

Desert in liberal justice: beyond institutional guarantees

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ABSTRACT

I argue that a theory of distributive justice is sensitive to desert if and only if it (1) does not require an institutional scheme that *prevents* individuals from treating one another as they deserve, and (2) requires a desert *ethos*. A desert *ethos* is a set of principles that, though not embodied in a society's basic coercive structure, nevertheless governs interpersonal relations between citizens. These two necessary conditions are jointly sufficient for 'giving desert its due' in a theory of justice. I therefore reject the received view that a desert-sensitive theory must endeavor to guarantee distributions patterned according to desert.

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1. Introduction

Some years ago, Samuel Scheffler observed that many liberal theories were out of step with political morality in the United States. As he saw it, political philosophers (especially those under the influence of Rawls) tended to neglect norms of desert and deservingness, norms that a significant subset of the population takes to be relevant for determining the justice of political outcomes (Scheffler 1992).

Perhaps political philosophy has been correct to discount these norms. After all, the question of whether a person deserves what she has is inescapably 'entangled' with facts about her upbringing and her genetics – factors that are arbitrary from a moral point of view. It is, in practice (or perhaps in principle), impossible to discern the extent to which an individual deserves her position and to what extent she has been merely lucky.¹ But desert-based principles must take a stand on the matter. Thus, recourse to such principles contaminates

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political outcomes with morally problematic contingency. For this reason, Rawls denies that individuals behind the veil of ignorance would choose desert-based principles (Rawls 1999; compare Arneson 2006).²

Some have argued, against Rawls, that bargainers behind a veil of ignorance would in fact choose desert-based principles (e.g. Sterba 1974). Others hold that distributive justice is essentially about giving each his due (*suum cuique tribuere*), and that part of what a person is due stems from considering what she deserves (e.g. Pojman 1999), regardless of what hypothetical choosers would agree to. If certain models for constructing principles of justice rule out the possibility of desert-based principles, so much the worse for those models. David Schmidtz, for example, writes that, if Scheffler is correct that no version of contemporary philosophical liberalism assigns a significant role to desert, then 'prominent contemporary versions of philosophical liberalism are mistaken' (2006, 33). Arneson agrees (1997, 328).

But this agreement leaves substantial issues unsettled. What is it for a philosophical theory of distributive justice to assign a significant role to desert? In Arneson's words, what is it for a theory of justice to be 'hospitable to norms of individual responsibility and deservingness' (ibid.)?

In this paper, I venture an answer to this question along the following lines. A theory of distributive justice is hospitable to desert only if it does not require institutions that *prevent* individuals from treating one another as they deserve. So formulated, this is both too vague and a mere necessary condition. The vagueness will have to be dealt with later, but another condition ought to be added. Also necessary is that the theory reinforces what I'll call a desert *ethos*.³ A desert *ethos* is a set of principles that, though not embodied in a society's basic coercive structure, nevertheless governs interpersonal relations between its citizens. Citizens governed by a desert *ethos* recognize and are motivated by duties to treat one another as they deserve. These two necessary conditions are jointly sufficient (assuming other background conditions are met) for 'giving desert its due'⁴ in a theory of justice. I therefore reject the received view that, to be sensitive to desert, a theory requires a commitment to institutional principles that seek, as far as possible, to guarantee distribution patterned according to deservingness.

The paper proceeds as follows. Section 2 clarifies the terms of the debate, and introduces the standard conception of what it is to reserve a place for desert in a theory of distributive justice. Section 3 rejects the standard conception, developing an alternative account along the lines sketched above. Section 4 considers objections, and Section 5 concludes.⁵

2. Entitlement, desert, and distributive justice

Before beginning, it will be helpful to disambiguate two distinct but closely related notions: entitlement and desert. Following convention, I will say that

a person's entitlements are generated by the institutional rules that govern her actions. If we have a race-running institution that is governed by a rule requiring the distribution of a gold medal to the first person across the finish line, the person who crosses the finish line first is entitled to a gold medal. That is not yet to say that such a person deserves the gold. To see this, consider two types of desert (institutional and non-institutional) and notice that entitlement is distinct from each.⁶

Institutional desert is generated by the *goals* that an institution is designed to serve. Suppose that the goal of our race institution is to recognize the fastest runners. The rule that whoever crosses the finish line first shall be awarded a prize is a reasonably good way of advancing that goal. Still, from this angle, we can see why entitlements generated by such a rule are not necessarily institutionally deserved. Suppose that the fastest runner in our race slips on some wet grass just before the finish line. As a result, she loses. By virtue of her having been the fastest runner, she institutionally deserves the prize. That distribution fits best with the underlying goal of the institution. But, since someone else crossed the finish line first, she is not entitled to it. The actual race-winner does not institutionally deserve the prize to which she is entitled. Therefore, entitlement and institutional desert come apart.

By contrast, non- or pre-institutional desert does not derive from extant institutions or their goals. A person deserves in the pre-institutional sense when some feature of her character or past actions simply makes her worthy of a certain kind of treatment. Now change our example so that the fastest runner really does win the race. She institutionally deserves the gold, and is entitled to it. This is compatible with her not being a very non-institutionally deserving person. The idea here is that, whereas institutional goals can make any behavior, characteristic, etc. a ground of (institutional) desert, there is a pre-institutional notion that constrains and shapes the institutional goals we ought to adopt (provided deservingness is something we care about). Perhaps the runner in our example is vicious or lazy, and so it is not very fitting after all that she has the prize. Other things equal, it would be better to have institutions that did not reward people like that. Noticing this allows us to see that entitlement, institutional desert, and non-institutional desert are distinct notions (cf. Feinberg 1970, 57; compare Olsaretti 2004, 16–19).

