

FROM NOZICK TO WELFARE RIGHTS:  
SELF-OWNERSHIP, PROPERTY, AND  
MORAL DESERT

*ABSTRACT: The Kantian moral foundations of Nozickian libertarianism suggest that the claim that self-ownership grounds only negative rights to property should be rejected. The moral foundations of Nozick's libertarianism better support basing property rights on moral desert. It is neither incoherent nor implausible to say that need can be a basis for desert. By implication, the libertarian contention that persons ought to be respected as persons living self-shaping lives is inconsistent with the libertarian refusal to accept that claims of need can sometimes outweigh claims to property.*

Nozickian libertarians maintain the view that persons can hold absolute rights to property, even though the assertion of such rights may place others in a position such that their basic subsistence needs are not met. In this paper I examine the moral foundations of Nozickian libertarianism. I argue that the libertarian claim that persons ought to be respected as persons living self-shaping lives entails that claims of need can sometimes outweigh claims to property.

In the first part of the paper, I outline some arguments that undermine the standard libertarian claim that self-ownership is the moral ground for absolute negative rights to property. I also examine arguments showing that moral desert based on labor is a more secure found-

dation for property rights. In the second section, I argue that the moral foundations of Nozick's theory of side-constraints better support a theory of property based on desert. I also suggest that some of Nozick's own criticisms of Rawls tend to support this claim. In the third section, I argue that need can coherently and plausibly be claimed to be a basis for moral desert. I conclude that the libertarian who is committed to attaching ultimate value to liberty and the pursuit of a meaningful life should acknowledge claims of need and a *prima facie* right to welfare.

### *Self-Ownership and Property Ownership*

The most important philosophical defense of libertarianism remains that of Robert Nozick (1974). He claims that only negative rights preserve the basic liberty each person is due. He cites a Kantian foundation for his claim that persons enjoy such rights. Our obligation to respect others' rights reflects our obligation to treat others in a certain way. He mentions rationality, autonomy, and moral agency as candidates for characteristics that might ground rights, but he concludes that rights are based on a more complex characteristic humans possess: the ability to form a conception of the life one wishes to lead, and to make choices in pursuit of that conception (Nozick 1974, 48).<sup>1</sup> This he considers a uniquely valuable trait because it allows the pursuit of a meaningful life. He believes that the possession of certain unrestricted rights to noninterference follows from the fact that one possesses the characteristics necessary for that pursuit.

For Nozick, one's basic rights are rights over oneself, or rights of "self-ownership."<sup>2</sup> Since we own our powers, we own whatever comes from their exercise. Since we do not create the land or the raw materials from which we can derive the things we want, our rights can be extended to such things only by appropriating the needed resources legitimately. However, there is an important restriction on our ability to appropriate resources legitimately. Nozick's understanding of this restriction is a development of Locke's "proviso" on appropriation.

Locke famously presents self-ownership and labor-mixing as supporting a right to property. He adds a proviso on the acquisition of private property, however: appropriation is permissible if, afterwards, there is "enough, and as good left in common for others" (Locke 1988, 288). Significantly, this is stated as a sufficient rather than a necessary condition on appropriation.<sup>3</sup> As Nozick himself and many other commenta-

tors have observed, the Lockean proviso as stated is a condition that cannot be met. Nozick's "zipper argument" shows that, given limited resources or the potential for limited resources in the future, one can never leave enough and as good for others (Nozick 1974, 176).<sup>4</sup> Take some present or future person Z who has not been left enough and as good. This means the last person to appropriate, Y, cannot legitimately do so. So not enough has been left for Y. This means that the last person to appropriate before Y (that is, X) cannot do so either. We "zip" back to any act of appropriation whatsoever, suggesting that the proviso cannot be met.<sup>5</sup>

There are, however, at least two respects in which the appropriation of property can benefit others (Wolf 1995, 799–801). First, a system of private enterprise often uses resources more efficiently than holding resources in common would allow. Also, privately appropriating resources can encourage their conservation, which would be unlikely were the resources to continue to be held in common. For similar reasons, Nozick (1974, 175) suggests that the intent of the Lockean proviso is satisfied by a condition stating that appropriation is permissible if the situation of others is not thereby "worsened." He thinks that, although appropriation will inevitably affect others by reducing opportunities to appropriate (at least in a trivial sense and often in a nontrivial one), the counterbalancing benefits of privatization can ensure that the overall condition of others is not worsened by it.

But this concern not to worsen others' condition, as well as Nozick's foundational respect for persons, suggests that claims to property may be based on need—that a Nozickian distribution may or must take into account all or some of the basic needs of all or some of the persons involved. Nozick claims to value all persons' quest for a meaningful life. Wouldn't this imply an obligation to help those who, because of deprivation beyond their control, are in no position to pursue such a life?

