

THE TAMING OF DESERT
WHY RAWLS' DEONTOLOGICAL LIBERALISM IS UNFRIENDLY TO DESERT

ERIC TAM

CANADIAN POLITICAL SCIENCE ASSOCIATION 2003 CONFERENCE
DRAFT—PLEASE DO NOT QUOTE
KING'S COLLEGE AT DALHOUSIE UNIVERSITY • MAY 2003

I. RAWLS' ASSERTION AND THE SETTING OF THE ARGUMENT

"Justice is getting what one deserves. What could be simpler than that?"

—John Hospers¹

The assumption that desert is a first principle of political morality is one that has been present in Western philosophy for more than two millennia. Aristotle affirmed that “everyone agrees that justice...must be in accordance with some kind of merit.”² This sentiment has been echoed by numerous thinkers since Aristotle, such as W.D. Ross, who thought that the duty of justice consists in “the apportionment of pleasure and pain to the virtuous and vicious respectively,”³ and, more recently, John Hospers, as demonstrated by the quotation above. Conventional wisdom since Ancient Greece has largely assumed that desert is a foundational component of justice and political morality. But in recent years, John Rawls—as well as a number of liberal thinkers who have followed him—has explicitly proposed to overturn this long-held assumption about the foundational relationship between desert and political morality.⁴

Given the heterodox nature of this claim, it is unsurprising that many thinkers have challenged its plausibility. Some have directly rejected it.⁵ Others have interpreted Rawls' view of the connection between desert and justice as resulting from an idiosyncratic or unorthodox understanding of desert. For example, some philosophers have argued that Rawls' dismissal of desert as a first principle of justice stems from a line of reasoning that ultimately implies that desert is altogether impossible.

¹ John Hospers, *Human Conduct: An Introduction to the Problems of Ethics* (Harcourt, Brace & World, 1961), p. 433

² Aristotle, *Nicomachean Ethics*, trans. Roger Crisp (Cambridge, UK: Cambridge University Press, 2000[c.330BCE]), 1131a

³ W.D. Ross, *The Right and the Good* (Oxford, UK: Oxford University Press, 1930), p. 28

⁴ John Rawls, *A Theory of Justice* (2nd Ed., Cambridge, MA: The Belknap Press of Harvard University Press, 1999). For supporters of Rawls' position on the disjunction between political morality and desert, see, for example, Jon Mandel, “Justice, Desert, and Ideal Theory,” *Social Theory and Practice* 23: 399–425 (1997); David Cummiskey, “Desert and Entitlement: A Rawlsian Consequentialist Account,” *Analysis* 47: 15–19 (1987); Richard Wasserstrom, “The University and the Case for Preferential Treatment,” *American Philosophical Quarterly* 13: 165–170.

Others interpret Rawls as arguing that pre-institutional desert is impossible. Both of these claims about desert have been shown to be rather implausible; a common tactic is to demonstrate the extent of their implausibility and to then conclude that Rawls' assertion that desert is not a first principle of political morality must therefore be absurd. After demonstrating that arguments based on such interpretations are misguided, I will argue that a clearer definition of the concept of desert allows us to discern the true reason for the absence of desert from the first principles of justice in Rawls' theory. The answer lies in a structural attribute that Rawls' theory shares with other liberal theories similarly unfriendly to desert. I conclude with some substantive arguments in favor of liberal political theories that have followed Rawls' lead in downplaying the importance of desert.

I begin by dismissing the interpretation of Rawls that suggests that desert does not appear in his theory because he employs a line of reasoning that renders desert impossible.⁶ This interpretation generally leans on the following infamous passage from *A Theory of Justice*:

We do not deserve our place in the distribution of native endowments, any more than we deserve our initial starting place in society. That we deserve the superior character that enables us to make the effort to cultivate our abilities is also problematic; for such character depends in good part upon fortunate family and social circumstances in early life for which we can claim no credit. The notion of desert does not apply here.⁷

Traditionally, this passage has been interpreted as asserting the following argument:

- 1) We do not deserve our family and social circumstances.

⁵ See, for example, Peter J. Steinberger, "Desert and Justice in Rawls," *The Journal of Politics* 44: 983–995 (1982); A.T. Nuyen, "Just Desert," *The Journal of Value Inquiry* 31: 221–230 (1997); James Sterba, "Justice as Desert," *Social Theory and Practice* 3: 101–116 (1974)

⁶ See, for example, Alan Zaitchik, "On Deserving to Deserve," *Philosophy and Public Affairs* 6: 370–388 (1977); John Hospers, "What Means this Freedom?" in *Determinism and Freedom in the Age of Modern Science*, ed. Sidney Hook (New York, NY: Collier, 1961), p.126–142. Also see Michael Sandel's *Liberalism and the Limits of Justice* (2nd Ed., Cambridge, UK: Cambridge University Press, 1998], p. 71–95) for an alternative argument that charges that desert is impossible for Rawls because he presupposes an "unencumbered self" that cannot possess any characteristics deeply enough to serve as desert-bases. I will not deal with Sandel's much-discussed argument here, except to note that I believe it to be inaccurate; for a thorough refutation, see Thomas Pogge, *Realizing Rawls*, (Ithaca, NY: Cornell University Press, 1989).

⁷ Rawls, *supra* note 5, at p. 89

- 2) Our superior character that allows us to cultivate our abilities depends on good part on fortunate family and social circumstances.
- 3) X deserves Y in virtue of having Z only if X deserves to have Z .⁸

Therefore,

- 4) We do not deserve our superior character that allows us to cultivate our abilities.

If Rawls is indeed committed to statement (3), it is evident his theory cannot support *any* desert-claims because they will all fail due to infinite regress. If, for X to deserve Y in virtue of desert-base Z , X needs to deserve Z , then X would also need to deserve the desert-base that allows X to deserve Z ...and so on.

But a more charitable interpretation of the above passage need not commit Rawls to asserting statement (3). We can instead read Rawls as arguing that we cannot employ our early family and social circumstances as desert-bases because of their contingent nature. But it may be the case that we do deserve our superior character to the extent that we have cultivated it through the employment of traits and resources other than our early circumstances, whether or not we deserve *those* traits and resources. However, as it is practically impossible to disaggregate the legitimate desert-bases from the illegitimate desert-bases for the purposes of establishing principles of social justice, any claim that we deserve our superior character is rendered problematic. This interpretation reformulates the quoted passage as asserting the following:

- 1) Our early family and social circumstances are contingent.

Therefore,

- 2) We cannot claim the contribution of our early family and social circumstances as a legitimate desert-base.

⁸ See Zaitchik (*supra* note 6, at p. 372) for an influential rendering of this interpretation.

