclose their result to their potential long-term partner, given that they might die early?
3. Do people who test positive for a faulty BRCA gene have a responsibility to share their result with family members at risk, like their siblings, their children or their nieces and nephews?
4. Do geneticists and doctors have a responsibility to disclose relevant genetic information to their patients' relatives if the lives of those relatives might be at risk, even if it goes against the wishes of the patient?

¹ <https://www.nhs.uk/conditions/predictive-genetic-tests-cancer/>

² <https://www.nhs.uk/conditions/predictive-genetic-tests-cancer/>

5. Tail Docking for Working Dogs

Tail docking, the shortening of a dog's tail, was banned in Scotland in 2007 under the Animal Health and Welfare Act 2006. However, in 2018 Scotland approved a change which permitted "tail shortening by a third" for working dogs used in the lawful shooting of animals. Two breeds are currently covered by this modification: spaniels and hunt point retrievers. The procedure is performed by a veterinarian on puppies under 5 days old.¹ The practice of tail docking is fully banned everywhere else in the U.K.

The Scottish Gamekeepers Association argues that the tail docking practice is a "quick preventative procedure protecting the animal over its whole working life".² In the 2006 parliamentary sessions, Liberal Democrat MSP John Farquhar Munro argued that no dogs were worse off as a result of tail docking and that such a traditional practice prevents tail injuries, thus benefitting the animal.³

In 2020, Green Party MSP Mark Ruskell said that he hopes to bring back the full ban as part of new animal welfare laws. He argues that cutting off the tails of thousands of puppies to appeal to a "bloodsports lobby" is despicable.⁴ Various reasons are invoked against tail docking, including that it is an outdated tradition, that it goes against the welfare of the animal, and finally, that it is impossible to know which puppies from a litter will be selected to be working dogs, thus leading to performing a painful procedure on dogs who might not become working dogs.⁵

Study Questions

1. Suppose that we know which puppies will become working dogs. Do you think that cutting the end of a dog's tail is justified if it can prevent future injuries?
2. Given that we don't know which puppies will become working dogs, do you think that it is justified to dock the tails of a whole litter?

¹ <https://www.shootinguk.co.uk/gundogs/health/tail-docking-key-facts-you-need-to-know-9672>

² <https://www.dailyrecord.co.uk/news/politics/bid-ban-barbaric-puppy-dog-22174424>

³ <https://www.parliament.scot/parliamentarybusiness/report.aspx?r=990&mode=html>

⁴ <https://www.dailyrecord.co.uk/news/politics/bid-ban-barbaric-puppy-dog-22174424>

⁵ <https://greens.scot/news/ruskell-highlights-warning-from-vets-over-dog-tail-docking>

6. Mandatory Covid-19 Vaccination

At the time of writing, there are more than 114 million confirmed cases of Covid-19 world-wide, and more than 2.55 million deaths attributed to Covid-19, with real numbers expected to be much higher due to lack of testing early on.¹ The pandemic has resulted in big shifts to global life, with many countries shutting down, tightening border controls, closing businesses, and keeping citizens confined to their homes or local areas to control the virus. Due to the concentrated effort of scientists working around the clock, vaccines against the coronavirus have been approved and are now being administered across the globe, and scientists seem to agree that widespread vaccination is the only path back to normality. Despite this, there are concerns that not everyone, or at least not enough people, will be willing to be vaccinated in order to prevent a repeat pandemic or eliminate the virus altogether.²

In response to these concerns, some have called or suggested for vaccination to be made mandatory. Such proposals take many forms. Some argue that vaccinations should be mandatory for the whole public, and in the U.K. and the E.U., it has been established that people will not be allowed to enter certain public spaces, be it social venues, hospitals, schools, airports, etc., without a “vaccine passport” to prove they have been vaccinated.³ Others have argued that vaccinations should be mandatory only for those people who work with those most vulnerable to the virus, i.e. the elderly and people with underlying health conditions.⁴ Opponents of mandatory vaccination argue that it infringes basic human liberties such as the right to bodily autonomy, self-determination, and freedom of belief.⁵

Study Questions

1. Is it immoral to refuse to be vaccinated?
2. Does mandatory vaccination infringe on people’s human rights to bodily autonomy?
3. Is a “vaccine passport” to enter public spaces, including schools, hospitals, airports, and social venues a better alternative to mandatory vaccination for all?
4. Is it better to have mandatory vaccination for all, or just mandatory vaccination for specific groups (vulnerable people, those working with vulnerable people, etc.)?