Nozick's account limits justifications for property rights to just acts of appropriation, transfer, and rectification (Nozick 1974, 151). He would characterize a theory of justice that distributes property by need as a "patterned" theory of justice since it aims at a certain pattern of distribution. He rejects patterned theories because they are incompatible with his conception of rights as negative—rights that bar interference with self-determination and with our ability to live the most meaningful lives we can, in accordance with the choices we make. This view of rights is based on respect for individual choice. Nozick rejects the liberal emphasis on taking circumstances—i.e., undeserved natural

and social inequalities—into account, because doing so would require countermanding individual choices.

While Nozick agrees that there should be restrictions on appropriation based on some version of the Lockean proviso, he would not agree that an acceptable version of the proviso would make reference to claims based on need. Such claims would justify certain rights-violating restrictions on the present use of property so as to protect the ability of future owners or users of that property to exact from it what they need. Claims based on need also would entail positive obligations on the part of others to assist those currently in need. Nozick and other libertarians reject the possibility of positive rights to welfare as incompatible with negative rights to non-interference derived from our basic right to live a self-shaping life.<sup>6</sup> Redistribution to pay for welfare would require using some people's work as "forced labor" for the sake of achieving a certain pattern of distribution.

There are, however, at least three major objections to Nozick's theory of justice in acquisition as he expresses it. These we might call the "historical," "self-ownership," and "surplus value" objections.

The historical aspect of Nozick's account of property rights and distributive justice has been subjected to considerable criticism. Gerald Gaus and Loren Lomasky ask (agreeing with Jeremy Waldron)<sup>7</sup> why "the propriety of contemporary practices should be deemed to hinge on their dark, distant prehistory" (Gaus and Lomasky 1990, 496). According to Nozick, a pattern of holdings is just if it is the result of just acquisitions—in which one transforms one's self-ownership into property—and of just transfers. The series of transfers establishing the justice of a distribution can go back indefinitely. But it seems strange to suggest that appropriations and exchanges lost in the mists of time, involving persons whose relationships to current persons cannot be stated, should determine the legitimacy of a present distribution.

Another objection concerns self-ownership. Nozick and Locke agree that ownership of property is derived from self-ownership. For Locke, self-ownership is most clearly connected with ownership of one's body. Lawrence Becker shows why the derivation of ownership of external resources through labor from the ownership of one's body is not unproblematic. He notes, for example, that human beings produce other human beings with their bodies, but do not own what they thereby produce (Becker 1977, 37). The claim that one owns one's body and the claim that one owns the fruits of one's labor appear incompatible in this case. The problem is solved, as he notes, if we suppose that ownership of

one's person is derived from rights to life and liberty. But in that case, the right to liberty should take precedence over the right to property when they conflict, so there ought to be severe restrictions on rights to property when the lives or the liberty of others is at stake (*ibid.*, 39).

This raises considerable problems for any theory of distributive justice that allows for unrestricted property rights, such as Nozick's. He claims that the only limit on appropriation is the *material* worsening of others' conditions;<sup>8</sup> but this is hard to defend if a right to liberty is seen as having priority over rights to property. Unrestricted ownership of land, for example, in a world of limited resources infringes greatly on the *de facto* liberty of the propertyless, even if (by some measure) their material condition is not worsened.<sup>9</sup> As Will Kymlicka puts it, recognition of "formal self-ownership"—recognition of absolute rights of self-ownership, including the formal capacity to acquire rights to property—does not necessarily lead to "substantive self-ownership," or the *de facto* ability to pursue a meaningful life.<sup>10</sup> Misfortune in one's allotted natural or social assets—or just arriving late on the scene—can mean that one possesses no property of one's own and a life of dependency on the propertied. One's search for the most meaningful life would be seriously and negatively affected. It is hard to understand why respect for persons' search for the most meaningful life would favor formal self-ownership over substantive self-ownership.

Finally, the "surplus value" objection notes that the value of one's holdings is determined to a great extent by factors unrelated to the choices and transfers one makes.<sup>11</sup> For example, suppose Wilt Chamberlain buys a house for \$5000, and a subsequent increase in local property values causes its value to increase to \$250,000. What part of the value of the house belongs to him? Whether or not Chamberlain can legitimately own the proceeds from selling his house at its full market value depends in part on whether he can be said to legitimately own the house at its full market value; and it begs the question to answer just by pointing to the fact that he bought the house at an earlier time.

Consider likewise the fact that Chamberlain, who (in Nozick's famous example) makes money by charging others to see him play basketball, is not responsible for the value of his talents. The value of those talents is determined by the work he put into them, but also by the demand for them and their scarcity. To what extent can Chamberlain, then, be said to own the full market value of his talents, even accepting that property ownership derives from self-ownership? If he cannot be

said to own the full value of his talents, then it is not obvious that he can legitimately use that full value for his own gain alone.