Nobody denies that a just institutional scheme will distribute according to a person's entitlements,⁷ and it is fairly uncontroversial that institutional desert is relevant for considerations of justice.⁸ To distribute according to entitlements is a requirement of justice because it makes our institutions credible. It would be hard to take institutions seriously that generated legitimate expectations in people without distributing in line with those expectations. To distribute according to institutional desert is to require that our institutional rules be well formed relative to their goals. More controversial is whether justice requires distribution according to non-institutional desert. And it is philosophical liberalism's

apparent lack of concern with non-institutional desert that motivates Scheffler's worries that it is out of touch with commonsense political morality.

For a person to have a non-institutional desert claim is for it to be fitting for her to enjoy some treatment or resource even when there is no existing institution even aimed at securing it for her. Non-institutional desert claims have the general form: S deserves X in virtue of F, where F is not some institutional rule or goal, but some past performance or possessed characteristic (Feinberg 1970, 57).⁹ In the context of distributive justice, the relevant X's – the things to be distributed – are economic benefits, offices or positions. The relevant F's have largely been taken to include things like effort, contribution to cooperative ventures, excellence in performance, moral character, etc.¹⁰ With these basic distinctions out of the way, I turn now to considering the question of non-institutional desert in the context of distributive justice.

There is a widespread intuition according to which a world is better, the more closely its benefits and burdens are distributed according to desert (Kagan 1999). The good should prosper and the wicked should suffer; the hardworking should flourish and the lazy should languish. There is something fitting about such states of affairs. Call this the desert requirement of 'cosmic justice.'¹¹ This requirement generates two questions.

- (1) Should (or does) desert play a central role in our thinking about justice as it pertains, not just to cosmic justice (which tends to have axiological implications only), but also distributive justice (which has deontic implications as well)?
- (2) Does justice demand of our institutions, specifically, that they distribute to according to desert (as far as is possible)?¹²

As we have seen, theorists disagree about whether or not we should offer an affirmative answer to (1). Those who argue for a negative answer tend to agree with Rawls that there are good normative and epistemic reasons to ignore desert when considering distributive justice. On the other hand, those who give an affirmative answer tend to argue that doing so reverses an unfortunate trend in much contemporary thinking on the topic of distributive justice. In reserving a place for desert in a theory of distributive justice, we ensure that human beings are treated as active shapers of their own fates, rather than passive recipients of goods. I set this dispute to the side. What is important for my purposes is the agreement among theorists that *if* (1) is answered affirmatively, (2) should be answered affirmatively as well. Call this the standard view.

According to the standard view, if desert should play a fundamental role in distributive justice, then economic benefits and prized positions ought to be distributed according to their relevant desert bases insofar as this is possible (within the confines of justice and efficiency). If economic goods are to be distributed according to one's contribution to the creation of economic wealth, for example, then there is *pro tanto* reason to favor institutional arrangements that achieve a

match between a person's contribution and her economic goods. Later, I argue that the inference *from* the fact that desert matters for the deontic aspects of distributive justice *to* the requirement that institutions guarantee that people get what they deserve is invalid. But, first, I distinguish between two competing views about the bases of desert (contribution, and conscientious striving, respectively) and observe that defenders of both accept the standard view.

David Miller is a leading proponent of the first view, and argues that desert-based meritocracy 'implies that people should be rewarded in proportion to their productive contribution' (1999, 197; see also *ibid.*, 163). Moreover, Miller sees the market as an approximately meritocratic arrangement: 'Provided that markets remain competitive,' he writes, 'and provided that enterprise managers make a conscientious effort to assess the respective contributions of the people they employ, there is no reason [market] rewards should not correspond to desert in the form of productive achievement' (*ibid.*, 193).¹³

Yet some wonder why we should be meritocrats in Miller's sense. If the motivation is to render our distributive principles sensitive to persons as responsible, rational agents, don't we need to know to what extent people are responsible for their contributions before we agree that the latter underwrite desert claims?

This question motivates the second view. Sometimes, perhaps even often, as a result of factors beyond her control, one person's contribution will be lower than another's. Due to John's upbringing (and perhaps some unfortunate genetics), the only job he can find is as a janitor. He works hard but, despite his hard work, cannot contribute at as high a level as he would like. His contribution is accordingly meager; so too is his pay. Jane on the other hand had a good upbringing and went to Yale; she coasted by with good marks despite being a somewhat lazy student. Eventually, she secures a job managing accounts for a major corporation and makes millions over her lifetime despite never exerting herself to the degree that John exerts himself. Miller's meritocracy seems to suggest that both John and Jane get what they deserve. Isn't this counterintuitive? Richard Arneson says yes.

To deserve something, according to Arneson, one must be responsible for bringing it about. Arneson and Miller agree on that point, and also that, to be responsible for bringing something about requires that it lie within your control to do so. But whereas Miller thinks that certain kinds of luck (e.g. the luck involved with having a particular genetic makeup or set of natural talents) do not interfere with your having control over an outcome, Arneson argues that these types of luck *do* undermine the relevant kind of control.¹⁴

Both authors agree that accounts that deny that one can deserve on the basis of natural talents are corrosive with respect to our ordinary judgments concerning what people deserve (Arneson 2006, 269; Miller 1999, 146). We might initially identify some agent's performance as deserving of some treatment. But after reflecting on the dependence of such performance on the individual's natural talents and the degree to which these lie outside her control, we are left

wondering: Is she deserving after all? For Arneson, answer is No. An individual deserves, on his account, as long as she conscientiously strives to do what is right by her own lights, whatever her contribution. But for Miller, the strength of our initial judgments implies that luck in the distribution of natural talents is irrelevant for control and desert – one's contribution really is what matters after all.

