

University of Reading

# Desert

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**Abstract:** Up until the late twentieth century, philosophers have thought not only that desert was not merely a matter of convention but in the nature of things but also that there is a close conceptual tie between justice and desert. In recent work, however, it has become common for philosophers to deny such a connection. This study of desert aims to reestablish that connection.

Many contemporary philosophers avoid appeal to the concept of desert in theorizing about justice for three main reasons: (1) there are perplexing questions regarding both the nature and normative force of desert claims which do not appear to admit satisfactory resolution; (2) since we deserve neither our natural talents nor our initial starting place in society, it's hard to see how the distribution of benefits and burdens based on desert can be what justice requires; and (3) any theory of justice which holds that some people deserve to suffer is morally indefensible.

The author of this study replies: (1) these alleged unclaritys are instead invitations to further theorizing, and further reflection shows that, rather than being part of either the deontic or the evaluative, desert is a species of fittingness which is its own category in the normative domain; (2) distributively just outcomes are sensitive to several morally relevant considerations, one of which is desert, and that income is deserved on the basis of contribution or effort as what matters is exercising effort and not the ability to exert effort; and (3) that no one can deserve to suffer is perfectly compatible with the idea that some people are more deserving than others, and, once the desertist position is properly understood, critics will see they too have reason to become desertists since their own view is plausible only because it leaves so many questions about desert unanswered.

## **Declaration of Original Authorship**

Declaration: I confirm that this is my own work and the use of all material from other sources has been properly and fully acknowledged

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## *Scepticism about Desert*

Most people find it obvious the hard-working student deserves a good grade, the diligent employee deserves a promotion, criminals deserve punishment, and those who have suffered harm as a result of the negligence or recklessness of others deserve compensation, or those who have suffered a series of misfortunes deserve some good luck. Appeal to the concept of desert is both familiar and frequent in ordinary conversation. But it is only when we observe someone being treated in a way that they do not deserve to be treated that we come to notice how deep our concern for desert and unjust treatment goes: the treatment victims of human and sex trafficking suffer immediately comes to mind. But the indignation we feel is most salient when it is someone who we know that has been mistreated. When we observe a co-worker, classmate, or fellow recruit who has been arbitrarily picked out for discipline as a threat to others, we feel incensed. And surely it is unfair for those who have been the victim of the abuse of stop and search policies, or racists policing, to have to knowingly bear the injustice involved in being treated not as one deserves. Undoubtedly, in such circumstances, the question foremost on their minds is: ‘what have I done to deserve this?’ Rightly so. For perhaps no general maxim gains wider acceptance in popular consciousness or common-sense morality than: ‘people deserve to be treated in a similar way as that in which they have treated others.’ Most of us believe that if one has been greeted with kindness, then one should treat with kindness in return.

Yet despite its intuitive and wide-spread appeal, most philosophical discussion of justice in the mid to late twentieth and early twenty-first century have tended to deny the link between justice and desert. Many authors write under the assumption that considerations of desert can be either safely ignored or dismissed in a perfunctory manner. This is particularly clear in the literature on distributive justice.

The aim of this introductory chapter is to show how philosophy and political theory has come to depart so far from common sense, and why many philosophers and political theorists have become what I shall at times refer to as desert sceptics, that is, those who believe the concept of desert should be avoided in ethical and political theorizing. Correspondingly, I shall from time to time refer to those who are open to the idea that

considerations of desert have a role in our ethical thinking as friends of desert, desert theorist, or desertists for short. This chapter identifies the main questions and objections to be addressed in the chapters that follow, forestalls possible misunderstandings, and in some instances provides initial responses to challenges posed by sceptics.

**1.1** While desert scepticism is currently the dominant view, not all philosophers are desert sceptics. James Rachels was a philosopher who I believe captured most accurately the role desert plays in our ordinary moral thinking. In his article, ‘What People Deserve’,<sup>1</sup> Rachels argued the reason why desert is important is that a system of mutual understanding which recognizes individual desert is one which gives people the power to determine their own fates.<sup>2</sup> He began with the thought that in contemporary society, it is inevitable that how well we fare in life is inextricably linked to how others treat us. And as he quite rightly pointed out, it is highly unlikely in the modern world that anyone can lead a flourishing life without the help of others. The best way to gain the assistance and trust of others, Rachels thought, is by helping them or assisting them in return. But this only works, according to Rachels, if there is a system of mutual understanding which recognizes desert.

Suppose Jake owns a plot of land adjacent to farmer A and farmer B. As it happens, weather was good this year and Jake realizes he needs additional help with the harvest. Jake calls farmer A for help only to be disappointed. Jake then calls farmer B and discovers farmer B is more than happy to help. A year passes, and this year Jake started harvesting early and is near done with the harvest. One day, Jake runs into farmer A at the market, and farmer A hints at the fact that he needs help with his harvest, suggesting Jake might provide some valuable assistance. Jake acknowledges but does not give him his word. Upon returning home, Jake receives a call from farmer B asking for support with his crops. Whom should Jake help? The answer should be clear enough. Jake ought to help farmer B. Why? Well, farmer B benefited Jake the year before and for that reason Jake owes him a debt of gratitude. If Jake were to decide to help farmer A instead, let’s suppose, many would think, I believe

<sup>1</sup> See Rachels 1997: 175-197.

<sup>2</sup> Rachels writes of his example involving an employer who is trying to decide to whom the promotion should go, either worker or slacker: ‘...from the employer’s point of view the arrangement whereby he promotes the harder-working employee is not merely a convenient deal that further his particular ends. It is part of a larger system of understanding that grants to people, including his employees, the power to determine their own fates in social settings in which their welfare depends upon how others respond to them. Acknowledging deserts is at least as important as empowering people in this way...I believe this is the deepest reason that desert is important.’ See Rachels 1997: 187.

truly, Jake would be acting unjustly towards farmer B.<sup>3</sup> Why? Jake would be ignoring farmer's claim of desert.<sup>4</sup>

It's natural to assume farmer B expects help from Jake. But is this reasonable? Suppose Jake is a rascal. Having gotten help with his harvest the year before, Jake now sees no advantage in assisting farmer A or B. Jake admits as much to farmer B. What can farmer B do? As Rachels points out, the alternatives are grim. Farmer B could either try to somehow coerce Jake into helping him, say, by kidnapping his daughter or by making credible threats to his life; or alternatively, farmer B could beg Jake for help and appeal to Jake's sense of charity or benevolence, which we are assuming Jake lacks. Clearly, neither option is appealing. It seems then, Rachels argues, the best means of eliciting help or support from others is through a system of mutual understanding which recognizes individual desert.

The thought is that, when a practice of reciprocation is in place, everyone benefits. Not only can farmer B count on Jake for support, but also, should some misfortune befall Jake in the near future, Jake can count on farmer B for assistance. The advantages of having such a practice is so great I gather most people would find it almost unimaginable for one to refuse to participate in such a practice of reciprocation.<sup>5</sup> For it seems almost undeniable that on the whole we often fare better with the help of others. In short, one does not recognize desert merely because a system that recognizes desert is already in place, but rather recognizing desert is to everyone's benefit. Distribution in accord with desert—of help or assistance in this case—is arguably the best means of achieving greater benefits for everyone.<sup>6</sup>

This, I take it, is what many people think about desert. Rachels, I think, captured it accurately. The main reason why we distribute income or grades, say, in accordance with desert is because distribution in accordance with desert, many people think, would bring about the greatest benefits for all. But while Rachels certainly thought good consequences ultimately justifies distribution in accordance with desert, this is not why, as I mentioned, Rachels thought distribution in accordance with desert is important. Rather, the reason why Rachels thought distribution in accordance with desert is important is that it gives people the power to determine their own fates.

This thought is not new, though Rachels gave it better expression. Henry Sidgwick noticed it when he wrote: 'some thinkers maintain the proposition...that the Law ought to aim at securing the greatest possible Freedom for each individual...not as absolute and

<sup>3</sup> While Jake may be acting unjustly toward farmer B, helping A might not be all things considered wrong. See 1.2.

<sup>4</sup> This example is modelled after one given by Rachels. See Rachels 1997: 189.

<sup>5</sup> Something similarly can be said in the case of promises-keeping.

<sup>6</sup> Cf. Crisp 2015a: 167.

axiomatic, but as a derivative from the principle that Desert ought to be required; on the ground that the best way of providing for the requital of Desert is to leave men as free as possible to exert themselves for the satisfaction of their own desires, and so to win each his own requital.<sup>7</sup> In other words, leaving people free to decide from whom benefits are received and reciprocated is the best means of achieving outcomes which are most beneficial for all. Allowing people to determine their own fates, so to speak, is the best means for everyone to achieve flourishing and meaningful lives.

While this is a compelling account of the importance of desert in our everyday thinking, one might find this utilitarian account of desert unsatisfying for several reasons. First, one might wonder whether inculcating the disposition to treat people as they deserve really does bring about the best consequences. Second, while this account justifies distribution in accordance with desert by appealing to the incentivizing effects, many, myself included, believe that there are many instances in which a person ought to receive what they deserve whether or not it will bring about the best consequences. Often, what most consider a just outcome is clearly not one with the best consequences for all in terms of welfare. Finally, as we shall see, this utilitarian account of desert leaves many specific puzzles about desert unanswered.

**1.2** Several such puzzles are raised by our harvesting example in the last section. As readers will have noticed, I have said almost nothing about the fate of farmer A. One common complaint sceptics often voice is that it is in many instances unclear what is it exactly that someone deserves, and in particular, what kind of treatment is called for, and at times it can also be difficult to determine from whom this treatment ought to come. For instance, since farmer A refused to offer Jake help the first time around, does this mean that farmer A deserves not to be helped? Or suppose farmer A would lose his farm if he were unable to bring in the harvest in time, while farmer B would merely be delayed in getting his crops in without Jake's help. Under these circumstances, does Jake have more reason to help farmer B rather than A? Now suppose farmer B calls Jake, but Jake happens to be out of town that week, so Jake refers farmer B to his friend Joyce. Does Joyce have reason to help farmer B? Finally, what precisely is Jake's reason to help farmer B? Is it that farmer B has helped him in the past? Or is it that helping Jake shows farmer B to be virtuous, and farmer B deserves Jake's help because he is virtuous?

<sup>7</sup> See Sidgwick 1907: 279-280.

Let's begin with the question, what does the farmer A deserve? Now sceptics often think if Jake has to choose between helping farmer A or farmer B, desertists hold that farmer A not only does not deserve help but also that Jake is morally required to help farmer B no matter what. What this assumes, however, is that desertists believe both that justice requires the requital of desert, *and* that the duty of justice is absolute. But this is an uncharitable interpretation of the desertist view. For few would be inclined to call a person just if he or she were to allow a person to drown just because they have promised to meet a friend for lunch or is on their way to repay a debt to a benefactor. Likewise, if farmer A were indeed at risk of losing his farm, then farmer A, one might argue, has a claim of need which Jake ought also to attend to;<sup>8</sup> if so, it might very well be the case that if farmer A's need is great enough, Jake ought, all things considered, to assist farmer A rather than B. In short, the more moderate and plausible position is, other things being equal, Jake has more reason to help farmer B than farmer A in light of farmer B's claim of desert. And if farmer A's circumstances are *not* dire, and since farmer A has not helped Jake in the past so does not deserve Jake's help, then Jake ought, all things considered, to help farmer B.

But while many sceptics falsely foist onto desertists a commitment to an absolute duty, sceptics surely do not err when they point out the reply just outlined raises more questions than it provides answers. The problem is the reply simply assumes that needs are a basis of desert or meeting needs is at least part of what justice requires. But why should we think either is true? Neither claim is obvious. For this reason, the desertist's position as it stands is inadequate. Worse, we are still left without a clear answer as to what farmer A deserves. To claim that farmer A does not deserve help does not yet tell us what farmer A deserves. And if justice does require treatment in accordance with desert, then we would surely want to know whether it is wrong to treat people as having deserts that they do not have or what it would mean to treat those who have no deserts accordingly.<sup>9</sup>

But one might also press further and ask: assuming needs are desert-generating or that attending to needs is part of what justice requires, at what point does farmer A's need become dire enough to outweigh farmer B's claim of desert? And more generally, one might ask: how weighty are considerations of desert? With this question, a more subtle question is pressed: having benefited Jake in the past, is Jake now morally *required* to help farmer B, even if his duty is not absolute, or is it merely a *good* thing when Jake helps farmer B, that is, an

<sup>8</sup> While some philosophers argue that needs is a basis of desert, others argue, like desert, meeting claims of need is also a requirement of justice, where a claim of need is consideration which competes with desert in the balance of reasons. This issue is more fully addressed in ch.4.

<sup>9</sup> See Cupit 1996: 48-55.

outcome in which Jake helps farmer B is merely better than one in which Jake does not. What these philosophers want to know is whether claims of desert belong to the deontic or the evaluative part of the normative domain. Up to this point we have simply assumed desert claims belong to the deontic, but this could be a mistake. What is required is an account of the nature of claims of desert.

And here is why this question is important. Many sceptics, especially those who take a rights-based approach to thinking about justice, often insist that since desert claims, if there are any, unlike claim-rights, which one gains, say, through having been made a promise, belong to the evaluative part of the normative domain rather than the deontic, one is never obligated to give people what they deserve.<sup>10</sup> And because it is merely a good thing that people get what they deserve, and what is deserved is not owed to the deserving individual (i.e. what is deserved can never be claimed as a matter right), claims of desert can simply be ignored in ethical and political theorizing. By their lights, unless it can be shown that claims of desert have significant normative force as to outweigh other morally relevant considerations—such as rights, needs, or utility—claims of desert can be safely ignored.<sup>11</sup> I take it, one reason why desert has been so often ignored in much of the contemporary writing on justice is because many have found this line of objection persuasive.

But this way of thinking about justice and desert is unfortunate for at least three reasons.

First, as we have seen, sceptics insist not only that it is unclear what farmer A deserves on the desertist view, but it is also unclear how much weight Jake ought to give farmer B's desert claim in his deliberation as to what he ought to do. Given these conceptual and normative complexities, sceptics argue, appeals to the concept of desert in ethical and political theorizing ought to be avoided. Sceptics see these unclaritys, and encourage us to see these unclaritys, as barriers to further thought. But a defeatist attitude here seems to me unwarranted. Why not instead see these unclaritys as invitations to further thinking and theorizing about desert?<sup>12</sup>

Second, few seem to question whether a rights-based approach is the best approach to thinking about justice. Perhaps it is not. The rights-based approach to thinking about justice is not without critics.<sup>13</sup>

<sup>10</sup> The claim that all desert claims belong to the evaluative domain we might call the axiological thesis.

<sup>11</sup> Also see Sher 2017: 86.

<sup>12</sup> Ibid.

<sup>13</sup> The problem with a rights-based approach is that the content of rights remain indeterminate until obligations are assigned through a process of institutionalization, but the institutionalization of rights is beset

Third, the force of this criticism is much exaggerated. If it turns out that not all desert claims belong within the evaluative domain, then the sting of this line of criticism has been removed. For instance, if it turns out that many desert claims are but a species of fittingness and fittingness is its own category within the normative domain, then in framing the issue as one about whether claims of desert belong to either the evaluative or deontic these critics have merely set up a false dichotomy.<sup>14</sup>

Now some sceptics seem to think friends of desert are committed to the claim that since farmer A refused to come to Jake's assistance in the past Jake has no reason to help farmer A. As we have just seen, this is not what friends of desert claim. True, since farmer A has not benefitted Jake in the past Jake has no reason *of desert* to help farmer A, but that does not mean that there is no reason at all to help farmer A—again, Farmer A could be in need. No desert theorist is myopic about desert; but of course, desert theorists still owe us an account of whether needs are a basis of desert or whether meeting needs is a requirement of justice. On this issue desert theorists remain divided.<sup>15</sup>

Other sceptics seem to think desertists claim not only that farmer A does not deserve help but also farmer A deserves not to be helped.<sup>16</sup> This too is uncharitable. Surely, the most natural way to think about the situation is simply that farmer A declined an invitation to help Jake. Perhaps farmer A had good reasons to decline. Perhaps farmer A prefers to help one of his other neighbours instead. In fact, farmer A's refusal tells us little if anything about his desert. And it's hard to believe anyone would think that farmer A's refusal makes farmer A undeserving.

But then the question arises, under what circumstances do desertists claim an individual deserves not to be helped? Here is one possibility. Suppose farmer A is jealous of the success his two neighbours have had in the past few years and so decides to sabotage their water supply. Suppose Jake knows about this. If so, then it seems plausible to some to claim that Jake has reason to think that farmer A deserves not to be helped and for this

with practical difficulties both with regards to the scarcity of resources and political conflict. Another problem with this approach is that it simply overlooks duties or obligations which are not owed to anyone—which some call imperfect duties—but duties which nonetheless form an important part of morality as many recognize and for this reason have found rights-based approaches to thinking about justice unsatisfying. For the many shortcomings of this rights-based approach, see O'Neill 1996: ch.5.

<sup>14</sup> In fact, it seems to me much of the debate over the import desert for thinking about justice has reached an impasse. On one side are those who find compelling the objection that since desert claims are evaluative in nature, claims of desert are too weak to be significant, while on the other are those who see the good of people getting what they deserve as just one value among others and no less important. For my views on this see ch.2 and 5.13. Also see note 58.

<sup>15</sup> See ch.4.

<sup>16</sup> These uncharitable renderings of the desertist's position often appears in debates about economic desert, i.e. the desert of income, but is also appears in other contexts, one such being the debate between those who believe no one can deserve to suffer and those who deny this. See 3.4 and ch.5.

reason refuses to help farmer A. Furthermore, it's plausible in refusing to help, Jake is holding farmer A accountable or responsible for his malicious designs. Arguably, insofar as farmer A is responsible for sabotaging his neighbours water supply, farmer A deserves not to be helped.

But now suppose farmer A was in fact unsuccessful in his attempt to poison the water supply of his two neighbours and quite by accident poisoned his own. As a result, farmer A now stands in danger of losing his own farm. Assume farmer A again approaches Jake for help. Does Jake have reason to help farmer A in this instance according to desertists?

Here too we must tread carefully. While it might seem as though desertists are committed to the claim that holding farmer A accountable for his malicious designs *requires* desertists to claim that farmer A deserves not to be helped *and* that it would be wrong all things considered to help farmer A, this too would be an uncharitable interpretation of their view. Recall, desert theorists are not committed to the claim that, even if farmer A stands to lose his farm or is in great need, Jake has *no* reason to help farmer A. Rather, desertists claim there is on balance *less* reason to help farmer A in light of his malicious designs. True, friends of desert believe farmer A's malicious designs make him less deserving, and in this more limited sense deserves not to be helped, but it is simply wilful misunderstanding of the view to foist onto the desert theorist the claim that there is no reason to help farmer A. Even in this instance, desertists are not committed to the claim that it would be all things considered wrong to help farmer A.

Even so, one might insist the friends of desert go too far in claiming that farmer A, even in this limited sense, deserves not to be helped. As the sceptics sees it, while it might not be wrong to refuse to help farmer A, there is also no reason for Jake to refuse to help farmer A. Holding responsible, these sceptics believe, only requires one to claim that Jake has no reason to help farmer A, and friends of desert go too far when they claim that there is reason not to help farmer A. Friends of desert, sceptics claim, slide from thinking that farmer A does not deserve help to the conclusion that farmer A deserves not to be helped. Worse, some even slide from the claim that farmer A does not deserve help to the claim that farmer A deserves to suffer. On the sceptical view, by contrast, despite farmer A's malicious designs, the most that we can claim or would want to claim is that farmer A does not deserve our help. According to the sceptic, there is no close conceptual connection between responsibility and desert.

This line of objection also brings us to the heart of the debate of the role desert plays in thinking about retributive justice. It is now generally accepted that retributive desert refers



to negative desert. The thought is those who are virtuous deserve to be happy while those who are vicious deserve to suffer. When people commit crimes, what they deserve is state punishment. Punishment, it is commonly agreed, has at least two components: first, punishment is a vehicle for condemning wrongdoing, and second, punishment must involve some sort of burden or loss for the wrongdoer in proportion to the gravity of his or her wrongdoing.<sup>17</sup> Where the sceptic and friends of desert disagree is whether wrongdoers deserve to suffer. Sceptics tend to claim no one can deserve to suffer. One challenge for the desert theorists, many sceptics believe, is to show why we should think individual desert justifies the deliberate infliction of suffering. And just as important is the question whether desert theorists are committed to the claim that there is an obligation to punish those who deserve punishment.

We will return to these issues again shortly.<sup>18</sup> The point I want to make here is that the link between responsibility and desert is at the centre of debate over the role desert has, if any, in thinking about both distributive and retributive justice. Some writers seem to want to claim that while we are obligated to give the deserving what they deserve in the positive case, we can never be obligated to give the deserving what they deserve in the negative case. But it is hard to see how insistence upon an asymmetry of this sort can be provided with a plausible rationale.

**1.3** Let's turn now to a different set of questions our harvest example has raised. Suppose farmer B calls Jake for help but Jake is out of town. Jake introduces farmer B to Joyce who Jake believes might help farmer B. Does Joyce have reason to help farmer B? The answer to this question will depend on how we resolve a different puzzle raised earlier: what precisely is Jake's reason to help farmer B? Is it that farmer B has helped him in the past? Or is it that helping Jake shows farmer B to be virtuous, and farmer B deserves Jake's help because he is virtuous? Here is how these two sets of questions are interconnected.

On one view, that farmer B has benefited Jake in the past entails that Jake owes farmer B a debt of gratitude. In other words, this fact grounds a duty of gratitude. And it is commonly believed that duties not only have the feature of being categorical, i.e. a duty applies irrespective of the agent's present desires, but also can have the feature of being directed, i.e. a duty owed to a particular individual.

Both the categorical and directed nature of some duties are salient in the way we think about promises. If I have promised you to meet you for lunch at the far end of campus,

<sup>17</sup> Also see Husak 2016: 51.

<sup>18</sup> See 1.5.

then that it would be inconvenient for me now to walk all that way to the agreed location, some argue, is no longer a reason not to meet you. (Others argue my reason not to meet you for lunch is simply outweighed.) Moreover, my duty to meet you for lunch is directed in the sense that it is owed to you and no one else—e.g. I don't owe it to your mother to meet you for lunch or because it would upset your mother. While all duties are to some degree categorical in nature, some duties are not directed or owed to others. Some philosophers call these imperfect duties.<sup>19</sup> For instance, suppose a stranger who is new on campus approaches me and implores me to walk with her to the science lab so that she would not get lost along the way. Since there is no prior agreement that I would walk with her, I would do no wrong, nor wrong her in particular, if I were to refuse. I'm under no obligation to walk her to the chem lab. Our general duty to promote good consequences or to benefit others is often thought to be a duty not owed to others. If we decide to help one person rather than another when we could help only one, we have not failed in some way to do our duty to the second person.

But the duty of gratitude, by contrast, is a directed duty. And in light of being directed it is often thought a duty is more stringent. That farmer B has helped Jake in the past means that Jake is now under an obligation to help farmer B this time round. And the reason why Jake ought to help farmer B is because farmer B has benefited Jake in the past, a duty owed to farmer B and no one else.

Alternatively, one might think the reason why Jake ought to help farmer B is because in having help Jake in the past—and perhaps many others—farmer B shows himself to be a good or virtuous person. Insofar as it is a good thing that deserving people get what they deserve, and the virtuous deserve to be better off, Jake has reason to benefit farmer B because it is a good thing that good people get what they deserve. On this view, it is not that Jake owes farmer B a directed duty, so much as it is a good thing that virtuous individuals receive the benefits they deserve. If this is correct, then Joyce has just as much reason to help farmer B as Jake in a certain respect. On this view, what we are responding to is not the fact that farmer B has benefited Jake in the past *per se*; rather his beneficent act reveals farmer B to be a virtuous individual, and it is farmer B's virtuous character or desert we are responding to.<sup>20</sup>

<sup>19</sup> The distinction between perfect and imperfect duties can be traced back to Grotius and Pufendorf and is most famously endorsed by Kant and Mill. See Hooker 2000: 161; also see Baron 1997: 16-19, 50; Crisp 1997: 158-159, 162-167.

<sup>20</sup> Notice, these two alternatives are not mutually exclusive. If gratitude is deserved, then both require the requital of desert, but the basis of desert will be different. Ross, for instance, thought if someone has benefited

Now Rachels's view was that if Jake had to choose between helping farmer A or farmer B, helping farmer B is 'the obvious mandatory choice', as he had put it. Rachels seems to have thought that Jake has a directed duty to farmer B. And Rachels thought if there is a practice of reciprocating, and as we have seen the benefits of having such a practice are so great it is hard to imagine a world in which no such practice existed, then farmer B is *entitled* to expect assistance from Jake.<sup>21</sup> Whether Jake has a moral or non-moral duty to help farmer B is a question Rachels thought is beside the point.

Now one might of course think Jake has a non-moral duty to help farmer B if his duty to help is not a directed duty. While Rachels thought Jake has a directed duty to help farmer B, he also seems to think Joyce in our example would have just as much reason to help farmer B. He wrote: 'if someone has helped you, it is said, you are indebted to her; otherwise you have no obligation. But it is shortsighted to view things this way. Anyone at all can justifiably take as a good reason for treating someone well the fact that this person has treated others well.'<sup>22</sup> Rachels here seems to suggest that in our example that farmer B has helped Jake in the past is also good reason for Joyce to help farmer B. But it is unclear whether the reason Joyce has to help farmer B is that farmer B is a virtuous person or helping farmer B would be in keeping with a system of interaction which recognizes individual desert that brings about better consequences overall. Of course, many will not be troubled by this ambiguity, but here is one reason why one might find being clear on this point of some significance.

Looking at David Schmitz's reading of Rachels here is instructive. Schmitz seems to think Rachels's view is improved or at least made clearer if we distinguish between reciprocity and desert. On Schmitz's view, the principle of desert and the principle of reciprocity are separate principles of justice. When Jake acts in accord with the principle of reciprocity, Jake is not responding to the kind of person farmer B is, rather the history he and farmer B share.<sup>23</sup> By contrast, if Joyce were to decide to help farmer B, she would be

you, you have *both* a reason of gratitude and desert to help your benefactor when the opportunity arises, just as you have both a reason of fidelity and of gratitude to obey the law. Likewise, with the duty of reparation and the duty of justice, which for Ross requires the requital of desert. He writes: 'the sense of general obligation to bring about (so far as we can) a just apportionment of happiness to merit is often greatly reinforced by the fact that many of the existing injustices are due to social and economic system which we have, not indeed created, but taken part in and assented to; the duty of justice is then reinforced by the duty of reparation.' See Ross 1930: 27-28.

<sup>21</sup> Another view, which is also quite plausible, is that it would be unfair not to reciprocate when we have received benefits from others. On such a view the principle of justice as fairness would be independent of the principle to promote overall welfare or good.

<sup>22</sup> What is interesting here is that Rachels seems to be suggesting that farmer B is entitled to expect help from Joyce on account of the fact that farmer B helped Jake; in other words, desert grounds obligations. See Rachels 1997: 190.

<sup>23</sup> See Schmitz 2006: 77.

responding to farmer B's virtuous character. In suggesting there are actually two different moral principles that apply, Schmitz seems to be after a satisfactory answer to a question Rachels declined to answer. Let me explain.

Some philosophers believe most duties belong to the deontic part of the normative domain. These duties are usually owed to some particular person. By contrast, non-directed duties, which some believe are non-moral, like the duty to promote good, belong to the evaluative part of the normative domain and are owed to no one in particular. Importantly, many believe most desert claims belong to evaluative domain rather than the deontic. For instance, a hard-working novelist might deserve some success, but success is not owed to the novelist, nor is anyone under any obligation to ensure the novelist succeeds in his or her endeavour. Rachels, as we have seen, tried to get around this with the suggestion that, when there is a system of mutual understanding which recognizes desert, benefactors are *entitled* to good treatment because they deserve it or will have earned it. What Rachels had in mind is perhaps that benefactors are entitled to good treatment much in the way that the promisee are entitled to promised performance by the promisor. Of course, what ultimately justifies both practices are the good outcomes to be achieved in participating in such practices. On Rachels's view, it is not only a good thing that the virtuous get what they deserve but also the virtuous are entitled to good treatment. Schmitz, I gather, like many others contemporary philosophers, appears to be uncomfortable with this thought, and perhaps for this reason introduces a separate principle, one for reciprocity and another for desert. This appears to keep desert claims safely within the evaluative domain.

But if Schmitz is right, then we can easily imagine a system of mutual understanding which requires people to reciprocate only when they have been benefited. In such a society, everyone would still gain the benefits which Rachels think great enough that no one would have reason to decline to participate. But on this view, no mention of desert is at all necessary.<sup>24</sup> The only difference that I can see between a world in which people gain benefits through the practice of reciprocating benefits and one which is supplemented by a principle of desert is that people like Joyce would have no reason to help farmer B when they themselves have not been helped. One might think the general principle to promote good or what is sometimes referred to as the principle of benevolence would suffice. In other words, little is gained with an additional principle of desert.<sup>25</sup>

<sup>24</sup> Cf. Schmitz 2006: ch.8 and ch.9.

<sup>25</sup> However, if there are things people deserve from you in addition to what you owe them out of reciprocity, then we would need an additional principle of desert. There would be (1) a duty of reciprocity, which is deontic and directed, or as some philosophers put it, agent-relative; (2) a duty of justice promoting people getting what

In addition, many find suspect the claim that good character can be a ground for deserving certain benefits or that bad character justifies the imposition of certain burdens or the disqualification for certain legal rights. But not all writers deny that good or bad character can be a ground for desert. For instance, one contemporary writer seems to endorse the view that bad character can disqualify one for certain legal privileges. He observes:

Persons who have been justly convicted of serious crimes are frequently disqualified from serving in public office while serving time in prison for their crime, and if their crime was serious enough [they] may be permanently disqualified from being a lawyer or judge. Considerations of desert yield the permission to impose such disqualifications.<sup>26</sup>

A desert sceptic might agree that having a criminal conviction can disqualify one from running for office, but they argue the disqualification has nothing to do with desert. In response to the assertion above, one author writes:

Even a person who clearly deserves the chance to run for office might justifiably lose the right to do so if she had a criminal conviction. Think here, for example of a person who commits a victimless crime in order to bring about an unambiguously good (even if only in comparison to the alternative) outcome. For example, a woman might engage in illegal prostitution to stop her underage sister from needing to do so. We might think, in such a case, that although she still deserves the chance to run for office, she is not entitled to it because only those who observe the law are.<sup>27</sup>

It is of some interest to note this author subtly casts into doubt what counts as good character that would qualify one for a chance to run for office. But more importantly, her example of a woman who engages in prostitution in order to shelter her sister from a sordid life points to an apparent flaw in the desertists' view, one which holds that moral character is a basis upon which good or ill treatment is deserved. Let me explain.

Some people think while we all have a right not to be imprisoned, this right can be forfeited on the basis of desert. If one has committed a series of crimes, or a crime heinous enough, then one forfeits one's right not to be imprisoned. However, as the sceptic is quick to point out, if desert has such normative power, it would be hard to see why people could not accumulate positive desert that would protect them from being imprisoned.<sup>28</sup> For this

they deserve, which is agent-neutral; and (3) a duty of desert, which is agent-relative. I owe this point to Brad Hooker.

<sup>26</sup> See Nickel 2015: 159.

<sup>27</sup> See Stemplowska 2015: 170.

<sup>28</sup> This quip is attributed to Victor Tadros. See Stemplowska 2015: 171.

reason, many sceptics find the view that good or bad moral character is the basis of deserving good or ill treatment implausible.

However, this is an uncharitable interpretation of the desert theorists' view. The sceptic here saddles desert theorists with an implausible moral ledger view of desert, where good and evil deeds are tallied over the course of one's life.<sup>29</sup> But more importantly, the problem with this line of objection is that it seems compelling only when what is deserved is left unspecified. Few, if any, desert theorists claim punishment or economic reward is deserved (solely) on the basis of moral character.<sup>30</sup> And no desert theorist, as far as I know, claims that entitlements can be deserved on the basis of moral character.<sup>31, 32</sup>

**1.4** Another philosopher who took the role the concept of desert plays in our ordinary thinking seriously was Henry Sidgwick. In the chapter on justice in *The Method of Ethics*, Sidgwick identified distribution in accordance with desert as the principle of justice generally endorsed by common sense morality.<sup>33</sup>

Sidgwick arrived at the principle of desert in thinking about gratitude. If Joan helps Karl in a time of need, then Karl is likely to feel grateful and has reason to do the same for Joan when she is in need. And if we were to universalize this principle, that is, by leaving out reference to Joan and Karl, then we arrive at the principle of desert, i.e. 'A deserves expressions of gratitude for P from B' where A stands for some agent, P some laudable performance, and B the beneficiary of P.

On one reading of Sidgwick, Sidgwick is suggesting having helped Karl in a time of need, it is not only Karl who has reason to benefit Joan, but we all do, an idea familiar from our discussion of Rachels. Furthermore, just as desert is gratitude universalized, punishment is resentment universalized. The concept of justice, Sidgwick recognized, is not only

<sup>29</sup> In his essay on supererogation, for instance, Joel Feinberg, a friend of desert, makes the point that those who are obsessed with saints and heroes make a fetish out of imperfect duties. See Feinberg 1970: ch.1.

<sup>30</sup> For instance, see Sher 1987: 147; Hurka 2003. Also see 2.6.

<sup>31</sup> There are only a few desertist theorists who seem to think moral character to be a basis of desert for things other than well-being or happiness. See Schmitz 2006: ch.8; McLeod 1999: 279-280; also Arneson 2011: 35.

<sup>32</sup> While Schmitz thinks moral character is a basis of desert, it is important to keep in mind what is deserved based on character on his view are opportunities or chances, not rewards. However, Schmitz does seem to think that advanced payments can be deserved based on character.

On Schmitz's view, while we might have reason to believe a person deserves a chance at  $t_1$ , we can only know whether the person is truly deserving of that opportunity at  $t_2$ . What makes a person deserving of the opportunity at  $t_1$  is what the person will do by  $t_2$ , but what ensures that the person will do it is the person's character.

There are several problems with this view. First, if good character is a mere matter of luck, it is hard to see why we should think one person is more deserving of a chance than another. Second, distributing opportunities based on desert might lead to some objectionable form of meritocracy; however, the force of the second objection is somewhat mitigated if desert is only one consideration among others, say, utility and fairness, in the decision process. See Schmitz 2006: ch.8 and 9.

<sup>33</sup> See Sidgwick 1907: 264-294.

distributive in nature but also is concerned with the distribution of benefits and burdens based on desert. For Sidgwick, since we have benefited from the contribution of others to the common good, we have reason to be grateful. For instance, in our daily lives we have reason to be grateful to the mailman for delivering our packages and correspondences, or to the bus driver for getting us to our destinations: without their services our lives would be greatly impoverished.

While Sidgwick thought common sense morality of his day endorsed the principle of desert as the main principle of justice, he thought the principle lacked the precision and self-evidence necessary for a fundamental principle of morality. Sidgwick's scepticism was based on several considerations, each, I believe, representative of contemporary scepticism with regards to desert. Let's consider each in turn.

First, there is some ambiguity as to what common sense morality takes to be the proper basis of desert. If our gratitude is based on moral desert, say, moral character, or as Sidgwick had put it, '*moral* excellences [that] are exhibited in human achievements', then it seems the matter of reward ought to be determined by God. Sidgwick is surely right about this, for it seems somewhat amiss to think those born benevolent ought to fare better simply in virtue of their innate features than those born less disposed to become altruistic. Moreover, it's likely many simply lack the opportunities to manifest great virtue. In short, virtue does not appear to be the proper basis for at least, say, the desert of economic rewards. However, since Sidgwick was more sympathetic and fair-minded a critic than most and saw clearly desert-based theories of justice cannot be dismissed solely on account of such an implausible claim as that income can be deserved on the basis of moral virtue, Sidgwick goes on to consider whether either effort or contribution might be the proper basis of desert for economic reward.<sup>34</sup>

But similar difficulties encountered in taking virtue as a basis for the desert of rewards beset taking effort as a basis of desert. Sidgwick wrote:

For it may be said that the actual utility of any service must depend much upon favourable circumstances and fortunate accidents, not due to any desert of the agent: or again, may be due to powers and skills which were connate, or have been developed by favourable conditions of life, or by good education, and why should we reward him for these?<sup>35</sup>

<sup>34</sup> Assuming desert theorists maintain economic rewards are deserved based on moral merit, many writers quickly dismiss all desert-based theories of justice based on this false assumption.

<sup>35</sup> See Sidgwick 1907: 283.

Sidgwick here suggests even a capacity for voluntary effort is to some extent externally caused and it hard to see why we should be rewarding something which is possessed as a mere matter luck. Famously, John Rawls will later repeat this line of objection which explains why, as one critic puts it, ‘the notion of desert seems...to have been consigned to the philosophical scrap heap’ for much of the late 20<sup>th</sup> century, and, I should add, into our own.<sup>36</sup> For it seems unjust (or unfair) that any individual should do better in life than another merely as a result of circumstances beyond her control. Sidgwick here clearly anticipates the views of many contemporary luck-egalitarians.<sup>37</sup>

Now, as Sidgwick recognised, one might, of course, point out that both talent and skill are developed and are certainly not *completely* beyond our control. But, as Sidgwick points out, even if we able to reward in proportion to voluntary effort for a good end, there is another threat within the vicinity. He writes:

...Determinists will say that even this [voluntary effort] is ultimately the effect of causes extraneous to the man’s self. On the Determinists view, then, it would seem to be ideally just (if anything is so) that all men should enjoy equal amounts of happiness: for there seems to be no justice in making A happier than B, merely because circumstances beyond his own control have first made him better. But why should we not, instead of ‘all men’ say ‘all sentient beings?’ for why should men have more happiness than any other animal?<sup>38</sup>

The thought is: we simply may not have the kind of freedom required for responsibility and desert. This too is a popular line for desert sceptics to take. Without individual responsibility there cannot be desert, in which case we can deserve neither good nor evil, benefits nor burdens. However, this is not Sidgwick’s main reason for scepticism. Instead, he thought it practically impossible to separate that part of a person’s achievement which is strictly due to his or her own free choice, from that due to natural talent or favourable circumstance.<sup>39, 40</sup>

In the chapters that follow little will be said about desert and problem of free will. This is for two reasons. First, many have already insightfully written about the topic of desert and free will and I have little to add. And second, an adequate treatment of the subject is

<sup>36</sup> See Kleinig in Pojman and McLeod (ed.) 1999: 84.

<sup>37</sup> See Crisp 2015a: 168.

<sup>38</sup> See Sidgwick 1907: 284.

<sup>39</sup> Readers interested in the reasons why I am more optimistic than Sidgwick and do not think this kind of objection undermines desert are referred to appendix.

<sup>40</sup> One response might be that any attempt to try to separate out inherent abilities from voluntary effort simply treats natural talent as a public asset. I believe this objection can be traced back to Nozick. See Miller 1999: 30.



simply beyond the purview of this project. So in what follows, I am going to simply assume we have the kind of freedom necessary for desert.

We turn now to the difficulties Sidgwick identified with regard to taking contribution as a basis of desert, one which, again, is a main source of scepticism for many contemporary critics of desert-based theories of justice. Sidgwick, recall, thought common sense took contribution to the common good to be the primary basis of desert. Now a common proposal is that when economic actors receive the market value for their contribution, such an outcome is not only commonly considered just but also thought just because these economic actors have received what they deserve. Sidgwick identified several difficulties with this proposal which might be illustrated with the following examples.

First: suppose producer A, say, a producer of canned beans, has gained near monopoly of the market on canned beans and sees there is currently great demand for canned beans; producer A then decides to cut production, thereby lowering supply, and reaps even greater profits: while the market value of producer's services has increased, it difficult to see why one should think producer A more deserving—if anything, just the reverse.

Or suppose Julie has developed a new style of horn playing and her services are now in great demand; a few months later, many other horn players have figured out how to accomplish the same effect; as a result, Julie's services are no longer in great demand: while the market value of Julie's services is now much diminished, do we really think Julie less deserving? To many, it seems implausible that our desert could be so closely tied to the fluctuations of the market.

Or suppose Imani designs watches made of only the most exquisite material that only a very few can afford, while Leanne designs attractive but affordable and environmentally-friendly cookware: do we really think the social worth of Imani's services greater than that of Leanne's or that Imani has greater social desert?

Since an individual's contribution to the common good is so difficult to determine, Sidgwick found unpromising the idea that social contribution is a proper basis of economic desert.<sup>41</sup>

**1.5** Contemporary Sceptics are also greatly influenced by one of the major philosophers of our time T.M. Scanlon. Following Scanlon, many sceptics believe not only that our practices of holding people responsible can be fully explained without appeal to the concept of desert, but also that an approach which appeals to desert has unsavoury implications.

<sup>41</sup> See Sidgwick 1907: 288.

In chapter six of his highly influential *What We Owe to Each Other*, Scanlon argues against what he takes to be a popular account of responsibility which he calls the Forfeiture View, according to which individuals cannot complain of the burden or harm they suffer as a result of the choices they have made if they have been “given the choice.”

The Covid-19 pandemic provides an apt example. When the pandemic struck, governments warned all citizens, through television, radio, and other public means of communication, to wear masks and to keep appropriate social distancing as a measure to protect themselves and others. After a year of extensive investment and research vaccines became generally available and citizens were encouraged to get vaccinated as soon as possible. However, despite the availability of a new highly efficacious protective measure against severe disease, a sizable part of the population chose to forego this opportunity. As a result, the hospitalization rate remained high among the unvaccinated. On the Forfeiture View of responsibility, those who chose to remain unvaccinated and who suffered serious illness—and in many cases illness led to death—only have themselves to blame. On this view, what matters is that the outcome is the result of a conscious decision made on the part of the agent and because the agent chose to forego certain available alternatives they cannot complain of the result.

But as Scanlon points out, it is easy to slide from the idea that what matters for responsibility is a conscious decision to intentionally forego certain alternatives to the thought that those who have made their decision deserve to suffer the consequences—e.g. those who have chosen to remain unvaccinated and as a result have fallen ill deserve their fate and cannot complain about the suffering as a result. As it is commonly held, holding people responsible means treating people as they deserve.<sup>42</sup> But, Scanlon warns, what lies behind the Forfeiture View is not in fact the notion of desert. He writes:

this conclusion [that a person is fully responsible for her fate in light of her decision] does not depend on our judging her decision to be foolish or mistaken. What lies behind the Forfeiture View is thus not a notion of desert, according to which people who behave wrongly or foolishly cannot complain about suffering as a result. The idea is rather that a person who could have chosen to avoid a certain outcome, but who knowingly passed up this choice, cannot complain of the result: *volenti non fit iniuria*.<sup>43</sup>

<sup>42</sup> Also see 1.2.

<sup>43</sup> See Scanlon 1998: 259.

It is important to notice what Scanlon is suggesting is that, on the desertist view according to Scanlon, those who believe in desert claim there is no reason to help, or more precisely, a reason not to help, because those who have made their choice *deserve* the outcome of their choices. By contrast, Scanlon thinks these people can't complain about the result not because they deserve it but because, as he goes on to argue, they have been given adequate opportunity to avoid this result. What is important for our purposes is that Scanlon seems to be suggesting those who believe in desert believe people deserve to suffer, and he seems to take it for granted that most people would find this implication unacceptable, even barbaric.<sup>44</sup>

However, as we have seen, friends of desert need not claim there is no reason to help, nor do they. No desert theorists, to the best of my knowledge, believe considerations of desert always outweighs other considerations.<sup>45</sup> Nonetheless, I believe Scanlon's characterization here of the desertist's position has been very influential, but misleading.

Desert aside, Scanlon thinks the Forfeiture view of responsibility is inadequate for several reasons, the most important being that the view focuses our attention in the wrong place 'by concentrating on the fact of choice and the possibility of choosing otherwise as the morally significant features of the case.'<sup>46</sup> Instead, Scanlon thinks 'what matters is the value of the opportunity to choose that the person is presented with. If a person has been placed in a sufficiently good position, this can make it the case that he or she has no valid complaint about what results, whether or not it is produced by his or her active choice.'<sup>47</sup>

When applied to our example, what matters is not that one has chosen to remain unvaccinated and as a result suffer serious disease; rather, the reason why the unvaccinated who have fallen ill have no valid complaint is not only that they have been placed in a sufficiently good position to choose, but also that the value of the opportunity to choose cannot be great, as there is little reason to place positive value on having the opportunity to become infected and die from serious disease.

