AGAINST LIBERALISM

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CHAPTER 6

Justice and Desert

the brave new world begins
When all men are paid for existing
and no man must pay for his sins.
—RUDYARD KIPLING, “The Gods of the Copybook Headings”

The topic of this chapter and the next is justice, another basic value of liberalism. The central argument is that while liberals are right in regarding justice as a basic value of political morality, they are wrong in their conception of it. If the concept of justice is rightly understood, desert must be recognized as an essential component of it. In that case, however, any conception of justice that interprets the concept of justice without acknowledging the centrality of desert to it is mistaken.

The most widely accepted account of justice as liberals understand it is that of John Rawls (see Rawls 1971, 1993). Since Rawls’s conception of justice is egalitarian, he regards desert as irrelevant to justice, so his interpretation of the concept of justice cannot be acceptable. On the other hand, if the centrality of desert to justice is acknowledged, then justice cannot be a basic liberal value because it is inconsistent with many liberal political programs, with other basic values of liberalism, with the interpretation of autonomy as the core of liberalism, and with good lives.

Underlying the liberal conception of justice and this criticism of it is a clash of intuitions. The liberal intuition is that justice requires the recognition of the equal rights of human beings to the resources they need for living autonomously. The contrary intuition is that justice makes the right to such resources contingent on what their recipients deserve. The liberal intuition is motivated by the egalitarian belief that at a fundamental level all human beings have equal worth. The contrary intuition is motivated by the antiegalitarian belief that the worth of human beings varies with their moral merits. Rawls’s conception of justice is an attempt to exhibit
the rational basis on which the liberal intuition rests and to show that the contrary intuition lacks such a basis. It will be argued that Rawls's conception fails on both accounts and that this has damaging consequences for liberalism.

The assumption that humans have equal worth has been the target of the third criticism of egalitarianism (see Section 5.5). The criticism was that differences in moral merit invalidate that assumption. One might reply that the evaluation of the moral merits of agents and their actions, on which the ascription of desert depends, becomes possible only after appropriate institutions have been established. According to Rawls, "Desert presupposes the existence of . . . [a] cooperative scheme" (1971: 103). Institutions are these cooperative schemes, and they are needed to provide the laws, principles, rules, criteria, or whatever that can be used as standards for ascribing desert. Justice is basic because it governs how such institutions ought to be shaped. If this were so, the legitimate ascription of desert could occur only after just institutions have been established. Justice would have to be recognized then as more basic than desert, and a conception of justice would have to be independent of desert. The exclusion of desert from a conception of justice would not then be a fault but a consequence of understanding how basic a value justice is.

This rejoinder leads to the question of whether desert is bound to be contingent on institutional arrangements. The answer that will be defended here is that it is not. But consideration of the question and the argument for the negative answer raise some of the deepest questions of morality and politics. It is proper to acknowledge that part of the great virtue of Rawls's conception of justice is that it forces these questions on its critics. The criticisms that follow are meant to call into question the defensibility of Rawls's conception, while paying tribute to its importance.

6.1 THE CONCEPT OF JUSTICE

Socrates of The Republic was the first philosopher to see and insist on the deep connection between justice and a good life. He believed that a life is good only if it is virtuous and the agent is, all things considered, satisfied with it. The distinguishing mark of the Socratic belief is the further assumption that these two components are inseparable. A virtuous life cannot fail to be satisfying, and satisfaction with one's life must be derived from its virtue because they have the same source: the endeavor to approximate the good. The appearance that a virtuous life may lack overall satisfaction or that overall satisfaction may be derived from a wicked life deceives only those who are ignorant of the good. Those who know the good will be satisfied with their life in proportion to their virtue.
Contemporary Western sensibility rejects this Socratic ideal because there are good reasons to doubt the assumption that underlies it: the two components of good lives may diverge. Socrates was right to value both, but he was wrong to believe that virtuous lives are bound to be satisfying or that overall satisfaction can be derived only from a virtuous life. The truth is that a virtuous life may be full of dissatisfaction and a wicked life may be very satisfying, even in the long run, even when all things are considered. The fundamental reason for the contemporary Western rejection of the Socratic ideal is disbelief in cosmic justice, understood as a moral order in nature, which guarantees that virtuous lives will be satisfying and that wicked lives will not be. In the absence of cosmic justice, injustice is an incorrigible feature of the human condition. This is a deplorable fact, but Socrates notwithstanding, it is now widely believed to be a fact. As Nietzsche put it, “God is dead . . . we have killed him” (1974: 125).

Justice should thus be thought of as a substitute for cosmic justice. It is bound to be a poor substitute because circumstances beyond human control impose ineliminable limits on its realization. Justice nevertheless calls for doing what is possible to ameliorate obstacles to living a good life by making the coincidence of virtuous and satisfying lives more likely. Justice is thus a basic value because it is an essential condition of good lives.

