

Sidgwick and Rawls on Distributive Justice and Desert

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Abstract

This article explores, comparatively and critically, Sidgwick's and Rawls's reasons for rejecting desert as a principle of distributive justice. Their ethical methods, though not identical, each require giving weight to common sense convictions about justice as well as higher-level principles. Both men, therefore, need to find a substitute for desert that captures some of its content – in Sidgwick's case 'quasi-desert' takes the form of an incentive principle, and in Rawls's case a principle of legitimate entitlement. However their reasons for rejecting desert are unclear, and at points appear to rest on contestable conceptual or metaphysical claims that their methodological commitments are meant to rule out. To clarify matters, the article distinguishes between three levels at which anti-desert arguments may operate: 1) Those purporting to reveal some fundamental defect in the idea of desert itself; 2) Those purporting to show that we cannot find a coherent *basis* for desert, at least for purposes of social justice; 3) Those purporting to show that it is impossible for social institutions to reward people according to their deserts, no matter which basis is chosen. At each level, the arguments put forward by Sidgwick and by Rawls are shown to be unsound.

Keywords

Desert, justice, Rawls, reflective equilibrium, Sidgwick

Introduction

Desert plays a leading role in most people's idea of distributive justice. When asked how jobs, salaries, prizes and other such benefits should be assigned, they are likely to say that they should be given to those who deserve them, by performing well in the relevant social sphere. Of course, requiring desert is not thought to be the whole of social justice. Other principles – equality, need, entitlement – also play an important role. Yet the importance of desert should not be underestimated. It explains, for example, what people find so

objectionable about the racial or gender pay gap, or what is unacceptable about ‘playing favourites’ when promotions are being handed out.

In contrast, philosophers who have written about distributive justice in recent decades have rarely had a good word to say about desert. There are a small number of exceptions to this rule (e.g. Sher 1987), but most have concluded that even if desert can properly play some role in human life as a whole, it is not the right principle to apply to social distribution (e.g. Scheffler 2001, 2003a, Scanlon 2018 ch. 8). Part of this repugnance is no doubt due to the ideological use of desert to justify gross economic inequalities, as when company bosses justify their inflated salaries by claiming that they have earned them through exceptional performance. But desert is also thought to face objections of a more specifically philosophical kind. For example, it is generally agreed that people can only be deserving when they are responsible for the performances that form the basis of desert, but questions then arise about what this responsibility condition means, and whether it can ever be satisfied.

In this article, I do not attempt to respond directly to those who argue that desert as commonly understood should have no place in the theory of distributive justice. Instead, I approach the question more obliquely by examining how it was treated by Rawls and Sidgwick. I choose these two philosophers because, as I will show, they share a commitment to developing a theory of justice that, while not mirroring ‘common sense morality’ in every detail, nevertheless remains sufficiently close to it that the theory can be seen as a rational reconstruction of what people ordinarily believe about justice. There are two reasons for this commitment. The first is conceptual. In order for the theory to be a theory of *justice*, and not something else, it must be sufficiently aligned with everyday use of the concept. As Sidgwick put the point, the aim must be to find a definition of justice ‘which will be accepted by all competent judges as presenting, in a clear and explicit form, what they have always meant by the term, though perhaps implicitly and vaguely. In seeking such a definition we may, so to speak, clip the ragged edge of common usage, but we must not make excision of any considerable portion’ (Sidgwick, 1907: 264). The second reason is normative. If the theory is going to serve as an effective guide to people’s conduct, they must be willing to accept what it asks of them, which will not be the case if the theory conflicts radically with their pre-theoretic sense of justice. As we will see shortly,

Sidgwick and Rawls disagreed about how far it was desirable for people to appeal directly to the theories they were defending when deciding how to act. Nevertheless, for both it was important that the theory should not be ‘in flagrant conflict with common opinion’, as Sidgwick put it.

Given these shared methodological commitments, both philosophers were obliged to explore common beliefs about desert in an attempt to discover how far their favoured theories – utilitarianism in Sidgwick’s case, the two principles of justice in Rawls’s – could accommodate them. It’s possible that as a result of these explorations, each became convinced that the concept was fundamentally flawed. Nevertheless they could not afford to dismiss it out of hand for the reason just given. So their response was to replace the ordinary concept with a surrogate concept that could cover enough of the same ground that it would be regarded as an acceptable substitute – following Wolff (2003) we might call this ‘quasi-desert’. The question, then, is whether either philosopher succeeded in identifying a replacement concept that meets that condition.

My argument will be that neither did. Nevertheless there is much to be learnt about desert and justice from studying their attempts. Moreover in the case of Rawls, we can better understand his thought by seeing both where it follows and where it departs from Sidgwick’s. The latter’s influence on Rawls has been underestimated: given the high regard in which he held Sidgwick’s ethics, it is a reasonable conjecture that his critical approach to desert was at the very least reinforced by the precedent that Sidgwick had set.¹ Rawls is widely regarded as one of the last century’s foremost critics of utilitarianism; but as I will show, when it comes to desert, there are striking similarities between his treatment of that idea and the one offered by the most sophisticated defender of utilitarianism from the century before.²

In the first section of the article, I look more closely at the role that Sidgwick and Rawls respectively assign to pre-theoretical moral judgements in formulating a theory of justice. In the next two sections I examine how each of them handles desert judgements in particular, focussing on what they find deficient in the ordinary concept. I then examine the surrogates they offer to replace it, asking how well they capture its substance. Finally I offer an assessment of their critiques of desert, suggesting in particular that they fail to distinguish clearly enough between three different levels at which desert as a principle of

social justice can be challenged. I also provide some responses to these challenges that I believe are effective within the broad methodological approach shared by Sidgwick and Rawls, though I do not claim to have answered critics for whom the very idea of desert is fundamentally flawed.

Common Sense Morality and the Theory of Justice

To begin the inquiry, we need to look more closely at the role that each philosopher assigns to lay beliefs in the task of constructing an ethical theory. This is not a straightforward matter, since there is intense scholarly controversy, particular In Sidgwick's case, over how exactly this role should be understood.³ The core issue is whether lay judgements are merely appealed to for heuristic reasons, as a means of persuading the reader (who is assumed to share these judgements) of the truth of the final theory, whose real foundations nevertheless lie elsewhere; or whether their role is also epistemic, in the sense that the theory would be rejected if it proved to conflict significantly with these judgements. Both Sidgwick and Rawls give independent grounds for accepting, respectively, the principle of utility and the two principles of justice. In Sidgwick's case, these take the form of intuitions that he regards as self-evident and that together support utilitarianism. In Rawls's case, it takes the form of a thought experiment involving rational agents placed behind a veil of ignorance and asked to choose principles to govern their life together. Yet it seems clear that both require sufficient conformity to lay beliefs about justice and so forth as an additional criterion that must be met if the theory is to be fully vindicated. According to Sidgwick, 'the truth of a philosopher's premises will always be tested by the acceptability of his conclusions: if in any important point he be found in flagrant conflict with common opinion, his method is likely to be declared invalid' (Sidgwick, 1907: 373). Rawls treats pre-theoretical 'considered judgements' of justice as playing a similar testing role: 'the most reasonable political conception [of justice] for us is the one that best fits all our considered convictions on reflection and organizes them into a coherent view' (Rawls, 2001: 31).