<sup>44</sup> We find in Sidgwick: 'History shows us a time in which it was thought incumbent on a man, to requite injuries as to repay benefits: but as moral reflection developed in Europe this notion was repudiated, so that Plato taught that it could never be right really to harm anyone, however he may have harmed us. And this is the accepted doctrine in Christian societies, as regards requital by individuals of personal wrongs. But in its universalised form the old conviction still lingers in the popular view of Criminal Justice: it seems still to be widely held that Justice requires pain to be inflicted on a man who has done wrong, even if no benefit result either to him or to others from the pain. Personally, I am so far from holding this view that I have an instinctive and strong moral aversion to it: and I hesitate to attribute it to Common Sense, since I think that it is gradually passing away from the moral consciousness of educated persons in the most advanced communities: but I think it is still perhaps the more ordinary view.' Like Sidgwick, many contemporary philosophers tend to associate retributive justice with a kind of barbarism. See Sidgwick 1907: 281.

<sup>45</sup> See 1.2.

<sup>46</sup> See Scanlon 1998: 263.

<sup>47</sup> See Scanlon 1998: 258.

To see why the fact of choice does not matter, imagine a person living in some remote area but has heard about the pandemic and knows that vaccines are available but simply forgets to get vaccinated. A month later this person is hospitalized. Isn't this person just as fully responsible as someone who consciously decides to remain unvaccinated?

Many have found Scanlon's explanation of our practices of holding responsible persuasive. And as should be evident, no mention of desert is necessary to explain our practices of holding people responsible.<sup>48</sup>

Scanlon's attitude towards desert, I take it, is representative of many contemporary desert sceptics and for this reason the passage that follows is worth quoting in full:

It is sometimes said that feeling guilty for having done something necessarily involves the belief that one should be made to suffer in some way for having done it. Similar claims are made about related notions of blameworthiness, resentment, indignation, and so on. Let me call the moral idea underlying such claims—the idea that when a person has done wrong it is morally better that he or she should suffer some loss in consequence—the Desert Thesis.... Since I regard the Desert Thesis as morally indefensible, my account of moral criticism, and the notions of guilt, blame, and responsibility that it involves, are not desert-entailing notions.<sup>49</sup>

Scanlon has in mind the classical view of desert, one already mentioned in passing, namely, that it is a good thing when the virtuous are made happy and the vicious suffer in proportion to their desert.<sup>50</sup> This view takes for granted that all desert claims belong within the evaluative part of the normative domain.<sup>51</sup> If saints deserve to be happy, then the morally depraved deserve to suffer. Scanlon is here suggesting the claim that people deserve to suffer is untenable and endorsement of this claim ought to be avoided. But of course, Scanlon is not the only one who has taken this attitude towards desert; Sidgwick also thought this the right

<sup>48</sup> To someone like Scanlon, the idea that there is value in the opportunity to become deserving is beside the point.

<sup>49</sup> Scanlon now thinks reactive attitudes, such as gratitude and resentment, are deserved. As he rightly points out, expressions of gratitude or blame are not what makes gratitude or resentment appropriate. Gratitude or resentment is appropriate in light of what the person did and her attitudes towards me that her action manifests. Judgement of the appropriateness of these reactive attitudes rest on the internal connection between facts about the person and the content of the reactive attitude. See Scanlon 1998: 274; Scanlon 2018: 210.

<sup>50</sup> Many British ethical intuitionists, such as W.D. Ross and G.E. Moore, held this view; and more recently Shelly Kagan and Tom Hurka also hold this view. See Moore 1903: 214-215; Ross 1930: 26-27; Hurka 2003: 45-46; Kagan 2012: 5.

<sup>51</sup> To the best of my knowledge, George Sher is the first to question this assumption and tried to remain neutral in theorizing about desert. See Sher 1987.

approach, along with many others since then.<sup>52</sup> Such attitudes are also partly responsible for the paucity of interest in the concept of desert.

As mentioned earlier, the prevalence of the idea that all desert claims are evaluative in nature and belong under the general duty to promote good is unfortunate. This has led many desert sceptics to believe that in order to defeat a desert-based approach justice, it is sufficient to point to the evaluative nature of desert claims: since desert claims are evaluative, as many believe, there cannot be any moral obligation to give people what they deserve, and for this reason claims of desert are too weak for the purposes of ethical and political theorizing and can be therefore be safely ignored.<sup>53</sup> The thought is: even if there are genuine claims of desert, the normative force of desert claims are always outweighed by other considerations, such as needs or entitlements. Again, whether this view is ultimately defensible or not, it is a very popular view.<sup>54</sup>

However, there are a few writers who come to think perhaps not all desert claims belong in the evaluative part of the normative domain, but rather some desert claims—maybe all—are best understood as a species of fittingness. But the problem is, to many, the idea of fittingness is too mysterious to be at all credible. For instance, David Miller, a friend of desert, asks us to imagine some agent *A* has taken some course of action *P* which makes the person deserving of some benefit *B*, Miller adds:

The performance has taken place, and *A*'s being put in a position to enjoy *B* is the fitting or appropriate response on our part to that fact. Many people find this relationship [fittingness] a mysterious one, and therefore seek to translate desert judgments into another form in which they do not have the implication that *A*'s doing *P* at one moment simply *is* a reason for his being given *B* at some later moment.<sup>55</sup>

And one might add that, to some, the idea of desert is just as mysterious. Here are two examples from the recent literature on justice: one reads, 'the very notion of desert is mysterious and...heavily dependent on intuitive judgments of intrinsic plausibility.'<sup>56</sup> Or: 'When it is asserted that a person deserves blame, what sort of normative claim is being made? Is it a claim about the right or about the good? Is it that it would be good for the

<sup>52</sup> For a recent example, see Nussbaum 2016. For someone who takes a slightly different attitude see McKenna 2012. Also see 1.4.

<sup>53</sup> Also see 1.2.

<sup>54</sup> Zofia Stemplowska claims even if the fact that someone deserves some treatment is a reason to give someone what they deserve, desert cannot ground moral obligations. See Stemplowska 2015: 173.

<sup>55</sup> See Miller 1999: 135-136.

<sup>56</sup> See Berman 2008: 269.

guilty person to be blamed? Or is it instead that it would be right or permissible to blame the person?<sup>57</sup> These passages suggest, for many, much mystery surrounds both the concept of fittingness and desert.

In short, even if not all desert claims turn out to be evaluative in nature, the sceptic will still want to know what makes any particular response fitting or deserved and why some other response is not just as fitting or deserved. Without a persuasive response to this challenge, the concept of desert, no less than fittingness, will remain enshrouded in mystery. Serious questions remain as to both the nature and normative force of desert claims and their role in determining what we ought to do.

**1.6** Over the course of this introductory chapter I have highlighted the main lines of objections to theories of justice which requires that the benefits and burdens are distributed in accordance with people's deserts.

One line of objection is that the conditions for desert are either incoherent or else incapable of satisfaction. As we saw in the discussion of Sidgwick, many believe that, since we cannot claim credit for our talents or natural dispositions, the conditions for desert are incapable of satisfaction. Worse, even if we base desert on contribution to the common good, we lack a proper measure of economic contribution.

A second line of objection points to conceptual and/or normative complexities associated with the concept of desert which many take to be barriers to further theorising about justice and desert. These critics often begin by pointing out that perplexing questions as to the nature and normative force of desert claims remain, and then insist that even if we get clear about what different people deserve, there are yet other values, like equality, need, and efficiency, which need to be taken into account, and until we are able to weigh the demands of desert against these other factors, any account of the relation between justice and desert will remain inadequate.

A third line of objection is that any theory of justice which endorses the claim that some people deserve to suffer is indefensible. The claim that some deserve to suffer, these

<sup>57</sup> In some respects, the author's own proposal as to what is being asserted when philosopher claim we should blame or punish because wrongdoers deserve to be blamed or punished is no clearer. He writes: 'Because it is a non-instrumental good that, in return for a harm wrongly inflicted, a wrongdoer is harmed, it is permissible to harm one who wrongly harms another.' The problem is it is hard to see how the fact that some act would be good makes it permissible: stealing from the rich to give to the poor is good one might think to the extent that it brings about greater overall level of welfare, but that doesn't make it permissible. No wonder many philosophers have been hesitant to appeal to the concept of desert. As is made clear in a later passage the author means: 'Because it is a non-instrumental good that, in return for a harm wrongly inflicted, a wrongdoer is harmed, it is, *other things being equal*, permissible to harm one who wrongly harms another.' See McKenna 2012: 123, 133, 150.

sceptics believe, is simply false. They hold instead that no one can deserve to suffer and that only good consequences justify state punishment, not desert.

1.7 Having identified the main problems to be addressed, I now provide an overview of the chapters that follow. It is my impression the literature on desert has arrived at an impasse.<sup>58</sup> Sceptics insist that, given desert claims are evaluative in nature claims of desert are too weak for the purposes of ethical and political theorizing. Alternatively, as we have seen, some have suggested it is fitting to give people what they deserve. But even if the sceptic concedes this point, they will want to know what makes it fitting to give people what they deserve or what makes one form of treatment fitting and not another.

In ch.2, I argue there is nothing at all mysterious about either the concept of fittingness or desert. Desert is a species of fittingness, and there are good reasons to think fittingness is a category of its own in the normative domain. While fittingness often provides reasons for action or for certain attitudes, the fittingness relation can fail to provide reasons when certain conditions are not met or when the reason or fittingness relation has been undermined by some feature of the situation. This provides an alternative explanation of why in some cases it is not wrong to fail to give people what they deserve which does not commit one to the thesis that all desert claims belong to the evaluative domain, which I am calling the axiological thesis. Furthermore, I argue it is simply not true that claims of desert cannot ground obligations.<sup>59</sup>

While effort and contribution are commonly taken to ground economic desert, that each is a basis of desert remains controversial. In ch.3, I argue theories of economic desert based on effort and contribution are not implausible. I begin by identifying the common core of all theories of economic desert, which one might call the compensatory model of desert. This model incorporates what some have called the received wisdom about desert, namely, a person deserves some treatment only in virtue of some past action for which he or she is responsible, though, as we shall see, there is good reason to think at least part of this received wisdom needs to be reconsidered.

<sup>58</sup> Reflecting on recent developments (or lack thereof) in the philosophy of criminal law in thinking about retributive desert, Husak thinks debates about the value of deserved suffering simply leads to a dead end. While once a friend of desert, persuaded by Tadros, Husak now thinks that in cases where, intuitively, desert seems involved, other equally, or more satisfying, explanations are available. Something similar can be claimed about desert's role in the literature on distributive justice. As I have suggested, many believe claims of desert are too weak to ground obligations. Husak 2016: sec. 2; also see Tadros 2011: ch.4; Tadros 2017: 395-398. Also see note 14.

<sup>59</sup> Dana Nelkin also rejects the axiological thesis. While Nelkin also sees some connection between fitness and desert, our views are not the same. Nelkin seems to have in mind mainly instrumental fitness. See ch.2.

As we saw in 1.4, some sceptics have tried to show appeals to either effort or contribution as a basis of desert is incoherent or incapable of satisfaction. But a different strategy is available to the sceptic, one which aims to show that what may at first appear to be a concern for desert may in fact be a concern for something else, an approach foreshadowed in 1.5. The thought is that, if one could show that a better explanation of our practices of holding responsible is available, one which does not appeal to the concept of desert, then one will have shown the irrelevance of desert for economic justice. In chapter eight of his recent book, Scanlon pursues this strategy. In ch.3, I examine several of Scanlon's arguments purporting to show the irrelevance of desert for distributive justice and conclude that none are persuasive.

As we also saw in 1.5, many believe what it means to hold people responsible is to treat them as they deserve. By appeal to considerations of desert, some luck egalitarians have tried to justify the inegalitarian conjunct of their view, namely, that any inequalities that are due to differences in the parties' choices are just (or at least not unfair) so long as the options from which the parties choose were sufficiently equal.<sup>60</sup> In ch.3, I argue both the luck egalitarian account of economic justice and the once popular benefits-and-burdens account are unsatisfactory. The problem with the luck egalitarian account is that it requires one to be able to exercise control over inequalities to which one is party, a kind of control that is not only beyond reach but also is not the kind that matters: instead, what matter is exercising control over one's own life.<sup>61</sup> And the main problem with the benefits-and-burdens account is that it assumes the basis of economic desert is non-comparative or individualistic, i.e. that what one deserves can be determined without reference to what others deserve. However, the idea that there is an individualistic non-comparative sphere of compensation is implausible concerning economic desert. If effort or contribution is to be taken as a basis of economic desert, the desert base must refer to the accomplishment of others. Economic desert is essentially comparative or holistic.

In ch.4, we turn to explore two sets of issues much debated in the literature on justice and desert. First, institutionalists claim all desert claims are institutional, i.e. a mere matter of convention.<sup>62</sup> And if all desert claims are institutional and if desert has no role in helping us determine which (ideal) institutions we consider just—as many assume or maintain—then desert has no foundational justificatory role in thinking about justice. If this is correct, then

<sup>60</sup> Also see 1.4.

<sup>61</sup> One might also add that the luck egalitarian still directs our attention to the wrong place. What matters for responsibility is not the fact of choice.

<sup>62</sup> Those who take a rights-based approach to thinking about justice tend to be institutionalists. Also see 1.2.



justice does not depend on desert.<sup>63</sup> However, if it turns out that our conception of ideally just institutions is informed by considerations of desert, then institutionalists will not have succeeded in showing that desert is irrelevant to thinking about justice. For this reason, the questions (1) whether our concept of desert is an institutional or pre-institutional notion, and (2) if desert is pre-institutional, whether pre-institutional desert affects whether we think any particular distributions of benefits (or burdens) just are at the centre of debate over desert's role in our thinking about justice.

I argue that not only can desert be pre-institutional but also whether people get what they deserve is part of our conception of what is ideally just. I also argue the question whether desert is an institutional or pre-institutional notion seems compelling only if we adopt an overly narrow interpretation of distributive justice as the distribution of benefits. I believe this way of thinking about justice has led many writers to deny a close conceptual connection between justice and desert, which I argue is a mistake. Framing the desert debate around the question whether desert is institutional or pre-institutional not only stacks the card against desert theorist (as it presupposes a contentious conception of justice), but also distorts our understanding of the concept of justice. Once an overly narrow conception of justice has been abandoned, the importance of desert claims again come into view.

In the second half of ch.4, a different set of issues is addressed, issues which are also central to the debate over the exact relation between justice and desert. In 1.2 we saw desert theorists owe us an account of the relation between justice, desert, and other ethical considerations such as needs. Ch.4 looks at two different desertist accounts of the relation between justice, desert, and other ethical considerations. One view holds that *justice* is sensitive to several different ethical considerations, namely, rights, needs, and desert. A competing view holds that rights (or entitlements) and needs are also bases of *desert*. The second view gains some intuitive support when we observe that it is often claimed that benefactors deserve the gratitude of beneficiaries and those who have suffered injury or loss deserve compensation. Defenders of this second view make the further claim that promisee also deserves the promised performance from the promisor. The thought is: if person *A* has a *pro tanto* duty to treat person *B* in a certain way, then person *B* deserves that treatment in virtue of person *A*'s *pro tanto* duty. If entitlements are correlated with *pro tanto* duties, and if *pro tanto* duties are bases of desert, then entitlements are a basis for desert.<sup>64</sup>

<sup>63</sup> In other words, institutionalists claim justice is conceptually prior to desert, i.e. explanatorily more foundational or fundamental.

<sup>64</sup> As we have seen, this is not the first attempt philosophers have made to arrive at the conclusion that one is entitled to what one deserves. See 1.3.

I argue that this line of argument in support of the second view is misguided. One problem with this approach is that if the treatment to which one is entitled is also a matter of desert, then it is tempting to think most desert claims are institutional and that what is owed to others is often owed as a matter of right. I think this presents a distorted picture of the way things are. I argue there are fundamental disanalogies between the duties of fidelity, gratitude, and repair (or reparation). While these duties are all directed, i.e. owed to another, only the duty of fidelity is owed as a matter of moral right. And while gratitude is deserved, compensation and the promised performance are not. Compensation, I believe, is best thought of as a matter of institutional entitlement. I maintain that justice is concerned not only with desert but also at least with a respect for rights. The claim that entitlements are also a basis of desert is implausible.

Finally, in ch.5 we turn to consider the question whether a view which holds that some deserve to suffer is in fact implausible. Sceptics, as we have seen, often claim that no one deserves to suffer, and once one accepts this claim, all forms of retributivism come to seem untenable. First, it is claimed that retributivism is barbaric: it stems from a mere desire for revenge, and it would be better if we rid ourselves of any retributive emotions and attitudes. (Recall, both Sidgwick and Scanlon endorse this stance.) Second, there remains a puzzle, these sceptics believe, as to how the intentional infliction of harm, which is usually thought impermissible, becomes permissible on account of desert. Third, it is claimed that retributivism is simply false: good consequences are what justifies punishment, not desert. Nothing is more obvious, sceptics insist, than the claim that harming others is unjustified unless harming them is likely to have some good effect. And if it's true that what justifies punishment is only the security achieved through deterrence, then desert has no role to play in our thinking about justice.

In response, I argue sceptics find desertism and retributivism implausible only because they have misunderstood these views. Moreover, it is not at all clear that those who claim no one can deserve to suffer fully understand the implications of their own view. For instance, some seem to think the desert of suffering entails that there is no reason to aid, which as I have suggested in this chapter, is not what friends of desert claim. Others seem to think all avoidable suffering is objectionable, a claim which few, I believe, would in fact endorse. But more importantly, few seem to realise that a commitment to the claim that no one deserves to suffer does not in fact entail a wholesale rejection of desert. The claim that no one deserves to suffer is compatible with the idea that some are more deserving than others, say, of assistance. I argue in ch.5 not only are the several objections just posed based

on misunderstandings of retributivist commitments but also that once the desertist position is properly understood sceptics will see that they too have reason to become desertists since their own view seems plausible only because it leaves many questions about desert unanswered.

In this chapter I have canvassed the many challenges which arise in theorizing about desert. In the chapters that follow, while I do not offer a complete theory of desert, I hope to have cast new light on an old but still much debated issue, namely, the relation between justice and desert.

## *Desert: A Species of Fittingness*

As we have seen in the last chapter, many contemporary authors are reluctant to appeal to the concept of desert in theorising about justice given the uncertainties pertaining to the nature and normative force of desert claims. One question often asked about desert claims is whether they belong to the deontic or the evaluative part of the normative domain.<sup>1</sup> The majority view is desert claims are evaluative in nature.<sup>2</sup> But if desert claims are all evaluative, then a theory of desert which takes this premise as its starting point faces the objection that since desert claims are evaluative (i.e. it is merely a good thing when deserving people get what they deserve), it is unlikely claims of desert ground obligations (i.e. one is rarely, if ever, required to give the deserving what they deserve), and for this reason, some believe, claims of desert are either insignificant or too weak for most purposes of ethical and political theorising.<sup>3</sup>

But of course, not all agree either that desert claims are too weak or that all desert claims all evaluative. As some writers have observed there also appears to be a close conceptual connection between the concept of fittingness and desert. This approach to thinking about desert, until recently, has remained relatively unexplored. This approach is not without difficulties. When asked, why we should give deserving people what they deserve, the reply that ‘giving the deserving what they deserve is a fitting response’ has

<sup>1</sup> The deontic part includes the concepts of obligation, duty, right, wrong, permission, and supererogation, while the evaluative part includes the concepts of good, bad, better, or worse. On the one hand, when making deontic judgments, say, regarding certain acts, we tend use the language of requirement and permission and often speak of what is the ‘right’ or ‘wrong’ thing to do; on the other hand, when making evaluative judgments, we tend to use the language of good or bad, and often speak of some act as bringing about ‘better’ or ‘worse’ consequences. But clearly, the deontic and the evaluative do not exhaust the normative domain, so to speak, as we also often speak of what we ought to do, or have reason to do, or, arguably, what it would be fitting to do. But as with claims of desert, many writers are puzzled over whether claims of fitness belong to the evaluative or to the deontic part of the normative domain.

<sup>2</sup> With regards to the normative force of various claims, writers disagree not only over the force of evaluative claims when compared with deontic considerations, but also over the force of different kinds of evaluative claims, likewise over different kinds of deontic claims. While consequentialists claim all morally relevant considerations are evaluative, non-consequentialists claim there are both evaluative and non-evaluative, that is, deontic considerations. Non-consequentialists also tend to assume that in most cases deontic considerations tend outweigh the evaluative.

<sup>3</sup> These same writers also often insist that all claims of desert are institutional, i.e., derived from existing or ideal social practices. These writers tend to be deeply suspicious of the idea that desert can be pre-institutional. See ch.4 on the issue of institutional and pre-institutional desert.

seemed unsatisfactory to many. Many are puzzled not only by the question why give people what they deserve, but also by the question of what makes any particular response the fitting or appropriate response. I believe one reason why many are perplexed is the writings of the British ethical intuitionists have been largely ignored—or too quickly dismissed—since the rise of logical positivism. Only within the last twenty years or so has their work again begun to attract attention.<sup>4</sup>

In this chapter, I propose an alternative approach to thinking about the nature and normative force of desert claims. I argue that not only can claims of desert ground obligations, as C.D. Broad suggested, but also there is nothing at all mysterious about concept of fittingness or desert. Furthermore, there are good reasons to think that, rather than being part of either the deontic or the evaluative, fittingness is its own category within the normative domain, and that desert is a species of fittingness.

**2.1** To get clear on the question what is being claimed when some say ‘giving the deserving what they deserve is a fitting response to their desert’, we must first understand what it means for a response to be fitting. By ‘response’, I mean an emotion, feeling, attitude, or act(s), which includes particular forms of treatment such as praising or rewarding and their opposites. The ethical intuitionists, writing in the period beginning with Sidgwick and ending late mid-century with Ewing, were a group of writers who appealed to the concept of fittingness in their analysis of other ethical terms in the normative domain.<sup>5</sup> A brief digression into this history will facilitate further discussion as to what is being claimed when it is asserted that a particular response is fitting.

The principle of parsimony, as in any field of human inquiry, is essential to an inquiry into the nature of morality. The idea is that the concepts we use in asking the fundamental questions concerning morality should be as few in number as possible. Members of this school took the concepts of ought, right, good, fitting, and duty or obligation to be the central ethical concepts in the normative domain and saw getting clear on the relations between these concepts as essential to their endeavour and part of their task is to see if some could be defined or analysed in terms of the others.<sup>6</sup>

Sidgwick held the sole basic ethical concept is that of what one ought to do and analysed ‘good’ as what one ought to desire.<sup>7</sup> In earlier work, Moore also thought there is

<sup>4</sup> Also see Hurka 2011: ch.1.

<sup>5</sup> Writers of this school include Henry Sidgwick, Hasting Rashdall, John McTaggart Ellis McTaggart, H.A. Prichard, G.E. Moore, E.F. Carritt, W.D. Ross, C.D. Broad, and A.C. Ewing. See Hurka 2014.

<sup>6</sup> E.g., see Broad 1930: 276-278.

<sup>7</sup> Sidgwick 1907: 112; also see Broad 1930: 176; Crisp 2015a: 59; Hurka 2014: 52-53; Hurka (forthcoming).

but one basic concept, namely, the concept of ‘intrinsically good’ and argued that ‘right’ means ‘productive of the greatest possible amount of intrinsic good’, though later came to reject this view.<sup>8</sup> Like Ross and Prichard, Moore later claimed there are two basic indefinable concepts, namely, the right and the good, but while Moore still thought the right act maximizes the good, he claimed this was a synthetic rather than analytic truth. Broad and Ewing, on the other hand, like Sidgwick, thought a single basic concept will do, but rather than the concept of ought, they took the concept of fitness to be basic. Broad suggested we can understand Ross’s ‘prima facie duty’ in terms of suitability or fitness to a factor of a certain wider total situation and what we mean when we call something good is that it is a fitting object of desire.<sup>9</sup> Ross later accepted Broad’s suggestion and also subsumed the right under fittingness.<sup>10</sup> Like Broad, Ewing also thought the concept of fitness underlies both ‘ought’ and ‘good’. But unlike Broad, Ewing was a pluralist and thought different objects called for or fit different attitudes, attitudes other than desire, like care, respect, admiration, appreciation, or approval.

The following two sections focus on Broad’s influential discussion of fittingness, which Ross endorsed in the *Foundations*. The main aim of these sections is to get clear on what it means for certain acts to be fitting. In 2.4, we turn to Ewing’s contribution to the debate, his fitting-attitudes analysis of goodness, and focus more directly on what it means for certain attitudes to be fitting. Taken together, these sections show how the concept of fitness might be thought fundamental and to underlie both the deontic and the evaluative within the normative domain.

**2.2** Broad distinguishes several different senses or applications of the term ‘ought’ and provides an account of the relation between each of these uses. Broad distinguished between narrow and wide sense of ‘ought’.<sup>11</sup> In its narrow sense, the term applies only to actions

<sup>8</sup> See Moore 1903: 147; Moore 1912: 76.

<sup>9</sup> See Broad 1930: 164, 278, 283.

<sup>10</sup> Ross traces the thought of rightness as fitness to the writing of Samuel Clarke. See Ross 1939: 52, 82.

<sup>11</sup> Broad also distinguished between deontological and teleological applications of the term and suggested that when ‘ought’ is used in its deontological application it is used in the narrow sense; and when ‘ought’ is used in its teleological application, it is used in its wider sense. In particular, the deontological application is used by those who judge that ‘there are certain types of action which ought to be done (or avoided) in all or in certain types of situation, regardless of the goodness or badness of the probable consequences’, while teleological application of the term is used by those who claim to have ‘no notion of unconditional obligation’ and therefore never use the term in its deontological application and judge that ‘everyone ought to aim at certain ends without any ulterior motive, e.g., at his own greatest happiness, at the greatest happiness of all sentient beings and so on.’ The teleological application of the term is conspicuously related to the evaluative. Broad also identified a logical application of ‘ought’ which he thinks is just a special case of the deontological application, but for our purposes this logical application is unimportant. Broad speaks of the different applications of ‘ought’ as it enables him to then claim that, say, when a person uses ‘ought’ in its deontological application, the person means ‘ought’ in the narrow sense. See Broad 1930: 162-163.

which an agent could do if he or she willed, but when used in its wide sense, the term carries no such implication. For instance, when we say to someone ‘you ought to keep your promises’, we believe the person is both able and can keep their promises. Our deontic judgments as to what one ought to do is noticeably constrained by a requirement of voluntary control, or an ‘ought’ implies ‘can’ condition: for example, if a doctor couldn’t have saved every patient in their hospital ward even if he or she chose to, then it can’t be true that the doctor ought to have saved everyone in the ward. Or consider how inappropriate it is to make a child feel guilty for wetting the bed. We think ‘ought’ just doesn’t apply in such cases. And the reason we are reluctant to use ‘ought’ in such instances is because it’s hard to believe morality can require or make obligatory something that is not within our control. Our use of ‘ought’ in this narrow sense is not only constrained by a requirement of voluntary control but is also often associated with moral obligation.

At this point it would be useful to introduce another sense of ‘ought’ which Broad recognized but did not emphasize. Suppose an old friend of mine is in town for just a few hours and I promise her I would meet her at a particular time and location. However, on my way there I encounter a cyclist who has been badly injured and needs to be taken to the hospital immediately. While I have promised my friend I would meet her, what I ought to do, all things considered, is to take the cyclist to the hospital. A moment’s reflection will reveal that we very commonly use the term ‘ought’ in this all things considered sense.

But while the term ‘ought’ is often used in this sense, Broad nonetheless thought this sense of ‘ought’ is not particularly helpful for two reasons. First, suppose I promised Evelyn I would repay her £50 by the end of the week, but I also promised Fran I would replace her coat by the end of the week which also happens to cost £50. Further suppose when the time came I have only £50. Here it is not at all clear what I ought to do. All we can say is that I ought either to pay Evelyn or replace Fran’s coat. Secondly, suppose I have promised to meet you for lunch, but am currently engrossed in the book I’m reading. Though I would gain immense satisfaction from finishing the book, what I ought to do all things considered is to meet you for lunch which is at the same time, most would agree, what I am morally *required* to do. But while it is tempting to think we almost always use ‘ought’ in this all things considered sense, i.e. as roughly synonymous with what we are morally required to do or what is obligatory, this is not always the case. Suppose Gwendolyn is trying to decide whether to continue her work providing medical care for refugees in some impoverished country far

away or to return home to start a family. Many, I take it, will be reluctant to claim that Gwen is morally required, or ought all things considered, to continue helping the refugees.<sup>12</sup>

Instead, Broad thought we mostly use ‘ought’ in the narrow sense to capture the categorical nature of duties or obligations. Some considerations, often moral, are commonly thought to rule out, or outweigh, other considerations such as a disinclination to do what one has most reason to do. For instance, knowing medicine is bitter, in light of their protest, one might say to an ill child, ‘you ought to take your medicine’.<sup>13</sup> Or if at the end of the month when bills have been paid you find a small sum left over, a friend might kindly remind you, ‘you ought to first pay Helena the amount she loaned you last week,’ knowing you would otherwise spend it at the pub. Often, we use ‘ought’ to capture the categorical nature of duties or obligation when there is some disinclination to do what there is moral reason to do. And usually our experiences of such conflicts is accompanied by a feeling we call a sense of obligation or duty.<sup>14</sup> And, as we have seen, ‘ought’ in this narrow sense not only is closely tied to action but also its usage is constrained by a condition of voluntary control.

Compare now the statement, ‘one ought to feel grief at a relative’s funeral’. This statement by contrast seems to have no implication that the person in question could choose to do it if he or she willed. This statement could be true even if one just couldn’t choose to feel grief. Not only that, but it cannot be wrong or blameworthy not to feel grief at the funeral. Why? Because feelings are not fully under the control of the will. Again, it seems implausible that morality could require something that is not fully within our control. Thus, ‘ought’, used in this wide sense, does not carry with it the idea of the act or response is morally obligatory or required.

Broad associated ‘ought’ in the wide sense with fittingness and here is why. It seems we could with equal propriety have said, ‘it would be fitting to feel grief at the funeral’. Or ‘it ought to be the case that one feels grief at the funeral of one’s relative’. Notice, this use of ‘ought’ also does not imply a person could feel grief if he or she willed. While many intuitionists of this period thought what ought-to-be synonymous with a good state of affairs, Broad shows some reluctance, and I think with good reason, to identify this sense of ought with the evaluative. (We will return to this important point in the next section.)

Having identified the main uses of ‘ought’, we should now consider how the concept of right is related to Broad’s the narrow sense of the term. While often what we mean by ‘the

<sup>12</sup> Also see Raz 1999: ch.11.

<sup>13</sup> See Broad 1930: 164.

<sup>14</sup> Ibid.



right act' in a given situation is the act which one ought, in the narrow sense, to do, there is nonetheless good reason to distinguish between what is right and what is obligatory.

Suppose I owe you £10. It would be right for me to pay you with (to keep things simple) either a single £10 note or two £5 notes. Both acts taken individually would be right, but neither is obligatory; rather, my obligation is to pay you either with two £5 notes or one £10 note.<sup>15</sup> Thus there is a sense in which an act can be right without also being obligatory.<sup>16</sup> One might also say either act is right or permissible.

In addition, when we call some act right, we need not mean the act is morally right or obligatory. For instance, you might say to me, as I'm about to slurp up an irresistible bowl of Ramen, 'the right thing to do is eat quietly'. It's hard to believe I am morally required to eat quietly, especially if I am in China or Japan. While slurping your noodles is considered distasteful in some cultures, in others it is a sign of respect. Even when I am eating noodles at a quiet western restaurant, while eating quietly may be the right thing to do, not slurping one's noodles is certainly not morally required.<sup>17</sup> We might call these optional norms.

By contrast, we also speak of keeping one's promise as the right thing to do. What we usually mean by this is that keeping one's promise is the morally right act. When used in this manner, what we call the right act is clearly also often morally obligatory, Broad's narrow sense of 'ought'. Here is an example. Suppose you have a broken leg and need help getting up a few flights of stairs. And further suppose, I am currently in no rush to be anywhere and can easily help you. Helping you up the stairs, in this instance, would be both right and obligatory, that is, I ought to help you up the stairs.<sup>18</sup> But notice the right act in this instance is also synonymous with both what is morally obligatory and what I ought to do all things considered. (Recall, what is morally obligatory need not be the same as what we ought to do all things considered.) In what follows I shall depart from Broad's usage slightly and use 'ought' in the all things considered sense unless otherwise specified.

<sup>15</sup> Again, it is a mistake to too quickly identify what is morally obligatory with what one ought to do all things considered. The two are not in all cases identical.

<sup>16</sup> Both acts belong to the same activity of repaying a debt. I am obligated to repay my debt.

<sup>17</sup> It might be thought if I were to loudly slurp my soup in a slurp-free environment or western restaurant I would be showing a lack of regard for others. But it's hard to believe resentment or even anger would be appropriate or count as a suberogatory action. See Driver 1992; also compare Shoemaker 2015: 94-95.

<sup>18</sup> Helping you up the stairs is the morally right act insofar as a duty of beneficence applies in a case such as this. While some writers would claim that I owe it to you to help, others do not. As in the case of friendship, the added complexity is that different writers demarcate the bounds of morality differently. For instance, Darwall claims morality is essentially second-personal, but Scanlon claims morality co-extensive with 'what we owe each other.' In contrast to both, some duties can clearly be owed to nobody. For example, one might have a duty not to harm the natural environment. Fortunately, demarcating the boundaries of morality is not necessary for our purposes in this chapter. I will assume readers have sufficient grasp of the concept of morality.

So what do we mean when we call an act 'right' when we do not mean to imply the act is also what we ought, all things considered, to do? Broad writes:

It seems to me that when I speak of anything as "right", I am always thinking of it as a factor in a certain wider total situation, and that I mean that it is "appropriately" or "fittingly" related to the rest of this situation. When I speak of anything as "wrong" I am thinking of it as "inappropriately" or "unfittingly" related to the rest of the situation.<sup>19</sup>

For Broad, to call some act right is to imply the act is right or fitting in some context or situation. Suppose again you have a broken leg and need help getting up a few flights of stairs. Insofar as I am presently in no rush to be anywhere else and can easily help you, I ought to help you up the stairs. That you need help is a feature of or factor in the situation which makes helping you right or fitting. But the situation might easily have been otherwise. For instance, suppose instead I am a doctor called to the emergency room (ER). If so, your claim to my assistance might be outweighed by other considerations, which might include someone else's greater need. We might say helping you up the stairs would be right or fitting *in a certain respect*, but since there are other considerations in the wider total situation which make it unfitting to help you, namely, my obligation to other members of staff and a patient who is presently in urgent need of my attention, helping you would *not* be the thing I ought to do all things considered. Taking these other considerations into account, I am clearly not morally obliged to help you. While helping you would be right or fitting in a certain respect, it is not what I ought to do.<sup>20</sup> Instead, what I ought to do is head straight for the ER. While what I ought to do is also fitting, an act can be fitting in a respect without also being what I ought to do all things considered.

To bring out more clearly the contrast between 'right' in the sense of being fitting or right in a certain respect, and 'right' in the sense of what I ought to do, consider moral views which endorse absolute prohibitions. Some claim it is always wrong to kill. Those who make this claim think all acts which involve killing are wrong. Yet one might wonder: what about killing wild animals for food under dire circumstances, or killing in cases where a wild animal is badly maimed, or killing in self-defence? If the animal is hurt beyond assistance, don't we want to say putting the animal to rest is at least right in a certain respect? Broad writes: '[the] relational character of rightness and wrongness tends to be disguised by the fact that some

<sup>19</sup> See Broad 1930: 164-165.

<sup>20</sup> Alternatively, we could say either I have a *pro tanto* reason to help you, or other things being equal, I have reason to help you up the stairs, but helping you up the stairs is not what I ought to do all things considered.

types of actions are commonly thought to be wrong absolutely; but this, I think, means only that they are held to be unfitting to *all* situations.<sup>21</sup> When an animal is hurt beyond help, we might think putting the animal to rest is what we ought to do; but insofar as this would involve killing, we might still want to say the act is in this respect wrong or unfitting; and Broad's point is that nothing prevents us from claiming that any act which involves killing is in *all* situations unfitting or wrong *in a certain respect*, but, that in some instances, such as this one, the wrongfulness of killing is outweighed by other considerations, namely, the great pain the animal has to suffer needlessly. What this case of mercy killing shows is even if killing is in all situations wrong in a certain respect, the wrongfulness of killing can sometimes be outweighed.<sup>22</sup> If killing a maimed animal would prevent unnecessary suffering, then putting the animal to rest is what I ought to do.<sup>23</sup>

In sum, an act can be right in a certain respect when some either moral or non-moral feature of the situation makes performing that act fitting or unfitting. What is right need not be at the same time what is morally obligatory, Broad's narrow sense of 'ought', nor is what is morally obligatory always what one ought to do all things considered. 'Ought' in the narrow sense is used to capture the categorical nature of duties or obligation, and, unlike 'ought' in the wide sense, our use of 'ought' in the narrow sense is constrained by a condition of voluntary control. And if what one 'ought' in the narrow sense to do is what is right to do, and what is right is what is fitting, then what underlies the narrow sense of 'ought' is the concept of fittingness.

**2.3** Broad took fittingness to be the basic ethical concept within the normative domain. But Broad also thought rightness is a species of fittingness.<sup>24, 25</sup> While Broad suggested one use of 'right' and 'wrong', Broad does not take himself to have offered an analytical definition of 'right' or 'wrong'. Rather he took the concept of rightness to be indefinable. In this regard, he thought rightness can fruitfully be compared with redness. Broad writes: 'rightness is a

<sup>21</sup> See Broad 1930: 164.

<sup>22</sup> Notice, to claim killing is in *all* situations unfitting or wrong *in a certain respect* is to claim that killing is *prima facie* wrong. Likewise, that some feature in the situation tends to make the act fitting or right would also make the act *prima facie* right. Some consider Ross's idea of *prima facie* duty, or *pro tanto* reason as it is now often put, one of the most important discoveries in 20<sup>th</sup> century ethics. See Hurka 2014: 71, 78.

<sup>23</sup> Cf. Shoemaker 2015: 53-54.

<sup>24</sup> See Broad 1971: 76.

<sup>25</sup> If so, then there seems to be some reason to think Broad also entertained the idea that goodness might be another species of fittingness. While Broad did not commit himself to this point, Ross proposed something along these lines: 'I feel myself, no difficulty in recognizing, in the tendency which an act has to amend the situation in the best possible way, i.e. to produce the maximum good, something in virtue of which that act tends to be fitting to the situation.' In other words, that some act will bring about good consequences makes the act fitting to the situation in that respect. See Ross 1939: 81.

quite unique kind of appropriateness, just as red is a quite unique kind of colour<sup>26</sup> Like redness, rightness is indefinable. While we can begin to define red, that is, red is a colour, when asked what distinguishes red from some other colours, all we can say is that being red is what distinguishes it from the other colours. Broad's point is that it is hard to capture precisely the kind of appropriateness or fittingness rightness involves.

But as Ross pointed out, not all kinds of appropriateness are difficult to capture. We often speak of the right road or the right key, for instance.<sup>27</sup> Assuming efficiency is important, which it often is, the right road is right insofar as it would get us from point A to point B faster. This kind of instrumental appropriateness or fitness can be explained in terms of a desire and causation. The kind of appropriateness rightness involves which Broad seems to think is difficult to capture is what Ross called moral fitness.<sup>28</sup>

While Broad leaves it an open question what other kinds of fitness there might be, Broad thought what all these (possible) kinds of fitness have in common is they all involve a relation between two terms. He writes: 'a term [act or emotion] which is 'fitting' must be fitting *to* something.'<sup>29</sup> The right response (act or emotion) is right under some circumstance or situation. Take Ross's example: sorrow is the right emotion to feel at the death of a relative, but wrong when one contemplates the success of a rival. The same emotion could be right or fitting in some situation but not in others. Likewise, when we call some act right, we imply a relation of fitness, such as taking off one's hat when entering a church. But insofar as it is possible for an agent to perform the fitting act or to feel the fitting emotion, fitness should perhaps be thought as involving three terms: some feature of the situation, a response (action or emotion), and an agent, (e.g. 'x makes y a fitting response to z').<sup>30</sup>

Recall, often in calling some act fitting what we mean is merely that it is right in a certain respect. I suggested earlier the statement 'one ought to feel grief at a relative's funeral' might be taken as equivalent to 'it ought to be the case that one feels grief at a relative's funeral', since such a statement carried with it no implication that one could choose to feel grief if he or she willed, that is, 'ought' in the wide sense. In addition, I suggested we could

<sup>26</sup> See Broad 1971: 76.

<sup>27</sup> See Ross 1939: 51.

<sup>28</sup> Ross also thought there is aesthetic fitness. Ross writes: 'There seems to be something not altogether different in the way in which a situation calls for a certain act, and the way in which one part of a beautiful whole calls for the other parts. Here, as in the case of a right act...there is a direct harmony between the parts of the composition, as there is between a moral situation and the act which completes it.' Yet despite the affinity between the moral and aesthetic fitness, Ross thinks the harmony involved in each is not of the same kind, as rightness is not beauty. See Ross 1939: 54.

<sup>29</sup> Ibid.

<sup>30</sup> Suppose you are in a position to help someone in need. If so, then, other things being equal, you ought to help. We might also say that someone needs help is a *pro tanto* reason for you to help them, or that someone needs help makes you helping them *pro tanto* fitting.

with equal propriety say, ‘it would be fitting to feel grief at a relative’s funeral.’ And as we have just seen, one way for something to be fitting is for it to be right. So we could also say ‘grief is the right emotion to feel at a relative’s funeral.’ This seems to be what Broad had in mind when he writes: ‘so far as I can see, the wider sense of “ought” [i.e. fittingness] reduces to that of right, together with the associated notion that, if the right state of affairs were in the power of anyone to produce, he ought to produce it.’<sup>31</sup> Notice, the second ‘ought’ in this sentence is the ‘ought’ of moral obligation. And if, fitness, rather than suggesting a merely two-place relation, should be thought to involve a third, then if it is my relative who passed away, and if my character doesn’t prevent me from feeling grief, then not only is grief the right emotion at the funeral, but also, other things being equal, I have reason to feel grief. That my relative has died is a reason for me to feel grief.

Broad’s point is made clear by the example he goes on to provide. He writes: ‘Take, e.g., the statement that virtue ought to be rewarded. This means primarily that it is right that virtue should be accompanied by happiness, that the one is fitting to the other. In so far as it means more than this the further implication is that anyone who had it in his power to make the virtuous happy would be under an obligation to do so.’<sup>32</sup> Notice, to believe there to be a relation of fit between virtue and happiness is to believe the virtuous deserve to be happy.<sup>33</sup> And insofar as we agree the virtuous deserve to be happy, and it is within the agent’s power to give the deserving (the virtuous) what they deserve (happiness), then agent ought to make the virtuous happy, given there are no other factors in the wider total situation that would outweigh this consideration of desert: i.e., giving the deserving what they deserve is not only a fitting response but also obligatory, other things being equal. In short, Broad thought that if it is within one’s power to give the deserving what they deserve then a person’s desert grounds obligations for one.

But Broad also goes on to make a more subtle point and suggests that good could be analysed in terms of right. Broad writes: ‘there is no need to hold that “ought-to-be” is a third independent notion in addition to “right” and “ought-to-do”’. For it seems that “ought-to-be” can be analysed in terms of “right” together with a hypothetical reference to what a being who had it in his power to produce the right state of affairs “ought to do”’.<sup>34</sup> Like the

<sup>31</sup> See Broad 1930: 165.

<sup>32</sup> *Ibid.*

<sup>33</sup> Ross thought that moral virtue ought to be rewarded with happiness. Ross asked us to imagine two worlds with equal amount of happiness. In the first world, all the saints are unhappy, while all the sinners are happy. In the second world, all the saints are happy and the sinners unhappy. That the second world is indisputably better suggests the virtuous people ought to be happy. In other words, the morally good deserve to be happy. Broad here is implicitly endorsing this claim. See Ross 1930: ch.5.

<sup>34</sup> See Broad 1930: 165.

other writers of this school, Broad took a good state of affairs to be the same as one that ought-to-be. Though Broad does not go on to provide such an analysis, Broad is suggesting the concept of fittingness can be taken as basic, and insofar as rightness is a species of fittingness, and insofar as there appears to be no reason against thinking ‘good’ could also be understood in terms of fittingness, ‘good’ can be analysed in terms of fittingness.<sup>35</sup> Broad tentatively endorsed the claim that when we call a thing good what we mean is the thing would be a fitting object of desire to any mind which had an adequate idea of its non-ethical characteristic.<sup>36</sup> If so, then perhaps the only primitive we need is the concept of fittingness.

