

Against the Asymmetry of Desert

Jeffrey Moriarty
Bowling Green State University

Appears in *Noûs* 37:3 (2003)

The concept of desert has traditionally played a central role in theories of both distributive and retributive justice. But while desert continues to play a central role in most contemporary theories of retributive justice, it plays little or no role in most contemporary theories of distributive justice.¹ This asymmetric treatment of desert is *prima facie* strange. If people should have the punishment they deserve, shouldn't they also have the social benefits they deserve?

There is good reason to care about the answer to this question. If “the asymmetry,” as I will call it, can be justified, then its justification will likely reveal deep differences in the natures, purposes, and circumstances of theories of distributive and retributive justice. If, however, it cannot be justified, then one influential view among contemporary moral philosophers—that desert is relevant to questions of retributive justice, or that it is irrelevant to questions of distributive justice—is mistaken.

Surprisingly, philosophers have said little about the asymmetry. Perhaps this is because few of them hold explicit views about both distributive and retributive justice, and those who do usually treat desert symmetrically; i.e., they assign considerations of desert roughly the same importance in both contexts.² In fact, John Rawls (1971) is the only individual philosopher I am aware of to endorse the asymmetry. Rawls, however, offers no arguments in support of it.

The paucity of discussion of the asymmetry makes the task of discovering whether it is justified difficult. But our project does not reduce to guesswork just yet. For Rawls and others have advanced (now well-known) arguments against the use of desert as a criterion for the just distribution of social benefits. Perhaps these arguments tell against the use of desert in the context of distributive justice but not in the context of retributive justice. I will pursue this strategy here.³ I first offer an intuitive argument against the asymmetry, then consider and reject four potential justifications of it. I do not claim that the asymmetry cannot be justified—it is possible that a new argument for it

will be found. But the justifications I consider are the most plausible available. These considerations should make us highly skeptical of the asymmetry, and lead us to re-examine our views about both distributive and retributive justice.

1. What is desert?

The natural place to begin this discussion is with an analysis of the concept of desert; i.e., by saying what it means for someone to be deserving of something, and specifying the necessary and sufficient conditions for desert. But this proves to be a difficult task. Philosophers generally agree that desert is a “natural,” as opposed to an “institutional,” property, and that deservers are in some sense “worthy” of what they deserve. They also agree that desert-claims take the form, “S deserves T in virtue of F,” where S is a subject, T is a thing or treatment, and F is a fact about S, also known as a “desert-base.”⁴ But there is widespread disagreement about the ranges of S, T, and F. That is, philosophers disagree about what kinds of subjects can be deserving, what kinds of things can be deserved, and what kinds of facts can serve as desert-bases.

Since my concern is with desert’s role in theories of justice, I do not want to join this debate. Instead, I will simply stipulate the conception of desert that is relevant to the present discussion. I do not claim that this is a complete account of desert, or that it captures every legitimate use of the term ‘desert’. Many philosophers will think it does not. But it does capture a (if not the most) widely used and recognized kind of desert. More importantly, the conception of desert I will identify is the kind of desert that is thought to be relevant to questions of just punishment, but irrelevant to questions of the just distribution of social benefits. The purpose of this paper, then, is to show that philosophers’ asymmetric treatment of this kind of desert is unjustified.

First, I am concerned with personal desert—the deserts of persons—only. Things other than persons may be deserving, and their deserts may be relevant to questions of justice, but I will not consider such deserts here. Second, since my topic is theories of justice, I will be concerned with people’s deserts of things that theories of justice are supposed to allocate. These are punishments, in the case of retributive justice, and social benefits (e.g., income, wealth, opportunities, and jobs), in the case of distributive justice.⁵ People may be deserving of other kinds of things (e.g., sympathy, apologies, recognition,

and respect), but, again, I will not be concerned with such deserts here. Third, I will be concerned with personal desert insofar as it arises from actions and characteristics for which people can claim moral responsibility. Moral responsibility presupposes voluntary and intentional human agency, and is associated with notions of “credit” and “fault” for outcomes.⁶ This is similar to criminal theorists’ notion of “culpability.”

Examples help illustrate the kind of desert I have in mind. Suppose A performs an onerous job that is beneficial to society; e.g., collecting garbage. In addition to the brute physical effort A expends, he endures the constant smell of stinking trash. It seems right to say, in this case, A deserves a living wage. Or suppose B and C, who are equally naturally gifted and enjoy equally supportive home environments, are competing for a college scholarship. B spends hours at the library, sacrifices leisure-time activities, pays attention in class and, as a result, achieves good grades and high test scores. C spends no time in the library, plays more video games, daydreams in class, and achieves mediocre grades and test scores. It seems right to say B deserves the scholarship compared to C. Finally, consider an example from the area of retributive justice. Suppose D assaults and robs E. If there is no excuse for D’s conduct (e.g., insanity, self-defense, ignorance), it seems right to say D deserves punishment.

Broadly speaking, then, people can deserve, in this sense of ‘desert’, social benefits for their praiseworthy achievements, and punishment for their wrongful acts. Of course, whether they actually deserve a quantum of benefits or punishment for their achievements and wrongful acts—and how large a quantum they deserve—depends on the particular acts they engage in and the circumstances of the case. I might not deserve punishment for lying to my mother, or a pay raise for winning the office golf tournament. As I said, I have not tried to offer sufficient conditions for people’s deserts of punishment and social benefits. I have only tried to make clear the kind of desert that is relevant to this discussion. Having done this, let us move on.

2. Why the asymmetry needs justification

I implied above that the asymmetry stands in need of justification. In fact, this claim is crucial to the purpose and interest of this paper. Defeating arguments in favor of the asymmetry helps establish the conclusion that the asymmetry is unjustified only if we

have some antecedent reason to be suspicious of it—to think it is unjustified. I suggest we do have such reason.