- 3) Our superior character that allows us to cultivate our abilities depends to an unknown degree on our early family and social circumstances.
- 4) We deserve our superior character that allows us to cultivate our abilities only to the degree that the development of this character resulted from factors that count as legitimate desert-bases.

Therefore,

- 5) Determining the degree to which we deserve our superior character that allows us to cultivate our abilities is problematic.

One can admittedly contest whether this latter interpretation is a more accurate rendering than the alternative, but I do not want to pursue this dispute further, for we have good reasons to believe that the significance of this passage to understanding the role of desert in Rawls' theory has been significantly overstated. Besides his admonishment that this passage is only meant to serve as an "intuitive consideration" in support of his difference principle, we should also note that Rawls thinks that principles of desert must underwrite theories of retributive justice.⁹

I now turn to the interpretation that ascribes to Rawls the view that desert can only be defined institutionally. Proponents of this interpretation argue that the only valid desert-claims that can arise under Rawls' theory are derivative of institutional rules.¹⁰ For example, George Sher presents the following passage as advancing a purely institutional conception of desert:

⁹ Rawls, *supra* note 5, at p. 276. Some, such as Sandel (*supra* note 6, at p. 90–92) and Pogge (*supra* note 5, at p. 83) have been puzzled by Rawls' assertion that distributive justice should not be regarded as the converse of retributive justice and that the latter involves principles of desert but the former does not. Rawls' argument is that the two theories operate at different levels of priority: he views the theory of distributive justice as a species of ideal theory because it is derived under the hypothesis of a well-ordered society of free, equal, and rational individuals who will fully adhere to the imperatives of justice. The conflict that distributive justice must manage is a result of differences in initial endowments of scarce resources among individuals who possess a plurality of incommensurable conceptions of the good—none of which are moral differences. *Ex hypothesi*, we have no basis for making moral distinctions within this theory. Retributive theory, in contrast, comes into play when agents violate the obligations of justice or natural duty, which does demonstrate a moral shortfall, and so principles of moral desert apply here. See generally, Mandle *supra* note 5.

¹⁰ See, for example, George Sher, *Desert* (Princeton, NJ: Princeton University Press, 1987); Samuel Scheffler, "Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics," *Philosophy and Public Affairs* 21:4 (1992); William Galston, *Justice and the Human Good* (Chicago, IL: The University of Chicago Press, 1980), p. 170–171; David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), p. 139.

[T]he concept of moral worth is secondary to those of right and justice, and it plays no role in the substantive definition of distributive shares. The case is analogous to the relation between the substantive rules of property and the law of robbery and theft. These offenses and the demerits they entail presuppose the institution of property which is established for prior and independent social ends. For a society to organize itself with the aim of rewarding moral desert as a first principle would be like having the institution of property to punish thieves.¹¹

While this passage expresses an important aspect of Rawls' theory that allows us to understand why desert is not a first principle of distributive justice, it is incorrect to understand it as asserting that pre-institutional desert does not exist. We know that this claim is false from his comments on retributive theory. As Rawls' theory would stipulate deserved punishments for breaking natural duties—which exist independently of social institutions¹²—we can infer that Rawls would acknowledge the existence of pre-institutional desert in the retributive realm. My view of the relationship that exists between desert and institutions in Rawls theory will become more evident later in this paper.

If Rawls' theory does not imply that desert is impossible or can only have an institutional basis, then what is the actual reason he defies tradition by not including a principle of desert among his first principles of justice? My answer is that desert has scant place in Rawls' theory for the same reason it is missing from most of the liberal theories that have followed his: the deontological character of these theories renders them unfriendly to principles dependent on antecedently held comprehensive conceptions of value. Before I make my substantive argument for this claim, it will be useful for me to first arrive at a clear definition of the concept of desert. I begin with a brief review of the pertinent philosophical literature.

¹¹ Rawls, *supra* 5, at p. 275 (quoted by Sher, *supra* note 10, at p. 14)

¹² See Rawls, *supra* note 5, at p. 93-101 for his account of the principles of fairness for individuals and the natural duties.

II. THE CHAOTIC LANDSCAPE OF DESERT

There are a few facts on which most philosophers can agree when discussing the notion of desert. Joel Feinberg's 1956 paper "Justice and Personal Desert"¹³ is regarded as a seminal analysis of the notion of desert. In this paper, Feinberg introduces the notion of a "desert base," on which any claim of desert must be founded.¹⁴ "If a person is deserving of some sort of treatment," Feinberg writes, "he must, necessarily, be so *in virtue* of some possessed characteristic or prior activity."¹⁵ On this point, most philosophers seem to concur. Beyond this basic point of agreement, however, there is little consensus. A brief review of the contemporary philosophical literature pertaining to the notion of desert reveals a great deal of confusion as to what the notion of desert exactly entails or requires. Theorists disagree as to whether the subject of desert must be restricted to persons¹⁶; whether desert-claims can be coherently distinguished from claims of need and entitlement¹⁷; whether desert-bases must give rise to "reactive" or "appraising" attitudes;¹⁸ whether desert-claims must be "forward-looking"¹⁹; and whether desert requires a subject who is responsible for the deserved treatment's desert-base.²⁰ George Sher notes that all desert-claims "display the form *M*

¹³ Joel Feinberg, "Justice and Personal Desert" in *Doing and Deserving* (Princeton University Press, 1970), p. 55

¹⁴ *Id.* at p. 55

¹⁵ *Id.* at p. 58

¹⁶ Miller, *supra* note 10, at p. 133–138) argues that desert is restricted to persons; it is clear that many other thinkers, among them Feinberg (*supra* note 13, at p. 55) and Sher (*supra* note 10, at p. 7), have endorsed the opposite view.

¹⁷ Miller's theory of social justice (*supra* note 10) is to a great degree based on this three-fold distinction, whereas Owen McLeod ("Desert and Institutions" in *What Do We Deserve?* Owen McLeod & Louis Pojman, eds. [Oxford, UK: Oxford University Press, 1999], p. 186–195) problematizes the distinction between desert and entitlement by defining entitlement as a desert-base.

¹⁸ P.F. Strawson ("Freedom and Resentment," *Proceedings of the British Academy* 48:199 [1962]), David Miller (*Social Justice* [Oxford, UK: Clarendon Press of Oxford University Press, 1976], p. 85–90, and Samuel Scheffler (*supra* note 10) support this claim, whereas Geoffrey Cupit ("Desert and Responsibility," *Canadian Journal of Philosophy* 26:83 [1996]) argues against it.