But perhaps Broad hesitated with good reason. Recall that for Broad fittingness is associated with the wide sense of ‘ought’. But one might argue that this use of the term is illegitimate.<sup>37</sup> Here is one reason why one might want to reject this usage of ‘ought’. Deontic judgments about what we ought to do, as we have seen, are governed by a requirement of voluntary control. Evaluative judgments, on the other hand, are not so constrained: for example, even if a doctor cannot save everyone in his or her ward, the claim that everyone in the ward is saved is good remains true. Since evaluative judgments are not constrained by the ‘ought’ implies ‘can’ condition, and some claims of fitness as we have seen, such as ‘one ought to feel grief at a relative’s funeral’, also do not seem so constrained, it seems one could simply assimilate claims of fitness into the evaluative category. In fact, many philosophers have made this move. For instance, Ross thought if you failed to feel grief at your relative’s funeral because your character made it impossible, then what we mean when we say, ‘you ought to feel grief’ means nothing more than ‘it is a bad thing, a manifestation of bad character, not to feel sorrow’.<sup>38</sup>

This move, however, seems to me a mistake. True, there appears to be a natural transition from ‘one ought to feel grief at a relative’s funeral’ to ‘it would be a good thing if one could feel grief’. And there likewise appears to be, as many others have noticed, a natural

<sup>35</sup> While Broad hints at the idea that ‘good’ could be analysed or defined in terms of fittingness, he does not follow through on this point. Thus, when Broad develops a form of intuitionism, one which he intends to escape Sidgwick’s main criticisms, he suggests ‘the rightness or wrongness of an action in a given initial situation is a function of its fittingness in that situation and its utility in that situation.’ But as Ross rightly points out, I think, what Broad should have said is the right act is a function of fittingness arising from utility and from other sources, such as needs or promise-making. Hurka, however, suggests Broad was right to claim utility as a separate category since unlike the other duties on Ross’s list, the duty of beneficence does not involve matching or fitness. (For example, keeping one’s promise matches the fact that one had made the promise; or repaying a debt of gratitude by helping one’s benefactor when he or she is in need matches having been benefited by the benefactor when you needed help most.) I fail to see why helping someone who needs help do not match the fact that they are in need. See Broad 1930: 221; Ross 1939: 81; Hurka (forthcoming).

<sup>36</sup> By ‘non-ethical characteristics’, Broad most likely meant the thing’s natural properties. See 2.4 for more extended discussion. See Broad 1930: 283.

<sup>37</sup> Ross rejected this wide sense of ‘ought’. See Ross 1939:45

<sup>38</sup> Also see Hurka 2014: 45.

transition from ‘we ought to give the deserving what they deserve’ to ‘it would be a good thing if the deserving got what they deserved’. This transition many take to support the idea that there is a close conceptual connection between fitness and desert. But, to claim ‘feeling grief at one’s relative’s funeral is fitting’ surely does not entail ‘it would be good to feel grief at one’s relative’s funeral’. For isn’t it possible that in such situations it might just be simply fitting to feel grief?

Moreover, it is hard to see how, if one had felt grief, one’s grief would make the world in any way better. Analogously, it might be argued it is hard to see how a wrongdoer getting the punishment they deserve makes the world in any way better.<sup>39</sup> Many, it seems to me, have been too quick to assimilate claims of fitness into the evaluative category. While the transition seems natural enough, fittingness is arguably its own category within the normative domain, neither deontic nor evaluative.<sup>40</sup> Perhaps Broad has something like this in mind when he claimed there is no need for a third independent notion of ‘ought-to-be’. If fitness is an independent category, given the close connection between fitness and desert, it seems to me we should likewise resist assimilating desert claims into either the evaluative or deontic category.<sup>41</sup>

Here is why I think the move to assimilate desert into either category too quickly should be resisted. First, it seems not only too strong to claim we are *required* to give the deserving what they deserve, but also it seems too weak to claim it is *permissible* to give the deserving what they deserve. In this respect, desert seems ill-suited to the structure of the deontic. While many might agree that to claim giving people what they deserve is merely permissible is too weak, they nonetheless emphasize being required to give the deserving what they deserve as too strong and take this to provide a rationale for assimilating claims of desert into the evaluative category. But, given the close conceptual connection between justice and desert, one would have thought the concept of desert is more closely associated with the deontic.<sup>42,43</sup>

<sup>39</sup> Also see 5.13.

<sup>40</sup> See Berker (forthcoming) for a compelling argument for this position.

<sup>41</sup> Cf. McKenna 2012: ch.7; Nelkin 2019; also see Husak 2016.

<sup>42</sup> I recognize not everyone will agree that justice is associated with the deontic rather than the evaluative, but it is hard to deny we often speak of what justice requires.

<sup>43</sup> For instance, Shoemaker in anticipating criticism writes: ‘I have no doubt I will get significant pushback on this point [namely, considerations of desert are considerations external to the fitness of responsibility responses], especially from people wanting to point to *practices* of responsibility even Strawson seems to license (practices built around the reactive attitudes), wherein someone’s offense seems to make it permissible to withdraw one’s good will and treat him in various harsh ways, ways it certainly would have been impermissible to treat him in the absence of offence.’ The wrongdoer’s offence renders permissible certain responses which would otherwise be impermissible, namely, harsh treatment or suffering involved in punishing the wrongdoer, a matter of retributive justice. The language of permission is deontic. See Shoemaker 2015: 223.

Here is another reason why I think it is a mistake too quickly assimilate desert claims into either category, one which I borrow from a recent article by Selim Berker: unlike goodness, which has what Berker calls a polar opposite (i.e. badness), desert does not have a polar opposite: someone can be undeserving, but not anti-deserving; likewise, a remark can be unfitting, but not anti-fitting.<sup>44</sup> So desert also seems ill-suited to the evaluative, and we have some reason to think desert is more closely related to ‘fitting’ than to ‘good’. In short, I contend desert, like fitness, belongs in neither the deontic nor evaluative category. And, as I argue in 2.6, there are good reasons to think desert is a species of fittingness.

**2.4** But it was not only Broad who thought ‘good’ could be analysed in terms of fittingness; Ewing also thought the concept of fittingness underlies evaluative judgments.<sup>45</sup> At the beginning of the twentieth century, Moore had claimed that ‘good’ is a non-natural, indefinable property. But many remain unpersuaded. Many are bothered by the fact that when one goes looking for the non-natural indefinable quality of goodness, it seems none could be found. To many philosophers, Moore’s non-natural property of goodness is simply a mystery. However, in an attempt to demystify the concept of good, Ewing proposed an analysis of goodness in terms of a psychological concept, namely, a pro-attitude, and the concept of fittingness. As we have seen, if ‘one ought to feel grief at the funeral of a relative’ is closely linked to ‘it would be a good thing to feel grief at a relative’s funeral’, it is but a short step to suggest ‘grief is the fitting response to the death of a relative.’ Thus, it might be claimed what we mean when we say ‘it’s a good thing to feel grief at a relative’s funeral’ is that grief is a fitting response to the death of a relative. Likewise, upon hearing your friend got the job she wanted, we might say ‘it is a good to feel joy on behalf of your friend’, and

<sup>44</sup> Berker writes: ‘goodness and badness are non-private, polar opposites, but no deontic categories are related in this way. Permittedness and forbiddenness are *privative opposites* (or *complements*): each is the absence or lack of the other. To be forbidden is to be non-permitted, and to be permitted is to be non-forbidden. By contrast, goodness and badness are what I call *polar opposites*: each is the inversely charged flipside of the other, not its mere lack or absence. To be bad is to be anti-good, not to be non-good, and to be good is to be anti-bad, not to be non-bad. No deontic categories are opposites of this sort...goodness and badness’s polar opposition is a distinctive relation that we find among the evaluative categories but not among the deontic categories.’ And with regards to fittingness and desert, he writes: ‘unfittingness is merely a lack of fittingness, not the presence of anti-fittingness, whatever that might be. Similarly, for something to be undeserved is for it to be non-deserved, not for it to be anti-deserved, and for something to be unmerited is for it to be non-merited, not for it to be anti-merited.’ Berker also points out that there is a neutral status between being good and being bad but when we come to consider emotional reactions, say, it is not the case that an emotion is neither fitting nor unfitting but something in between. While I have pointed to some of Berker’s reasons for thinking fittingness is not evaluative, Berker argues we should resist treating the fitting as simply another variety of either the deontic or the evaluative. Fittingness, Berker argues is its own category within the normative domain. See Berker (forthcoming); cf. Feinberg 1970: 62.

<sup>45</sup> The move to define ‘good’ in terms of some deontic concept, such as ‘ought’, was anticipated by Sidgwick and Franz Brentano. See Hurka 2014.



by that we mean it is appropriate or fitting to feel joy, even if one could not bring oneself to feel joy on the spur of the moment. While feeling joy is not required, joy is a fitting response.

And besides feelings and emotions, other attitudes could be fitting, and they might include desire, care, respect, admiration, appreciation, or approval; when thinking about the object of the attitude, an object might be worthy of choice, worth pursuing, preserving, or protecting; and the object of the attitude may include acts, features of the situation, or other things, such as paintings or experiences. To claim some attitude is fitting is to claim a relation of fit between the attitude and the object of that attitude. These attitudes are all what Ross dubbed pro-attitudes.<sup>46</sup>

This brings us to Ewing's proposed definition of good. Ewing maintained to say that something is good is just to say that it is a 'fitting object of a pro attitude.'<sup>47</sup> Unlike Broad, Ewing was a pluralist and thought different objects warrant different attitudes, attitudes besides desire, for instance, paintings are fit to admire, while disasters are fit to prevent. In addition, more than one attitude can be fitting for a given object. And importantly, an object need not be good in all respects.<sup>48</sup> For example, to say 'this is a good pop song' just means the song is fit to enjoy or to like, given some feature of the song, say, the song has a catchy melody. Yet, the song might not be good in other respects, say, the lyrics affirms some misguided sentiments or takes an objectifying attitude towards women. Since objects can have both good and bad qualities, to say the song is good is just to say the song is *pro tanto* good. In short, to say the song is good in this example just means the song is fit to like or enjoy in virtue of its melody.

Fittingness is a relation between the object and the attitude. What makes the attitude fitting is some feature of the object. In the case of things such as paintings, what makes admiration fitting are features of the painting itself, e.g., the use of colour to capture the beauty of a Venetian sunset. In terms of experiences, what makes, say, eating a bar of chocolate choiceworthy is the pleasantness of the experience, i.e., pleasure is a fitting object of choice—or we might say it's good to eat a bar of chocolate. Likewise, the pleasantness of the experience at a spa makes a weekend stay at the resort choiceworthy or worthy of pursuit. And in case of persons, when we say, for instance, 'Phil is a good man', we often mean Phil should be admired for some feature of his, say, his trustworthiness or kindness, which we

<sup>46</sup> And of course, there is also dislike, hate, disapproval, condemnation, disrespect, etc.

<sup>47</sup> See Ewing 1948: 152.

<sup>48</sup> As Ewing points out, we might define 'bad' as a 'fitting object of an anti-attitude.' For instance, when we say cruel treatment of animals is bad, we mean cruel treatment of animals should be condemned, or cruel treatment of animals is a fitting object of condemnation.

might think is a moral virtue. In speaking of a good or a bad person, we often have in mind their moral character which usually involves an overall judgment.

A version of Ewing's fitting-attitudes analysis of goodness or value was proposed by Scanlon, his buck-passing account of value or good.<sup>49</sup> But rather than analyse good in terms of fittingness and pro-attitudes, Scanlon offers an analysis of good or value in terms of reasons and positive attitudes.<sup>50</sup> Roughly, Scanlon's thought is: that  $x$  has such-and-such natural properties seems to provide all the reasons we have, and when a complete list of these properties have been provided it seems odd to expect the fact that something is good (or bad) will also appear on the list of reason-providing properties as an additional reason.<sup>51</sup> For instance, it seems odd to think the badness of a toothache provides you with an additional reason to see the dentist; rather, given the nature of pain, the suffering experienced provides you with reason to see the dentist.<sup>52</sup> In short, on the buck-passing account of value, what all reason-providing properties have in common is that they provide reasons; and what we mean when we call something good is that that object has other properties which provide reasons and things with those properties are good.<sup>53</sup> Thus all experiences with the property of pleasantness we call good, and by good we mean the property of being pleasant provides us with reason to choose that experience. Contrary to what Moore claims, the formal, higher-order property of goodness or value does not provide reasons; instead, the buck is passed, so to speak, to the lower-order properties, the properties upon which goodness supervenes, the natural (or non-natural) properties being the properties which provide reasons.

While on Scanlon's account the goodness of any object is to be understood in terms of the object possessing some property (or properties) which ground reasons, the reason-providing property need not be a natural property. Nor does buck-passing apply only to the thin concept of good. For instance, on a buck-passing account of rightness, what it means for an act to be right is for it to be called for by an undefeated reason. Here being called for by an undefeated reason is not a natural property, but the buck is passed from the property of being right to being called for by an undefeated reason. Here is another example. Suppose you say to me Carla is a good person and point out that she is admirable because she is kind. If Carla is kind person, then, other things being equal, I have reason to admire her. While

<sup>49</sup> See Scanlon 1998: 95-97.

<sup>50</sup> It is interesting Ewing later abandons the concept of fittingness for that of reason. See Ewing 1959: 94.

<sup>51</sup> See Stratton-Lake and Hooker 2006: 154; also see Stratton-Lake 2017.

<sup>52</sup> This example is Dancy's. See Dancy 2005: 37. Cf. Hurka 2014: 61.

<sup>53</sup> As Stratton-Lake and Hooker puts it: 'Scanlon's buck-passing account of goodness in effect claims that, whatever the practical reason-giving properties are, what they all have in common is only that they generate practical reasons. This relation to practical reasons can be expressed by saying that all things with those properties are good.' See Stratton-Lake and Hooker 2006: 156.

Carla is a good person, what provides me reason to admire her is the fact that she is kind but being kind many believe is not a natural property or reducible to any naturalistic description.<sup>54</sup>

Like Ewing's, Scanlon's analysis aims to demystify the good. As with Ewing, it is the properties of the object of a positive or pro attitude that make the attitude or response fitting. Put in terms of reasons, it is natural properties but not only natural properties of the object of the positive attitude which provide reasons for the attitude or response. One important difference between the two accounts is that while Scanlon takes reason to be fundamental, Ewing takes fitness to be fundamental.<sup>55</sup>

**2.5** Before moving forwards, we should also consider whether the kind of view Broad and Ewing had in mind might be better captured in terms of reasons rather than fittingness.<sup>56</sup> As we have seen, other things being equal, that you need help is a feature of the wider total situation which makes it fitting to help you. The same point could be put in terms of reasons. That you need help is the normative reason why I ought, other things being equal, to help you. Just as what makes it fitting to help you is the fact that you need help, that you need help is also a normative reason to help.

However, as Parfit points out, there is an ambiguity in the notion of a normative reason here. It can mean either (a) the fact that you need help, or (b) the fact that the fact that you need help gives me a reason to help you. Following Parfit, we might call the first a normatively significant fact and the latter a normative fact, a fact about reasons.<sup>57</sup> A normative reason is a normatively significant fact. Suppose I made you a promise to pay you

<sup>54</sup> As Stratton-Lake and Hooker have pointed out, the buck-passing account has the advantage of ruling out views which allow that something can have value yet provide no reasons, *e.g.*, to care or to pursue. While I find the buck-passing account of goodness very plausible, the account remains controversial. Nothing I say in this chapter hangs on the question whether or not we should pass the buck. See Stratton-Lake and Hooker 2006: 162. For scepticism regarding passing the buck see Hurka 2014: 61; also see Raz 2011: 79; Dancy 2005.

<sup>55</sup> An interesting question arises here as to whether to take reasons or fitness as fundamental. Since Ewing takes fitness and not reasons as fundamental, Ewing's account is not troubled by the wrong kind of reasons objection.

<sup>56</sup> While Broad, Ross, and Ewing all took the concept of fittingness to be basic or primitive, *i.e.* the concept in which other terms might be defined or analysed, contemporary writers like Scanlon, Dancy, and Parfit takes reasons to primitive. For instance, Scanlon writes: 'I will take the idea of a reason as primitive. Any attempt to explain what it is to be a reason for something seems to me to lead back to the same idea: a consideration that counts in favor of it. "Counts in favor how?" one might ask. "By providing a reason for it.'" Harty analyses the concept of a reason into two components: 'a favoring relation, which is supplied by an underlying default [rule], together with the presumption of premise truth, which then triggers, or activates, that favoring relation.' Broome, on the other hand, takes 'ought' to be primitive and defines *pro toto* and *pro tanto* reasons in terms of 'ought'. However, as critics have pointed out, Broome's attempt to define *pro tanto* reason as being part of a weighing explanation is not altogether satisfactory. Broome thinks we can have independent grasp of the 'for-F' role in a weighing explanation, yet it seems to me this role depends on a prior understanding of the notion of favouring. See Scanlon 1998: 17; Harty 2012: 42; Broome 2013: 50, 53. On Broome, see Crisp 2015b: 147; Kearns and Star 2015: 238.

<sup>57</sup> See Stratton-Lake 2012: 21; Parfit 2011, Vol. 2: 279-280.

£5 today. That I promised to pay you £5 is why I should pay you £5, the normatively significant fact. The fact that that fact (i.e., I promised) gives me a reason to pay you is a normative fact. When Broad claims that, if possible, other things being equal, one ought to make the virtuous happy, what he has in mind seems to be this: that the virtuous are deserving is a reason for you to make them happy. This is a claim about reasons. It is a normative fact that we have reason to give the deserving what they deserve. Thus, it seems plausible that when we call some act fitting, we also intend to draw attention to a normative fact. For instance, in saying one ought to feel grief at a relative's funeral, we mean to claim not only that death makes grief appropriate, but also that, given it is the death of a loved one there is reason to feel grief. That there is a reason to feel grief is a normative fact. Notice, whether or not one could feel grief at the spur of the moment, one nonetheless has reason to feel grief if one's relative has passed.<sup>58</sup>

But while there is significant overlap between the concept of fittingness and the concept of a reason, both being relational concepts, the two concepts are not logically equivalent. For instance, that something is dangerous makes fear an appropriate or fitting response but does not count in favour of fearing it, i.e., we may have reason to fear it, but that something is dangerous does not seem to provide a reason to feel fear. That something is dangerous rather provides us with reason to avoid it.<sup>59</sup>

One plausible view is that reasons derive from a relation of fitness but only when certain conditions are met and only if there are no undermining features in the context or situation which undermines either the fitness or the reasons relation. In the case of danger and fear, while the fact that skydiving is dangerous makes fear fitting, there would be no reason to feel fear if I'm on the ground observing others partaking in the activity or have no reason to suspect equipment failure.<sup>60</sup>

Notice also that, if this account of how fitness might fail to give rise to reasons is correct, and desert is a species of fitness, then it need not be the case that claims of desert, being evaluative in nature, are too weak to ground obligations; rather, cases where the agent

<sup>58</sup> That Broad intended to draw attention to normative facts is made clear by the examples he provides. He writes: 'we say that love is the right emotion to feel towards one's parents, or that pity and help are the right kinds of emotion and action in presence of undeserved suffering.' When we claim it is fitting to love one's parents, we are claiming the fact that he is my father (or she is my mother) is a reason to love them is true, i.e., a normative fact. However, as pointed out earlier, this need not mean that one is obligated to love one's parents. Other things may not equal, say, when one was abused horribly as a child. So to claim that love is the right emotion to feel towards one's parents is to say, *ceteris paribus*, one ought to love one's parents. The fact that he or she is your parent is a reason to love them. But the reason might be undermined or outweighed in some instances. See Broad 1930: 164-165.

<sup>59</sup> This example is Crisp's. See Crisp 2015b: 141.

<sup>60</sup> Another view is that fitness always gives rise to reasons, but the converse is not true.

is not required to give the deserving what they deserve are cases in which either the relation of fitness fails to give rise to reasons—perhaps because the agent lacks opportunity, or the reason or fitness relation has been undermined by some feature of the situation, among others—or a *pro tanto* reason of desert has been outweighed by other considerations. Desertists need not commit to the axiological thesis, namely, that all desert claims belong to the evaluative domain.

**2.6** Here are some preliminary points about the concept of desert. While desert claims are standardly analysed as a three-place relation, e.g., ‘Jones deserves his success in virtue of his diligence’, desert claims can also often be analysed as a four-place relation: ‘*A* deserves *T* from *B* in virtue of *DB*’ where *A* and *B* often stands for some agent, *T* for some form of treatment, and *DB* for the desert basis, or the bases upon which some form of response or treatment is deserved: for instance, ‘Jones deserves payment from Imani for mowing Imani’s lawn’, or ‘Kelly deserves admonishment from her parents for breaking windows in the neighbourhood’.<sup>61</sup> In most cases, a person deserves some form of treatment for something he or she is causally responsible for.<sup>62</sup> We might call this desert in the narrow sense.

This allows us to acknowledge that ‘deserves’ is also often used with a very broad meaning, where responsibility is not a necessary condition for desert. For instance, ‘Jill deserves admiration from the fashion industry for her beauty’, or ‘Jack deserves praise from sports fans for his athleticism.’ In both instances, Jill and Jack are praiseworthy for a feature which they need not be responsible for, namely Jill’s beauty and Jack’s athleticism. And we should also notice that with some desert claims *A* need not be an agent: for instance, ‘Beaches deserve preservation from beachgoers for the relaxation and recreation they provide.’ These claims also involve desert in the broad or wide sense.

But more often than not, we are concerned with desert in the narrow sense. And it is desert in this narrow sense that most clearly distinguishes desert claims from other claims of appropriateness. For example, while children may not have done anything to deserve presents, it is nonetheless fitting to give children presents for Christmas. What makes it fitting to give the children presents is the fact that Christmas is a holiday which involves gift-giving and gift-giving can be an expression of love. While children do not deserve presents for Christmas, it is fitting to give them presents anyway.

<sup>61</sup> Feinberg is the *locus classicus* for discussions of the concept of desert. See Feinberg 1970: ch.4.

<sup>62</sup> In the case of negative desert, such as blame or punishment, moral responsibility might be mitigated by excuses or justifications. For a fuller discussion of the relation between responsibility and desert see ch.3.

That there should be some resemblance between being the object of a fitting attitude and being deserving of some form of treatment or attitude is hardly surprising. Arguably, masterpieces deserve admiration for the artistic qualities of the work; likewise, admiring masterpieces for their artistic qualities is fitting when at the museum. But some writers go further and identify desert with fittingness. Ewing for instance writes: “‘To be fitting object of disapproval’ is equivalent to ‘deserving blame’, ‘blame’ being the expression of disapproval.”<sup>63</sup> Ewing here seems to suggest a logical equivalence between fittingness claims and desert claims. This is true to an extent. But, as we have seen, while what is deserved is also fitting, what is fitting need not be deserved. For instance, while it is fitting to feel sorrow at a funeral, sorrow is hardly deserved.<sup>64</sup>

These ruminations suggest deservingness, like rightness, is also a species of fittingness.<sup>65</sup> Just as rightness is a unique kind of appropriateness, so is desert.<sup>66</sup> Recall, what is right is fitting, but what is fitting need not be right. It might also be good, for instance. And some responses, I contend, are deserved. While it remains controversial whether desert is also indefinable, and even if it is indefinable, there is more that can be said about the concept of desert. Desert is a thick concept with its own distinctive ground. Let me elaborate.

What makes a concept thick or thin? Compare a concept such as ‘good’ with a concept like ‘courageous’. While many things are good, far fewer things are (or count as) courageous. Why? Well, a courageous act must at least be done in the face of danger. In this respect, the extension of the concept ‘courageous’ is constrained by what we might call the descriptive component of the concept. With thin concepts, such as ‘good’, no such constraint obviously applies.<sup>67</sup> While all good things have other properties that make the thing good, what is distinctive about thin concepts is they give no indication of what these other properties are. With thick concepts things are otherwise. Some concepts will be thicker than others depending how much descriptive content any particular concept is thought to have. Since thick concepts can be analysed as having a descriptive and evaluative component, in addition to being an act done in the face of danger, courageous acts are also good or praiseworthy.

<sup>63</sup> See Ewing 1948: 169.

<sup>64</sup> Alternatively, some writers seem to suggest desert is a necessary condition for fittingness. For instance, in reporting Pereboom’s position as it relates to reactive attitudes, Shoemaker writes: ‘anger [or resentment] at people who slight us is unfitting because they lack the requisite form of control over their slights to deserve it.’ See Shoemaker 2015:107.

<sup>65</sup> Cf. Shoemaker 2015: 222.

<sup>66</sup> But see note 75.

<sup>67</sup> See Elstein and Hurka 2009.

But the descriptive component of thick concepts need not involve only natural properties. Take, for instance, the concept of a ‘distributively just’ outcome. A just distribution could be just in virtue of being an equal distribution, as egalitarians claim, or a distribution in accordance with desert, as desert-theorists claim, or some other property, such as priority to the worst-off.<sup>68</sup> While theorists of distributive justice disagree over which property, e.g. being an equal distribution or being a distribution in accordance with desert, makes a distribution just, a controversial question which undoubtedly will determine the extension of the concept, these theorists are nonetheless using the same concept. Otherwise, it’s hard to see how these theorists can be said to disagree, rather than just talking past one another, each using a different concept.<sup>69</sup>

And here is why I think that, unlike ‘good’ or ‘right’ and arguably ‘fitting’,<sup>70</sup> ‘desert’ in the narrow sense is a thick concept. As we have seen, to be deserving, in the narrow sense of desert we are interested in, an agent must be responsible for some act or action and the agent comes to deserve some treatment or response in virtue of that act or action.<sup>71</sup> In other words, quite a bit of descriptive content is built into the narrow sense of desert.

But desert is not only a thick concept, but also has a distinctive ground. As we seen, what is good has other properties that make it good, and right acts have other properties which make the acts right. We might refer to these other properties as the ground of goodness and rightness respectively. If so, we could also ask: what is the ground of desert? An answer is not hard to find. As we have seen, agents come to deserve some response in virtue of some act which the agents are responsible for. The basis upon which an agent deserves some response, or what many call the desert basis, is what the agent is responsible for, usually some act or action. I contend that the desert basis just is the ground of desert.<sup>72</sup>

<sup>68</sup> Some might think being an equal distribution is a natural property. True, it remains controversial just what counts as natural properties, but even if one disagrees, it seems to me hard to deny the property of being an equal distribution is at least far less natural than the property of being red. See Shafer-Landau: 2003: 58-60.

<sup>69</sup> Also see Elstein and Hurka 2009: 521-522.

<sup>70</sup> Cf. Hurka (forthcoming).

<sup>71</sup> Following Ross, I take talk of actions, as opposed to acts, to include specification of motive. For instance, a shopkeeper might give a customer the correct change without any thought about being honest, but only out of self-interest. Or suppose Jack does something for Jerry with the sole aim of ensuring that Jerry will owe him a favour. Here Jack may have done Jerry a good turn, and in that respect the act is right, yet Jack did not act from a morally good motive. While helping Jerry might be right, we might say it was not a good action. Good action requires good motives. And an act might be right even if done from bad motives. We can imagine an incompetent criminal hoping to wire money from a wealthy but corrupt politician’s account into his or her own but mistakenly enters the wrong account number and as a result donates all the money to an organization dedicated to end world hunger. Or to take a real case, a thief unknowingly steals a bag containing a bomb and as a result saved many lives. The thief is hardly praiseworthy.

<sup>72</sup> In other words, just as when we call someone a ‘good person’ what we mean is the person has other properties which make the person good, when we call someone a ‘deserving person’ what we mean is the person has other properties which make the person deserving, and these other properties are just the basis or ground of desert.

For instance, what makes benefactors deserving of gratitude is the fact that they have benefitted the beneficiary: their beneficent act is what grounds desert. And just as with the concept of ‘distributively just’ where there can be disagreement over which property makes a certain distribution just, there can likewise be disagreement over what counts as a desert basis.

In order to determine what counts as a basis of desert, we also need to look at the response that is being claimed as deserved. Since desert is a species of fittingness, and what makes a response fitting is some feature of the object or situation, likewise whether a treatment or response is deserved will depend on whether the agent has the feature(s) that grounds that response and makes that response deserved, appropriate, or fitting; and importantly, what counts as having the relevant feature will also be partly determined by the response in question. For instance, while a medal might be deserved for exceptional courage in battle, a prize would not be appropriate insofar as prizes are deserved on the basis of competition. In other words, the treatment deserved must fit the desert basis and vice versa. In order to determine what counts as a basis of desert, we must also consider the response or treatment up for distribution.

Important also is the fact that the fit between what is deserved and the basis upon which the treatment or response is deserved occurs at a more abstract level as well: happiness, something of intrinsic or final value, is deserved on the basis of virtue, which is also of final value, while, say, economic reward, something of instrumental value, is deserved based on economic contribution, which is also of instrumental value. For this reason, we ought to speak of economic desert as distinct from moral desert. If so, then arguments against desertism to the effect that desertists claim economic reward can be deserved on the basis of moral character are misguided.<sup>73</sup>

Now if, like rightness, desert is a species of fittingness, and rightness is a unique kind of appropriateness, we should consider what kind of appropriateness desert involves.<sup>74</sup> To home in on the kind of appropriateness that desert might involve, we might contrast desert

<sup>73</sup> Also see Hurka 2003: 59; Sher 1987: 147; Feinberg 1970: ch.4. See 1.3.

<sup>74</sup> Here, however, is why one might think desert cannot involve a unique kind of fittingness. Consider what it means for a person to be kind. To be kind is not just to be good, but to be good based on some ground, e.g. having helped others in the past or to be generally disposed to help. In other words, kindness is a thick evaluative concept. Now like kindness, desert in the narrow sense, as we have seen, also has two components. But while both kindness and desert are thick concepts that have a descriptive component, in the case of desert, the second component is not an evaluative component or involve the property of being good; rather, the second component involves the property of being fitting. Recall, like ‘good’, ‘fitting’ is also a thin concept. And just as there are thick and thin evaluative concepts, there are also thick and thin fittingness concepts. And just as there are different ways to be kind, there are different ways to be deserving. Now insofar as kindness does *not* involve a special kind of goodness, it seems implausible to claim desert involves a unique kind of fittingness. I thank Philip Stratton-Lake for this suggestion.



with other kinds of appropriateness within the vicinity, such as eligibility and qualification.<sup>75</sup> Consider the following.

Suppose Betty and Maurice are friends and they both book a flight to vacation together in Haiti for a week. However, as the result of bad weather all flights to Haiti have been cancelled. The airline sends a message to all customers affected stating that refunds will be provided for those who booked their flight before February. Betty booked her flight in January, but Maurice in March. While Betty is eligible for the refund, Maurice is not. Though Betty is eligible for the refund, she no more deserves the refund than Maurice. What makes it appropriate to refund Betty and not Maurice is the fact that she booked her flight earlier. Betty satisfies a certain condition specified by the rules established by the airlines. It is appropriate or fitting for the airline to reimburse Betty since she meets the eligibility condition.

Consider next the case of Charlie and Davy. Suppose Charlie and Davy decide to enter a foot race at the end of the month to see who can run the fastest. Charlie trains daily for the whole month before the race while Davy lies on the sofa eating crisps all day and doesn't train at all before the race. Come the day of competition, Charlie leads Davy the whole race but just before crossing the finish line Charlie slips on a pebble, so Davy wins. Does Davy deserve to win? I take it most would agree Charlie is the more deserving candidate, but Davy is entitled to the prize. What this shows is that desert must be distinguished from entitlement under a set of rules. According to the rules of the footrace, the winner is entitled to the prize and crossing the finish line first qualifies Davy as the winner. What makes it appropriate to give Davy the prize is just that he crossed the finish line first. And it is appropriate or fitting for the organisers to award Davy since he qualifies as the winner even if he doesn't deserve it.<sup>76</sup>

Next suppose Chantelle and Abigail are friends. Chantelle asks Abigail if she can borrow a dress for her big night out. Abigail agrees. The next day, when the dress is returned, Abigail discovers a huge stain on her dress. When Abigail confronts Chantelle about the stain, Chantelle insists the stain was caused inadvertently or by someone else thus neither apology nor amends are owed to Abigail. Abigail blames Chantelle for her attitudes. What makes blame appropriate? Chantelle fails to see she has reason to take great care with her friend's belongings, and to apologise and to make amends if there is damage. Chantelle's failure in these regards signals indifference or even ill will towards Abigail and lack of respect

<sup>75</sup> Also see Feinberg 1970: 57.

<sup>76</sup> Also see 4.2.

for ownership. What makes Chantelle blameworthy are her attitudes. And it is appropriate for Abigail to blame Chantelle since Chantelle deserves it.

Notice, while Chantelle has done something which makes her deserve blame, namely, ruin her friend's dress without remorse, neither Betty nor Davy by contrast has done anything which could count as making them deserve some form of treatment. And while it may be tempting to say Betty and Davy deserve the treatment they got in accordance with the rules of the institutions they participated in, this would be a mistake. Being eligible, or being qualified, is not the same as being deserving. Each involves a different kind of appropriateness.

What makes Chantelle's case distinct from that of Betty's and Davy's is that it is not only fitting to blame Chantelle, but that blame is justly deserved. Notice, it would not be unjust if Davy does not get an award because the race was called off, or if Betty didn't get a refund because no refunds were offered. But there would be something amiss if Abigail didn't blame or feel some resentment or negative emotion towards Chantelle even if Abigail decided not to express her blame verbally. Why? To the extent that the relationship between Abigail and Chantelle is governed by the norms of friendship, norms which arguably constitute a part of morality, in treating Abigail as she does Chantelle acts unjustly towards Abigail in virtue of the relation they stand to one another. Abigail deserves a certain level of respect as a friend, and Chantelle acts unjustly when she fails to treat Abigail with the level of respect Abigail deserves. Thus, unlike eligibility and qualification, the concept of desert is linked to justice.<sup>77</sup>

Here is another reason to think while fittingness need not be linked to justice, desert is closely linked to right and wrong. When we say that 'Jones deserves payment from Smith for mowing Smith's lawn', we are not merely claiming that it would be fitting for Smith to pay Jones; rather, we mean to imply something more; what we mean to imply is that it would be unjust if Smith were to fail to pay Jones for mowing her lawn.

We tend to speak of justice when non-optional moral norms are involved, or when some moral claim is left unsatisfied. For this reason, we speak of gratitude as deserved. For instance, suppose Betty is short on rent this month and Maurice pays Betty's rent for her. His paying for Betty puts them in a relation of benefactor and beneficiary. Their relation is now governed by the norms of gratitude, which we might think are like norms of friendship

<sup>77</sup> Here is another possible view: that Chantelle and Abigail are friends does not count in favour of returning the item in good condition; rather, Chantelle has more (or a more stringent) reason to return the sweater in good condition because she and Abigail are friends. In other words, Chantelle's duty as a borrower—i.e., a duty to return a borrowed item in as good a condition as when the item was lent—has been intensified, as Dancy would put it, by their friendship. I owe this suggestion to Brad Hooker. See Dancy 2004: ch.3.

in being a part of morality. Maurice deserves gratitude from Betty for paying her rent. If next month Maurice is short on rent and Betty could easily help out Maurice, but she refuses, we think Betty has treated Maurice unjustly. If she refuses to help him though he has helped her, Maurice would not have gotten the treatment he deserves.

**2.7** It is commonly assumed there are just two main categories in the normative domain, namely, the deontic and the evaluative. And when confronted with claims of fitness or desert, writers are wont to establish that these claims belong in either one of these two mutually exclusive categories. However, if the arguments presented in this chapter are correct, then fittingness is its own category in the normative domain, and desert is a species of fittingness.

## *Economic Desert*

In the last chapter I argued that desert, rather than belonging to either the deontic or evaluative part of the normative domain, is a species of fittingness, and that fittingness is its own category within the normative domain. I focused on the narrow sense of desert according to which people deserve certain forms of treatment or response in virtue of having certain features for which they are responsible, features which in the literature are often referred to as the basis of desert or the desert base. In this chapter, our attention turns to a particular type of desert claim, namely, economic desert claims. I argue economic rewards are deserved on the basis of effort and contribution, and that while a just distribution of economic resources (e.g. salaries, wages, offices, promotions, and wealth) will likely be sensitive to several morally relevant considerations, such as fairness, rights, and needs, what many consider a just outcome will also be sensitive to considerations of desert. Contrary to what many sceptics believe, I argue, desert has an important role to play in our thinking about economic and distributive justice.<sup>1</sup>

**3.1** In his monumental *A Theory of Justice* published in the 1971, John Rawls argued that the concept of desert has no place in a theory of distributive justice.<sup>2</sup> His argument persuaded many, and as a result many political theorists writing about justice have taken little interest in this concept. It is only with the growing interest in luck egalitarianism at the beginning of this century—a theory of justice which holds that inequalities are just if and only if they are due to a person’s choices rather than luck—that the concept of desert has once again captured the attention of moral and political philosophers.<sup>3</sup> In particular, it is the close conceptual tie between desert and responsibility that is of immediate interest. For it started to seem plausible to some once again that an unequal outcome may not be unjust if individual desert justifies inequalities in the distribution of resources.<sup>4</sup>

<sup>1</sup> Some authors argue distributive justice is concerned with the distribution of welfare or levels of well-being. For instance, see Arneson 2011: 40. For the purposes of this chapter I shall only be concerned with theories which take income and wealth, or more generally resources, to be ‘the currency of distributive justice’—a phrase coined by G.A. Cohen.

<sup>2</sup> See Rawls 1971: 104.

<sup>3</sup> See Olsaretti 2003: 1-24.

<sup>4</sup> For example, see Olsaretti 2008: 445.

Suppose Frank and Glen have just graduated from the same university, and we decide it is a good idea to give them each £15,000 to help them get started with their lives and careers.<sup>5</sup> Glen decides to use his sum to start up a small but profitable business. Frank, on the other hand, decides to spend most of his money at the tracks, which in the end leaves Frank in financial ruin. Further suppose, at the end of the year, another £30,000 is up for distribution between the two. How should we to distribute this sum? What does justice require in this instance? Would it be wrong not to provide undeserving Frank with less or no help? Is Frank in fact undeserving?

While strict egalitarians claim what we ought to do in this instance is give each another £15,000, luck egalitarians disagree. Some luck egalitarians would point out that other things are not equal and that in fact an unequal distribution would be a more just outcome than one in which Frank and Glen get the same. These luck egalitarians would insist that fairness requires Frank be held responsible for his poor choices: since Frank could have chosen not to bet on horses, the bad luck Frank had at the tracks is not the kind of luck which calls for neutralization;<sup>6</sup> given both Frank and Glen were provided with roughly equally good opportunity to succeed, these luck egalitarians claim that Frank does not deserve to get more assistance.<sup>7</sup> To these luck egalitarian, even if we think Frank should get more—maybe because Frank is in great need since his losses put him below subsistence level—Glen should not have to be made to bear the burden of Frank's poor choices. In short, luck egalitarians of this stripe maintain that Frank does not deserve more help with the additional sum.<sup>8</sup> If this is correct, then it is easy to see how personal desert might have a role in the justification of unequal outcomes in the distribution of resources. The thought is: we deserve certain outcomes on the basis of our acts and decisions for which we are responsible.

That there is a tight conceptual connection between responsibility and desert has long been observed by desert theorists.<sup>9</sup> Following David Miller, we might distinguish between three kinds of desert judgments: primary, secondary, and sham desert judgments. Of primary desert judgments, which according to Miller fall within the core of the concept of desert, he writes:

<sup>5</sup> I have in mind something like universal income. See Ackerman and Alstott 1999.

<sup>6</sup> It has become common currency among luck egalitarians to distinguish between option-luck, as in the case of Frank and brute-luck, say, if Glen were born with a disability which kept him confined in a wheelchair.

<sup>7</sup> Luck egalitarians claim we should only neutralize the effect of luck in outcomes for which we are not responsible, e.g. in cases where one's earning power has been adversely affected by having been born with a disability. Following Dworkin, we might call this kind of luck 'brute luck' in contrast to 'option luck' as Frank's case illustrates.

<sup>8</sup> Of course some might even want to go further, and claim Frank positively deserves not to be helped.

<sup>9</sup> See Feinberg 1970: ch.4; Sadurski 1985: ch.5; Rachels 1997: ch.12; cf. Feldman 1997: ch.9.

When primary desert judgments are made, some agent *A* is said to deserve some benefit *B* on the basis of an activity or performance *P*. [...] *P* may be a single act or a course of activity extending over time. The important thing is that *P* should be in the relevant sense *A*'s performance; that is *A* should be responsible for *P*.<sup>10</sup>

What does it mean for *A* to be responsible for *P*?

First, a person's agency must not be undermined either through coercion or manipulation. Suppose Jo was drugged at a party, and the next day, under hypnotic spell Jo robs an innocent person at the ATM. Since Jo's acts were the result of having been coerced and hypnotized by her abductors, Jo ought not to be held responsible for her acts and therefore Jo does not deserve to be punished.

Second, generally speaking the performance must be an intended action of the agent, and the performance must be sufficiently within the agent's control. Suppose your worst enemy hands you a poisoned drink, and Larry happens to walk by your table and is pushed into your booth by someone also passing by; the jolt causes Larry to knock the cup out of your hands and your life is saved. While it is true that Larry saved your life, Larry can hardly claim credit. Insofar as Larry did not intend to stop you from drinking the poisoned cup, Larry can hardly claim credit for saving your life. Mere causal responsibility is insufficient for desert and responsibility in the sense we are interested in.

Third, the success of the performance of the action must not be merely a matter of luck. Suppose during halftime at a basketball game, Kelly is handed a ball and promised a prize if she is able to land the ball in the hoop three consecutive times from mid-court. To entertain, Kelly holds her left hand before her eyes and hurls the ball with her right as best as she can in the general direction of the hoop. It so happens Kelly lands the ball in the hoop three consecutive times in this fashion. While Kelly might be entitled to the prize, there is little reason to think Kelly deserves it: though Kelly intended the outcome, her success is largely a matter of luck.<sup>11</sup>

But not all forms of luck undermine desert. In particular, what we might call 'background luck' does not.<sup>12</sup> Suppose Yuki and Zoe are both up for a promotion which is to be given to only one candidate; both make roughly equal contributions to the company, and both are equally qualified, equally hardworking; however, Yuki is promoted first simply

<sup>10</sup> See Miller 1999: 133.

<sup>11</sup> Alternatively, Kelly didn't competently cause the outcome. See Bradford 2015: ch.3.

<sup>12</sup> I borrow this term from Olsaretti. See Olsaretti 2008: 440.

because he is more pleasant to be around at the office.<sup>13</sup> That Yuki was born with a pleasant disposition, while Zoe was not so lucky in this respect, does not undermine Yuki's desert. In other words, Yuki is no less deserving of the promotion in light of the fact that he was born with a more pleasant disposition than others.<sup>14</sup> Unlike Kelly, his performance has not been undercut by luck, i.e. Yuki's responsibility for his effort and contribution at work has not been undermined by background luck. Background luck does not undermine desert.

What these examples show is insofar as responsibility is lacking, so is desert. Generally speaking, an agent is not responsible for acts when manipulated or coerced, or when the outcome is unintended or not sufficiently within the agent's control, or when the outcome is a mere matter of luck.<sup>15</sup> Primary desert judgments, on Miller's account, require responsibility. At the core of the concept of desert, it seems then, is responsibility for actions and outcomes.

Responsibility also has an important role to play in Miller's account of secondary desert judgment. It is often thought the best-qualified candidate deserves the office or job. But as Miller points out, strictly speaking, no candidate deserves the job based on his past performance with prior employers; rather, past performances are used merely as predictors of future performance, so properly speaking, it is a person's performance on the job that makes him or her deserving of compensation or promotion. In this way, the desert of offices or jobs are parasitic on primary desert judgment, hence secondary.<sup>16</sup> Past performances can only be used as predictors if the agent was responsible for the performances in the ways outline above.<sup>17</sup>

Miller's third type is what he calls "sham" desert judgments. Sometimes we say some treatment is deserved even when there is no connection between responsibility and desert, e.g. we sometimes say, 'the prettiest rose deserves the prize.' In such instances, Miller thinks, what we mean is the rose best fulfils particular criteria according to the rules of the contest. Miller calls these "sham" desert judgments as there is no meaningful way in which the rose is responsible for being the prettiest.<sup>18</sup> (This is what I call the broad or wide sense of desert.)

<sup>13</sup> I am assuming having a pleasant disposition made it easier for Yuki to work more efficiently with others and enabled him to make a slightly greater contribution than some others.

<sup>14</sup> One might be tempted to insist it is unfair that Yuki was born with a pleasant disposition. But it remains true that not all aspects of our characters are beyond our control. It's plausible to claim that Zoe could have cultivated a more pleasant disposition, something it is hard to believe is completely beyond her control. Also see appendix.

<sup>15</sup> In other words, we are interested in moral responsibility as opposed to mere causal responsibility.

<sup>16</sup> Cf. Schmitz 2006: ch.8.

<sup>17</sup> See Miller 1999: 167.

<sup>18</sup> See Miller 1999: 137.