First, the claim that considerations of desert are relevant to questions of retributive justice but irrelevant to questions of distributive justice just seems intuitively wrong. Like many others, I firmly believe that it is intrinsically good that people get what they deserve. But this intuition is not context-specific; that is, it does not apply only in the context of retributive justice. It seems just as good that people get the social benefits they deserve as that they get the punishment they deserve. For this simple reason, the claim that desert should play a role in theories of retributive justice but not in theories of distributive justice calls for explanation.

This intuitive case against the asymmetry can be supplemented by noticing that the common distinction between distributive justice and retributive justice is somewhat artificial. Perhaps unintentionally, philosophers observe this distinction scrupulously. Those who write on retributive justice rarely write on distributive justice, and those who write on distributive justice rarely write on retributive justice. Thus, it is easy to suppose that distributive justice and retributive justice are completely different kinds of practices, governed by distinct sets of moral principles. But it is more natural to see them as two aspects of the same practice—the practice of justice.⁷ We might think, for example, that justice consists in a kind of reciprocity. According to this view, people's deeds should be re-paid in kind: good deeds with reward, bad deeds with punishment. This implies that, while distributive justice and retributive justice deal with different kinds of deeds (good and bad, respectively), they so do according to the same set of moral principles, namely, the principles of justice. If this is right, then there is a presumption in favor of symmetry between distributive justice and retributive justice, and any difference between them, including the asymmetry of desert, must be justified.

I do not want to oversimplify the matter. Clearly there are many differences between distributive and retributive justice, and these differences will justify different criteria for distributing social benefits than for inflicting punishment. But the above discussion suggests that distributive justice and retributive justice are in an important sense similar. In particular, they are both kinds of justice. For this reason also, we should be skeptical of the asymmetry with respect to desert.

3. Two arguments against desert in the context of distributive justice

Having established a prima facie case against the asymmetry, let us now consider several potential justifications of it. I said above that, though few philosophers have tried to justify explicitly the asymmetry, many have offered arguments against the use of desert in the context of distributive justice. One of these arguments might justify the asymmetry accidentally, by telling against the use of desert in the context of distributive justice but not in the context of retributive justice. In this section I consider two such arguments. Both have roots in Rawls's influential discussion of desert in A Theory of Justice. For reasons that will become clear later, I call the first the "metaphysical₁ argument," and the second the "epistemological₁ argument." I will argue that, to the extent these arguments are successful against desert in the context of distributive justice, they are successful against desert in the context of retributive justice. Thus neither argument can be used to justify the asymmetry. I will then draw out several consequences of this discussion.

3.1. The metaphysical₁ argument

The following passages are representative of the metaphysical₁ argument.

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 does not seem to apply to these cases. (Rawls 1971, 103-104)

Most of what are regarded as the decisive characteristics for higher education have a great deal to do with things over which the individual has neither control nor responsibility: such things as home environment,

socioeconomic class of parents, and . . . the quality of the primary and secondary schools attended. Since individuals do not deserve having had any of these things vis-à-vis other individuals, they do not, for the most part, deserve their qualifications. And since they do not deserve their abilities they do not in any strong sense deserve to be admitted because of their abilities. (Wasserstrom 1978, 17)

. . . is there anything whatever that, strictly speaking, a man can claim credit for, or he can properly be said to deserve, with the implication that it can be attributed to him, the ultimate subject, as contrasted with the natural forces that formed him? In the last analysis, are not all advantages and disadvantages distributed by natural causes, even when they are the effects of human agency? (Hampshire 1972, 36-37)

There could be much discussion of the precise structure of the metaphysical₁ argument, and the differences among Rawls's, Hampshire's, and Wasserstrom's versions of it. But a central theme is common to them all, and I will focus on that.

The influence of natural factors—genes and environment—seem to these philosophers to determine human action in a way that is incompatible with personal responsibility. The resulting argument can be put roughly as follows. (As we will see, a rough characterization is all that is needed for the purposes of this discussion.) Desert requires responsibility. In other words, people must be responsible for the actions and character traits in virtue of which they are deserving. But no one is responsible for these things. People's actions and traits are the product of natural factors, and causation by natural factors is incompatible with responsibility. It follows that no one deserves anything. Hence desert cannot be used as a distributive criterion.

The metaphysical₁ argument has widespread appeal. In addition to Rawls, Wasserstrom, and Hampshire, Kai Nielsen (1985) and Michael Sandel (1998) appear to endorse versions of it.⁸ In fact, in a recent article Samuel Scheffler (1992) attributes the contemporary rejection of desert-based distributive theories to the naturalism-inspired worries about responsibility embodied in the metaphysical₁ argument.

Questions might be raised about the soundness of this argument. It might be argued, for example, that natural factors do not fully determine human action, or that responsibility and desert are compatible with determination by natural factors. But we are not interested in such questions here. We want to know: Can the metaphysical₁ argument be used to justify the asymmetry?

I think it is clear that it cannot. Its conclusion is that no one deserves anything, not, as is necessary to justify the asymmetry, that people can deserve punishments but not social benefits. And it is difficult to see how such a distinction, if made, could be supported. It would have to be claimed that natural factors determine only our praiseworthy achievements, not our wrongful acts, or that they determine our wrongful acts in a way that is compatible with desert, but our praiseworthy achievements in a way that is incompatible with desert. Both possibilities are far-fetched. I conclude that the metaphysical₁ argument cannot be used to justify the asymmetry. Let us turn to the epistemological₁ argument.

3.2. The epistemological₁ argument

The following passages are representative of the epistemological₁ argument.

. . . it does not seem possible to separate in practice that part of a man's achievement which is due strictly to his free choice from that part which is due to the original gift of nature and to favouring circumstances . . .
(Sidgwick 1962, 285)

The precept which comes intuitively closest to rewarding moral desert is that of distribution according to . . . conscientious effort. Once again, however, it seems clear that the effort a person is willing to make is influenced by his natural abilities and skills and the alternative open to him. The better endowed are more likely . . . 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, 311-312)

The factors that make it easy or difficult, and more or less costly, for an individual to behave as she ought are densely intertwined with aspects of her circumstances for which it is sensible to hold her accountable. Sorting out these factors and deciding to what degree an individual is truly deserving can be hard, even intractable . . . (Arneson 1997, 349)

Again, while there are differences in each philosopher's presentation of the argument, they have a common theme. The epistemological₁ argument also trades on worries about naturalism and responsibility. But it does not take them as far as the metaphysical₁ argument does. The following is a rough characterization of the argument.