As a beginning toward understanding what the pursuit of justice involves, it should be acknowledged that, like equality, it may be an essentially contested concept, one that is open enough to allow numerous evaluatively charged and incompatible interpretations (Gallie 1964: chapter 8). The concept must nevertheless possess some core of uncontested meaning, for without it there would be no reason to suppose that the numerous interpretations are of the same thing. Controversies about justice thus presuppose some, at least minimal, agreement regarding the subject about which the participants disagree.

This point may be expressed in terms of Rawls's distinction between the concept and various conceptions of justice: “It seems natural to think of the concept of justice as distinct from various conceptions of justice and as being specified by the role which these different . . . conceptions have in common” (1971: 5). As a start toward identifying this common element, it will be useful to begin at the same point as the discussion of equality did, with Aristotle's general formula for justice: treat equals equally and unequals unequally.

This general formula, however, is much too vague because nothing connects it specifically with justice. It is a condition of the consistent application of any rule in any context that like cases that come under its jurisdiction should be treated alike and different cases differently. This is
as true of classifying fauna, diagnosing illness, appraising antiques, and so forth as it is of justice. The Aristotelian formula, therefore, is insufficiently informative about why some rules are rules of justice. It needs to be supplemented with an account that goes beyond simple consistency and explains what permits the identification of particular rules as those of justice.

Considerable care must be exercised, however, about the content of this additional account. It would be unreasonable, for instance, to add to consistency the requirement of equal treatment in respect to economic distribution. For this would make economic equality just by definition, which would, of course, beg questions. This way of proceeding would arbitrarily identify the concept of justice with a particular conception of it. The unacceptable result would be that conceptions that allowed for economic inequality could be challenged not merely on moral or political grounds but also for being self-contradictory. Whatever is added to consistency, therefore, must be specific enough to identify some rules as rules of justice and yet remain sufficiently general to allow for conflicting conceptions of justice.

The clue to the missing core of justice may be found in the expectation of cosmic justice that guarantees that a virtuous life will be satisfying and that a satisfying life will be virtuous. A belief that is implicit in this expectation and lends much strength to it is that living virtuously is not merely necessary but also ought to be sufficient for living satisfyingly. This belief is compatible with acknowledging that the Socratic ideal is mistaken in its claim that virtue is sufficient for a satisfying life, for the belief is not that it is sufficient but that it ought to be. Justice is thought to be violated if the connection between virtue and overall satisfaction is severed. If the divergence between them is too great, if a virtuous life is full of suffering or a wicked life is filled with enjoyment, then justice is not merely violated but outraged. The expectation of justice thus routinely survives the disappointment that reality will conform to it because justice is not a description of any human society but an ideal motivating the improvement of existing societies.

This ideal is the expression of the basic moral belief that people ought to get what they deserve. It is the key to what was earlier called cosmic justice. The concept of justice should then be analyzed in terms of consistency and desert: equals should be treated equally and unequals unequally in respect to the allocation of desert. The next step is to try to understand better the nature of desert. (The following account is indebted to Feinberg 1963; Galston 1980; Miller 1976; Sandel 1982; and especially Sher 1987.)
If agents deserve some benefit or harm, it is because of some fact about them. This fact is the basis of desert, and that the agents merit some benefit or harm on that basis creates a claim of desert. Desert is thus relative to agents because its basis is a fact about the agents, and the claim is for some benefits or harms that the agents ought to have (Feinberg 1963: 69–72).

The fact about the agents that forms the basis of desert may be a character trait, such as a virtue or a vice, an excellence or a fault, a skill or a deficiency; it may be a relation in which the agent stands, for instance, being a taxpayer, a competitor, or an employee; it may be an explicit or implicit agreement into which the agent has entered, like having made a promise, gotten married, or enrolled as a student; or it may be a way in which the agent has acted, for example, kindly or cruelly, thoughtfully or unthinkingly, fairly or unfairly. The basis of desert, then, is some characteristic, relation, agreement, or conduct of some agent. Each basis allows for considerable variety within it. Desert, therefore, does not have a unitary basis; it is a pluralistic notion (Sher 1987: especially chapter 1).

The claim of desert is that the agent ought to enjoy some benefit or suffer some harm on the relevant basis. The claim need not be one that the agent makes; indeed, it is not often that agents lay claim to some deserved harm. Nor need any particular person or institution make the claim on behalf of the agent. The claim should be understood in the very general sense that the agent has a certain benefit or harm coming and that it would be good, right, proper, in a word, fitting if the agent received it. The claim sometimes could and should be enforced, but it need not be. It need not even be enforceable, because there are perfectly legitimate claims of desert that are not directed toward any person or institution, such as that wicked people do not deserve to live happily until they die of old age or that good people do not deserve the misfortune that befalls them.

