



OXFORD JOURNALS
OXFORD UNIVERSITY PRESS

ANALYSIS

Desert and Entitlement: A Rawlsian Consequentialist Account

Author(s): David Cummiskey

Source: *Analysis*, Vol. 47, No. 1 (Jan., 1987), pp. 15-19

Published by: Oxford University Press on behalf of The Analysis Committee

Stable URL: <http://www.jstor.org/stable/3328700>

Accessed: 16/03/2009 14:05

Your use of the JSTOR archive indicates your acceptance of JSTOR's Terms and Conditions of Use, available at <http://www.jstor.org/page/info/about/policies/terms.jsp>. JSTOR's Terms and Conditions of Use provides, in part, that unless you have obtained prior permission, you may not download an entire issue of a journal or multiple copies of articles, and you may use content in the JSTOR archive only for your personal, non-commercial use.

Please contact the publisher regarding any further use of this work. Publisher contact information may be obtained at <http://www.jstor.org/action/showPublisher?publisherCode=oup>.

Each copy of any part of a JSTOR transmission must contain the same copyright notice that appears on the screen or printed page of such transmission.

JSTOR is a not-for-profit organization founded in 1995 to build trusted digital archives for scholarship. We work with the scholarly community to preserve their work and the materials they rely upon, and to build a common research platform that promotes the discovery and use of these resources. For more information about JSTOR, please contact support@jstor.org.



Oxford University Press and The Analysis Committee are collaborating with JSTOR to digitize, preserve and extend access to *Analysis*.

<http://www.jstor.org>

DESERT AND ENTITLEMENT:
A RAWLSIAN CONSEQUENTIALIST ACCOUNT

By DAVID CUMMISKEY

I RAWLS, NOZICK, AND FEINBERG ON DESERT AND ENTITLEMENT

RAWLS claims that we have no natural entitlement to the benefits generated by superior natural talents and abilities. To allow distributive shares of primary social goods to be determined by natural talents and abilities, he argues, is to let people's life prospects be determined by factors that are arbitrary from a moral point of view. We should, instead, agree 'to regard the distribution of natural talents as a common asset and to share in this distribution whatever it turns out to be' ([3] p. 101). I will refer to this as 'the common assets thesis'. Nozick responds by arguing that 'it needn't be that the foundations underlying desert are themselves deserved, *all the way down*'. He claims that we just may *have, not illegitimately*, some of the things or characteristics we use in coming to deserve something ([2] p. 225). Our natural talents and abilities are simply things we have, not illegitimately. And, since it is we that have them, why, he asks, are we not entitled to the benefits that are generated by them? It does not follow from the moral arbitrariness of this distribution that it may be treated as a common asset. Indeed, the very considerations supposed to show that we are not individually entitled to these assets would also show that we are not jointly entitled to the benefits. The natural distribution may be arbitrary and undeserved, but it is nonetheless the natural distribution. If no one has a claim on the pool of natural assets, then why should not those who fortuitously have these talents and abilities benefit from them?

Nozick's thesis, about the foundations of desert, is rather plausible and it does provide *some* support for his conclusion that those who fortuitously have the talents and abilities are entitled to the benefits that flow from them. Nonetheless I will argue that Rawls can, and does, accept the thesis that the foundations of desert need not be themselves deserved, and that Rawls can meet whatever burden of proof this shifts on to him. In order to demonstrate both the accuracy of Nozick's thesis about the foundations of desert and my claim that it is acceptable to Rawls, let us look more closely at the concept of desert.

Joel Feinberg has argued (i) that all attributions of personal desert must have a basis, and (ii) that the basis of a subject's desert must always be some factor about that subject. These two theses help clarify Nozick's thesis. (i) First, 'it is necessary that a person's desert have a basis' ([1] p. 61). 'Desert without a basis simply is not desert' ([1] p. 58). This feature of desert is obvious if one reflects

that it makes no sense to claim that someone deserves something 'for no particular reason'. As Feinberg puts it, 'judgments of desert carry with them a commitment to the giving of reasons' ([1] p. 58). The reasons that must accompany judgements of desert are the basis of the alleged desert. (ii) Second, it is a necessary condition that 'the facts which constitute the basis of a subject's desert must be facts about that subject' ([1] pp. 59, 61). 'If a person is deserving of some sort of treatment, he must, necessarily, be so *in virtue of* some possessed characteristics or prior activity' ([1] p. 58). Shawn cannot deserve a good grade simply because Cedric did well on the test. If Cedric's performance is the basis of Shawn's desert, then Cedric's performance must somehow be a reflection of Shawn's abilities or prior activities.