Desert requires responsibility. For a person to be responsible for some action or character trait, it must be the product of her own free choices, not the product of natural factors (e.g., genes, environment) outside her control. People's actions and traits are partly the product of their own free choices and partly the product of natural factors outside their control. Therefore, people are deserving in virtue of that part of their actions and traits which is the product of their own free choices, not that part which is the product of natural factors. However, separating the effects of people's free choices from the effects of natural factors is impossible, or at least impracticable. Since theories of justice must be practicable, desert must be rejected as a distributive criterion.

Although the epistemological₁ argument is less popular than the metaphysical₁ argument, it is a better argument. The view of human agency on which it relies is more likely true. This does not mean, however, that the epistemological₁ argument cannot be challenged. It might be argued, for example, that it is not impracticable to determine what people deserve, where what they deserve is determined only by their own free choices. But we are not concerned with such questions here. We want to know: Can the epistemological₁ argument be used to justify the asymmetry?

Again, I think it is clear that it cannot. The conclusion of this argument is that determining what people deserve simpliciter is impracticable, not, as is needed to justify the asymmetry, that determining what social benefits they deserve is impracticable, whereas determining what punishments they deserve is not. To arrive at this conclusion, it would need to be shown that separating the effects of people's free choices from the

effects of natural factors outside their control is easier in the case of wrongful acts than in the case of praiseworthy achievements. But this is implausible. I conclude, then, that the epistemological₁ argument cannot be used to justify the asymmetry.

3.3. Preliminary conclusions

So far we have considered two arguments against the use of desert in the context of distributive justice. We concluded that neither argument can be used to justify the asymmetry. I now want to draw out three consequences of this discussion.

The first concerns Rawls's endorsement of the asymmetry. I said above that both the metaphysical₁ and the epistemological₁ arguments can be traced to Rawls's discussion of desert in A Theory of Justice. I do not mean to imply by this, of course, that Rawls endorses both arguments. This would be to accuse him of a blatant inconsistency. The metaphysical₁ argument says that no one deserves anything, while the epistemological₁ argument implies that people are sometimes deserving. The sense in which both arguments can be traced to Rawls is that both arguments have been attributed to him. Some philosophers think he endorses the metaphysical₁ argument; others think he endorses the epistemological₁ argument.⁹ This is not the place to decide this debate. But suppose, as many have, that Rawls endorses either the metaphysical₁ argument or the epistemological₁ argument. In this case, he cannot, on pain of inconsistency, endorse the asymmetry. Both arguments tell against the use of desert in the context of distributive justice as well as in the context of retributive justice.¹⁰

It might be objected that since an acceptance of the asymmetry is obviously inconsistent with an endorsement of either the metaphysical₁ or the epistemological₁ argument, we should be skeptical that Rawls endorses either argument, or that he endorses the asymmetry. I have some sympathy with this objection. But the mass of scholarship on this point suggests otherwise. Many philosophers believe that Rawls endorses the asymmetry, and that he endorses one of the two arguments. This is not the place to decide this debate, either. Let us conclude tentatively that Rawls's acceptance of the asymmetry is unjustified, and move on.

A second point concerns the potentially unpalatable implications of the metaphysical₁ and epistemological₁ arguments in the context of retributive justice. We

said these arguments cannot be used to justify the asymmetry. This means philosophers who appeal to them to justify their rejection of desert as a criterion for distributing social benefits cannot then claim that considerations of desert are relevant to questions of just punishment. This consequence is obvious, though I think its repugnance has not been fully appreciated. Supporters of the metaphysical₁ argument must claim that criminals do not deserve punishment. Supporters of the epistemological₁ argument must claim that we cannot tell what punishments criminals deserve. I find this unacceptable. And I am not alone. Besides its pre-theoretical appeal, the concept of desert plays a central role in most contemporary theories of punishment. Michael Moore goes as far as to say that “any plausible theory of punishment gives some prominent role to the desert of offenders” (1997, 191, my emphasis). This is not to say, of course, that the metaphysical₁ and epistemological₁ arguments are wrong because they have unsavory consequences.¹¹
¹² It is only to question whether philosophers are willing to accept the full consequences of their endorsements of these arguments. I believe few are.

The third point concerns the type of argument needed to justify the asymmetry. Our previous discussion shows, I suggest, that the metaphysical₁ and the epistemological₁ arguments are fundamentally the wrong kind of arguments to justify the asymmetry. Let me explain. “The asymmetry” names a state of affairs in which desert is thought to play a different role in the context of distributive justice than in the context of retributive justice. But the metaphysical₁ and epistemological₁ arguments focus on a similarity between the two contexts: the concept of desert. And crucially, they make no attempt to discriminate between desert of benefits and desert of punishment. This strategy will not work. What is needed is an argument which focuses on relevant differences between the contexts of distributive and retributive justice, or, equivalently, one that discriminates between “good” and “bad” desert. That said, I do not think that desert of benefits and desert of punishment are deeply different kinds of desert, and can be distinguished in a way that justifies the asymmetry.¹³ If a justification for the asymmetry can be found, it will cite differences in the natures, purposes, and circumstances of theories of distributive and retributive justice. The next two arguments we will consider respect this point.

4. Two more arguments against desert in the context of distributive justice

Let us now consider two more arguments against the use of desert as a criterion for distributing social benefits. I call the first the “metaphysical₂ argument,” and the second the “epistemological₂ argument.” Though initially plausible, these arguments also fail as justifications of the asymmetry.

