

0001 MICHAEL SANDEL: When we ended last time, we were considering arguments
0002 for and against affirmative action, counting race as a factor in
0003 admissions.
0004 And in the course of the discussion, three arguments emerged, three
0005 arguments for affirmative action.
0006 One of them was the idea that race and ethnic background should count as a
0007 way of correcting for the true meaning of test scores and grades.
0008 Getting a more accurate measure of the academic potential those scores, those
0009 numbers, represent.
0010 Second was what we called the compensatory argument, the idea of
0011 righting past wrongs, past injustice.
0012 And the third was the diversity argument.
0013 And when Cheryl Hopwood, in the 1990s, challenged the University of Texas Law
0014 School's affirmative action program in the federal courts, the University of
0015 Texas made another version of the diversity argument, saying that the
0016 broader social purpose, the social mission, of the University of Texas
0017 Law School is to produce leaders in the legal community, in the political
0018 community, among judges, lawyers, legislators.
0019 And therefore, it's important that we produce leaders who reflect the
0020 background and the experience and the ethnic and the racial composition of
0021 the state of Texas.
0022 It's important for serving our wider social mission.
0023 That was the University of Texas Law School's argument.
0024 And then we considered an objection to the diversity argument, which after
0025 all, is an argument in the name of the social mission, the common good.
0026 We saw that Rawls does not simply believe that arguments of the common
0027 good or the general welfare should prevail if individual rights must be
0028 violated in the course of promoting the common good.
0029 You remember, that was the question, the challenge, to the diversity
0030 rationale that we were considering when we finished last time.
0031 And we began to discuss the question, well, what right might be at stake?
0032 Maybe the right to be considered according to factors
0033 within one's control.
0034 Maybe this is the argument that Cheryl Hopwood implicitly was making.
0035 She can't help the fact that she's white.

0036 Why should her chance at getting into law school depend on a factor she
0037 can't control?

0038 And then Hannah, who was advancing an argument last time, said Harvard has
0039 the right to define its mission any way it wants to.
0040 It's a private institution.

0041 And it's only once Harvard defines its mission that we can identify the
0042 qualities that count.
0043 So no rights are being violated.

0044 Now what about that argument?
0045 What I would like to do is to hear objections to that reply, and then see
0046 whether others have an answer.

0047 Yes.

0048 And tell us your name.

0049 DA: Da.

0050 MICHAEL SANDEL: Da.

0051 Right, you spoke up last time.

0052 How do you answer that argument?

0053 DA: Well, I think there was two things in there.
0054 One of them was that a private institution could define its mission
0055 however it wants.
0056 But that doesn't however it defines it right.
0057 Like I could define my personal mission as, I want to collect all the
0058 money in the world.
0059 But does that make it even a good mission?

0060 So you can't say that just because a college is a private institution, it
0061 can just define whatever it wants.
0062 We still have to think about whether the way it's defining it is right.
0063 And in the case of affirmative action, a lot of people have said that since
0064 there's a lot of other factors involved, why not race?
0065 Like, if we already know that the system's imperfect--

0066 MICHAEL SANDEL: Let's--
0067 I want to stick with your first point, Da.
0068 Here's Da's objection.
0069 Can a college or university define its social purpose any way it wants to and
0070 then define admissions criteria accordingly?
0071 What about the University of Texas Law School, not today, but in the 1950s?
0072 Then, there was another Supreme Court case against the admissions policy of

0073 the University of Texas Law School because it was segregated.

0074 It only admitted whites.

0075 And when the case went to court, back in the '50s, the University of Texas

0076 Law School also invoked its mission.

0077 Our mission as a law school is to educate lawyers for the Texas bar, for

0078 Texas law firms, and no Texas law firm hires African Americans.

0079 So to fulfill our mission, we only admit whites.

0080 Or, consider Harvard in the 1930s, when it had anti-Jewish quotas.

0081 President Lowell, president of Harvard in the 1930s, said that he had nothing

0082 personally against Jews, but he invoked the mission, the social

0083 purpose of Harvard, he said, which is not only to train intellectuals.

0084 Part of the mission of Harvard, he said, is to train stockbrokers for

0085 Wall Street, presidents, and senators, and there are very few Jews who go

0086 into those professions.

0087 Now here's the challenge.

0088 Is there a principled distinction between the invocation of the social

0089 purpose of the college or university today, in the diversity rationale, and

0090 the invocation of the social purpose or mission of the university by Texas

0091 in the 1950s or Harvard in the 1930s?

0092 Is there a difference in principle?

0093 What's the reply?

0094 Hannah?

0095 HANNAH: Well, I think that the principal that's different here is

0096 basically the distinction between inclusion versus exclusion.