¹⁹ This proposition is endorsed by many thinkers, including Feinberg (*supra* note 13, at 72), Miller, (*supra* note 10), and John Kleinig ("The Concept of Desert," *American Philosophical Quarterly* 8:71 [1971]) but denied by Fred Feldman ("Desert: Reconsideration of Some Received Wisdom," *Mind* 104:413 [1995]).

²⁰ Miller (*supra* note 10), Wojciech Sadurski (*Giving Desert Its Due* [Dordrecht, HL: D. Reidel Publishing, 1985], p. 118), and Julian Lamont ("The Concept of Desert in Distributive Justice" in *What Do We Deserve?* Owen McLeod & Louis Pojman, eds. [Oxford, UK: Oxford University Press, 1999], p. 101–113) support this claim, whereas Feldman (*supra* note 19, at 417–421) Geoffrey Cupit (*supra* note 18) deny it.

deserves X for A .”²¹ Yet defining desert in this manner without any restrictions beyond the one offered by Feinberg above allows us to fill this relation with *any* triple containing a subject, a putatively appropriate mode of treatment, and an associated basis of justification for this appropriateness that is a trait or prior activity belonging to the subject. Is the notion of desert equivalent to the notion of *any* form of appropriate treatment? When one says ‘ M deserves treatment X for A ,’ is this statement identical to the statement ‘ M should get treatment X because of A ’ or the statement ‘ M ought to get treatment X because of A ’? This equivalence seems unlikely. For example, the following statements suggest that not all relationships of appropriate treatment are desert relationships:

- 1 a) They’re the ones who really should get the medal, because they skated the best performance.
- 1 b) They’re the ones who really deserve to get the medal, because they skated the best performance.
- 2 a) She ought to get the medicine, because she needs it the most.
- 2 b) She deserves to get the medicine, because she needs it the most.
- 3 a) He ought to get some exercise, because he needs it to stay in shape.
- 3 b) He deserves to get some exercise, because he needs it to stay in shape.
- 4 a) The enemy officers should be attacked first, because of their tactical importance.
- 4 b) The enemy officers deserve to be attacked first, because of their tactical importance.
- 5 a) The channel ought to be changed, because it is broadcasting a boring show.
- 5 b) The channel deserves to be changed, because it is broadcasting a boring show.

If one holds all of these statements to be identical, then the concept of ‘desert’ is without distinctive prescriptive force. In fact, if we were to take seriously this expanded notion of desert, all claims about the relationship between desert and justice (or political morality in general) would be devoid of substantive content, as this statement would be equivalent to asserting that a system of justice or political morality must involve *some* element of appropriate treatment. But by definition, all normative principles containing an object (in the grammatical sense) involve a notion of appropriate

²¹ Sher, *supra* note 10, at p. 7

treatment because they must take the form of prescriptive statements. Even a conception of political morality such as ‘justice as total anarchy’ would define a form of appropriate treatment (i.e.: ‘everyone *deserves* [i.e. ought to have] total freedom’). Claims about the relationship between justice and desert would then be vacuous.

I believe this confusion stems from conflating the notion of “what is *due* to person x ” with that of “what person x *deserves*,” which is a common mistake.²² The former statement is effectively identical to “what person x ought to get.” If we think desert-claims possess any kind of distinctive prescriptive force, we must conclude that desert-claims only make up a subset of the universe of *appropriate treatment* claims that fit the general form ‘*M* ought to receive treatment *X* because of *A*.’ But does the concept of desert possess a feature that allows us to distinguish it consistently from other statements of appropriate treatment? One group of thinkers does not seem to think so, for these thinkers are willing to employ various claims in their arguments and examples about desert that could just as easily be described as need-claims, rights-claims, duty-claims, or entitlement-claims.²³ A second group of thinkers has taken the opposite strategy: they have attempted to distinguish desert by stipulating very strict conditions on the way in which the word “desert” can be properly used. For example, David Miller argues that the relationship of desert only properly describes modes of treatment appropriate to *persons* in virtue of their *responsibility* for some *performance*. All other uses of the term are either derivative of such a relationship, or constitute improper or metaphorical invocations. Unfortunately, a consequence of these kinds of stipulative definitions is that they must ignore or dismiss many ordinary invocations of “desert” as incoherent. For Miller to

²² This confusion is what seems to have led Hospers, for example, to adopt his stance (*supra* note 1).

²³ Feldman (*supra* note 19), Sher (*supra* note 10), McLeod (*supra* note 17), and Bruce Waller (“Just and Unjust Deserts,” *The Southern Journal of Philosophy* 25:229 [1987]) exhibit tendencies in this direction.

maintain his stringent definition, for example, he has to create a class of “second-order” desert-claims, which he argues are not really desert-claims, but rather statements that draw their normative force from first-order desert-claims, as well as a large category of “sham” desert-claims.²⁴ A third group of thinkers employ a strategy of dividing desert into different subtypes—desert for effort, desert for merit, desert for contribution, and so on—and then attempting to set constraints on each of these subtypes.²⁵

III. DEFINING THE CONCEPT OF DESERT

All three groups of desert theorists described above have failed to draw the proper type of distinctions required to define the concept of desert. The first group errs because they confuse desert with the broader (and almost vacuous) relationship of appropriate treatment, whereas the second group errs because they have mistakenly identified the general *concept* of desert with specific *conceptions* of desert that they favor.²⁶ The third group of thinkers has chosen a strategy that mixes the mistakes of the first two groups: by breaking up the concept of desert into many different subparts, they are actually mapping out the territory of one or (usually) more specific conceptions of desert; they also include mistakenly include under the rubric of desert a number of non-desert claims.

In contrast, I think it is possible to formulate a definition of the concept of desert that consistently distinguishes it from other forms of appropriate treatment *and* that accounts for most coherent uses of the term in both ordinary speech and the philosophical literature. My definition departs from

²⁴ Miller, *supra* note 10

²⁵ See Waller (*supra* note 23) and Sher (*supra* note 10)

²⁶ In employing this distinction between *concept* and *conception*, I follow H.L.A. Hart, *The Concept of Law* (Oxford, UK: The Clarendon Press, 1961), p. 155–159; Rawls, *supra* note 5, at p. 5–11; and Jeremy Waldron, *The Right to Private Property* (Oxford, UK: Clarendon Press of Oxford University Press, 1988), p. 52–53.

previous definitions of desert because it does not view desert as a 3-place relation. In contrast, I propose that all statements of desert can be defined by the following biconditional:

Where z is a subject, t is a form of treatment, a is a predicate, and v is a value-system,

' z deserves t for a ' is true in v , if and only if, both t tracks z 's relationship to a and D is an element of v .

D : if a is a predicate of z , then applying t to z is intrinsically valuable.

