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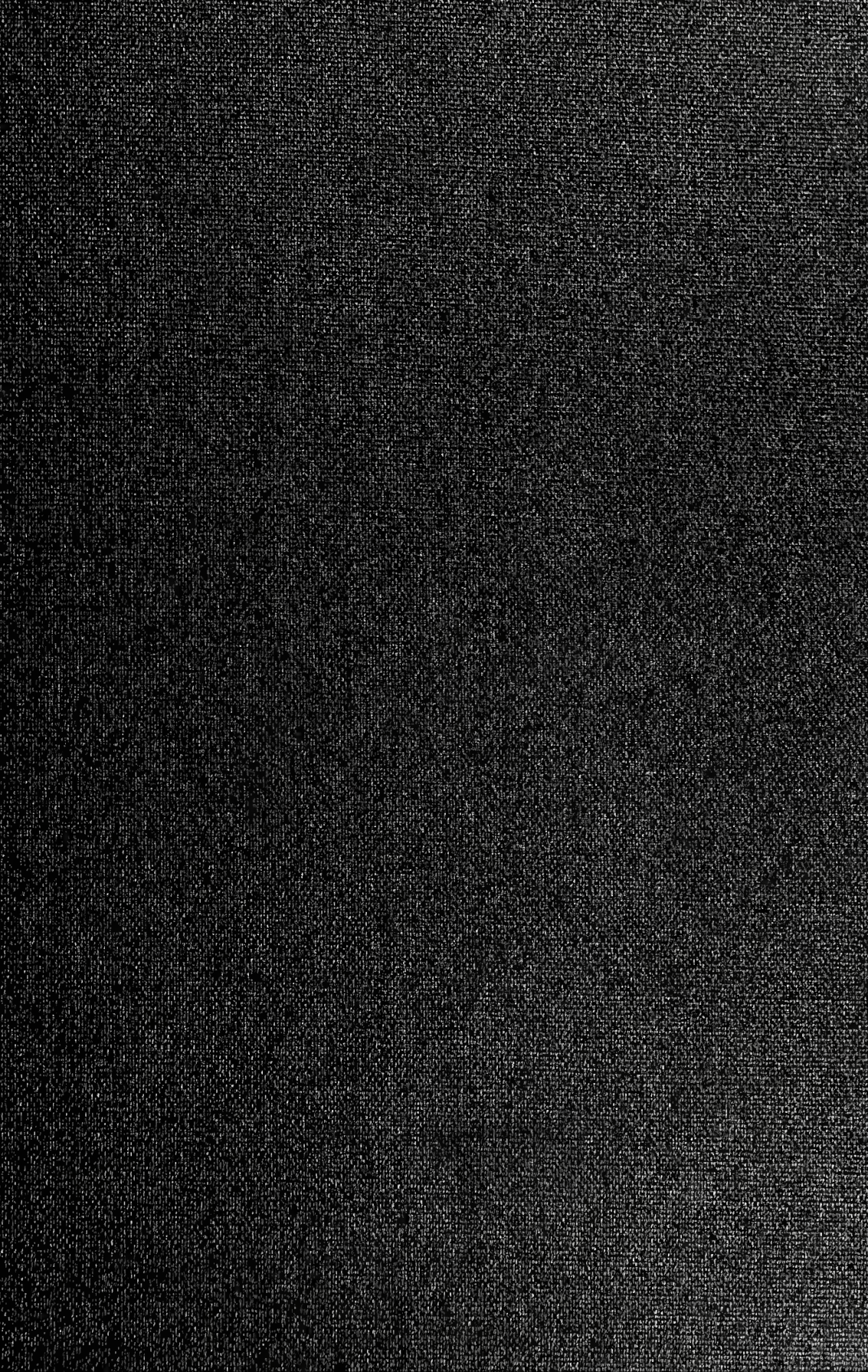
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ON BEING DESERVING

A Dissertation Presented

by

JAMES OWEN MCLEOD

Submitted to the Graduate School of the
University of Massachusetts Amherst in partial fulfillment
of the requirements for the degree of

DOCTOR OF PHILOSOPHY

September 1995

Department of Philosophy

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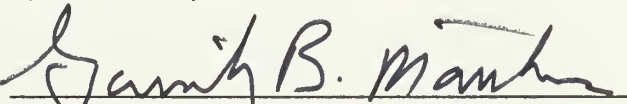
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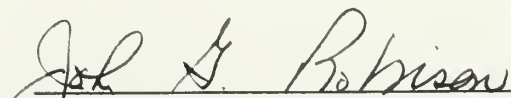
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ACKNOWLEDGEMENTS

For kind encouragement over the course of my graduate career at the University of Massachusetts, I am grateful to Gareth Matthews. I am grateful also to Thomas Kearns of Amherst College, who introduced me to much of the philosophical literature discussed in this dissertation.

My deepest debts, however, are owed to Fred Feldman. If I have any philosophical skill, I must have acquired it in large measure from attending Fred's classes and reading Fred's work. Indeed, it was Fred's own work in normative ethics that got me interested in the concept of desert in the first place. And when I expressed to Fred an interest in writing a dissertation on desert, he warmly encouraged me. Fred read each draft of each prospective chapter with alacrity and care. In so doing, Fred saved me from mistakes, steered me out of dead ends, and directed me toward fruitful ideas. Without his keen intelligence, outstanding and patient instruction, good sense, and friendship, I could not have written this dissertation.

ABSTRACT

ON BEING DESERVING

SEPTEMBER 1995

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The concept of desert is familiar to everyone. We have all heard that wrongdoers deserve punishment, that the virtuous deserve happiness, that hard workers deserve success, that innocent victims deserve compensation, that everyone deserves an adequate level of medical care, that no one deserves to be born handicapped, and so on.

From these sayings, it is clear that desert is an evaluative concept. It therefore belongs to the class of concepts that includes rightness, justice, rationality, goodness, beauty, and others. Desert is thus a familiar, evaluative concept.

It is ironic, then, that desert has not received anything like the amount of philosophical attention enjoyed by the other evaluative concepts that I mentioned. In this dissertation, I focus my attention on desert.

I begin, in Chapter 1, by trying to explain why desert has been neglected by philosophers. In Chapter 2 I argue that much of the received philosophical wisdom about desert is false. Chapter 3 is dedicated to "institutional" theories of desert. These theories make

desert relative to institutional rules or purposes. Chapter 4 explores some views about the purported connection between desert and the emotions. In Chapter 5 I argue that a well-known attempt to justify desert-claims fails, and that this failure is the result of mistaken views about the connections between desert and the concepts of moral obligation and of value. One aim of Chapter 6 is to reveal the defects of some prominent theories of desert of wages. A deeper aim is to expose a fundamental defect in a standard way of looking at desert in general.

In Chapter 7, I present my own theory of desert. It contains, among other things, a catalogue of bases for desert and an explanation of "all-in desert" in terms of "prima facie desert" and "weight." The structure of my theory of desert is therefore similar to the structure of W. D. Ross's theory of moral rightness.

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CHAPTER 1

INTRODUCTION

We do not merely describe the world. We evaluate it - ineluctably, and from a variety of perspectives. We pronounce of various things that they are good or bad, beautiful or ugly, right or wrong, rational or irrational. These are just a few of the many concepts we employ to evaluate the people we know, the acts we perform, the objects we behold, the rules we make, the fates that befall us.

Another evaluative concept is *desert*. We use this concept to evaluate the receipt or distribution of benefits and burdens - such as prizes, grades, punishment, offices, apologies, compensation, retribution, suffering, rewards, wages - and we employ the concept liberally. Most often it crops up in our evaluations of what people receive (or could receive) from other people, as when we say that a student deserves a certain grade, or that a waitress deserves a certain tip. But we also use it to evaluate what people "receive" from the natural world, as when we express sympathy for the "undeserving victims" of floods, famine, and earthquakes. We also invoke the concept of desert to evaluate what the natural world "receives" from human beings, as when it is argued that rabbits do not deserve to suffer the Draize test for cosmetics, or that the Olympic Peninsula deserves preservation. Appeals to desert extend even to inanimate objects, as when we declare

that Union Carbide deserves to be sued for its role in the Bhopal disaster, or that Oregon deserves better publicity. Indeed, once one becomes sensitive to the concept of desert, one cannot help but be struck by the ubiquity of evaluations made in terms of it. As George Sher has observed, "Desert is central to our pre-reflective thought."¹

Thus it is surprising that desert, unlike the other evaluative concepts I mentioned, has been neglected by philosophers. The available philosophical literature on desert is more or less exhausted by a few books and a dozen articles, almost all of which appeared in the last few decades.² Prior to the 1960's, references to desert in the philosophical literature were confined almost exclusively to debates in the philosophy of punishment. In those debates, the concept of desert was used to characterize a form of "retributivism" according to which punishment is morally justifiable only if deserved.³ But even those who endorsed this sort of retributivism offered nothing in the way of an articulated theory of desert.⁴

Indeed, among the few philosophers who have written about desert, the tendency has been as much toward ridiculing or downplaying the concept as toward taking it seriously. One example of the former tendency is Barbara Goodwin's verdict that "...the concept of desert itself is incoherent and, philosophically speaking, unfounded."⁵ Another is Brian Barry's astonishing prediction: "In examining the concept of desert we are examining a concept which is already in decline and may eventually disappear."⁶ Remarks such as these imply that even

if desert is central to our pre-reflective thought, a bit of philosophical reflection might prompt us to reject it.

The neglect of desert by contemporary philosophers is surprising for a reason other than desert's centrality to pre-reflective thought. The reason is that, in the twenty-five years since the publication of John Rawls's enormously influential *A Theory of Justice*, there has been a tremendous outpouring of philosophical interest in the idea of *justice*.⁷ But according to a venerable view, justice obtains to the extent that people get what they *deserve*.⁸ Since justice is important, so is desert. Thus, it is natural to suppose that the recent upsurge of interest justice would be accompanied by a similar upsurge of interest in desert. This has not happened.

What explains this tendency among contemporary philosophers, especially those interested in justice, to ignore or reject the concept of desert? Part of the explanation, I think, is Rawls's work itself. In *A Theory of Justice*, Rawls appeared to argue that desert, rather than the central concept in terms of which justice could be explained, is instead a concept explicable in terms of a prior notion of justice.⁹ Rawls, accordingly, made no use of the concept of desert in the formulation or defence of his theory of justice. Those (the many) who were impressed by Rawls's theory of justice may have felt no need to discuss or invoke the concept of desert in their own work on justice.

This, however, cannot be the whole story behind the contemporary neglect of desert. This is because some of Rawls's severest critics make no use of desert in their own theories of justice. Robert Nozick

is an excellent example of one such theorist. In *Anarchy, State, and Utopia*, Nozick subjects Rawls's theory of justice - and, in particular, Rawls's rejection of desert - to serious and, in my opinion, devastating criticisms.¹⁰ Yet when Nozick turns to formulating and defending his own "entitlement" theory of justice, he makes no mention of desert whatsoever. Another example is Michael Sandel, whose penetrating criticisms of Rawls are second only to Nozick's, but whose own "communitarian" theory of justice is devoid of appeals to desert.¹¹ The existence of these critics of Rawls, whose theories of justice do not depend on desert, suggests that there may be a deeper explanation of their apparent scorn for desert.

Samuel Scheffler has recently sought such an explanation. Scheffler's idea is that contemporary theorists of justice have shied away from desert because of their acceptance, perhaps tacitly, of "naturalism." Scheffler writes:

The widespread reluctance among political philosophers to defend a robust notion of...desert is due in part to the power in contemporary philosophy of the idea that human thought and action may be wholly subsumable within a broadly naturalistic view of the world. The reticence of these philosophers - their disinclination to draw on any...notion of desert in their theorizing about justice - testifies in part to the prevalence of the often unstated conviction that a thoroughgoing naturalism leaves no room for a conception of individual agency substantial enough to sustain such a notion. This problem, the problem of the relation between naturalism and individual agency, is of course a descendant of the problem of determinism and free will....Thus my suggestion is that the reluctance of many contemporary political philosophers to rely on a preinstitutional notion of desert results in part from a widespread though often implicit skepticism about individual agency, a form of skepticism that is the contemporary descendant of skepticism about freedom of the will.¹²

Scheffler's explanation, as I understand it, is this. Contemporary theorists of justice accept the doctrine of naturalism. Naturalism is incompatible with the doctrine that human beings have free will. The denial of the doctrine of free will is incompatible with accepting a "robust" notion of desert. Hence, contemporary theorists of justice reject any such notion.

There is something plausible about Scheffler's explanation. At any rate, Scheffler is not the first philosopher to suppose that skepticism about free will or responsibility is tantamount to skepticism about desert. Daniel Dennett, for example, makes the same supposition in his engaging book, *Elbow Room: The Varieties of Free Will Worth Wanting*:

It could be...that the concept of personal responsibility enshrined in traditional (Western) morality is subtly incoherent, and that we ought to revise or even jettison that concept and the family of ideas surrounding it: guilt, desert, moral praise, and punishment, to mention the most important.¹³

Tom Campbell makes a similar remark:

...the belief in desert - the very idea that anybody ultimately deserves anything - seems to run counter to the common contemporary assumption that individual behaviour is, in the end, almost entirely the outcome of heredity and environment, with little if any significance being attributable to people's individual choices. The "free will" assumptions behind traditional ideas of desert are certainly hard to fit into a scientific and deterministic world view according to which human decisions are simply one part of a continuous causal chain.¹⁴

Thus, if desert and naturalism are incompatible, as some have thought, and if recent theorists of justice accept naturalism, then Scheffler is correct: the retreat from desert by those theorists should come as no surprise.

That said, there is something implausible about Scheffler's diagnosis of the recent retreat from desert. First, there is no direct textual evidence of a denial of free will in the writings of the theorists of justice that Scheffler has in mind - Rawls and Nozick, most notably. In fact, Rawls and Nozick depend heavily on notions of freedom, autonomy, and liberty.¹⁵ It seems unlikely, then, that these theorists have assumed (even tacitly) a conception of the world incompatible with human freedom. Second, let us suppose with Scheffler that those philosophers have accepted a conception of the world incompatible with human freedom. But then why would they jettison desert only, and not also the "family of ideas," to borrow Dennett's phrase, that seem to surround it: guilt, praise, punishment, and so on? Rawls and Nozick, at least, do not reject this family of notions.¹⁶ If these notions are, along with desert, out of place in a world without human freedom, then Scheffler's explanation implies that contemporary theorists of justice have internalized naturalism, but without appreciating some of its most obvious implications. Third, there are some contemporary theorists of justice who are, I presume, no less susceptible to the supposed "power" of naturalism, but who nevertheless make a place in their theories for desert.¹⁷ Scheffler's explanation implies that these theorists are even more incapable than their anti-

desert colleagues of appreciating the full significance of naturalism. Given the implausibility of this and the other implications of Scheffler's diagnosis, perhaps it would be best to treat it as merely part of the full explanation of recent refusals to countenance desert.

Perhaps another piece in the full explanation of desert's neglect by philosophers is this. Perhaps some philosophers have confused desert with some other concept, or mistakenly subsumed it under some other concept. Unaware of the error, but aware of theories of whatever concept desert may have been confused with or subsumed under, perhaps these philosophers concluded that there was nothing more to say about desert. So, they said nothing about it.

There is evidence that some philosophers have, if not confused desert with some other concept, then at least subsumed it under some other concept. Brian Barry, for example, seems at one time to have thought of desert as a species of *goodness*:

To ascribe desert to a person is to say that it would be a good thing if he were to receive something...in virtue of some action or effort of his or some result brought about by him.¹⁸

Austin Duncan-Jones, to take another example, seems to have confused desert with the concept of *responsibility*. This confusion is most apparent in his description of a "utilitarian" theory of desert:

...when we say that a man is responsible, and has certain deserts, the whole meaning of our statement can be resolved into two clauses: (1) he has done a good or bad action; (2) it is useful to apply certain sanctions to him....[These] two clauses...convey the whole of our meaning when we ascribe responsibility or desert....¹⁹

As a final example, take S. I. Benn and R. S. Peters. In their once-influential textbook, *The Principles of Political Thought*, these authors treated desert as a species of *entitlement*:

"Desert" is a normative word; its use presupposes a rule having two components: (i) a condition to be satisfied; (ii) a mode of treatment consequent upon it. In questions of income distribution the condition is usually the performance of some service (and in this respect it differs from "entitlement," *which is more general*, since one might be "entitled" to benefits under rules which prescribed need, or insurance conditions, or sale of goods, as the qualifying condition). We cannot estimate desert, therefore, in a vacuum; we must be able to refer to some standard or rule from which "X deserves R" follows as a conclusion.²⁰

If the philosophers mentioned thought of desert as at least subsumable under another concept, then perhaps others have thought so too. If so, this might partially explain the relative lack of interest in desert as a concept in its own right.

It is interesting to wonder about possible *explanations* for the relative lack of philosophical interest in desert. But it may be more interesting, and more pertinent, to wonder whether this lack of interest is *justified*. This is where Scheffler's diagnosis may take on a deeper significance. Is it true, as Scheffler and others imply, that a broadly "naturalistic" view of the world is incompatible with an acceptance of desert? If it is, and if the naturalistic view of the world is correct, then a philosophical study of desert (such as the one before you) is interesting as an academic exercise only. It will be a study of a

concept that, like the concept of phlogiston, has no application to the actual world.

I will not try to fully address this vague worry here. I will, however, suggest that even if "naturalism" is true and inconsistent with the doctrine of human freedom, there is still a place for desert in the world. To see this, suppose we are not free. Suppose further that we are occasionally victims of crime, natural disasters, workplace injuries, disease, and so on. Even if we are not free agents, it is not obvious that we could not deserve compensation, medical care, sympathy, and perhaps other forms of treatment in virtue of suffering such things. Indeed, as John Kleinig pointed out twenty-five years ago:

The possibility of deserving compensation...indicates that there is no *simple* relationship between "being deserving of" and "being responsible for." The man who deserves compensation is precisely *not* responsible for those things on the basis of which he deserves it.²¹

Thus, even if widespread acceptance of naturalism partly explains the retreat from desert, it does not obviously justify it. For it to do so, the supposed connection between desert and responsibility would, at the very least, have to be made much clearer. In Chapters 2 and 7, I take up *inter alia* the supposed connection(s) between desert and responsibility. With Kleinig, I conclude that if there is any such connection, it is not so simple that a denial of freedom would force us to deny desert.²²

I will also record my view that desert is distinct from the concepts of goodness, responsibility, and entitlement. I have already

noted that desert and responsibility may not be as closely connected as some philosophers have supposed. As for desert's distinctness from goodness, this can be seen by considering a simple example. Suppose that I experience some pleasure. This is good in itself. However, I may not deserve that pleasure. Hence, desert is distinct from goodness. Besides, even if the getting of what's deserved is always good in itself, and in this way a "species" of goodness, this would not provide any reason for a philosopher to ignore desert - any more than it would provide a reason for a philosopher to ignore pleasure, virtue, friendship, or any other species of goodness. As for desert's distinctness from entitlement, I refer the reader to Chapter 3, where I make the case for this distinction in some detail. Thus, if my suggestions here and in the chapters that follow are correct, the neglect of desert by some contemporary philosophers cannot be justified by their supposing that desert is (or is a species of) goodness, responsibility, entitlement, or some other concept.

Whatever the full explanation or the supposed justification, the fact remains: desert has been largely ignored by philosophers. There are only a few worked-out philosophical theories of desert available in the literature. In this dissertation, I contribute a new theory. Obviously, I would not do this if I thought that one of the currently available theories were correct. Accordingly, I do not believe that any of the currently available theories of desert are correct. I do believe that all of those theories contain valuable insights. I try to

incorporate some of those insights into my own theory, which I present and explain in Chapter 7.

The chapters preceding Chapter 7 can be summarized as follows. Chapters 2, 3, and 4 are devoted to discussions of some prominent theories of desert. Thus, in Chapter 2, I attempt to clear away some misguided views of desert that are prominent in the literature, and that have conveniently coalesced in a theory of desert recently espoused by Wojciech Sadurski.²³ Chapter 3 is dedicated to an examination of a family of theories that have the following feature in common: each attempts to explain desert in terms of *rules* or *purposes*, and most characteristically in terms of the rules or purposes of social institutions. (It is this sort of theory that is suggested by some remarks in Rawls's *A Theory of Justice*.) In Chapter 4, I discuss a theory that attempts to explain desert in terms of a certain class of emotions. I also explore there some other purported desert-emotion connections.

As I see it, a pressing question for any theorist of desert is whether our considered views about what is and what is not a "basis" for desert can be justified. So, for example, how (if at all) can we justify the considered views that hard workers deserve to succeed, that the virtuous deserve to be happy, or that innocent sufferers deserve sympathy? In the only full-length study of desert currently available in print, George Sher attempts to justify these and a host of other desert-claims.²⁴ My view, explained and defended in Chapter 5, is that Sher's justificatory project fails. I take the failure of Sher's heroic

attempts to justify the major desert-claims as evidence for the futility of any such project.

Chapter 6 takes a somewhat practical turn. In it, I try to answer the question of why, if at all, workers deserve wages. I also trace out some implications that my answer has for the "comparable worth" debate. An ostensible aim of this chapter is to discuss some prominent theories of desert of wages, and to expose their defects. But a deeper aim is to reveal what I take to be a fundamental flaw with a standard theory of desert, a theory espoused and defended by Joel Feinberg in his landmark essay, "Justice and Personal Desert."²⁵ My hope is that Chapter 6 provides the last piece in a cumulative case for my conviction that a new theory of desert is needed. As noted before, I present such a theory in Chapter 7.

Notes

1. George Sher, *Desert* (Princeton, NJ: Princeton University Press, 1987), page ix.
2. See Bibliography.
3. An excellent collection containing many of these articles is Gertrude Ezorsky's *Philosophical Perspectives on Punishment* (Albany, NY: State University of New York Press, 1972). For a good, contemporary discussion of "retributivism," see Igor Primoratz, *Justifying Legal Punishment* (Atlantic Highlands, NJ: Humanities Press International, Inc., 1988).
4. Perhaps the only attempt at this came later, with the publication of John Kleinig's remarkable and under-appreciated book, *Punishment and Desert* (The Hague: Martinus Nijhoff, 1973).
5. Barbara Goodwin, *Justice By Lottery* (London: The University of Chicago Press, 1992), page 64.

6. Brian Barry, *Political Argument* (London: Routledge and Kegan Paul, 1965), page 112.
7. Jonh Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971). The structure and details of the post-rawlsian debate are deftly chronicled in Stephen Mulhall and Adam Swift, *Liberals and Communitarians* (Oxford: Basil Blackwell, 1992).
8. If John Stuart Mill is any guide, the idea that justice has to do with desert was widespread in mid-nineteenth Europe:

...it is universally considered just that each person should obtain that (whether good or evil) which he *deserves*, and unjust that he should obtain a good, or be made to undergo an evil, which he does not deserve. This is, perhaps, the clearest and most emphatic form in which the idea of justice is conceived by the general mind. (*Utilitarianism*, [Buffalo, NY: Prometheus Books, 1987], page 61.)
9. For references to, and a full discussion of, Rawls's remarks about desert, see my Chapter 3.
10. Robert Nozick, *Anarchy, State, and Utopia* (New York, NY: Basic Books, 1974), pages 183-231. For a development of one strand of Nozick's criticisms of Rawls's views about desert, see Alan Zaitchik, "On Deserving to Deserve," *Philosophy and Public Affairs* 6 (1977), pages 370-388.
11. Michael Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982).
12. Samuel Scheffler, "Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics," *Philosophy and Public Affairs* 21 (Fall 1992), pages 299-323; the passage cited is found on pages 309-310.
13. Daniel Dennett, *Elbow Room* (Cambridge, MA: The Massachusetts Institute of Technology Press), page 156.
14. Tom Campbell, *Justice* (Atlantic Highlands, NJ: Humanities Press International, Inc.), page 150.
15. See *A Theory of Justice* and *Anarchy, State, and Utopia*, *passim*!
16. For Rawls's discussion of punishment, for example, see *A Theory of Justice*, pp. 314-315 and 575-577. For Nozick's, see *Anarchy, State, and Utopia*, pp. 59-63.
17. These theorists include Joel Feinberg, "Justice and Personal Desert," reprinted in Feinberg's *Doing and Deserving* (Princeton, NJ: Princeton University Press, 1970), pages 55-94; William Galston, *Justice*

and the Human Good (Chicago, IL: The University of Chicago Press, 1980); J. L. Lucas, *On Justice* (Oxford: Clarendon Press, 1980); David Miller, *Social Justice* (Oxford: Clarendon Press, 1976); Wojceich Sadurski, *Giving Desert its Due* (Dordrecht: D. Reidel Publishing Company, 1985); Michael Slote, "Desert, Consent, and Justice," *Philosophy and Public Affairs* 2 (Summer 1973), pages 323-347.

18. Brian Barry, *Political Argument*, page 106.

19. Austin Duncan-Jones, *Butler's Moral Philosophy* (Harmondsworth: Penguin Books, 1952) pages 137, 139.

20. S. I. Benn and R. S. Peters, *Principles of Political Thought* (New York, NY: The Free Press, 1959), pages 157-158.

21. John Kleinig, "The Concept of Desert," *American Philosophical Quarterly* 8 (January 1971) page 74.

22. The same conclusion is reached by Fred Feldman, "Desert: Reconsideration of Some Received Wisdom," *Mind* 104 (January 1995), pages 63-77.

23. Wojceich Sadurski, *Giving Desert its Due*.

24. George Sher, *Desert*.

25. In Feinberg's *Doing and Deserving*, pages 55-94.

CHAPTER 2

DESERT: CLEARING AWAY SOME MISCONCEPTIONS

Introduction

George Sher opens his full-length study of the concept of desert with the remark: "Desert is uncharted philosophical territory."¹ Sher might have said with equal justice that desert is *mis*charted. The literature on desert, meager though it is, contains some grave misunderstandings of a concept that pervades our ethical thought. It would be advisable, therefore, in a study such as this, to identify and correct those misunderstandings at the outset. That is the central aim of this chapter. In it, I play the role of Lockean underlaborer: I attempt to clear away "...the Rubbish, that lies in the way to Knowledge."²

That said, the goal of this chapter is not entirely destructive. One constructive aim is to provide (perhaps *via negativa!*) a rough sketch of the concept of desert as I understand it. Another is to set the agenda. Many of the points merely raised in this chapter require more careful treatment. This they receive in several of the following chapters.

To make the task of this chapter manageable, I focus on Wojciech Sadurski's recent theory of desert.³ I choose Sadurski's theory for two reasons. First, Sadurski's book, *Giving Desert its Due*, contains one of the few detailed treatments of desert in the literature. Second,

Sadurski's theory is the perfect target: it contains almost all the received philosophical views about desert that I reject.⁴

Sadurski's theory

Desert claims seem to have (implicitly, at least) this form: 'P deserves x at t in virtue of E'. P is the deserving subject; x is the thing deserved; t is the time at which P deserves x; and E is the basis of P's deserving x. A theory of desert may therefore take the form of a statement of conditions that are necessary and sufficient for P to deserve x at t in virtue of E. At any rate, this is how I will construe Sadurski's theory.

As I understand it, Sadurski's theory of desert (or STD) contains seven parts:

STD P deserves x at t in virtue of E iff (i) P is responsible for E; (ii) P is a person; (iii) E is effort exerted by P; (iv) E is valuable to P's society; (v) E occurs prior to t; (vi) E is a burden to P; and (vii) x can be distributed to P.

In this section, I will further present and explain STD. In the next section, I will evaluate it.

(i) *P is responsible for E.* A view widespread in the literature is that there is an important connection between desert and responsibility. Typical assertions of such a connection include:

A person's having been able to have done otherwise is a *necessary condition* of ascribing desert.⁵

People ought to be done by according to how they deserve, and how they deserve depends on how they have done, which in turn presupposes responsibility and freedom.⁶

The concept of desert serves to signify the ways of treating people that are appropriate responses to them, *given that* they are responsible for those actions or states of affairs. That is the role played by desert in our moral vocabulary.⁷

The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is...problematic; for this character depends in large part upon fortunate family and social circumstances for which he can claim no credit.⁸

These passages differ in important ways, but a doctrine running through them seems to be this:

If S is not responsible for some quality or action, then S does not deserve anything in virtue of it.

Sadurski accepts this doctrine:

When we are pronouncing judgments of desert, we are inevitably making judgments about persons who are responsible for their actions. It makes no sense to attribute desert, positive or negative, to persons for actions or facts over which they have no control. (Page 117.)

This doctrine, which (i) is intended to express, is supported by many examples. Suppose a cashier is forced at gunpoint to hand over the money. The store suffers a loss, but the cashier does not deserve blame. This is because the cashier was not responsible for handing over the money: he was coerced. Suppose a student submits an excellent term paper. If she is not responsible for it (if, for example, her roommate wrote it), she does not deserve praise or a good grade. Suppose a

sprinter swallows a handful of amphetamines prior to a race, and wins. He does not deserve to win, and this is (at least partly) because he is not truly responsible for his performance: the drugs are. These examples lend credence to the doctrine about desert and responsibility, and hence to (i).

(ii) *P is a person*. Sadurski writes: "...desert considerations are always person-oriented" (117). That is, the subject of desert is always a person. Like (i), many examples could be adduced in support of this claim. Furthermore, (ii) is at least suggested by (i), which asserts the connection between desert and responsibility. For it is plausible that only people can be (morally) responsible for anything. (ii) might also be suggested by (iv), which states the basis of P's desert is valuable to P's "society." At any rate, the view that the subject of desert must be a person is venerable. It was, for instance, endorsed by the eighteenth-century moralist Richard Price:

The epithets *right* and *wrong*, are, with strict propriety, applied only to actions; but *good* and *ill* desert belong rather to the *agent*. It is the *agent* alone, that is capable of happiness or misery; and, therefore, it is he alone that can properly be said to *deserve* these.⁹

(iii) *E is effort exerted by P*. According to Sadurski, "...effort is the only legitimate basis and measure of desert" (116).¹⁰ The notion that effort is the only basis for desert is familiar from discussions of desert of *wages*.¹¹ Thus, in supposing that effort is the only desert base *simpliciter*, Sadurski is generalizing that idea. He is also

accepting what he takes to be a consequence of (i), the thesis about desert and responsibility:

I consider effort to be the principle criterion of desert, mainly because 'contribution' or 'success' reflect, among other things, factors which are beyond our control and thus for which we cannot claim any credit. (Page 134.)

Here, and in the debate over desert of wages, the argument that effort is the basis for desert goes like this. The basis for desert is either effort or success.¹² The effort one exerts is within one's control; the success of those efforts is not. Desert can arise only in virtue of what is within one's control, or for what one is responsible. (As Sadurski says, "...factors which are totally beyond a person's control...are irrelevant to desert" [3]). Thus, it is not success but effort that must be the basis for desert.

(iv) *E is valuable to P's society.* The idea here is that the basis for desert must be valuable to the deserving person's society. There are two ways to construe this. One is Sadurski's: "What counts is a conscientious effort which has socially beneficial effects" (116).¹³ On this construal, one's effort is valuable to society, and a basis for desert, only if it benefits others.

Another way to understand the idea that the basis for desert must be valuable to P's society is this: The basis of P's desert must be generally "valued" by P's society (regardless of whether it actually benefits anyone). This second idea is suggested by Joel Feinberg's claim that "If we were all perfect stoics...then there would be no use

for the concept of desert."¹⁴ It is explicitly endorsed by David Miller:

...desert is a matter of fitting forms of treatment to the specific qualities and actions of individuals, and in particular good desert...is a matter of fitting desired forms of treatment to qualities and actions which are generally held in high regard.¹⁵

Like the other portions of STD considered thus far, (iv) has an air of plausibility. People who contribute to society, or who perform actions that are generally admired, are said to be deserving. Philanthropists are said to deserve admiration or public recognition; virtuous behavior is said to deserve praise and emulation. Thus it may appear, as (iv) asserts, that desert bases must be "valuable" to society in some way or another.

(v) *E occurs prior to t*. Like other parts of STD, this is a standard thesis about desert. It (or a similar thesis) is endorsed throughout the literature. Typical statements of the thesis include:

...the basis of all desert is a person's own past actions.¹⁶

If a person is deserving of some sort of treatment he must, necessarily, be so in virtue of some characteristic or prior activity.¹⁷

Desert can be ascribed to something or someone only on the basis of characteristics possessed or things done by that thing or person. That is, desert is never simply forward-looking.¹⁸

The idea in each passage is that desert bases are always located in the past. This idea can be more precisely expressed:

If S deserves x at t in virtue of E, then S acquired or performed E prior to t.

This idea is accepted by Sadurski: "...desert considerations are always past-oriented. When talking about desert, we are evaluating certain actions which have already happened" (118). Part (v) of STD corresponds to this view about the supposed connection between desert and time.