The ascription of desert is partly backward- and partly forward-looking. It looks backward toward its basis, and it looks forward from there to lay claim to the appropriate benefit or harm. The ascription of desert thus always requires a particular type of reason, and the claim it creates always requires a particular type of justification. Both requirements are met by the basis of desert. It may therefore be said that hard work deserves success, employees deserve wages from their employers, and acts of kindness deserve gratitude from their recipients, just as hypocrites deserve to be exposed, incompetent physicians deserve to lose their licenses, and criminals deserve punishment. The justification of these claims is to point at
the relevant characteristic, relation, agreement, or conduct, which provides the basis for claiming that their agents deserve the appropriate benefits or harms.

The basis for justified claims of desert, however, has a further requirement because not just any characteristic, relation, agreement, or conduct provides the required reason. To serve as a reason, the basis must be something that merits the benefits or harms consequent on it. There must be an explanation of what it is about the basis that makes it fitting that the agent should receive some benefit or harm. Why does hard work deserve success or kindness gratitude? The appropriate explanation then strengthens the reason that can be derived from the basis of desert by pointing at the feature that makes the characteristic, relation, agreement, or conduct in question a fitting basis for the appropriate benefits or harms. The required explanation therefore must point at some excellence or fault, achievement or failure, compliance or noncompliance, or commission or omission that provides the basis for claiming that the agent in question deserves the corresponding benefits or harms.

It has been said at the end of the preceding chapter that the basis of desert is some moral merit or demerit of the agents. The sense in which this is meant, however, needs to be explained. Both "moral" and "merit or demerit" can be interpreted in a broad and in a narrow sense. In the broad sense, "moral" may be taken to mean the evaluative dimension of the effort to live a good life. Lives are morally good in this sense if they are virtuous and the agents are satisfied with them overall. In the narrow sense, "moral" may be taken to mean the evaluative dimension of the effort to live a good life. Lives are morally good in this sense if they are virtuous, and they are good even if the agents lack overall satisfaction with them. The broad sense includes, whereas the narrow sense excludes, the agents' satisfaction. If the distinction is kept in mind, it makes no substantive difference in what sense "moral" is used. It will be used in the broad sense here. The moral merit or demerit of agents that is said to form the basis of their desert therefore calls for benefits or harms that are fitting responses to the extent to which the agents' lives have been virtuous and satisfying. What makes responses fitting is that the benefits and harms they provide are aimed to make commensurate the virtue and satisfaction, as well as the wickedness and dissatisfaction, in particular lives.

"Merit" and "demerit" have an analogous ambiguity. In the broad sense, to say that agents have a particular merit or demerit is to refer to the characteristic, relation, agreement, or conduct that forms the basis of the claim that they deserve some particular benefit or harm. In this sense, "merit" or "demerit" is synonymous with "the basis of desert." What makes "merit" and "demerit" moral in the broad sense is that the bene-
fits and harms nontrivially affect the goodness of the agents' life. In the narrow sense, "merit" and "demerit" refer to the bearing that the characteristic, relation, agreement, or conduct has on the agents' living virtuously. This sense is thus connected with the narrow sense of "moral," and the agents' moral merit or demerit depends on what the agent has done or is doing to live virtuously. Just as "moral" will be used here in the broad sense, so also will be "merit" and "demerit."

To say then that moral merit or demerit is the basis of desert is to say that a certain characteristic, relation, agreement, or conduct of a certain agent is a fitting basis for that agent's receiving some particular benefit or harm that nontrivially affects the goodness of the agent's life.

The foregoing account suggests several ways in which the ascription of desert may be mistaken. The first is a factual mistake about the basis of desert. The person who was thought to be a burglar really was not, so punishment is inappropriate. The second is a mistake in thinking that the basis of desert merits the benefits or harms that it is thought to do. This may involve a mistaken evaluation of the basis, such as thinking of chastity as a virtue. Or it may involve a correct evaluation that is mistakenly applied, for instance, thinking correctly that modesty is a virtue but mistaking humility for modesty. The third is a mistake in proportion. The agents in question do indeed deserve benefits or harms on the basis that is rightly supposed to exist and merit benefit or harm, but the benefits or harms received exceed what is appropriate. The burglar deserves imprisonment, but not for life; the novelist deserves good reviews, but not a Nobel Prize. The fourth is the logical mistake of ascribing desert without regard for its basis. The mistake is not that there is thought to be a basis when there is none; rather, the ascription of desert occurs in disregard of whether it has an appropriate basis. In this way, benefits or harms may be distributed not on the basis of some properly evaluated characteristic, relation, agreement, or conduct but for some other reason.