Several terms in this definition require elaboration. By value-system, I mean a (consistent) set of principles of value-assignment. It may be incomplete and include only a handful of principles or it may be a full-fledged axiology. My stipulation that the deserved treatment must track the deserving subject's relationship to the desert-base implies that the level of desert is related to the deserving subject's mode of possession of the desert-base—so variations in the degree of desert must be responsive to variations in the deserving subject's mode of possession of the desert-base. By "intrinsically valuable," I mean that the deserved treatment's value has to result directly from the fulfillment of principle D , and not from some other principle that might be fulfilled by applying the treatment to the deserving subject.

Although the concept of desert I have proposed here is very abstract, it is substantive enough to allow us to distinguish desert-claims from other claims of appropriate treatment at the concept level. The boundaries of such distinctions at the conception level will vary with the specific axiologies to which particular conceptions are linked. My definition asserts that desert-claims are distinguished from other claims of appropriate treatment based primarily on two stipulations. First, the deserved treatment must track the deserving subject's relationship to the characteristic that makes it deserving. This condition distinguishes desert-claims from prescriptive claims for which the subject's mode of possession of the base of appropriate treatment is unimportant to the value of applying the

prescribed treatment. For example, in the claim “Anna ought to receive a big smile from Takeshi because she was the first person he met after winning the lottery,” Anna’s mode of possession of the predicate “was the first person Takeshi met after winning the lottery” is not (likely) important to value generated by the claim, which is really about Takeshi and not Anna. Presumably, Takeshi ought to give a big smile to *whomever* he first meets after winning the lottery. Most conceptions of desert express this condition by stipulating that the desert-base must be a characteristic or action *of* the deserving subject. Second, the application of the deserved treatment must result in *intrinsic* value. This feature of desert distinguishes the concept from a number of different concepts that often seem closely related.

Most importantly, we can contrast desert-claims with appropriate treatment claims that are justified on a purely *instrumental* basis. Such claims assert that treating a subject in a certain manner may promote some end or value, but no intrinsic value results from their fulfillment. It is for this reason that most people will view desert-claims (4b) (“The enemy officers deserve to be attacked first, because of their tactical importance”) and (5b) (“The channel deserves to be changed, because it is broadcasting a boring show”) above as poorly formed. On most conceptions of value, attacking one target over another because of its tactical value has no intrinsic value; the value that results from such an attack results entirely from its contribution to an overarching military goal. If a desert-claim is valid in relation to a conception of value, then the fulfillment of that claim will have value in itself. Miller grasps this point when he writes that a well-formed desert-claim expresses a primary-level prescriptive justification.²⁷

²⁷ Miller accurately observes that not all claims of the form ‘*x* should have *t* for *c*’ are desert-claims, because “in the case of genuine desert judgments ‘deserves’ supplies the *ground* for ‘should have’” (*supra* note 10, at p. 138, italics in original text).

Note that the stipulation that deserved treatment must be intrinsically valuable dovetails with the conventional intuition that most theories of utilitarianism are unfriendly to desert-claims. Basic act-utilitarian²⁸ theories cannot support most ordinary language desert-claims, because these theories hold that only the generation of utility has intrinsic value. However, it is strictly speaking untrue that act-utilitarian theories cannot support any desert claims at all. Instead, all valid desert-claims on such theories must take a form that resembles the following: “Sankar deserves to get these resources because he possesses the capability to use them in a manner that maximizes the community’s utility.” As we do not ordinarily employ desert-claims in this manner, it is not surprising that philosophers have assumed that desert and utilitarianism are incompatible. Finally, the stipulation that deserved treatment must produce intrinsic value explains why many conceptions of value distinguish need-claims from desert-claims: if a value-system defines the satisfaction of certain needs completely instrumentally, then their fulfillment will not generate intrinsic value and cannot give rise to desert. This is illustrated by desert-claim (3b) above (“He deserves to get some exercise, because he needs it to stay in shape”).²⁹

Similarly, entitlement claims can be viewed as possessing a purely *formal* basis: fulfillment of the conditions of some previously promulgated rule or system. As many axiologies ascribe no value to

²⁸ My comments on utilitarianism do not apply to more sophisticated rule-utilitarian theories, such as J.S. Mill’s, which attempt conceive of justice, desert, virtue, and so on as constitutive of their conceptions of utility.

²⁹ William Galston also correctly identifies the instrumental nature of need-claims as one of several characteristics that distinguish need-claims from desert-claims. His primary basis for making this distinction is not convincing, however. Galston argues that forms of deserved treatment always have the same valence of appraisal as their connected bases (Galston, *supra* note 10, at p. 174). But we can think of axiologies that feature desert-claims for which this is not true. For example, desert theorists frequently assert that when persons who are injured or suffer some other misfortune, they *deserve* compensation (see, for example, Feinberg, *supra* note 13, at p. 65; Feldman, *supra* note 19, at p. 417–419). In addition, it is unclear that need-bases have the opposite valence of appraisal than do their modes of treatment. For example, humans could plausibly be described as possessing a need for love, affection, and sex, but there are many axiologies (including, I think, those held by a majority of Westerners) in which both these needs and their satisfaction are appraised positively.

the fulfillment of just any arrangement of rules, it is easy to see why philosophers have traditionally viewed entitlement as separate from desert. Of course, not all axiologies hold formal rules to be devoid of value. Some value-systems—for example, ones compatible with the legal theories of formalism and positivism—seem to ascribe intrinsic value to following rules promulgated in a certain manner, regardless of their content or purpose. According to such theories, claims of entitlement would always entail claims of desert.

I believe my definition can account for almost all ordinary language invocations of desert, including invocations in which the subject is not a person.³⁰ Common usage, however, typically leaves any specification of a value-system suppressed. This omission is not surprising, as the definition I have provided is a metatheoretical one, appropriate to defining a concept, and people do not ordinarily speak in metatheoretical terms. If a speaker already presupposes a value-system (or something approximate to one), then we would expect him or her to articulate a desert-claim in its familiar form as a 3-place relation, which is equivalent to *D*, relative to the presupposed value-system.

