Reflections on Alexander Rawls's Desert-Inclusive Justice

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In this symposium, Alexander Rawls interestingly discusses how and why one may incorporate claims of desert into John Rawls's conception of justice. After briefly reviewing the divergence of Rawls from Rawls, I argue that John Rawls was concerned with principles of justice for governing ideal cooperation, whereas Alexander Rawls shifts to a nonideal theory concerning justice for a society in which productive cooperation is neither universal nor independent of incentives. In this way, Rawls and Rawls come to different answers because they ask different questions. The final section notes John Rawls's concern for the function of a public conception of justice and the challenge of maintaining moral relations given the fact of reasonable disagreement about justice itself.

Justice as Fairness versus Justice as Fair Desert

John Rawls calls his conception "justice as fairness," so I will call Alexander Rawls's desert-incorporating conception "justice as fair desert." These conceptions agree that to assess society's basic institutional structure, one should consider what agents in a properly constructed original position would endorse.[1] Justice as fairness

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1. On the "basic structure," see Neufeld and Van Schoelandt 2014.

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and justice as fair desert further agree that to support impartiality such agents should be ignorant about their particular place in society, though they disagree about what information agents should possess.

In *A Theory of Justice* ([1971] 1999), John Rawls excludes information about one's natural talents, fortunate social position, and even one's character enabling the use of one's talents *because* one does not deserve those features (sec. 17). Ultimately, the agents in justice as fairness do not consider any desert-based claims and do not take the income a person may get with her talents in a free market to be relevant considerations. Desert is maintained only within institutions, not as a fundamental criterion for judging society's basic structure. In contrast, Alexander Rawls argues that respecting people's moral agency implies recognizing that they have fundamental claims of desert for productive use of their talents. Within justice as fair deserts, then, the agents consider desert-based claims along with the fact that people have different degrees of deservingness and that it is essential for society's functioning to incentivize people to become deserving.

I want to emphasize that Alexander Rawls maintains agents' impartiality by denying them knowledge of which person they are in society and leaving them ignorant of their natural talents, social positions, and levels of desert. Agents in justice as fair desert do not reason from knowing that they are very deserving or undeserving but consider that the society as a whole will have people who do deserve what they earn in the market and other people without such deservingness. The agents likewise know that some people in the society will have significant needs that those people themselves cannot or will not meet, so such people depend on others for satisfying their needs. The agents do not know, either, if they are among the needy people, so they must consider principles and policies from the perspective of someone who could turn out to have extensive or minimal claims of desert or need.[2] Thus, the agents must balance these interests.

John Rawls argues that the agents deciding in the circumstances he specifies would select principles requiring equal basic liberties, fair equality of opportunity, and the "difference principle," which permits inequalities in wealth and income only insofar as doing so works to benefit the least well-off, as through providing incentives.[3] It is this last principle that Alexander Rawls rejects because the focus on maximizing the position of the least well-off can come at the expense of the very deserving. Justice as fair desert, then, holds that instead of the difference principle

2. Alexander Rawls also suggests that the agents know they are more likely to be among the more deserving because a functioning society must have mostly productive people. Knowledge of probabilities is another break from justice as fairness, for John Rawls holds that the agents in justice as fairness have no way of assessing the probabilities for the society, in particular the relative probabilities of being among the more or less well-off ([1971] 1999, 134; 2001, 101).

3. On the role of incentives for the difference principle, see Rawls [1971] 1999, 68, and 2001, 63. Besides incentives, I would emphasize that incomes, like other prices, serve an essential information function. On the information function of prices, see Hayek 1945.

there should be a balancing of the need-based claims of the least well-off and the claims of the more well-off have to deserve their incomes in a free market.[4]

