
Rescuing Rawls from Rawls

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I read with interest Alexander Rawls's essay "A *Theory of Justice* with Claims of Desert," which, like my own recent work (Cowen 2021a, 2021b), attempts to reconcile John Rawls's approach to justice as fairness with classical liberal commitments to economic liberty. I agree with Alexander that John underestimated the strength and nuance of John Stuart Mill's approach to justifying liberal institutions. Unlike Alexander, however, I think we have reason to resist a broad application of desert into a theory of justice, at least as applied to what John calls the basic structure of that theory. So I am grateful to *The Independent Review* for giving me an opportunity to comment.

Epistemic Problems of Moral Desert

One of Alexander's key observations is that the logic of John's veil of ignorance pushes far beyond ordinary notions of fair procedures such that it excludes intuitively compelling claims of desert. The initial impetus for introducing a veil of ignorance is the imperative to prevent actors from biasing institutional rules in their favor (J. Rawls [1971] 1999, 118). At this stage, it closely resembles Geoffrey Brennan and James Buchanan's (1999) veil of uncertainty, which aims to achieve similar agreement on impartial rules by showing the benefit of general rules for the long-term interests of self-interested agents. However, Rawls radicalizes the decision procedure further by arguing that justice as fairness excludes all morally arbitrary sources of social inequality, not only

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The Independent Review, v. 26, n. 3, Winter 2021, ISSN 1086-1653, Copyright © 2021, pp. 361-366.

any preexisting property entitlements but also any product of one's talents, which are conceptualized as endowments. Even the results of personal effort are ultimately morally arbitrary because one's capacity for hard work is not something an individual morally merits but is rather the result of upbringing and genetics. So it appears that no one can merit anything because of his or her personal efforts or circumstances.

Alexander points out that this conclusion renders John's account oddly utilitarian in that it seeks to allocate resources and rights without regard to individual contributions. Moreover, it excludes crucial moral relationships and choices, such as parents' capacity to make sacrifices to improve the lives of their children. Indeed, recent debates around "luck egalitarianism" highlight how even intimate practices, such as parents reading bedtime stories to children, risk producing morally arbitrary inequalities with which a regime dedicated to social justice must contend (Segall 2011; Hankins and Thrasher 2015; Cowen 2018a). I agree with Alexander that to be compelling a liberal moral theory relies on the presumption that the people it applies to are free to make consequential moral decisions. I also agree that any theory of justice must take seriously everyday intuitions about moral desert as well as the value of intimate social relationships. However, I disagree that this means that basic social institutions can take moral desert into account. Here, I take heed of observations initially popularized by Friedrich Hayek (1945) and developed by various market-process theorists (e.g., Kirzner 1985; Lavoie 1986).

Any attempt to make a productive contribution through joining or starting an enterprise is fraught with risk and uncertainty because no one knows how market conditions will change while one is pursuing a venture. The best an individual can do is make an intelligent conjecture based on her personal knowledge and publicly available prices of the good she intends to provide and the intermediate goods required to supply it. Trial and error, assessed through profit and loss, reveals which productive endeavors are best able to make use of social resources (Delmotte and Cowen 2019; Cowen 2020). They help to inform future ventures as to what is likely to be a valuable contribution, with updated information reflected in the price system. This means that failed enterprises are as important as successful enterprises because they push individual entrepreneurs to alternative business practices and reveal to the rest of the community what is *not* worth imitating. To work at all, market processes must differentiate success and failure, but it makes no sense for the community to valorize success as morally merited. The overall process of market competition is beneficial for enhancing social cooperation, but results at the individual level are effectively arbitrary (Cowen 2021b, 75).

When justifying giving desert significant weight in economic affairs, Alexander points out that John treats individuals as helpless in the face of market forces. They have no control over how many people choose to work. It is true that people generally have a choice of occupations and that the market will reward people who work in the area where they can make the greatest marginal contribution to a sector. However, there are at least two problems with drawing strong conclusions about desert even if we accept

that people normally have multiple options of some form. The first is that decisions to pursue particular occupations often have long-run consequences that are hard to anticipate, such that people seeking to contribute to social cooperation may, through sheer error, end up in a position where they have limited skills to do so. The second is that a great many valuable yet difficult occupations are relatively unrewarded. Adam Smith expected more physically demanding or less-desirable work to be compensated with higher pay ([1776] 1981, I.x). This evidently happens in some sectors, such as working on oil rigs, but not in others, such as providing care for the elderly. There is frequently a gendered dimension to these variations. People's employment options are partially determined by group characteristics and their broader social relations rather than by anything that plausibly tracks individual desert (Goldin et al. 2017).

The Prospective Alternative

The results of the market process cannot plausibly be said to track desert at the individual level. Indeed, it is impossible for any policy regime to reward merit (Hayek 1976). What constitutes desert is deeply contested because people's social contributions (and subtractions) come in so many irreconcilable dimensions. Even if it could be agreed upon in principle what merit is, it would be impossible to measure merit in practice. As the People's Republic of China's emerging "social credit" system illustrates, attempts to implement a merit-based reward scheme for a whole community are an ally of tyranny rather than of liberty (Devereaux and Peng 2020).

