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# Desert and Distributive Justice in *A Theory of Justice*

Jeffrey Moriarty

There is disagreement about what role personal desert should play in just social institutions. One commonsense theory gives desert a central role; according to it, justice simply is giving each person what he or she deserves (hereafter, the *classical conception* of justice). John Rawls in his *A Theory of Justice* (hereafter, *Theory*) denies desert this central role.<sup>1</sup> What persons deserve, on his view, should be given *no* consideration—social institutions should not be designed to ensure that people get what they deserve. Now Rawls's rejection of the classical conception of justice may at first seem wrong-headed. If Jones deserves X, then it seems that she should have X and also that a just social institution should be designed to ensure that she has X. Through an examination of the concept of desert, however, Rawls hopes to show that it is the classical conception that is wrongheaded, not his rejection of it. Once we examine the concept of desert, he thinks, it becomes clear that desert should be denied a central role in just social institutions.<sup>2</sup>

Rawls's theory of justice has come under attack in recent years for just this claim. Robert Nozick, for one, has argued that Rawls's rejection of desert denigrates the autonomy of persons.<sup>3</sup> George Sher has taken a more direct approach, arguing that the premises in Rawls's antidesert argument do not entail the conclusion he wants.<sup>4</sup> I will argue that these attacks (and others like them) are based on a misunderstanding of Rawls's account of desert and, in particular, his reasons for denying desert a central role in his theory of justice.<sup>5</sup> This paper proceeds as follows. First, I present the standard interpretation of Rawls's account of desert. I then show how this interpretation is inadequate, bringing to light certain subtleties of the account that give it entirely new meaning. Next, I examine the criticisms of Nozick and Sher and show how, because of misconceptions of Rawls's account of desert, they fail. Finally, I offer a criticism of Rawls's theory of justice based on the correct interpretation of his account of desert.

## 1

Before we begin discussing Rawls's account of desert, it will be useful to distinguish two kinds of, or ways of thinking about, desert. The first is articulated by Joel Feinberg in "Justice and Personal Desert." He argues there that desert is a "natural" notion: "that is, one which is not logically tied to institutions, practices, and rules."<sup>6</sup> On this view, what people deserve is not entirely accounted for by the rules and regulations of institutions and, as a result, people can deserve things in the absence of institutions. The conception of desert that says that desert is a natural notion that is not tied logically

to institutional rules and regulations I will call preinstitutional desert, or p-desert.<sup>7</sup> A prima facie case for desert's being at least in part a preinstitutional concept can be made by considering situations in which our intuitions tell us someone is deserving, but no institutional rules provide the basis for that desert. If a person clears, plows, and plants crops in a field, it seems right to say that she deserves to reap the fruits of her labor, even in a situation in which there are no laws to require this state of affairs. Similarly, if a person contracts a terminal illness, it seems right to say that she deserves our sympathy, even though there are no institutional rules that require the giving of sympathy.

What I will call institutional desert, or i-desert, is desert that *is* logically tied to institutions, practices, and rules. I-desert is determined entirely by the rules and regulations of institutions, and people cannot be said to i-deserve anything in the absence of institutions. (These kinds of deserts are sometimes called 'entitlements'.) A prima facie case for desert's being at least in part an institutional concept can be made by considering some of the things we are commonly said to deserve. Prizes, rewards, and grades, to name just a few examples, are the products of institutional arrangements. Without the rules and policies of a university, a student cannot be said to deserve a high mark for a paper. Likewise, without the rules and regulations of a spelling bee, a contestant cannot be said to deserve first prize.

The classical conception of justice says that justice just is giving each person what he or she deserves. This view, we can now see, assumes that people have p-deserts.<sup>8</sup> It assumes, that is, that people have deserts prior to the construction of social institutions and then assigns the job of making sure people get what they p-deserve to those institutions. If people get what they p-deserve, then the social institutions are just; if they do not get what they p-deserve, then the social institutions are unjust. Rawls rejects the classical conception of justice because of problems he sees in the concept of p-desert. The next section of this paper examines those problems.<sup>9</sup>

## 2

For the classical conception of justice to get off the ground, it must have a way of deciding what exactly it is that each person p-deserves. The standard approach is to say that people p-deserve whatever fair exchange in a free market of their native talents, abilities, and social circumstances enables them to acquire. It is a likely result of this process that those individuals with greater natural endowments will p-deserve (and so, on the classical conception of justice, be entitled to) larger incomes, more power, and superior social status. Those with fewer natural talents will p-deserve (and be entitled to) smaller incomes, less power, and inferior social status. To take a simple case, if you have a strong back and a green thumb and I am weak and useless in the field, then your harvest will be larger and more valuable than mine. With enough large and valuable harvests, your income will begin to far exceed mine, as will your influence and social status.

