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# TWO CLAIMS ABOUT DESERT

BY

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**Abstract:** Many philosophers claim that it is always intrinsically good when people get what they deserve and that there is always at least some reason to give people what they deserve. I highlight problems with this view and defend an alternative. I have two aims. First, I want to expose a gap in certain desert-based justifications of punishment. Second, I want to show that those of us who have intuitions at odds with these justifications have an alternative account of desert at our disposal – one that may lend our intuitions more credibility.

## *Introduction*

Many philosophers think that it's always intrinsically good when people get what they deserve and that there's always at least some reason to give people what they deserve. I'll highlight problems with this view and defend an alternative.

I have two aims. First, I want to expose a gap in certain justifications of punishment. These justifications assume the above view. I think they must argue for it. If it's questionable, this will complicate attempts to defend these justifications. My second aim has to do with the fact that philosophical debates about punishment's justifiability involve fundamental intuitive disagreements. To some, it seems intrinsically good when bad people are harmed. To others like me, it seems intrinsically bad. I'll argue that philosophers like me can accept the desert claims the above justifications appeal to without having to reject our intuitions. We can do this by embracing another view of desert. This may lend our intuitions more credibility.

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## 1. *Two claims*

Consider a personal desert claim.

D P deserves  $\phi$ .

Many think that claims like D entail claims like these.

V It is intrinsically good that P have  $\phi$ .

R There is a pro tanto reason to bring about, for its own sake, P's having  $\phi$ .<sup>1</sup>

Shelly Kagan thinks that D entails V: 'it is a good thing – other things being equal – if people get what they deserve . . . [i.e.,] I believe that there is intrinsic value in people getting what they deserve' (2003, p. 93).<sup>2</sup> Thomas Hurka (2001, pp. 7–8) and Jeffrey Moriarty (2003, p. 520) agree. Joel Feinberg thinks that D entails R: 'a person's desert of X is always a reason for giving X to him, but not always a conclusive reason' (1970, p. 60). Geoffrey Cupit (1996, p. 48), John Kleinig (1973, pp. 62–3), and David Schmdtz (2002, p. 774) agree. Jeff McMahan thinks that D entails both V and R. He says that giving people what they deserve is 'an end in itself' (2009, p. 8). David Miller (1999, p. 135–6) and George Sher (1987, pp. 194–205) also seem to think that D entails V or R. Serena Olsaretti identifies this as one of the 'few basic points of substantive agreement among desert theorists' (2003, p. 4).<sup>3</sup>

Call the following claim *the entailment claim*.

EC D entails (V or R).

Call the following claim *the consistency claim*.

CC D is consistent with ( $\sim$ V and  $\sim$ R).

Certain justifications of punishment assume EC. For example, Mitchell Berman (2008), Lawrence Davis (1972), John Kleinig (1973), and Michael Moore (1993) use thought experiments to defend the view that some people deserve harm or punishment. They assume that these claims entail corresponding V and R claims, which they take to straightforwardly support the claim that punishment is justified, indeed that it's worth inflicting for its own sake. Call this justification of punishment *Desert Based Retributivism*, or DB-Retributivism for short.

DB-retributivists don't defend EC. They think it's obvious, so they focus on establishing the desert claims. I'll consider ways of defending EC later. For now, I'll give some reasons to doubt it by presenting cases

that I take to support CC. In response to any such case, of course, EC's advocates will want to say that the proposed desert claim is false or that it's true but does entail claims like V or R. This position will be less attractive if a plausible account of desert can accommodate CC and if there are independent reasons to accept it. I'll argue that both conditions hold.

## 2. *Johnny*

I'll discuss two cases that support CC. This section focuses on the first. It exploits the fact that we often think that people can deserve harm when they act imprudently, irresponsibly, recklessly, and so on.

Here's the case. Johnny, a carefree undergrad, goes to a frat party. He's eager to impress his bros and after a couple drinks he hits upon a daring scheme. He clambers to the roof of the frat house with a sheet, bellows out his favorite beer's name while striking a macho pose, hurls himself off the roof, and tries to parachute onto the lawn, aiming for a convenient spot near the keg (living dangerously is thirsty business). Unsurprisingly, he breaks his ankle. The following claim seems plausible, at least to me.