The view that desert bases are always located in the past is supported by any number of examples. If you deserve an apology, this is because you *have been* insulted, not because you are going to be insulted. If you deserve punishment, this is because you *have committed* some wrong, not because you will commit some wrong. If you deserve a reward, this is because you *have done* something good, not because you are going to do something good; and so on. In general, then, it appears that the basis for desert must be located in the past.

(vi) *E is a burden to P.* Desert is often attributed to those who have borne some burden, such as "...effort, sacrifice, work, risk, responsibility, inconvenience, and so forth" (Sadurski, 116). Consider the relentless medical researcher who sacrifices her own health for others'; the firefighter who risks his life to save a child; the executive of a major corporation who bears ultimate responsibility for thousands of employees; the person who willingly accepts a major inconvenience to help a friend through a difficult time: all these people are deserving in virtue of the "burden" they bear. Furthermore, those whose actions require no sacrifice, risk, responsibility, inconvenience, and so on, are often held to deserve nothing for

performing them. The idea is that there is desert only if there is some "cost" to the agent.

An argument in support of this intuition is due to Miller. Miller, as noted above, believes that "...a desert basis consists of personal attributes which are generally held in high regard."¹⁹ People who tend to perform actions involving work, risk, sacrifice, responsibility, inconvenience, etc., are for that reason generally held in high regard. But people who tend not to perform actions that involve no such burdens are, for that reason, not highly regarded. They are regarded with indifference, sometimes contempt. If Miller is right, it follows that those in the former category are deserving; those in the latter category are not. Sadurski would put this by saying that the basis for desert is burdensome.

(vii) *x can be distributed to P*. Sadurski writes:

To say that X deserves P makes sense only when it is imaginable that P can be distributed or attributed. To say "I was working very hard all year therefore I deserve good weather during my vacations" is erroneous except as a metaphor. (Page 118.)

Good weather is not something that can be distributed; anyway, it cannot be distributed by *people*. Therefore, Sadurski reasons, it cannot be deserved. In a slogan: The deservable is distributable (by people). Perhaps the idea behind this slogan is that just as 'ought' implies 'can', so 'deserved' implies 'distributable'.

Let that serve as a presentation and explanation of STD. STD contains much of what is accepted by philosophers who have written about

desert. But my view is that every part of STD is false. I now turn to a defence of that view.

The refutation of Sadurski's theory

(i) *P is responsible for E.* I do not accept that if P deserves x in virtue of some property or action, then P is responsible for that property or action. Many clear cases of desert involve a person who suffers some evil, is not responsible for suffering it, yet deserves something for suffering it. All kinds of sufferings could be adduced as examples: disease, disaster, crime, insult. A person may not be responsible for suffering one or another of these things, but each can be a basis for deserving sympathy, relief, treatment, reparation, or apology. Therefore, it is false that the deserving subject must be responsible for the desert base. There are properties for which one may not be responsible for possessing, but that can be bases for desert.²⁰

(ii) *P is a person.* I reject the suggestion that the subject of desert must be a person. I believe that manuscripts and mathematical puzzles, for example, can deserve consideration or attention; that trees and earthquakes can deserve admiration or awe; that baseball teams can deserve championships; that corporations can deserve to be sued; that cities can deserve publicity; and so on.²¹ I take these desert claims about non-persons literally. And while I believe that perhaps some such claims can be adequately translated into claims about what people deserve, I do not believe that every such claim can be thus translated.

Consider, for example, the following desert claim: "Cleveland is an interesting city; it deserves better publicity." Perhaps this claim is shorthand for a set of claims about the deserts of various people (the mayor, members of the city council, downtown merchants) who have worked hard to improve Cleveland. But what of the claim that the Lowenheim-Skolem theorem deserves attention? This seems quite different from, say, the claim that Lowenheim and Skolem deserve admiration for discovering the theorem. Or what of the claim that Union Carbide deserves to be sued billions of dollars for the Bhopal disaster? This claim can be true even if there is no particular Union Carbide employee (or group of employees) who deserves to be sued billions of dollars for the Bhopal disaster. These claims suggest that non-persons can be subjects of desert.

(iii) *E is effort exerted by P.* The difficulty with this view requires a distinction between two contrary positions about desert bases: *monism* and *pluralism*. Monism is the view that there is only one basis for desert; pluralism is the view that there is more than one. (iii) is a form of monism. According to it, effort is the only basis for desert. There are other versions of monism. One is that moral worth is the only basis for desert. G. W. Leibniz and W. D. Ross seemed to accept this latter version of monism.²²

(iii) is false. For suppose it were true that the effort you exert is the only basis for your desert of anything. Suppose further that one day you are brutally assaulted by a group of thugs. Since you made no effort to get assaulted, (iii) entails that you deserve nothing.

This is clearly wrong. You now deserve sympathy, compensation, apology, and perhaps other things.

As I see it, all monisms about desert are false. There is more than one basis for desert. I believe these include (but are probably not exhausted by) innocent suffering, need, being a person, past receipt, entitlement, moral worth, and effort. A profound and pressing question is whether there is any way to *justify* these claims about what *is* (and what is not) a desert base. Sher devotes an entire book to attempting to answer this question. Sher's project is the subject of Chapter 5. The subject comes up again in Chapter 7.

(iv) *E is valuable to P's society.* I offered two interpretations of this view about desert. On the first interpretation, for E to be "valuable" to P's society is for E (that is, its presence or performance) to contribute to that society's good. This is false, for the simple reason that one can deserve punishment or some other evil for *harming* one's society. So perhaps what Sadurski meant is this: If E is a basis for P's desert of x, then E is either valuable or damaging to P's society. I believe this is false. As I see it, one can be deserving without being part of any society. I postpone a defense of this controversial claim until the next chapter. There I explain (and ultimately reject) various versions of the prominent view that desert is somehow "institutional."

On the second interpretation, for E to be "valuable" to P's society is for E (that is, its presence or performance) to be generally admired or held in high regard by that society. I reject this second

version of (iv). My view is that at least some properties and actions are bases for desert even if no one ever admires or detests them.

(Virtue, for example, seems a basis for deserving admiration or happiness, regardless of the general attitude toward virtue.) However, this claim is also controversial. I postpone its defense until Chapter 4.

(v) *E occurs prior to t*. I reject the widespread assumption that desert bases are always located in the past. Christopher New recently argued that it is possible to deserve punishment *prior* to committing an offence.²³ Even more recently, Fred Feldman has called attention to several examples that seem to show conclusively that bases for desert need not be anchored in the past.²⁴ One of Feldman's examples concerns the Make-a-Wish Foundation. The Foundation attempts to offer extraordinary benefits to terminally ill children - trips to Disneyland, for example. Many people feel that such children *deserve* these benefits. The reason is not (or not necessarily) that these children have already suffered, but rather that they will suffer. Thus, their desert bases are in the future, not the past. Another of Feldman's examples concerns a soldier who volunteers for a dangerous mission. The soldier might be honored prior to his mission. This honor is deserved not because of what he has done; it is deserved because of what he is *about to do*. Thus, the soldier's desert base is located in the future. These examples show that desert is not always "backward-looking."

(vi) *E is a burden to P*. Burdens, on Sadurski's view, include effort, sacrifice, work, risk, responsibility, and inconvenience. Thus

understood, however, bases for desert need *not* be a burden to those who are deserving in virtue of them. For example, you can deserve an apology in virtue of being insulted, even though your being insulted required no sacrifice, work, risk, responsibility, or inconvenience. Even if the insult was not an "emotional" burden for you, this would not make the ensuing apology undeserved. Besides, there are other bases for desert that clearly are not burdens. Suppose, for example, that there is a wonderfully talented violinist. She loves nothing more than playing the violin, and she plays beautifully. She may deserve admiration or respect in virtue of her beautiful playing, even though playing the violin is not at all burdensome to her.

(vii) *x can be distributed to P.* I do not accept that the deservable is necessarily distributable. Some deserved things cannot be distributed. These include things that people are incapable of distributing, such as good fortune good weather. But they also include what we happen to be unable to distribute at the moment they are deserved. A trivial example is compensation. It is possible that X deserves financial compensation from Y, even if Y is unable to pay. Another example concerns apologies. Suppose that X deserves an apology from Y, but Y is now dead. The apology cannot be given, but it is nonetheless deserved.

What desert is not

The results of this chapter can be summarized in seven points. First, there is no obvious connection between desert and responsibility;

at any rate, it is possible for a subject to be deserving in virtue of a property for which he or she is not responsible. Second, persons *and* non-persons can be subjects of desert. Third, there are many desert bases, not merely one. Fourth, there is no interesting sense in which a desert base must be "valuable" to society. Fifth, bases for desert need not be located in the past, but may sometimes be located in the future. Sixth, desert bases need not constitute a "burden" to the deserving subject. Seventh, whether one deserves something does not hinge on whether or not it can be distributed.

Some of these points have, I hope, been established in this chapter. Others clearly have not. I will consider them in some of the chapters that follow. Those considerations culminate in Chapter 7, in which I present my own theory of desert.

Notes

1. George Sher, *Desert* (Princeton, NJ: Princeton University Press, 1987), page 3.
2. John Locke, *An Essay Concerning Human Understanding*, Peter H. Nidditch, editor (Clarendon Press, Oxford, 1975), page 10.
3. Wojciech Sadurski, *Giving Desert its Due* (Dordrecht: D. Reidel Publishing, 1985).
4. Sadurski's theory of desert is not the only one that embodies much of the philosophically received wisdom about desert. For two other such theories, see William Galston, *Justice and the Human Good* (Chicago, IL: Chicago University Press, 1980), pages 170-176; and Margaret Holmgren, "Justifying Desert Claims: Desert and Opportunity," *Journal of Value Inquiry* 20 (1986), pages 265-278, especially pages 265-266.
5. Brian Barry, *Political Argument* (London, Routledge and Kegan Paul, 1965), page 108.

6. J. R. Lucas, *On Justice* (Clarendon Press, Oxford, 1980), page 197.
7. James Rachels, "What People Deserve," in *Justice and Economic Distribution*, ed. John Arthur and William H. Shaw (Englewood Cliffs, NJ: Prentice-Hall, 1978), page 157.
8. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), page 104.
9. From Price's *Review of the Principle Questions in Morals*, ed. by D. D. Raphael (Oxford, 1948), page 79; quoted in John Kleinig, "The Concept of Desert", *American Philosophical Quarterly* 8 (1971), page 72.
10. Sadurski uses 'effort' and 'action' interchangeably. Thus, Sadurski would probably endorse Rachels's view that "...what people deserve always depends on their own past actions" (Rachels, "What People Deserve," page 150).
11. I discuss this idea in Chapter 6, "Desert and Wages."
12. As Sadurski puts it, "Two main alternative measures of desert are usually suggested: effort or objective contribution." (Page 134.)
13. Sadurski seems not to notice that this point sits uneasily with his claim that effort "...is the only legitimate basis and measure for desert" (116). For if that were true, then the beneficial (or otherwise) effects of one's effort would *not* be relevant to one's desert.
14. Joel Feinberg, "Justice and Personal Desert," in Feinberg's *Doing and Deserving* (Princeton, NJ: Princeton University Press, 1970), page 61.
15. David Miller, *Social Justice* (Clarendon Press, Oxford, 1976), page 85.
16. James Rachels, "What People Deserve," page 154.
17. Joel Feinberg, "Justice and Personal Desert," page 58.
18. John Kleinig, "The Concept of Desert," page 73.
19. Miller, *Social Justice*, page 112.
20. Other writers have been skeptical about the supposed connection between desert and responsibility. Kleinig openly questions it:

The possibility of deserving compensation...indicates that there is no *simple* relationship between 'being deserving of' and 'being responsible for'. The man who deserves

compensation is precisely *not* responsible for those things on the basis of which he deserves it. ("The Concept of Desert," page 13.)

David Miller, to take another example, scrutinizes "...the principle that a man can only deserve treatment (benefit or harm) on the basis of his own voluntary actions, or of characteristics he has voluntarily acquired..." (*Social Justice*, page 99). Miller's verdict is this:

So far as deserved benefit goes, ordinary thinking gives us no clear guide as to whether the principle is to be accepted. In some of our judgements we base desert entirely upon voluntary action, in others we do not. Further, the philosophical arguments in favor of the principle are not decisive. The verdict must be: not proven. (Page 100.)

But by far the most thorough refutation of standard views about the connection between desert and responsibility is, in my opinion, Fred Feldman's "Desert: Reconsideration of Some Received Wisdom," *Mind* 104 (January 1995), pages 63-77. For still further reflections on desert and responsibility, see Norvin Richards, "Luck and Desert," *Mind* XCV (April 1986), pages 198-209; and Jonathan Adler's reply to Richards, "Luckless Desert is Different Desert," *Mind* XCVI (April 1987), pages 247-249.

21. Other philosophers who accept that non-persons can be subjects of desert include Kleinig ("The Concept of Desert," page 72) and Sher (*Desert*, page 8).
22. The relevant texts are cited by Rawls in *A Theory of Justice*, page 310.
23. Christopher New, "Time and Punishment," *Analysis* 52 (1992), pages 35-40.
24. Feldman, "Desert: Reconsideration of Some Received Wisdom."

CHAPTER 3
INSTITUTIONAL THEORIES OF DESERT

Introduction

In the spring of 1994, in a Singapore jail, an American citizen named Michael Fay received three violent strokes with a rattan cane. The blows ripped through his skin and left permanent scars across the width of his back. This was Fay's legally prescribed punishment for spraying graffiti on a row of cars parked along a Singapore street.

Although caning is a standard form of punishment in Singapore, many in the United States reacted with horror to Fay's treatment. But some did not; some thought Fay *deserved* the caning. However, it was rare to find someone of this view who also believed that caning would be an appropriate punishment for vandals in the United States.¹

At first blush, this position (that Fay deserved a caning for his vandalism in Singapore, but would not deserve this for a similar act of vandalism in the U.S.) seems inconsistent. But on one view of desert, the inconsistency is merely apparent. On this view, no one deserves anything "in the abstract," but only according to the rules or purposes of the social institutions in which he finds himself.² On this view, Fay's caning was deserved because his vandalism occurred in Singapore, where one of the legal rules is that vandals shall be caned. Since there is no such rule in the US, vandals here do not deserve to be

caned. The alleged inconsistency vanishes on this "institutional" theory of desert.

In this chapter, I examine some recent attempts to explain desert in terms of social institutions. I refer to them as *institutional theories of desert*. (I make no attempt to elucidate the notion of "social institution.") I believe that institutional theories of desert are defective, but that calling attention to their defects sheds light on some of desert's most salient features.

A crude institutional theory of desert

I propose to begin by discussing a crude institutional theory of desert. I am not aware of any philosopher who holds this theory - though, as will be pointed out later, it is suggested by the writings of some philosophers. I do believe that this crude theory is presupposed in some everyday discussions of desert - for example, in discussions of Michael Fay's punishment. The theory is this:

T1 S deserves x in virtue of F iff there is some
 social institution, I; a rule of I is that those
 who participate in I and have F shall receive x;
 the rules of I apply to S; S has F.

T1 is rather plausible. Consider the social institution of professional boxing. Suppose George Foreman knocks out Mike Tyson in the heavyweight bout. People might say that for this, Foreman deserves the heavyweight title. This is not because a boxer "preinstitutionally" deserves the title if he punches out his opponent. It is not as though

the institution of boxing was invented so that boxers could get the titles they deserve! Without the institution of boxing, there would be no boxers, matches, or heavyweight titles. Therefore, the existence of those rules is a necessary condition of Foreman's desert of the heavyweight title. Indeed, it may seem sufficient for Foreman's desert of the title that he satisfied the rule that a boxer who knocks out his opponent in the heavyweight championship fight shall receive the heavyweight title. At least, that is the idea behind T1.

Despite T1's plausibility, I believe it suffers from several defects. Perhaps the most obvious one is this. T1 entails that in the complete absence of social institutions, no one can deserve anything. I think that reflection on a somewhat fanciful case will suggest that even in the complete absence of social institutions, it is still possible to be deserving. The case is this. Imagine a world with no social institutions: no laws, rulers, governments, religions, and so on. The only people in this world are Abel and Cain. Abel is industrious. He built his own shelter, made his own clothes, and hunts his own food. Cain is slovenly. He lives in a cave, runs around naked, and gets by on the few berries and roots he can be troubled to gather. Neither Abel nor Cain knew the other existed until Abel, out hunting, stumbled across Cain sleeping in the bushes. Without provocation, Cain leapt up and strangled Abel to death. Cain then stole Abel's clothes, spear, and the bag in which Abel had carried a freshly killed rabbit. When Cain came upon Abel's shelter, he took up residence until it became uninhabitable due to neglect. Then Cain resumed his slothful life in the forest.

Now consider the following desert claims: Abel deserves his possessions; Abel deserves not to be killed; Cain deserves not to have Abel's belongings; Cain deserves punishment (or some other ill) for killing Abel. These claims seem true. If T1 were true, they could not be. Indeed, it is not difficult to imagine that a society might form itself with the intention of distributing goods and evils in accordance with what people deserve. But if T1 were true, this would be impossible. Prior to society's formation, no one could deserve anything.

The tale of Cain and Abel may be too fanciful to convince the staunch institutionalist. No matter. T1 has other defects, one of which can be brought out by considering the following case. Suppose an ice-fisherman has been warned by a reliable authority that the ice on the lake is perilously thin. Cavalierly disregarding this warning, he drives his truck out on the thin ice anyway. He parks it there and walks several yards away to do some fishing. As expected, his truck falls through the ice, leaving him stranded. A natural feeling is that other things being equal, this is just what the man deserves for his recklessness. But observe that, at least in this world, there is no social institution with the rule that those who recklessly drive trucks out on thin ice shall lose their trucks. Indeed, the very idea of such an institution seems ludicrous. T1 seems unable to handle this sort of case.

The case of the ice-fisherman is meant to reveal a basic defect of T1. The defect is this. T1 requires the existence of some social

institution for every true desert-claim, even though there are true desert-claims to which no social institutions can be plausibly held to correspond. The claim that the ice-fisherman deserves to lose his truck through the ice is only one example. Another example is the claim that Jones, in virtue of suffering a series of misfortunes, now deserves a bit of good luck. This claim could be true, even though there is no social institution with a rule that those who suffer misfortune shall experience a bit of good luck. Another example is the claim that, other things being equal, every person deserves a fair share of life. This claim (I believe) is true, but there is no social institution with a rule that people shall receive a fair share of life. Notice that the point is not merely that there are no such institutions. It is that the proponent of T1 is forced to either reject these apparently genuine desert-claims, or posit some rather peculiar social institutions.

A third problem for T1 is this. T1 is not plausibly construed as a theory of *desert* at all. Rather, it is more plausibly understood as a theory of *entitlement*, which is different from desert. These points can be brought out by considering a few cases of entitlement. Suppose a person is named in a legally binding will as the beneficiary of the testator's estate. That person is entitled by a rule of law to that estate. Consider next the runner who first crosses the finish line in the Olympic 100 meter sprint. This runner is entitled by an Olympic rule to the gold medal. Consider, finally, the host of a dinner party. He is entitled by a rule of etiquette to an expression of thanks from his guests.

These cases suggest the following theory of entitlement:

E S is entitled to x in virtue of F iff there is some social institution, I; a rule of I is that those who participate in I and have F shall receive x; S participates in I; S has F.

With one minor difference, E is T1! The difference is that 'deserves', as it appears in T1, has been substituted with 'is entitled to' in E. Thus, T1 better understood as a theory of entitlement, not as a theory of desert.

This would not matter if entitlement and desert are the same. They are not. Entitlement is different from desert. This point has been recognized in the literature³, and can be seen by recalling the cases above. In each case, it is possible that the person entitled to the estate, the gold medal, or the expression of thanks does not deserve it. So, for example, if the beneficiary is a wicked person, he may not deserve the estate. If the sprinter won only because the most skilled runner tripped near the finish line, then she may not deserve the gold. If the host was boorish and the food awful, then he may not deserve any gratitude. In these cases, people are entitled to things they do not deserve. Entitlement is therefore different from desert; T1 ignores this difference.

It is worth noting that at least one philosopher has crafted an institutional theory of desert that does *not* conflate entitlement and desert. This is David Gauthier, who explains desert not in terms of institutional *rules*, but rather in terms of institutional *purposes*. He explains this idea with the help of an example:

A race is a social institution which is usually constructed for some specific purpose. We cannot conclude that someone deserves to win the race without...appealing to the purpose of the race. When we say that the most skilled deserves to win then we are assuming that the point of the race is to reward skill. Since rewarding skill is the point of the institution it also is the appropriate basis of desert.⁴

Julian Lamont seems to commit himself to a similar idea in this passage:

This practice [of grading students] normally has behind it some purpose, or at least some defining value, which plays an essential role in the setting of the desert-basis. For instance, sometimes it is to indicate a person's demonstrated potential in a particular occupation or in higher education. In such cases, students who are clearly above or below the threshold for a B grading do not deserve that grade, no matter how hard they have tried. Sometimes the purpose is simply to indicate to the students...their objective mastery of the subject (and this type of grading can be very different from the previous one). Sometimes the grade...is to indicate to the students their level of effort in the subject. Sometimes the desert-basis is decided by other persons or institutions, sometimes by the teachers themselves. What is important to notice is that *the desert-basis is determined by other values or purposes*, rather than by something internal to the notion of desert itself.⁵

The gist of these passages is relatively clear. It can be expressed as follows:

T2 S deserves x in virtue of F iff there is some institution, I; a purpose of I is that those who have F shall receive x; S participates in I; S has F.

So, for example, if a purpose of the institution of racing is to honor the most skilled runner, then the most skilled runner deserves to be honored. If a purpose of the institution of grading is to indicate to

the students their level of effort, then the students who exert the most effort deserve the best grades.

The important thing to notice is that unlike T1, T2 does not conflate desert and entitlement. This is because institutional purposes are different from institutional rules, and entitlement is explained (in E) in terms of institutional rules. Thus, it will be possible under T2 to be entitled to something without thereby deserving it, and vice versa.

To see this, recall Cummiskey's example of the social institution of racing. Suppose the purpose of this institution is to honor the most skilled runner. Suppose further that the rule in a particular race is that the runner who first crosses the finish line shall receive the prize. Suppose, finally, that the runner who crosses the finish line first is not the most skilled. Then this runner is entitled to the prize, but does not deserve it. The most skilled runner deserves it, according to T2, since the purpose of the institution is to reward the most skilled runner. Therefore, T2 does not conflate desert and entitlement.

However, T2 and T1 are vulnerable to a fourth objection, which I believe to be the gravest thus far considered. The problem is that T1 and T2 generate morally repugnant results. Suppose, for example, that there is a legal system with rules (or purposes) according to which traffic violators shall receive life imprisonment. If T1 or T2 were true, traffic violators who fell under these rules would actually deserve life imprisonment. Suppose next that there is an academic

grading system with a rule (or purpose) that those with blond hair and blue eyes shall receive the highest possible marks. T1 and T2 entail that those who fall under those rules really deserve the highest marks. Suppose next that there is a system of etiquette with the following rule: Those who fail to cover their mouths during a sneeze shall have their hands dipped in boiling chicken fat. If these institutional theories were true, then rudeness could be grounds for torture.

These are absurd results. No matter what rules or purposes there are, no one can deserve life imprisonment for double parking. No one can deserve high marks on a physics exam for being blonde and blue-eyed. No one deserves to have a hand immersed in boiling chicken fat, merely for failing to cover a sneeze. Clearly, something has gone wrong with the institutional theories of desert considered thus far.

The problem is not hard to see. Neither T1 nor T2 places any *moral constraint* on the supposedly desert-conferring rules or purposes of institutions. Without such a constraint, as we have seen, the door is left open for all sorts of repugnant results. This suggests that an institutional theory with such a constraint will fare much better than T1 and T2. Let us examine such a theory.

A rawlsian approach

In a few passages from his remarkably influential *A Theory of Justice*, John Rawls appeared to advance an institutional theory of desert. Like the theories thus far considered, the rawlsian theory explains desert in terms of the rules (or purposes, in Cummiskey's

theory) of institutions. The important difference is that on the rawlsian theory, there is a moral constraint on those rules. The constraint is that desert-conferring institutions must be *just*. As will be shown, this constraint protects the rawlsian theory of desert from some of the objections that plagued T1 and T2.

According to a standard view, justice obtains to the extent that people get what they deserve. A proponent of this standard view explains justice in terms of desert. Rawls rejects the standard view. He believes that justice has nothing to do with desert.⁶ Thus, Rawls does not explain justice in terms of desert. Indeed, in passages suggesting his commitment to an institutional theory of desert, Rawls appears to do the opposite: namely, explain desert in terms of justice!

Rawls:

...it is necessary to be clear about the notion of desert. It is perfectly true that given a just system of cooperation as a scheme of public rules and the expectations set up by it, those who, with the prospect of improving their condition, have done what the system announces that it will reward are entitled to their advantages....But this sense of desert presupposes the existence of the cooperative scheme....⁷

The case [of the relation of justice to desert] is analogous to the relation between the substantive rules of property and the law of robbery and theft. These offenses and the demerits they entail presuppose the institution of property which is established for prior and independent social ends. For a society to organize itself with the aim of rewarding moral desert as a first principle would be like having the institution of property in order to punish thieves.⁸

Not only the content of these remarks, but also their context (in each case they serve as a response to the objection that Rawls's theory of justice ignores desert) have suggested to several commentators that Rawls endorsed an institutional theory of desert. Samuel Scheffler, for example, writes:

On [Rawls's] way of understanding desert, the idea that social institutions should be designed in such a way as to ensure that people get what they deserve makes about as much sense as the idea that universities were created so that professors would have somewhere to turn in their grades, or that baseball was invented in order to ensure that batters with three strikes would always be out.⁹

Another commentator, George Sher, reads Rawls similarly:

In his major work, *A Theory of Justice*, Rawls argues that desert of reward and recompense are...artifacts of social institutions which in turn are justified in quite different ways. Instead of imposing constraints upon our choice of social institutions, personal desert is only established within and by such institutions.¹⁰

The rawlsian theory of desert is relatively clear: to deserve something is to be entitled to it under institutional rules that are just. Let us try to make this theory more precise.

One possible statement of the rawlsian institutional theory of desert is this:

T3 S deserves x in virtue of F iff there is some social institution, I; a rule, R, of I is that those who participate in I and have F shall receive x; R is just; S participates in I; S has F.

This is a plausible interpretation of Rawls's own remarks. Moreover, it does not generate the morally repugnant results that T1 and T2 generated. To see this, reconsider the traffic rule that penalizes double-parkers with life imprisonment. This rule is plainly unjust. Likewise for a rule that awards the best grades in a physics class to people with blond hair and blue eyes, and a rule of etiquette that punishes rudeness with torture. Rules like this fail to satisfy T3's requirement that desert-conferring institutional rules are just.

But if T1 and T2 are implausible, so is T3. Like T2 and T3, T3 entails that in the absence of social institutions, no one deserves anything. Like T1 and T2, T3 requires its proponent to either reject apparently genuine desert-claims, or posit some peculiar social institutions. Finally, like T1, T3 conflates desert and entitlement. In these respects, T3 is no improvement over T1 and T2.

However, T3 may not capture the spirit of the rawlsian view. As I see it, the spirit of that view might be expressed counterfactually: People actually deserve things in virtue of the fact that if there were just social institutions, those institutions would entitle those people to those things. For personal reasons, I prefer to express this in terms of possible worlds:

- T4 S deserves x in virtue of F iff there is some world, w, and some social institution, I, in w; a rule, R, of I is that those who have F shall receive x; R is just; S has F.¹¹

T4 is more plausible than T3. Like T3, it avoids the morally repugnant results that T1 and T2 generated. Unlike T3, T4 is not vulnerable to the objection that if it were true, then no one would deserve anything in the absence of (actual) social institutions. This is because T4 ranges over all possible worlds, and a proponent of T4 can appeal to some of those worlds to account for the truth of desert-claims in worlds without social institutions. Recall, for example, the claim that Cain deserves punishment (or some other ill) for murdering Abel. This claim seems true, even though there are no social institutions in that world. This is no problem for the advocate of T4, who can note that there is a social institution in *some* world with the just rule that murderers shall be punished. It is that otherworldly institution, the advocate of T4 can claim, that accounts for Cain's desert of punishment. In this way, the advocate of T4 may be able to handle many desert-claims that seem true at institutionless worlds.

Many, but not all. Recall the claim that Abel deserves not to be killed by Cain. This claim seems true. As I see it, this is because other things being equal, people deserve a fair share of life. Consequently, they deserve not to have their lives unnaturally shortened by murder. But if it is true that each person deserves a fair share of life, then T4 requires the existence of some social institution with a rule that persons shall receive a fair share of life - either that, or the rejection of perfectly plausible desert-claims.

I now turn to consider a final objection to the Rawlsian institutional theory of desert. The objection is that even if T4 avoids

the morally repugnant conclusions generated by T1 and T2, it generates some of its own. This objection requires some explanation.

As has been emphasized, the rawlsian theory of desert places a moral constraint on the rules of desert-conferring institutions. The constraint is that those rules must be just. Thus, a proper evaluation of T4 depends on an understanding of the concept of justice that it depends on. What concept of justice is it?

One thing is clear: it cannot be a concept of justice that appeals to desert. So, for example, it cannot be the venerable view that justice is the getting of what's deserved. Otherwise T4 would be viciously circular. It would explain desert in terms of justice, and justice in terms of desert. This would be unacceptable.

A natural alternative conception of justice is, obviously, Rawls's conception. This is not the place for a full exposition of Rawls's theory of justice. Fortunately, the substance of Rawls's theory of justice is contained in two relatively straightforward principles¹²:

The Liberty Principle: Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for all.

The Difference Principle: Social and economic inequalities are to be arranged so that they are (a) to the greatest benefit to the least advantaged; and (b) attached to offices and positions that are open to all under conditions of fair equality of opportunity.

It will not be necessary to rehearse Rawls's proustian efforts to explain and defend these principles. The objection that I wish to level against the rawlsian theory of desert depends only on an understanding

of the Difference Principle and what it requires. I shall ignore the Liberty Principle in what follows.

The intuition behind the Difference Principle is plausible enough. It is that social and economic inequalities should, in justice, benefit the worst off group. But by how much? The answer to this question is determined by the fact that the Difference Principle is a *maximizing* principle. It requires that a perfectly just institutional framework *maximize* the welfare of the socially and economically worst off. Thus, a slightly less-than-perfect institutional framework will improve but not maximize the welfare of the worst off group. As Rawls explains: "while the difference principle is, strictly speaking, a maximizing principle, there is a significant distinction between the cases that fall short of the best arrangement."¹³ So the answer to the question "By how much?" is: "As much as possible."

Now we are in a position to pose the final objection to the rawlsian theory of desert. The objection is based on a remark made by Tom Campbell in the midst of his penetrating discussion of the Difference Principle:

There is...the problem of what to do about disadvantages which cannot be specifically rectified, but only compensated for, such as liability to serious and painfully incurable illness. Clearly, even an equal share of resources will be insufficient to redress such imbalance of satisfactions and medical care in itself will not greatly alter the situation. Does this mean that the difference principle would involve putting more and more resources towards marginal improvements in the lot of persons with such a low quality of life? Society would then become one large hospital or welfare institution, to which end all social co-operation would be ultimately geared.¹⁴

Campbell is imagining a society in which the worst off group is composed of people who suffer from painful and incurable diseases or handicaps. To avoid the most excruciating pain, and to enjoy even a minimal level of satisfaction, these unfortunate people require tremendous amounts of medical care and other benefits. Campbell's point is that the Difference Principle seems to require "putting more and more resources towards marginal improvements" in the lives of these people. Indeed, if even a marginal improvement can be obtained by imposing huge taxes on the advantaged groups, then the Difference Principle (which is a maximizing principle) would seem to require it.

The force of this objection is easier to grasp by comparing two possible societies.¹⁵ In each society, there are several socio-economic classes. The worst off class is the class, described above, of those who suffer from painful and incurable diseases or handicaps. Let us numerically indicate the net distribution of benefits and burdens to each class, thus:

S1

Upper Class:	+500
Upper Middle Class:	+300
Middle Class:	+100
Lower Middle Class:	+50
Lower Class:	-50
Worst Off Class:	-500

S2

Upper Class:	-5
Upper Middle Class:	-6
Middle Class:	-7
Lower Middle Class:	-8
Lower Class:	-9
Worst Off Class:	-499

Campbell's objection is, in effect, that the Difference Principle forces us to say that S2 is more just than S1. This is because the worst off class in S2 is better off than the worst off class in S1. Apparently, Campbell's intuition is that this is wrong. S1 is not necessarily less just than S2. Indeed, if the distribution in S2 arises within an institutional framework that imposes severe taxes on the other classes, S2 may be less just than S1.