I shall not try to establish how much justificatory weight is borne by this testing process by comparison with the force of the more direct supporting arguments that these philosophers give for their favoured master principles (this is one of the main issue that divides commentators on Sidgwick in particular). All that needs to be assumed for present purposes is that judgements of desert have a prominent place in popular conceptions of

distributive justice, so that accommodating these judgements (to the required extent) is *one* test that a successful theory of justice must pass.

Neither Sidgwick nor Rawls proposes that his theory should be tested against 'raw' public opinion, as it might be revealed in a questionnaire or opinion poll. What they suggest instead is that lay judgements need to be refined before they become apt for this role. However each understands the refining process somewhat differently. Sidgwick's investigation begins with intuitions about what morality requires in particular cases. But he next claims that, even at the level of common sense, the importance of applying general rules to these cases to guide our judgment is well understood. Since concrete cases often have multiple features, our judgments about them can only be made consistent by placing them under the relevant rules, and, Sidgwick claims, the content of these rules is easily discoverable:

It takes only a little reflection and observation of men's moral discourse to make a collection of such general rules, as to the validity of which there would be apparent agreement at least among moral persons of our own age and civilization, and which would cover with approximate completeness the whole of human conduct (Sidgwick, 1907: 214-215).

However this still leaves common sense morality unsatisfactory as a guide to conduct. First, it may not be clear how to classify particular cases that seem to fall under more than one rule. Second, the rules themselves are rather general in form and therefore will not be precise enough to give guidance in many concrete circumstances: to use one of Sidgwick's examples, the rule that prohibits lying does not tell us 'whether and how far false statements may be allowed in speeches of advocates, or in religious ceremonies, or when made to enemies and robbers, or in defence of lawful secrets' (Sidgwick, 1907: 215). Third, where two or more rules apply to the same case, they are liable to yield conflicting prescriptions, and so long as one remains at the level of common sense morality, there is no way to decide which rule should take precedence. This is what drives the philosopher to search for some higher level principle that is not only intuitively compelling but can also serve as a practical guide when for one or other reason the normal rules do not deliver a clear verdict. As we know, In Sidgwick's case this higher principle turns out to be the principle of utility.

It is important, however, to stress that the discovery of such a principle does not entail jettisoning common sense morality as unreliable. This is partly because the ultimate principle itself is supported not only by direct intuition but also by its ability to systematize ordinary moral rules in a satisfactory way, clarifying their scope, deciding conflicts between them, and so forth. As Sidgwick puts it, in order to get beyond 'dogmatic' intuitionism to 'philosophical' intuitionism, 'what is needed is a line of argument which on the one hand allows the validity, to a certain extent, of the maxims already accepted, and on the other shows them to be not absolutely valid, but needing to be controlled and completed by some more comprehensive principle'.⁴ It is also partly because, for most everyday purposes, it is better that people should follow the accepted general rules than to attempt to make direct calculations of utility – this for a number of reasons, including questions of moral motivation, the need for social co-ordination, and so forth. So Sidgwick shows himself very reluctant to recommend any significant changes to existing positive morality, and notoriously asks whether a utilitarian should encourage the spread of utilitarianism itself: he might instead prefer that 'the vulgar should keep aloof from his system as a whole, in so far as the inevitable indefiniteness and complexity of its calculations render it likely to lead to bad results in their hands' (Sidgwick, 1907: 490).

Turning now to Rawls, there are at least three ways in which his method of achieving a 'reflective equilibrium' differs from Sidgwick's.⁵ The first concerns the character of the 'intuitions' or 'considered convictions' used in arriving at such an equilibrium. In Sidgwick's case, he makes it clear that although the analysis provided of common sense morality is of course his own, his aim is to report on intuitions that are commonly held, at least by 'moral persons of our own age and civilisation'. As he puts it:

I have endeavoured to ascertain impartially, by mere reflection on our common moral discourse, what are the general principles or maxims, according to which different kinds of conduct are judged to be right and reasonable in different departments of life. I wish it to be particularly observed, that I have in no case introduced my own views, in so far as I am conscious of their being at all peculiar to myself; my sole object has been to make explicit the implied premises of our common moral reasoning. (Sidgwick, 1907: 338)

Rawls, in contrast, is less clear on the status of the ‘considered judgments’ from which the process of arriving at reflective equilibrium begins: are they the judgments that Rawls himself would make on certain issues, under appropriate conditions, or are they the judgments that he thinks people in general would make, under the same conditions? Evidence for the latter interpretation can be found in a paper written shortly after *Theory*, where Rawls says that:

....one tries to find a scheme of principles that match people’s considered judgments and general convictions in reflective equilibrium. This scheme of principles represents their moral conception and characterizes their moral sensibility. One thinks of the moral theorist as an observer, so to speak, who seeks to set out the structure of other people’s moral conceptions and attitudes (Rawls, 1999a: 288).

In contrast, in *Theory* itself, Rawls says that he will refrain from asking whether ‘the principles that characterize one person’s considered judgments are the same as those that characterize another’s’, going on to conclude that ‘for the purposes of this book, the views of the reader and the author are the only ones to count. The opinions of others are used only to clear our heads’ (Rawls, 1971: 50). This seems unfortunate, since it puts in question whether it is possible to achieve a general reflective equilibrium in which the same principles serve to accommodate and rationalize every citizen’s more specific intuitions about justice – the outcome Rawls is aiming for. In this respect, Sidgwick’s approach, which is closer to the position taken by Rawls in ‘The Independence of Moral Theory’, seems better suited to the latter’s general project.

A second respect in which Rawls appears to depart methodologically from Sidgwick is in offering a less hierarchical account of the elements that go into the making of a ‘wide’ reflective equilibrium. These comprise, first, considered judgements on specific issues or practices, such as the judgement that slavery is unjust; then, second, the subordinate principles that Rawls calls ‘precepts’, such as the Marxian principle ‘from each according to his ability, to each according to his needs’; and third, alternative general conceptions of justice, such as utilitarianism, including ‘the force of various arguments for them’.⁶ The relationship between these elements is supposed to be one of mutual adjustment. Specific judgements and/or precepts may be abandoned if they conflict with a general theory that otherwise has strong arguments in its favour, but equally theories can be discarded if they

are unable to accommodate particular judgements that remain intuitively compelling even after due reflection. Rawls states explicitly that his method is 'nonfoundationalist': 'no specified kind of considered judgment of political justice or particular level of generality is thought to carry the whole weight of public justification' (Rawls, 2001: 31). Here there is a contrast with the role assigned by Sidgwick to certain core intuitions treated as self-evident.