Finally, economic desert seems to require the features that ground the economic desert-claim be positively appraised. One might capture this thought with the following slogan: ‘positive treatment for some positively appraised feature’—e.g., income (a benefit or economic reward) for hard work (a positively appraised feature). By contrast, retributive desert involves unwelcome treatment for some negatively appraised feature—e.g., punishment (a burden) is deserved for wrongdoing (a negative feature), or condemnation (a burden) for malice (a negative feature). Many believe ‘positive treatment for positively appraised performance’ is one feature which sets distributive justice apart from other forms of justice. This is one popular way of picking out the subject matter of distributive justice.<sup>19</sup>

In sum, there is a very tight connection between desert and responsibility, one so tight one might be tempted to claim responsibility is a necessary condition for desert.<sup>20</sup>

**3.2** Few would deny that many believe individual or personal desert has some role to play in our everyday thinking about salaries, wages, and promotions. Generally speaking, people believe income and promotions are deserved from one’s employer for the contributions one makes or the effort one puts in towards the success of the enterprise one happens to be engaged in, whether it involves selling used cars, editing film, telling jokes, or developing new vaccines. In addition, if your boss asks you to stay for a few extra hours, you will most likely expect to be compensated in one form or another, say, more vacation or sick days, if not overtime pay. Or if your rival gains the promotion that you too were after, whether or not this individual deserves the promotion more than you is a question perhaps—rightly or wrongly—not far from your mind. In short, it’s commonly believed a person comes to deserve economic rewards based on their effort or contribution to some enterprise which either forwards their own or someone else’s interest.

Suppose Alice is in the process of redecorating her yard and decides to hire Ben to build a rock garden for her. When the work is complete, most would agree, I think, that since Alice has benefited from Ben’s work, Ben deserves to be paid for this work, i.e. since Alice wanted the rock garden, made a deal with Ben, and benefited from Ben’s labour and ingenuity, Ben deserves payment from Alice.<sup>21</sup> Most would also agree, I believe, that Alice

<sup>19</sup> There is some reason to think this interpretation of distributive justice overly narrow, for it seems plausible corrective justice involves the distribution of security in our possessions, while distributive justice involves the distribution of wealth, and retributive justice the distribution of penalties and punishment. If so, then corrective and retributive justice are but different aspects of distributive justice. Also see 4.2.

<sup>20</sup> The connection between responsibility and desert is challenged by Feldman and discussed in 4.4. See Feldman 1997: ch.9.

<sup>21</sup> In addition, Ben might deserve praise if the rock garden also displays artistic excellence.



ought, other things being equal, to compensate Ben in the form of pay for Ben's effort and contribution in improving her garden. This, I take, is a paradigm case of economic desert.

By varying a few details, we can learn something important not just about economic desert, but about the concept of desert more generally. For instance, suppose Alice started praising Ben even before Ben began work on her rock garden. Surely, this would be odd. What this suggests is a person deserves the appropriate treatment only *after* the action is performed.<sup>22</sup> Next suppose while Alice contracted Ben to build her a rock garden, Ben decides to exploit his friend Clark, making Clark do all the work, while Ben sunbathes. Though the agreement was between Alice and Ben, we would surely not want to say Ben deserves to be paid for Clark's work. Instead, as we have seen, we should claim that Clark deserves to be paid since it was Clark who was responsible for the final product.<sup>23</sup> What this shows is only the person who is responsible for object of positive treatment (the beautiful rock garden) deserves the positive treatment (payment).<sup>24</sup>

In the core cases of economic desert, as with other forms of desert, the basis of desert is some fact about the individual.<sup>25</sup> In short, a person deserves some treatment only in virtue of some *past* action for which he or she is *responsible*. These two claims are parts of what we might call the received wisdom about desert.<sup>26</sup> For ease of reference, let's call this the compensatory model of desert: '*A* deserves some treatment *X* in virtue of some past action *P* for which *A* is responsible.'<sup>27</sup>

**3.3** Is economic desert best understood in accordance with the compensatory model of desert? Here are some reasons to be sceptical, but none, I believe, count decisively against the model.

First, it might be thought "the compensatory model of desert" is somewhat of a misnomer: "compensation" is usually used only when some kind of loss is involved; but in the case of economic desert, no loss is involved—e.g. 'contribution for economic reward'

<sup>22</sup> Cf. Schmitz 2006: Ch.8.

<sup>23</sup> One might think there exist at best an implicit agreement between Ben and Clark, and since Ben has negotiated the contract with Alice, Ben deserves a cut of the income. But since Ben is exploiting Clark, and exploitive contracts are unjust, one might claim Ben has no moral claim to payment simply in virtue of his agreement with Alice. (I'm assuming Clark is working for Ben because he seeks Ben's approval.)

<sup>24</sup> That desert is closely tied to responsibility is even more evident if we suppose the deserved treatment is praise rather than payment.

<sup>25</sup> The qualification is needed, as we shall see, since desert can also be comparative. See 3.7.

<sup>26</sup> Feldman challenges both claims. See 4.4. and Feldman 1997: ch.9.

<sup>27</sup> I borrow this term from Schmitz who proposes a promissory model of desert. See Schmitz 2006: Ch. 8 and 9.

makes no apparent reference to any loss.<sup>28</sup> Furthermore, since we are paid in accordance with the terms of our contract, one might think we ought instead to speak of remuneration rather than compensation. For both these reasons, it might be argued, the compensatory model seems to mislead rather than enlighten, and the distribution of economic rewards seems to have little to do with desert.

Second, at a glance, effort does not seem to be particularly praiseworthy. For example, twirling advertising signs at street corners hardly seems a praiseworthy activity. Economic desert involves positive treatment for positively appraised features, and sign-twirling doesn't seem to count.<sup>29</sup>

Here is another line of objection: that some income can be deserved as compensation seems to be in some tension with the responsibility condition for desert. Some believe unusually disagreeable or dangerous jobs, say, mining, working in slaughterhouses or rubbish collecting, ought to be paid more in light of their disagreeableness or risk of debilitating illness or injury.<sup>30</sup> Now one might think the disagreeableness or an element of danger as a (potential) loss for which these workers are *not* responsible and for this reason they deserve to be compensated; but according to the compensatory model the basis of desert is limited to performances for which the agent is responsible. In short, the compensatory model does not seem to capture all instances of compensatory desert.

Finally, some claim medical doctors, for instance, deserve higher salaries in light of all the years of additional education during which they receive little or no income. One possible explanation is that their higher salaries are better understood as incentives. Yet it is hard to see how incentives can be deserved, given the responsibility condition. To illustrate, suppose we aim for a more equitable society and there is currently a shortage of secondary school male teachers, and for this reason we pay male teachers a higher salary than female teachers. But the male teachers hired under this policy are in no way responsible for being male; so it is hard to see how higher pay in the form of incentives could be deserved. Recall that the responsibility condition requires that income be deserved only on the basis of either

<sup>28</sup> Compensation is also distinct from reparation. While reparation involves loss for which someone is responsible, compensation might involve loss for which no one is responsible. Ordinary speech often fails to distinguish between these two concepts and uses "compensation" indiscriminately to cover cases in which either concept applies. See Feinberg 1970: 75.

<sup>29</sup> In California, interns and young workers are often paid to twirl adverts on side-walks to attract customers.

<sup>30</sup> I do not mean to suggest the amount of compensation deserved is to be measured by how disagreeable the activity is to the individual; rather, we should look to see how disagreeable the activity is to individuals across the whole society. For this reason, one might think of compensatory pay as a form of incentive. But unlike compensation which is a backwards-looking concept, incentives are forward-looking. With compensation, the basis of desert is some loss one has already suffered; by contrast, incentives are often thought of as lacking a proper desert-base.

contribution or effort. And not only are male teachers not responsible for being male, but also male teachers are not responsible for a shortage in the labour market of male teachers. In short, one cannot deserve some positive treatment on a basis for which one is not responsible.

While these objections cast some doubt on the compensatory model of desert, they hardly provide conclusive reason for rejecting the model. First, if we see the effort we put in and the contribution we make as a burden or cost to ourselves, then it seems appropriate to speak of compensation rather than remuneration: after all, at the workplace our aims are subordinated to those of our employers, so in this respect, the time and energy we expend at work ought to be considered a cost or burden to ourselves—i.e. the less time we spend under the command of our employers, the more time we have for consumption and leisure activities, and given we all have but one life to lead, our decision is always a trade-off between work and leisure.

Notice, one might further develop this line of thought thus: since we are the moral equals of our employers, we deserve to be compensated for the resources we expend in pursuit of *their* ends. In other words, it would be unfair for us to have to bear burdens or costs to our employer's benefit. For this reason, it might be argued, income is deserved as compensation for the time and energy we expend in the pursuit of our employer's goals or ends. Let's call this the benefits-and-burdens account.<sup>31</sup>

Second, that economic desert requires positive treatment for positively appraised features does not amount to an argument against compensatory desert. While effort can be seen as burden or something negative, we also praise diligence and hard work. And while working in rubbish collecting is disagreeable, the job is nonetheless socially valuable, and in this respect deserves positive appraisal. The same can be said about physicians. Having experts in medical care is certainly something socially desirable, and temporarily forgoing income for the greater benefit of the society should also be positively appraised. In short, that economic desert requires positive treatment for positively appraised features is compatible with the compensatory desert model.<sup>32</sup>

<sup>31</sup> A similar account can be given of retributive desert. Some claim wrongdoers not only benefit from the restraint of others but gain an additional benefit when they do wrong. Suppose you decide to steal my wallet. It is argued, in this instance, you not only benefit from my constraint, but also in having my wallet. Punishment is appropriate to offset this unfairness. See Sher 1987: ch.5; Finnis 1983: 128; cf. Dolinko 2011; also see Hurka 2011: 16; Crisp 1997: 162.

<sup>32</sup> If this is correct, then the onerousness of jobs (i.e. disagreeableness) and lengthy training, which are sometimes identified as individual bases of economic desert, can be collapsed under the heading of effort

Third, that desert requires responsibility by itself does not count against compensatory desert. As Serena Olsaretti points out, what motivates our concern for ‘active desert’, i.e. the agent must be responsible for the desert basis through some performance, is also likely to motivate concern for those who suffer loss for which they are not responsible.<sup>33</sup> Suppose you frequently cycle to school, but one day get injured when a driver carelessly opens the door to his or her parked car. Many believe you deserve compensation from the careless driver precisely because you were *not* responsible for the accident. You do not deserve to have to suffer the burden of medical expenses. The thought is that there is no good reason to be concerned only for ‘active desert’.<sup>34</sup> You deserve compensation for having suffered a loss for which you are not responsible.<sup>35</sup>

Finally, payment received as an incentive can also be seen as compensation for a form of loss. Suppose Alice prefers to divide her time between surfing at the beach and working at the office. Given the growth of the company, Alice’s employer decides a new position needs to be created, but the position also requires more hours at the office. The position is offered to Alice, but she prefers her time at the beach. Since her employer believes Alice is perfect for the position, the employer decides to offer her more pay as an incentive to take the position. From Alice’s point of view, taking the position can be seen as compensation for the time she lost at the beach.<sup>36</sup>

**3.4** The compensatory desert model is at the core of most theories of economic desert. Many believe economic rewards are deserved on the basis of contribution and effort. Yet, as mentioned at the start and in ch.1, that desert has a role to play in thinking about distributive justice is the minority view among contemporary authors writing about distributive justice. These writers believe the distribution of economic rewards or resources in fact have nothing at all to do with desert. Scanlon’s recent discussion of economic desert is a case in point.<sup>37</sup> As we saw in our discussion of Scanlon’s approach to thinking about responsibility and desert (see 1.5), Scanlon’s general strategy is to provide an alternative explanation of our practices of holding responsible which makes no appeal to the concept of desert; rather than provide

broadly construed as ‘everything negative about work or contrary to the worker’s preference.’ See Hurka 2003: 58; cf. Feldman 2016: 111-112, 114, 116; also see McLeod 1999: 277.

<sup>33</sup> See Olsaretti 2003:193.

<sup>34</sup> This issue is more extensively discussed in ch.4.

<sup>35</sup> Cf. 4.6.

<sup>36</sup> The problem with this reply is, as on the benefits-and-burdens account, it assumes the desert-basis, namely, effort, is non-comparative or individualistic, i.e. desert is based on the effort I put in alone, irrespective of the effort and contribution of others. As we shall see, with regards to economic desert, this is simply false. See 3.4 and 3.7.

<sup>37</sup> See Scanlon 2018: ch.8.

'knockdown' arguments against the idea of deserving economic reward. In these next few sections, I hope to persuade you that, in each case, it's hard to see how the proposed alternatives provide better explanations.

In chapter eight of *Why Does Inequality Matter?*, Scanlon claims that a widely shared assumption among those writing about economic justice is that levels of economic reward are justified on the basis of desert.<sup>38</sup> Scanlon argues this assumption should be rejected and that the concept of desert has no role to play in our thinking about distributive justice.<sup>39</sup> Scanlon considers both effort and contribution as bases of desert and argues that what may appear at first to be claims about desert in fact make no appeal to the concept of desert at all. In each instance, economic inequality is in fact justified by considerations other than desert.

Scanlon thinks many believe people deserve to be paid more if they have exerted greater effort because 'a willingness to work hard shows a kind of moral merit that deserves to be rewarded.'<sup>40</sup> Scanlon points out that, while moral merit may deserve praise and admiration, moral merit is not an appropriate standard for distributive justice. Why? Well, that one individual is more virtuous than another does not provide us any reason to think the less meritorious should accept lower incomes if they have made comparable effort and contribution to the enterprises that they are engaged in.

The problem is this argument is a *non sequitur*, as I have already suggested in 2.6.<sup>41</sup> Moral merit is certainly not an appropriate standard for distributive justice, and almost no desert theorist claims virtue is a basis of desert for greater economic reward.<sup>42</sup> At least since Feinberg, most desert theorists have observed that what is deserved must fit the desert-base.<sup>43</sup> Since effort and contribution are merely instrumental to the success of various economic enterprises, what is deserved, namely income, should likewise be of mere instrumental value. By contrast, virtue is arguably something desirable for its own sake, and so one would expect the appropriate reward is happiness, something also of intrinsic or final

<sup>38</sup> Scanlon mainly seems to have economists and conservative political theorists in mind.

<sup>39</sup> Scanlon writes: 'The idea of desert plays no independent role in these cases [i.e. when it is true to say that a person deserves (or does not deserve) a certain economic reward] either as a justification for greater economic rewards or as a limit on them.' See Scanlon 2018: 117.

<sup>40</sup> See Scanlon 2018: 124.

<sup>41</sup> Also see 1.4.

<sup>42</sup> Exceptions might include Schmidtz 2006: 51; McLeod 1999: 279 and Arneson 2011: 35, 42.

<sup>43</sup> See Hurka 2003: 59. Feinberg makes this point in terms of polar and nonpolar desert. See Feinberg 1970: 62, 90-91.

value. While Scanlon rightly points out that moral merit is not a basis of desert for economic rewards, few in fact make this claim.<sup>44</sup>

Another argument Scanlon considers for the desert of economic rewards is this: if those who have lower incomes could have had higher incomes if only they had chosen to exert more effort, then, since it is their fault that they have not earned more, they deserve their lower incomes.<sup>45</sup> While this argument does appeal to economic desert, Scanlon is careful not to attribute this argument to desert theorists.<sup>46</sup> Scanlon thinks those who find this argument compelling are simply confused. Instead, Scanlon thinks a different idea is at work, an idea he calls ‘adequate opportunity to choose’. What is really behind this argument, Scanlon thinks, is instead a concern for responsibility and not for desert, an idea familiar from 1.5. The thought is that, if an individual has already been presented with the opportunity to earn more but chose to forgo the opportunity, then inequalities which are the result of this choice cannot be unjust given the person has been placed in a sufficiently good position to choose. Those who have lower incomes ‘cannot object to their lower earnings’ since they are responsible for choosing to forgo the opportunity for higher earnings.<sup>47</sup> According to Scanlon, it is not that those who have more deserve more because they have chosen prudently; rather, those who have less merely chose to forego the opportunity to earn more. And what those who have chosen to forego the opportunity have failed respond to are incentives created to improve overall productivity.

In short, what explains economic inequality for Scanlon are incentives and what justifies incentive schemes are the benefits gained from increased productivity. So long as inequalities do not contravene the distributive principles which guide the institutions that constitute the basic structure of a near just society (whatever the principle ends up being, say, the inequalities that maximize benefits to the worst-off group, as Rawls maintained, or some other principle), inequality is justified on the basis of benefits gained. On Scanlon’s view, it is not that those who have more deserve more, but rather that inequality is justified insofar as incentivizing payments lead to greater overall productivity. If this is correct, then desert has no role to play in justifying economic inequalities. Economic inequality has nothing to do with desert.

<sup>44</sup> As Hurka points out, Rawls also directs the bulk of his attention to the view that people deserve income on the basis of moral merit. See Hurka 2003: 59.

<sup>45</sup> Scanlon’s interpretation of this general line of argument is in fact more charitable as he does not connect the desert of lower wages with fault, a claim, I take it, even friends of desert are unlikely to make.

<sup>46</sup> Cf. 1.5.

<sup>47</sup> See Scanlon 2018: 125.

But few would in fact claim that those who choose to forego opportunities to earn more *deserve* less. The idea is rather that those who choose to forego opportunities simply do not deserve to have more.<sup>48</sup> The problem with Scanlon's treatment of this line of argument lies in the fact that there is no reason to think those who earn more are simply responding to incentives. And it is uncertain at best whether people do in fact confuse claims of desert with incentivizing payments. What's troubling is that Scanlon fails to provide an argument for thinking that inequality in income is justified *only* if incentivizing payments in fact lead to greater productivity. Nor does he provide an argument for thinking effort or contribution cannot be a basis of desert. Absent a reason to think greater income can only be justified as incentives, there is no reason for a desert theorist to accept the claim that income inequality is justified only as the result of incentivizing payments. There is no more reason to think the benefits of increased productivity justify inequality than desert. Intuitively, if Jo works more productively, then Jo deserves more from her employer.

But even if Scanlon is right that greater economic rewards are best viewed as incentives, this by itself does not rule out the possibility that the concept of desert has a role to play in the economic realm. Following Sher, one might take a layered approach to thinking about distributive justice. As Scanlon points out, on Rawls's view, incentives are justified insofar as they work to the benefit of the worst-off group.<sup>49</sup> But so long as a society maintains a system of transfers that maximizes the income of the worst-off group, there is no objection, on Rawl's view, to a further combination of transfers, incentives, and constraints, in particular ones that reward economic agents in proportion to economic desert.<sup>50</sup>

True, on this layered approach, desert would not enter at the fundamental level—i.e. considerations of desert would neither inform us as to what justice requires nor help determine which institutions are just. But if we adopt a broader conception of distributive justice and count as a principle of justice any principle which ought to govern the distribution of goods within a just society, then under this broader conception of distributive justice,

<sup>48</sup> The claim is *not* that lower income earners deserve not to have more. While it might seem holding responsible entails this latter claim, this would be a mistake. One must be careful to keep separate the idea of holding responsible and what an agent deserves. For example, an economically destructive agent does not deserve negative income, whereas criminals deserve to suffer some form of loss, say, penalties or imprisonment, in virtue of their wrongdoing. What the economically destructive agent deserves is no wages not negative wages. What an economically productive agent deserves are wages and praise if they are exceptionally productive.

<sup>49</sup> Scanlon endorses a weaker principle of justice than Rawls: according to Scanlon economic arrangements are unfair 'if they generate significant difference in income and wealth for which no sufficient reason can be given.' See Scanlon 2018: 139.

<sup>50</sup> See Sher 2017: 93.

desert still has a role to play in the economic realm.<sup>51</sup> And true, distribution in accordance with desert would no longer on this view be a matter of justice narrowly conceived;<sup>52</sup> nonetheless, as Sher puts it, ‘the layered approach allows us to see how a just society can *take account* of its members’ desert.’<sup>53</sup>

Scanlon next considers the claim that those who exert greater effort deserve greater reward to the extent that effort involves sacrifices for which people should be compensated. As we have seen, many believe compensation is deserved for unpleasant or especially dangerous work or for extended periods of training in which little income is earned in order to obtain socially valuable expertise. Scanlon makes two interesting points here.

First, Scanlon quite rightly points out that on some accounts of compensation for sacrifice, the appeal is not made to an independent principle of desert.<sup>54</sup> Recall, on the benefits-and-burdens account, the reason why we ought be compensated for our efforts is because we are the moral equals of our employers and it would be unfair for us to have to bear burdens for the sake of our employers: here appeal is made to the notion of fairness, not desert.<sup>55</sup>

That seems right. But I think Scanlon goes too far when he claims that ‘the idea of compensation for sacrifice is not an independent standard of justice (desert-based or not).’<sup>56</sup> As Feldman has argued, being a victim of food poisoning as the result of an unsanitary kitchen might very well be a basis of desert for compensation. And it seems plausible that it would be unjust if careless drivers were not made to compensate cyclists for hospital bills incurred as a result of the driver’s negligence or recklessness. (Notice, the reason it would be unjust need not be that it would be unfair.) It seems to me arguments on both sides are compelling and neither decisive.

Second, Scanlon suggests the claim to compensation for sacrifices made depends on loss of well-being, i.e. the sphere of compensation is the sphere of individual well-being. Here is an apt example: US veterans who were stationed in the Middle East for the last decade or so now claim compensation for exposure to toxic air at military burn pits. These claims to compensation for sacrifice, Scanlon might claim, are based on the desert of a certain

<sup>51</sup> Another way of putting the point is that on the layered approach considerations of desert comes into the picture downstream to the establishment of just institutions. Whether a principle of desert would be chosen in the original position is beside the point.

<sup>52</sup> We might instead have reason to distribute resources in accordance with desert as part of what it would mean for the state or government to enable us to live our lives effectively. See Sher 2014.

<sup>53</sup> See Sher 2017: 95.

<sup>54</sup> Also see Olsaretti 2003: 194-197.

<sup>55</sup> Another possibility is to argue that a burden is unfair because it is undeserved.

<sup>56</sup> See Scanlon 2018: 127.



level of well-being for the sacrifices these soldiers have made. According to Scanlon, on the compensation view, ‘to achieve justice, those who have made these sacrifices should receive *more* in other terms (greater income, for example) to compensate for these sacrifices and thus bring them to the level [of well-being] that justice requires.’<sup>57</sup>

This objection, I think is a good one. As we saw in our example at the end of 3.3, some desert theorists seem to assume a sphere of compensation in terms of well-being in trying to make room for incentives, understanding incentive payments as making up for some burden or loss.<sup>58</sup> This objection deals a fatal blow to such theories of desert.

But of course, as we have seen, not all desert theorists assume a certain level of *well-being* is deserved. And, as the case of these US veterans I think shows, often what is claimed is not high levels of well-being which greater income makes possible but better health care and insurance.<sup>59</sup> For these veterans, their complaint is not at all about economic desert. Their claims are instead based on the higher levels of precaution the military ought to have taken or the military’s blatant disregard for soldier’s health. Even more plausible is the idea that these veterans have a claim of need. Perhaps Scanlon would be on firmer ground if, as in the case of these veterans, if he were to claim that compensation for sacrifice is based on considerations of need rather than desert.<sup>60</sup>

But maybe what Scanlon has in mind are the higher incomes academics, lawyers, and physicians claim in light of the long periods of training where little income is earned. Yet it seems plausible the greater income of physicians and some medical researchers is claimed for the socially valuable contributions they make through their expertise. Of course, it is open for Scanlon to reply that compensation here is best understood as incentives. But as I have already suggested, there is no more reason to think incentives justify economic inequality than desert.

**3.5** Of Scanlon’s arguments against taking effort as a basis of economic desert, the most persuasive is perhaps the following. Scanlon suggests the idea is not so much that sacrifice calls for compensation but rather that just institutions must fulfil the expectations that they invite people to act on. The suggestion is people tend to confuse claims of desert with legitimate expectations. Scanlon imagines a scenario in which achieving the highest average

<sup>57</sup> See Scanlon 2018: 128.

<sup>58</sup> Also see Rachels 1997: 188.

<sup>59</sup> Jennifer Steinhauer, ‘Congress Poised to Help veterans Exposed to ‘Burn Pits’ Over Decades of War’ *The New York Times* (12 February 2019), <https://www.nytimes.com/2019/02/12/us/politics/veterans-burn-pits-congress.html>.

<sup>60</sup> I think Scanlon would agree but he would not put this point in terms of need. See Scanlon 2018: 15-16.

grade in a class entitles the student to have the lowest ranking student as a personal servant for the coming term.<sup>61</sup> Scanlon asks readers to imagine a student who works extra hard to achieve the highest average grade. While one might be tempted to argue since the student made sacrifices in expectation of the reward and therefore deserves the reward, this would be a mistake. Whether or not the student deserves the reward is much beside the point, according to Scanlon. Since such a practice, namely one where a student is made the personal servant of another, is clearly demeaning and unjust, Scanlon claims the student at best has a complaint about being deceived about the prospect of a reward.<sup>62</sup>

The thought is: that the student had made sacrifices in order to achieve the highest average grade does not entail that the student ought to have a personal servant for the coming term. Rather than having a claim of desert, the student might have a complaint based on legitimate expectations at best. But since such a practice is clearly unjust, it is not clear that the student has any claim or reason for complaint.

Compare this case with the following: suppose according to the syllabus any student who achieves an average grade of 95 gets an A in the course. Our student works extra hard achieving an average of 96 but is not rewarded an A. Here our student has a legitimate complaint, but again, one not based on desert. The student's complaint is rather based on the idea that just institutions must fulfil the expectations that they invite people to act on. If so, then many claims which may appear at first to be claims of desert are in fact just merely claims of institutional entitlements.<sup>63</sup>

Scanlon's point is this: making sacrifices does not entitle one to any particular treatment or outcome based on desert. Many complaints which are often framed in terms of 'what one deserves' are instead based merely on legitimate expectations.

While it is certainly true that we need to distinguish claims based on desert from claims based on legitimate expectations, and distinguish between claims of desert and institutional entitlements, as Scanlon recognizes, some claims of desert are not reducible to institutional entitlement.<sup>64</sup> Scanlon's claim here is that economic desert claims based on sacrifice are reducible to institutional entitlements. Scanlon might very well be right about this. (More about institutional entitlements and desert will be said in the next chapter.) Yet

<sup>61</sup> See Scanlon 2018: 119, 128.

<sup>62</sup> Another way of putting the point is a rule that can require one non-consenting individual to act as the personal servant of another is substantively unjust. Even if over time everyone was made a personal servant under this practice, the rule would still be unjust.

<sup>63</sup> This example is Scanlon's. See Scanlon 2018: 118.

<sup>64</sup> Scanlon calls these 'pure desert claims.' See Scanlon 2018: 120.

it seems to me the claim that just institutions must fulfil the expectations that they invite people to act on might itself be justified on the basis of desert.

In fact, Fred Feldman has recently argued along these lines. According to Feldman, promises engender desert. If you promise to pay me £100 by Friday, then I am not only entitled to be paid £100 at the end of the week but also deserve £100. Or suppose Alice and Ben both apply for the same position at the same company; there are two openings for the position, so both get hired; however, suppose the employer decides to pay Alice half the salary she is paying Ben simply because Alice is a woman. In this instance, Feldman claims both Alice and Ben deserve to live in a society where men and women are paid equal amounts for equal work. In other words, Alice and Ben deserve to live in a society with just institutions, and what makes institutions just might very well take into account whether individuals are being treated as they deserve.<sup>65</sup>

For Feldman, the basis of desert here is need, in particular a need that can be provided for only through collective action. Only through collective action can institutions which do not unfairly discriminate between potential candidates for employment be realized. And just as we all deserve to live in a society which does not unfairly discriminate against certain candidates based on their race, sex, or gender, we all deserve to live in a society where institutions fulfil the expectations that they invite people to act on. If this is correct, then the fact that just institutions ought to fulfil the expectations that they invite people to act on does make reference to the concept of desert. Contrary to what Scanlon suggests, legitimate expectations are not independent of the concept of desert.

However, some are likely to object to this use of ‘deserve’. One might claim the word is being used in an indefensibly broad sense.<sup>66</sup> After all, a person who is in need does not necessarily *deserve* help; in fact, some people who are in need might actually deserve not to be helped (e.g. if the person in question knowingly wasted their initial distribution of resources, as we saw in 3.1). In addition, as we have seen, this broad use of ‘deserve’ contravenes the responsibility condition for desert.<sup>67</sup> Arguably in saying you deserve assistance because you need assistance, or that it would be unjust for me not to provide you assistance, one is not appealing to a desert-based conception of justice; rather, the reason why it would be unjust not to assist you is arguably that on this conception of justice, justice (also) requires distribution in accordance with need. In other words, when it is claimed those who are in

<sup>65</sup> See Feldman 2016: ch.4.

<sup>66</sup> See Scanlon 2018: 118.

<sup>67</sup> Thus, just because I promised you £100 does not entail to that you deserve £100, though you may be entitled to £100. What have you *done* to deserve £100? Getting me to promise to pay you £100 is hardly a ground for desert.

need deserve assistance, no appeal is made to a genuine principle of desert. And even if one is willing to concede those who are in need deserve assistance, an independent argument is still needed for a desert-based conception of justice. That there exists a practice of assisting those in need does not entail that those who are in need deserve assistance. If desert is to justify an institution or practice of helping those in need, one must make an appeal to the concept of desert, not need.

This line of objection is not new. An objection along these lines has been put forward by Serena Olsaretti.<sup>68</sup> According to Olsaretti, a view like Feldman's allows that an agent deserves whatever is positively appraised by others, insofar as others are willing to reward the sheer possession of such features as an expression of approval.<sup>69</sup> (For instance, beauty, for which arguably one is not responsible, if positively praised, as in the case of beauty pageants, deserves reward so long as others are willing to reward beauty as an expression of their approval.) On such a view, Olsaretti continues, 'those who display the positively appraised feature are owed a benefit because those who appraise that feature have announced that they will reward it.'<sup>70</sup> In other words, the desert claim in question is institutional. (Recall, these claims are based on what Miller would call "sham" desert judgements.) To fail to reward or benefit those who have those features we have announced we would reward is merely, as Scanlon would put it, to contravene legitimate expectations, and not necessarily to fail to give people what they deserve. Instead, Olsaretti suggests that what we want to know is the reason for those institutions, and in particular whether desert figures among those reasons. According to Olsaretti, on a view like Feldman's, if need, for instance, is identified as a morally significant feature, then those who are in need deserve to be benefitted with assistance only because it was announced that those who are in need should be benefitted. And just because people are willing to reward or benefit certain features in no way ensures that a society with institutions which provide those benefits makes that particular society more just, nor does it entail the person expecting the benefit deserves the benefit.

The problem is Olsaretti seems to assume what makes institutions just are only the principles which could be chosen in something like in Rawl's original position behind a veil of ignorance. And, at least in the case of Rawls, since those who are in the original position are behind a veil of ignorance, no principle of desert is likely to be chosen as those in the original position are oblivious to their own deserts and other concrete features of themselves. The sting of Olsaretti's criticism depends on that fact that those who defend a view like

<sup>68</sup> See Olsaretti 2008.

<sup>69</sup> See Olsaretti 2008: 442.

<sup>70</sup> See Olsaretti 2008: 443.

Feldman's seem to be unable to provide a systematic account of which benefits are deserved, and of what makes social institutions of one's society just.

At least in Feldman's case, the reason why institutions are important is not because just institutions make a just society—a claim few would deny—rather the needs that people have that must be provided for can only be provided for by institutions through collective action. On Feldman's view, it is not the case that people deserve *anything* others are willing to reward. What others are willing or not willing to reward is beside the point. The reason why people in need deserve assistance is because the assistance they need and deserve can only be provided for by their government through collective action—e.g. emergency natural disaster relief.<sup>71</sup> What people deserve from their government are *only* things that only the government can provide.<sup>72</sup> Contrary to what Olsaretti suggests, there is a rationale on Feldman's view as to why people deserve from the government particular benefits they need: the benefits one deserves from the government are benefits only the government can provide through collective action.<sup>73</sup>

In sum, Scanlon's attempt to show the irrelevance of desert for distributive justice by reducing economic desert-claims to institutional entitlements is no more persuasive than Olsaretti's. True, Feldman's use of 'desert' in the broad sense is contrary to the received wisdom about desert—in particular, the responsibility condition. However, contrary to what Olsaretti seems to suggest, a Feldman-like approach to distributive justice need not lack a rationale. The only significant difference that I can see between the two approaches is that while one appeals to the concept of justice, the other desert. And it is not at all clear to me that one approach is to be preferred over the other. When it comes to employment, for instance, there seems little difference between claiming that discriminatory treatment based on race, sex or gender is undeserved and that we deserve to live in a society which makes such treatment illegal, and claiming that rules which allow discrimination practices based on race, sex and gender are substantively unjust. It seems to me to claim that what justice requires is that we get what we deserve from our government is also a plausible approach to thinking about distributive justice. Without further argument, there is no reason to prefer the claim that what we deserve is what justice requires.<sup>74</sup>

<sup>71</sup> In the case of rights, on Feldman's view, what we deserve are institutions which ensure that contracts between individuals are non-exploitive and fair. See Feldman 2016: ch.4

<sup>72</sup> Ibid.

<sup>73</sup> Also see ch.4.

<sup>74</sup> In other words, it is not obvious that justice is conceptually prior to desert, or desert derives from and is to be explained in terms of justice.

**3.6** Let's turn now to the question whether economic rewards are deserved on the basis of contribution. Having considered several arguments for the desert of economic rewards based on effort, Scanlon asks whether economic rewards are deserved based on economic contribution.

The thought is that compensation should be proportional to an individual's marginal product, i.e. the difference that what an individual does would make to the value of what is produced. Suppose Alice contracts both Ben and Clark to build her a beautiful rock garden; the two divide the work according to their skill sets, say, Ben designs and Clark executes. Further suppose the garden is valued at £1,000, and without Ben's design the garden would only be valued at £600. If so, then Ben's contribution (i.e. Ben's marginal product) to the enterprise is £400.

Scanlon is sceptical of such counterfactual tests.<sup>75</sup> Scanlon claims in the case of large cooperative enterprises an individual's marginal product is not easily distinguishable. Scanlon asks readers to imagine a factory-like scenario where workers while working cannot see what each other are doing. Then he asks us to imagine with the assistance of a coordinator who directs the workers and alerts them as to what needs to be done and who all the workers can see the workers are now able to work more efficiently. If so, then the marginal product of the coordinator is the difference in value of what the workers produce with and without the coordinator's assistance. What Scanlon finds troubling about this scenario is 'the extra quantity of goods produced as a result of this direction is not something "produced by" the person who provides the direction.'<sup>76</sup> While the productivity of each worker is increased, the coordinator does not seem to have contributed to the final product. According to Scanlon, the coordinator would not be cheated or deprived of his or her fruits of labour if the coordinator's pay was not congruent with the coordinator's marginal product as the desert theorist, according to Scanlon, wants to claim.

Such a literal construal of "contribution" certainly makes the marginal product view seem puzzling.<sup>77</sup> But the marginal product view is less puzzling (if at all) if we measure contribution by how far people's preferences are satisfied given the work of others. Both Tom Hurka and Steven Wall argue along these lines.<sup>78</sup> Rather than look to marginal productivity, they argue we should look instead to the satisfaction of preferences.

<sup>75</sup> See Scanlon 2018: 128-129; also see Scanlon 2019: 3396.

<sup>76</sup> See Scanlon 2018: 129.

<sup>77</sup> Scanlon seems to overlook the fact that the metaphysically reductive view that labour never really produces any material thing but adds value to what is already owned is position available to the desert theorist. As Sidgwick points out, often all that is really claimed is that one ought to be compensated for one's labour. See Sidgwick 1907: 280.

<sup>78</sup> See Hurka 2003: 57-58; also see Wall 2019: 3383.

Now one might worry that, since market pricing reflects the satisfaction of people's preferences, to claim what one deserves is determined by the market price is circular because when asked why the market price is just, one has to reply that that is what one deserves. Indeed, this seems to be in part what Scanlon is getting at. But, as Hurka points out, measuring contribution by the extent to which others' preferences are satisfied is conceptually independent of the market and can at least provide a partial justification of economic reward based on the market.<sup>79</sup> I think Hurka is right. Scanlon's criticism leaves this thesis untouched.

In these sections, we have looked at five arguments for the claim that considerations of desert are irrelevant to distributive justice. I found none particularly persuasive. On the contrary, it seems to me the concept of desert does have an important role to play in the economic realm and provides at least partial justification for market distribution.

**3.7** Our inquiry so far has left two issues unresolved. First, the benefits-and burdens account emerged unscathed at the end of 3.3, though in 3.4 we were provided with at least one reason to suspect this account of economic desert might be inadequate. We need now to consider whether the benefits-and-burdens account might nonetheless be the best account of economic desert. Second, in 3.1 I suggested considerations of desert might justify economic inequality on a luck egalitarian approach to distributive justice.<sup>80</sup> We need now to consider whether the concept of desert might serve this role. Let's begin with the question whether a luck egalitarian view which appeals to considerations of desert to justify economic inequalities is a satisfactory view.

The most plausible form of luck egalitarianism where desert has a role in justifying unequal distribution of resources has been suggested by Olsaretti. On this view, 'persons justifiably deserve more or less than others only if all had a fair opportunity to deserve more or less than others,' and 'the presence of unequal background luck undermines the fairness of the distribution of opportunities to deserve.'<sup>81</sup>

<sup>79</sup> See Hurka 2003: 65-66.

<sup>80</sup> Recall that luck egalitarians claim all inequalities that cannot be traced to a person's own choices are unjust, *and* any inequalities that are due to the differences in a person's choices are indeed just insofar as all parties had adequate opportunity to choose. To illustrate what I mean by adequate opportunity to choose, suppose both Ben and Clark were offered an opportunity to build Alice a rock garden for some set amount, but Ben declines the offer. If so, then Ben has no grounds for complaint and an outcome in which Clark ends up with more than Ben cannot be unjust, for Ben had more than adequate opportunity to choose to earn more. Of course, there could be disagreement as to what counts as 'adequate opportunity', but further pursuit of this issue would take us far afield. Our concern here is with the question whether, say, an outcome in which Clark has more than Ben is just because Clark deserves more than Ben given Clark has chosen to accept Alice's offer and actually has built Alice a rock garden.

<sup>81</sup> See Olsaretti 2008: 445.

Recall our discussion in 3.1: (un)lucky outcomes which are unintended are ones for which the agent is not responsible, and the lack of responsibility undercuts the agent's desert. It was also claimed that background luck does not undermine desert, e.g. that Yuki was born with a pleasant disposition does not undermine his desert. By contrast, the view currently under consideration requires that background luck also be neutralized. To illustrate, suppose when they were younger both Yuki and Zoe had hoped to qualify for a place at some prestigious university, but in order to qualify each must correctly answer a certain number of questions on an entrance exam. Zoe answered correctly more than enough questions to qualify, but Yuki did not. Further suppose the only reason why Yuki answered incorrectly was because the several questions he missed were on an area of math which was not taught at his school. In this instance, the luck egalitarian would claim background luck has not been neutralized and for this reason the supposed difference between Yuki's and Zoe's desert is undermined. After all, it was simply a matter of luck that Zoe attended a school which happened to offer a course in this particular area of math. On the view under consideration, in order for agents to become deserving, background luck must also be neutralized. Olsaretti continues: 'to deserve, on this view, is to be responsible for what one deserves, and one is responsible for what one deserves relative to others only if her deserving more or less than them is not the result of unequal luck.'<sup>82</sup>

The problem with this view is that in order to be deserving people must have control over inequalities in outcomes, a kind of control which is beyond their reach. For instance, on this view, unless Yuki also had access to knowledge of that particular area of math which affected his score, he cannot be thought of as being in control. Yet, control over inequalities in outcome is not the kind of control that matters for responsibility; instead, what matters is control over one's own life. Imagine a world without Zoe. Is Yuki any less responsible or less in control of his own life? I don't think so. Why think Zoe's existence should matter to whether Yuki can be thought of as in control? What reason is there to think Yuki cannot have control unless he has control over inequalities in outcome? Even if Yuki does not have control over inequalities, he has control over his life, and it is only the second kind of control that matters. Exercising control over inequalities to which one is party is *not* a requirement of exercising control over one's own life.<sup>83</sup>

As Sher has persuasively argued, appeal to the concept of desert will not accomplish what luck egalitarians hope it would. Take the case of a daughter who gives up her career in

<sup>82</sup> Ibid.

<sup>83</sup> See Sher 2014: 33.



order to nurse her dying mother. The thought is that people deserve the predictable outcomes they have chosen. But if so, the luck egalitarian is then committed to the claim that since the daughter had chosen this path, the daughter deserves the subsequent lack of earning power. But the daughter clearly does *not* deserve such an outcome, nor is this outcome one which many luck egalitarians are likely to affirm as just. Furthermore, even when the outcomes we bring about are deserved, the reason why we deserve them is generally not *that* we have brought them about.<sup>84</sup> An Olympic athlete who trains hard to achieve success and gains it does not deserve success any less than if success was not achieved. In short, an appeal to desert neither captures the letter nor the spirit of luck egalitarianism. While desert will justify some inequalities which the luck egalitarian wants to justify, generally speaking, appeal to the concept of desert will likely leave many luck egalitarians dissatisfied.<sup>85</sup>

Let's turn now to the benefits-and-burdens account of economic desert. Does the benefits-and-burdens account best explain the role desert has in the economic realm? Here are three problems with the benefits-and-burdens account.

First, as Olsaretti points out, this approach is not based on a genuine principle of desert.<sup>86</sup> On the benefits-and-burdens account, the reason why employees ought to be compensated, strictly speaking, is not because employees deserve it; rather, not compensating employees would be unfair and the reason why it would be unfair is because employers and employees are moral equals. On this account it is fairness rather than desert that informs what justice requires. (In other words, we believe compensation is deserved only because a state of affairs in which employers do not compensate employees would be unjust because unfair.) Some, I gather, would want the concept of desert to have a more fundamental role.<sup>87</sup>

Second, as Hurka points out, the account leaves no room for incentives. And because there is no room for incentives, 'it makes it hard to see how an economy governed by this view could ever develop technologically.'<sup>88</sup>

And third: the benefits-and-burdens appears to be at variance with common sense. I think Hurka hits the nail on the head when he writes: 'common sense would find the proposition that justice requires the net effect of working and being paid to leave one no better off than if one had not worked absurd.'<sup>89</sup> This objection, I think, sounds the death knell for the benefits-and-burdens account of economic desert.

<sup>84</sup> Many luck egalitarians seem to take for granted a view of responsibility similar to the Forfeiture View laid out in ch.1.

<sup>85</sup> See Sher 2017: 93-94; also see Sher 2014: 49-53.

<sup>86</sup> See Olsaretti 2003.

<sup>87</sup> Of course, if fairness is equivalent to comparative desert, then the sting of this line of objection is removed.

<sup>88</sup> See Hurka 2003: 65.

<sup>89</sup> Ibid.

Now it might be thought if we abandon the benefits-and-burdens account then we no longer have an account of desert's role in distributive justice. Not so. Perhaps the most defensible account of economic desert is Hurka's.

On Hurka's view, what is deserved are not levels of well-being or welfare but income. And the desert of income for a given time's work is based on two factors, namely, contribution and effort. Contribution, as we have seen, should be understood as the extent to which one's work contributes to the satisfying the preferences of others given the work of others. (I shall return to this qualification shortly.) And effort should include everything negative about work or contrary to the worker's preference.<sup>90</sup> What's new on Hurka's approach is that Hurka combines these two factors in a multiplicative way: if a worker makes either no effort or no contribution then his or her desert is zero. In this way, the approach provides intuitively correct results.<sup>91</sup>

Moreover, on this account, unlike the benefits-and-burdens account, economic desert is comparative since one's effort or contribution always makes implicit reference to the work of others. For this reason, we defined contribution as the extent to which one's work contributes to the satisfying the preferences of others *given the work of others*. Recall, if Alice's rock garden is the result of Ben's and Clark's joint effort, then we cannot determine what each deserves without knowing facts about the other, say, how much value Ben's design adds to the value of the final product. But economic desert is comparative also in the following respect: suppose Ben worked on the front-yard while Clark the back, and each worked for the same amount of time producing equally satisfying results, but Ben is paid less; if so, then Ben would be getting less than Ben comparatively deserves. So economic desert is comparative both with regard to outcome and the desert-basis.

Finally, on Hurka's account, unlike Sher's layered approach, desert enters in at the fundamental level. While economic desert is institution-dependent insofar as economic desert is comparative, the concept of desert directly determines which institutions are just. Just institutions bring about outcomes where each economic actor is rewarded in proportion to his or her economic desert.<sup>92</sup>

Now one might be dissatisfied with the fact that this account is completely silent on the role of luck in distributive justice. Like Miller's view laid out in 3.1, Hurka's view also

<sup>90</sup> Notice, this allows us to account for work that may be difficult or dangerous in some ways, as well as work that requires expertise which can be gained only with extensive periods of training.