Other formal definitions of the concept of desert do not explicitly mention its connection with a value-system. In my view, this is a critical oversight, as such a system is necessary to give particular conceptions of desert their evaluative content and concrete desert-claims their prescriptive force. But my addition is by no means an unprecedented innovation. Many other philosophers have speculated that desert presupposes a substantive value-system, although none have explicitly identified the structure of the connection. For example, William Galston writes that one of features

³⁰ The definition provided by this paper can easily accommodate non-person subjects of desert. Many comprehensive hierarchies of value ascribe intrinsic value to the appropriate treatment of non-human animals or objects possessing certain qualities.

of desert is that its concept “presupposes a general concept of the *good*, and the application of desert in specific cases presupposes a substantive view of the good.”³¹ Alasdair MacIntyre argues that the virtue of desert requires “an overriding conception of the *telos* of a whole human life, conceived as a unity.”³² Sher highlights the axiological—as opposed to normative—character of desert when he observes that “[w]hen we say that persons deserve things, we generally answer questions about what it would be good for them to have; when we attribute rights, we generally answer questions about what others ought to do or refrain from doing.”³³ And Julian Lamont comes very close to adopting the definition I have sketched here when he writes:

[A]ssessment of desert is usually made in the light of other goals and values (though not necessarily in the light of pre-existing institutions or practices) which are separate from desert itself. Desert is a partially externally defined concept, in the sense that people’s goals and values enter into setting the desert bases.³⁴

Lamont, however, does not generalize his definition of desert enough to cover all of its possible conceptions. It seems likely that he makes this mistake because he imposes stipulations on the concept of desert that are actually specific features of a subclass of particular conceptions of personal desert for which the value of responsibility is fundamental.³⁵ As a result of these stipulations, Lamont ends up making a distinction between values that are “internal” and “external” to the concept of desert, and consequently overlooks that the concept of desert *qua* concept is actually *purely* relational. Lamont comes close but still slips when he asserts that “[d]esert is a partially

³¹ Galston, *supra* note 10, at p. 173

³² Alasdair MacIntyre, *After Virtue* (2nd Ed., Notre Dame, IN: The University of Notre Dame Press, 1984), p. 202

³³ Sher, *supra* note 10, at p. 201

³⁴ Lamont, *supra* note 20, at p. 106. Italics in original text.

³⁵ “One of the defining characteristics of desert (and something which *does* come from examination of the concept itself) is that it does require some minimum degree of voluntariness. For instance, Brian Barry notes that ‘a person’s having done otherwise is a *necessary condition* of ascribing desert’ [quoting Brian Barry, *Political Argument* (London, UK: Routledge & Kegan Paul), p. 108]. These requirements help distinguish desert from entitlement.” (*id.* at 106, italics in original text). As demonstrated above, a requirement of voluntariness is unnecessary for distinguishing desert from entitlement or other forms of appropriate treatment. In addition, I should also note that by dropping the condition of voluntariness from the concept of desert, my conception of desert implies that there is no necessary conflict between desert and determinism. For views on the compatibility of desert and determinism, see Miller, *supra* 18, at p. 95–102; Waller, *supra* note 23.

externally defined concept³⁶; strictly speaking, the *concept* of desert neither depends on or nor implies any specific external value-claims. By itself, the concept of desert only identifies types of relations that may occur within the universe of possible value-systems. Rather, *conceptions* of desert are linked to specific value-systems. On the one hand, if one defines as correct a conception of desert independently of particular value-systems and principles, such a definition effectively places conditions on the kinds of subjects or relationships that can be deployed in making valid desert-claims. Such conceptions of desert will therefore entail a constraint on compatible value-systems and value-claims. On the other hand, if one starts from a value-system that is assumed to be the true (or best) one, then this system automatically entails a certain conception of desert (or, if one is inclined to break down desert into deserts of different kinds, various conceptions).

Theorists of desert have typically engaged in the latter project without realizing it. In their attempts to define the concept, they have generally presupposed an unacknowledged value-system, which has led them to place restrictions on the concept of desert, incorrectly limiting it to conceptions that are compatible with the presupposed value-system. Arguments involving desert have therefore usually neglected to identify a crucial suppressed premise: the presupposition of the correctness of a background value-system, which provides the motivation for deeming some form of deserved treatment as appropriate. This explains why arguments involving desert are so prone to confusion. Whenever thinkers invoke desert, they muster a battery of conflicting principles and examples that seem independently compelling, without recognizing that some of these principles or examples may be rooted in completely incommensurate value-systems. For example, Bruce Waller argues that the following example reveals the heterogeneous nature of desert:

³⁶ *Id.* at p. 102

Alice, Barbara, Carol, and Dianne engage in a foot race. Alice races brilliantly and finishes first; Barbara runs in a muddy lane and is soundly beaten; Carol struggles courageously but is outclassed; and Dianne is both slow and lethargic. Yet all four may *deserve* the fruits of victory, in four different senses of “deserves.”³⁷

According to Waller, we can imagine a situation in which each of the four runners has an equally valid desert-base that could justify the claim that she deserved to win the race: Alice because she actually finished first; Barbara because she is normally the fastest runner but was unfortunately assigned a muddy lane; Carol because she exerted the most effort in running the race; Dianne because she put the most time into training for the race. Because there seems to be no way to adjudicate between these conflicting claims, Waller concludes that there exists many forms of desert. But observe that if we assume a single consistent system of value, then adjudication will not be a problem. Depending on the degree to which this system ascribes value to, say, an individual’s actual performance, talent, effort, and preparation with regard to athletic activities, one could determine the amount of value the system ascribes to considering each runner “truly deserving” and then select a subject who is most deserving (if the result is a tie, then we would assert that these individuals are equally deserving, in an unambiguous sense). We are therefore only confronted with incommensurability if the background value-system is itself indeterminate or if we make the mistake of trying to compare principles of desert drawn from different presupposed value-systems.

The above example demonstrates that many of the apparent paradoxes resulting from conflicting desert-claims might be more tractable if some attempt were made to specify a common comprehensive value-system that could order and prioritize the principles underwriting the desert-bases of the competing claims. Thus most of the long-running arguments about the degree to which luck, responsibility, effort, and so on affect one’s deserts are not disputes about the *concept* desert at

³⁷ Waller, *supra* note 23, at p. 229.

all. Rather, they are disputes over *conceptions* of desert, which are effectively disagreements between clashing value-systems, or subsets of principles drawn from such systems.

The definition I have outlined here is purely formal and metatheoretical: it provides a definition of the *concept* of desert but does not stipulate a *conception* of desert. As such, without a substantive theory of value, one could not use it to determine whether a particular claim to appropriate treatment was indeed a desert-claim. But this metatheoretical move will prove useful to developing a clear view as to the role of desert in Rawls' theory of justice and liberal theories of political morality that share its deontological character.