4.1. The metaphysical₂ argument and the epistemological₂ argument

Consider the following passages.

. . . desert statements only make sense where there are only a few actors who make discrete and readily identifiable causal contributions to the outcome. Where many causal factors are deeply intertwined, any apportionment of credit between them would be arbitrary . . . Cluttered causal histories characterize almost all outcomes of consequence in complex modern societies. There are very few things indeed that people can, therefore, be said unequivocally to deserve or not to deserve. (Goodin 1985, 589-590)

From the point of view of justice, the attempt, independent of moral principles, to credit specific bits of output to specific bits of input by specific individuals represents an arbitrary cut in the causal web that in fact makes everyone’s productive contribution dependent on what everyone else is doing. (Anderson 1999, 321)

. . . people’s productive contributions are mutually dependent in the sense that each person’s capacity to contribute depends on the contributions of others . . . [thus] it makes no normative sense to suppose there could be, at the level of fundamental principle, a standard for assigning . . . benefits that appealed solely to characteristics of or facts about the proposed beneficiaries. Yet that is precisely what a prejudicial conception of desert would have to be. (Scheffler 2000, 985)¹⁴

These writers may have intended to put forward one argument against the use of desert as a distributive criterion. But, in fact, two separate, but closely related, arguments can be gleaned from these passages. Both start with an important assumption about desert, namely, that the basis for desert of social benefits is contribution. That is, they assume that what people deserve in the context of distributive justice is an amount of benefits equal in value to the value of their productive contributions in the economic system.¹⁵ Giving people what they deserve therefore requires, minimally, determining the value of these contributions. But, because of the complex and cooperative nature of modern productive enterprises, this is impossible. Why is this impossible?

In answering this question, the arguments diverge. First, the “impossibility” might be metaphysical. What follows is the metaphysical₂ argument against desert. According to it, the reason it is impossible to determine what each person has contributed is that there is no fact of the matter about what each person has contributed. A person’s labor does not translate into a determinate amount of production. This is suggested by Scheffler’s claim that “people’s productive contributions are mutually dependent in the sense that each person’s capacity to contribute depends on the contributions of others” (2000, 985), and Anderson’s claim that “everyone’s productive contribution [is] dependent on what everyone else is doing” (1999, 321).

An example helps to clarify the argument.¹⁶ Consider two chair makers, A and B. Working alone, A can make six chairs per hour, and B can make eight chairs per hour. Suppose each chair is worth \$10. In this case, the value of A’s contribution is \$60/hour, and B’s is \$80/hour. But suppose, working together (and just as diligently), A and B can make 21 chairs per hour. Their contribution is now worth \$210/hour. How should this be divided up? More precisely, how should it be divided so that the individual productive contributions of A and B are required? There are several plausible alternatives. One might think the total wage should be divided equally: \$105/hour for each. Or perhaps each should retain their original wage then get half the extra value: $\$60 + \$35 = \$95/\text{hour}$ for A; $\$80 + \$35 = \$115/\text{hour}$ for B. Or perhaps the proportion between their wages should remain constant: \$90/hour for A; \$120/hour for B. The metaphysical₂ argument denies that any one of these answers is superior to any one of the others.

Some have thought that an individual's contribution to a joint product is his marginal product: the difference between the size/value of the product when a given person is working and the size/value without him.¹⁷ The above example can be used by supporters of the metaphysical₂ argument to show why this suggestion fails. Suppose A is working, and B comes to join him. The product increases from 6 chairs/hour to 21 chairs/hour. In this case, B "contributes" 15 chairs to A's six. But suppose B is working and A comes to join him. The product increases from eight chairs/hour to 21 chairs/hour. In this case, A "contributes" 13 chairs to B's eight. But there is no reason to think the actual contributions of A and B are different in each case. This illustrates the well-known point that a group of people working together can produce an amount of goods greater than the sum of what each member of that group can produce working alone.

We can now complete the metaphysical₂ argument. Since there is no fact of the matter about what each person has contributed to some joint product, there is no fact of the matter about what each person deserves. Hence desert cannot be used as a criterion for the just distribution of social benefits.

There is a second interpretation of the "impossibility," however. It might be epistemological. What follows is the epistemological₂ argument against desert. According to it, there is a fact of the matter about what each individual has contributed to some joint product, but we cannot determine, because of the complexity of modern productive enterprises, the value of each individual's contribution. This is suggested by Goodin's remarks about the "cluttered causal histories" characteristic of "complex modern societies," and his claim that "[w]here many causal factors are deeply intertwined, any apportionment of credit between them would be arbitrary" (1985, 589). If we cannot determine the value of each individual's contribution, then, on this view of desert, we cannot tell what they deserve. Since theories of justice must be practicable, desert must be rejected as a distributive criterion.¹⁸

Let us suppose the metaphysical₂ and epistemological₂ arguments are successful against desert in the context of distributive justice. Do they justify the asymmetry? The answer seems to be "yes." As we have seen, in both arguments, the conclusion that desert cannot be used as a criterion for the distribution of social benefits depends in a crucial way on a fact about the circumstances of distributive justice: that the complexity

of modern productive enterprises makes requiring contribution impossible. But, the argument goes, nothing analogous is true of the circumstances of retributive justice. Criminal acts, unlike acts of production, are often the work of one or a few individuals. The activities of criminals are not “mutually dependent” in a way that makes it impossible to “credit specific bits of output to specific bits of input by specific individuals.” Rather, any given person’s “contribution” to a criminal enterprise is “discrete and readily identifiable.” In sum, the basis for desert of punishment is the performance of a wrongful act. But, given the solitary, isolated nature of most criminal acts, it is possible—both metaphysically and epistemologically—to give people the punishment they deserve. It is metaphysically possible, since there is a fact of the matter about whether some individual performed some wrongful act. It is epistemologically possible, since we can discover, most of the time, who that person is.