D<sub>j</sub> Johnny deserved to break his ankle.

Claims like D<sub>j</sub> are ubiquitous. Sher discusses similar cases that motivate similar claims, though he rejects CC (1987, pp. 41–2).<sup>4</sup> A common rationale for such claims is this: those who behave in such ways deserve the predictable harmful consequences of their behavior.

I think D<sub>j</sub> is true. But I find the following two claims intuitively compelling. It's intrinsically bad that Johnny broke his ankle. And there was no reason – not even a weak one – to bring this about for its own sake. For now, I'll assume that that these two claims are true. It seems to me that one can coherently endorse D<sub>j</sub> and deny the corresponding V and R claims. Moreover, I'll argue that there are good reasons to do so.<sup>5</sup>

One might immediately object and say that the implausibility of the relevant V and R claims is a reason to reject D<sub>j</sub> outright. One might hold that claims like D<sub>j</sub> are only metaphorical (cf. Sher, 1987, p. 10). There are two reasons to doubt this objection.

First, it's too quick. Given the ubiquity of claims like D<sub>j</sub>, we should at least try to accommodate them before dismissing them outright. I see no reason to be so confident in intuitions about general principles like EC that we flatly dismiss apparently common intuitions about concrete cases like these, intuitions that may highlight features of desert we're apt to miss if we just focus on general principles about it. Christopher Freiman

and Shaun Nichols highlight this risk with an instructive analogy between intuitions about desert and intuitions about grammar (2011, pp. 131–32). Intuitions about general grammatical principles often overlook considerations that only concrete cases can highlight. Because of this, general grammatical principles that seem intuitively plausible are often subject to counterexamples. They suggest that the same may be true of desert.

As we'll see, there are plausible accounts of desert that can accommodate claims like  $D_j$ . Moreover, there are reasons to accept such claims, which brings me to my second reason to doubt the objection.

$D_j$  has explanatory value. It can explain important difference between cases. Consider Jenny, who breaks her ankle through no fault of her own. What happens to her seems intrinsically worse than what happens to Johnny. And other things equal, it seems like we have more reason to do things like help her and sympathize with her. If neither of them deserved what happened, these differences are harder to explain. I don't mean to say there's no explanation available if we reject  $D_j$ . But I think desert is a natural place to look for an explanation, that such an explanation is relatively simple, straightforward, and intuitively attractive, and that  $D_j$ 's explanatory value is at least some reason to accept it. Maybe this is one reason why such claims are so common.

One might object that a weaker desert claim can do the explanatory work while preserving the entailment. One might deny  $D_j$  and say that Johnny deserved some lesser harm and that Jenny deserved none. I don't think a weaker desert claim can preserve the entailment, though. Even if a weaker claim can do the explanatory work, it won't obviously entail claims like  $V$  or  $R$ . It still seems intrinsically bad if Johnny sprains his ankle or stubs his toe. And it still seems like there's no reason (not even a weak one) to bring such things about for their own sake.

Alternatively, one might object that we don't need a desert claim to explain the differences. Maybe they can be explained in another way. Consider the objection that  $D_j$  is false and that the differences can be explained by the claim that Johnny was reckless and Jenny wasn't.<sup>6</sup> There are two versions of this objection. The first says that all negative desert claims are false.<sup>7</sup> The second says that some are true, but that claims like  $D_j$  are false.

I suspect that most of EC's advocates would reject the first version of the objection. And DB-retributivists must reject it. Since it holds that all negative desert claims are false, it's inconsistent with the view that such claims help justify punishment. Since DB-Retributivism is my concern here, I'll ignore this version of the objection.

As for the second version, I have no decisive argument against it. It carries an explanatory burden, though. What about Johnny's recklessness makes it an illegitimate negative desert basis? Commonsense apparently

recognizes a wide variety of negative desert bases, including recklessness. That's some reason to think that recklessness is a legitimate negative desert basis. Moreover, there's an apparent symmetry between negative and positive desert here. Commonsense recognizes a wide variety of positive desert bases too. For example, it seems that careful, responsible, prudent people deserve to fare well and to have their plans succeed. If the objection rejects these as positive desert bases, it would reject some firm and widespread intuitions. That would be a mark against it. If, on the other hand, it doesn't reject these as positive desert bases, it must explain the resulting asymmetry between positive and negative desert.