IV. DEONTOLOGICAL LIBERALISM AND DESERT

In *A Theory of Justice*, Rawls defines a *teleological* theory of political morality as a theory that presupposes a single, independently defined, substantial conception of the “good.” A conception of the good is a hierarchy of values or ends. A *comprehensive* conception of the good consists of a system that could conceivably rank all known values. Such a value-hierarchy thus provides a *telos* that can underwrite the derivation of a set of normative prescriptions for organizing social relations and institutional structures—including the rules of justice and right conduct. A teleological theory is therefore said to define the good independently of and prior to the right; as justice exists to promote the presupposed conception of the good, its principles are consequently defined by this conception's values and ends. In contrast, a *deontological* theory of political morality does not “specify the good independently of the right or does not interpret the right as maximizing the good.”³⁸ Such a theory

³⁸ Rawls, *supra* note 5, at p. 26. Rawls' use of the term “deontology” to refer to political theories that define the right independently of the good is analogous to its use in the field of ethics in the sense that both refer to non-consequential

therefore defines prescriptions for structuring social relations and institutions independently of or prior to a particular system of values. In such theories, the principles of justice constrain the pursuit of ends and values, and constitute limits on acceptable conceptions of the good.

Rawls' stipulation of his theory of justice as deontological can be interpreted as a metatheoretical move, because it does not by itself stipulate the specific content of the resulting principles. But it is a metatheoretical move with substantive purposes and implications. Rawls' justification for defining the right independently of a comprehensive conception of the good is that he views modern societies as characterized by a reasonable pluralism of such conceptions. To Rawls, a theory of political morality suitable for regulating contemporary societies must account for a citizenry that holds a variety of incommensurable substantive ultimate ends. Although the citizens hold different perspectives on what is good, they are reasonable because they recognize that their pursuit of their conceptions of the good must be constrained by the principles of justice. These principles thus serve as the basis of a shared community among citizens who hold disparate worldviews. In taking the deontological turn, Rawls effectively asserts that the principles that underwrite our social institutions should not depend on a particular theory of value so that they will be compatible with a pluralistic society.

The reason Rawls' first principles of justice do not include a principle of desert should now be clear: a principle of desert adequate for regulating society's fundamental institutions presupposes a substantive theory of valuation, whereas Rawls aims to formulate a theory of justice that is independent of such a theory. Without a substantive theory of value, there exists no basis for giving

theories. However, I should make it clear that deontological theories in the Rawlsian sense have no necessary relationship to the concept of "duty." I follow Rawls' usage in this paper.

content to a principle of desert adequate to serve as a first principle of justice for regulating society's basic structure. In general, principles whose content depends on a substantive theory of value can only be introduced in deontological theories after the first principles of political morality have already been established, because the role of these first principles in a deontological theory is to define and restrict the permissible range of substantive theories of value. Principles of desert relevant to issues of justice must therefore be derived *after* the principles of justice and are given content either by value-principles derivative of the first principles of justice or within one of the comprehensive conceptions of the good for which the principles of justice are regulative.³⁹

It should also be evident why many contemporary liberal theories have little place for desert among their first principles. Rawls' aspiration of developing a political theory that could justly moderate among a plurality of competing substantive value-systems has been shared by many liberals over the past 30 years. Ronald Dworkin, for example, thinks the defining aspect of liberalism is adherence to a theory of equality that "supposes that political decisions must be, so far as it is possible, independent of any particular conception of the good life."⁴⁰ The substantive core of Bruce Ackerman's theory of *Social Justice in the Liberal State* is the principle of Neutrality, which restricts admissible principles to those that can be defended without asserting that one citizen's conception of the good is intrinsically superior to any other citizen's conception.⁴¹ Robert Nozick's libertarian theory—arguably a purified form of liberalism—is centered around moral side constraints that render inviolable the individual's "ability to regulate and guide its life in accordance with some

³⁹ "The essential point is that the concept of moral worth does not provide a first principle of distributive justice. This is because it cannot be introduced until after the principles of justice and of natural duty and obligation have been acknowledged. Once these principles are on hand, moral worth can be defined as having a sense of justice... Assuming that everyone accepts the priority of self- or group-interested motivation duly regulated by a sense of justice, each decides to do those things that best accord with his aims" (*id.* at p. 275, 277).

⁴⁰ Ronald Dworkin, "Liberalism" in *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985), p. 191

⁴¹ Bruce Ackerman, *Social Justice in the Liberal State* (New Haven, CT: Yale University Press, 1980), p. 10–12

overall conception it chooses to accept.”⁴² All of these theorists set out schemes of rights and distributive justice that do not make use of desert as a first principle: Dworkin’s theory of equality of resources,⁴³ Ackerman’s assertion of initial equality, and Nozick’s Entitlement Theory are all similar in that they do not appear to depend on either a thick conception of value or a first principle of desert.

One can plausibly question, however, whether it is actually possible to derive non-vacuous principles of right completely independently of *any* value-principles or some view of the good. To have substantive implications, normative justification must be driven by some value of substance, whether it is acknowledged or suppressed. Liberal theorists may attempt to dodge this dilemma by appealing to “primary goods” and “widely shared principles” as Rawls does, or imperatives of “conversational constraint” as Ackerman does, or “moral side-constraints” as Nozick does. Yet behind all of these principles, one can detect the outlines of some value-laden ideal of autonomy or individuality. For example, although Dworkin claims that his theory of equality of resources is neutral with respect to individuals’ conceptions of the good, he leans heavily on an appeal to responsibility to justify his willingness to compensate persons for their expensive needs and handicaps but not for their expensive tastes and preferences.⁴⁴ This critique asserts that the neutrality among conceptions of the good claimed by liberal theories is actually false: all of these theories smuggle in unacknowledged value-systems and presuppose principles of desert that motivate their principles of justice, although they may not explicitly state them.⁴⁵

⁴² Robert Nozick, *Anarchy, State, and Utopia* (New York, NY: Basic Books, 1974), p. 49

⁴³ See Scheffler (*supra* note 10, at 321) for an argument that Dworkin’s theory of equality of resources does not involve desert in any important way. But see my argument below.

⁴⁴ Ronald Dworkin, “What is Equality? Part 1: Equality of Welfare,” *Philosophy and Public Affairs* 10:185 (1981), p. 226–244

⁴⁵ See, for example, George Sher, “Government and Good Lives” in *Social and Political Philosophy* (Wadsworth Publishing, 1998), p. 144; Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press), p. 102–

This critique is correct in asserting that any conception of liberalism that claims to be completely neutral among conceptions of the good is either insincere or vacuous. But neither Rawls nor most liberals aim to entirely banish desert—or the comprehensive conceptions of the good that are necessary to motivate it—from the public sphere. No convincing theory of political morality can completely dismiss the normative force of either desert or the substantive value-systems in which actual persons are always already embedded. Rawls for example, acknowledges that the acceptance of his theory of justice requires its consonance with the core of “an overlapping consensus” of comprehensive conceptions of the good.⁴⁶ Presumably, if other common prescriptive principles besides the Rawlsian principles of justice exist within that overlapping core, they might also have normative force in the structuring of basic social institutions.