Despite their differences, what Miller's account and Arneson's account have in common is the standard view: institutions should be designed to approximate what people deserve, whatever that consists in. Thus, Miller proposes to regulate markets in order to approximate deservingness when market outcomes are expected to fail to track desert, and Arneson claims that something similar would be required to take desert seriously in matters of justice. Miller's coarse-grained notion of what it is to deserve implies only that satisfying a desert-based distributive principle will be less costly than satisfying such a principle will be on Arneson's fine-grained account.¹⁵ Theorists who accept desert as an important component of justice say that we should absorb the costs. To do so is to (rightly) trade utility against justice (e.g. Moriarty 2005, 214–215).

However, as I shall argue, there are reasons – reasons pertaining to the structure of desert itself – to think that taking desert seriously in a theory of distributive justice does not make such institutional demands. Instead, I will argue that what it means for a theory of justice to take desert seriously is two-fold: (1) institutions must be designed so as to allow individuals to treat one another as they deserve to be treated; and (2) part of the *ethos* promoted by accepting a theory of justice should encourage in citizens' personal sense of justice a substantial concern for what people deserve. Many of our intuitions about deservingness are intuitions not about how society as a whole should be ordered, but instead about how it should *not* be ordered, and what kinds of things people in charge of distributing various goods ought to be sensitive to in their distributive roles. Intuitions that desert matters do not commit us to judging that it would be desirable if society were arranged so that individuals always got what they deserved, on whatever understanding of what it takes to deserve economic benefits and burdens.

3. Against patterns: the interpersonal nature of desert

Proponents of desert are moved by the following kind of case:¹⁶

Best Candidate: A restaurant is hiring a new delivery person. The manager, Bob, interviews two applicants. Candidate A is late for the interview, and has no relevant experience. A's previous employers claim that she is lazy, and she comes across in the interview as being generally rude. Candidate B arrives on time, and has held many relevant jobs. B's former employers praise her work ethic and kind demeanor and B is polite and respectful. Despite judging that B is better qualified, Bob finds candidate A physically more attractive, and awards the job to A.

Bob acted unjustly, we judge, and neither just because his hiring A will harm his customers by subjecting them to miserable service, nor because hiring A was inefficient.¹⁷ Instead, he wronged B by failing to give her the opportunity she deserves. Moreover, Bob's wrong does not consist merely in upsetting one of B's legitimate expectations. To see this, consider a second case:

Bad Advertising: Bob (our manager in the last case) posts a job listing that makes very clear that the job will be assigned, not to the best-qualified candidate, but instead to the most physically attractive candidate. Candidates A and B apply, and each possesses the same attributes as before. Bob hires A.

Despite the fact that B did not have any expectations of securing the job based upon her qualifications, it is plausible to think that Bob still wrongs B. Bob wronged B because he deprived B of something that, morally speaking, B deserved, something that it was fitting for B to have.

Suppose we agree that Bob acts unjustly: does that entail that the institutional setting that tolerates his behavior is thereby unjust? I suggest that the answer is No. And if the answer is no, a theory of justice can take desert seriously without being committed to implementing desert-based distributive principles at the institutional level. To see why the answer is in fact no, let me relay a story.

When I was 16, I applied for a job at a local restaurant known for its ice cream. I was to get my license later that year, and I needed to save money for a car. I worked as a cashier for several months, twice a week after school, and took my responsibilities seriously. I was proud of the paychecks I earned, and my manager appeared pleased with my work, regularly asking me to log additional hours. As summer drew near, management hired another cashier – call him Alex. He was a few years older than me. Still, he could not seem to do anything right. Six-gallon tubs of ice cream were left outside the freezer to melt; customers were given the wrong change; customer orders were consistently messed up; inventory was mis-recorded resulting in shortages; and the servers complained that they could not rely on his help during the dinner rush. On top of all this, he was lazy, and seemed uninterested in learning how he could do better.

One night Alex and I were closing together, and he started to complain about his pay. He asked what I was making. I told him: \$7.00 an hour. Eventually, I learned that he was complaining because he had been denied a raise from \$9.50. I didn't resent him for that. But I did resent my manager. The next day, I went to his office and demanded to make at least what Alex was making. I'd had no problem with my wage before I learned of his.¹⁸ It wasn't as if I thought I was being exploited. It was that, in light of new information, I judged that I wasn't getting what I deserved for the work I did.

What I thought I was owed was recognition (in the form of a higher wage) that I was (at least!) as valuable to the company's success as Alex. It is crucial that I wanted recognition from the institution itself. Had a third party stepped in, e.g. to adjust our pay, this would not have been an appropriate response. Justice would have been done only if management had agreed to give me a

raise in recognition of my work.¹⁹ When I opened my next check and saw that the raise I had been given was \$.07, I walked. When they called me every week for the next month asking if I would return to work (promising me more money) I refused. I did not want to work for a company that treated its employees like that. The problem wasn't the institutional scheme that allowed that restaurant to exist. The problem was how the restaurant's management had chosen to exercise its agency within that framework.

Suppose that the above case reflects a failure on the part of my employer to respect norms of deservingness. Suppose further that I am correct in locating the problem where I have: the injustice was committed by the restaurant, rather than the broader framework within which it operated. What does this case tell us? I suggest that it reminds us that there is something irreducibly interpersonal about desert claims, both what it is to make them, and what it is to have them fulfilled.²⁰ Desert claims are asserted by one responsible agent against another. A person who asserts such a claim against a person or institution makes a demand for a certain kind of treatment – not against society, not against its basic coercive structure – but against *that* institution, *that* employer, or *that* individual. And I suggest that this feature of desert claims matters when considering the practical implications of taking desert seriously as a matter of distributive justice.