A third difference between the two is that Rawls states explicitly that the fundamental principles arrived at by this means are to serve as a 'public conception of justice' to be consciously embraced and acted on, ideally by every citizen. This doesn't mean that there is no place for lower level principles that can give people practical guidance in their daily lives, but such principles should be regarded as valid only insofar as they occupy a subordinate place within a master conception of justice that all citizens can endorse. Here, then, there is a clear contrast with Sidgwick's view that it was an open question how far his own fundamental principle, the principle of utility, ought to be widely embraced, as opposed to remaining an esoteric doctrine to be followed only by the enlightened few. This is going to matter as we turn to discuss desert specifically, because it remains open to Sidgwick to argue that most people should continue to think and act by appeal to desert in its ordinary sense, even if a utilitarian philosopher is bound to reject it in favour of a surrogate; whereas for Rawls this possibility is closed.⁷

Sidgwick, Determinism, and Desert

We are now ready to embark on the article's main task, which is to explore how each of our subjects handles desert judgments considered as part of common sense morality. In Sidgwick's case this is done as part of a mapping exercise in which the inner complexity of the idea of justice is brought to light. The main division, he claims, is between conservative justice, which concerns obedience to positive law, the fulfilment of contracts and legitimate expectations more generally, and ideal justice, which proposes higher standards by which law and other social practices might be reformed. Desert is treated as the central component of ideal justice, after two other candidates – natural rights and equal freedom – have been set aside. But Sidgwick's handling of desert, both in *Methods* and in *The Principles of Political Economy* is complicated by the fact that he moves quickly between three questions that need to be kept distinct: whether the very idea of desert is coherent (i.e. that people can justly claim benefits of various kinds simply on the basis of their past

performance and without reference to consequences or expectations), what features should form the basis of (economic) desert, and whether we can identify a set of economic and social institutions capable of ensuring that individuals are rewarded according to their deserts.

The third of these questions is addressed through a comparison between ‘Individualistic’ and ‘Socialistic’ modes of economic organization – roughly speaking, between a market economy with full rights of private ownership, and a system under which all land and capital is owned by the government, and employment by the state is the only source of income for individuals.⁸ Sidgwick points to difficulties with both of these economies from the point of view of rewarding desert; yet it is one thing to say that the idea of desert is internally flawed, and another to say that we cannot yet identify an economic system whose implementation would ensure that it was perfectly required. It begs the question how far we should expect principles of social justice to provide detailed guidance on questions of institutional design – a question to be taken up later.

Sidgwick’s treatment of desert is also complicated by his attempt to set aside the free will/determinism controversy as of (almost) no practical importance for ethics. After laying out the arguments that tell in favour of determinism and those that favour free will, and finding both sets of arguments powerful in themselves, he then claims that they have no bearing either on the moral ends that we should pursue or on the means we should use to achieve them. However there is one place in which the truth or falsity of determinism will make a difference: according to Sidgwick, our ordinary notions of ‘merit’, ‘demerit’ and ‘responsibility’ rely on the assumption of free will, so if determinism is true, they will need to be replaced. But he promises that in his discussion of justice, he will show that ‘this admission can hardly have any practical effect; since it is practically impossible to be guided, either in remunerating services or in punishing mischievous acts, by any considerations other than those which the Determinist interpretation of desert would include’ (Sidgwick, 1907: 72). Sidgwick’s ‘Determinist interpretation’ involves replacing desert in its ordinary sense by what I have called ‘quasi-desert’. Under this interpretation, in the case of punishment, to say that someone deserves punishment for a harmful act is just to say that it is right to punish him for it, ‘primarily, in order that the fear of punishment may prevent him and others from committing similar acts in future’ (Sidgwick, 1907: 71-72). In the case of

reward, 'when a man is said to deserve reward for any services to society, the meaning is that it is expedient to reward him, in order that he and others may be induced to render similar services by the expectation of similar rewards' (Sidgwick, 1907: 284).

In order to maintain his avowed neutrality on the free will/determinism question, Sidgwick has then to show that this reconstructed notion of desert is the only one viable, and crucially to do so without relying on assumptions that will be accepted only by determinists. He begins his discussion by drawing an analogy between desert-based justice and gratitude, and pointing out, as the first of many 'perplexities', that in both cases we are unsure whether reward should be given in proportion to the effort someone makes, or to the results that they achieve. Taking the latter option first, he then argues that the value of the services someone renders are likely to depend on 'favourable circumstances and fortunate accidents, not due to any desert of the agent' and jumps immediately on from these to 'powers and skills which were connate, or have been developed by favourable conditions of life, or by good education' (Sidgwick, 1907: 283). But this leap is surely problematic. For while it would be universally agreed that people are not made deserving by 'fortunate accidents' – that is, results that they neither intended nor could reasonably expect their actions to achieve – it is much less clear that desert claims are nullified once it is revealed that the contributions on which they are based require skills and abilities that are either innate or developed through the education that others have provided. Sidgwick seems to rely here on the eminently challengeable view that in order to deserve on the basis of X, a person must also deserve to *have* (all the components of) X – an assumption that, as we shall see later, Rawls too appears to make.⁹

Having dismissed the 'results' basis of desert on these grounds, Sidgwick turns to the principle that 'reward should be proportionate to the amount of voluntary effort for a good end.'¹⁰ But this, he says, must be unacceptable to determinists, since effort too is 'ultimately the effect of causes extraneous to the man's self'. So for determinists, justice requires an equal distribution of happiness, since no-one can deserve more than anyone else. But having come this far, he asks, why not include animals too? So, he concludes, 'the pursuit of ideal justice seems to conduct us to such a precipice of paradox that Common Sense is likely to abandon it. At any rate the ordinary idea of Desert has thus altogether vanished' (Sidgwick, 1907: 284).

However the path to the precipice seems to be one of Sidgwick's own making. For in order to dismiss the voluntary effort principle, he has had to appeal to determinism, having already conceded that if determinism is true, ordinary ideas of responsibility and desert will need to be abandoned. At this stage in the proceedings, to recall, he is trying to spell out the principles of common sense morality, and since common sense must recoil from determinism if what Sidgwick says is true, it cannot be used to discredit a desert principle that otherwise seems intuitively plausible. So Sidgwick's critique of the 'effort' version of justice as desert seems as question-begging as his critique of the 'results' version.

Sidgwick then finds his way back from the precipice by noting that 'it does not seem possible to separate in practice that part of a man's achievement which is strictly due to his free choice from that part which is due to the original gift of nature and to favouring circumstances', and concluding that the practical aim of ideal justice can only be to 'reward voluntary actions in proportion to the worth of the services intentionally rendered by them'.¹¹ Both of these claims are plausible; but Sidgwick then goes on to undermine the latter by switching to the third of our questions about desert, and arguing that we have no reliable way of measuring the worth of services. He points out that when people make claims about the 'fair worth' of a service, they are often referring simply to the amount that is usually paid to have the service provided. Setting this aside as belonging to conservative rather than ideal justice, he then asks whether 'market value', meaning the amount that a service can command under free competition, might serve as a measure of worth. This would yield the interpretation of the desert principle most congenial to Individualists: a person deserves to have whatever they receive in a perfectly competitive market economy.

Against this proposal Sidgwick mounts a barrage of objections, but what again must strike the reader is his running together of claims of different kinds. Some of Sidgwick's criticisms point to ways in which actual economies fail to be perfectly competitive – for example they give individuals the opportunity to combine to create a monopoly in the provision of a particular service, thereby raising its price. A different kind of objection is that people may mistake the value of the services for which they are willing to pay. Yet another is that the remuneration a service can command will depend on the number of people who are offering it, yet 'it does not seem that an individual's social Desert can properly be lessened merely by the increased numbers or willingness of others rendering the same services'.¹²

How telling these objections are will depend on how far we understand the relevant desert principle as making a claim about the distributive outcomes of actual market economies, and how far as providing a standard of justice by which those outcomes can be judged, by reference to what individuals would receive within an idealised market. I return to this issue below, but first we must end this review of Sidgwick by noting the socialistic version of the desert principle that he also (albeit briefly) contemplates.