Although deontological theories of political morality cannot completely expunge desert-claims and other value-prescriptions rooted in comprehensive conceptions of the good from the public sphere, they *can* tame them by asserting that such principles do not have justificatory priority in certain spheres. In a pluralistic society, it seems reasonable to ask that the principles that underwrite society’s procedures for legitimating the use of coercion and its economic institutions should draw at least some of their normative force from universally cognizable claims of rightness. A state’s policies and procedures can never be completely *neutral* among value-systems, either in their motivations or their outcomes. But a liberal state can be *fallibly agnostic* and such a state would significantly restrict the role desert could play in structuring its laws and institutions.

107; and from a liberal perspective, Stephen Macedo, *Liberal Virtues* (Oxford, UK: Oxford University Press, 1990), p. 260–263.

⁴⁶ John Rawls, “Justice as Fairness: Political Not Metaphysical,” *Philosophy and Public Affairs* 14:223 (1985)

Some theorists will be ultimately unconvinced by liberal claims of agnosticism or relative neutrality. Theorists of this disposition may still find my conclusions up to this point useful, for their substantive implications cut in at least two directions. On the one hand, the conclusion that principles of desert can only be first principles in teleological theories of political morality and not deontological theories provides more plausibility to the dismissal of desert by partisans of deontology. The rejection of a central place for desert in political theory will be eminently sensible to theorists who argue that the entitlements granted by rights ought to be doing most of the work in defining social institutions. As the universality of human rights suggests that there is an intrinsic dignity to all humans that need not be deserved, such theorists may well be justified in doubting that desert ought to have a significant place in contemporary political theory. On the other hand, one can employ the relationship asserted in this paper to turn strong intuitions one might have about the foundational role desert should play in defining our social institutions into another set of reasons for rejecting the entire project of deontological theorizing as untenable. Supporters of both teleology and the role of desert in political theory can use the relationship demonstrated by this paper as more evidence that the attempt to build a theory of political morality independent of any substantive theory of value has implausible implications that do not reflect the substance and texture of human experience. As Samuel Scheffler argues, the popular notion that social institutions should be organized to reflect principles of desert is such a deeply held view that any political theory unable to account for this intuition should be considered both theoretically and pragmatically wanting.⁴⁷

I shall take a partisan turn in the concluding section, however, by siding with deontological liberalism. Further reflection on the nature of principles of desert—sharpened by the conceptual

⁴⁷ Scheffler, *supra* note 10

work I have done in this paper—provides a number of good reasons to support a fallibly agnostic state and the limited role of desert it would entail.

V. DEFENDING THE TAMING OF DESERT

If deontological liberal theories can never fully achieve their promise of providing principles that can adjudicate neutrally between comprehensive conceptions of the good, why should we find them compelling? And since the notion that justice is related to desert seems to have significant common-sense appeal, why put any stock in a group of theories that rejects it?

The arguments that liberals typically provide for supporting deontological liberal theories are linked to the fact of pluralism that characterizes contemporary society. And these are good arguments. In societies populated by citizens who possess many different conceptions of the good, it does not seem legitimate—or respectful of every individual’s intrinsic equality, or autonomy—to use values held by only some to justify policies that affect everyone.⁴⁸ Society therefore ought to employ modes of justification in certain spheres that respect this “thin” procedural value-imperative of universalizable legitimation. This defense of deontological liberalism is admittedly vulnerable to the criticism that such theories cannot deal with political issues for which the truth or falsity of a substantive value-claim lies at the heart of the matter. The issues of slavery and abortion serve as two striking examples.⁴⁹ Attempts to achieve a neutral resolution to such issues will fail, as the parties to the dispute will not view such a resolution as taking the nature of the dispute seriously and

⁴⁸ See generally, John Rawls, *Political Liberalism* (New York, NY: Columbia University Press, 1993); Jurgen Habermas, *Between Facts and Norms*, trans. William Rehg (Cambridge, MA: MIT Press, 1996); Dworkin, *A Matter of Principle*, *supra* note 40; Charles Larmore, *Patterns of Moral Complexity* (Cambridge, UK: Cambridge University Press, 1987).

⁴⁹ These examples are employed in such a critique by Sandel (*supra* note 6, at p. 184–218).

will therefore reject its claim to procedural legitimacy. Liberals should be willing to concede that in such cases, deontological principles by themselves cannot succeed. The reach of reasonable argumentation based on claims that are in principle accessible to all has its limits even in highly rationalized contemporary societies. Consequently, with some highly divisive issues that cannot be resolved through appeals to universally cognizable principles, citizens and legislators will just have to wade into the arena of value-conflict to sort out their laws.

But this concession does not imply that we should abandon deontological liberalism entirely. Most conflicts in politics do not resemble those over slavery and abortion.⁵⁰ Issues such as taxation policy, the distribution of health care, and gay rights may be divisive, but they need not produce immediate metaphysical conflict. As a result, the pluralist argument in favor of deontology retains much of its force. Because substantive conflicts over values are too often settled by the forceful imposition of resolute majority opinion as opposed to reflection and deliberation over which value-system is most likely true or best, citizens and the state have an obligation to justify policies with discourses and procedures that are accessible and reasonable to all citizens whom the policies are likely to affect. There exists numerous other reasons besides the argument from pluralism to prefer deontological theories; my examination of the concept of desert points to one that is related to the problematic relationship between teleological political theories and the aesthetic realm.

⁵⁰ I suspect that part of the reason slavery and abortion may not be amenable to an in-principle universalizable solution is that they are *boundary* issues, wherein the very nature of the agent is in doubt. With such issues, the status of the agent is precisely what is contested, and as a result they immediately launch a metaphysical conflict to the forefront. As a result, a “political not metaphysical” resolution, to use Rawls’ phrase, is untenable.