My employer did not distribute according to desert. In so failing, those involved acted unjustly. Granted. But notice: were they forced to distribute according to desert in the way many desert-friendly theorists suggest, I would have missed the opportunity to exercise agency in getting what I deserve. And I suspect that, for those interested in theories of distributive justice that pay greater heed to the active, responsible individual, this opportunity matters at least as much as the relevant patterned outcome. I cannot be sure of that, of course. But now notice some striking features of the case.

First: the restaurant was not prevented from distributing according to desert. It opted not to. Had it been *prevented* from treating me in accord with principles of desert, then a desert-sensitive theory of distributive justice must condemn the responsible institutions. But as long as individuals and businesses are not so prevented, it seems that a desert-sensitive theory need not say anything at all about the basic structure of the relevant society.

Second: I learned something from the way the restaurant handled the choice it was given. I learned how to take responsibility for getting what I deserved, and I was given the opportunity to express resentment where it was due. I don't know if the expression of resentment made a difference, but the fact remains that I was glad to know for whom I was working. I do not think, then, that the fact that I was treated unjustly condemns the institutional atmosphere within which the unjust treatment occurred.

Indeed – and this is a further claim – sometimes it seems that by virtue of considerations like those raised above, an institutional scheme fits better with our intuitions about desert if it does *not* attempt to pattern outcomes in the way

the standard view implies it should. Recall that friends of desert begin by arguing that other theories of distributive justice treat human beings as passive recipients of goods, rather than as beings responsible for shaping their own fate.²¹ To distribute according to desert is allegedly to reverse this unfortunate trend. Respecting and allowing for the development of responsible agency is thus at least one value underlying desert-based theories. But were we committed to affording desert a role in distributive justice in the way that the standard view suggests, we would focus on the wrong features of the case relative to this value. We might consider punitive measures against the restaurant itself, or we might propose that the store manager himself ought to lose his distributive privileges. But it's hard to see how these proposed measures comes any closer to treating individuals as responsible agents. Whatever one thinks, such proposals appear to be optional for a theory of distributive justice that recognizes significant injustice in failures to treat individuals as they deserve to be treated.

One naturally wonders what the upshot *is* for institutions. I said above that taking desert seriously requires that people be given a genuine opportunity to treat one another as they deserve to be treated (and perhaps the opportunity to fail to do so). This condition might seem thin, but it does restrict the range of permissible institutions considerably. The requirement that the people in charge of distributing resources not be prevented from distributing according to desert requires, e.g. that we reject any arrangement that requires individuals in distributional roles to maximize efficiency.²² Treating people as they deserve to be treated does not promise to be efficient (though given plausible assumptions about human psychology, it often will be).²³ Moreover, if individuals are to be allowed to be sensitive to desert in their distributional decisions, then they will not be required to deploy their resources or to make other distributive decisions *solely* on the basis of some narrowly construed and morally irrelevant factors like race, sex, or religion. Such arrangements *require* that decisions concerning the distribution of goods be made on the basis of factors other than desert, and so they are sensibly ruled out by theories that champion the importance of desert in distributive matters.

If leaving individuals free to assert and respect desert claims as they see fit is part of what taking desert seriously requires, perhaps it makes sense that many desert-theorists are drawn to market institutions (despite the well-known fact that market distributions are not guaranteed to track desert). Perhaps such theorists never meant to say exactly that, in a market setting, everyone gets what they economically deserve. Perhaps they meant instead that distributing positions and incomes via market mechanisms allows people to strive to make themselves deserving in ways that respect responsible agency and the interpersonal nature of desert. But if they let on that a theory of justice sanctions market-based societies as such, such theorists are mistaken. Nothing about a market-based society rules out that it might be comprised of individuals who are wholly unconcerned with desert. (Imagine a society of utility-maximizers

where individuals' utility functions include no preference to see deservingness rewarded.) A theory that requires institutions that allow individuals the chance to treat one another as they deserve therefore satisfies a mere necessary condition for taking desert seriously as a component of justice. This brings us to our second requirement. A theory of justice that affords desert and responsibility a place will require cultivating what I have called a desert *ethos*, and condemn as less-than-fully just any society that does not instantiate such an *ethos*.

A society is characterized by a desert *ethos* when people in their interpersonal lives, and especially in their capacity as distributors of scarce resources, are sensitive to, *inter alia*, what candidates, friends, family members, strangers deserve. To be sensitive to what others deserve is part of what it means to treat them as responsible agents, as persons. As persons, we have obligations of justice to be sensitive to considerations of desert when interacting with one another, even if such sensitivity is not coerced or otherwise institutionally mandated. A theory of justice takes desert seriously by refusing to recognize as fully just any society where citizens routinely flout such obligations.

Sometimes it will be the case that those who are guided by such an *ethos* judge that a person who does not contribute much deserves a second or a third or a fourth chance. On what basis? Perhaps such a person deserves further chances because she conscientiously strives to do the best that she can. Her contribution is not relevant, at least not always. Other times, we may have doubts that a person deserves a second chance, or we might judge (taking into account all of the evidence available to us) that she positively does not deserve a second chance. Trusting these judgments and acting accordingly is part of respecting people as responsible agents. This does not rely on our being infallible judges. Sometimes we will get things wrong. When we do, it will matter. Such mistakes form an ineradicable and deeply regrettable part of our lives as moral agents.

