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DESERT, VIRTUE, AND JUSTICE

A Dissertation Presented

by

ERIC F. MOORE

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

DOCTOR OF PHILOSOPHY

February 1998

Department of Philosophy

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ABSTRACT

DESERT, VIRTUE, AND JUSTICE

FEBRUARY 1998

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I endorse an old view that distributive justice can best be understood as people getting what they deserve. John Rawls has several famous arguments to show that such a view is false. I criticize those arguments, but agree that more work needs to be done on the clarification and explanation of the concept of desert in order for the old view to be more than a platitude. I then criticize attempted analyses of the concept of desert by Feinberg, Kleinig, and Miller. I claim that desert must be taken as a primitive concept. However, even though desert is primitive, there still needs to be some account of what sorts of things make a person deserving (what sorts of things count as desert bases). Some proposed desert bases include need, personhood, diligence, moral worth, autonomous action, and entitlement. I criticize George Sher's work on autonomous action, diligence, and moral worth, then propose and defend a modified version of the view that all legitimate desert bases are either virtues or vices.

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CHAPTER 1

INTRODUCTION

This dissertation is a study of the nature of desert, and an exploration of the possibility that some significant principles about distributive justice can be formulated in terms of it. Here is one principle that I have in mind. It sets the limit for a perfectly just distribution of goods and evils.

The Perfectly Just Distribution (PJD):

A distribution of goods and evils, d , over a population of people, p , is perfectly just during time interval, $t1-t2$, if and only if, under d , each person in p gets what s/he deserves during $t1-t2$.

John Rawls has argued that no such principle as PJD could ever be true, because no conception of justice involving desert would ever be chosen in the original position. He gives several arguments for this conclusion, and this dissertation is a response to those arguments. Most of the arguments he presents are fairly easily refuted, and I take care of them in the second chapter. However, the most challenging argument that Rawls suggests against desert is that desert is too based on intuition to be of much use in explaining distributive justice. I answer this objection in the rest of the dissertation, where I examine several alleged analyses of desert, discuss some of the principal grounds of desert, and finally present my own principles

about desert. Thus, I end up with a viable, desert-based alternative to Rawls's principles of justice.

In the third chapter I examine several purported analyses of desert. First, Feinberg's analysis of desert in terms of propriety, then Kleinig's analysis in terms of evaluation of the agent, and finally Miller's analysis in terms of an evocation of appraising attitudes. I acknowledge that each of these authors points out an important feature of desert, yet none of those features can serve to unify the bewildering array of desert claims (even among those that each author explicitly accepts). Thus, it appears that desert is a deep, primitive concept. Examples can be used to help people "get onto" the concept, but no explicit analysis can be given. Nevertheless, it is useful to keep in mind the features pointed out by these authors as general guideposts to the nature of desert.

Taking desert as a primitive concept does not rule out saying *something* of importance about desert. As is evident from the preceding chapter, there are many possible grounds for desert. If we can specify which alleged grounds are actual grounds, then that would further our understanding of desert. Thus, it will be useful to survey some of the literature about desert bases. The most extensive treatment appears to be in the work of George Sher. Sher tries to provide arguments to show that autonomous action, diligence, and virtue (among others) are legitimate desert bases. In

the next two chapters, I examine his arguments for these three alleged desert bases. I show that they are all seriously defective.

Finally, I present my own view about the legitimate desert bases. I show how my view, that all desert is closely tied to virtues and vices, takes into account the features pointed out by Feinberg, Kleinig, and Miller. However, my account is unifying in a way that theirs is not. It ties the concept of desert to that of virtues and vices. Since it does so, some account of the virtues and vices appears necessary. I try to take a fairly non-committal view that is open to several different conceptions of the virtues and vices. However, I do claim that there is an important connection between the virtues and vices, and desert bases. I claim that whatever the true virtues and vices are, those are also the only desert bases (with a couple of exceptions detailed in Chapter Seven). At the end of this chapter, I have answered the most serious challenge to desert-based conceptions of justice by providing a fairly plausible account of desert.

CHAPTER 2

DESERT AND JUSTICE

In the seminal work of John Rawls, *A Theory of Justice*, there is a section called "Legitimate Expectations and Moral Desert." Rawls here suggests several arguments that might, if sound, show that justice cannot be explained with reference to desert. In this chapter, I refute all but one of those arguments. The last argument is refuted in Chapter Seven, where I present my view about desert.

Rawls notes that it a common sense view that justice is distribution according to desert.

There is a tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to moral desert. Justice is happiness according to virtue.¹

Of course, this is probably an unattainable ideal, but it is what people should at least aim for. Rawls concedes that this is an often held view; nevertheless, he rejects it. "Such a principle would not be chosen in the original position. There seems to be no way of defining the requisite criterion in that situation."²

I think these few sentences suggest an argument against desert based on the choice problem of the original position. However, before stating the argument, I want to formulate the desert principle that Rawls rejects. Since Rawls's approach to the study of justice differs somewhat from the one I presented in my introduction, the principles in this

chapter are formulated a little differently from other chapters. The major reason for the difference is that Rawls takes the main subject of justice to be the basic structure of social institutions rather than the distributions of goods and evils among the members of a population. The basic structure of a social institution is composed of a political constitution and the principal economic and social arrangements.³ "They [the principles of justice] are to govern the assignments of rights and duties and to regulate the distribution of social and economic advantages."⁴ Therefore, in this chapter, principles about distributive justice will have the form, "An institutional framework is distributively just if and only if..."

Many things can be distributed, but Rawls is interested in the distribution of primary social goods ('psgoods' for short). It is the way that an institutional framework distributes these that determines whether it is just or not. Psgoods are *primary* goods because they are the goods that "every rational man is presumed to want. These goods normally have a use whatever a person's rational plan of life."⁵ Psgoods are *social* goods because their production and distribution is primarily controlled by social institutions. This is in contrast to primary *natural* goods, such as health and intelligence, which can occur independently of social institutions. According to Rawls, the psgoods are "rights and liberties, opportunities and

powers, income and wealth," and an especially important psgood is a sense of one's own worth.⁶

Using the concepts of institutional frameworks and psgoods, and understanding virtue as moral worth, the following principle of distributive justice can be derived from the passage, "the good things in life generally, should be distributed according to moral desert. Justice is happiness according to virtue."⁷ Here then is the Principle of Distributive Justice according to Moral deserts.

PDJm An institutional framework is distributively just if and only if it leads to distributions of psgoods in which each person's receipt is equal to her/his moral deserts.

Here is the Original Position argument that I think Rawls suggests.

- (1) Persons in the original position would not choose PDJm.
- (2) If persons in the original position would not choose PDJm, then PDJm is not true.
- (3) Therefore, PDJm is not true.

Lines (1) and (3) are pretty clearly implied by the text of §48, but nothing like (2) is mentioned there. However, I think (2) is the most straightforward way to make the argument valid, and I think that Rawls would affirm its truth. He discusses the original position at some length in §4. There he pretty much states the contrapositive of (2), "We shall want to say that certain principles of justice are justified because they would be agreed to in an initial situation of equality [the original position]."⁸ I think

Rawls would allow that it follows from this that if a principle of justice would not be chosen in the original position, then it is not justified (and so presumably not true).

