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Distributive Justice ~ Who Deserves What
[16]
      Professor Sandel: We ended last time with that remarkable poll.
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      Do you remember?
      The poll about birth order.
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      What percentage of people in this room raised their hands to say that they
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      were the first born?
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      75%, 80%?
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      And what was the significance of that if you're thinking about these
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      theories of distributive justice?
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      Remember, we were discussing three different theories of distributive
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      justice, three different ways of answering the question, how should
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      income, and wealth, and opportunities, and the good things in life be
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      distributed?
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      And so far we've looked at the libertarian answer that says the just
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      system of distribution is a system of free exchange, a free market economy
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      against a background of formal equality, which simply means that jobs
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      and careers are open to anyone.
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      Rawls says this represents an improvement over aristocratic and
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      caste systems, because everyone can compete for every job--
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      careers open to talents.
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      And beyond that, the just distribution is the one that results from free
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      exchange, voluntary transactions--
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      no more, no less.
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      Then Rawls argues, if all you have is formal equality, jobs open to
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      everyone, the result is not going to be fair.
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      It will be biased in favor of those who happened to be born to affluent
      families, who happen to have the benefit of good educational
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      opportunities.
      And that accident of birth is not a just basis for
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      distributing life chances.
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      And so many people who notice this unfairness, Rawls argues, are led to
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      embrace a system of fair equality of opportunity.
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      That leads to the meritocratic system--
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      fair equality of opportunity.
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      But Rawls says, even if you bring everyone to the same starting point in
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     the race, what's going to happen?
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     Who's going to win?
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      The fastest runners.
      So once you're troubled by basing distributive shares on morally
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      arbitrary contingencies, you should if you reason it through, be carried all
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      the way to what Rawls calls the Democratic Conception, a more
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      egalitarian conception of distributive justice that he defines by the
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      difference principle.
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      Now, he doesn't say that the only way to remedy or to compensate for
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      differences in natural talents and abilities is to have a leveling
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      equality, a guaranteed equality of outcome.
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      But he does say there's another way to deal with these contingencies.
      People may gain, may benefit from their good fortune but only on terms
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      that work to the advantage of the least well-off.
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      And so we can test how this theory actually works by thinking about some
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      pay differentials that arise in our society.
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      What does the average school teacher make in the United
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      States do you suppose--
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      roughly?
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      Audience: $35,000.
      Professor Sandel: It's a little more--
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      $42,000.
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      What about David Letterman?
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      How much do you think David Letterman makes?
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      More than a schoolteacher?
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      $31 million, David Letterman.
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      Is that fair that David Letterman makes that much more
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      than a school teacher?
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      Well, Rawls's answer would be, it depends whether the basic structure of
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      society is designed in such a way that Letterman's $31 million is subject to
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      taxation so that some of those earnings are taken to work for the
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      advantage of the least well-off.
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      Another example of a pay differential--
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      a justice of the United States Supreme Court.
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     What do they make?
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      It's just under $200,000.
     Here's Sandra Day O'Connor, for example.
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0072 There she is.

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      There's another judge who makes a lot more than Sandra Day O'Connor.
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      Do you know who it is?
      Audience: Judge Judy.
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      Professor Sandel: Judge Judy.
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      How did you know that?
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      You watch?
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      Audience: No.
      Professor Sandel: No, but you're right.
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      Judge Judy-- you know how much she makes?
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      There she is.
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      $25 million.
      Now, is that just?
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      Is it fair?
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      Well, the answer is it depends whether this is against a background system in
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      line with the difference principle, where those who come out on top in
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      terms of income and wealth are taxed in a way that benefits the least
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      well-off members of society.
      Now, we're going to come back to these wage differentials, pay differentials
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      between a real judge and a TV judge, the one Marcus watches all the time.
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      What I want to do now is return to these theories and to examine the
      objections to Rawls's more egalitarian theory, the difference principle.
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      There are at least three objections to Rawls's difference principle.
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      One of them came up last time in the discussion, and a number of you raised
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      this worry--
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      what about incentives?
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      Isn't there the risk if taxes reach 70%, 80%, 90% marginal rate that
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      Michael Jordan won't play basketball?
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      That David Letterman won't do late night comedy?
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      Or that CEOs will go into some other line of work?
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      Now, who among those who are defenders of Rawls, who has an answer to this
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      objection about the need for incentives?
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      Yes?
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      Go ahead.
0106
      Stand up.
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      Tim: Rawls's idea is that there should only be so much difference that it
      helps the least well-off the most.
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      So if there's too much equality, then the least well-off might not be able
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      to watch late night TV or might not have a job because their CEO doesn't
      want to work.
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      So you need to find the correct balance, where taxation still leaves
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      enough incentive for the least well-off to benefit from the talents.
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      Professor Sandel: Good.
      And what's your name?
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      Tim: Tim.
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      Professor Sandel: Tim.
      All right.
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      So Tim is saying in effect that Rawls takes account of incentives and could
      allow for pay differentials and for some adjustment in the tax rate to
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      take account of incentives.
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      But Tim points out the standpoint from which the question of incentives needs
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      to be considered is not the effect on the total size of the economic pie,
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      but instead from the standpoint of the effect of incentives or disincentives
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      on the well-being of those at the bottom.
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0126
      Right?
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      Good.
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      Thank you.
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      I think that is what Rawls would say.
      In fact, if you look in section 17, where he describes the difference
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      principle, he allows for incentives.
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      The naturally advantaged are not to gain merely because they are more
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      gifted, but only to cover the cost of training and education and for using
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      their endowments in ways that help the less fortunate as well.
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      So you can have incentives.
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      You can adjust the tax rate.
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      If taking too much from David Letterman or from Michael Jordan or
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      from Bill Gates winds up actually hurting those at the
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      bottom, that's the test.
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      So incentives, that's not a decisive objection against
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      Rawls's difference principle.
      But there are two weightier, more difficult objections.
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      One of them comes from defenders of a meritocratic conception.
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      The argument that says, what about effort?
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      What about people working hard, having a right to what they earn because they
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     deserved it?
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0147 They've worked hard for it. 0148 That's the objection from effort and moral desert. Then there's just another objection that comes from libertarians. 0149 And this objection has to do with reasserting the idea of 0150 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. And it's tempting to believe the government can rectify what nature has 0158 0159 spawned." But his answer is, the only way to try to rectify that is to have a leveling equality of outcome--0160 everyone finishing the race at the same point. 0161 And that would be a disaster. 0162 0163 This is an easy argument to answer. And Rawls addresses it in one of the most powerful passages, I think, of A 0164 Theory of Justice. 0165 It's in section 17. 0166 "The natural distribution,"--0167 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 argument about self-ownership, developed as we saw in Nozick. 0181 And from that point of view, yes, it might be a good thing to create head 0182 start programs and public schools so that everyone can go to a decent 0183

