DESERT, EQUALITY AND JUSTICE

by

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ABSTRACT

In this essay I argue that pre-institutional desert is relevant to the notion of distributive justice. My argument is in two main parts.

First I show how the notion of pre-institutional desert can be given sufficient grounding. I argue that there is a clear distinction between desert and entitlement. Desert, unlike entitlement, is not created by satisfying certain conditions laid down in a system of rules or regulations. Thus, desert is a natural moral notion, prior to institutions and rules, and a standard by which such institutions and rules may be judged.

Second, I show how conceptions of distributive justice which exclude pre-institutional desert, in particular the theories of John Rawls, Ronald Dworkin and Thomas Nagel, are mistaken. Rawls' main objection to the pre-institutional conception of desert is that desert claims are always ultimately based on circumstances or characteristics over which the agent has no control, and are therefore morally arbitrary. My main response to this is to deny that moral value is beyond all luck. Moral agents, although never in control "all the way down", may properly be morally evaluated for characteristics which they have not voluntarily acquired, in particular if these characteristics are combined with effort or contribution.

According to egalitarians such as Dworkin and Nagel, each person's life matters equally, and hence everyone should get an equal share of the community's resources. This view conflicts with the differentiations imposed by desert. My main criticism of the egalitarian doctrine is that it unreasonably assumes that each person's life has equal moral value
because impersonal value is somehow the predominant consideration in the evaluation of a person's human worth. I argue that, on the contrary, the importance of a person's life cannot be evaluated without reference to the greater or lesser value that person has for others. A plausible account of moral worth must bring together the impartial, and the partial value of the person. Thus, I conclude that even from the standpoint of politics, the interests of members of the community do not matter equally.
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INTRODUCTION

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. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases. Thus 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. There is no basis for his making this claim (Rawls 1971:104).

In this well-known passage, John Rawls presents his main argument against the view that desert is a fundamental principle of social justice. Not only are all men equal, but all men are equally undeserving. The main purpose of this essay is to argue that people can become deserving in a number of different ways which have implications for social justice. I will attempt to show this by discussing three related topics.

First I consider the concept of desert, and show how it may be relevant to the notion of social justice. Much has been done in recent years to clarify the concept, most notably by Joel Feinberg, and there seems to be some general agreement on the logical form of desert-claims. There is, however, a dispute over whether desert is an institutional or pre-institutional notion. This is a crucial issue because, if it turns out that desert is an institutional concept, it will have no independent force. Desert-claims would be wholly the artifacts of social institutions, and thus it would make no sense to criticize institutions for being unjust because they are insensitive to people's intuitions about desert. If there are no knock-down arguments on either side of this debate, we may have to choose between them
on the basis of our intuitions: Which position does a better job in capturing our judgments about desert? Along with Feinberg, Sher, and others, I am inclined to defend the pre-institutional notion of desert. It is not clear why some people take this stand, but I suspect that part of the reason is that they are drawn to a rather pluralistic world-view, which opposes the dangers of over-systematization and "conceptual tyranny." Those who are drawn to pluralism may therefore be genuinely wary of any attempt to reduce the concept of desert to a component in some overall system or principle, or to view desert-claims wholly as the artifacts of social institutions. But it follows from this that those who are pluralist in spirit will be equally wary of the claim that desert is the sole principle of justice, or that "justice is simply] getting what one deserves" (Hospers 1972:361).

Having discussed the logic of desert I will turn to the question of which grounds for desert-claims could be relevant to distributive justice. I will focus my attention mainly on three categories, which can be labeled hard work, ability, and contribution. I will argue that although there are some problems with applying the concept of desert, this is not a reason to dismiss it as irrelevant to the issue of distributive justice.

Secondly, I discuss John Rawls' arguments against desert. In my opinion, any adequate discussion of desert must try to take some notice of Rawls' objections to the relevance of desert to social justice and attempt to find some answers to them. My main point will be that Rawls exaggerates the importance of the principle of voluntariness for morality. I contend that Rawls starts out with a Kantian conception of morality which is far from being realistic, because it defines morality as that which is not a matter of luck. This definition is flawed because of the fact that what is, from a moral point of view, most valuable about people's
constitution and actions will not always be the result of their voluntary actions, and hence value is affected by luck. Rather than declaring those features of people "morally arbitrary," as Rawls does, we should frankly acknowledge the bitter truth that morality is not immune from luck.

Thirdly, I examine a strong version of egalitarianism which emphasizes notions of impartiality and equality that conflict with the differentiations imposed by desert. I will mainly be concerned with the doctrine as it is presented in the works of Ronald Dworkin, and Thomas Nagel, although I will also consider briefly one argument for it taken from Rawls. My main point will be this: The egalitarian's claim that a person's worth can solely be determined by impartial considerations is improbable to say the least. Furthermore, it seems to presume a particular view of personality which, in itself, is not very plausible, and is of a "metaphysical" kind which liberalism is supposed to eschew. I will argue for an account of human worth which takes into consideration detached, as well as personal perspectives. What this means is that people do not all have equal human worth, since the value of their lives cannot be assessed in detachment from the (personal) value their lives have for others, and this value is bound to vary. If this is so, then the way is still open for personal desert to play an active role in our ideas about social justice.

As I have emphasized, the main objective of this essay is to show that unequal treatment of people may be justified on the basis of desert. In other words, it will be argued that there

1Unequal treatment may also be justified on grounds such as efficiency, liberty, and respect for rights (cf. Landesman 1983:29). It is not my aim in this essay to discuss the plausibility of these grounds for unequal treatment. However, if inequalities are said to be justified on more than one ground, the question arises how these grounds are to be weighed against each other? Is there any clear and convincing criteria of a just distribution of what we might call surplus goods, i.e. goods that remain after the basic needs of everyone have been satisfied? I
are morally significant differences between persons, i.e. differences of desert, which should be respected. But one sometimes wonders whether such an argument can ever be successfully defended. Concepts such as desert and justice are controversial and there is a widespread disagreement about their meaning and significance. One might therefore easily become a pessimist, not only about the possibility of a rational agreement on the matter, but also about finding a solution which would be morally better than alternative solutions.

There are some reasons, however, to think (and hope) that this kind of pessimism is premature. It is true that there is disagreement about desert, but there is also disagreement about most other moral matters, whether it is disagreement about what has value, or about what is right and just. Disagreement on moral issues is a fact, but that should not discourage us from seeking and defending reasonable conceptions of the good (as well as of the just). There is no reason to rule out beforehand that this can be done. Moreover, it might turn out that there is more agreement about matters of desert than one might initially think. There is evidence, for example, that the vast majority of people strongly believe that the incomes people earn ought to reflect their deserts, at least partially (Miller 1989:328; cf. Hochschild 1981:ch.5; McClosky and Zaller 1984:80-6; Bell and Robinson 1978:125-43). Thus with the confidence that something substantial can be said about desert and its relevance to social justice I will now explore the concept of desert.

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am very sceptical that any such criterion can be found, but a discussion of that issue lies beyond the scope of this essay.
Chapter One
1.1. Introduction

In this chapter I discuss the concept of desert. I argue for an "expressive" account of desert, i.e. that desert is closely linked with our reactive attitudes, and their expression. I then consider briefly the objection that this account does not justify desert-claims, but merely explains why we make them. I will argue that this objection is mistaken. Next, I consider the utilitarian, and the institutional approaches to desert, and try to show how they fail to provide a satisfactory account of what it means for a person to deserve a treatment of a certain sort. Then I will briefly mention desert in relation to voluntary action. Finally I examine what basis of desert is relevant in relation to distributive justice. I argue that although there are some problems with applying the concept of desert, that is not a reason to dismiss it as irrelevant to distributive justice.

1.2. The Concept of Desert

It seems to be natural for most people to entertain certain reactive attitudes toward various actions and qualities of human beings. To feel sympathy and concern, to be grateful or resentful, to admire or to disapprove, are attitudes which people experience spontaneously when involved in transactions with each other. It has been argued by Peter Strawson that, as a whole, the web of such human attitudes and feelings neither calls for, nor permits, an

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external, rational justification (Strawson 1982:78). In other words, it does not make sense to ask for a rational justification for the fact that people entertain these attitudes at all. However, as Strawson remarks, inside the general structure of human attitudes there is more than enough room for justification and criticism. We can always ask a person, for instance, why she feels grateful, and we expect her to name some relevant reason for her gratitude. Thus, within the structure each of the reactive attitudes has its own appropriate kind of reason. We do not normally feel grateful for someone's insult or humiliation; these are normally inappropriate reasons. According to Feinberg this kind of "fittingness" between one person's actions or qualities and another person's reactive attitudes suggests that reactive attitudes are the basic things persons deserve and that modes of treatment are deserved in a derivative way insofar as they are the natural or conventional means of expressing the fitting attitudes (Feinberg 1970:82). If someone does you a favor that is a reason for his deserving your gratitude. But if or how you should express your gratitude may, for instance, depend on existing institutions and regulations.

In desert-claims there are three general components involved: That which is said to be deserving (M), the basis of desert (A), and that which is deserved (X).

The Deserving. Many things other than persons are commonly said to be deserving. But statements of the desert of persons are clearly most important when it comes to questions of justice. The following discussion will be confined to personal desert.

The Basis of Desert. All desert claims have a common structure, in that they all assert that, if a person is deserving of some sort of treatment, he must, necessarily, be so in virtue of some possessed characteristic or prior activity. It is because no one can deserve anything unless there is some basis or ostensible occasion for the desert
that judgments of desert carry with them a commitment to the giving of reasons (Feinberg 1970:73).

In other words, when we say "(person) M deserves (treatment) X" we are implicitly committed to having reasons for M's desert. It would be logically absurd for M to deserve X for no reason at all. One cannot say, for example, that Jones deserves gratitude although he has done "nothing in particular." If a person says that Jones deserves gratitude, then he must be prepared to answer the question "For what?" Therefore, logically, all desert claims display the form "M deserves X for A (where A is some fact about the person)."

In general, the facts which constitute the basis of a subject's desert must be facts about that subject. If a student deserves a high grade in a course, his desert must be in virtue of some fact about him — his earlier performance say, or his abilities, or other such characteristics. Thus, judgments of desert are infelicitous if they lack a basis altogether or have an inappropriate one, as when it is claimed that a student deserves a good grade for no reason at all, or when the claim is that a mother's mental health is the basis of a student's desert.

The Deserved. (a) The kinds of treatment that persons deserve from other persons are varied, but they have at least one thing in common: The deserved object must be something generally regarded as pleasant or unpleasant, or as something to be pursued or avoided, etc., even if, in some particular case, it is regarded with indifference by a person said to deserve it. Thus, in the case of distributive justice, desert is a matter of fitting forms of treatment to the specific qualities and actions of individuals which are generally held in high regard.
(b) The deserved item may or may not already be in the possession of the deserving party. We may say, for example, that Joe deserves his success because he has worked hard for it, but, on the other hand, that George deserves more success than he has because he also has worked hard for it.

(c) The deserved items vary in their impact on others' obligations. In this sense there is a continuum of desert-claims.

Firstly, there is "cosmic" desert that carries no implications for human actions. As Barry observes, "To say that a venture deserves success does not necessarily commit one to saying that steps ought to be taken to see that it gets it" (Barry 1965:106). In this respect the relationship between desert and justice is weaker than the corresponding relationship between rights and justice. If Jones has a right to X, this is always a *prima facie* reason for regarding it as just that Jones be given X. However, if Jones deserves X, it is not always a *prima facie* reason for regarding it just that he be given it (see, Miller 1976:114-117).

Secondly, governments often confer honorific titles on those citizens who are judged to have made substantial contributions to the welfare of the nation. Given that such a practice has been instituted, the government is responsible for making sure that those who are most deserving receive the titles. Kleinig calls these desert-claims *institutionalized desert-claims* because the deserved treatment presupposes a context of legal or quasi-legal rules or institutions (Kleinig 1971:71). However, the government is not necessarily required to institute the practice itself.

Thirdly, the basis of a given person's desert is often thought to affect what others ought to do. As Sher points out, in most people's view, the fact that someone has wrongfully harmed
another obligates the wrongdoer to provide compensation. Likewise it can be argued that if Jones freely confers on Jim a benefit that Jim desires to receive, Jones deserves reward in a way that has implications for the way in which Jim should act. This holds, whether or not Jim makes the practice of giving rewards (Miller 1976:116).

Finally, it follows from the characterization above that there is a clear distinction between desert and entitlement. Although both concepts imply that there is a certain sort of propriety between a person and a given treatment, the grounds for desert are of a different kind than are those of entitlement. To be entitled to something a person has to satisfy certain conditions as specified by a rule or a regulation. To take Feinberg's example, a person is entitled to become the president of the United States if he wins the majority of the electoral votes. Similarly there are millions of persons who are eligible to be the president because they satisfy certain eligibility conditions, also specified by rules and regulations. However, in many cases it is quite plausible to say that a person who is eligible or even elected president does not deserve to be president. He or she simply may not have the qualities, such as intelligence and honesty, that a president of the United States should have. This points to a difference between desert and entitlement. Desert, unlike entitlement, is not created by satisfying the conditions laid down in a system of rules or regulations. Furthermore, the rules and regulations can be criticized on the ground that they do not assign entitlements to those who deserve them. As Feinberg observes,

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3As Kleinig emphasizes, institutionalized desert-claims are not to be confused with entitlement, for although such claims arise only because of an already existing system of rules and regulations, they at least implicitly "prescribe a dispenser of desert" (Kleinig 1971:75).
In requiring people to satisfy qualifying conditions specified by public regulations and administered by impartial officials, we have a system which in respect to many kinds of activity, is probably the most reliable guide to the deserts themselves (Feinberg 1970:83).

Thus if a system of rules and regulations is not the most reliable guide to people's deserts, that can at least be a *prima facie* reason for changing it. In this sense desert is a natural moral notion, prior to institutions and rules, and a standard by which such institutions and rules may be judged.

1.3. Explanation or Justification

There are, of course, several points at which the account of desert depicted above, can be criticized. I will discuss two alternative accounts of desert-claims, the utilitarian approach, and the institutional approach but first I want to comment briefly on a possible difficulty of linking desert so closely to the expression of people's reactive attitudes.

Sher points out that while the "expressive" account of desert is useful in explaining why we *say* that the deserving deserve things, it is actually of little help in showing why the deserving *ought* to have what they deserve. The expressive account is, in other words, descriptive, not normative. Since the expressive account does not justify, but merely explains the practice of rewarding the deserving, Sher maintains that we have to look elsewhere for some independent rational principle, value, or argument that shows *why* individuals or society should exhibit appropriate expressive behavior (Sher 1987:112,130).

It would require a lengthy discussion to properly evaluate this objection to the expressive account. It raises some complex and controversial questions about such issues as the nature
and relationship of our emotions, reason, and morality. It is very difficult, however, to deny that there is a strong relationship between the concept of desert and our reactive attitudes. To take an example, it would barely make any sense to use the concept of desert if people did not adopt these attitudes towards one another at all, because then the concept would hardly have any meaning for them (See, Miller 1976:89). Furthermore, it is by no means clear why the existence of our reactive attitudes cannot be said to give us a justification for making certain judgments about desert. To suggest that our reactive attitudes cannot be the basis of justification is to suggest that these attitudes are wholly arbitrary. But, in fact, there is no reason to think that this is the case. If, for example, most people have a certain attitude towards a specific quality or activity of their fellow citizens, say that they tend to admire and praise hard work, then it is hard to see what further justification someone would have to give for taking up, or having this attitude.4 It is true that to talk about justification here is not to use the word in its strongest sense, where it stands for some ultimate value or moral principle. Feinberg has suggested that the reasons for having and expressing the appropriate attitudes are somewhat analogous to those that support aesthetic judgments (Feinberg 1970:114). We may not be able to state any purely rational principle which explains why it is apt to respond to certain qualities or activities in a particular way. Yet the "fit" between human responses and the occurrences that evoke them is not arbitrary either. What it makes sense to feel, and react to in a certain way, responds to the kinds of things I myself, and

4Compare, Rachels 1978:158-159: "The reason why the conscientious employee ought to be promoted is precisely that he earned the promotion by working for it. That is a full and sufficient justification for promoting him, which does not require supplementation of any sort. If we want to know why he should be treated in that way, that is the answer. It is not easy to see what else, by way of justification, is required."
people around me feel and react to. As Alan Gibbard puts it, "in socio-psychological fact, my feelings will move me toward accepting norms that endorse those very feelings. So will the feelings of people around me" (Gibbard, 1990:276).

An answer of this sort will not satisfy those who want to find some purely rational principles which could justify our judgments of desert. But there is a great difference between claiming that desert-claims should be based purely on some such principle, and recognizing that reason has a role to play in the justification of our judgments about desert. Reason and emotions are not two entirely separate elements in our psychology, and there is therefore no reason to build one's view on any such sharp distinction. As we have already seen, some desert-claims are clearly more reasonable than others. But they are more reasonable, at least in part, because we, in fact, feel certain ways about them, and react in certain ways to them.

1.4. Desert and Utilitarianism

Given the account of desert stated above, desert can be ascribed to someone only on the basis of characteristics possessed or things done by that person. That is, desert is never simply forward-looking. When a person deserves to be punished, for example, he does so not because it will reform him or deter others, but because he has done something wrong. A person may deserve to be punished even though carrying it out would have disastrous effects on him and society. As Kleinig observes, "The disastrous consequences could be reasons for not punishing him, but not for his not deserving to be punished" (see, Kleinig 1971:73).
This characterization seems to exclude utilitarian analysis of desert-claims because the only kinds of considerations that utilitarianism holds relevant to determining the rightness of actions are considerations having to do with the future benefits they will bring. Therefore, utilitarianism seems to exclude all backward-looking considerations — what happened in the past does not seem to be of any moral importance. Utilitarians have, however, displayed much ingenuity in showing how apparently non-utilitarian attitudes might have a utilitarian base. As Sher observes, we therefore cannot simply assume that any adequate justification of our backward-looking moral beliefs must itself appeal solely to backward-looking considerations (Sher 1987:10). Utilitarian accounts must be examined on their merits.