Campbell's point can now be turned into an objection to the Rawlsian theory of desert. The objection is this. Presumably, an institutional rule operating in S2 is that those not in the worst off group must contribute huge sums of their own money in order to achieve a marginal improvement in the lot of the worst off class. Since this rule seems required by the Difference Principle, it must be a just rule by Rawls's lights. These points, coupled with T4, entail that those who are not in the worst off group *deserve* to be aggressively and oppressively taxed!

As I see it, this is a morally repugnant result. Other things being equal, no one *deserves* to suffer such a system of taxation. Of course it is unfortunate that there are people whose lives will be somewhat more miserable without such a system. It might even be morally

right for people to voluntarily sacrifice large portions of their income for the sake of minimal improvements in the lives of the worst off. But no one deserves to have his or her own standard of living drastically worsened for the sake of such minimal improvements in the lives of others. Therefore, T4 is defective. In light of this defect and the others already discussed, I conclude that the rawlsian theory of desert should be rejected.¹⁶

A rule-utilitarian approach

This is not the end of institutional theories of desert. There are many possible moral constraints that an institutional theorist might place on the rules of supposedly desert-conferring institutions; therefore, there are many possible versions of the institutional theory of desert. Justice is only one such constraint. Indeed, since there are different and competing conceptions of justice, there is (at least in logical space) a collection of "justicized" institutional theories of desert. A thorough refutation of the institutional approach, then, would seem to require the refutation of each theory. Needless to say, I will not attempt that herculean task here.

What I propose to do instead is this. One moral constraint that an institutional theorist of desert might place on the rules of desert-conferring institutions is that those rules *maximize utility*. Something like this "rule-utilitarian" theory of desert is suggested by Richard Brandt.¹⁷ I propose to examine Brandt's theory in some detail.

In contemporary philosophical usage, the term 'utilitarianism' is used to name any one of several distinct theories. It is customary to divide these theories into two sorts: act-utilitarianism and rule-utilitarianism. If anything unites act-utilitarianisms, it is roughly the thesis that the moral status of an action - its rightness or its wrongness - is determined by the consequences that would obtain if that action were performed.¹⁸ If anything unites rule-utilitarianisms, it is roughly the thesis that the moral status of an action is determined by the consequences that would obtain if there were a rule permitting that action. Although act-utilitarian theories of desert have been suggested¹⁹, our interest is in a rule-utilitarian theory of desert. This is because an institutional theory of desert purports to explain desert in terms of the rules of institutions, not in terms of individual actions or their consequences.

Perhaps the most influential and well-developed contemporary version of rule-utilitarianism is Richard Brandt's "Ideal Moral Code" theory.²⁰ Brandt states this theory as follows:

IMC An act is right if and only if it would not be prohibited by the moral code ideal for the society; and an agent is morally blameworthy (praiseworthy) for an act if, and to the degree that, the moral code ideal in that society would condemn (praise) him for it.²¹

It is somewhat unusual to construe utilitarianism as Brandt has done: namely, as a theory of not only the moral status of actions, but also the moral blameworthiness or praiseworthiness of agents. This,

however, is why Brandt's rule-utilitarianism is of interest here. For what else is it to be *blameworthy* or *praiseworthy*, except to be *deserving* of blame or praise? So, IMC seems to include a theory of desert (of praise and blame at least).

IMC contains or presupposes several technical concepts. One is the concept of a *moral code*. A moral code is a set of moral rules. Examples of moral rules include: "Keep your promises," "Honor your father and mother," "Help others," "Avoid injuring others," "Improve yourself," "Bring about just distributions," and so on.²² Presumably, this set should be consistent: it should not contain rules that contradict each other, or rules that direct agents to perform incompatible actions. It should also be complete: the rules taken together should cover every situation that is likely to arise in the relevant society.

A second technical notion is that of a moral code's being *ideal for a society*. Brandt explains that a moral code is ideal for a society "...if and only if its currency would produce at least as much good per person as the currency of any other moral code."²³ That is, a moral code is ideal for a society if and only if no other moral code would, if current in that society, produce a greater net good per person.

A moral code is *current* in a society, on Brandt's view, just in case two conditions are satisfied:

First, a high proportion of the adults in the society must subscribe to the moral principles, or have the moral opinions, constitutive of the code....[P]robably it would not be wrong to require at least 90 percent agreement....Second, we want to say that certain principles

A, B, etc. belong to the moral code of a society only if they are recognized as such. That is, it must be that a large proportion of the adults of the society would respond correctly if asked, with respect to A and B, whether most members of the society subscribed to them.²⁴

That is, a moral code is current in a society just in case (i) at least 90 percent of the adults in that society subscribe to it; and (ii) most adult members of that society believe that most members of that society subscribe to that code.

An agent *subscribes* to a moral code if the following conditions are met.²⁵ First, the agent is generally motivated to perform actions that are permitted by the code, and to avoid performing actions forbidden by it. Second, the agent will tend to feel guilty or remorseful if she thinks that she has performed some action forbidden by the code - unless she has some excuse for performing it. Third, the agent will tend to think less of those who perform actions forbidden by the code. Finally, the agent will think that these dispositions, feelings, actions, and attitudes of hers are justified.

It is important to understand that IMC does not entail that if a moral code ideal for some society is not actually current in that society, then actions performed in that society fail to have any moral status. This is because on Brandt's view, the moral rightness of an action performed in a given society is determined by whether or not that action *would* be permitted by the moral code ideal for that society if it *were* current in that society. Since IMC is also a theory of desert, it therefore allows that there can be desert (at least of praise and blame)

in the absence of social institutions and their rules.

Is IMC a plausible theory of desert of blame and praise?

Answering this question may be easier if that theory is considered separately from Brandt's theory of moral rightness. Recall that the theory of desert of blame and praise, as stated by Brandt, is this:

An agent is morally blameworthy (praiseworthy) for an act if, and to the degree that, the moral code ideal in that society would condemn (praise) him for it.

This theory is incomplete. It states only a sufficient condition on the moral blameworthiness or praiseworthiness of agents. A more complete theory would state sufficient and necessary conditions, thus:

IMC* An agent is morally blameworthy (praiseworthy) for an act if and only if, and to the degree that, the moral code ideal in that society would condemn (praise) him for it.

I presume that Brandt would accept IMC*. At any rate, there is no indication that he would not.

Crucial to IMC* is the notion of a moral code *condemning* (or *praising*) an agent. Brandt does not explain this notion, but it is natural to construe it as follows:

C A moral code condemns an agent for performing a type of action just in case a rule of that code forbids the performance of actions of that type.

So, for example, if one of the rules of the moral code ideal for a given society is that lying is not permitted, then agents in that society who

lie thereby come to be blameworthy - that is, deserving of blame.

One problem with this suggestion is that the analogous suggestion for a moral code's *praising* an agent is implausible. To see this, suppose a moral code praises an agent for performing a type of action just in case a rule of that code permits the performance of actions of that type. Now suppose, as seems plausible, that one of the rules of a moral code ideal for a given society is that it is permissible to tie one's right shoe before tying one's left shoe. If the current suggestion were correct, then agents in that society who tie their right shoe before tying their left shoe would thereby come to be praiseworthy - that is, deserving of praise. This seems wrong. Ordinarily, a normal adult person does not deserve praise for tying his right shoe before his left shoe. Furthermore, it may be that another rule in the moral code ideal for that society is that it is permissible to tie one's *left* shoe before tying one's right shoe. (That is, the moral code ideal for that society permits one to tie either shoe first.) If so, then the current proposal generates the result that people in that society would deserve praise every time they lace up their shoes! Similar arguments would show that praise is deserved for performing any sort of trivial act. This seems wrong.²⁶

Another notion crucial to IMC* is *degree* of desert of blame and praise. There can be no doubt that desert of these things comes in degrees. I can deserve more blame than you deserve, or less praise than you deserve. Brandt tries to account for these degrees of desert by building into IMC* "degrees" of condemnation (or praise) by the moral

code ideal for a society. Brandt does not explain what it could mean to speak of such "degrees," but one possibility is this. Let us begin by focusing on desert of blame. Suppose that punishments are attached to some of the rules of the moral code ideal for a given society, so that those who violate those rules are punished. This allows us to say that degrees of desert of blame are just the degrees of severity of the punishments attached to these rules. So, to say that a rule severely blames an agent for performing a type of act is to say that there is a severe punishment for actions of that type; to say that a rule mildly blames an agent for performing a type of act is to say that there is a mild punishment for committing actions of this type. In this way, IMC* may seem to accommodate degrees of desert of blame: degrees of desert of blame are degrees of severity of punishment.

The analogous proposal for degrees of desert of praise is this. Let us suppose that rewards are attached to some of the rules of the moral code ideal for a given society, so that those who obey them are rewarded. This allows us to identify degrees of desert of praise with the values of those rewards. (I leave aside the question of what *sort* of value this might be.) So, on this suggestion, to say that a rule highly praises an agent for performing a type of act is to say that there is a highly valuable reward for performing actions of that type; to say that a rule lowly praises an agent for performing a type of act is to say that there is a minimally valuable reward for performing actions of that type. In this way, IMC* may seem to accommodate degrees

of desert of praise: degrees of desert of praise are degrees of value of reward.

These attempts to account for degrees of desert of blame and praise reveal the need for a more general theory of desert. To see this, suppose that the moral code ideal for a society contains a rule that prohibits lying. Suppose further that there is a punishment attached to this rule, so that liars are punished. Now suppose someone in that society tells a lie. Would *any* punishment be appropriate? The answer is clearly "No." As I see it, the appropriate punishment is the *deserved* punishment. So, for example, if the agent's lie was trivial, then the agent deserves mild punishment. If the agent's lie was seriously damaging, then the agent deserves severe punishment.

What is it for an agent to deserve punishment? IMC* does not provide an answer to this question. This is because IMC* is not a theory of desert of punishment (or reward). It is a theory of desert of blame and praise. Thus, the plausibility of IMC* appears to hinge on the plausibility of some theory of desert of punishment and reward. Indeed, I suspect that the plausibility of *that* theory would itself depend on the plausibility of a general theory of desert. What might a general theory of desert look like, on Brandt's view?

Brandt does not propose a general theory of desert. However, I think that if he were to propose one, it might look something like this:

BTD S deserves x in virtue of F if and only if S has F, and a rule in a moral code ideal for S's society is that those who have F shall receive x.

BTD treats desert as entitlement according to rules that are part of a moral code ideal for the relevant society. For example, S deserves punishment to some degree of severity in virtue of lying if and only if S lies and is thereby "entitled" to a punishment of that degree of severity by a rule in a moral code ideal for S's society . To take a different example, S deserves a reward for capturing a wanted felon if and only if S captures a wanted felon and is thereby entitled to a reward by a rule in a moral code ideal for S's society.

I believe that BTD is false. It is possible to be entitled to something by a rule within a moral code ideal for one's society, yet fail to deserve it. To see this, consider the moral rule that elderly people shall receive care and assistance from their children. It seems likely that this rule will be part of a moral code ideal for many societies, including our own. BTD, together with this rule, entail that elderly people in that society deserve care and assistance from their children. Now suppose that I am an elderly person living in that society. Suppose further that I have been an abusive, unloving, and irresponsible father to my children. Suppose, finally, that I am now aged, feeble, and in need of medical care and financial assistance. In these circumstances, it would be implausible to suppose that I now *deserve* care and assistance from my children. If I deserve care and assistance at all, I may deserve it from the state, or from my former employer, but certainly not from the children to whom I gave nothing but grief. This example shows that BTD is defective, provided that the

aforementioned rule is indeed part of a moral code ideal for this society.

Consider next the moral rule that those to whom promises have been made shall receive what was promised. It seems likely that this rule will be part of a moral code ideal for many societies, including our own. Now suppose that you have promised to loan me your car. Suppose further that if I receive it, I will use it to run down my enemies. *BTD*, together with this rule, entail that I *deserve* the loan of your car. This is absurd. Whatever *prima facie* claim I had to the car in virtue of your promise is completely mitigated by the fact that I will use it to run people over. Thus, if the rule regarding promises is indeed among the rules in a moral code ideal for that society, then there is reason to reject *BTD*.

An advocate of *BTD* might reply to these arguments by claiming that the aforementioned rules would never be among the rules of a moral code ideal for a society. However, such a claim would be implausible. If those rules are moral rules at all, then surely there is a moral code ideal for some society that contains one or another of them.

This suggests that a supporter of *BTD* might argue that these rules are not *moral* rules at all, and hence not part of any moral code. But this, too, is implausible. If "Keep your promises" is a moral rule, then why not "Those to whom promises have been made shall receive what they have been promised?" If "Honor your elders" is a moral rule, then why not "The elderly shall receive care and assistance from their children?" After all, it seems as though one would be as effective as

the other if given as moral advice. I conclude that there is no basis for denying these rules the status of moral rules.

I further conclude that Brandt's rule-utilitarian theory of desert of praise and blame, and the general theory of desert suggested by it, are not acceptable theories of desert. If there is an acceptable rule-utilitarian analysis of desert, Brandt has not found it.

Conclusion

In spite of the apparent failure of institutional theories of desert, there is something plausible about them. As I see it, their plausibility derives from the following fact: Many objects of desert, and many bases for deserving them, are institutional artifacts. Consider first some typical objects of desert, or things deserved: grades, championships, financial compensation, promotions, wages, and so on. Each of these is an artifact of a more or less identifiable institution. Perhaps it is reflection on these objects of desert that has led some philosophers to suppose that *desert itself* is an artifact of social institutions. Next, consider some bases for desert: excelling on a physics exam, winning the Boston Marathon, closing the big deal with Microsoft. None of these could exist without the existence of a social institution and its rules. Perhaps it is reflection on these bases for desert that has led some philosophers to conclude that *desert itself* is an artifact of social institutions.

However, reflection on other objects and bases of desert suggests that desert itself is not an artifact of social institutions. For

example, consider the claim that Jack deserves punishment in virtue of killing an innocent person, or the claim that Jill deserves respect in virtue of being a human being, or the claim that Joe deserves gratitude from his parents in virtue of his efforts to take care of them in their old age. These and many other cases of desert seem not to depend on the existence of institutions. Indeed, some of these cases suggest that a desire that people get what they deserve might prompt people to create institutions - the institution of punishment, for example. It may have been reflection on these sorts of cases that led Feinberg, for one, to declare that desert "...is not logically tied to institutions, practices, and rules."²⁷

How can a theorist of desert account for the dependence of some desert objects and desert bases on social institutions, on the one hand, and the independence of some desert objects and desert bases from social institutions, on the other? Is a compromise between institutional and preinstitutional theories of desert possible?

One possible compromise is due to N. Scott Arnold. In the course of a discussion of desert of profits, Arnold made the following distinction:

...there are two kinds of desert claims - institutional and noninstitutional. The latter directly reflect general moral assessments of a person's character. Thus it is in this sense that good people deserve to be happy...and wicked people deserve to be miserable. On the other hand, institutional deserts are logically connected to particular social institutions. The basal reasons...that ground [institutional] desert claims are determined by the nature of the institution and need not have any independent significance. This distinction between institutional and noninstitutional deserts comes out quite clearly in the case

of contests such as sporting events. The naturally talented athlete who demonstrates the greatest proficiency deserves to win, even if he is an unsavory character and even if his untalented opponent trains harder.²⁸

As I understand it, the compromise suggested by these remarks is that there are two concepts, each meriting the name 'desert'. One is the concept of institutional desert; the other is the concept of noninstitutional desert. If this suggestion is correct, the conflict between institutional theorists of desert, on the one hand, and preinstitutional theorists of desert, on the other, is merely apparent. Rather than contradicting one another, advocates of these theories are merely talking past each other.

For two reasons, I do not favor this compromise. One is that, as I hope has been shown, institutional theories of desert are defective. If they are theories of anything, they are not theories of desert. It is misleading, then, to label them theories of *desert* - even "institutional" theories of desert. Another is that there seems to me to be a better compromise, one that does not fracture the concept of desert.

The compromise is this. Common to the institutional theories of desert considered thus far is the idea that desert is somehow determined by *rules*. More specifically, the idea is that to deserve something is to be entitled to it according to some sort of rule. My suggestion is that this idea - rather, what is plausible in this idea - can be captured by accepting the following proposal: Entitlement is a basis

for desert, but not the whole of desert. Although I explain this proposal in detail in Chapter 7, a few remarks here may be helpful.

My view is that there are many bases for desert. I believe these bases include effort, achievement, moral worth, being a person, need, and others. Many of these bases - need and effort, for example - are not institutional artifacts. But on my view, another desert base is *entitlement*. As noted, I defend this claim in Chapter 7. Entitlements are generated by institutional rules. Hence, entitlement is an institutional artifact. If this is right, then a *basis* for desert, but not desert itself, is purely institutional.

This is a compromise position. It attempts to capture not only what is plausible in institutional accounts of desert (namely, that entitlement has a deep relationship to desert), but also what is plausible in preinstitutional theories of desert (namely, that desert can arise in the absence of social institutions and their rules). Of course, the tenability of this compromise can be assessed only in the light of a complete theory of desert that includes it. I present such a theory in Chapter 7.

Notes

1. I draw these views from surveys of students in my ethics classes, and from my memory of the many opinions regarding Fay's treatment that were expressed in the editorial pages of newspapers.
2. I take the phrase 'in the abstract' from Ronald Dworkin, who writes:

There is no combination of abilities and skills and traits that constitutes 'merit' in the abstract; if quick hands

count as 'merit' in the case of a prospective surgeon, this is because quick hands will enable him to serve the public better and for no other reason. If a black skin will, as a matter of regrettable fact, enable another doctor to do a different medical job better, then that black skin is by the same token 'merit' as well. ("Bakke's Case: Are Quotas Really Unfair," in Dworkin's *A Matter of Principle* [Cambridge, MA: Harvard University Press, 1985], page 299.)

3. See, for example, Joel Feinberg, "Justice and Personal Desert," in Feinberg's *Doing and Deserving* (Princeton, NJ: Princeton University Press), pages 56-58; John Kleinig, "The Concept of Desert," *American Philosophical Quarterly* 8 (January 1971), page 74; David Miller, *Social Justice* (Oxford: Clarendon Press, 1976), pages 84-85.
4. David Cummiskey, "Desert and Entitlement: A Rawlsian Consequentialist Account," *Analysis* 47 (1987), pages 15-19; the cited remark is from page 18.
5. Julian Lamont, "The Concept of Desert in Distributive Justice," *The Philosophical Quarterly* 44 (1994), pages 45-64; the cited remark is found on page 51.
6. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), pages 101-105 and 310-315.
7. Rawls, *A Theory of Justice*, page 103.
8. Rawls, *A Theory of Justice*, page 313.
9. Samuel Scheffler, "Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics", *Philosophy and Public Affairs* 21 (Fall 1992), pages 299-323; the cited remark is from page 306.
10. George Sher, *Desert* (Princeton, NJ: Princeton University Press, 1987), page 14.
11. The condition that S *participate* in I must be dropped from this theory, since no one at the actual world can, I presume, "participate" in otherworldly institutions.
12. Rawls, *A Theory of Justice*, pages 60ff.
13. Rawls, *A Theory of Justice*, page 79.
14. Tom Campbell, *Justice* (Atlantic Highlands, NJ: Humanities Press International, 1988), page 92.
15. I owe this way of putting the objection to Fred Feldman.

16. I do not pretend that Campbell's argument provides a conclusive refutation of the Rawlsian theory of desert. However, a serious defense of that theory against the present objection would take us too deeply into Rawls's theory of justice.

17. Richard Brandt, "Some Merits of One Form of Rule-Utilitarianism," in Brandt's *Morality, Utilitarianism, and Rights* (Cambridge: Cambridge University Press, 1992), pages 111-136. It may be important to note that Brandt might find it misleading to characterize his theory of desert as an "institutional" theory. The reason is this. As I note in the text, Brandt explains desert (at least of praise and blame) by appealing to his notion of an "ideal moral code." However, on Brandt's view, such a code is not an institution, nor are the rules that comprise it necessarily institutional rules. As Brandt says, "...the moral code of a society cannot itself be construed as an institution, nor its rules as rules of an institution" (122). Brandt's reasons for saying this are complex (pages 122-124). Fortunately, they are not relevant here. For Brandt himself concedes that:

...if one thinks it helpful to speak of a promise as an institution or a practice...there is no harm in this. The similarities and dissimilarities are what they are, and as long as these are understood it seems to make little difference what we say. (Page 124.)

18. That said, not all utilitarians state their views in terms of actions. See, for example, Fred Feldman's *Doing the Best We Can* (Dordrecht: D. Reidel Publishing Company, 1986), especially pages 4-25.

19. Henry Sidgwick described (but did not endorse) a utilitarian theory of desert (or desert of reward):

...according to which, when a man is said to deserve reward for any services to society, the meaning is that it is expedient to reward him, in order that he and others may be induced to render similar services by the expectation of similar rewards. (*The Methods of Ethics*, 7th ed., [Indianapolis, IN: Hackett Publishing Company, 1981], page 284.)

Utilitarian theories of desert are discussed by David Miller, *Social Justice*, pages 93-95; and George Sher, *Desert*, pages 10-17.

20. I say that Brandt's is the most influential *contemporary* version of rule-utilitarianism, since there are passages in Chapter 5 of Mill's influential *Utilitarianism* that suggest his commitment to a form of rule-utilitarianism. Brandt himself reads Mill in this way, and claims even that Mill's version of utilitarianism is "...very substantially the Ideal Moral Code theory" (p. 129). But the most famous portrayal of Mill as a rule-utilitarian is J. O. Urmson's "The Interpretation of the

Moral Philosophy of J. S. Mill," in Philippa Foot, ed., *Theories of Ethics* (Oxford: Oxford University Press, 1967), pages 128-136.

21. Brandt, "Some Merits of One Form of Rule-Utilitarianism," pages 119-120.

22. Brandt, "Some Merits of One Form of Rule-Utilitarianism," page 131.

23. Brandt, "Some Merits of One Form of Rule-Utilitarianism," pages 124-125. Nothing in what follows depends on understanding Brandt's conception of the good. As it happens, Brandt believes that the good is that which is rationally desired. See his *A Theory of the Good and the Right* (Oxford: Clarendon Press, 1979).

24. Brandt, "Some Merits of One Form of Rule-Utilitarianism," page 120.

25. Brandt, "Some Merits of One Form of Rule-Utilitarianism," pages 120-121.

26. Of course this does not refute IMC*. It shows that C cannot be the correct understanding of what it is for a rule to condemn an agent. Maybe there is a better way to understand this notion. However, I cannot think of one.

27. Joel Feinberg, "Justice and Personal Desert," page 56.

28. N. Scott Arnold, "Why Profits Are Deserved," *Ethics* 97 (January 1987), pages 387-402; the cited passage is from page 309.

CHAPTER 4
DESERT AND THE EMOTIONS

Introduction

"Emotions occupy a fundamental place in our moral lives." Or so claims Justin Oakley in his recently published book, *Morality and the Emotions*.¹ My view is that desert also occupies a fundamental place in our moral lives. If Oakley and I are right, it would not be surprising if the emotions and desert turned out to be deeply connected.

In fact, there is a tendency among writers on desert to posit a deep connection between desert and the emotions. Joel Feinberg's seminal paper, "Justice and Personal Desert," is an excellent example of this tendency. Therein Feinberg claimed: "If we were all perfect stoics...there would be no use for the concept of desert."² I suspect that behind this assertion is the belief that the basic objects of desert, the things we ultimately deserve, are expressions of emotion. Not just any emotion, but rather a special class of emotions. On Feinberg's view, these include gratitude, appreciation, resentment, remorse, sympathy, and concern. Feinberg calls these emotions the "responsive attitudes":

...responsive attitudes are the basic things persons deserve and... 'modes of treatment' are deserved only in a derivative way, insofar perhaps as they are the natural or conventional means of expressing the morally fitting attitudes. Thus punishment, for example, might be deserved by the criminal

only because it is the customary way of expressing the resentment or reprobation he "has coming."³

Feinberg's idea seems to be that if the "basic things" people deserve are expressions of emotion, then a world of emotionless or "stoic" people would have "no use" for the concept of desert. At any rate, people in that world will never get what they deserve. Toward the end of this chapter, I will return to Feinberg's view of the connection between desert and the so-called "responsive attitudes."

Meanwhile, consider another philosopher who envisages a relationship between desert and the emotions. This is Samuel Scheffler, who has recently argued that our "...reactive attitudes presuppose a preinstitutional notion of desert that is incompatible with liberal principles of justice."⁴ That is, the character of such emotions as indignation, gratitude, and respect suggests (to Scheffler, at any rate) that ordinary folk implicitly believe what some influential contemporary theorists of justice reject: namely, that the notion of desert is conceptually prior to the idea of justice, and that it can be used to judge the justice of institutions and their rules. The details of Scheffler's argument for this claim are not relevant here. The point is simply that Scheffler connects (though in a way different from Feinberg) desert to emotions .

Yet another philosopher who posits a connection between desert and the emotions is David Miller.⁵ Miller's view of this connection is the main topic of this chapter. I choose to examine Miller's theory for two reasons. One is that his proposal is the most detailed of those that

posit a desert-emotion connection. Another is that Miller's theory promises to supply an interesting criterion of desert basehood. This criterion, if correct, could be used (and Miller attempts to use it) to settle long-standing debates over whether desert bases include need, suffering, moral worth, and others. Such a principle is clearly desirable. Thus, Miller's view demands serious attention.

Desert bases and the appraising attitudes

Miller's conception of the link between desert and certain emotions can be introduced in the following way. Desert requires a base. That is, if a person deserves something, then he or she deserves it *for* possessing some property (e.g., having innocently suffered) or performing some action (e.g., committing a crime). As Feinberg insisted, "Desert without a basis is simply not desert."⁵

A related point has been thought to hold for a certain class of emotions: gratitude, resentment, admiration, remorse, sympathy, and others. These emotions (the "reactive attitudes," in Peter Strawson's famous terminology⁶) seem to require a basis. Like desert bases, the bases for these emotions are either properties possessed or actions performed by individuals. So, for example, if I admire you, I admire you *for* something - say, your fine musical talent. If you resent me, you resent me *for* something - say, for some misdeed of mine. Likewise for gratitude, remorse, sympathy, and many other emotions. These emotions are different from emotions such as malaise, joy, fear, and anxiety, which seem not to require a basis. It is possible to be

anxious, for example, without being anxious about anything in particular. But it is not possible to be resentful, for example, and not resent someone *for* something in particular.

Now we are in a position to understand Miller's view of the connection between desert and emotion. It is that the bases for reactive attitudes ("appraising attitudes," in Miller's terminology) are also the bases for desert. Miller writes:

To understand the relationship between a desert basis and a judgement of desert, it is helpful to...look at certain attitudes which one person may hold towards another: attitudes such as admiration, approval, and gratitude, for which I shall use the generic term 'appraising attitudes'. It is plain that, like judgements of desert, these appraising attitudes demand a basis, which consists of features of the person (or his conduct) towards whom the attitude is held. If I admire someone, I must admire him *for* something (for his intelligence, or for his skill at playing the violin).....The range of possible desert bases coincides with range of possible bases for appraising attitudes. (Page 89.)

As I understand him, Miller is proposing that whatever is a basis for an appraising attitude is also a basis for desert, and that whatever is a basis for desert is a basis for an appraising attitude. In other words:

MT F is a desert base if and only if F is the basis of an appraising attitude.

MT is plausible. Consider the appraising attitudes of admiration and approval. These attitudes are directed toward people who possess qualities that are desert bases. Examples of these desert bases include

athletic skill, industriousness, and moral excellence. Or consider the appraising attitudes of abhorrence and contempt. These attitudes are often aimed at those who exhibit qualities that are desert bases. Examples of these desert bases include ineptitude, slovenliness, and wickedness. The coincidence of desert bases and appraising attitudes in these and other cases lends some credence to MT.

MT is plausible for other reasons. First, it is inconsistent with the implausible view that there is only one basis for desert. (I called this view "monism" in Chapter 2.) There is surely more than one basis for emotions such as gratitude, resentment, admiration, contempt, and so on; thus, MT implies that there is more than one basis for desert. Second, MT implies that people need not be responsible for bases of desert. This is because at least some appraising attitudes - sympathy, for example - may be appropriately directed at people in virtue of properties for which they are not responsible - for example, innocent suffering. Third, MT implies that desert bases need not be located in the past.⁷ For example, it is possible to be *grateful* to someone not only for what she has done, but also for what she will do; or to detest someone not only because of what he has done, but also for what he will do.⁸ Since the bases for these appraising attitudes are located in the future, MT implies that desert bases can be located in the future. Fourth, MT implies that non-persons can be subjects of desert. A seeing-eye dog, for example, can be the object of admiration or gratitude; therefore, it can be a subject of desert. These implications were endorsed in Chapter 2. If they are correct, MT gains plausibility.

MT captures the essence of Miller's version of the desert-emotion connection. However, as will become apparent in the next section, MT is too crude to serve Miller's purposes. To meet those purposes, MT must be refined. This can be done in the following way. Let us divide appraising attitudes into two sorts: positive and negative. Positive appraising attitudes are "pro" attitudes. They include admiration, respect, gratitude, and so on. Negative appraising attitudes are "con" attitudes. They include contempt, disrespect, resentment, and so on. Presumably, bases for "good desert" or desert of benefit will be bases for positive appraising attitudes; bases for "bad desert" or desert of harm will be bases for negative appraising attitudes. These points allow us to state a clarified version of Miller's version of the desert-emotion connection:

MT* F is a desert base for x if and only if (i) x is a benefit and F is the basis of a positive appraising attitude; or (ii) x is a harm and F is the basis of a negative appraising attitude.⁹

Using the theory

As I noted earlier, one of the striking aspects of Miller's view of the desert-emotion connection is that it provides an interesting criterion for desert basehood. At any rate, this is what Miller believes. He argues against regarding various things as desert bases, and these arguments depend on the truth of (what I have called) MT*.¹⁰ Let us examine these arguments.

Writers on desert disagree about what is and what is not a basis for desert. One disputed desert base is *need*. Some philosophers say that need is a desert base. Feinberg is an example. He writes:

A man with a chronically sick wife or child deserves compensation since through no fault of his own he has greater *need* than others; and the same is true of the man with a large number of dependents.¹¹

Miller disagrees. His view is that need is not a basis for desert. He argues as follows:

What disqualifies needs from being taken as grounds for desert is...that no one wishes to have them, or admires others for having them. (Page 86.)

In this passage, Miller is not being as careful as he should be. He claims to show that need is not "grounds for desert" by showing that need is not a basis for admiration (or, presumably, any other positive appraising attitude). But the most Miller has shown is that need is not grounds for deserving anything *good*. Need, for all that Miller has said, may be a basis for some negative appraising attitude. If so, it could be grounds for desert; that is, it could be a basis for deserving something bad.

Indeed, some needs seem to be bases for negative appraisal. To see this, suppose a profoundly insecure man needs to belittle other people in order to feel happy. This need may be a basis for regarding the man with contempt. Or suppose a fantastically gluttonous man needs to eat five pounds of meat daily in order to maintain his weight. This

need may be a basis for regarding the man with disgust. Or suppose a masochist needs to feel pain in order to retain her sense of self-worth. This need may be a basis for pitying her. These examples suggest that need may be a basis for various negative appraising attitudes. If it is, MT* entails that need is a basis for bad desert.

Consider next Miller's argument against several other purported desert bases:

Needs are not unique in being generally inappropriate as a basis of desert. The same is true of beliefs, or preferences, or interests; we cannot claim that people deserve benefits because of what they believe, and again the reason is that there is nothing in the actual holding of a belief (as opposed to the process of arriving at it) that we can appropriately admire. (Page 86.)

Beliefs, preferences, interests: none, argues Miller, is a base for an appraising attitude. Therefore, none is a basis for desert.

Once again, Miller is not being very careful. What he means to argue is that beliefs, preferences, and interests are not something we "admire;" hence, they are not bases for deserving anything good. Miller has not shown that these things are not bases for negative appraising attitudes; nor, if MT* is assumed, has he proven that they are not bases for desert of something bad.

Indeed, it seems that beliefs, preferences, and interests can be bases for negative appraising attitudes. Suppose, for example, that Jones *believes* one race of human beings is intrinsically inferior to another race. It would be quite natural to regard Jones with contempt in virtue of his believing such a thing. Or suppose Smith *prefers* to

converse with his mouth full of masticated food. Most of us would regard Smith with disgust for this. Or suppose Roberts has an irrational *interest* in some hopeless, doomed project. For this, we might regard him with pity. If contempt, disgust, and pity are negative appraising attitudes, and if MT* is true, then beliefs, preferences, and interests can be bases for bad desert.