0184 school and start the race at the same starting line. That might be good. 0185 But if you tax people to create public schools, if you tax people against 0186 0187 their will, you coerce them. It's a form of theft. 0188 0189 If you take some of Letterman's \$31 million, tax it away to support public schools against his will, the state is really doing no better than 0190 0191 stealing from him. It's coercion. 0192 And the reason is, we have to think of ourselves as owning our talents and 0193 endowments, because otherwise, we're back to just using people 0194 0195 and coercing people. That's the Libertarian reply. 0196 What's Rawls's answer to that objection? 0197 He doesn't address the idea of self-ownership directly. 0198 But the effect, the moral weight, of his argument for the difference 0199 principle is, maybe we don't own ourselves in that 0200 thoroughgoing sense after all. 0201 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-freedom of speech, religious liberty, freedom of conscience, and the like. 0206 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. People who work hard to develop their talents deserve the benefits that come 0218 from the exercise of their talents. 0219

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

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And it goes back to that poll we took about birth order. 0221 His first answer is, even the work ethic, even the willingness to strive 0222 conscientiously, depends on all sorts of family circumstances and social and 0223 cultural contingencies, for which we can claim no credit. 0224 You can't claim credit for the fact that you, most of you, most of us 0225 0226 happen to be first in birth order. And that for some complex psychological, and social reasons, 0227 0228 that seems to be associated with striving, with achieving, with effort. That's one answer. 0229 There's a second answer. 0230 Those of you who invoke effort, you don't really believe that moral desert 0231 attaches to effort. 0232 Take two construction workers. 0233 One is strong and can raise four walls in an hour without 0234 0235 even breaking a sweat. And another construction worker is small and scrawny and has to spend 0236 three days to do the same amount of work. 0237 No defender of meritocracy is going to look at the effort of that weak and 0238 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. The objection continues, does that mean that, according to Rawls, moral 0254 desert has nothing to do with distributive justice? 0255 0256 Well, yes. Distributive justice is not about moral desert. 0257

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 expectations on the other. 0260 0261 What is the difference between moral deserts and entitlement? Consider two different games, a game of chance and a game of skill. 0262 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. But even though I'm entitled to my winnings, there's no sense in which--0266 because it's just a game of luck--0267 no sense in which I morally deserve to win in the first place. 0268 That's an entitlement. 0269 Now, contrast the lottery with a different kind of 0270 game, a game of skill. 0271 Now, imagine the Boston Red Sox winning the World Series. 0272 When they win, they're entitled to the trophy. 0273 But it can be always asked of a game of skill, did they deserve to win? 0274 It's always possible, in principle, to distinguish what someone's entitled to 0275 0276 under the rules and whether they deserve to win in the first place. That's an antecedent standard, moral desert. 0277 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 that goes beyond the question of whether it's to my credit that I have 0292 the talents that enable me to get ahead. 0293 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, puts a great value on a certain type of smirky joke, that's not his doing. 0297 He's lucky that he happens to live in such a society. 0298 But this is a second contingency. 0299 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. What my talents will reap in a market economy, what does that depend on? 0304 0305 What other people happen to want or like in this society? 0306 It depends on the law of supply and demand. That's not my doing. 0307 It's certainly not the basis for moral desert. 0308 What counts as contributing depends on the qualities that this or that 0309 0310 society happens to prize. Most of us are fortunate to possess, in large measure for whatever reason, 0311 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. In a bureaucratic society, it helps to get on easily and 0315 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. But would we be less worthy? 0328 0329 Would we be less virtuous? Would we be less meritorious if we lived in that kind of society rather 0330 than in ours? 0331

0332 Rawls's answer is no. We might make less money and properly so. 0333 But while we would be entitled to less, we would be no less worthy, no 0334 0335 less deserving than we are now. And here's the point. 0336 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 entitlements to legitimate expectations. 0341 We are entitled to the benefits that the rules of the game promise for the 0342 exercise of our talents. 0343 But it's a mistake and a conceit to suppose that we deserve in the first 0344 place a society that values the qualities we 0345 happen to have in abundance. 0346 Now, we've been talking here about income and wealth. 0347 0348 What about opportunities and honors? What about the distribution of access, of seats in elite colleges and 0349 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 David Letterman, and Judge Judy. 0363 0364 But it's also a question that can be asked of opportunities to go to the 0365 top colleges and universities. And that's a debate that comes out when we turn to the question of 0366 affirmative action next time. 0367