In short, utilitarianism emphasizes the incentive effects of, say, reward and punishment. When we say a man deserves something we are saying (a) that he has performed a good or bad action, (or right or wrong) and (b) it is useful to apply certain sanctions or rewards to him — useful, that is, in the way of influencing his and other people's habits. Furthermore, although rewarding and punishing in these ways sometimes fails to maximize utility, our attempts to isolate the cases in which it will fail, and to refrain from rewarding and punishing in such cases, often do more harm than good. Therefore, utilitarians often hold that we can best promote utility by inculcating in ourselves and others a general propensity to reward effort and contribution and to punish wrongdoing. Hence, in a way, our belief that punishment and reward are called for by past actions is only to be expected. This belief is the consequence of producing a disposition to feel guilty when we fail either to reward the hard-working and productive or to punish the guilty. And more importantly, this belief, like all others that are defensible, is ultimately grounded in utility.
As Sher points out, the main objection to this line of reasoning is that the utilitarian approach has still not succeeded in justifying our most fundamental belief about desert. For although we may be able to invoke utility to justify *inculcating* the belief that reward and punishment should be administrated on the basis of past activity, it does not follow that the belief itself has been justified (Sher 1987:12). Indeed it appears to be very inadequate justification\(^5\) of a desert-claim to say, for example, that a woman who has worked hard deserves promotion, not because she has earned it, but because it promotes the general welfare that she gets it. Furthermore, as long as the utilitarian's basic tenet is that the rightness of acts depends ultimately on their consequences, he must still maintain that punishing and rewarding in accordance with backward-looking reasons, like desert, is wrong whenever its costs outweigh its benefits. It can hardly be reasonably asserted that rewarding or punishing in accordance with desert will always be beneficial. However, as we have seen, it is central to our beliefs about desert that a person may deserve something, even if his receiving it will not maximize overall utility.

### 1.5. The Institutional Approach

Traditional utilitarianism is not the only doctrine which challenges the characterization of desert presented above. One powerful alternative is offered by John Rawls who argues that desert is an artifact of social institutions which, in turn, are justified in quite different ways.

\(^5\)According to Feinberg, utilitarianism which interprets utility as a universal desert-basis is not so much naive as it is either absurd or self-defeating (Feinberg 1970:81).
On this view, personal desert plays no basic role in determining the choice of just social institutions, but is only established by such institutions. According to Rawls, to think otherwise shows a failure to distinguish between moral desert and legitimate expectations. As Rawls says:

Thus it is true that as persons and groups take part in just arrangements, they acquire claims on one another defined by the publicly recognized rules. Having done various things encouraged by the existing arrangements, they now have certain rights, and just distributive shares honour these claims. A just scheme, then, answers to what men are entitled to; it satisfies their legitimate expectations as founded upon social institutions. But what they are entitled to is not proportional to nor dependent upon their intrinsic worth. The principles of justice that regulate the basic structure and specify the duties and obligations of individuals do not mention moral desert, and there is no tendency for distributive shares to correspond to it (Rawls 1971:311).

Thus, according to Rawls, desert is not a basic category of moral thought which can operate as an independent normative constraint on the design of social institutions. When we speak of desert, we are merely referring to certain entitlements which in turn are justified by the relevant institutions.

As Sher points out, the basic objection to this view is simply that the entitlements which the institutions dictate may systematically diverge from what persons intuitively deserve. These deviant desert-claims would therefore have to be dismissed as unjustifiable (Sher 1987:16). For example, in Rawls' own theory, neither industry nor contribution to the social product plays a fundamental role in determining the economic benefits of the citizens. Moreover, there is no distinction between being unable to work and being simply unwilling. Thus, as Lessnoff points out, there are reasons to think that in a Rawlsian society, there would be a large group of non-workers by choice, for the application of the difference
principle would assure that the incomes of all non-workers would be maintained by state transfers, not just at subsistence level, but at the "maximum minimum" entailed by that principle (Lessnoff 1978:142). Thus, one striking result of the difference principle appears to be that some people may have to pay for others' choices, in the event that those in the worst off group are there by choice (see Kymlicka 1990:75). Now surely this would seem to be contrary to many people's intuitions about desert. The difference principle violates people's intuition that those who are diligent and productive should not have to subsidize the cost of other people's choices, namely the choices of those who are lazy and unproductive. It appears that these intuitions would have to be dismissed according to Rawls' theory.  

Still it could be argued that dismissing these intuitions is not too high a price to pay, if instead we get a comprehensive political doctrine that structures most of our intuitions, and is supported by several background theories upon which liberal theory is founded, such as the conception of man as free, equal, and rational. Furthermore we would get a general theory of the role of morality in society, including the ideal of a well-ordered society. As Rawls remarks, there is only one way to dispute the doctrine that there is an irreducible family of first principles, such as desert, which have to be weighed against one another without any single standard that assigns them their weights; it is precisely to set forth a standard that accounts for the weights which, in our considered judgments, we think appropriate to give to them (Rawls 1971:96). The difference principle might therefore have to be amended, to meet the basic insight of justice as fairness itself. But even this change would not meet people's "pre-institutional" intuitions about desert, for as Scheffler points out, Rawls' notion of "responsibility for ends" is not itself a pre-institutional notion, and is not intended as an independent constraint on the design of just institutions (Scheffler 1992:320).
According to Rawls, if we are to find such a standard, we have to reduce our reliance on intuitive judgments. For example, we may have to reject the common sense view that desert is at least a *prima facie* principle of distributive justice (Rawls 1971:310).

How convincing is this argument? It is admittedly very difficult to answer this question, in part because the claims and principles that fall under desert are far from being homogeneous and so it is very difficult to determine whether a theory does adequate justice to people's intuitions about desert. Which desert-claims has the theory to take account of and which can it dismiss in order to be acceptable? Furthermore, if we are to be able to settle the question whether an institutional approach like Rawls' is ultimately defensible we have to look at the basic assumptions which lie behind it in order to determine if they are plausible. I will attempt to do that in chapter 2. I believe that it can be shown that some of the basic premises of Rawls' doctrine are suspect. Because of this, and because the "pre-institutional" notion of desert seems to do a better job of capturing many important features of people's actual concept of desert and the great variety of our judgments about desert, there certainly seem to be some good reasons to reject the institutional approach.

One serious worry for the advocates of the institutional approach is that it ignores the relevance of what is reasonable to expect of people's motivations. As mentioned before, it seems to be natural and spontaneous for most people to entertain certain reactive attitudes toward various actions and qualities of other human beings when involved in transactions with them. In other words, these reactive attitudes seem to be a fact of human motivational psychology. Furthermore, as stressed by Strawson, we attach great importance to the attitudes others have towards us, and consequently it matters greatly to us whether the actions of other
people reflect or express these attitudes. One way of looking at people's judgments about desert is precisely to see them as the expression of certain feelings and attitudes, such as gratitude, recognition, appreciation, or approval, that people spontaneously entertain toward the actions and characteristics of other human beings. As Scheffler remarks, "judgments to the effect that certain individuals do or do not deserve certain benefits have an important expressive function in many contexts" (Scheffler 1992:314).

Hence, as Scheffler also points out, if this ordinary notion of desert is replaced with the idea of legitimate institutional expectations, then this institutional notion may turn out to be incompatible with a web of fundamental interpersonal responses, and thus in conflict with an important part of human motivational psychology. For the fact that this institutional notion of desert seems counter-intuitive to many people and thus meets with considerable resistance, may stem from the fact that the institutional account is in conflict with people's reactive attitudes. Now surely this would count against the institutional notion of desert, because if people find it psychologically difficult or even impossible to live as this conception requires, it shows that it cannot provide viable or stable political institutions. Scheffler remarks that

7Of course one can deny this claim. Nagel, for instance, notes that like beauty, talent and excellence also attract recognition, admiration, and gratitude, and such responses are among the natural rewards of human life. But he adds that, "the economic rewards which some talents are able to command, if properly developed, are another story. They cannot be said to be merited just because the recognition of excellence on which they are based is merited" (Nagel 1991:113, emphasis added). However, it is very hard to see how Nagel can be justified in making this sharp distinction between the recognition of excellence, on one hand in the form of admiration and gratitude and on the other hand in the form of economic reward. For although it seems plausible to suggest certain attitudes are the basic things people deserve (see above), these attitudes may well be expressed, in natural and conventional ways, by various modes of treatment, such as in the form of economic rewards. Of course Nagel wants to hold that since people are all, from a moral point of view, equal, we have an important moral reason not to express our attitudes in this way. In chapter 3 I argue that his view is mistaken at this point.

8Scheffler suggests that the problem of desert is an instance of a more general challenge facing liberalism, namely
advocates of the institutional approach could perhaps avoid this problem if it could be shown that the reactive attitudes were sufficiently plastic as to render them fully compatible with an institutional system of economic expectations that was insensitive to any independent considerations of desert (Scheffler 1992:315). In other words, if it can be shown that human motivational psychology can be changed so as to meet the requirements of the institutional approach, then it may still provide the best obtainable justification of desert-claims. However, although it is surely not inconceivable, the prospects of such transformation are rather slim. People's ideas about what is motivationally reasonable would have to change substantially and the result of such changes would be a very different society from those we know today. Although one should take some care not to get into the habit of thinking that any substantial departure from accustomed patterns of human psychology is totally unrealistic, one should be equally wary of ideas about a general and radical change in people's emotional makeup. Thus, when we consider how heavily the institutional notion of desert relies on this (unlikely) kind of change in our motivational constitution, it seems to give us an additional reason to reject it.

1.6. Desert and Voluntariness

It is often thought that there is a direct relationship between desert and voluntary action. Desert does, or should depend entirely upon what is within a person's control. However, this view does not accord well with the analysis of desert set out above. For if desert is based on

that the interpersonal attitudes that liberals value in the private sphere may be psychologically continuous with social and political attitudes whose implications are uncongenial to liberalism (Scheffler 1992:319).
people's emotional responses, it is clear that people can become deserving for qualities they have not voluntarily acquired. As Miller puts it:

If we consider the attitudes of admiration, approval, etc., it is plain that we do not adopt them only towards qualities believed to be voluntarily acquired. When we admire the superlative skill of a musician, we do not ask about the conduct which led to its acquisition before granting our admiration. The attitude is held directly towards the quality as it now exists, and the question "voluntarily acquired or not?" is simply not considered (Miller 1976:96; cf. Hume 1911:Book iii, Part III, section 4).

However, it would be wrong to say that there is no relation between desert and voluntariness. As Miller points out, our ordinary judgments are not wholly consistent on the issue. For we also want to see people as deserving on the basis of features for which they can be held responsible. For this reason we may sometimes be reluctant to base desert on such features as native abilities which are wholly outside people's control.

It is very difficult to know what to make of this conflict of intuitions, and it is unlikely that it has any final solution. However, it will be argued in chapter 2 that the principle of control cannot be used to exclude all desert-claims, on the ground that no one has voluntarily chosen his native abilities, and thus cannot be held responsible for actions that result from them. Even if we are reluctant to base desert only on native abilities, it is far more doubtful that they cannot be a pre-condition of desert-claims. This can be seen, for instance, from the fact that even wholly voluntary actions may often require native abilities which in no way undermine a person's desert, e.g. when a man is able to save a drowning child because of his inherited physical strength (see, Miller 1976:97). Thus, native ability which is minimally utilized may not be an appropriate desert-base, but combined with conscientious effort, and contribution, it can be a perfectly acceptable ground for desert-claims.
1. 7. Desert and Distributive Justice

There are varieties of basis for desert, and the same can be said about the treatment that is deserved. The question now arises, which desert-basis and which treatment ought to be taken into account when formulating a conception of distributive justice. In the case of deserved treatment, the answer seems to be fairly straight-forward. Since the concept of distributive justice is traditionally applied to social benefits and burdens, such as appointed offices, taxes, wealth and income, what is deserved in this context must be some social benefits and burdens of this kind.

It is far more difficult to identify the basis upon which judgments of desert should be made, in relation to distributive justice. There are several reasons for this, which have mainly to do with the practical and conceptual difficulties when we attempt to match social benefits to some particular desert-base. A good example of a desert-base which has seemed problematic to many writers, is what is usually called moral virtue, i.e. desert which is based upon qualities or actions of the individual which have moral value in themselves, such as courage, honesty, etc. In some respects it does not seem implausible to say that the good or the virtuous deserve to be happy, and that they ought (deserve) to be recognized as being good or virtuous (See, Ewing 1929:128; cf. Feinberg 1970:90-91). However, according to some writers there is something morally repugnant in paying a man for being virtuous.

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9The distinction between qualities which have moral value in themselves and qualities which are non-moral in themselves seems to be based on the idea that qualities which are moral in themselves can only be used in beneficial ways, whereas morally neutral qualities, such as intelligence, ability, and diligence can be used for better or for worse.
Feinberg observes that, "Economic benefits seem to be a highly inappropriate vehicle of recognition partly because they tend to render the recipient suspect and to tarnish the disinterested altruism essential to moral worth" (Feinberg 1970:91). What Feinberg has in mind here is that rewarding moral virtue is self-defeating in that reward offers a pecuniary motive for certain forms of excellence that require motives of a different kind. There is a danger that a person who previously did good deeds, irrespective of reward, comes to do them for the sake of the reward, and that is "decidedly a step downwards" (Ewing 1929:132).

Thus, although it might make sense, in some "cosmic" way, to say that it is a good thing when happiness and moral virtue "fit together," society can do nothing to bring this about, and hence would not be obligated to provide the virtuous with what they deserve.

It is not clear, however, how self-defeating rewarding moral virtue really is. One might, for example, argue that to reward moral virtue is more likely to encourage people who are not virtuous, to act virtuously, and thus perhaps gradually to become motivated by morally worthy consideration, than to "tarnish the disinterested altruism" of those who are already morally motivated. But more importantly, moral virtue narrowly defined is not the only kind of virtue on the basis of which people can appropriately deserve benefits, nor is it the most important one. In a broader sense we speak for instance of hard work or diligence as virtues, and it certainly seems to be an important ground for desert-claims. Most people feel that a person who exerts effort at his work deserves more than the lazy person who makes no effort at his

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10 Rawls seems to assume that the only possible desert-basis for distributive shares is moral worth (Rawls 1971:310). This weakens this general argument against desert. Although nearly all desert-claims are moral in the sense that they indicate what certain people ought to have, it does not follow that the characteristics in virtue of which people come to deserve things are necessarily themselves moral characteristics (see e.g. Miller 1989:158).
work. In this case, rewarding virtue can hardly be said to be self-defeating since the motive connected with hard work is not necessarily disinterested altruism, or any other "purely moral" motive of that kind. On the contrary, we want to reward hard work because it is an activity which we appreciate, and admire, and because we think that by rewarding it we encourage this kind of activity, and the motive which lies behind it. But, what is it in particular about hard work which makes it an appropriate desert-basis? There is one suggestion in this context which warrants mentioning. James Rachels has pointed out that although, what he calls industriousness may be considered as any other "lucky asset," such as, for example, intelligence, there is an important formal difference between the one and the other. Industriousness is a sort of super-asset which enables many other assets to be utilized (Rachels 1978:158). Intelligence alone produces nothing, but intelligence plus work can produce a great many things, and this may help explain why the concept of desert is tied to hard work in ways in which it is not tied to other abilities.

However, the notion of hard work is ambiguous because it can either mean "willingness to work," or "work actually done." The second meaning seems to be preferable to the first, because many would be reluctant to say that a person who has the best of intentions, and even tries very hard at a work, but accomplishes almost nothing, is deserving of much. However, although the second meaning escapes this problem, it is not quite satisfactory since it appears to ignore the extent to which people turn their work in an useful direction. We seem to be reluctant to say that the hard-working bank-robber deserves a great reward for his achievements. Having this in mind, we seem therefore to be led to another desert-basis, which I will discuss below, i.e. the value of the contribution which a person makes to social welfare in
her work. However, although the attention here shifts away from hard work to contribution, that does not mean that hard work has no place as a desert-basis. We may, for example, still think that of two persons A and B who contribute equally to society, but where A works harder than B, A deserves greater reward than B. This should make us aware of the fact that the relationship between these two desert-basis, hard work, and contribution, is a complex one—not the least because the boundaries between these notions can be hard to determine.

Before turning to contribution, something should be said about ability, or merit as a basis of desert. In many cases it seems appropriate that those who are best able to perform a certain task should be appointed to perform it; the best-qualified applicant deserves to get the job, or to be admitted to an educational institution. No doubt judgments of this kind can be traced to our inclination to express admiration or approval when others display valuable qualities or excellence. These attitudes, which Feinberg calls, "the urge to reward" and "the urge to punish" may be expressed through several conventional means, such as the practice of appointing the best-qualified person to a job. But as Sher suggests there may also be an internal connection between certain goods and traits, in this case, between an opportunity to perform a task and a person's ability to do so (Sher 1987:120-121; cf. Williams 1973:127; Walzer 1973:403). According to Sher, the primary purpose of hiring or admitting is apt to be best accomplished if one selects the best-qualified applicant. Moreover, "showing that a given action will best accomplish a purpose is a way of justifying the action to anyone who has the purpose" (Sher
1987:121). On this basis, Sher thinks that it can be shown that inattention to such internal connections involves a failure to take people's deserts seriously.\textsuperscript{11}

If this is right, then it is plausible to say that a society ought to promote job and educational appointments on the basis of merit. And in fact there exists well-established practices and public regulations that are meant to guide administrators to the best qualified applicants for jobs and educational opportunities. Of course these procedures do not guarantee that the "best" people will be accepted in every case, but their existence shows that hiring and admitting by merit is thought to be morally important. This is not to say that merit-claims can never be overridden by other values, such as the aim to correct for past discrimination by preferential treatment. But as Sher remarks, it is one thing to concede that it may occur that merit-claims should be overridden and quite another to agree that they always are (Sher 1987:124).

The conclusion is then that society can and should promote job and educational appointments on the basis of merit. But what about economical rewards? Does the fact that someone possesses special abilities which are needed for the superior performance of a job of considerable social importance and prestige, indicate that this person deserves greater rewards for doing the job? This is a much more controversial issue. Feinberg comments that, "it is no more self-evident to me that superior intelligence or skill per se deserves reward than that great

\textsuperscript{11}Norman Daniels offers an interesting account of merit, where he ties our obligation to honour merit up with the \textit{prima facie} obligation to encourage productivity. According to this line of thought an individual may claim to merit one job more than another job, or merit one job more than another person does, if and only if his occupying that job is an assignment which is a part of an array of maximally productive job assignments. Thus merit does not derive directly from having certain abilities, but from their social utility (Daniels 1978:206-223). I will not discuss this doctrine here, but only point out that it is likely to meet many of the same difficulties as the utilitarian account of desert.
height or physical strength does" (Feinberg 1970:92). Whether this is true or not, it seems clear that there is no internal connection between being best qualified to work or learn and economical reward, as there is between a person's ability to perform a task and the opportunity to perform it (see, Sher 1987:123). Indeed it seem to be odd to take ability in itself as a basis of reward, regardless of how such ability is used.