But once it is admitted that beliefs (etc.) can be bases for bad desert, it is implausible to deny that they can also be bases for good desert. Indeed, it seems that beliefs can be bases of good desert. Consider this dialogue by William Galston:

A: John deserves to be the leader of our spiritual community.
B: Why?
A: Because of the unusual purity and sincerity of his Christian belief.¹²

I believe that similar examples could be adduced to show that preferences and interests can be bases for good desert.

It is important to see that these criticisms do not impugn MT*. This is because MT*, by itself, entails nothing about whether a particular property is a basis for desert, or a basis for some appraising attitude. To yield such results, MT* must be conjoined with a substantive view about what is and what is not a basis for appraising attitudes, or a substantive view about what is and is not a basis for desert. The upshot is that an advocate of MT* need not accept Miller's arguments that need, beliefs, preferences, desires, and pain are not bases for (good) desert. Those arguments presuppose what an advocate of

MT* can reject: namely, Miller's substantive view that these things are not bases for positive appraising attitudes.

Why Miller's theory is false

Nevertheless, there are two reasons for thinking that MT* is false. One can be brought out by considering Miller's argument against a popular view about why wages are deserved. According to this view, wages are deserved as *compensation* for the suffering one's work involves.¹³ Miller rejects this theory:

Generally, when we think of work as involving human costs...we are thinking of what the person is suffering, not of the good qualities he is displaying. I do not think that these features can serve as a basis for desert....[for] a desert basis consists of personal attributes which are generally held in high regard. Pain cannot therefore be a ground for desert [of wages], though the courage shown in withstanding pain might be. In so far as we consider the costs themselves which are involved in work...our judgements of deserved compensation must be interpreted...not as desert judgements in the true sense, but as judgements about the making good of unwarranted deprivation. (Page 112.)

I understand the argument of this passage as follows. Wages are a benefit. Thus, MT* requires that the basis for deserving them must be the basis of some positive appraising attitude. But suffering is not a basis for any appraising attitude. Therefore, if wages are deserved at all, they are never deserved as compensation for work-related pain or harm.

This argument reveals a defect with MT*. The defect can be brought out by way of a dilemma. Suffering is a basis for some appraising attitude, or not. Suppose that it is not. Then if MT* is

true, suffering is not a basis for desert of any kind. But surely suffering *is* a basis for desert. To see this, suppose an innocent person is mugged. In the course of her attack, she suffers serious injuries. For this she may deserve sympathy, compensation, and medical care. She may also deserve that the mugger be prosecuted to the fullest extent of the law. She deserves all this in virtue of suffering the attack and the injuries. So, suffering is a basis for desert. Assuming that MT* is correct, it follows that suffering *is* the basis for some appraising attitude, positive or negative.¹⁴ Suffering is unlikely to be the basis of a negative appraising attitude. If it were, MT* would entail that suffering is a basis for *bad* desert. That would be implausible. It is more plausible that suffering is a basis for desert of good things (financial compensation, for example). So, suffering must be the basis for some positive appraising attitude. What attitude could this be? Pity and sympathy seem to be the only candidates. Yet these are not really modes of positive appraisal. They are not "pro" attitudes. Indeed, it seems highly counterintuitive that suffering should be the basis of a "pro" attitude of any kind. Thus, if suffering is a basis for deserving good, MT* requires that suffering be the basis of some positive appraising attitude - but there seems to be no positive appraising attitude appropriate to suffering. This reveals a defect with MT*. It is that suffering is basis for desert of good, but there seems to be no basis for positive appraisal that corresponds to it.

The second reason for rejecting MT* can be brought out by recalling a point made by G. E. Moore.¹⁵ Consider the property of *being*

desirable. How does one discover whether something has this property? One answer, which seems to have suggested itself to John Stuart Mill, is that one looks around and sees whether the thing is actually desired.¹⁶ If it is actually desired, then it is desirable; if not, not. Moore's point was that this is not a good test for desirability. For, as Moore maintained, a thing's desirability is not dependent on whether or not it is desired. This is evidenced by the fact that it is possible that people will desire that which is really undesirable. There is no necessary connection, then, between that which in fact desirable, on the one hand, and that which is in fact desired, on the other.

A similar point can be made about bases for appraising attitudes. To see this, suppose that you admire me. It does not follow that I possess any property that makes me worthy of admiration. For it is possible to admire someone for whom contempt would be appropriate. There is no necessary connection between that which is in fact admirable, on the one hand, and that which is in fact admired, on the other.

This fact allows us to ask a general question: Given an appraising attitude, what is an appropriate basis for that attitude? Miller sometimes writes as though the appropriateness of a basis for an appraising attitude is determined by whether or not that attitude is actually directed towards those who exemplify that basis.

Now it is not actually necessary for me, the maker of the judgement [that Smith deserves to win the race], to have this attitude of admiration myself....Still, I live in a community in which most people would take up the relevant appraising attitude toward hard athletic training, and hence

I can give Smith's training as a reason for his desert.
(Page 90.)

...a [good] desert basis consists of personal attributes
which are generally held in high regard. (Page 112.)

These passages suggest the following:

F is a basis for an appraising attitude, A, if
and only if most people adopt A towards those
who have F.

This is an untenable view, for the reason noted above: namely,
that from the fact that most people direct an appraising attitude
towards someone in virtue of possessing some property, it does not
follow that this property really is a basis for that attitude. Besides,
if MT* were construed in accordance with the theory above, then what
counts as a basis for desert would be determined by contingent facts
about what "most people" make the objects of their appraising attitudes.
This would be an implausible account of desert basehood. To see this,
suppose that most people are contemptuous of those who are morally
virtuous. Then moral virtue would be the basis for the appraising
attitude of contempt. Since contempt is a negative appraising attitude,
MT* would entail that moral virtue is a basis for deserving harm. This
is an absurd result.

In other places, Miller appears to accept the difference between
being, as a contingent fact, the basis of someone's appraising attitude,
and being an appropriate basis for that attitude. For example:

...we cannot claim that people deserve benefits because of
what they believe, and...the reason is that there is nothing

in the actual holding of a belief...which we can appropriately admire. (Page 86.)

When we make a judgement of desert, we are judging the appropriateness of this particular individual, with his qualities and past behavior, receiving a given benefit or harm - an appropriateness which is made intelligible by considering the appraising attitudes that we may take up towards the person. (Pages 92-93.)

The question is, what does Miller mean by 'appropriate'? A natural answer is this:

A basis for an appraising attitude is an appropriate basis for that attitude if and only if those who exemplify that basis *deserve* to be the object of that attitude.

To see that this is a natural answer to the question, consider a few examples. Take those who possess great musical ability. These people are appropriately admired because, in virtue of their talent, they deserve to be admired. Similarly, those who are morally wicked are appropriately detested because they deserve to be detested. Similarly, those who innocently suffer are appropriately shown sympathy because this is what they deserve; and so on. In general, then, it seems that a basis is appropriate to an attitude just in case those who exemplify that basis deserve to be the object of that attitude.

Miller cannot help himself to this natural understanding of what it is for a property to be an appropriate basis for an appraising attitude. If he did, MT* would amount to this:

F is a desert base for x if and only if (i) x is a benefit and those who exemplify F deserve positive appraisal; or (ii) x is a harm and

those who exemplify F deserve negative appraisal.

This is an explanation of being a desert base in terms of desert. One would have thought that if there were an explanation of desert, it would go in precisely the opposite direction, explaining desert in terms of its bases. Anyway, the main attraction of MT* - namely, its promise as a principle for determining what is and is not a basis for desert - is entirely lost on this current proposal. For if the question is what counts as a desert base, then it is no help to be told, as the theory above tells us, that bases for desert are those things that make people deserving. This is as helpful as saying, for example, that bases for admiration are those things that make people admirable.

Thus, the second defect with MT* is that it may amount to an explanation of desert basehood in terms of bases that are *appropriate* to various emotions, but this notion of appropriateness seems to be nothing more than the concept of desert itself. If so, then MT* is vacuous.

Is there a desert-emotion connection?

The failure of Miller's theory raises the question of whether there is any interesting link between desert and the emotions. In this final section, I briefly consider two further views: Feinberg's and my own.

As noted at the outset, Feinberg's view seems to be that desert and emotions are connected in the following way: Whenever one deserves something, what one deserves is that some emotion be expressed. The

forms of treatment that are in fact received - prizes, grades, punishment, wages, and so on - are, in Feinberg's words, "deserved only in a derivative way, insofar perhaps as they are the natural or conventional means of expressing the morally fitting attitudes." So, for example, if you deserve a prize, then you deserve that admiration be expressed. If you deserve a good grade, you deserve that approval be expressed. If you deserve punishment, then you deserve that resentment be expressed. If you deserve a wage, then you deserve that gratitude be expressed; and so on.

Note that unlike MT*, Feinberg's view is not really a substantive theory of desert basehood. It merely asserts an interesting connection between objects of desert and the emotions. The connection is this: Whenever a form of treatment is deserved, this treatment is really just the expression of some emotion that deserves to be expressed.

A bit of reflection, however, casts doubt on Feinberg's view. Suppose, as seems plausible, that every newborn child deserves to live a relatively long life. (This is one reason why it is especially tragic when young people die: they have been robbed of their "fair share" of life.) We may *hope* that each child gets the share of life that it deserves. We may be *happy* if it does, or *unhappy* if it does not. But it is clear that what the child deserves - namely, a relatively long life - is not that some emotion be expressed. Or, taking a different example, suppose a person has suffered a long stretch of misfortune. Other things being equal, this person now deserves some good luck. My may hope that this happens, and be sad if it does not. But what the

person deserves - namely, a bit of good luck - is not that some emotion be expressed. I think these examples show that Feinberg's view of the desert-emotion connection is false.

Despite my rejections of Miller's and Feinberg's views, I do accept that there is an interesting desert-emotion connection. My version of it is simple: Some emotions are desert bases. My reason for saying this is based on two things: the view that moral virtue is a basis for desert, and the view that moral virtue has something to do with the emotions.

Moral virtue has traditionally been regarded as a basis for desert. The idea is that those who are virtuous deserve happiness. Those who are wicked deserve to fail to be happy. But as Aristotle argued in the *Nicomachean Ethics*, a person is virtuous not merely for performing the right sorts of actions in the right sorts of circumstances, but also for feeling the appropriate emotions to the appropriate degree.¹⁷ If this is correct, as I believe it is, then emotions are a constituent of a basis for desert.

Feinberg said "If we were all perfect stoics...there would be no use for the concept of desert." The truth, I believe, is rather that if we were all perfect stoics, then there would be no use for the venerable notion - a "law of justice," in Leibniz's opinion - that the virtuous deserve happiness, and the wicked do not.¹⁸ For if Aristotle is right about emotions and virtue, then emotionless people would lack virtue. Hence, they would lack an important basis for desert. That, so far as I can see, is all there is to the elusive desert-emotion connection.

Notes

1. Justin Oakley, *Morality and the Emotions* (London: Routledge, 1993), page 38.
2. Joel Feinberg, "Justice and Personal Desert," in Feinberg's *Doing and Deserving* (Princeton, NJ: Princeton University Press, 1970), page 61.
3. Feinberg, "Justice and Personal Desert," page 82.
4. Samuel Scheffler, "Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics," *Philosophy and Public Affairs* 21 (Fall 1992), pages 299-323; the cited remark is from page 319.
5. David Miller, *Social Justice* (Oxford: Clarendon Press, 1976). Page references to this book are contained in the body of the text.
5. Feinberg, "Justice and Personal Desert," page 58.
6. Peter Strawson, "Freedom and Resentment," in Gary Watson, ed., *Free Will* (Oxford: Oxford University Press, 1981), pages 59-95.
7. Miller does not realize that this is an implication of his view. For he claims that "Desert judgements are justified on the basis of *past* and *present* facts about individuals, never on the basis of states of affairs to be created in the future." (Page 93.)
8. For more examples like this, see Fred Feldman, "Desert: Reconsideration of Some Received Wisdom," *Mind* 104 (January 1995), page 66 (note 6).
9. One might want to add a third clause to the effect that x is neutral and F is the basis of a neutral appraising attitude.
10. Note that if MT* is true, it can be used not only to rule out various properties as bases for desert, but also to justify our beliefs about what *are* desert bases. To see this, consider moral virtue. An old idea is that virtue is a basis for desert. Those who are morally virtuous are said to deserve happiness; those who are morally wicked are said to deserve unhappiness (or at least not happiness). On Miller's view, this old idea is correct. After all, moral virtue is the basis of an appraising attitude: namely, admiration. So moral virtue is a basis for desert. Moral wickedness is also the basis of a an appraising attitude (e.g, aversion); hence it too is a basis for desert.
11. Feinberg, "Justice and Personal Desert," page 93.

12. William Galston, *Justice and the Human Good* (Chicago, IL: University of Chicago Press, 1980), page 173.
13. I discuss this theory in Chapter 6, "Desert and Wages."
14. Or perhaps some neutral appraising attitude - but what could that be?
15. G. E. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1978), page 67.
16. John Stuart Mill, *Utilitarianism* (Buffalo, NY: Prometheus Books, 1987), page 50:

The only proof capable of being given that an object is visible, is that people actually see it. The only proof that a sound is audible, is that people hear it: and so of the other sources of our experience. In like manner, I apprehend, the sole evidence it is possible to produce that anything is desirable, is that people do actually desire it.

17. Aristotle, *Nicomachean Ethics*, J. A. K. Thomson, trans., (Harmondsworth: Penguin Books, 1988), pages 91-110.
18. The reference to this can be found in John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), page 310.

CHAPTER 5
JUSTIFYING DESERT-CLAIMS

Introduction

Hard workers deserve success. Wrongdoers deserve punishment. Victims of negligence deserve compensation. The best qualified applicant deserves the job. The most able athletes deserve victory. Conscientious students deserve good grades. The virtuous deserve happiness.

Many people would accept these platitudes without thinking twice. If pressed to justify them, however, these people might be nonplussed. They might (after recuperating) protest that these and kindred "desert-claims" are so obviously true that there is no way, and no need, to justify them.

For a philosopher, this response might seem unsatisfactory. As David Lewis eloquently put it:

It is the profession of philosophers to question platitudes that others accept without thinking twice. A dangerous profession, since philosophers are more easily discredited than platitudes, but a useful one. For when a good philosopher challenges a platitude, it usually turns out that the platitude was essentially right; but the philosopher has noticed trouble that one who did not think twice could not have met. In the end the challenge is answered and the platitude survives, more often than not. But the philosopher has done the adherents of the platitude a service: he has made them think twice.¹

George Sher has provided us this service with respect to the platitudes about desert. Indeed, his book *Desert* is (as far as I know) the only attempt at a full-scale justification of desert-claims available in print.² If his project succeeds, we will have reasons to believe our platitudinous desert-claims. We will also gain the intellectual satisfaction of knowing that our beliefs about desert are linked to other, more fundamental beliefs, and are not simply "adrift" in conceptual space. Even better, perhaps, we will have settled debates about what is and what is not a basis for desert of various things. If, on the other hand, Sher's justificatory project fails, no harm is done. Thus, there are good reasons to undertake it, and no good reason not to.

A summary of Sher's project

Before proceeding, a brief summary of Sher's project may be helpful. Sher writes: "...one of my central aims is to display the underlying justification of desert-claims" (xi). In one place, Sher says desert-claims are "...claims that persons deserve things" (x).³ He offers a list of fifteen examples:

1. Jones deserves his success; he's worked hard for it.
2. Smith deserved more success than he had; he gave it his all.
3. Walters deserves the job; he's the best-qualified applicant.
4. Wilson deserved to be disqualified; he knew the deadline for applications was March 1.
5. Jackson deserves more than minimum wage; his job is important and he does it well.
6. Baker deserves to win; he's played superbly.
7. Miss Vermont deserves to win; she's the prettiest entrant.

8. Anderson deserves his twenty-year sentence; he planned the murder.
9. Brown may have known that he wouldn't be caught, but he still deserves to be punished.
10. Winters deserves some compensation; he's suffered constant pain since the shooting.
11. Lee deserves a reward; he risked his life.
12. Benson deserves some good luck; he's a fine person.
13. Gordon deserves some good luck; he's had only bad.
14. McArthur deserves a hearing; he's an expert on the subject.
15. Cleveland deserves better publicity; it's an interesting city. (Pages 6-7.)

According to Sher, these and all other desert-claims have (at least implicitly) the form 'M deserves X for A'.⁴ M is the object of desert, X is the thing deserved, and A is the reason for M's deserving X - or what Sher, following Joel Feinberg, calls a "desert basis" (7).

Actually, Sher is not interested in justifying desert-claims like 1-15, at least not directly. After all, one might "justify" any one of desert-claims 1-15 by appealing to one or more of the platitudes about desert. For example:

Hard workers deserve to succeed.
Jones is a hard worker.
Therefore, Jones deserves to succeed.

This argument is a "justification" of the particular desert-claim that Jones deserves success. But it is not very deep, because the platitude that hard workers deserve to succeed has been left unjustified. Sher wants to provide deep justifications of particular desert-claims, such as 1-15 above, by justifying more general desert-claims, such as the claim that hard workers deserve to succeed.

It will be helpful to have a list of the general desert-claims that Sher attempts to justify⁵:

- C1. People deserve to experience the expected consequences of their free actions.
- C2. People deserve what they have diligently tried to achieve.
- C3. People deserve punishment for their wrongful acts.
- C4. People deserve compensation for the wrongful harm they suffer.
- C5. People deserve wages for the work they do.
- C6. People deserve prizes/good grades for performing well according to the relevant rules.
- C7. The best-qualified applicant deserves the job.
- C8. People who perform virtuous acts deserve to be rewarded.
- C9. Virtuous people deserve happiness.

How does Sher justify these desert-claims? In theory, Sher does not commit himself to any particular method of justification:

...I accept, and find liberating, a metaethic that holds that there are no a priori limits to what counts as an acceptable philosophical account. What will turn out to be intellectually satisfying often cannot be known in advance. (Page xii.)

But in practice, Sher's justifications are naturally interpreted as arguments intended to entail a general desert-claim. At any rate, that is how I will interpret them.

Sher's justifications, whatever their nature, have something in common: each involves an operative principle that is moral-normative or axiological.⁶ It will help to have a list of the principles to which Sher appeals in his justifications of C1-C8⁷:

- P1. Freedom is valuable.
- P2. Persons are valuable.

- P3. For every good G, every person M, and every period of time P, if M has less (more) of G than he should during P, then M should have correspondingly more (less) of G or some related good than he otherwise should during some later period P'.
- P4. Conventions for evaluating performance ought to be honored.
- P5. Persons should be treated as rational agents.
- P6. Gratitude is owed to those who make sacrifices to benefit others.
- P7. The morally virtuous have greater moral worth than those who are not morally virtuous.

The moral-normative principles make use of the concepts *ought* or *should*; the axiological principles make use of the concepts *value* or *worth*. But whatever their classification⁸, Sher appears to believe that P1 is crucial to the justification of C1; P2 to the justification of C2; and so on down the lists. (Sher appeals to P3 to justify desert-claims C3, C4, and C5.) Thus, Sher's justificatory project is intended to be "...an account of the moral underpinnings of desert" (x). One of Sher's fundamental theses, then, is that desert *has* "moral underpinnings" or "normative roots."

Sher's justificatory project is pluralistic: "...desert need not have any single normative basis. Instead, the different classes of desert-claims may owe their justification to irreducibly different principles and values" (xii). Indeed, Sher does not propose a grand ethical principle, or even a set of unified ethical principles, that would justify all or even most interesting desert-claims. He offers instead a plurality of ethical principles to justify an assortment of general desert-claims.

So much by way of summary. Before turning to the details of Sher's justificatory project, I want to briefly discuss another way of looking at it. I have spoken of Sher's project as an attempt to justify certain "platitudes" about desert, or as an attempt to justify general "desert-claims." These desert-claims specify certain *bases* for desert: effort, wrongdoing, suffering, achievement, virtue, and so on. So, one could use those general desert-claims to draw up a list or catalogue of desert bases. Thus, another way to view Sher's project is as an attempt to justify a particular catalogue of desert bases.

I offer this as an alternative way of looking at Sher's project for the following reason. In Chapter 7, where I present my own theory of desert, I attempt to draw up a catalogue of desert bases. One of the claims I make with respect to this catalogue is that it is difficult if not impossible to *justify* it. Although there are, of course, things that we intuitively feel are bases for desert, and things that we intuitively feel are not bases for desert, these intuitions are (as I see it) difficult if not impossible to justify. My view, then, is that if those intuitions are correct, they must be taken as epistemologically basic. By saying that these intuitions are "epistemologically basic," I do not mean that we are not justified in believing them. I do mean that they are incapable of being justified by some more fundamental principle or principles.

This claim - that our intuitions about what is and what is not a basis for desert are, when correct, epistemologically basic - might strike some as outlandish. It strikes me as somewhat outlandish, too.

It is not a claim I prefer to make. It is a claim I feel forced to make, in virtue of failing to find any convincing justification of our considered views about what is and what is not a basis for desert. This is one reason why I dedicate a chapter to Sher's heroic efforts to justify the platitudes about desert: I believe that his attempt fails, and that its failure is evidence for my view (which I adopt tentatively and reluctantly in Chapter 7) that there may be no way to justify those platitudes about desert, no way to justify the correct catalogue of desert bases.

Another reason for dedicating a chapter to Sher's attempt to justify desert-claims is this. Several of Sher's justifications depend on principles that assert connections between desert and other ethical concepts, such as value and moral obligation. A deep and important question is whether there *are* any such connections between desert and those other ethical concepts. I think that there are such connections, and that reflection on Sher's attempts to justify desert-claims reveals at least some of them.

Desert, freedom, and expected consequences

Sher begins Chapter 3 of *Desert* with an observation: "It is widely recognized that free action has some important link to desert" (37). Sher thereby agrees with those writers who assert that freedom and desert are importantly linked. Indeed, Sher's project in this chapter is to explain this supposed "desert-autonomy link" (38).

The link, in Sher's view, is this: free or "autonomous" action is a desert basis (49). But for what? His answer is that the performance of a free action is a basis for deserving its consequences (38); specifically, performing a free action is a basis for deserving its expected consequences (39-40). Sher dubs this the "expected-consequence account" of the supposed link between free action and desert.⁹

Although Sher does not formulate it in this way, I believe the general desert-claim he intends to justify is this:

(C1) People deserve to experience the expected consequences of their free actions.

This general desert-claim is supposed to "capture the essence" of specific desert-claims that Sher does mention:

1. Wilson, who knowingly submitted his application late, deserves to be disqualified.
2. Harris, who didn't bring his raincoat, deserves to get wet.
3. Simmons, who didn't study for his exam, deserves to fail.
4. Jake, who drove his truck out on the thin ice, deserves to have his truck fall through the ice. (Page 41.)

In each claim, someone is said to deserve "...to suffer the predictable consequences of one's earlier carelessness" (41). These are the sorts of cases where some people will say "Serves him right," or "He got what was coming to him."

Sher is interested in justifying desert-claims involving not only an agent's carelessness, but also an agent's resourcefulness:

Just as the man who leaves his umbrella home when it rains deserves to get wet, so too does the man who brings his umbrella deserve to reach his destination dry. More important, we believe that persons who resourcefully seize opportunities deserve the resulting benefits, that persons who carefully make and execute plans deserve success, and that persons who forego immediate benefits in expectation of longer-range gains deserve those gains. (Pages 41-42.)¹⁰

In all these cases, agents are said to deserve the expected consequences of their free choices - regardless of whether the agent's choice was careless or resourceful. Hence, what Sher seems to be assuming is that the real basis for desert in these cases cannot be the carelessness or resourcefulness of the agent, but rather the common element in each case: namely, the agent's free or "autonomous" choice.

Sher's attempted justification of C1 can be drawn from the following passage:

Few would deny that person ought to be able to choose and act freely, and indeed that their doing so is of paramount importance....[But] any value that attaches to an autonomous act might carry over to that act's consequences. Because (at least some of) those consequences are part of what an agent chooses, it would be quite arbitrary to say that it is good that the agent perform the act he has chosen, but not good that he enjoy or suffer that act's predictable consequences. Since choice encompasses both acts and consequences, any value that attaches to the implementation of choice must belong equally to both....In light of this, one natural reason for saying that free agents ought [i.e., deserve] to enjoy or suffer specific consequences is that those consequences, where predictable, have acquired value from the fact that they are part of what the agent has chosen....In that case, what justifies our desert-claim will be the value of the retrospective aspect of freedom itself. (Pages 39-40.)¹¹

Here is how I understand the argument of this passage:

1. Freedom is valuable (P1).
2. If 1, then the exercise of freedom (that is, the performance of free actions) is valuable.
3. If the exercise of freedom is valuable, then experiencing the expected consequence of one's free action is valuable.
4. If experiencing the expected consequence of one's free action is valuable, then one deserves to experience the expected consequence of one's free action.
5. Therefore, one deserves to experience the expected consequence of one's free action (C1).

Sher summarizes the crux of the argument: "...it is *generally sufficient* for an outcome's having value, and the agent's consequently deserving it, that that outcome have been predictable from the agent's earlier activities" (67, my emphasis).

Sher does not feel it necessary to argue for P1, the first premise that freedom is valuable. He merely says this:

Few would deny that persons ought to be able to choose and act freely, and indeed that their doing so is of paramount importance. These claims, whatever their exact interpretation, are central to our shared moral scheme.
(Page 39.)

The question of whether freedom is good cannot, however, be treated so lightly. For one thing, the answer to that question depends on what is meant by 'good'. Sher is right that few would deny that the exercise of freedom can be *extrinsically* good. But this is irrelevant to Sher's argument. Sher wants to show that if freedom is good, then so is its exercise. From the fact that freedom is extrinsically good, it does not follow that the exercise of freedom (the performance of a free act) is extrinsically good. If the performance of a free act causes the

agent harm, then that particular exercise of freedom is extrinsically bad.

Sher must mean, then, that the exercise of freedom is intrinsically good. Is it? We might try to answer this by imagining two extremely similar worlds. The only difference between them is that people have freedom in one world but not in the other. If the free world is intrinsically better than the unfree world, then freedom is intrinsically good.

I have no fixed intuitions regarding this thought-experiment. In this, I am not alone. Consider the confessions of this ethicist:

One problem for me is that my intuitions about what has intrinsic value are not sufficiently firm. Freedom, for example, is a source of puzzlement. Sometimes I think that freedom is good only as a means, and then at other times I become convinced that it is good in itself, even when it produces nothing else of value.¹²

Hence, it is difficult (for some) to know whether P1, the first premise in Sher's justification of C1, is true. For the sake of argument, however, let it be granted that freedom is intrinsically good. Let it even be granted that freedom's being intrinsically good means that the exercise of freedom - the performing of free acts - is intrinsically good.¹³ Let it be granted, then, that the first two premises in Sher's argument for C1 are true.

A crucial question is whether it is true, as Sher's third premise asserts, that if the performance of a free act is intrinsically good, then the agent's experiencing the "expected" consequence of that act is

also intrinsically good. Sher's argument for this premise, recall, was that "it would be quite arbitrary to say that it is good that the agent perform the act he has chosen, but not good that he enjoy or suffer that act's predictable consequences" (39).

I do not think this would be at all "arbitrary." To see this, suppose you dive into frigid water to save a drowning child. Just before diving in, you are skeptical about your chances to save the child. Although you hope to save the child, what you actually expect is to suffer intense pain, cramp up, and drown before you reach the child. But since you feel you have no morally acceptable alternative, you dive in. Just as you expected, you suffer intense pain, cramp up, and drown before you reach the child. This, if anything, is intrinsically bad. If so, then it is false that experiencing the expected consequence of a free act is intrinsically valuable.

Another crucial question is whether it is true, as Sher's fourth premise asserts, that if experiencing the expected consequence of one's free action is intrinsically valuable, then one *deserves* to experience the expected consequence of one's free action. I suspect that this premise depends on a general principle that asserts a certain connection between the concept of value and the concept of desert. The principle, it seems, is this:

VD If receiving (experiencing) x is intrinsically
 good for S, then S deserves to receive
 (experience) x.

The crucial question, then, is whether VD is true.

I think the answer is "no." As I see it, there is no reason to suppose that an experience's being intrinsically good for a person has anything to do with whether or not the person *deserves* that experience. The ancient Romans, for example, might have taken tremendous pleasure in the spectacle of Christians being devoured by lions in the Colosseum. Suppose their pleasure, considered in isolation, was intrinsically good for them. Clearly, this is no reason for supposing that the ancient Romans *deserved* those pleasures!

This is not to say that there is no connection between the concept of value and the concept of desert. Indeed, my own view is that there *are* such connections. One such connection can be brought out by considering a simple case. So, suppose you have worked hard, and I have not. You deserve a dollar. I deserve nothing. Suppose next that I, who do not deserve it, happen to get the dollar. You, who deserve it, do not get the dollar. Other things being equal, it would (I believe) have been much better for you to have gotten the dollar than for me to have gotten it. The natural explanation for this is, of course, that you *deserved* the dollar and I did not. This simple case suggests that, other things being equal, receiving what one deserves is intrinsically better than failing to receive what one deserves. That is:

DV If S deserves x, then S's receiving x is
 intrinsically better than S's not receiving x
 (other things being equal).

An important feature to notice about DV is that, like VD, it asserts a connection between desert and value. The connection, however,

is reversed. Sher assumes that something's being intrinsically valuable for a person is a reason to think that the person deserves it. That is, Sher assumes the truth of something like VD. My assumption is that if a person deserves something, this is some reason for thinking that the person's receiving it will be intrinsically better than the person's not receiving it. That is, I assume the truth of DV.

Besides, if I have understood him, Sher went wrong in supposing that C1 captures the essence of the specific desert-claims that he wishes to justify. It seems to me far more natural to suppose that, in the cases Sher mentions, the basis for desert is not freedom, but carelessness and prudence. According to this natural view, carelessness or recklessness is a basis for deserving to suffer its harmful consequences to oneself; thoughtfulness or prudence is a basis for deserving the consequences that are pleasant to oneself. Thus, one who accepted this alternative view would replace C1 with a pair of desert-claims:

C1(-) People deserve to suffer the harmful, self-affecting consequences of their careless or reckless actions.

C1(+) People deserve to enjoy the pleasant, self-affecting consequences of their thoughtful or prudent actions.

My own view is that these are plausible desert-claims. Return to the case of Jake. He was reckless in driving his truck out on the melting ice. It was his stupid recklessness that makes us feel that he deserves that his truck fall through the ice, whether he expected that

or not. Or consider the case of Wilson, who knowingly submitted his application late. This was a careless thing to do. If because of his carelessness he is disqualified, then so be it. That is what we intuitively feel he deserves, whether he expected it or not. Or consider the person who prudently carries his umbrella to work, on the expectation of rain. We feel that this person deserves, other things being equal, to stay dry.

I suggest, then, that C1 is not among the platitudes about desert. Sher should not bother trying to justify it. In light of the cases he describes, the desert-claims that Sher ought to justify, if any, are better captured by C1(-) and C1(+).

This raises the question of how, if presented with C1(-) and C1(+), Sher would attempt to justify them. One thing is clear. He could not justify them by appealing to VD. For one thing, VD is false. But even if VD were true, it could not be used to justify C1(-). The reason is simple. The antecedent of VD has to do with what is intrinsically *good* for a person. C1(-) is claim about the harms that people deserve to *suffer*. Suffering a harm is not, I believe, intrinsically valuable. So even if VD were true, it could not be invoked to justify C1(-).

Desert and diligence

In Chapter 4 of *Desert*, Sher seeks to justify the following sorts of desert-claims:

1. Conscientious students deserve to get good grades.

2. Athletes who practice regularly deserve to do well.
3. Businesspeople who work long hours deserve to make money.
4. Immigrants who overcome displacement and poverty deserve their success. (Page 53.)

In these and other cases, the basis for a person's desert is said to be his or her "diligence." But exactly what does a person deserve in virtue of being diligent? Sher argues that *what* the agent deserves in virtue of his diligence is "...a function of his particular efforts" (54). Therefore, the general desert-claim Sher wants to justify seems to be this:

(C2) People deserve what they diligently strive to achieve.

Unlike C1, C2 is a common view about desert. It is a worthwhile target of an attempted justification.

Sher's argument for C2 is contained in the following passages:

...persons themselves matter....If persons themselves matter, then what matters to persons should matter as well. This line of reasoning makes it plausible to say that desires confer some value on their objects....But if so, then sustained efforts will indeed confer more value than desires if the objects of such efforts matter to persons in a deeper way [than merely desiring those objects]. Moreover...the objects of diligent striving do matter to persons more deeply, for diligent striving represents a far greater commitment than does mere desire....[This is] the correct explanation of why the diligent ought [i.e., deserve] to succeed. They ought to succeed because their sustained efforts are substantial investments of themselves - the ultimate sources of value - in the outcomes they seek. (Pages 57-62.)