A distributive principle of this kind, however, Rawls says, is "surely incorrect":

It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one's initial starting place in society. (104)

Since we do not p-deserve our native endowments and initial starting places in society, it seems unreasonable to say that we p-deserve the amounts of wealth, power, and prestige they enable us to acquire. But this is not all. Even if you and I are equally talented and physically able, but your work ethic is superior to mine and, as a result of your hard work, your harvest is larger and more valuable than mine, it might still be inappropriate, according to Rawls, to say that you p-deserve your larger harvest and me my smaller one. For

[t]he assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for this character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert does not seem to apply to these cases. (104)

The argument, then, appears to be this: one cannot be said to p-deserve something, if what one claims to p-deserve flows from abilities or traits that are themselves undeserved. Since one's natural abilities and character traits are undeserved, and (on the classical conception of justice) one's natural abilities and character traits determine one's wealth, power, and prestige, one's wealth, power, and prestige are undeserved. (We will examine this inference in more detail below.) It follows from this, Rawls says, that "the more advantaged representative man cannot say that he deserves and therefore has a right to a scheme of cooperation in which he is permitted to acquire benefits in ways that do not contribute to the welfare of others" (104). The more advantaged representative man does not p-deserve the abilities and character traits that allow him to achieve these greater advantages; as a result, Rawls says, "[t]here is no basis for his making this claim" (104).

But, we might ask, *why* is it the case that no one p-deserves his place in the distribution of native endowments? *Why* does the more naturally advantaged representative man not p-deserve to be more naturally advantaged, and the less naturally advantaged representative man not p-deserve to be less naturally advantaged? Rawls's answer to this question has been formulated in two different ways, corresponding to two places in *Theory* where he discusses this problem. (We will see below, however, that these answers are in fact oversimplifications of Rawls's actual view.) The first derives from what Rawls says in the passages previously cited.<sup>10</sup> The second is taken from what he says about the injustices of a system of natural liberty.<sup>11</sup> I begin with the first answer.

In the passages cited above, Rawls says: "The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is . . . problematic; for this character depends in large part upon fortunate family and social circumstances *for which he can claim no credit*" (emphasis added). What Rawls seems to be saying here is that the reason no

one p-deserves his starting place in the distribution of natural endowments is that no one can *claim credit* for his endowments. *We did nothing* to acquire our endowments or, alternatively, *we are in no way responsible* for them. Rawls seems, then, to be drawing a connection between p-desert and responsibility: what one is in no way responsible for, one does not p-deserve. Those with greater intelligence, dexterity, or social status did nothing to acquire, or are not responsible for, those traits. Likewise, those with lesser intelligence, dexterity, or social status are not responsible for those traits. Because no one is responsible for having her character traits, no one p-deserves to have them, nor does anyone p-deserve the rewards that flow from them.

The second answer attributed to Rawls derives from what he says in *Theory* about the deficiencies of a system of natural liberty (the details of such a system are not important for our purposes). In a system of natural liberty “the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies” (72). Natural and social contingencies here are differences in, on the one hand, intelligence, abilities, and talents, and, on the other hand, socioeconomic status. The problem with a system of natural liberty, Rawls says, is exactly these contingencies: “it permits distributive shares to be improperly influenced by these factors so *arbitrary from a moral point of view*” (72, emphasis added). This observation is supposed to have consequences for the classical conception of justice in general and p-desert in particular. Since the classical conception of justice determines what people p-deserve by what they can acquire through fair exchange in a free market of their native talents and abilities, it, too, permits distributive shares to be improperly influenced by factors that are arbitrary from a moral point of view. But besides this, it doesn’t even seem right to say that what people *deserve* can be influenced by factors that are *arbitrary* from a moral point of view. It seems more appropriate to say that the very notion of desert is undermined by the presence of such factors.<sup>12</sup>

To sum up: The classical conception of justice gives a central role to p-desert. It says that justice consists in giving each person what she p-deserves, where what she p-deserves is determined by what she can acquire through fair exchange on a free market of her natural talents and abilities. Rawls thinks this is unfair. The bases of this p-desert, he points out, are morally arbitrary and something for which we are not responsible. It follows, then, that the classical conception of justice, because its distributive scheme depends on factors that are morally arbitrary and beyond our control, is unjust. Rawls concludes that p-desert should play no role in a just social institution.