Rawls's justification for the original position is that it is a device "to make vivid to ourselves the restrictions that it seems reasonable to impose on arguments for principles of justice, and therefore on these principles themselves."⁹ Ideally, these restrictions are widely held, weak presumptions, such as that all parties in the original position have equal rights in formulating, defending and choosing principles.¹⁰ Rawls attempts to show that of the conceptions of justice up for consideration, only his two principles of justice are fully consistent with a complete statement of the original position. Therefore, they would be chosen.¹¹

The explanation for premise (1) requires appeal to the substance of the original position. Putting aside the acceptability of premise two for the moment, it seems that to establish the truth of (1), Rawls needs to show that a full statement of the original position will lead to the rejection of PDJm. Three of the twelve elements that summarize the original position seem most relevant to this job.¹² Keeping Rawls's numbering, they are,

- (7) Knowledge and Beliefs: The choice of principles is made from the standpoint of the veil of ignorance.¹³

- (8) Motivation of the Parties: The parties' motivation is characterized as mutual disinterestedness.¹⁴
- (9) Rationality: Each person in the original position is assumed to be rational in the following sense. S/he takes effective means to her/his ends with unified expectations and objective interpretation of probability.¹⁵

A person chooses so to speak, "from behind" the veil of ignorance when the following conditions obtain. She chooses without knowledge of particular facts about herself, such as what is her class position, income level, wealth, intelligence, strength, talents. Nor does she know her own rational life plan, what social class she lives in, nor even details of her psychological makeup. She does know general facts about human sociology, such as principles of economic theory and human psychology.¹⁶

The parties' mutual disinterestedness amounts to this: each bargains to get as much psgoods for himself as possible, but without envy. "The parties do not seek to confer benefits or to impose injuries on one another; they are not moved by affection or rancor."¹⁷

Lastly, Rawls claims the rationality presupposed here is the standard model from social theory. Each person wants to advance her own interests. But she does not know what those are, so she goes for as much of the psgoods as she can get. Then, no matter what her rational life plan is, she will be in as good a position as is possible to achieve it. "[The parties] know that in general they must try to protect

their liberties, widen their opportunities, and enlarge their means for promoting their aims whatever these are."¹⁸

From these three elements of the original position, it seems possible to argue why PDJm would not be chosen there. As I quoted above, Rawls says, "There seems to be no way of defining the requisite criterion in that situation."¹⁹ Then on almost the next page, he says "The idea of rewarding desert is impracticable."²⁰ The context here is a discussion of how hard it would be to figure out how much of a person's good fortune arises from his hard work, and how much from his natural abilities (which he does not deserve). In short, it appears that PDJm is not practical.²¹ It would not be possible to construct an institutional framework that would be able to make the delicate judgments of moral worth required for the distributions of psgoods. Since the persons in the original position are rational, and have general knowledge about human nature, they know that it is often difficult, if not impossible, to figure a person's actual moral worth. This is independent of knowing what makes for moral worth, a thorny philosophical problem in its own right. Since an institution has to actually distribute the psgoods, it must make some determination of what each person's moral worth actually is. This certainly seems very unworkable. Thus, it is easy to envision the participants in the original position rejecting PDJm.

Rawls mentions this practicality criterion in two other places as a reason to reject possible PDJ's. The first place is the last paragraph of §24:

... one conception of justice is to be preferred to another when it is founded upon markedly simpler general facts, and its choice does not depend upon elaborate calculations in the light of a vast array of theoretically defined possibilities.²²

Rawls puts this forward as one reason to favor his two principles of justice over classical utilitarianism.²³ It sounds like Rawls is here borrowing a widely used criticism of classical utilitarianism in the realm of morality, and adapting it to the arena of justice. The criticism of classical utilitarianism is that no one could ever calculate all the utilities required to evaluate a course of action, so at least in many cases, a person cannot determine which of her several alternatives is morally permissible. If classical utilitarianism was adopted in the original position, then the institutional framework would have to regulate distributions the choice of which would "depend upon elaborate calculations in the light of a vast array of theoretically defined possibilities." Clearly this would be highly impractical, and so one reason to prefer Rawls's principles to classical utilitarianism.

The second place Rawls appears to use the impracticability criterion is in §47:

No attempt is made to define the just distribution of goods and services on the basis of information

about the preferences and claims of particular individuals.²⁴

One reason is that such information is not available in the original position, but Rawls goes on to say,

... and in any case, it introduces complexities that cannot be handled by principles of tolerable simplicity to which men might reasonably be expected to agree.²⁵

It sounds like he is saying that very complex principles would not be accepted by persons in the original position. But surely not just because they are complex, or because a certain amount of time is required to grasp their implications. After all, Rawls's own two principles take much of his book to be explained. They seem pretty complex to me. So it seems to me that the reason that Rawls claims such principles would be rejected is not just their complexity, but instead because of the difficulty of putting them in practice. In this case, it would be very difficult to actually find out each person's preferences and claims in order to figure out how much psgoods each should get. So it seems reasonable to take Rawls as claiming that certain complex PDJ's are impractical, and so wouldn't be chosen in the original position.

So it appears that again and again Rawls uses a criterion of practicality to judge PDJ's. Perhaps this can be justified from the original position in light of the stated aim of (9), that rational people attempt to take *effective* means to achieve their aims.²⁶ It is plausible

that it would be hard to set up institutional frameworks so that they would effectively track individual preferences and claims, or calculate the long-term utilities of a variety of alternatives, or accurately take into account a person's moral worth. This seems to be ample reason to believe premise (1) of the Original Position argument.

However, I think these considerations miss the point of deliberation about PDJ's. The point is to formulate true principles of justice, not merely to formulate principles that are practical for use in distributing psgoods among large numbers of people. The quest is for principles that reveal general justice-making properties, not for principles that will easily be enforced by some standard legal system. It seems to me that this latter task is a matter for economists, political scientists and legal scholars. One of their tasks is to figure out how to get institutional frameworks to embody PDJ's. This is certainly no small problem, and is just as important as the one I take myself to be embarked upon. Still, I think their emphasis is different. They presuppose some theoretical conception of justice, and then try to figure out how to construct the constitution of a country to bring about this justice, whereas Rawls and myself are working on the theoretical conception itself. Note that Rawls cannot accuse me of being "overly ideal." That is, he cannot consistently fault a theory that shows what the ideals of a perfect social

system are without giving us much insight into how such a system could be brought into being by an institutional framework. For he himself limits his theory to a system where strict compliance holds, and says that, "the nature and aims of a perfectly just society is the fundamental part of the theory of justice."²⁷ Of course there is some overlap between the tasks of developing a theory of justice and trying to apply it, but I think it is important not to place too much emphasis on the practicality of a conception of justice. Thus, if premise (1) is true, then I reject premise (2); I do not think that the original position is the final arbiter of which principles are justified. It relies too much on practical contingencies.²⁸

There is another reason to believe that premise (1) might be true, but it is not suggested by Rawls. Elements (8) and (9) of the original position state that persons are mutually disinterested and rational agents. They each try to get as much of the psgoods as possible. Some have taken these elements as equivalent to stating that the persons in the original position are downright selfish. If so, then this would be reason to suppose that they would not choose PDJm. Since they know general principles of human psychology, these agents would know that not too many people have high moral worth.²⁹ So each might figure that his chance of getting as many of the psgoods as he wanted would be diminished were he to get only the amount of psgoods that

corresponded to his moral worth. It seems that persons in the original position would agree on this at least: none wants to see goods distributed according to moral worth. But this seems to point out another defect of the original position. For if a bunch of greedy tightwads agree not to choose PDJ_m, this seems an argument *for* it rather than against. Thus one who accepted premise (1) because it seems that the original position requires selfish behavior, would probably reject premise (2). It would seem to such a one that selfish people cannot conceive of justice.³⁰

Rawls considers and rejects this objection. He points out that though persons are mutually disinterested in the original position, that has no bearing on their character traits in the real world.³¹ Also, though the agents are mutually disinterested, they are not envious. "He is not downcast by the knowledge or perception that others have a larger index of primary social goods."³² Furthermore, though the agents may be selfish, they still will comply with whatever is agreed upon in the original position, and each knows this of each other. This is the strict compliance requirement. So selfishness will not cause one to try to get away with disobeying a PDJ. Finally, it is unlikely that Rawls would agree that general principles of human psychology imply that most people are selfish. He would probably argue that the principle, if true, is not general or universal enough to make it through the veil of

ignorance. It is probably just a contingent fact due to the way our social system operates, and persons in the original position do not know anything about their societies in the real world. Thus, an agent in the original position would not be making any guesses about the probability of her being selfish in the real world. At any rate this seems to be just the kind of contingent knowledge that Rawls wants to rule out with the veil of ignorance. He argues that because the agents are operating without knowledge of specifics, their selfishness does no harm. The fact that each agent operates from the motive of mutual disinterestedness but from behind the veil of ignorance "forces each person to take the good of others into account."³³ Though each person wants the best for himself, he knows so little about who he is that the only way to accomplish this is through making sure everyone is as well off as possible.