Of course, we have not shown that desert should be taken into account by theories of (retributive) justice. That would require another argument. But let us suppose, as many philosophers do, that it should be. In this case, it seems, the asymmetry can be justified by either the metaphysical₂ or the epistemological₂ argument. Differences between the circumstances of distributive justice and retributive justice make distribution according to desert impossible in the former context but not in the latter. Since theories of justice must be practicable, it follows that desert should play a role in theories of retributive justice but not in theories of distributive justice.

4.2. Why the metaphysical₂ and epistemological₂ arguments fail

In this section I argue that the metaphysical₂ and epistemological₂ arguments fail as justifications of the asymmetry. In fact, neither argument establishes its intended conclusion: that desert should not be used as a criterion for the just distribution of social benefits. Since the objection I raise questions an assumption common to both arguments, it is possible, as in the previous section, to discuss them together.

I said above that both the metaphysical₂ and the epistemological₂ arguments make an important assumption about desert, namely, that the relevant desert-base for questions of distributive justice is contribution. On this view, what people deserve is an amount of

benefits equal in value to the value of their productive contributions in the economic system. Let us look more closely at this assumption.

In fact, what is assumed is that contribution is the only basis for desert of social benefits, or at least, that people's contributions are always relevant to their deserts. If there are sources of desert besides contribution, and if contribution is sometimes irrelevant to desert, then it does not follow, from the fact that contribution cannot be required, that desert cannot be required. Perhaps it is possible to require other sources of desert, even if it is impossible to require contribution. I want to explore this and another criticism in what follows. First, I will argue that there are sources of desert besides contribution, and that people's contributions are sometimes irrelevant to their deserts. Second, I will suggest that, in certain cases, contribution can be adequately measured. For these reasons, neither the metaphysical₂ nor the epistemological₂ argument shows that desert cannot be used as a criterion for distributing social benefits. Thus, neither argument can be used to justify the asymmetry.

The view that contribution is the only desert-base relevant to questions of distributive justice is initially plausible. We might think that, just as there is one desert-base for punishment (e.g., the performance of wrongful acts), there is one desert-base for social benefits. A natural choice for the latter desert-base is activity connected to production, including contribution to a joint enterprise. Social benefits, after all, do not just fall from the sky; they have to be made. Thus it may seem that one's desert of benefits should be in proportion to the work one does to create them.

But a brief survey of the recent literature shows this view to be extremely controversial. Even if we focus on the more narrow case of desert of income, as opposed to desert of social benefits more generally, we see that contribution is only one of several proposed desert-bases. Philosophers who think contribution is relevant to economic desert include George Sher (1987), Joel Feinberg (1973), and William Galston (1980). But effort and hardship have also been offered as desert-bases. Wojciech Sadurski (1985) says purposeful effort is the sole criterion for desert of anything. And Feinberg (1970), Karol Soltan (1987), and James Dick (1975) suggest that desert is determined by the hardships associated with one's job (e.g., its dangerousness, difficulty, or degree of responsibility).¹⁹ Some philosophers think there is one legitimate basis for economic

desert: it is either contribution, effort, or hardship. Of these philosophers, there is no clear majority in favor of one criterion over another. But others think all of these factors are relevant, so that people's deserts are determined by some weighted combination of their contribution, effort, and hardship.²⁰

Examples also suggest that contribution is not the only basis of desert. Indeed, expanding our view to desert of social benefits besides income, we find cases where contribution is irrelevant to people's deserts. Educational opportunities and jobs, to take two common examples, can be deserved. The student who works hard for good grades may be deserving of admission to college; the applicant who works diligently to acquire the skills for a certain job may be deserving of that job. In these cases, people are said to be deserving of educational opportunities and jobs solely in virtue of getting good grades and acquiring certain skills, respectively.

It may be tempting to explain these cases in terms of expected contribution. According to this view, the best qualified student or applicant deserves an educational opportunity or job, respectively, because in that position she will make the largest productive contribution. But this forgets that desert is not a forward-looking notion. Although consequentialist considerations may provide good reasons to give the best qualified person a position, such considerations are not reasons the person deserves it. However, we still want to say the best qualified student or applicant deserves her respective position because of what she has done. And this is a reason she should have the position. Thus, we have succeeded in describing cases where people's productive contributions—past or future—are irrelevant to their deserts.

A third context in which people can be deserving, and in which contribution is irrelevant to desert, is social welfare. Consider the able-bodied person who does not want to work, but would rather surf all day. Since he is content with the meager income social welfare provides, he does not try to find a job. Should our able-bodied surfer receive welfare payments? Many people would say "no." But why? A plausible answer is that the able-bodied surfer does not deserve welfare payments. The reason he does not deserve them is that he does not even try to find a job; he makes no effort to achieve this end. We might think differently if our surfer tried but failed to find a job, or if there were no jobs available. In this case, we might think he deserves welfare, since he is badly off

through no fault of his own. But this is not the case at hand. Here, I suggest, is a case where effort determines desert. In particular, the surfer's lack of effort to find a job makes it such that he does not deserve welfare payments.²¹

Do the metaphysical₂ and epistemological₂ arguments tell against the requiring of desert when its source is scholastic achievements, skills, and effort? It seems not. The impossibility of requiring contribution lies in our supposed inability to assign outputs of product to inputs of labor. Because of the complexity of modern productive enterprises, it is claimed that the question "What goods has person P produced?" either has no determinate answer, or it does, but we cannot discover it. Nothing similar holds in the case of people's scholastic achievements, skills, and effort. We can answer the questions, "What grades did P receive?", "What skills does P have?", and "Has P tried to find a job?" There are facts of the matter about whether certain people have received good grades, have certain skills, or have tried to find jobs. And we can readily learn these facts. Since there are no metaphysical or epistemological problems with requiring desert when it is based on scholastic achievements, skills, and effort, the metaphysical₂ and epistemological₂ arguments do not tell against the requiring of these sources of desert.²² Thus they do not tell against the requiring of desert simpliciter.