This is the proposal that ‘all labourers ought to be paid according to the intrinsic value of their labour as estimated by enlightened and competent judges’ (Sidgwick, 1907: 288-289). Sidgwick’s objections here have to do with the difficulty of finding a suitable measure of value, and then the difficulty of estimating the relative contributions made by different participants in a combined process of production. So he concludes that any attempt to implement the desert principle in the form that he had earlier proposed must fail, and instead we must ask ‘not what services of a certain kind are intrinsically worth, but what reward can procure them, and whether the rest of society gain by the services more than the equivalent reward’ (Sidgwick, 1907: 289). This is, evidently, a direct application of the utility principle, and at this point Sidgwick presents it, not as a principle of ideal justice, but instead as involving a concession that an ideally just social order is impossible to achieve. He asserts that this is already recognized by Common Sense: but this seems inconsistent with his earlier claim to have distilled a principle of reward in proportion to voluntary contribution from his review of moral intuitions about desert. Indeed elsewhere he readily assumes that distributive justice is realised when ‘each man’s remuneration is an exact measure of the service that he renders to society’ (Sidgwick, 1887: 20). As we shall see later, when considering the relationship of utilitarianism to common sense morality, he takes such a principle as his starting point when discussing ideal justice.

Rawls, Desert, and Entitlement

I now turn to consider Rawls’s treatment of desert as part of his theory of social justice. Notice first that whereas Sidgwick begins by examining ‘the morality of common sense’, and then later endeavours to show that it can only be rendered complete and coherent by adopting a utilitarian perspective, Rawls starts by presenting direct arguments in favour of his two principles of justice, and then later considers how far they can accommodate intuitive beliefs about desert. In the time between writing *Theory* and writing *Justice as*

Fairness, he seems to have become more impressed by the need to make such an accommodation, and I shall point to differences between the two works in due course.

Notice also that whereas Sidgwick gives relatively short shrift to *moral* desert, arguing that this is not the kind of desert that social institutions could be expected to recognize, Rawls seems often to assume that when people talk about desert as a principle of distributive justice, it is moral desert that they have in mind.¹³ He therefore somewhat labours the point that it is unreasonable to think that institutions could be arranged so that people received distributive shares in proportion to their moral worth. However the only evidence he gives for 'a tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to moral desert' are references to the writings of Leibniz and Ross, both of whom did indeed assert, as a requirement of justice, that *happiness* should be distributed in proportion to virtue (Rawls, 1971: 310). Some, though not all, philosophers have followed their lead;¹⁴ but there is no reason to suppose that when lay persons talk about people deserving jobs, or salaries, or wealth, this is what they have in mind.¹⁵ So I will set aside Rawls's remarks about moral desert in order to focus on his more general reasons for dismissing desert as a basic principle of justice, and proposing a replacement in the guise of 'entitlement earned under fair conditions' (Rawls, 2001: 78).

Rawls follows Sidgwick in attacking desert at a number of levels.¹⁶ At the most fundamental level, he argues that we cannot deserve to have benefits such as income and wealth, since we do not deserve to have the attributes that might form the basis of such a claim, including both ability and effort. As he famously puts it:

It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one's initial starting place in society. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases. Thus the more advantaged representative man cannot say that he deserves and therefore has a right to a scheme of cooperation in which he is

permitted to acquire benefits in ways that do not contribute to the welfare of others (Rawls, 1971: 104).

This passage begins with a claim that common sense would surely endorse ('we do not deserve our native abilities') then moves to one that it would probably contest ('ability to make an effort depends largely on family background, etc. '), and ends by rejecting an implausible version of the desert principle. A much more reasonable reconstruction of the justice claim that an 'advantaged representative man' might make goes something like this: I have both undeserved natural abilities that others lack, and skills I have chosen to develop through training, and when I deploy either or both of these voluntarily in ways that benefit others, I should expect to be rewarded in proportion to the value of my contribution.¹⁷ This response simply denies the thesis, reviewed above, that in order to deserve on the basis of X, we must also deserve to have (all the components of) X. Our respondent claims to be deserving because he has developed and used his (undeserved) natural gifts in beneficial ways. The truth of that demanding thesis about the basis of desert is surely not itself one of 'the fixed points of our considered judgments'.

It would be possible, of course, for Rawls to follow Sidgwick by citing determinist reasons for rejecting desert: in brief, to claim that the truth of determinism shows that we cannot be responsible for our actions in the sense that desert presupposes. But Rawls makes no such claim, and it seems that he is barred from doing so by his wish to conduct moral theory independently of metaphysical and other philosophical questions, including that of free will (Rawls 1999a).¹⁸ In his later writings, this methodological commitment appears as the claim that principles of justice must be justified by public reason, rather than (contestable) philosophical doctrines. And the claim that responsibility and desert must be discarded (or substituted) in light of the truth of determinism surely counts as such a doctrine.

Alongside his basic critique of desert Rawls also considers some substantive desert principles, such as the effort and contribution principles, as 'common sense precepts of justice' that should be given a subordinate role within the general conception. His initial suggestion is that, within the context of a market economy, the role of these precepts is merely to 'identify features of jobs that are significant on either the demand or the supply side of the market, or both' (Rawls, 1971: 305). Thus if one job creates products of greater value than another, it will be worth paying someone more to do it. Here, then, the precepts

amount simply to rules of thumb that need to be followed if the market is to operate efficiently. But if that is all they are, it is not clear why Rawls should describe them as precepts *of justice*. The person doing the more productive job who is paid at the same rate as a less productive person will certainly have an incentive to switch jobs, but can she complain that meanwhile she is being treated unfairly?

Rawls does not provide any clear answer to this question. But suppose he had answered in the affirmative. He could then offer two reasons why these precepts can at best serve as subordinate rather than fundamental principles of distributive justice. One is that there are several such precepts, and no way of establishing their relative weight in the absence of some more basic principle. Rawls suggests that the proper balance will change according to social conditions, but argues that this is acceptable so long as the weighting process is guided by a higher-level principle, such as the difference principle that he favours (Rawls, 1971: 306-309). The other reason is that for a precept such as the contribution principle to apply at all, the social system must be governed by holistic principles such as equality of opportunity. As he puts it, 'there is no presumption, then, that following the precept of contribution leads to a just outcome unless the underlying market forces, and the availability of opportunities which they reflect, are appropriately regulated. And this implies, as we have seen, that the basic structure as a whole is just' (Rawls, 1971: 308).

In this part of his argument, Rawls follows Sidgwick closely. Like Sidgwick, he comments on the way in which the value of a contribution may depend on factors external to the agent (e.g. 'an individual's contribution is also affected by how many offer similar talents'). He likewise mirrors Sidgwick in stressing the problem of weighing the common sense precepts against one another. And finally Sidgwick had also noticed that the plausibility of the contribution principle as a principle of desert required a background condition of equal opportunity.¹⁹ However in place of Sidgwick's incentive principle, Rawls offers a different substitute for conventional desert: entitlement under background conditions of fairness:

In a well-ordered society individuals acquire claims to a share of the social product by doing certain things encouraged by the existing arrangements.....a person who has complied with the scheme and done his share has a right to be treated accordingly by others. They are bound to meet his legitimate expectations.....in the traditional

phrase, a just scheme gives each person his due; that is, it allots to each what he is entitled to as defined by the scheme itself (Rawls, 1971: 315).