I have been arguing that it is no necessary part of a desert-sensitive theory of justice to require that its basic institutions distribute (as far as possible) according to desert. I have also suggested that there may be reasons stemming from the notion of desert itself to resist such institutions. For all that has been said, this account of what it is for a theory of justice to take desert seriously is underspecified. Certainly not everyone will be sympathetic. In the hope of attaining greater specificity (and gaining additional sympathizers), I turn in the next section to considering some objections.

4. Objections

The basic claim defended in Section 3, recall, was that we can maintain a place for desert in our theories of justice without recommending top-down, patterned distribution according to desert. To motivate this possibility, I suggested a further claim, namely that some of the very reasons why desert seems to morally matter also indicate that the standard view is misguided in recommending such

patterned distribution.²⁴ But one might worry that I have thereby proven too much. Consider that most take anti-discrimination laws to be required by justice, and further that, on a plausible interpretation of those laws, they are geared at ensuring that individuals get what they deserve. To be sure, the account sketched above condemns any society characterized by widespread discrimination. Such societies lack, among other things, a desert *ethos*, and so at best satisfy a necessary condition of the account sketched above. But this seems to offer little comfort: We want to say that coercive institutions really are permissible or required here.²⁵ A number of responses to this serious concern seem plausible.

First: although there is a plausible desert-based interpretation of anti-discrimination law, that interpretation is not obviously the best interpretation. Indeed, it strikes me as more plausible to say that such laws are aimed at ensuring a kind of equal treatment for individuals regardless of sex, gender, race, religion, etc.²⁶ Whether individuals get what they ultimately deserve is beside the point. If so, then anti-discrimination laws would mark out a class of claims about what people ought to have that are not genuine desert claims (on this point, see Note 9). Thus, we might simply observe that desert and the values underlying it are not the only values. The values appealed to in the account sketched here *do* imply that, to the degree that anti-discrimination law compromises individuals' abilities to exercise and develop responsible agency, there is a *pro tanto* reason against it. But nothing here implies that such law must be all-things-considered unjustified.

Additionally, we might observe that a society with strong anti-discrimination laws can still reserve plenty of room for individuals to develop responsible agency. After all, the case involving my employer above takes place in an institutional context in which anti-discrimination law operates in the background, and the lesson of the example was precisely that the institutional scheme was not the problem.

Further, it is (I think) important that anti-discrimination laws are plausibly understood as requirements that derive their urgency from unjust but historically contingent circumstances. Consider for example that there is (in the United States) no federal law prohibiting discrimination on the basis of eye color (except insofar as that characteristic is correlated with membership in a protected class).²⁷ Yet this omission appears unproblematic. This is in part because no particular eye color has been associated with historical acts of oppression, and there is no reason to believe that benefits and burdens break down primarily along the lines of this characteristic. If denied service (or some opportunity) on the basis of eye color in ordinary circumstances, one would recognize a bizarre kind of injustice in the act of denial. But one would also likely think that the problem could be addressed via informal means (boycott, blame, etc.). These considerations suggest to me two things.

First, a truly just society might *not* have anti-discrimination laws, because individuals living in such a society would be opposed to discrimination, and

would voluntarily undertake means of combating any implicit biases they exhibit. Second, the legal requirements that appeal to us in our circumstances may derive more from those circumstances, than from considerations of justice in isolation.

For the above reasons, I think that the first objection fails, and that a theory of justice sensitive to desert in the way I have described can recommend anti-discrimination laws when the circumstances require them. An additional attractive feature of the account (brought out by the objection) is that it suggests good grounds for opposing such laws when they appear unnecessary. In so doing, my account sheds light on still very active debates concerning the value and limits of the freedom of association.

Still, anti-discrimination laws aside, doesn't the picture offered doubly privilege those with greater natural talents, negotiating skills, etc., by not only taking desert into account, but also holding individuals accountable for getting what they deserve? No. Because it is the responsibility of everyone to be concerned about what each deserves, it is the responsibility of everyone not to take advantage of persons who undervalue their own talents.²⁸ Moreover, were people suffering as a result of not being able to get what they deserved in recompense for their labor, for example, there may be significant obligations on the part of others (and the state) to step in and ensure that they were nevertheless capable of leading decent lives. The grounds of these obligations would not be desert, but perhaps welfare, and discharging them is compatible with the account proffered here.

Turn now to the second objection. I argued above that the interpersonal nature of desert suggests that ensuring that people get what they deserve through third-party mechanisms is inappropriate. One might resist this by claiming that the interpersonal character of desert is consistent with coercive attempts to guarantee distribution according to desert. The objector might note that institutions have an expressive character, and draw an analogy with retributive justice to support her case: Surely when person A trespasses against person B's property, A fails to show respect for B. It would be appropriate for B to resent A. Still, A deserves punishment, and the objector astutely observes that we would *deny* that it should be B who carries out the punishment. Instead, justice is done when a third-party (i.e. the state) punishes A, and part of the state's obligation to do so is grounded in its appropriately expressing A's interests.²⁹ So why not say something similar in the case of rewarding desert in distributive justice?