At this point, it might be objected that, while it may be clear whether or not a certain person has good grades or a certain set of skills, or has tried to find a job, it will not be clear whether or not he is fully responsible for receiving his grades, acquiring his skills, or trying to find a job. His actions and traits are partly, if not fully, the result of factors beyond his control. This line of criticism should look familiar. Indeed, fully spelled out, it is either the metaphysical₁ or the epistemological₁ argument against desert. As we said above, these arguments are regarded by many as decisive against the use of desert as a distributive criterion. But, as we also said, they fail as justifications of the asymmetry. If the influence of natural factors undermines people's responsibility, in the sense relevant for desert, for their praiseworthy achievements, it must also undermine their responsibility for their wrongful acts.²³

It might next be objected that I have not shown, contra the metaphysical₂ and epistemological₂ arguments, that scholastic achievements, acquired skills, and effort can serve as desert-bases. I have noted that many philosophers think they can, and provided

examples in which they appear to serve as desert-bases. But I might be mistaken. Perhaps contribution is the sole basis for desert, or is always relevant to people's deserts. In response: I find this hard to believe. Even if contribution is sometimes relevant to people's deserts, it seems wrong to claim, for example, that a person cannot deserve an educational opportunity or job exclusively in virtue of his scholastic achievements or job-related skills, respectively. At the very least, I have shown that the burden of proof is on the opposing side. The view that contribution is a basis of desert is controversial.²⁴ The view that it is the only basis of desert, or is always relevant to desert, is even more so. Since the metaphysical₂ and epistemological₂ arguments rely on these assumptions, they are similarly controversial.

We come to my second criticism of these arguments. We have assumed thus far that contribution cannot be required, either because there is no fact of the matter about what people have contributed, or because we simply cannot measure their contributions. There is good reason to believe this assumption is false. Note first that the claim that contribution cannot be required is at odds with two common business practices: merit pay and economic consulting. Consequentialist considerations may explain why some employers give their employees bonuses for exceptional work. But the basis on which such pay is distributed is past productive contribution. To make sense of this practice, we must suppose that employers can adequately measure their employees' contributions.²⁵ Similarly, in an effort to make large and complex corporations more efficient, economic consultants try to identify how much "value" each employee is "adding." Making sense of this practice also requires that we suppose consultants can measure—perhaps with the aid of their own past experience and current employees' job descriptions—employees' contributions. The alternative is to think employers and consultants are unwittingly engaged in hopeless enterprises. But this is implausible. While such groups may make mistakes, it is more realistic to believe that their measurements of contribution are roughly correct, than that they are wholly inaccurate.

Supporters of the metaphysical₂ and epistemological₂ arguments may be unimpressed by such anecdotal evidence. So, let me suggest a more formal way that people's contributions might be measured: substitution.²⁶ We see, for example, what three people—A, B, and C—can produce working alone. Suppose A can make six

chairs/hour, B can make eight chairs/hour, and C can make 10 chairs/hour. Then we pair them off as follows: A and B, B and C, A and C. Suppose, working together, A and B can make 21 chairs/hour, A and C can make 24 chairs/hour and B and C can make 27 chairs/hour. By comparing the output of A and B with the outputs of A and C, and B and C, we are able to determine what each worker contributes when he is working with someone else.²⁷ Comparing different pairs of workers allows us to eliminate some of the indeterminacy involved in examining one pair in isolation. Our example suggests that, working with someone else, each worker can produce 1.5 times what he can produce working alone: A can make nine chairs/hour, B can make 12 chairs/hour, and C can make 15 chairs/hour. If this practice is sound, then workers' individual contributions to joint products can be adequately measured; hence, they can be required.

Substitution provides a useful framework for measuring contribution. Of course, it may not always get exactly the right answers, and in some cases it may be difficult or costly to implement. But this should not lead us to abandon the practice, or our efforts to measure people's contributions more generally, for two reasons. First, significant gains in justice are worth modest losses in efficiency. If justice requires giving people what they deserve, and if what people deserve is determined partly by their contributions, then we should be willing to devote time and resources to measuring people's contributions. Second, even rough measures of contribution can be useful for distributive justice. In most countries, huge sums of money are distributed for reasons other than contribution (e.g., inheritance). If requiring contribution were our only goal, then the distribution of benefits in these countries would have to be radically changed.

I have argued that the metaphysical₂ and epistemological₂ arguments, even if they prove contribution cannot be required, do not prove desert simpliciter cannot be required. There is good reason to believe that there are sources of desert besides contribution, and that contribution is not always relevant to people's deserts. I have also given reason to believe that, in certain cases, contribution can be adequately measured. Thus, neither the metaphysical₂ nor the epistemological₂ argument shows that desert should not be used as a criterion for the just distribution of social benefits. It follows that neither argument can be used to justify the asymmetry.

5. Conclusion

The asymmetry of desert stands in need of justification. It seems intuitively wrong that people should get the punishment they deserve but not the social benefits they deserve. This intuition is supported by the recognition, articulated in section two, that the distinction between distributive and retributive justice is artificial. We have not seen, at this point, any argument that justifies the asymmetry. Sections three and four considered several potential justifications, and argued that all of them fail.

Note that I did not claim the asymmetry cannot be justified. It is possible that a new argument for it will be found. Thus, further research on the asymmetry can proceed in two directions. Those who remain sympathetic to it must search for a new argument. As we said above, any plausible justification of the asymmetry must rely on what is distinctive about the natures, purposes, and circumstances of distributive and retributive justice. Given this constraint, a possibility that may be worth exploring focuses on the relative value of desert in the contexts of distributive and retributive justice. Many writers agree that, while desert is important, it is not all that matters. Considerations of desert may be overridden by competing moral considerations. An argument for the asymmetry might begin, then, with the observation that the values that “compete” with desert in the context of distributive justice (e.g., equality, entitlement, liberty) are different than the values that “compete” with desert in the context of retributive justice (e.g., crime prevention, correction). Perhaps desert “trumps” the values of retributive justice but not the values of distributive justice.²⁸

In the absence of this new argument, however, those who (like me) doubt the asymmetry can be justified must pursue a different task. They must decide who is wrong: distributive theorists who reject desert, or retributive theorists who embrace it. In examining this question, the arguments of both retributive and distributive theorists should be taken into account. Ignoring one at the expense of the other is, I suggest, a reason the asymmetry has for so long gone unnoticed.²⁹

¹ Those who endorse desert-based retributive theories include Hart (1968), Husak (1992), Moore (1997), Morris (1968), Sadurski (1985), and Sher (1987). Those who reject

desert-based distributive theories include Rawls (1971), Nozick (1974), Sandel (1998), Hampshire (1972), and Wasserstrom (1978).