The significance of this fourth kind of mistake about the ascription of desert is considerable. The mistake, it needs to emphasized, is logical. Just as a person cannot be held to a promise if none has been made or be guilty of a crime if none has been committed, so desert cannot be ascribed unless it has a basis. The reason for this is that without a basis, the benefits and harms received cannot—logically cannot—be deserved. Benefits and harms may be received for reasons of need, want, love, prudence, generosity, paternalism, religious belief, political expediency, and so forth. But they can be deserved only if there is a specific reason for receiving them. And the reason must be that their recipients merit them in virtue of some characteristic, relation, agreement, or conduct of theirs
which makes it fitting that they should enjoy or suffer those particular benefits or harms.

It is just this element of fittingness that egalitarian distribution schemes lack. To say that everybody deserves the same benefits is to ignore the fact that people differ in respect to their characteristics, relations, agreements, or conduct and thus in respect to the bases on which desert can reasonably be ascribed to them. The charge Rawls famously leveled against utilitarianism also applies (as Nozick [1974: 228] points out) to egalitarianism: it “does not take seriously the distinction between persons” (1971: 3).

To reply to this by saying that there may be some respects in which all persons are alike, such as their capacity for autonomy, and that is why they all deserve the same benefits is to make a logical mistake about the basis on which desert can be reasonably ascribed. For it is not enough for the ascription of desert that people be alike in some way, it must also be explained why that likeness creates a basis for desert. The basis of desert must be something that has moral merit or demerit, broadly understood; it must nontrivially contribute to or detract from the agents’ living a good life; and if it is to be a basis of a claim for some benefit or harm, it must be ascertained what its actual positive or negative effect is. The capacity for autonomy, or indeed any respect in which human beings are alike, fails these conditions because there are obvious differences among people in how their shared characteristics, relations, agreements, and conduct affect the goodness of their lives. For instance, the capacity for autonomy may be used or not; if used, it may be for good or for evil; if used for good, it will contribute to good lives in various degrees—and all these affect whether it provides a basis for desert, whether the basis is of moral merit or demerit, and whether the moral merit or demerit is great, small, or somewhere in between.

This is the reason why the ascription of desert is essentially antiegalitarian and why consistent egalitarians will repudiate distributive schemes based on desert. But if desert is an essential component of justice, then egalitarians cannot base the distribution scheme they favor on justice either, because justice, involving desert, will not be egalitarian. Egalitarians must deny, therefore, that desert is an essential component of justice. And, of course, they do deny it; it remains to be seen, however, with what success.

6.3 JUSTICE AND DESERT

Suppose that the ascription of desert is reasonable because it is free of the mistakes in fact, evaluation, proportion, and logic that have
been discussed above. The claim it creates, then, is that deserving agents ought to receive some benefit or harm. How strong is this claim?

Since it may be impossible to provide the desert that is reasonably claimed, the claim cannot be unconditional. One obstacle may be the unavailability of the deserved benefits or harms as a result of nonculpable scarcity of resources. Another obstacle may be that the available resources cannot be distributed proportionally to what is deserved. How could people who have been negligently blinded or maimed by prolonged torture be fittingly compensated? What benefit could be provided for those who nobly died in the line of duty or chose a life devoid of most satisfactions in order to make others less miserable? Underlying these obstacles is the fact that the human control over the distribution of deserved benefits and harms is insufficient. People are often unavoidably prevented from having what they deserve and ought to have.

Two of the numerous consequences of this limitation of justice are opposite in the present context. The first makes it superficial to claim, as Rawls does, that "justice is the first virtue of social institutions" (1971: 3). Surely, a prior virtue of social institutions must be to generate ample resources to increase the likelihood that justice could be done in their distribution. If social institutions were to have a first virtue, which is a highly dubious belief for a liberal to hold, as it will argued in Chapter 9, prosperity would be a much stronger candidate than justice.

The second consequence strengthens the previous objection to the principle: "ought" implies "can" (see Chapter 3) by presenting yet a further counterexample to it. If the principle were correct, it would be a logical error to claim that people ought to have what they deserve even though the unavoidable lack of resources or proportionality makes it impossible. But there is nothing logically faulty about this claim; it is one of the most important sources of the motivation to extend justice by increasing human control over the resources needed for it.

If reasonably based claims of desert are not unconditional because conditions beyond human control may make it impossible to meet them, can they then be said to be overriding claims? They could perhaps be expressed as claiming that insofar as it is possible to arrange that people get what they deserve, it ought to be done. But this is still too strong an interpretation of these claims. Desert is a basis for distributing benefits and harms, and it calls for distributing them proportionally to the moral merit or demerit of their recipients. There are, however, other bases of distribution, and they may support a moral case for giving people more or less than what they deserve.