Here is how I understand the argument of these passages:

1. Persons are valuable (P2).
2. If 1, then what persons desire to achieve is valuable.
3. If what persons desire to achieve is valuable, then what they diligently try to achieve is valuable.
4. If what persons diligently try to achieve is valuable, then people deserve what they diligently try to achieve.
5. Therefore, persons deserve what they diligently strive to achieve (C2).

An evaluation of this argument can begin with considering premise 1, or P2. Sher's explanation of P2, the principle that persons are valuable, occurs in this passage:

Put most simply, the belief is that persons themselves matter - that they are, in some sense, "ends in themselves."
(Page 57.)

Sher does not specify in *what* sense persons are "ends in themselves." But the dictum that persons are "ends in themselves" is usually a premise in an argument for the kantian view that we should never treat other persons merely as means to our own ends. This kantian view is controversial, and not entirely clear. Sher, astonishingly, does not defend or explain it. He says only that it is "plausible" and "...in the current context, beyond dispute" (57).

So let us take up the second premise, or what Sher calls the "desire-confers-value thesis." The thesis, in Sher's words, is (or provides) that we can "...infer from 'M desires X' to 'M's having X is valuable in itself'" (56). Sher claims (55) that the desire-confers-value thesis "received its classic statement" from Ralph Barton Perry. Perry said:

...[a]ny object, whatever it be, acquires value when any interest, whatever it be, is taken in it.¹⁴

Perry's considered view was that something is good(bad) if and only if someone desires(is averse to) it; and that something is intrinsically good(bad) if and only if someone desires(is averse to) it for its own sake.¹⁵ Hence, Perry would accept the desires-confer-value thesis, which appears to be that if M desires x (for its own sake), then x is valuable (in itself).

If the desires-confer-value thesis is true, then (Sher argues) so is the effort-confers-value thesis:

Persistent attempts to achieve a result, and sacrifices made to obtain it, are the strongest possible evidence of a stable and enduring desire for it. More deeply, desire and effort may be conceptually related; for on various accounts, it is impossible to desire something without being disposed to try to get it. If even the former connection holds, then all diligently pursued outcomes are desired. Hence, if all desired outcomes have value, then so too do all outcomes that are diligently pursued. (Page 58.)

For argument's sake, let us grant that *if* desires confer value on their objects, then so do diligent efforts. That is, let us grant premise 3. One question that remains is whether desires *do* "confer value" on their objects in the way that Sher, following Perry, claims. I think not. As critics of Perry were quick to point out, his theory of intrinsic value would make even the most reprehensible thing intrinsically good, provided that someone desired it as an end in itself. A similar point would cut against the effort-confers-value thesis. Hence, there is little reason to accept either thesis.¹⁶

Let us turn, then, to premise 4. According to it, if what people diligently try to achieve is valuable, then people deserve what they diligently try to achieve. This seems to be the argument's crucial premise. It asserts a connection between what is *valuable* (intrinsically valuable, let us assume) and what is *deserved*. It therefore appears to be an instance of VD. But as I have argued, VD is false. There are no grounds for supposing that something's being intrinsically valuable to a person provides any reason for a person's deserving it. Indeed, reflection on simple cases suggests that at least one connection between desert and value is quite the reverse. That connection is expressed in DV. Thus, Sher's justification of C2 fails, ultimately, in just the way that his justification of C1 failed.

However, it may be that Sher does not really depend on the desires-confer-value thesis. Recall that the desires-confer value thesis is supposed to secure the efforts-confer value thesis, which in turn is supposed to secure that the goals of diligent striving are valuable. In one passage, Sher seems to advance an argument for this lattermost conclusion that does not depend on the desires- or effort-confers-value thesis:

Since our lives are constituted by our actions, our time and energy are thus the very stuff of which we fashion our lives. Hence, any agent who devotes a major portion of his time and energy to achieving a goal is quite literally making that goal a part of himself. (Page 62.)

Persons are "constituted," in part, by the goals they desire and diligently strive for. (Sher dedicates Chapter 9 of his book to an

explanation and defense of this view of persons.) But persons are valuable (P2). Hence, if the value of a thing is due to the value of its constituents, then what persons desire and strive for is valuable. This may be Sher's real argument for the claim that diligent effort confers value upon its object. If it is, then his view may be that this claim justifies (C2). As evidence, here is the rest of the passage in which Sher summarizes that putative justification:

...[the diligent] ought to succeed because their sustained efforts are substantial investments of themselves - the ultimate sources of value - in the outcomes they seek. Reversing Marx's aphorism that value is congealed labor, we might express the point by saying that (sustained and goal-directed) labor is congealed value. Of course, this suggestion is only as convincing as the view that persons are constituted by the specific acts they perform, and by the specific act-related traits they possess. (Page 62.)

This argument does not show that the objects of diligent striving are valuable. It depends on the implausible claim that persons are "constituted" by their goals, or that a person's goals can be "quite literally" parts of that person. To see that this view is implausible, consider the following case. Suppose a particular statesman's goal is total nuclear disarmament. If Sher's view about persons is correct, then the statesman has total nuclear disarmament as one of his parts. But how could the state of affairs expressed by 'total nuclear disarmament' be in any real sense "part" of a person? (What if total nuclear disarmament is never achieved?)

Even if it were granted that people have their goals as parts, and even if it were granted that this gives value to those parts, Sher does not

explain how this would justify the claim that people deserve what they diligently strive to achieve. Sher's justification fails at the crucial step: namely, from the premise that what persons diligently strive to achieve is valuable, to the desert-claim that persons deserve what they diligently strive to achieve. It fails, I would argue, because this step can be made only by relying on a principle akin to VD.

Sher is right, though, that the "value" of an outcome that someone has struggled to achieve *is* relevant to the question of whether he deserves it. Sher himself supplies two examples that illustrate the point:

A safecracker does not deserve to escape with the contents of a vault because he has spent five years tunneling into it; neither does a political fanatic deserve to succeed at a painstakingly plotted assassination. (Page 67.)

In cases like these, the agent strives to attain an evil. The evil of the goal mitigates what might otherwise be the agent's desert of that goal. The opposite effect can occur in cases where the goal is especially good. To see this, suppose that two people relevantly similar to each other are striving equally hard to achieve their respective goals. One person's goal is neurotic: to know the precise number of blades of grass in his lawn. The other's altruistic: to find a vaccine for the AIDS virus. Although there is no difference in the intensity of their efforts, my intuition is that, other things being equal, the AIDS researcher deserves to achieve her goal more than the blade-counter deserves to achieve hers. The natural explanation for

this is that the researcher's goal is especially good, whereas the blade-counter's goal is, at best, neutral. If this is right, then the "value" of a diligently pursued goal affects one's desert of it.

However, in cases like these, the value (or disvalue) does not, as Sher would have us believe, come from the agent's diligent striving. Rather, it comes from the goal itself. The desires or efforts of an agent have no effect on the value of the goal - or if they do, this inherited "value" has no obvious effect on the agent's desert of the goal. So, rather than say with Sher that diligence confers value on its object, I would say instead that the fact that one has been diligent has a certain "weight" that influences one's desert, but this can be outweighed by, among other things, the value of one's goal.¹⁷

Desert and wrongdoing

It is a platitude that wrongdoers deserve punishment. Sher notes that neither the expected-consequence account nor the effort-confers-value thesis justifies it. That is, neither account:

...explains why persons who have acted wrongly now deserve to be punished. Wrongdoers do not diligently pursue their own punishment; neither is it always predictable from their acts. Thus, if their desert is to be understood, it must be in terms of some third sort of justification. (Page 69.)

In Chapters 5 and 6 of *Desert*, Sher turns his attention to justifying the general desert-claim:

(C3) People deserve to be punished for their wrongful acts.

Sher's justification of C3 depends heavily on Herbert Morris's famous essay, "Persons and Punishment."¹⁸ Here is how Sher understands the essence of Morris's argument:

...punishment is fair because it removes an advantage that the wrongdoer has but others lack. Those who obey the rules abjure the advantage they could obtain by interfering with others in proscribed ways. Those who break the rules gain this advantage. Because they gain it without giving up the additional advantage they get from the self-restraint of others, they end up with more than their fair share of advantage. In punishing them, we remove their excess advantage, and so restore a fair balance of burdens and benefits. (Page 77.)

Morris's suggestion is that criminal wrongdoers benefit from breaking the law, and from the failure of others to break the law. For example, if a thief robs a bank, he obtains a financial benefit. He also benefits from the fact that others have not robbed the bank before he did. So the thief benefits from the general public's self-restraint, and his lack of it. This supposedly upsets a fair balance of benefits and burdens. Punishing the criminal is intended to restore that balance. So, for example, the thief's financial benefit (or some equivalent) is (if possible) returned to the proper owners, and the thief is imprisoned. He is thereby placed under a far greater degree of restraint than law-abiding citizens. In this way, Morris seems to be saying, punishment is "fair."

Sher modifies Morris's view in several ways. Morris restricts his discussion to the punishment of law-breakers. Sher wants to justify the claim that *wrongdoers*, not merely law-breakers, deserve punishment. So,

as a first step towards justifying this broader claim, Sher appeals to the concept of "the moral law" (82). Wrongdoers violate the moral law; criminals violate the civil law (at least). Next, Sher rejects Morris's suggestion that "...the wrongdoer's extra benefit, and so too his deserved punishment, is determined by the amount of profit he receives from acting wrongly" (81). For in some cases moral wrongdoing, the wrongdoer may not "profit" in any tangible way. What the moral offender gains, on Sher's view, is the benefit of "liberty" or "freedom" from the moral restrictions that others typically observe (83).

However, Sher's view is not, as one might expect, that the wrongdoer's benefit is to be measured in terms of the amount of freedom that the wrongdoer supposedly gains by flouting the moral law. Rather, on Sher's view, it is to be measured in terms of "...the strength of the moral prohibition that is violated." Specifically: The stronger the prohibition, the greater the benefit from transgressing it (82-83). Thus, on Sher's account, wrongdoing results in an excess of a supposed benefit: namely, transgressing the moral law.

Sher now invokes a general principle that will, he thinks, provide the crucial step in his attempted justification of the claim that wrongdoers deserve punishment. He calls it the "principle of diachronic fairness":

DF3 For every good G, every person M, and every period of time P, if M has less (more) of G than he should during P, then M should have correspondingly more (less) of G or some related good than he otherwise should during some later period P'. (Page 94.)

The word 'should' occurs several times in DF3. Let us assume, for the moment, that it means 'deserves'. Thus interpreted, DF3 expresses a thesis about desert and the receipt of good and evil over time. The thesis, roughly, is that past receipt and future receipt of good or evil are bases for what one deserves now. I find this thesis plausible. I discuss and endorse a version of it in Chapter 7.

Sher appears to use DF3 to justify C3 in the following way. According to Sher's account of wrongdoing, wrongdoing results in an excess, for the wrongdoer, of the supposed benefit of transgressing the moral law. DF3, as I am understanding it, states (in effect) that those who enjoy an excess of some benefit at some time deserve to have less of that benefit at some other time. Freedom is a benefit, and punishment often takes the form of a restriction on one's freedom. Thus, it seems that Sher's account of wrongdoing, conjoined with D3, justifies C3.

I find this justification implausible. First, Sher's account of wrongdoing is obscure: it is hard to know, and Sher does not tell us, what the "moral laws" are. Second, even if we knew what the moral laws are, it seems rather odd to claim that transgressing those laws is, in general, some sort of "benefit" - unless, of course, one subscribes to a hobbesian view of morality, but Sher never explains or defends any such theory.

Besides, even if Sher's account of wrongdoing were accepted, he seems not to provide a deep justification of C3. For, on the current interpretation of DF3, Sher's justification of C3 amounts to this:

1. Excessive past receipt of some good is a basis for deserving less of some good.
2. Wrongdoing results in excessive receipt of some good (such as freedom).
3. Therefore, wrongdoing is a basis for deserving less of some good (such as freedom, by way of punishment).

Given his overall project, which is the justification of major desert-claims, what Sher ought to be attempting to justify is the first premise of this argument: namely, that excessive past receipt of some good is a basis for deserving less of some good now. Moreover, since this premise is just a corollary of DF3, what Sher ought to justify (but never does) is DF3. For this principle, as I have understood it thus far, is a general desert-claim. Therefore, it cannot provide a deep justification of other desert-claims.

Perhaps I have misunderstood DF3. My assumption thus far has been that the word 'should', as it occurs in DF3, means 'deserves'. This assumption may be mistaken. Perhaps the word 'should', in at least one of its occurrences in DF3, means 'morally should'. This possibility is suggested by Sher's remark:

...desert of punishment...reflects the demands of diachronic fairness....On one natural interpretation, these demands and requirements are precisely *obligations*.... (Page 196.)

Indeed, perhaps Sher's intention is to provide a principle linking the concept of moral obligation to the concept of desert. DF3 can be interpreted as just such a principle:

DF3* For every good G, every person M, and every period of time P, if M has less (more) of G than he *morally should* during P, then M *deserves* to

have correspondingly more (less) of G or some related good than he otherwise *deserves* during some later period P'.

Understood this way, DF3* asserts a connection between what a person *ought* to receive what a person *deserves*. I think a simpler principle, one that Sher may depend on here and (as we will see) later on, is this:

OD If S morally ought to receive x, then S deserves to receive x.

OD asserts a connection between the concept of moral obligation and desert. Moreover, OD could be used in a deep justification of C3, the claim that wrongdoers deserve to be punished. The justification would go something like this:

1. Wrongdoers ought to receive punishment.
2. If S morally ought to receive x, then S deserves to receive x (OD).
3. Therefore, wrongdoers deserve punishment (C3).

If sound, this little argument would provide a deep justification of C3. For none of its premises is itself a general desert-claim. In this respect, it is an improvement over what appeared, on one interpretation of DF3, to be Sher's justification of C3.

However, the argument is not sound. Premise 2, the OD principle, is false. There is little reason to suppose that S deserves x merely because S morally ought to receive x. This can be seen most clearly by considering the contrapositive of OD: namely, if it is not the case that S deserves x, then it is not the case that S morally ought to receive x.

So, for example, consider a lifeboat situation. A group of five people is adrift. There is enough food for only four of them. Thus, one must be thrown overboard if the rest are to survive. It seems safe to assume that none *deserves* to be thrown overboard. However, for anyone in the lifeboat, it may nevertheless be true that he or she morally ought to be jettisoned. Otherwise all will die. This example suggests that OD is false.

This is not say, however, that there is no connection between desert and moral obligation. Indeed, I believe there is at least one such connection. It can be brought out by considering a simple case. So, suppose that you deserve an apology. Other things being equal, you morally ought to receive it. This is because, other things being equal, the person who insulted you ought to offer you an apology. This case suggests that there is a general connection between desert and moral obligation. The connection can be expressed as follows:

DO If S deserves x, then S ought to receive x
 (other things being equal).¹⁹

The important thing to notice is that DO, like OD, asserts a connection between desert and obligation. However, the connection is reversed. Sher's assumption appears to be that the fact that S ought to receive x is a reason for supposing that S deserves x; that is, Sher assumes something akin to OD. My assumption is that S's deserving x is a reason (though not conclusive) for supposing that S ought to receive x; that is, I assume the truth of DO.

It appears, then, that Sher's justification of C3 is in trouble. His justification of C3 depends crucially on DF3, the "principle of diachronic fairness." On one natural interpretation, DF3 is *itself* a general desert-claim, and therefore cannot provide a deep justification of CF3. On another natural interpretation, DF3 seems to depend on the truth of OD. But OD is false. It reverses an ostensible connection, expressed by DO, between desert and moral obligation. I conclude that if there is a justification of CF3, Sher has not found it.

This is particularly unfortunate in light of the fact that Sher invokes DF3 to justify other desert claims. In Chapter 6, Sher attempts to justify "...a whole range of desert-claims that appear to require some trans-temporal balancing of benefits and burdens" (91). These include not only claims that persons deserve punishment:

...but also claims that persons deserve sums of money, or opportunities, to compensate for wrongly inflicted harm or suffering. In addition, they include many more modest claims that persons deserve relief from burdens that were *not* wrongfully inflicted. For example, someone who has had persistent bad luck may be said to deserve a change of fortune. Finally...they include claims that persons who have worked for others deserve wages as compensation. (Page 91.)

Thus, the three general desert-claims that Sher attempts to justify with the help of DF3 are as follows:

- (C3) People deserve to be punished for their wrongful acts.
- (C4) People deserve compensation for the wrongful harms they suffer.
- (C5) People deserve wages for the work they do.

Given the difficulties just discussed, I think there is little reason to review Sher's attempts to justify C4 and C5 with the help of DF3. Therefore, I shall press on to a discussion of Sher's attempt to justify desert-claims involving merit. (Sher does have some interesting things to say about desert of wages, but I take these up in Chapter 6.)

Desert and merit

At the beginning of Chapter 7, Sher states that his "...main aim will be to discover *why* the deserving parties - in this case, the meritorious - should have what they are said to deserve" (109). Sher distinguishes "moral merit" from "nonmoral merit":

The morally meritorious include both people who perform single transcendent acts of heroism or sacrifice and persons whose generosity or compassion is woven through their lives. The nonmorally meritorious include athletes who run faster than others, scientists who discover cures for deadly diseases, and job applicants who score highest on qualifying exams. (Page 109.)

In this chapter, Sher tries to justify desert-claims involving nonmoral merit. In particular:

(C6) People deserve prizes/good grades for performing well according to the relevant rules.

(C7) The best qualified applicant deserves the job.

Let us take up Sher's attempted justification of C6.

Sher argues that "...the best competitor's desert of victory and the prize, and the student's desert of his grade, reflects the demands of veracity" (196). What, according to Sher, are the "demands of veracity"? How are those demands supposed to justify C6?

According to Sher, there is a "principle of veracity" that "...requires that we not say what we know to be false, but...does not require us to say everything we know to be true" (112). Sher argues that "something like the principle of veracity" operates in contexts that "...presuppose conventional structures which establish tests for excellence and rewards or prizes for passing those tests" (115). The principle Sher has in mind is that "...where there are conventions for evaluating performance, their dictates ought to be honored" (116). That is:

- (P4) Conventions for evaluating performance ought to be honored.

Sher claims that by "...appealing to veracity, we can justify the desert-claims that arise when persons display merit in conventionally structured contexts" (117). That is, P4 is supposed to justify C6, the desert-claim that people deserve prizes/good grades for performing well according to the relevant rules.

Sher is not explicit about how P4 is supposed to do this. Let us suppose that Sher is advancing the following argument:

1. Conventions for evaluating performance ought to be honored (P4).
2. If 1, then people who perform well according to relevant rules deserve prizes or good grades.

3. Therefore, people who perform well according to the relevant rules deserve prizes or good grades.

Let us grant premise 1, or P4, for argument's sake. Then the question is whether premise 2 is true. If I have understood Sher correctly, premise 2 depends on a view about the connection between desert and moral obligation. The view is that if S ought to receive x, then S deserves to receive x. We have encountered this view before. It is expressed by OD. But OD, I argued, is false. There is no reason for supposing that the fact that S morally ought to receive x is grounds for S's deserving x. (Quite the reverse, I claimed: S's deserving x is grounds for it being true that S ought to receive x.) If this is correct, then the above argument is unsound. It does not justify C6.

Perhaps there is an alternative interpretation of Sher's justification of C6. Sher may be suggesting that the mere fact that someone has satisfied the conditions of some contest, or excelled according to some rules, and is therefore entitled to some prize or grade, is a basis for the person's deserving that prize or grade. In short, entitlement is a basis for desert. If it is, then (other things being equal) people deserve prizes/good grades for performing well according to the rules that entitle them to those prizes/good grades.

I happen to believe that entitlement is a basis for desert (see Chapter 7). However, even if that is granted, the basic justificatory question remains unanswered. For what justifies the claim that, other things being equal, people deserve that to which they are entitled?

Until this question is answered, Sher will not have provided a deep justification C6.

Let us turn, then, to Sher's attempt to justify the claim that people deserve the positions for which they are qualified (C7). This passage seems crucial for understanding that attempt:

...selecting by merit is a way of taking seriously the potential agency of both the successful and the unsuccessful applicants. Conversely, when an applicant is selected on some other basis, there is a recognizable if elusive sense in which he and his rivals are *not* taken seriously. And this suggests that we may justify selection by merit by arguing that persons *ought* to be taken seriously in the relevant sense. I believe, in fact, that some argument of this sort does underlie the claim that best-qualified applicants deserve jobs and educational opportunities. (Pages 121-122.)

The argument appears to be that if we ought to take people "seriously" (in some sense), then people who are best qualified for jobs deserve them. But in *what* sense should people be taken seriously? And how does this justify C7? Let us begin with the first question.

Sher claims that "...the requirement that we select among applicants on the basis of their qualifications is a consequence of the more general requirement that we treat all persons as rational agents" (126). So to say that we should "treat people seriously" is, for Sher, to say that we ought to treat people as rational agents.

Sher explains that to treat persons as rational agents is to treat them as agents who can deliberate, choose, and act autonomously (126). When an employer takes a person's qualifications seriously - that is, as qualifications that the applicant has chosen to obtain and has acted

autonomously in attaining them - the employer treats the applicant as a rational agent.

Sher's view is that treating people as rational agents is "...the rationale for the claim that the best-qualified *deserves* to be chosen" (127). What exactly *is* the rationale? Sher writes:

What needs to be shown is not that only the best-qualified applicant is owed *treatment as a rational agent*, but rather that he, and only he, is owed *the contested position*. To establish this, I have argued that only selection by qualification treats all applicants as rational agents, and that under such selection, the best-qualified applicant, and he alone, is owed the position. On this account, what the best-qualified applicant alone is owed just *is* what he alone deserves. (Page 127.)

This passage suggests that Sher's justification of C7 amounts to this:

1. People should be treated as rational agents (P5).
2. If 1, then the best-qualified applicant deserves the job.
3. Therefore, the best-qualified applicant deserves the job (C7).

Let us grant for argument's sake the truth of premise 1, or P5. For I think it is clear that premise 2 is false. It moves from a claim about what people *should* or *ought* to receive, to a claim about what people *deserve* to receive. This move assumes a mistaken view, expressed by OD, of the connection between moral obligation and desert. (A more plausible view of one such connection is, I believe, expressed by OD.) If so, then premise 2 cannot be used in a sound justification of C7.

Desert and virtue

Let us turn, finally, to Sher's attempt to justify desert-claims that mention *virtue*. Virtue, for Sher, is "moral merit." According to Sher, people exhibit moral merit "...when they display a virtuous character or perform specific acts of courage, thoughtfulness, or generosity" (132).

As Aristotle realized, not every person who performs a virtuous act is a virtuous person.²⁰ Nevertheless, Sher thinks, persons who perform virtuous acts deserve some sort of reward (133). Those who are virtuous persons also, Sher believes, deserve something: "...an excellent character seems in itself to be a significant desert-basis" (136). Following W. D. Ross and others, Sher's view is that the virtuous deserve happiness (132). Thus, Sher wants to justify two desert-claims: that persons who perform virtuous acts, but who may not be virtuous persons, deserve rewards (C8); and that virtuous persons deserve happiness (C9). Let us turn to Sher's attempted justification of C8.

People who act so as to benefit others are often said to deserve rewards. Sher considers a number of cases: the person who returns to a burning building to save another; the companion who looks after a widow in her declining years; the person who assists a stranded motorist; the foster parents who take in children nobody else wants. Because of their virtuous acts, these people deserve some reward - whether or not they have virtuous characters.

Sher argues that "...where persons are said to deserve rewards for specific acts of virtue, their desert may well be grounded in debts of gratitude that these acts engender" (133):

Where persons make sacrifices to benefit others, those others are standardly thought to owe them debts of gratitude. Thus, when we say that benefactors deserve rewards, the real point may be that their beneficiaries owe them such debts. (Page 133.)

Sher notes that gratitude is "owed" to those who make sacrifices to benefit others (P6). He seems to be arguing that the desert of those who make such sacrifices is "grounded" in debts of gratitude. Put another way, Sher seems to be arguing that P6 justifies C8: "...desert of reward for heroic or helpful acts sometimes draws force from the requirements of gratitude" (196). In other words:

1. Gratitude is owed to those who make sacrifices to benefit others (P6).
2. If 1, then people who perform virtuous acts deserve to be rewarded.
3. Therefore, people who perform virtuous acts deserve to be rewarded (C8).

Let us grant, for argument's sake, that gratitude is owed to those who make sacrifices to benefit others. Then the question is whether premise 2 is true. This depends on how 'is owed to', as it occurs in premise 2, is understood.

If 'is owed to' means 'is deserved by', then premise 2 seems true. For understood that way, premise 2 asserts this: If gratitude is deserved by those who make sacrifices to benefit others, then people who

perform virtuous acts deserve to be rewarded. Indeed, this is trivially true if gratitude is a sort of reward.

If premise 2 is understood in this way, the argument fails to provide a deep justification of C8. For if 'is owed to' means 'is deserved by' in premise 2, then it must (for validity's sake) mean the same in premise 1. But if 'is owed to' means 'is deserved by' in premise 1, then that premise asserts that gratitude is *deserved* by those who make sacrifices to benefit others. This seems true. In fact, it seems to be a platitude about desert! If so, then it cannot provide a deep justification of another platitude about desert, such as C8.

Perhaps 'is owed to', as it occurs in the above argument, does not mean 'is deserved by'. Perhaps it is meant to express not the concept of desert, but the concept of *moral obligation*. If so, the argument is this: People who make sacrifices to benefit others morally ought to receive gratitude; if so, then those people deserve rewards; therefore, people who make sacrifices to benefit others deserve rewards.

My evaluation of this argument should come as no surprise. The move from what people morally ought to receive to what they deserve to receive is, in my view, illicit. It depends on a mistaken view, expressed by OD, of the connection between desert and moral obligation. A correct view of such a connection, I believe, is expressed by DO - but DO cannot be used to justify C8.

What, finally, of Sher's attempt to justify C9, the claim that virtuous people deserve happiness? Summarizing his attempt, Sher says: "...I defended the claim that virtuous persons deserve to be happy by

arguing that such persons are themselves worth more than others, and hence that their happiness must be worth more as well" (196). That is, Sher wants to justify C9 with:

(P7) The morally virtuous have greater moral worth than those who are not morally virtuous.

Sher defends P7 by arguing, firstly, that "seeking value is part of what confers worth on persons;" secondly, the virtuous seek value more than persons who are not virtuous (143). In support of the claim that seeking value is part of what confers worth on persons, Sher admits that he appeals only to "sketchy considerations" (143). He is nevertheless willing to "...assume that the worth of persons is due partly to the fact that they have a concept of value and seek to realize it" (143). For argument's sake let us assume it, too.

In support of the claim that the virtuous seek value more than those who are not virtuous, Sher says this:

...the moral virtues that interest us are all heightened and concentrated propensities to seek forms of value. When someone is fair-minded and honest, he automatically seeks to do what is right. When someone is generous, sympathetic, considerate, or kind, he automatically seeks to bring good results. In each case, the person exemplifies, to a higher degree than others, the value-seeking propensity that is crucial to the worth of persons. And because he does, we may reasonably suppose that he acquires greater worth than do others from his possession of it. (Pages 143-144.)

For argument's sake, let us grant that the moral virtues are "heightened and concentrated propensities to seek forms of value." Let us also

grant that those who possess these propensities have "greater worth" than those who do not.

So, Sher's argument is relatively clear: "the desert of the virtuous" can be justified by "...the fact that they seek value to a greater degree than others, and thus have greater worth" (145). In other words:

1. The morally virtuous have greater moral worth than those who are not morally virtuous (P7).
2. If 1, then the happiness of those who are morally virtuous is more valuable than the happiness of those who are not morally virtuous.
3. If the happiness of those who are morally virtuous is more valuable than the happiness of those who are not morally virtuous, then virtuous people deserve happiness.
4. Therefore, virtuous people deserve happiness (C9).

Let us grant, for argument's sake, the truth of premises 1 and 2. The crucial question is whether premise 3 is true. Premise 3 appears to depend on a view of the connection between value and desert. This view can be expressed as follows:

VD' If A's receiving x is more valuable than B's receiving x, then A deserves x (more than B deserves x).

Premise 3 is more or less an instance of VD'. If so, then the plausibility of premise 3, and the soundness of Sher's justification of C9, depend on the truth of VD'.

VD' is false. To see this, suppose that you have worked hard in the garden all day. You come inside, covered with sweat and grime, to drink a cold beer. This gives you a moderate amount of pleasure. Now

suppose that I, who have been lazing around the house all day, would get a tremendous amount of pleasure - much more pleasure than you actually get - from drinking that beer. My receiving that beer would, in this way, be more valuable than your receiving that beer. But from this it clearly does not follow that I deserve the beer more than you do! Indeed, I may not deserve the beer at all. This example shows, I think, that VD' is false. It also shows that there is no reason to accept premise 3 of Sher's justification of C9.

This is not to say that there is no connection between desert and value. Indeed, my view is that there are such connections. DV expresses one such connection. Another connection, more pertinent to the case at hand, is this:

DV' If A deserves x more than B deserves x, then A's receiving x is more valuable than B's receiving x (other things being equal).

Like VD', DV' expresses a connection between desert and value. The connection, however, is reversed. This suggests that Sher's justification of C9 gets things backwards. It suggests, in other words, that here (as elsewhere) Sher relies on a mistaken conception of the relation(s) between desert and other moral concepts.

Conclusion

Sher's justificatory project seems to be a failure. My personal opinion is that the major premises (that is, P1 through P7) of Sher's justifications are too obscure or too controversial to provide any

convincing justification of the targeted desert-claim. But even if we accept those major premises (as I did, for argument's sake), it appears that Sher's justifications fail. This is because the minor premises of those justifications depend on false principles (that is, VD, VD', and OD) that assert various connections between desert and the concepts of value and moral obligation.

However, Sher's failure is instructive for at least two reasons. First, it forces us to recognize that desert *does* have connections to the concepts of value and moral obligation. I believe that some of these connections are expressed by DV, DV', and DO. Second, Sher's failure to justify some major desert-claims is some evidence for supposing that the platitudes about desert, if accepted at all, must be accepted as among the first principles of ethics.

Notes

1. David Lewis, *Convention* (Cambridge, MA: Harvard University Press, 1969), page 1.
2. George Sher, *Desert* (Princeton, NJ: Princeton University Press, 1987). Page references to this book appear in the body of the text.
3. If this definition of 'desert-claim' were correct, then only persons could be the objects of desert-claims. However, Sher knows that "...the deserving party need not always be a person" (8). What Sher must mean, then, is that a desert-claim is a claim that something deserves something.
4. Sometimes the form will be 'M deserves X in virtue of A'.
5. Sher does not explicitly draw up such a list.

6. The possible exception to this is P3, which (on one interpretation) is itself a general desert-claim. I discuss this interpretation (and an alternative interpretation) in the text.
7. Sher does not list these principles explicitly.
8. Sher himself seems uncertain as to which are principles of obligation and which are principles of value. Indeed, it is not until the concluding chapter (especially pages 195-198) that Sher attempts to classify them.
9. Sher never explains what he means by 'expected'. Even worse, he uses 'expected', 'predicted', 'predictable', and 'chosen' as though they were synonyms. The result is that four interpretations of 'expected' are suggested by his text. On one, an expected consequence is the consequence the agent actually expected (39-40). On another, it is the consequence the agent should have expected, given adequate information (41). On a third, an expected consequence is a "statistical expectation" (42-43). On the fourth, it is a consequence that maximizes expected utility (42). Of these, the first and fourth seem the most strongly supported by Sher's text.
10. Sher is not talking here about desert in virtue of diligence, which he discusses in Chapter 4. The desert-claims here need not involve diligence.
11. The bracketed insertion is mine. I insert it for the following reason. Sher is attempting to justify a claim about *desert*: namely, the claim that agents deserve to enjoy or suffer the consequences of actions they have freely chosen. This is not, as the passage implies, the same as the claim that agents *ought* to enjoy or suffer such consequences.
12. Fred Feldman, *Doing the Best We Can* (Dordrecht: D. Reidel Publishing, 1986), page 35.
13. Sher argues: "But if the opportunity to act freely has value, then so too must its exercise. We can hardly say that it is a good thing when someone *can* determine his own fate, but not a good thing when he does" (39).
14. The quotation is taken from Sher, *Desert*, page 55.
15. See Ralph Barton Perry, *Realms of Value* (Cambridge, MA: Harvard University Press, 1954).
16. In fairness, Sher is aware of the objection that "...many desires prove harmful when satisfied" (56). Nevertheless, he argues that there is reason to believe the desires-confer-value thesis (some of this passage is cited above):

...when we reflect on the preconditions for morality itself, we do encounter a further belief that seems to lead naturally to the desires-confer-value thesis. Put most simply, this belief is that persons themselves matter - that they are, in some sense, "ends in themselves". As Kant famously discerned, we cannot even raise the question of how we ought to act toward others unless we first assume that each person, in and of himself, has some absolute value. Moreover, this assumption clearly draws important support from the fact that persons care, intensely and complexly, both about what happens to themselves and other entities and about the outcomes of their own actions. Not only are the beings to which morality ascribes fundamental value capable of taking other things to have value, but their taking those other things to have value is central to what makes them valuable. Thus, it does seem natural to hold that a portion of their value devolves upon what they value - that some of the absolute value of persons is transferred to, or inherited by, the things they care about. If persons themselves matter, then what matters to persons should matter as well. This line of reasoning makes it plausible to say that desires confer value on their objects. (Pages 57-58.)