I think that Rawls has here missed some subtle ways in which selfishness can affect people's behavior, even behind the veil of ignorance. Michael Slote also thinks the stipulation that people in the original position are selfish is a mistake, because if the people there are faced with a hard lot, they may rather accept an unjust principle that helps them rather than a just principle that does not help them.³⁴ To see how selfish people could choose differently than altruistic people, even from behind the veil of ignorance, imagine that they are faced with a choice between

two sets of principles about justice. Imagine that under the first set of principles, institutions will be set up to distribute the psgoods so that fifty percent of the people will be moderately well off, twenty-five percent of the people will be very well off, and twenty-five percent of the people will not be well off at all, but will suffer a fair amount. Under the second set, everyone will be roughly equally well off, and a little better off than the moderately well off people under the first set. An altruistic person might very well prefer the second set of principles, because no one in that state would suffer much more than anyone else (as far as distribution of the psgoods is concerned). But a selfish, rational risk-taker might well prefer the first set of principles. She might reason that the risk of being in the worst-off group is adequately offset by the risk of being in the best-off group, and that the overall chances of landing in a good or very good situation versus a bad situation are three to one. Since she is selfish, so long as she is not in the worst-off group, she will not be very concerned about the people who are in that group. Thus, it seems to me that the selfishness of the people in the original position is a good reason to think that the principles chosen by those in the original position are not necessarily the just principles.

Circularity and Co-Dependence

Rawls suggests another argument against moral desert.

He says,

... the concept of moral worth does not provide a first principle of distributive justice. This is because it cannot be introduced until after the principles of justice...have been acknowledged.³⁵

Note that in this passage, Rawls writes of moral *worth*, but earlier, he wrote about moral *desert*. I think this is because Rawls has the view that desert is determined by moral worth. Thus, since justice is determined by desert, and desert is determined by moral worth (on his view), if there is a problem with moral worth, then there is a problem with desert (which Rawls often describes as *moral desert*, I think because of his view that moral worth determines desert).

Now, Rawls says moral worth is *defined* as having a sense of justice. "We have now defined this notion in terms of the sense of justice, the desire to act in accordance with the principles that would be chosen in the original position."³⁶ Rawls's talk of definitions might suggest that he thinks there is a formal circularity in PDJm. But Rawls never actually uses the term 'circular'; in any case, PDJm is not a definition, it is a substantive principle, so it cannot be formally circular. Only definitions can have that property. Nevertheless, there is a kind of circularity (perhaps 'co-dependency' is a better term) that principles can have, and while their having it does not show them

false, it does significantly decrease our philosophical interest in them. Here are three principles that I think are co-dependent: PDJm, MW1 and SJ1.

PDJm An institutional framework is distributively just if and only if it leads to distributions of psgoods in which each person's receipt is equal to her/his moral deserts.

I think that MW1 and SJ1 (below) embody the sense of moral worth that Rawls discusses in the following passage about a well-ordered society. Also, it is important to remember that Rawls thinks that desert is determined by moral worth.

Its members also have a strong sense of justice, an effective desire to comply with the existing rules...We have now defined this notion [moral worth] in terms of the sense of justice, the desire to act in accordance with the principles that would be chosen in the original position.³⁷

MW1 A person has moral worth equal to the strength of her/his sense of justice.

SJ1 The strength of a person's sense of justice is determined by how often s/he succeeds in acting in accordance with the true PDJ's.³⁸

The three principles are co-dependent in the following sense. One cannot determine which institutional frameworks are just unless one knows the desert of each person. Since the desert of each person is determined by the moral worth of each person, one cannot determine the moral desert of a person unless one knows the strength of that person's sense of justice. One cannot determine the strength of a person's sense of justice unless one knows (among other things) which

institutional frameworks are just. But the question of which institutional frameworks are just is the one that started the whole process. Thus, it appears that a person cannot come to know which institutional frameworks are just by studying PDJm, MW1, and SJ1. Yet that was the purpose of formulating them. Here is a Co-Dependency argument that incorporates this reasoning.

- (1) PDJm, MW1 and SJ1 are co-dependent.
- (2) If (1), then PDJm cannot be a first principle of distributive justice.
- (3) Therefore, PDJm cannot be a first principle of distributive justice.

Though I think (1) is justified, the only way to get to the conclusion seems to be by (2), and that line is very weak. First of all, since it is the three principles that together are co-dependent, it is not clear why PDJm should be the one to go. Since the co-dependency would be broken if any one of the three principles were given up, I would rather choose MW1 or SJ1. In fact, I think MW1 is highly implausible as an account of moral worth. Having a sense of justice is surely an important factor in determining moral worth, but just as surely it is not the sole factor. It is possible to be too motivated by justice, and we would say of one who is justice-motivated to the exclusion of other feelings, "he was just but hard-hearted in his refusal to ever grant mercy." Imagine this guy had many chances to be just, and many chances to be merciful, and assume that in all those cases he could not be both.³⁹ If he always chose

the just when he had the chance, and never chose the merciful, then though his sense of justice contributed positively to his moral worth, I think his lack of mercy contributed negatively to it. There are other qualities besides mercy and justice which contribute towards a person's moral worth: compassion, forgiveness, honesty, conscientiousness, diligence, etc. However, I think there is a trivial revision of MW1 which will seem far more plausible, and yet still let the argument go through. Here it is.

MW2 A person's moral worth is partially determined by the strength of his/her sense of justice.

So long as the sense of justice is at all important to moral worth, there will be co-dependency among the principles, because determining moral worth will rely, at least in part, on knowing which institutional frameworks are just. Since MW2 is plausible, and PDJm is not to be abandoned until necessary, that means that there is one last solution. Give up SJ1.

In fact I think SJ1 is implausible, so I am happy to give it up. When Rawls presents his "definition" of moral worth, he does so in the context of an ideal social system, whose members are lucky enough to know which principles were chosen in the original position, and are also lucky enough to know that whatever principles get chosen in the original position are true. For such individuals, it may be that SJ1

is correct about the conditions for the possession of a sense of justice. But we are not in that situation, and likely no one will ever be in that situation. We do not know what the true PDJ's are for certain, in the way that those in Rawls's ideal social system would. So I think that to have a sense of justice it is not required that a person act in accordance with the true PDJ's. It is enough that the person act in accordance with what s/he rationally believes to be the true PDJ's. After all, it makes sense to speak of a person from a different country than one's own (whose members have a different perception of the just), as having a sense of justice.

I think a person can have the virtue of honesty even on occasions when that person mistakenly gives you misinformation.⁴⁰ So long as the correct intent was there, and the person had good reason to believe he was right, I would accept his misinformation as "an honest mistake." Similarly, a person can have a sense of justice without always acting justly. So I would replace SJ1 with SJ2 as stated below.

SJ2 The strength of a person's sense of justice is determined by how often s/he succeeds in acting in accordance with what s/he rationally believes to be the true PDJ's.

With this revision of SJ1 I have achieved two principles that I think capture an important element of moral worth: MW2 and SJ2. Furthermore, they are not co-dependent with PDJm. Thus, I think that when it is

correctly formulated, by substituting MW2 for MW1 and SJ2 for SJ1, the first premise of the Co-Dependency argument is false. This argument has not shown that PDJm must be rejected as a candidate for a first principle of justice.

The Common Sense Precepts of Justice

In §47 Rawls considers whether his two principles of justice (PDJr) satisfy "our intuitive ideas of what is just and unjust. In particular we must ask how well it accords with common sense precepts of justice."⁴¹ Rawls thinks that although he has so far ignored the common sense precepts in his formulation of PDJr, it nevertheless accounts for them.⁴² Here are some of the common sense precepts of justice that Rawls discusses.