With this (partial) analysis in hand we can see what is plausible about Nozick's thesis. Nozick is simply pointing out that the possessed characteristics or prior activities, which provide the basis of someone's desert, need not themselves be deserved. If I win a race because of my natural talent, training, and tactical ability, then I may plausibly claim to deserve the prize. My personal desert does not presuppose that I also deserved my talent, my ability to train, and my tactical ability. As the concept of desert is ordinarily understood, it simply is not the case that one must deserve the basis of one's desert. Indeed, if the bases of desert, the talents and abilities, had to be deserved, then they too would have to have a basis which too would have to be deserved; etc. It would seem that the resulting regress would make desert impossible.

Nonetheless, although I agree with Nozick's thesis about the foundation of desert, I fail to see how it helps his case. Nozick's thesis is consistent with both an institutional and a pre-institutional notion of desert. Rawls grants that within the contexts of legitimate social institutions, those who do what the institutions announce they will reward deserve their rewards ([3] pp. 10, 103). And Rawls believes that public institutions which involve social and economic inequalities often provide incentives which work to the advantage of the least advantaged, and which are thus justified. Since he does not think that the bases of these entitlements are themselves deserved, he accepts Nozick's thesis; it is a corollary of his own position.

Nozick does, nonetheless, have a point. I would grant that the above objection shifts the burden of argument back to Rawls. Natural talents and abilities are not 'manna-from-heaven': even if the distribution of natural talents and abilities is arbitrary, these natural 'assets' are nonetheless distributed.

Since things come into being already held (or with agreements already made about how they are to be held), there is no need to search for some pattern for unheld holdings to fit ... The situation is not an appropriate one for wondering, 'After all, what is to become of these things, what are we to do with them?' ([2] p. 219).

Since holdings come into the world already held, is it not plausible to assume that those who fortuitously have the holdings are pre-institutionally entitled to the benefits that flow from them? We can legitimately treat natural talents as a common asset only if there are no pre-institutional entitlements to the benefits that flow from them.

II THE LOGIC OF DESERT AND ENTITLEMENT: A RAWLSIAN CONSEQUENTIALIST RESPONSE

By looking at the difference between desert and entitlement and their essential connection to social institutions, we will see that pre-institutional accounts of these notions are inadequate. *Desert bases are determined by antecedent goals*, and thus Nozick's entitlement theory is essentially flawed. Since Nozick does not present and defend a pre-institutional account of these notions I focus on Feinberg's argument.

The difference between desert and entitlement has led Feinberg mistakenly to conclude that 'desert is a *moral* concept in the sense that it is logically prior to and independent of public institutions and their rules' ([1] p. 87). Although Feinberg's analysis of the difference between the two concepts is correct, his conclusion does not follow.

Feinberg begins by pointing out that 'to say a person deserves something is to say that there is a certain sort of propriety in his having it' ([1] p. 56). He then attempts to clarify 'the particular kind of propriety distinctive of desert... by contrasting it with other forms of propriety' ([1] p. 57). He distinguishes three kinds of propriety conditions. 'There are those whose satisfaction confers eligibility ("eligibility conditions"), those whose satisfaction confers entitlement ("qualification conditions"), and those conditions whose satisfaction confers worthiness or desert ("desert bases")' ([1] p. 58). In the case of the office of the presidency of the United States the eligibility conditions are natural-born citizenship and a minimal age of thirty-five years. The entitlement condition is getting the most electoral votes in a fair election. If one satisfies both the eligibility conditions and the entitlement conditions then one 'can claim the office... as his *right*, according to the rules he is entitled to it' ([1] p. 57). Satisfaction of these conditions does not, however, confer worthiness or desert.

To deserve something, one must be qualified in still a third sense: one must satisfy certain conditions of worthiness which are written down in no legal or official regulation. Thus to be 'truly qualified' for the presidency, a person must be intelligent, honest, and fair minded; he must have a program which is really good for the country and the tact and guile to make it effective ([1] p. 57-8).

We thus have a distinction between entitlement or victory conditions and worthiness or desert bases. Even though ordinary language does not precisely distinguish these two concepts, the difference is familiar and intuitive. In many cases of awarding prizes, grades, rewards, offices we have entitlement without desert or desert without entitlement. The person who satisfies the entitlement conditions need not be the same as the one who is most deserving.