However, as I read it, this passage merely repeats rather than defends the inference to the desires-confer-value thesis from the principle that persons have value. I cannot discern in this passage any defense of that inference, nor can I think of one.

17. For more on the concept of "weight," see Chapter 7.

18. In Morris, *On Guilt and Innocence* (Berkeley and Los Angeles, CA: University of California Press, 1976).

19. Joel Feinberg endorses a similar principle. He writes: "That a subject deserves X entails that he ought to get X in the *pro tanto* sense of 'ought,' but not in the 'all things considered' or 'on balance' sense." ("Justice and Personal Desert", in Feinberg's *Doing and Deserving* [Princeton, NJ: Princeton University Press], page 60.)

20. Aristotle, *Nicomachean Ethics*, J. A. K. Thomson, trans. (Harmondsworth: Penguin Books, 1988), pages 91-92.

CHAPTER 6
DESERT AND WAGES

Introduction

Women tend to earn less than their male colleagues. Furthermore, women tend to earn less than men who hold jobs that are nominally different but relevantly similar (in terms of skill, responsibility, working conditions) to their own. Advocates of "comparable worth" protest these facts. Their protest often takes this form: Those differences in pay between men and women are *undeserved*.¹ The argument for this claim is simple. Some facts are relevant to the wage one deserves for performing a given job, and some are not. In the vast majority of cases, the argument continues, *being a man* or *being a woman* is not relevant to the wage one deserves for performing a given job; relevant are (say) the skill, responsibility, and working conditions required by job. Thus, those whose jobs are comparable with respect to these facts deserve comparable pay. Therefore, women and men who work the very same jobs deserve equal pay. Furthermore, women and men who work jobs that are nominally different but relevantly similar also deserve equal pay.

This argument clearly presupposes an account of what is and what is not a basis for deserving a wage, or a theory of desert of wages.² Such a theory interests not only advocates of comparable worth. It also

interests those (like me) who believe that justice obtains to the extent that people get what they deserve. For us, the justice of wealth-distributions in industrialized countries cannot be assessed without a theory of desert of wages. This is because in those countries, wages constitute the bulk of the average person's income.

Theories of desert of wages have been proposed. In the first few sections of this chapter, I consider the most prominent among them. Each suffers from unique difficulties, but they share a fundamental defect. This defect is symptomatic of a common but (as I see it) misguided way of thinking about desert in general. In the penultimate section, I describe this way of thinking and suggest an alternative. I conclude by applying this alternative to desert of wages in particular, and sketching its implications for the comparable worth debate.

Before proceeding, some terminological points are in order. Let a wage be whatever payment is given to a person in return for his or her contracted work.³ The wage may be cash or some other benefit such as food, lodging, vacation time, and so on. Work is the attempted provision of some service, such as lawn-mowing or lawyering. Thus, a necessary condition on deserving a wage is doing some contracted work. Contracted work is, of course, work that has been contracted. But as I understand them, contracts can be formal or informal, explicit or implied. There need not be a signed document. There need only be some sort of agreement between the relevant parties that the service will be provided in return for some sort of payment. In some circumstances, this agreement need not even be actual.⁴

The effort theory

With those points made, let us begin by considering the effort theory of desert of wages. Joel Feinberg describes a version of it:

...the principle of effort...would distribute economic products not in proportion to successful achievement but according to the degree of effort exerted. According to the principle of effort, justice decrees that hard-working executives and [equally] hard-working laborers receive precisely the same remuneration....⁵

Feinberg's statement captures the basic idea behind the effort theory: the more effort one exerts on the job, the higher the wage one deserves. This idea can be put as follows:

ET: Worker A deserves a higher wage than worker B
iff A exerts more effort than B; A and B deserve
the same wage iff A exerts the same amount of
effort as B.

The leading argument for ET appears to be this.⁶ Wages are deserved either for our efforts or for their success. Our efforts are within our control, but their success is not. The success of one's efforts is matter of luck or accident. Desert, however, cannot arise through mere luck or accident. Thus, wages are not deserved for the success of our efforts, but rather for our efforts alone.

This is a bad argument. First, there is no reason to believe that effort and success exhaust the possible bases for deserving a wage. At the very least, an argument is needed to support such a claim. Second, it is not true that desert cannot arise through mere luck or accident. If it were true, then bad luck and horrible accidents could not make one

deserving of, say, a stretch of good luck, or compensation.⁷ Finally, it is highly implausible that the success of one's efforts is always a matter of luck or accident - unless this means merely that there is a chance that one's efforts will not succeed. *That* is certainly true, but there is a difference between the possibility of one's efforts failing, on the one hand, and their success being "accidental" or "lucky," on the other. For example, your efforts to read this paper may fail; but if they succeed, this probably will not be a matter of luck or accident.

Besides, the effort theory generates implausible results. Compare two garbage collectors. One finds it very easy to lift heavy bags of rubbish all day, and can do it quickly. Another finds the task difficult, and must exert three times the effort to achieve the same results. If ET were true, the second garbage collector would deserve a wage perhaps three times greater than the first. That seems incorrect. Surely it is more plausible that they deserve the same wage, or even that the first collector, since he can perform his job more efficiently, deserves a higher wage than the second.

Or compare two corporate executives. Each works as hard as the other, and each works tirelessly. ET entails that each deserves a generous wage. But one does excellent work. Her diligent efforts lead to dramatic profits for the company. For this, she deserves a raise. Meanwhile, the other's efforts constantly backfire. His efforts, though conscientious, result in substantial losses to the company. For this, he may deserve demotion to a lower-paying position. Certainly he does not deserve a raise.

The advocate of ET cannot reply to these examples by saying that *other things being equal*, workers who exert more effort deserve more pay. For this is to admit that factors other than effort can affect one's desert of a wage. This is precisely what an advocate of ET must deny.

In rejecting ET, I am not rejecting the idea effort is a basis for deserving a wage. On the contrary, I think it is. I am arguing that effort is not the *only* basis for deserving a wage. Later I will discuss some of those other bases. In the meantime, let us consider a different theory.

Market value theories

The literature on desert of wages is sometimes characterized as a debate between those who think that a worker's effort is the appropriate basis for deserving a wage, and those who believe the worker's actual contribution or productivity is the appropriate basis.⁸ Typical statements of the contribution theory of wages include:

A man's reward should depend on the value of the contribution which he makes to social welfare in his work activity.⁹

Justice, according to this principle [of contribution], requires that each worker get back exactly that proportion of the national wealth that he has himself created.¹⁰

According to the contribution theory, the wage you deserve is a function of the amount of contribution you have made.¹¹

The value of a worker's contribution is often identified with its market value. But the contribution's value could be identified with something else -say, its "intrinsic" value, or its utility. Thus, there are several versions of the contribution theory.¹² I will discuss only the version that identifies the contribution's value with its market value. I call it the "market value theory" of desert of wages.

According to the market value theory, the basis for deserving a wage is providing a marketable service, and the amount deserved for providing it is equal to the free-market value of that service. In *Spheres of Justice*, Michael Walzer describes such a theory:

the market, if it is free, gives to each person exactly what he deserves....The goods and services we provide are valued by potential consumers in such-and-such a way, and these values are aggregated by the market, which determines the price that we receive. And that price is our desert, for it expresses the only worth our goods and services can have, the worth they actually have for other people.¹³

A market value theory of desert of wages seems to be based partly on the plausible intuition that unless the work one does has some sort of value to others, then one cannot deserve a wage for it. The market value theory then identifies this value with market value. Also, this identification makes for a relatively simple theory. This is because the market value of a thing - unlike its utility, or the amount of effort that went into producing it - is relatively easy to determine (at least in theory). As David Miller writes:

...if we want desert to form the basis of a social practice - rather than being an idea that is used merely to form a series of idiosyncratic judgements - we need a non-arbitrary

public standard to measure it. In this light, the attraction of a market-based criterion is very considerable.¹⁴

However attractive a free-market value theory of desert of wages may be, it cannot be properly evaluated without stating it more precisely. This will require attention to the notion of a "free market."

The United States is often said to have "free market" economy. This is because a significant portion of the means of production is in private hands, and there is much less governmental interference in the workings of the US economy than in the economies of, say, France, Mexico, or Cuba. If this is the sort of "free market" that advocates of the market value theory of desert of wages have in mind, then they must accept that all wages currently received in the US are deserved.

Accepting this would trivialize the comparable worth debate. Advocates of comparable worth maintain that women tend to earn less than they deserve, given that their male colleagues, or men who work in nominally different but relevantly similar jobs, tend to earn more. If, however, it is a necessary truth that the wage one deserves in a US-style "free market" is precisely the wage that one receives, then those advocates are contradicting themselves. They would be maintaining (in effect) that women manage to earn less-than-deserved wages, while earning precisely what they deserve. Surely advocates of comparable worth are not guilty of this.

Thus, what advocates of market value theories must have in mind is not a US-style free market, but rather an "ideal" or "perfectly free" market. In neoclassical economics, a perfectly free market is a hypothetical market with the following features. There is supply and demand for goods and services. The means of production are entirely privately owned and there is no state interference in the market's operations. Firms and consumers in this market are psychological egoists: they always seek to maximize their own welfare. They also operate under certainty: they know the outcomes of their alternative actions. As a consequence of certainty, firms and consumers in a perfectly free market have, in the words of economists Richard Wolff and Stephen Resnick, "...perfect information about price and wage movements."¹⁵

This conception of a "free market" may be used to formulate a version of the market-value theory of desert of wages:

MVT1 S deserves wage W at t for providing some service R in market M at t iff (i) S provides R in M at t and (ii) if M were free at t, then W would be the market price of R at t.

To find out whether someone deserves a wage for providing a service in the actual market, MVT1 directs us to consider the closest possible perfectly free market in which that service is provided. The price of that service in that market is the wage one deserves for providing it in the actual market.

I believe that MVT1 is not the correct theory of desert of wages. It entails that many people who intuitively deserve wages deserve no wages at all. To see this, consider the case of Mr. Porkbelly. He is a commodities trader in the actual market. Mr. Porkbelly excels at his job. He assiduously researches the market, works long hours, and almost always makes his clients a good deal of money. Intuitively, Mr. Porkbelly deserves a decent wage for his work.

MVT1 entails that he deserves nothing. As noted above, consumers in a perfectly free market possess perfect information about price movements. They do not have to speculate. But commodities trading is speculation about the price movements of commodities. Thus, consumers in a free market would not demand the services of commodities traders. The price of that service would therefore be zero. It follows that Mr. Porkbelly deserves no wage at all for the work he does. Indeed, if MVT1 is true, then most workers on Wall Street deserve nothing!

This difficulty can be avoided by adjusting the idea of a free market. Let a free market be similar to the perfectly free market sketched above, except that firms and consumers do not operate under certainty. Call the theory that incorporates this conception of a free market MVT2. MVT2 avoids the conclusion that Wall Street workers deserve nothing. In that market, people must speculate about price movements.

However, MVT2 falls to the following case. Consider Ivan, who works in a Soviet-style controlled economy. His job is to set the price of corn for each year. This job requires a high level of mathematical

and organizational skills. It also involves extensive training and considerable responsibility. The working conditions are abysmal: Ivan's cramped office is cold and windowless. Despite this, Ivan works hard and does his job well. Intuitively, Ivan deserves a decent wage.

MVT2 entails that Ivan deserves nothing. If the market in which Ivan worked were free, there would be no such job as "setting the price of corn for each year." The price of corn would be "set" entirely by market forces. Put another way, if we go to the possible free market closest to Ivan, we find that his service of setting the price of corn has no market value whatsoever. Since that value or price would be Ivan's deserved wage, it follows that Ivan - in the actual market - deserves nothing for doing his job.

An advocate of MVT2 might reply that Ivan has marketable skills, e.g. mathematical and organizational, and their exercise would have a price in a free market. That price would be Ivan's wage for exercising those skills, and that wage is what Ivan actually deserves for doing his job. In other words, Ivan's job should not be thought of as "setting the price of corn for each year," since that would indeed be a worthless service in a perfectly free market, but rather as "exercising such-and-such degree of mathematical and organizational skills," which would have a positive market value and would deserve a wage. A similar reply might be made on behalf of Mr. Porkbelly by advocates of MVT1.

This reply assumes that exercising mathematical and organizational skills "in the abstract" counts as a service. This is implausible. As I see it, the exercise of a skill counts as a service only if directed

toward some project. In Ivan's case, the project is setting the price of corn for each year. That project has no positive value in a free market. Of course Ivan could apply his mathematical and organizational skills to a different project, but the question is not whether Ivan would deserve a wage for providing some service, but whether he deserves a wage for the service he actually provides. MVT2 entails that Ivan deserves nothing.

Besides, there are displays of skill that have no market value, but that may nevertheless deserve a wage. Suppose, for example, you are a wealthy but slightly eccentric person who lives near a sandy beach. One day a derelict man knocks on your door asking for work. You pity him, but have no work for him to do. So you make the following arrangement. If only he will count grains of sand at the beach, you will pay him some sort of wage. The man agrees to this. So every day he counts thousands of grains of sand. This job requires tremendous patience, steady hands, and a relatively high degree of mathematical skill. It also involves eye and back strain, not to mention serious sunburn. For doing this, you pay him a wage. He deserves it. This is not because his particular display of skill has market value; it does not.

This is not to say that the market value of the service one provides, or the skills and talents one exhibits in providing it, are irrelevant to the wage one deserves. It is to say that there is more to deserving a wage. Thus, we must look elsewhere if we wish to find the correct theory of desert of wages.

Compensation theories

Work can be drudgery, an imposition on one's time, or a danger to one's health. This has suggested to some philosophers that if wages are deserved, they are deserved as compensation. James Dick, for example, writes that the notion of compensation "...provides the most powerful and important ground for justifying differences in incomes."¹⁶ Joel Feinberg agrees: "...economic income cannot plausibly be construed as prizes or rewards, and can be spoken of as 'deserved' only insofar as it is compensation...."¹⁷ Feinberg continues:

Not only unpleasant and hazardous work but also terribly responsible positions and functions requiring extensive preliminary training deserve compensation. Here is the real basis for the claim that the executive and the physician deserve higher incomes: not that their superior abilities deserve rewards, but rather that their heavier loads of responsibility and worry and (for doctors) their longer periods of impoverished apprenticeship deserve compensation.¹⁸

Feinberg's idea is that wages are deserved as compensation for at least three factors: length of training, working conditions, and responsibility. The more training and responsibility, and the worse the conditions, the higher the wage one deserves. Let us formulate Feinberg's compensation theory as follows:

CT1 S deserves wage W for doing job J iff (i) S does J; and (ii) W is adequate compensation for the training, responsibility, and working conditions that J involves for S.

For purposes of evaluating CT1, it is important to be clear about the notion of compensation. In one place, Feinberg observes that "...persons deserve compensation for harm wrongly inflicted by others." In another, he stipulates that 'compensation' is deserved for "...losses which are no one's fault."¹⁹ In each case, Feinberg's idea is that the basis for deserving compensation is some sort of harm or loss. CT1 thus implies that wages are deserved on the basis of harm or loss.

If taken as a general view about deserving wages, this is clearly false. Consider the medical student who enjoys the rigors of medical school, later thrives as an impoverished intern, and still later takes tremendous pleasure in practicing medicine. Or consider the happy graduate student who finds no pleasure greater than hours of intense study, who later savors the demands and responsibilities of teaching. Indeed, consider anyone who is happy in his or her job, and who enjoyed qualifying for it. In all such cases, CT1 entails that no wage is deserved. This is plainly wrong.

Perhaps George Sher's compensation theory will fare better than CT1. Sher's view is that "...a wage is deserved when a worker's receiving it would rectify the subordination of his purposes to those of others."²⁰ Sher's argument is this:

...when a person works for another, his unremunerated labor violates a standard that requires that no one's purposes be subordinated to the purposes of others. This situation is clearly rectified by the restoration of equality between what the worker has done for others and what those others have done for him....A wage, which the employee can convert to goods or services of his own choosing, is singularly well suited to serve this function. And this, I suggest, is the basic reason the wage is deserved.²¹

Sher's idea is that working involves subordinating one's own interests to the interests of one's employer, and that this sort of subordination makes one deserving of compensation or "rectification." The deserved wage, then, adequately compensates for having one's interests thus subordinated; or:

CT2 S deserves wage W for doing job J iff (i) S does J and (ii) W is adequate compensation for the subordination of interests that S must undergo to do J.

CT2 hinges on the assumption that work involves a subordination of one's purposes to another's. As Sher writes "...our account presupposes that labor is not among workers' primary goals."²² If taken as a claim about all wage-deserving workers, this presupposition is clearly false. There are those whose work involves no subordination to the goals of others. If CT2 is true, then if these people deserve any pay at all, they deserve less pay than those whose goals are being "subordinated" to the goals others.

Sher realizes that this poses a problem for CT2: "...the stronger intuition appears to be that willing workers deserve as much pay as others."²³

Thus, to defend our account, we must somehow disarm that intuition. This is...not difficult to do. It is a commonplace that the most committed and willing workers are generally also the best. Thus, although these workers come closer than others to pursuing their own purposes, they also generally do more to advance the purposes of others. In part, the intuition that they deserve to be paid as much as others may reflect a belief that these two factors cancel.²⁴

Sher's argument is that there are (at least) two factors, rather than the single factor of interest-subordination, determining the wage a person deserves. These are (i) how much his work requires the subordination of his goals to others' goals, and (ii) how much good his work does for others. If his work requires very little subordination, he deserves a correspondingly lower wage - unless his work does a lot of good for others, in which case "these two factors cancel." I presume this means that the person deserves as much pay as a similar worker whose goals are being subordinated but whose work does not do as much good for others.

Apart from abandoning CT2, Sher now assumes that the most committed workers are "generally also the best." This seems plausible, but irrelevant. It is possible for there to be committed and willing workers whose work is no better, or better for others, than those who are not as committed and willing. Sher's account implies that those workers deserve less pay than relevantly similar workers who are not as committed and willing. This is absurd. Other things being equal, these workers deserve the same amount of pay.

A related difficulty arises with respect to discontented workers. Sher's account implies that they deserve more pay than their less discontented workers. But, Sher asks, "...isn't it highly counterintuitive to say that a worker with negative attitudes deserves a higher wage than his more constructive colleague?"²⁵ Sher's response:

Just as a very willing worker is apt to perform well, a very unwilling one is apt to perform badly. The dissatisfied worker's labor is likely to be relatively unproductive. This means that he is apt to be less deserving than others by one measure even if more deserving by another.²⁶

It is a plausible empirical assumption that workers who are dissatisfied with their jobs often fail to be as productive as colleagues who are satisfied with their jobs. But this is irrelevant. A worker who dislikes his job may perform as well or better than a worker who likes his job. (My father, for example, loathed selling insurance - yet he was the best salesman in the region!) Sher's account implies that the unhappy worker deserves more pay than the satisfied worker. This seems wrong.

I believe these arguments reveal the basic flaw of compensation theories: People can deserve wages, but often not as compensation. Job-related harms are, of course, relevant to the wage one deserves for doing it. But it is oversimple to construe all deserved wages as compensation.

A different approach

I believe that an acceptable theory of desert of wages will be more complicated than any of those considered thus far. This is mainly because the range of bases for deserving a wage is, I believe, much broader than those theories allow. My view is that these bases include not only the effort one makes, the value of one's services, and one's working conditions, but also the wage to which one is entitled by

contract or convention, the fact that one is a person, certain needs one may have, one's moral worth, one's past and future receipt of other goods and evils, and probably others. I believe that a theory of desert of wages must allow that the wage one deserves may involve any of these (and perhaps other) factors.²⁷

Rather than develop this suggestion in detail, I will instead defend it against two objections. Doing this may shed a bit more light on my view about desert of wages.

The first objection is this: My suggestion that wages can be deserved for the reasons I mentioned contradicts a natural and heretofore unquestioned presupposition of a standard way of thinking about desert. This presupposition can be brought out as follows. There are various forms of treatment that people can deserve: punishment, reward, apology, compensation, prizes, gratitude, and so on. The presupposition is that for each sort of deservable treatment, there is one desert-base or small set of desert-bases unique to it. Thus, for example, it is said that punishment is deserved for committing some wrong (but not for anything else); reward is deserved for heroics (but not for anything else); apology is deserved for being insulted (again, not for anything else); compensation is deserved for being wrongfully harmed; grades are deserved for academic performance. And wages, depending on the theory, are deserved for effort, for providing a marketable service, or for the training and conditions one's work involves. My suggestion that wages can be deserved for any number of reasons flies directly in the face of this presupposition.

This presupposition of the standard view is at the very core of Joel Feinberg's influential paper, "Justice and Personal Desert." In that paper, which first appeared more than thirty years ago²⁸, Feinberg attempts to analyze the concept of desert. His analysis proceeds in the following way. First he draws up a list of the sorts of treatment that people can deserve:

1. Awards of prizes
2. Assignments of grades
3. Rewards and punishments
4. Praise, blame, and other informal responses
5. Reparation, liability, and other modes of compensation.²⁹

Then Feinberg attempts to specify the bases for deserving these forms of treatment. In each case, the purported desert bases are unique to the form of treatment. This is why Feinberg says "...the bases of desert vary with the mode of deserved treatment."³⁰ And since for Feinberg wages are deserved as compensation, the bases for deserving a wage are just those that are bases for deserving compensation.³¹ Thus, bases for deserving a wage are not to be confused with bases for deserving prizes, rewards, grades, or any other sort of deservable treatment.

Other writers have accepted Feinberg's assumption that for each form of deservable treatment, there is a desert base or small set of desert bases unique to it. David Miller, for one, claims:

...the basis for desert - the characteristics in virtue of which people are said to deserve this or that - appears to change according to the kind of benefit in question.³²

Robert Young, to take another example, writes:

...whether someone deserves to win the World Chess Championship will be determined by utterly different considerations from those that are relevant to whether someone deserves to be given life imprisonment, and utterly different again from whether someone deserves to be awarded compensatory damages for injuries sustained as a result of medical negligence.³³

I believe that this way of thinking about desert in general, and hence about desert of wages in particular, is fundamentally misguided. I therefore believe that it is no objection to my view that it contradicts the standard way of thinking about desert. To see why I think the standard view is false, we should begin by considering something other than wages.

Consider grades. An important basis for deserving a good grade is (in many cases) performing well on tests and assignments. But this need not be the only basis. Suppose there is a student with a slight learning disability, and a physical disability that makes getting to class difficult. This student may not perform as well as others. But if he performs at all well, he may deserve a higher grade than "unchallenged" students whose work is no better. Here, in addition to performance, effort and (medical) needs seem relevant to what grade he deserves. Or suppose a gifted freshman takes a senior seminar. Her work may not be up to the seniors' level. But if it is rather good, she may deserve a higher grade than those seniors whose work is no better. Here, age and skill seem relevant. Or suppose a student informs a

teacher that he must receive a "B" to graduate. The teacher, who is familiar with the student from a previous class, assures the student that a "B" is a practical certainty. Suppose the student then struggles in the class, and does not quite earn a "B." As I see it, the student may nevertheless deserve one in virtue of the teacher's assurances. Here, something akin to entitlement is relevant.

Next, consider apologies. A condition on deserving an apology is being insulted. But this is not the only relevant fact. Another is the insulted party's moral worth. If he is a scoundrel, then perhaps he deserves only the slightest apology. Since he is a human being, he may deserve some sort of apology, no matter how morally worthless he may otherwise be. Also relevant is the fact that he is entitled by the rules of etiquette to an apology. If the insulted person is especially sensitive, and needs an apology to avoid emotional damage, then this need may be a basis for deserving an apology.

Next, consider medical care. Need is a basis for deserving it. But so is moral worth and being a person. For imagine that A, a morally despicable person, and B, a morally outstanding person, need a heart. Only one heart is available. Each deserves it insofar as each needs it, but B may deserve it more than A in virtue of her superior moral worth. Suppose further that A is entitled by a living will to the heart. That too would be relevant to whether A deserved it. Suppose also that B has had several (unsuccessful) heart transplants already, and that A has had none. Then past receipt seems relevant to deserving the heart. Also

relevant are the efforts that A and B have made to stay relatively healthy.

Next, consider punishment. It can be deserved for committing some wrong. But other factors are relevant to the offender's desert. The harm caused by the crime is clearly relevant. But also relevant, I believe, are the offender's background, his reasons for committing the crime, the effort he put into the crime, any special medical needs he may have, the fact that he is a person, his moral worth, and the penalty to which offenders of that crime are usually "entitled."

I suggest that what is true of grades, apologies, medical care, and punishment - namely, that each can be deserved for an indeterminate number of non-exclusive reasons - is also true of wages. We have already seen that something is plausible in each of the theories of desert of wages considered in previous sections. Effort, the value of one's services, the conditions and training one's work involves: All are relevant to the wage one deserves. But even these do not exhaust the bases for one's desert of a wage. Consider, for example, a terrifically successful but morally wicked corporate executive. My view is that her wickedness makes her less deserving of the handsome salary she takes home. So, *wickedness* should be added to the list of bases for deserving a wage. Consider next a shoe shiner who, through no fault of his own, is especially financially needy. As I see it, his need makes him deserve a somewhat higher wage than the shoe shiner of equal skill who is not as needy. So, *need* should be added to the list of bases for deserving a wage. Consider next the employee who has signed a contract

that entitles her to a certain wage. Other things being equal, the fact that she has entered into this agreement is a basis for her deserving the wage to which she is now entitled. So, *entitlement* should be added to this list of bases for deserving a wage. Consider, finally, the man who performs a menial and perhaps economically valueless job. He is nevertheless a person, and this fact makes him deserving of some wage; that is, the fact that he is a person provides a floor below which wages cannot, without injustice, fall. So, *being a person* should be added to the list of bases for deserving a wage. It begins to appear, then, that there is a large number of factors relevant to the wage one deserves.

At this point it may be objected that I have not provided any principled reason for deeming something a basis for desert, or that I rely on unsupported "intuitions" about what is a desert base. To this second objection I reply as follows: The other theories of desert of wages are no better in this respect than mine. Effort theorists, value theorists, compensation theorists: All rely on intuitions about what is and is not a basis for deserving a wage. The real difference between my theory and theirs is not that mine rests on intuitions about desert bases and theirs do not. The difference is rather that my theory posits more desert bases than the others. As far as appeals to intuitions go, my theory and the others are partners in the supposed crime.

Comparable worth

I conclude by briefly noting two implications that my view of desert of wages has for the comparable worth debate. The first

implication is this. As noted at the outset, advocates of comparable worth claim not only that women and men who work in the same jobs deserve equal pay, but also that women and men who work in jobs that are nominally different but relevantly similar deserve equal pay. These claims imply that certain factors (for example, skill, training, and working conditions) are relevant to the wage one deserves, and some (for example, being a man) are not. But if my view about desert of wages is correct, then bases for deserving a wage include many others never mentioned by advocates of comparable worth.

The second implication is that there are inherent limitations to current "job evaluation schemes." The schemes I have in mind attempt to specify the bases for the wage a job deserves.³⁴ But people, not jobs, deserve wages. And the wage a person deserves depends (I have suggested) not only on facts about the person's job, but also on facts about the person. Unfortunately, there is no way to know all of those facts - no way to know, for example, each person's moral worth, need, or the benefits and burdens a person has already received. Therefore, there is no practical way to include these facts in job evaluation schemes. The upshot is that job evaluation schemes, at least as we know them, support neither the claim that women and men who work in the same job deserve equal pay, nor the claim that women and men who work in jobs that are nominally different but "relevantly similar" deserve equal pay. This is because many of the relevantly similar features - that is, many of the desert bases - are not and cannot be feasibly included in those schemes. Simply put, all that current job evaluation schemes support is

the claim that *other desert bases being equal*, women generally earn less-than-deserved pay. To put the point rather more contentiously: For all that advocates of comparable worth have said, individual workers may be getting precisely what they deserve.³⁵

Notes

1. For a book-length version of this argument, see K. E. Soltan, *The Causal Theory of Justice* (Berkeley, CA: University of California Press, 1987). For more general discussions of comparable worth that discuss this argument, see Paula England, *Comparable Worth: Theories and Evidence* (New York, NY: Aldine de Gruyter, 1992); and Michael Evan Gold, *A Dialogue on Comparable Worth* (Ithaca, NY: ILR Press, 1983).

2. A theory of desert of wages might include not only a list of bases for deserving a wage, but also a method for ranking, quantifying, and assigning "amounts" of them to particular sums of money.

3. Why say that wages are deserved only for *contracted* work? Consider the following case. While you are away on vacation, I take it upon myself to tend to your lawn and garden. On your return, I present myself at your doorstep and ask for payment. You may reward me for what I have done, but to say that this reward is a wage is counterintuitive. The reason, I suggest, is that the work I have done was not done under any sort of contract.

Note also that on my understanding of wages, the money self-employed people pay themselves is not a wage. This is because people presumably cannot make contracts with themselves.

4. I have in mind the following sort of case. Suppose I am hit by a speeding car. I am knocked unconscious. Because of my injuries, I will die unless I receive immediate emergency surgery. Fortunately, a surgeon witnesses the accident and comes to my aid. Though I am unable to consent, the surgeon performs the surgery. The operation is a success, and I survive. A few weeks later, I receive a bill from the surgeon for services rendered. The surgeon's argument is that there was an implicit or "quasi" contract: If I had been able to consent to the surgery, I would have. If so, then any payment I make to the surgeon should count as a wage. For a case involving these facts, see *Cotnam v. Wisdom* (Supreme Court of Arkansas, July 15, 1907). I thank Thomas Kearns for this reference.

5. Joel Feinberg, *Social Philosophy* (Englewood Cliffs, NJ: Prentice-Hall, 1973), page 117. The effort theory is discussed also by David Miller, *Social Justice* (Oxford: Clarendon Press, 1976), pages 103 and 109-110, and by James Dick, "How to Justify a Distribution of Earnings," *Philosophy and Public Affairs* 4 (Spring 1975), pages 259-260.

6. David Miller offers (but does not endorse) one version of this argument:

The argument in its favor is usually expressed as follows: a man can deserve reward only for what it is within his power to do. If two men try equally hard, and work for an equally long time, they deserve equal remuneration even if one of them, by virtue of superior ability, manages to produce more goods, or goods of a better quality. (*Social Justice*, page 109.)

Another version is suggested by the following story, told by Michael Slote, "Desert, Consent, and Justice," *Philosophy and Public Affairs* 2 (Summer 1973):

Imagine...that a certain woman has lost a book and two friends of hers come by and volunteer to help her find it. The friends make equally conscientious, energetic, and intelligent efforts to find the book, and one of them succeeds in finding it and returning it to the woman who lost it. One might well wonder about such a case whether the woman who actually found the book deserves more (by way of gratitude or reward) from the friend who lost the book than does the woman who tried equally hard but failed to find the book. And this is a difficult question. On the one hand, it is possible to feel that since the friends made equal efforts, etc., in behalf of the woman who lost the book, she is equally in their debt and should reward them equally. It may seem that neither deserves more than the other at her hands. We are, after all, imagining that the person who does not find the book fails through no intellectual, emotional, or moral defect of her own and that her failure to find the book can be attributed to "bad luck" or "accident". And can greater desert...arise through mere luck or accident? (Pages 327-328.)

Slote is talking about deserving gratitude or reward, rather than wages. But he tells this story in the course of discussing "whether an ideally just society...would reward people (workers) in accordance with their actual success in contributing to society or in accordance with their (conscientious) efforts to contribute to society" (323). Also, Slote does not endorse this argument, but he does not reject it either. His comment: "It is hard to know what to say" (329).

