

Phil 115, June 8
Legitimate expectations, desert, and natural endowment

Commonsense precepts of justice

- Examples:
 - “to each according to his effort” and
 - “to each according to his contribution.”
- These commonsense precepts often conflict in particular cases, and it is not clear how to resolve these conflicts. This is another instance the problem of priority that Rawls discussed in §§7–8.
- The two precepts imply something like a market economy.
- And a market economy will give rise to the commonsense precepts. This is because contribution varies with demand for labor, and effort varies (inversely) with supply. People who can contribute more will be more sought after, and hence will be paid more, and work that requires unusually great effort will be shunned, and hence will be paid more.
- Yet these commonsense precepts are entirely derivative and subordinate to the two principles. They are simply rules of thumb that are bound to arise in the sort of market economy that the two principles sanction.
- We often lose sight of their derivative and subordinate character, because our attention tends to be focused on the *particular factors*, such as contribution and effort, that these precepts apply to.
- But the commonsense precepts cannot serve as first principles.

Desert, legitimate expectations, deservingness

In §48, Rawls turns to another commonsense precept: “that income and wealth, and the good things in life generally, should be distributed according to moral desert. Justice is happiness according to virtue” (273).

For Rawls, the relevant concept is not desert, but *legitimate expectations*.

- If people have followed the rules of just institutions, then they are entitled to what those institutions announce that they will receive.
- Legitimate expectations are promises that provide *incentives* to socially beneficial behavior, which must be *honored* when the behavior is displayed.
- Unlike desert, legitimate expectations are not *rewards* for moral merit.

Rawls recognizes a third notion, between legitimate expectation and desert: “*deservingness*.”

- Just institutions promise incentives to certain kinds of behavior. Displaying the behavior that just institutions encourage is *deservingness*.
- Different from legitimate expectations, since, through bad luck, one can fail to acquire an entitlement under the rules.
- Different from desert: deservingness is defined *in terms of justice*. According to the precept of desert, justice is supposed to be defined *in terms of desert*.

Rawls’s argument against desert:

First, the precept of desert would not be chosen in the OP.

Second, what grounds desert?

- *Contribution?* First, contribution will depend on many factors that are external to the individual. Second, no one deserves the native talents that determine what he is able to contribute.
- *Effort?* Yet effort also depends on native talents, and there is no practicable way to discount for this.
- *Just behavior?* This would be *circular*. According to the precept, justice is rewarding desert, and according to the present proposal, desert is doing what justice requires. We need an independent conception of justice before we can apply the precept of desert.

Note: These arguments are very close to Sidgwick's arguments. Sidgwick, like all utilitarians reject the precept of desert.

Third, we think that justice requires meeting basic needs, and this has nothing to do with desert.

Fourth, "Having conflicting conceptions of the good," he writes, "citizens cannot agree on a comprehensive doctrine to specify an idea of moral desert for political purposes" (*Restatement*, 73).

Standard interpretations of Rawls's claim that natural talents are "arbitrary from a moral point of view":

In reading §§12, 17, and 48, it's natural to make the following interpretive assumptions:

- *First*, that the natural talents are "arbitrary from a moral point of view," for Rawls, because they are *not deserved*.
- *Second*, that natural talents are "arbitrary from a moral point of view," for Rawls, because they are *not chosen*: they are not the result of the voluntary efforts of the people who possess them, but instead the result of brute luck.

Why, then, does Rawls believe that natural talents should not be allowed to influence the distribution (to the extent that the system of natural liberty allows)?

- *Appeal to desert*: Rawls holds as a fundamental principle that the distribution should reflect *only* what people deserve. Advantages that are undeserved should be leveled. (Gauthier)
- *Appeal to choice*: Rawls holds as a fundamental principle that the distribution should reflect *only* what results from *voluntary choice*, *not* what results from *mere brute luck*. "*Luck egalitarianism*": disadvantages that result from factors outside of one's control should be compensated for, whereas disadvantages that result from voluntary choice should lie where they fall.

Problems with the standard interpretations:

First, there is a point of Nozick's, which bears on the plausibility of the appeal to desert. It does not obviously follow from the fact that one's *natural talents* are undeserved that one cannot deserve something for *what one achieves as a result of those talents*.

- (1) It just seems false to say that you must deserve your talents to deserve what flows from your talents. You *deserve* an A on a paper if you *write* an A paper. We don't ask whether you deserve the *I.Q.* that allowed you to write an A paper.