² See Sadurski (1985) and Sher (1987).

³ Scheffler (2000) employs this method in one of the few explicit discussions of the asymmetry. (The only other one I am aware of is Husak's (2000) response to Scheffler.) The argument he develops is "suggested by . . . the work of Rawls and other egalitarian liberals" (2000, 985). I discuss Scheffler's argument below.

⁴ These claims were first made by Feinberg (1970). See also Miller (1976).

⁵ I put aside the question of what the "currency" of distributive justice is. For a recent discussion, see Arneson (2000). Also, for convenience, I ignore the complication that theories of distributive justice allocate social burdens; e.g., garbage dumps.

⁶ Moral responsibility is a complex notion; I recognize my analysis is far from complete. But detailed discussion of this matter would take us far afield. I leave it aside.

⁷ See Nathanson (1998, 22-23).

⁸ Some will object that the above passage from Rawls does not commit him to the metaphysical₁ argument, as I have described it. They may be right. But many have thought it commits him to this argument. For more on Rawls's treatment of desert, see section 3.3., below.

⁹ Those who ascribe the metaphysical₁ argument to Rawls include Nagel (1979), Nozick (1974), Sher (1987), Scheffler (1992), and Zaitchik (1977). Sher and Zaitchik, however, do so tentatively. Cohen (1989) and Young (1992) ascribe the epistemological₁ argument to Rawls.

¹⁰ Sandel (1998, 90-92) concludes, for similar reasons, that Rawls's endorsement of the asymmetry is inconsistent with his rejection of desert in the context of distributive justice.

¹¹ However, Moore (1997) and Zaitchik (1977) take the metaphysical₁ argument's conclusion—that no one deserves anything—to be a reductio of the argument.

¹² Hume notes the popularity of this fallacious form of reasoning: "There is no method of reasoning more common, and yet none more blameable, than, in philosophical disputes, to endeavor the refutation of any hypothesis, by a pretence of its dangerous consequences to religion and morality" (1993, 64).

¹³ Garcia (1986) has argued that claims of “good” desert are in some respects different from claims of “bad” desert. He says that if one deserves something good, then one acquires a right to it, which right would be violated if one were not given that thing. However, if one deserves something bad, then one does not acquire a right to it; rather, one’s normal rights against having that bad thing done to one are forfeited. This is an intriguing claim, but it does not help justify the asymmetry. In fact, it suggests that desert is more important in the context of distributive justice (where it gives one a right to the deserved thing) than in the context of retributive justice (where it does not).

¹⁴ As I noted above, this excerpt is part of a larger discussion in which Scheffler tries to justify the asymmetry explicitly. I have distilled its most relevant elements in this passage and the following discussion. For a more thorough treatment of Scheffler’s argument, see Moriarty (2002).

¹⁵ In fact, people’s productive contributions might have many sorts of value: aesthetic, utilitarian, or whatever. But what is usually meant by “value” in this context is “market value.” I assume that this is what is meant here, as well.

¹⁶ This example, and the following discussion, owes much to Miller (1976, 107-108).

¹⁷ Dick (1975, 262).

¹⁸ Note that the metaphysical₂ and epistemological₂ arguments do not stem from naturalistic concerns about the reality of personal responsibility. Rather, they assume, as a background condition, that people are responsible for what they do and who they are. In this way they avoid the unpalatable consequences of the metaphysical₁ and epistemological₁ arguments in the context of retributive justice.

¹⁹ Note that Feinberg changes his position between 1970 and 1973. In the earlier article, he claims that the sole criterion for economic desert is the hardships endured in one’s job. Later he says that productive contribution is relevant to desert.

²⁰ Young says the desert-bases for income “will range from those relevant to compensation such as danger, unpleasantness, inconvenience, and remoteness of location with its attendant loss of facilities, through reward for efforts which produce valuable products, to reward for risk-taking which is aimed at producing something valuable, and on even to efforts which do not result in the production of value but warrant a return

simply because the effort was well motivated and had a reasonable probability of success” (1992, 338). See also McLeod (1996).

²¹ This is not to say that the surfer should not all-things-considered receive welfare payments. Desert is one factor among many in determining the justice of distributions. There may be other, stronger reasons to give the surfer welfare payments. See Van Parijs (1991). I discuss briefly the value of desert relative to other distributive criteria in section five, below.

²² In fact, it is easy to think of still other cases where contribution is irrelevant to desert. If health care can be deserved, then making honest efforts to maintain one’s health, as opposed to frittering it away on high-risk activities, is a ground for deserving it. If political positions can be deserved, then serving the community, as opposed to ignoring or destroying it, is a ground for deserving one. In short, there are many things that might be distributed according to desert, and people’s contributions will often be irrelevant to their deserts.

²³ It might be objected that there is a sense in which people’s scholastic achievements, skills, and effort are socially influenced that does not rely on the metaphysical₁ and epistemological₁ arguments. In particular, perhaps achievement, skill, and effort are socially influenced in the same way contribution is, as explained in the metaphysical₂ and epistemological₂ arguments. This, I think, is a confusion. Certainly other people’s, e.g., efforts will be in a sense relevant to determining how hard some person has worked. But there will always be a discoverable fact of the matter, I have suggested, about how many units of effort that person has put forth. Analogously, while how rich a person is depends in some way on the salaries of others, there still is a discoverable fact of the matter about how much money he makes.