Ultimately, I think that the analogy between retributive and distributive justice fails. In matters of retributive justice, there are both pragmatic reasons and reasons of procedural justice for which B cannot personally punish A. On the pragmatic side, we might worry that leaving punishment to individuals is likely to issue in on-going, costly disputes, and that leaving it to a neutral third party avoids this inconvenience.³⁰ On the procedural side, we might be concerned that

people are owed a fair trial before they endure punishment for a crime, and that individuals left on their own are likely to strike first and ask questions later. But I think neither of these conditions (nor any close analog) obtains in the case of distributive justice. Instead, when a private party fails to give us what we deserve in an economic setting, the best response is not to get someone else to force her to comply, but to express resentment and take our goods and services elsewhere in the hopes that the responsible party makes amends. Similarly, when we learn that business owners do not treat their employees as they deserve to be treated, the appropriate response is to withhold our patronage from such businesses, to express blame, and to attempt to get others to do the same. When we do so, this is often (rightly) the end of the story. The issue of a fair procedure also seems far less weighty here. After all, we tend not to think that individuals need to defer to a neutral third party when evaluating whether it is the case that their contribution has been adequately recognized.

A third objection presses a sociological point: suppose it is true that a just society requires a desert *ethos*. Still, proponents of such an *ethos* ought to recognize and embrace the *ethos*-shaping character of coercive institutions, for a basic structure that evinces a concern with desert is likely to instill in its citizens a like concern. Though this objection rests on an empirical claim about the relationship between institutions and the dispositions of those that live under institutions, the empirical claim appears plausible.³¹ Still, we should distinguish between two claims of differing strengths. According to the first, it is *impossible* to cultivate a desert *ethos* without the influence of desert-oriented institutions. According to the second, it is simply more difficult to realize an *ethos* in the absence of desert-sensitive institutions.

It seems to me that the first claim is simply false. There are all kinds of justice-related concerns that precede the existence of institutions to back them. The objection then must rest on the second claim. Yet the second claim does not pose significant problems for my account. First, much turns on how much more difficult it is to cultivate a desert *ethos* without the backing of the appropriate institutions. Depending upon how important it is to develop citizens' senses of responsible agency, it might turn out that it is better to forego the help of coercive institutions than to enlist it. Second, even if coercive institutions turn out to be desirable in the short term, the theory developed here has clear transitional implications: Such institutions ought not to survive past their optimal level of effectiveness in terms of the relevant values. Even if it turns out for the purposes of maintaining the desert *ethos* that part of the basic structure must remain sensitive to desert in perpetuity, my account develops resources for understanding the moral costs that are incurred by relying on such institutions. Such costs might be worth bearing, but they are costs nonetheless.³²

This leaves us with our final objection, namely that this picture of what it is to take desert seriously has relied on intuitions drawn from examples that presuppose generally market-based institutions for distribution. Accordingly, the

conclusions drawn are of no importance if the market is unjustified. The objector is right that I have largely assumed a market framework where it is largely individuals in charge of distributing benefits and burdens, rather than the state. But I think there are two things to say. First, I think the intuitions elicited here track something pre-institutional concerning how our interactions ought to be structured, rather than something that itself *relies* on an independent justification of the market. Therefore, if the ideal described here is attractive in its own right, then it can be part of a fuller moral defense of the market (*pace* Olsaretti 2004). Second, the account outlined above does not really presuppose full ownership rights over productive property (although it may suggest a picture of the person that confers upon such rights a certain measure of attractiveness). The account is instead consistent with any system of property that affords individuals significant rights in hiring and determining the salaries of other individuals.

5. Final remarks

For some, philosophical liberalism's recent failure to represent human beings as responsible agents is deeply unfortunate. In response, philosophers have attempted to incorporate desert-based principles into their theories of distributive justice. Such principles require institutional measures assuring that distribution will track desert (so far as is possible). I have argued that a liberal theory can leave room for desert without such institutional requirements. My further claim has been that rejecting those requirements may sit better with our intuitive sense of what it is to show respect for morally responsible, active agents. In closing, I want to acknowledge several questions concerning which further work is desirable.

First, I have presupposed here that justice upholds a plurality of values (e.g. equality, liberty, efficiency, etc.). A fully worked out account in this spirit must specify and set the tradeoff rate between these values (desert against equality, against liberty, against responsible agency, etc.). Until further normative work is undertaken in this regard, it is difficult to know precisely what institutional changes are desirable based on the framework sketched here. Second, there is important work to be done in articulating the steps necessary to foster an *ethos* in a society characterized by widespread disagreement. Such work will need to rely on current empirical research concerning the relationship between institutions and norms, and may need to extend this research in various directions. Moreover, but in the same vein, there is work to be done in specifying the ethics of informal sanctions, upon which any account that stresses the importance of *ethos* justice must rely. Finally, there is very important work to be done in adjudicating the debate between Rawls and others on the question of the place of desert in distributive justice. For this paper has left open the possibility that Rawls and his followers have been right all along.

Though, therefore, more needs to be said on these and other questions, it is my hope that the arguments offered here press us in the direction of taking them up. There is a trend in much thinking about distributive justice that infers from the importance of some value in distributive contexts to a claim about constraints on the configuration of society's basic structure. The literature on desert exemplifies this trend, but it is not the only such literature. To the extent that the trend rests on a mistake, I hope that this paper inspires further research into alternative means of setting things straight. As for the arguments offered here, I eagerly await their criticism.