- (2) To say that you must deserve X in order to deserve what flows from X may “prove too much.” *Anything* one might do is possible only because of factors outside of one’s control, which one does not deserve. So this principle seems to imply that no one ever deserves *anything*.

Second, Rawls’s overall view seems to conflict with both the appeal to desert—the idea that the distribution should reflect only what people deserve—and the appeal to choice—the idea that the distribution should reflect only what people have chosen.

- Rawls *denies* that justice involves rewarding desert. Rawls’s view seems to be that a conception of justice should set aside the whole category of desert.
- Certain parts of Rawls’s theory seem to be *in tension* with luck egalitarianism.
 - On the one hand, Rawls’s focus on primary goods fails to take into account the fact that the benefit people receive from primary goods may depend on factors beyond their control. People with congenital handicaps or preferences for expensive things may get less from a given allotment of primary goods than others. So Rawls seems to allow people to be disadvantaged by unchosen factors.
 - On the other hand, Rawls doesn’t seem particularly committed to people bearing the cost of their own choices. For example, he does not include leisure time as a primary good.

Finally, both the appeal to desert and the appeal to choice involve controversial principles, which Rawls does not discuss, much less attempt to justify.

Another interpretation?

Natural talent is “morally arbitrary”:

- not a morally relevant ground on the basis of which principles of justice ought to treat people differently,
- *because natural talents are irrelevant to people’s status as free and equal cooperators in society, to one’s standing as a citizen.*

The role of the claim:

- Rawls works back from our firmly held particular judgments—such as the equality of the political liberties: one man, one vote—to the fundamental ideas that ground these particular judgments—a view of society as a fair system of cooperation between persons viewed as free and equal.
- We then use these fundamental ideas to settle questions about which we are uncertain or conflicted, such as distributive justice.
- Political liberties do not depend on natural assets and social starting point.
- This is based on an ideal of free and equal citizenship according to which natural assets and social starting point are irrelevant.
- If we then apply this conception of citizenship to distributive justice, then natural assets and social starting point will also be irrelevant to distributive justice.
- This may be part of the reason why Rawls labels this conception “democratic equality.” It extends to distributive justice the view that underlies the democratic ideal.

On *this* interpretation, Rawls is not making either the appeal to desert, or the appeal to choice. Instead, Rawls is simply appealing to the conception of free and equal citizenship that underlies the democratic ideal.

The rejection of desert:

Although both Nozick and Gauthier believe that it is acceptable for the distribution to be influenced by natural endowment to a greater extent than does Rawls, they do not believe this *because* they believe justice requires rewarding desert.

- Natural endowment may influence the distribution, according to Nozick, because people *own* themselves, and hence they have a *right* to what they do and to what results from what they do.
- Natural talents may influence the distribution, according to Gauthier, is because people, aware that natural talents differ, could *rationally* agree only to a principle that permitted natural talents to influence the distribution.

For all of their differences, *none* of the theories that we have been considering, Rawls, utilitarianism, Nozick, and Gauthier assign any role to desert in distributive justice. *All* of these theories seem at odds with our commonsense view to this extent. It is worth asking why this is.

Rawls's reply to Gauthier in "The Basic Structure as Subject":

The social contract, Rawls claims, differs from a particular agreement in three crucial respects.

- First, membership in society is given. There is no possibility of opting out.
- Second, we cannot know what we would have been like had we not belonged to society. Gauthier requires that we can separate out what members of society would have had outside of society from what they have within society.
- Finally, society has no ends of its own. We cannot determine our contribution to society, because there are no ends relative to which contributions can be assessed.

The distribution of natural talents as a common asset:

Recall Nozick's bafflement at Rawls's suggestion that "The difference principle represents, in effect, an agreement to regard the distribution of natural talents as in some respects a common asset" (87). How is this compatible, Nozick wonders, with Rawls's insistence on the moral importance of separateness of persons? It suggests that society owns everyone's talents.

First, it is not *talents*, but instead the *distribution* of talents that Rawls says is the common asset.

Second, in any sense in which talents are "owned," Rawls points out, they are owned by those who possess them. The basic liberties leave people free to decide how they will use their talents. A head tax on talent is therefore foreclosed by the priority of liberty. It would force people to forego other activities to make enough to pay off the tax.