¹ https://en.wikipedia.org/wiki/COVID-19_pandemic_deaths

² <https://theconversation.com/coronavirus-believing-in-conspiracies-goes-hand-in-hand-with-vaccine-hesitancy-148192>

³ <https://www.bbc.co.uk/news/explainers-55718553>

⁴ <https://theconversation.com/should-covid-19-vaccines-be-mandatory-two-experts-discuss-150322>

⁵ <https://petition.parliament.uk/petitions/561750>

7. Statues

Edward Colston was a politician and philanthropist. He was also a slave trader. On the 7th of June 2020, during the Black Lives Matter protests that followed the killing of George Floyd, protesters tore down a statue of him in Bristol and threw it in Bristol Harbour.¹

Statues of historical figures have become a topic of political debate in the last few years. In the U.S., there remain many statues of generals who fought for the Confederacy. 160 were taken down in 2020,² but hundreds remain.³ Those who want the statues removed see their presence as a celebration of the racist views harboured by the individuals represented. In this light, the continued display can be seen as a celebration of that racism.

After the Edward Colston statue was taken down, a statue of Winston Churchill in Trafalgar Square was boarded up for protection.⁴ Although celebrated for his leadership as Prime Minister of the U.K. during World War II, Churchill expressed racist views – describing whites as a “stronger race, a higher-grade race” – and is blamed for the Bengal famine, which resulted in millions of deaths.⁵

Those who oppose taking down statues of controversial figures often point to their historical significance. Statues may be seen as having an educational role, or as important in maintaining the cultural identity of citizens. Boris Johnson argues that removing statues is “to lie about our history”.⁶

Study Questions

1. It is often suggested that statues help to maintain a community’s cultural identity, have a role in public education, or help us to remember our history. Should these considerations have a bearing on whether we retain statues of racists from earlier eras?
2. As well as being a slave trader, Edward Colston was a renowned philanthropist, and Churchill is celebrated for his role in defeating the Nazis in the World War II. If we accept that these people are responsible for atrocities, could their good deeds still justify having a statue honouring them?
3. The toppling of the Colston statue in Bristol was an illegal act. If there is a strong case for removing the statue of a racist figure, is it ever justifiable for activists to break the law to remove it?

¹ <https://www.theguardian.com/uk-news/2020/jun/08/who-was-edward-colston-and-why-was-his-bristol-statue-toppled-slave-trader-black-lives-matter-protests>

² <https://www.theguardian.com/us-news/2021/feb/23/160-confederate-symbols-removed-public-spaces-2020>

³ <https://www.smithsonianmag.com/smart-news/us-removed-over-160-confederate-symbols-2020-more-700-remain-180977096/>

⁴ <https://www.bbc.co.uk/news/uk-53023351>

⁵ <https://www.bbc.co.uk/news/magazine-29701767>

⁶ <https://www.theguardian.com/politics/2020/jun/12/boris-johnson-says-removing-statues-is-to-lie-about-our-history-george-floyd>

8. Symbolic Genital Mutilation

In a Dutch hospital in 1992 three young women asked for an unusual kind of surgery: the making of small genital cuts, with no therapeutic purpose.¹ The women were culturally descended from a tribe in which it is customary to perform a ritual of female genital mutilation in order to celebrate a woman's maturity. The women were attached to their roots, and instead of undergoing a complete, painful genital mutilation performed by a member of the tribe, they decided to ask for a painless, symbolic surgery performed by a professional, which was completely harmless to their body but still maintained the meaning of the original ritual.

Nevertheless, genital cutting is widely considered a symbol of male domination over the female body.² Consequently, allowing it might be interpreted as an endorsement of gender hierarchy. Not allowing it, on the other hand, forces the women to choose between distancing themselves from their culture and undergoing a painful and risky mutilation performed by a tribe member.