²⁴ Sadurski (1985) and Feinberg (1970) reject contribution as a desert-base.

²⁵ Nozick (1974, 188) makes a similar point.

²⁶ Thanks to Larry Temkin for this suggestion.

²⁷ A crew coach does something similar to determine which arrangement of rowers produces the fastest boat. She starts with an idea of how hard each rower can pull on a stationary exercise device. Then, by switching rowers into and out of the boat one-by-

one, she gets an idea of what each can pull rowing with others. Using this information, she is able to assemble the fastest boat. Thanks to Gopal Sreenivasan for this example.

²⁸ I thank for this suggestion an anonymous reviewer for *Noûs*.

²⁹ I read an early draft of this paper at the 29th Annual Conference on Value Inquiry, and discussed much later drafts with the ethics faculties of Georgetown University and the National Institutes of Health. Thanks to members of those audiences, especially Stephen Nathanson and Gopal Sreenivasan, for helpful criticisms and suggestions. I received many useful comments on earlier drafts of this paper from Ruth Chang, Doug Husak, Howard McGary, Larry Temkin, and an anonymous reviewer for this journal. Thanks to them and also to Mike Valdman for discussions of this material.

References

- Anderson, Elizabeth. (1999) "What is the Point of Equality?," *Ethics* 109:2, pp. 287-337.
- Arneson, Richard J. (2000) "Welfare Should be the Currency of Justice," *Canadian Journal of Philosophy*, 30:4, pp. 497-524.
- - - (1997) "Egalitarianism and the Undeserving Poor," *The Journal of Political Philosophy*, 5:4, pp. 327-350.
- Cohen, G.A. (1989) "On the Currency of Egalitarian Justice," *Ethics*, 99:4, pp. 906-944.
- Dick, James (1975) "How to Justify a Distribution of Earnings," *Philosophy and Public Affairs*, 4:3, pp. 248-272.
- Feinberg, Joel. (1973) *Social Philosophy*, Englewood Cliffs, New Jersey: Prentice-Hall.
- - - (1970) *Doing and Deserving*, Princeton: Princeton University Press.
- Galston, William A. (1980) *Justice and the Human Good*, Chicago: University of Chicago Press.
- Garcia, Jorge L.A. (1986) "Two Concepts of Desert," *Law and Philosophy*, 5, pp. 219-235.
- Goodin, Robert. (1985) "Negating Positive Desert Claims," *Political Theory*, 13:4, pp. 575-598.
- Hampshire, Stuart. (1972) "A New Philosophy of the Just Society," *New York Review of Books*, February 24th, pp. 34-39.
- Hart, H.L.A. (1968) *Punishment and Responsibility: Essays in the Philosophy of Law*, New York: Oxford University Press.
- Husak, Douglas N. (2000) "Holistic Retributivism," *California Law Review*, 88, pp. 991-1000.
- - - (1992) "Why Punish the Deserving?" *Nous*, 26:4, pp. 447-464.
- Hume, David. (1993) *An Enquiry Concerning Human Understanding*, second edition, ed. Eric Steinberg, Indianapolis, Indiana: Hackett.

-
- McLeod, Owen. (1996) "Desert and Wages," *Utilitas*, 8:2, pp. 205-221.
- Miller, David. (1976) *Social Justice*, New York: Oxford University Press.
- Moore, Michael. (1997) *Placing Blame: A General Theory of the Criminal Law*, Oxford: Clarendon Press.
- Moriarty, Jeffrey. (2002) *Just Deserts: The Significance of Desert to Distributive Justice*, Ph.D. dissertation, Rutgers University, New Brunswick, NJ.
- Morris, Herbert. (1968) "Persons and Punishment," *Monist*, 52, pp. 475-501.
- Nielsen, Kai. (1985) *Equality and Liberty: A Defense of Radical Egalitarianism*, Totowa, New Jersey: Rowman & Allanheld.
- Nagel, Thomas. (1979) *Mortal Questions*, New York: Cambridge University Press.
- Nathanson, Stephen. (1998) *Economic Justice*, Upper Saddle River, New Jersey: Prentice Hall.
- Nozick, Robert. (1974) *Anarchy, State, and Utopia*, New York: Basic Books.
- Rawls, John. (1971) *A Theory of Justice*, Cambridge, Mass.: Harvard University Press.
- Sadurski, Wojciech. (1985) *Giving Desert its Due: Social Justice and Legal Theory*, Dordrecht: D. Reidel Publishing Company.
- Sandel, Michael J. (1998) *Liberalism and the Limits of Justice*, second edition, New York: Cambridge University Press.
- Scheffler, Samuel. (2000) "Justice and Desert in Liberal Theory," *California Law Review*, 88, pp. 965-990.
- - - (1992) "Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics," *Philosophy and Public Affairs*, 21:4, pp. 299-323.
- Sher, George. (1987) *Desert*, Princeton: Princeton University Press.
- Sidgwick, Henry. (1962) *The Methods of Ethics*, seventh edition, originally published London: Macmillan, 1907; reprinted Chicago: University of Chicago Press.
- Soltan, Karol E. (1987) *The Causal Theory of Justice*, Berkeley: University of California Press.
- Van Parijs, Philippe. (1991) "Why Surfers Should be Fed: The Liberal Case for an Unconditional Basic Income," *Philosophy and Public Affairs*, 20:2, pp. 101-131.
- Wasserstrom, Richard. (1978) "A Defense of Programs of Preferential Treatment," *National Forum*, 58:1, pp. 15-18.
- Young, Robert. (1992) "Egalitarianism and Personal Desert," *Ethics*, 102: 2, pp. 319-341.
- Zaitchik, Alan. (1977) "On Deserving to Deserve," *Philosophy and Public Affairs* 6:4, pp. 370-388.