

Introduction to *Equality and Justice: Desert and Entitlement*, Peter Vallentyne, ed., Routledge, 2003.

### Desert and Entitlement: An Introduction

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This is the sixth volume of *Equality and Justice*, a six-volume collection of the most important articles of the twentieth century on the topic of justice and equality. This volume addresses two issues: (1) desert-based conceptions of justice, and (2) entitlement conceptions of justice. Other volumes address the following issues: (1) the concept of justice, (2) whether justice is primarily a demand on individuals or on societies, and (3) the relative merits of conceptions of justice based on equality, on priority for those who have less, and on ensuring that everyone has a basic minimum, of the relevant goods (Volume 1); whether justice requires equality of some sort (Volume 2); the question of who (animals, members of other societies, future people, etc.) is owed justice (Volume 3); the question of what goods (welfare, initial opportunity for welfare, resources, capabilities, etc.) are relevant for justice (Volume 4 and part of Volume 5); and contractarian conceptions of justice (part of Volume 5).

#### 1. Desert

Desert theories of justice hold that an action (social structure, etc.) is just if and only the distribution of benefits and burdens is appropriate given what people deserve. Desert can be understood in an *institutional* sense—according to which the principles of desert are determined by the prevailing institutional norms, current practices, or reasonable expectations—or in a *non-institutional* sense—according to which the principles of desert are not so contingent. Desert theories proper are based on non-institutional desert, and in what follows “desert” should be so

understood. Non-institutional desert can be understood in a *justice-determined* sense—according to which the principles of justice determine the principles of desert, do not depend on them—and in a prejusticial (non-justice-determined) sense—according to which the principles of desert are prior to the principles of justice, and can be relevant for determining what is just. Because our focus is the determination of what is just, I shall use “desert” in its prejusticial sense. In this sense, facts about desert do not presuppose facts about what is just.<sup>1</sup>

There are a variety of views about the desert basis, that is, what determines how deserving people are. One could hold that desert is based on features of individuals that have nothing to do with their characters or agency (e.g., those of aristocratic families deserve more than others), but almost everyone agrees that desert must be based on something related to character or agency. Some might hold that desert is based on how virtuous one’s character is independently of what choices one has made, but most agree that it is somehow based on the desirability of the agent’s choices. Thus, for example, effort and contribution are often taken to be desert bases. Even here, however, there is disagreement, for agents may, as a matter of brute luck (e.g., genes at birth), differ in their abilities to make an effort or contribution, and it’s unclear why they should deserve more merely because they have more favorable endowments. Given that they don’t deserve their capacities, they don’t deserve, it has been argued, the benefits that flow from their exercise. This objection, however, can be dealt with by basing desert on how good a use, relatively speaking, an agent makes of her brute luck opportunities (e.g., capacities). Thus, for example, an agent that contributes 50% of her potential might be judged equally deserving as a less talented agent who contributes less but also contributes at 50% of her potential.

Desert theories also vary in what they take to be the deserved benefits and burdens to be. Well-being is a common specification, but there are many other possibilities (primary goods,

material wealth, etc.). The topic of what goods justice is concerned with is addressed thoroughly in *Equality and Justice, Volume 4: Distribution of What?* and in the second part of *Equality and Justice, Volume 5: Social Contract and the Currency of Justice*.

Desert theories can take a non-comparative, comparative, or mixed form. *Non-comparative desert* is concerned with each person getting what she deserves in an absolute sense—independently of what others deserve and are getting. Compared with giving no one a benefit, it judges it *better* to give one person a benefit that she deserves even if others are more deserving of that benefit. For example, if A deserve 5 units and B deserves 10 units, giving A 5 units and B nothing is better than giving neither anything. *Comparative desert*, by contrast, is concerned with the benefits that each person gets *relative to what others deserve and get*. It judges it *worse* to give a person (and no one else) a benefit that she deserves, when someone else is at least as deserving of that benefit. In the above example, it judges it better to give each nothing than to give 5 units to A and nothing to the more deserving B. Mixed views are possible as well.

Desert theories pose a very direct challenge to egalitarian theories. If outcome desert theory is correct, then outcome egalitarianism (justice requires that the value of outcomes be equalized) is false. Individuals that are more deserving should have outcomes that are more valuable. Outcome egalitarianism, however, has been widely rejected on the ground that it leaves no room for agents being accountable for their choices. Initial opportunity egalitarianism and brute luck egalitarianism (discussed in *Volume 4: Distribution of What?*) each leaves room for agent accountability. The question is whether their accounts of accountability are more, or less, plausible as those of desert theory.

## 2. Entitlement

According to entitlement theories, a distribution is just if and only if it came about without violating anyone's rights (entitlements). Justice, on this view, is a matter of respecting rights. There is a wide variety of accounts of what rights people have: people may have rights to get what they deserve, rights to have their needs satisfied, rights to equal shares of some good, and so on. The mostly widely discussed entitlement theory, however, is libertarianism, and we shall focus on this view.

Libertarianism holds that each agent owns herself (and thus killing her, striking, her, etc. is prohibited without her consent) and has certain powers to acquire private property in the rest of the world (natural resources and artifacts). Libertarianism views justice as a matter of respecting property rights. Because property rights protect negative liberty (freedom from interference), libertarianism views justice as matter of respecting negative liberty.