Nozick would like a very simple theory of entitlement to property according to which one can take out of nature anything so long as, in so doing, one does not negatively affect another's material well-being. He shies away from giving a precise account of how self-ownership is transferred to things in acquisition; for him, so long as the condition of others is not materially worsened, one gains ownership, as it were, just by *choosing* to do so (by choosing to acquire or transfer). The surplus-value objection challenges Nozick to provide an account of legitimate acquisition that relies on more than just the anti-worsening proviso and the notion of a legitimate transfer. Even with these, there is still a question as to when one owns a piece of property at its market value.

One idea that might bolster the case for strong negative property rights would be the suggestion that (contra Nozick) labor itself, not self-ownership, functions as a basis for claims to property—that is, that one can own property because one has a moral claim to the fruits of one's labor. Labor as a justification for the assertion of property rights is cited by both Locke and Mill. Locke (1988, 306) clearly identifies the labor involved in the appropriation or development of the property as the basis for rights in the holding thereof: collected acorns are a person's property because "*labour* put a distinction between them and common. That added something to them more than Nature, the common Mother of all, had done; and so they became his private right." Thus Alan Ryan (1984, 53)<sup>12</sup> describes property for Locke as "the wages of labor." Mill (1976, 209) contends that "private property, in every defence of it, is supposed to mean the guarantee to individuals of the fruits of their own labor and abstinence."<sup>13</sup>

As we have seen, Nozick cites ownership of one's powers as the basis for ownership of what one produces with them and of those things one has legitimately appropriated. But he notes that it is not immediately clear how this works. He wonders why mixing one's labor with something transfers self-ownership to it: "Why isn't mixing what I own with what I don't a way of losing what I own rather than a way of gaining what I don't?" (Nozick 1974, 174).

One possible answer is that labor is a basis for *moral desert*, and that one's right to property, at least in part, is based on one's deserving it.<sup>14</sup> Joel Feinberg's well-known analysis of desert holds that desert requires a "basis": "if a person is deserving of some sort of treatment, he must, necessarily, be so *in virtue* of some possessed characteristic or prior ac-

tivity” (Feinberg 1970, 58).<sup>15</sup> So there can be no desert without a basis for desert, which, furthermore, “must, in general, be some fact about the deserving person” (Becker 1977, 50). Deserving something is generally distinguished from having an entitlement or claim-right to it, as in Nozick’s view.<sup>16</sup> According to Feinberg (1970, 56–58), “to say that someone deserves something is to say that there is a certain sort of propriety in his having it”; the propriety is achieved when one satisfies conditions of worthiness “not specified in any regulatory or procedural rules.” Deserving something is not, in his view, *the same thing* as having a right to it, but someone’s deserving something *is* a reason (though not necessarily a sufficient one) to give it to him or her—it is the basis for a *prima facie* right, in other words (*ibid.*, 60). Gaus and Lomasky (1990, 497–98) hold that the intuitive genesis of the labor-mixing criterion for appropriation must be that “producers deserve to own the fruits of their labor.” The continuing appeal of original-acquisition arguments such as Nozick’s, according to them, is explained by the fact that they “fix a spotlight” on this intuition through their function as “thought experiments that induce us to view justificatory issues *as if* they occurred in certain idealized historical settings.”

Desert is a notion fundamental to morality, since it makes sense to confer praise and blame only on those who “are worthy of” or deserve it.<sup>17</sup> Original-appropriation arguments appeal to a fundamental intuition that productive effort is often meritorious. On the premise that productive effort is meritorious, one can claim that persons (under certain conditions) deserve to own and enjoy the fruits of their labor—regardless of whether they “own” themselves. It is, indeed, at least plausible to suggest that this corresponds to a fundamental intuition. The justification of original appropriation by reference to labor, furthermore, is in accordance with the spirit of Nozick’s maxim: “From each as they choose, to each as they are chosen” (Nozick 1974, 160). Acquisition springs from the choice to put labor into appropriation and development; the productive effort one chooses to put forth creates rights in the things produced or developed. This is consistent with the libertarian preference for choice over circumstance.

The notion that ownership is based (in part) on moral desert would avoid the historical objection to Nozick’s theory of justice in acquisition (when combined with a notion of legitimate transfer). It would also answer the self-ownership objection, since differing degrees of desert could justify some having more than they need while others do

not have enough. Finally, it might answer the challenge of the surplus-value objection by giving basis for ownership independent of the choice to appropriate or transfer. It could ground ownership of full market value, since desert based on willingness to take risks in making investments could explain Chamberlain's ownership of all or part of his house's surplus value.

As we know, however, Nozick absolutely rejects any patterned distribution scheme based on desert or "moral merit." As with any patterned scheme, he says, allocation by desert would require interference in the rights of others to shape their lives as they see fit (Nozick 1974, 156). Individual choices (as in his Wilt Chamberlain example) will tend to upset the patterns which are the goal of a distributive scheme. "Patterning" will necessitate interference in individual choices and/or the taxation of earnings and Nozick views taxation as "forced labor" and the partial ownership of others. In his scheme, a distribution of property and resources is just only if it came about as a result of just appropriation, transfer, and rectification—not because it fits a pattern of distribution based on, for example, merit or perceived value to others. He is committed to self-ownership as the basis of rights, and he maintains that self-ownership means an absolute right not to be interfered with, so long as the condition of others is not (directly and materially) worsened.