I see no obvious way to explain the asymmetry or to explain why recklessness isn't a legitimate negative desert basis, though there may be good explanations available. My only point is that those who want to press the objection have an explanatory burden. So relying on it would complicate attempts to defend DB-Retributivism. At any rate, my other case isn't vulnerable to this objection since it implicates a negative desert basis that DB-retributivists can't reject. I'll discuss it in the next section.

Before moving on, though, I'll consider one more objection.<sup>8</sup> I've assumed that it's intrinsically bad that Johnny broke his ankle and that there was no reason to bring this about for its own sake. At this point, determined advocates of EC might grant that there are good reasons to accept  $D_j$ , but reject these assumptions. They might say that it's intrinsically good that Johnny broke his ankle and that there was a reason to bring this about for its own sake. They could point out that Johnny was responsible for his reckless behavior and for the risks he took. They might say that this grounds  $D_j$  and thereby confers the value and generates the reason. Sher, for example, says that 'such predictable consequences inherit the value of the free choices that led to them' (1987, p. 41).

This view is more controversial than it may initially seem. My intuitions about Johnny are very strong. And I doubt they're eccentric. The intuitions about value and reasons that DB-Retributivists have about very bad people are one thing. Maybe most people share those intuitions. But intuitions about cases like Johnny's are another thing. I see no reason to assume that most people have intuitions in line with the objection. I seriously doubt that most people would be willing to say that it's intrinsically good when people like Johnny get hurt and that we have a reason to hurt them. If I'm right, then at best the objection renders EC extremely controversial. I'd be satisfied just to show that EC is more controversial than its advocates think. But there are more problems to come.<sup>9</sup>

In the next section, I'll show that CC is consistent with a plausible extant account of desert. Then I'll present the other case and use it to argue that the combination of CC and such an account has further advantages over views that endorse EC.

### 3. *The general*

Fred Feldman (1995) proposes an axiology on which desert enhances and mitigates intrinsic value. He takes pleasure to be intrinsically good and pain to be intrinsically bad under conditions of neutral desert. Conditions are neutral with respect to an agent's deserving something when she doesn't deserve either to get it or to not get it. On Feldman's view, when someone deserves pleasure, her desert enhances her pleasure's intrinsic value and her pain's intrinsic disvalue. When someone deserves pain, her desert mitigates her pain's intrinsic disvalue and her pleasure's intrinsic value. Feldman takes no stand on whether EC is true and doesn't consider arguments like mine. His view is compatible with EC and with CC. I'll argue that endorsing CC and a view like his has advantages over views that endorse EC.

Feldman's view can be modified to apply to anything that can be deserved, e.g., benefits and harms. And it can be modified to say similar things about reasons. The resulting view can accommodate CC. Combining them yields the following view of negative desert (I'll discuss positive desert later). When P deserves something bad for her, her having it is still intrinsically bad, though not as bad as it would be if she didn't deserve it. And there are no reasons to bring about, for its own sake, her having it. There are still reasons not to bring this about, but those reasons are weaker. Reasons to do other things like help her and sympathize with her when she gets it are also weaker.

I'll argue that this view deals with certain hard cases better than views that endorse EC. Here's one such case. A general orders the kidnapping, brutal torture, and execution of innocent dissidents. In retaliation, rebels kidnap her, brutally torture her, and execute her. People's intuitions about such cases vary. Some will say that the general deserved it and will endorse corresponding V and R claims on that basis. Some will be skeptical about the V and R claims and will reject the desert claim on that basis. Both positions assume EC. Both, I will argue, are problematic because of it.

Rejecting the desert claim is problematic because there seems to be something different about the way the general was treated. What happened to any victim of hers seems intrinsically worse than what happened to her. And compared to any such victim, there seems to be less reason to do things like help the general and sympathize with her. Her deserts are an obvious place to look for an explanation. As with Johnny and Jenny, it's harder to explain these differences otherwise.