Love, friendship, family ties, special relationships, and so forth may place an obligation on people to be generous rather than punctilious in
benefiting others with whom they stand in such a relationships. Since relationships of this sort are essential to most conceptions of a good life, there may often be good reasons to provide benefits greater than what their intended recipients deserve. A similar case can be made for making people suffer less than they deserve. Mercy, forgiveness, hope of reform, remorse of the wrongdoer, the uncharacteristic nature of the wrong that has been done, and the like may provide reasonable bases for not inflicting harm proportional to the moral demerit of some people. The claim that people ought to have what they deserve may be overridden, therefore, by a stronger case that rests on some alternative basis of distributing benefits and harms.

These alternative bases, to be sure, require fairly close familiarity with the people who are provided with more benefits or harms than they deserve. Such familiarity cannot be made a condition of workable institutions, political programs, and numerous personal decisions. So it would be impracticable to suggest that it should compete with desert as a basis of distribution. But it is not impracticable to recognize that when such familiarity does exist, then it can be appealed to as a reasonable basis for overriding claims of desert. Those who are willing to accept that justice essentially involves desert and who join Rawls in regarding justice, in one sense or another, as a first virtue of social institutions may still disagree with Rawls's further claim that "laws and institutions . . . must be reformed or abolished if they are unjust (1971: 3). It may often be right that the claims of love, mercy, and so on should prevail over the claims of justice.

The most reasonable interpretation of the strength of the claim that people should have what they deserve is that it is prima facie. It should be assumed to hold, unless some stronger consideration overrides it. It would be neat if a general account could be given of what consideration would be stronger than desert, but no such account is to be had. Just as there is a plurality of bases of desert, so there is a plurality of ways in which the claims of desert can be reasonably defeated. Desert may be a basic value, but there are also other basic values, and their claims may conflict with and override the claims of desert. The best that can be done a priori is to indicate the logic of a claim that would reasonably defeat the claim of desert.

The context of the competing claims of desert and whatever conflicts with them is people's aspiration to live a good life, understood as one in which virtue and satisfaction coincide as closely as possible. The prima facie case for desert derives its strength from the importance of desert to this aspiration. What a claim that reasonably overrides that of desert would have to show is that in a particular case some consideration other
than desert, such as love or mercy, is more important to living a good life. But what such considerations may be cannot be specified a priori because there is a plurality of conceptions of a good life, and what is important to one may not be important to another. In this context a reasonable case must be particular, and a general case can only be prima facie.

In summary, justice should be understood as the combination of consistency and desert. Consistency requires that like cases be treated alike and different cases differently. Desert provides the basis on which the likenesses and differences should be evaluated. That basis is to distribute benefits and harms in proportion to the moral merit or demerit of their recipients. Moral merit and demerit, in turn, are to be understood in terms of people's characteristics, relations, agreements, or conduct that make it fitting that they should receive the appropriate benefits or harms. And the evaluative force of fittingness derives from justice being an ideal that serves as a substitute for cosmic justice; an ideal that requires social institutions, political programs, and individual efforts to be directed toward making lives good by making their virtue and satisfaction proportional to each other. The claim of justice is neither unconditional nor overriding but prima facie.

This understanding of justice is, of course, unacceptable to egalitarians because they reject the idea that benefits and harms should be distributed according to desert. The time has come to consider Rawls's conception of justice, which is the strongest liberal attempt to support egalitarianism.

6.4 RAWLS'S CONCEPTION OF JUSTICE

Rawls's conception of justice is well known and extensively discussed (see, for example, Barry 1973; Daniels 1975; Korsgaard 1992; and Kymlicka 1990: chapter 3), so there is no need to provide a detailed exposition of it here. But it is important to have the logic of his argument clearly in view so that the soundness of the reasons about to be given for rejecting it can be readily judged. Its logic will be exhibited backward, beginning with Rawls's rejection of desert as a basis for justice and then going deeper by bringing out the more and more fundamental reasons Rawls gives in support of his egalitarian conception of justice.

Rawls writes: "There is 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. Justice is happiness according to virtue. While it is recognized that this ideal can never be fully carried out, it is the appropriate conception of distributive justice, at least as a prima facie principle, and society should try to realize it as circumstances per-
mit. Now justice as fairness [Rawls’s theory] rejects this conception” (1971: 310). In claiming this, Rawls does not deny that people are entitled to various benefits, although he says nothing about harms. “A just scheme . . . answers to what men are entitled to; it satisfies their legitimate expectations as founded upon social institutions. But what they are entitled to is not proportional to nor dependent upon their intrinsic worth. The principles of justice . . . do not mention moral desert, and there is no tendency for distributive shares to correspond to it” (311). What people are entitled to thus depends on social institutions, and just institutions recognize no connection between entitlement and desert, regardless of what common sense says.