This suggests that there is another reason for saying that a person deserves a high economical reward for her job, which is, at best, indirectly connected with her being well-qualified for the job. It is intuitively plausible to say that those with greater ability to do a certain job do not prima facie deserve more economical benefits from society, independently of their relative contribution to society.\(^{12}\) Thus, as in the case of desert based on hard work, we seem to be led to the principle of contribution according to which rewards should depend on the value of the contribution people make to social welfare in their work activity.

Contribution as a desert-basis can, again, be seen in the light of people's reactive attitudes. According to Miller, it is useful to take up Sidgwick's definition of reward as gratitude "universalized" (Sidgwick 1907:278-283). Sidgwick's idea is that the desire to reward socially valuable services arises through universalizing the impulse of gratitude. Thus, as Miller puts it,

> just as an individual wishes to repay his benefactor in proportion to the benefits he has received, so he will wish society as a collective body to reward its members to the extent to which it benefits from their activities (Miller 1976:118).

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\(^{12}\)According to Slote, some thinkers stress the propriety of rewarding people according to their talents or abilities because they assume that with great talents or abilities go greater contributions to society (Slote 1973: 331).
According to Miller, if this analogy can be sustained, it provides the most defensible interpretation of economic desert.

However, although desert on the basis of contribution seems definitely to be an important element of distributive justice, it must be recognized that there are some significant difficulties involved in trying to apply this criterion. The difficulty with the idea that income should be given as a reward for services to society, is to show how it might conceivably be put into practice. How are we, for example, to measure social value? There are a number of problems here. First, there is the problem of disentangling one man's contribution from another's in cases of cooperation. Secondly, Hayek has argued that the idea that market receipts measure social value has serious difficulties because, at best they measure the value of services to those who purchase them. As Hayek puts it, "the values attached to different services by different groups of people are incommensurable" (Hayek 1976:76; cf. Miller 1989:162). Thus, according to Hayek, there is no common denominator which could determine the social value of each person's services in society. Thirdly, even if Hayek's argument is mistaken, and market receipts reflect the value of people's contribution, the market does not reward people according to the intrinsic value of their activities, but merely according to what people are prepared to pay for their performance. Thus, "the extent of one's contribution depends upon supply and demand" (Rawls 1971:311; cf. Knight 1935:54-57). But, as Rawls remarks, it seem counter-intuitive that people's deserts should vary according to how many happen to want what they can produce.

It is unclear whether any satisfactory answer can be given to these objections. Miller has made some interesting attempts to answer them. He has, for example, argued that Hayek's
argument is correct if "value to society" requires a personified society to do the valuing. But, according to Miller, there is no need to interpret the concept in this way. Instead "value to society" can be seen as a shorthand for the aggregate value each person creates for all the other individuals making up the population in question (Miller 1989:163). Thus, when I say that my service is valuable to society, all I mean is that I create benefits for a discrete number of individuals who are prepared to pay a certain price for my service. The problem of "incommensurability" is therefore solved, at least in part, by the price-system which serves as a standard of value, evoked when the value of the resources each person creates is measured.

However, why should we think that the value a person contributes to society can be measured in terms of market value? It would seem that the market measures the value of people's contribution only in certain domains and only after certain desires for things had been manipulated in several ways. As Knight puts it,

The product or contribution is always measured in terms of price, which does not correspond closely with ethical value or human significance. The money value of a product is a matter of the "demand," which in turn reflects the tastes and purchasing power of the buying public and the availability of substitute commodities (Knight 1922:597-8).

Miller's answer to this objection is basically three-fold. First, he argues that a wholesale severance of value from want-satisfaction cannot be upheld, although there may be some cases where we wish to apply a distinction between what a person desires and what it is good for her to have. Secondly, he emphasizes that when he speaks of "the market," he is not referring to an "uncontrolled" market. It is not enough merely to set ground-rules and then
allow the market to operate spontaneously, as in laissez-faire capitalism. On the contrary, Miller holds that we need a market strategy which allows primary incomes to be determined chiefly by the market, but which frames the market in certain ways so that incomes will bear as close a relation as possible to people's deserts (Miller 1989:151-175, 321-338). Any market economy that aims to approximate to distributive justice must be given an appropriate regulatory framework. In such regulated market, equilibrium prices could be taken as indicators of value when measuring desert.

Thirdly, Miller argues that market-determined value has a certain superiority over other standards of value as a basis for judging general social contributions. Contributions to people's "true and ultimate good" are, after all, essentially contestable and impossible to measure. By contrast, to measure the value of people's activities primarily in terms of their capacity to meet desires has the advantages of being, to a much greater extent, empirically detectable. Each person is in a position to judge how much value he will create by his activities by observing how greatly they are in demand, measured in a market context by the prices people are prepared to pay (see, Miller 1989:160). Furthermore, Miller holds, that if a person's desert is based on economical contributions, this seems to make it easier for us to accept the idea that his deserts can be increased or lessened by such contingent facts as the tastes of consumers for goods of different sorts and the availability of various skills and abilities in the workforce. As Miller says,

If desert is based on value created, that value cannot be estimated without taking account of what others have produced; the notion that the service you render has the same value regardless of what others do is absurd...Desert isn't merely a matter of good intentions; it also has to do with how much benefit you create for the recipients of your services, and in nearly every case that depends on the configuration of the world outside. A fall in the price of a commodity or a service
not only acts as an incentive to shift to some other line of business, but it is also a
signal that the good or service in question has become less valuable, in the short
term at least, as a result of what other people have decided to do (Miller 1989:167).

I am not able to discuss in detail all the issues which Miller raises here, for they involve
some fundamental questions about the nature and relationship of moral and social value, and
the market economy. However, it is doubtful that the market can serve as a non-arbitrary
public standard to measure desert. The reason for this is simply that people can make
valuable contributions, say that of an artist or a scientist, which have very little market value.
It is not easy to see how an "appropriate regulatory framework" can solve this problem. It is
likely that our judgments, and intuitions about the value of people's contributions will always
deviate in various ways from the market value of those contributions, no matter how we
regulate the market.

Furthermore, the last passage quoted from Miller seems to go against one fundamental
feature of the concept of desert as it was depicted above. A person's deserts no longer depend
solely on facts about her. But how can a person be deserving on the basis of something else
than what she is or what she does? According to Miller the only possible answer is that if a
person chooses to become skilled at a task which he rightly foresees will become essential to
the production of a valuable commodity, then he deserves a reward for making that choice.
This, however, makes the "market solution" again less attractive. The main advantage of that
solution was supposed to be that it offered a relatively clear and workable standard to
measure desert. But as soon as it emerges that what a person deserves depends, not simply
on the market value of her contribution, but also on her choices and on her foresight, the
most attractive features of the market solution, simplicity and applicability, seem largely to disappear.

The conclusion seems to be that we can find no neat and simple standard of value which we can use to measure desert. What are we to make of this? Rawls takes the practical difficulties of defining justice in terms of desert, to strengthen his view that the notion of desert plays no major role in the concept of justice (Rawls: 1971: 311). Slote, on the other hand, takes this to show that it is difficult to decide what is just and recompense people accordingly (Slote 1973: 337). According to Slote, there is no reason to think that the dictates of justice are bound to be, or likely to be, capable of practical implementation. In support of this, he draws on the analogy between social justice and divine, or cosmic justice. Since the notion of desert plays a large role in the notion of cosmic justice, it is hard to believe that desert plays no large role in the notion of social justice:

We feel that if God or the world is just, then people are rewarded according to their merits or worth, but that a man's merit or worth is enormously difficult for anyone (except perhaps God) to determine. But if it is difficult to know the dictates of cosmic or divine justice, why should this not be (at least to some degree) true of the dictates of social justice. And if it is reasonable to assume that it is difficult to know the dictates of social justice, then surely we can reasonably assume that the dictates of social justice are difficult to implement (Slote 1973: 338).

Although I am sympathetic to Slote's view, I believe that we can take a middle-stand on this issue. If we acknowledge that some notion of desert has a role to play in the concept of justice, but that in no case does it exhaust the idea of justice, the difficulties of determining, and implementing the dictates of desert become less overwhelming. It is reasonable to think that the concept of desert comes increasingly into play only after certain other elements of justice, such as need, have been satisfied. Furthermore, if the notion of desert is an element
in the conception of social justice, then justice is an imperfect procedural notion, meaning that there is an independent criterion (assuming some agreement on a standard of desert) for just results, but no feasible procedure certain to lead to them (see, Rawls 1971:86). But although we cannot find a system that is certain to generate a just outcome in every instance, surely some procedures are more likely, overall, to lead to just outcomes than others. It is important not to exaggerate the difficulties involved in finding such a procedure. Market value may serve as one measure of people's valuable contribution, but it can hardly become the standard of value. People will always want to make some intuitive estimates about the comparative contributions members in various occupation make, which do not neatly fit the standard which the market provides. The same can be said of other grounds of desert-claims, such as hard work. One may think that, at least in some cases, there is a relationship between a person's hard work, and the economic benefits she derives from the market. But in many cases people know that it is not so, and they may rightly feel that in some of those cases the result is not just.

The sceptic may still feel that this lack of a clear and simple criterion of value, and the reliance on intuition in relation to desert-claims gives us a definite reason to reject the notion of desert altogether as a relevant element in social justice. It is not clear whether anything further than what has already been said can convince him to change his mind. But here it seems relevant to note that the grave difficulties of determining value, whether it be social, moral, or economical, is not a peculiar problem for those who think that desert is an important moral concept. To take an example, one of the most influential and powerful moral doctrines today bases its entire system on the notion of utility. There is no obvious
reason to think that utility can be determined any more easily than desert. In other words, many of the problems surrounding the concept of desert, are problems for moral theory as such. They are problems which are tied up with attempts to make sense of our complex moral and social experience. I do not believe that these problems will easily go away, nor do I think that we can make them go away, for example, by dismissing, as insignificant, important parts of our moral vocabulary. Whether one likes it or not, talk about desert is an important part of people's terminology, and it is so because it represents a significant part of our moral experience. One should therefore acknowledge that as moral beings people are stuck with both, their existence as moral and social beings, and the complex problems that which go with it.
Chapter Two
2. 1. Introduction

Rawls' argument against personal desert is well-known to those who study political philosophy. It is important for several reasons. According to this argument, nobody deserves anything, in the sense articulated in chapter 1, because nobody deserves the abilities and endowments that make his actions possible. Obviously, if this argument is correct, there would be little sense in attempting to clarify what role desert plays in our ideas about justice. The argument is also important because it is combined with some powerful ideas about human nature and the essence of morality.

In this chapter I intend to examine this argument. First, I briefly review Rawls' methodology, and then his conception of justice as fairness, and how he rejects the idea of liberal equality on the basis of this conception. I then turn to some criticisms. I argue that Rawls' attempt to reduce the importance of intuitive judgments in his theory is not successful, because his own theory relies heavily on one particular intuition, i.e. the intuition that responsibility and desert are closely linked to voluntary action. I then examine the principle of voluntariness upon which justice as fairness is built. I argue that there are several deep problems with it, and that it is unlikely that it can be sustained in its strong form.

2. 2. Rawls' Method

Rawls' main objective in *A Theory of Justice* is to find a standard against which the justice of the basic structure of societies can be measured. He believes that we already possess

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13In what follows I am primarily concerned with *A Theory of Justice*. I am not going to discuss Rawls' most recent
settled convictions about justice, and his purpose is to find and formulate the general principles which lie behind those convictions:

[A Theory of Justice] is a theory of the moral sentiments...setting out the principles governing our moral powers, or, more specifically, our sense of justice. There is a definite if limited class of facts against which conjectured principles can be checked, namely, our considered judgments in reflective equilibrium (Rawls 1971:51).

The principles of justice then constitute a theory that is a conjectured account or explanation of a set of empirical facts, called by Rawls "our considered judgments." More concretely the relation between the moral facts — our considered judgments — and the principles or theory of morals are as follows:

Now one may think of moral philosophy at first... as the attempt to describe our moral capacity; or, in the present case, one may regard a theory of justice as describing our sense of justice...[W]hat is required is a formulation of a set of principles which, when conjoined to our beliefs and knowledge of the circumstances, would lead us to make these judgments with supporting reasons were we to apply these principles conscientiously and intelligently. A conception of justice characterizes our moral sensibility when the everyday judgments we do make are in accordance with its principles (Rawls 1971: 46).

Thus, as Zuckert puts it, the theory provides the regulative principles for the moral judgments that we already make "much on the model of the laws of Newtonian mechanics supplying the "regulative principles" for the motions of the heavenly bodies" (Zuckert 1981:468, cf. Barry 1967:424).

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book, Political Liberalism, where he claims to redefine the concept of a "well-ordered society" in a more pluralistic manner; it is no longer a society united in its basic moral beliefs, or in its beliefs about what constitutes the good life. The "well-ordered society" is only united in its political conception of justice. Thus, in Political Liberalism Rawls refrains from endorsing any controversial religious, philosophical, or moral doctrine. It is not clear to me how this "method of avoidance", if it can be used successfully at all, would change the effects of my criticism of Rawls' most fundamental views.
Furthermore, Rawls attempts to purify the basic phenomena or facts, that his theory intends to explain. That is why he speaks of considered moral judgments:

Thus in deciding which of our judgments to take into account we may reasonably select some and exclude others. For example, we can disregard those judgments made with hesitation, or in which we have little confidence...Considered judgment are simply those rendered under conditions favourable to the exercise of the sense of justice, and therefore in circumstances where the more common excuses and explanations for making a mistake do not obtain (Rawls 1971:47-48).

This interaction in Rawls' scheme between the explanation and the moral judgments to be explained is further complicated by the notion of reflective equilibrium. While those considered judgments function in some respects as data to be explained as in a scientific theory, they are nonetheless not incorrigible. Our considered judgments are subject to certain irregularities and distortions, despite the fact that they are rendered under favourable circumstances. Hence, the relation between the principles and the judgments is a two-way process: "in the search for the best fit one has the option of reformulating principles, or of reformulating our judgments in the light of the principles already found" (Rawls 1971: 20-21). Thus unlike the procedure of scientific reasoning, the procedure of the reflective equilibrium concedes that the phenomena, in this cases in the form of moral convictions, may have to be revised the better to serve a theory (see, Dworkin 1977:165). The reflective equilibrium does not merely systematize some determinate set of judgments, but rather permits extensive revision of these moral judgments.
2. 3. Justice as Fairness

The basic idea behind Rawls' scheme is to conceive of "the principles of justice" as those rules which persons, situated in a position of fundamental fairness — the original position — would rationally choose to govern their common life; rules which assign basic rights and duties and determine the division of social benefits. This conception of justice as fairness conveys the basic idea that the principles of justice are agreed to in an initial situation that is fair. To guarantee fairness and impartiality, Rawls makes use of a "veil of ignorance" so that, while behind it, no person "is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances" (Rawls 1971:12). The situation is fair because, among other things, no one knows his place in society, his class position or social status, his conception of the good, nor his fortune in the distribution of natural assets and abilities, such as intelligence and strength. This ensures that no one is advantaged or disadvantaged in the choice of principles — they are the result of a fair bargain.

According to Rawls, the rule that would dictate the rational decision of the persons in the original position is the "maximin" rule: the contractors would choose to maximize the minimum expected outcome. In accordance with this rule, Rawls claims that two principles will be chosen:

(1) each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others..... (2) Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged and (b) attached to offices and positions open to all under conditions of fair equality of opportunity (Rawls 1971:60-62).
These two principles define what Rawls calls the "special conception" of justice, which is a special case of the "general conception" which is formulated as follows: "All social values — liberty and opportunity, income and wealth, and the bases of self-respect — are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage" (Rawls 1971:62).

2.4. Against Liberal Equality

The idea that a just political system must ignore or nullify socially caused initial advantages and disadvantages in competing for social benefits is as old as political philosophy itself. Plato called for social mobility among his classes so that all could gravitate towards the class for which their temperaments naturally suited them. The idea that the system must take positive steps to correct for these differences among individuals is likewise as old as the concept of public education. According to this way of thinking, the reason why political systems such as a caste system are morally objectionable is that a person's social position is defined in advance on the basis of class, or other related morally arbitrary factors. People's fate is determined by their circumstances, rather than by their own free choices.

According to Rawls, what he calls "liberal equality" tries to correct for this by stressing the importance of fair equality of opportunity, meaning that those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success regarding their initial place in the social system, irrespective of the class into which they are born (Rawls 1971:73). According to liberal equality, in a society where
no one is privileged or disadvantaged by their social circumstances, people's success will largely be the result of their own choices and efforts. Hence whatever success they achieve is earned rather than merely endowed on them. In a society that has equality of opportunity, unequal income is fair, because success is deserved.

Rawls objects strongly to this view, and his reason for doing so is very simple. By resting reward on natural endowment and effort, as the system of liberal equality intends to do, it does not fulfill its own demand that justice should rest only on conditions that are not arbitrary from the moral point of view. According to Rawls, the central motivating idea in the system of liberal equality is that it is fair for individuals to have unequal shares of social goods if those inequalities are earned and deserved by the individual, that is, if they are the product of the individual's actions and choices. On the other hand, it is unfair for individuals to be disadvantaged or privileged by arbitrary and undeserved differences in their social circumstances. This, however, ignores undeserved inequalities in natural talents and in effect treats them as if they were one of our choices (see, Kymlicka 1990:57). According to Rawls, it is no more just to permit the distribution of wealth and income to be determined by the natural distribution of abilities and talents, than by the influence of social contingencies. As Rawls puts it:

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. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases (Rawls 1971:104).

Thus according to Rawls, the ideal of equality of opportunity is "unstable" because,
once we are troubled by the influence of either social contingencies or natural change on the determination of distributive shares, we are bound, on reflection, to be bothered by the influence of the other. From the moral standpoint the two seem equally arbitrary (Rawls 1971:74-5).