But there's a problem with endorsing the desert claim and EC. Many are reluctant to say that such treatment can be deserved. I suspect this stems largely from acceptance of EC. The view that such treatment can never be intrinsically good and that we can never have a reason – not even a weak

one – to inflict it for its own sake is compelling. Some things just seem off limits in this sense.<sup>10</sup> If EC and the desert claim are true, what was done to the general was not off limits in this sense.

So EC generates a dilemma. EC's advocates must deny that there are such limits or they'll have trouble explaining differences between cases. We can avoid the dilemma by rejecting EC. If we do, we can say that the general got what she deserved. This lets us explain important intuitions while avoiding the problematic value and reason claims. We can still say that what was done to the general was intrinsically bad, though not as bad as what she did to any of her victims. And we can say that her desert was not a reason to treat her that way. Instead, we can say that it weakened the reasons not to treat her that way – so that what the rebels did to her wasn't as wrong as what she did to any of her victims – and that it weakened the reasons to do things like help her and sympathize with her.

The obvious objection is that the dilemma is a false one. One might say that a different desert claim can explain the differences, one that says that the general deserved some lesser amount of harm. This view is consistent with the claim that some forms of treatment are off limits in the relevant sense. Recall that I considered such a response to the Johnny case and said that a weaker desert claim wouldn't preserve EC. This response isn't as compelling here. This is because many people have the intuition that it's intrinsically good when people like the general come to at least some harm. Many people also have the intuition that there's at least some reason to harm people like the general. There's another problem with the proposal, though.

Consider any proposed limit on deserved harm and people who reach it. Take two such people who are harmed equally and in excess of it, say the general and someone even worse: the generalissimo. It seems like what happens to the generalissimo isn't as intrinsically bad. And it seems like there's less reason to do things like help him and sympathize with him. If EC is true and if there's a limit on deserved harm, then we can't appeal to desert to explain important differences between such cases. And again, desert is an obvious place to look for an explanation.

Maybe there's a better way for EC's advocates to avoid the dilemma, though. One might say that there's always *some* intrinsic value in people having what they deserve, but that sometimes this is intrinsically bad *on the whole*. For example, if someone deserves to suffer, it may to some extent be intrinsically good that she suffer. But on the whole it might be intrinsically bad because suffering is intrinsically bad and its badness outweighs the goodness of the desert satisfaction. Ditto for reasons. Maybe there's always some reason to bring about, for its own sake, people having what they deserve, even when they deserve to suffer. But maybe the nature of suffering always generates reasons not to make people suffer, reasons that outweigh the desert reasons. John Gardner and François

Tanguay-Renaud call these ‘reasons of humanity’ (2011, pp. 124–5). In effect, this response says that I’ve interpreted EC uncharitably. The objection endorses a weaker interpretation.<sup>11</sup>

This view has advantages. On this view, one can endorse  $D_j$  and use it to explain the differences between Johnny and Jenny without saying that what happened to Johnny was intrinsically good on the whole. Because Johnny deserved it, one can say, there’s at least some good in what happened to him and this partially offsets the bad in a way that doesn’t happen in Jenny’s case. One can also reject the limit on deserved harm and thereby avoid the explanatory problems it creates, but accept the claim that things like brutal torture culminating in execution are never intrinsically good on the whole. One might say that the general deserved what she got, that there was therefore some good in her getting it, and that this offsets the bad in a way that makes what happened to her victims worse than what happened to her. One can also say that the generalissimo deserves worse than the general, that there is therefore more good in what happens to him when they both suffer some horrific fate, and that what happens to him therefore isn’t as intrinsically bad as what happens to her, even though it’s intrinsically bad on the whole. One can make similar claims about reasons on this view.