CPJc Other things equal, it is more just that a person's receipt level is equal to his/her contribution.⁴³

CPJt Other things equal, it is more just that a person's receipt level is equal to his/her talent.⁴⁴

CPJn Other things equal, it is more just that a person's receipt level is equal to his/her need.⁴⁵

CPJe Other things equal, it is more just that a person's receipt level is equal to his/her conscientious effort.⁴⁶

By the end of §47, I think Rawls is satisfied that RPJ accounts for the CPJ's as much as it needs to. He has also argued that none of the CPJ's could be elevated to the status of a first principle of justice.⁴⁷ It is plausible

that here Rawls is presenting moral desert not as a first principle of justice, but as a common sense precept.

There is a tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to moral desert.⁴⁸

Here is PDJm expressed as a common sense principle rather than as a first principle of justice.

CPJm Other things equal, it is more just that a person's receipt level is equal to his/her moral desert.

Expressed in this form CPJm is covered by Rawls's argument in §47, that no CPJ could plausibly be raised to the status of a first principle of justice. Here is one way that the Non-Accommodation of CPJ's argument can be formulated.

- (1) Any true first principle of justice must account for all our CPJ's.
- (2) PDJm does not account for any CPJ other than CPJm.
- (3) Therefore, PDJm is not a true first principle of justice.

I already presented the passage where Rawls assented to (1) above, and in any case it seems a plausible premise. Rawls presents a couple of reasons to believe (2). First, he shows that PDJm and CPJc conflict. According to CPJc, a person's receipt should match her contribution to the social system. But the amount a person contributes is partly regulated by supply and demand. Clearly a person's moral worth does not vary with supply and demand. "No one supposes that when someone's abilities are less in demand

... his moral deservingness undergoes a similar shift."⁴⁹ Rawls also points out that PDJm and CPJn conflict.⁵⁰ This seems clearly true. The moral worth of a person seems mostly independent of his need. It certainly does not vary with the occurrence of natural disasters though need often does. So (2) seems true as well.⁵¹ This argument appears successful.

However, premise (1) of the argument is quite powerful. It not only shows the implausibility of PDJm, but threatens the plausibility of RPJ. Here is the Non-Accommodation Argument Against RPJ.

- (1) Any true first principle of justice must account for all our CPJ's.
- (2) RPJ does not account for CPJm.
- (3) Therefore, RPJ is not a true first principle of justice.

Rawls admits the truth of (2) in a discussion of the conflict between CPJn and CPJm, "Nor does the basic structure tend to balance the precepts of justice [CPJn and CPJm] so as to achieve the requisite correspondence behind the scenes. It is regulated by the two principles of justice which define other aims entirely."⁵² Clearly, if RPJ accommodates CPJn and CPJc, and these conflict with CPJm, then RPJ cannot also accommodate it. To reject this argument, it is not enough for Rawls to show that PDJm is not a first principle of justice. He must show that CPJm is false. This is much harder than just showing that CPJm cannot plausibly be raised to a first principle, and none of

Rawls's arguments I have so far examined, even if sound, would seem sufficient to the task. They would at most show that PDJm is not true. However, Rawls does appear to think that CPJm is false, so I will consider his argument in the next section.

Deserving to Deserve

Rawls appears to claim that moral worth is not the correct basis of desert, from which it follows that CPJm must be false, because CPJm is based on moral desert, which is based upon the view that desert is determined by moral worth. Rawls claims that no one deserves the abilities, talents, or defects that one is born with, "any more than one deserves one's starting place in society."⁵³ Certainly much of a person's character, and moral worth, is determined by early childhood circumstances: one's family, education, natural inclinations toward good or evil, etc. These are things for which one can take no responsibility, and so one cannot deserve them. Rawls says that a man does not deserve his superior character because it is in large part determined by circumstances "for which he can take no credit."⁵⁴ If credit is understood as moral responsibility, this suggests the following Lack of Responsibility argument.

- (1) Our moral worth is determined by our inborn talents, childhood experiences, education, and natural inclinations, none of which we can be said to be responsible for.
- (2) If (1), then we cannot deserve anything on the basis of moral worth.

- (3) If we cannot deserve anything on the basis of moral worth, then CPJm is not true.
- (4) Therefore, CPJm is not true.

The rationale for premise (1) has already been discussed. Premise (2) seems based on the ideas that desert requires moral responsibility and that one is not morally responsible for one's own moral worth. Premise (3) is true, because CPJm is based on moral worth as the sole basis for desert.

The problem with this kind of argument is well noted in the literature.⁵⁵ Few philosophers would accept both (1) and (2).⁵⁶ Most of those who accept strict determinism, and therefore would accept line (1), do not claim that as a reason to deny moral responsibility, so it is not likely that they would accept (2). It is standard practice for compatibilists to base moral responsibility on something other than freedom from strict determinism. On the other hand, an incompatibilist who found (2) plausible would likely reject line (1). Just because your childhood circumstances contribute to your character, it does not follow that all decisions are bereft of free will. So while there is some influence of childhood circumstances on a person's moral worth, they are not usually decisive. In the final analysis, a good portion of a one's choices stem from one's own self. As Nozick points out, one can hardly believe that Rawls really thinks of persons as just mindless

automatons reacting to external stimuli strictly according to how they were brought up as children.

So denigrating a person's autonomy and prime responsibility for his actions is a risky line to take for a theory...that founds so much (including a theory of the good) upon person's choices.⁵⁷

In addition, line (2) seems false for another reason as well. It is not the case that all desert requires personal responsibility. Imagine poor Jim going about his everyday life working hard for his money, until one day a bolt of lightning causes a nearby tree to fall onto his home and destroy it. He deserves some recompense. But Jim was certainly not responsible for that tree hitting his house. In fact, this seems to be an instance that proves just the reverse of (3): if Jim had been responsible for the tree's destruction of his house, he would not deserve recompense.⁵⁸

So the Lack of Responsibility argument fails. However, the passage I quoted above from Rawls has suggested a different argument to some philosophers.⁵⁹ It is a more general argument about the nature of deserving, and does not mention responsibility or determinism, so it deserves separate consideration. Alan Zaitchik notes that all deserving must be in virtue of some justifying grounds; and that Rawls argues that the grounds of desert must be deserved as well. Zaitchik takes Rawls to say that if someone claims desert on grounds that just happen to be true, then the claim must be false. For the fact that the

grounds are true of him is "arbitrary from a moral point of view." Thus,

The man who deserves something must be able to claim credit, as Rawls puts it, for the ground's being true of him. But this means that he must deserve...whatever is specified in the ground.⁶⁰

Zaitchik formulates the following Infinite Regress of Desert argument.

- (1) All desert must be in virtue of some ground or other.
- (2) X deserves Y in virtue of having ground Z only if X deserves to have ground Z.
- (3) Therefore, no one ever deserves anything.⁶¹

The conclusion follows because in order for a person to deserve something, she must deserve its ground, but also the ground's ground, and the ground's ground's ground, and so on. Such conditions cannot be fulfilled, so no one ever deserves anything.

This is an argument whose conclusion is sweeping enough that if the argument were sound, my project would be completely derailed. However, line (2) seems clearly false. For one thing, to say that a ground needs justification seems to misunderstand its nature. A fact *grounds* a person's desert claim when it justifies it. Nothing more is needed. Otherwise it is unclear why such a fact would be said to ground its claim.

It certainly seems that people in ordinary language speak of desert with the understanding that there are possible circumstances in which it occurs. Yet if (2) were

true desert would not just never occur, it would be impossible. Furthermore, poor Jim's circumstances as I described above seem to provide a case of desert where the grounds "just happen" to be true of him. That is the injustice: he did not deserve to get a tree smashed into his house, it just happened to him.

Desert and Intuition

While I may have shown that Rawls's project requires more than just the falsity of PDJm, one might think that since the non-accommodation argument seems successful, that PDJm is false, and that therefore my project is scuttled. But this is not so, for my project does not depend upon PDJm. My project is to account for justice in terms of desert. But though I do think that desert is based primarily on virtues and vices, my view of them is fundamentally Aristotelian, so my view of desert is more broad than Rawls's concept of moral desert, which is determined solely by moral worth. I will show that effort and need, which are not accounted for according to moral worth, are accounted for under my view.⁶² Thus, I would present my first principle about the justice of institutional frameworks not as PDJm, but as PDJd, below.⁶³

PDJd An institutional framework is distributively just if and only if it leads to distributions in which each person's receipt is equal to his/her desert.