Alexander Rawls seems to hold that adding desert creates substantial changes in the policy applications of the conceptions of justice, though I am not clear on what differences it actually makes. He suggests policies different from those that John Rawls or that others typically associated with John Rawls suggest, but he argues for many of these policies in ways that seem relevant to justice as fairness instead of being particular to justice as fair desert. Empirical claims about the effects of policies motivate the policies in ways that would apply as much to justice as to fairness and do not depend on appeal to the fundamental desert claims particular to justice as fair desert. For instance, Alexander Rawls holds that the most productive people and their productivity are crucial to society's vitality, that societies can function and prosper only if recognizing and incentivizing productivity as allowing people to keep their market incomes tends to do, that government redistributive assistance programs tend to increase poverty by reducing incentives for both the better-off and the worse-off to be productive and by directing resources from the more to the less productive, and that welfare programs may be the biggest cause of poverty and needs.[5] He seems undoubtedly correct that vastly more important for satisfying people's needs is overall productivity to greatly expand wealth rather than redistributions of existing wealth. Moreover, market-based societies generate tremendous amounts of wealth and widely disburse benefits, including to many of the least well-off.[6]

Someone accepting Alexander Rawls's empirical claims about the importance of productivity and the harms of government aid while also endorsing John Rawls's principles, including that economic institutions should maximize the advantages (wealth, income, powers and prerogatives of office) of representative least-advantaged members of society, should be skeptical of high rates of redistributive taxation and welfare without any special claims of desert. The difference principle, after all, holds not that one should maximize government transfers to the least well-off but that one should have the basic structure of justice as fairness with inequalities working to the advantage of the least well-off. In the same vein, Alexander Rawls argues that structuring government aid (including corporate welfare) like a loan would provide better incentives for people to be more productive and less reliant on aid. Such concerns about policies' incentive effects are relevant to justice as fairness, too, and do not seem to depend on balancing desert against need insofar as the superior incentives work to satisfy needs over time.

4. From Alexander Rawls's discussion, I assume but am not certain that justice as fair desert maintains the lexical priority of fair equality of opportunity over the principle of balancing desert and need.

5. Alexander Rawls could appeal to a considerable literature to support these views. For instance, see Friedman and Friedman [1980] 1990, chap. 4; Schmidtz 2006, chap. 23; Sowell 2009, chaps. 1 and 6; Coyne 2013.

6. Deirdre McCloskey emphasizes that markets alleviate poverty (2011, 2–4). See also Davies, Harrigan, and Teague 2015 as well as Storr and Choi 2019, chaps. 3–4, on the way markets generate wealth and prosperity.

That said, I expect justice as fairness and justice as fair desert to diverge on some policies because the latter requires balancing the needs of the least well-off against the desert-based claims of the better-off to keep their market income rather than to have it taxed. At *some* margins, then, justice as fairness would support a tax-funded policy because it helps the least well-off, whereas justice as fair desert would reject that policy *because* of the desert claims of potential taxpayers and *even though* the policy would help the least well-off. A case of balancing would say something like, "Though these welfare policies would work to meet the needs of the poor, respecting desert requires us to abstain from or have less of those policies and leave the needs of the poor less well met." Though the two conceptions would agree in rejecting government aid that actually worsens poverty, they must disagree about at least some tax-funded aid that would be effective. How far the conceptions diverge in their recommendations depends on how the claims are balanced, particularly the relative weight of desert, and on the available policy alternatives.

Cooperation versus Conflicting Interests

In this section, I consider the difference in the fundamental framing of justice as fairness and justice as fair desert. In particular, I am concerned about what sort of people and interpersonal relations each conception is about, for that is essential to seeing what questions the conceptions are trying to answer. As I clarify, these conceptions seem to differ at least in part because they are addressing different circumstances, though we may see justice as fair desert as an extension of justice as fairness from ideal to nonideal theory.

In his article, Alexander Rawls presents central issues in terms of conflicting claims between productive people and needy people. On his account, the productive pull their own weight, have extensive claims of desert represented by the high incomes they command in the market, and have few claims of need. In contrast, the needy consume more than they produce, perhaps produce nothing, meet their needs only through others' productivity, and systematically tend to deserve the least. In this context, justice as fair desert constrains redistribution to society's most needy members to respect the desert-based claims of the productive members.