Libertarianism holds that all agents are, initially at least (e.g., prior to engaging in any commitments or unjust actions), full self-owners, and that any violation of full self-ownership is unjust. The core idea of full self-ownership is that agents own themselves in just the same way that they can fully own inanimate objects. This maximal private ownership includes (1) full *control rights* over (power to grant and deny permission for) the *use* of their persons (e.g., what things are done to them), (2) full *rights to transfer* the rights they have to others (by sale, rental, gift, or loan), (3) full *payment immunities* for the possession and exercise of these rights (ensuring, for example, that the other rights are not merely rented and that taxation is not owed for mere possession or exercise), and (4) full *compensation rights* (which require others to compensate them if they violate their rights).

At the core of full self-ownership are the constraints on how individuals may be used. Killing, torturing, or enslaving innocent individuals without their consent is unjust no matter how

effective these actions are as means to equality or other moral goals. More generally, agents have the *right to control the use of their person*. There are some things (such as physical contact of various sorts) that are unjust when done to an agent without his/her consent, and those very things are just when the agent gives his/her consent.

Two versions of libertarianism have come to be distinguished. Both hold that agents own themselves; they differ in their views about the powers agents have to acquire private property in the rest of the world. Right-libertarianism, which is the traditional form of libertarianism, holds that natural resources—resources that were not created by any agent (except perhaps God)—may be privately appropriated without the permission of, or any significant payment to, the members of society. It views natural resources as essentially up for grabs by the first person who discovers, claims, or (depending on the account) mixes her labor, with them. Although some right-libertarians literally hold that unowned natural resources can be justly appropriated by whoever gets there first, many right-libertarians—such as Robert Nozick in *Anarchy, State, and Utopia*—further require that the appropriation make no individual worse off in some appropriate, but fairly minimal, sense. It seems quite plausible that satisfaction of some form of such a proviso is a *necessary* condition for just unilateral appropriation, but it is arguably not *sufficient* for just appropriation. For private property rights over natural resources typically bring the owners significant benefits (even after making a payment to ensure that no one is made worse off). Some would argue that the benefits that natural resources (as opposed to labor) bring should be shared with everyone.

Left-libertarianism takes exactly this position. It holds that natural resources are owned in some egalitarian manner (and that agents fully own themselves). This egalitarian ownership can take many forms. One is joint-ownership, according to which all use of natural resources is subject to collective approval (e.g., by majority or unanimous vote). Given that all actions by

agents involve the use of natural resources (e.g., land or air), this means that all actions of agents are subject to collective approval. Consequently, few individuals have defended this form of left-libertarianism. Much more common is the view that natural resources may be privately appropriated, just as right-libertarians claim, except that agents must pay the competitive value (based on supply and demand) of the rights that they claim over natural resources. Rights over resources that no one wants require little or no payment, but rights over resources that many people want may be very expensive. The social fund generated by such payments is then divided up in some egalitarian manner. Here, again, this can take several forms. One is to divide the pot equally. Another is to divide it so that it best promotes equality of some specified sort (e.g., effective opportunity for well-being).

Left-libertarianism, then, is a form of liberal egalitarianism. It holds the promise of reconciling liberty with equality. Unlike most versions of egalitarianism, left-libertarianism endorses full self-ownership, and thus places specific limits on what others may do to one's person without one's permission. Unlike the more familiar right-libertarianism, left-libertarianism underwrites some demands of material equality. An on-going debate is whether its commitment to full self-ownership is compatible with a robust form of egalitarianism.

Libertarian theories are examples of purely historical theories of justice. Whether a distribution of goods is just depends entirely on what the past was like. Principles of appropriation specify the conditions under which an unowned good can come to be owned, principles of transfer specify the conditions under which an owned good can be transferred to others, and principles of rectification specify what is to be done when one of the previous principles is violated. In *Anarchy, State, and Utopia*, Robert Nozick presented a powerful argument against non-historical patterned principles (e.g., with an pattern of equality or desert). Take any pattern, and suppose that everyone starts in the appropriate pattern (e.g., equality of

wealth). Individuals will be naturally inclined to make voluntary exchanges (e.g., to give Wilt Chamberlain some money in exchange for being able to watch him play basketball). The result of these voluntary exchanges will be to disrupt the specified pattern (e.g., Wilt Chamberlain will be much richer than others). Voluntary exchanges upset patterns, and hence if patterns are to be maintained, some freedom will have to be sacrificed. A natural conclusion is that any plausible theory of justice must be purely historical, but this would be hasty. The example shows that a plausible theory of justice will have to be partly historical (e.g., to make some agreements valid, to hold people accountable for some of their choices, to treat wrongdoers differently from the virtuous). It might still have a patterned component; it might, for example, require equality of initial opportunities of some sort without requiring on-going equality.

#### Suggested Further Reading

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## 2. On Entitlement:

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Vallentyne, Peter and Hillel Steiner, eds., *Left Libertarianism and Its Critics: The Contemporary Debate*, New York: Palgrave Publishers Ltd., 2000.

Van Parijs, Philippe. *Real Freedom for All* (New York: Oxford University Press, 1995).

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<sup>1</sup> For further discussion of the difference between institutional and non-institutional desert and between pre-justicial and justice-determined desert, see Samuel Scheffler, "Justice and Desert in Liberal Theory," *California Law Review* 88 (2000): 965-90. Reprinted in Samuel Scheffler *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford: Oxford University Press, 2001).