The reason Rawls gives for these strong and counterintuitive claims is that the “essential point is that the concept of moral worth [and desert] does not provide a first principle of distributive justice . . . because it cannot be introduced until after the first principles of justice have been acknowledged. Once the principles are on hand, moral worth [and desert] can be defined as having a sense of justice. . . . Thus the concept of moral worth [and desert] is secondary to those of . . . justice, and it plays no role in the substantive definition of distributive shares” (312–13). It follows that “it is incorrect to say that just distributive shares reward individuals according to their moral worth [and desert]. But what we can say is that . . . a just scheme give each person his due: that is, it allot to each what he is entitled to as defined by the scheme itself” (313). According to this suggestion, people get their due, but that has nothing to do with what they deserve on the basis of their moral worth.

It may be thought that a way of alleviating doubts about this suggestion is to allow that whatever the first principles of justice turn out to be, they should connect what is due to people with what they deserve. But Rawls rejects this on the ground that benefits should not be based on desert “since the initial endowment of natural assets and the contingencies of their growth and nurture in early life are arbitrary from a moral point of view. The precept which seems intuitively to come closest to rewarding moral desert is that of distribution according to effort. . . . Once again, however, it seems clear that the effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously, and there seems to be no way to discount for their greater good fortune. The idea of rewarding desert is impracticable” (311–12). The thought then is that the distribution of benefits based on desert is morally arbitrary because desert depends on natural endowments, and “no one deserves his place in the distribution of natural assets any more than he deserves his initial starting place in society” (311).
That differences of endowments and circumstances exist among people "is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts. What is just and unjust is the way that particular institutions deal with these facts" (102). The just way is to recognize "that undeserved inequalities call for redress; and since inequalities of birth and natural endowments are undeserved, these inequalities are to be somehow compensated for. Thus . . . in order to treat all persons equally . . . society must give more attention to those with fewer native assets and to those born into the less favorable social positions. The idea is to redress the bias of contingencies in the direction of equality" (100–101).

It is the role of what Rawls calls "the difference principle" to achieve this. The difference principle represents . . . an agreement to regard the distribution of natural talents as a common asset. . . . Those who have been favored by nature . . . may gain from their good fortune only in terms that improve the situation of those who have lost out. . . . The basic structure can be arranged so that these contingencies work for the good of the least fortunate" (101–2). And the difference principle is: "Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, and (b) attached to positions open to all under conditions of fair equality of opportunity" (83).

This principle has been repeated so often, and often in such a commanding moral tone, that there is a tendency to be lulled by its familiarity into overlooking just how great a violence it does to common sense and ordinary moral convictions. Consider just two of its numerous counterintuitive consequences. Suppose that a man and a woman are both among the least-advantaged members of a society. The man is a hitherto unapprehended mugger; he has never held a job; he is vicious when he can get away with it; he has moderate native endowments, but he has made no effort to develop them. The woman is the mother of several children; she and the children have been abandoned by her husband and their father; she earns meager wages by working part-time at a menial job; she is doing her best to raise the children well; she has the same native endowments as the mugger but, unlike him, has used them to make great, although unsuccessful, efforts to improve her situation. According to the difference principle, the mugger and the mother are entitled to the same treatment. Their positions of inequality are due to contingencies that are arbitrary from the moral point of view. The mugger's viciousness and lack of effort and the mother's decency and unsuccessful efforts create no morally relevant differences between them insofar as the distribution of benefits is concerned. They are entitled to the same distributive shares.

Changing the scenario a little illustrates another consequence of
Rawls's position. The mugger continues as before, but the mother is no longer unsuccessful. Through her efforts, she considerably improves her position. She now has a moderately comfortable and secure, but by no means affluent, middle-class existence. She has a good job, she bought a house, the children are doing well at school, and they can even afford an occasional family vacation. According to the difference principle, the contingencies of life, among which are counted the mugger's lack of effort and the mother's successful effort, are to be redressed in the direction of equality. Thus on Rawls's view of justice, some of the mother's resources should be taken from her and used to support the mugger.

It may be, of course, that the ordinary moral convictions, which render these consequences of the difference principle unacceptable, are mistaken and Rawls's conception of justice is correct. But that needs to be shown, and showing it requires adducing very strong reasons indeed for the difference principle. Rawls certainly offers some reasons, and the next step is to see what they are. The difference principle is Rawls's second principle of justice. It serves two main purposes: to supplement the first principle and to strengthen the egalitarian component of the general conception of justice. The reasons for the difference principle emerge from understanding its purpose.