### 3

We have shown at this point how Rawls’s analysis of p-desert leads him to reject the classical conception of justice. It should be noted, however, that Rawls does not abandon the concept of desert entirely. His point is just that it “cannot be introduced until after the principles of justice and of natural duty and obligation have been acknowledged” (312). Desert is a concept for Rawls that does not precede but rather is a product of just social institutions. What people deserve on his view is what just institutions allot them:

It is perfectly true that given a just system of cooperation as a scheme of public rules and the expectations set up by it, those who, with the prospect of improving their condition, have done what the system announces that it will reward are entitled to their advantages. In this sense the more fortunate have a claim to their better situation; their claims are legitimate expectations established by social institutions, and the community is obligated to meet them. (103)

In this passage, Rawls drops talk of “desert” for talk of “entitlements” or “legitimate expectations.” What people deserve (or are entitled to or can legitimately expect) on his view is determined entirely by “what the system announces that it will reward,” not by some preinstitutional standard. If I pass the test administered by the Department of Motor Vehicles, for example, I deserve (or am entitled to or can legitimately expect) a driver’s license. Likewise, if I take and pass all of the required courses for a medical degree, I deserve (or am entitled to or can legitimately expect) that degree. Without these rules and regulations, I cannot be said to deserve a driver’s license, a medical degree, or indeed anything at all. We defined this conception of desert earlier as the conception of *i*-desert.

We see, then, that Rawls has retained the concept of desert in his theory of justice, but has given it different meaning than the meaning it has in the classical conception of justice. When Rawls talks of personal desert he does not mean *p*-desert: the desert of persons as determined by a preinstitutional standard. His *i*-desert “presupposes the existence of the cooperative scheme” (103) and is determined by that scheme itself.

#### 4

I described above what I called in various places Rawls’s ‘rejection’ or ‘abandonment’ of *p*-desert. The reason why Rawls rejects or abandons *p*-desert, I have suggested, is that he thinks it is *wrong* to give *p*-desert a central role in a theory of justice. Why wrong? We said that Rawls thinks *p*-desert is determined by factors that are arbitrary from a moral point of view and by character traits for which we are not responsible. This line of argument might be clarified as follows:

1. For persons to be *p*-deserving, they must have some control over the features of their character that make them *p*-deserving.
2. It is not the case that persons have control over the features of their character that make them *p*-deserving—what persons are commonly said to *p*-deserve is determined entirely by factors arbitrary from a moral point of view and character traits for which they are not responsible.
3. No one is *p*-deserving of anything.
4. Therefore, distributing goods according to *p*-desert is unfair, and *p*-desert should have no place in a just social institution.

Certainly Rawls does draw this conclusion (4). But does he ever make this argument? In particular, does Rawls claim (2), that *p*-desert is determined

entirely by factors arbitrary from a moral point of view and character traits for which we are not responsible? If Rawls does think this, then it does follow that (3) no one is p-deserving of anything, and it makes sense, as he does, to give p-desert no place in his theory of justice. After all, why should one benefit from talents and abilities one did nothing to earn? If, however, Rawls doesn't think this, then it doesn't follow that (3) no one is p-deserving of anything. In this case, why not give p-desert a role in his theory of justice, but be careful to ground it in something besides arbitrary factors outside of our control? After all, if people are legitimately p-deserving, then it seems that they should get their p-deserts, and that a just social institution should be designed to ensure that they get them.