2.5. Which of Our Considered Moral Judgments?

One of Rawls' main concerns in *A Theory of Justice* is to formulate a conception of justice that can serve as an alternative to intuitionist theories which have generally been foundationalist. A general feature of these theories is that some set of moral judgments is picked out as basic or self-warranting. In other words, certain moral judgments, however they are systematized, carry an epistemological privilege, which implies that there exists no higher-order principle or method of weighing these judgments against one another or to revise some of them in order to provide a coherent conception of justice. By contrast, Rawls' conception of justice aims precisely at such coherence, and it, therefore, reduces the reliance on intuitive judgments (Rawls 1971:44). No one type of our considered moral judgments is held more or less fixed than any other, because each of them can be revised, "in light of the principles already found."

However, although Rawls maintains that reflective equilibrium does not involve the epistemic priority of intuitionism it does not seem to make much practical difference. For the effect is very similar, namely that a set of principles gets "tested" against a determinate and relatively fixed set of moral judgments. As Rawls puts it himself, "There is a definite if limited class of facts against which conjectured principles can be checked, namely our considered judgments in reflective equilibrium" (Rawls 1971:51). According to Hare, this
can be read in the following way: "to arrive at a reflective equilibrium, treat considered judgments as a definite if limited class of facts which is to determine the shape and content of the rest of the theory" (Hare 1975:83).

Indeed this reading seems to accord with what Rawls has to say about desert. When he says that 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..." he takes this judgment to imply that for the distribution of wealth and income to be determined by these native endowments is arbitrary from a moral point of view. What is interesting here is that this judgment takes absolute priority over other considered moral judgments, in particular the common judgment that people sometimes deserve reward for their (undeserved) endowments and efforts. As Zuckert points out, it is as if Rawls wants to maintain that,

one of the fixed points of our considered judgments condemns our considered judgments — not merely in some marginal case where we are rather uncertain, or where there is a conflict of interest, but in our settled, impersonal, and widely held judgments" (Zuckert 1981:473).

But on what ground can one of our settled judgment be rejected in this way by another judgment? It is tempting to think that if there is any ground for such rejection, it must be based on the claim that the one judgment is in some sense more fundamental than the other. If so, then Rawls would have to face the same objections as the foundational theories he criticized.

Rawls might deny this claim by pointing out that his anti-desert argument is not meant to be built on some fundamental judgment about the moral arbitrariness of all desert-grounds, but that it has an independent justification in the contract, or the argument from the original
position. The original position, Rawls would argue, demands that no one should be advantaged or disadvantaged in the choice of principles of justice, by the outcome of natural change or the contingency of social circumstances. This demand rules out all claims based on desert because they ultimately rest on such contingencies. Furthermore, when persons act from the principles of justice which arise from the argument in the original position, they "express their nature as free and equal and rational beings" (Rawls 1971:252). Thus, in fact, the anti-desert argument is backed up by a specific view of human nature, which can only be rejected if competing views of human nature are shown to be preferable.

However, it seems doubtful that the contract can have any independent justificational role. The reason for this is simply that the original position is constructed so as to build in from the outset certain prior requirements. As Rawls put it himself,

We want to define the original position so that we get the desired solution. If a knowledge of particulars is allowed, then the outcome is biased by arbitrary contingencies. As already observed, to each according to his threat advantages is not a principle of justice (Rawls 1971:141).

This suggests that Rawls' interpretation of the original position is already loaded with his initial conception of justice as fairness. In fact he admits that everything depends on how the original position is conceived, for "as the circumstances are presented in different ways, correspondingly different principles are accepted" (Rawls 1971:18). What Rawls presumably wants to maintain is that the way circumstances are attributed to the original position, as he describes it, are in certain ways superior to other possible descriptions of the original position. And, as Zuckert observes, it is hard to see how Rawls can do this otherwise than by building into the original position conditions of fairness as these are grasped and expressed
in our more or less well-considered moral judgments (Zuckert 1981:470). But then the veil of ignorance is woven as it is precisely to meet the pre-existing demand that such factors as differences of natural endowment and character be nullified in the principles of justice. As Rawls tells us:

Once we decide to look for a conception of justice that nullifies the accidents of natural endowments and the contingencies of social circumstances as counters in the quest for political and economic advantage, we are led to those principles (Rawls 1971:15).

Nozick seems therefore to be right when he remarks that it is the quest for a conception of justice that nullifies morally arbitrary features, which crucially shapes Rawls' theory, and it underlies his delineation of the original position (Nozick 1974:215). But if this is so, then the following question still stands: How can one of the fixed points of our considered judgments "condemn" another of our settled, impersonal, and widely held judgments, that people can become unequally deserving?

For Rawls the answer to this question must somehow show that his conception of justice as fairness in fact provides the best account of our intuitions about desert. Thus, although our intuitions about fairness seem, at first sight, to collide with our intuitions about desert, at closer inspection we see that they do not. According to Kymlicka, the central intuitive idea in justice as fairness is that:

it is fair for individuals to have unequal shares of social goods if those inequalities are earned and deserved by the individual, that is, if they are the product of the individual's actions and choices. But it is unfair for individuals to be disadvantaged or privileged by arbitrary and undeserved differences in their social circumstances [or natural talent]" (Kymlicka 1990:56).
If Kymlicka is right, Rawls' conception of desert, as well as his conception of fairness, is closely tied up with voluntary action; a man can only make desert-claims on the basis of his own voluntary action,\textsuperscript{14} or characteristics he has voluntarily acquired. As we will see later Rawls seems to combine this notion of desert with a scepticism about human agency, in such a way that desert is shown to be almost impossible because human agents can hardly ever perform the sort of voluntary action which desert is said to demand. But what is important to note here is that it is Rawls' notion of desert, linked as it is to voluntary action, which enables him to declare that natural endowments, and the benefits which flow from them, are arbitrary from the moral point of view. As we saw in chapter 1 some of our intuitions support the view that desert is related to voluntary action. But is desert exclusively based on voluntariness? I will now look into this question.

2.6. The Principle of Voluntariness

At first sight the principle of voluntary action does seem to be very plausible. According to Thomas Nagel, the basic idea is this: "Prior to reflection it is intuitively plausible that people cannot be morally assessed for what is not their fault, or for what is due to factors beyond their control (Nagel 1982:174). It is easy to think of examples which would confirm this idea. Most people acknowledge that a person acting under duress is not in control of her actions and should, therefore, not be held morally accountable for what she does. The same can be said, for example, about a person acting under posthypnotic suggestion, or a person

\textsuperscript{14}Of course this would imply that, according to Rawls, only some of our actions can serve as the basis of desert-claims, since only some of our actions are voluntary.
who has been brainwashed. In these cases we feel that the appropriateness of moral assessment is undermined by the fact that the persons are not in control of their actions. But, as Nagel observes, if the condition of control is consistently applied, it seems to have much wider employment than this. For what we are, and what we do depends in many more ways than these on what is not under our control. For example, people do not choose their sexuality, their race, their ethnic background or the class into which they are born. Furthermore, basic abilities, such as intelligence, temperament, and other personality traits are not subject to the will of the individual.

Related to the notion of control is the concept of luck. What happens to a person by luck is not brought about by his or her own agency, i.e. what happens to him, as opposed to what he does or makes. Thus, moral luck is "where a significant aspect of what someone does depends on factors beyond his control, yet we continue to treat him in that respect as an object of moral judgment" (Nagel 1982:175). In general, to eliminate moral luck from human life would be to put that life, or the morally most important things in it, under the control of agents, removing the element of reliance upon external factors. Kant is important in this context because he, more than anyone else of the major philosophers, emphasized that good or bad luck should influence neither our moral judgment of a person and his actions, nor his moral assessment of himself. In particular he was insistent on the moral irrelevance of qualities of temperament and personality that are not under the control of the will. More importantly, Kant found it unacceptable and absurd that moral worth should depend on basic abilities unequally and fortuitously distributed as they are (see Williams 1962:121). It makes no sense, according to Kant, to condemn or blame oneself or anyone else for a quality which
is not within the control of the will. Morality, as Kant articulates it, is the sphere of life which is open to everybody everywhere and furthermore, it is open to everybody equally.

Kant's basic idea that moral worth cannot be subject to contingencies or chance is one of the fundamental premise of Rawls' *A Theory of Justice*; what is right and just should not depend on luck. As Kymlicka notes, Rawls appeals to the attractive idea that people's well-being should be determined by *their choices*; "by the decisions they make about how to lead their lives — not by the contingent circumstances which they happen to find themselves in" (Kymlicka 1990:57). A society that permits significant inequalities among its members in advantages and disadvantages which they have not chosen, will be perceived as failing to treat them equally: In its treatment of them it distinguishes along morally arbitrary lines.

It needs hardly to be emphasized how strong the demand of voluntariness is in Kantian morality. As William points out there is a pressure within it,

> to require a voluntariness that will be total and will cut through character and psychological or social determination, and allocate blame and responsibility on the ultimately fair basis of the agent's own contribution, no more and no less (Williams 1985:194).

Can this demand be met? There are some reasons to think that it cannot. Kant tried to meet it by locating ultimate moral worth beyond any empirical determination — beyond any contingencies or luck of this world — in man's transcendental capacity to will freely as a rational agent. But as Williams and Nagel both point out, there is no reason to think that the motives and intentions of the will are any less 'conditioned' than anything else (Williams 1993:36; Nagel 1982:183).
But there is also another quite different reason for holding that the Kantian emphasis on
voluntariness is mistaken. It concerns the concept of constitutive luck. There seems to be
something odd about the idea that a person can be lucky or unlucky in her endowments and
character. The reason for this is that the notion of luck seems to presuppose the existence of
some subject who is affected by it. Because luck in the very constitution of an agent cannot
be luck for anyone, the idea of being lucky in the kind of person one is sounds incoherent.
Thus, Nicholas Rescher argues, personality features are by their very nature things to which
the idea of choice does not apply:

Putting [personality features] outside morality's reprobation with the standard
excuse that the agent "has not control" over them involves a category mistake
because the whole control issue is irrelevant here from the angle of moral concern
— seeing that, although in some (morally irrelevant) sense one's inclinations,
dispositions, and character merely fail to be "matters within one's control," these
factors are not things that lie outside oneself but, on the contrary, are a crucial part
of what constitutes one's self as such (Rescher 1993:156-157).

Hence, according to Rescher, it makes no sense to say that endowments and basic abilities
are outside a person's control and therefore merely "a matter of luck" and, thus, outside the
moral domain.

It might of course be said in response to this argument that Rawls could ignore it because,
according to Michael Sandel, Rawls' theory builds on a concept of the person which allows
him to make a sharp distinction between the self, taken as the pure subject of possession, and
the aims and attributes it possesses (Sandel 1982:85). The idea here is something like this:
The self is at least relatively enduring and continuous, and thus the guarantor of some
minimal personal identity. Furthermore, in some sense, persons necessarily, and universally
possess their selves. By contrast, attributes or qualities are changeable, contingent, and
unequally distributed; they can be developed and lost, they are possessed by some persons, and not others, and are, therefore, not essential for being a person. The conclusion is that selves are in several ways prior to their qualities, and, therefore, that it makes perfect sense to speak of "constitutional luck." Some selves are simply luckier than others.

There seems to be some truth to this interpretation of justice as fairness, for although Rawls makes some effort to deny that his theory commits him to a metaphysical theory about the nature of the self (Rawls 1985:239), he frequently talks as though one's character is, to a great extent, a matter of luck or good fortune, and, therefore, arbitrary from the moral point of view. In fact, it seems to be a part of the rationale for the original position that the contractors only know their selves, but not their characteristics. This certainly seems to presuppose a very specific view of the self and its relationship to its qualities. One can, therefore, doubt that Rawls can avoid an appeal to a metaphysical foundation for his theory.

However, there are some serious difficulties related to this conception of the person. For example, if we try to identify the human self in abstraction from all its empirical qualities, there seems to be no way to know what this self is supposed to be. In fact, it could be almost anything, for instance, animal-self, or plant-self. What this shows is that if we are going to identify a self as a human self, we must do it in terms of some particular quality, and hence, the self is not prior to that quality (see, Kekes 1992:393).

Rawls might respond by granting that there are some qualities which are "essential" to the human self, but claim that these qualities are universal and morally neutral. He might, for example, say that one essential feature of the self is its ability to revise and adjusting its ends and aspirations; "The self is prior to the ends which are affirmed by it" (Rawls 1971:560).
Self-direction, the ability to choose among alternative conceptions of the good, is an ability which every person must have *qua* person, and it is morally neutral in the sense that it is the precondition of any moral life, and thus prior to the establishment of social institutions. By contrast, other qualities, such as intelligence, diligence, and moral merit are contingent, both naturally and socially, since they are subject to the "natural lottery" and to the institutions which define what a particular society counts as being those qualities.

However, there is no good reason to think that this distinction can be sustained. For there is no reason to think that self-direction is any more universal, or any less contingent than many other human qualities. What, for example, about a person's ability to form emotional ties with other people, to love and hate, admire or despise, etc.? Is this any less a universal ability than self-direction? Is it any more a subject to luck? Is it any less important a pre-condition for being moral? It is difficult to see that it is. The fact seems to be that what it is to be a human being consists of many qualities and attributes, none of which can be said to be more fundamental to personal identity than others. It is therefore wrongheaded to try to find some set of only a few of these qualities, and claim that they alone define what it essentially means to be a moral agent. Thus, Rescher's view that it makes no sense to say that inclinations, dispositions, and character are things that lie outside oneself seems to be correct.\(^{15}\)

However, even if we grant that it is not meaningless to say that people are lucky or unlucky in their constitution, it does not necessarily follow that people's constitutions are morally

\(^{15}\)Harry Frankfurt presents a different objection to the notion of constitutive luck. According to Frankfurt, the responsibility of a person for his character has to do, not with the question of whether its existence is within the person's control, but rather whether he has taken responsibility for his characteristics, i.e., whether he identifies with them by his own will, and incorporates them into himself as constitutive of what he is (see, Frankfurt 1988:171-172)
arbitrary. For this view presupposes that moral value lies beyond all luck. But although this view has some attraction, because it has, "an ultimate form of justice at its heart" (Williams 1993a:36), it can never be realized. As Williams observes, Kantian morality tries to realize it by making the concept of voluntariness deep and profound, so that we can allocate blame and responsibility only on the basis of that which the agent is "really" responsible for, beyond character and psychological or social determination. But this puts the concept of voluntariness beyond all recognition. As Williams remarks, "voluntariness" is an inherently vague and limited notion, because one's history as an agent is a web in which anything that is the product of the will is surrounded and held up and partly formed by things that are not (Williams 1993a:44). Thus we deceive ourselves if we suppose that public practices of ascribing responsibility can be derived from an antecedent and profound notion of voluntariness. This does not mean that there is no purpose served by discriminating between actions in terms of the voluntary. On the contrary, voluntariness is important, for example, for the notions of justice and desert. For instance, it is important that it is possible for people to become deserving through directing their activities appropriately. But voluntariness has a different meaning here than in Kantian morality. As Williams remarks:

When we ask whether someone acted voluntarily, we are asking, roughly, whether he really acted, whether he knew what he was doing, and whether he intended this or that aspect of what happened. This practice takes the agent together with his

16 According to Christopher Hill, the sense of unfairness related to the unequal and arbitrary distribution of innate abilities, has its sources in a number of emotions and attitudes. Among those attitudes are pity and benevolence (e.g. people feel sorry for those who are unfortunate), embarrassment, envy, resentment (e.g. people envy those who are fortunate), desire for solidarity, mutual respect, and self respect, and the feeling that inequalities are manifestations of the irrationality of the world (we would like the world to behave like a rational human agent, and distribute things of the greatest importance equally) (Hill 1985:214-215).
character, and does not raise questions about his freedom to have chosen some other character (Williams 1985:194).

In other words, when we are dealing with questions of voluntary actions, we are mostly concerned with the conditions of the particular act, and less, as it were, with the conditions of the agent's constitution. It follows that moral value may be subject to luck, because many admired characteristics are distributed in ways over which no one has control. But, to dismiss them for this reason as morally arbitrary makes no sense. This can be seen very clearly in relation to Rawls' argument against desert. The core of his argument can be interpreted as follows: If a person does not deserve to have X, (where desert is exclusively linked to voluntary action), and X makes Y possible, then that person does not deserve Y (see, Sher 1987:24). But certainly this rules out too much. As Alan Zaitchik points out, if, in order to deserve something, a person has to be in control "all the way down"; that is, to deserve something a person must deserve the desert-basis for that thing, this will lead to a vicious regress.

Suppose that Jones claims to deserve something in virtue of ground Z. By [Rawls' argument] he must deserve to have Z. He can deserve this only in virtue of some new ground for deserving Z'. But again, Jones must now deserve to have Z'. This will require yet another ground Z'' and so on ad infinitum. Obviously, these conditions on deserving are never satisfied by anyone. Since the argument is perfectly general, we can state its conclusion as "no one ever deserves anything". Thus no desert theory could possibly be true, no matter what kinds of desert it sees as relevant to distributive justice (Zaitchik 1977:373).

Zaitchik sees this as a reductio ad absurdum of Rawls' argument, because when ordinary people make desert-claims in everyday affairs they do not investigate whether the claimants are in control "all the way down." Indeed, people usually do not bother themselves beyond
inquiring into whether claimants have produced the relevant item, done the relevant action, or expended the required effort.

It might be argued that this particular way of dismissing the anti-desert argument begs the question against Rawls. Why could these "ordinary people" not simply be mistaken? After all, are there not moments, or at least, should there not be moments when we are properly overwhelmed by the all-determining power of luck and of life's pervasive natural injustice? However, to use Williams expression, the "bitter truth" is that moral judgment cannot ignore people's emotional responses, even if it means that moral value will get tainted with luck, and this fact is known to almost everyone, and it is hard to see a long future for a system committed to deny it.

2. 7. Kantian Morality and Rawls' Conception of Agency

In the last section, it was argued that Rawls' argument against desert is motivated in part by a Kantian conception of morality, which excludes desert because it is inevitably based on some characteristics of persons which are, to some degree, a matter of luck. However, the Kantian conception of morality only makes sense if the concept of voluntariness can be made deep and profound, so that we can allocate blame and responsibility only on the basis of that which the agent is "really" responsible for, beyond character and psychological or social determination. This conception of voluntariness is very implausible and although Kant built his moral theory on such a conception it is hard to believe that Rawls' theory relies on it. Indeed, as we will see below, there are many reasons to think that Rawls bases his theory
on a quite limited notion of voluntariness. Still, with this more limited notion of voluntariness Rawls, might want to argue that a person can only become deserving on the basis of her voluntary action, or of characteristics she has voluntarily acquired and that this would exclude native endowments as desert-basis, because they are brought into being solely by external forces beyond people's control.