This inability to establish merit for any individual's overall social contribution presents a challenge because it precludes applying a traditional Aristotelian definition of justice to the distribution of resources: giving people what they deserve. Fortunately, John Rawls's approach is applicable to a large-scale political community (Lister 2013). Rather than tracking individual desert, John's justice applies to a system of rules that stably generates mutually advantageous social cooperation over indefinite generations into the future and is agreeable, at least in principle, to all citizens subject to it. Although John insists on some egalitarian constraints, some of which I argue are unwarranted, his conception of justice does not assess the relative distribution of social resources between individuals or groups. So long as the distribution is to the ongoing advantage of whoever happens to be in a least-advantaged group, it can be justified. This conception of justice is compatible with a market-based economy where no institution claims control over the systematic distribution of social resources (Lister 2017).

This approach is prospective rather than retrospective. It justifies institutions based on their capacity to ensure ongoing social cooperation into the indefinite future rather than to reward or penalize past contributions. Of course, establishing stable legitimate expectations is critical for ensuring ongoing cooperation (J. Rawls [1971] 1999, 273). This is where entitlements for contributions to social cooperation can be justified. From a realistic standpoint, this is also where sanctions for break-

ing the terms of social cooperation can be justified, too. Although not premised on moral desert as such, these institutionally secured entitlements will resemble some common intuitions about what desert entails. Critically, rewards for these contributions must still be justified by their overall capacity to facilitate ongoing social cooperation, which would include supporting the least advantaged as much as feasibly possible. Importantly, this conception of justice applies only to the basic structure of society (J. Rawls 1958; [1971] 1999, 28; [1993] 2005, 268). Legal institutions and public policy must be constituted with the aims of improving the condition of the least advantaged and ensuring equal opportunity, but this imperative does not apply to all actions within civil society. Within families and private associations, people remain free to dedicate personal time and resources to the ends and relationships they value, including those they find deserving.

As well as being less epistemically ambitious, this approach to justice has the further advantage of motivating social cooperation through anticipation of future benefits. In both personal and political life, people tend to forget past beneficence while vividly remembering historical injustices (both real and imagined) (Cowen 2018b). Institutions of justice focused on the past can easily lead to a continuous airing and litigation of grievances. By contrast, people are more likely to sympathize with the needs and interests of their fellow citizens if they anticipate that meeting those needs will be aligned with their own interests. For the sake of social stability, an institutional conception of justice must focus on ensuring the rules governing social cooperation are to the continuous benefit of all parties.

Practical Problems of Moral Desert

The theoretical challenges in conceptualizing desert transform into parallel problems with implementing a desert-based welfare regime in practice. Alexander suggests that claims of desert can be balanced against claims of need by billing all recipients of government aid and requiring welfare beneficiaries to pay back any aid based on their ability to pay. There is a role for this sort of contributory arrangement within a welfare state. Indeed, a feature of this system is present in both U.S. and U.K. approaches to higher-education funding. In England and Wales, for example, students take out subsidized loans to pay for their education, which they pay back at a rate commensurate to their income (Britton and Gruber 2020). Yet this approach clearly has weaknesses of its own. At this very moment, the U.S. federal government is grappling with how to handle billions in losses due to unpaid student debts (Sheffey 2021).

If applied to welfare spending in general, then extracting debt payments from past welfare recipients produces high implicit marginal taxes on income. This is because people with a welfare bill must give up public assistance when entering employment and then, in addition, start paying their previous costs back. Under such rules, many people might be worse off working than continuing to draw from welfare. So Alexander's proposal, depending on how it is implemented, could leave

some people destitute if the policy were not generous enough or would discourage employment if too generous. Attempts to compensate for past claims on resources can end up reducing the scope for future gains from cooperation. To deal with this problem, several classical liberal scholars look toward more-generous alternative welfare regimes, including universal-basic-income policies (Munger 2015; Lehto and Meadowcroft 2021). These approaches are admittedly expensive and do not attempt to track individual desert or contribution but have the key advantage of avoiding the problem of deterring welfare recipients from working when and if they can do so.

This comment attempts to clarify the moral basis for economic liberty in a liberal society. John Rawls noted the role of luck in determining individual economic outcomes in a market economy and used this role to argue against giving market outcomes substantial weight. He went so far as to reject capitalism as necessarily unjust, favoring instead liberal socialism or property-owning democracy. Alexander Rawls criticizes John's approach for vitiating moral desert, eliminating the basis for valuable social relationships, especially down the generations. I think John's theory can cope with these concerns. Considerations of desert can be rescued once they are recognized as important for ensuring the stability of ongoing cooperation. Moreover, John's conception of justice applies only to the theory's basic structure and permits private associations to pursue ends based on their own reasons, including specific conceptions of moral desert. Where John errs is missing the epistemic necessity of markets and private property to overcome problems of risk and uncertainty that are intrinsic to economic activity. Fortunately, his broader framework is suited to justifying a market economy once that epistemic role is recognized.

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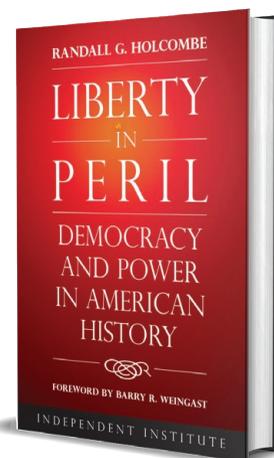
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