<sup>91</sup> Recall, if Ben exploits Clark making Clark do all the work, then having put in no effort, Ben's desert is zero. Now suppose Ben's design is impossible to execute so Clark decides to execute his own design, in which case Ben's overall desert is again zero.

<sup>92</sup> See Hurka 2003: 57-61.

does not call for the neutralization of background luck. But as I have just argued, neutralizing background luck in many cases is beyond our reach and is not necessarily desirable.

But even if we accept Hurka's account of economic desert, it is important to keep in mind that desert is but one relevant consideration for economic justice. A complete theory of distributive justice would also require an account of procedural fairness and substance opportunity. Providing a complete account of distributive justice, however, is beyond the purview of this chapter.

*Desert and Justice:  
Entitlements as a Basis of Desert*

Some writers claim that all desert claims are institutional—i.e. a mere matter of convention: what one deserves is simply what is in accord with the rules of the institutions of one's society. Others claim, even if desert is pre-institutional—i.e. one can deserve certain forms of treatment irrespective of the rules of institutions—it is at best uncertain whether pre-institutional desert has any genuine role to play in the design of ideally just institutions. On this latter view, currently the majority view, justice is the first virtue of institutions, and if the institutions which constitute the basic structure of society are just then any distribution determined in accordance with the rules of just institutions must also be just. So on this approach to thinking about justice, if considerations of desert do not inform or shape our conception of ideally just institutions, then desert is irrelevant to our thinking about justice.<sup>1</sup> If this is the correct account of justice, then justice does not depend on desert.<sup>2,3</sup> This would be indeed a surprising result and a radical departure from most traditional accounts of justice.<sup>4</sup>

In what follows, I argue the claim that all desert claims are institutional is simply false (4.1), and that the institutionalist account of desert ought to be abandoned not only because it is incompatible with traditional conceptions of justice but also because it fails to capture all instances of desert (4.2). Much confusion, I believe, can be avoided if we simply replace all talk institutional desert with institutional entitlements.<sup>5</sup>

But of course not all philosophers deny desert is relevant to justice. Some take a more traditional approach to thinking about justice (4.3). These philosophers often adopt the old Justinian conception of justice which holds that justice requires 'giving each his or her due'.

<sup>1</sup> See Olsaretti 2003.

<sup>2</sup> However, these writers will usually allow desert some role in thinking about retributive justice. But even then, they hold a mixed view of punishment and will generally claim desert has only a limited role in thinking about punishment and that what justifies punishment are good consequences, not desert. See 5.11.

<sup>3</sup> Another possibility here is that justice requires being fair, but one element of fairness is desert. However, distinguishing between fairness and justice is controversial. Also see Hooker (forthcoming).

<sup>4</sup> Also see Pojman in Pojman and McLeod 1999: 9.

<sup>5</sup> I take it that, when an individual is 'entitled' to something or some performance, an individual has a claim-right to the thing or performance.

Adopting this general definition makes possible a pluralistic approach to thinking about justice since it leaves open the question on what basis benefits or burdens are due to any particular individual. Justice, on such a view, can be sensitive to several different morally relevant considerations, say, of rights, needs, fairness, or desert.<sup>6</sup> On such a view, desert is not only pre-institutional but also informs and shapes our conception of ideally just institutions.<sup>7</sup>

But some writers go further and find it plausible to claim that what is ‘due’ to each should simply be interpreted as giving to each ‘what he or she deserves’.<sup>8</sup> But, as many have pointed out, there are clearly cases in which what one is entitled to is plainly inconsistent with what one deserves, e.g. an ungrateful grandson might not deserve to inherit, especially when compared with his faithful sister, but might nonetheless be entitled to inherit. One recent proposal is to claim entitlements are also a basis of desert.<sup>9</sup> On such a view, the ungrateful grandson’s legal entitlement generates a certain amount of desert, but is counteracted by his ungrateful behaviour thereby making him much less deserving on balance, and it remains possible the faithful granddaughter has much greater all-things-considered desert.<sup>10</sup> The upshot of this approach is that we arrive at a more complete and unified view of justice: justice is treating each as they deserve. However, I believe there are good reasons to think that entitlements are not in fact a basis of desert, and if one were to claim, say, that one deserves the £50 one was promised, one would be at best using ‘desert’ in a weak or extended sense.

In the second half of this chapter, I first consider two common objections to the claim that entitlements are a basis of desert, neither of which I believe are conclusive (4.4). I then explore some supporting arguments for this claim (4.5). Then in the section that follows, I provide new arguments for thinking entitlements are *not* a basis of desert (4.6).

**4.1** Institutionalists believe all desert-claims are institutional. One interpretation of this claim is that what we deserve is simply what is in accord with the rules of existing social institutions. On such a view, desert-claims are mere institutional artifacts. Why think all desert-claims are

<sup>6</sup> See Miller 1999; also see Gardner 2013.

<sup>7</sup> See Feldman 2016: ch.4.

<sup>8</sup> See Hospers 1970: 433; also see Feldman 2016: 5.

<sup>9</sup> See McLeod 1999a: 193; Feldman 2016: 86.

<sup>10</sup> The reader might wonder how much weight we ought to give to the grandson’s desert based on legal entitlement. This will in part depend on whether the legal institutions in which the grandson lives is reasonably just. If the institutions in question are not radically unjust but reasonably just or within an acceptable range, then it might be the grandson all-thing-considered ought to inherit. But since it is not government officials who decides to whom the inheritance should go, but the grandfather, if the wrong grandchild ends up getting the money it is at most an instance of cosmic injustice. Such an injustice would not count against the legal institution under which this family lives. See Feldman 2016: 93.

institutional? Consider some things that are commonly thought to be deserved, e.g. grades, economic rewards, medals, championships, promotions, etc. A moment's reflection will show that one cannot deserve any of these things without already existing institutions: e.g., a gold medal cannot be deserved without the Olympic Games. Notice, this is true also in cases where the thing or treatment deserved is unwelcomed: e.g., incarceration cannot be deserved as a form of punishment without the existence of a criminal justice system. Examples like these easily lead one to conclude that all desert-claims are institutional.

However, that would be a mistake. Clearly not all desert-claims are institutional. It might be true that incarceration can only be deserved as state punishment for criminal wrongdoing, but wrongdoers deserve punishment even without the existence of any state institutions: even if we were to live in a society where there is no criminal justice system, it seems plausible murderers deserve punishment.<sup>11</sup> Likewise, children deserve discipline for bad behaviour even without the existence of any social institutions or practices. And while the *expression* of blame may depend on existent social practices, a person can still resent or blame another for injuring or harming them even if no such expressive practices, such as verbal reprimands, exist—perhaps the person simply decides to avoid communication and contact with the other altogether. In this respect, reactive attitudes, such as resentment and indignation, are independent of institutions or practices. Respect is another example. It's plausible to claim that respect is deserved irrespective of the existence of any institutions: we ought to respect one another because respect is deserved simply in virtue of being a person.<sup>12</sup> Cases such as these suggest desert is a pre-institutional notion.

But pre-institutional desert is not just limited to just these kinds of cases. Consider the case of a diligent but unlucky person. Even though it's hard to imagine any institution or practice which could provide those who deserve it with good luck, since luck (either good or bad) is not something that can be provided, it seems plausible to claim a diligent person deserves a bit of good luck. Natural disasters provide another example. When natural misfortune befalls innocent people, we believe the burden the innocent suffer is undeserved. Further reflection shows at least some desert-claims are pre-institutional.

**4.2** Institutionalists believe all desert-claims are institutional. They believe that  $A$  deserves  $X$  only if there is some existing rule of a practice or institution which determines that  $A$

<sup>11</sup> It's also possible that, while some society has a criminal justice system, the society fails to pass a law prohibiting behaviour the society should prohibit such that a wrongdoer living in this society might deserve punishment because there ought to be a law banning his or her behaviour.

<sup>12</sup> And it is not only persons who deserve respect, but also other animals. We have reason also to respect our environment.

deserves  $X$  in virtue of  $F$ . For example, one might claim Ann deserves a gold medal in virtue of being the fastest runner, where the fastest runner is defined as the one who crosses the finish line first. That the fastest runner deserves the gold medal is a rule instantiated by the practice of rewarding excellence in athletic competitions. The claim is if no such competition exists, then it simply doesn't make sense to claim the Ann deserves a gold medal. Many institutionalists believe the idea of pre-institutional desert is simply incoherent. All desert-claims, institutionalists believe, are institutional artifacts.<sup>13</sup>

But here are some reasons why one might be dissatisfied with the institutionalist account of desert. The account simply fails to capture the difference between claims of desert and claims of entitlement. Here is a classic example. Suppose Gwen and Finn decide to race one another at the end of the month in order to establish who is the faster runner. Before the end of the month, Gwen watches her diet carefully and trains diligently. Finn, on the other hand, is careless with his diet, never once set foot in a gym, and decides to have many late nights out. Come the day of the race, Gwen, leading Finn by quite a distance, is nearing the finish line, but just before slips and falls. Her misfortune allows Finn to emerge as the winner. Though Finn is the winner, Finn hardly deserves to win. Intuitively, it is Gwen who deserves to win on account of her diligence and training. While Finn may be entitled to the prize, which comes with being the winner, few would want to claim Finn deserves the prize or to win. The institutional account is unable to capture this distinction. On such a view, there is no distinction between Finn deserving the prize and Finn being merely entitled to it. As we have seen, desert must be distinguished from entitlement under a set of rules.<sup>14</sup> (Also see 2.6.)

This example leads to another common objection against the institutionalist account of desert: the institutionalist account of desert does not capture all instances of desert. Suppose we live in a society where discriminatory practices in employment are not condemned. In this society, simply in virtue of their sex, women are considered unemployable. Now even though there exists no rule in this society which states such discriminatory practices in employment (and those who engage in such practices) ought to be condemned, intuitively, such discriminatory practices deserve and ought to be condemned. If condemnation is deserved irrespective of any rules of existing institutions,

<sup>13</sup> As we saw in the last chapter, some believe desert claims on such view might easily be reduced to what people are willing to reward by agreement without an adequate account of what makes institutions just. See 3.5.

<sup>14</sup> As Schmitz rightly points out, 'we see winning sprinters as deserving when we see their excellence as a product of years of ferocious dedication. If instead we thought the key to winning was more [performance-enhancing] drugs, we would not regard the winner as deserving. This difference is not an institutional artifact.' See Schmitz 2006: 64.

then it seems the institutional account of desert is unable to capture all we would want out of a satisfactory account of the concept of desert. (Also see 3.5.)

But the institutionalist is not left without a plausible reply. The reason why such discriminatory practices and those who engage in it ought to be condemned, one might argue, is not because discriminatory treatment is undeserved, but rather that such treatment is unjust. And institutions which endorse such discriminatory practices are unjust.<sup>15</sup> We cannot just look to existing institutions, they claim, but must instead look to ideally just institutions. In other words, what we should be asking, one might argue, is whether, in a near just society, there would be a rule which directs us to condemn such discriminatory practices. If so, we then need to ask whether discriminatory practices would be unjust because undeserved, or are discriminatory practices unjust because unfair, or are discriminatory practices unjust for some other reason. The answer to this latter question, as some institutionalists point out, is not at all clear: what makes discriminatory practices unjust can be given no easy answer.

But there are several problems with this reply. First, if we look to ideal worlds, then the concept of *institutional* desert seems to be doing little work. What made the concept distinctive is that it ties desert to existing institutions.<sup>16</sup> Second, by appealing to ideal institutions, the institutionalist has simply shifted to the question of whether some notion of desert informs our conception of ideally just institutions. Many contemporary writers simply assume that desert has nothing to do with justice or ideally just institutions. This can be explained perhaps in part by the fact that a principle of desert is unlikely to be chosen in Rawls's original position behind a veil of ignorance (also see 3.5). Another possibility is that they think we simply don't have the kind of freedom requisite for desert (see 1.4). My point is even if the right question to ask is which morally relevant considerations informs our conception of ideally just institutions, without further argument there is no reason to think our concern for desert cannot affect which institutions we consider just.<sup>17</sup> (Also see 3.7.)

Here is another problem, even if one insists that institutions which endorse undeserved discriminatory treatment are unjust but concedes that justice might be sensitive to considerations of desert among others, there is the further question whether the relevant concept of desert is either institutional or pre-institutional. If the concept of desert appealed to here in asking what desert-sensitive justice requires is institutional, then the institutionalist

<sup>15</sup> In appealing to the concept of justice rather than desert, many writers simply rule out, without further argument, the possibility that desert might inform us as to what counts as just treatment. On their view, justice informs desert when instead the reverse might be true. Many believe considerations of desert can be safely ruled out since they take the concept of desert to be incoherent, often also citing metaphysical worries concerning free will as pointed in 1.4 in our discussion of Sidgwick.

<sup>16</sup> Also see McLeod 1999: 191.

<sup>17</sup> Cf. Hooker 2006; Hooker 2008.



would be merely pushing the question one step further back. But if the concept of desert appealed to here is pre-institutional, then the institutionalist has simply failed to keep desert out of the picture.<sup>18</sup> And if there is pre-institutional desert on such a view, then we should avoid confusion by speaking of institutional entitlements instead of institutional desert. But since institutionalist insist all desert claims are institutional, the institutional account of desert is incompatible with the traditional account of justice as giving each what they deserve, which bring us to my final point.

It seems to me one attractive conception of justice is that justice involves giving people what they deserve.<sup>19</sup> If this is the correct account of justice, and if the institutionalist's account of desert is incompatible this conception of justice, then we have reason to reject the claim that all desert-claims are mere institutional artifacts. Of course, many institutionalists will not find this conception of justice at all attractive and instead are happy to give up the concept of desert all together. Even so, without further argument, there is little reason to abandon a perfectly plausible account of justice as giving each what he or she deserves. Few doubt that justice requires giving wrongdoers what they deserve—namely, condemnation or punishment for their wrongdoing.<sup>20</sup> So another reason why the institutionalist claim that all desert-claims are institutional should be abandoned is that the claim is incompatible with the traditional conception of justice as giving people what they deserve.

In sum, (a) the institutionalist account tends to conflate desert-claims with entitlements; (b) the account fails to capture all instances of desert; (c) while one way to capture what appears to be pre-institutional desert is to look to ideal rather than existing institutions, if institutionalists concede what makes an institution ideal is partly a matter of whether the institution accords with pre-institutional desert, then by appealing to ideal institutions to explain what people deserve the institutionalist has simply failed to keep pre-institutional desert out of the picture; and finally (d) the institutionalist account of desert is incompatible with the traditional conception of justice as giving each what they deserve.

<sup>18</sup> McLeod makes this point in McLeod 1999: 191. I thank Brad Hooker for helping me formulate this point.

<sup>19</sup> I am not claiming that all that matters is desert; rather, desert is an element of justice.

<sup>20</sup> I do not mean to imply that *all* wrongdoing deserves state punishment. Suppose you ask me what I had for lunch, and I lie to you for no good reason. While lying to you is wrong, what I deserve is your distrust and admonishment, but not punishment. Or suppose your life is in danger and I could easily save you by turning you over but fail to do so. Failing to assist in this instance is very wrong. While we might think a legal system which required providing assistance when it is at little cost to oneself (as it is in some jurisdictions) is more just, failure to assist most believe does not call for state punishment. Nevertheless, such indifference or neglect warrants blame and indignation on the part of others. I thank Brad and Philip for discussion of this point.

As I mentioned at the outset (see ch.1), philosophers writing about distributive justice and desert are divided over the issue whether our concept of desert is an institutional or pre-institutional notion. Many seem to think if all desert claims are institutional, which are in the end really just institutional entitlements, then there is really no need to speak of desert. (Also see 3.5.) However, this approach to thinking about justice and desert is misleading. It seems to me the question whether desert is institutional or pre-institutional only seems important if one adopts an overly narrow view of justice. Let me explain.

Many contemporary writers who are institutionalists simply assume that considerations of desert are irrelevant to questions of justice, when in fact just the opposite is true. That there is a close conceptual tie between justice and desert is a claim few philosophers would deny. Many philosophers since Aristotle have claimed justice involves, among other things, giving people what they deserve.<sup>21</sup> That there exists a close connection between justice and desert finds support, as we have seen, in the observation that murderers (pre-institutionally) deserve punishment, and everyone (pre-institutionally) deserve respect. Desert is an overtly distributive concept.<sup>22</sup> Justice involves not only punishing murderers but also ensuring that of two equally deserving parties neither suffers an unjustified burden or disadvantage.<sup>23</sup>

By contrast, many contemporary political theorists simply ignore this connection between justice and desert.<sup>24</sup> Again following Rawls, many political theorists simply assume a radical asymmetry between distributive and retributive justice: while retributive justice is essentially individualistic or non-comparative, they claim, distributive justice is holistic or comparative. Retributive justice is often thought of as individualistic in the sense that the punishment any individual deserves can be determined independently of the punishment anyone else deserves; and by contrast, distributive justice is holistic in the sense that what one deserves, say, in terms of wages and income, cannot be determined independently of what others deserve.<sup>25</sup> (See ch.3.) On this view, the question of distributive justice is essentially one about what is fair in the distribution of scarce resources.<sup>26</sup> And since desert is essentially individualistic or non-comparative, these writers believe, considerations of desert are irrelevant for distributive justice. Yet, it is not at all clear an asymmetry so conceived exists.

<sup>21</sup> See Pojman and McLeod 1999: part 1.

<sup>22</sup> Also see Sher 2014: 46-47; Gardner 2013.

<sup>23</sup> On comparative desert, see Kagan and Hurka in Olsaretti (ed.) 2003.

<sup>24</sup> Notice, since Rawls allows desert to inform the design of our criminal justice system, it is simply false that Rawls thinks desert has no role in our thinking about justice. Also see Sher 2017: 87.

<sup>25</sup> See Scheffler 2001: ch.10; cf. Hurka 2003.

<sup>26</sup> Cf. Gardner 2013.

Retributive justice is concerned with the distributions of burdens but likewise has a holistic or comparative aspect. If Alex and Beth commit the same crime, but Alex's sentence is twice as harsh as Beth's, then isn't it the case that Alex is being punished more than she deserves and isn't such a sentence unfair to Alex?<sup>27</sup> Likewise, distributive questions can arise even when what is being distributed is not limited or scarce.<sup>28</sup> Suppose Alex and Beth are equally diligent students but the teachers tends to praise Beth more: praise is not limited in supply, yet there is a certain injustice in Alex receiving less praise and encouragement than Beth when both are equally good students. In short, without further argument, there is no good reason to adopt an overly narrow conception of justice, and of distributive justice in particular. And the question whether desert is institutional or pre-institutional only seems compelling if one adopts such a narrow conception of distributive justice. Let's turn now to what I believe to be a more attractive approach to thinking about justice, one which recognizes the close conceptual connection between justice and desert, which others are quick to deny.

**4.3** What is justice? Few would dispute that justice is a virtue. But sometimes justice is used to refer to that part of morality which is concerned with all other-regarding duties.<sup>29</sup> We might call this justice in the broad or wide sense. But when 'just' is used in this all-encompassing way, a just person must also be a charitable person, a loyal person an honest person, etc. If we are interested in justice as one other-regarding virtue or duty rather than a summary of other-regarding virtues or duties, then what we are interested in is what we might call justice in the narrow sense.

What is justice in the narrow sense? Justice in the narrow sense names both a virtue of character and a state of affairs. And one way to see what makes a person or a state of affairs just is to look to the constant concerns of a person recognized by many as just.<sup>30</sup> A

<sup>27</sup> Another way to understand fairness is as comparative desert. For ease of reference, I shall continue to use fairness rather than the cumbersome phrase 'comparatively speaking, (un)deserved.' Also see Kagan 2012: 351; Hurka 2003.

<sup>28</sup> It is often thought that comparative justice only arises when what is being distributed is limited in supply. For example, suppose I have nine pieces of candy to distribute among five equally deserving students; since it is impossible for each to get two pieces, a question of fairness arises. But issues of fairness can arise even if what is being distributed is not limited in supply. Imagine a remote island of a hundred people. On this island, theft is punished by lashes of the whip. According to the rules of this society the punishment for stealing coconuts is fifty lashes for each coconut stolen. Suppose Kris is caught stealing two coconuts and Jared one, but both were sentenced to a hundred lashes. There is no shortage of lashes that can be given out, yet that Jared got fifty more lashes than he deserved is certainly a matter of distributive justice. Mercy is also unlimited in supply, but it is still a matter of justice as to whom to pardon.

<sup>29</sup> Also See Aristotle 1980: 108-109.

<sup>30</sup> Since a virtue of character is a set of dispositions to act in various ways on the basis of particular motivations or concerns, we look to the constant concerns of a person in order to discover what virtues are within their character.

just person, I take it, is one whose constant concern is with ensuring his or her relations with others are in order. And one way in which a person's relation with others is in order is if the person treats others as they deserve.<sup>31</sup>

Imagine Dani has two friends Evelyn and Finn who also happen to be business partners. Edward wants to know what kind of person Evelyn is. Upon being asked this question, Dani recalls once a pernicious rumour went around that Finn short-changes his customers, but unlike some other friends and acquaintances, Evelyn was forthcoming in exposing this falsehood. At the time, out of curiosity, Dani happened to have asked Evelyn why she felt the need come to Finn's defence. As she recalls, Evelyn's reply was that being the honest businessman that Finn is he doesn't deserve to have his reputation tarnished by rumours and that Finn was being treated unjustly by others. So Dani concludes Evelyn is a just person.

Plausibly, Dani reasoned as follows: while a loyal friend would object to this falsehood about Finn on account of friendship, a just person would object for the reason that those who were spreading rumours were treating Finn in a way he does not deserve. A constant concern of people who are often thought just is that others are treated as they deserve, and Evelyn is one such person. For Evelyn, a just state of affairs is one in which this pernicious falsehood about Finn is exposed, and this suggests in exposing this falsehood Evelyn was acting for reasons of justice. But a just person is keen not only to do justice but also to avoid injustice. Evelyn came to Finn's defence not only because defending Finn was what she thought was the right thing to do but also because Evelyn wanted to do right by Finn.<sup>32</sup>

But of course a just person is not only concerned with people getting the treatment they deserve. And that people get what they deserve is but one way in which a state of affairs might be just.<sup>33</sup> Suppose Evelyn buys some sweets for her son and daughter, and, noticeably, Evelyn is mindful that they each receive roughly the same amount.<sup>34</sup> Arguably, such display of impartiality is also a mark of a just person and a good parent. So in addition to desert, a just person might attend also to other considerations: fairness being one, and arguably

<sup>31</sup> Also see Gardner 2013.

<sup>32</sup> Of course, Evelyn might be both a just person and a loyal friend. Justice is after all only one virtue a person might possess. Perhaps Finn prefers his friends to be more loyal than just, a preference I think most people have. *Ibid.*

<sup>33</sup> Contrary to what some claim, justice cannot reside in a pattern of holdings or advantages defined independently of what anyone did to create or sustain such pattern of holdings. Justice is something done. A just state of affairs might be brought about by just institutions. But I think justice is better thought of as first a virtue of character and only derivatively a virtue of institutions. Also see Gardner 2013.

<sup>34</sup> I'm assuming here the children are equally deserving.

entitlements another, i.e. what others ought to have as a matter of moral or legal right. For instance, it is highly likely that people like Evelyn would intervene if they were to witness someone trying to get away with a hit-and-run. Or imagine Evelyn had promised Dani that she would help Dani move to her new apartment on Tuesday. Plausibly, Evelyn would be treating Dani unjustly if Evelyn failed to show up on Tuesday for no good reason.<sup>35</sup> In sum, a just person might treat another in a certain way either because the person deserves such treatment or because it is the fair thing to do, or, having made a promise a just person will keep their promise. What this means is that justice can take on different meanings in different contexts or situations.

In a recent article on justice, David Miller writes:

...justice takes on different meanings in different practical contexts, and to understand it fully we have to grapple with this diversity. But it is nevertheless worth asking whether we find a core concept that runs through all these various uses... The most plausible candidate for a core definition comes from the *Institutes of Justinian*...where justice is defined as ‘the constant and perpetual will to render to each his due’.<sup>36</sup>

Miller goes on to point out that justice has two different faces: one conservative of the existing norms and practices, and the other calling for reform of these same norms and practices.<sup>37</sup> This, according to Miller, exposes an ambiguity in the phrase to ‘render each his due’: what is ‘due’ might be either what a person can reasonably expect given current laws and policies, or it might be what a person should get in accordance with the ideal of justice.<sup>38</sup> The first face of justice Miller has in mind is what we are entitled to or what is owed to us as a matter of positive right, which includes both legal entitlements and claim-rights generally recognized as in the case of promises.<sup>39</sup> With regards to the second face of justice, one

<sup>35</sup> Cf. Raphael 2001: 66.

<sup>36</sup> See Miller 2021; also see Miller 1976: 24-25; Miller 1999: 33.

<sup>37</sup> Also see Sidgwick 1907: 273.

<sup>38</sup> This definition of justice is not circular: to define justice as ‘the constant and perpetual will to render to each his due’ is merely to provide a formal definition of justice, leaving ‘what is due to each’ open to interpretation. On Miller’s view, what he is calling ‘ideal justice’ is but one interpretation of ‘what is due’, and legal entitlements or legal rights the other, which he calls ‘conservative justice’. Miller is here following Sidgwick, but unlike Sidgwick, who thinks common sense morality takes ideal justice only to consist in treatment in accordance with a principle of desert, Miller thinks ideal justice involves several principles of (ideal) justice, namely, ‘treatment in accordance with desert’ and ‘treatment in accordance with need’, and each, like ‘treatment in accordance with legal entitlements’ captures a particular use of ‘just’ in reference to a particular state of affairs. See Miller 1976: 24-31; Sidgwick 1907: 273; also see Raphael 2001: 184-185; Lucas 1980: 71.

<sup>39</sup> Miller contrast positive rights with ideal rights, a distinction which cuts across the contrast normally drawn between moral and legal rights. In more recent work, Miller has taken a more communitarian or contextualist approach to thinking about justice. Miller speaks now of a principle of equality among citizens rather than rights. His thought seems to be since the value of rights lie in the protection of security and freedom of citizens

attractive possibility is that justice requires treatment in accordance with desert, which as we have seen in ch.1 is the view Sidgwick attributes to common sense morality. But, as I have emphasized, there are other possibilities, for instance, justice might also be sensitive to considerations of needs, which is Miller's own view.<sup>40</sup> So if one is attracted to the view that justice requires treatment in accordance with desert, two further questions need to be answered: (1) how is desert related to these other considerations, such as rights and needs, and (2) whether desert and rights might be reconciled as to gain a more unified account of justice, where justice can be understood as simply giving people the treatment they deserve.

As we have seen, all writers agree that people deserve benefits, burdens, or certain forms of treatment always on some basis, i.e. the desert base or ground of desert.<sup>41</sup> Some writers argue justice requires the distribution of resources based on need. And to some it seems not only intelligible but also quite plausible to claim that people deserve to have resources based on their need.<sup>42</sup> In other words, one might think of needs as a basis of desert.<sup>43</sup> And if needs can be a basis of desert, then perhaps entitlements can also be as a basis of desert.<sup>44</sup> Indeed, such a view would make room for both institutional and pre-institutional desert. If this is correct, then we have arrived at a unified account of justice as requiring treatment in accordance with desert.<sup>45</sup> (Also see 3.4 and 3.5.)

But before we turn to arguments for the claim that entitlements can also be a basis of desert in 4.5, I would like in the next section to consider first two initial objections some philosophers have found compelling, though neither I believe are conclusive. Then in 4.5 we look at arguments in support of the claim that entitlements are a basis of desert. However, in 4.6, I provide reasons to think this claim is false.

#### 4.4 Here are two reasons why one might think entitlements are not a basis of desert.

and the same rights apply to all citizens nothing is lost in speaking of a principle of equality rather than rights. On Miller's current view the three principles of justice, namely, desert, needs and equality, are tied to particular modes of interaction, respectively, instrumental association, solidaristic community and citizenship. See Miller 1976: ch.2; Miller 1999: ch.2.

<sup>40</sup> See Miller 1976: ch.4; Miller 1999: ch.10; also Raphael 2001: 185.

<sup>41</sup> Feinberg's essay on desert is the *locus classicus* on the concept of desert. See Feinberg 1970: 58.

<sup>42</sup> One might object that one who makes this claim has substituted a formal account of desert with a substantive account which then forces them to use 'desert' in a weak or extended sense. Feldman and McLeod, for instance, seem unbothered by this implication of their view. See Miller 1976: 24, 84-85; cf. Feldman 2016: 56-57.

<sup>43</sup> Cf. Miller 1976: 86.

<sup>44</sup> See McLeod 1999a: 193-194; Feldman 2016: 56-57; Cf. Miller 1976: 85.

<sup>45</sup> Hospers once wrote: 'Justice is getting what one deserves; what could be simpler?' See Hospers 1970: 433.

First, things to which one can be entitled, or to which one has a claim-right, are often welcomed, e.g. benefits or rewards; by contrast, certain forms of treatment that are clearly deserved are unwelcome, e.g. blame, condemnation and punishment.<sup>46</sup> (Also see 3.1.)

In reply, one might point out that if we set aside retributive justice and focus exclusively on distributive justice,<sup>47</sup> then, as is the case with entitlements, where an individual is thought deserving of some form of treatment, what is deserved are only benefits or positive treatment in light of some positively appraised performance. For instance, a good grade is deserved for a well-written essay, grants are deserved for breakthrough research, and medals are deserved for courage in battle. Examples such as these easily multiply. If we narrow the scope of distributive justice to the fair distribution of scarce resources, which many believe is the main concern of distributive justice, there is a clear overlap between what can be deserved and what one might be entitled to. If this narrow interpretation of distributive justice is correct, then it does seem what one can be entitled to, or what one deserves, must be something welcomed by the recipient.<sup>48</sup> (Also see 1.2.) But as suggested earlier, I think it is a mistake to adopt such a narrow interpretation of justice; nonetheless, I take it, many will find this reply persuasive. (See 4.2.)

A better objection in my opinion is this: recall that according to the received wisdom about desert, one deserves certain forms of treatment only if (a) one is responsible for the performance in virtue of which the treatment is deserved and (b) the performance must lie in the past. (See 3.2.) Neither necessarily apply in the case for entitlements. For instance, Charlie might be a criminal rotten to the core, but if her rich uncle dies naming her the sole beneficiary, Charlie is legally entitled to inherit irrespective of desert. With regards to the second condition (b), suppose Charlie was injured in an accident at the construction site where she works. In light of her injuries, Charlie might be entitled to recover for the loss of any *future* earnings. Both examples suggest the logic of entitlements is incompatible with desert.

In response, one might point out that both claims (a) and (b) are simply false.

Feldman, for instance, argues responsibility is *not* a necessary condition for desert. Here is his example. Suppose you decide to have a nice evening out with friends at a Chinese restaurant. Later that evening, you fall seriously ill. Intuitively, you deserve to be compensated

<sup>46</sup> See Miller 1976: 112; cf. Olsaretti 2003: 192.

<sup>47</sup> As suggested earlier, many modern political theorists take this approach, which in my opinion is a mistake.

<sup>48</sup> It is commonly thought that issues of fairness arise when there is a limited supply of what is being distributed. And it is tempting to think there will always be an issue of fairness when what we are concerned with are rights. But as the case of ordinary moral rights show, this is simply false. Issues of fairness do not arise with moral rights simply because moral rights are not up for distribution. To see every issue as a matter of fairness is to take a myopic attitude to justice. Also see Gardner 2012: ch.10; Gardner 2013: 160-161.

for getting food poisoning. Surely, you are not responsible for the lack of cleanliness in the restaurant kitchen. Or imagine you involuntarily cough violently in a quiet restaurant. The other patrons deserve an apology even though they are in no way morally responsible for the cough, though you are causally responsible. Such examples can easily be multiplied.<sup>49</sup>

And here is an example which shows that both (a) and (b) are false. Organizations like the Make-a-Wish Foundation aim to provide children with some of life's joys which the children would otherwise not have had, children whose life are cut short by disease. The rationale behind these organizations seems to be that some of us, through no fault of our own, end up getting less welfare or happiness than we deserve. That such organizations exist suggests, many believe, innocent people deserve to be compensated for loss for which they are not responsible. But importantly, the desert basis need not antedate the treatment that is deserved, i.e. these children are being compensated for *future* loss. These children, many believe, deserve more joy in their lives now in virtue of the loss coming to them.<sup>50</sup>

In sum, if Feldman is right, then not only is responsibility not a necessary condition for desert, but also the basis upon which some benefit or positive treatment is deserved need not predate the treatment.<sup>51</sup>

Now one might object that in food-poisoning case an illicit inference is being made from a negative desert claim to a positive one: that you do not deserve to suffer the symptoms of food poisoning (negative desert claim) does *not* entail that you deserve compensation (positive desert claim). But this objection hardly seems decisive. The claim is one deserves compensation based on one's innocence.<sup>52</sup> The wrongly accused not only deserve not to be punished in light of their innocence, but also the wrongly accused deserve—at the very least—to be released on the basis of their innocence. In addition, they deserve our sympathy and compassion. Examples such as these cast doubt on the claim that responsibility is always a condition of desert.

**4.5** Before we turn to reasons for thinking entitlements are a basis for desert, I should make a few remarks about what I mean when I say someone has a duty.<sup>53</sup>

First, by duty, I mean *pro tanto* duty, in contrast to what one might call a person's 'final duty' or what one ought to do all things considered. For example, suppose I promised Bea to meet her for lunch, but as I am leaving, I receive a phone call alerting me that my

<sup>49</sup> See Feldman 1997: 182; Feldman 2018: 80.

<sup>50</sup> See Feldman 1997: 185; also see Schmidtz 2006: 40-53.

<sup>51</sup> Cf. Smilansky 1996.

<sup>52</sup> It also seems plausible positive treatment can be deserved in light of the undeserved burden.

<sup>53</sup> Many authors use duty and obligation interchangeably, as I will in the following.



brother is in the hospital. Though I have a *pro tanto* duty to meet Bea, meeting Bea is not what I ought to do all things considered, i.e. my *pro tanto* duty is outweighed by other considerations in this instance.<sup>54</sup> (Also see 2.2.)

Second, the ground of duty is both an explanatory reason and a normative reason.<sup>55</sup> Continuing with our example, the fact that I promised not only explains why I have a *pro tanto* duty to meet Bea but also is a normative reason to meet Bea. So when I speak of one's duty to keep one's promises, I mean, that one promised is a reason to do what was promised. The duty to keep one's promises is only a duty if there is a ground of duty, i.e., there are no ungrounded duties. I take it a theory of *prima facie* duties, like Ross's, provides principles which state facts which are the possible grounds of duties, but the principles are not themselves reason-providing. These principles state that some other fact, such as the fact that I have promised to meet Bea, is a reason.<sup>56</sup>

Third, the ground of duty is always a categorical reason. By 'categorical reason', I mean a reason one has that is not dependent on some contingent desire or intention.

Finally, the ground of duty is a reason that generally outweighs any reason one might have in light of any of one's personal goals at the time for performance: for instance, even though I would enjoy finishing the book I was reading as I was about to go meet Bea, the enjoyment I would get from finishing the book is (typically) outweighed by the fact that I promised to meet her.<sup>57</sup> In addition, since not all reasons ground duties, we might also usefully refer to the ground of duty as a moral reason.<sup>58</sup> In this respect, the grounds of duty are unlike other ordinary reasons, such as one's reason to go for a walk, or to drink a sip of water. Duties are distinguished by their grounds.<sup>59</sup>

Now here is why one might think entitlements are a basis of desert. Suppose Sully is legally entitled to receive payment from Finn. If so, then Finn has a *pro tanto* duty to ensure Sully gets paid. The reason for this is legal entitlements are akin to promises and promises generate *pro tanto* duties.<sup>60</sup> If Finn has a *pro tanto* duty to ensure Sully gets paid, then one might say Sully deserves to get paid. Why? Because it seems plausible to claim that Finn's *pro tanto* duty

<sup>54</sup> This is not to say, however, that I don't have reason to apologize, or reason to make it up to Bea for not meeting her. Of course I do.

<sup>55</sup> That I promised is an explanatory reason in the sense that it is the reason why I am obligated to meet Bea.

<sup>56</sup> Cf. Hurka 2014: 69-70.

<sup>57</sup> *Pro tanto* duties are what one ought to do in Broad's narrow sense. See 2.2.

<sup>58</sup> For example, while the fact that I would enjoy finishing the book might make it the case that I ought to finish reading, this fact hardly grounds a duty.

<sup>59</sup> Also see 2.4.

<sup>60</sup> Ross thought our duty to obey the law is a derivative duty, on based on the primary duty of fidelity, i.e. to keep our promises. Whether derivative duties also provide reasons is debatable. Also see Stratton-Lake 2011.

to pay Sully is for Sully a *pro tanto* basis of desert. In other words, one's *pro tanto* duties are another's *pro tanto* bases of desert. If A has a *pro tanto duty* to treat B in a certain way, then B deserves that treatment in virtue of A's *pro tanto* duty. If entitlements are correlated with *pro tanto* duties, and if *pro tanto* duties are bases of desert, then entitlements are a basis for desert.<sup>61</sup>

Here is another reason to think entitlements are plausibly a basis of desert: it is consistent with justice that people get what they are entitled to. Suppose Alice and Bea are similar in all relevant respects, say, equally hard working, equally virtuous, etc. Further suppose Alice won the lottery and is therefore entitled to a large sum. Other things being equal, there is no injustice in Alice receiving the sum.<sup>62</sup>

In addition, that *pro tanto* duties of some are *pro tanto* bases of desert for others finds some support when we consider other cases where *pro tanto* duties are involved, such as cases of gratitude and repair. And among the many things that are commonly thought to be deserved are expressions of gratitude and compensation.<sup>63</sup>

Suppose you and I have just been introduced by our mutual acquaintance. We are about to purchase some train tickets to London, and I find I am £5 short. You immediately offer me £5, and we are on our way. Since I have benefited from your generosity, I now owe you a debt of gratitude, i.e. since I am the beneficiary, I have a *pro tanto* duty of gratitude owed to you. Notice the duty would not exist if I hadn't consented to the benefit—i.e. I could have just as easily refused the proffered help. This provides some support for thinking that gratitude can be deserved in light of a *pro tanto* duty of gratitude.<sup>64</sup> But I think a better case for thinking duties are a basis of desert can be made if we consider cases of repair.

Here is why one might think compensation is deserved in light of the *pro tanto* duty of the one responsible for the loss or harm. Suppose you and I happen to be riding on the same crowded subway train, and all of a sudden, the train jolts violently; I lose my balance and land on your gouty toe. Since I am responsible for your physical harm, I owe you an apology for the harm I have caused you.<sup>65</sup> But if your injury is serious enough, I might even have reason to offer to take you to the hospital. Had there been no harm, there would also

<sup>61</sup> See McLeod 1999: 193; Feldman 2016: 86.

<sup>62</sup> See McLeod 1999: 193.

<sup>63</sup> For instance Sidgwick claimed desert is gratitude universalized; see Sidgwick 1907; also see Miller 2003. That compensation can be deserved, see Feinberg 1970: 74; also see Feldman 2016:100.

<sup>64</sup> cf. Miller 1976: 81

<sup>65</sup> Here I might either apologise to make you feel better, and in this sense can be thought of as reparative measure, or I might apologise to assure you I intended you no harm. But it is also possible that my apology is an expression of regret, i.e. my regret that you are harmed. Some might even regret that they are responsible for the harm. For an insightful discussion of agent-regret, a term first-coined by Williams, see Gardner 2018: ch.4, sec.2.

be no duty of repair. So it seems the apology or any further compensatory action or reparative measure is deserved in light of a *pro tanto* duty of repair.

But let's raise the stakes a little. Suppose Jo is a construction worker and is badly injured as a result of a serious automobile accident for which Jo was not responsible. To many it seems plausible to claim Jo deserves compensation. But importantly, it also seems plausible that Jo deserves not only compensation for medical expenses but also for any loss of future earnings. If so, then entitlement and desert are compatible after all.<sup>66</sup>

That the duty of gratitude and repair both involve *pro tanto* duties which appear to be a *pro tanto* basis of desert lends some support to the idea that entitlements are a basis of desert. And if in addition we can identify some further feature(s) all three duties share, (recall, entitlements are closely tied to (implicit or explicit) promise-making or as Ross called it the duty of fidelity), this would provide further support for the claim that entitlements are a basis of desert. Let's compare the three duties.

The duties of gratitude and repair differ in the following respects: in the case of gratitude one is benefited by the acts of others, while in the case of repair one has suffered loss or harm at the intervention of others and these others have a duty of repair. While benefits are welcomed, injury is (usually) not. Nonetheless, the two duties have the following in common: in both cases, it's obvious to whom the duty is owed, namely, the one who helped you or the one whom you have harmed. And this last feature, namely, of being 'owed to' someone, is one shared with the duty of fidelity. In the case of promises, having made a promise, the promiser has a *pro tanto* duty, or as some say is morally obligated, to perform what was promised to the promisee. Likewise, when the occasion arises, one is morally obligated to help one's benefactor; and if one has caused harm or injury to another, one is morally obligated to take reparative measures to make it up to them (repair). In short, in all three cases, some feature of an exchange or transaction between two parties (1) gives rise to a *pro tanto* duty for one of the parties and (2) that duty is owed to the other party involved. All three duties share in having the feature of being owed to someone in particular.

Uncontroversial is the idea that some duties have the feature of being directed, or one might say patient-relative. For instance, when one makes a promise to someone, say, to water their plants, the performance promised is thought of as owed to the promisee, and what makes a duty directed is precisely that it is owed to someone. But in addition, it is commonly believed the promisee then has a claim-right in light of the promise to the

<sup>66</sup> Recall, it was suggested earlier one essential difference between desert and entitlements is that while one can only deserve positive treatment for positively appraised past performance, entitlements require no such qualification.

performance promised. It seems plausible then to argue, insofar as the promisor has a *pro tanto* duty to the promisee, and the promisee a claim-right to the performance promised, then there is *pro tanto* reason for the promisee to get what he or she deserves, namely, the promised performance.

Now, as we have seen, directed duties are involved not only in promise-making, but also in cases of gratitude. Recall our train ticket example: since I am the beneficiary of your benevolence, my *pro tanto* duty is a directed duty, a duty to help you my benefactor when you need help, a duty owed to you and no one else. And when a situation arises where you need help, you would have reason to be cross with me if I refused to help for no good reason. This seems to suggest that in addition to the duty being a directed one, you also have a claim-right to my assistance.

But it is not only duties of fidelity and gratitude which have this feature of directedness, but also duties of repair. Suppose I refuse to apologize for landing on your gouty toe. Intuitively, an apology is something you can demand, which again suggests you have a claim-right against me for repair. Here is another example. Suppose Sully borrows Finn's sweater for the party during which Sully's antics result in some split wine that ruins Finn's sweater. Intuitively, Finn is within his rights to demand a new sweater. Thus, by extension, some believe, compensation can be deserved in light of the *pro tanto* duty to repair, where the content of the duty is simply determined by the loss involved. It seems then cases of repair can also involve claim-rights.<sup>67</sup>

But notice, unlike reparation where the burden, loss, or injury is somebody's fault, compensation can be appropriate even when the burden or loss is no one's fault. For instance, some claim doctors and lawyers—or any other profession which requires extensive training—deserve compensation for the loss of earnings during their time of study. This too lends support to the idea that entitlements are a basis of desert.<sup>68</sup>

In sum, all three duties (fidelity, gratitude, repair) share the feature of being directed. And in the case of each, we know quite well from whom the deserved treatment ought to come: the promised performance from the promisor, expressions of gratitude from the beneficiary, and compensation from those who were responsible for our loss or harm. In addition, it seems we may presume that if one has a claim of desert, the deserved treatment might be claimed in much the same way as a promisee can demand the promised

<sup>67</sup> Cf. 2.6.

<sup>68</sup> See 3.4.

performance, or the victim compensation. If this is correct, then the *pro tanto* duties of others are also a *pro tanto* basis of desert.

**4.6** But here is why I think this account of entitlement as a basis of desert is unpersuasive. First, there is a clear conceptual distinction between legal entitlements and desert. Imagine in Nazi Germany there are laws that entitle some German citizens to dispossess Jewish citizens of their businesses and livelihood. I take it many will find it hard to believe that just because some citizens are legally entitled to deprive others of their possessions that they deserve to have the possessions of others. One can be legally entitled to something without deserving it.<sup>69</sup> While the account does not deny the distinction, the account invites confusion. (Also see 4.2.)

Second: that the *pro tanto* duty of some is a *pro tanto* basis of desert for others seems rather implausible when we consider paradigm cases of desert. Recall our example of the diligent but unlucky person who deserves some success. Intervention would not only undermine his or her achievement, but also there is no one who can be said to have a *pro tanto* duty to provide him with what he or she deserves.<sup>70</sup> And generally speaking, that one is deserving of some treatment does not entail a claim-right to the deserved treatment. This is particularly clear in the case of punishment. As many have pointed out, though criminals may have an interest in being recognized as responsible agents, it is odd to claim criminals have a claim-right to be punished.