The first principle of justice is what Rawls calls "the equal liberty principle" "Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all" (250). This is the first principle because it takes priority over the second. A just society, therefore, first guarantees, in accordance with the first principle, equal basic liberties to everyone and then, in accordance with the second principle, arranges inequalities to benefit those who are least advantaged, allowing inequalities to result only from conditions of fair equality of opportunity. One reason for having the second principle of justice, therefore, is to have a way of dealing with inequalities that will arise if the first principle is in place. And the second reason for having it is "that undeserved inequalities call for redress; and since inequalities of birth and natural endowments are undeserved, these inequalities are to be . . . compensated for" (100). In "the democratic interpretation of justice . . . liberty corresponds to the first principle, equality to the idea of equality in the first principle together with equality of fair opportunity [in the second principle]" (106).

The question of what reason there is for accepting the two principles of justice together however remains. Why should the most extensive equal basic liberties be guaranteed? Why should inequalities of endowments and circumstances be redressed? Why should those who are least advantaged be favored? Rawls's answer leads to the deepest level of his theory.
The intuitive idea is that since everyone's well-being depends upon a scheme of cooperation without which no one could have a satisfactory life, the division of advantages should be such as to draw forth the willing cooperation of everyone taking part in it, including those less well situated. Yet this can be expected only if reasonable terms are proposed. The two principles . . . seem to be a fair agreement on the basis of which those better endowed, or more fortunate in their social position, neither of which we can be said to deserve, could expect the willing cooperation of others when some workable scheme is a necessary condition of the welfare of all. Once we decide to look for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance . . . we are led to these principles. (15)

Rawls's fundamental claim is then that the two principles of justice are the principles that are most likely to promote the well-being of individuals who willingly cooperate with one another in order to have a satisfactory life. The argument in support of this claim rests on the well-known hypothetical constructs of the original position, and the veil of ignorance.

We are to imagine," says Rawls about the original position, "that those who are engaged in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits. Men are to decide in advance how they are to regulate their claims against one another and what is to be the foundation charter of their society. Just as each person must decide by rational reflection what constitutes his good . . . so a group of persons must decide once and for all what is to count among them as just and unjust. The choice which rational men would make in this hypothetical situation . . . determines the principles of justice. (11–12)

We are also to suppose that the people in the original position are "rational and mutually disinterested. This does not mean that the parties are egoists. . . . But they are conceived as not taking an interest in one another's interests. They are to presume that even their spiritual aims may be opposed. . . . Moreover, the concept of rationality must be interpreted as . . . taking the most effective means to given ends" (13–14). Some further characteristics of the people in the original position are that "each desires to protect his interests, his capacity to advance his conception of the good, no one has a reason to acquiesce in an enduring loss to himself in order to bring about a greater net balance of satisfactions" (14).
If people have these characteristics, each is likely “to design principles to favor his particular condition” (12). In that case, however, no principle would be generally acceptable, and the cooperation on which everyone’s well-being depends could not be secured. To avoid this, Rawls supposes that “among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like . . . the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance” (1971: 12).

The veil of ignorance “ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances. Since all are similarly situated and no one is able to design principles to favor his particular conditions, the principles of justice are the result of a fair agreement or bargain. For given the circumstances of the original position, the symmetry of everyone’s relations to each other, this initial situation is fair between individuals” (12). If the principles of justice were reached “by this sequence of hypothetical agreements . . . it will then be true that whenever social institutions satisfy these principles those engaged in them can say to one another that they are cooperating on terms to which they would agree if they were free and equal persons whose relations with respect to another were fair. . . . The general recognition of this fact would provide the basis for a public acceptance of the corresponding principles of justice” (13).

The devices of the original position and the veil of ignorance “make vivid to ourselves the restrictions that it seems reasonable to impose on . . . principles of justice. . . . The aim is to rule out those principles that it would be rational to propose for acceptance . . . only if one knew certain things that are irrelevant from the standpoint of justice. . . . To represent the desired restrictions one imagines a situation in which everyone is deprived of this sort of information. One excludes the knowledge of contingencies which set men at odds and allows them to be guided by their prejudices” (18–19). When irrelevant considerations are excluded, then, according to Rawls, people will choose his two principles of justice.5

What this conception of justice does, notes Rawls, “is to combine . . . the totality of conditions that we are ready upon due reflection to recognize as reasonable in our conduct with regard to one another. Once we grasp this conception, we can . . . look at the social world from the required point of view. . . . This standpoint is . . . objective and expresses our autonomy. Without conflating all persons into one but recognizing them as distinct and separate, it enables us to be impartial. . . . Thus to see our place in society from the perspective of this position is to see it
sub specie aeternitatis. . . . Purity of heart . . . would be to see clearly and to act with grace and self-command from this point of view” (587).