We may, for the sake of the argument, grant this for a moment. However, even if we do, it seems evident that abilities are not merely endowments which are not under any agent's control. Native endowments interact with the environment, so that if the environment changes, the endowments change. In part this environment is social, that is, it can be manipulated, not only by other people, but by the agent himself. Thus, as Rosenberg remarks, we get three types of endowments, "Some biological endowments will not be under any agent's control, others will be the responsibility of those who nurture the agent, and still others will be the responsibility of the agent himself" (Rosenberg 1987:4).

It would seem, therefore, that if the more limited notion of voluntariness is accepted, there are endowments which are acquired by the agent himself, and are hence earned, or deserved, while native endowments are not, and those endowments nurtured by others might fall somewhere between the two extremes. Of course it is an open question which of these three types of endowments generate the most advantages or disadvantages in a market economy, or any other type of social arrangement. Rosenberg, for one, thinks that most advantages, or disadvantages in the market are either the responsibility of the agent himself, or those who have nurtured him, such as his parents (Rosenberg 1987:5). In other words, many or most advantages are deserved by an agent, or by others who transfer these advantages in ways that
are not morally objectionable. Whether or not this is correct it seems plausible to assume that some inequalities are the responsibility of the agent and, therefore, deserved.

However, there is no sign of this kind of reasoning in Rawls' theory. This can be best seen from the scepticism he expresses about extra reward for extra effort. As Rawls puts it:

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 (Rawls, 1971:312). 17

Here Nozick's question seems entirely appropriate: why does Rawls not mention at all how persons have chosen to develop their natural assets (Nozick 1974:214)? Why does Rawls leave out effort which deserves reward? This omission is all the more striking when the general spirit of Rawls' theory is kept in mind. A central feature of justice as fairness is the idea that we, as free moral beings have some part in forming and cultivating our final ends and preferences — we have "the capacity to assume responsibility for our ends" (Rawls 1982:168-169). This is an aspect of Rawls' theory which he expresses by saying that in justice as fairness the concept of right is prior to that of the good. In this respect, justice as fairness explicitly rejects the principle of utility, because in utilitarianism the satisfaction of any desire has some value in itself which must be taken into account in deciding what is right. Thus, according to utilitarianism, if people take a certain pleasure in discriminating against others, or in subjecting them to a lesser liberty, then the satisfaction of these desires

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17Rawls' position here seems, in many ways, to be in line with Henry Sidgwick's view that, "the actual utility of any service must depend much upon favourable circumstances and fortunate accidents, not due to any desert of the agent; or again, may be due to powers and skills which were connate, or have been developed by favourable conditions of life, or by good education, and why should we reward him for these?" (Sidgwick 1962:283).
must be weighed in our deliberations along with other desires (Rawls 1971:30-31). From the point of view of justice as fairness, such pleasures deserve condemnation, and the corresponding preferences have no claim to be satisfied. As Rawls explains, in justice as fairness "one does not take men's propensities and inclinations as given, whatever they are, and then seek the best way to fulfill them" (Rawls 1971:31). Rawls' conception of justice assumes that in a just social system people are responsible for their preferences in the sense that they must develop their aims within a certain scope. In drawing up plans and deciding on aspirations people are to take into account certain restrictions on what are reasonable conceptions of the good.

How can this picture of persons as responsible agents be reconciled with Rawls' argument against desert? Why are people assumed to be responsible for their ends but not for their exerted effort? Some commentators, such as Donald Morano, think that Rawls is here guilty of a contradiction. On the one hand, rational choice and responsibility for ends implies a choice of a certain type; it implies a genuine role to individual initiative and self-determination which suggests "psychological freedom" or absolute autonomy of the individual. On the other hand, A Theory of Justice derives its strategic second principle from the assumption "that every aspect of a person's personality is without moral merit," and thereby, according to Morano, assumes psychological determinism (Morano 1979:288-293). A similar interpretation of Rawls argument against desert is expressed by Nozick in his well-known remarks:

This line of argument 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. So denigrating 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 persons' choices. One doubts that the unexalted picture of human beings Rawls' 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" (Nozick 1974:214).

According to G. A. Cohen, Nozick's reading is not fair, because, after all, Rawls does not say that personal effort is wholly determined by circumstances, but only that it is influenced by them (Cohen 1989:914). According to Cohen, Rawls' point is that we cannot reckon the extent to which our effort is attributable, not to admirable striving, but to good fortune. However, if this is right, it is not easy to reconcile with what Rawls has to say about tastes. Why does partial responsibility for effort attract no reward at all, while partial responsibility for morally wrong, or expensive tastes attracts a full penalty?18

Scheffler offers an interpretation which seems to free Rawls of all charges with conflict between his notion of responsibility for ends, and his refusal to reward effort. According to Scheffler, what Rawls seems to be saying is that just institutions need to make no special provision for expensive preferences, not because individuals are responsible in some pre-institutional sense for their own preferences, but rather "because people living in a just

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18Rawls might want to argue, along with Dworkin, that preferences unlike mental or physical abilities, are not parts of an agent's "circumstances" (Dworkin 1981:303). But it is very unclear what this means. If it means that abilities are determined by factors beyond an agent's control while preferences are not, this does not seem to be true. A much more plausible view is that persons have some part in forming and cultivating their abilities as well as their preferences. Furthermore, as Rosenberg points out, there is a close relationship between talents and preferences. Whether an agent's endowment is a talent or not, depends on his own preferences and on those of others among whom he finds himself, and on how social institutions are arranged in the light of those preferences. Thus if someone is deprived of the gains of a certain ability, he is being deprived of gains, "due to his ambitions and other's preferences, for those are what turn his endowments into abilities and talents" (Rosenberg 1987:22). If this is so, it makes the sharp distinction between preferences and abilities impossible to sustain. Furthermore, even if this distinction could be upheld in some way, it would have to be supported by a rather specific theory of the personality which liberalism is supposed to eschew because of the controversial nature of any such a theory.
society have the capacity to adjust their preferences in light of the resources they can expect to have at their command" (Scheffler 1992: 321). Justice as fairness includes what Rawls calls a social division of responsibility:

society, the citizens as a collective body, accepts responsibility for maintaining the equal basic liberties and fair equality of opportunity, and for providing a fair share of the other primary goods for everyone within this framework, while citizens (as individuals) and associations accept the responsibility for revising and adjusting their ends and aspirations in view of the all-purpose means they can expect, given their present and foreseeable situation. This division of responsibility relies on the capacity of persons to assume responsibility for their ends and to moderate the claims they make on their social institutions in accordance with the use of primary goods. Citizens' claims to liberties, opportunities and all-purpose means are made secure from the unreasonable demands of others (Rawls 1982:169).

Thus there is no conflict between Rawls' doctrine of "responsibility for ends" and the refusal to reward effort per se. The doctrine of "responsibility for ends," as Rawls presents it, does not involve any pre-institutional conception of responsibility nor is it intended as an independent constraint on the design of just institution. This confirms what Rawls says about desert: "The concept of moral worth does not provide a first principle of distributive justice" (Rawls 1971:312), because it is an artifact of social institutions which in turn are justified in quite different ways. Instead of imposing constraints upon our choice of social institutions, personal desert is only established within and by such institutions. To put it differently, neither "responsibility for ends," nor desert have independent "deontic force" in the justification of institutions and principles.

Scheffler believes that Rawls' reluctance to rely on a strong notion of pre-institutional desert and responsibility testifies in part to the prevalence of the unstated conviction that a thoroughgoing naturalism leaves no room for a conception of individual agency substantial
enough to sustain such a notion (Scheffler 1992:309). According to Scheffler, this conviction is the contemporary descendant of scepticism about individual agency, and freedom of the will.\(^{19}\)

However, although Scheffler is probably right that an unstated belief in naturalism partly motivates Rawls' opposition to robust notions of desert and responsibility, there are other factors at work that may be equally or more important in explaining Rawls' opposition to these notions. As we have seen before, these factors have to do more directly with Rawls' Kantian conception of morality. For it might be asked, why does naturalism pose a special threat to the notion of desert and responsibility? From Rawls' Kantian point of view, the answer would seem to be obvious. Naturalism threatens these moral notions mainly because they require control "all the way down", and if naturalism is true, such deep control is not possible.

We can now see an important feature of Rawls' position. He assumes that people cannot be morally assessed for what is due to factors beyond their control; moral value must be beyond all luck, but, unlike Kant, Rawls does not try to make sense of this conception of morality by making the conception of a person's will, deep and profound. On the contrary, Rawls, perhaps

\(^{19}\)If Scheffler is correct here, then Rawls' theory of justice appears to be based on rather shaky ground, because it is supposed to be neutral among the competing conceptions of the good, and human nature: "[The original position] has no metaphysical implications concerning the nature of the self" (Rawls 1985:238). But as Scheffler notes, "as long as purely naturalistic understanding of human life remains controversial — as long as the place of human beings in the world of science is subject to debate — no conception of agency and responsibility can claim to be neutral among conceptions of the good" (Scheffler 1992:317). Here it seems relevant to note that the controversy does not merely surround metaphysical issues, such as the problem of free will. It also surrounds the question whether, or to what extent metaphysical doctrines, such as determinism should have an impact on the moral issue of how individuals should be treated. For the view that determinism conflicts with theories which defend strong notions of responsibility and desert, see, for example, Ellis 1991. For the view that the moral issue of how individuals should be treated should not be resolved on the basis of such a metaphysical doctrine, see for example, Simon 1978-1979.
because of his belief in naturalism, tends to put a strong emphasis on the fragility of human agency and the importance of the conditions under which it is exercised. Thus, the fact that Kantian morality requires the moral agent to be in control "all the way down," and the fact that moral agents (at least human moral agents) can never meet this requirement is not taken to show that there is anything basically wrong with the Kantian conception of morality. The possibility is simply never considered that since human agents are not Kantian agents (i.e. ultimately free and responsible), Kantian morality might not be a morality for human agents at all. On the contrary, the failure on behalf of human agents to stand up to the standards of Kantian morality is taken to show that we should be sceptical, not of the principle of voluntariness, but of human agency. For if human agents are, for instance, never "ultimately" deserving, this is taken to show that they are not deserving at all. It is as if we should set the standards of morality first, according to our intuitions about the badness of luck in human life, etc. and then work out what implications these standards have for people who never can live up to them. Again, for Rawls the implications are that we must lay great stress on social conditions and arrangements. Since human agents are not ultimately free Kantian agents, we have to acknowledge that their will, as well as their numerous features and circumstances — their greater natural capacities and merit, and their starting place in society — are all factors which are in various ways subject to luck. But we must also recognize, in the Kantian spirit, that these features are morally arbitrary, because luck is morally arbitrary, and as Rawls puts it, "The basic structure [of society] can be arranged so that these contingencies work for the good of the least fortunate" (Rawls 1971:102). We cannot, in other words, eliminate the influence of luck on human agency, but we can do our best in reducing its bad influence on people's lives.
by constructing social institutions which, to a great extent, "even out" the influence of features such as natural capacities and desert.

Hence, Rawls accepts the Kantian picture of morality as the domain of value which is immune from luck, but he rejects the Kantian view that human agents are fundamentally free and responsible, and thus immune from luck. But why should we accept the Kantian morality in the first place? Given that we accept the more limited view of human agency, why should we insist that the Kantian definition of morality, with its emphasis on the intuition that people cannot be morally assessed for what is due to factors beyond their control, is correct? It seems rather odd to suppose that we can completely reject the Kantian account of moral agency, but yet hold so strongly on to his idea of what morality is all about. At least, from the point of view of those who believe that desert is an important moral concept, to hold that the Kantian intuition alone defines the framework of moral value is extremely implausible. Although the intuition that moral value should be beyond all luck, may have a place in people's moral judgments, it is merely one of many "reasonable" intuitions about moral value, and it is not easy to see why it should necessarily override all other intuitions, in cases of conflict.

When talking about the condition of control and how it threatens to erode most of the moral assessments we find it natural to make, Nagel remarks, "The erosion of moral judgment emerges not as the absurd consequence of an over-simple theory, but as a natural consequence of the ordinary idea of moral assessment, when it is applied in view of a more complete and precise account of the facts" (Nagel 1982:176). Nagel seems to be suggesting here that when we "really" think about it, the condition of control is the idea of moral assessment, no more and no less. But the idea that people cannot be morally assessed for what is due to factors beyond
their control, is far from being the only "ordinary idea of moral assessment," and it is very
difficult to see why, out of our many ideas about moral assessment, it should be the supreme
principle of moral assessment. To come back to Zuckert's way of putting it, it is difficult to
see how one of the fixed points of our considered judgments can condemn some of our most
settled, impersonal, and widely held judgments, such as our judgments about desert. As far as
Rawls is concerned, we never get a answer to this question because the principle of
voluntariness is an unquestioned assumption behind his whole theory. But it is precisely this
assumption which should be questioned.

2. 8. Desert and Social Conditions

We have seen that, given the Kantian conception of morality, naturalism seems to pose
a special threat to the notion of desert and responsibility. But as we have seen the Kantian
emphasis on voluntariness or control may also explain the perhaps related issue, why Rawls'
puts such strong emphasis on how social conditions affect people's options. According to T.M.
Scanlon, one of the main reason why contractarians like Rawls reject any pre-institutional
notions of desert or responsibility is that these notions exaggerate "the importance of the fact of

20 If Nagel is right that "the erosion of moral judgement" is ultimately the consequence of the principle of control,
then, one might ask, does that not count as a reason against the supremacy of the principle? To those who believe
that moral value is not immune from luck it would seem that the answer is affirmative. The Kantian moralist may
disagree, but then it remains for him to explain how, in the light of a general erosion of moral judgment, any moral
theory can be based on the condition of control.

21 I will leave it open here whether, or to what extent, naturalism is a threat to any conception of morality. But it
seems safe to say that naturalism is particularly worrisome for a conception of morality which is based on the idea
that moral value is closely linked to control.
choice relative to that of the *conditions* under which the choice was made" (Scanlon 1988:196). Scanlon holds that those who adhere to the pre-institutional notions put crucial weight on the issue whether an outcome actually resulted from an agent's conscious choice, the agent having intentionally passed up specific alternatives. The pre-institutional view, therefore, only looks at what choices are "available" to an agent in the sense that an action which an agent has the choice of performing must be seen as available to him. But, according to Scanlon, this view under-estimates the importance of the condition of choice. As Scanlon puts it:

> Once the people are placed in disadvantageous circumstances, circumstances which themselves make it very unlikely that anyone would make the choice necessary to escape, offering these people the opportunity to exert themselves does little to improve their position (Scanlon 1988:185).

Scanlon takes this to show that we should direct our attention to the issue of just social institutions, and acknowledge that it is prior to notion of desert. If institutions are just then people deserve the rewards which those institutions assign to them. The justice of institutions is, in turn, determined in the following way:

> In my view, to show that a social institution is legitimate, one must show that it can be justified to each person affected by it on grounds which that person could not reasonably reject. One thing which people may reasonably demand, however, is the ability to shape their lives and obligations through the exercise of choice under reasonably favourable conditions. Moral principles or social institutions which force one to accept the consequences of choice under extremely unfavourable conditions which could be improved without great cost to others, are likely to be reasonably rejectable for that reason (Scanlon 1988:184).

The first thing to note about this argument is that it builds on what seems to be the entirely plausible claim that people's options are influenced by the social institutions under which they live. Opportunities for schooling and training, career opportunities, potential economic rewards, etc., all depend more or less on the social arrangement of a given society.
It is, therefore, reasonable to assume that such social conditions must be present before citizens can have "real choice," i.e. some sufficient number of significant options to chose from. At least it is clear that if a person has to spend all his time fighting such "extremely unfavorable conditions" as starvation, diseases, or extreme ignorance, it reduces her options in such a way that she can hardly be said to have any real choices in life. Thus, if desert depends on people's ability to have control over their own lives and actions, then it would seem that extremely unfavorable social conditions would make desert-claims less acceptable.

However, it is by no means clear why this should be a problem for a pre-institutional conception of desert. As Sher points out, it is hardly deniable that the justice of social institutions can affect what people deserve. For example, they shape the skills, preferences, and values that contribute to the performance of desert-creating actions, and establish the conventions that give many actions their meaning. But we can consistently say,

(1) that the other determinants of justice... must be present before an agent can act freely enough to deserve his act's expected consequences and (2) that his and others' receiving the deserved consequences of their acts is an additional determinant of their society's justice. Thus construed, the fact that desert presupposes other aspects of justice does not prevent it from being an independent and significant source of normative force. Rather, desert and the other elements may work in tandem to determine the proper structuring of the social order (Sher 1987:49).

In other words, there seems to be no basis for Scanlon's claim that those who defend the pre-institutional notion of desert underestimate the importance of the condition of choice. To require some reasonable levels of opportunity for all, before desert can be properly assessed, is consistent with the view that desert is an important moral category which cannot be reduced to mere entitlements. Of course it is still an open question what a "reasonable" level
of opportunity means. Here, perhaps, is the rub. One might expect that when Scanlon talks about conditions of choice which a person could reasonably reject, he is referring to the "extremely unfavourable conditions" he mentions in the passage quoted above, which presumably would mean extremely unfavorable social conditions, such as great poverty, etc. However, it appears that Scanlon has something different in mind, because he expresses his strong support for Rawls' idea of a social division of responsibility, according to which society "accepts responsibility for maintaining the equal basic liberties and fair equality of opportunity, and for providing a fair share of the other primary goods for everyone within this framework" (Rawls 1982:169; cf. Scanlon 1988:198). It would seem that if Scanlon supports Rawls' idea about the "fair share" of the other primary goods, he, in fact, supports some idea similar to the difference principle. As Rawls remarks, the difference principle represents the idea that those who have been favored by nature may gain from their good fortune only on terms that improve the situation of those "who have lost out" (Rawls 1971:101). Thus Rawls' general conception of justice: "All social values — liberty and opportunity, income and wealth, and the bases of self-respect — are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantages" (Rawls 1971:62). If this is the conception of justice which Scanlon supports, then it would seem that he is being rather inaccurate when he remarks that "reasonably rejectable" social conditions, are those conditions under which it is "extremely unfavourable" for people to exercise their choices. For what he really appears to have in mind as "reasonably rejectable" social conditions, are all social conditions which are not to the greatest benefit of the least advantaged, and that is something quite different from the claim that extremely unfavorable
social conditions can undermine people's ability to shape their lives through the exercise of choice.\textsuperscript{22} Furthermore, if it is really Scanlon's view that reasonable social conditions are only those conditions which are to the greatest benefit of the least advantaged, then he is faced with all the same objections as Rawls. For, again, this view is based on the Kantian belief that "accidents of nature and social circumstances" are morally arbitrary, because people cannot be morally assessed for what is due to factors which are ultimately beyond their control, a belief which has not been found to be very plausible. Thus even if Scanlon correctly identifies the reason for the contractarian rejection of the pre-institutional notion of desert, it is uncertain that the contractarian view can be sustained. The influence of the social system on the individual becomes the \textit{sole} concern of moral theory, only if that theory sees ultimate control as a precondition of moral assessment. According to this line of thought, if no one has ultimate control, no one deserves anything in virtue of their qualities and actions, and therefore what is everyone's due should be determined only on the basis of the basic structure of society's institutions. However, once the principle of voluntariness is rejected, the strong emphasis on social conditions becomes less plausible. Once the principle has been dismissed it becomes possible to recognize that the structure of social institutions, \textit{as well as} the greater desert of those individuals who exhibit valuable qualities and actions, are important elements in social justice.