Third: the account gets wrong the proper basis of desert both in the case of gratitude and repair. In the case of gratitude, benefactors deserve gratitude not because the beneficiary has a duty to repay a debt of gratitude, but benefactors deserve gratitude for their beneficent acts—and in some cases their benevolence. (See 2.6.) To think otherwise would be taking the metaphor of a debt too seriously. And in the case of repair, while it is tempting to think an undeserved burden or loss is what triggers and determines the content of the duty of repair, and that the loss suffered is a basis of desert, this is a mistake. Let me explain.

In many cases of repair, no loss at all is involved. And contrary to what many are inclined to believe, undeserved burdens or loss does not determine the content of the duty of repair. Not only is loss not a basis of desert in most cases, but also reparative measures, of which compensation is but one, has very little to do with desert.

<sup>69</sup> I don't mean to imply moral desert is a legitimate basis of ownership. If some Germans during that time were complicit in Nazi activities, making them better off would be contrary to desert.

<sup>70</sup> This does not however commit one to the axiological thesis. See ch.2; also see 1.3.

To see this, suppose I promise my nephew to take him to the beach next Sunday. Something comes up and I am unable to take him.<sup>71</sup> Notice, that my nephew did not go to the beach on Sunday need not involve any loss to him—imagine my nephew was grounded for the whole weekend. So we need to distinguish between the mere absence of a promised benefit and a genuine loss. And the mere absence of a promised benefit, in this case, is sufficient to incur a duty of repair. This suggests it is not the alleged loss that gives rise to a duty of repair; rather, it is the broken promise. And while it is tempting to think the content of my reparative duty is necessarily determined by the content of my promise, this too would be a mistake. One can easily imagine that if I were to take my nephew to the movies the following Friday, I would have fulfilled my duty of repair. So in order to determine the content of my duty of repair we must look elsewhere.<sup>72</sup> In short, rather than being a basis of desert and determinative of my reparative duty, the alleged undeserved burden or loss is in fact merely incidental to the whole exchange.

But further notice if the content of the reparative duty is independent of the content of the promise, then there is reason to think entitlements are independent of desert, insofar as it seems plausible that compensation is something deserved. And if it turns out that the duty of repair is also independent of considerations of desert, then we have reason to doubt compensation is in fact something deserved.

This example also helpfully brings to light a few further issues. First, even if the mere absence of a promised benefit is sufficient to ground a duty of repair, this does not yet show that undeserved burdens or loss as such cannot be a basis of desert. Second, even if loss is not a basis of desert, it may still seem plausible the treatment received when the reparative measures are taken are deserved, and, if so, we must ask on what basis? Third, if the content of my reparative duty is not determined by the content of my promise, then how is it determined? While formidable, I believe these difficulties are not insurmountable.

Can loss be a basis of desert? Here is one reason to think it cannot. Intuitively, my nephew deserves an apology at the very least for my not taking him to the beach. But what would I be apologising for? It seems unlikely that I would be apologising for his missed opportunity; a more plausible explanation is that I would be apologising for having broken my promise. But consider the following. Suppose John is driving home when all of sudden a kid appears out of nowhere chasing after a ball. There is no time for evasive action, and

<sup>71</sup> I'm assuming I have a good excuse, one which my nephew would readily accept.

<sup>72</sup> To think otherwise is to model the duty of repair after the law of contracts. Our investigation is instead normative. Even if the duty of repair is best understood in relation to the contract law, one would want to know what reasons there are for structuring the laws as we do.

the car runs into the kid leaving the kid fatally wounded. John feels terrible. In addition, he feels a deep need to apologise. Suppose John does apologise. It seems plausible, in this kind of situation, rather than a reparative measure, an apology is really just an expression of regret.<sup>73</sup> And while John might regret the fact that he was causally responsible for the accident, a more likely explanation is that John regrets that the child was killed in the accident.<sup>74</sup> Furthermore, it seems the child's parents deserve an apology in light of their loss, in addition to sympathy and compassion from others. And if in such cases we believe apologies, sympathy and compassion are deserved, then it seems loss can be a basis of desert. For this reason, I tentatively conclude loss can sometimes be a basis of desert.

But that sympathy and compassion are deserved is clearly independent of considerations of repair. And while apologies are sometimes part of the reparative process—when they deescalate the situation, make the injured party feel better, or help both parties move on—they are deserved for the (sometimes alleged) breach of duties, and this sets apologies apart from other reparative measures one might think. And while compensation is often claimed to be deserved, I believe this a mere symptom of legalistic thinking. Observe that most reparative measures taken are nonmonetary in nature, and often payment is thought inappropriate. Suppose Charlie promises Dani to meet her for coffee this afternoon, but something comes up and Charlie is unable to make their appointment. It would be odd for Charlie to offer Dani £10 the next time they meet.<sup>75</sup> And it would be even more odd for Dani to demand that Charlie buy her dinner. This suggests reparative measures cannot be claimed as a matter of right. Instead, the duty of repair lies wholly with the person who breached their original duty. Given that most reparative measures are taken to sustain an ongoing relationship, it seems unlikely that the treatment received when reparative measure are taken is best thought of as deserved as compensation for some loss.<sup>76</sup> And if, as the foregoing suggests, in most cases of repair loss is not a basis of desert of compensation—or any reparative measures more generally—and there are no other considerations that could plausibly serve as a basis of desert, then the duty of repair has very little, if anything, to do with desert.<sup>77</sup>

<sup>73</sup> I'm not denying that apologies can be a reparative measure; in fact, they often are.

<sup>74</sup> Also see Gardner 2018: 139.

<sup>75</sup> For an insightful discussion of why pecuniary measures are appropriate see Gardner 2018: ch.3 sec.4.

<sup>76</sup> That said, in the cases of the breach of a duty of non-injury loss does seem to play a greater role. But even then, one might argue the breach of this duty constituted an interruption in the injured party's life and the reparative measure taken are taken with the aim of enabling the injured party to get on with their lives.

<sup>77</sup> Many believe retributive justice is paradigmatically concerned with desert. Recall our subway train example. In that example, I am clearly not morally blameworthy for stepping on your gouty toe, yet reparative measures are appropriate. If so, then it seems the duty of repair is not really a matter of desert. It is not the case that I

Let's turn now to the question, how is the content of the duty of repair determined? Here is an attractive view: we look to the reason(s) that gave rise to the original duty.<sup>78</sup> To illustrate, suppose my niece has recently discovered the joy of singing. She believes she has some talent but is still uncertain as to whether she would like to pursue this avenue of opportunity as a possible future career. To show support I promise to take her to favourite jazz vocalist who happens to be in town for only one night. Come the day of the concert, something important comes up and I am unable to take her to the concert. My niece is rightly upset. Given I have broken my promise to her, it is now incumbent upon me to make it up to her (a duty of repair). What should I do? Recall the reason for my promise was to show support and encouragement for my niece's artistic endeavours. But since I was unable to take my niece to the concert that night, I still have reason to show my support for her endeavours. My primary duty (my promise) was to take her to see her favourite jazz vocalist, but since her favourite vocalist was in town for only one night, fulfilment of that duty is now impossible. Since the chance to take her to see her favourite vocalist is now past, my secondary duty (duty of repair) will involve the next best thing, namely, other ways of showing my support, say, by buying my niece recordings of her favourite vocalist or to take her to see her second favourite vocalist, or some other reparative measure which might show my support for her artistic endeavours.

Notice that the content of my duty of repair is determined by the same reason(s) which gave rise to my primary duty, namely, to show support and encouragement for my niece's artistic endeavours. True, my duty of repair is secondary, but 'secondary' only in the sense that fulfilling my primary duty is now impossible. And my secondary duty is a duty merely in the sense that I am now obligated to buy her recordings or take her to another concert or something else which would show my support. I say 'merely' because it seems implausible to claim that my niece has a claim-right to either the recording or another concert, or any other particular reparative measure I might take.<sup>79</sup> In other words, not only is the content of my duty of repair in this respect independent of the content of the promise,

have culpably wronged you and now you deserve payment for the wrong or injury I have caused. Also see MacCormick 1982: 215.

<sup>78</sup> This is Gardner's view. As he puts it: 'when a contract was breached or any other wrong was done to another person, the various reasons went unconfirmed to, and those reasons are still awaiting conformity. The question is always, what is the best conformity with those reasons that is still available? Whatever it is, that is now one's remedial or 'secondary' duty towards the same person.' Gardner calls this the 'continuity thesis.' Gardner's account can be profitably compared with Arthur Ripstein's account: while for Gardner reasons survive the breach, for Ripstein it is rights that survive the breach. See Gardner 2018: 102. See Ripstein 2016.

<sup>79</sup> Suppose I broke my promise to you to send you flowers on your birthday because I happened to be out of town. It would be odd to claim that in light of not having set you flowers, you can now demand that I take you to dinner.



but also the person to whom my duty of repair is owed does not have a claim-right to any particular reparative measure.<sup>80</sup>

What this brief digression has revealed is that neither can reparative measures—of which compensation is but one—be claimed as a matter of right nor is compensation, properly speaking, something deserved.<sup>81</sup> And here is why these observations are important. Recall the account of justice proposed in 4.5 simply assumes compensation is something deserved and tries to establish that entitlements are a basis of desert by analogy. It was suggested that the *pro tanto* duty of some is a *pro tanto* basis of desert for others, and that all three duties (fidelity, gratitude, repair) have this feature in common. But as we have just seen, a comparison with the duty of repair does not in fact support the claim that entitlements are a basis of desert. Neither does the *pro tanto* duty of repair confer a claim-right upon the person to whom the duty is owed, nor is the duty of repair much concerned with matters of desert. But that is not all. It seems to me further reflection on the duty of gratitude will show that a duty of gratitude also does not confer upon the person to whom the duty is owed a claim-right.

It is easy to slide from the idea of a duty being directed to the claim that the person to whom the duty is owed thereby acquires a claim-right. But this is a mistake. It is not the case that, when duties are directed, the person to whom the duty is owed thereby acquires a claim-right. Arguably, parents owe their children a duty of impartiality, but not by right. Parents are impartial not because impartiality constitutes a benefit to their children; rather, the duty exists because of the value in the parent-child relationship. A parent's duty of impartiality is constitutive of that relationship, i.e. being impartial is part of what it means to be a good parent.<sup>82</sup> That a duty has the feature of being directed does not entail the person to whom the duty is owed thereby acquires a claim-right.

The case of gratitude also attests to the truth of this claim. If I am the beneficiary of your good deed, I owe you a debt of gratitude. But my owing you this does not imply that you have a right to my gratitude. Indeed, for you to demand repayment, so to speak, would not be seen as in keeping with the spirit of gratitude. Again, to think otherwise it seems to me is to take the metaphor of a debt too seriously. Something similar can also be said in the case of apologies: though we are not always looking for an apology, but when we do, we

<sup>80</sup> The promisee only has a claim-right to the promised performance, which is now impossible.

<sup>81</sup> Strictly speaking, it seems to me compensation based on loss is something received only as a matter of legal rights.

<sup>82</sup> Also see Gardner 2018: 54.

want the apology to be sincere.<sup>83</sup> True, many do claim the one who has been wronged can demand an apology, but the idea of having a claim-right to an apology is paradoxical at best.<sup>84</sup>

Now one might object, perhaps like friendship, being the beneficiary of the act of others gives rise to a duty of gratitude or reciprocity, and the reason the duty to reciprocate exists is that, just as in the case of friendship, there is value in being in such a relationship with others.<sup>85</sup> However, it's hard to find anything valuable about being in a benefactor-beneficiary relationship, unlike, say, a parent-child relationship, friendship, or marriage.

True, in the case of friendship, one is often thought to have certain rights, say, the right to a friend not confirming salacious rumours about oneself.<sup>86</sup> And while standing on one's rights is in a way adversarial—i.e. a sure sign of the breakdown of the relationship is when rights-talk begins—this adversarial aspect of rights is not wholly inconsistent with friendship—e.g. sometimes the need to ease friction can be seen as a sign of commitment to the relationship. But in the case of gratitude, things are otherwise. That the benefactor has a claim-right, or can make demands, is plainly inconsistent with the spirit of gratitude and the benevolence which usually accompanies beneficent acts.

Also observe how much more natural it is to speak of gratitude as being deserved rather than the desert of some promised performance. I suspect one reason is that in the case of gratitude the benefactor is simply not in possession of a claim-right. Gratitude is not something that can be claimed as of right but deserved. And this is consistent with the general observation that that one is deserving of some treatment does not entail a claim-right to the deserved treatment.

In sum, while the duty of gratitude and the duty of fidelity share the feature of being directed, only the promisee has a claim-right to the promised performance. By contrast, expressions of gratitude are deserved and cannot be claimed as of right.<sup>87</sup> As the case of both

<sup>83</sup> As we have seen, an apology can be in order on account of the fact that my chance to fulfil my primary duty has passed and it is now a duty impossible to fulfil. Plausibly, one main function of apologies is to recognize that substitution is impossible in many cases, and sometimes apologising is the only thing we can do. And in some cases, as we have seen, the wrong is irreparable and no apology would suffice. Apologies in these instances are a mere expression of regret.

In addition to arguing that apologies demonstrate a sensitivity to unconfirmed reasons, Gardner thinks apologies are often used to deescalate situations of conflicts. As Gardner also points out, apologies can be part of the process of repair in that apologies can reassure the wronged party that the wrongdoer takes their duties to them seriously, and in some cases might make the wronged party feel better. See Gardner 2018: ch.4.

<sup>84</sup> Perhaps apologies are deserved, since failing to apologise is a sign of disrespect.

<sup>85</sup> Schmitz thinks the duty of reciprocity is independent of desert but is also a principle of justice. See Schmitz 2006; also see 1.3.

<sup>86</sup> Also see Scheffler 2010: 52.

<sup>87</sup> That a closer parallel exists between gratitude and desert than gratitude and entitlement is suggested by that fact that expression of gratitude ought to be proportionate to the benefit received, as punishment must be proportionate the seriousness of the wrong done. Nothing similar holds in the case of entitlements. Entitlements are not constrained by the requirement of proportionality.

gratitude and repair shows, one can have a directed duty without the other thereby acquiring a claim-right. And if the alleged parallel between the duty of gratitude and fidelity doesn't exist, we have another reason to think entitlement are not a basis of desert.

Here is one final objection. Suppose the *pro tanto* duty of others is a *pro tanto* basis of desert, such that the treatment one is entitled to, like gratitude and compensation, is deserved. Even so, entitlements, gratitude and repair are independent sources of reasons and are not genuine principles of desert. As Olsaretti puts it, desert-claims in these instances would amount to nothing more than 'rubber-stamp' claims.<sup>88</sup> Another way of putting the point is to say that on such a view 'desert' is being used merely in a weak or extended sense.

Suppose Alec has a faithful daughter and profligate son. Unfortunately, Alec dies before he has had a chance to revise his old will, which left the entire estate to his undeserving son; however, right before the funeral the son dies in a plane crash, and thus the faithful daughter inherits Alec's estate. In this example, the deserving daughter gets what she deserves, but she receives the inheritance by way of entitlement. Here the daughter both deserves and is entitled to the inheritance. One might say the daughter both deserves the inheritance because she is morally deserving and because she is entitled to it. Now it may seem odd that the same treatment can be deserved on two different bases. But this is not objectionable because there are clearly cases where one can have two different duties with the same content. Suppose you and I carpool to work, and it is my responsibility to drive on Tuesdays. Last week, I happened to lose track of the days of the week, and as a result we were both late for work. This week you call me on Monday to alert me to the fact that you will be taking your own car tomorrow. Come Tuesday, I receive a call from you asking for assistance. Your car has broken down and I happen to be just a few blocks away. Clearly, I ought to help you. In this instance, I have two duties that just happens to have the same content: I ought to help you not only on account of a duty of repair, but also because I can help you at very little cost to myself. So it seems you both deserve my help because you are in need and because I have reason to make up for my mistake the week prior.

But here is why this response is unpersuasive. While the deserving daughter example involves a genuine desert claim, the ride to work example does not. Moral desert, entitlement, repair, and need are all independent sources of reasons. Apart from the first on the list, the rest cannot be considered genuine reasons of desert. They are different duties because they stem from different sources. The ride to work example makes salient the fact that justice might require a certain outcome, but it is not always the concept of desert that informs what

<sup>88</sup> See Olsaretti 2003:196.

justice requires. In other words, justice is concerned not only with desert. In addition to desert, as we have seen, justice is sensitive to other considerations, such as, entitlements.

**4.7** It is sometimes claimed entitlements are a basis of desert, and, if so, then the treatment to which one is entitled is also a matter of desert, i.e. institutional desert. And if this is correct, then it is tempting to think most desert claims are institutional and that what is owed to others is often owed as a matter of right. But this is misleading. Often what is owed to others need not be owed as a matter of right. We also owe it to others to treat them as they deserve. In short, justice requires giving each their due, where 'due' can be interpreted as deserved treatment. But justice is concerned not only with desert, but also, at least, with a respect for rights.

## *Moral Desert and Retributive Justice*

Generally speaking, most would agree we ought and deserve to be treated in the way we treat others.<sup>1</sup> When we are met with acts of kindness, it is not only appropriate to feel gratitude, but there is also a natural tendency to reciprocate and to act in the belief that our benefactors deserve a good turn. And when we are harmed by certain unjustifiable and inexcusable acts of others which betray their ill-will toward us, it is natural to feel resentment and indignation, which is accompanied by a tendency toward blame or condemnation, a tendency toward holding the other to account for the harm they have caused. While on the one hand we are quite confident in our belief that treating others as they treat us is not only good policy, but also that the good or ill treatment itself is deserved, but when asked whether criminals deserve to be punished, many are much less confident whether punishment could be deserved.

Surprisingly, many believe punishment has very little to do with desert. One view is that the only reason why we punish is to satisfy our desire for revenge, a desire which we should by now recognize as not only primitive and barbaric, but also a desire we have good reason to disassociate ourselves from insofar as it involves taking pleasure in seeing the wrongdoer suffer.<sup>2</sup> Those who hold this view tend to argue it would be best to do away with punishment altogether. A second view is that we punish criminals not because they deserve punishment, but for the sake of public safety. Punishment on their view is only about public safety or deterrence, and not desert. A third view is that one instance of harm can hardly make permissible another instance of harm. Insofar as punishment involves the deliberate infliction of suffering, it is unclear how desert can justify punishment.<sup>3</sup> And what all three views seem to have in common is that each denies wrongdoers can deserve the harm or suffering involved in punishment. In fact, all three views seem to rest on the proposition that no one can deserve to suffer. But is it true that no one can deserve to suffer?

<sup>1</sup> Of course, what is often referred to as the golden rule and its various formulations cannot be taken too strictly. If I am a charitable person and give away my life savings this does not obligate others to reciprocate. See Hooker 2005.

<sup>2</sup> See 1.5.

<sup>3</sup> Even in cases of self- or other-defence, we don't think the harm an aggressor suffers is deserved, rather harm is only justified in order to avert greater harm.

Now one might arrive at the proposition that no one can deserve to suffer by way of thinking about the problem of free will. Some argue we don't have the kind of freedom of will required for moral responsibility.<sup>4</sup> If so, then strictly speaking no one can deserve either to suffer or to fare well. They argue the lack of free will precludes the possibility of desert. While whether the lack of free will precludes the possibility of desert is certainly an important and interesting question, this question will not be my concern in what follows. Since my interest is not in whether the lack of free will precludes desert, I will simply assume we have the kind of free will needed to deserve to fare ill or well and pursue a deeper understanding of what our commitments are in terms of desert. What I am interested in is what justifies the claim that no one deserves to suffer and whether a commitment to this claim precludes one from adopting any form of retributivism, the view that criminals deserve to suffer.

Notice, to claim no one deserves to suffer does not amount to a wholesale rejection of desert. In fact, the proposition is perfectly compatible with the claim that the virtuous deserve not only to fare well but also deserve to be better off than those who are vicious. The idea that no one deserves to suffer is even compatible with the idea that some people are currently faring at a higher level of welfare than they deserve. So if those who claim no one can deserve to suffer—to save words, I will henceforth call them N-theorists—do *not* mean to imply we lack the kind of free will necessary to be deserving, it is worth asking what they actually believe about desert. Do N-theorists believe that, while some are more deserving of faring well than others, no one can deserve to suffer? Well, why not? If no one deserves to suffer, is unconditional love required for even those who deliberately bring about the evil we see in this world? What does a commitment to the proposition that no one deserves to suffer imply about what vicious people deserve? As we shall see, often it is not at all clear what N-theorists mean when they claim no one deserves to suffer.

**5.1** Of course, not everyone believes no one deserves to suffer. In fact, I presume quite a lot of people believe at least *some* people deserve to suffer—let's call them S-theorists. And I gather many others are at least open-minded to the idea the *criminals* deserve to suffer, i.e. they deserve to be punished. So what is so objectionable about the thought that some people deserve to suffer? I suspect one reason why some are hesitant is that claiming some people deserve to suffer sounds vengeful. To say criminals deserve to suffer can sound as though we punish only in order to get revenge. True, some people may be seeking revenge, but often,

<sup>4</sup> See Dennett and Caruso 2021; Parfit 2011: Ch.11.

for victims and their loved ones, revenge may not be the only thing desired, or even the most important. Instead, many also seek retribution or justice.

To confuse revenge or vengeance with retribution is all too common.<sup>5</sup> Closer consideration will show that, while vengeance is driven by resentment, and at times what can seem unbounded anger, retribution is instead driven by a sense of justice. Retribution is different from vengeance in two crucial respects: first, retribution is punishment carried out impartially by a political community for particular crimes which are defined by laws of that community; and second, the punishment for the crime committed must be proportionate to the nature of crime. (Just what is meant by ‘proportionate’, I will return to shortly.) Vengeance, on the other hand, is private justice without limit.<sup>6</sup>

Imagine a man who moves to a small town is accused of molesting children. This man is then snatched by a few private individuals and held captive in the basement. For weeks the vigilantes torture this man before they are finally apprehended by the police. A moment’s reflection will show the vigilantes’ actions had very little to do with justice. Even assuming the accused actually is guilty, such private acts of vengeance are clearly against the law in almost every jurisdiction. Precisely because they show no concern for the rights of the accused, vigilantes are outlaws.

Justice, by contrast, requires impartiality.<sup>7</sup> Any legitimate criminal justice system aims to protect the rights of all, both the victim and the accused, equally.<sup>8</sup> In this respect, retributive justice is public justice. In addition, state punishment is warranted only when there is transgression of declared law, law which it is incumbent upon all members of the community to comply with under threat of punishment. It is hard to imagine any jurisdiction would have laws which ignored serious harms like assault and battery, rape, and murder. I take it these moral wrongs are what the criminal law was initially created to address and prevent.

And importantly, retribution requires also the punishment be proportionate to the crime. While retribution is often associated with ‘an eye for an eye and a tooth for a tooth’

<sup>5</sup> In common parlance, retribution is often thought synonymous with revenge. After the US’s withdrawal of troops from Afghanistan, reporters often speak of the Taliban seeking retribution. Since the Taliban are still officially considered terrorists, and given retribution is often associated with *divine* retribution, perhaps for these reasons reporters thought this word apt. I am, however, not suggesting the Taliban are seeking justice.

<sup>6</sup> See Nozick 1981: 366-370; also Brooks 2012: 17.

<sup>7</sup> The kind of impartiality I have in mind here often goes by the name of formal justice, which involves treating like cases alike and different cases differently. There is generally a presumption of equality before the eyes of the law, prior to conviction or acquittal. There can of course also be material or substantive injustice, even when rules are applied impartially: there could be unjust rules: for instance, up until fairly recently, martial rape was not illegal, and sadly in many countries is still not. My point here is just that retribution is carried out by a third-party which rules out potential bias. Also see Feinberg 1973: 99-102.

<sup>8</sup> Since many states lack the political stability to ensure due process, justice remains unavailable to many.

(the Code of Hammurabi's *lex talionis*), on reflection this cannot be what one means by proportionate punishment: e.g. justice is hardly advanced by raping the rapists. Instead, proportionality requires the punishment be proportionate to the wrongdoer's desert, where desert is established by reference to the crime committed. But asked when punishment is proportionate, or what justice requires on this front, we are met with some difficulty. We notice instead that 'injustice wears the trousers', as Lucas once put it.<sup>9</sup> Often, we discover what justice is by considering occasions of injustice. For instance, life-time imprisonment for auto theft is clearly disproportionate, as is death for pickpocketing. Perhaps the retributivist position is best understood in contrast to the consequentialist approach to punishment. While consequentialists believe ever harsher sentences are justified so long as greater deterrence will bring about better consequences than less deterrence (where the harm to those punished is counted in the assessment of the consequences), retributivists believe the wrongdoer's desert constrains the pursuit of good consequences. For retributivists, punishing anyone more than deserved is unjust. As a matter of jurisprudence, the punishment deserved is always established by declared law.

Now one might think, given the centrality of desert for retributivists, they must also believe there is always injustice when criminals are punished less than they deserve. But in fact, retributivists believe when criminals are punished less than deserved such an outcome may *not* always be unjust. Most retributivists are pluralists.<sup>10</sup> Contrary to appearances, retribution is not incompatible with mercy, for without desert there would be no reason to be merciful.<sup>11</sup> At the core of retributivism is not only the thought that what justifies punishment is desert, but also the thought that there is a limit to how much suffering (punishment) one can deserve for wrongdoing.

**5.2** Since S-theorists believe some deserve to suffer, I take it that they will be attracted to some form of retributivism. But before we consider further the retributivist position, I would like to consider one common objection often made against the idea that some deserve to suffer. As suggested in 5.1, some argue the only reason why we punish is to satisfy our need

<sup>9</sup> This expression derives from J.L. Austin. See Lucas 1980: 4

<sup>10</sup> One can be pluralist about morality or justice, as we have seen in ch.4. Pluralists about morality might claim that, in addition to the intrinsic value of well-being or welfare, giving people what they deserve is also of intrinsic value. Both welfare and desert, they claim, are of moral value. Of course, pluralists about morality need not restrict themselves to only welfare and desert. There might be other things they believe have moral value, say, equality. Pluralists about justice, as we have seen, might claim justice is sensitive not only to claims of desert, but also to claims of need and fairness. Again, these might not be the only considerations justice is sensitive to. Now retributivists might be pluralist in both senses. But the kind of pluralism we are interested in here mainly is pluralism about morality.

<sup>11</sup> In this way, the practice of punishment makes the pursuit of other values available. See Tasioulas 2006.



for revenge. These objectors seem to assume those who defend the desert of punishment must harbour a desire for revenge. Yet it is by no means clear a commitment to the claim that some deserve to suffer entails the desire for revenge.

Unlike vengeance, the aim of retribution is not to see the wrongdoer suffer. The aim of retribution is instead to see justice prevail. Retribution is driven by a sense of justice which has close ties with resentment. Vengeance by contrast is often driven by anger.

While some take resentment and anger to be synonymous, I believe these reactive attitudes can be distinguished.<sup>12</sup> Resentment, unlike anger, includes the thought of having been wronged by someone in some respect, whereas anger need not. For instance, while I might be angry at my PC for malfunctioning, or my cat for dragging dead mice into the house, I can't be said to resent either the computer or my cat. In contrast, I might resent my friend for betraying my trust, or the pickpocket who stole my wallet, or the person who sent me to the hospital by running a red light. I resent these individuals for wronging *me*, namely, by betraying my trust, or taking my personal property, or recklessly causing me serious bodily harm. While we are also certainly angry with people, it is not always clear it is in fact wrongdoing that occasions the anger.<sup>13</sup> Since resentment necessarily involves the thought of wrongdoing, this reactive attitude is often considered a retributive emotion.

Closely tied to resentment is indignation. Like resentment, indignation also involves the thought of wrongdoing. While resentment requires that I be the victim, indignation need not.<sup>14</sup> For instance, I might be indignant about my friend being betrayed by a mutual acquaintance, or about day-laborers being underpaid, or about police brutality. Moreover, it also seems possible I might remain indignant about some harm done to me, even when I have given up resentment in the spirit of forgiveness.<sup>15</sup> Like resentment, indignation is tied to thoughts of right and wrong.<sup>16</sup>

<sup>12</sup> See Shoemaker 2015; Nussbaum 2016.

<sup>13</sup> Notice, if resentment is defined as merely wishing ill of others, then anger and resentment might not be so readily distinguished. I am uncertain whether resentment involves ill-will toward others. Some argue forgiveness involves overcoming resentment in this sense, but forgiveness is still compatible with indignation. On this view, indignation is not restricted to third parties. See Gerrard and McNaughton 2010.

<sup>14</sup> See Strawson 1962.

<sup>15</sup> See Gerrard and McNaughton 2010; cf. Nussbaum 2016.

<sup>16</sup> Feinberg provides a nice example of this involving unfair discrimination. Imagine an employer who pays all his or her employees more than the current market rate, such that everyone is getting more than they non-comparatively deserve, but for no good reason pays some a lot more than others. Feinberg writes: 'It is natural enough to respond to hurt with anger, but when hurt seems to have been arbitrarily inflicted in the manner characteristic of unjust discrimination, anger is transmuted into moral indignation. Because the treatment is offensive to reason as well as hurtful, responsive anger borrows some of the authority of reason; it becomes righteous and impersonal, free of self-doubt, and yet disinterested and free of mere self-preference. This moralized anger is by no mean peculiar to discrimination among the various injustices, whether comparative or non-comparative, whether actions, rules, or judgements. Perhaps more than anything else, it distinguishes the

And while anger might involve a desire to see the another suffer, when one feels resentment or is indignant about something, the suffering of the wrongdoer lies in the periphery. At their core, resentment and indignation aim to have particular contravention of moral norms or expectations recognized, and the sense of injustice vindicated. Rather than a desire to see others suffer, the desire is instead for the recognition of wrongdoing, recognition from others of the harm or wrong done (vindication), and in particular by the wrongdoer. Wrongdoing makes remorse and feelings of guilt appropriate from the perspective of the offender. In short, resentment and indignation are tied to a disposition to hold others responsible for their wrongdoing, while guilt and remorse is a recognition of wrongdoing from the point of view of the offender.

Notice also, often even those who seek revenge believe their task incomplete until the wrongdoer has recognized they are made to suffer *for some harm* they have brought about *to some victim*. Otherwise, revenge quickly shades into mere retaliation.<sup>17</sup> That a person who seeks revenge would be left unsatisfied if the wrongdoer were to refuse to recognize the wrong suggests perhaps what is in fact driving this person is not a desire to see another suffer, but rather something else instead. Perhaps the person is mistaken about their own motives and is instead driven by a sense of justice. It seems to me more likely than not what this person desires is that justice prevails.<sup>18</sup> Resentment is just as likely to be mistaken for anger, as anger for resentment. If this is correct, then perhaps far fewer people take satisfaction in seeing others suffer than some would have us believe. Unlike revenge, retribution has little to do with the suffering of wrongdoers.

Of course one might still insist the only reason why one would think some people deserve to suffer is because they want to see the wrongdoer suffer. But a moment's reflection shows this cannot be true. For instance, suppose at a party a friend of yours betrays some embarrassing secret about you in order to get a laugh from others at the party. Undoubtedly, you would feel embarrassed, betrayed, and resentful. You resent the fact that your friend has broken the bond of trust between you. Does this mean you also desire to see her suffer? It is hard to believe there is any necessary connection here. If anything, you are more likely to see this betrayal as a reason to distance yourself from your friend for the time being, and the reason for this distance is to signal to your friend that there is something wrong, something to be repaired, between the two of you. Of course, the betrayal might be so serious you

apprehension of injustice from awareness of other kinds of wrong or harmful conduct.' See Feinberg 1980: 288. Also see Hooker 2017.

<sup>17</sup> I take it retaliation is just as much, if not more, driven by the need to deter than a desire for revenge.

<sup>18</sup> The film *Operation Finale* directed by Chris Weitz captures this sentiment.

decide to break off your friendship with this person, but even here, it's hard to believe you desire to see your friend suffer.

Or imagine you are the head of the PTA (Parent-Teachers Association), and your child has been sent home for bullying and hitting other children. You might resent your child for being a bully and for putting you in a tough spot at the next PTA meeting, but it is very hard to believe you desire to see your child suffer.

But of course it might be suggested things are otherwise with strangers. True, anger and resentment place some distance between you and wrongdoer, but there is no reason to conclude from this such emotions places an unbridgeable gulf between us and *them*. And even if we suppose this natural gulf is what misleads some to believe people can deserve to suffer, this claim is logically independent from the claim that we *must* desire the suffering of others when we resent others for causing us harm. It is one thing to claim some deserve to suffer, and yet another to claim the desert of suffering entails a desire to see others suffer.

**5.3** But suppose for the sake of argument that N-theorists do not fail to distinguish between revenge and retribution, between anger and resentment, and do not attribute to S-theorists a desire for revenge. Instead, N-theorists object to the claim that some suffering is unobjectionable. Perhaps N-theorists believe suffering cannot be deserved because all suffering is to be avoided if it can be helped and all suffering is always objectionable. Yet, it is not at all obvious avoiding all suffering is possible. Nor is suffering always the only morally relevant consideration. Some avoidable suffering may be unobjectionable.

Consider again our case of betrayal. Your friend has made you the laughingstock of the party. After the incident, you distance yourself from your friend. Over time your friend starts to realize something is wrong. In addition, she begins to get cold shoulders from others among your shared companions. She is pained by being alienated from the community and begins to feel shame, guilt, and remorse. It seems to me your friend *deserves* to suffer the pain of alienation, shame, guilt, and remorse, even if these could be avoided.<sup>19</sup>

In addition, there would also be something odd about others counselling your friend to simply forget about the incident before addressing the betrayal. Such counselling not only shows insufficient regard for the person harmed—namely you—but also arguably betrays a moral failing in these friends. And were these friends overeager in imploring you to forget all about this incident, you might rightly feel betrayed by them as well.

<sup>19</sup> Also see Bennett's wonderful article on the varieties of retributive experience. See Bennett 2002.

5.4 But perhaps N-theorists do not mean to claim all suffering is objectionable, or even that all avoidable suffering is always objectionable.<sup>20</sup> Perhaps what they really mean is merely that there is always a reason to aid.

Suppose Alice and Brett both work with you at a chemical lab. One day as you are about to leave there is a huge explosion. You rush to the scene and see both Alice and Brett are lying next to each other in serious pain. Both Alice and Brett have helped you in the past many times before in various ways. You happen to have a half dose of morphine which would partially ease the pain of either one of them before the medic arrives. Looking around you discover what caused the accident was that the gas was not properly shut off, which was Brett's responsibility. Since Alice is innocent, you give the dose to Alice.<sup>21</sup>

Now one might think that, since no one can deserve to suffer, in failing to aid Brett you must have acted on the assumption that Brett deserves to suffer. But again, it is hard to find a necessary connection here. Perhaps nothing could be farther from the truth. By stipulation, you could have helped only one person. And since Brett is culpable, to think he is less deserving of your help because he is culpable is not unreasonable.

Furthermore, just because you decided not to help Brett since he is less deserving than Alice does not commit you to the belief that Brett deserves to suffer. N-theorists sometimes seem to suggest any reduction in welfare implies one must believe those who are not helped deserve to suffer. But surely it is a mistake to identify cases of failing to aid with the desert of suffering. After all, there are many cases in which due to lack of resources we are unable to help everyone, e.g. cases of natural disaster or war. And it's hard to believe anyone would think those who we were unable to help deserve to suffer.

And even if you helped Alice because Brett is less deserving, this does not rule out the possibility that had you a second dose, you would have reason to give it to him. Helping Alice because she is more deserving than Brett is compatible with thinking there would still be reason for you to give the extra dose to Brett if one were available. While Brett may be less deserving, Brett is not undeserving.

But now suppose you are new to the job and have no prior connections to either Alice or Brett. And since you have been in the office, you have observed Alice often willingly offering her help to others, whereas Brett always goes out of his way to avoid having to help others. Same as before, there is an explosion because Brett didn't shut off the gas; but this time Brett deliberately left the gas on hoping an explosion would put Alice in the hospital

<sup>20</sup> We return to the question whether all avoidable suffering is always objectionable again in 5.13.

<sup>21</sup> This example is from Kagan, with some details slightly modified for illustration. See Kagan 2012: ch.2.

because Alice wouldn't date him. Further suppose you know this, and you have two half doses of morphine, where one dose would partially ease the pain and a second dose would completely eliminate the pain until the medic arrives.

Even in this scenario, if you were to give both doses to Alice, it is not at all clear in doing so you would act in the belief that Brett deserves to suffer. Alice might just be more deserving of help than Brett. But one might also think since Brett deliberately tried to hurt Alice, he deserves not to be helped. Moreover, one might think even giving him one of the two doses would be uncalled for because he doesn't deserve your help. Rather, given his high degree of culpability, he deserves to suffer the pain the explosion caused him, and even just giving him one dose would be making him better off than he deserves to be. So perhaps here we discover the contrast we are after between N-theorists and S-theorists. While S-theorists believe Brett does not deserve aid, N-theorists believe Brett still deserves help.

In this second scenario, N-theorists will likely insist that, since Brett cannot deserve to suffer, he must be given a dose. While some S-theorists might think we have reason not to give Brett even one dose, N-theorists will deny this. For -N-theorists it would be wrong not to aid Brett.

In sum, N-theorists often neglect to distinguish cases of failing to aid, not deserving to be helped, and deserving not to be helped. For this reason, they are likely to attribute to S-theorists the belief that, even in cases of failing to aid, those not helped deserve to suffer, which really just amounts to a misunderstanding. S-theorists do not believe those who they could not aid must deserve to suffer. Instead, N-theorists and S-theorists differ over the question whether there is reason to aid Brett in this second scenario. N-theorists insist it would be wrong not to aid Brett, while S-theorists deny refusing to aid is always wrong.

Now N-theorists might also point out that in cases of emergency, such as our chem lab example, considerations of desert are simply irrelevant. To see this, imagine you are an ER (emergency room) doctor. Two car-accident patients are rolled in whose life are both in jeopardy and are both in equal need of assistance. One might think just because one of the patients is responsible for the accident it is not the case that there is less, or no reason, to assist the patient who is responsible. No one deserves to suffer. And even if we are forced to choose, it is often thought the right way to proceed in such cases is by either triage or first come first serve basis, and not desert.

Even so, it should be observed N-theorists need not reject the idea that those who are less culpable are more deserving of benefits. When we consider cases where the welfare of those involved are not precariously threatened, but instead are above a certain threshold,

it quickly becomes evident N-theorists can and probably do accept not only that some are more deserving than others, but also that we have more reason to benefit those who are more deserving over those who are less deserving.

To see this, suppose for Christmas you give your two children a bicycle. The older one spends the morning assembling the bike, but when it comes time to decide who should have the bike for the rest of the day, the younger one argues that, since she has already promised her friends a good time bike riding, she should be the one allowed to use the bike for the rest of the day. Intuitively, the older one deserves to have the bike for the rest of the afternoon. To argue that, since no one deserves to suffer the younger one should get the bike is simply absurd.<sup>22</sup> Both children are equally entitled to use the bike and to describe the younger one's (or the older one's) not having use of the bike for the rest of the day as a case of suffering is simply comical.

In short, there is no reason for N-theorists to deny at higher levels of welfare considerations of desert provide us reason to benefit those who are more deserving. To claim that no one deserves to suffer does not commit one to ruling out considerations of desert all together.<sup>23</sup> Despite their differences, we must not overlook the fact that N-theorists and S-theorists might also share an important commitment, namely, that there is more reason to benefit the more deserving.

Yet despite this shared commitment, there are still differences. While N-theorists claim there is always reason to aid, S-theorist believe in some instances it may not be wrong to refuse aid or benefits on account of desert. However, as we shall see in the next section, that it may not be wrong to refuse aid or benefit in some cases does not commit the S-theorists to the claim that in such cases there is no reason to aid or benefit.

**5.5** Since N-theorists do not rule out the idea that some can be more deserving than others and most likely also believe we have less reason to benefit those who are less deserving, the difference between N-theorists and S-theorists must lie elsewhere. Recall that in our chem lab example, I said that if one had two doses of morphine, N-theorists would insist at least one of doses should be given to Brett even if he is culpable while S-theorists might disagree. Let's look more closely at this point of disagreement.

<sup>22</sup> I'm also assuming the younger one would be slightly more upset than the older and that it would be wrong not to bring about a state of affair which minimized suffering.

<sup>23</sup> Recall we have set aside the question whether considerations of desert are ruled out given we lack the kind of free will necessary for desert.

The best way to get clear as to what is at issue is perhaps by thinking through the issue with the help of visual representations. The use of graphs to gain a better understanding of desert was first used by Fred Feldman then developed extensively by Shelly Kagan.<sup>24</sup> Both seriously entertained the thought that it is a good thing when people get what they deserve. Both thought that a state of affairs in which people have what they deserve is better than one in which people do not. While they disagree as to how considerations of desert contribute to the overall value of a state of affairs, they share the belief that people getting what they deserve is a good thing—what I have called the axiological thesis. And while there are subtle and important differences in the way in which they used their graphs, for the moment let's consider the ideas they share and what this might imply about the disagreement over whether Brett should be given even one dose of morphine and what reason there could be not to give him even a single dose. Thinking through this example will also help us see the core differences between N-theorists and S-theorists.

But before continuing, let's set aside for the moment two important issues: first, whether it is in fact a good thing when people get what they deserve, and second, whether aid can be deserved. As argued in ch.2, too hasty a commitment to the axiological thesis might be a mistake. Nonetheless, the points I make in the following sections do not depend on the truth of the axiological thesis. Likewise, it might be claimed, unlike income, aid is not something that can be deserved. As we saw in ch.4, philosophers disagree over whether need is a basis of desert. Again, for the sake of argument, let's just assume needs are also a basis of desert, as nothing said in this chapter hangs on this assumption. In what follows I will simply assume it is not only a good thing that people get what they deserve, but also that people can deserve aid. And since, as we have seen, both N-theorists and S-theorists share in the belief that some can be more deserving than others, this is what we want to capture.

We might illustrate these ideas as follows.



Figure 1

<sup>24</sup> Feldman attributes his use of the graphs to Michael Zimmerman. See Feldman 1997: 174.

In Fig. 1, the x-axis represents increases or decreases in the level of welfare. Point A represents a person at 10 units of welfare, while point B a person suffering -15 units of welfare.<sup>25</sup> The y-axis represents the amount of moral value from the point of view of desert. Assume the person represented by point A deserves to be at 10 units of welfare. Since it is good thing that people get what they deserve, the unit along the y-axis is also positive, here 10 units of moral value. What these 10 units of moral value represent will become clear as we proceed.<sup>26</sup>

Since both Alice and Brett in our original description of the chem lab explosion were not vicious people, we can assume they both deserve to fare well. Given this assumption, we can focus our attention on the upper right-hand quadrant. Points that fall in this quadrant are all individuals doing well in terms of welfare, and no one is suffering any pain. Just prior to the accident, let's assume that both Alice and Brett were at 10 units of welfare, but after the accident both are 0 units of welfare. Consider Alice's case first. (See Fig. 2.)

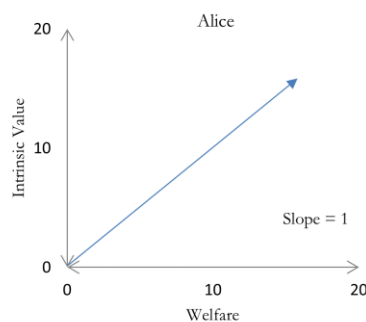


Figure 2

We can trace Alice's drop in welfare from 10 units to the origin which forms a line, which we might call Alice's desert line. Recall Alice is completely innocent with regards to the explosion. Since Alice is innocent, let's assume one unit of welfare does just as much good in terms of the moral value of desert, i.e. the slope of Alice's desert line is 1. If Alice deserves to be at 10 units of welfare, then the suffering Alice experiences is undeserved. And if the morphine could prevent Alice from dropping to 0 level of welfare, then giving her the dose

<sup>25</sup> Units are assigned merely for concreteness and clarity of presentation. I am not suggesting precision.

<sup>26</sup> I here follow Kagan's use of graphs. The difference between Kagan's use and Feldman's will be made clear in the next section.



would bring about 10 units of moral value, i.e. the amount of good you would bring about in terms of desert.