I find this view counterintuitive. I see nothing intrinsically good about what happened to Johnny and the general. I see nothing intrinsically good in a reckless person suffering the predictable harmful consequences of his behavior. And I see nothing intrinsically good in the general getting brutally tortured and executed or, more generally, in terrible people suffering horrible fates. Ditto for the claims about reasons. I have no argument against the view, though.<sup>12</sup>

Luckily, I don’t need one. DB-Retributivism says that it’s intrinsically good on the whole when people get the harm they deserve.<sup>13</sup> And it rejects the claim that there are reasons of humanity that always outweigh desert-based reasons to harm those who deserve it. The weaker take on EC is inconsistent with this position, so DB-retributivists must reject the weaker take. This take also entails that negative desert claims don’t straightforwardly support punishment. This is because the balance of intrinsic value and the balance of reasons always weigh against inflicting harm for its own sake on this view. EC’s advocates, however, typically think that such claims do straightforwardly support punishment, even if they’re not sure whether such claims successfully justify it (cf. Hurka, 2001, p. 7). Given this, I don’t think I’ve been uncharitable. It’s worth emphasizing, though, that EC’s advocates can endorse this view to avoid some of the problems I’ve raised, so long as they’re willing to reject the view that negative desert claims straightforwardly support punishment.

DB-retributivists might adopt a modified form of the proposal, though. They might say that sometimes it’s intrinsically good on the whole when



people get the harm they deserve and sometimes it's intrinsically bad on the whole. They might say that sometimes the goodness of desert satisfaction outweighs the bad and sometimes it doesn't. On this view, one can say that Johnny and the general deserved what they got, that their desert didn't make what happened to them intrinsically good on the whole, but that sometimes it's intrinsically good on the whole when a bad person gets what she deserves. They could say similar things about reasons.

I won't argue against this view either. It's concessive enough to seriously complicate things for DB-Retributivism. If it's right, DB-retributivists must argue that desert satisfaction is valuable enough to outweigh the badness of punishment wherever they think it's justified, but not valuable enough to outweigh the badness of Johnny breaking his ankle or the badness of the general getting brutally tortured and executed. And they'd have to defend similar claims about reasons. It's an open possibility on this view that all instances of what DB-retributivists pre-theoretically take to be justified punishments are not intrinsically good on the whole and not such that there are strong enough reasons to inflict them for their own sake. I leave those who find this view attractive to try to defend it. Again, my purpose is just to show that DB-retributivists must do more to defend their view about desert's support for punishment.

Before moving on, I should note that nothing I've said is meant to suggest that desert can't play a role in justifying things like punishment, law enforcement, and other forceful, coercive practices like self-defense. My view of desert is consistent with the claim that desert can help justify such practices. Standard reasons not to do things that harm others can be weakened by desert. Those reasons can be weakened to the point that other reasons outweigh them.<sup>14</sup>

Contrary to DB-Retributivism, though, I don't think receipt of deserved harm is intrinsically valuable or that desert of harm constitutes a reason to inflict it for its own sake. Advocates of such claims must argue for them. I'll consider potential arguments in the next section.

#### 4. *Arguments for EC*

Now I'll consider some ways of defending EC. In what follows, I'll focus on claims about value, but everything will apply to claims about reasons too.

One way to argue for EC would be to use cases like the ones DB-retributivists use to defend punishment. Davis poses the following case.

Imagine an old-style Hollywood Western in which the villain, presented as irremediably wicked to the core, meets an unpleasant end in some natural disaster. Do you not feel that he

has gotten what he deserved, that what happened was altogether fitting? If so, then you share the intuition that [there is some intrinsic value in the suffering of the guilty] (1972, p. 140).

Davis doesn't use this case to defend EC. But one might try to defend EC with such cases.

To do this, one would have to proceed carefully. One would have to ask independent questions about desert and value and then tie the answers together somehow. Suppose for argument's sake that nearly everyone would say that the villain got what he deserved and that what happened to him was intrinsically good. Would that establish EC?

No. This would not show that desert made what happened to the villain intrinsically good. To defend EC with cases like this, one must solicit reactions to a sufficiently wide variety of cases, including ones like mine. Maybe a correlation between affirmation of desert claims and affirmation of the relevant value claims would be evidence for EC. I see no reason to assume there would be such a correlation, though, given the range of cases at issue. And even if there were, we'd still need a way to deal with the problems I've raised for EC. We may have to reject some intuitions in light of the problems.

Another strategy would be to argue that a plausible analysis of desert entails EC. I can't consider all such proposals here. But Davis mentions the most important one: desert is a kind of fittingness.