In one place, Rawls does seem to say that p-desert is determined entirely by factors arbitrary from a moral point of view (and this would support his rejection of p-desert). He draws an analogy between theft and desert: "For a society to organize itself with the aim of rewarding moral desert [p-desert] as a first principle would be like having the institution of property in order to punish thieves" (313). The implication here is that just as the concept of theft does not make sense in the absence of an established institution of property, so the concept of desert does not make sense in the absence of an established social institution. Or to put the point more strongly (and perhaps more tentatively): just as we cannot be said to have stolen anything if no one owns it, so we cannot be said to deserve anything if there are no preestablished social institutions. From the suggestive comparison Rawls makes here, along with his repeated assertions to the effect that we do not deserve our place in the distribution of natural talents and abilities, one could easily draw the conclusion that Rawls thinks p-desert is determined entirely by factors arbitrary from a moral point of view, and so, strictly speaking, no one can be said to p-deserve anything. But this conclusion is too quick, and ignores even stronger evidence to the opposite conclusion.

Ultimately, I think Rawls's answer to the question 'Is p-desert determined entirely by contingent and arbitrary facts?' is 'no'.<sup>13</sup> Rawls doesn't hold (2). Nor does he endorse (3), the claim that no one is p-deserving of anything. References to the legitimacy of p-desert claims can be found throughout Rawls's discussion of desert in *Theory*. In a passage previously examined, Rawls says that a person's character "depends *in large part* upon fortunate family and social circumstances for which he can claim no credit" (emphasis added). Notice here that Rawls does not say that a person's character depends entirely upon "fortunate family and social circumstances," but only that it depends *in large part* upon such circumstances. This leads to the question: what is that other, smaller part on which a person's character depends? The natural answer—our only available option—is *autonomous choice*. A person's character, Rawls is saying, depends both upon his fortunate family and social circumstances *and* upon what autonomous decisions he makes about what kind of character to have. In this case, a person might be said to p-deserve things in virtue of his superior character—or at least in virtue of those aspects of his character that he has developed through autonomous choice. At the end of the same passage, Rawls says that the notion of p-desert *does not apply*



to cases in which the initial distribution of endowments is arbitrary from a moral point of view. He does not say that all p-desert claims are illegitimate or that persons can never p-deserve anything; he leaves open the possibility that there are legitimate p-desert claims and that persons can be legitimately p-deserving.

Perhaps Rawls's most clearly articulated admission of the reality and legitimacy of p-desert claims occurs in the following passage:

The distributive shares that result [from Rawls's principles of justice] do not correlate with moral worth, since the initial endowment of natural assets and the contingencies of their growth and nurture in early life are arbitrary from a moral point of view. The precept which seems intuitively to come closest to rewarding moral desert is that of distribution according to effort, or perhaps better, conscientious effort. Once again, however, 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, and there seems to be no way to discount for their greater good fortune. *The idea of rewarding desert is impracticable.* (312, emphases added)

There are a number of important ideas in this passage, so let us go through them one by one. The first sentence reiterates Rawls's stance on p-desert as defined in section 2 of this paper. That is, since natural endowments are arbitrary from a moral point of view, people do not deserve them or what flows from them, including wealth, power, and prestige. Next, Rawls says that there is a basis for p-desert, namely, conscientious effort. In this case a person might be said to p-deserve something in virtue of his conscientious effort toward some end or goal. Yet the conscientious effort one expends in pursuit of an end or goal, Rawls goes on to say, is also determined in part by factors that are arbitrary from a moral point of view. Most important is his conclusion: "the idea of rewarding desert is *impracticable*" (emphasis added).

What we can learn from this apparently conflicting set of ideas about desert? I suggest that Rawls is thinking as follows. Rawls thinks claims of p-desert can be legitimate—their base, he says, is conscientious effort. So, on this view, we may be said to p-deserve things on the basis of our conscientious effort toward some end or goal. Rawls implies further that, because the conscientious effort a person makes is only *influenced* (as opposed to, say, determined entirely) by his natural talents and social circumstances, it is also in part a result of his autonomous choice (again: what else could it be?). It follows from this that one's p-deserts, according to Rawls, are not based entirely on factors arbitrary from a moral point of view, and so are not always illegitimate. Rather, we have some freedom to choose to strive conscientiously (or not) and so can be said to p-deserve (or not) rewards or accolades on this basis. But in this case, why not, as we asked above, include p-desert among the considerations to which social institutions must respond, but ground p-desert in conscientious effort? Rawls at this point emphasizes the arbitrary and contingent factors that contribute to one's character. The better endowed



