The Theory of Public Desert I: Toward a Reconciliation of Liberalism and Desert

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Very Rough Draft: Comments Welcome!

Liberal political philosophers since Rawls have had an uneasy relationship with the concept of desert. Traditional egalitarian liberals such as Rawls, Dworkin, Nagel, Barry, and Goodin, among others, have developed theories of justice in which desert plays little or no basic[1] role.[2] Yet in the last two decades, desert has made something of a comeback.[3] In just the last few years, two major liberal theorists have published books giving desert a basic role in a theory of justice.[4]

Given these recent developments, it's time to integrate desert into the liberal tradition of public reason. My task in this paper, then, is to provide a theory of *public* desert. In Fred D'Agnostino's words, public justification demands that "no regime is *legitimate* unless it is reasonable from every individual's point of view". A theory of *public* desert, then, is one on which the justification of desert-sensitive institutions is

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[1] I shall use the term 'basic' in this essay to refer to the role a moral concept plays in a theory of justice when it is not cashed out in terms of other moral concepts. I shall use the term 'derivative' to refer to the role a moral concept plays in a theory of justice when it is cashed out in terms of other moral concepts.

[2] For examples see, John Rawls, *A Theory of Justice* (Harvard University Press, 1971), 74-75, 101-102; John Rawls, 'The Basic Structure as Subject', *American Philosophical Quarterly* 14 (1977), 162; Ronald Dworkin, "Why Bakke Has No Case," *New York Review of Books*, Nov. 10, 1977; Thomas Nagel, *Mortal Questions* (Cambridge University Press, 1979); Brian Barry, *Political Argument* (Routledge and Kegan Paul, 1965); Robert Goodin "Negating Positive Desert Claims" *Political Theory* 13:4 (1985).

[3] The revival, as I understand it was brought about in part by George Sher's *Desert* (Princeton University Press, 1987).

[4] See David Miller, *Principles of Social Justice* (Harvard University Press, 1999) and David Schmidtz, *Elements of Justice* (Cambridge University Press, 2006).

based on public reason; thus, no regime is legitimate unless it respects publicly justifiable desert claims.[5]

I defend a *Public Contribution* Theory of Desert. Desert claims are justified by individuals' contributions to the realization of some public goal.[6] This essay is the first of two that attempt to flesh out a specific theory of public desert. The primary purpose of this essay is to motivate the need for a theory of public desert and to detail its formal structure. I will proceed as follows.

My first section outlines the basic machinery of public reason in order to acquaint the reader with the tradition. In my second section, I give some reasons to think that desert must be built into the tradition. I clarify the traditional Rawlsian notions of the rational and the reasonable and show how to apply them within a public reason framework that respects desert. My third section outlines a strategy for building desert into a plausible theory of public reason: reintegrating desert requires developing a distinct liberal conception of the person. Next, I shall develop a device of representation most appropriate for modeling a free-standing conception of justice demanded by this conception of the person: I appeal to a device that I call the *Productive Standpoint*. I will motivate the abstraction on the grounds that desert must play a basic role in a liberal theory of justice if it is to reflect the true liberal conception of the person. This will comprise my fourth section. In my final section, I use the machinery from the last four sections to outline the formal structure of a theory of public desert. I develop the

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[5]See Fred D'Agnostino's entry in the Stanford Encyclopedia of Philosophy <http://plato.stanford.edu/entries/justification-public/, November 2006>.

[6] I shall take a public goal to be a political goal that persons with divergent comprehensive doctrines can endorse. Much more on this can be found below.

structure of a theory of public desert based in large part on the structure of traditional theories of desert. Of course, the theory of public desert has several components that need specification. This essay cannot take up that task; but my second essay will.

I. Terms and Definitions

The fundamental moral idea of the liberal tradition is that *coercion needs to be justified*. In other words, individuals proceeding through life on their own terms must be left unmolested, unless a *justification* can be given to coerce them. In order to have political society at all, *some* coercion must be used. Persons cannot be allowed to attack or murder one another, for instance. Yet what sort of justification do we need to separate legitimate from illegitimate coercion?

The contemporary answer is that we need a *public justification*. A public justification is a reason for coercion *that the person being coerced can reasonably be expected to endorse*.[7] Thus, we have a rational interest in agreeing to fair terms for coercion; after all, that's what makes living together possible. But this rational interest involves proceeding on terms that others can comprehend given their own points of view.

Those who develop theories of public justification usually agree that free and equal persons who attempt to develop their own conceptions of the good will come to disagree about the nature of the good life. In fact, Rawls held (and public reason theorists follow him in this) that people operating under free institutions will come to disagree *radically* about most of life's big questions, including what sort of political institutions we should have.

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[7] For a great introduction to these matters see Gaus, *Contemporary Theories of Liberalism*, Ch. 8.

But if there is a demand to justify coercion to people on terms they can reasonably be expected to endorse, and people radically disagree about almost all the fundamentals of life, how is it possible to justify a political order? Rawls argued that we must develop a *free-standing* conception of justice: one that does not depend on any particular conception of the good.[8] If we can develop a free-standing conception of justice, then we can publicly justify coercive political institutions. We might then create institutions that reasonable people can endorse.

For Rawls, this is the goal of political life: to secure political agreement between persons who disagree radically about almost everything, so that they can cooperate with each other on fair terms for mutual benefit. This is the essence of theories of public reason and public justification.

I should introduce two more concepts before I proceed. It is necessary to point out that theories of public reason rarely try to have universal appeal. In other words, they try to justify political institutions to those who already live in liberal, democratic societies. Rawls put it the following way: we justify institutions based on a certain *conception of the person*. For Rawls, public reason can only get off the ground if we assume three things about people:

1) They must understand one another as having the moral power to possess a conception of the good.

[8] Rawls' account of a conception of the good may be illustrative: "The capacity for a conception of the good is the capacity to form, to revise, and rationally to pursue such a conception, that is, a conception of what we regard for us as a worthwhile human life. A conception of the good normally consists of a determinate scheme of final ends and aims, and of desires that certain persons and associations, as objects of attachments and loyalties, should flourish. Also included in such a conception is a view of our relation to the world—religious, philosophical, or moral—by reference to which these ends and attachments are understood" [302].

2) They regard themselves as 'self-authenticating sources of valid claims'. In other words, they understand that they are entitled to demand that their institutions be structured so as to advance their conception of the good.
3) They view themselves as able to take responsibility for their ends and they let this affect their assessment of the claims they make under (2). [30-31].

Most public reason theorists are on the same page as Rawls here.[9] Further, they, along with Rawls, do not regard these claims as presupposing any particular metaphysical doctrine. Rather, they hold that this view of persons is implicit in modern liberal democratic societies. As Rawls says:

> In justice as fairness the aim is to work out a conception of political and social justice which is congenial to the most deep-seated convictions and traditions of a modern democratic state [300].