\textsuperscript{22}According to Harry Frankfurt, egalitarians sometimes try to find support for their doctrine by appealing to poor social conditions. Frankfurt criticizes for instance Dworkin for trying to find support for his view that no citizen ought to have less than an equal share of the community's resources, by referring to the concern that some people \textit{do not earn a decent living}. But as Frankfurt points out, these two doctrines are logically independent so that considerations that support the one cannot be presumed to provide support also for the other. See, Frankfurt 1988; cf. Dworkin 1985.
2. 9. Conclusion

My main aim in this chapter has been to argue that Rawls' argument against desert, and in fact his whole conception of justice is based on the assumption that the Kantian conception of morality is the correct conception of morality. I have shown that this is a mistaken view. As I argued in chapter 1, people can become deserving on the basis of qualities they have not voluntarily acquired, especially if they are combined with effort, or contribution. The principle of voluntariness requires us to deem those qualities morally arbitrary, because they are due to factors beyond people's control. In so doing, it may not only ignore the relevance of how people are in fact motivated, but it also demands unreasonably that they deserve their qualities "all the way down." I have argued that the idea of a value that lies beyond all luck should be abandoned. Williams remarks that those who accept the Kantian idea of morality can only encourage the idea, that, if we abandon it, there can be no coherent ideas of social justice, "but only efficiency, or power, or uncorrected luck" (Williams 1985:196). Once it is realized that our alternatives are not confined to these extremes, we would do better to forsake conceptions of morality which are built on the illusion that they are the only options we have got.
Chapter Three
3.1. Introduction

From the standpoint of politics, the interests of the members of the community matter, and matter equally (Dworkin 1983:24).

In these words Ronald Dworkin sets out the foundation of the egalitarian thesis, according to which, no citizen should have "less than an equal share of the community's resources just in order that others may have more of what he lacks" (Dworkin 1992:384). It is not difficult to see that if this doctrine is correct, then all my arguments in favor of the view that personal desert is an important moral category, and relevant to matters of distributive justice, must be completely mistaken. For it is fundamental to the idea of desert that people's lives may not be equally important nor do they necessarily have valid claims to an equal share of a community's resources.

In this chapter I will scrutinize the doctrine of egalitarianism, and argue against it. First I discuss the idea of equality and attempts that have been made to base that idea of equal human worth on the notion of the human point of view. Then I will mainly be concerned with the theory as it is presented in the works of Ronald Dworkin and Thomas Nagel, although I will also consider briefly one argument from Rawls. My main point will be this: The egalitarian belief that a person's worth can be determined solely by impartial considerations is seriously flawed. Furthermore, it seems to presume a particular view of personality which, in itself, is not very plausible, and is of a "metaphysical" kind which liberalism is supposed to eschew. I will argue for an account of human worth which takes into consideration detached, as well as personal, perspectives. What this means is that people do not all have equal human worth, since the value of their lives cannot be assessed in
isolation from the (personal) value their lives have for others, and this value is bound to vary. If this is so, then the way is still open for personal desert to play an active role in our ideas about social justice.

3. 2. Human Equality

Aristotle thought that there is a relationship between what characteristics people have, and the way they should be treated. He articulated this relationship in his celebrated account of justice in Book V of the *Nicomachean Ethics* (1131a). His basic idea was that no distinction ought to be made between men who are equal in all respects relevant to the kind of treatment in question, even though in other (irrelevant) respects they may be unequal (cf. Benn 1967:39). However, in matters in which they are in relevant respects unequal, they ought to be treated in proportion to their relevant inequalities. Since Aristotle did not believe that all men are alike in their nature, he laid more stress on not treating unequals equally than on any general conception of equality. The distribution to persons of unequal merit should be unequal.

The search for some general conception of equality, however, has been one of the tasks of political philosophy for a long time. The major difficulty involved in this task has always been to identify, despite the many points of inequality, an important characteristic that all men possess in precisely the same degree, so that whatever differences of treatment their other inequalities might justify, this fundamental equality would make them equal qua men (Benn 1967:40). Because of this difficulty, the ideal of universal equality has sometimes
been reduced to a principle of procedure; all men ought to be treated equally, despite their differences, until a case has been made for saying that some particular differences between them is relevant to the matter at hand. By shifting the burden of proof to the person who wants to treat people differently, some egalitarians have thought that it is less important to specify a characteristic which all men have, and by virtue of which they should all be treated as equals.

As Joel Feinberg has pointed out, this egalitarian presumptivist formulation completely ignores the second part of Aristotle's "formal principle." For according to Aristotle not only (1) should those who are the same (equal) in relevant respects be treated alike, but (2) those who are unlike (unequal) in relevant respects should be treated differently in proportion to the differences (inequalities) between them (Feinberg 1973:100). Thus, if the Aristotelian principle is correct, where the "burden of proof" actually lies in a given case depends on the relevant traits of the individuals involved. The presumption in favor of equal treatment holds when the individuals involved are believed, assumed, or expected to be equal in the relevant respects, whereas the presumption in favor of unequal treatment holds when the individuals are expected to be different in the relevant respects (Feinberg 1973:101). The egalitarian presumptivist principle overlooks cases in which our antecedent expectations about the existence of characteristics agreed to be relevant creates a presumption in favor of inequality.

Many attempts have been made to answer the question why all people should be treated equally in any respect in the face of manifest inequalities of characteristics and merit among them. One of the most celebrated accounts of equality was stated by Gregory Vlastos in an article, where he argued for a doctrine of universal equal human worth as a basis for human
rights (Vlastos 1962:31-72). Vlastos argued that, unlike talent, skill, character and personality traits where people get different grades, "human worth" is not a grading concept. It applies to fools and rogues as well as to the wise and honest. Human worth is something individuals have, quite apart from their other valuable qualities. But what kind of value could this "human worth" be? Vlastos does not consider this question and we must, therefore, look elsewhere for possible answers. Feinberg effectively argues that if human worth is generically like every other kind of worth, it is a supervenient property, i.e. a property possessed by something in virtue of some other property or properties it possesses (Feinberg 1973:90). If two things or two persons have the same worth, they must have in common some other characteristic — a non-value characteristic — that is the basis of their equal worth.

Philosophers have given a variety of answers to the question what common characteristic this might be. The three main variations have been (1) natural capacities, such as rationality; (2) natural vulnerabilities, such as the liability to pain and suffering; and (3) transcendental properties such as an intrinsic dignity attaching to all human beings as "ends in themselves." None of these attempts to find the foundation for equal human worth have proved very satisfactory. On the one hand, transcendental properties do not clearly account for the equality of human worth, but merely rename that which is to be explained. On the other hand, the empirical characteristics are dubious as grounds of human worth because they vary from person to person. Some men are more rational than others, and the same can be said of the liability to pain and suffering.
This has led some thinkers, such as Feinberg, to conclude that universal respect for human beings is groundless — a kind of ultimate attitude not itself justifiable in more ultimate terms. As Feinberg puts it:

In attributing human worth to everyone we may be ascribing no property or set of qualities, but rather expressing an attitude — the attitude of respect — toward the humanity in each man's person. That attitude follows naturally from regarding everyone from the "human point of view," but it is not grounded on anything more ultimate than itself, and it is not demonstrably justifiable (Feinberg 1973:94).

According to this view, men are equal because they all have a point of view of their own, a unique angle from which they view the world. Similarly Bernard Williams, who also speaks of the human point of view, holds that to regard a person from the human point of view is to be concerned primarily with what it is for that person to live her life, and do the things she does. One tries to see the world from her point of view (Williams 1962:123).

However, many people find this view philosophically unsatisfactory. If it is true that "human worth" names no property in the way that "redness" names redness, it implies that talk of human worth is in a sense arbitrary. If it is asked, why each and every human being should be given equal respect, or why we should respect human beings, but not, for example, other animals, then there doesn't seem to be any further answer to be given in support of the view of equal human worth. We are only told that most normal people are disposed to fall into the attitude of respect whenever they acquire "the habit of looking at their fellows in a certain way" (Feinberg 1973:93). This, however, seems to be a rather unsatisfying answer precisely because it appears to give us no good reason to believe that talk about human worth is anything but a camouflage for our prejudices. Thus one could make a similar point on
"human worth" as Daniel Dennett makes on the concept of a person when he remarks that it might turn out,

that the concept of a person is only a free-floating honorific that we are all happy to apply to ourselves, and to others as the spirit moves us, guided by our emotions, aesthetic sensibilities, considerations of policy, and the like, just as those who are chic are all and only those who can get themselves considered chic by others who consider themselves chic (Dennett 1976:176).

Thus if we are going to defend the concept of "equal human worth" and "equal respect for persons," we seem to be faced with a dilemma. On the one hand, we can try to ground these concepts on some characteristics which are common to all persons and are the basis of their equal worth. But then one has to face the fact that most, if not all, characteristics vary from person to person. And if human worth is to be related to some minimum concept, such as minimal rationality, it becomes very difficult to discern any intuitive connection between this basis and human worth. As Peter Singer has remarked, if equality is to be related to any actual characteristics of humans, these characteristics must be some lowest common denominator, pitched so low that no human lacks them. Then, however, we come up against the difficulty that any such set of characteristics which covers all humans will not be possessed only by humans (Singer 1990:226).

On the other hand, we can hold that universal respect for human beings is a kind of ultimate attitude, not justifiable in more ultimate terms. This, however, seems to imply that it is arbitrary to ascribe equal worth to all humans — we are given no justification for treating all human beings as equals.

However, some writers have argued that there is a way out of the dilemma. For one can hold that, although there are no universal human traits that compel equal respect for persons,
there are certain characteristics of persons that "call for respect." As Feinberg puts it,

It may well be, however, that most normal people are disposed to fall into that attitude whenever their attention is drawn to certain traits of all humans, or when they acquire the habit of looking at (or conceiving) their fellows in a certain way. The traits thus attended to may not constitute logically coercive reasons in support of the attitude of Kantian respect (that may be too much to hope for), but a thorough awareness of them can make the attitude seem less mysterious and actually lead people to acquire it — a result almost as good! (Feinberg 1973:93).

Of course it still remains an open question what these traits are that make people disposed to fall into the attitude of respect. Williams suggests that ultimately the notion of respect for human worth is based on some notion of men as conscious beings who necessarily have intentions and purposes and see what they are doing in a certain light (Williams 1962:124). People are, at least potentially, conscious of their situation and they are capable of reflectively standing back from the roles and positions in which they are cast.

Can a coherent conception of equal human worth be built on these rather weak considerations? In what follows I argue that it cannot, if it is supposed to mean that every human being has equal worth, all things considered. It may well be that some such notion as the "human point of view" has a role to play in our estimation of people's worth, but I will argue that equal human worth cannot be solely based on this notion. This means that although people may possibly be worthy of some minimum respect on the basis of their "humanity," they may not be worthy of equal respect, since the value of people's lives may vary from person to person.
3. 3. The Egalitarian Argument

Men have different views on the empirical end of happiness, and what it consists of, so that as far as happiness is concerned, their will cannot be thought under any common principle, nor thus under an external law harmonizing with the freedom of everyone (Immanuel Kant).

In this short passage Kant set forth what has become one of the cornerstones of modern liberalism. This is the doctrine that, as a matter of fact, there are radical and irresolvable differences in modern societies, over what the good for human beings is and what their ultimate nature is thought to be. The conclusion which modern liberals, following Kant, draw from this fact is both sceptical, and pluralistic: "there is no foundation to guide us to an understanding of the ultimate nature of the good and bad in politics; these are personal values which cannot be objectively grounded" (Plant 1991:74). One of the characteristics of liberal thought is to claim to be neutral on fundamental moral issues: "Liberalism does not depend on the truth of any single metaphysical or epistemological system" (Ackerman 1980:361; cf. Plant 1991:75-76). Liberal society marked by moral pluralism must be, as far as possible, independent of any conceptions of the good life.

However, if moral pluralism was the sole basis for liberal neutrality, then the liberal argument would not seem to carry enough weight, because, it might be asked, why should the

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23 There are, at least, two implicit presumptions in this argument that warrant mentioning: (1) No person or group is in a privileged position to resolve the radical disagreement over the conception of the good, and (2) appeals to the good in political argument are often disguised assertions of prejudice (see, Sher 1987:208; cf. Rawls 1971:331). However, although these points may be correct, it is doubtful that the strong liberal conclusions can be drawn from them. For instance, it is hard to deny that the notion of a moral expert, who generally knows more about the way other people should live their lives than they do themselves, is not a very plausible one (pace Plato). But to acknowledge this is surely something different from accepting the much stronger claim that no reasonable judgments about the good can be made the basis of social policy.
fact that the citizens of a society differ in their conception of the good require governments to be neutral among those conceptions? Why should governments not prefer one conception to another if they believed that one is held by the more numerous or more powerful group?

Because of this difficulty it is a characteristic of liberal thought that its emphasis on neutrality is not just a response to moral pluralism. Rather, liberal neutrality is a consequence of a more basic moral principle, a principle which, according to Dworkin, is that of treating individuals with equal concern and respect: The government does not treat its citizens as moral equals if its policies are based upon some particular conception of the good life which some of the citizens do not share, or some conception of human nature which might mean that some citizens are more deserving than others (Dworkin 1984:64).

According to egalitarians, such as Dworkin and Nagel, the principle of equality is abstract, universal, and fundamental. The principle is abstract because it is based on our capacity to view the world in abstraction from our identity, i.e. we can "remove ourselves in thought from our particular position in the world and think simply of all those people, without singling out as I the one we happen to be" (Nagel 1991:10). Or, putting it another way, we can place ourselves in other people's shoes and assign what happens to them the value it has from their point of view. The principle of equality is universal because it appeals to no "contingent qualities or

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24 This is slightly inaccurate because there is a disagreement among liberals with respect to the question of which value is "fundamental." According to Rawls it is justice, according to Raz it is freedom, and according to Dworkin and Nagel, it is equality. But they all believe that these, what might be called, procedural values are overriding values. Substantive values, i.e. values which are derived from various conceptions of a good life, are, or ought to be, regulated, and restricted by the procedural values. Thus, liberals are pluralist about substantive values but not about procedural values. However, it is seriously questionable whether this distinction can be properly maintained. For an interesting discussion, see Kekes 1993.
achievements in virtue of which individuals come to deserve something they are not otherwise entitled to have" (Dworkin 1983:31). It applies to everyone, since everyone has his or her "point of view," whatever else may be said of them in terms of their contingent characteristics or qualities. Finally, the principle of equality is fundamental because it admits of no defense in the usual form:

It seems unlikely that it can be derived from any more general and basic principle of political morality that is more widely accepted. Nor can it be established through one or another of the methods of argument popular in political theory, for these already presuppose some particular conception of equality (Dworkin 1983:31).

The basic insight of the principle of equality is that "From the standpoint of politics, the interests of the members of the community matter, and matter equally" (Dworkin 1983:24). The idea is that if we assume that a person's most fundamental interests matter greatly to her, then these interests have an abstract, impartial value. Or, as Nagel puts it, "if we really take it in," we see that the importance of every person's life to her, has not merely a personal value to her, but has a great impersonal value to her as well as others which there is reason to take into account, and ought to be reflected in how political institutions treat citizens.25 Furthermore, "if we really take it in," we also see that people's lives have equal impersonal value, since there is, from the standpoint of politics, no antecedent reason to think that my

25Dworkin considers the objection that although it may matter to you whether your own life is a good life, and to everyone else whether his life is a good one, it does not matter objectively or impartially, and therefore from the standpoint of politics, whether anyone's life is good. Dworkin's main answer to this objection is that we could not construct any justification of political action — whether this is positive action as in the provision of resources, or negative in the sense of putting strict limitations on the powers of governments — unless we assume that it is important what happens in people's lives. "Why else," Dworkin asks, "could it matter whether we do or do not respect people's rights, for example?" (Dworkin 1983:32-33). I do not intend to discuss this issue here, but only note that it is by no means clear why we should not be able to construct justification of political institutions, solely, or at least mostly, on the basis of self-interest and rational prudence, and thus largely without an appeal to impersonal value. For an interesting discussion see for example, Kavka 1984:297-319.
fundamental interests matter more or less to me, than your fundamental interests matter to you.

According to Dworkin, people's interests, viewed most comprehensively, are based on the fact that it matters how their lives go: They lie in "having as good a life as possible, a life that has in it as much of what a life should have" (Dworkin 1983:26). Hence, the aim of politics should be to improve peoples lives, and to aim at this in a way that treats that interest as equally important for each person; "the state takes over my aim, and aims to make my life as good as it can be" (Dworkin 1983:27).

However, both Dworkin and Nagel emphasize that this does not mean that some people may not be more important in virtue of their greater value for others. As Dworkin remarks:

This is of course very different from the claim that any particular person's life is in fact good or that his conception of a good life is worthy. So it could not provide an argument that people's lives are equally good or equally valuable lives or anything of that sort. It claims that, for any particular person, it matters whether his life is a good life, that his life is, at least for him, a subject of value rather than an object of value (Dworkin 1983:27).