This framing significantly diverges from that of justice as fairness, which is not designed to address issues with respect to people who are needy on net. John Rawls instead provides an account of justice assuming "that all citizens are fully cooperating members of society over the course of a complete life" (1980, 546). Justice as fairness is part of so-called ideal theory and, at least in John Rawls's development, assumes "that everyone has sufficient intellectual powers to play a normal part in society, and no one suffers from unusual needs that are especially difficult to fulfill, for example, unusual and costly medical requirements" (1980, 546).[7] So justice as

7. Eva Feder Kittay criticizes John Rawls for this because presenting a theory of justice only for fully cooperating members of society excludes people with severe disabilities (2019, pt. II). Christie Hartley

fairness assumes that people are able to be productive, but it further assumes that they will choose to be productive if they are to have claims for government support. Moreover, John Rawls considers those "unwilling to work under conditions where there is much work that needs to be done," denies that they would have a claim for income support, and illustrates this by indicating that "those who surf all day off Malibu must find a way to support themselves and would not be entitled to public funds" ([1993] 2005, 182 n. 9).[8] Justice as fairness addresses cooperative systems and the division of a cooperative surplus among cooperators rather than how much the productive people should provide to the needy.

Justice as fairness and justice as fair desert are thus answering different questions rather than being competing answers to the same question. Justice as fairness, on the one hand, answers how a society's basic structure should constitute a fair system of cooperation among free and equal cooperators with different talents but comparable needs (no "unusual needs that are especially difficult to fulfill") over a complete life. Justice as fair desert, on the other hand, answers how to arrange society such that the benefits of cooperation are appropriately shared among people, including both producers and nonproducers. It is no surprise that introducing needy people into consideration significantly changes the resulting conception of justice.

To be clear, John Rawls's approach does not imply that a just society should exclude disabled people or merely let those with costly medical requirement die or owe no consideration at all to people unwilling to work. His principles are not designed to address those cases. As Leif Wenar notes, John Rawls provides principles for ideal theory but intends them as a basis for principles for nonideal circumstances, so "once we find ideal principles for citizens who can be productive members of society over a complete life, we will be better able to frame non-ideal principles for providing health care to citizens with serious illnesses or disabilities" (2021, sec. 2.3).[9] Similarly, John Rawls considers those able but unwilling to work as an extension of the theory accounting for additional values (such as leisure) and variables rather than part of justice as fairness from the start ([1993] 2005, 182 n. 9).

Perhaps, then, one should take Alexander Rawls's discussion not as interpreting, criticizing, and providing a direct alternative to John Rawls's theory as originally developed but instead as extending that constrained ideal theory to the conditions of

(2011) provides an important overview and assessment of social contract theory's treatment of disability. Peter Vanderschraaf provides important insights on how theories of justice as mutual advantage can protect the vulnerable (2011; 2018, chap. 8).

8. Philippe Van Parijs famously defends the surfers (1991) and a basic-income guarantee (1998). Otto Lehto and John Meadowcroft (2021) provide an informative account of "demogrants" from a public-choice economics perspective. Samuel Freeman reports in an interview that John Rawls supported wage subsidies that "come from government. He thought we ought to get rid of a minimum wage and let the labor market just go as low as it would and let employers just pay two, three dollars an hour if they could and let the government come in and supplement that" (Wattenberg 2004).

9. Though space does not permit me to get into the details and problems with ideal theory, Gerald Gaus (2016) illuminates and compellingly criticizes ideal theory.

our very nonideal world. One need not reject John Rawls's ideal theory to recognize the need to move beyond it in order to reason about policies in our nonideal circumstances. John Rawls left out—or idealized away—considerations that are vitally important for addressing real-world policy, so Alexander Rawls is right to shed light by bringing additional considerations into the account. In this way, Alexander Rawls emphasizes that in real societies some members are needy on net, some neediness results from personal choice and character, and families have a significant influence on character. He highlights that a theory can change radically when we go from assuming that all people are fully cooperating members of society to acknowledging that not everyone will choose to cooperate and, moreover, that the level of cooperation varies with policies rather than being stable.

Taking account of these considerations, as Alexander Rawls brings out, draws our attention from questions of how to distribute a cooperative surplus to questions of what institutions or policies actually lead people to cooperate and produce a surplus at all. Likewise, he brings out the importance of developing institutions to promote greater productivity. This puts him in a tradition of those looking at extending John Rawls's theory and other ideal social contract theories to more realistic conditions. Charles W. Mills (1999) discusses the histories and continuing aspects of pervasive racism that social contract theory must address if it is to apply to actual societies like ours; Nick Cowen (2021) argues for the need to "unveil" John Rawls's theory and to incorporate insights from of public-choice economics; and now Alexander Rawls extends justice as fairness to recognize the vital importance of productivity within markets.