0097 I think that it's morally wrong of the university to say, we're going to

0098 exclude you on the basis of your religion or your race.

0099 That's denial on the basis of arbitrary factors.

0100 What Harvard is trying to do today with its diversity initiatives is to

0101 include groups that were excluded in the past.

0102 MICHAEL SANDEL: Good.

0103 Let's see if--

0104 stay there.

0105 Let's see if someone would like to reply.

0106 STEVIE: Actually, this is kind of in support of Hannah,

0107 rather than a reply.

0108 MICHAEL SANDEL: That's all right.

0109 STEVIE: But I was going to say another principal difference can be based on

0110 malice being the motivation, I guess, for the historical segregation act.

0111 So it's saying that we're not going to let blacks or Jews in because they're

0112 worse as people, or as a group.

0113 MICHAEL SANDEL: Good.

0114 So the element of malice isn't present.

0115 And what's your name?

0116 STEVIE: Stevie.

0117 MICHAEL SANDEL: Stevie says that in the historic segregationist, racist,

0118 antisemitic quotas or prohibitions, there was built into them a certain

0119 kind of malice, a certain kind of judgment that African Americans or

0120 Jews were somehow less worthy than everybody else.

0121 Whereas, present-day affirmative action programs don't involve or imply

0122 any such judgment.

0123 What it amounts to saying is, so long as a policy just uses people, in a

0124 way, as valuable to the social purpose of the institution, it's OK, provided

0125 it doesn't judge them--

0126 maliciously, as Stevie might add--

0127 as intrinsically less worthy.

0128 I'd like to raise a question.

0129 Doesn't that concede that all of us, when we compete for positions or for

0130 seats in colleges and universities, in a way, are being used--

0131 not judged, but used--

0132 in a way that has nothing to do with moral desert?

0133 Remember, we got into this whole discussion of affirmative action when

0134 we were trying to figure out whether distributive justice should be tied to

0135 moral desert or not.

0136 And we were launched on that question by Rawls and his denial, his rejection

0137 of the idea that distributive justice, whether it's positions or places in

0138 the class or income and wealth, is a matter of moral desert.

0139 Suppose that were the moral basis of Harvard's admissions policy.

0140 What letters would they have to write to people they rejected--

0141 or accepted, for that matter?

0142 Wouldn't they have to write something like this?

0143 Dear Unsuccessful Applicant, we regret to inform you that your application

0144 for admission has been rejected.

0145 It's not your fault that when you came along, society happened not to need

0146 the qualities you had to offer.

0147 [LAUGHTER]

0148 MICHAEL SANDEL: Those admitted instead of you are not themselves deserving of
0149 a place nor worthy of praise for the factors that led to their admission.
0150 We are, in any case, only using them and you as instruments of a wider
0151 social purpose.

0152 [LAUGHTER]

0153 MICHAEL SANDEL: Better luck next time.

0154 [LAUGHTER]

0155 MICHAEL SANDEL: What was the letter you actually got
0156 when you were admitted?
0157 Perhaps it should have read something like this.
0158 Dear Successful Applicant, we are pleased to inform you that your
0159 application for admission has been accepted.
0160 It turns out, lucky for you, that you have the traits that society needs at
0161 the moment, so we propose to exploit your assets for society's advantage.

0162 [LAUGHTER]

0163 MICHAEL SANDEL: You are to be congratulated, not in the sense that
0164 you deserve credit for having the qualities that led to your
0165 information, but only in the sense that the winner of a lottery is to be
0166 congratulated.
0167 And if you choose to accept our offer, you will ultimately be entitled to the
0168 benefits that attach to being used in this way.
0169 We look forward to seeing you in the fall.

0170 [LAUGHTER]

0171 MICHAEL SANDEL: Now there is something a little odd, morally odd, if it's
0172 true that those letters do reflect the theory, the philosophy,
0173 underlying the policy.
0174 So here's the question they pose.
0175 And it's a question that takes us back to a big issue in political
0176 philosophy.
0177 Is it possible and is it desirable to detach questions of distributive
0178 justice from questions of moral desert and questions of virtue?
0179 In many ways, this is an issue that separates modern political philosophy
0180 from ancient political thought.
0181 What's at stake in the question of whether we can put desert, moral
0182 desert aside?
0183 It seemed, when we were reading Rawls, that the incentive, the reason, he had

0184 for detaching distributive justice from moral desert was
0185 an egalitarian one.

0186 That if we set desert to one side, there's greater scope for the exercise
0187 of egalitarian considerations.

0188 The veil of ignorance.

0189 The two principles.

0190 The difference principle.

0191 Helping the least well off.

0192 Redistribution and all that.

0193 But what's interesting is if you look at a range of thinkers we've been
0194 considering, there does seem to be a reason they want to detach justice
0195 from desert that goes well beyond any concern for equality.