But it is not so clear that patterning (partly) based on moral desert ultimately conflicts with the libertarian's respect for self-ownership. I think that a closer look at self-ownership and the Kantian moral foundations of Nozick's theory of justice shows that a theory of property rights based on desert is a more plausible expression of those foundations.

### *Libertarianism and Desert*

Nozick describes his view as roughly Kantian because it includes a basic obligation to treat persons as ends rather than means.<sup>18</sup> He does not justify this principle as Kant did, however. In fact, he is rather vague in explaining the moral foundations of his own theory. He agrees with Kant that persons share certain key characteristics—in particular, rationality, autonomy, and moral agency—and that these characteristics are tied up with that which makes persons valuable and grounds their rights. These characteristics, he says, add up to the ability to shape one's



life as one deems desirable, thereby allowing one to pursue the most meaningful life as one understands it. This pursuit is morally significant and explains the respect we must accord any entity with the characteristics of rationality, autonomy, and moral agency. We respect these connected characteristics, he says, by according persons absolute rights to noninterference.

Nozick shares Kant's view to the extent that he considers these characteristics of persons to be morally significant, and claims that we therefore have a moral obligation to respect one's personhood by respecting one's status as an end in oneself rather than as a means to an end. But, assuming that the making of choices in pursuit of meaning is morally significant and grounds moral respect for persons, is Nozick right in thinking that this respect also grounds "side-constraints" on our behavior towards others—or does it ground an obligation to respect others' moral desert?

I think that this question turns on what, exactly, the *respect-inducing characteristics* of people are. This is an enormous question, and I shall make only a few comments by way of briefly sketching an answer here. I think that, if the attempt to shape one's life in a meaningful way is the morally significant pursuit that creates significance for the personal characteristics involved with this pursuit, then the relevant characteristics are not those of, say, moral agency and autonomy. Rather, the relevant characteristics should involve not capacities but activities.

Consider the following manner of classifying people's moral aspects:

First-order aspects: autonomy; moral agency.

Second-order aspects: choosing in pursuit of one's conception of the good.

Third-order aspects: one's particular conception of the good.

The first order concerns aspects of persons that are mere capacities. The second order concerns the activities made possible by the first-order capacities. The third concerns the aims or principles of the second-order activities. My claim is that when respect for self-shaping personhood is at issue, some activity (or activities) from the second classification should be included among the *objects* of respect. My consequent claim is that a theory of justice involving desert (such as, say, desert based on labor, or on risk-taking) as a basis of prima-facie rights is therefore more appropriate than a theory that allows only negative rights to non-interference.

The third category is definitely ruled out for any Kantian classical liberal like Nozick or, for example, Rawls. It is central to each of their

views that the state cannot justly impose some particular conception of the good on its citizens. A utilitarian, by contrast, has a particular conception of the good (happiness), and attaches ultimate intrinsic value to that. The deontological liberal maintains respect for all particular conceptions of the good (within certain more general constraints) as each person pursues his or her ends.

I do not think that, when we cite a moral obligation to respect others as moral agents, or to respect others' pursuit of a meaningful life, the only characteristic of others that we respect is their mere *capacity* to be a moral agent or to pursue a meaningful life. We really respect performance in addition to mere capacity, as is reflected in the strong intuition that persons deserve what they work hard to achieve. Similarly, the notion that persons deserve praise and blame is also an important moral intuition; but praise and blame attach to actions (or failures to act) rather than to mere capacities to act.

Of course, a person's capacity to pursue his or her ends is important. That capacity is a precondition of doing that which Nozick considers valuable—shaping one's life in a meaningful way. But a theory of justice based only on rights would miss much of the idea of valuing morally relevant activity. Also, as we have seen above, a theory of justice based on desert would avoid some major objections to Nozick's theory.

That Nozick attaches value to the activity of choosing emerges in his criticism of Rawls. Rawls (1971, 310–15) rejects moral desert as a basis for distributive justice. Part of his criticism is bound up with his own theory of the “original position,” which I will not go into here. But an important determinant of his rejection of the notion of rights based on moral desert derived from, say, effort, is that “the effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him” (*ibid.*, 312) Even the personality traits that lead one to develop one's talents or work harder than others are due to in-born tendencies, and are thus “arbitrary from a moral point of view.”<sup>19</sup> He concludes that natural and social assets are, in effect, common property, and that inequalities based on these assets should be permitted only when they benefit everyone.

