

0001 Professor Sandel: We ended last time with that remarkable poll.
0002 Do you remember?
0003 The poll about birth order.
0004 What percentage of people in this room raised their hands to say that they
0005 were the first born?
0006 75%, 80%?
0007 And what was the significance of that if you're thinking about these
0008 theories of distributive justice?
0009 Remember, we were discussing three different theories of distributive
0010 justice, three different ways of answering the question, how should
0011 income, and wealth, and opportunities, and the good things in life be
0012 distributed?
0013 And so far we've looked at the libertarian answer that says the just
0014 system of distribution is a system of free exchange, a free market economy
0015 against a background of formal equality, which simply means that jobs
0016 and careers are open to anyone.
0017 Rawls says this represents an improvement over aristocratic and
0018 caste systems, because everyone can compete for every job--
0019 careers open to talents.
0020 And beyond that, the just distribution is the one that results from free
0021 exchange, voluntary transactions--
0022 no more, no less.
0023 Then Rawls argues, if all you have is formal equality, jobs open to
0024 everyone, the result is not going to be fair.
0025 It will be biased in favor of those who happened to be born to affluent
0026 families, who happen to have the benefit of good educational
0027 opportunities.
0028 And that accident of birth is not a just basis for
0029 distributing life chances.
0030 And so many people who notice this unfairness, Rawls argues, are led to
0031 embrace a system of fair equality of opportunity.
0032 That leads to the meritocratic system--
0033 fair equality of opportunity.
0034 But Rawls says, even if you bring everyone to the same starting point in
0035 the race, what's going to happen?

0036 Who's going to win?

0037 The fastest runners.

0038 So once you're troubled by basing distributive shares on morally

0039 arbitrary contingencies, you should if you reason it through, be carried all

0040 the way to what Rawls calls the Democratic Conception, a more

0041 egalitarian conception of distributive justice that he defines by the

0042 difference principle.

0043 Now, he doesn't say that the only way to remedy or to compensate for

0044 differences in natural talents and abilities is to have a leveling

0045 equality, a guaranteed equality of outcome.

0046 But he does say there's another way to deal with these contingencies.

0047 People may gain, may benefit from their good fortune but only on terms

0048 that work to the advantage of the least well-off.

0049 And so we can test how this theory actually works by thinking about some

0050 pay differentials that arise in our society.

0051 What does the average school teacher make in the United

0052 States do you suppose--

0053 roughly?

0054 Audience: \$35,000.

0055 Professor Sandel: It's a little more--

0056 \$42,000.

0057 What about David Letterman?

0058 How much do you think David Letterman makes?

0059 More than a schoolteacher?

0060 \$31 million, David Letterman.

0061 Is that fair that David Letterman makes that much more

0062 than a school teacher?

0063 Well, Rawls's answer would be, it depends whether the basic structure of

0064 society is designed in such a way that Letterman's \$31 million is subject to

0065 taxation so that some of those earnings are taken to work for the

0066 advantage of the least well-off.

0067 Another example of a pay differential--

0068 a justice of the United States Supreme Court.

0069 What do they make?

0070 It's just under \$200,000.

0071 Here's Sandra Day O'Connor, for example.

0072 There she is.

0073 There's another judge who makes a lot more than Sandra Day O'Connor.

0074 Do you know who it is?

0075 Audience: Judge Judy.

0076 Professor Sandel: Judge Judy.

0077 How did you know that?

0078 You watch?

0079 Audience: No.

0080 Professor Sandel: No, but you're right.

0081 Judge Judy-- you know how much she makes?

0082 There she is.

0083 \$25 million.

0084 Now, is that just?

0085 Is it fair?

0086 Well, the answer is it depends whether this is against a background system in

0087 line with the difference principle, where those who come out on top in

0088 terms of income and wealth are taxed in a way that benefits the least

0089 well-off members of society.

0090 Now, we're going to come back to these wage differentials, pay differentials

0091 between a real judge and a TV judge, the one Marcus watches all the time.

0092 What I want to do now is return to these theories and to examine the

0093 objections to Rawls's more egalitarian theory, the difference principle.

0094 There are at least three objections to Rawls's difference principle.

0095 One of them came up last time in the discussion, and a number of you raised

0096 this worry--

0097 what about incentives?