The purpose of this chapter has been to give an account of the concept of justice and of Rawls's liberal conception of justice, which is meant to be an interpretation of the concept. The concept was found to be inegalitarian because it involves the consistent distribution of desert, and, since people differ in respect to the characteristics, agreements, relations, and conduct that form the bases of desert, different people deserve different things. Rawls's conception of justice, by contrast, is egalitarian. He attempts to provide an interpretation of the concept of justice in which desert plays no significant role. It will be argued in the next chapter that this attempt fails. A conception of justice must recognize the centrality of desert, otherwise it is not a conception of justice but of something else.
“a reasonably harmonious and stable pluralist society” (xxv), the arguments for it continue to place the hypothetical contractors in the original position where they allegedly opt for egalitarian principles on the basis of considerations that do not derive from the political conditions of their particular society, but from universal features that human beings are said to have as rational and self-interested agents. Rawls thus acknowledges the unwarranted slide from the universal to the particular, but still fails to make it warranted.

Finally, Bernard Williams begins by exploring the implications of the idea of “equality of men as men” (1973b: 232), but he ends by speaking about equality in “an economically developed and dynamic society, in which certain skills and talents are necessarily at a premium” (248). He does not say why the “equality of men as men,” universal equality, should be discussed in the context of a particular type of society.

Chapter 6

1. As Rawls puts it, “The primary subject of justice [is] the basic structure of society,” and “Justice is the first virtue of social institutions . . . laws and institutions . . . must be reformed or abolished if they are unjust” (1971: 3).

2. This basic moral belief may be formulated in a number of different ways. One is the idea of moral equilibrium. “The aim of morality is to prevent the upsetting of the moral equilibrium. . . . Primary rules define what it is . . . to preserve the moral equilibrium. Secondary rules indicate what is to be done by whom when the balance has been upset. . . . [T]hey are determined by the concept of desert, of positive and negative moral merit” (K. Baier 1958: 130; the sentence order of the original has been reversed). Another is the idea of reciprocity. “Generally stated, reciprocity is the practice of making a fitting and proportional return of like for like—good for good and evil for evil. . . . [I]n one form or another, reciprocity is a social norm in every society of record” (Becker 1992b: 1075-76). Yet another is the idea of divine justice. “When we speak of the world as justly governed by God, we seem to mean that, if we could know the whole of human existence, we should find that happiness is distributed among men according to their deserts. And Divine Justice is thought to be a pattern which Human Justice is to imitate as far as the conditions of human society allow” (Sidgwick 1981: 280).

3. They will do so, according to Rawls, for several reasons. First, “not only do the parties protect their basic rights but they insure themselves against the worst eventualities” (176). Their basic rights will be protected by the first principle; and if they happen to be among the least-advan-
taged members of the society, then the second principle will assure that the improvement of their situation will take precedence over any other possible improvement. Second, if "the two principles are satisfied, each person's liberties are secured and there is a sense defined by the difference principle in which everyone is benefited by social cooperation. Therefore we can explain the acceptance of the social system and the principles it satisfies by the psychological law that persons tend to love, cherish, and support whatever affirms their own good. Since everyone's good is affirmed, all acquire inclinations to uphold the scheme" (177). Third, "the public recognition of the two principles . . . support[s] men's self-respect and this in turn increases the effectiveness of social cooperation. . . . [T]he two principles achieve this end. For when societies follow these principles, everyone's good is included in the scheme of mutual benefit and the public affirmation in institutions of each man's endeavors supports men's self-esteem. The two principles are equivalent . . . to an understanding to regard the distribution of natural abilities as collective assets so that the more fortunate are to benefit only in ways that help those who have lost out. . . . [B]y arranging inequalities for reciprocal advantage . . . persons express their respect for one another in the very constitution of their society" (178–79).

Chapter 7

1. Rawls says "that the effort a person is willing to make is influenced by his natural abilities and skills and alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously, and there seems to be no way to discount for their greater good fortune" (1971: 311–17).

2. "In the original position the parties agree to be held responsible. . . . The essential point . . . is that the principles that best conform to our nature as free and equal rational beings themselves establish our accountability. Otherwise autonomy is likely to lead to a mere collision of self-righteous wills" (1971: 519).

3. According to Rawls, "Each person possesses an inviolability founded on justice . . . the rights secured by justice are not subject to political bargaining or to the calculus of social interests" (1971: 3–4).

4. "A conception of right is a set of principles," writes Rawls, "general in form and universal in application, that is to be publicly recognized as a final court of appeal for ordering the conflicting claims of moral persons" (1971: 135).

5. Rawls says that "the inevitable deviations from justice are effectively corrected or held within tolerable bounds by forces within the system" (1971: 458).