Compared with Sidgwick's proposal, this form of quasi-desert has the virtue of retaining desert's backward-looking logic: a person can claim 'rewards' for having done what the scheme specifies, not because of what it is now on balance socially useful to offer him as an incentive. However, there is no general reason to believe that what a person must be or do to qualify for benefits under the scheme will correspond to desert in any of its usual senses: that is a wholly contingent matter. I consider this point more fully below, but to conclude this section of the article I turn briefly to Rawls's discussion of desert in *Justice as Fairness*, where he works harder to show that his theory of justice aligns sufficiently closely with desert as commonly understood.

The results, however, are not very satisfactory. First, Rawls tries to narrow the gap between desert and entitlement by emphasizing that people have to earn their entitlements. As he puts it, 'the idea of entitlement presupposes, as do ideas of (moral) desert, a deliberate effort of will, or acts intentionally done' (Rawls, 2001: 75). But this cannot be correct. Whether one needs to make a deliberate effort of will in order to become entitled depends entirely on the terms of the scheme in question. Suppose for some reason it is decided that all workers will have their pay boosted by 20% when they reach the age of 60 (perhaps this is to encourage them to remain in the workforce and avoid poverty in old age). Then no effort of will is required in order to become entitled to that extra pay.

Second, Rawls claims that his theory recognizes another idea alongside legitimate expectations, and that is 'deservingness as specified by a scheme of public rules designed to achieve certain purposes' (Rawls, 2001: 73). This is said to be inspired by Joel Feinberg's observation that in sporting competitions and the like, we sometimes judge that the most deserving person is not the person who is entitled to the prize – say because they are prevented from winning by some unlucky accident (Feinberg, 1970). The economic analogue to this would presumably be somebody who trains for a profession in the expectation of reward, but for some reason – perhaps a sudden contraction in demand for those services – fails to qualify for it, since no jobs become available. However the point about the Feinberg example is although we may judge the losing competitor to be deserving and may commiserate with her on her bad luck, we should still give the prize to the person

who won the race. In other words, in these contexts the desert judgment has no direct practical impact on way resources should be allocated. So although Rawls is correct to observe that his theory allows us to make deservingness judgments about people who don't get the rewards that the existing scheme encouraged them to expect, these judgments play no practical role within the theory: they do not provide reasons to alter the scheme.

Proposed Surrogates for Desert

We are now in a position to assess Sidgwick's and Rawls's arguments for rejecting desert as an independent principle of social justice, while aspiring to accommodate commonly-held views about desert via a substitute notion. First we must ask how well their proposed surrogates perform: can they in fact capture those widely-shared intuitions that qualify as considered judgments? If not, then, second, we must ask whether desert principles can withstand the challenges that our two authors bring against them.

To begin with Sidgwick: the central problem with his concept of quasi-desert is that it replaces a backward-looking with a forward-looking idea. So it will be unable to handle cases in which providing somebody with a benefit has no predictable effect on either his, or anyone else's, future behaviour. But in fact we do sometimes judge it to be obligatory to reward somebody for what they have done even though we know that this cannot serve as an incentive – for example, because the deed is unrepeatable. A defender of Sidgwick might argue here that there may still be one utilitarian reason for giving the reward, namely the expectation of the deserving person that he will receive it; however Sidgwick himself, as we have seen, draws a clear line between 'conservative' and 'ideal' justice, and places both the common notion of desert and its utilitarian surrogate in the second category, while the fulfilment of legitimate expectations belongs in the first, so this escape route is not available to him. He would not count fulfilling someone's expectation of reward as a case of quasi-desert.

It might, however, be thought that while Sidgwick has a problem in handling individual cases, he is on firmer ground when considering the justice of general *rules*, because there is bound in practice to be very substantial overlap between a rule that rewards people for the valuable contributions they have made, and a rule that incentivises people to make such contributions in the future. Yet the problem here is that an incentive-based rule must pay

attention to whether people are unwilling to contribute *unless* suitably incentivised. Sidgwick claims that reluctance to contribute is already incorporated in common sense notions of desert. He says that ‘we do not commonly recognize merit in right actions, if they are such as men are naturally inclined to perform rather too much than too little’ (Sidgwick, 1907: 446). As a general claim, however, this seems implausible. Sidgwick appears to have been misled by thinking of moral praise, of which it may indeed be true that it is reserved for courses of action that people are generally reluctant to undertake, such as heroic rescues, or standing fast in the face of oppression. But when thinking of rewards for social service generally, we do not consider contributions as grounds for desert only when people are reluctant to make them – we don’t for example think that people who have a vocation, or love their jobs, should for that reason be paid less for doing what they do. And this seems to apply not only at the individual level but across types of employment as well.²⁰ So although there will be *some* areas of overlap between desert-grounded and incentive-grounded rules, there will also be areas in which the two pull substantially apart.

Turning now to Rawls, and his proposal that, for purposes of a theory of social justice, desert in its normal sense should be replaced by ‘entitlement under fair conditions’, we have seen already that this proposal does at least preserve desert’s backward-looking character: you become entitled to a benefit by qualifying for it under some rule, not because of any future effect that providing you with the benefit will have. But the problem for Rawls is that the rules of a social order governed by his conception of justice may not be rules whose outcomes track the outcomes of desert-based rules at all closely. First, there will be rules designed to create an efficient economy by offering incentives of various kinds. But as we have already noted in the case of Sidgwick, incentive and desert can often pull apart. For example, it may be desirable to allow the inheritance of wealth in order to encourage saving and capital accumulation – and Rawls (1971: 277-278; 2001: 160-161) certainly envisages this, within certain limits – but under the rules governing inheritance, beneficiaries become entitled to resources that they don’t deserve. Second, a Rawlsian society may also contain rules that do not have an economic rationale of this kind, but that aim to improve the position of the worst-off by providing material benefits such as subsidised housing or free medical care. But when a person becomes entitled to a benefit of this kind, it cannot plausibly be presented as a kind of ‘quasi-desert’ (as we have seen,

Rawls tends to camouflage this discrepancy by speaking of 'earned entitlements'; my point is that Rawlsian entitlements may or may not be 'earned' in any sense that would align them with desert).

In response to the latter point, a defender of Rawls might claim that it is now commonly seen as a matter of justice for the state to ensure that basic needs are met – this is one respect in which conventional social morality has moved on since Sidgwick wrote – so if the entitlements generated by applying his two principles reflect a balance of desert and need considerations, this counts in their favour.²¹ In *Theory*, however, Rawls himself explicitly dismisses such an interpretation of his position. When contrasting the common-sense precepts of moral desert and of need, he remarks that in the just society he envisages, the basic structure does not 'tend to balance the precepts of justice so as to achieve the requisite correspondence behind the scenes. It is regulated by the two principles of justice which define other aims entirely' (Rawls, 1971: 312).

On this point, Rawls's self-interpretation is surely correct. Concerning the precept of need, it is a long-standing criticism of Rawls that his two principles of justice, and in particular the difference principle, fail to respond to the need-based claims of people with disabilities or special health care requirements (see Sen 1980; reference removed). Concerning desert, economic and other contributions will only be 'rewarded' in a Rawlsian society if the persons who will make them have to be incentivised to do so. Jobs that people do from a sense of duty or vocation will be paid less than jobs that are done only out of self-interest.