0098 Isn't there the risk if taxes reach 70%, 80%, 90% marginal rate that

0099 Michael Jordan won't play basketball?

0100 That David Letterman won't do late night comedy?

0101 Or that CEOs will go into some other line of work?

0102 Now, who among those who are defenders of Rawls, who has an answer to this

0103 objection about the need for incentives?

0104 Yes?

0105 Go ahead.

0106 Stand up.

0107 Tim: Rawls's idea is that there should only be so much difference that it

0108 helps the least well-off the most.

0109 So if there's too much equality, then the least well-off might not be able

0110 to watch late night TV or might not have a job because their CEO doesn't
0111 want to work.

0112 So you need to find the correct balance, where taxation still leaves
0113 enough incentive for the least well-off to benefit from the talents.

0114 Professor Sandel: Good.

0115 And what's your name?

0116 Tim: Tim.

0117 Professor Sandel: Tim.

0118 All right.

0119 So Tim is saying in effect that Rawls takes account of incentives and could
0120 allow for pay differentials and for some adjustment in the tax rate to
0121 take account of incentives.

0122 But Tim points out the standpoint from which the question of incentives needs
0123 to be considered is not the effect on the total size of the economic pie,
0124 but instead from the standpoint of the effect of incentives or disincentives
0125 on the well-being of those at the bottom.

0126 Right?

0127 Good.

0128 Thank you.

0129 I think that is what Rawls would say.

0130 In fact, if you look in section 17, where he describes the difference
0131 principle, he allows for incentives.

0132 The naturally advantaged are not to gain merely because they are more
0133 gifted, but only to cover the cost of training and education and for using
0134 their endowments in ways that help the less fortunate as well.

0135 So you can have incentives.

0136 You can adjust the tax rate.

0137 If taking too much from David Letterman or from Michael Jordan or
0138 from Bill Gates winds up actually hurting those at the
0139 bottom, that's the test.

0140 So incentives, that's not a decisive objection against
0141 Rawls's difference principle.

0142 But there are two weightier, more difficult objections.

0143 One of them comes from defenders of a meritocratic conception.

0144 The argument that says, what about effort?

0145 What about people working hard, having a right to what they earn because they
0146 deserved it?

0147 They've worked hard for it.

0148 That's the objection from effort and moral desert.

0149 Then there's just another objection that comes from libertarians.

0150 And this objection has to do with reasserting the idea of

0151 self-ownership.

0152 Doesn't the difference principle, by treating our natural talents and

0153 endowments as common assets, doesn't that violate the

0154 idea that we own ourselves?

0155 Now, let me deal first with the objection that comes from the

0156 libertarian direction.

0157 Milton Friedman writes in his book Free to Choose, "Life is not fair.

0158 And it's tempting to believe the government can rectify what nature has

0159 spawned." But his answer is, the only way to try to rectify that is to have

0160 a leveling equality of outcome--

0161 everyone finishing the race at the same point.

0162 And that would be a disaster.

0163 This is an easy argument to answer.

0164 And Rawls addresses it in one of the most powerful passages, I think, of A

0165 Theory of Justice.

0166 It's in section 17.

0167 "The natural distribution,"--

0168 and here, he's talking about the natural distribution of talents and

0169 endowments--

0170 "is neither just nor unjust; nor is it unjust that persons are born into

0171 society at some particular position.

0172 These are simply natural facts.

0173 What is just and unjust is the way that institutions deal with these

0174 facts."

0175 That's his answer to libertarian, laissez faire economists, like Milton

0176 Friedman who say life is unfair, but get over it.

0177 Get over it, and let's see if we can at least maximize the benefits that

0178 flow from it.

0179 But the more powerful libertarian objection to Rawls is not libertarian

0180 from the libertarian economists like Milton Friedman, it's from the

0181 argument about self-ownership, developed as we saw in Nozick.

0182 And from that point of view, yes, it might be a good thing to create head

0183 start programs and public schools so that everyone can go to a decent

0184 school and start the race at the same starting line.

0185 That might be good.

0186 But if you tax people to create public schools, if you tax people against
0187 their will, you coerce them.

0188 It's a form of theft.

0189 If you take some of Letterman's \$31 million, tax it away to support public
0190 schools against his will, the state is really doing no better than
0191 stealing from him.