0196 Libertarian rights-oriented theorists of the kind we've been studying, as
0197 well as egalitarian rights-oriented theorists, including Rawls, and for
0198 that matter, also including Kant, all agree.

0199 Despite their disagreements over distributive justice and the welfare
0200 state and all of that, they all agree that justice is not a matter of
0201 rewarding or honoring virtue or moral desert.

0202 Now why did they all think that?

0203 It can't just be for egalitarian reasons.

0204 Not all of them are egalitarians.

0205 This gets us to the big philosophical question we have to try to sort out.
0206 Somehow they think tying justice to moral merit or virtue is going to lead
0207 away from freedom, from respect for persons as free beings.

0208 Well, in order to see what they consider to be at stake, and in order
0209 to assess their shared assumption, we need to turn to a thinker, to a
0210 philosopher, who disagrees with them.

0211 Who explicitly ties justice to honor, honoring virtue and
0212 merit and moral desert.

0213 And that thinker is Aristotle.

0214 Now in many ways, Aristotle's idea of justice is intuitively very powerful.
0215 In some ways, it's strange.

0216 I want to bring out both its power, its plausibility, and its strangeness
0217 so that we can see what's at stake in this whole debate about justice and
0218 whether it's tied to desert and virtue.

0219 So what is Aristotle's answer to the question about justice?

0220 For Aristotle, justice is a matter of giving people what they deserve.

0221 Giving people their due.

0222 It's a matter of figuring out the proper fit between persons with their

0223 virtues and their appropriate social roles.

0224 Well, what does this picture of justice look like?

0225 And how does it differ from the conception that seems to be shared

0226 among libertarian and egalitarian rights-oriented theorists alike?

0227 Justice means giving each person his or her due, giving

0228 people what they deserve.

0229 But what is a person's due?

0230 What are the relevant grounds of merit or desert?

0231 Aristotle says that depends on the sort of things being distributed.

0232 "Justice involves two factors--

0233 things and the persons to whom the things are assigned.

0234 In general we say," Aristotle writes, "that persons who are equal should

0235 have equal things assigned to them."

0236 But here there arises a hard question.

0237 Equals in what respect?

0238 Aristotle says, that depends on the sort of thing we're distributing.

0239 Suppose we're distributing flutes.

0240 What is the relevant merit or basis of desert for flutes?

0241 Who should get the best ones?

0242 What's Aristotle's answer?

0243 Anyone.

0244 SPEAKER 1: The best musician.

0245 MICHAEL SANDEL: The best flute players.

0246 Right.

0247 Those who are best in the relevant sense.

0248 The best flute players.

0249 Is it just to discriminate in allocating flutes?

0250 Yes.

0251 All justice involves discrimination, Aristotle says.

0252 What matters is that the discrimination be according to the

0253 relevant excellence, according to the virtue appropriate to having flutes.

0254 He says it would be unjust to discriminate on some other basis in

0255 giving out the flutes.

0256 Say, wealth--

0257 just giving the best flutes to the people who can pay the highest price.

0258 Or nobility of birth--
0259 just giving flutes to aristocrats.
0260 Or physical beauty--
0261 giving the best flutes to the most handsome.
0262 Or chance--
0263 having a lottery.
0264 Aristotle says birth and beauty may be greater goods than the ability to play
0265 the flute, and those who possess them may surpass the flute player more in
0266 these qualities than he surpasses them in his flute-playing, but the fact
0267 remains that he is the person who ought to get the best flute.
0268 It's a strange idea, this comparison, by the way.
0269 I mean, could you say, am I more handsome than she is a
0270 good lacrosse player?
0271 It's a strange kind of comparison.
0272 But putting that aside, Aristotle says we're not looking for the best
0273 overall, whatever that might mean.
0274 We're looking for the best musician.
0275 Now why--
0276 this is important to see-- why should the best flutes go to
0277 the best flute players?
0278 Well, why do you think?
0279 Anybody.
0280 SPEAKER 2: Their music.
0281 MICHAEL SANDEL: What?
0282 SPEAKER 2: Best music.
0283 MICHAEL SANDEL: They'll produce the best music.
0284 Well, and everybody will enjoy it more.
0285 That's not Aristotle's answer.
0286 Aristotle is not a utilitarian.
0287 He's not just saying, that way, there will be better music and everyone will
0288 enjoy it, everyone will be better off.
0289 His answer is, the best flutes should go to the best flute players because
0290 that's what flutes are for.
0291 To be played well.
0292 The purpose of flute-playing, the purpose, is to
0293 produce excellent music.
0294 And those who can best perfect that purpose ought properly to

0295 have the best ones.