Thus, there may be persons to which a specific public reason conception of justice does not apply.

From the liberal conception of the person, Rawls develops what he calls a *device of representation*. A device of representation is an abstraction that attempts to model deliberation over fair terms of cooperation that liberal persons would engage in. Rawls' famous original position is the most well-known device of representation. The original position (including Rawls' veil of ignorance) abstracts from particular, contingent features of persons, asking all parties to ignore those things that would bias them from proposing fair terms to one another. Rawls notes that the original position attempts to:

> … model both freedom and equality and restrictions on reasons in such a way that it becomes perfectly evident which agreement would be made by the parties as citizens' representatives [26].

[9] I should note here that one major public reason theorist, Jerry Gaus, denies claim 2. Gaus considers such a requirement an excessive theoretical imposition on an average citizen.

Whatever device of representation a public reason theorist appeals to, it attempts to have these features.

I hope that this brief summary of the machinery of theories of public justification is enough to proceed. For now, I shall turn to how theories of public justification that follow Rawls typically ignore desert.

II. Public Reason and Desert

As is well-known, Rawls uses the original position to generate two principles of justice.[10] The Difference Principle is the second part of the second principle. Let's reproduce it:

> *Difference Principle*: inequalities are to be to the greatest benefit of the least advantaged members of society.[11]

Rawls believes that the Difference Principle is the result of the proper application of his theory of public justification.[12] Other theories of public justification have similar principles. Attend to the way that economic inequalities must be justified: they are justified if and only if they benefit the least-advantaged. For Rawls, as with many egalitarian theories of justice, desert plays no basic role in justifying an income distribution.

It is regularly argued that Rawls' veil of ignorance is too 'thick'. Robert Nozick[13], Michael Sandel[14], David Gauthier[15], among others, have argued that Rawls' veil of ignorance overlooks relevant information about persons insofar as it generates a theory

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[10] Rawls [1993], 5-6.
[11] Rawls [1993], 5-6.
[12] Although, he notes that his principles are not the *unique* outcome of his theory: "But each of these elements can be seen in different ways, so there are many liberalisms" [223].
[13] Robert Nozick, *Anarchy State, and Utopia* (Basic Books, 1974).
[14] Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge University Press, 1982).
[15] David Gauthier, *Morals by Agreement* (Clarendon Press, 1986), 245-261.

of justice. Whether this criticism succeeds is not relevant here, but it is worth noting that Rawlsian theories of justice ignore much moral information[16] at their basic theoretical levels. Consider an often made claim within liberal societies that high taxes fail to respect what persons contribute to society due to their own hard work. Certainly such a reason is 'congenial to the most deep-seated convictions and traditions of a modern democratic state'. Yet it can play no basic role in Rawls' theory of justice or in most egalitarian liberal theories of justice to date. Those who give such reasons may justifiably feel as if they are not being treated equally by their society.[17]

Thus, information about what persons *deserve* is relegated to a purely institutional role. For example, on Rawls' theory, desert is understood in terms of 'legitimate institutional entitlements'. Desert claims must be made within institutions that already embody more basic principles of justice.[18]

I mention Rawls here only to observe that his view of desert is common in contemporary liberal political philosophy. Desert claims are somehow *derivative* of the fundamental principles of justice in most liberal theories of justice. I hope to motivate a different view: that desert claims are *basic* to the theory of justice. This has been

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[16] I should be careful here. In many ways the *point* of Rawls' political constructivism is to abstract from much moral information. My claim here is that Rawls' construal of political constructivism has left out some important *relevant* moral information.

[17] This holds, of course, so long as their reasons are not based on a comprehensive moral theory not shared by other reasonable persons. But I will make the case for this below.

[18] Rawls claims that "desert is understood as entitlement acquired under fair conditions" John Rawls, *Justice as Fairness: A Restatement* (Harvard University Press, 1990), 64. For a detailed criticism of this view, see both Gauthier, Ch. 8, particularly 248-253. For a defense of Rawls on these matters, see Sher, 26. For a helpful discussion of these matters, see Serena Olsaretti, *Liberty, Desert, and the Market* (Cambridge University Press, 2004), 24-33. Rawls can be interpreted either as arguing against desert *per se* or as arguing that desert claims are only legitimate under conditions of fair opportunity. Either way, principles of desert do not play a basic role in his theory, with principles of desert arising only after the major work in economic justice is complete.

attempted before.[19] Yet few have tried using public reason to motivate theories of justice on which desert enjoys a basic position.[20] In order to develop a theory of *public* desert, we need to give a public justification for a theory of desert to be embodied within pluralistic liberal institutions.

In criticizing Rawls, David Gauthier advances the crucial motivation for a theory of public desert. If society is, in Rawls' words 'a cooperative venture for mutual advantage', then we must not treat persons' attempts to produce as merely instrumental towards maximizing the social product.[21] Gauthier argues that Rawls' difference principle fails to respect the individuality of persons. Instead, the difference principle rewards persons only insofar as their contributions have *instrumental* value toward maximizing the position of the least-advantaged. In other words, the person's entitlement to her contribution isn't justified because it's part of her own self-formed life plan, or because it benefits *her*, but because it benefits *someone else*, in particular one who

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[19] For instance, see Gaus, *Social Philosophy* (M. E. Sharpe Press, 1999), particularly Chapter 9.4, 172-176.

[20] Instead, they have tended to focus on the fact that desert claims remain compelling on a philosophical and practical political level. For more, see Miller, Ch. 7, 131. For a discussion of the political consequences for the liberal de-emphasis of desert see Samuel Scheffler, "Responsibility, Reactive Attitudes, and Liberalism" *Philosophy and Public Affairs* 21: 4 (Fall 1992), Reprinted in McLeod and Pojman *What Do We Deserve?* (Oxford University Press, 1999), 196-209. See 196-200 in particular. Schmidtz and Miller's methodologies dovetail nicely with their particular motivations for their theories of desert. In one way, this is understandable given how anomalous anti-desert theories of justice have been within political philosophy, and how unpopular they are with the public (for more on this, see Miller, Ch. 4 "Distributive Justice: What the People Think").

[21] Gauthier believes that Rawls is guilty of this. I am simply not willing to wade into Rawls exegesis. I shall simply quote the relevant Gauthier here. On Rawls' view, "The person who takes advantage of her fellows is not the less talented individual who benefits from the maximin principle, but the more talented individual who uses her talents solely for her own benefit. For she diverts to her exclusive use an undue proportion of the total assets of society. She robs her fellows of what is rightfully theirs" (252). Gauthier considers this as failing to respect the individuality of persons. In my view, such a view fails to respect what I shall call *sui juris conception of the person*. To fail to give desert a basic role is to fail to respect persons as essentially project pursuers. For *the* book on project-pursuit and personhood, see Lomasky, Loren, *Persons, Rights, and the Moral Community* (Oxford University Press, 1987), particularly Chapter 2.

may be largely[22] unconnected from the cooperative activity a productive member of society may be engaged in.