Notes

1. Moriarty (2002, 2005) has deemed this the 'epistemological argument' against desert-based distributive principles: justice does not require distributing according to desert because doing so requires information that is too costly to come by. He argues that the epistemological argument is mistaken, not because such information is less costly than critics suppose, but because sometimes justice requires assuming such costs.
2. F.A. Hayek rejects desert-based principles for a different reason, but also appeals to their undesirability in a particular choice situation. For Hayek, the most desirable society is the one that we would choose if we knew our initial situation in it would be desired wholly by chance (Hayek 1982, 32). In such a situation, human beings recognize interests in both maintaining their independence (liberty) and securing for themselves extensive material means (welfare). They would thus choose a system of *laissez-faire* (with a safety-net to preclude a life of deprivation), rather than one that interfered with individuals to ensure that each got what she deserved.
3. On the idea of a justice ethos in general, see G.A. Cohen (2008); also see Neufeld and Van Schoelandt (2014) for a project similar in spirit to this one.
4. The phrase is due to Scanlon (2013).
5. Note: For all I say below, the paper leaves open the possibility that the right theory of distributive justice will not take norms of personal responsibility and deservingness into account at all.
6. The ensuing discussion follows Feinberg (1970, 63–4) and Arnold (1987, 390–391).
7. For example, if a state has a welfare program that extends benefits to unemployed citizens seeking work, and a citizen meets that description, she is entitled to receive that package of benefits. It would be *prima facie* unjust to deny it to her.
8. Indeed, some obligations to reform extant (justice-oriented) institutions will derive from the fact that the entitlements generated by the current rules do not track the underlying goals of those institutions. If, for example, the goal of our welfare program is to maximize the prospects of the least well off citizens, and if many such citizens are ineligible for benefits under current rules, then those citizens institutionally deserve a package of benefits to which they are not currently entitled. The caveat with distributing according to institutional desert is that changing institutional rules to better align institutions with their underlying purpose will require upsetting the legitimate expectations (and entitlements) of other people. In our welfare example, were the rules expanded to cover this new group of people, the program would require additional funding,

which (presumably) requires levying additional taxes. Levying additional taxes, however, requires taking resources from some who are currently institutionally entitled to such resources and have legitimate expectations with respect to them. That does not mean such taxation is all-things-considered wrong. It just means that sometimes distributing according to institutional desert involves *prima facie* or *pro tanto* wrongdoing because it violates norms of fairness (see Hsieh 2000, 111). But this wrong may not be very weighty when compared to the wrong of denying people what they institutionally deserve. Moreover, there are ways to avoid it (perhaps by restricting changes to earnings collected after the change of rules: *ibid.*, 113).

9. Note: all non-institutional desert claims are pre-institutional claims about what a person ought to have (some treatment, office, or object), but not all non-institutional claims about what one ought to have are desert claims. It might be, for example, that, morally, one ought to have sufficient resources to secure one's basic needs by virtue of being human, but it is not the case that what underlies that claim is deservingness. Its basis is something else (e.g. human rights). Though these can look like basic desert claims taken out of context, it is important to keep these notions separate. It is also important to note that a theory of distributive justice can be sensitive to desert without distributing *only* according to desert. It can take other distributive demands seriously, too.
10. It is important that nearly everyone agrees that considerations of utility can never serve as desert basis. Here's Feinberg in a characteristic passage: 'to say "S deserves X because giving it to him would be in the public interest" is to misuse the word "deserves"' (1970, 81). What is less clear is whether or not there is a single desert base or whether desert admits of a plurality of bases. For a helpful discussion, see Kristjánsson (2003), where he develops a monistic conception of desert.
11. Cosmic because it pertains to general facts about worlds, irrespective of how those worlds came about. The general distinction between what we judge to be cosmically just and what we judge to be just pertaining to human actions and institutions is one I found in Slote (1999).
12. These two questions combine to generate a third question of identification and evaluation: (3) Does a particular institutional arrangement (e.g. the market) realize justice by approximately distributing according to desert?
13. The notion that markets distribute according to desert has been subjected to significant scrutiny. For a sustained treatment, see Olsaretti (2004) and Hsieh (2000). For discussion of Olsaretti's book, see Schmidtz (2007) and Sternberg (2007).
14. Because Arneson allows that there are things for which people can genuinely be responsible (their conscientious striving), his view does not reduce to what Schmidtz calls the 'Big Bang Theory' requirement of desert, according to which one would have to be responsible for the big bang to be responsible for anything else (Schmidtz 2006, 38; cf. Zaitchik 1977).
15. Folk intuitions about which notion of desert is correct appear to depend upon whether individuals are presented with a question about a concrete case or an abstract principle. When asked about an abstract principle, most judge that Arneson's fine-grained account is the right one. Yet when the details are filled in, their judgments appear to support Miller's account (see Freiman and Nichols 2011).
16. The cases I consider tend to treat desert as coarse-grained. They could be altered to fit Arneson's fine-grained understanding as well. The discussion surrounding the first two cases follows Miller (1999, 158–159).