So, if Rawls did show that CPJm is false, then that would derail some of my particular view about the what the legitimate desert bases are, but it would not show that PDJd is false. For though I think that virtues and vices are the primary grounds for desert, there are those who hold a pluralist view about the legitimate grounds.⁶⁴ A version of PDJd would still be left to compete with RPJ.

The last objection to explaining justice in terms of desert is suggested by Rawls's discussion of intuitionism. According to Rawls, intuitionism is the doctrine that,

... there is an irreducible family of first principles which have to be weighed against one another by asking ourselves which balance, in our considered judgment, is the most just.⁶⁵

Desert-based theories of justice are intuitionistic, according to Rawls. In his list of alternative theories for consideration in the original position, those involving desert considerations are placed in the category of intuitionistic conceptions.⁶⁶ The problem with intuitionistic views is

... the especially prominent place that they give to the appeal to our intuitive capacities unguided by constructive and recognizably ethical criteria.⁶⁷

Thus, even if Rawls's other arguments against desert are unsatisfactory, there is still one final alleged problem with the concept of desert. If desert is merely a collection of unrelated intuitive principles, then although something like PJDD could be a possible alternative view to

RPJ, or classical utilitarianism, such a principle would not be especially insightful. We would be using a fairly mysterious concept, desert, to explain justice, and this would be of only minor interest.

I do not see this objection as unanswerable, but as a challenge. The challenge is to come up with a concept of desert that is at least somewhat unified and explanatory, so that in PDJd the concept of desert is not more mysterious than the concept of justice that it is supposed to explain. The rest of my dissertation takes up this challenge.

CHAPTER 3

THE ANALYSIS OF DESERT

In this chapter I examine three alleged analyses of desert. I show that those analyses are either just plain wrong, or else that although some alleged analysis may provide a useful glimpse of some aspect of the concept, it is far too sketchy to be a true analysis. Having shown the defects of previous attempted analyses, and having no satisfactory candidate of my own, my only option will be to take the concept as primitive. Nevertheless, I can give some original, substantive principles about the concept of desert (in Chapter Seven), and this will have to serve to make the concept more intelligible.

The difficulty of the task at hand can perhaps be better understood when a catalog of some of the main kinds of various uses of 'desert' has been presented, for it will show the widely diverse uses to which the word has been put. Before presenting such a catalog, there is a little bit of background work about the structure of desert claims to be done. Consider the claim, "Mary deserves a free lunch." This claim has a truth value, but before we can begin to ponder what its truth value might be, we need more information. The answer to the question, "*Why* does Mary deserve a free lunch?" is of primary importance for evaluating the original claim, *that* Mary deserves a free lunch. A "negative" answer to the question why the subject

is deserving: "No reason, she just deserves a free lunch," always indicates that the original desert claim is false. It is never true that a subject is deserving for no reason at all. This point is emphasized by several philosophers, and disputed by none that I have read.⁶⁸ Thus the structure of complete desert claims always includes a subject (the thing that deserves), a desert (that which the subject deserves), and a justification or desert base⁶⁹ (the alleged reason why the subject deserves the desert).

Given this structure, it can be seen that there are three main kinds of differences among desert claims: they can differ with respect to subject, desert and desert base. Here is a list of some desert-attribute sentences that each seem typical and noncontroversial.⁷⁰

Some Desert Claims

1. Jones deserves her success; she has worked hard for it.
2. Smith deserves more success than he had; he gave it his all.
3. Walters deserves the job; she is the best qualified applicant.
4. Wilson deserved to be disqualified; he knew the deadline for applications was March 1.
5. Jackson deserves more than minimum wage; her job is important and she does it well.
6. Baker deserves to win; he has played superbly.
7. Miss Vermont deserves to win; she is the prettiest entrant.
8. Simpson deserves the death-sentence; he planned the murder.
9. Brown may have known she would not be caught, but she still deserves to be punished.

10. Goldman deserves some compensation; he has suffered tremendous loss from the murder of his son.
11. Lee deserves a reward; she risked her life.
12. Benson deserves some good luck; he is a fine person.
13. Gordon deserves some good luck; she has had only bad.
14. McArthur deserves a hearing; he is an expert on the subject.
15. Cleveland deserves better publicity; it is an interesting city.
16. That painting deserves to be in a museum; it is a great work of art.
17. This problem deserves careful consideration; a wrong solution could spell disaster for our business.
18. Legislative bill n. 113 deserves passage into law; it is fair and just.
19. The villain deserved to be crushed in the landslide; she had never been punished for her crimes.
20. Peters deserves to get good weather for his holidays; he has planned everything so carefully.
21. Smith deserves a breakthrough; she has been working at that problem for years now.
22. Martin deserves to be punished; he lied to Jackson and Burns about ringing up yesterday.
23. Nolan deserved the prize for her efforts; her painting was by far the best.
24. Furthermore, Nolan deserved every bit of the \$500 she got for 1st prize.
25. McKenzie deserves to go to jail; he robbed that old lady.
26. Furthermore, McKenzie deserved about 5 years jail for his offence.
27. Menzies deserves to be honored; she made important contributions to Commonwealth relations.
28. Furthermore, Menzies deserved at least a K.C.M.G.
29. Pike deserves \$50; that amount was offered to anyone who climbed this peak, and Pike did.
30. Haiti deserved the sanctions imposed upon it; its military government was illegitimate and corrupt.

31. Monkeys, dogs and cats do not deserve the pain they receive in laboratory experiments; they are at least near-persons, and so should be treated similarly, especially with respect to causing them harm.
32. American Indians deserve a national holiday. (From a bumper-sticker.)

The Subjects of Desert

As the length and variety of this list shows, desert claims come in a wide assortment of flavors, sizes and colors. Although the subject of a desert claim is most typically a person, claims (15-18) and (30) present examples where the subject is a city, a country, a work of art, a legislative bill, or a problem. In claim (31), the subjects are "near-persons." Since my interest in desert is connected to justice, and I think that justice is of concern primarily among persons, I am willing to ignore claims where the subject is clearly not a person. Maybe the force of those claims comes from suitable paraphrases where reference to the non-person is replaced by reference to a suitable person. For instance, claim (30), about Haiti, can be construed as a claim about the actual military leaders--they are the ones who deserved harm for their illegal ouster of President Aristide, and the subsequent human-rights atrocities which they encouraged or permitted. Claim (16), about the painting deserving to be in a museum, can perhaps be construed as a claim about the public (understood as a group of persons): the public deserves access to that painting (through its being in a museum; it is a great work

of art and should be seen. However, I do not greatly care if such reconstructions do not always work. It seems to me that so long as all the people get what they deserve, then justice is not furthered or lessened by mere objects getting (or failing to get) what they deserve. If non-personal objects do deserve anything, it is not in the important sense that people deserve, and so has no bearing on justice.

It might be thought that in addition to individuals, groups should also get what they deserve. My view is that groups are not entities over and above their members. Furthermore, a person never deserves anything because of group-membership alone. Instead, talk about desert due to group-membership is to be understood as talk about an individual's desert because she possesses a relevant feature that makes, or at least helps to make, the group deserving. For instance, consider Slowpoke, who is a member of a prize-winning relay team. Suppose Slowpoke did not run a very good leg, but the team won the race anyway. Clearly, Slowpoke deserves a share in the prize, because Slowpoke's efforts, though they may have been slowest, were still good enough to help the team triumph.

Near-persons are a different story. I think claim (31) matters to justice. Objects with some but not all of the attributes of personhood should receive some justice. Consider two worlds that are the same with respect to the deserts of humans, but differ with respect to the treatment

of monkeys. In world A, the monkeys are raised strictly for the purpose of torturing them to a slow, agonizing death. In world B, the monkeys are allowed to live life in the wild, facing natural dangers, but no torture is inflicted by humans. Assuming that there are no other near-persons besides monkeys in either world A or B, A is clearly far more unjust than B. I think that in world A, the monkeys are not getting what they deserve, and this leads to the injustice there. This is why I wrote above that justice is only "primarily" concerned with persons. It is also concerned with near-persons, and so they are appropriate candidates to be the subjects of desert claims.