A consideration of the range of admissible desert-claims reveals that they are potentially of a very great variety, depending on one's conception of value. For example, Sher lists the following natural language desert-claims as apparently valid:

1. Jonas deserves his success; he's worked hard for it.
2. Smith deserved more success than he had; he gave it his all.
3. Walters deserves his job; he's the best-qualified applicant.
4. Wilson deserved to be disqualified; he knew the deadline for applications was March 1.
5. Jackson deserves more than minimum wage; his job is important and he does it well.
6. Baker deserves to win; he's played superbly.
7. Miss Vermont deserves to win; she's the prettiest entrant.
8. Anderson deserves his twenty-year sentence; he planned the murder.
9. Brown may have known he wouldn't be caught, but he still deserves to be punished.
10. Winters deserves some compensation; he's suffered constant pain since the shooting.
11. Lee deserves a reward; he risked his life.
12. Benson deserves some good luck; he's a fine person.
13. Gordon deserves some good luck; he's had only bad.
14. McArthur deserves a hearing; he's an expert on the subject.
15. Cleveland deserves better publicity; it's an interesting city.⁵¹

As this list makes evident, the universe of possible desert-claims ranges over the entirety of a value-system's prescriptive map, from the moral to the expressive to the purely aesthetic.⁵² And distinguishing the category into which each claim falls does not seem to be a straightforward task. Feinberg writes that the judgments of appropriateness that match desert-bases to their corresponding modes of deserved treatment "resemble certain aesthetic judgments—for example,

⁵¹ Sher, *supra* note 10, at p. 6–7

⁵² Readers whose sensibilities are finely tuned to gender will note that Sher's only example desert-claim involving a female subject is one of the most obviously aesthetic of the group. The exclusion of the feminine from the political realm based on aesthetic value-principles is, in my view, one of the most significant forces behind gender-based domination. This conclusion places me on the side of liberal feminists who recognize the emancipating potential of reason. Along with Seyla Benhabib, I would argue that it is less useful for feminists to attempt to employ the aesthetic sphere as a characteristically feminine corrective to an oppressive masculine rationality (although such arguments are not entirely without force), rather than recognizing that powerful men have used their patriarchal control of the political sphere to impose their preferred aesthetic narratives on women. See Seyla Benhabib, *Situating the Self* (New York, NY: Routledge, 1992), p. 16.

that crimson and orange are clashing colors—more than they resemble judicial pronouncements”⁵³ As this remark suggests, the justification behind many desert-claims resists rational evaluation. This conclusion is unsurprising if the definition of the concept of desert I have proposed is correct. For my view of desert implies that the substantive content that determines the appropriateness of a deserved treatment is *entirely* provided by principles drawn from substantive value-systems. The imperatives that provide principles of desert with their prescriptive force may therefore involve a mix of expressive and aesthetic propositions—the stuff that conceptions of the good are made of—which are not easily amenable to reasoned weighing or contestation.

Feinberg writes that talk of “desert” and “right” stem from completely “different parts of our ethical vocabularies”⁵⁴ and so should not be viewed as competing. But this assertion is only true for political and ethical theories that are characterized by a fairly clear differentiation between the normative and the evaluative spheres.⁵⁵ And this differentiation is a relatively modern achievement, the result of a rationalization of the moral and political spheres, which has led to a shift from the dominance of teleological theories of legitimation to deontological theories.⁵⁶ Conceptually, there is nothing that stipulates that all entitlements or rights cannot be entirely defined by principles of appropriateness—particular aesthetic or axiological notions of “fittingness”—within a specific comprehensive conception of the good. In absence of a theoretical context, the concepts of justice and desert possess no intrinsic property that renders conflict between them unlikely.

⁵³ Feinberg, *supra* note 13, at p. 73

⁵⁴ *Id.* at p. 76

⁵⁵ For example, *contra* Feinberg, A.T. Nuyen writes of desert, rights, and entitlement that “it is clear enough that they belong to one and the same ethical vocabulary” (“Just Desert,” *The Journal of Value Inquiry* 31:221 [1997], p. 228). But this claim is only true for the ethical vocabulary that Nuyen presupposes.

⁵⁶ See generally, Jurgen Habermas, *The Theory of Communicative Action, Volume One: Reason and the Rationalization of Society*, trans. Thomas McCarthy (Boston, MA: Beacon Press, 1984 [1981])

These reflections provide us with reasons to prefer deontological theories—which minimize the role of desert in structuring social obligations and institutions—to teleological theories that involve desert heavily. The latter theories would allow a wide range of principles of desert and their accompanying aesthetic propositions to underwrite public decisions that are backed by coercive law and that may have a significant impact on citizens' fundamental interests and thus their ability to pursue their life-plans. We have good reason to be wary of systems of political legitimation that cannot readily and reasonably adjudicate between claims such as “Persons who maliciously injure others deserve to be imprisoned, because they do not demonstrate respect for their community” and “Persons who speak in an uncouth manner deserve to be imprisoned, because they do not demonstrate respect for their community.” In contrast, deontological liberalism aims to tame the expressive and the aesthetic with the rational and the reasonable by privileging the latter as much as possible in spheres that involve the legitimation of coercive law or that directly affect citizens' basic interests. Because modern societies are characterized by a plurality of groups with possibly incommensurable axiological and aesthetic views, the justification of decisions in parliaments, courts of law, bureaucratic and administrative agencies, and public schools will usually require us to turn away from principles of desert and instead look toward principles whose content does not rely on the truth of any particular conception of value.

This is not to say that liberalism must subordinate the expressive and the aesthetic to the reasonable and the rational in a thoroughgoing way. The point of deontological liberalism is to allow people who possess many different conceptions of value to pursue their expressive and aesthetic ends to the greatest degree possible. Robust conceptions of value will always play a large role in defining the ethos of liberal citizens' private lives, as well as that of their social associations, churches, and cultural groups. Sometimes, a liberal community may even find it reasonable to legislate on the basis

of substantive values that almost all citizens can acknowledge and embrace.⁵⁷ Liberal states do this, for example, when they distribute public honours such as the Governor General's Book Awards or those announced by the Queen's New Year List. However, in a liberal state, both the citizens' pursuit of their ultimate ends as well as the community's decision to recognize certain shared values must take place against a certain background of social institutions. These background institutions are in-principle universally justifiable because they secure everyone's basic liberties, opportunities, and survival interests and presume all individuals to be free and rational beings worthy of equal respect. In short, deontological liberalism asserts that the ends and values that inform desert are best served when suitably tamed by justice.

It is undeniable that there may be a significant cultural and aesthetic cost to this taming. It is unlikely, for example, that a deontological state would have contributed funds to the construction of the Cathedral of Notre Dame, whereas such support would be easily justified in certain teleological theories that affirm the proposition 'Christianity deserves our greatest architectural reverence.' But when the alternative is the imposition of one group's conception of value on other groups who are likely to view this as oppressive, it is unclear that a solution superior to deontological liberalism is available in our pluralistic and disenchanted world.

⁵⁷ "[P]olitical neutrality...is a relative matter. It does not require that the state be neutral with respect to all conceptions of the good life, but only with respect to those actually disputed in society. Where everyone agrees about some element of human flourishing, the liberal should have no reason to deny it a role in shaping political principles" (Larmore, *supra* note 48, at p. 67).