Why does Rawls rule out desert? Rawls avoids rewarding persons according to their contributions because those contributions are determined in part by social contingencies.[23] Desert can't play a basic role because it too is ruined by those contingences. For Rawls, the *only reason* that someone could be justified in earning more than another is because the unequal ratio in earnings maximizes the position of the least well-off.[24] Productive members of society may only benefit from making greater contributions if their labor benefits someone other than themselves and their fellow cooperators.[25]

I want to pause here to make an important point. The Rawlsian theory of justice *is* a theory of mutual benefit. In other words, political institutions are justified on the basis that they benefit all members of society. Further, the reason people agree to these institutions is that they *benefit one another*. But it is important here to distinguish between

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[22] I say 'largely' to tip-toe around one of the odder parts of Rawls' claims about the relations between persons in the original position. Rawls has a notion of 'chain connectedness' in *Theory of Justice*: "Let us suppose that inequalities are chain-connected: that is, if an advantage has the effect of raising the expectations of the lowest position, it raises the expectations of all positions in between" [69]. The point of chain-connectedness is to tie benefits of one social class to the benefits of others. In this way, the benefits some parties *are* connected to one another. But that is not the notion of connectedness I have in mind. Rawls imagines a *global* connectedness, where the benefits that some achieve through social cooperation eventually reach other members of society. I am imagining a more local notion of connectedness, referring only to those persons involved in the cooperative venture itself.

[23] See again Rawls, 'The Basic Structure as Subject', 162.

[24] Rawls appears to claim otherwise when he writes: "Such [socioeconomic] inequalities we may assume, are inevitable, or else necessary or highly advantageous in maintaining effective social cooperation. Presumably there are various reasons for this, among which the need for incentives is but one" [270]. Yet he never suggests what those reasons might be.

[25] Rawls treatment of desert does little to undermine this. He allows for institutional desert, granted. But he explicitly repudiates an attempt to have institutions embody pre-institutional principles of desert. So then we can understand Rawls' concept of institutional desert only in terms of desert-sensitive institutions' ability to maximize the position of the least-advantaged.

two notions of mutual benefit, what I shall call *global* mutual benefit and *local* mutual benefit. Global mutual benefits are those that are provided to persons *society-wide* by implementing certain *society-wide institutions*. Thus, we can say that some system of private property has global mutual benefit when it makes all persons better off than they would be without it. *Local* mutual benefit, on the other hand, occurs when persons benefit one another *from their own interactions*. Trades are examples of local mutual benefits; so are joint projects. Rawls is emphatically a *global* mutual benefit theorist, but he is not as interested in securing *local* mutual benefit. To make this clear, let's return to Rawls' understanding of social cooperation. Rawls:

> Social cooperation is always for mutual benefit and this implies that it involves two elements: the first is a shared notion of fair terms of cooperation, which each participant may reasonably be expected to accept, provided that everyone else likewise accepts them. Fair terms of cooperation articulate an idea of reciprocity and mutuality: all who cooperate must benefit, or share in common burdens, in some appropriate fashion judged by a suitable benchmark of comparison [300].

The passage clearly suggests global mutual benefit, but not local mutual benefit. Further, many liberal theories of justice follow Rawls in this. The tendency is to hold that a claim of local mutual benefit is *not sufficient* to justify claims to not be interfered with.

I would like to argue that we have reason to respect claims of local mutual benefit as well. For one thing, there seems to be a good *prima facie* case that if *global* mutual benefit is morally important because it reflects reciprocity, then it seems odd to *exclude* local mutual benefit when it plausibly shares in the same grounds. But more deeply, I think, respecting desert involves respecting local mutual benefit. Desert claims are typically assigned to persons or groups based on their completion of particular tasks.

Sometimes we claim that a nation 'deserves', say, a better leader or a fairer legal system; but this is said loosely. Desert claims are typically taken to apply to *agents*, or persons who are able to control their behavior. As a result, they tend to apply to small groups or individuals.

Thus, I think we can argue, contra Rawls, that if society is a *cooperative* venture, then the difference principle fails to properly respect productive members of society because it fails to respect local mutual benefit. Thus, we can see how liberal theories of justice that treat desert as derivative fail to treat persons as part of a truly cooperative venture—these theories fail to regard individual contributions to production as contributions given on cooperative terms. However, theories of justice on which desert is basic promise to properly respect producers for participating in social production by protecting their contributions from the claims of others.

Why think this? To see why, let's return to the difference principle. I believe that advocates of the difference principle misunderstand equal treatment and reciprocity. If we treat desert claims as basic, then we do not treat persons unequally if we treat them differently when their desert claims differ. Some persons work harder than others; other persons contribute more than their fellow citizens. But we do not treat them unequally or unreciprocally if we recognize these facts or construct institutions that do the same. I think that if we take a notion of desert as basic, then we can understand rather easily how someone who works hard and contributes to society may be justifiably entitled, say, to a higher income than others. She may have a claim to non-interference based on

what she's done. After all, some persons contribute to the benefit of others. Don't they thereby merit some special treatment?

This is where the notion of local mutual benefit enters the picture. Many persons' projects and daily activities fail to contribute to the benefit of the least-advantaged members of society. However, they often contribute to the benefit of those they interact and cooperate with. But does that fact undermine their desert claims? Surely not. If I do a favor for you, and you reward me with a nice dinner, it matters very little (or not at all) how someone in another region of the country is affected as to whether I'm entitled to receive your gratitude.

Thus, it seems to me that integrating desert into a theory of public justification will involve respecting local mutual benefit, and will thereby be a central part of respecting persons as free and equal. That is why we should be build desert into a theory of public justification.[26]

Hopefully the motivation for building desert into a theory of public justification is clear: treating persons as fair cooperators requires treating them according to desert.

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[26] One might argue here that there is reason to think that global mutual benefit claims *trump* local mutual benefit claims. Thus, desert may still have to play a derivative role. To me, it seems clear that a good theory of justice will attempt to formulate a theory of justice that minimizes conflicts between global and local mutual benefit. Nonetheless, the argument seems hard to maintain on its own grounds, for reasons to respect global mutual benefit apply to respecting local mutual benefit as well. To my mind, the solution is to respect local mutual benefit so long as it does not produce *global mutual cost*. Thus, local mutual benefit can be restricted if that benefit is the direct cause of *harm* to another, but it otherwise cannot be restricted. Unfortunately, I do not have space to argue for this here. I will mention, however, that I am skeptical about the sensibility of global mutual benefit outside of a string or aggregate of local mutual benefit claims. Thus, it seems hard to me to make sense of the claim that we could have a global mutual benefit that does not itself require local mutual benefit. If local mutual benefit is restricted, it seems hard to see global mutual benefit as truly beneficial to all. In another paper, I develop these concerns in more detail.