The Deserts Themselves

The things that subjects can deserve are quite varied, at least at first glance. Anything from "some good luck," as in claims (12-13), to "every bit of the \$500," as in claim (24). However, it may seem that all of these various deserts can be categorized as either something which is pleasant, or something which is unpleasant. So says John Kleinig, for instance, "Anything which is pleasant or unpleasant can be said to be deserved," and he goes on to say, "Deserved treatment is not something toward which we remain indifferent."⁷¹ This seems to echo Joel Feinberg's position. Here is his view about the various kinds of deserts.

They are varied, but they have at least one thing in common: they are generally "affective" in

character, i.e., favored or disfavored, pursued or avoided, pleasant or unpleasant. The deserved thing must be something generally regarded with favor or disfavor, even if, in some particular case, it is regarded with indifference by a person said to deserve it. If we were all perfect stoics, if no event were ever more or less pleasing to us than any other, then there would be no use for the concept of desert.⁷²

I see in this passage a proposal about deserts, along with a little argument to support it. The proposal is similar to Kleinig's view above, that all deserts must be pleasant or unpleasant. To show the import of Feinberg's view, I present here a precisification of Kleinig's view; though I do not mean to imply that Kleinig would or should accept this as equivalent to his original statement. (I will speak of states of affairs as the things which may serve as the deserts of a subject.)

D1 State of affairs e cannot be a desert for subject S at time t unless e is either pleasant or unpleasant to S at t .

The problem with D1 is that though a person might be indifferent to a state of affairs on some particular occasion, it still can be exactly what the person deserves on that occasion. For instance, suppose a marathoner learns of death of his father just before going on to race and win the Boston Marathon. Because of his grief for his father's demise, he is indifferent to the accolades he receives. But he still deserves them. His indifference to the desert does not change his desert. Feinberg at least makes it clear that such situations as the marathoner's are to be

considered legitimate cases of desert. His proposal might be precisified as follows.

D2 *E* cannot be a desert for *S* at *t* unless *e* is either pleasant or unpleasant to most people, most of the time.

Since most people, most of the time, would find the accolades given the marathoner pleasant, the fact that in this one special instance he was indifferent to them would not affect the appropriateness of the accolades for his accomplishment.

One other minor point is that both D1 and D2 treat positive and negative deserts on a par. That is, for a state of affairs to be a desert, it must be generally pleasant or unpleasant--i.e., not generally indifferent. But this has the result that a flogging (an unpleasant state of affairs) can be at least considered as a desert for a person's bravery in the line of duty (an action for which only pleasant states of affairs are appropriate candidates as deserts). This seems at least as incorrect as the proposal that some state of affairs to which the person is indifferent can serve her/his desert. Thus, I would follow Scott Hestevold, and treat positive deserts and negative deserts separately.⁷³

PD *E* cannot be a positive desert for *S* at *t* unless *e* is pleasant to most people, most of the time.

ND *E* cannot be a negative desert for *S* at *t* unless *e* is unpleasant to most people, most of the time.

All of these proposals are supported by the little argument that Feinberg gives, that if we were indifferent to every event, then there would be no use for the concept of desert. This is supposed to support the contention that no state of affairs can be a desert unless it has a pleasant or unpleasant character. I find Feinberg's argument unpersuasive. For one thing, I think that it would prove too much. It would show not only that the concept of desert requires non-stoics, but that all moral concepts, including the concept of morally right action, judgments of character, etc., have the same requirement. However, there is a distinguished tradition that holds that the morally right action is morally right not because it is pleasant, but because it is morally right, in the famous words of G. E. Moore.⁷⁴ Even if no event were ever more or less pleasing to any person, there might still be a use for the concept of desert: to record the truth about justice. Feinberg himself makes this point in his discussion of grades as deserts when he says,

... a grade as such is simply a way of ranking something...an appraisal which may be put to some future uses or may simply be put on the record *for no other purpose than to register the truth.*⁷⁵

So I do not think that Feinberg has given a reason to think that perfect stoicism would obviate need for desert. On the other hand, Feinberg may be making a metaethical point. He may be simply stating his belief that preferences determine goodness. He may be a preferentist with respect

to desert, just as some utilitarians are preferentists with respect to what they think should be maximized. As a matter of fact, I would disagree with Feinberg. I would say that part of what is required of a state of affairs to be a positive desert, is not that it is generally found to be pleasant, but that it is actually good. Persons can be misled as to which state of affairs are good, and they may erroneously conclude that they have not got their appropriate deserts when in fact they have. So, though it is possible for all people to be perfect stoics, and not find either their good deserts pleasant, or their bad deserts unpleasant, it is still true that some deserts are good, while others are bad. However, though I am of this opinion, I will not argue for it here. Suffice to say that Feinberg has not given any reason to think that desert is different from other moral concepts such that one who is *not* a preferentist about goodness when considering morally right action should *become* a preferentist about goodness when considering deserts.

Finally, I think Feinberg's discussion of grades shows that it is not the case that all desert must be pleasant or unpleasant, good or bad - in some contexts the deserved grade may be neutral. The grade simply serves to record the rank, which may itself be neutral. For instance, although an "A" is a good or pleasant desert, and an "F" a bad or unpleasant desert, it seems plausible that there is some

grade in between which is neither good nor bad, pleasant nor unpleasant, but simply neutral. Thus, I think that the attempt to restrict possible deserts to things which are either pleasant or unpleasant fails. Partly I think it fails because I think that goodness is not (or not merely) pleasure, but even if Kleinig were right about the nature of goodness, I think he is wrong about the requirement that all deserts be positive or negative. Some are neutral. So, when speaking of deserts, I would say, "the person who does/is good deserves good deserts, the person who does/is evil deserves evil deserts, and the person who does/is neutral deserves neutral deserts."

Cosmic and Person-Bestowed Deserts

There is another parameter along which the deserts in the list of claims above differ. It seems clear that some deserts are bestowable by persons; for instance, those deserts in claims (3-5), (8), (10), (11), (14-18), (22-31). But some deserts, such as those mentioned in claims (12), (13), (19-21), and perhaps also those mentioned in (1), (2), (6), (7), and (9-11), seem not to be the kind that are bestowable by persons. A landslide or bad weather are not the kinds of things generally under control of people. They occur whether or not we wish or intend them. Some deserts, e.g. success, may be partly under control of people, partly uncontrollable.

Feinberg concerns himself only with deserts that are or could be bestowed by persons. Kleinig's discussion of deserts does not rule out "cosmic" desert, that is, desert that is not bestowed by another person. Indeed, claims (20) and (21), which mention the deserts "good weather" and "a breakthrough," are adapted from examples mentioned by Kleinig in his article. Most other writers do include cosmic deserts in their discussion, and Feinberg gives no reason for his rejection of them.⁷⁶ Here is a reason to think that Feinberg may be correct. Consider two worlds, very similar in most respects, but quite different in one significant way. The inhabitants of Sunnyskye are morally excellent, and also see to it that insofar as possible each person there gets his or her deserts. In addition, the people there have good weather all the time. The same is true of the inhabitants of Naturaldisaster with respect to moral worth and person-bestowed deserts; however, the unlucky denizens of that inhospitable sphere are plagued with frequent hurricanes, tornados, earthquakes and tidal waves. If cosmic deserts are true deserts, then it is reasonable to suppose that Sunnyskye-people are deserving of the good weather they receive. On the other hand, the poor Naturaldisasterians are *not* deserving of the terrible weather that *they* receive. In fact, they also deserve good weather, and through no fault of their own do not get it. So, assuming that the person-bestowed deserts of Sunnyskye

are the same as those of Naturaldisaster, but that the cosmic deserts are skewed as outlined here, and a principle relating the justice of a world to the deserts therein in a straightforward manner; then it turns out that Sunnyskye is a more just world than Naturaldisaster. This seems wrong to me. It is just not true that Naturaldisaster is any less *just* than Sunnyskye. After all, the people in the former world treat each other as justly as do the people in the latter world. Granted, Naturaldisaster may be less happy, and we might say of its inhabitants, that they are less lucky, but this does not seem relevant to the *justice* that goes on in that world. So perhaps this example furnishes a reason why cosmic deserts should be disallowed by a suitable analysis of desert.