are, because of their superior natural talents, “more likely” to strive conscientiously. I take Rawls to be saying here that as a result of the interplay between autonomous choice and arbitrary circumstance, we *cannot determine* how much of one’s conscientious effort derives from autonomous choice and how much derives from character traits for which one is not responsible.<sup>14</sup> Rewarding p-desert, then, because of these *epistemological* limitations, is “impracticable.” It follows from this that any attempt by social institutions to reward p-desert will in most circumstances end up getting it wrong. So, for this epistemological reason, we should not give p-desert a central role in a just social institution.

We began this section with the suggestion that Rawls thinks it is wrong to take into account p-desert when designing the structure of a just distributive scheme—wrong because the factors that determine p-desert are outside our control and arbitrary from a moral point of view. After elaboration of some of the finer points of Rawls’s account of desert, we have found this view to be, although not altogether incorrect, not altogether correct either. A more precise account says that Rawls recognizes that persons can be in some cases legitimately p-deserving. In particular, a person can p-deserve something in virtue of his autonomous choice to strive conscientiously toward some end or goal. Rawls thinks also, however, that we cannot decide in any particular case what is legitimately p-deserved and what is arbitrary from a moral point of view. So although it is not strictly speaking incoherent to talk about rewarding p-desert, any social institution that attempts to do so, because of epistemological limitations, will most likely end up getting it wrong.<sup>15</sup> Rawls concludes from *this* (and not a claim that no one is p-deserving of anything) that p-desert should play no role in a just social institution.<sup>16</sup>

## 5

At the beginning of this paper, I suggested that Rawls’s account of desert is widely misunderstood. As a result, many of the objections to it are flawed. (After all, one cannot hope to criticize a theory adequately without first knowing its correct interpretation.) Having explained what I take to be the correct interpretation of Rawls’s account of desert, I now look briefly at the two misinterpretations of it mentioned in the introduction to this paper. My point here is not to engage in the debate between Rawls, Nozick, and Sher, but only to show that Nozick and Sher are, on this issue, missing Rawls’s point. I begin with Nozick.

In chapter 7 of *Anarchy, State, and Utopia*, Nozick asks of Rawls: “Why shouldn’t holdings partially depend upon natural endowments?”<sup>17</sup> He attributes to Rawls the answer: “these natural endowments and assets, being undeserved, are ‘arbitrary from a moral point of view’.”<sup>18</sup> Rawls gets to this conclusion, Nozick thinks, by using an argument of the following form:

1. If there is no autonomy, then there is no p-desert.
2. There is no autonomy.
3. There is no p-desert.

Nozick takes Rawls's statements about the arbitrariness of natural abilities and social circumstances as arguments for premise (2). That is, if it is true that which character traits we have is determined entirely by factors arbitrary from a moral point of view, and that our choices are determined by a combination of our character traits plus our social circumstances,<sup>19</sup> then there is no personal autonomy. But these arguments, Nozick says, "can succeed in blocking the introduction of a person's autonomous choices and actions (and their results) only by attributing *everything* noteworthy about the person completely to certain sorts of 'external' factors."<sup>20</sup> This creates a problem for Rawls's theory of justice, as Nozick explains:

[D]enigrating a person's autonomy and prime responsibility for his actions is a risky line to take for a theory that otherwise wishes to buttress the dignity and self-respect of autonomous beings; especially for a theory that founds so much (including a theory of the good) upon person's choices. One doubts that the unexalted picture of human beings Rawls's theory presupposes and rests upon can be made to fit together with the view of human dignity it is designed to lead to and embody.<sup>21</sup>

According to Nozick, Rawls's denial of the legitimacy of p-desert claims leads to an undesirable picture of humanity. It implies that everything one is and does is attributable to character traits and social circumstances for which one is not responsible and, by the argument discussed above, that no one is p-deserving of anything. Such a view of personal autonomy and desert, however, according to Nozick, does not comport with the commitments Rawls makes in other places in *Theory* to preserve human dignity.