I've never been sure how to take this idea. The claim that some things fit might mean that they correspond or match up somehow, like puzzle pieces or events that typically correlate. Fittingness in this sense isn't a good-making feature, though. Lots of things fit in this way, but their combination isn't intrinsically good. Puzzle pieces might fit together to create something horrible. Things like hopelessness and despair, greed and selfishness, and violence and harm also seem to fit in this sense. But these combinations aren't intrinsically good. Johnny highlights a similar fit between recklessness and harm and the general between brutality and retaliatory brutality. Even if things like harm fit certain desert bases in this way, this isn't a reason to think that the conjunction of harm with these desert bases is intrinsically good. Fit in this sense isn't always good.

One might complain that I'm being too literal and that the fittingness analysis is clearly using the term *fitting* to mean *appropriate* or *good*. Fair enough. That analysis is certainly one to consider. But it will be plausible only if it accommodates the relevant phenomena and deals with apparent cases of desert in a satisfying way. My discussion gives us reason to doubt that it does so. Insisting on the analysis just ignores this and begs the question.

There's another way to frame the analysis, though. Consider Geoffrey Cupit's take on it.

What people deserve is governed by the requirement that they should not be treated in such a manner as gives expression to a false belief about their status-affecting attributes (1996, p. 44).

Cupit says that treating people fittingly is to treat them in accordance with their status-affecting attributes (1996, p. 47). As far as I can see, this version of the fittingness analysis is compatible with my view, given what the view says about desert's effects on value and reasons.

I'm skeptical that one can defend EC on the basis of a fittingness analysis, then. So consider another, partly concessive response. One might grant CC, but defend the value and reason claims that DB-retributivists want to make by appealing to a claim like the following. Sometimes, things that are typically intrinsically bad, e.g. suffering and harm, become intrinsically good things when deserved. Feldman (1995) calls this potential phenomenon *transvaluation* (he takes no stand on whether it occurs).<sup>15</sup> Maybe Johnny's breaking his ankle is intrinsically bad, though deserved. But maybe the harms deserved by the people DB-retributivists think we can justifiably punish are intrinsically good because deserved.

On this view, there's a special class of negative desert claims that entail V claims. Call them DV claims. One might grant CC and say that claims like D<sub>j</sub> aren't DV claims, but that the desert claims that figure in DB-Retributivism are. This view's proponents would have to identify a relevant difference between the cases and argue that it yields the difference in value. The obvious candidates are the different desert bases. One might say that some desert bases don't ground DV claims, but that others do, e.g. maliciously harming others or violating their rights.

I'm skeptical. The view needs a principled way to identify the desert bases of DV claims. I've mentioned candidates, but I've said nothing about what might make them special. Why do they ground DV claims and not desert bases like Johnny's recklessness? The view must explain this. And it must do so in a way that avoids the dilemma raised by the general case. That is, it must do so in a way that doesn't have trouble explaining differences between cases and that doesn't abandon the claim that some negative forms of treatment can never be intrinsically good. The general case implicates a desert basis that advocates of this view would take to ground a DV claim, but it's not obvious how the view can avoid the dilemma.

Advocates of the view may be unimpressed. They might just appeal to intuitions on a case-by-case basis and say that the deserved harms in my cases are intrinsically bad, though deserved, but that many other deserved harms are intrinsically good because deserved. Even setting the above problems aside, there's another problem with this approach: desert doesn't really seem to be doing the work it's supposed to be doing. It's not obvious that *desert* is making the corresponding V claims true, given that it doesn't do so in cases like mine.

If I'm right, this approach departs from DB-Retributivism in an important way. It effectively abandons the attempt to defend the relevant V claims with appeals to desert. But maybe this departure is warranted. Maybe the most promising response DB-retributivists can make to my arguments is to abandon appeals to desert and to defend the relevant V claims with direct appeals to intuitions about value.

I won't assess the resulting version of Retributivism here. I do so elsewhere (Hanna, ms.). I think it suffers from several problems, but I'll just flag a couple of them now. They're not meant to be decisive.