In a similar way Nagel claims that although one person's life may be more valuable than another person's life, at the baseline of value in the lives of individuals, everyone counts the same: "For a given quality of whatever it is that's good or bad — suffering or happiness or fulfillment or frustration — its intrinsic impersonal value doesn't depend on whose it is (Nagel 1991:11).
3. 4. Impartiality and Equal Human Worth

The egalitarian argument can be criticized on at least three grounds. First, it could be questioned whether *anything* matters from the impartial standpoint, given that "all that matters is what matters for this or that individual" (Nagel 1991:19). One could even doubt whether any such detached perspective is actually possible, given human motivational psychology. Second, even if it is granted that "we can put ourselves in each person's shoes," and thereby identify as valuable other people's interests, it can be asked why we should think that people's interests matter *equally*? Third, one can question whether impartial considerations really imply the highly egalitarian social ideal which egalitarians claim they do. The first issue raises some fundamental questions about the nature of value, and rationality, which I will not consider here. I believe, however, that there is no particularly compelling reason to exclude the possibility of impersonal values. My argument will at least not depend on the assumption that they are impossible. It is really the second part of the argument which is crucial for the egalitarians because, on the one hand, it looks less plausible than the first, and on the other hand, all their views on social justice depend on it. I will therefore concentrate on, what might be called, the argument from equal human worth.26

26Vlastos, who has the same basic ideas about impartiality, and equal human worth as Dworkin and Nagel, argues that differentials of economic reward, economic power, and political power can be justified in the terms of egalitarian justice. According to Vlastos, equality in the distribution of goods is not the only concern of egalitarian justice. What is also important is that happiness and freedom be secured at the highest possible levels. Vlastos believes that this leads to some kind of merit-principle, (a) because with such a principle society would have higher level of production of goods than it would have without it, and (b) because praising merit is something people like to do, and do spontaneously so that it can be said to be a direct expression of human freedom (Vlastos 1962:64-72).

27In what follows, I will use the notion of "human worth" to refer to the value or importance of a person's life. As we will see, it is fundamental to the egalitarian belief that this value or importance is solely determined on the basis of impartial, and universal considerations.

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As we have seen this argument starts from the assumption that people place great value on how their lives go, and that the value each person places on his or her own life is equal, and hence that impartial value of their lives is equal. However, this assumption is not very plausible. For although it is not unreasonable to assume that it matters to most people how their lives go, there is little reason to think that it matters equally to everyone. Even if we consider people's lives in abstraction from factors such as age and health, and look only at how people value their lives over a whole lifetime, it is not likely that the value each person places on herself is equal. Life may matter less to the person whose life is marked by boredom and ennui, than to the buoyant hedonist (to take a crude example).

Still, it might be argued that, roughly speaking, people place equal value on how their lives go, and from the standpoint of politics, this is enough to consider each person's life equally valuable. After all, if we are ever going to reach conclusions about social justice, we will have to make some reasonable assumption about human beings, and it does not seem to be unreasonable to assume that the vast majority of people care very deeply about their own lives. How else, for example, could we make sense of the kind of deliberation we exercise at important moments in our lives?

Perhaps this assumption is not so implausible. However, even if we grant that the roughly equal value each person places on her own life, projects roughly equal value into the impersonal assessment, it follows that each person's life has roughly equal moral value only if we assume that impersonal value is somehow the predominant value in the evaluation of a person's human worth. Indeed this seems to be Dworkin's view. At one point he considers the possibility that "it matters more how some lives go than others:"
You might want to say, for example, that it is more important how your life goes because you are a more virtuous person. But your convictions about the importance of how your life goes are too deep — too fundamental — to permit this. Your belief provides you with a reason to consider whether to be virtuous, and where virtue lies, which means that you think it important how your life goes for some reason that in this way precedes your virtue. If so, then you cannot say that it is more important how you live for any reason drawn from your merit or the merit of your life, and no other kind of reason can plausibly distinguish you from anyone else who has a life to lead (Dworkin 1983:35, emphasis added).

How are we to understand this argument? In what sense does the fact that you think it important how your life goes, precede your virtue, and why is that important? Dworkin suggests that the importance to you of how you lead your life is intrinsic as opposed to strategic, i.e. it does not depend on other interests you have, but is rather the ground of a great many of those other interests, such as your interest in being virtuous. But this leaves the questions still unanswered. It may well be that your interest in leading a good life has a great impersonal value — which constitutes a part of your human worth — and it may also be that in some (rather obscure) sense this interest precedes your other interests. But why should the value of your life only be determined on the basis of the importance your life has to you? Why, for example, is the value of your life not determined, at least in part, on the basis of how valuable or important you are for other people? Nothing Dworkin says about how some of your interests precede your other interests helps us understand why the interests of other people are not relevant in the evaluation of your human worth.\textsuperscript{28}

\textsuperscript{28}Dr. Paul Russell has pointed out to me that it could be argued that, impersonally considered, it is even more evident that people's lives are not equally valuable. This suggests that, contrary to what Dworkin and Nagel seem to think, there is no necessary relationship between impersonal value, and equal value. Of course they would want to argue that impersonal value is the value we assign to people's lives when we consider the value which their lives have from their point of view, and this value has to be equal. But there is no obvious reason why impersonal value is necessarily of this nature. It does not seem implausible to say that, impersonally considered, people's lives have value because people value their own lives, and because others value their lives.
One might try to turn to Nagel's book, *Equality and Partiality*, in hope of finding a more plausible account of human worth. There Nagel appears to reject, quite outspokenly the view that, "the values...emerging from the impersonal standpoint should be dominant, at the most basic level of justification, whenever they conflict with more personal values" (Nagel 1991:15).

According to Nagel, he wants to defend the alternative view that the personal aims, interests, and desires of the individual, and his "strong personal allegiance to particular communities of interest or conviction or emotional identification" must be taken into account directly in the justification of any ethical or political system. Thus, Nagel holds that it is the main task of political theory to combine, and balance the impartial, and the partial perspective in some acceptable way.

Yet, Nagel makes it very clear that at some basic level every person's worth is equal, and this is so because at a basic level human worth is determined solely by impartial considerations:

The impartial attitude is, I believe, strongly egalitarian both in itself and in its implications. As I have said, it comes from our capacity to take up a point of view which abstracts from who we are, but which appreciates fully and takes to heart the value of every person's life and welfare. We put ourselves in each person's shoes and take as our *preliminary guide* to the value we assign to what happens to him the value which it has from his point of view. This gives to each person's well-being very great importance, and from the impersonal standpoint everyone's primary importance, *leaving aside his effect on the welfare of others*, is the same (Nagel 1991:64-65, emphasis added).

This looks very much like Dworkin's argument above. Before we can even consider the effect of a person's life on the welfare of others, we should, in the light of impartial considerations, assign the same value to her life as everyone else's. Moreover, it is this equal
value of everyone's life which, according to Nagel, attracts us strongly to a social ideal where everything is done to avoid unequal distribution of resources.

However, again, even if Nagel is right that from the impartial standpoint, everyone counts the same, it does not follow that human worth is equal all things considered. Surely, if personal, and impersonal values are equally fundamental, then a person's worth would have to be evaluated in terms of both kinds of value. Thus, human worth is not only based on the (impartial) value each person places on his own life, but also on the (partial) value his life has for others. Yet, Nagel talks as though (equal) human worth is only determined from the impartial standpoint.

It is true that Nagel stresses that no social system can be run on the basis of impartiality alone. Everyone has his own life to lead which means that everyone has his own personal aims, interests and desires, which cannot be ignored in the justification of a social system. As Nagel puts it, "it is clear that in a world not inhabited by perfect altruists, some account must be taken, not just for practical, but for moral reasons, of how different social arrangements look from the perspectives of the differently situated participants" (Nagel 1991:83). According to Nagel, this makes the problem of how a balance may be struck between the partial, and the impartial standpoints, very difficult to resolve. He suggests that an ideal solution might be if everyone could be publicly egalitarian and privately partial, meaning that impartiality and egalitarianism would be dominant in determining the social structure, but not in private life, where individuals would be expected to devote their energies to the pursuit of happiness and the benefit of their families. As Nagel acknowledges, a solution of this kind meets several severe motivational problems which, at present, seem unsolvable.
But he makes it clear that, despite these problems, he considers this to be, from a moral standpoint, the most desirable solution, and the solution we should hope for. As he puts it: "it may be a consequence of our nature and our circumstances that, even without being morally at fault, we cannot at present design a form of collective life that is morally acceptable. However, that should not stop us from trying" (Nagel 1991:95).

However, it would seem that a part of what makes Nagel's problem so difficult, is that he assumes from the start that what matters from the standpoint of politics is each person's impartial value. It is this view that prompts him to claim that impartiality and egalitarianism should apply to the social structure. From the beginning Nagel presumes that, ideally, politics should only be concerned with features which all individuals possess, and possess to exactly the same degree. According to Nagel, what each person possesses to exactly the same degree is an impartial value. If one asks why politics should only be concerned with people's impartial value, the answer one gets is that this question cannot be answered because the principle of equality is fundamental. However, whether it is fundamental or not, I believe that the doctrine that from the standpoint of politics the interests of each individual matter equally is hardly plausible. It is deeply committed to the Kantian view that the moral/political point of view requires total abstraction from particular characteristics or any particular relation to particular persons. Although there are no knock-down arguments against this view I believe that it is fundamentally mistaken. The capacity to think abstractly is no doubt important, but it is not the whole basis of moral or political life, not even the most important. Thus, in my judgment, the attempt to ground equal human worth on the impartial standpoint alone is mistaken.
3. 5. The Egalitarian Presumption

It has been suggested that in the passage above Dworkin is affirming the point made by Rawls (see chapter 2), that the self is prior to the ends which are chosen by it. Thus, as Plant puts it,

it cannot be the case that the life to be led by self X is intrinsically more important than the life to be led by self Y because that judgment can only be made in terms of particular "thick" goals and values and this judgment has to be avoided at the political level." (Plant 1991:115).

Dworkin's view also seems to be in line with Kekes' claim that the heart of the egalitarian case is that human worth attaches to selves, while moral merit depends on qualities (Kekes 1992:392). As Kekes remarks: "Human worth is prior to moral merit, because the possession of selves is prior to their development. Justice consists in social arrangement guaranteeing equal protection for all people so that they may develop their selves" (Kekes 1992: 393).

As we saw in chapter 2 there are some serious difficulties bound up with the idea that there is a sharp distinction between the self and its qualities, the one being both universal and necessary, and the other being neither. The most fundamental difficulty, of course, is that this distinction presupposes, however tacitly, a particular theory of the person, and, along with it, a particular moral standpoint. All the talk about talents and abilities as arbitrary factors based on luck, and therefore not the individual's responsibility, seems to require a highly debatable theory of the person, which liberalism is supposed to eschew. Thus, not

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29Vlastos has a similar idea in mind when he writes that, "if there is a value attaching to the person himself as an integral and unique individual, this value will not fall under merit or be reducible to it" (Vlastos 1962:43). Thus, according to Vlastos, "the human worth of all persons is equal, however unequal may be their merit."
surprisingly, the difficulties bound up with the distinction between the self, and its qualities are also bound up with the corresponding distinction between human worth, and desert or merit. It is hardly good enough merely to assert that this distinction is fundamental, and that we should accept it because there are no good reasons for rejecting it (Dworkin 1983:32). As Scheffler points out, a claim like this seems to involve a certain degree of bad faith on the part of liberalism. For it suggests that liberalism is neutral between different conceptions of "the nature and moral importance of the individual human agent," when it neither is, nor ever could be (Scheffler 1992:318). Furthermore, as we have seen, we have good reasons to reject the egalitarian position, because it gives us no compelling explanation as to why the value of a person's life is supposed to depend solely on the value life has for that particular person, but not for others. But how are we to evaluate the importance of a person's life without any reference to the greater or lesser value that person has for others? Isaiah Berlin once remarks that: "My individual self is not something which I can detach from my relationship with others, or from those attributes of myself which consist in their attitude towards me" (Berlin 1992:156). This seems to me to be to the point. No man's value is an island.

Since the idea that everyone values his or her own life does not seem to provide a sufficient basis for the egalitarian doctrine that everyone's life is equally important, egalitarians might want to look for another foundation for their theory. The most obvious possibility would be to base equal human worth on some capacity, possessed equally by all human beings. Following Gregory Vlastos, egalitarians might, for example, want to ground it on people's capacity to enjoy the same goods:
In all cases where human beings are capable of enjoying the same goods, we feel that the intrinsic value of their enjoyment is the same. In just this sense we hold that *one man's well-being is as valuable as any other's* (Vlastos 1962:51).

As we saw earlier in this chapter one problem with this argument is that we seem to have little reason to think that such a capacity does not in fact vary from person to person. But there is another more powerful objection to it which is similar to Kekes' argument above in that it emphasizes that our evaluation of the importance of an agent's well-being cannot be sharply distinguished from our evaluation of the value this particular agent seeks.

If we ask ourselves what it is about persons which is the basis of their worth, we could probably come up with a great many characteristics as possible candidates. Indeed it is not unlikely that to advance even a minimal account of human worth we would have to name several "worth-conferring" characteristics of a person. However, as Robert Nozick has argued, it is not unreasonable to think that one of the most important worth-conferring characteristic of a person is the very fact that she is "a seeker after value, someone who searches for value and guides her behavior by value considerations" (Nozick 1981:457; cf. Sher 1987:142). If this is so, then it is plausible to argue that those who seek value more intensely have greater worth. For, as Sher points out, by saying that part of what confers worth on persons is their own propensity to seek value, we bring together the notions of being a moral subject and being a moral object: "We imply that the capacities to give and receive moral treatment are of a piece" (Sher 1987:142). In other words, to evaluate the moral subject — the individual agent — we have to refer to the moral object — the values which the agent seeks. In any adequate moral evaluation of the importance of a person's well-being, these two elements must be, in some way, brought together.
Since the reason that it is good that human desires are satisfied is, presumably, that humans have worth, it follows (given that "human worth" is not a threshold notion) that the more worth a person has, the more value there is in his or her desires being satisfied. Putting it differently, the well-being and happiness of those who successfully seek the more valuable things is worth more than of most others, and the well-being of the very bad is worth less. The virtuous person exemplifies, to a higher degree than others, a value-seeking propensity and therefore her desires and sustained efforts will be able to confer correspondingly more value on their objects. Thus, if this argument is correct, then the doctrine of equal human worth cannot be based on the idea that every person's well-being is equally valuable. For the value of a person's well-being cannot be assessed regardless of that person's effort to seek value.


As we saw in chapter 2 it is an important element of the egalitarian conception of justice to stress the significance of social conditions as a primary concern of justice. Rawls, for example, holds that the intuitive idea underlying his choice of the principles of justice is that "the well-being of each depends on a scheme of social cooperation without which no one could have a satisfactory life" (Rawls 1971:103). It is, of course, Rawls' view that this scheme of social cooperation should be determined on the basis of a particular notion of fairness, which he accepts. In the previous chapter I tried to show that this notion of fairness is not plausible. Furthermore, I argued that if a limited notion of voluntariness is accepted,
then even if desert is closely linked to voluntary action, people can become deserving in many ways, e.g. because they have voluntarily acquired, as well as native, talents and abilities.

Again, however, it might be argued that this begs the question against Rawls, because his main point is that people's talents and abilities cannot be used as a basis for distribution, for they are, to a large extent, created by society. And Rawls makes it clear that his argument applies equally to native and acquired talents:

We cannot view the talents and abilities of individuals as fixed natural gifts. To be sure, even as realized there is presumably a significant genetic component. However, these abilities and talents cannot come to fruition apart from social conditions, and as realized they always take but one of many possible forms. Among the elements affecting the realization of natural capacities are social attitudes of encouragement and support and the institutions concerned with their training and use. Thus even a potential ability at any given time is not something unaffected by existing social forms and particular contingencies over the course of life up to that moment. So not only our final ends and hopes for ourselves but also our realized abilities and talents reflect, to a large degree, our personal history, opportunities and social position. There is no way of knowing what we might have been had these things been different (Rawls 1978:55-56).

This is one of the main reasons why Rawls speaks of natural talents as "a common asset" (Rawls 1971:101). The talented individual who makes a valuable contribution owes much

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Several commentators have taken this remark to imply that Rawls denies self-ownership in an important way (Nozick 1974:228; Cohen 1986:79; Sandel 1982:70). Sandel, for example, remarks that, according to Rawls, "I am not really the owner but merely the guardian or repository of the talents and capacities that happen to reside in me, and as such have no special moral claim on the fruits of their exercise." What this really means is that according to Rawls, the abilities of an individual are treated as his own to the extent that each individual is entitled to choose for himself whether, or to what extent, he contributes to production. But the individual does not fully own his abilities in the sense that he is not fully entitled to their economic fruits. Whether or not this view violates self-ownership proper is a controversial issue. For a further discussion see, Kernohan 1990:19-28; Kernohan 1993:197-202; Lessnoff 1978:135-149. For the view that desert is an important basis of ownership see, Annis & Bohanen 1992:537-546.
of his capacity to society and any individual contribution will therefore be very small relative to the immeasurably greater contribution of society. As Feinberg points out, this would tend to support the egalitarian view that it is in fact the community which has the largest claim for its own "due return," through taxation and other devices (Feinberg 1973:116). The debt we owe as citizens to the institutions of society is much greater than the debt society owes to us for our individual contribution.

However, it is by no means clear that this argument is sound. We can see that it is based on scepticism about individual agency, similar to the one expressed by Scanlon. Compared to society, the individual contribution seems small and insignificant. Antony Flew remarks that this "sociological" way of seeing things, "reinforces [the] tendency to assume that all the goods which are or might be achieved by the individuals or the groups in any society must be the products of everyone's cooperation in that society" (Flew 1983:164). But, according to Flew, this prejudicially forecloses on the anti-collectivist objection that individuals and groups often achieve for themselves advantages upon which other members of their societies have little, if any, proper claim.