Nozick's criticism of Rawls goes wrong in two ways, both having to do with his faulty interpretation of Rawls's theory of desert. First, Rawls nowhere in *Theory* denies that there is personal autonomy; his statements to the effect that our natural talents are arbitrary from a moral point of view are not intended as evidence for this conclusion, but rather as evidence for the less strong conclusion that who we are and what we do is *in part* a result of circumstances outside our control. This claim leaves room, as we said above, for the view that who we are and what we do is *in part* a result of autonomous choice. Second, Rawls does not deny the existence of p-desert. Instead, he recognizes that we can, as a result of autonomous choice, become p-deserving, and cites as the base of p-desert "conscientious effort." Rawls's point is not that we should ignore claims of p-desert because they are based entirely on factors arbitrary from a moral point of view, but only that we cannot tell in most circumstances what part of conscientious effort is a result of autonomous choice (and so makes us p-deserving) and what part is a result of character traits for which we are not responsible (and does not make us p-deserving).

Nozick's criticism begins by assuming that Rawls denies both that there is any personal autonomy and that there is any p-desert. But this, for the reasons given above, is a clear misinterpretation of Rawls's account of desert. I now turn to Sher's criticism.

Sher's reconstruction of Rawls's antidesert argument goes as follows:

1. Each person has some basic set of abilities, including an ability to exert effort, which does not belong to him as a result of anything he has done.
2. If a person's having *X* is not a result of anything he has done, then he does not deserve to have *X*.
3. No person deserves to have his basic abilities.
4. Each action a person performs is made possible, directly or indirectly, by some subset of his basic abilities.
5. If a person does not deserve to have *X*, and *X* makes *Y* possible, then that person does not deserve *Y*.
6. No person deserves to perform his actions, and neither does anyone deserve to enjoy any of the benefits that his actions in turn make possible.<sup>22</sup>

Right away we can see where Sher's criticism might go wrong—his reconstruction of Rawls's argument against p-desert is inaccurate. Most obviously, Rawls doesn't hold (6): the "unqualified conclusion that nobody ever deserves anything."<sup>23</sup> Rawls thinks that, in virtue of autonomously choosing to strive conscientiously toward some end or goal, we do p-deserve at least some of the benefits our actions make possible. It also seems unlikely that Rawls holds (2) or (5), since he thinks we can be p-deserving, and it is unreasonable to think that we p-deserve our ability to make autonomous choices to strive conscientiously.

Sher's subsequent criticisms of Rawls attempt to prove only that we can be legitimately p-deserving. But Rawls, as I said, would agree with Sher on this point. In the light of the correct interpretation of Rawls's account of desert, then, Sher's argument loses much of its original force.<sup>24</sup>

## 6

The objection I want to raise now may have been troubling the reader for some time. Let us say, with Rawls, that what one p-deserves is in part determined by factors arbitrary from a moral point of view and in part determined by autonomous choices. Now Rawls, as we know, says that because we cannot tell what part of conscientious effort is a result of autonomous choice and what part is a result of character traits for which we are not responsible, we should ignore p-desert altogether. The objection to this solution asks: is this the right way of handling the problem of p-desert? Is it *just* to say that, although persons may legitimately have p-deserts, because we cannot determine their extent, we should ignore them altogether? Why not think instead that every effort should be made to reward p-desert, even if in most cases we end up getting it wrong? A social institution that is truly just, the objection goes, strives to reward p-desert. And even though it may fail in its attempts to do so, it at least tries to do the right thing. There is no reason to settle, as Rawls does seemingly without hesitation, for second best.

This objection is *prima facie* a serious one. Rawls says at the beginning of *Theory* that justice is the "first virtue" of social institutions, "as truth is of systems of thought" (3). The other virtues, including expediency, are to be

secured after justice. If, as it now appears, Rawls recognizes the legitimacy of p-desert only to ignore it in his final solution, then it seems he has sacrificed justice to expediency.

To make progress on this objection, and perhaps to offer Rawls a way around it, we must address a question put off earlier in the paper, namely, what is the modality of the “cannot” in Rawls’s claim that we cannot determine what part of conscientious effort is a result of autonomous choice and what part is a result of factors for which we are not responsible? There are, I think, two possibilities. The first is that the modality amounts to this: that we cannot *in principle* (it is *impossible* to) know what part of conscientious effort is a result of autonomous choice and what part is a result of factors for which we are not responsible. If Rawls can show this—a claim that would require further substantiation—he can avoid the objection. He can say that, because it is impossible to discern autonomous choice from natural ability, the only available option is to ignore p-desert altogether, and not assign it any role in a theory of justice. For although social institutions must be responsive to matters of justice, they cannot ignore practical concerns altogether. If it indeed turns out that p-desert cannot be accurately measured, then it seems we have no alternative but to put it aside.