Now since Brett is at least partly responsible for the explosion, we need a way to capture this difference in culpability between Alice and Brett. We can capture this difference using the concept of a slope. Since Brett is somewhat culpable, any improvement in his welfare would be less good in terms of desert, i.e., it is less good from the point of view of desert for Brett to be at 10 units of welfare than Alice. To capture this, we can assign a gentler slope to Brett's desert line. So for Brett, every unit of increase in welfare is, say, half the increase in terms of moral value than for Alice. (See Fig.3)

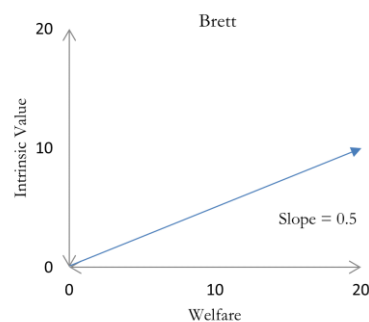


Figure 3

What this means is that aiding Alice by 10 units of welfare would bring about 10 units of moral value, while aiding Brett would only bring about 5 units. (See fig. 2 and fig. 3.) For this reason, you would make the situation better from the point of view of desert by giving Alice the dose of morphine than by giving it to Brett. And if we can only help one individual, we should choose Alice since it would do more good since she is more deserving of aid than Brett. Another way of putting the point is to say: given there is a short supply of painkillers, if we had to short-change someone, it is better to short-change the less deserving. To use Feinberg's pithy phrase, 'fault forfeits first'.<sup>27</sup> Since Brett is at least partly responsible, he goes to the back of the line.<sup>28</sup>

Again, that we have more reason to help the more deserving is something N-theorists can accept. After all, what is being claimed is merely that it is *better* to help Alice than Brett when there is limited supply. One need not make the further claim that there is no reason to help Brett. If another dose were available with the same efficacy, giving one dose to each

<sup>27</sup> See Feinberg 1970: 218; also see Kagan 2012: 24.

<sup>28</sup> Of course, being at the end of the line does not mean one is no longer in line. Those who foist the belief onto S-theorists that those who one happens to fail to aid deserve to suffer seem to make this mistake.

would improve the state of affairs by 15 units of moral value, and yet it still remains true that it is better to help Alice than Brett. Even if aiding Brett does less good than helping Alice, it still makes the overall state of affairs better. (He is after all only partially responsible.) That it is better to help Alice than Brett is something N-theorists and S-theorists can agree on.<sup>29</sup>

We turn now to the difference between the two views. In the second scenario described, we said Brett *deliberately* didn't shut off the gas hoping to send Alice to the hospital. It was suggested that S-theorists believe it would not be wrong to refuse aid in this case, while N-theorists believe not aiding would be wrong. But notice, there might be yet another difference between the two views here. In addition, some S-theorists might also believe the mere pain Brett suffers as a result of the explosion is still incommensurate with his desert, even if you refuse aid. What you ought to do is not only refuse Brett aid, but also call not just the ambulance but the police. Since Brett wanted to harm Alice intentionally, he deserves to be punished.<sup>30</sup> Let's begin with this second idea first.

After the explosion, we are assuming both Alice and Brett are at welfare level 0. But since Brett is culpable, one might think he deserves to be at an even lower level of welfare than 0, say, -10 units of welfare, that is to say, he deserves to suffer.<sup>31</sup> This brings us to the upper left-hand quadrant. (See Fig. 4)

<sup>29</sup> One might also put the difference between Alice and Brett in terms of moral worth. Following Nozick, Sher argues persons have moral worth on account of the fact that they are value seekers. Since some have the value-seeking propensity more than others, they have greater worth. But not all virtues can serve as a desert basis. According to Sher, while courage, temperance, cheerfulness, and prudence may have an indirect effect on the pursuit of value, it is only virtues like generosity, kindness, fair-mindedness, and honesty that can serve as desert basis for happiness, since only these are directly tied to realization of value. Sher writes: '...if a virtuous person does have greater worth than others, then his desires and sustained effort will be able to confer correspondingly more value on their objects. Thus, however good it is that an ordinary person's desires are satisfied, or that his diligent effort succeed, it will be even better if the person who is satisfied or successful is especially virtuous. When this is the case, his happiness will have special value.' While Sher claims the *happiness* of virtuous individuals are worth more, another possible position is to claim the virtuous getting what they deserve contributes more value in terms of *desert*. The text illustrates one way in which making the more virtuous happy counts for more, but it is also possible there is more *potential* value to be gained with the more virtuous. For instance, suppose individuals getting exactly what they deserve contributes a certain amount of value to the overall state of affairs, and getting either more or less than they deserve contributes less value. If so, then it might be argued the more virtuous individual getting exactly what they deserve contributes more value (e.g. 10 units) in terms of desert than the less virtuous (e.g. 3 units). In other words, each individual's maximum potential contribution to the value of the state of affairs overall might reflect their moral worth. While Kagan does not consider moral worth as such, Kagan explores this possibility in terms of the V-shaped skyline for non-comparative desert in his book on desert. See Sher 1987: 144; Kagan 2012: sec. 4.3. See note 59.

<sup>30</sup> N-theorists, by contrast, are committed to the idea that you have no reason of desert to call the police. No one deserves to suffer on their view. But of course this does not mean for N-theorists there is no reason to call the police. While punishment cannot be deserved on their view, N-theorists might believe punishment is called for and justified if greater deterrence or public safety is achieved, or if punishment would do Brett more good than harm over the long run., i.e. if it would prevent Brett from committing more offences in the future.

<sup>31</sup> Since S-theorists believe some deserve to suffer, they will adopt some form of retributivism.

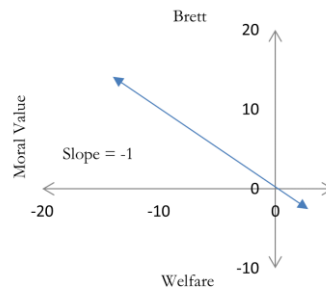


Figure 4

If the accident only brings Brett to welfare level of 0, but he deserves to be at -10, then punishment might bring him to this deserved level of welfare. Moreover, it is a good thing if Brett gets what he deserves, and for this reason the line moves northwest from the origin. I take it this is what S-theorists mean when they claim that Brett deserves punishment. And if we assume each unit of welfare brings about just as much good in terms of desert when one gets what one deserves, then by bringing Brett from 0 to -10 units of welfare would bring about 10 units of moral value, since at -10 units of welfare Brett would be getting exactly what he deserves, and that we are assuming would be a good thing.

Importantly, this graph also helps make clear why, if two doses were available, giving Brett one of the two doses would be a bad thing. Suppose giving him the dose would bring him from 0 level of welfare to 5. The reason why S-theorists would be reluctant to give Brett the extra dose is that giving him the dose would bring us to the lower right-hand quadrant, in which case Brett would be at a higher level of welfare than he deserves, which would clearly make things worse in terms of the moral value of desert. But it is important to keep in mind that no one is denying giving Brett the dose would be “good for” Brett. Rather, giving Brett the dose would result in -5 units of moral value. Giving Brett the extra dose makes things worse from the point of view of desert.

Here then are the two points of disagreement between N-theorists and S-theorists. First, N-theorists believe no one can deserve negative levels of welfare. In other words, all points to the left of the y-axis are ruled out on their view. S-theorists disagree. Second, if a second dose were available, N-theorists claim aiding Brett would be a good thing and it would be wrong not to aid Brett. By contrast, S-theorists claim in some instances it is not wrong to refuse aid and it would be a bad thing to aid Brett.

But this second point of disagreement requires closer scrutiny. In fact, perhaps S-theorists are not in fact committed to the claim that it would be a bad thing if we were to give Brett the second available dose of morphine. Here is what I mean. We said for S-

theorists, giving Brett the available dose would be a bad thing, but it must be remembered that what we mean is that it is bad *from the point of view of desert*. S-theorists might be pluralists. They might also believe welfare also has independent value. To see this, consider Fig. 5 and 6.

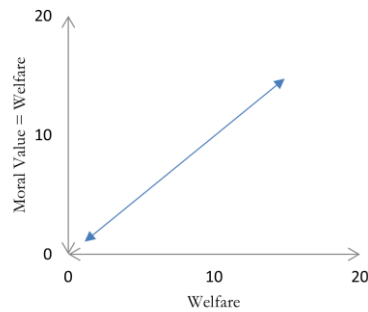


Figure 5

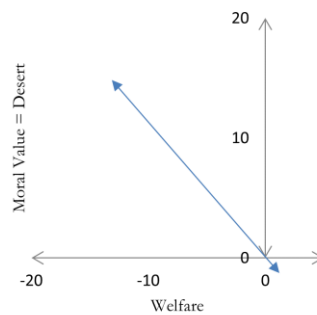


Figure 6

On a pluralist view, we might suppose each unit of welfare contributes one unit of moral value in terms of welfare, while one unit of welfare contributes one unit of moral value in terms of desert.<sup>32</sup> To get the overall moral value, we simply sum the contributions made in terms of welfare and desert.

Apply these assumptions to our second scenario. Giving Brett a dose of morphine would make the state of affairs worse by -5 units of moral value in terms of desert, but since welfare counts independently, giving him the dose would also contribute 5 units of moral value in terms of welfare. In other words, the good in terms of welfare in aiding Brett is simply cancelled by considerations of desert. So it is simply not true that S-theorists are committed to the claim that giving Brett the available dose is overall a bad thing. Rather, in

<sup>32</sup> Of course this is not the only option. For instance, on a prioritarian view, the line Fig. 5 might have the shape of a concave curve which captures the idea that the lower an individual's absolute level of welfare, the more important it is to aid this person. And unlike desert, welfare need not be differentiated, so one graph would suffice for all individuals.

the case thus described it is neutral. It would neither make things better nor worse. Yet we can still sensibly say giving Brett the extra dose is a bad thing from the point of view of desert.

That said, one can easily imagine cases in which even if the person in question is undeserving, consideration of desert is simply outweighed by considerations of welfare. Just imagine a person who is just slightly less culpable than Brett. In such a case, S-theorists would still think it a good thing overall to aid this person. In other words, S-theorists do not deny at times, perhaps more often than not, it might be right, all things considered, to aid a person even if that person is undeserving. To be precise, if one is pluralist—and most retributivists are—that a person is undeserving does not entail that we have *no* reason to aid.

In short, for S-theorists who are also pluralists, one can see why one might want to refuse to benefit or aid a person either because it would do no good from the point of view of desert, or it would make things worse from the point of view of desert, but both these considerations might be outweighed by other considerations. A single-minded pursuit of the good of desert is not only hard to imagine but also very implausible. If so, then the real difference between N-theorists and S-theorists is that for S-theorists a person might be undeserving in the sense that they deserve to be at a negative level of welfare. It is this last claim N-theorists reject.

**5.6** This distinction between monist and pluralist theories brings us to a key difference between Feldman's and Kagan's theories of desert. Feldman is a monist, in particular, a hedonist. For Feldman, the only thing of moral value is the intrinsic value of pleasure. But he also thinks, utilitarianism needs to take into account considerations of justice, namely, desert. The view is that positive desert enhances the intrinsic goodness of pleasure, that negative desert mitigates, and that neutral desert neither enhances nor mitigates the intrinsic good of pleasure. What this means is on Feldman's view the y-axis must be understood differently from how we have understood it up until now.

While Feldman provides us only with a sketch of a theory of desert, here are what I take to be the bare essentials of his view.<sup>33</sup>

<sup>33</sup> Also see Feldman 1997: 155.

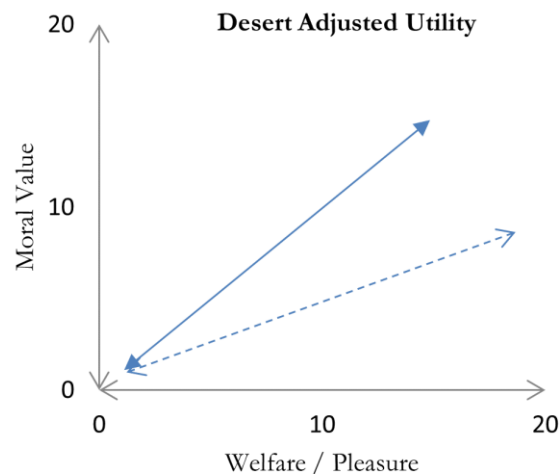


Figure 7

The straight solid line in Fig. 7 represents someone who has neutral desert. Since neutral desert neither enhances nor mitigates the intrinsic goodness of pleasure, it seems plausible to claim the slope is 1, i.e. for every unit of additional pleasure a person experiences the state of affairs is made better by one unit of moral value. For illustration, the dotted line in Fig. 7 represents someone with negative desert and for this reason, each additional unit of pleasure counts for less in terms of moral value or the intrinsic goodness of pleasure. In this way, utility, defined as pleasure, is adjusted for justice or desert. On this view, those with negative desert will have lines with slopes ranging from 1 to 0, while those with positive desert will have desert lines with slopes greater than 1, i.e. the more virtuous one is, the more value one's being happy contributes to the overall value of that state of affairs. Here is another way of putting the point: pleasure is better when deserved so each unit of deserved pleasure counts for more. And if benefits in terms of welfare are undeserved, then that benefit counts for less.

And here is why I say Feldman only provides us with a sketch of a theory of desert: not only is Feldman both circumspect and non-committal in what he says about negative desert, but also there is some ambiguity as to what Feldman means by 'mitigates'. Feldman suggests one possible view about how negative desert 'mitigates' the value of pleasure is that in some cases additional units of pleasure for individuals with negative desert, in particular those who deserve negative levels of welfare or pain, are worthless, making neither better nor worse a state of affairs when we benefit these individuals. Here, it seems to me clarity is gained if we speak instead of the intrinsic value of pleasure being 'nullified'—for lack of a better term—rather than 'mitigated'. In other words, Feldman seems to think from a moral

point of view benefiting people with negative desert, in particular those who deserve a negative level of welfare, is a matter of indifference, or as Feldman puts it ‘worthless’. And since Feldman represents this idea of additional benefits to some people with negative desert as worthless with a horizontal line, i.e. with a slope of 0, I think it is fair to say that slopes between 0 and 1 diminishes value, while a slope of 0 nullifies value.<sup>34</sup>

But in thinking about negative desert, Feldman also entertains the idea that for some persons with negative desert additional units of pleasure might be transvalued (i.e., rather than contributing positive value additional units would contribute negative value), in which case their desert line would have a negative slope.<sup>35</sup> While Feldman does not take a firm stand on this issue of transvaluation, Feldman expresses reluctance in suggesting that only an ‘extreme’ view would allow for transvaluation.

Now consider individuals with positive desert but are badly off in terms of welfare. If an individual deserves a positive level of welfare but currently experiences a negative level of welfare, this fact contributes negative value to the overall state of affairs. In such cases, we are concerned with the lower left-hand quadrant, left because we are dealing with pain, and lower, because it contributes negative value to the overall moral value of a state of affairs. Feldman captures this idea with the claim that positive desert ‘aggravates’ the intrinsic badness of pain.

In sum, Feldman’s theory of desert consists of six principles: (1) positive desert enhances the intrinsic goodness of pleasure; (2) negative desert mitigates the intrinsic goodness of pleasure; (3) neutral desert neither enhances nor mitigates the intrinsic goodness of pleasure; (4) positive desert aggravates the intrinsic badness of pain; (5) negative desert mitigates the intrinsic badness of pain;<sup>36</sup> and (6) neutral desert neither enhances nor mitigates the intrinsic badness of pain.<sup>37</sup>

Now while it may seem odd that the intrinsic value of pleasure can be enhanced or mitigated, since one might think an episode of pleasure is good just to the extent the

<sup>34</sup> Feldman uses ‘diminished’ and ‘mitigated’ interchangeably. The example provided with Fig. 7 above illustrates how negative desert diminishes, rather than nullifies, the intrinsic goodness or value of pleasure.

<sup>35</sup> Thus, according to Feldman, the intrinsic value of pleasure can be diminished, nullified, or transvalued. Feldman seems to think all these can be captured under the umbrella term ‘mitigated’. Perhaps what Feldman has in mind is the idea that depending on how vicious the person is, additional benefits to this person might be either nullified (if less vicious) or transvalued (if more vicious). However, we should keep in mind that a less deserving person need not be an undeserving person, much less vicious. For this reason, I have tried to speak only of individuals as having negative desert and to avoid speaking of individuals as either ‘undeserving’ or ‘vicious’. By speaking of the more or less vicious, I only hope to make salient the idea that vice, like virtue, can be understood as a matter of degrees. See Feldman 1997: 164-165.

<sup>36</sup> Suppose a person deserves 10 units of pain (-10 units of welfare), and suffers 10 units of pain, in which case, the badness of pain is ‘mitigated’—better, nullified—and the overall value of that state of affairs is 0. See Feldman 1997: 167.

<sup>37</sup> See Feldman 1997: 163-168.

individual enjoys the experience, this thought is less odd when we recall what we are interested in is moral value.<sup>38</sup> Consider the pleasure a sadist takes in watching others suffer. One might think pleasure is pleasure, so it must be good. But more plausible to some is the idea that there is no *moral* value in pleasure taken in the pain others suffer, even if it is pleasure.<sup>39</sup> And one might go even further and argue sadistic pleasure has not just no moral value, but negative moral value.<sup>40</sup> More generally, one might have a moral view in which knowledge, achievement, and virtue (or something other candidate good) have moral value, but pleasure or pain are of no moral value. On such a view, while pleasure might still be “good for” this individual, no one’s pleasure is of any value from the moral point of view. Instead, what is to be promoted are knowledge, achievement, and virtue, but not pleasure.<sup>41</sup>

One may have already noticed, apart the from different interpretations of the y-axis, Fig.7 is simply a combination of Fig. 2 and Fig.3. A state of affairs in which Alice gets the morphine is better than one in which Brett gets it, since giving Brett the dose counts for less. When we benefit Alice rather than Brett, there is more moral value.<sup>42</sup> At the core of Feldman’s theory of desert is the idea of ‘fault forfeit first’.<sup>43</sup> In fact, ‘fault forfeit first’ is at

<sup>38</sup> Given Feldman’s other theoretical commitments, Feldman provides a different explanation of how the intrinsic value of pleasure can be enhance or mitigated based on his understanding of the concept of pleasure. See Feldman 1997: 127-147.

<sup>39</sup> In other words, while sadistic pleasure might be “good for” the sadist, sadistic pleasure does not contribute moral value to the overall state of affairs. Recall that for Feldman while benefits to some persons with negative desert may likewise be “good for” that individual, these benefits are “worthless” from the moral point of view. However, perhaps one troubling implication of accepting the claim that benefits to some individuals with negative desert are worthless is that such a view will remain silent on differences between individuals with negative desert.

<sup>40</sup> Or episodes of sadistic pleasure might be “transvalued”, as Feldman puts it.

<sup>41</sup> While this kind of view may seem less intuitive, since for many if anything is intrinsically good or bad pleasure and pain seem indisputable candidates, perfectionist views such as the one just sketched is by no means without some attraction.

<sup>42</sup> Even if it is true the morphine would reduce the pain by the same amount, that is, would be equally “good for” Brett as it would be “good for” Alice, a state of affairs in which Alice gets the morphine is of more *moral* value. According to Feldman, the experience of Alice “feeling better” counts for more, since given Brett was at least partially responsible for the explosion the value of relief to Brett has been mitigated by his negative desert.

<sup>43</sup> One might think Feldman’s free lunch example confirms this. Feldman imagines someone giving away free lunch tickets. Suppose A would be slightly more disappointed than B if B were to get the free lunch. If so, and we want to maximize happiness, then it seems we are committed to giving A the free lunch every time. But if we accept that negative desert mitigates the intrinsic goodness of pleasure and positive desert aggravates the intrinsic badness of pain, and we assume repeatedly getting free lunch makes A less deserving while B not getting free lunch tickets makes him more deserving, then, once we adjust utility (pleasure) for desert, there is more reason to give B the next free lunch ticket.

While B does not deserve the disappointment of not getting the ticket time and time again, one might wonder if getting free lunches has anything to do with desert. After all, neither A nor B have done anything to deserve free lunches. And it is hard to see how the mere fact of receiving free lunches makes one less deserving—in other words, there is no fault which could forfeit first. Rather, one suspects there is something wrong with the person distributing these tickets! And if responsibility is a requirement of desert, which Feldman denies, then Feldman’s example really concerns only comparative desert or fairness rather than non-comparative desert.

Of course, it remains controversial whether there should be a responsibility requirement for desert. This is a point of debate regarding the basis of desert, i.e. whether one must be responsible for the act upon which a certain treatment is deserved. See 4.4.



the core of many theories of desert.<sup>44</sup> And recall N-theorists and S-theorists also share a commitment to this idea.

Nonetheless, the core commitments of Feldman's view, like the N-theorist's, differs from the S-theorist's, with regards to two key features: first, the lines extends upward (and downward) without limit; and second, additional units of pleasure or welfare, even for those with negative desert have positive moral value. (See Fig. 7.) As such, benefits to even those who are undeserving, those with slopes between 0 and 1, is still a good thing.<sup>45</sup> In addition, it seems one who holds this type of view will want to deny the existence of negative slope, for negative slopes allow for the possibility that additional units of pleasure can make the state of affairs worse—i.e. more pleasure for a vicious person results in negative moral value—and one might be uncomfortable with idea that pleasure which is intrinsically good can have negative value. These thoughts also seems to lend support to the idea that no one can deserve to suffer. No matter how vicious a person is additional units of pleasure must make that state of affairs better, and this is so if we rule out not only the possibility of points in the upper left-hand quadrant but also the possibility of negative slopes.<sup>46</sup>

But here is why ruling out negative slopes might be a mistake. Recall that, if negative slopes are impossible, then an increase in welfare is always a benefit and always makes that state of affairs better. However, on a pluralist view, each additional unit of welfare still contributes overall moral value to that state of affairs even if it makes things worse from the point of view of desert. It is just that in some cases the value of welfare is simply outweighed by another factor such as desert. And one wonders if the main reason why one would even want to reject the possibility of negative slopes is because one is confusing one's intuitions about the overall value of a state of affairs with intuitions about desert in particular.<sup>47</sup>

<sup>44</sup> Hurka may be an exception. Unlike Kagan, Hurka rejects bell-motion (see 5.9) and accepts a V-shaped skyline. See note 51 and 59.

<sup>45</sup> I hesitate, however, to peg Feldman as an N-theorist, since at points in his article Feldman seems open to the idea that some can deserve to suffer. As we have seen, Feldman suggests benefits to those who deserve negative levels of welfare are worthless and do not contribute value to the overall moral value of a state of affairs. See Feldman 1997: 168

<sup>46</sup> Recall that Feldman remains non-committal on the issue of transvaluation.

<sup>47</sup> See Kagan 2012: 190.

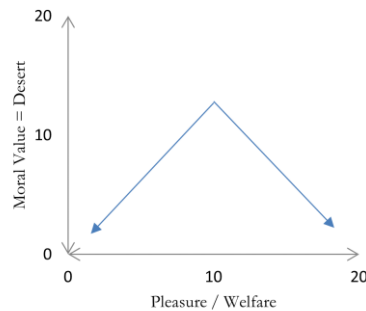


Figure 8

Fig. 8 represents an individual who deserves to be at 10 units of welfare. Beyond that point, the person is getting more they deserve, hence the negative slope. Is it implausible to claim that it is a bad thing for some to get more than they deserve? I don't think so. We might here think of those who profit from others through exploitation or other dubious means. Does making room for negative slopes mean it would always be a bad thing to benefit an individual who is already getting more than they deserve? Not always. In many instances, it might be the case that a person is getting less than they deserve and the only way to benefit them is give them slightly more than they deserve, in which case we might very well have reason to benefit them regardless. Moreover, while it would certainly make the state of affairs worse *from the point of view of desert*, it might not make that state of affairs bad overall. Since pluralists claim welfare is of independent value, benefiting this person may still make the state of affairs overall better.

And even if we increase this individual's level of welfare (See Fig.8) to, say, 15, this state of affairs is still good from the point of view of desert.<sup>48</sup> For until additional benefits bring the individual to the point at which the desert line crosses x-axis and into the lower right-hand quadrant, things are still good from the point of view of desert. And for pluralists, even once it crosses the line, it is only when the negative contribution of desert is outweighed by the contribution made by welfare, that it becomes an overall bad thing to benefit this person more.

In short, if welfare continues to contribute independent value to the overall state of affairs, there appears to be no good reason to continue to insist each additional unit of welfare also contributes value *from the point of view of desert*. If pluralism is able to capture everything the monists hope to capture, but in addition, pluralism offers a possibility that

<sup>48</sup> Though one can still say benefiting this person might be a "bad" thing, insofar as it makes things worse in a respect from the point of view of desert.

some might find attractive, namely, that some people might be getting more than they deserve, then there is less reason to hang on to monism.

**5.7** Having explored the core commitments of Feldman's theory of desert, I will, in next few sections, explore what is distinctive about Kagan's theory of desert, namely, the idea of absolute desert.

Consider again Brett. We said that after his malicious intentions have been carried out, the explosion left him at the welfare level of 0. As we have seen, it might very well be the case that if Brett was just slightly less malicious, even those who believe some deserve to suffer would think there is overall reason to aid Brett. But it was also suggested for some S-theorists leaving Brett at the welfare level of 0 is not enough. In other words, Brett is still doing better than he deserves. If so, then Brett deserves to be punished. The question is how much?

Now it might be thought that if every additional unit of welfare for the virtuous always makes the state of affairs better, one might think in the case of the vicious it is also the case each additional unit of suffering always makes the state of affairs better since malicious wrongdoers deserve to suffer. (See Fig. 9.)

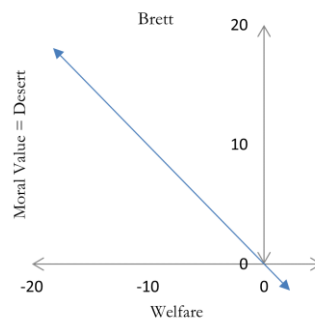


Figure 9

Yet a moment's reflection will show just how absurd this idea really is. Surely one must think at some point a person is made to suffer more than they deserve.<sup>49</sup> Surely a serial killer deserves to be at a much lower level of welfare than the pickpocket. If so, then there must some point at which punishing the pickpocket more would mean the pickpocket suffers more than he or she deserves. In short, the point at which either more or less suffering for the

<sup>49</sup> Also see Feinberg 1980: 279.

pickpocket would be unjust, we might want to say, is the amount of suffering the pickpocket deserves absolutely.

If there is a limit to how much a pickpocket deserves to suffer, there likewise must be some point beyond which Brett would be made to suffer more than he deserves. This is represented in Fig.10.

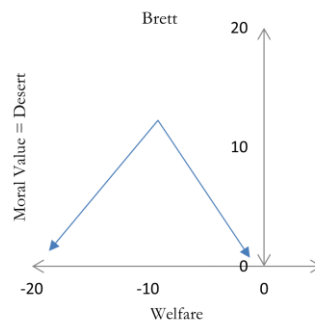


Figure 10

Since Brett is culpable for the explosion, let's assume he deserves to be at the welfare level of -10. If Brett is brought to a level of welfare lower than -10 through punishment, then he would be punished too harshly. One might claim this would be a bad thing from the point of view of desert. If so, then Brett's desert line will come to look like a mountain with a peak located along the x-axis at -10 level of welfare. (See Fig.10.) The peak of the mountain indicates what Brett deserves absolutely. If Brett is brought to a lower level of welfare, say, -15, then Brett is being punished more than he deserves, which is a bad thing from the point of view of desert. This idea of peaks, a point beyond which an individual would be getting more or less than they absolutely deserve, is essential to Kagan's theory of desert.<sup>50</sup>

And we can easily imagine individuals who are more vicious than Brett whose desert line will likewise be mountains but whose peaks will be even further west along the x-axis. For instance, we might compare Brett's case with Charles's (see Fig. 11).<sup>51</sup> Suppose Charles is a mafia hitman who has killed a few known criminals and has set off a few bombs injuring many innocent people, so deserves to be at the welfare level of -30. Now suppose, the mafia

<sup>50</sup> Also see 5.9.

<sup>51</sup> Following Kagan, I have kept all peaks at the same height. Kagan calls this the skyline. That all peaks are the same height capture the idea that it is equally important all individuals are at their peak. An alternative view which Kagan explores is the idea of a V-shaped skyline. On this view, the more virtuous (or vicious) one is, the more morally significant one is. This is captured by higher peaks. Kagan writes: 'The V-shaped skyline expresses the claim that it is more important, from the point of view of desert, to give what is deserved to the morally more significant, rather than the less morally significant.' While Kagan seems attracted to the skyline idea and presents most of his view on this assumption, he is open-minded about the V-shaped skyline and does not take a firm stand on this issue. See Kagan 2012: 155, 161; also see Hurka 2011: ch.9; Sher 1987: ch.8.

bribes the judge and as a result Charles is given a reduced sentence which brings him merely to the level of -20. And having missed lunch, the Judge gives Brett the same sentence.

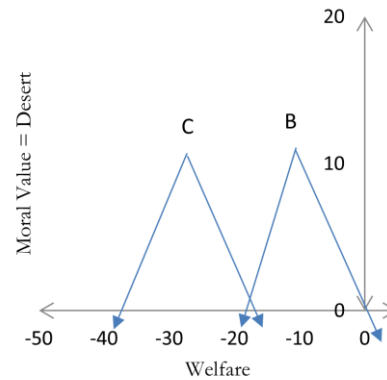


Figure 11

While Charles would be better off than he deserves, Brett would be worse off than he deserves, as we are assuming that Brett deserves to be at the welfare level of -10. From the point of view of desert, both state of affairs should be unacceptable.<sup>52</sup> The idea of some point beyond which a person would suffer more than they deserve is one of the core intuitions behind retributivism.<sup>53</sup>

**5.8** As we have just seen, Fig. 11 captures the idea that the more vicious an individual is, the less well-off he or she deserves to be absolutely. Since Charles is more vicious than Brett, he deserves to be worse-off overall. The further west along the x-axis we move away from the origin, the more vicious these individuals are, and for that reason their peaks are located further to the west indicating lower and lower levels of welfare that are absolutely deserved.

<sup>52</sup> In 5.9 we will see how we might capture the idea that it might be more important to ensure Brett does not suffer more than he deserves than Charles faring better than he deserves.

<sup>53</sup> In this chapter I have set aside considerations of comparative desert since punishment is mainly concerned with non-comparative desert. Nonetheless, here is how considerations of comparative desert could come into play. Suppose the explosion caused in the chem lab was overdetermined, that is, Charles had been hired to blow the whole building in order to bring about the death of some individual who happened to work there. Both Charles and Brett are apprehended and brought to trial and both pled guilty to the same crime. However, the judge decides to give Brett a longer sentence. Here Brett would have a comparative claim to have his sentence reduced. Since Charles committed the same crime but has a shorter sentence, Brett's sentence should be reduced. Brett's claim depends on a fact about Charles and for this reason the claim is comparative. But it is also possible Brett's sentence should be reduced from a non-comparative perspective as well. Suppose the law says anyone who blows up building should be sentenced to 5 years in prison, and the judge sentences Brett to 7 years, then Brett has a non-comparative claim for the reduction of his sentence for 2 years. Since criminal law involves only punishment for particular crimes, a non-comparative matter, I have set aside most issues of comparative desert.

Why think one individual deserves to be *absolutely* worse off than another? Well, we might think that for someone like Charles, given Charles's overall pattern of life, it is extremely likely that he deserves to be at -30 level of welfare overall, since it is very unlikely Charles would ever reform. That is, from whole life perspective, it is very likely Charles's peak should be at -30 and no greater. We might likewise think of a committed pickpocket that his or her peak might also be located west of the origin, though not as far west as Charles's. What these reflections show is that the more vicious one is, the lower level of welfare one deserves to be at overall over the course of a whole life.

By comparison, we might think given Brett's pattern of life, even though he may have attempted, quite unsuccessfully, to take private "revenge" on women he knew on several occasions before, incidents which risked only minor harm, unlike Charles, there is a greater possibility of reform, such that eventually Brett's peak might be located to just slightly east of origin after ten years. This can be represented with Fig. 12 and Fig.13 which capture Brett's desert at different time slices.

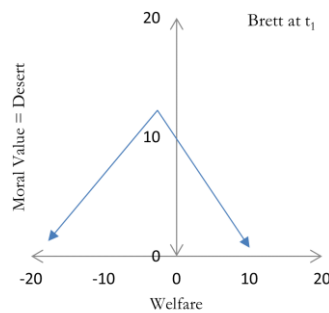


Figure 12

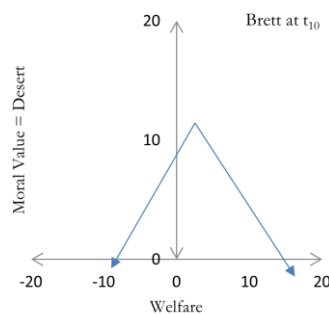


Figure 13

Likewise, we might imagine Charles prior to apprehension was leading an opulent life, faring at the welfare level of 20, a point located deep into the lower right-hand quadrant. (See Fig. 14.) From the point of view of desert, this state of affairs is very unacceptable,

given the negative moral value of that state of affairs must be great, say, -40. In short, these graphs capture equally well the whole life or time-slice interpretation of peaks.

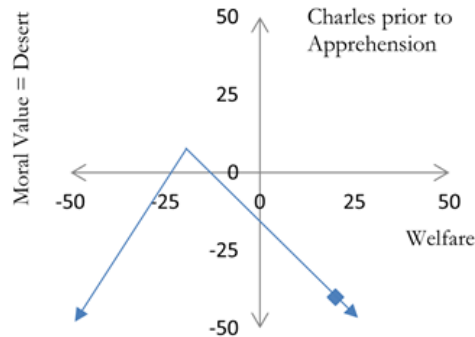


Figure 14

**5.9** Now since the negative slope indicating how much better off Charles is than he deserves is the same as the positive slope indicating how much worse off Brett is (See Fig.11), this seems to suggest it is equally important to place each at their peaks. But given their histories, it seems plausible that it is more important Brett gets what he deserves than Charles. In fact, the whole point of introducing slopes was to capture the idea that there is more reason to aid or benefit the less culpable. So in fact, Fig. 11 is not quite an accurate representation of what is going on. As we move from the more vicious to the less vicious, the western slope gets steeper while the eastern slope gets gentler. This captures the idea that the more virtuous and individual is the worse it is for this individual to get less than he or she deserves, and less bad it is that the individual get more than he or she deserves. If we were to hold fixed the peaks, the rotation described would create a bell-motion, as seen in Fig. 15 and 16. (The peaks are here held fixed only for illustration.)

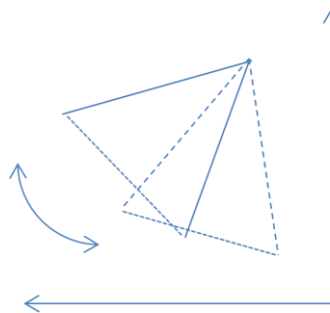


Figure 15

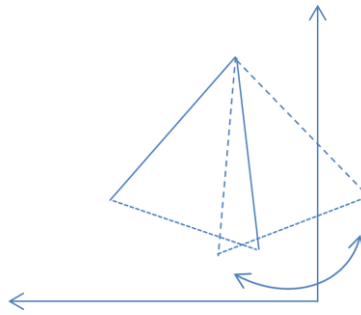


Figure 16

In fact, this is one of Kagan's more important insights. If we combine a commitment to the idea that the more culpable, the gentler the western slope, with Kagan's idea of peaks, what we get is this bell-motion spread out along the x-axis. (See Fig. 17.) Once we combine bell-motion with the idea that the less vicious or more virtuous a person is the farther east their peak will be since the more deserving deserve to be at a higher levels of welfare than the less deserving, we see how the idea that it is more important that Brett gets what he deserves than Charles might be captured: given bell-motion which is entailed by the acceptance of slopes which represents degree of culpability, Brett's western slope might be steeper than Charles's eastern slope in which case it is more important that Brett gets what he deserves than Charles.<sup>54</sup>

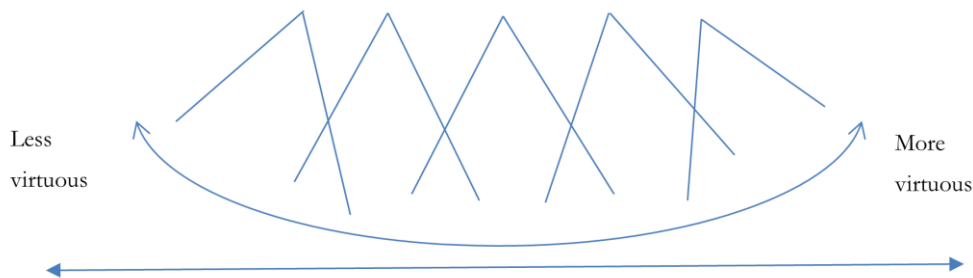


Figure 17

<sup>54</sup> For our purposes, we can set aside further complications concerning the rate of rotation which is important when we come to make substantive claims about any individual's desert. Roughly, one might claim increases in the degree of virtue or vice need not be proportional to increases in the size of the peak, that is, how far east or west the peak is located along the x-axis. This is what determines the rate of rotation. Virtue and peaks might come apart if we think even the mildly vicious deserve a positive level of welfare. (See 5.11.) For ease of exposition, I will continue to assume the increase in this size of peaks is proportional to increase in degree of virtue and vice. See Kagan 2012: Ch. 6.2 and 6.6.



Bell-motion is an extension of the idea of ‘fault forfeits first’—that the more culpable are less deserving—an idea which both Feldman and Kagan share.<sup>55</sup> In a certain respect, one might see Feldman’s theory as incomplete, since in a way Feldman neglects to address the possibility of individuals getting more than they deserve.<sup>56</sup> Bell-motion might be thought of as mountains plus changes in slopes. That the entire mountain rotates captures the idea that as individuals are more virtuous, it is worse that they get less than they deserve *and* less bad that they get more than they deserve. These ideas seem to go naturally together.<sup>57</sup>

In sum, here are the main difference between Feldman’s and Kagan’s theory of desert. While Feldman thinks desert enhances or mitigates the intrinsic value of pleasure, Kagan keeps open the possibility of a pluralistic approach to desert where welfare and desert make independent contributions to the overall value of a possible state of affairs. But the main difference between Feldman and Kagan, and N-theorists and S-theorists for that matter, is that Feldman and N-theorists reject the idea of peaks, both for the virtuous and vicious.<sup>58</sup> By contrast, Kagan thinks there must be a point at which an individual either suffers more than he or she deserves or is faring better than he or she deserves. That one can never have too much is one implication of the commitment to the claim that no one deserves to suffer, an implication that, I have suggested, seems much less attractive if one is open to the possibility of pluralism. The idea of peaks is one I think most S-theorists will find attractive.<sup>59</sup>

**5.10** Now the idea of peaks should not be unfamiliar. Recall, one main motivation for retributivism is the thought that some people are being punished more than they deserve in the pursuit of good consequences. (See 5.1.) When we compare a pickpocket with a serial murderer, it seems plausible the serial murderer deserves to suffer more. Of course, for N-theorists, the idea of a point beyond which an individual would suffer more than he or she

<sup>55</sup> Another alternative to capturing the idea of ‘fault forfeits first’ is through the use of curved desert lines. Since the basic idea is that there is more reason to aid the less culpable, this can be captured if the more virtuous an individual is, the higher up along the y-axis the line goes before it gets gentler. See Kagan 2012.

<sup>56</sup> Given Feldman’s talk of mitigation, one might think for Feldman, when an individual gets more than they deserve, rather than slope down (the eastern slope), the line simply plateaus. What this suggests is further increases in welfare for this individual is simply irrelevant from a moral point of view, or as Feldman might put it, “worthless”. Kagan explores the idea of plateaus and its implications for a theory of desert extensively in his book. See Kagan 2012: *et passim*, esp. 5.1.

<sup>57</sup> Kagan explores the idea that they may come apart. See Kagan 2012: 331-332.

<sup>58</sup> See 5.6.

<sup>59</sup> Unlike Kagan, Hurka rejects bell-motion since it conflicts with proportionality, so in this respect he does not embrace of the idea of fault forfeits first. Instead, on Hurka’s view, peaks, or the optimal level of pleasure or pain for a fixed level of virtue or vice, get higher as we move to either the east or west of the origin, where peaks are established in proportion to the degree of virtue and vice. On this view, there is more moral value in terms of desert in bringing either very virtuous or very vicious individual to their peak than a mildly virtuous or vicious individual. In other words, there is more potential moral value in terms of desert in bringing the more virtuous or vicious to their peaks. See Hurka 2011: 160n; also see note 44.

deserves is beside the point, for those who claim no one can deserve to suffer simply deny the existence of negative peaks all together. But then, the question is: how we are to think about a person who is very vicious on such a view?

As a first pass, it would seem their view would look something like the following (see Fig.18.)

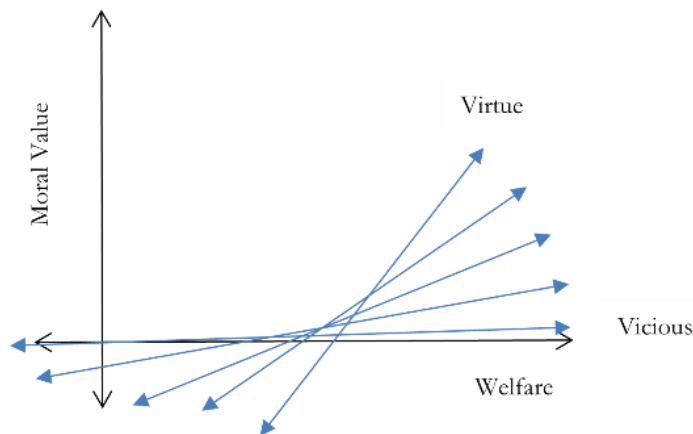


Figure 18

A vicious person would have a slope approaching zero. In addition, it is a bad thing from the point of view of desert for this individual to suffer, hence points to the west of the origin lie in the lower left-hand quadrant. And as we move along the x-axis to the east, the slope of individual desert lines get steeper and steeper as those who believe no one can deserve to suffer share in the believe that there is more reason to benefit those who are less culpable or more deserving. This graph also preserves the intuitively compelling thought that it is worse from the point of view of desert for a more virtuous individual to be at the same level of welfare as one who is less deserving. For this reason, individual desert lines shift east as the slope gets steeper.

While this is not an implausible view, there are a few peculiarities. First, even for the most vicious individual, suffering for this individual is a bad thing, but only very slightly bad. And because this individual is so malicious it takes a whole lot of welfare before additional units of welfare become a good thing from the point of view of desert.<sup>60</sup> This seems plausible enough on the positive end of welfare. But now imagine this individual is at a *very* low level

<sup>60</sup> Since by stipulation the slope of desert line of the very vicious *approximates* zero, there must be some point at which the line crosses the x-axis. Recall that for N-theorists desert lines must have positive slope. But one might wonder how welfare benefits for the very vicious can ever become good from the point of view of desert. I thank Brad Hooker for pointing this out.

of welfare at the far west end of the x-axis. Since this individual is so vicious, it would take huge improvements in welfare to make a small difference in terms of desert. I take it at least some N-theorists might find this implication unsettling. Instead, they might want to entertain the idea that the slopes for individuals below the x-axis might differ from the slopes above. This possibility is represented in Fig. 19.

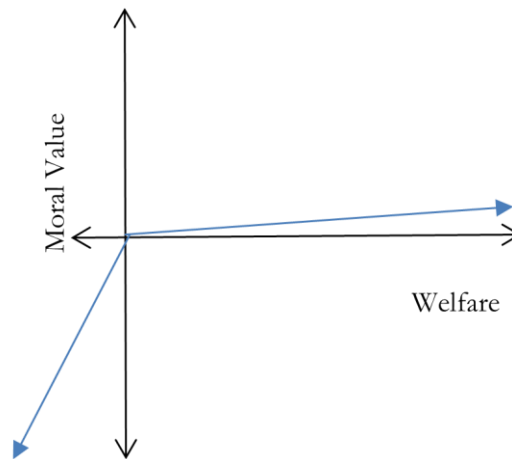


Figure 19

But if one adopts this kind of view, we must ask what would determine the degree of slopes below the x-axis. In addition, I take it one would want the slope to be sufficiently steep, and presumably why one would want the slope to be sufficiently steep is because suffering is such a bad thing.<sup>61</sup> But what is driving this intuition? It seems to me perhaps what is really driving one's intuition here is just the thought that at some point an individual is suffering more than he or she deserves.<sup>62</sup>

Second, as we have seen, a commitment to the claim that no one deserves to suffer is not incompatible with accepting peaks for the positive levels of welfare. While the idea that a person can deserve too much *welfare* is much less intuitively compelling than the idea that there is some point at which a person might *suffer* more than they deserve, once we remember that what we are concerned with are things as they stand *from the point of view of desert*, and not with overall moral value or with the independent value of welfare, there should be much less resistance to the thought that some are faring better than they deserve. And surely, we want

<sup>61</sup> At the same time, I'm sure the N-theorists will agree the slope cannot be steeper than for those who are more virtuous.