However, someone who does not think that deserts play a very large role in justice may think that my example shows that desert should not be used to understand justice. Such a one may say, "This just shows that desert and justice are not connected in the way that you think. For though Naturaldisaster is not less just than Sunnyskye because of some bad weather, it is still true that the Naturaldisasterians *do not deserve their bad luck*. The *deserts* of the two worlds are not the same."

My view is that just as there are two types of deserts, cosmic and personal, so are there two types of justice. Naturaldisaster is cosmically less just than Sunnyskye, but

is its equal in personal justice. In some contexts it may be more useful to consider strictly personal justice (and, therefore, strictly personal desert). For instance, the framers of a constitution may find it impractical to allow laws which would punish thieves only in the absence of natural disasters befalling them.

As the above catalog shows, there are many different proposed bases for deserts. Conscientious effort, actual contribution or success, moral worth, beauty, innocent suffering, bad luck, premeditated evil, need, past receipts, entitlement, personhood, talent. These are some of the major proposed bases for desert. Not all these bases are accepted by every philosopher. Robert Young accepts moral merit, value of contribution, and effort.⁷⁷ Wojciech Sadurski argues that effort is the only legitimate basis for desert.⁷⁸ Feinberg says that the desert basis of a prize is the pre-eminent possession of the skill singled out as a basis of competition; the desert basis of a grade is the actual possession to the appropriate degree of the quality assessed.⁷⁹ Several philosophers, including Feinberg, Sher, Miller and Kleinig, also try to provide more general analyses of desert bases.

The above paragraph only alludes to the problems that need to be worked out. What desert bases are there? Is there a general analysis of the concept of a base? Can it adjudicate between competing accounts of what bases there

are? As the discussion of desert bases requires detailed treatment, I will deal with it in several individual chapters after this one.

The catalog of desert claims is meant to show the diversity of such claims. But I do not expect that any analysis would have to accept all of those claims, so I want to extract a few that are likely candidates for any analysis we might encounter. Below I have extracted four claims from the catalog, in descending order of likelihood that each would be accepted by most analyses of desert.

1. Jones deserves her success; she has worked hard for it.
8. Simpson deserves the death-sentence; he planned the murder.
3. Walters deserves the job; she is the best qualified applicant.
6. Baker deserves to win; he has played superbly.

While they are in need of some elaboration, I think these claims do present some of the strongest evidence for the importance of the concept of desert. A satisfactory analysis of desert should either confirm claims such as these, or if it rules some out, at least shed light on why each appears plausible at first glance.

Desert as Propriety

In the first paragraph of Joel Feinberg's famous article, "Justice and Personal Desert," Feinberg states that his "direct aim" is to provide an analysis of the concept of desert; and some twenty-two pages later he writes, "Having presented this analysis of the concept of desert, I shall

conclude ..."⁸⁰ According to Feinberg, desert can be understood as a certain sort of propriety. "To say that a person deserves something is to say that there is a certain sort of propriety in his having it."⁸¹ So an initial stab at Desert Analysis could be as follows.

DA1 *S* deserves *x* =df. it is proper for *S* to have *x*.

The obvious immediate question raised by A1 is the meaning of 'proper.' Feinberg notes that there are other kinds of propriety than that conferred by desert. For instance, eligibility and entitlement can confer propriety. It is by means of contrasting these kinds of propriety with the kind conferred by desert that Feinberg attempts to elucidate the analysis of desert.

According to Feinberg, eligibility is a "minimal qualification, a state of not being disqualified," for some prize or office. Entitlement is stronger. A person is entitled to some prize or office when s/he satisfies certain conditions. Eligibility and entitlement are rules-based concepts, only applicable when there is an existent set of rules governing social intercourse. However, to deserve something, "one must be qualified in still a third sense; one must satisfy certain conditions of worthiness which are written down in no legal or official regulation."⁸²

Take the presidency as an example. To be *eligible* to run for president, one must be at least thirty-five and a U.S. citizen born in the U.S. or one of its territories. To

be *entitled* to be president, one must be eligible, and one must have received the most electoral votes (there are some other legal methods of becoming president, such as being the vice-president when the president dies, etc.). But to be *deserving* of the presidency, one must (and this list will vary according to the standards of individual voters) be intelligent and honest, have a plan for the job, be a consensus-builder, or be a leader, and so on. These conditions are not specified by any rule, "At best, they are conditions 'required' by the private standards or principles of a sensitive voter."⁸³ This discussion suggests the following analyses for eligibility, entitlement, and desert.⁸⁴ The analyses of eligibility and entitlement seem pretty straightforward, but there are at least two analyses of desert suggested. I will present both and then discuss the merits and defects of each.⁸⁵

ELG *S is eligible for x* =df. there exists some social institution, I; the rules of I specify that no one who does not satisfy conditions C shall be allowed to compete for x; *S* "participates" in I, *S* satisfies C.

ENT *S is entitled to x* =df. *S is eligible for x*; the rules of I specify that if one has quality Q, then one gets x; *S* participates in I; *S* has quality Q.

DA2 *S deserves₂ x* =df. *S is entitled to x*; there are further conditions, F, not written down, that constitute the reason or point of I; *S* satisfies F.

DA3 *S deserves₃ x* =df. there exists some social institution, I; in addition to the written rules of I, there are

further conditions, F, not written down,
that constitute the reason or point of
I; S satisfies F.

The difference between DA2 and DA3 is that the former makes entitlement a necessary condition for desert, and the latter does not. The textual evidence for DA2 comes from the sentence, "To deserve something, one must be qualified *in still a third sense...*"⁸⁶ This sentence follows a discussion of how eligibility is a weak qualification, which is embodied in the stronger qualification of entitlement. The natural progression would be that desert is the strongest qualification, which embodies the previous two, plus something else. DA2 allows us to make sense of the following statement: "the man who was just elected president of the U.S. did not deserve it." This would be true when it was the case that although he won the election, and so was entitled to the presidency, he did not fulfill the further unwritten conditions needed for desert.

However, DA2 suffers from two defects, one of which, at least, is devastating. First of all, DA2 appears to fly in the face of a statement earlier made by Feinberg, that his analysis will suggest that, "desert is a 'natural' moral notion (that is, one which is not logically tied to institutions, practices, and rules)."⁸⁷ DA2 on the contrary, does appear tied to rules, because one of its requirements for desert is entitlement. According to DA2, S must be entitled to be deserving, and S can not be entitled

to anything unless there is an institution with rules and S participates in that institution. The second criticism of DA2 is even worse. Feinberg makes it clear that it is not only reasonable to say of someone who actually won the election, that he did not deserve to, but that it is also reasonable to say that someone who did not win the election *did* deserve to. Yet DA2 does not allow the second type of statement. According to DA2, to deserve to win, one must be entitled to win. In other words, to deserve to win, one must have already won. Thus, DA2 clearly fails to capture an important part of the nature of desert: that a person could deserve something without having already achieved it.

DA3 does not suffer from the defects so far discussed of DA2. It is not tied to the written rules of an institution, and it does allow that a person who has not achieved something could deserve it. However, the connection between rules and desert is complex, and it is not clear that DA3 has correctly captured it. For one thing, DA3 is still tied to social institutions in a way that it seems Feinberg's above quotation would not allow. But I will not try to further resolve the connection between rules and desert here. Kleinig's analysis, to be examined next, takes up the issue of raw versus institutionalized desert claims, and this matter can be put off until then.

DA3 and DA2 have in common the part about desert requiring satisfaction of conditions not written down in any

institution's rules. I think I can show that this requirement is unsatisfactory in an analysis of desert without having to resolve further questions of the connection between rules and desert.

First, I think that the requirement for satisfaction of conditions that are explicitly *not* written down in the institution's rules, is defective. Presumably, since we can talk about cases of desert, it is possible to know what the point of some institution is. But if it is possible to know the point of an institution, then it seems that it is possible to write down that point - even to incorporate that point into the written rules of the institution. Thus I think that DA3 is too strict in its requirement that the desert conditions must be unwritten. As a matter of fact, they often are unwritten, but that is merely contingent, and not necessary to the concept of desert. This defect is remedied in DA4, below.