Nozick (1974, 214) thinks that Rawls's rejection of desert exposes a critical weakness in Rawls's theory. He writes that

this line of argument can succeed in blocking the introduction of a person's autonomous choices and actions (and their results) only by attributing *everything* noteworthy about the person to certain sorts of

“external” factors. So denigrating a person’s autonomy and prime responsibility for his actions is a risky line to take for a theory that otherwise wishes to buttress the dignity and self-respect of autonomous beings.<sup>20</sup>

Nozick’s objection to Rawls appears to be that his conception of human beings doesn’t leave room for the notion that one can make laudable choices and (again, laudably) work hard. Rawls does not deny the existence of the capacities to choose, to work hard, etc. But he does seem to suggest a conception of human beings such that they cannot be accorded credit for their choices, because they do not deserve the capacities that allowed them to make those choices. What are “noteworthy,” according to Nozick, are the choices persons make, not their mere capacity to choose. So he attacks Rawls’s idea that persons should be compensated for undeservedly unequal capacities by rejecting the notion that one’s choices and actions cannot be valuable and noteworthy, even if they are made possible by undeserved capacities. Failing to appreciate this value is to “denigrate a person’s autonomy and prime responsibility for his actions”—to denigrate what is at the heart of what is morally important about persons.

The libertarian may certainly say that valuing liberty means an obligation to respect the inert first-order properties of moral agency and autonomy directly, and may then make the quite non-trivial further claim that this implies noninterference with individual action. Or he can say that second-order attributes are valued, but that they are respected by maintaining people’s maximum capacity to choose by enforcing negative rights. However, in light of the arguments weakening Nozick’s antipatterning position, and in light of the importance of labor and moral responsibility to the concept of a self-shaping life as well as to any plausible moral conception, it is hard to deny that moral desert, as a basis of prima-facie rights, should play some role in a theory of justice based on respect for the self-shaping life.

### *Desert and Need*

If property rights are tied to moral desert based on labor and risktaking, what of claims to assistance by those in need? As G. A. Cohen, Lawrence Becker, and Will Kymlicka point out, even Nozick’s approach seems to imply that claims to need should be considered, for the sake of

substantive self-ownership: a respect for self-ownership can imply an obligation to assist self-owners in need. But if we tie property rights to moral desert, how do we explain claims to property solely on the basis of need? Redistribution through welfare would *appear* to mean achieving patterns by ignoring claims to property based on desert.

One way to address this question would just be to note that effective choice-making requires the fulfilment of basic needs. This, arguably, is enough to establish a prima-facie claim given the kind of moral foundations under consideration.

I would like briefly to explore another idea: the (to some, counter-intuitive) suggestion that one can base claims on need because need, too, can justify desert. I believe that any enduring appeal of libertarian approaches to property rights owes much to the perception that there is an asymmetry between claims based on need and claims based on labor, in that labor can justify desert and need cannot. This perception, however, is an ill-founded conceit that does not sit well with a libertarian commitment to respect for individual self-determination.

To some, the notion that need can be a basis for (extra-institutional) desert seems not to jibe with a standard analysis of the concept of moral desert. Among reasons given for the claim that need alone cannot justify desert, the view that desert is necessarily connected with *merit* is generally considered “the most decisive of the overthrows.” Obviously, being in a position in which one is in need is not itself meritorious. If desert requires merit, it is indeed hard to see how need can justify desert. (Nozick uses the phrase “moral merit” as a substitute for “desert.”)

The connection between desert and merit resolves into two issues, each of which has been taken up by recent commentators on desert. These commentators have claimed that, in order to deserve something morally, one must be responsible for the basis of one’s desert, and the basis of one’s desert must be something generally esteemed by others. These are elements associated with justifications based on merit: the question is whether they are also necessary conditions for desert.

One objection to the claim that need can justify desert is that extra-institutional desert requires responsibility, or “voluntariness”; in other words, one can deserve *x* on the basis of *b* only if one is responsible for *b*. Brian Barry (1965, 108) maintains that “a person’s having to be able to have done otherwise is a *necessary condition* of ascribing desert.” Julian Lamont (1999, 106) argues that “it seems clear that, for some quality to count as a ground for desert, the person concerned must, in some sense,

be able ‘to take credit for’ that ground.” And, of course, one is generally not responsible for having unfulfilled needs; when one is responsible for having such needs, it is often in the negative sense that one’s position is the result of one’s bad choices.

Is it true, though, that bases for moral desert must always be voluntary? In the case of rectificatory desert, it clearly is not true. The recipient of an (undeserved) insult deserves an apology, and victims of negligence or crime deserve compensation.<sup>21</sup> In neither type of case is the deserving person responsible for his or her situation. There are other important applications of the concept of desert in contexts where responsibility is not an issue. Fred Feldman remarks that the parents of a sick child deserve sympathy, and many—such as Nozick—believe that persons deserve respect and equal treatment just by virtue of being persons.<sup>22</sup> Many would also agree that children deserve a good education. In none of these cases are the deserving parties responsible for the basis of their desert.

The other element in the common conflation of moral desert and merit is the idea that positive justifications of desert must be characteristics or actions generally esteemed by others. David Miller (1999, 94) relates desert to the “appraising attitudes,” or generally shared attitudes of approbation and disapprobation directed towards qualities and conduct. “Good desert,” he says, “is a matter of fitting desired forms of treatment to qualities and actions which are generally held in high regard.” He mentions two related reasons for thinking that need should be specifically disqualified as a justifying desert. First, everyone has certain needs until they are satisfied; and second, having needs is not generally something to be admired.