Social institutions, to be just, must treat people according to desert. I discuss how to do this in the next section.

III. How to Build Desert into Public Justification

I argue that building desert into a theory of public justification requires building desert *into the liberal conception of the person*. Recall that the liberal conception of the person is a conception shared by those who live within liberal democratic institutions and who adopt the values of those institutions as their own. To make my argument, I'll attempt to show that there is a notion of desert built deep within this historical liberal conception of the person.

I'll give three arguments to this effect: two shorter ones and one much longer. The two simple arguments are as follows: *i*) the liberal tradition prior to Rawls emphasized desert claims as important moral claims, *ii*) the success of liberal egalitarian politics has often suffered due to its disposition to ignore desert claims.

Support for *i*): Liberals from Locke, through Mill, and all the way through the progressive era defended desert claims. Desert claims are historically in the same family of claims as merit claims. Given this, here are some choice quotes from some of the major figures in the liberal tradition:

> *Hobbes*: He that performs first in the case of a Contract, is said to Merit that which he is to receive by the performance of the other; and he has it as his Due. (*Leviathan*, Ch. 10, 'Of Merit')

> *Smith*: That whatever appears to be the proper object of gratitude, appears to deserve reward; and that, in the same manner, whatever appears to be the proper object of resentment, appears to deserve punishment. (*The Theory of Moral Sentiments*, Section I, 'Of the Sense of Merit and Demerit', Chap. 1)

> *Mill*: It is universally considered just that each person should obtain that (whether good or evil) which he deserves. (*Utilitarianism*, Ch. 5, 'On the Connection Between Justice and Utility')

> *Sidgwick*: … it is the Requital of Desert that constitutes the chief element of Ideal Justice, in so far as this imports something more than mere Equality or Impartiality. (*The Methods of Ethics*, Ch. 5, 'Justice', Section 5.)

Hopefully, statements of this sort are sufficient to make the case that desert played a central role in the liberal tradition for over two hundred years.

Argument *ii*) is fairly simple. We have all heard the critiques of egalitarianism coming from the Right: "It's not your money to redistribute. Those people earned what they have. Get off of their backs." Politicians making these claims swept into power in the 1980s and 90s all over the Western World, in many cases greatly reducing tax rates. Clearly the claim that persons deserve their incomes had force on members of liberal society. It seems to me arrogance and condescension to reduce this impulse to mere self-interested greed. Something seemed *just* about these claims to millions of citizens within liberal democracies.

One may worry that this isn't a good argument. Millions of citizens believe the Jesus Christ was born of a virgin, but *that* can't be part of the liberal conception of the person. What I'd like to suggest from this argument, however, is that desert claims cut across typical comprehensive doctrines and that persons in the West (and outside of it) routinely acknowledge claims of desert. In other words, the claims of desert that have resonated with citizens of liberal societies are part of a free-standing conception of the person as evidenced by the fact that these concerns haven't been confined to persons of particular religions or social classes.

We can draw from the foregoing something crucial about the liberal conception of the person: what one chooses to do with her life has important bearing on what she should have. Persons should be the object of social evaluation, reward, and punishment according to what they *deserve*.

Perhaps the best argument to regard desert as part of the liberal conception of the person is that the most reasonable liberal conception of the person sees individuals exercising their capacities and powers to *actively* pursue their conceptions of the good rather than merely protecting their ability to do so. This distinction is worth fleshing out in detail. I shall call the self-directed pursuit of one's conception of the good, the formulation of one's one life plans from one's own autonomous existence, etc. the *sui juris* pursuit of the good. The woman who participates in a campaign to elect her favored politician, the young immigrant who starts a business to give his children a better life, or the middle-aged nare-do-well who slaves away on her unlikely-to-be-completed novel, are all engaged in the *sui juris* pursuit of their conception of the good. By contrast, most modern liberals have tended to emphasize the importance of merely *protecting* one's *sui juris* pursuit of her conception of the good. Such activities include protecting one's ability to speak freely, to express oneself – attempting to preserve legal or civil rights. In other words, *protective* pursuit of the good is about the *protection* of the means to pursuing one's conception of the good; whereas, *sui juris* pursuit of the good is what persons are able to do when they are so protected.

One might argue that Rawls' notion of the rational already captures the notion of *sui juris* pursuit of the good. I think it will suffice to say that his notion of the rational

underdetermines whether persons are capable of engaging in a *sui juris* pursuit of the good. I argue that by emphasizing this aspect of human activity we can justify giving a desert a basic role in a theory of justice by featuring it more prominently in the liberal conception of the person.

How so? I think that when we start to focus on an individual's *sui juris* pursuit of her conception of the good, we activate *application conditions* for desert. In other words, we find a basis on which to evaluate persons according to desert. If Janet attempts to win a race, to make a passing grade, or to engage in some other pursuit of a goal that involves her own autonomous attempt to achieve, we can evaluate her performance according to desert. For instance: If she has the second best time, then she deserves second prize. If she studies hard and does well on all of her tests, then she deserves to pass. One might say that active agency is part of activating the *moral context* of desert. In other words, goal-directed behavior, in a way, 'calls up' evaluation according to desert. The notion of directed pursuit of a goal, in some sense, commands the application of the concept; again, it activates application conditions for the concept.

We might also say that this kind of behavior *commands our respect* in a certain way: we *ought* to treat a person in part according to her accomplishments. That's what's involved in respecting her *because that's what she deserves*. Perhaps we can say that by activating the application conditions for desert, the *sui juris* pursuit of the good can generate duties to respect desert claims. Again: If Janet has the second best time, then she deserves second prize. In other words, someone has a *duty* to award her second prize. And if Janet studies hard and does well on all of her tests, then she deserves to

pass. In other words, someone has a duty to award her a passing grade. In the same way, I suggest that when we evaluate persons according to their *sui juris* pursuit of the good, then that places duties on us to treat that persons according to our fairest evaluation of her accomplishments. This is what I mean when I claim that the *sui juris* conception of the good activates the application conditions for desert.