0192 It's coercion.

0193 And the reason is, we have to think of ourselves as owning our talents and
0194 endowments, because otherwise, we're back to just using people
0195 and coercing people.

0196 That's the Libertarian reply.

0197 What's Rawls's answer to that objection?

0198 He doesn't address the idea of self-ownership directly.

0199 But the effect, the moral weight, of his argument for the difference
0200 principle is, maybe we don't own ourselves in that
0201 thoroughgoing sense after all.

0202 Now, he says this doesn't mean that the state is an owner in me in the
0203 sense that it can simply commandeer my life, because remember the first
0204 principle we would agree to behind the veil of ignorance is the principle of
0205 equal basic liberties--

0206 freedom of speech, religious liberty, freedom of conscience, and the like.

0207 So the only respect in which the idea of self-ownership must give way comes
0208 when we're thinking about whether I own myself in the sense that I have a
0209 privileged claim on the benefits that come from the exercise of my talents
0210 in a market economy.

0211 And Rawls's says on reflection, we don't.

0212 We can defend rights.

0213 We can respect the individual.

0214 We can uphold human dignity without embracing the idea of self-possession.

0215 That, in effect, is his reply to the libertarian.

0216 I want to turn now to his reply to the defender of a meritocratic conception,
0217 who invokes effort as the basis of moral desert.

0218 People who work hard to develop their talents deserve the benefits that come
0219 from the exercise of their talents.

0220 Well, we've already seen the beginning of Rawls's answer to that question.

0221 And it goes back to that poll we took about birthorder.

0222 His first answer is, even the work ethic, even the willingness to strive

0223 conscientiously, depends on all sorts of family circumstances and social and

0224 cultural contingencies, for which we can claim no credit.

0225 You can't claim credit for the fact that you, most of you, most of us

0226 happen to be first in birth order.

0227 And that for some complex psychological, and social reasons,

0228 that seems to be associated with striving, with achieving, with effort.

0229 That's one answer.

0230 There's a second answer.

0231 Those of you who invoke effort, you don't really believe that moral desert

0232 attaches to effort.

0233 Take two construction workers.

0234 One is strong and can raise four walls in an hour without

0235 even breaking a sweat.

0236 And another construction worker is small and scrawny and has to spend

0237 three days to do the same amount of work.

0238 No defender of meritocracy is going to look at the effort of that weak and

0239 scrawny construction worker and say, therefore he deserves to make more.

0240 So it isn't really effort.

0241 This is the second reply to the meritocratic claim.

0242 It isn't really effort that the defender of meritocracy believes is

0243 the moral basis of distributive shares.

0244 It's contribution.

0245 How much do you contribute?

0246 But contribution takes us straight back to our natural talents and

0247 abilities, not just effort.

0248 And it's not our doing how we came into the possession of those talents

0249 in the first place.

0250 All right, suppose you accepted these arguments--

0251 that effort isn't everything, that contribution matters from the

0252 standpoint of the meritocratic conception, that effort even

0253 isn't our own doing.

0254 The objection continues, does that mean that, according to Rawls, moral

0255 desert has nothing to do with distributive justice?

0256 Well, yes.

0257 Distributive justice is not about moral desert.

0258 Now, here Rawls introduces an important and a tricky distinction.

0259 It's between moral desert on the one hand and entitlements to legitimate
0260 expectations on the other.

0261 What is the difference between moral deserts and entitlement?

0262 Consider two different games, a game of chance and a game of skill.

0263 Take a game of pure chance.

0264 Say I play the Massachusetts state lottery, and my number comes up.

0265 I'm entitled to my winnings.

0266 But even though I'm entitled to my winnings, there's no sense in which--
0267 because it's just a game of luck--
0268 no sense in which I morally deserve to win in the first place.

0269 That's an entitlement.

0270 Now, contrast the lottery with a different kind of
0271 game, a game of skill.

0272 Now, imagine the Boston Red Sox winning the World Series.

0273 When they win, they're entitled to the trophy.

0274 But it can be always asked of a game of skill, did they deserve to win?

0275 It's always possible, in principle, to distinguish what someone's entitled to
0276 under the rules and whether they deserve to win in the first place.

0277 That's an antecedent standard, moral desert.

0278 Now, Rawls says distributive justice is not a matter of moral desert,
0279 though, it is a matter of entitlements to legitimate expectations.