Miller’s view is that desert is related to the appraising attitudes; this view holds that need cannot justify desert because need is just a characteristic that everyone has and is not a quality or action generally admired by society. But Miller gives no reason why the concept of desert should be limited in this fashion, except by pointing out that some claims to desert are based on need, some on institutional practices, and some on admirable qualities or actions. One could equally say that Miller has shown that there exist at least three different types of desert: institutional desert and two types of extra-institutional desert. To contend, without further argument, that one type of desert is fundamental seems arbitrary.<sup>23</sup> Miller (1999, 97) maintains that people decide what creates desert by focusing appraising attitudes on types of qualities or conduct. But then why can’t people, through

their values or sympathies, establish that certain characteristics that are not themselves desirable can justify desert? Feinberg (1970, 75–76) describes attributions of desert as expressions of “responsive attitudes.” Attitudes of gratitude or resentment are examples of such attitudes, the expression of which is associated with deserving rewards or punishments. But Feinberg also thinks that the suffering innocent can deserve compensation for their misfortunes. In this case, the responsive attitudes expressed by the attribution of desert might include “sympathy, benevolence, or concern.”

Miller (1999, 96) claims that, if we did not adopt appraising attitudes toward one another, “we would not and could not use the concept of desert. If the behavior of others did not arouse our admiration and approval we could not say that they deserved honors, prizes, and the rest. The words would have no meaning for us.” Even if this is true for honors and prizes, there are many things one may deserve that are unlike honors and prizes. One may be considered worthy of respect by virtue of being a moral agent, just as one may be considered worthy of an award by virtue of meritorious conduct. Desert has a perfectly understandable meaning when respect for personhood or claims of need are at issue, even though need is not usually considered admirable or meritorious.<sup>24</sup>

Stephen Darwall’s distinction between different kinds of respect is helpful in explaining the possibility of such different kinds of desert. He distinguishes between “appraisal respect” and “recognition respect” (Darwall 1977, 38–39). Appraisal respect is respect for qualities of persons and features of persons “held to manifest their excellence as persons or as engaged in some specific pursuit.” Recognition respect “consists in giving appropriate consideration or recognition to some feature of its object.” Darwall holds that recognition respect characterizes the respect thought to be owed to persons by virtue of their being persons. He equates having recognition respect for someone as a person with giving “appropriate weight to the fact that he or she is a person by being willing to constrain one’s behavior in ways required by that fact” (*ibid.*, 45) This is what Kant means by the duty to respect persons: to respect persons is to respect “the moral requirements that are placed on one by the existence of other persons.”

Following Darwall, David Annis and Cecil Bohanon (1992, 539) distinguish between “appraisal desert” and “recognition desert.”<sup>25</sup> Appraisal desert attaches to persons because they “have done something or have some feature that distinguishes them from others, and in

virtue of this, they are worthy of a kind of response.” For example, a passerby deserves a reward for saving a drowning person. Recognition desert attaches to persons simply in virtue of being persons: “A person, qua person,” write Annis and Bohanon, “deserves respect, to have his or her interests counted equally with others, and to be treated fairly.” On this basis, they claim that persons can also deserve to have their needs met: “Whatever the basis of recognition desert that makes a person deserve respect and equal consideration (autonomy, rationality, agency . . .), that basis also may make a person worthy of having his or her subsistence needs met.”

When Miller detects two uses of the concept of extra-institutional desert, he appears to be noticing the distinction between moral recognition and appraisal desert. Simply to assert that the term “desert” is used properly in one type of case, and improperly in another common type of case, is arbitrary. Similarly, Barry’s restriction of desert-bases to those which are voluntary simply ignores one evident type of desert (and may unduly limit appraisal desert, since it may rule out desert based on the possession of virtuous characteristics).

Furthermore, the notion that we owe (in some sense, at least) respect to persons by virtue of their status as moral agents, or their status as persons wishing to live meaningful lives, is central to libertarianism in particular and classical deontological liberalism in general. It is central to such liberalism that recognition of one’s status as an agent involves the recognition that this status grounds certain claims. When we recognize this, what we recognize is that human beings, unlike other sorts of thing or creature, have characteristics that make them worthy of special consideration.