The second possibility is that the modality amounts to this: that we do not *most of the time as a matter of fact* know what part of conscientious effort is a result of autonomous choice and what part is a result of factors for which we are not responsible. In this case, it seems we should, out of concern for justice, make every effort to reward p-desert, and Rawls goes wrong in not doing so. To see why, consider the plight of our legal system. Oftentimes, it is difficult to discover who the perpetrator of a certain crime is. The physical evidence may be slim, the eyewitnesses may be confused or lying, and the suspect, if there is one, may have fled the city, state, or country. But we value justice and think it important to at least try to discover who the culprit is and punish him accordingly. Not to expend significant effort in this endeavor, we think, would be an unacceptable affront to justice, even if in some cases we do end up getting it wrong. An analogous argument seems to apply to p-desert and distributive justice. If, as Rawls thinks, people can be legitimately p-deserving, then a just social institution should require that considerable effort be spent in seeing that people get their p-deserts, even if in some cases it does end up getting it wrong.

Suppose, then, that the modality of the “cannot” does conform to the second possibility described above, that we do not most of the time as a matter of fact know what part of conscientious effort is a result of autonomous choice and what part is a result of character traits for which we are not responsible. Rawls still may be able to avoid the objection. If he can show that determining each person’s p-deserts would be far too costly an enterprise (say, because it would require extensive background checks and genetic screening), and that the benefits it yields would be insignificant compared to its costs (say, because it still ends up getting it wrong, or alternatively, the resulting distribution is similar to the one provided by Rawls’s two principles of justice), then he might be able to convince us that ignoring p-desert is the right way to go. If, for example, the costs of capturing and trying a certain

suspect are exceedingly expensive (say, because he lives in a country with no extradition treaty with the United States), and the benefits we gain by doing so are equally slim (say, because he is very old and the crime in question is only a misdemeanor), then perhaps the right thing to do is to let him go. Of course, in this case, Rawls needs to show that determining each person's p-deserts is in fact prohibitively expensive, and also to give an explanation of how this rejection of p-desert accords with his claim that justice is the "first virtue" of social institutions.

On either interpretation of the modality of the "cannot," Rawls's theory of justice, as it now stands, is in an awkward position. It recognizes the legitimacy of p-desert but refuses to take it into consideration. This seems, I have suggested, like a distinctly unjust thing to do. Rawls must offer a reason for his rejection of p-desert before we can accept its absence in his theory of justice.

## 7

If the interpretation of Rawls's account of desert advanced here is correct, then many commentators have it wrong.<sup>25</sup> The primary goal of this paper was to show just this—that my interpretation *is* correct. After describing what I take to be Rawls's account of desert, I showed how this interpretation undermines two objections to Rawls's theory of justice. At the end of the paper, I offered an objection to Rawls's theory of justice based the correct interpretation of his account of desert. This objection may not be conclusive; but Rawls needs to show why, if he recognizes that persons legitimately have p-deserts, a just social institution should not at least try to be responsive to them.

*I am grateful to an anonymous reviewer for this journal and to Howard McGary for many useful comments on earlier drafts of this paper.*

## Notes

<sup>1</sup> John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971). Since I quote extensively from this book, I mark the quotations in the text as follows: (page number).

<sup>2</sup> In this paper I will be focusing on distributive justice only.

<sup>3</sup> Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic, 1974).

<sup>4</sup> George Sher, *Desert* (Princeton, N.J.: Princeton University Press, 1987).