0296 Now it may also be true, as a welcome side effect, that everyone will enjoy
0297 listening to that music.

0298 So that answer is true enough, as far as it goes.

0299 But it's important to see that Aristotle's reason is not a
0300 utilitarian reason.

0301 It's a reason that looks--

0302 here's where you might think it's a little bit strange.

0303 It looks to the purpose, the point, the goal of flute-playing.

0304 Another way of describing this, looking to the goal to determine the
0305 just allocation, the Greek for goal or end was telos.

0306 So Aristotle says, you have to consider the point, the end, the goal,
0307 the telos of the thing-- in this case, of flute-playing--

0308 and that's how you define a just allocation, a just discrimination.

0309 So this idea of reasoning from the goal, from the telos, is called
0310 teleological reasoning.

0311 Teleological moral reasoning.

0312 And that's Aristotle's way.

0313 Reasoning from the goal, from the end.

0314 Now this may seem, as I said, a strange idea, that we're supposed to
0315 reason from the purpose, but it does have a certain intuitive plausibility.

0316 Consider the allocation, let's say, at Harvard of the best tennis courts or
0317 squash courts.

0318 How should they be allocated?

0319 Who should have priority in playing on the best courts?

0320 Well, you might say, those who can best afford them.

0321 Set up a fee system.

0322 Charge money for them.

0323 Aristotle would say no.

0324 You might say, well, Harvard big-shots, the most influential people
0325 at Harvard.

0326 Who would they be?

0327 The senior faculty should have priority in playing on
0328 the best tennis courts.

0329 No, Aristotle would reject that.

0330 Some scientist may be a greater scientist than some varsity tennis
0331 player is a tennis player.

0332 But still, the tennis player is the one who should have priority for
0333 playing on the best tennis court.

0334 There is a certain intuitive plausibility to this idea.

0335 Now one of the things that makes it strange is that in Aristotle's world,
0336 in the ancient world, it wasn't only social practices that were governed,
0337 in Aristotle's view, by teleological reasoning and teleological
0338 explanation.

0339 All of nature was understood to be a meaningful order.

0340 And what it meant to understand nature, to grasp nature, to find our
0341 place within nature, was to inquire into and read out the purposes, or the
0342 telos, of nature.

0343 And with the advent of modern science, it's been difficult to think of the
0344 world that way, and so it makes it harder, perhaps, to think of justice
0345 in a teleological way.

0346 But there is a certain naturalness to thinking about even the natural world
0347 as teleologically ordered, as a purpose of whole.

0348 In fact, children have to be educated out of this way of
0349 looking at the world.

0350 I realized this when my kids were very young and I was reading them a book,
0351 Winnie-the-Pooh.

0352 And Winnie-the-Pooh gives you a great idea of how there is a certain
0353 natural, childlike way of looking at the world in a teleological way.

0354 You may remember a story of Winnie-the-Pooh walking in
0355 the forest one day.

0356 He came to a place in the forest.

0357 "And from the top of a tree, there came a loud buzzing-noise.

0358 Winnie-the-Pooh sat at the foot of the tree, put his head between his paws,
0359 and began to think.

0360 Here's what he said to himself.

0361 'That buzzing-noise means something.

0362 You don't get a buzzing-noise like that, just buzzing and buzzing,
0363 without its meaning something.

0364 If there's a buzzing-noise, somebody's making a buzzing-noise, and the only
0365 reason for making a buzzing-noise that I know of is because you're a bee.'

0366 Then he thought for another long time and said, 'And the only reason for
0367 being a bee that I know of is making honey.' And then he got up, and he
0368 said, 'And the only reason for making honey is so I can eat it.' So he began

0369 to climb the tree." This is an example of teleological reasoning.

0370 [LAUGHTER]

0371 [APPLAUSE]

0372 MICHAEL SANDEL: It isn't so implausible after all.

0373 Now we grow up and we're talked out of this way of thinking about the world.

0374 But here's the question.

0375 Even if teleological explanations don't fit with modern science, even if

0376 we've outgrown them in understanding nature, isn't there something still

0377 intuitively and morally plausible, even powerful, about Aristotle's idea

0378 that the only way to think about justice is to reason from the purpose,

0379 the goal, the telos of the social practice?

0380 And isn't that precisely what we were doing when we were disagreeing about

0381 affirmative action?

0382 You could almost recast that disagreement as one about what the

0383 proper, appropriate purpose or end of a university education consists in.

0384 Reasoning from the purpose or from the telos or from the end--

0385 Aristotle says that's indispensable to thinking about justice.

0386 Is he right?

0387 Think about that question as you turn to Aristotle's Politics.

0388 [APPLAUSE]
