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Objection 1: Incentives

Rawls's case for the difference principle invites two main objections. First, what about incentives? If the talented can benefit from their talents only on terms that help the least well off, what if they decide to work less, or not to develop their skills in the first place? If tax rates are high or pay differentials small, won't talented people who might have been surgeons go into less demanding lines of work? Won't Michael Jordan work less hard on his jump shot, or retire sooner than he otherwise might?

Rawls's reply is that the difference principle permits income inequalities for the sake of incentives, provided the incentives are needed

to improve the lot of the least advantaged. Paying CEOs more or cutting taxes on the wealthy simply to increase the gross domestic product would not be enough. But if the incentives generate economic growth that makes those at the bottom better off than they would be with a more equal arrangement, then the difference principle permits them.

It is important to notice that allowing wage differences for the sake of incentives is different from saying that the successful have a privileged moral claim to the fruits of their labor. If Rawls is right, income inequalities are just only insofar as they call forth efforts that ultimately help the disadvantaged, not because CEOs or sports stars deserve to make more money than factory workers.

Objection 2: Effort

This brings us to a second, more challenging objection to Rawls's theory of justice: What about effort? Rawls rejects the meritocratic theory of justice on the grounds that people's natural talents are not their own doing. But what about the hard work people devote to cultivating their talents? Bill Gates worked long and hard to develop Microsoft. Michael Jordan put in endless hours honing his basketball skills. Notwithstanding their talents and gifts, don't they deserve the rewards their efforts bring?

Rawls replies that even effort may be the product of a favorable upbringing. "Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances."¹⁸ Like other factors in our success, effort is influenced by contingencies for which we can claim no credit. "It seems clear that the effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously . . ."¹⁹

When my students encounter Rawls's argument about effort, many strenuously object. They argue that their achievements, including their

admission to Harvard, reflect their own hard work, not morally arbitrary factors beyond their control. Many view with suspicion any theory of justice that suggests we don't morally deserve the rewards our efforts bring.

After we debate Rawls's claim about effort, I conduct an unscientific survey. I point out that psychologists say that birth order has an influence on effort and striving—such as the effort the students associate with getting into Harvard. The first-born reportedly have a stronger work ethic, make more money, and achieve more conventional success than their younger siblings. These studies are controversial, and I don't know if their findings are true. But just for the fun of it, I ask my students how many are first in birth order. About 75 to 80 percent raise their hands. The result has been the same every time I have taken the poll.

No one claims that being first in birth order is one's own doing. If something as morally arbitrary as birth order can influence our tendency to work hard and strive conscientiously, then Rawls may have a point. Even effort can't be the basis of moral desert.

The claim that people deserve the rewards that come from effort and hard work is questionable for a further reason: although proponents of meritocracy often invoke the virtues of effort, they don't really believe that effort alone should be the basis of income and wealth. Consider two construction workers. One is strong and brawny, and can build four walls in a day without breaking a sweat. The other is weak and scrawny, and can't carry more than two bricks at a time. Although he works very hard, it takes him a week to do what his muscular co-worker achieves, more or less effortlessly, in a day. No defender of meritocracy would say the weak but hardworking worker deserves to be paid more, in virtue of his superior effort, than the strong one.

Or consider Michael Jordan. It's true, he practiced hard. But some lesser basketball players practice even harder. No one would say they deserve a bigger contract than Jordan's as a reward for all the hours they put in. So, despite the talk about effort, it's really contribution, or achievement, that the meritocrat believes is worthy of reward. Whether

or not our work ethic is our own doing, our contribution depends, at least in part, on natural talents for which we can claim no credit.

Rejecting Moral Desert

If Rawls's argument about the moral arbitrariness of talents is right, it leads to a surprising conclusion: Distributive justice is not a matter of rewarding moral desert.