<sup>5</sup> Those who I think have it wrong include Nozick and Sher, as well as Michael Sandel, in *Liberalism and the Limits of Justice*, 2nd ed. (New York: Cambridge University Press, 1996); Michael Slote, in "Desert, Consent and Justice," *Philosophy and Public Affairs* 2 (Summer 1973): 323–47; Samuel Scheffler, in "Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics," *Philosophy and Public Affairs* 21, no. 4 (Fall 1992): 299–323; Louis P. Pojman, in "Does Equality Trump Desert?" in *What Do We Deserve? A Reader on Justice and Desert*, ed. Owen McLeod and Louis Pojman (New York: Oxford University Press, 1999), 283–97; and Alan Zaitchik, in "On Deserving to Deserve," *Philosophy and Public Affairs* 6, no. 5 (Summer 1977): 370–88.

<sup>6</sup> Joel Feinberg, "Justice and Personal Desert," *Nomos VI: Justice*, ed. C. J. Friedrich and John W. Chapman (New York: Atherton, 1963), 63–97.

<sup>7</sup> I owe the abbreviations "p-desert" and "i-desert" to Owen McLeod, who uses them in "Desert and Institutions," in McLeod and Pojman, *What Do We Deserve? A Reader on Justice and Desert*, 186–95.

- <sup>8</sup> It need not say that *all* desert is p-desert, just that some of it is.
- <sup>9</sup> Rawls is not alone in his rejection of p-desert. A number of philosophers in recent years have done the same. See, for instance, Kai Nielson, *Equality and Liberty: A Defense of Radical Egalitarianism* (Totowa, N.J.: Rowman and Allanheld, 1985); and Brian Barry, *Political Argument* (New York: Routledge & Kegan Paul, 1965).
- <sup>10</sup> Sher, in *Desert*, interprets Rawls to be making the first kind of answer.
- <sup>11</sup> Nozick, in *Anarchy*, interprets Rawls to be making the second kind of answer.
- <sup>12</sup> I tend to think that the two answers sketched here are in fact the same answer, that what we are not responsible for *is* what is arbitrary from a moral point of view. But the matter need not be decided here; nothing hinges on it.
- <sup>13</sup> This answer was suggested first, to the best of my knowledge, by G. A. Cohen in "On the Currency of Egalitarian Justice," *Ethics* 99 (July 1989): 906–44. See also Robert Young, "Egalitarianism and the Modest Significance of Desert," *Ethics* 102 (January 1992): 319–41.
- <sup>14</sup> The modality of this 'cannot' will be explored below.
- <sup>15</sup> One might wonder at this point if epistemological limitations alone give us good reason to reject a philosophical theory or principle that is otherwise sound. I address this worry in section 6 of this paper.
- <sup>16</sup> In a footnote to his "Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics," Samuel Scheffler says that in an unpublished manuscript, "Rawls says that he does not reject pre-institutional desert altogether; he merely denies that it can play any role in a 'political' conception of justice designed for a modern, pluralistic democracy, and believes it must be replaced for the purposes of such a conception by the idea of legitimate expectations. This seems to me to represent a significant departure from the view expressed in *A Theory of Justice*" (316). We have shown here that the claims Rawls makes in this unpublished manuscript are consistent with the claim he makes in *Theory*. Scheffler has interpreted Rawls's theory of desert as presented in *Theory* incorrectly.
- <sup>17</sup> Nozick, *Anarchy*, 216. By "holdings" Nozick means things like property, money, social status, and material goods.
- <sup>18</sup> *Ibid.*
- <sup>19</sup> The second clause of this sentence is an extra premise added by Nozick. Nozick speculates that the reason Rawls doesn't consider the possibility that persons have autonomously chosen to develop their natural assets in certain ways is that he thinks a person's choices are determined by his native character traits and social circumstances and thus are "arbitrary from a moral point of view."
- <sup>20</sup> *Ibid.*, 214.
- <sup>21</sup> *Ibid.*
- <sup>22</sup> Sher, *Desert*, 24. Later Sher amends this argument to make it more relativistic. The basic structure, however, is the same.
- <sup>23</sup> *Ibid.*, 28.
- <sup>24</sup> I do not think, however, that bringing the correct interpretation of Rawls's theory of desert to light will entirely resolve the philosophical difference between Sher and Rawls on the topic of desert. It will just shift the focus of discussion. The dispute between these two will lie not in *whether* we can be said to p-deserve things (since both agree), but in *how much* we can be said to p-deserve and what the *bases* of p-desert are.
- <sup>25</sup> For a partial list of these commentators see note 5.