Thus, if we are to respect local mutual benefit and regard persons as *sui juris* pursuers of their own good, then I argue we must distribute resources in part according to who *deserves them*. And in cases of conflict, we give the resources to those who *deserve them more*. Whose project is the most important? The most creative? Which has the most promise? When we evaluate the claims of others to limited resources—resources they wish to turn toward their own projects—we evaluate them *according to desert*. And when we evaluate the claims of others to the fruits of their projects, to the things they've produced, we evaluate them according to desert as well. On a public reason view, we must evaluate all of these claims according to *publicly justifiable desert claims*.

The distinction between *sui juris* and protective project pursuit is not sharp; nonetheless, I hope it is illustrative. Modern liberal theories of justice, I argue, have excised desert at the cost of failing to properly rank the claims persons wish to make on others when they are engaged in the *sui juris* pursuit of their own projects. If we take seriously persons as *sui juris* pursuers of their own good, then we have to take desert claims seriously as part of the liberal conception of the person.

I have already argued that part of respecting persons' contributions to the good of others is by respecting local mutual benefit. I then argued that respecting local mutual

benefit involves integrating desert claims into the foundational structure of a liberal theory of justice because it involves seeing persons as *sui juris* pursuers of their own good. If we are to truly cooperate together on free and equal terms, then we must take desert claims seriously, and build institutions that prioritize them. Next I argued that the liberal conception of the person must be altered accordingly, and I outlined how this might go.

At this point, I hope to have proven the project of this essay worthwhile. We must reason publicly, and we must respect desert claims. But how is this possible? The only way I can see to begin is to formulate *desert claims that can be publicly justified*.

We can now outline how to integrate desert claims into public reason in Rawlsian terms. Rawls speaks of individual possessing two moral powers, the power to be *rational* and the power to be *reasonable*. The rational 'refers to each participant's rational advantage; what, as individuals, the participants are trying to advance' [300]. In other words, persons, *qua rational*, act to promote their own conception of the good.[27] The reasonable, on the other hand, is understood as being willing to offer 'fair terms of cooperation'. In other words, persons, *qua reasonable*, have a sense of justice. But they therefore need some shared conception of fairness.

On Rawls' view, the notion of the reasonable *constrains rational activity*. If persons pursue their conceptions of the good *qua* their being reasonable persons, they will be willing to constrain their activities out of respect for others *qua* their being rational persons. In the theory I propose, like Rawls, the reasonable constrains the rational. Yet

[27] It is worth nothing that while promoting one's conception of the good may generally be self-interested, it need not be.

unlike Rawls and most other public justification theorists, I include *within the reasonable* the notion of desert. Reasonable persons respect the desert claims of others. And reasonable institutions do the same.

Thus, I argue that reasonable persons will respect *publicly justifiable desert claims* made by rational persons pursuing their own conceptions of the good. The reasonable constrains the rational, thus desert claims of a certain sort will provide public justification to constrain the rational activity of persons under liberal institutions.

IV. The Device of Representation

As I noted in my first section, a public justification for an institution is usually provided by means of a *device of representation*. In Rawls' case, we have the original position. The original position is supposed to model our conception of justice among free and equal reasonable and rational persons. Its entire function is to model the shared (and presumably liberal) conception of the person. Yet if we modify the liberal conception of the person as I suggest, then we must develop a revised device of representation.

What we must do, first and foremost, is construct a device of representation that construes persons as *sui juris* agents, in the terms I've described. What I'd like then is to construct a device of representation that somehow includes *production* as one of its central activities. I do this in order to model persons' as sources of their own plans and activities. What I hope to accomplish is to give production and local mutual benefit a central role in the theory of justice along with global mutual benefit. If not, then I argue that we relegate desert to the nether regions of justice. To remedy this, we must understand persons within the device of representation as engaging in or negotiating

the terms of their productive interactions, so as to emphasize their role in local mutual benefit, thereby giving desert a bigger part to play in the theory of justice.

Consider then what I shall call the *Productive Standpoint*. When members of society take the productive standpoint, they abstract away from their particular circumstances to choose rules that govern economic production.[28] Rather than treating production derivatively, the productive standpoint attempts to model production as its central moral notion. The productive standpoint involves parties governed by the same informational constraints as the original position. But instead of first deciding on principles of economic distribution, citizens must decide on terms under which they will voluntarily cooperate to produce the social product. In other words, citizens consider what they believe to be fair terms of cooperative production in fixing the content of global distribution of rights and wealth.

I argue that citizens will establish a system of *desert* in order to give one another fair terms of cooperation. The argument is straightforward: in order to protect persons' active pursuit of the good, we model their productive lives. But the activity of production – or active project pursuit -- calls up the notion of desert as its primary concept of normative constraint. I argue that a system of desert, then, properly models the liberal conception of the person. Desert claims constrain rational activity in order to allow persons to actively pursue their own life plans.

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[28] I want to note here that I do not intend the productive standpoint as a *replacement* for the original position. Instead, I think that a better liberal theory of justice will involve *three* distinct standpoints: the *standpoint of liberty*, the *productive standpoint*, and the *distributive standpoint*.

Why think that persons taking the productive standpoint will choose to respect principles of desert when they presumably have other options? I argue that persons won't pick desert principles merely because they're better than others. They'll pick them because they *have* to manifest principles of desert in order to model the liberal conception of the person. To fail to respect some fundamental principle of desert, I argue, would be as fundamentally in error as failing to respect some fundamental principle of equality or reciprocity. If we understand persons as *sui juris* pursuers of their own good, then we know that their activities will demand treatment according to desert.

This brief reply may not satisfy. Perhaps persons who take the productive standpoint would pick other principles that will trump desert claims. Why again will persons who take the productive standpoint choose to respect principles of desert? I shall argue that they will choose to respect principles of desert because any alternative principle that contradicts treating persons according to desert fails to model the liberal conception of the person I suggest above. For now, I shall consider two alternative sets of principles that may indeed contradict desert claims: principles of need and principles of equality of income or wealth.[29]

A principle of need would be one that distributes social goods like income or wealth according to who needs them most. Presumably, if one is in need she can be understood as one who most urgently requires social goods in order to achieve proper

[29] One might wonder whether some principle of, say, contractual liberty would contradict desert. In the following essay, I argue that the two are actually mutually reinforcing. Thus, there is no need to discuss it here.

functioning or to actualize her capacities. I do not take the productive standpoint to embody the whole of justice or even the whole of economic justice, so I will not rule out a principle of need entirely, nor do I think those who take the productive standpoint will do so. But if we conceive of persons as pursuers of their own projects, I believe we can see how what persons choose to do must play some key moral role in what they receive. A nare-do-well genius may need more resources to actualize her capacities than a businessman of average intelligence. But if we distribute wealth away from the businessman to the nare-do-well, then we fail to treat persons according to a conception of the person that sees individuals as capable of meriting reward based on their performance. A principle of need that overwhelms desert too much, then, will fail to acknowledge this central feature of persons that I have argued is shared amongst liberal peoples.