Who is right here? The first thing to note here is that the dispute is not over the issue whether, in fact, individual contributions are unequal. Rawls never denies that some, in fact, work harder than others, or make more valuable contributions. What he objects to is the moral claim that because of this some deserve more benefits than others. Rawls' reason for doing this is familiar enough; ultimately it is not the individual which can take credit for her contributions, because when all things are considered, the individual achievement is only made possible by the society she lives in. Secondly, the "sociological" objection to desert looks, at least initially, less plausible than the naturalistic objection mentioned in chapter 2. For while it makes sense
to say that everything an individual is and does depends ultimately on "natural" factors outside her control, it is far less obvious that everything an individual is and does ultimately depends on her particular social circumstances. Surely Flew is right that individuals and groups can often achieve for themselves advantages for which their society can claim no special credit. To assume otherwise would, at least, seem to be a highly controversial ground for a social theory to build on. Thirdly, and perhaps most importantly, we come back to the issue of ultimate control. We know that people's unequal contributions and efforts depend in many ways on factors outside their ultimate control, and to some extent these are social factors, which can be controlled collectively. Indeed, this may be a valid reason to believe that the basic structure of society is an important subject of justice. But if the foregoing discussion has been on the right track, the following are also true:

(a) Individuals can be morally assessed for what is due to factors beyond their ultimate control, i.e. moral value is not beyond all luck.

(b) Judgments of personal desert, and the practice of rewarding for deserving activity and qualities, are justifiable because they are, in part, expression of certain attitudes which human beings are generally very committed to. Putting it differently, people's judgments of desert express their attitudes about what actions and characteristics they do find valuable. The latter point is emphasized by writers such as Strawson. As Strawson points out, we may have good reasons for dropping or modifying some of the practices which are expressions of our reactive attitudes, for example, because of considerations of efficacy. But as he remarks:

What is wrong is to forget that these practices, and their reception, the reactions to them, really are expressions of our moral attitudes and not merely devices we calculatatingly employ for regulative purposes. Our practices do not merely exploit our natures, they express them (Strawson 1982:80).
Thus it is Strawson's view that it is only by attending to the complicated web of attitudes and feelings, which form an essential part of the moral life as we know it, that,

we can recover from the facts as we know them a sense of what we mean, i.e. all we mean, when speaking the language of morals, we speak of desert, responsibility, guilt, condemnation, and justice. But we do recover it from the facts as we know them. We do not have to go beyond them (Strawson 1982:78).

In a sense Rawls wants to go beyond the facts — or in Strawsonian terminology, he wants to overintellectualize the facts — because he feels that ultimately the facts are unfair. Yet, if Strawson is correct, it is only from the facts that we can acquire a proper understanding of moral life. And the fact is that although people always live within a certain social framework, it does not hinder them from praising those with especially useful capacities, and who really use them to the full in their collaboration with others. As long as people find certain actions and qualities of others valuable, and as long as individuals will not exhibit those actions and qualities to the same degree, they will get unequal praise and remuneration. A person's contribution may, in other words, depend on many things over which she has no ultimate control, and yet people react to her in an approving manner. As mentioned several times before, when ordinary people make desert-claims in everyday affairs they do not normally investigate whether the claimants are in control "all the way down." People normally do not bother themselves beyond inquiring into whether claimants have produced

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31 One might even say that the work of past generations is crucial in determining the value of a present-day individual's contribution. If our forefathers and fore-mothers had not worked long and hard in order to earn a living, where would we be now (Imagine the debt we all owe to the person who invented the wheel)? But that certainly does not mean that we should thank our forefathers for the contributions people make today (I am not denying that we should show our ancestors a proper respect!).

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the relevant item, done the relevant action, or expended the required effort. Thus, the issue whether, or to what extent, society contributes to the individual does seldom arise when people make judgment about whether that particular individual has made a valuable contribution which deserves special recognition. Again, this is neither to deny that the social framework is an important subject of justice, nor that it, in many ways "sets the stage" for our judgments about desert. It denies, however, the view that the social framework is the whole subject of justice, because to some extent this view ignores "the fact of our natural human commitment to ordinary inter-personal attitudes" (Strawson 1982:70), a commitment which I have argued, is the basis of people's judgments about desert.

3. 7. Conclusion

Earlier in this chapter it was said that one of the major tasks of social philosophy is to identify those differences between persons' which are morally significant, as well as people's morally relevant similarities. This idea is in the spirit of the Aristotelian rule that those who are the same in relevant respects should be treated alike, and those who are unlike in relevant respects should be treated differently in proportion to their relevant inequalities. We have seen, however, that egalitarians try to dismiss all differences between person's as irrelevant, or morally arbitrary. For them, what is morally relevant, at least from the standpoint of justice, are a couple of supposedly universal feature of human beings; the fundamental value a person's life has for her, and the person's capacity to choose her own way of living her life. From this starting point egalitarians have little trouble deriving their highly egalitarian social
ideal, which requires that "the government treat all those in its charge equally in the
distribution of some resources of opportunity" (Dworkin 1984:62).

I am reluctant to deny that the features egalitarians hold in so high regard are crucial for
the concept of moral agency. But I am deeply sceptical about whether they tell the whole
story about human worth. I am not convinced that the moral point of view is exclusively
impartial and indifferent to any particular relation to particular persons, or that it requires
total abstraction from particular circumstances and particular characteristics. Not to allow for
the importance of individual character and personal relations in the sphere of morality does
not seem to conform to our moral experience. I have therefore argued for a view of human
worth which, to some extent, brings together the impartial, and the more partial value of the
person. People's lives are valuable for several morally important reasons, ranging from the
purely impartial considerations to the more personal issues of various feelings, commitments, and attitudes associated with individual actions, and characteristics. It follows
that some people's lives are, to a degree, more valuable than other people's lives.

This would seem to commit me to a form of perfectionism, a doctrine which, according to
one commentator, "few decent people in this age would contemplate" (Keshen 1990:610). Am
I merely being indecent? The main worry here is that once we give up the idea that all humans
have equal worth, it is hard to see how the notion of equal rights could maintain a secure
foothold in our moral scheme. Since human worth is generally considered to be the basis of

32For a further discussion of this point, see Williams 1987:16-29.
persons' rights, it seems to follow that the rights of persons also vary with their moral character. There is a strong inclination in modern western societies to resist this idea, for example, because it seems to be inconsistent with the idea that all persons should be treated equally by the law. Sher's solution to this problem is to claim that the concept of rights is a threshold notion, so that the person who is capable to seek value at all, good or bad, reaches the threshold and has therefore a full complement of moral rights. Furthermore, Sher argues, even if some people do not reach the threshold we may still have good reasons to extend them moral rights. For example, if our moral rules allowed people to treat some person-like non-persons in ways we do not want people to be treated, this might undermine the system of sympathies and attitudes that makes the ethical system work (Sher 1987:147-148; cf. English 1975:241). I believe these are important points, but I would add that although we recognize that the value of people's lives may vary from person to person, there is still a place in our moral vocabulary for talk about the "human point of view." We may well acknowledge that people's lives have value from a certain detached standpoint, and that this value may be a basis for basic moral rights, without taking the much stronger view that people's lives are all of equal value, and thus that their interests matter equally. I do not think that it is unreasonable to suggest that there is a balance to be struck between our impersonal judgments, and our more personal judgments, so that we can at the same time defend basic moral rights, and recognize the greater importance of those individuals who exhibit valuable qualities, or contribute greatly to society.
Chapter Four
Summary and Conclusion

This concludes my discussion of desert, equality and distributive justice. My main objective in this essay has been to argue for the view that desert is an important moral concept which is a significant element in any satisfactory conception of distributive justice. In Kantian terminology the aim has been to show how desert is possible.

In chapter 1, I argued desert could be a ground of unequal distribution of social goods. First I examined the concept of desert, and maintained that there is a close relationship between our reactive attitudes and the concept of desert. At a basic level, desert is a matter of a kind of fittingness between a person's actions or qualities and other people's reactive attitudes. Modes of treatment are deserved in a derivative way insofar as they are the natural or conventional means of expressing those attitudes. In general we have no reason, or purpose in holding the reactive attitudes, and on the whole, they do not call for an external justification. However, this does not make our judgments of desert entirely arbitrary. For although we do not need to justify why we entertain these attitudes at all, we have to be able to justify why we entertain a certain attitude towards a particular action or characteristic. This is what is meant by saying that there has to be a fittingness between a person's actions or characteristics and other people's attitudes or treatment. There must be a reason for deserving, or in other words, desert-claims must have a appropriate basis. What those desert-bases are, is a matter of considerable debate. In general it can be said that "good desert" is a matter of fitting desired form of treatment to qualities and actions which are generally held in
high regard; people whose actions or characteristics are admirable, praiseworthy, etc.,
deserve treatment which is generally regarded pleasant, gratifying, and so on.

If the basis of desert is always some actions or characteristics of person's, it follows that
there is a clear distinction between desert and entitlement. Desert, unlike entitlement, is not
created by satisfying certain conditions laid down in a system of rules or regulations. Even
where a deserved treatment presupposes a context of rules or institutions, such as when
desert of prizes presupposes certain practices of games and competitions, the desert-basis is
still certain qualities which the competitors possess. Thus, desert is a natural moral notion,
prior to institutions and rules, and a standard by which such institutions and rules may be
judged. Moreover desert is based on past or present facts about the individual, and not on the
basis of states of affairs to be created in the future.

This characterization of the concept of desert goes against two alternative accounts of the
concept, the utilitarian, and the institutional accounts. Utilitarianism (i.e. act-utilitarianism)
is not able to give adequate justifications of desert claims, for it gives us the wrong kind of
reason for a person's desert, i.e. a forward-looking reason. The institutional approach is more
plausible because it seem to a greater extent to preserve the backward-looking logic of
desert. On this account the direct justification of a person's desert is based on her activity or
quality which acquires claims defined by a publicly recognized rules or institutions.
However, the rules and institutions are justified independently of any desert considerations.
Desert plays no basic role in determining the choice of just institutions, but is instead only
established by such institutions. The basic problem with this view is that it seems often to go
against some of many people's most important intuitions about desert. Rawls' theory, for
example, requires that those who are diligent and productive have to subsidize for those who are lazy and unproductive. Furthermore, it can be argued that by violating people's intuitions about desert the institutional approach to some extent ignores the relevance of what is reasonable to expect of people's motivations. If desert is based on certain reactive attitudes which people entertain naturally and spontaneously, and which are an important part of the human motivational psychology, then to replace the ordinary notion of desert with the idea of legitimate institutional expectations might demand to much of people's motivational capacity. It would to a degree require people to give up an important way of expressing attitudes which it is natural for them to entertain and express.

After having discussed the concept of desert, I turned to the relationship between desert and distributive justice. I argued that there are several different bases for desert which ought to be taken into account when formulating a conception of distributive justice. The most important categories are hard work, ability, and contribution. Hard work is an important desert-basis because people generally approve of and admire person's who exert effort at their work. Part of the reason why hard work is particularly appropriate desert-basis may also be that it is the ability which enables one's other assets to be utilized. The second desert-basis, ability, is particularly appropriate when people are required to perform a certain task. In general, the best-qualified applicant deserves to get the job, or to be admitted to an educational institution. Desert claims on the basis of ability to perform a task may be strengthened by the observation that there seems to be an internal connection between certain goods and traits, such as the opportunity to perform a task and a persons ability to do so. According to the third category, contribution, people's reward should depend on the value of
the contribution which they make to social welfare in their work activity. Just as it is appropriate for a person to repay his benefactor in proportion to the benefits he has received, so it is appropriate that society rewards its members to the extent to which it benefits from their activities.

There are considerable difficulties involved in trying to apply these three criterions of desert, in particular that of contribution. I discussed some of these difficulties and came to the conclusion that there is no one easy-to-apply method available to measure contribution, such as in some particular form of a market-system. People can make valuable contributions which have little market value. However, the difficulty of determining value is not a unique problem for desert theories. There is, for instance, a clear parallel between the difficulty of determining social value, and the difficulty for utilitarianism of determining utility. It is therefore important that we do not exaggerate the difficulties involved in determining people's valuable contribution. To do so might suggest that nothing reasonable can be determined about the concepts which constitute the most important part of people's language of morals, such as the notion of value.

In chapter 2, I critically examined Rawls' theory of justice, particularly in relation to his argument against desert. I argued that Rawls' attempt to reduce the importance of intuitive judgments in his theory is not successful, because his own theory relies heavily on one particular intuition, i.e. the intuition that a conception of justice should nullify the morally arbitrary features of "the accidents of natural endowments" and "the contingencies of social circumstances". This presupposes the Kantian view of morality, where moral notions such as justice, responsibility, and desert are closely linked to voluntary action. What is right and
just should not depend on brute luck, and neither can people be held responsible, or become deserving on the basis of factors which are beyond their control or they have not voluntarily acquired. This demand of voluntariness in Kantian morality is extremely strong, for it requires that in order to be morally assessable, a person has to be in control "all the way down." Or as Williams puts it, blame and responsibility are to be allocated on the "ultimately fair basis of the agent's own contribution."

However, there is little reason to believe that moral value lies beyond all luck. There is no compelling reason to believe, for example, that people's constitution is morally arbitrary just because ultimately it fails to be a matter within their control. It would only be plausible to deny this if one could make the concept of voluntariness deep and profound, as Kant made it. However, his transcendental conception of agency is generally not considered to be very plausible. Williams' suggestion seems to be much more credible, that the notion of the voluntary is inherently vague and limited, such that when we speak of autonomous agent we are not referring to Kant's ultimately free agent, but to the agent taken together with some conditions which are not within his control, such as his native characteristics. It follows that to some extent moral value is a subject to luck, because many admired characteristics are distributed in ways that no one has control over. This is in agreement with the account which was given of desert in chapter 1. There it was argued that people can become deserving on the basis of qualities they have not voluntarily acquired. Moreover, even if we are sometimes reluctant to base desert only on native abilities, they are certainly a pre-condition of most desert-claims, and not inappropriately so. There is nothing inappropriate with combining the notion of native ability, for instance, with a limited notion of voluntariness, such that people
become deserving through directing their activities appropriately and thereby using and
developing their native abilities and skills. Thus it is an essential part of the notion of desert
that people can become deserving on the basis of qualities which ultimately are not
voluntarily acquired.

In chapter 3, I examined the concept of equality and, in particular, the doctrine of
egalitarianism. I began by discussing the Aristotelian account of justice which states, on the
one hand, that people who are equal in all respects relevant to the kind of treatment in
question, ought to be treated equally, and, on the other hand, people who are, in the relevant
respects, unequal ought to be treated in proportion to their relevant inequalities. If this
principle is accepted, then there is no general presumption in favor of treating people either
equally or unequally, because just treatment depends on the relevant traits of the individual
involved, and the particular context of justice and its governing norms. A presumption in
favor of equal treatment holds when individuals involved are believed to be equal in the
relevant respects, and a presumption in favor of unequal treatment holds when the
individuals involved are expected to be different in the relevant respects.

The question now becomes, in what morally relevant respects can all people be said to be
equal, and in what relevant respects can they be said to be unequal. I discussed some
attempts that have been made to ground human equality on the notion of equal human worth.
The main problem with this project is that whatever kind of value "human worth" may be, it
must be based on some non-value characteristics of human beings. However whatever these
characteristics may be they are likely to vary from person to person, and they can therefore
hardly serve as a foundation for equal human worth. This has led philosophers to try to base
equal human worth, not on any property or set of qualities, but on "the human point of view". Irrespective of all the differences between human beings, they all view the world from a human standpoint, and they all have a human life to lead.

However, the view that human worth can exclusively be built on the impartial human point of view is implausible. In order to show this I discussed the doctrine of egalitarianism, according to which the members of the community have a legitimate claims to an equal share of the community's resources. According to egalitarians, such as Dworkin, liberal neutrality is a consequence of the principle of treating individuals with equal concern and respect; the government does not treat its citizens as moral equal if its policies are based upon some particular conception of the good life which some of the citizens do not share, or some conception of human nature which mean that some citizens are inherently more deserving than others. The basic insight of the principle is that from an impartial standpoint, what happens to anyone matters the same as if it had happened to anyone else. Hence, politics should aim that people have better lives, and aim at this in some way that treats their fundamental interest as equally important for each person.

My main criticism of the egalitarian doctrine was that it unreasonably assumes that each person's life has equal moral value because impersonal value is somehow the predominant consideration in the evaluation of a person's human worth. I argued that, on the contrary, the importance of a person's life cannot be evaluated without any reference to the greater or lesser value that person has for others. A plausible account of moral worth must somehow bring together the impartial, and the more partial value of the person. In order to be able to evaluate an individual moral agent, one has, at least in part, to refer to the values that agent
seeks. It follows that people do not have equal human worth, because what each person seeks is not equally valuable. Thus, even from the standpoint of politics, the interests of members of the community do not matter equally.

One may worry that once the idea that all human beings have equal human worth is given up, the notion of equal rights will lose its foothold in the moral scheme. I do not believe that this is a serious problem, because even if people's lives are not all of equal value, we have still good reasons to extend them moral rights. My argument does not depended on the assumption that people's lives have no impartial value. One reason why people should have moral rights may precisely be that their lives have such impartial value. Furthermore, the view that individuals or groups should not fall below a minimum floor of well-being, or that an adequate range of opportunity should be provided for them, is I believe, not inconsistent with the view that people's moral worth is unequal. One cannot do justice to justice if the concept of desert is left out of the discussion. However, although I believe that desert is an important moral concept, it is certainly not the sole principle of justice. There are several other principles which are highly relevant, such as those just mentioned. To the question, how particularly all these principles can be reconciled, I have no concrete answer, and it has not been my aim in this essay to give one. I doubt, however, that there is any easy-to-apply method which makes it possible to find the "correct" solution. Moral theory is after all not an exact science. But one important thing a moral theorist can and should do in his work, is to try to be as sensitive as one can be to people's moral sentiments. It is in this spirit that I have argued that desert is relevant to justice. It is mainly those who want to go beyond the moral sentiments, and find a criterion of morality in some higher, universal, abstract, rational
principles, that tend to dismiss the concept of desert. To borrow Plato's analogy, they want to go out of the cave, instead of staying in it. But as Strawson points out, it is very doubtful that from these "rational" principles we can recover a sense of what we mean when speaking the language of morals. It is therefore useless to build a moral theory entirely on such principles. Of course, it is in the nature of people's moral sentiments that they vary, to some extent, from one place and time to another. The concepts of equality, justice and desert which have been employed in this essay do not represent eternal truths. What has been said here may only hold for certain western societies at a particular stages in their history. But then, what more can one reasonably expect.


——— "Social Unity and Primary Goods", in *Utilitarianism and Beyond*, Amartya Sen and Bernard Williams (eds.) (Cambridge:Cambridge University Press, 1982).