7. For a convincing refutation of some standard views about the supposed connection(s) between desert and responsibility, see Fred Feldman's "Desert: Reconsideration of Some Received Wisdom," *Mind* 104 (January 1995), pages 63-77.
8. See, for example, Julian Lamont, "The Concept of Desert in Distributive Justice," *The Philosophical Quarterly* 44 (1994), pages 45-64. Lamont writes: "Among those who think that desert should play some role in determining income distribution, one of the long-standing debates has been between those who think 'effort' should be the desert-basis and those who think 'productivity' should be" (57).
9. Miller, *Social Justice*, page 103.
10. Feinberg, *Social Philosophy*, page 114.
11. Soltan, *The Causal Theory of Justice*, page 147.
12. See Soltan, *A Causal Theory of Justice* (page 147) for three such versions. Note that contribution theories will differ also according to what counts as "contribution." In what follows, I understand a worker's contribution to be the service he provides. But William Galston, in *Justice and the Human Good* (Chicago, IL: University of Chicago Press, 1980) understands "contribution" much more broadly: "Contribution to production has five major components: sacrifice, duration, effort, productivity, and quality" (201). Galston's inclusion of "sacrifice" and "effort" makes his theory a hybrid of effort and contribution theories. Thus, I think Galston misleads by calling it a "contribution" theory.
13. Michael Walzer, *Spheres of Justice* (Oxford: Basil Blackwell, 1983), page 108. Walzer, however, does not accept this theory, writing:

...this is to misunderstand the meaning of desert. Unless there are standards of worth independent of what people want (and are willing to buy) at this or that moment in time, there can be no deservingness at all. We would never know what a person deserved until we saw what he had gotten. And that can't be right (108).

However, several authors seem to accept some version of the market value theory of desert of wages. See, for example, Louis O. Kelso and Mortimer J. Adler, *The Capitalist Manifesto* (New York, NY: Random House, 1958), page 52-86; David Miller, *Market, State, and Community* (Oxford: Clarendon Press, 1989), pages 151-174; Jonathan Riley, "Justice Under Capitalism," in John Chapman and J. Roland Pennock, eds., *Nomos XXXI: Markets and Justice* (New York, NY: New York University Press, 1989), pages 122-162; Robert Young, "Egalitarianism and Personal Desert," *Ethics* 102 (1992), pages 319-341, especially page 330. For the claim that neoclassical economic theory is committed to the idea that in a

free market "each gets his or her just deserts" (page 246), see Richard D. Wolff and Stephen A. Resnick, *Economics: Marxian versus Neoclassical* (Baltimore, MD: The Johns Hopkins University Press, 1987). For an old but impressive criticism of the neoclassical economic theory of justice, see Henry Sidgwick, *The Methods of Ethics*, 7th ed. (Indianapolis, IN: Hackett Publishing Company), pages 287-290. For further reflections on the morality of a free market, see David Gauthier, *Morals by Agreement* (Oxford: Clarendon Press, 1986), pages 83-112.

14. Miller, *Market, State, and Community*, pages 161-162.

15. Wolff and Resnick, *Economics: Marxian versus Neoclassical*, page 123. Neoclassical economists use these assumptions to derive all sorts of interesting results - for example, that the prices in such a market will remain in equilibrium; and that such a market will be "Pareto optimal."

16. Dick, "How to Justify a Distribution of Earnings," page 264.

17. Joel Feinberg, "Justice and Personal Desert," in Feinberg's *Doing and Deserving* (Princeton, NJ: Princeton University Press), page 94.

18. Feinberg, "Justice and Personal Desert," page 92-93.

19. Feinberg, "Justice and Personal Desert," pages 74 and 75.

20. George Sher, *Desert* (Princeton, NJ: Princeton University Press, 1987), page 105.

21. Sher, *Desert*, page 102.

22. Sher, *Desert*, page 106.

23. Sher, *Desert*, page 107.

24. Sher, *Desert*, page 107.

25. Sher, *Desert*, page 107.

26. Sher, *Desert*, page 108.

27. Two important caveats. First, I do not view possession of any of these bases as *sufficient* for deserving a wage. I view them as bases for *prima facie* desert. Second, I accept what many authors have noted: namely, that need and entitlement are different from desert. What I do not accept is that need and entitlement are not *bases* for desert. For further discussion of these points, see Chapter 7, "A Theory of Desert."

28. In *Nomos VI: Justice*, Friedrich, C. J. and Chapman, J. W., eds. (New York, NY: Atherton Press, 1963), pages 69-97. However, quotations from this article are from its reprinting in Feinberg's *Doing and Deserving*.
29. Feinberg, "Justice and Personal Desert," page 62. Feinberg does not claim "taxonomic precision or completeness" for this list.
30. Feinberg, "Justice and Personal Desert," page 61.
31. Or, since there are many sorts of harm, it might be better to say that on Feinberg's view, wages are deserved as compensation for "workplace" harm. These "harms," according to Feinberg's theory of desert of wages, are training, responsibility, and working conditions.
32. Miller, *Market, State, and Community*, page 157.
33. Young, "Egalitarianism and Personal Desert," page 319.
34. A good discussion of different sorts of job evaluation schemes can be found in England, *Comparable Worth: Theories and Evidence*, pages 189-224.
35. I hope that readers will understand that I am not taking sides in the comparable worth debate. I am merely suggesting that the debate needs to be broadened to include what I have argued to be the proper conception of desert of wages.

CHAPTER 7
A THEORY OF DESERT

*Let us then examine more closely
wherein Desert consists...*

- Henry Sidgwick,
The Methods of Ethics

Introduction

My view is that the previous chapters suggest the need for a fresh start on the topic of desert. That is the goal of this chapter, in which I explain and defend my own theory of desert. I hasten to add that the theory I defend lacks novelty in two important respects. First, I believe that my conception of desert, however much it differs from some philosophical conceptions, is more or less the ordinary or "common sense" conception. Put another way, the theory of desert I propose is meant to be not much more than a systematization of what I take to be ordinary beliefs about desert. Second, the structure of my theory of desert is not novel. In fact, its structure is strikingly similar to that of W. D. Ross's theory of moral rightness. It will be useful, then, to conclude this chapter by comparing my theory of desert to Ross's theory of moral rightness.

What sort of thing is desert?

There are many sorts of things: events, propositions, physical objects, properties, sets, and perhaps more (or perhaps less). Thus, a natural way to begin theorizing about desert is to ask: What sort of thing is it? As I see it, the answer is clear: Desert is a property. But desert is not a "monadic" property. It is a "polyadic" property, or a relation.

If desert is a relation, then (like any relation) it takes a number of relata. An interesting question is "How many?" A natural answer is that desert takes three relata: a *subject* of desert, an *object* of desert, and a *basis* for desert. This is suggested by ordinary desert-claims such as:

- (a) Smith deserves a bonus in virtue of her increased productivity.

However, it could be argued that (a) is incomplete. For Smith not only deserves a bonus: she also deserves it *from* someone or something - her boss, for example, or the company. So perhaps (a) should be replaced by:

- (b) Smith deserves a bonus from the company in virtue of her increased productivity.

It could now be argued that not even (b) is complete. This is because Smith may deserve a bonus from the company at a certain *time* - immediately, say, or at the end of the year. So perhaps (b) should be replaced by:

- (c) Smith deserves a bonus at the end of this year from the company in virtue of her increased productivity.

Even (c), it might be said, is incomplete. The reason is that Smith's desert of a bonus can change over time. So, for example, Smith may *now* deserve a bonus at the end of the year. But *six months ago*, prior to her increase in productivity, Smith did not deserve a bonus at the end of this year. Thus, Smith's desert of a bonus at the end of the year has changed over time: at one time, she does not deserve it; at another time, she does. So perhaps (c) should be replaced by:

- (d) At this time, Smith deserves a bonus at the end of this year from the company in virtue of her increased productivity.

If (d) were a paradigmatic expression of the desert relation, then desert would take six relata: (1) a subject of desert; (2) an object of desert; (3) a basis for desert; (4) a time at which the object is deserved by the subject; (5) a time at which it is true that the subject deserves that object in virtue of instantiating some desert base(s); (6) and a person from whom, or a thing from which, the subject deserves the object. It may appear, then, that a schematic expression of the desert-relation will have to take this form:

DC At t , S deserves x at t' from y in virtue of F .

There is no doubt that many ordinary desert-claims, fully parsed, will conform to DC. But some will not; for example:

- (e) At this time, Jones deserves some good luck;
he's had only bad.

Good luck, though it can (I believe) be deserved, is not deserved from anyone or anything.¹ Good luck is therefore unlike other deservable things, such as a bonuses, raises, apologies, rewards, or grades, which *are* deserved from someone or something. Good luck is a limiting case, insofar as it seems impossible to distribute or bestow; but there are things that can be bestowed and deserved without being deserved from anyone in particular. Food, respect and medical care are examples: Other things being equal, everyone deserves these things - even though there may not be, for any particular deserving person, a person or persons from whom these things are deserved. Thus, every desert-claim that expresses a case like this will, like (e), fail to conform to DC.

(e) fails to conform to DC in another way. Although it does mention a time at which it is true that Jones deserves good luck, it does not mention a time at which this good luck is deserved. True, Jones deserves that there is some time at which he has good luck; to deny this is to deny that Jones deserves good luck. However, it is possible that there is not any particular time such that Jones deserves good luck at that time. (Perhaps Jones deserves it soon, but 'soon' does not pick out a time.) Thus, every desert-claim that expresses a case like this will, like (e), fail to conform to DC.

At this point, it may be tempting to posit several desert-claim schemas, each canonical. One would express a three-place relation, and would capture claims like (a); another would express a four-place relation, and would capture claims like (b); another would express a five-place relation, and would capture claims like (c); a fourth would express a six-place relation, and would capture claims like (d); and perhaps even more would be needed to accommodate the variety of apparently genuine desert-claims.

This temptation should be avoided. This is because to posit several desert-claim schemas, each canonical, is to multiply desert-relations beyond necessity.² Let me explain.

According to a plausible principle, any relation takes the same number of relata each time it is instantiated.³ Take, for instance, the relation expressed by 'taller than'. Suppose this relation takes exactly two relata in some case. Then, according to this principle, the *taller than* relation always takes two relata. Any relation that takes more or less than two relata is not the *taller than* relation.

Now consider the relation of desert. Suppose this relation takes just three relata in some case. Then, according to the principle above, the desert relation always takes three relata. Any relation that takes more or less than three relata is not the desert relation. Now suppose that we posit several desert-claim schemas. Each expresses a relation, but the number of relata taken by each relation is different. Then according to the principle above, the relation expressed must in each case be a different relation. Of course, it might be convenient to call

the relation expressed by each schema 'desert'; but, strictly speaking, each relation is distinct from the other.

My view is that this would unnecessarily fracture the concept of desert. I also believe that there is a way to accommodate the variety of desert-claims without positing a multitude of distinct desert-relations. The "trick" is fairly obvious. It is to transfer the apparent variety of desert-claims to the desert object. This can be done by treating objects of desert as *propositions*. (As is the custom, I will name propositions by using 'that'-clauses.) So, for example, suppose that Aaron Burr deserves *that Alexander Hamilton apologizes to Burr at noon on January 1, 1800*. This object of desert - that Alexander Hamilton apologizes to Burr at noon on January 1, 1800 - is deserved from a particular person, Hamilton, at a particular time, noon on January 1, 1800. But as we have seen, not every object of desert will be like this. So, for example, Jones may deserve *that Jones has some good luck*. This object of desert - that Jones has some good luck - may not be deserved at a particular time, or from a particular agent. Nevertheless, it seems to be an object of desert in good standing, and so does the more complex desert object deserved by Burr.

That said, I believe it would be a mistake to assert that the canonical form for all genuine desert-claims is this:

DC* At t, S deserves x in virtue of F.

True, DC* is an improvement over DC insofar as DC* captures many more genuine desert-claims than DC. But as I see it, DC* fails to capture

all genuine desert-claims. This is because, according to the theory I advocate below, there are two distinct desert relations, or two concepts of desert: *prima facie desert* and *all-in desert*. Later I will explain these concepts, and why they are different. For now it is sufficient to note that 'deserves' as it appears in DC* is (on my view) ambiguous between *prima facie desert* and *all-in desert*.

Thus, my view of desert requires that DC* be replaced by a pair of schematic claims:

DC_{pf} At t, S *prima facie* deserves x in virtue of F.

DC_{ai} At t, S *all-in* deserves x in virtue of F.

DC_{pf} is intended to capture all genuine claims of *prima facie* desert; DC_{ai} is intended to capture all genuine claims of *all-in* desert. I believe that DC_{pf} and DC_{ai}, together, capture all genuine desert-claims. Accordingly, I believe that desert, whether *prima facie* or *all-in*, is a four-place relation that obtains among a subject of desert, an object of desert, a basis of desert, and a time at which the subject deserves that object in virtue of that basis.

A catalogue of desert bases

The term 'desert basis' seems to have been coined by Joel Feinberg when he wrote:

If a person is deserving of some sort of treatment, he must, necessarily, be so *in virtue of* some possessed characteristic or prior activity. It is because no one can deserve anything unless there is some basis or ostensible occasion for the desert that judgments of desert carry with

them a commitment to the giving of reasons. One cannot say, for example, that Jones deserves gratitude although he has done "nothing in particular." If a person says that Jones deserves gratitude, then he must be prepared to answer the question "For what?" Of course, he may not know the basis of Jones's desert, but if he denies that there is any basis, then he has forfeited his right to use the terminology of desert....Desert without a basis is simply not desert.⁴

Feinberg is right that desert must have a basis. But this raises more questions. What are the desert bases? How do desert bases manage to make things deserving? As I see it, these are the two most pressing questions for any theorist of desert. I shall now attempt to answer them.

In Chapter 2, I accepted "pluralism" about desert bases. This is the view that there is more than one basis for desert. I mentioned in previous chapters some of the things I take to be bases for desert. What follows is a more complete catalogue of desert bases. It will be noticed that each entry in the catalogue opens with an italicized word. In each case, the italicized word is meant to express what philosophers might call a "determinable property" (such as *being colored*), of which there may be innumerable "determinate properties" (such as *being scarlet*, or *being vermillion*).⁵ So, for example, the first entry in my catalogue of desert bases is *effort*. This is meant to express the determinable property of *having exerted effort*. Determinates of this property include *having exerted intellectual effort*; *having exerted physical effort*; and so on. Note that even these are determinable properties. *Having exerted intellectual effort*, for example, is a determinable property. Some of its determinates include *having stayed*

up all night studying for the physics exam, and having labored for hours under a broiling sun. Note also that determinates of determinables that are desert bases are, in virtue of this, themselves desert bases. So, for example, *having labored for hours under a broiling sun* is a desert base in virtue of the fact that it is a determinate of the determinable desert base of *having exerted effort*.⁶

(1) *Effort.* It is a truism that those who work hard become deserving. One philosopher who accepts this truism is George Sher:

Of all the bases of desert, perhaps the most familiar and compelling is diligent, sustained effort. Whatever else we think, most of us agree that persons deserve things for sheer hard work. We believe that conscientious students deserve to get good grades, that athletes who practice regularly deserve to do well, and that businessmen who work long hours deserve to make money. Moreover, we warm to the success of immigrants and the underprivileged who have overcome obstacles of displacement and poverty. Such persons, we feel, richly deserve any success they may obtain.⁷

Another philosopher who accepts effort as a desert base is Wojciech Sadurski. As I explained in Chapter 2, Sadurski's view on this matter is rather extreme. He claims that "*..effort is the only legitimate basis and measure of desert.*"⁸

I accept the truism that those who exert effort become deserving. I do not accept Sadurski's extreme view that effort is the only basis for desert. There are many bases for desert, on my view. Nor do I accept, what Sher's remarks imply, that effort is always a basis for deserving some benefit. To be sure, in many cases it is. For example, if a person has spent many long, hot, dirty hours working in her

vegetable garden, then she may deserve a thriving garden, the admiration of her neighbors, the pleasure she might take in beholding and eating the vegetables, or some other benefit. In other cases, however, effort is a basis for deserving evil or harm. To see this, suppose a terrorist aims to blow up some innocent people. Suppose the terrorist works quite hard to achieve that end. The terrorist's effort is not a basis for deserving a benefit. It is a basis for deserving punishment. Indeed, effort can be a basis for deserving just about anything deservable. For there are many sorts of effort, and what is deserved in virtue of effort will depend on what sort of effort is exerted. For example, criminal effort deserves punishment; altruistic effort deserves admiration; reckless effort deserves failure; intellectual effort deserves a good grade; heroic effort deserves a reward; and so on.⁹

This is a convenient place to partially explain three pieces of terminology that I will use later on to state my theory of desert. When I say, for example, that effort deserves success, or that criminal effort deserves punishment, I am not saying that effort is sufficient for actually deserving success, or even that criminal effort is sufficient for actually deserving punishment. To see why, suppose Jones exerts criminal effort. Suppose, in other words, that Jones directs effort towards something illegal. This is not sufficient for Jones to deserve punishment. One reason is that the laws criminalizing the those efforts might be morally unacceptable. Those laws might, for example, criminalize any attempt to practice Judaism. If Jones attempts to practice Judaism, he is engaged in illegal activities. But this is

hardly sufficient for deserving punishment. Another reason is that even if the laws are morally acceptable, Jones might instantiate other desert bases that could influence the amount of punishment he deserves. For example, Jones might be the product of horribly abusive parents. This may mitigate the severity of the punishment he deserves; it might even render any punishment undeserved.

However, even if Jones turns out not to actually deserve punishment, I maintain that his criminal effort is a basis for *prima facie desert* of punishment (this is the first bit of terminology). The mere fact that Jones broke the law is, as I see it, a "point in favor" of his deserving punishment. It is an objective fact about the act, and is relevant to whether Jones really or *all-in deserves* punishment (the second bit of terminology). Jones all-in deserves punishment if, when all the bases for Jones's *prima facie desert* of punishment are taken into consideration, those bases in this case *outweigh* (the final piece of terminology) the bases in this case for Jones's deserving not to be punished.

I will postpone further discussion of the notions of *prima facie desert*, *all-in desert*, and *weight* until the other desert bases have been considered. In the meantime, I will make generous use of the notion of *prima facie desert* so as to avoid misunderstandings.

(2) *Achievement*. People are deserving in virtue of their efforts, even if those efforts do not succeed. But people are also deserving in virtue of their achievements, even if those achievements do not require much effort. Think, for example, of the praise that is

sometimes bestowed upon a brilliant composer. This praise can be deserved even if the composer finds composing easy. What matters is the achievement. Likewise for the wage deserved by a carpenter, say, for whom building and installing a staircase is a matter of effortless routine. Likewise for the punishment one might deserve for a spontaneous murder.

There are importantly different things one can achieve, and what is deserved for achievement depends on what is achieved. So, for example, there is artistic achievement, which *prima facie* deserves exhibition; political achievement, which *prima facie* deserves re-election; personal achievement, which *prima facie* deserves praise; financial achievement, which *prima facie* deserves money; intellectual achievement, which *prima facie* deserves publication; athletic achievement, which *prima facie* deserves victory; and so on. (Note that any instance of achievement can be an instance of many sorts of achievement, and thereby constitute a basis for deserving several sorts of treatment.)

Although the word 'achievement' customarily carries a positive connotation, I would like to say that there are negative achievements - for example, criminal achievements, which *prima facie* deserve punishment; despicably motivated achievements, which *prima facie* deserve contempt; worthless or useless achievements, which *prima facie* deserve nothing; and so on.

(3) *Worth*. Consider the claim that the Olympic Peninsula deserves preservation, or that this giant Sequoia deserves not to be turned into a bunch of Dixie cups. Let us assume for the moment that these claims are true. What makes them so? What are the relevant bases for desert? Perhaps something akin to effort is relevant to the towering, ancient Sequoia's desert. But what of the Olympic Peninsula's desert? It has not exerted any "effort." It has not "achieved" anything. Thus, if it deserves anything at all, the basis for its desert has not yet been catalogued.¹⁰

My view is that the basis for the Olympic Peninsula's desert is its *worth*. I understand "worth" broadly. I intend it to include the following properties: Rarity, magnificence, beauty, and so on. As I see it, the Olympic Peninsula possesses all these properties. Furthermore, I believe that in virtue of possessing them, the Olympic Peninsula deserves preservation. Likewise for the giant Sequoia, the tropical rainforest, and other things.

However, I intend "worth" to include not only the properties of rarity, magnificence, beauty, and so on. I intend it to include also the property of *moral* worth. Trees, wilderness areas, and the like do not have moral worth. Moral worth is something that only people can have. What is moral worth? Following tradition, I take a person's moral worth to be a function of his or her degree of virtue: The more virtuous a person, the greater his or her moral worth.

A traditional assumption is that the greater a person's moral worth, the greater his or her prima facie desert of happiness. If this assumption is correct, then moral worth is a basis for desert.

I believe that this very assumption is implicit in a remark made by W. D. Ross. Ross wrote:

If we compare two imaginary states of the universe, alike in the total amounts of virtue and vice and of pleasure and pain present in the two, but in one of which the virtuous were all happy and the vicious miserable, while in the other the virtuous were miserable and the vicious happy, very few people would hesitate to say that the first was a much better state of the universe than the second.¹¹

I share Ross's intuition that, other things being equal, the world in which the virtuous are happy and the vicious unhappy is much better than that world in which the vicious are happy and the virtuous miserable. I share it, because I believe that moral worth is a basis for desert, and that the world is made better to the extent that people get what they (all-in) deserve. In typical cases, those who are virtuous all-in deserve happiness in proportion to their virtue, and those who are wicked all-in deserve unhappiness in proportion to their wickedness. Therefore, other things being equal, a world in which the virtuous are happy and the wicked unhappy is better than a world in which the wicked are happy and the virtuous are miserable.

I suspect that if there is a desert base the possession of which is sufficient not merely for prima facie desert, but also for all-in desert, it is a high (or low) degree of moral worth. I find it

difficult to imagine a case in which a moral saint deserves unhappiness, or a case in which a truly evil person deserves happiness.

(4) *Being a person.* Simply in virtue of being a person, you prima facie deserve various things.¹² These may include a modicum of respect; a share of happiness; a certain span of life; basic necessities such as food, shelter, medicine, clothing; and so on. If there were any doubt about this, it may be helpful to consider a brand new baby. It is natural to feel that this child deserves various things - love, attention, nurturing, education, a happy life, and so on. But since the child has done, received, and suffered so little at this early point in its life, it seems that the basis for its desert of these things can only be its personhood.

This is not to say that being a person makes one all-in deserving of these things. It is to say that being a person is a basis for prima facie desert. So, for example, if the child grows into a wicked person, then this person may deserve little in the way of respect or happiness. Also, it is important to see that what is prima facie deserved in virtue of being a person changes over time. So, for example, suppose an infant prima facie deserves a certain amount of life - say, 70 more years. But a 65 year-old person does not prima facie deserve 70 more years of life. Rather, what that person prima facie deserves, as far as life is concerned, is five more years.

What about organisms that are non-persons? There are some things that some non-persons simply cannot deserve: for example, giant Sequoias and blue whales cannot deserve educations, though people can. But does

a giant Sequoia or blue whale prima facie deserve anything simply in virtue of being the sort of organism that it is? My opinion is that these creatures do prima facie deserve certain forms of treatment; or, at the very least, that they deserve to fail to suffer certain forms of treatment. For example, I believe blue whales prima facie deserve not to be made into dog food, and that giant Sequoias prima facie deserve not to be made into Dixie cups. I cannot expect others to accept these views, and I will not attempt to argue for them. I will merely note that if being a person is a basis for prima facie desert of certain things, then it is plausible that person-like organisms prima facie deserve, to the extent that they are person-like, what persons prima facie deserve in virtue of being persons.

(5) *Need*. I believe that need is a basis for desert.¹³ As noted in Chapter 4, Feinberg shares this view:

A man with a chronically sick wife or child deserves compensation since through no fault of his own he has a greater *need* than others; and the same is true of a man with a large number of dependents.¹⁴

I think it is more precise to express this view by saying that need is a basis for prima facie desert. This is because need is not sufficient for all-in desert. To see this, suppose a person needs life-sustaining medicine. Then this person prima facie deserves it. But suppose this person needs medicine because he has knowingly abused his body over the course of several years. Other things being equal, he deserves this medicine rather less than the person who needs it and has

taken every effort to stay relatively healthy. Or suppose a person needs money because he has frittered away all of his funds on gambling, drink, and sleazy entertainment. Other things being equal, he deserves this money rather less than the person who needs money and is poor through no fault of his own. So, need is not sufficient for all-in desert.

Some philosophers maintain that need is not a basis for desert. William Galston, for example, argues as follows:

If *f* is to serve as a desert-basis, it is a necessary condition that *x*, the treatment appropriate to it, be accorded the same normative or moral evaluation as *f*. If *f* is regarded as good or desirable, so is *x*, and similarly if *f* is regarded as bad. Clearly, need does not satisfy this criterion; it is regarded as undesirable, but the treatment to which it gives rise is considered desirable.¹⁵

Galston's criterion is false. Consider wages. One basis for deserving a wage is having to work in horrible conditions. Clearly, having to work in horrible conditions is undesirable. If Galston's criterion were true, it would have to follow that wages are undesirable! Or consider apologies. Being viciously slandered is a basis for deserving an apology. Clearly, being viciously slandered is not at all desirable. If Galston's criterion were true, it would have to follow that receiving an apology is also undesirable. These examples show that Galston's criterion for desert-basehood is false. There is no reason to suppose that if *f* is a desert base and regarded as good (bad), then *x*, or what is deserved in virtue of *f*, must also be regarded as good (bad). Thus,

Galston's criterion cannot be used to show that need is not a desert base.

Another argument against need's being a desert base is suggested by those who point out, first, that we must be responsible for the bases of our desert, and second, that we are not responsible for our needs.¹⁶ But this argument fails. As I suggested in Chapter 1, and as I argued in Chapter 2, and as I will argue further below, it simply is not true that we must be responsible for the bases of our desert. (Innocent suffering, which is a basis for deserving compensation, is an example.) If this is correct, need cannot be disqualified as a basis for desert even if we are not responsible for our needs.

(6) *Receipt*. What people have received in the past is a basis for what they prima facie deserve now. Suppose, for example, that you have suffered miserably for many years. Suppose that I have had lots of joy. Suppose some happiness will now fall into either your life or mine. You prima facie deserve it more than I do. The reason is that past receipt is a basis for prima facie desert. Those who have enjoyed, say, a lot of good are prima facie less deserving of currently available goods than those who have enjoyed less. Conversely, those who have suffered a lot of evil are prima facie less deserving of more evil now than those who have suffered less.

My rejection in Chapter 2 of the view that desert is always "backward looking" compels me to adopt a similar stance with respect to future receipt of good and evil. Thus, I accept that those who will enjoy an excessive amount of good are prima facie less deserving of

currently available goods than those who will enjoy less; and, conversely, those who will suffer an excessive amount of evil are prima facie less deserving of more evil now than those who will suffer less. More simply, what people will receive in the future is a basis for what they prima facie deserve now.

(7) *Suffering*. Excessive past or future receipt of just about anything is a basis for prima facie deserving less of it now. But I would like to call special attention to suffering, and to treat it as a distinct basis for prima facie desert. One reason for doing this is that those philosophers who have written about desert have largely ignored this basis for desert.¹⁷ Another reason is that, in ordinary life, suffering is thought to be one of the most prominent bases of desert. It is customarily regarded as a basis for deserving compensation, sympathy, apology, medical care, or some other such thing.

Of course, merely having suffered is not sufficient for all-in desert. For there are many possible causes of suffering, and in any particular case the cause of suffering can mitigate one's desert. So, for example, a man who loses a limb in an accident at work may all-in deserve compensation for his suffering. But a man who intentionally injures himself in order to cash-in on a generous disability insurance plan may, for this, deserve no compensation whatsoever.

(8) *Entitlement*. The last desert base that I consider is entitlement. (For an account of the notion of entitlement, see Chapter 3.) I believe that the relationship between desert and entitlement has not been well understood by philosophers. Those who discuss these

notions tend to fall into one of two extremes. At one extreme are those who so sharply *distinguish* desert from entitlement that these notions seem shorn of any interesting relationship to each other. Remarks typical of this view include:

"Deserve," "fitting," and "appropriate," on the one hand, and "right," "entitlement," and "rule," on the other, are terms from altogether different parts of our ethical vocabularies....¹⁸

...desert-claims and rights-claims do seem to answer different questions. When we say that persons deserve things, we generally answer questions about what it would be good for them to have; when we attribute rights, we generally answer questions about what others ought to do or refrain from doing.¹⁹

At the other extreme are those who actually *identify* desert with (a species of) entitlement. John Rawls has made remarks, already cited in Chapter 3, that suggest his commitment to such a view:

...it is necessary to be clear about the notion of desert. It is perfectly true that given a just system of cooperation as a scheme of public rules and the expectations set up by it, those who, with the prospect of improving their condition, have done what the system announces that it will reward are entitled to their advantages....²⁰

The case [of justice's relationship to moral desert] is analogous to the relation between the substantive rules of property and the law of property and theft. For a society to organize itself with the aim of rewarding moral desert as a first principle would be like having the institution of property in order to punish thieves.²¹

In each of the latter two passages, the implication is that desert can arise only under a system of just rules - indeed, that to deserve something just *is* to be entitled to it under these rules.

My own view (which I briefly discussed in Chapter 3) lies between divorcing desert from entitlement, on the one hand, and wedding them on the other. It is that entitlement, though distinct from desert, is a *basis* (one of many) for prima facie desert. I offer two arguments for the view that entitlement is a desert base.

One argument is based on the fact that institutional theories of desert are plausible. At any rate, they have seemed plausible to several eminent philosophers, each of whom treats desert as a sort of entitlement.²² One explanation for the plausibility of those theories is that they are true. I think this is a poor explanation, since (as I see it) those theories are not true. (Again, see Chapter 3.) An alternative explanation for the allure of institutional theories is that philosophers have confused one important basis for desert - namely, entitlement - with desert itself. If this explanation is correct, then entitlement is a basis for desert.

The second argument that entitlement is a basis for desert is based on an imaginary case, and a view about the nature of justice. The imaginary case is this. Imagine that you are legally entitled to something - say, a piece of land. Now suppose that you are similar to me with respect to the other desert bases. That is, suppose we have worked the same amount, achieved the same amount, need the same amount, are of equal moral worth, are persons, and so on. The important difference is that you are legally entitled to the land. Suppose, finally, that you have and enjoy the land, and I do not.

As I see it, there is no injustice here. Furthermore, I accept the venerable view that justice obtains to the extent that people (and other things) get what they deserve. From this view of justice and the facts of the case described above, it follows that you must have deserved the land more than I did. Otherwise there *would* have been an injustice in your receiving it. And since, in the case described, the only fact that relevantly distinguishes you from me is your entitlement to the land, it further follows that entitlement is a basis for your desert of that land. Therefore, entitlement is a desert base.²³

Now I would like to note an interesting implication of the claim that entitlement is a desert base. If entitlement is a desert base, then a plausible principle about desert and responsibility is false. The principle is this:

(P) If S deserves x in virtue of performing some action, then S is responsible for performing that action.²⁴

(P) is plausible. It is hard to imagine a case where someone might deserve praise or blame, punishment or reward, for performing an action if she is not responsible for performing it.²⁵

Nevertheless, if entitlement is a basis for desert, then (P) is false. A simple case illustrates this point. Suppose I am forced at gunpoint to buy a lottery ticket. I am not responsible for this purchase. Suppose further that this lottery ticket turns out a winner: it entitles me to \$10,000. If entitlement is a desert base, then (other things being equal) I deserve the cash. But I am not responsible for

buying the ticket. I was coerced into buying it. My act was not free. Hence, if entitlement is a desert base, then it is possible to be deserving in virtue of performing an action for which one is not responsible.

It may be instructive to finish off this catalogue of desert bases by briefly mentioning some things that I do not take to be bases for desert. An obvious point is that since, on my view, desert bases are properties, nothing that fails to be a property is a basis for desert. So, for example, events, times, places, people, souls, physical objects, fairies, centers of gravity: none is a property, so none is a desert base. Even among properties, there are some that seem not to be bases for desert. These include gerrymandered, disjunctive properties, such as *being wooden* or *being the square root of 27*. Other properties that seem not to be desert bases include some perfectly natural properties, such as *having a mass of five kilograms* or *being positively charged*. As a general rule for deciding whether or not a property is a basis for desert, I suggest the following: If P is neither included in the above catalog of desert bases, nor a determinate of at least one of those bases, then P is not a desert base.²⁶

A final point. In Chapter 6, I argued that consideration of desert of wages suggests that a standard way of thinking about desert is fundamentally flawed. According to that way of thinking, for each form of deservable treatment, there is a desert base or small set of desert bases unique to it. My view is different. According to it, any one (or

any specific instance) of the desert bases catalogued above can influence the extent to which a form of treatment is deserved.

Theories and analyses

In the previous section, I made some use of the concepts of *prima facie* desert, all-in desert, and weight. These concepts are crucial to my theory of desert. In the next section I shall say more about them, and state my theory explicitly. Much of what I say there depends on my conception of the distinction between a philosophical *theory* and a philosophical *analysis*. Thus, it may be helpful to explain my conception of this distinction before I attempt to present my theory of desert.