Consider then a principle of equality. One might argue that we should distribute wealth equally unless we have some good reason to do otherwise. I have three reasons to think that persons taking the productive standpoint would reject a principle of equality strong enough to block reward according to desert. First, a principle of equality fails to respect local mutual benefit. If two individuals benefit one another, then it seems like there is good *prima facie* case to think that they should be allowed to do so. Yet a strong principle of equality would be committed to denying them this. Second, it is hard to imagine persons who take the productive standpoint regarding this as fair or the proper reflection of reciprocity in production. How can it be fair for those who choose to produce more and benefit others more to have less than those who choose to produce

less and benefit others less? Persons who take the productive standpoint are engaged in productive practices based on their own rational activity. They will therefore not regard income equality as a form of equality worth having *qua* their productive activities. Even if persons have differing capacities to contribute to the good of others, I argue that persons who take the productive standpoint will regard equality-in-production as equal reward for equal contribution; they will not regard equality-of-shares as just to the extent that it thwarts such an equality-in-production. That's just not what equality *is* with regard to production.

A third argument, which I shall flesh out in another essay, is that respecting a principle of desert actually secures *global* mutual benefit more effectively than a principle of equality would. I will argue that respecting desert gives persons reasons to contribute to the social product that they would lack under institutions based on a principle of equality. Thus, societies that respect desert claims will actually be more effective benefactors of their members because they will have a larger pie to distribute in the first place.

I hope that it is not too quick for me to claim that persons who take the productive standpoint will choose to treat persons according to principles of desert. The point of the productive standpoint is to feature persons as *sui juris* agents. It concerns persons' deserts with regard to their productive activities. Remember that I do not take the productive standpoint to embody the whole of justice or even the whole of economic justice. Justice concerns liberty and distribution, as always thought. For now, I focus on

the productive standpoint in order to outline the structure of a theory of public desert. Let us then move on to outline that structure.

V. The Formal Structure of Public Desert

In this section, I shall attempt to outline the formal structure that a theory of public desert must take. I cannot attempt to fill in the content here, however. For now, I shall construct a theory of public desert with five formal parts.

It is worth noting desert has been discussed many times over the last three decades.[30] And debates about desert continue into the 21st century.[31] These debates typically concern whether desert is grounded in effort, contribution, compensation, responsibility, and so on. To date, from what I can tell, theories of desert do not attempt to defend themselves with public justifications.[32] In other words, they concern desert claims not grounded in public reason. Yet our task here is to develop just such a theory. How then are we to formulate one?

One difficulty with the debates over desert is that so many of the major theories of desert seem correct in certain circumstances. Sometimes we think people deserve reward due to effort, and other times we think they deserve reward due to their achievement. In fact, there are cases where we reward people for *both*. Consider a children's sports competition. The child who scores the most points may be rewarded on the basis of her achievement. But often event organizers choose to reward the player

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[30] Two recent collections of articles cover much of the relevant literature. See Mcleod and Pojman (eds.), *What Do We Deserve?* (OUP, 1999) and Olsaretti (ed.), *Desert and Justice* (OUP, 2003).
[31] For recent discussions of desert, see Olsaretti, *Liberty, Justice, and the Market* (CUP, 2004), particularly Ch. 1-3. And Schmidtz, *Elements of Justice*, particularly Part II.
[32] Excepting Gaus' *Social Philosophy*, as mentioned above.

who displays the most 'spirit', which is often a stand-in for a reward for the kid who tried really hard, but was unable – for whatever reason – to contribute in a significant way to the team performance. Sometimes we really should reward persons according to a principle of effort, like our spirit kid. And other times we reward them for contribution, like the young MVP. It isn't clear that each circumstance demands any one response.

The point is that what people deserve is partly contextual. We determine what persons deserve within certain contexts. This contextual approach to justice forms the foundation of Julian Lamont's critique of many theories of desert. Lamont argues that,

> The concept of desert is not a purely *internally* defined concept: i.e., examination of the concept itself will not yield the appropriate desert-basis for the particular case being considered (102).

Lamont argues that most people fill in their concept of desert by an appeal to 'external goals and values'. Thus, desert is contextual because the conception of desert most appropriate within a given context is fixed by the external goal or value persons in that context possess. The nature of desert, then, cannot be discovered by conceptual analysis alone.

These external goals and values give grounding[33] to a *desert basis*. The standard view is that desert claims are three-place relations of the form 'A deserves X in virtue of *f*' where *f* is the desert-basis.[34] (A, of course, is the object of desert, whereas X is the object deserved.)

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[33] Lamont: "What is important to notice is that *the desert-basis is determined by other values or purposes*, rather than by something internal to the notion of desert itself" (105).
[34] See Feinberg, *Doing and Deserving* (Princeton UP, 1970), 58-61 for the standard account.

We might call Lamont's theory *teleological* because it is grounded in goals or values. Lamont's argument for his teleological view of desert involves two claims: first, he argues that his view makes sense of the diversity of theories of desert, and second, he argues that the best way to explain desert bases in particular contexts is by appealing to the particular aim of the institutional context[35] where some particular desert basis is invoked.[36] I think that Lamont is correct to claim that specifying the content of desert claims requires an external goal or value. Yet I agree with Lamont that this need not imply that the notion of desert is wholly institutional.[37] There is no need to argue for this here, however.

Our reasons to prefer Lamont's theory do not rely merely on the fact that he has the best theory of ordinary desert. Instead, we prefer his theory because it lends itself towards conversion into a theory of *public* desert. Why? Lamont's theory has an explicitly teleological element. A typical desert basis is grounded in the pursuit of an individual goal under certain institutional conditions. Similarly, we should be able to ground a *public* desert basis by choosing to pursue a certain *public* goal under certain institutional conditions. Lamont's structure of desert is to be preferred because of how nicely it dovetails with the rationale for public justification. If desert bases are justified on behalf of the goal they promote, then we can convert an ordinary theory of desert

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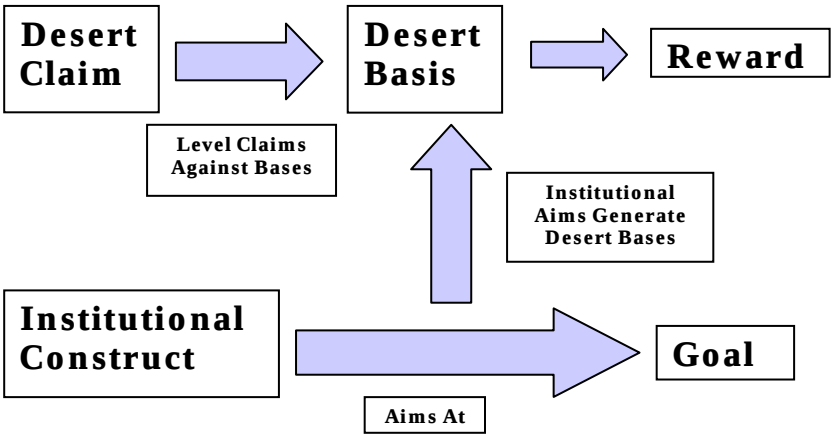
[35] Note that the 'aim of an institutional context' is not necessarily the aims of any one person participating in those institutions; I will make more of this below.