He recognizes that this conclusion is at odds with our ordinary way of thinking about justice: "There is a tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to moral desert. Justice is happiness according to virtue . . . Now justice as fairness rejects this conception."²⁰

Rawls undermines the meritocratic view by calling into question its basic premise, namely, that once we remove social and economic barriers to success, people can be said to deserve the rewards their talents bring:

We do not deserve our place in the distribution of native endowments, any more than we deserve our initial starting point in society. That we deserve the superior character that enables us to make the effort to cultivate our abilities is also problematic; for such character depends in good part upon fortunate family and social circumstances in early life for which can claim no credit. The notion of desert does not apply here.²¹

If distributive justice is not about rewarding moral desert, does this mean that people who work hard and play by the rules have no claim whatsoever on the rewards they get for their efforts? No, not exactly. Here Rawls makes an important but subtle distinction—between moral desert and what he calls "entitlements to legitimate expectations." The difference is this: Unlike a desert claim, an entitlement can arise only once certain rules of the game are in place. It can't tell us how to set up the rules in the first place.

The conflict between moral desert and entitlements underlies many of our most heated debates about justice: Some say that increasing tax rates on the wealthy deprives them of something they morally deserve; or that considering racial and ethnic diversity as a factor in college admissions deprives applicants with high SAT scores of an advantage they morally deserve. Others say no—people don't morally deserve these advantages; we first have to decide what the rules of the game (the tax rates, the admissions criteria) should be. Only then can we say who is entitled to what.

Consider the difference between a game of chance and a game of skill. Suppose I play the state lottery. If my number comes up, I am entitled to my winnings. But I can't say that I deserved to win, because a lottery is a game of chance. My winning or losing has nothing to do with my virtue or skill in playing the game.

Now imagine the Boston Red Sox winning the World Series. Having done so, they are entitled to the trophy. Whether or not they deserved to win would be a further question. The answer would depend on how they played the game. Did they win by a fluke (a bad call by the umpire at a decisive moment, for example) or because they actually played better than their opponents, displaying the excellences and virtues (good pitching, timely hitting, sparkling defense, etc.) that define baseball at its best?

With a game of skill, unlike a game of chance, there can be a difference between who is entitled to the winnings and who deserved to win. This is because games of skill reward the exercise and display of certain virtues.

Rawls argues that distributive justice is not about rewarding virtue or moral desert. Instead, it's about meeting the legitimate expectations that arise once the rules of the game are in place. Once the principles of justice set the terms of social cooperation, people are entitled to the benefits they earn under the rules. But if the tax system requires them to hand over some portion of their income to help the disadvantaged, they can't complain that this deprives them of something they morally deserve.

A just scheme, then, answers to what men are entitled to; it satisfies their legitimate expectations as founded upon social institutions. But what they are entitled to is not proportional to nor dependent upon their intrinsic worth. The principles of justice that regulate the basic structure of society . . . do not mention moral desert, and there is no tendency for distributive shares to correspond to it.²²

Rawls rejects moral desert as the basis for distributive justice on two grounds. First, as we've already seen, my having the talents that enable me to compete more successfully than others is not entirely my own doing. But a second contingency is equally decisive: the qualities that a society happens to value at any given time also morally arbitrary. Even if I had sole, unproblematic claim to my talents, it would still be the case that the rewards these talents reap will depend on the contingencies of supply and demand. In medieval Tuscany, fresco painters were highly valued; in twenty-first-century California, computer programmers are, and so on. Whether my skills yield a lot or a little depends on what the society happens to want. What counts as contributing depends on the qualities a given society happens to prize.

Consider these wage differentials:

- The average schoolteacher in the United States makes about \$43,000 per year. David Letterman, the late-night talk show host, earns \$31 million a year.
- John Roberts, chief justice of the U.S. Supreme Court, is paid \$217,400 a year. Judge Judy, who has a reality television show, makes \$25 million a year.

Are these pay differentials fair? The answer, for Rawls, would depend on whether they arose within a system of taxation and redistribution that worked to the benefit of the least well off. If so, Letterman and Judge Judy would be entitled to their earnings. But it can't be said

that Judge Judy deserves to make one hundred times more than Chief Justice Roberts, or that Letterman deserves to make seven hundred times as much as a schoolteacher. The fact that they happen to live in a society that lavishes huge sums on television stars is their good luck, not something they deserve.

The successful often overlook this contingent aspect of their success. Many of us are fortunate to possess, at least in some measure, the qualities our society happens to prize. In a capitalist society, it helps to have entrepreneurial drive. In a bureaucratic society, it helps to get on easily and smoothly with superiors. In a mass democratic society, it helps to look good on television, and to speak in short, superficial sound bites. In a litigious society, it helps to go to law school, and to have the logical and reasoning skills that will allow you to score well on the LSATs.