Study Questions

1. Should the hospital have agreed to perform the surgery on the three women?
2. Does the answer to Question 1 depend, at least to some extent, on the women's age? Would it make a difference if the young women were instead children, or middle-aged?
3. According to the Hippocratic Oath, doctors have the duty not to harm their patients. Does this duty include the avoidance of symbolic harm? Does a doctor also have a duty to prevent the risk of painful mutilation performed by a non-specialist? If the answer to both questions is affirmative, which duty is weightier?

¹ This happened in the Netherlands in 1992, in Seattle in 1996 and in Italy in 2004. See, for example, Catania L. and Abdulcadir O., *Ferite per sempre. Le mutilazioni genitali femminili e la proposta del rito simbolico alternativo*. Roma: DeriveApprodi, 2005, on the 2004 case.

² See UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCHR, UNHCR, UNICEF, UNIFEM & WHO, *Eliminating female genital mutilation: an interagency statement*, World Health Organization Press, 2008, available at https://apps.who.int/iris/bitstream/handle/10665/43839/9789241596442_eng.pdf;jsessionid=2355BBF1EB60F351FC30D4C290B04020?sequence=1. See also African Union, *Solemn Declaration of Gender Equality in Africa*, signed on the 6-8 July 2004, available at https://www.mrfcj.org/pdf/Solemn_Declaration_on_Gender_Equality_in_Africa.pdf.

9. Vaccine Prioritization

Finally, after a terrible year, in December 2020 some Covid-19 vaccines became available. As of this writing, this is the vaccine priority ranking in the U.K.:¹

- | | |
|---|---|
| 1. Residents in a care home for older adults, and their carers | 6. All individuals aged 16 years to 64 years with underlying health conditions that put them at higher risk of serious disease and mortality ² |
| 2. All those 80 years of age and over, and frontline health and social care workers | 7. All those 60 years of age and over |
| 3. All those 75 years of age and over | 8. All those 55 years of age and over |
| 4. All those 70 years of age and over, and immunosuppressed individuals of any age | 9. All those 50 years of age and over |
| 5. All those 65 years of age and over | 10. Everyone else, prioritized according to future scientific knowledge concerning the vaccine |

Since there is no proof that the vaccine stops the spread of the virus, the declared distribution rationale is to minimize deaths: since older people are more vulnerable to dying from Covid-19, they should be vaccinated first. Inevitably, the current prioritization will save some lives of those who are 80 years or older at the cost of failing to save more lives among the youngest eligible group.

Study Questions

1. The current prioritization prioritizes those whose expected remaining years of life is relatively low. It also prioritizes those who, on average, have a lower quality of life, since elderly people are more likely to suffer from health issues and from limited social interactions.³ By prioritizing the youngest in the risk group, more people would die, but more good years of life would be saved. Does this fact form the basis of a sound ethical objection to the current prioritization?

2. People in the government don't receive an elevated place in the current prioritization. However, a Covid-19 outbreak in the government would greatly compromise decision-making in a crucial moment of the nation's history. Should members of the government therefore be prioritized?

3. Is there any other group that deserves priority?

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/948338/jcvi-advice-on-priority-groups-for-covid-19-vaccination-30-dec-2020.pdf

² This includes those who are in receipt of a carer's allowance and those who are the main carer of an elderly or disabled person whose welfare may be at risk if the carer falls ill.

³ <https://www.nhs.uk/mental-health/feelings-symptoms-behaviours/feelings-and-symptoms/loneliness-in-older-people/>

10. Abortion Rights During the Pandemic

For early medical abortions, i.e., abortions up to ten weeks, a person seeking an abortion can do so by taking two pills (this is called ‘medical abortion’). According to U.K. legislation, the first of these must be taken in an abortion clinic following a face-to-face meeting with a healthcare professional while the second can be taken at home. In light of the Covid-19 pandemic, in late March 2020 the legislation was updated to allow both pills to be taken at home. Instead of a face-to-face appointment, the consultation is now provided via telephone or online (usually via video). If a patient wishes to proceed, the medication is delivered directly to their home.¹ The announced change is temporary, lasting at most two years or else until the Covid-19 crisis is over.²

During the first three months under the new legislation, medical abortions have increased relative to surgical abortions while the total number of abortions over the three months has increased only slightly.³ Numbers for later months are not published yet. Overall, then, the current data shows that the new option makes medical abortion more attractive relative to surgical abortion than it used to be.