One way to approach the distinction between analysis and theory is by way of another: namely, the distinction between the "intension" of a predicate and the "extension" of a predicate. The intension of a predicate can be usefully thought of as its *meaning*. A traditional assumption in the philosophy of language is that the meaning of a predicate is the concept (or property) expressed by that predicate.²⁷ On this assumption, the meaning or intension of 'red', for example, is, in contemporary English, the concept of redness. The *extension* of a predicate is the set of things to which that predicate correctly applies, or the set of things that instantiate the concept expressed by that predicate. So, for example, the extension of 'red' is the set of all the things that are red.

This set or extension is different from redness, or the intension of 'red'. This is because the set of red things could have contained members other than those it actually contains, in which case it would have been a different set, but without this resulting in a change in the concept of red.

The intension/extension distinction can now be used to illuminate the analysis/theory distinction. It might be said that theories and analyses aim at different "targets." A theory aims at an extension. An analysis aims at an intension. A *theory* of redness, for example, is supposed to "pick out" the extension of 'red'. That is, it is supposed to pick out all and only things that are red. This is not what an analysis of redness is supposed to do. It aims to reveal the conceptual structure of redness, or the intension of 'red'. Likewise for theories and analyses generally.

There is more that can be said to illuminate the distinction between theories and analyses. A theory of X will take the form of a statement of conditions that are supposed to be necessary and sufficient for a thing's being X.²⁸ There are two forms such a statement might take. One is an enumeration or list of all and only the things that are F. (Such a theory may not be very illuminating.) Another (and more illuminating) sort of theory is a specification of some property had by all and only those things that are F. Thus, to return to the example of redness, instances of theories of redness include:

TR1 x is red if and only if x is this apple, this
 book, this chair, this cherry, this car.....

TR2 x is red if and only if x would, under appropriate conditions, emanate lightwaves of within 4000-7000 angstrom units.

An analysis of F will take the form of an "analytic definition" of F. This will be a statement containing the symbol 'df.=', which will be flanked on the left by the "analysandum," or the concept to be analyzed, and on the right by the "analysand," or that in terms of which the concept is analyzed. So, for example, an analysis of redness will look something like this (with the blank appropriately filled):

AR1 x is red =df. _____.

It is important to recognize that some concepts may be unanalyzable, or "primitive." That is, there may be some concepts with nothing in the way of an (informative) analysand. This is what G. E. Moore held about the concept of intrinsic goodness.²⁹ It is also what Ross, as we shall see, held about the concept of prima facie rightness. And it is what I shall hold about the concept of prima facie desert.

Prima facie desert, all-in desert, and weight

My view is that the concept of prima facie desert is primitive, or not susceptible to any enlightening analysis. This does not mean that nothing can be said about it. At the very least, I can try to indicate what prima facie desert is *not*. To say that S prima facie deserves x in virtue of F is not to say that S merely appears to deserve x in virtue of F. Nor is it to say that S actually (or all-in) deserves x in virtue

of F. Nor is it to say that, in most cases, those with F all-in deserve x. Rather, it is to say, roughly, that S has some property that is relevant in a certain way to whether S all-in deserves x.³⁰ In the previous section, I discussed the properties that I take to be relevant in that way. That is, I discussed the desert bases. I also attempted to illustrate, by appealing to cases, that possession of these bases is generally insufficient for all-in desert.

It is especially important to understand that I do not analyze the notion of prima facie desert in terms of the desert bases. To see why, consider one such attempt:

- D1 S prima facie deserves x in virtue of F =df (i) S has F, and (ii) either F is effort; an achievement; some degree of moral worth; personhood; need; some amount of past or future receipt of something; suffering; or entitlement.

An obvious flaw with this putative analysis of prima facie desert is that it makes each desert base a basis for prima facie deserving "x," which could be anything at all! To see this, suppose that S is a person. S thereby satisfies the right-hand side of the analysis. So, whatever x is, S prima facie deserves it. But suppose x is punishment. Then S prima facie deserves punishment in virtue of being a person!³¹ Similar arguments would, if sound, demonstrate that athletic effort is a basis for prima facie deserving an apology; that intellectual achievement is a basis for prima facie deserving contempt; that wickedness is a basis for prima facie deserving admiration; and so on.³² Clearly, these arguments are not sound. So, D1 is unacceptable.

It might be thought that this flaw can be avoided by more carefully specifying the sort of treatment deserved in virtue of F, thus:

- D2 S prima facie deserves x in virtue of F =df (i) S has F, and (ii) either F is effort and x is a wage; or F is an achievement and x is admiration; or F is a high (low) degree of moral worth and x is a high (low) degree of happiness (unhappiness); or F is personhood and x is respect; or F is a need and x is that which S needs; or F is an excessive (deficient) amount of past or future receipt of something and x is deficient (excessive) receipt of that thing; or F suffering and x is a remedy; or F is an entitlement and x is that to which S is entitled.

One problem with D2 is that it presupposes the standard view that associated with each form of deservable treatment is a desert base or small set of desert bases unique to it. As I tried to show in Chapter 6, this view is false. Reflection on desert of wages suggests that almost any desert base might influence the wage one deserves; *mutatis mutandis* for grades, apologies, medical care, punishment, and the other forms of deservable treatment.

Suppose it were thought that this latest defect could be avoided by an even more careful specification - not only of the sort of treatment deserved in virtue of F, but also of the Fs or desert bases themselves. The analysis I have in mind would look something like this:

- D3 S prima facie deserves x in virtue of F =df S has F and (ii) either F is intellectual effort and x is publication, fame, a professorial chair, admiration, or satisfaction; or F is athletic effort and x is victory, a prize, fame,

admiration, a raise; or F is artistic effort and x is patronage, fame, admiration, respect; or F is.....

There would be no point in attempting to complete this so-called analysis of the concept of prima facie desert. The reason is that it (as well as D1 and D2) suffers from a fundamental flaw. The flaw is that it is not plausibly construed as an *analysis* of prima facie desert at all. For if D3 were an analysis of prima facie desert, it would express the *meaning* of 'S prima facie deserves x in virtue of F'. Surely, though, D3 does not express the meaning of that term. For if it did, then a person who denies, say, that intellectual effort is a basis for prima facie desert of admiration would be guilty of failing to understand the concept of desert. This is because if D3 were an analysis, then part of the meaning of 'S prima facie deserves x in virtue of F' would be that S prima facie deserves admiration in virtue of intellectual effort. However, it is quite possible for someone to understand the concept of desert, yet deny that intellectual effort is a basis for prima facie desert of admiration. D3 would, if an analysis, make this impossible. A similar point holds for D1 and D2. In light of this point, I suggest that prima facie desert be taken as a conceptual primitive.

Another concept I shall take as primitive in my theory of desert is that of *weight*. Here is an example to illustrate the concept. Suppose you are participating in a foot race. You exert much effort during training and during the race. These efforts are a basis for

prima facie desert of the prize. Suppose, however, that you do not win the race. This is a basis for prima facie not deserving the prize. (You are not entitled to it.) But if your efforts were especially strenuous, and pursued with great dedication, and if you lost the race by only a narrow margin, this may outweigh the fact that you failed to break the tape. If it does, and other things are equal, then you all-in deserve the prize. That is, your effort, which is a basis for prima facie deserving the prize, outweighs your failure to win, which is a basis for prima facie deserving to not get the prize.

A similar example suggests that the same desert bases have different weights in different circumstances. Return to the case of the race. Suppose your effort was not strenuous, and you lost by a convincing margin. Suppose also that other things are equal. Then it may be that you do not all-in deserve the prize. If you do not, then your effort, which is a basis for prima facie deserving the prize, is *in this case* outweighed by your failure to win, which is a basis for prima facie deserving to not get the prize.

The notions of prima facie desert and weight can now be used in a theory of all-in desert. All-in desert is actual desert, or desert simpliciter. It is different from prima facie desert: it is possible to prima facie deserve something and not all-in deserve it. (However, it is impossible to all-in deserve it without prima facie deserving it.) What is all-in deserved in a given case is determined by what is prima facie deserved in that case, in the following way:

- (D) *S all-in* deserves *x* in some circumstance if and only if the bases for prima facie deserving *x* that *S* instantiates in that circumstance outweigh the bases, taken together, for prima facie not deserving *x* that *S* instantiates in that circumstance.

(D) expresses my theory of desert. It is a theory of all-in desert. It depends crucially on two primitive concepts: prima facie desert and weight. I do not particularly like the fact that my theory depends so crucially on these notions. However, I am skeptical about the possibility of a theory of desert that does not depend on them. My reason for skepticism is the failure of previous attempts to explain desert in terms other than prima facie desert and weight. I explained those failures in previous chapters.

One might conclude from those previous failures to explain desert that desert is illusory, or utterly mysterious. I accept that desert (along with other, philosophically problematic concepts such as truth, beauty, goodness, life) is a bit mysterious. But I deny that it is illusory. Such a denial would demand so radical a departure from our ordinary understanding of the world that it could not be taken altogether seriously. Besides, there is an alternative to denying desert. It is to enumerate and describe the various bases for desert, and to accept prima facie desert and weight as primitive concepts in a theory of all-in desert.

Rossianism

Anyone who has read W. D. Ross's *The Right and the Good*³³ will recognize the similarity between my theory of desert and his theory of moral rightness. Because our theories are similar, a discussion of his may further clarify my own. And because our theories are similar, they are vulnerable to similar objections. Thus, I shall offer a comparison of my theory of desert to Ross's theory of moral rightness. It is important to remember that Ross's theory is not about desert. It is, I have said, about moral rightness. It purports to state necessary and sufficient conditions for the moral rightness of actions. Note also that there is more than one interpretation of Ross's theory. What follows is my favored interpretation.³⁴

A concept fundamental to Ross's theory is *prima facie duty*, or *prima facie rightness*. Ross does not offer an analysis of this notion, taking it instead as primitive.³⁵ However, he does explain that an action is a *prima facie duty* in virtue of being an action of a certain "morally significant" kind. On Ross's view, there are seven such kinds: fidelity, reparation, gratitude, justice, beneficence, self-improvement, and non-maleficence (21).³⁶

Ross discusses each of these kinds in some detail, but his discussion is not relevant here. The relevant points are, first, that on Ross's view an act of one or more of these kinds is a *prima facie duty*. Second, Ross's list of "morally significant kinds" or "right-making characteristics" has its analogue in my catalogue of desert bases, or what might be called "desert-making characteristics."

Ross explains that a *prima facie* duty is not an act that merely appears to be right. Rather, an act's *prima facie* rightness is an objective property of the action. Furthermore, a *prima facie* duty is not necessarily an actual duty:

If, as almost all moralists except Kant are agreed, and as most plain men think, it is sometimes right to tell a lie or to break a promise, it must be maintained that there is a difference between *prima facie* duty and actual or absolute duty. (Page 28.)

That is, there are occasions where (for example) telling a lie or breaking a promise is morally right. This does not change the fact that even on those occasions, truth telling and promise keeping are *prima facie* duties; *mutatis mutandis* for the other *prima facie* duties.

Ross uses this notion of *prima facie* rightness to state the central idea behind his theory of moral rightness: "Whether an act is a duty proper or actual duty depends on *all* the morally significant kinds it is an instance of" (19-20). In other words, the actual moral rightness of an act is in some way the result of all the *prima facie* duties that it is. Ross explains:

Every act...viewed in some aspects, will be *prima facie* right, and viewed in others, *prima facie* wrong, and right acts can be distinguished from wrong acts only as being those which, of all those possible for the agent in the circumstances, have the greatest balance of *prima facie* rightness, in those respects in which they are *prima facie* right, over their *prima facie* wrongness, in those respects in which they are *prima facie* wrong.... For the estimation of the comparative stringency of these *prima facie* obligations no general rules can, so far as I can see, be laid down. (Page 41.)

As I read this passage, Ross is attempting to explain moral rightness in terms of prima facie rightness and "stringency." The concept of prima facie rightness has already been discussed. What of stringency? Ross says that there are "no general rules" for the comparative stringency of prima facie duties. This suggests that on Ross's view, some prima facie duties not only are more stringent than others, but also that their relative stringency varies from circumstance to circumstance. So, for example, in one circumstance the prima facie duty of non-maleficence may be more stringent than the prima facie duty of self-improvement; in another circumstance, the opposite may be true. As for the notion of stringency itself, Ross is silent. I suspect he takes it as primitive. At any rate, Ross's theory of moral rightness seems to be this:

- (R) An act is an actual duty in some circumstance if and only if it is a prima facie duty and no other act that the agent could perform is, in that circumstance, a more stringent prima facie duty.

Now we are in a position to compare (R) and (D). First, Ross's concept of prima facie rightness has its analogue in my notion of prima facie desert. Each is taken as conceptually primitive. Each is purportedly an objective property, not merely an appearance. Second, Ross's concept of stringency has its analogue in my concept of weight. Each is conceptually primitive. And just as prima facie duties of justice, benevolence (and so on) differ in stringency according to

circumstance, so bases of prima facie desert differ in weight according to circumstance. Third, Ross's concept of actual duty has its analogue in my notion of all-in desert. Just as an act's actual rightness is determined by a balance of prima facie duties (and prima facie wrongs) and their relative stringencies in that circumstance, so a subject's all-in desert is determined by a balance of bases for prima facie desert (and prima facie undeservingness) and their relative weights in that circumstance. Fourth, just as any combination of Ross's "right-making characteristics" is supposed to be able to determine the rightness of an act, so any combination of my desert bases or "desert-making characteristics" is supposed to be able to determine whether a form of treatment is all-in deserved.

Objections and replies

Ross's theory may be vulnerable to many objections, but there are three in particular that seem the most serious. My theory is vulnerable to similar objections.

The first objection to Ross's theory concerns his catalogue of prima facie duties. The objection, in Ross's words, is that "this catalogue...is an unsystematic one resting on no logical principle" (23). As I understand it, the idea behind the objection is this. Ross never justifies his claim, for any putative prima facie duty, that it is in fact a prima facie duty. He is content to list them without appealing to any principle (or principles) that might be used to justify his catalogue rather than another. This procedure is "unsystematic,"

for it rests on no "logical principle." The theory of desert defended in this chapter is vulnerable to a similar objection: namely, that there has been no attempt to justify the catalogue of desert bases, no appeal to any principle that might justify this catalogue rather than another. This is supposed to be a defect.

This is no defect in Ross's theory or mine if the respective catalogues (i) reflect the facts, and (ii) there is no further principle or principles that could be used to justify them. As far as the facts are concerned, Ross's reply is that his catalogue of prima facie duties "makes no claim to being ultimate" (23). The same goes for mine. Perhaps there are more (or fewer) bases for prima facie desert than I catalogued. I concede that my list of desert bases may not reflect perfectly the facts. But the burden of showing that it is inaccurate now falls on the objector.

Concerning further principles that could be used to justify the catalogue of prima facie duties, Ross maintains that there are no such principles. Rather, the "general principles of duty...come to be self-evident to us just as mathematical axioms do" (32). I hold a similar view about my catalogue of desert bases. It is that this catalogue of desert bases cannot be justified by showing that it falls out of some deeper, further principle (or principles). This view gains some indirect support from Sher's failure, chronicled in Chapter 5, to justify the major desert-claims. Sher's failure suggests that our true beliefs about what is and what is not a basis for prima facie desert are epistemologically basic.

The second objection against Ross's theory is, I believe, more serious. It is that his theory of moral rightness is vacuous. Fred Feldman puts this objection nicely:

Many readers find Ross's view to be empty, trivial, or unenlightening. It seems to some of these people that all Ross has said is that an act is right if and only if it has at least as much rightness as any alternative. Surely, if this is all that Ross has said, then his view is indeed rather trivial.³⁷

As I understand it, the objection is this. Ross's notion of "stringency" is really just the notion of "more-ness," and prima facie rightness is really just the notion of *rightness to some degree*. If this is correct, then Ross's theory is indeed vacuous. It would assert that an act is right if and only if no alternative is more right than it is. Someone seeking an understanding of the notion of rightness is no wiser after hearing such a theory.

My theory of desert is vulnerable to a similar objection. It is that the notion of "weight" is really just the notion of "more-ness," and prima facie desert is really just the notion of *desert to some degree*. If that is correct, then my theory of desert is indeed vacuous. It would assert, in effect, that S deserves x in virtue of F if and only if S is more deserving of x in virtue of F than not deserving of x in virtue of anything else. Someone seeking an understanding of the notion of desert will be no wiser for hearing such a theory.

My reply to this objection is blunt: The notion of weight is not the notion of "more-ness," and the notion of prima facie desert is not

the notion of desert to some degree. Weight is a primitive concept, distinct from the concepts of prima facie desert and all-in desert. It is introduced to account for the fact that the relative importance of desert bases toward determining a subject's desert fluctuates according to circumstance. Prima facie desert is also a primitive concept. It is introduced to account for the fact that there appears to be a range of properties directly relevant to all-in desert, though none seems sufficient for all-in desert. I concede that not much more can be said about these concepts. I suspect Ross would make similar claims, and a similar concession, regarding the concepts of stringency and prima facie rightness.

This leads to the final and most serious objection I wish to consider. The objection is that if Ross's notion of stringency is left undefined, then the theory becomes obscure; likewise if my notion of weight is left undefined. This is a serious objection since these are technical notions, introduced to perform certain theoretical roles. They are not familiar, everyday notions. If they were, then taking them as primitive would not necessarily render the theories obscure. As it is, the notions have no natural place in our ordinary conceptual scheme. Thus, the theories that use them are obscure. They do not illuminate the concepts they purport to illuminate. Rather, they explain obscure concepts (like "all-in desert") in terms of alien concepts (such as "prima facie desert" and "weight").

I have two modest replies to this objection. One is that even if the theory of desert defended in this chapter is somewhat obscure, it is

not obviously false. So, at least it is an improvement over theories of desert considered in the previous chapters. My second reply is that the notions of prima facie desert and weight may not be quite so obscure. The concept of prima facie desert is brought in to account for the fact, illustrated several times in my catalogue of desert bases, that properties that are relevant to a subject's desert may not be sufficient for (all-in) desert. And as for the concept of weight, it is brought in to account for the fact that although desert bases determine desert, they do this in an unsystematic way: a basis central to one's desert in one circumstance may play a quite minor role in determining one's desert in another circumstance. So, as I see it, the concepts of prima facie desert and weight are not total strangers to our conceptual scheme.

Conclusion

In Chapter 1, I cited Barbara Goodwin's remark that "...the concept of desert itself is incoherent and, philosophically speaking, unfounded."³⁸ I hope that a central lesson of this chapter is that Goodwin is wrong. The concept of desert - more precisely, the theory of desert expounded in this chapter - is not "incoherent." Whatever its defects, the theory I defend is at least intelligible and (apparently) self-consistent. I confess that the theory I defend may be "unfounded" insofar as it relies on apparently brute intuitions about what is and what is not a basis for desert. But if, as it seems, every philosophical theory must at some point rely on brute intuitions, then reliance on such intuitions would condemn every philosophical theory.

Anyway, the theory of desert I defend is *not* "unfounded" insofar as it reflects and systematizes a central component of common sense morality. It is not, in other words, a flight of philosophical fancy.

Besides that, there are several areas of philosophical interest that are in desperate need of a defensible theory of desert. One area is desert of *wages*, and in particular the issue of comparable worth. I have discussed these in Chapter 6. As a conclusion, I will briefly consider three other areas of philosophical discussion that need a defensible theory of desert.

(1) Justice. From time to time, I have mentioned the venerable view that justice obtains to the extent that people (and other things) get what they *deserve*. Although few contemporary theorists of justice accept this view, there are several who maintain that justice has at least something to do with desert.³⁹ But even those who accept this weaker version of the venerable view of justice require some theory of desert. If the arguments given in previous chapters are sound, it would be a mistake for anyone to rely on the most influential theories of desert. For if those arguments are sound, then those theories of desert are false. What is needed, then, is an alternative theory of desert. This is precisely what I offer.

(2) Utilitarianism. According to a standard objection, classical (hedonistic) utilitarianism ignores justice. So, for example, classical utilitarianism seems to make it morally obligatory for the sheriff of a small town to hang an innocent vagabond in order to placate an otherwise riotous and destructive populace, even though the hanging would be

grossly unjust.⁴⁰ Thus, it is objected, classical utilitarianism goes wrong in this and similar cases.

Fred Feldman has recently argued that there is a form of utilitarianism that does not fall to this sort of case.⁴¹ According to this form of utilitarianism, the intrinsic value of an episode of pleasure or pain is a function not only of the intensity and duration of such an episode, but also the extent to which that episode of pleasure or pain is *deserved*. The basic intuitions on which Feldman depends are (i) that the value of an episode of pleasure is augmented(mitigated) to the extent that it is deserved(undeserved); and (ii) that the disvalue of an episode of pain is mitigated(augmented) to the extent that it is deserved(undeserved).

The details of this form of utilitarianism are not relevant here. The important fact is that it is supposed to yield the correct answer in cases like the one just described. For part of that case is the vagabond is innocent. He does not *deserve* to be hanged. This fact allows Feldman to say that the disvalue of his being hanged is greatly augmented by the fact that he does not deserve it; moreover, the value of whatever pleasures that accrue to the bloodthirsty crowd as a result of the hanging is significantly mitigated by the fact that they do not deserve such pleasures. The result is supposed to be that on this form of utilitarianism, the act of hanging the innocent vagabond is, all things considered, morally wrong; *mutatis mutandis* for similar cases.

Feldman's ingenious response to the "objection from justice" assumes that justice is the getting of what's deserved. More

pertinently, it relies heavily on the concept of desert. Thus, the acceptability of Feldman's form of utilitarianism depends heavily on the theory of desert it presupposes. I have just offered one such theory. I believe (with Feldman) that it can be incorporated into a broadly utilitarian framework. Doing this would make the case for Feldman's brand of utilitarianism more convincing.

(3) Punishment. In 1985, Michael Davis noted that "...the retributive theory of punishment has recently enjoyed a startling revival."⁴² According to a standard form of retributivism, punishment is "morally justifiable" only insofar as the punishment is *deserved*. As C. L. Ten explains in *Crime, Guilt, and Punishment: A Philosophical Introduction*:

Contemporary retributivists treat the notion of desert as central to the retributive theory, punishment being justified in terms of the desert of the offender.⁴³

Despite the apparent centrality that retributivists assign to desert, there has been (so far as I know) no attempt by retributivists to construct a theory of desert. Thus, retributivism is yet another area in philosophy that needs what has been offered in this chapter.

Although contemporary retributivists have not offered a general theory of desert, at least one has offered a formula for determining a wrongdoer's desert of punishment. This is Nozick. In *Philosophical Explanations*, Nozick endorses a retributive theory of punishment. His formula for determining the wrongdoer's desert of punishment is this:

The punishment deserved depends on the magnitude H of the wrongness of the act, and the person's degree of responsibility r for the act, and is equal in magnitude to their product, $r \times H$.⁴⁴

In other words, the severity of punishment deserved by the wrongdoer is equal (on some appropriate scale) to the product of the wrongness of the act and the wrongdoer's responsibility for performing that act.

It is worth noting that if Nozick were to adopt the theory of desert defended in this chapter, then he would be forced to abandon his formula for determining a wrongdoer's desert. According to Nozick's formula, a wrongdoer's desert is determined by only two factors: the wrongness of the act, and the agent's degree of responsibility for performing it. But according to my general theory of desert, any form of deservable treatment is deservable in virtue of the agent's possession of any of the desert bases. So, for example, a particular wrongdoer's desert of punishment might, on my theory of desert, depend not only on the wrongness of his act and the degree of responsibility he bears for performing it, but also on other things: being a person, having certain needs, and so on. Thus, if my general theory of desert is correct, then Nozick's formula for determining a wrongdoer's desert of punishment is, at the very least, oversimple. This suggests that retributivists need a defensible general theory of desert not only for adding substance to their theories, but also for avoiding what I take to be false claims about desert of punishment.

Notes

1. Here I am assume the falsity of certain religious views.
2. That said, there is at least one author who accepts a variety of distinct desert relations. This is Bruce Waller, who posits four forms of desert: "Act-desert," "talent-desert," "effort-desert," and "justice-desert." See Waller's "Just and Nonjust Deserts," *The Southern Journal of Philosophy* XXV (1987), pages 229-238, especially pages 229-231.
3. David Armstrong calls it the "Principle of Instantial Invariance." See his *A Combinatorial Theory of Possibility* (Cambridge: Cambridge University Press, 1989), page 40.
4. Joel Feinberg, "Justice and Personal Desert," in his *Doing and Deserving* (Princeton, NJ: Princeton University Press), page 58.
5. Writers on desert typically divide desert bases into two sorts: properties and actions. Feinberg, for instance, writes: "If a person is deserving of some sort of treatment, he must, necessarily, be so *in virtue of* some possessed characteristic or prior activity" ("Justice and Personal Desert," page 58). However, for simplicity's sake I treat all desert bases as properties, and include actions by taking *having performed such-and-such action* as a property.
6. This last fact points to an ambiguity in the term 'desert base': The term can express a quite general property, such as *having exerted effort*, or a quite specific property, such as *having labored for hours in the garden under the broiling sun*, or even some "moderately specific" property. However, I think this ambiguity is harmless.
7. George Sher, *Desert* (Princeton, NJ: Princeton University Press, 1987), page 53.
8. Wojceich Sadurski, *Giving Desert its Due*, (Dordrecht: D. Reidel Publishing Company, 1985), page 116 (my emphasis).
9. It is important to note that these claims are consistent with a point I tried to establish in Chapter 6. The point was that contrary to a standard view of desert, any form of deservable treatment is deservable in virtue of any desert base. This point is consistent with the claim, for example, that criminal effort deserves punishment. For this is not to say that punishment is deserved *only* for criminal effort. It is to say that criminal effort is a basis - one of many - for deserving punishment.
10. My thanks to David Waller for drawing this point to my attention.

11. W. D. Ross, *The Right and the Good* (Oxford: Oxford University Press, 1930), page 138.
12. I accept that the category of persons is broader than the category of human beings.
13. Philosophers differ in their accounts of need. For interesting discussions, see pages 126-143 of David Miller's *Social Justice* (Oxford: Clarendon Press, 1976); pages 158-183 of Wojciech Sadurski's *Giving Desert its Due*; and, for an especially dense discussion, David Wiggins's "Claims of Need," in Ted Honderich, ed., *Morality and Objectivity: A Tribute to J. L. Mackie* (London: Routledge and Kegan Paul, 1985), pages 149-202.
14. Feinberg, "Justice and Personal Desert," page 93.
15. William Galston, *Justice and the Human Good* (Chicago, IL: Chicago University Press, 1980), page 174.
16. J. R. Lucas, for example, writes: "I do not create my own needs; they happen to me;" then he goes on to argue: "People ought to be done by according to how they deserve, and how they deserve depends on how they have done, which in turn presupposes responsibility and freedom." (*On Justice* [Oxford: Clarendon Press, 1980], pages 183 and 197.) The implication is obvious: Need is not a basis for desert.
17. Failure to consider suffering as a basis for desert is perhaps the only explanation for why philosophers have accepted such implausible views of the supposed connection between desert and responsibility. See Chapter 2, and Fred Feldman's "Desert: Reconsideration of Some Received Wisdom," *Mind* 104 (January 1995), page 72.
18. Joel Feinberg, "Justice and Personal Desert," page 86.
19. George Sher, *Desert*, page 201.
20. John Rawls, *A Theory of Justice*, page 103.
21. Rawls, *A Theory of Justice*, page 313.
22. In addition to those philosophers, including Rawls, mentioned in Chapter 3, there is also Thomas Scanlon, whose own views about the "moral significance of choice" depend on an institutional conception of desert:

In approaching the problems of justifying both penal and economic institutions we begin with strong pretheoretical intuitions about the significance of choice: voluntary and intentional commission of a criminal act is a necessary condition of just punishment, and voluntary economic

contribution can make an economic reward just and its denial unjust. One way to account for these intuitions is by appeal to a preinstitutional notion of desert: certain acts deserve punishment, certain contributions merit rewards, and institutions are just if they distribute benefits and burdens in accord with these forms of desert.

The strategy I am describing makes a point of avoiding any such appeal. The only notions of desert which it recognizes are internal to institutions and dependent upon a prior notion of justice: if institutions are just then people deserved the rewards and punishments which those institutions assign them. ("The Significance of Choice," in Sterling L. McMurrin, ed., *The Tanner Lectures on Human Values VIII* [Salt Lake City, UT: University of Utah Press, 1988], page 188.)

23. I do not pretend that this argument is conclusive, especially insofar as it relies on the view that justice is the getting of what's deserved. Venerable though this view may be, the most influential contemporary theorists of justice reject (or ignore) it. For an attempt to diagnose the flight from desert by contemporary theorists of justice, see Chapter 1.

24. (P) is similar to, but importantly different from, a principle mentioned in Chapter 2. According to *that* principle, if S deserves x in virtue of F, then S is responsible for F. This principle is clearly false. As I noted in Chapter 2, it is possible to be deserving in virtue of a property, such as *having suffered*, that one is *not* responsible for possessing. But (P) is more narrow. It restricts the supposed connection between desert and responsibility to actions. It states only that *actions* for which one is not responsible are never bases for desert. This is more plausible than the principle considered in Chapter 2.

25. Actually, Susan Wolf attempts to describe such a case in *Freedom Within Reason* (Oxford: Oxford University Press, 1990), pages 79-85. One of Wolf's major theses in this book is that although no one deserves blame if determinism is true, it is possible to deserve praise even if determinism is true. The example she cites in support of this "asymmetry thesis" is this:

Two persons, of equal swimming ability, stand on equally uncrowded beaches. Each sees an unknown child struggling in the water in the distance. Each thinks "The child needs my help" and directly swims out to save him. In each case, we assume that the agent reasons correctly - the child *does* need her help - and that, in swimming out to save him, the agent does the right thing. We further assume that in one of these cases, the agent has the ability to do otherwise, and in the other case not. (Pages 81-82.)

Wolf's intuition is that each person deserves praise, even though one of them is not responsible for her actions.

26. Provided, of course, that my catalogue of desert bases is complete. I am not confident that it is.

27. I use the word 'concept' to denote any property that can be conceived. Thus, as I understand them, concepts are a species of property.

28. Actually, it is more accurate to say that a statement of necessary and sufficient conditions for F is the "central element" in a philosophical theory of F, rather than the theory itself. Like the theory of desert contained in this chapter, an entire philosophical theory is usually more than a mere biconditional. Typically it contains other things, such as analyses of various concepts; certain accompanying or auxiliary principles, axioms, and theorems; commitment to a particular ontology; and so on.

29. G. E. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, 1903), pages 1-36.

30. For convenience's sake, I speak here as though desert bases are always located in the past.

31. My own view is that personhood can be relevant to one's desert of punishment. But it is relevant only insofar as it is a basis for *prima facie not* deserving certain sorts of punishment (say, being drawn and quartered).

32. These problems cannot be avoided by revising the analysandum, thus:

S is deserving if and only if...

thereby leaving out the problematic "x". The reason this fails is that every case of desert is a case of deserving *something*.

33. Page references to this book are henceforth contained in the body of the text.

34. My interpretation is indebted to that found in Fred Feldman's *Introductory Ethics* (Englewood-Cliffs, NJ: Prentice Hall, 1978), pages 149-159.

35. At least one reader of Ross would deny that Ross takes *prima facie* rightness as primitive. See Frank Snare, "The Definition of *Prima Facie* Duties," *The Philosophical Quarterly* XXIV (1974), pages 235-244.

36. Note that Ross does not claim "completeness or finality" for this list.
37. Feldman, *Introductory Ethics*, page 157.
38. Barbara Goodwin, *Justice By Lottery* (Chicago, IL: Chicago University Press, 1992), page 64.
39. For references to these philosophers, see Chapter 1.
40. This case is found in Kai Neilsen, "Against Moral Conservatism," in Louis Pojman, ed., *Ethical Theory: Classical and Contemporary Readings* (Belmont, CA: Wadsworth Publishing Company, 1989), pages 181-187.
41. Fred Feldman, "Adjusting Utility for Justice," forthcoming in *Philosophy and Phenomenological Research* (September 1995).
42. Michael Davis, "How to Make the Punishment Fit the Crime," in J. R. Pennock and J. W. Chapman, eds., *Criminal Justice: Nomos XXVII* (New York, NY: New York University Press, 1985), page 119.
43. C. L. Ten, *Crime, Guilt, and Punishment* (Oxford: Clarendon Press, 1987), page 46.
44. Robert Nozick, *Philosophical Explanations* (Cambridge, MA: The Belknap Press, 1981), page 393.

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