Challenges to Desert: Three Levels

It seems, therefore, that there must be a significant practical gap between desert-based justice and either utilitarian or Rawlsian justice; so utilitarians or Rawlsians who aim to achieve a reflective equilibrium that accommodates common sense desert judgments must argue that these judgments are defective in a way that justifies replacing them by one or other of the proposed surrogates. What, then, is the matter with desert? As we have seen, the arguments against it are made at several different levels. They can be classified roughly as follows:

- A) Arguments purporting to reveal some fundamental defect in the idea of desert itself.

- B) Arguments purporting to show that we cannot find a coherent *basis* for desert, at least for purposes of social justice.
- C) Arguments purporting to show that it is impossible for social institutions to reward people according to their deserts, no matter which basis is chosen.

Arguments under heading A) fall into two main categories. First, there can be a challenge to what Sher (1987: 176) has called ‘antecedentalism’ – ‘the view that an act or occurrence is called for because it would stand in a certain relation to some antecedent act(s) or event(s)’. Since desert claims standardly take this form, anyone who believes that normative reasons must always refer to some present act or future state of the world must reject desert outright. Does either Sidgwick or Rawls dismiss desert simply on this basis? In the case of Rawls, we have seen that the answer must be ‘No’, since his own substitute for desert is in part antecedentalist: a person can become entitled to some benefit by virtue of having done what the relevant social rules prescribe, not for consequentialist reasons.²²

In Sidgwick’s case, the position is less clear. He never attacks antecedentalism directly. Instead, his technique is to show that claims that appear to involve it can all be adequately translated into utilitarian form, in the process becoming more precise. For example, under the heading of conservative justice, he examines the claim to have legitimate expectations fulfilled. As normally understood such claims are antecedentalist in form: it is the very act of creating the expectation, say by agreeing to do something, that afterwards gives the creator a *pro tanto* reason to fulfil it. Sidgwick argues first that we have no very clear sense of what makes an expectation legitimate; and then claims that a utilitarian can resolve this uncertainty by measuring the extent of the ‘shock’ that the potential beneficiary, as well as others, will receive if the expectation goes unfulfilled (Sidgwick, 1907: 442-443). In other words, what matters is the sense of disappointment felt by the beneficiary, and the anxiety created in the minds of others. But Sidgwick avoids telling us whether there is an obligation to fulfil a legitimate expectation in cases where the beneficiary won’t be upset by non-performance – say because he has already written off the expectation-creator as unreliable – and no-one else will be any the wiser.²³ So although we may suspect that if pressed on the issue, Sidgwick would have conceded that he could see no force in antecedentalist claims, this is not his avowed position for purposes of ethical investigation.

This strategy of avoidance is prudent given Sidgwick's methodological commitments. To reject antecedentalism wholesale would involve excising a large part of common sense morality, not merely the part that involves desert, violating his undertaking as reported on p. 2 above. Of course, another critic not burdened by such commitments might simply dismiss desert by rejecting antecedentalism in general, but there is no space here to reply to such a critic. I conclude that neither Rawls nor Sidgwick shows that desert needs to be substituted by another concept on this ground alone.

A second reason a critic might have for rejecting desert wholesale is that the conditions that would have to be met for desert judgements to be valid cannot in fact be met. In particular, such a critic might argue that desert requires the kind of metaphysical freedom that determinism shows we cannot have. However this line of argument is not available either to Sidgwick or to Rawls. Sidgwick, as we have seen, claims to take no position in the dispute between determinism and free will in his ethical investigations. He cannot therefore appeal to the truth of determinism as a reason for jettisoning the common idea of desert. Rawls, as we have also seen, argues that moral philosophy should be 'independent' in the sense of not having to rely on the resolution of problems in other areas of philosophy, such as metaphysics, and here mentions 'the freedom of the will' as an example of such a problem (Rawls, 1999a: 287). So he, too, cannot consistently give determinist grounds for rejecting desert.

Desert as commonly understood *does* require that the deserving person controls the performance that forms the basis of desert (rendering a useful service, say). One cannot become deserving by virtue of accidentally bringing about some outcome. But the notion of control contained in this requirement is not the notion of an uncaused volition. It is rather that the person intended to bring about the outcome in question, and that the outcome occurred through the exercise of her powers and not in some freakish way. These conditions for desert are neutral on the question of what kind of causal explanation of the process of forming the intention and deciding to act on it might be such as to undermine the desert claim.

Both Sidgwick and Rawls do of course point out that the performances that form the basis of desert nearly always rely on factors that the agents in question do *not* control, such as their levels of natural talent. But they then have to explain why this observation should

undercut desert as normally understood. It is certainly not part of the common notion that desert should only reflect what is entirely within the agent's control at the moment of performance. Rawls seems to have been misled here by his tendency to conflate desert in general with moral desert in particular. If people believed that the distribution of income and wealth should be based entirely on moral desert, then they would indeed have reason to discount fully the effects of unequal natural talent, since it is only the virtuous character displayed in someone's actions that should count. But there is no evidence that such a view is widely held (except possibly, as noted above, among philosophers – though even in their case it is *happiness* rather than income that morally deserving people should enjoy).

Let us turn therefore to arguments of type B), which do not dismiss desert as such, but claim that we cannot find a coherent basis for the desert judgments people make about social distribution. Both Sidgwick and Rawls appear to have been influenced by the passage in Mill's *Utilitarianism* in which he presents the conflict between *effort* and *skill-based contribution* as grounds for remuneration as proof that distributive justice remains indeterminate until we appeal to social utility to resolve it.²⁴ Mill is of course correct to say that both of these plausibly qualify as desert bases, and correct to say that it may matter in practice which we choose to apply. But he concludes very quickly that once the conflict between these two principles has been recognized, nothing further can be said in terms of justice or desert ('any choice between them, on grounds of justice, must be perfectly arbitrary'). But is this really so?

Notice first that although effort and contribution are certainly distinguishable as possible grounds for reward, there is often considerable overlap between them. The effort that will count as a source of desert is not effort *per se*, but intelligently-directed effort, effort that can be expected to produce a valuable result.²⁵ Equally, when talent-dependent contribution is offered as the basis for reward, the claim being made is not that merely possessing natural talent is sufficient. To sustain contribution, talents have first to be developed into useful skills, and then actively deployed in the appropriate way – both processes that normally involve some expenditure of effort (see also Hurka, 2014: 248). So the contrast that Mill is drawing is narrower than he pretends, and comes down to this: when we compare the remuneration due to people for their work activities, ought we to

discount that part of their contribution to socially valuable ends that is entirely attributable to inequalities of natural talent, always assuming that these can be identified?²⁶

Mill might reply here that even if in practice it makes little difference whether we choose to reward people according to their effort or their contribution, given the way that these are intertwined, these two desert bases remain distinct in principle. But if so, we might choose to respond to each of them separately, on the model of a school that awards prizes both to the best performing student in each class and the one judged to have tried the hardest. Or again it would be possible to combine effort and contribution by attaching weights to each of these two features in arriving at an overall judgment of desert.²⁷ Rawls and Sidgwick appear to consider only the latter possibility, and then claim that any such weighting must be arbitrary; Rawls (1971: 307) adds that the weighting will vary from one society to the next (though here he appears to be working back from the predicted distribution of income to the weighting of the criteria that would explain it). But it is never made clear why this must be so – why there cannot be consistent judgments about the relative importance of different desert bases, in cases in which more than one seems to apply. Nor should it be surprising if we find that what counts substantively as desert should vary between societies, since it will naturally reflect what the members of each society regard as a valuable form of social contribution – whether this means the exercise of skills in hunting animals, or in programming computers.