[36] Lamont spends some useful time dissecting an example of someone deserving a fellowship. See Lamont, J. (1994) "The Concept of Desert in Distributive Justice" *Phil. Quarterly* 44: 174, 53-55.

[37] See Lamont, 56.

into a theory of public desert by replacing the ordinary goal or value[38] that grounds the desert-basis with a public goal or value.[39] Note here that I am not claiming that public justification itself is teleological but rather that because desert is teleological, a theory of public desert must be as well.

If we are to use Lamont's theory of desert to construct a theory of public desert, then it is worth laying out the structure of his theory explicitly. I have constructed a crude visual aid to assist us. Lamont's theory can be understood in terms of the following relations:

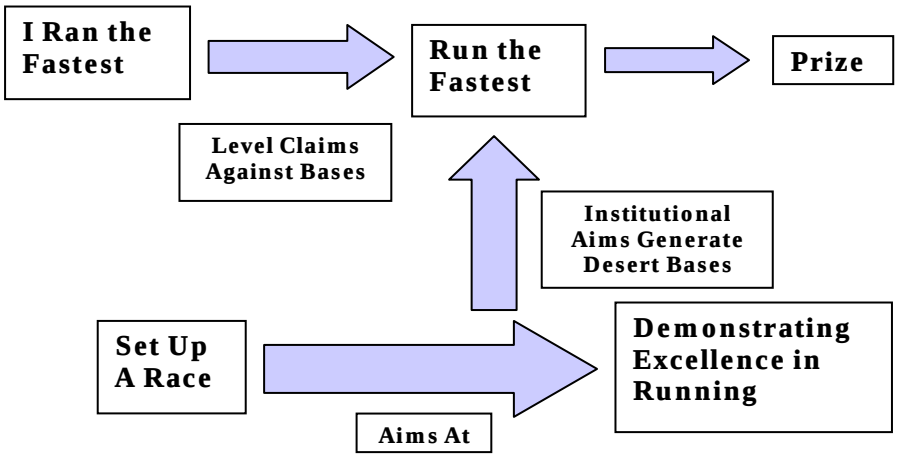


Lamont's theory possesses five major components: a desert claim, a desert basis, the object deserved, some institutional construct, and a goal or value. Institutional constructs aim at accomplishing some goal. In doing so, institutional constructs can

[38] Of course, not just any goal or value will do. For an accessible discussion of this, see McCleod's entry on the SEP: < http://plato.stanford.edu/entries/desert/>, Sec. 4. Last accessed on Oct. 31st, 2006.

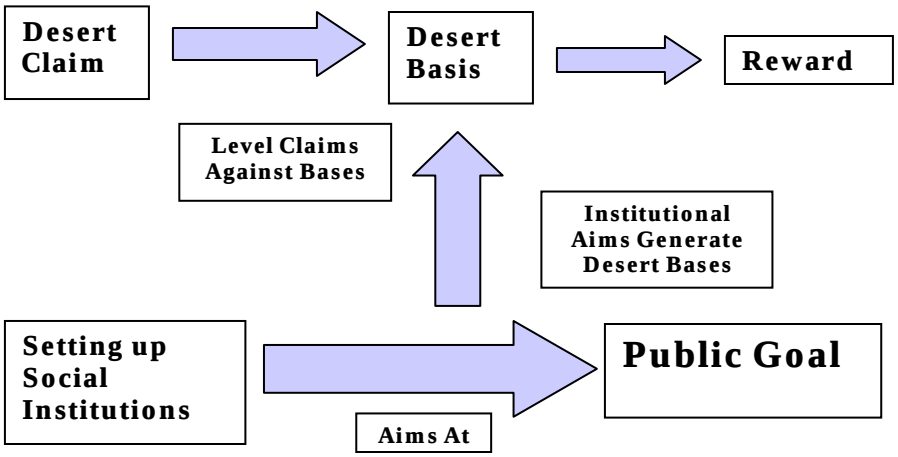
[39] It is worth emphasizing my agreement with Lamont [60] that a teleological theory of desert is not thereby a consequentialist one. Lamont spends some time teasing the two apart, arguing that his teleological theory of desert would only be consequentialist if consequences entered into the justification of a desert claim. But Lamont denies this. Rather, external values give rise to practices and institutions that possess their own internal desert-bases.

generate desert bases. Desert claims can thereby be leveled against desert bases; an example will help fill out the content. Take a standard 2k race. The following applies Lamont's theory to the problem of how to deserve in this case.



Some group of individuals constructs a race in order to demonstrate excellence in running. This aim generates a desert basis: Run the fastest. So, if you run the fastest, you have a desert claim to the desert basis of running the fastest. You thereby deserve a prize. Now try to connect each of these claims with the visual representation above.

What we must do now is give each component of the theory a *public structure*. By 'public structure' I mean components whose values can be publicly justified. For now, I conceive of a theory of public desert having the same five-part structure. I model it as follows:



It's worth going over each of these components in detail. The core and most complex component of a theory of public desert is what I've called the public goal. A public goal is a social end *promoted by a particular public practice or public institution*. Let me be clear: it is not a goal that individuals must possess; instead it must be understood as the goal promoted by a particular public practice or institution. This is important: as Rawls emphasizes, in a pluralistic society we cannot expect different persons to share too many of the same goals. But we can expect them to find reasonable those institutions that promote some aims over others.

Consider a criminal justice system. The point of a criminal justice system is to punish law breakers. It has the public goal of promoting and enforcing justice as it is understood by the community. Yet persons need not have the goal of living in a just society to be reasonable in accepting the coercion necessary to have this institution.

Second, public goals merely *constrain* individual goals. Public goals connect up to individual goals because they justify institutions that place publicly reasonable constraints on rational activity. Again, a public goal is a value promoted by a publicly

justified institution or practice. The criminal justice system places publicly reasonable constraints on rational activity when it punishes criminals. But this need not require that those who are bound by the criminal justice system themselves have the aim of promoting criminal justice. Of course, in this case the public goal of criminal justice is derivative of our conception of justice, so we may indeed share that goal; desert is in a similar position. My only point is that my case for the theory is not reliant on these facts.