In light of this, the U.K. government is currently considering making the temporary change permanent.⁴ Proponents hold that the face-to-face consultation is an unnecessary hurdle for persons seeking an abortion, potentially deterring people who want to have an abortion or at least placing an undue burden on them. This burden may result from lack of money, limited access to transportation, time constraints, etc. In contrast, advocates of compulsory face-to-face consultation maintain that it ensures that persons seeking an abortion make an informed decision, and that only a face-to-face consultation guarantees that the decision to have an abortion is free of coercion from partners and/or family.

Study Questions

1. Is the updated legislation an appropriate response in light of the pandemic?
2. Should the legislation be updated permanently?
3. Should we continue to require that a person go through a consultation (face-to-face or online) before proceeding with an abortion?

¹ <https://www.gov.uk/government/consultations/home-use-of-both-pills-for-early-medical-abortion/home-use-of-both-pills-for-early-medical-abortion-up-to-10-weeks-gestation>

² <https://www.gov.uk/government/consultations/home-use-of-both-pills-for-early-medical-abortion/home-use-of-both-pills-for-early-medical-abortion-up-to-10-weeks-gestation>

³ <https://www.gov.uk/government/publications/abortion-statistics-during-the-coronavirus-pandemic-january-to-june-2020/abortion-statistics-for-england-and-wales-during-the-covid-19-pandemic>

⁴ <https://www.gov.uk/government/consultations/home-use-of-both-pills-for-early-medical-abortion/home-use-of-both-pills-for-early-medical-abortion-up-to-10-weeks-gestation>

11. Day Fines

While discussing the costs of insurance premiums due to speeding, insurance analyst Laura Adams noted:

It makes me wonder if the higher-income people are willing to take more risk because they know they can afford it. [...] If you don't have any money in savings, maybe you're less likely to speed to work.¹

If Adams's observation is correct, then fixed fines are less effective with high-income groups.

In some jurisdictions, crimes such as speeding are punished not by a fixed fine, but rather by a so-called *day fine* based on the offender's (daily) income. In Finland, for example, most crimes punishable by fines are effectively punished by day fines, resulting in one case in which a speeding ticket cost a Finnish businessman the equivalent of roughly £48,000.²

In the U.K., both England and Wales implemented a day fine mechanism in 1992 but abandoned the policy in 1993 after magistrates protested the scheme.³ While a precise mathematical formula for the determination of fines was thus given up on, the home secretary at the time, Kenneth Clarke, encouraged courts "to have regard to the particular circumstances of individual offenders – in particular, to their means to pay – when fixing the level of a fine".⁴

Thus, there are three possible stances towards day fines. First, one might object to the application of day fines, as most jurisdictions worldwide do. Second, one might implement precise formulae to determine day fines (as in, e.g., Finland). Third, one might leave fines to the discretion of judges while encouraging them to take into account offenders' means to pay (following Clarke's proposal).

Study Questions

1. Are day fines preferable to fixed fines?
2. If one accepts that fines should be relative to a person's means, which is to be preferred: a precise mathematical formula (such as day fines) or a case-by-case decision system (such as later proposed by Clarke)?
3. If one accepts that fines should be relative to a person's means, does it follow that other day-to-day costs (such as grocery costs) should also be relativized to people's means?

¹ <https://www.cnbc.com/2015/04/15/wealthier-drivers-get-more-tickets-but-dont-pay.html>

² <https://www.nytimes.com/2015/04/26/world/europe/speeding-in-%20nland-can-cost-a-fortune-if-you-already-have-one.html>

³ http://news.bbc.co.uk/1/hi/uk_politics/4173913.stm

⁴ http://news.bbc.co.uk/1/hi/uk_politics/4173913.stm