DB-retributivists appeal to desert for a reason. They think it explains and supports the V claims they use to justify punishment. Abandoning the appeal to desert surrenders this source of support. That's one problem. Some retributivists may not be very troubled by this, though. They might think that direct appeals to intuitions about value (and reasons) can help to justify punishment on their own. This reaction overlooks the very real possibility that retributivist intuitions stem at least partly from assumptions about desert, assumptions like EC. If EC is false, that may cast doubt on the credibility of these intuitions. That's another problem. I suspect, then, that DB-retributivists can't so easily evade my arguments just by abandoning the appeal to desert.

A more promising way to meet my challenge may just be to criticize my view of desert. Maybe the view has problems of its own, problems worse than the ones I've raised. In the last section, I'll briefly consider some objections like this.

## 5. *More objections*

I've said nothing about positive desert. But what my view says about it is also important and might be problematic. So it's worth briefly considering potential objections to this aspect of the view. I've rejected the claim that deserved harm is intrinsically good. Conversely, I reject the claim that it's intrinsically bad when those who deserve harm get benefits. I think it's intrinsically good even when bad people fare well. One might object that this claim is absurd and that it has problematic implications.

As for the alleged absurdity, I just don't see it. But for those who do, there's a way to make my view more palatable. Feldman says that negative desert can mitigate intrinsic value. If he's right, it can be good even when bad people are benefited, but it may be less good than when good people are benefited. Moreover, the value of benefits to bad people can progressively decrease as they get more benefits (cf. Kagan, 1999).

As for potentially problematic implications, here's one: since it's good even when bad people get benefits, the world would keep getting better as they get more benefits. I agree this would be a bad implication. But I'm not

committed to it. The distinction between comparative and noncomparative justice can help here. It seems bad when bad people fare well while good people don't. Gains in value from benefits to bad people can be outweighed by the disvalue of corresponding imbalances here. And the value can be more easily outweighed the more it's mitigated.

Another objection alleges that my view has explanatory problems of its own because it can't explain the apparent intrinsic value of certain psychological states that can be deserved. Guilt and shame, for example, may be intrinsically good when they're felt to the appropriate degree by people who deserve to feel them, say because of the bad things they did (cf. Bennett, 2002, 2008; Duff, 2001). One might charge that my view can't explain this.

I accept the intuitions and I think the view can help explain them. I take psychological states like guilt and shame to be complex states made up of things like beliefs, attitudes, and feelings. I think there are aspects of guilt and shame that can be intrinsically good – e.g., certain beliefs and attitudes – and others that are intrinsically bad – e.g. the associated pain. I've discussed this elsewhere, so I'll be brief (Hanna, 2009). I explain the intuitions as follows. The disvalue of the bad aspects of guilt and shame can be mitigated by desert and can in turn be outweighed by the value of the good aspects. It can be intrinsically good when someone feels guilty for or ashamed of the bad things she did. Certain beliefs and attitudes involved – e.g. belief that she did wrong, disapproval of what she did – are good, given the nature of what she did. Their value can outweigh the disvalue of the pain, which is mitigated because she deserves to feel guilty for what she did.

Two facts seem to support this explanation. First, our evaluations change when these beliefs and attitudes change. It's bad, for example, when someone feels guilty or ashamed for not managing to do even worse things than she did. Second, we often have a mixed reaction to justified guilt and shame. For example, when those close to us feel justified guilt and shame, we're glad to see that they acknowledge the bad things they've done. But often we try to comfort them. This is hard to square with the claim that the associated pain is intrinsically good. Very often, we think that what's really important is not the pain, but that they understand and acknowledge the wrong, resolve to do better, and try to make amends.

So I take it the view I've been defending can overcome some important objections. Given this, and its virtues, I think it has some plausibility and merits further consideration.

### *Conclusion*

I've challenged EC, thereby exposing a gap in some popular justifications of punishment, and I've defended an alternative view of desert. This is a

coherent view that should be particularly attractive to those like me who think that things like harm and suffering are never intrinsically good – even when bad people experience them.<sup>16</sup>

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#### NOTES

<sup>1</sup> Pro tanto reasons are reasons that are genuine (not merely apparent) and that have some weight, but that can be outweighed by other reasons.

<sup>2</sup> In an earlier paper he said this: ‘If people have what they deserve, this is good from the point of view of desert’ (1999, p. 300). This can be interpreted as a weaker claim, e.g. that it’s better when people get what they deserve. See the next note for more on this view. Another interpretation is that there’s always some intrinsic value in people getting what they deserve. On this view, see Section 3.