<sup>62</sup> Of course, our intuitions here might also be driven by the thought that there must be some limit to vice or evil.

to allow the possibility that the mildly vicious can be faring better than they deserve. I take it many cheats and thieves fall into this category. In addition, a common belief is some who are really well-off have done nothing to deserve their wealth but have simply inherited it.<sup>63</sup> Many who are inclined to think this are most likely open to the idea that some are better off than they deserve. If we allow some can have more than they deserve, then there will be negative slopes and desert lines will look like mountains. As we have seen, this is not incompatible with the claim that no one can deserve to suffer. This claim only commits one to the rejection of negative peaks.

When we consider a kind of view like the one just sketched in terms of the implications for the most vicious and for those who are well-off but do not deserve it, we see a mere commitment to the claim that no one deserves to suffer leaves unanswered many questions about desert. If the idea of negative slopes is rejected, what the view implies about these cases seems unclear or leads to counter-intuitive results. One possibility is to say they are simply irrelevant from the moral point of view, but that seems unsatisfactory. In this respect, N-theorists have at best an incomplete theory of desert. And once we attend to these issues, for instance, the apparent denial of negative slopes, the distance between N- theorists and S-theorists diminishes.

**5.11** But we are still left with the main difference between these two views, namely, N-theorists deny the existence of negative slope, while S-theorists allow for the possibility. But perhaps one finds the claim that no one deserves to suffer compelling only because they assume the retributivist must claim even those who are mildly vicious deserve to suffer. But this is not true, and few retributivists would make this claim. In fact, here is a sketch of what I take to be the most plausible form of retributivism, one which most retributivists hold.<sup>64</sup>

Up to this point we have simply assumed that peaks to the left of the origin are those who deserve to suffer and those to the right are those who deserve to fare well and that the bell begins to rotate either direction beginning from the origin which is also taken to be the interface between virtue and vice. However, the most plausible form of retributivism holds that bell-motion begins somewhere east of the origin along the x-axis so that even the mildly vicious might deserve a positive level of welfare. Here is how these ideas might be captured in visual form. Again, Kagan's use of graphs is here helpful.

<sup>63</sup> Many believe the current great inequality that exists is sustained by unjust economic arrangements. I take it for some what makes these economic arrangements unjust is precisely that it is an arrangement in which some are getting more than they deserve and many are getting much less than they deserve. Also see Mulligan 2018.

<sup>64</sup> Also see Kagan 2012.

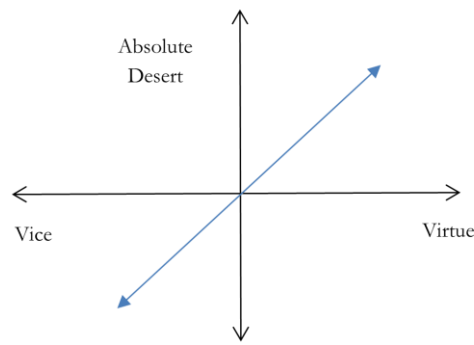


Figure 20

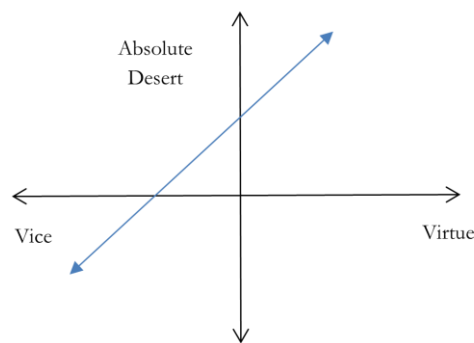


Figure 21

In both these graphs (Fig. 20 and Fig. 21), rather than representing welfare, the x-axis represents degrees of virtue and vice. Points to the east of the origin represents greater levels of virtue, and points to the left indicates greater vice. Welfare is instead captured by the Y-axis with points below the x-axis representing the desert of suffering. The y-axis itself indicates the interface between virtue and vice where up until now we have assumed bell-motion begins.

In fig. 20, the line captures the idea that the more virtuous one is the more one deserves to be at a greater absolute level of welfare. Since the line passes through the origin, the interface between virtue and vice lies at 0 level of welfare. Any point along the line above the x-axis means the individual deserves a positive level of welfare. Now compare Fig. 21. Since the x-intercept is located west of the origin, what this means is that even the mildly vicious deserve positive levels of welfare. And since the y-intercept is located some distance above the origin, the interface between virtue and vice lies at a level of welfare significantly

above 0.<sup>65, 66</sup> Since the interface between virtue and vice is now located at a high level of welfare, bell-motion begins that same distance to the east of the origin. (See Fig. 22.)<sup>67</sup>

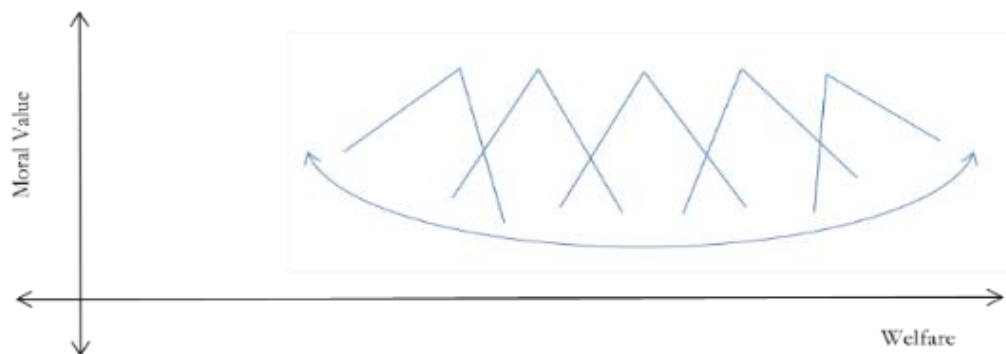


Figure 22

However, as we have seen, retributivists are attracted to the idea that there must be some point at which no one can deserve to suffer more, even the most vicious person imaginable. So it can't be that the line extends down infinitely in the lower left-hand quadrant. So retributivists will want to impose a lower bound as shown in Fig. 23.<sup>68</sup>

<sup>65</sup> The equation for the line represented in Fig. 20 is  $y = mx$ , where  $m$  represents the slope. Here we are assuming the slope is 1 such that degree of virtue is directly proportional to the size of absolute desert. In contrast, the equation for the line in Fig. 21 is  $y = mx + b$ , where  $b$  represents the  $y$ -intercept. Since the  $y$ -axis now represents welfare or absolute desert, the  $y$ -intercept captures the idea of a baseline of welfare individuals deserve simply in virtue of being persons. I take it many will find this idea intuitively compelling, and it seems in tune with many retributivist intuitions. See Kagan 2012.

<sup>66</sup> As Kagan points out, this move is not without some cost. When we come to consider comparative desert, where what matters is how well-off individuals fare relative to one another (e.g., if  $A$  is just as deserving as  $B$ , and  $A$  is at a lower level of welfare than  $B$ , then  $A$  has a comparative claim to be made better off in light of  $B$ 's current level of welfare, even if both are above or below their peaks), many find intuitively attractive the idea that if  $A$  is twice as virtuous than  $B$ , then  $A$ 's peak should necessarily be twice as great as  $B$ , that is, peaks are proportional to virtue. (See Fig. 20.) This kind of view originates with Aristotle. However, in Fig. 21, since even the mildly vicious have positive peaks, it is no longer true the vicious deserve to suffer.

But notice also since  $N$ -theorists deny the existence of negative peaks, this would mean vice is ruled out as an impossibility. (See Fig. 20.) On this view, all points in the lower left-hand quadrant are ruled out. This is a very implausible claim. Both considerations suggest we should reject the claim the peaks are proportionate to virtue.

<sup>67</sup> For illustration, I have exaggerated the shift along the  $x$ -axis. But in principle, it is possible for the bell to swing far to the west such that individual desert line crosses into the upper left-hand quadrant. It remains an open possibility that very vicious individuals deserve to suffer.

<sup>68</sup> This also addresses Sher's worry. He writes: 'Although evil doers are not always banal self-seekers or drab functionaries, they clearly often are. And of such persons, it seems extreme to say that their very existence has negative (rather than much reduced positive) worth. Hence, it also seems extreme to say that their happiness and well-being have negative value, or that their unhappiness and suffering have positive value.' Sher's retributivism is clearly more moderate than the one outlined in the text as for Sher, the line would not extend below the  $x$ -axis. In other words, Sher not only rejects negative peaks but also negative slopes. Though Sher is a retributivist, in this respect he has more in common with  $N$ -theorists. See Sher 1987: 149.

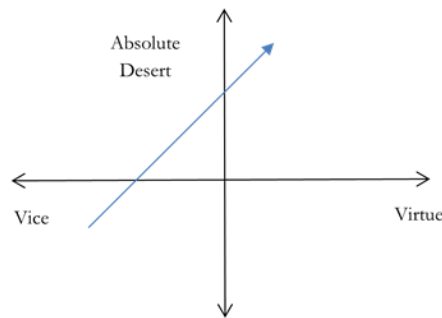


Figure 23

What seems to drive this intuition is that there must be some limit to how vicious an individual can be. But if we think there is a limit to evil, we will also find compelling the idea that there must also be some limit to how virtuous one can be. If so, then there must be an upper bound as well, represented in Fig.24.

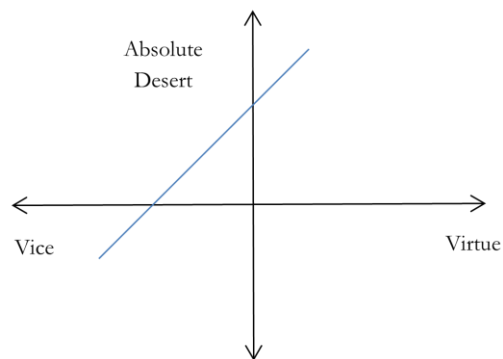


Figure 24

The idea here is not that there are levels of welfare that cannot be deserved, rather there are inherent limits to virtue and vice. These claims about upper and lower bounds can easily be shared by N-theorists and S-theorists. The main difference of course is that N-theorists would set the lower bound be above 0 level of welfare. What this means is that the lines in Fig. 23 and Fig.24 cannot cross below the x-axis.

Now clearly retributivism can take more extreme forms, but I think there would be few advocates for such views. I take the core intuitions which drive the retributivist are that there is a limit to how much one can deserve to suffer for what they have done and being punished more than one deserves is always unjust.

The retributivist position is most compelling when we consider cases like the following:

*Small Town.* Suppose a man who was once convicted of minor crimes moves into a small town. But around the same time a wave of small crimes occurs in town. Given this man's past record and the colour of his skin, several individuals in town have a strong aversion toward this man. Rumours begin to circulate and as the criminal remains at large but unknown, more and more people in town now believe our man is the one responsible for these crimes. Then one day a girl from the community drowns in the river which runs through town. Convinced that our man is responsible for the girl's death, the townspeople insist our man be charged with murder. Sadly, the reluctance of the sheriff to charge our man without any evidence only drives the town to riot.<sup>69</sup>

Clearly, locking up and charging our man would bring out about good consequences: it would prevent further riots, placate the townspeople, and restore peace and security. However, it would clearly be unjust to send our man to prison when there is no proof that he is responsible, since there is no evidence to be had because our man is innocent. For our man to suffer time in prison would be more suffering than he deserves. Since he is innocent, if he were to spend time in prison his suffering would be completely undeserved. If punishment must be deserved, in this case, there is simply no reason to punish. Desert thus places a constraint on the pursuit of good consequences.

This brings us to one of the points with which we began. I suggested some argue punishment is not about desert, but rather it is about public safety and deterrence. In our example, public safety would clearly be restored, further riots prevented. And we might also easily imagine the real culprit would be greatly deterred if we were to send our man to prison. Yet, it is very difficult to believe these other considerations could possibly justify sending an innocent man to prison.<sup>70</sup>

Of course, those who claim the only thing that could justify punishment are good consequences might point out if only the townspeople realized both that an innocent man was being sent to prison and that anyone of them might now be in danger of being sent to

<sup>69</sup> The example is a variation of H.J. McCloskey's, one often repeated in the literature on punishment.

<sup>70</sup> I don't mean to claim consequences don't count at all. We might imagine cases where a terrorist might set off a bomb which might wipe out the whole population of London, and the only way in which we might prevent the disaster is if we ill-treated or killed an innocent man. In such cases, such treatment might very well be justified. The point is there is a threshold below which good consequences could not justify serious harm to innocent others. Of course, where that threshold is set remains controversial. Regardless, we are considering only very exceptional cases.



prison, this might bring fear into town such that good consequences would not be achieved overall. Nonetheless, it is hard to deny often people do get carried away in the pursuit of good consequences. Without some kind of constraint in principle, good consequences might all too often detract attention from other important considerations, such as justice.<sup>71</sup>

What the retributivists deny is not that punishment might be instrumental to achieving security and effective deterrence. What they deny is that punishment can be justified without consideration of desert. It seems to me any plausible theory of punishment must recognize the punishment must be deserved. But of course, even if punishment must be deserved, those who deny it is good thing for people to get what they deserve will insist we still lack reason to punish. (See 5.13). The point I want to make here is simply that punishment cannot be justified without taking into account considerations of desert.

It should also be observed even those who are ambivalent about desert have come to accept negative retributivism. Some argue we need to distinguish between the questions, (1) whom to punish, and (2) how much to punish.<sup>72</sup> Such mixed view theorists of punishment agree with retributivists that the first question must be answered by appeal to desert, while the second need not. Mixed theorists and retributivism disagree over the second question. Retributivists insist the question of how much to punish must also be determined by considerations of desert.<sup>73</sup> Desert lies at the core of retributivism. Unlike other theories of punishment, retributivist theories take desert to be essential to the justification of punishment and to have a central role in determining how much to punish.<sup>74</sup>

**5.12** In taking a Kagan-style pluralist approach to developing a plausible form of retributivism, I took it for granted we can easily make sense of absolute desert and peaks. (Recall, the notion of absolute desert is the hallmark of Kagan's view.) Furthermore, absolute desert is independent of 'fault forfeits first'. So even if we accept 'fault forfeits first', we still might want to reject the notion of absolute desert. This section considers some reasons why one might resist the notion of absolute desert.

<sup>71</sup> Here is Feldman's example, if all we cared about was the maximization of pleasure and giving a free lunch to B would make A slightly more upset, then there would never be reason to give B a free lunch. Or if you are the coach of an undefeated high school sports team and C and D are your best players and never got tired, then there might never be reason to play A or B, your comparatively lower performing athletes who if they were on other teams might actually be the best players.

<sup>72</sup> Rawls and Hart are usually credited with this approach. Also see Brooks 2012: ch.5.

<sup>73</sup> Few retributivists will deny good consequences also have a role in thinking about punishment. Brink argues such considerations apply when thinking about the manner in which offenders are to be punished. See Brink 2021: 147-151.

<sup>74</sup> Also see Tasioulas 2006.

Again, the notion of absolute desert is independent of ‘fault forfeits first’. To see this, suppose A is more virtuous than B. If it would be worse from the point of view of desert for a more deserving individual to be at the same level of welfare as a less deserving individual, then if both A and B were assigned the same degree slope A’s desert line would shift to the east. (See Fig. 18.) Thus, absolute desert is independent of ‘fault forfeits first’. Feldman’s view is a fine example of a theory of desert which include ‘fault forfeits first’ without commitment to the idea of absolute desert. Hurka’s theory of moral desert is a great example of a commitment to absolute desert without embracing bell-motion, as we have seen an extension of ‘fault forfeits first’.<sup>75</sup>

Recall what is distinctive about the idea of peaks is that an individual can be at a level of welfare more than they deserve or be punished more than they deserve absolutely. And as we have seen the idea of a peak captures the core intuition of retributivism, one which S-theorists are likely to accept. Nonetheless, there are several reasons why one might be reluctant to accept the idea of absolute desert.

First, in thinking through our example with Brett and Charles, it was suggested given Charles’s overall pattern of life, i.e. a life of crime, he deserves to be at a negative level of welfare absolutely. In other words, the idea of what an individual deserves absolutely is closely tied to the idea of the level of welfare an individual deserves over the course of a whole life. While we might be more certain of intuitions if we are asked to consider whether there is a point beyond which no individual deserves to *suffer* more, many are much less certain of their intuitions when asked to consider whether there is a point beyond which an individual would be faring at a level of *welfare* more than he or she deserve. Is there a level of welfare beyond which a doctor who works for Doctors Without Borders would be getting more than he or she deserves? What level is that? It seems to me many are perhaps not at all certain as to what any particular individual absolutely deserves over the course of a life. And it seems plausible this is not just a case of conflating intuitions about welfare and desert.

What makes arriving at an answer more difficult is that our judgment must be determined non-comparatively. This is what the notion of absolute desert entails. For instance, in our example Charles deserves to be worse off simply because Charles leads a life of crime. While we can compare Charles with Brett, why Charles deserves to be worse off than Brett is *not* because any fact about Brett, say, Brett’s level of welfare, but because of

<sup>75</sup> See Hurka 2011:160.

Charles's vicious acts alone.<sup>76</sup> While I'm confident in my judgment that given his life of crime Charles deserves to suffer a negative level of welfare over the course of a lifetime, I am much less confident as to the exact level. I find myself grasping for comparisons. And returning to our self-sacrificing doctor, when asked what he or she non-comparatively deserves absolutely over the course of a life, I find my intuitions are even less firm than in the case of negative desert.

Here is another difficulty. Suppose Delores grows up in an underserved community. She lives in an environment where her options are extremely limited. Most of the people who she knows have been in and out of jail for most of their adult life—we can suppose, mostly for drug possession. Even in this environment, she hopes one day she will have saved enough money from working odd jobs to lift her and her child out of poverty. But, as for most people, the burdens of her life at times get the better of her. We might imagine Delores is currently getting far less than she deserves over the course of a life. We might suppose in terms of the level of welfare she deserves absolutely, while she should be at 5, she is currently faring at a welfare level of -10.

Now suppose one day in a moment of weakness Delores decides to smuggle some drugs across the U.S. border for a friend. Since she barely knows what she is doing, Delores is soon apprehended and brought to trial where she pleads guilty. The judge sentences her to several years in prison. Given the crime committed, we might suppose she now deserves to be at welfare level -2. If Delores goes to prison, we might suppose her welfare level would be at -12. Even if we adjust our view as to what Delores absolutely deserves (i.e., from 5 to -2), from the point of view of desert, since she was already getting far less than she deserves, punishing Delores only makes things worse. Given this fact, does it mean there would be no reason to punish Delores?

It is hard to believe that because she was already getting less than she deserves, punishment for crime becomes inappropriate. The problem is up to this point we have been assuming what is deserved is to be a certain level of welfare and that the benefits and burdens to a person are commensurable.<sup>77</sup> Examples like this one point to the practical limitations of a whole life approach to desert.<sup>78</sup>

<sup>76</sup> One might think, for instance, since Charles is twice as vicious as Brett, and Brett is at the welfare level of -2 so Charles deserves to be at the welfare level of -4. Here what Charles deserves is established comparatively. By contrast, if anyone who commits murder deserves to be at welfare level of -6, and Charles commits murder, then he absolutely deserves to be at -6. Here what Charles deserves is determined non-comparatively.

<sup>77</sup> See Sher 1987: footnote on 85.

<sup>78</sup> This however does not prevent us in private life from having more reason to help the deserving.

Here is another worry. Suppose Al decides to rob a bank later that afternoon. As he is on his way out, he is cornered by a security guard. Determined to escape, Al points his gun at the guard, shoots and kills him. On that same day, at the other side of town, Ben also decides to rob a bank. On his way out, he too is cornered by a security guard. However, just as he is about to pull the trigger, he is tackled from behind by a bank clerk, and his shot misses the guard. Both Al and Ben are apprehended. While both Al and Ben are equally vicious, having killed the guard Al gets the harsher sentence. Yet, from the point of view of desert, this may seem unfair. After all, Ben is equally vicious. By pure dumb luck Ben just happened to have missed the guard.

Or we might imagine firefighter A saves ten people from a burning building, and at a different part of town firefighter B saves twenty people in a different burning building. It might very well be that A is just as deserving as B, but it just so happens that for A only ten people were in the building who needed saving, but if there were twenty A would try to save them all.

In short, moral luck must be taken into account. In terms of retributive justice, one radical suggestion is to punish only for what offenders intend but not for consequences which are the results of their action. However, this view is clearly radically revisionary and remains highly controversial.<sup>79</sup>

These last two objections point to the difficulties involved if one tried to put the whole life view into practice. Nonetheless, in outline the pluralistic approach captures many of our most important intuitions about the retributivist position. And recall the whole life interpretation is not essential to the pluralistic approach. If we set aside concerns about what any individual deserves over the course of a whole life, important still is the idea that some individuals may be punished more than they absolutely deserve, i.e. there must be some limit to the amount of suffering any individual deserves for any particular crimes. And when we come to consider what to criminalize and how much to punish, most theorists seem to work under the assumption that there is both a baseline level of welfare and a lower bound beyond which no one can deserve to suffer more. Most retributivists, recall, claim even the mildly vicious deserve a positive level of welfare (see 5.11). I take it, these features of the view—namely, for particular types of criminal wrongdoing there is an absolute limit of deserved suffering, a baseline, and a lower bound—capture the intuition that there are natural limits to the criminal law.

<sup>79</sup> See Alexander and Ferzan 2017.

**5.13** We turn now to the third objection mentioned at the outset. Many are perplexed by the idea that the intentional infliction of harm, which is normally impermissible, can become permissible on account of an individual's desert.

Let's consider more closely what is being claimed here. It clearly cannot be the case that all intentional infliction of harm is always impermissible. When you break the wrist of a culpable attacker in self-defence you are deliberately inflicting harm on this person. In these instances, the intentional infliction of harm (if the response is proportionate) becomes permissible since the good consequences outweigh any costs (in terms of suffering) which might be associated with the harm. So it cannot be that intentional infliction of harm is always wrong all things considered. So it must be while the objector agrees good consequences can justify or make permissible the deliberate infliction of harm, the objector fails to see how considerations of desert can make intentional harm unobjectionable.

One way to approach this challenge is to claim while punishment involves suffering, which is bad, punishing those who deserve to be punished makes the state of affairs overall better. According to Moore's principle of organic unities, the value of the whole need not be the same as the sum of the value of the parts.<sup>80</sup> Suppose Bruce breaks Alfred's leg for winning the attention of his beloved. The harm Bruce caused Alfred, we might suppose, makes the state of affairs worse by -10 units. Now suppose we could punish Bruce for breaking Alfred's leg. Suppose Bruce's suffering would make the state of affairs worse by -5 units. However, since Bruce deserves punishment, his getting punished makes the state of affairs as the whole better by 7 units. So the state of affairs on the whole in which Bruce is punished is -8. Moore's principle states that the value of a state of affairs on the whole need not be the same as the sum of the value of the parts, which here include both the pain Alfred and Bruce suffer. By comparison, a state of affairs in which Bruce goes unpunished is -10. So a state of affairs in which Bruce is punished is better than one in which he goes unpunished. While the pain Bruce suffers is still bad, it is outweighed by considerations of desert. Essential to this view is the disvalue of the original harm must be greater than the value of the response, in this case, deserved punishment. If the good of desert can be greater than ten, such a view would entail in the pursuit of the good of desert we ought to encourage wrongdoing. This is clearly absurd. In this way, the good of desert can only make a situation better, never a positive good. Moore's principle of organic unities thus provides one explanation as to how the deliberate infliction of pain may become permissible. It is not wrong to make a situation better, even if it does not make the state of affairs good overall.

<sup>80</sup> See Moore 1903: 215.

While some might be inclined to think this is just a bit of moral alchemy,<sup>81</sup> this approach gains some support from the idea that since Bruce's suffering is still bad, the approach explains the regret we feel when wrongdoers are punished. As Hurka puts it, 'retribution involves or should involve a distinctively somber or subdued emotional tone, one suffused with regret.'<sup>82</sup> An alternative is to claim since Bruce deserves punishment, the pain he suffers is not bad—or even good—in which case Bruce's pain is transvalued. However, this approach would fail to explain the regret that might be involved in retribution.

While I am sympathetic to Moore's approach, I concede many will remain dissatisfied. This application of Moore's principle of organic unities assumes it is a good thing people get what they deserve. Up to this point we have also simply *assumed* this is true. But in fact, peaks, slopes, and bell-motion still applies even if we do not make this assumption. While evaluative judgements are still involved, one need not claim that people get what they deserve is a positive good. One might instead claim all peaks are located on the x-axis. (See Fig. 25.)

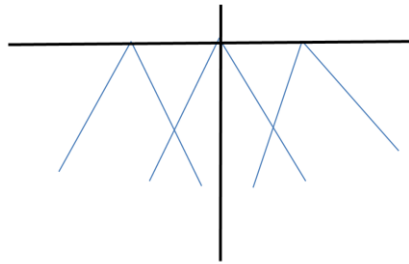


Figure 25

On this view, for any individual to be at their peak is neutral from the point of view of desert, neither good nor bad.<sup>83</sup> But desert is not simply irrelevant on this view. For any individual to be below or beyond their peaks is a bad thing from the moral point of view. When individuals are getting more or less than they deserve, this is still a bad thing from the point of view of desert. Bringing individuals closer to their peaks is still “good” and makes the state affairs

<sup>81</sup> This phrase is attributed to H.L.A. Hart, who once wrote: '[to some critics] it appears to be a mysterious piece of moral alchemy in which the combination of the two evils of moral wickedness and suffering are transmuted into good.' As quoted in Sher 1987: 4.

<sup>82</sup> See Hurka 2011: 103.

<sup>83</sup> Commitment to this claim is also consistent with what we have said about a baseline of welfare. While in Fig. 25 I have represented the interface between virtue and vice at the origin, that the interface should be located farther west along the west x-axis is compatible with the claim that people getting exactly what they deserve is merely neutral from the point of view of desert. Bell-motion, of course, is also compatible. What is incompatible on this view is the rejection of peaks.

better. Just as one might think inequality is a bad thing without thinking equality as such is good, one might think it is a bad thing when people don't get what they deserve without being committed to the idea that it is a positive good when people get what they deserve.<sup>84</sup>

Notice, this kind of view also seems to capture what Moore had in mind when he claimed that punishment only makes the situation better. And it is perhaps also this same intuition which drives philosophers like Feldman to claim that desert enhances the value of happiness or pleasure. While it is surely not incoherent to claim there is positive value in a state of affairs where equality obtains, say, with regards to the level of welfare, or where everyone is getting exactly what they deserve, some might find it puzzling this distributive feature of a state of affairs can have positive value. In addition, as I argued in ch.2, desert seem ill-fitted for either the deontic or evaluative category. I take it this thought finds some support in our ambivalence as to whether people getting what they deserve is a positive good or merely neutral. In light of these two considerations, I'm inclined to think people getting exactly what they deserve is not a positive good.<sup>85</sup> Perhaps like mercy, there would be no reason to pursue retributive desert if there were no injustice. Injustice wears the trousers. This of course doesn't address the question of positive desert. Either way, once we see many of our commitments about desert do not depend on this assumption, the question whether people getting what they deserve is a positive good becomes unimportant.

<sup>84</sup> As to whether people getting exactly what they deserve is a positive good or neutral, Kagan reports he has no firm intuitions on this point. See Kagan 2012: 149.

<sup>85</sup> One thing that is not captured if peaks are not located above the x-axis is the idea that there is a minimum level of welfare for any particular individual below which things would be bad from the point of view of desert. I don't have firm intuitions on this point so do not find this objection particularly compelling.

## Appendix

### Effort and Ability

Consider the following:

*Tale of Suzie and Sally.* Suzie and Sally, both high school aged, live in a small rural town. Sally's father works at the local bank, Suzie's a coal miner. Informal calls are not infrequent between the two men, and their mothers have been best friends since childhood. As a result, Suzie and Sally are also inseparable. Suzie and Sally attend the same school, and both have the ambition to go to college.

As graduation nears, both families become more attentive to school reports. Since neither family can afford to send their child to college, academic performance has added significance for both Suzie and Sally. For Sally and her family, teachers have nothing but good things to say: 'Sally is focused, demonstrates a great love for learning and is expected to graduate at the top of her class.' For Suzie, the situation is otherwise. Consistent with what other teachers have reported in the past, they write: 'while Suzie is enthusiastic about learning and demonstrates due diligence, Suzie is often easily distracted.' Nonetheless, many of her teachers believe Suzie could attain higher grades with more focus. As a result, tension has developed within the family concerning Suzie's academic progress.

Graduation arrives. Sally is awarded full scholarship for her efforts. But in Suzie's case, while admitted into the same college as Sally, Suzie failed to meet the grade requirement to qualify for financial aid. Both Suzie and Sally are saddened by this outcome and Suzie about her prospects. They realize the paths upon which they are about to embark have very different trajectories. And it seems all but inevitable they will soon grow apart. Suzie will likely stay in town and work at the local diner, while Sally will move to the city and find a job there after she graduates.

On account of their friendship, both regret the outcome. But the two friends disagree vehemently as to the question whether this outcome was fair. Sally believes her success is deserved, while Suzie believes she has been unfairly disadvantaged. Frequent clashes begin to make Suzie feel alienated both from her family and her friend. Was this a fair outcome? Would things be different if only Suzie could have worked harder?

Sceptics about desert tend to agree with Suzie. They argue while it may appear that Suzie and Sally had equal opportunity to succeed, this is not in fact true. We have reason to look more



closely at Suzie's case, they point out. We know Suzie is punctual, talented, and ambitious. But also know Suzie was easily distracted. And, as her school reports show, Suzie clearly couldn't help becoming easily distracted. If so, we should conclude, but for her disposition to become easily distracted, Suzie would have gotten higher grades and qualified for financial aid. Furthermore, it would do no good to blame Suzie for not trying hard enough, as the ability to try harder is simply beyond her control. Suzie is simply unlucky to have been born with a disposition to become easily distracted, and, when compared with Sally, her disposition puts her at an unfair disadvantage. Given Suzie could not help but be distracted, and the ability to put in more effort is beyond her control, an outcome in which only Sally is awarded financial assistance for college cannot be fair.<sup>1</sup>

At a glance, this argument seems quite compelling. Importantly, the argument applies not only to the possession of negative traits, as in Suzie's case, but also to what might be considered positive natural assets. Do famous fashion models and talented basketball stars deserve their success? Many think no. After all, fashion models were born with good looks, and successful basketball players are likewise simply lucky to have been born taller than six feet with the required stamina, agility, and dexterity to become basketball stars.<sup>2</sup> Moreover, we have reason to think this might apply to Sally as well: perhaps Sally was simply born with a talent for academic learning. Notice, this is a perfectly general line of argument, one that undermines *all* claims of desert, both positive and negative. If this line of argument proves convincing, then those who believe the concept of desert has a role to play in how we think about just outcomes have reason to think twice.

To be exact, the sceptic argues the celebrity's success cannot be deserved since we deserve only the benefits and burdens (or other forms of treatment), based on what we have

<sup>1</sup> One might doubt whether having the disposition to become easily distracted really counts as a disadvantage. The following alternative line of argument is open to the sceptic. Suppose Suzie wasn't easily distracted, but rather Sally's success can be traced to the fact that since childhood Sally's parents have made it a rule that Sally is not allowed to go outside to play with her friends until she has finished all her homework, while at Suzie's house no such rule exist. In addition, suppose Sally's family was generally supportive of her ambition to go to college while Suzie's family mocked, discouraged and in various ways hindered her from achieving her ambitions. Isn't it just a matter of luck, sceptics will point out, for Suzie to have grown up in one household rather than another? Or suppose Sally was born into a relatively well-to-do family in relatively peaceful and prosperous country and now leads a reasonably pleasant life, while Suzie was born into a family living in a war-torn country rife with civil unrest and Suzie continues to live in poverty. Isn't simply a matter of luck that Sally and Suzie were born into different families in different regions of the world? Sceptics believe the social environment into which we are born, no more than our natural assets or talents, is arbitrary from the moral point of view. Whether Suzie's disadvantage stems from natural or environmental factors is beside the point for the sceptic: both are equally arbitrary and therefore unfair. For clarity and ease of exposition, I focus on natural assets. Also see Rawls 1971: 74.

<sup>2</sup> Of course, there may be other reasons why one would think the success enjoyed by celebrities is not fully deserved. One might think their success depends upon having gained a monopoly in public attention. See Mulligan 2018.

done. (For instance, I deserve gratitude for helping you out of a jam; the boy next door deserves to be paid for mowing my lawn; students who show up late for class deserve detention.) But since the fashion model has not done anything to deserve her beauty, nor the athlete his talent, their beauty or talent cannot be deserved. And insofar as their beauty and talent make possible the model's and athlete's success, sceptics claim, they also do not deserve the success and benefits which these traits fortuitously make possible. Compared with others, the fashion model's beauty and athlete's talent are facts about them which gives them an unfair advantage, and any advantages or benefits gained based upon these traits are also undeserved. Thus, we must conclude, according to the sceptic, an outcome in which the model and athlete fare better than others cannot be fair since the model and the athlete have been given unfair or undeserved advantages.

If this is correct, then what it shows is that contrary to what one would expect, the concept of desert has in fact no role to play in our thinking about just or fair outcomes. Sally no more deserves her success than Suzie her disadvantage. On this view, no one can truly deserve the successes or failures we intuitively think make up the fabric of our lives.<sup>3</sup>

### **Can We Be Deserving?**

There are, however, several problems with this line of argument. First, it should be pointed out, if it is true, as the sceptic claims, that in order to deserve the benefits made possible by certain traits of ours, such as beauty or talent, we have to deserve all those traits, then no one could be said to deserve anything, since no one deserves to be born, with or without, beauty, brains, or talent. This conclusion indeed amounts to a wholesale rejection of desert. But surely this conclusion is deeply counterintuitive.<sup>4</sup>

Second, sceptics assume we must deserve *all* the necessary conditions which might make a person deserving of some benefit (or burden, or type of treatment) based upon some act of his or hers. But this is surely implausible. Suppose Sally has a knack for wiggling her ears while at the same time humming a tune. While Sally didn't do anything to deserve her ability to wiggle her ears, we might still think her deserving. We might agree Sally deserves

<sup>3</sup> This conclusion closely resembles another within this vicinity, namely, we simply don't have the kind of freedom necessary in order to become deserving. But these two rather different conclusions two should not be confused. The sceptical argument pursued in the text does not aim to arrive at a deeply sceptical metaphysical conclusion concerning free will, since it allows that we can deserve certain benefits or burdens based upon what we have done. The desert sceptic claims merely we don't deserve what makes possible what we have done with our lives, namely, our individual natural assets and the environment into which we were born. For this reason, the line of objection pursued in the text is what one might call a quasi-metaphysical objection.

<sup>4</sup> Some have taken this to be a *reductio* of the sceptical argument. See Zaitchik 1977. Also see Sher 1987: 25.

appreciative laughter and mirth, and perhaps even praise for the effort she put into learning an entertaining party trick, even though Sally was simply born with the ability to develop the skill of wiggling her ears.

Third, the sceptic makes desert claims seem trivial only by adopting an overly narrow view of what justice requires. On this view, when thinking about what is fair or just, we are interested only in traits which provide some an unfair advantage over others. But the sceptic neglects to point out that we are interested in unfair advantages only insofar as what is being distributed is in short supply. In other words, the sceptic treats all distributive issues as a matter of competition. But there are clearly other ways to become deserving apart from becoming deserving in competition.

And in cases where the agents compared are in possession in roughly equal measure of a set of relevant abilities, or are provided with roughly equally good outcomes, there appears to be no apparent reason to be sceptical of desert.<sup>5</sup> This is true even in cases of competition.

Let's consider each of these points more closely.

Suppose Sally has a knack for wiggling her ears while at the same time humming a tune, and Suzie is able to do perfect backflips and isn't easily distracted. Same as before, Sally gets a scholarship and Suzie fails to get the grades. I doubt anyone would even be tempted to think under these circumstances an outcome in which Sally goes to college, and Suzie doesn't, is unfair. We might think instead Suzie simply slacked off. In this instance, we do not think the outcome unfair because Sally and Suzie are both in possession in roughly equal measure of a set of relevant abilities for academic success. Neither a neat party trick nor fancy backflips are relevant to academic success. If so, then Sally deserves her success.<sup>6</sup>

But just having in roughly equal measure a set of relevant basic abilities is not all that matters. It is often also important the agents are provided with opportunities for roughly equally good outcomes. It is perhaps for this reason, for some, our tale about Suzie and Sally may not have initially struck one as intuitively unfair: life in a small town may be just as good as a life in the city. Thus, when agents are presented with opportunities for comparably good outcomes, there is also no real reason to be sceptical of desert.

In fact, considerations of desert are most salient in cases where agents are presented with equally good outcomes. Suppose Ian will pay Jack £10 on condition that Jack mow his

<sup>5</sup> As to why the qualification is needed, see note 11.

<sup>6</sup> Notice, if we don't think becoming easily distracted is a relevant trait, then we would also not think an outcome unfair in which Sally goes to college and Suzie doesn't. But clearly becoming easily distracted can be a relevant trait for academic success.

lawn, and asks Ken to clean his windows, but will give Ken £10 regardless. If both Jack and Ken end up with £10, but Ian's windows remain filthy, we think Ken's benefit undeserved, and are inclined to suspect Ian treated Jack unfairly. Perhaps Jack deserved to be treated better.

Notice also it is only when what is being distributed is a scarce resource that natural differences become important, and only those which might provide an unfair advantage; otherwise, we quite readily take effort or ability to be a natural basis of desert. For instance, suppose Sally enters a talent show and wins acclaim by wiggling her ears while humming a tune sprinkled among amusing jokes. If Sally is in fact amusing, intuitively we think the accolades are deserved. We think this because Sally had put effort into learning an entertaining party trick and telling funny jokes. And if Suzie were also to win acclaim for playing the fiddle—because she cannot wiggle her ears—we would not think it unfair because there is plenty of praise to go around.<sup>7</sup>

Compare: suppose Sally and Suzie were to enter a contest which rewards £100 to the winner, one which requires contestants to recite flawlessly the first three pages of OED from memory. In addition, suppose Suzie has photographic memory, while Sally doesn't. Here, Sally is likely to object that having photographic memory—which seems rather insignificant in itself and not particularly praiseworthy—gives Suzie an unfair advantage in the contest. True, if Suzie is not disqualified, she would have an unfair advantage. But this matters only because we want to ensure the person who gets the £100 get it fairly. But we clearly also care about the reason for which one is awarded the £100. And if what we care about is praiseworthy performances, we would require Suzie be disqualified from these kinds of contests on account of her having photographic memory, or at least require further special obstacles for candidates like Suzie with the relevant special abilities in compensation. Notice that we think Suzie should be disqualified from the contest does nothing to undermine our belief that the winner of the contest deserves the reward. Suppose in competition with Sally is Sam, and Sam wins only because she had a cheat sheet under her cuffs. If discovered, we would rightly object to Sam being declared the winner.

In adopting an overly narrow conception of what justice requires, the sceptic has in a way changed the question. Equal opportunity is not all that justice requires. Just outcomes in competitions might very well also require the winner deserves the reward for their excellent performance. And importantly, becoming deserving through competitions is not

<sup>7</sup> This is not to deny that applause and praise can be treated as a scarce resource, in which case some might think the fact that Suzie can't wiggle her ears puts her at a disadvantage, especially if they were to join a contest in which this ability might provide an advantage. Also see Miller 2003: 30.

the only way one comes to deserve benefits or burdens or certain forms of treatment, as the sceptic assumes. As we have seen, Suzie might well deserve praise for playing the fiddle whether or not there is a competition if she is an excellent fiddle player.

In sum, if there is equal opportunity for roughly equally good outcomes, or when what is being distributed is not limited in number, we are little bothered by differences in natural ability and quite readily allow considerations of desert may affect how we distribute benefits and burdens, or others forms of treatment, such as praise or blame.

### **Exercising Effort and The Ability to Exert Effort**

We have looked at cases where differences in natural assets do not amount to an unfair advantage either because the trait is irrelevant or because there is no competition. In such cases, we have seen, scepticism fails to gain a foothold. We have also seen in cases where agents are provided with equal opportunity for roughly equally good outcomes, there is also no reason to be sceptical of desert. But this of course leaves untouched cases where we might think equal opportunity does not obtain, where the agent is unfairly disadvantaged by one of their relevant unchosen traits. Does Suzie's case in our original example fall into this category? Let's pursue this a bit further.

What we should notice is the sceptic not only claims that Suzie's disposition to become easily distracted is beyond her control, but also her ability to exert more effort is beyond her control. Without argument, sceptics simply insist there are innate differences in our ability to exert effort. The sceptic assumes putting in more effort into not becoming distracted is beside the point since Suzie's ability to exert effort is beyond her control.<sup>8</sup> But here is the misstep.

That Suzie's ability to exert effort is beyond her control by no means entails that Suzie could not have exercised more effort. What the sceptic fails to do is distinguish between possessing the ability to exert effort and exercising effort. And surely, we have good reason to distinguish between the two.<sup>9</sup>

True, some naturally find it easier to stay focused than others, but many sceptics simply ignore the fact that often there are steps we can take to compensate, say, in order to

<sup>8</sup> Also see Sher 1987: 28.

<sup>9</sup> It might be thought the sceptic is assuming we are incapable of making more effort than we actually do make. But this claim is clearly false. Could I have gotten the last pea off my plate?

help stay focused for longer periods of time.<sup>10</sup> And surely even the sceptic will not want to deny that Suzie, like Sally, possesses the basic ability to exert effort. While both differences in our ability to exert effort and the exercise of effort are a matter of degrees, it would be a mistake to conflate the two. And it is the exercise of effort that is a possible basis of desert.

Nonetheless, the sceptic is surely right in pointing out that if the difference in our ability to exert effort is large enough then Suzie might very well be at an unfair disadvantage.<sup>11</sup> If Suzie is dyslexic, for instance, we will surely want to say, not that she lacks the ability to exert effort, but that her ability has been impaired in some way by her dyslexia. And importantly, we can distinguish cases in which the agent chose not to exercise effort from cases in which the agent's ability to exercise effort has in some way been impaired. We might do this by asking whether the agent had any reason not to exercise effort.

To illustrate, suppose the real reason why Suzie is doing poorly in English is because deep down she believes herself to be 'a math person' and hopes to single-mindedly study only math in college. If so, it seems reasonable to conclude Suzie chose to exercise less effort in English because she wanted to spend all her energy on math.<sup>12</sup> Now suppose Suzie loves English and hopes to major in the subject in college, but she is dyslexic. Since there is no reason why Suzie would not want to exercise all her effort in the subject, we should conclude her performance has been hindered by her dyslexia.<sup>13</sup>

What the sceptical argument demonstrates is not that desert is impossible, but rather some natural differences in ability may lead to disadvantages which might require compensation so as to level the playing field. To claim that Suzie's ability to concentrate has been impaired is not the same as claiming that Suzie lacks the ability to exert effort. Recognizing differences in natural ability hardly amounts to a wholesale rejection of desert.

In sum, the popular sceptical argument depends on the premise that in order to be deserving of benefits or burdens or other forms of treatment, we must deserve all the necessary conditions which make possible the benefits and burdens. This is wildly

<sup>10</sup> A useful analogy here is with colour blindness. Being colour blind doesn't disqualify you from operating motor vehicles, it just means you need to know the order of the lights. Many philosophers have been boggled by this idea as colour blindness is a bit of a misnomer since it is not the case that most colour-blind people don't see colour; rather, for most their ability to discriminate between adjacent colours on the colour wheel is impaired, just as myopia impairs vision.

<sup>11</sup> For this reason, the qualification 'in roughly equal measure' was added to 'possessing a set of relevant basic abilities' earlier. See note 5.

<sup>12</sup> It is also possible that Suzie falsely believes doing well in English is not worth the effort.

<sup>13</sup> Of course, in practical life many cases may involve both a lack of effort and some kind of impairment. So identifying cases where it is clearly *impossible* for the agent to exert more effort is more easily said than done. Nonetheless, it is neither logically nor empirically impossible to distinguish between the two kinds of cases. Here is another example of a case where more effort is simply irrelevant: one might wonder why a lecturer decided to choose a colour scheme which makes it hard to read the slides, but that he or she is colour blind is a perfectly good explanation.

implausible. Sceptics claim that since our ability to exercise effort is beyond our control we cannot be deserving of benefits or burden based upon our efforts. But this seems plausible only if we fail to distinguish between possessing the ability to exert effort and exercising effort. While there may be some natural variation in our ability to exert or exercise effort, we all have this basic ability. And it is the exercise of effort that is a possible basis of desert and exercising effort is clearly within our control. Contrary to what many assume, sceptics have by no means provided us with a successful argument for the wholesale rejection of desert.<sup>14</sup>

<sup>14</sup> For an insightful and careful account of Rawls's highly influential attack on the moral significance of desert, see Sher 1987: ch.2. My arguments in this section owe a clear debt to Sher.

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