Rawls might regard this as a reason why desert principles would not be selected behind the veil of ignorance, since people who have no knowledge of their conceptions of the good would not be in a position to say what should count as a valuable social contribution. But here the answer is that the principles would need at this initial stage to be expressed in more abstract terms, without specifying what should count concretely as grounds of desert – just as Rawls's own 'fair equality of opportunity' principle requires that 'those who are at the same level of talent and ability, and have the same willingness to use them, should have the same prospects of success....' without specifying what are to count as talents and abilities or how their level is to be measured.²⁸

This brings us finally to anti-desert argument C): desert principles are simply inappropriate as regulatory standards for social institutions. The thought here is that desert might have a role to play at micro-level, say when allocating resources within a small group, but cannot

govern the basic structure of society, particularly where it is centred on a market economy. Such an economy relies on people being able to contract with one another on mutually agreed terms, where these terms will reflect factors such as the shortage or surplus of particular kinds of labour, and so there is no reason to expect that individual people will be rewarded according to some uniform measure of desert. Sidgwick and Rawls make very similar arguments along these lines, Sidgwick concluding that:

In the actual state of society it is only within a very limited range that any endeavour is made to reward Good Desert. Parents attempt this to some extent in dealing with their children, and the State in rewarding remarkable public services by statesmen, soldiers, etc.....ordinarily the only kind of Justice which we try to realise is that which consists in the fulfilment of contracts and definite expectations (Sidgwick, 1907: 290).

This assumes, however, that at societal level too the role of desert principles is to govern and align individual receipts. The difficulties involved in commensurating personal contributions, particularly in the context of a market economy, are then easy to see. But desert principles might be used instead to identify an institutional structure that, as far as can be predicted, is most likely to result in people being rewarded as they deserve to be. The structure will be one that seeks to eliminate those factors that have the predictable effect of over- and under-rewarding individuals – for example discriminatory practices that prevent people in certain categories from getting the jobs, and the income, that they deserve, or forms of property that allow monopolies to develop and provide their beneficiaries with undeserved rents.

In this connection it is worth noting that both Sidgwick and Rawls show some sympathy for socialism – particularly surprising in Sidgwick's case given the generally conservative cast of his political philosophy – presumably because they are unconvinced that the receipts of capitalists and landowners are demonstrably just.²⁹ Of course, conventional capitalism can be challenged on grounds of equality, rather than desert, so I do not want to claim that it must have been a regard for desert that led both men to pay serious attention to socialist proposals. Nonetheless it is curious that they did not consider the possibility that the main role played by desert in a theory of social justice would not be to determine how much specific individuals should receive by way of benefits, but one of regulating institutions and practices so that the array of outcomes they produce broadly aligns with desert. The target

of desert should be the basic structure of society, as Rawls calls it, not individual acts of distribution – though this is consistent with recognizing that individuals playing their part within the basic structure, sitting on hiring committees, say, or setting remuneration rates within a firm, will need to apply desert principles more directly if the structure is to deliver social justice.

This oversight seems to persist in the work of post-Rawlsian critics of desert, such as Scheffler, who argues that desert is an individualistic notion, in the sense that valid desert claims are always based on some fact about the particular person who is said to be deserving, whereas social justice is a holistic notion, ‘in the sense that the justice of any assignment of economic benefits to a particular individual always depends – directly or indirectly – on the justice of the larger distribution of benefits in society’ (Scheffler, 2001: 190). However this overlooks the diversity of ways in which the concept of desert is deployed in reasoning about distributive justice. In particular, it overlooks the fact that although desert sometimes takes a non-comparative form, it is very often comparative, in the sense that to discover what any particular person deserves, we may have *either* to compare her performance with that of many others *or* to compare what she is now receiving with what many others are receiving, or to undertake both comparisons simultaneously.³⁰ There is, for example, no absolute amount of money that employee John deserves by virtue of the work he does. We have first to compare John’s performance with that of other workers, and then examine prevailing wage scales for different kinds of work, though even that may not be sufficient. In such a case, desert is a holistic idea in exactly the sense identified by Scheffler. Of course, this may mean that where the existing distribution of benefits across society is radically unjust, it will be impossible to give a definitive answer to the question what income a particular person such as John deserves. But this is a problem only if one begins with the assumption that desert has no normative role other than to make such person-specific judgments.

Conclusion

In this article, I have pointed to some fairly close similarities between Sidgwick and Rawls in how they treat the role of desert in distributive justice. This may serve to underline the extent to which Rawls, at least in this aspect of his thought, remains close to the utilitarian tradition as exemplified by Sidgwick. I have also pointed out some common weaknesses in

their handling of desert principles, in particular their tendency to move rather swiftly between more fundamental and more applied questions, without making it clear where the nub of their critique of desert really lies. I have suggested that this may reflect their shared commitment to showing that their respective ethical theories can accommodate at least a considerable portion of what lay people believe about justice, which inhibits them from engaging in a root-and-branch attack on desert. Nothing I have said will disturb a philosopher who has no such commitment – for instance, a thoroughgoing consequentialist who finds any form of antecedentalism irrational. If, however, we are in search of a theory of distributive justice that does a sufficiently good job of capturing and rendering coherent ‘the morality of common sense’ or ‘our considered convictions of justice’, I have argued that neither Sidgwick’s nor Rawls’s version of ‘quasi-desert’ will cut the mustard.

¹ Rawls said that Sidgwick’s *The Methods of Ethics* was ‘the outstanding achievement in modern moral theory....the first truly academic work in moral theory, modern in both method and spirit. Treating ethics as a discipline to be studied like any other branch of knowledge, it defines and carries out in exemplary fashion, if not for the first time, some of the comprehensive comparisons that constitute moral theory.’ (Rawls, 1999b: 341). Similar remarks are to be found in Rawls’s discussion of Sidgwick in Rawls (2007) and in the foreword that Rawls supplied for the 1981 reprint of *Methods* by Hackett. Only Kant receives as many index references as Sidgwick in Rawls’s masterwork *A Theory of Justice* (Rawls, 1971).

² On the relationship between Rawls and utilitarianism in general, see especially Scheffler (2003b). Rawls identified himself as utilitarian in his early work in ethics, while gradually coming to distance himself from some aspects of that doctrine: see Galisanka (2019: esp. 57-60, 152-157).

³ See, for example, Singer (1974), Schneewind (1977: Ch. 9), Sverdlik (1985), Brink (1994), Shaver (1999: Ch. 3), Skelton (2010), Hurka (2014: Ch. 5), Crisp (2015: Ch. 4). For a helpful overview that lays out the range of possible readings of Sidgwick as well as proposing one of its own, see Phillips (2011: Ch. 3).

⁴ Sidgwick (1907: 420). For a much fuller discussion of the relationship between the different forms of intuitionism in Sidgwick, see Crisp (2015: Ch. 4).