<sup>3</sup> She puts V like this: it would be morally better if P had  $\phi$ . This is compatible with the claim that it would be intrinsically bad if P had  $\phi$ . But I doubt many philosophers who accept Olsaretti’s version of V would accept this claim. At any rate, my discussion will also raise problems for the view that D entails this version of V.

<sup>4</sup> Here are his cases. Harris can see that it looks like rain, but doesn’t bring his umbrella. So he deserves to get wet. Simmons doesn’t study for his upcoming exam, though he easily can. So he deserves to fail. A letter to the editor says that anyone ‘crazy enough to drive their vehicle out on the ice [in warm weather] deserves to have the vehicle go through the ice.’

<sup>5</sup> I deny the V claim because I think it’s intrinsically bad that Johnny broke his ankle. But one could reject the V claim on different grounds, say because one thinks that there’s no such thing as intrinsic value (thanks to an anonymous referee for this suggestion). Zimmerman, 2010 gives examples of philosophers who hold this view. I’ll just assume, along with most of EC’s advocates and most DB-retributivists, that this view is false. Those sympathetic to it can focus on my claims about reasons and either ignore my value claims or take them to be conditional (e.g. if there is such a thing as intrinsic value, then it’s intrinsically bad that Johnny broke his ankle). Note that my claims about reasons don’t depend on my assumption about intrinsic value. Intrinsic value is a potential source of reasons here but not the only potential source.

<sup>6</sup> Thanks to Mitchell Berman for this suggestion.

<sup>7</sup> I’ll use the phrase *negative desert claim* to refer to claims that say that someone deserves something bad for her (or at least presumptively bad for her).

<sup>8</sup> Thanks to an anonymous referee for suggesting it.

<sup>9</sup> A more nuanced objection says that there’s *some* intrinsic value in Johnny’s breaking his ankle, but that it’s not intrinsically good on the whole. I’ll consider this objection later.

<sup>10</sup> I think brutal torture culminating in execution is off limits in this sense. If this doesn’t meet your limits, substitute whatever does. My argument really only requires that some forms of treatment are off limits. I assume there are such limits.

<sup>11</sup> Thanks to an anonymous referee for this suggestion.

<sup>12</sup> Reflecting on what attitude it’s appropriate to have about the Johnny case is suggestive, though (cf. Hurka, 1998, p. 310). If there’s some good in what happened to Johnny even if what happened to him is intrinsically bad on the whole, then it’s appropriate to have a mixed attitude about his case – something like regret and sympathy tinged by approval. I don’t think a mixed attitude is appropriate. I think only regret and sympathy are appropriate, but

less regret and sympathy than would be appropriate in Jenny's case. I think the same of the general and the generalissimo, but I suspect many would disagree with me.

<sup>13</sup> See Berman, 2008, pp. 269–70 and Moore, 1993, pp. 19–20. Davis says 'There is some intrinsic value in the suffering of the guilty' (1972, p. 136). Because of the word *some*, one might think that Davis' view is consistent with the above proposal. But it's clear that Davis doesn't endorse the proposal and that *some* is meant to signal that he's just noncommittal about how much intrinsic value their suffering has. He explicitly rejects the claim that suffering is always intrinsically bad and says that it begs the question against his value claim (pp. 139–40).

<sup>14</sup> Some philosophers think that desert can't help justify uses of defensive force because they accept EC. If EC is false, their arguments fail. See McMahan, 2009, pp. 8–9 and Tadros, 2011, pp. 176–7. See Gardner and Tanguay-Renaud, 2011 for a response to the former. I should note that Gardner and Tanguay-Renaud argue that D doesn't entail V (2011, p. 123). But their reasons strike me as weak and somewhat obscure.

<sup>15</sup> He notes that this view is similar to views endorsed by Meinong, Brentano, Chisholm, and G. E. Moore (Feldman, 1995, p. 580). For more on Moore's view see Hurka, 1998.

<sup>16</sup> Thanks to Mitchell Berman, Peter Celello, several anonymous referees, and an audience at the Fall 2011 meeting of the Indiana Philosophical Association.

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