I want here to expand on Alexander Rawls's point that neediness itself is variable. Consider that what conditions generate "unusual and costly medical requirements" depends on the society's state of medical knowledge and health care. A debilitating and untreatable visual impairment may be surgically corrected in one society, meliorated with inexpensive prescription glasses in another, or avoided with early detection and prevention in yet another. At least part of addressing the concerns of those with potentially debilitating or costly medical conditions, then, is arranging society to be highly productive, conducive to medical advances and efficient health-care provision. Furthermore, wealth and extensive markets enhance productive opportunities for people of different abilities, such as by generating new industries and careers as well as means of accommodating people. This enhancement supports, among other things, greater freedom of immigration because of the diversity of talents and tremendous economic benefits immigrants bring.[10] Vibrant markets with personal freedom and responsibility must take high priority for anyone concerned with meeting people's needs and conceiving justice for the real world.

10. On the benefits of immigration, see Riley 2008, chap. 2; Caplan and Weinersmith 2019; and Nowrasteh and Powell 2020. Arash Abizadeh (2007) compellingly argues that the scope of Rawlsian distributive justice extends beyond state borders, so the potential migrants' interests are also essential for considering immigration policies.

Justice and Disagreement

I conclude here by briefly highlighting what I take to be John Rawls's most important fundamental questions that still drive ongoing and lively research agendas. I also consider how Alexander Rawls's proposal stands regarding these projects.

John Rawls centrally focuses on constructing a *public* conception of justice that people can share and use to guide their political actions. He notes that his project differs from philosophic inquiries into independent moral truth or the like (J. Rawls 1974). This project requires that the conception of justice be able to generate intersubjective agreements not merely on the abstract principles of justice but also on their application to a society such that diverse members of society can systematically agree on the justice of their society or on necessary reforms.[11] At least as specified so far, justice as fair desert cannot perform this function, for it tells us we must balance the competing claims without providing any metric or means of doing so. As such, people will appeal to their own intuitions and come to radically divergent findings for what seems to them to be appropriate or inappropriate balances of desert and need across different policies.

More fundamentally, Alexander Rawls's proposal highlights and compounds an already existing problem with the Rawlsian approach. As John Rawls came to realize in *Political Liberalism* ([1993] 2005), a free society will have reasonable pluralism not only about the good but also about justice itself.[12] As compelling as justice as fairness may seem as a conception, reasonable people will disagree over what it is. Importantly, even small disagreements about the structure, information, or reasoning within the original position generate tremendous differences in the resulting principles and policy prescriptions. Alexander Rawls's discussion illustrates this by showing how what many will see as a plausible adjustment to the agents' information can snowball into potentially large differences in application. His piece also brings out, as discussed earlier, that there are different ways to specify the relevant people whose interests are central to justice, such as whether it includes only those who are full cooperators. Some social contract theories, such as Ryan Muldoon's (2016), even treat the public itself as an object of bargaining and part of what the social contract determines.

The fundamental question we face now is how to maintain cooperative relations despite the ineliminable, reasonable pluralism regarding justice itself. Although we can continue to consider and construct conceptions of justice that we think best, we must face the fact that free people will come to diverse views about ultimate justice. To cooperate and prosper together, we must discern not what is ideally just but what we all can live with. For that task, it may not help to discern

11. See Van Schoelandt and Gaus 2018 and Van Schoelandt 2020.

12. For extended discussion, see Gaus and Van Schoelandt 2017. For related concerns about disagreement about justice, see Lomasky 1998 and Moehler 2018.

what conception of justice is best, and even were we to discern it, we may find that we must forsake it to live cooperatively with deeply diverse others (Van Schoelandt 2021, sec. 13.4.4).

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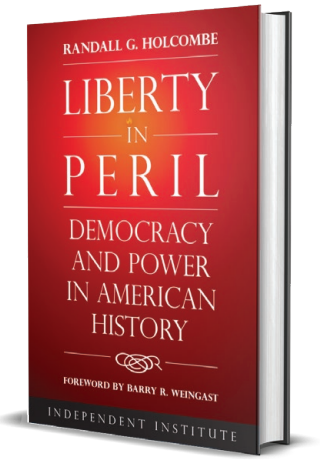

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