17. Again, assuming, for the sake of argument, that desert matters and is a distinct value: Some will (perhaps rightly) think that Bob's wrong *is* reducible to utility, etc.
18. The case is thus one of comparative desert. But what I say here holds of non-comparative cases as well. Suppose for example that I initially accept a job for a certain wage X. I then begin performing my duties, and as I do, I realize that it is more work than I'd anticipated. As I spend more time on the clock, I notice that the company is turning a huge profit, largely on the basis of my work. I start to draw the conclusion that X is an unreasonably low rate given the responsibilities of the job. I demand a raise, claiming that I deserve it. The owner refuses. He could easily get someone else to do my job: I'm free to walk. There is sense to be made of the claim that he fails to treat me as I deserve. But this case has the same interpersonal form as the last case: I would not be made whole if a third party, say a state agency, stepped in and forced my employer to pay me the deserved wage. If I cannot get another job, I might appreciate such an intervention, but my boss's unjust treatment would not be made right by such means.
19. It is crucial that the recognition that I am owed fails to be delivered unless the restaurant voluntarily delivers the goods (a higher wage). For as an anonymous reviewer points out, the case can otherwise seem to suggest that the restaurant's wrong was merely a failure of recognition and that it might be remedied even in the case where some third party (e.g. the state) secures the deserved wages. The state doles out deserved wages, while individuals and companies dole out deserved recognition. But supposing that individuals can (on some basis) deserve pecuniary rewards, and supposing that this fact is relevant for distributive justice, it is not implausible that providing the requisite kind of recognition requires voluntarily providing the deserved goods. Additionally, we might point out that these two might in practice go hand in hand. If one succeeds in doling out the deserved recognition, it is unlikely that she will fail in doling out the deserved good, for (by hypothesis) the person's having the good is constitutive of what she deserves.
20. The interpersonal nature of desert is widely acknowledged at the level of conceptual analysis, but when it comes to considering the implications of taking desert seriously, the suggestions are always at the level of the institutions of the basic structure of society. A rare exception to the rule, Smith (1999) writes that desert is 'personal ... or "one on one." What a person deserves, she deserves from particular others. Correspondingly, justice governs relations between specific individuals. Justice does not signify an impersonal condition or cosmic order that people are obligated to maintain, requiring us to restore "equilibrium" as soon as anyone throws it askew.' (354). See also Kristjánsson (2005) and Strawson (1962).
21. Testifying to the prevalence of this motivation is the fact that the second sentence of the section on desert-based principles in the *Stanford Encyclopedia of Philosophy's* entry on distributive justice expresses exactly this point.
22. This is consistent with its being the case that efficiency is an important criterion for evaluating states of affairs.
23. Distributing according to desert would be efficient (on one model of efficiency), for example, if individual actors in a given institutional scheme had strong preferences over outcomes that tracked desert. Considerations of desert and considerations of efficiency cut in opposite directions in cases like the one discussed in Note 18.
24. Thanks to an anonymous referee for prompting me to more sharply distinguish these two claims.
25. I thank two anonymous reviewers for pressing me to square up to this worry.

26. While I wish to remain neutral on precise understanding of equality operative here, see Sunstein (1994) for a conception of equality that coheres well with the ensuing analysis. (Thanks to an anonymous reviewer for directing me to Sunstein's work on this issue.)
27. The example is not original to me, and was apparently inspired by Jane Elliot's famous 1968 experiment. Thanks to Carson Young for many illuminating discussions on this topic, inspired by a compelling presentation he gave in 2012.
28. An anonymous referee presses further: Suppose the issue is not that a person undervalues her own talents, but instead that the person's talents are not in demand, and so her deserving employment of them goes unrewarded. I think it's clear that, to the extent that these talents really ought to be valued, individuals governed by a desert *ethos* will recognize a grave kind of injustice here. Elaine lives in a society that does not (yet) value the visual arts. She dedicates much of her free time to painting pastoral scenes that any impartial, esthetically sensitive observer would prize. Because of where she lives, there are few of these individuals. Still, her community is governed by a desert *ethos*. Individuals in such a community, I suggest, may have a hard time appreciating Jane's artistic talents on their own. But they will be motivated to attempt to cultivate an appreciation for the visual arts, simply on the basis that they sense a kind of underappreciated excellence in Jane's constant work. They may fail in that, and Jane may never get what she truly deserves. But we shouldn't fool ourselves into thinking that things could be wholly otherwise. Those performances (etc.) third parties recognize as deserving are also socially contingent, and so even if individuals are 'guaranteed' what they deserve, this is always indexed to a particular place and time, and allocation will rely on human judges whose tastes and values are in part dependent upon their circumstances. History is replete with tragic examples of works of genius utterly neglected in their time, and it is hard to see that any institution would have been capable of setting right all or even most of these injustices. If the issue instead is not that an individual's talents are not in demand, but rather that she is untalented, the objection might be better conceived as a reason *against* taking desert into account in distributive contexts. But I have bracketed this issue for the purposes of this paper.
29. This might not be obvious, however. Adam Smith writes in *The Theory of Moral Sentiments* that if a person does us great injury and is killed by natural causes, such a death would not satisfy our resentment. But Smith does not go straight for punishment by a third party. Instead, he notes that, 'Resentment would prompt us to desire not only that he should be punished, but that he should be punished *by our means*' (Smith 2002 [1759], 80, my emphasis). Depending upon what it is to punish someone 'by our means,' perhaps even in the case of retributive justice, there are *pro tanto* reasons (grounded in the moral sentiments) for having individuals mete out punishment as deserved. Still, it is likely that even if there are such reasons, they are outweighed by the kinds of pragmatic and procedural considerations cited in the main text.
30. Hence one of the traditional arguments for leaving the state of nature is that the state of nature is characterized by precisely this property: see, e.g. Kant 1996, 6:312 and also the accounts in Hobbes' *Leviathan*, and Locke's *Second Treatise*.
31. Note, however that the institutions that are likely to emerge are sensitive in part to the existing *ethos* of the existing society, and therefore that if the society is wholly unconcerned with desert, such coercive institutions that may bring about a greater concern with desert are unlikely to emerge themselves. Compare Miller (1999, 87–90).

32. I do not mean to deny that there are other reasons for which institutional requirements might be desirable. To take an example suggested by an anonymous reviewer, suppose a philosophy department is looking to hire an assistant professor. According to desert, one ought to choose the best candidate, rather than favoring one's own graduate students. But without assurance that other departments will respect this rule too, the department risks disadvantaging its own graduate students. Institutions can provide assurance that one's compliance with norms of desert does not have such undesirable consequences. But institutional requirements are not necessary to provide such assurance. Other (less formal) mechanisms (like a department's reputation concerning their hiring practices) might prevent departures from desert from being profitable long-term. I suspect a similar thought might cover other cases as well.

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