0280 Here is where he explains it.

0281 "A just scheme answers to what men are entitled to; it satisfies their
0282 legitimate expectations as founded upon social institutions.

0283 But what they are entitled to is not proportional to or dependent on their
0284 intrinsic worth."

0285 "The principles of justice that regulate the basic structure do not
0286 mention moral desert, and there is no tendency for distributive shares to
0287 correspond to it." Why does Rawls make this distinction?

0288 What morally is at stake?

0289 One thing morally at stake is the whole question of effort that we've
0290 already discussed.

0291 But there's a second contingency, a second source of moral arbitrariness
0292 that goes beyond the question of whether it's to my credit that I have
0293 the talents that enable me to get ahead.

0294 And that has to do with the contingency that I live in a society

0295 that happens to prize my talents.

0296 The fact that David Letterman lives in a society that puts a great premium,
0297 puts a great value on a certain type of smirky joke, that's not his doing.
0298 He's lucky that he happens to live in such a society.

0299 But this is a second contingency.

0300 This isn't something that we can claim credit for.

0301 Even if I had sole, unproblematic claim to my talents and to my effort,
0302 it would still be the case that the benefits I get from exercising those
0303 talents depend on factors that are arbitrary from a moral point of view.
0304 What my talents will reap in a market economy, what does that depend on?
0305 What other people happen to want or like in this society?

0306 It depends on the law of supply and demand.

0307 That's not my doing.

0308 It's certainly not the basis for moral desert.

0309 What counts as contributing depends on the qualities that this or that
0310 society happens to prize.

0311 Most of us are fortunate to possess, in large measure for whatever reason,
0312 the qualities that our society happens to prize, the qualities that enable us
0313 to provide what society wants.

0314 In a capitalist society, it helps to have entrepreneurial drive.

0315 In a bureaucratic society, it helps to get on easily and
0316 smoothly with superiors.

0317 In a mass democratic society, it helps to look good on television and to
0318 speak in short superficial soundbites.

0319 In a litigious society, it helps to go to law school and to have the talents
0320 to do well on LSATs.

0321 But none of this is our doing.

0322 Suppose that we, with our talents, inhabited not our society,
0323 technologically advanced, highly litigious, but a hunting society or a
0324 warrior society.

0325 What would become of our talents then?

0326 They wouldn't get us very far.

0327 No doubt some of us would develop others.

0328 But would we be less worthy?

0329 Would we be less virtuous?

0330 Would we be less meritorious if we lived in that kind of society rather
0331 than in ours?

0332 Rawls's answer is no.

0333 We might make less money and properly so.

0334 But while we would be entitled to less, we would be no less worthy, no

0335 less deserving than we are now.

0336 And here's the point.

0337 The same could be said of those in our society who happen to hold less

0338 prestigious positions, who happen to have fewer of the talents that our

0339 society happens to reward.

0340 So here's the moral import of the distinction between moral desert and

0341 entitlements to legitimate expectations.

0342 We are entitled to the benefits that the rules of the game promise for the

0343 exercise of our talents.

0344 But it's a mistake and a conceit to suppose that we deserve in the first

0345 place a society that values the qualities we

0346 happen to have in abundance.

0347 Now, we've been talking here about income and wealth.

0348 What about opportunities and honors?

0349 What about the distribution of access, of seats in elite colleges and

0350 universities?

0351 It's true all of you, most of you first born, worked hard, strived,

0352 developed your talents to get here.

0353 But Rawls asks, in effect, what is the moral status of your claim to the

0354 benefits that attach to the opportunities you have?

0355 Our seats in colleges and universities, a matter, a kind of

0356 reward, an honor for those who deserve them, because they've worked so hard?

0357 Or are those seats, those opportunities, and honors entitlements

0358 to legitimate expectations that depend for their justification on those of us

0359 who enjoy them, doing so in a way that works to the benefit of those at the

0360 bottom of society?

0361 That's the question that Rawls's difference principle poses.

0362 It's a question that can be asked of the earnings of Michael Jordan, and

0363 David Letterman, and Judge Judy.

0364 But it's also a question that can be asked of opportunities to go to the

0365 top colleges and universities.

0366 And that's a debate that comes out when we turn to the question of

0367 affirmative action next time.