Since recognition desert does not require voluntary or estimable conduct or characteristics, it is not incoherent to suggest that need is a basis for such desert. It is reasonable to suggest, then, that people, through their values or sympathies, could designate need as a basis for deserving certain treatment. Furthermore, one may argue, as Annis and Bohanon do, that one’s status as a person is enough to make one worthy of having one’s basic needs met.<sup>26</sup> Such an argument is easy to produce, given the idea that respect for the pursuit of a meaningful life is essential to respect for personhood. Without (at least) the means of subsistence, one cannot effectively pursue one’s ends. So any worthiness that attaches to personhood should be taken to imply worthiness of the means of subsistence as well.<sup>27</sup>

The Nozickian libertarian will object that “respecting” persons in this way will mean disrespecting others by turning them into unwilling laborers for the sake of those who lack the means of subsistence. Counterarguments such as the self-ownership objection, however, cast a great deal of doubt on this negative conception of property rights; hence the pressure to adopt the already intuitively well-supported view that moral desert based on labor underlies property rights.

The claim of those who identify need as a basis for desert is not that it grounds absolute rights or entitlements, but that it grounds conditional and prima-facie or presumptive rights, just as labor or risk-taking can ground prima-facie rights. So each of the competing claims is a potential basis for desert; neither has obvious moral priority over the other.<sup>28</sup> If we mean to attach ultimate value to the pursuit of a meaningful life, then, it seems most appropriate to decide rights claims in particular sorts of cases by weighing claims of need against claims to property. The argument that libertarian rights to property are grounded on desert, and that status as an end-pursuer justifies desert, contributes to a different understanding of rights than that of the libertarian assertion of basic rights to noninterference. Weighing competing claims is not an issue for Nozick, nor for Tibor Machan;<sup>29</sup> they think that there are negative rights that cannot be outweighed. The present discussion is intended, in part, to cast doubt on that approach to rights in favor of an approach that sees rights as undefeated prima-facie claims. The latter conception of rights is suggested when we see that libertarian claims to property are most defensibly based on claims to moral desert, and that there can be other, competing, claims that are also based on moral desert.

If we take seriously the libertarian’s commitment to agency and respect for persons as ends in themselves, then the proper measure for adjudicating among these claims should be respect for personhood. In some cases, claims to property will be stronger by this measure: privatization and economic development can protect or increase the value of a holding, and provide compensating benefits to others. In many cases, however, claims to the means necessary to pursue one’s ends will be stronger, or at least have some weight. The exclusive appropriation and use of resources can place significant material and nonmaterial constraints on the lives of present and/or future generations. As has been observed by many commentators, the acquisition of property under conditions of scarcity also places significant restrictions on



the liberty of others, so unrestricted property rights under such conditions must always be regarded with suspicion by anyone concerned with agency.<sup>30</sup>

If claims to property and claims of need are on an equal footing, so to speak, by virtue of each being based on plausible desert-claims, then positive rights to welfare may be legitimately asserted in some situations. To illustrate this point of view, take the fanciful case of Robert and Karl: Karl, a victim of an accidental plane crash, is wandering in the wilderness and starving. He finds a tree bearing some apples on a high branch. But Karl is too weak with hunger to climb. Along comes Robert, a well-supplied hiker, who happens to be in the mood for an apple. He regrets Karl's evident plight, but climbs the tree and retrieves the fruit for himself anyway.

According to Nozick, Robert deserves the apple: we applaud his initiative, hard work, and willingness to take a risk. On similar grounds, however, Karl deserves the apple more, and even has a right to it (or to some of it, or to appropriate compensation). It is not just that Robert ought to give Karl all or some of the apple out of charity. To fail to assist Karl would be to fail to respect Karl as a person with ends of his own who requires the apple to have any hope of pursuing those ends. Karl deserves more respect than Robert has shown him by appropriating the apple without regard for Karl's status as a person with ends of his own.

Robert did not create the apple, was not charged by Karl with the task of retrieving it,<sup>31</sup> and has undermined Karl's ability to appropriate the apple for himself. Any inclination to grant him a claim to the apple rests on desert based on his labor, initiative, effort, or risks taken. Why would these justify desert? Because devoting effort to achieving one's ends represents the end-pursuing characteristic of human beings. Moral agents are, according to Nozick, worthy of the respect cited by some in treating effort as a desert-base, because of their identity as end-pursuing beings. Recall that Nozick describes the very possession of characteristics universal to persons as "note-worthy," and describes Rawls's mistake as that of "denigrating" persons by disregarding the characteristics involved in making choices and living the self-shaping life;<sup>32</sup> Nozick identifies these universal characteristics of persons—the characteristics involved in being end-pursuers—as "valuable," and claims they are owed respect on the basis of that value.<sup>33</sup> But it is inconsistent to base a theory of rights on respect for valuable universal characteristics of persons, and then to

deny the implications of that respect by claiming that worthiness attaches only to meritorious actions.

Talk of respect for persons is ubiquitous in libertarianism, as well as in classical liberalism generally. It is evident that libertarians are committed to the view that persons are worthy of respect just by virtue of characteristics all persons hold. But these same reasons for respect suggest that the needs of moral agents can create desert—not necessarily sufficient for rights, but sufficient for factors that should be taken into account.

Karl has a right to the apple; this is not incompatible with Robert's rights because any right Robert had to appropriate the apple would be based, ultimately, on desert. Now that we have identified another person who deserves the apple, we must determine whose prima-facie claim outweighs the other's. I would suggest that it is at least coherent to maintain that, in this case, Karl's claim does.