⁵ I leave it an open question whether the resemblances between Sidgwick's methodology and Rawls's are close enough to justify describing Sidgwick's as a version of reflective equilibrium. For two conflicting views, see Singer (1974) and Sverdlik (1985). For analysis of Rawls's conception of reflective equilibrium, see Daniels (1996: esp. Ch. 2) and Scanlon (2003).

⁶ This idea is first explicitly employed by Rawls in Rawls (1999a), though it is implicit in Rawls (1971: §9). The quoted phrase is from Rawls (2001: 31).

⁷ Note that when Rawls is discussing utilitarianism as a rival to the two principles of justice, he stipulates that it must be assessed as 'a society's public conception of justice': see Rawls (1971: 181-182). Here he is explicitly ruling out a position such as Sidgwick's (though Sidgwick is not named).

⁸ This contrast is only introduced fleetingly in *Methods*, but expounded much more fully in Sidgwick, (1887: Book III, Chs. 6-7) and Sidgwick (1897: Ch. 10), as well as in the essays 'Economic Socialism' and 'The Economic Lessons of Socialism', printed in Sidgwick (1904).

⁹ For challenges to that view, see in particular Nozick (1974: Ch. 7), Zaitchik (1977), and Sher (1987: Ch. 2). The convergence between Sidgwick and Rawls on this point is noted briefly by Crisp (2015: 168), and at greater length and more critically by Hurka (2014: 248-249).

Tom Hurka has pointed out to me that there are two ways of formulating the condition in question: either as the claim that the basis for a desert claim must be some feature that is itself deserved, or as the claim the basis for desert must be a feature that is under the voluntary control of the agent. The second formulation avoids the problem of infinite regress that afflicts the first. In his discussion, Sidgwick appears to shift between the two formulations.

¹⁰ See also his discussion of the effort principle in Sidgwick (1887: 506). Here without appealing explicitly to the truth of determinism, he argues that 'we should find it hard to show why even energy and perseverance are to be remunerated, unless we can prove that these qualities are not merely inherited natural gifts; so that the principle of rewarding desert would be in danger of finding no realization, through our scrupulous anxiety to realise it exactly!'

¹¹ Sidgwick (1907: 285). Note that this formulation stands mid-way between the two desert principles with which Sidgwick began, since although it bases desert on results ('the worth of

services') it qualifies this by saying that these results must be intended and achieved through voluntary action.

¹² Sidgwick (1907: 288). This argument, which as I note later Rawls also advances, has always struck me as curious. In many cases the value of supplying a particular service really does depend on the numbers of those already supply that same service (in the relevant neighbourhood), and that is something that a person contemplating supplying the service should be expected to consider. See Miller (1989: 165-167).

¹³ By 'moral desert' Rawls means (and here I follow him) the idea that people should be rewarded according to how virtuously they act – for example how far they seek to promote justice.

¹⁴ See the helpful survey in Hurka (2014: 232-236). A prominent recent example is Kagan (2012).

¹⁵ I don't mean to imply that no element of moral evaluation enters the desert judgments that lay people make. For example, when people judge that someone deserves to succeed economically, they mean succeed by honest toil and initiative, not by cheating or exploiting others. Gordon Gekko of Wall Street fame is not a deserving character. But this is different from treating virtue itself as the basis of desert.

¹⁶ No doubt Rawls's attack had multiple sources. Andrew Lister has underlined the influence of Knight and Hayek on Rawls's thinking in Lister (2017). By pointing to important similarities between Sidgwick and Rawls on desert and distributive justice, I am not suggesting that Sidgwick was the only authority that Rawls relied upon.

¹⁷ I return later to the question of how the value of someone's contribution is to be established. Note that the view of desert sketched here does not specify the 'currency' in which contribution is to be rewarded, leaving it open for critics such as Scanlon (2018: ch. 8) to argue that differential economic benefits cannot be justified in this way, while other less tangible rewards such as praise and admiration can be. However even if the appeal to desert taken by itself cannot justify rewarding people with economic benefits, if providing such benefits is justified on independent grounds, desert may still be the relevant principle to govern their distribution.

¹⁸ It may nonetheless be true that when Rawls dismissed desert as a principle of distributive justice, he was unwittingly influenced by a position he had taken up in his early theological investigations.

For the view that Rawls's hostility to desert stemmed from his anti-Pelagian interpretation of Christian doctrine, see Nelson (2019: Ch. 3).

¹⁹ See his brief comment at Sidgwick (1907: 285, fn. 1) and his slightly fuller proposal at Sidgwick (1887: 531).

²⁰ We do of course believe that people whose work involves high levels of danger or hardship should be given compensation for these factors, but again this does not directly track unwillingness to perform these jobs. For example, we would still think that firefighters should be given compensating benefits (such as extra time off) for the risks they run, even if it were shown that firefighters were committed to their jobs and would continue in them despite no such compensation being offered.

²¹ I thank an anonymous referee for this suggestion.

²² Of course the rules themselves are justified consequentially – they are chosen with the aim of maximising the share of income and wealth going to the worst-off social group.

²³ Avoidance comes about through the way in which Sidgwick conducts his critical review of common sense morality. He takes some principle endorsed by common sense and then shows that when we try to apply it to particular cases we often have to qualify or limit its application in various ways. He then proceeds to find ingenious utilitarian reasons for such qualification. But having led the discussion in this direction, he fails to revisit the simpler cases in which the principle applies unqualified, and therefore never asks whether in *these* cases the principle holds regardless of consequences. In other words, having established to his own satisfaction that utilitarian factors are sometimes needed to explain the fine-grained shape of a common sense principle, he assumes that these factors must also capture the force of the principle itself.

²⁴ Mill (1861: 53-54). For the influence of this passage on Rawls, see Rawls (1971: 304-305).

²⁵ For further reflection on why effort as a basis of desert is hard to separate from other factors that will determine contribution, see Lamont (1995) and Sher (2003).

²⁶ How far do lay people correct for inequalities of natural talent when making desert judgments?

This may depend on the context – what kind of performance is at stake, and what kind of reward is being offered. I have looked at some evidence in Miller (1999: ch. 4).

²⁷ This does not exhaust the list of possibilities. Thomas Hurka has suggested that we might combine effort and contribution principles by multiplying measures of the two, according to the formula $D = E \times C$: see Hurka (2003: 58). However this would yield an implausible result in the case where a producer decided to switch to making the same product or delivering the same service in a more effortful way. How can a voluntary increase in effort without an increase in contribution make a person more deserving?

²⁸ Rawls (1971: 73). There is a different reason why one might expect desert principles not to be chosen in the original position, namely that the position is set up in such a way as to invite the parties to consider how far their interests (measured in terms of primary goods) would be advanced by the adoption of various candidate principles of justice. They are not to consider whether these principles seem to be intuitively fair. However Rawls has then to explain why the principle of equality of opportunity would be selected, if, as he asserts, it is not to be regarded merely as a subordinate efficiency principle.

²⁹ For a discussion of Sidgwick's conservatism, see Miller (2020). Sidgwick finally rejected socialism on efficiency grounds, but not before he had spent some time criticizing the arguments usually made in defence of the receipts of landlords and capitalists, such as the 'abstinence' argument in the latter case. See Sidgwick, 'Economic Socialism' and Sidgwick, 'The Economic Lessons of Socialism' in Sidgwick (1904), as well as Sidgwick (1887: Book III, Ch. 7).

³⁰ I have developed this point at much greater length in Miller (2003).

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