Granting all of this, in what sense does it follow that 'desert is a *moral* concept . . . that is logically prior to and independent of public institutions and their rules'? To answer this question we must diagnose what happens when desert and entitlement come apart.

In the simple case of a contest of skill for a prize it often occurs that the person with the most skill fails to satisfy the victory condition. When this occurs, the most likely cause is some stroke of bad luck which leads to an off day. The next likely cause is that the victory conditions themselves were in some way ill chosen. Given this diagnosis of the likely causes, does it follow that desert is 'logically prior to and independent of' the race and its rules?

A race is a social institution which is usually constructed for some specific purpose. We cannot conclude that someone deserves to win the race without, at least tacitly, appealing to the purpose of the race. When we say that the most skilled deserves to win then we are assuming that the point of the race is to reward skill. Since rewarding skill is the point of the institution it also is the appropriate basis of desert. In an important sense desert is not independent of the rules, for the point of the rules is to single out the one most deserving of victory. If the winners of a race were habitually not the most deserving *because* the rules were inadequate, then, if possible, the rules would be changed so as to bring entitlement and desert more closely together. In this sense desert is not independent of public institutions and their rules.

Desert is 'logically prior to' public institutions and their rules only in the sense that desert is directly related to the point of the institutions and their rules. Indeed, desert bases are determined by the point of the institutions. Without the prior social ends the institutions would have no point and there would thus be no appropriate basis of desert. The logical relations between a social goal or end, desert, and entitlement are as follows. First, we have the social goals or ends. These may be moral, immoral, or amoral. Indeed, this analysis is compatible with absolutism, relativism, or non-cognitivism. Next, we have desert bases. The appropriateness of desert bases is determined by whether or not a social policy of praising or blaming a subject with some characteristic or because of some prior activity is likely to further the goal of the institution in question. Last, we have entitlement conditions. These are the social mechanisms and social practices which reward or sanction individuals with the appropriate desert basis. In essence, entitlements set up expectations of specific treatment because of specific prior

activities or specific personal characteristics. Desert is logically prior to institutions in the same way that the point of the institutions is prior to the institutions. Feinberg has not established that desert is logically prior in any sense that would provide a constraint on the legitimate construction of institutions.

In the above example of the race I have followed Feinberg, and others, and argued by analogy from a fairly simple case. The example suffices to show that Feinberg's conclusion does not follow from his argument. Nonetheless, to avoid my conclusion, one might argue that I have illegitimately assumed that the case of the race and cases of moral desert are analogous. I respond as follows. First, the example of the race provides a clear and non-mysterious analysis of desert. If one accepts the analogy, one has an equally clear and non-mysterious analysis of moral desert. Second, this analysis provides the basis for a plausible account of the nature of backward-looking reasons, which are constitutive of some institutions. It thereby lays the foundation for an account of backward-looking reasons within a larger consequentialist framework. I believe that the compatibility of the analysis with both consequentialism and Rawls's Kantian theory is a virtue. Third, if one accepts my analysis of desert and entitlement for the case of the race but argues that moral desert is disanalogous, then one is committed to a non-univocal analysis of desert. *Prima facie*, however, the only difference between moral desert and other desert claims is that moral desert involves the moral point of view, the giving of moral reasons. Fourth, both Rawls and Nozick, in the final analysis, wish to avoid intuitionist appeals. Thus, within the context of this paper, the above objection assumes that there is a plausible non-intuitionist pre-institutional analysis of moral desert and entitlement. Until we have such an analysis in hand, we have no motivated reason for believing that the analogy is inadequate. The burden of proof has been shifted back.

Nozick's objection to Rawls presupposes a notion of pre-institutional desert and entitlement. I have argued that desert is an institution-dependent concept, and thus Nozick's objection to Rawls cannot be sustained.¹

*Bates College, Lewiston,
Maine 04240, U.S.A.*

© DAVID CUMMISKEY 1987

REFERENCES

- [1] J. Feinberg, *Doing and Deserving*, Princeton: Princeton University Press, 1970.
- [2] R. Nozick, *Anarchy, State, and Utopia*, New York: Basic Books of Harper Torchbooks, 1974.
- [3] J. Rawls, *A Theory of Justice*, Cambridge: Belknap Press of the Harvard University Press, 1971.

¹ I would like to thank Sarah Conly, Steve Darwall, Allan Gibbard, Mike Lavin, John Nolt, Betsy Postow, Peter Railton, and the referees of *Analysis* for helpful discussion or comments.