It appears then that a public goal for a theory of public desert would be the goal implicit in the activity that generates desert claims: production. Consider again the productive standpoint. When persons take the productive standpoint, they consider fair terms of cooperative production. Each person wishes to pursue her own conception of the good, but she wishes to do so peacefully with others, and usually with their help. She will thereby accept an institution that places constraints on her actions if it does so fairly for each person. The public goal generated by the productive standpoint will be whatever goal persons wish social institutions to promote when constraining their rational behavior.

I cannot say much here about what the content of the public goal will be. But I will argue in my next essay that persons will choose to constrain all non-Pareto-superior moves under the productive standpoint. So long as all exchanges promote local mutual benefit, then I argue that parties taking the productive standpoint will have no publicly justified ground for complaint.[40] In the next essay I shall also take up the issue of those

[40] Note however that many members of society cannot engage in the process of production because of disablement or bad luck. These persons, I argue, do not have reason to take the productive standpoint. These persons, I argue, will take the *distributive* standpoint instead. The distributive standpoint arranges

who suffer negative externalities as a result of living under institutions that are Pareto-optimizing. I shall argue that so long as the harm they suffer has a *public character*, that they have a valid claim to have those externalities internalized. I shall take harm of a "public character" to be harm that persons with distinct conceptions of the good can recognize as harm. If the harm does not have a public character, the coercion involved in internalizing the externality cannot be justified.[41]

Let's turn now to the process of creating institutions. Public institutions have to be constructed to embody a public goal. But I want to be clear about what a construction consists in. Whatever it means, it does *not* mean that the institutions have to be designed, as it were, from the top-down. It doesn't mean that the institutions have to have a perfectly clean past, in that they always develop in a perfectly moral way. It also doesn't mean that the way the institution developed has to be particularly reasonable. All that matters is that the institutions *actually promote the public goal*. This should be sufficient to generate publicly justified desert claims.

Turn now to the public desert base. How do these institutions generate publicly justified desert bases? In the race case noted above, we naturally hold that the person

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social wealth according to need, whereas the productive standpoint arranges social wealth according to desert. I argue that the norms generated by the distributive standpoint can *trump* the norms generated by the productive standpoint when we can plausibly take a person who does not participate in social production as a *counterfactual cooperator* – or someone who presumably would have participated had she been able. Thus, considering the parties who take the distributive standpoint will help to generate a *Counterfactual Cooperator* theory of distributive justice.

[41] I set up this constraint to block objections by certain sorts of political movements who demand that the government protect a certain economic practice from market forces through coercing other groups. Consider the public nostalgia for the 'family farm'. Many groups would like to preserve this way of life by having the government tax some to subsidize this practice. It seems to me that parties who take the productive standpoint will consider the coercion needed to protect this way of life an unjustified imposition on person's productive projects because the harm involved does not have a sufficiently public character.

who runs the fastest deserves the medal. Thus, if Janet runs the fastest, she has a legitimate claim to the medal against others who would have it. In this case, the institution is justified in constraining the actions of those who would like the medal for themselves because *Janet deserves the medal*. I imagine a theory of public desert working similarly. If persons make Pareto moves with others, then I shall argue that they deserve to benefit. And if they pursue their conception of the good under the conditions demanded by the productive standpoint, then they deserve what they receive under free institutions. The desert base, then, is generated by the fact that the public goal is the promotion and protection of Pareto-move-making. Thus, the fruits of Pareto-move-making are *deserved*. And if one makes Pareto-moves through cooperation with others, then she deserves to remain unmolested.

Think about it this way: Persons who make Pareto-superior moves benefit others *in the eyes of those others*. In other words, persons give according to what is desired of them, and they receive according to what they are willing to exchange. In other words, to proceed in the productive process, to increase their range and ability to actively pursue their own conception of the good, *persons must attempt to benefit others*. Does it seem out of the blue to suggest that persons might thereby *deserve* their benefits? If persons freely exchange, they do so – at least *prima facie* – because they believe that they are benefiting one another. If you gain from an exchange, you still *prima facie* help another pursue her life plan.[42] Presumably, that is worth social recognition. I shall argue

[42] And note that you plausibly do so *from the perspective of the one you exchange with*. Thus, we have *prima facie* reason to suppose that the exchange is reasonable from different points of view. Scale up this insight to

in the next essay that recognition plausibly requires restraining others from coercing those who have made an effort to benefit their fellow citizens.

I think we are reasonably safe in claiming that social institutions which embody a public goal can generate publicly justified desert bases. Turn now to desert claims. It appears that if persons properly activate public desert bases, then they have publicly justified desert claims that they can level against their society. I shall argue in the next essay that by engaging in Pareto-improving[43] practices, citizens of liberal societies have justified desert claim to the benefits they receive from engaging in those practices. They can thereby make a claim on their social institutions to protect them from interference with the active pursuit of their life plans. In other words, they can be said to *publicly deserve to benefit from exchange*.

We've already outlined the last portion of the theory without directly attending to it. The public reward for individuals with valid public desert claims, then, is their gain from exchange. We have thereby completed the list of formal components of a theory of public desert.

VI. Conclusion

This concludes the first part of our theory of public desert. In the essay, I've attempted to connect public reason and desert in a way that promises to be controversial. But my hope is that readers can see the need for the project. Clearly the notion of desert is a

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market prices. Market prices are aggregate exchange ratios of persons' preferences *regardless of their point of view*. Could a market price be a device of public reason? I suggest that it can be.

[43] I should note that I do not say 'Pareto-optimizing' for a reason. The reason is that I'm not sure how to make sense of Pareto optimization because there is controversy surrounding how to formulate the notion. I shall say more about this in the future.

fundamental part of the liberal conception of the person. It has only ceased to play a role in the liberal *philosopher's* conception of the person. I've argued that this must change.

If it changes, then I hope to show that liberalism should recognize a liberal conception of the person that treats individuals as *sui juris* pursuers of their own good. If I'm right about this, then we need a distinct device of representation to model this conception of the person. For this reason, we developed the idea of the productive standpoint. Parties who take the productive standpoint recognize one another as free and equal *active* pursuers of distinct conceptions of the good. They consider other persons as free and equal *producers*. I argued that parties that take the productive standpoint will therefore consider desert claims as a basic part of social justice.

I spent the final two sections of the paper outlining the formal structure of a theory of public desert. I claimed that a theory of public desert has five components: a public goal, a process of constructing institutions, a desert base, a desert claim, and a reward. Each component plays a role in the structure of public desert in a way that is supposed to model how liberal institutions can be justified in constraining the rational activity of the individuals who participate in those institutions. The goal of the next essay is to fill in these components, and defend them against objections.