The defender of negative property rights is on the horns of a dilemma. He can base his view on the ascription of ultimate value to liberty *qua* capacity to act—thereby exhibiting a form of recognition respect; but this invites the objection that substantive or effective liberty should be more important than formal liberty. The libertarian may, alternatively, base property rights on desert, but then must explain why recognition desert should be ignored.

What I have tried to show is that the fundamental values underlying the libertarian's respect for property rights equally support claims to the satisfaction of needs. There is no way out for the libertarian defender of absolute property rights. The libertarian attaches ultimate value to liberty and the pursuit of a meaningful life; but, since the fulfillment of basic needs is necessary to these, the libertarian really should support a prima facie right to welfare.<sup>34</sup>

#### NOTES

1. The following description of the foundations of Nozick's conception of rights is strongly influenced by Jonathan Wolff's treatment of the same in *Reading Nozick* (1991, 27-29).
2. See Kymlicka 1990, 103-7.
3. See Wolf 1995, 795 and Waldron 1979, 319-28.
4. See Wolf 1995, 798-99.
5. See Locke 1988, 335.
6. See, for example, Machan 1995, 211.

7. See Waldron 1988, 259; cited by Gaus et al. (1990, 496).
8. See Nozick 1974, 177–82.
9. See Becker 1977, 40. This objection is developed at length by G. A. Cohen in *Self-Ownership, Freedom, and Equality* (1995).
10. See Kymlicka 1990, ch. 4, sec. 2. See also Plant 1985 for a similar argument.
11. This point is developed by Barbara Fried (1995). The following examples involving Wilt Chamberlain come from her essay.
12. Cited in Gaus and Lomasky 1990, 497.
13. Cited in *ibid.*, 496.
14. See Becker 1977, ch. 4. When I use the expression “moral desert” I mean extra-institutional desert—desert that is not based on expectations relative to some legal system or other institutional arrangement.
15. Cited by Becker 1977, 50.
16. See, for example, Feinberg 1970, 145.
17. See Becker 1977, 50. Jean-Paul Vessel has pointed out to me that a utilitarian might feel obligated to confer praise or blame on some who do not deserve it just because some value will be maximized as a result. Here, as elsewhere in this paper, I ignore utilitarian perspectives on justice. I agree with Rawls and Nozick that utilitarianism leads to fatal counterexamples from the standpoint of justice, and fails to respect the distinction between persons.
18. See Nozick 1974, 48–51.
19. From Wolff 1991, 120.
20. This passage is cited by Wolff in making a similar point about the Rawls–Nozick debate (1991, 121).
21. This point is made by Fred Feldman (1997). Owen McLeod (1999, 63) also discusses this point.
22. See Annis and Bohanon 1992. See also Feldman 1997 and McLeod 1999.
23. Eric Moore makes a similar point in his doctoral dissertation on the subject of desert (1998, 68).
24. McLeod adds the point that Miller does not distinguish between something’s being admired and something’s being *appropriately* admired. As McLeod points out, if Miller’s claim is that  $x$  justifies desert if and only if  $x$  happens to be admired by many, then his view reduces to a questionable sort of conventionalism or relativism about desert. Hitler, for example, was admired by many. If Miller’s view is that  $x$  justifies desert if and only if  $x$  is *appropriately* admired, then his view is vacuous without an account of what makes admiration appropriate—an account that would show that the admiration in question is *deserved* (1999, 64). Moore (1998, 69–70) makes a similar point.
25. Darwall (1977, 39) implies that he would not accept recognition desert, since “typically,” only appraisal respect is connected with “meriting or deserving” respect. This is not a focus of his paper, though, and he does not categorically rule out desert based on recognitional features.
26. All I am claiming here is that needs can *sometimes* be desert-bases for persons. No one would want to claim that need is *always* a desert-base for persons;

- Machan (1995, 211) points out, for example, that a thief “needs” skills in order to steal.
27. In a recent paper, Gillian Brock (1999) does not argue that need can be a desert-base, but does argue that need should be taken into account in a society that values distribution according to desert. Her argument turns on the claim that, in such a society, to allow persons to suffer from a lack of opportunity to acquire desert is to punish them unjustly. Among other defects, this argument rests on an unjustified equivocation between being unlucky and being unjustly punished; Brock assumes, to put it another way, that we not only deserve but deserve to deserve.
  28. Unless the libertarian can explain why desert based on labor, *as a rule*, outweighs desert based on need. I do not see how this is to be done in a non-arbitrary fashion, however. My thanks to Jean-Paul Vessel for this objection.
  29. See Machan 1995, 210.
  30. See Cohen 1995, Becker 1977, and Kymlicka 1990.
  31. As Proudhon (1966, 61) would say; cited in Becker 1977, 41.
  32. Recall Nozick 1974, 214.
  33. Recall *ibid.*, 48.

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