That our society values these things is not our doing. Suppose that we, with our talents, inhabited not a technologically advanced, highly litigious society like ours, but a hunting society, or a warrior society, or a society that conferred its highest rewards and prestige on those who displayed physical strength, or religious piety. What would become of our talents then? Clearly, they wouldn't get us very far. And no doubt some of us would develop others. But would we be less worthy or less virtuous than we are now?

Rawls's answer is no. We might receive less, and properly so. But while we would be entitled to less, we would be no less worthy, no less deserving than others. The same is true of those in our society who lack prestigious positions, and who possess fewer of the talents that our society happens to reward.

So, while we are entitled to the benefits that the rules of the game promise for the exercise of our talents, it is a mistake and a conceit to suppose that we deserve in the first place a society that values the qualities we have in abundance.

Woody Allen makes a similar point in his movie *Stardust Memories*.

Allen, playing a character akin to himself, a celebrity comedian named Sandy, meets up with Jerry, a friend from his old neighborhood who is chagrined at being a taxi driver.

SANDY: So what are you doing? What are you up to?

JERRY: You know what I do? I drive a cab.

SANDY: Well, you look good. You—There's nothing wrong with that.

JERRY: Yeah. But look at me compared to you . . .

SANDY: What do you want me to say? I was the kid in the neighborhood who told the jokes, right?

JERRY: Yeah.

SANDY: So, so—we, you know, we live in a—in a society that puts a big value on jokes, you know? If you think of it this way—(*clearing his throat*) if I had been an Apache Indian, those guys didn't need comedians at all, right? So I'd be out of work.

JERRY: So? Oh, come on, that doesn't help me feel any better.²³

The taxi driver was not moved by the comedian's riff on the moral arbitrariness of fame and fortune. Viewing his meager lot as a matter of bad luck didn't lessen the sting. Perhaps that's because, in a meritocratic society, most people think that worldly success reflects what we deserve; the idea is not easy to dislodge. Whether distributive justice can be detached altogether from moral desert is a question we explore in the pages to come.

Is Life Unfair?

In 1980, as Ronald Reagan ran for president, the economist Milton Friedman published a bestselling book, co-authored with his wife, Rose, called *Free to Choose*. It was a spirited, unapologetic defense of the free-market economy, and it became a textbook—even an anthem—for the Reagan years. In defending laissez-faire principles against egalitarian objections, Friedman made a surprising concession. He acknowledged that

those who grow up in wealthy families and attend elite schools have an unfair advantage over those from less privileged backgrounds. He also conceded that those who, through no doing of their own, inherit talents and gifts have an unfair advantage over others. Unlike Rawls, however, Friedman insisted that we should not try to remedy this unfairness. Instead, we should learn to live with it, and enjoy the benefits it brings:

Life is not fair. It is tempting to believe that government can rectify what nature has spawned. But it is also important to recognize how much we benefit from the very unfairness we deplore. There's nothing fair . . . about Muhammad Ali's having been born with the skill that made him a great fighter . . . It is certainly not fair that Muhammad Ali should be able to earn millions of dollars in one night. But wouldn't it have been even more unfair to the people who enjoyed watching him if, in the pursuit of some abstract ideal of equality, Muhammad Ali had not been permitted to earn more for one night's fight . . . than the lowest man on the totem pole could get for a day's unskilled work on the docks?²⁴

In *A Theory of Justice*, Rawls rejects the counsel of complacency that Friedman's view reflects. In a stirring passage, Rawls states a familiar truth that we often forget: The way things are does not determine the way they ought to be.

We should reject the contention that the ordering of institutions is always defective because the distribution of natural talents and the contingencies of social circumstance are unjust, and this injustice must inevitably carry over to human arrangements. Occasionally this reflection is offered as an excuse for ignoring injustice, as if the refusal to acquiesce in injustice is on a par with being unable to accept death. The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are

simply natural facts. What is just and unjust is the way that institutions deal with these facts.²⁵

Rawls proposes that we deal with these facts by agreeing “to share one another’s fate,” and “to avail [ourselves] of the accidents of nature and social circumstance only when doing so is for the common benefit.”²⁶ Whether or not his theory of justice ultimately succeeds, it represents the most compelling case for a more equal society that American political philosophy has yet produced.