DA4 *S* deserves *x* =df. there exists some social institution, *I*; there are conditions, *P*, that constitute the reason or point of *I*; *S* participates in *I*, *S* satisfies *P*.

The defect of DA4 (and all the previous incarnations of Feinberg's analysis of desert as well), can be highlighted by the following desert claims.

1. Jones deserves her success; she has worked hard for it.
11. Lee deserves a reward; she risked her life.
12. Benson deserves some good luck; he is a fine person.

13. Gordon deserves some good luck; she has had only bad.
14. McArthur deserves a hearing; he is an expert on the subject.
19. The villain deserved to be crushed in the landslide; she had never been punished for her crimes.
20. Peters deserves to get good weather for his holidays; he has planned everything so carefully.
21. Smith deserves a breakthrough; she has been working at that problem for years now.
31. Monkeys, dogs and cats do not deserve the pain they receive in laboratory experiments; they are at least near-persons, and so should be treated similarly, especially with respect to causing them harm.

None of these claims is specifically tied to an institution. So none of these claims could be true given DA4. While some of the claims about luck may not carry too much weight, claim (1) is from my select group of target claims. It is the type of desert claim made all the time, so I think that any analysis that disallows (1) must be wrong. The fact is that many desert claims are not tied to institutions, as Feinberg noted. The problem is that while Feinberg originally noted this fact, he seems not to have sufficiently allowed for it in his subsequent treatment of desert. I think any attempt to accommodate these desert claims along Feinberg's lines will weaken the analysis so much as to make it useless. For instance, DA5 below.

DA5 S deserves x =df. it is proper for S to get x , and this propriety is independent of any rules, institutions, or practices.

DA5 suffers from two significant defects. First, this analysis corrects too far the problem of DA4 *et al.* The problem with those analyses is that they left out many legitimate cases of desert that were independent of institutions. But DA5, while allowing those cases, does not take account of the fact that some deserts are tied very closely to institutions. For instance, in competitions, the awarding of prizes is typically rule-based. Even more, the competitive activities themselves would not even be engaged in if it were not for the competition. Consider Carl Lewis's four Olympic gold medals in the 1984 Games. Suppose he deserves them. The propriety of his receiving them just as clearly is *not* independent of any institutions or rules. If there were no Olympics, it would be bizarre to say that Carl Lewis deserved *Olympic* gold medals. Indeed, it is hard to see how he could deserve any kind of athletic award if there had been no institutionalized competition so that he would make the effort to develop his skills and prove he was the best. One of the truisms of professional football is that on any given day, any given team can beat any other. So it seems sensible that at least part of the desert for winning a game comes from having actually won it. This is not always the case, but I think it is generally the case, or we would not need to use games to determine which team deserves the Super Bowl trophy each year.

So DA5 fails to account for a considerable class of institutionalized deserts. But its second failing is even worse. DA5 analyzes one opaque concept (desert) in terms of another concept that is no less opaque (propriety). It is not at all clear what kind of propriety it is that constitutes desert. The only information about propriety given in DA5 is that it is supposed to be independent of institutions, and that is not even quite correct. Thus, while we may have some better ideas about desert, we do not have enough to claim a satisfactory analysis. I will turn to other philosopher's writings to try to shed more light on the subject.

Desert as Evaluation

John Kleinig notes that some desert claims arise only in rules-based contexts, while others arise in contexts which could not be said to have such a connection to rules. The former he characterizes as *institutionalized* desert claims, while the latter are *raw* desert claims.⁸⁸ However, Kleinig thinks that the two types of desert differ only in the fact that "institutionalized desert claims at least implicitly prescribe a dispenser of deserts," whereas the responsibility for fulfilling raw desert claims does not rest on any particular person or authority.⁸⁹ In fact, Kleinig claims that desert is *not* created by satisfying conditions of a legal system. Anyone who thinks they are, is confusing desert with entitlement.⁹⁰ Thus Kleinig's

analysis should work for desert claims both in institutional and in non-institutional settings. Below is my interpretation of Kleinig's analysis of desert, but let me note first the textual evidence for this analysis. Kleinig starts talking about "the analysis I have given," the paragraph after he says,

We can now state more clearly the type of grounds (*B*) by virtue of which *X* is said to deserve *A*. These must be such as evaluate (at least implicitly) the characteristics possessed or things done by *X*.⁹¹

Again, at the start of Section V, he says,

So far I have suggested ... of a certain subject, *X*, that it deserves *A*, where *A* is a form of pleasant or unpleasant treatment, when *X* possesses characteristics or has done something, *B*, which constitute a positive or negative evaluation of *X*.⁹²

I have taken my reconstruction particularly from this second statement.

DA6 *S* deserves *x* =df. *x* is a form of pleasant or unpleasant treatment; *S* possesses characteristics or has done something, *B*, which constitute a positive or negative evaluation of *S*.

Before discussing this analysis in depth, I would change the part about pleasant or unpleasant treatment, along the lines of what I said above (p. 38) about what kinds of limits there are on the things that can be deserved. This requires a minor change in the part about what kind of evaluations there can be, consistent with what I noted from Feinberg's discussion of grades, also discussed above (p. 41). Here is the revised analysis.

DA7 *S* deserves *x* =df. *S* possesses characteristics or has done something, *B*, which constitutes an evaluation of *S*.

The difference between DA6 and DA7 takes account of my belief that evaluation of a thing is not only positive or negative, but can be neutral, and that the deserts can match the evaluation. They too can be either positive, negative, or neutral.

DA7 makes clear what might have been obscured in DA6, that the desert, *x*, is not connected to the evaluation of *S*. In DA6, the only reason *x* is in the analysand is to put a limit on what form it can take. Once that limit is removed, as in DA7, then it becomes clear that more is needed for the analysis of desert. In a desert claim, it seems that there is some special connection between *x* and *S*'s past actions or characteristics, such that in some sense they "match." Although I have used vague language here, the idea should be fairly clear. It is that expressed when we say "the punishment should fit the crime," expanded to take account of a wider variety of states of affairs than just those where crimes have been committed.

To return to the Carl Lewis example that provided so much trouble for Feinberg's attempted analysis, it does at least appear that Kleinig's analysis has no problem with institutional deserts. Since evaluations can take place in both institutional and non-institutional settings, DA7 can take account of both institutionalized and raw desert

claims. To say that Carl Lewis deserved his four Olympic gold medals in 1984 is, according to DA7, to say that Carl Lewis possessed certain characteristics, or did something, which constituted an evaluation of himself. In this case, the evaluation took place in an institutional setting. So far, so good for DA7. However, this case provides a concrete example of the above-mentioned deficiency of DA7. The analysis does not make it clear why, or even that, Carl Lewis deserved *four Olympic gold medals*, as opposed to anything else. After all, in each of the events for which Lewis got the gold, there were several other people who did not get gold. Yet, each of the other competitors was in a situation where what he did constituted an evaluation of himself. So each of them deserved something, too. DA7 does not provide an answer to the question of why the other competitors did not deserve gold medals just as Carl Lewis did.

So it seems to me that DA7 is not a full analysis of a desert claim such as, "*S* deserves *x*." Rather it is an analysis of the claim, "*S* is deserving." It should be reformulated thus:

DA8 *S* is deserving =df. *S* possesses characteristics or has done something, *B*, which constitutes an evaluation of *S*.

This is a better analysis than those suggested by Feinberg, since the concept of evaluation is not nearly so opaque as the concept of propriety, or desert. So DA8 does

perhaps shed some light on the nature of desert. However, as Kleinig himself points out,

...if the claims of justice are to be fulfilled, then not only the question of whether a person ought to get rewarded, punished, compensated, etc., but also the question of how much he ought to get, must be settled by desert considerations...⁹³

However, even without a full analysis of "S deserves X," there seem to be some significant problems with Kleinig's approach. First of all, Kleinig's use of the word 'evaluation' is fairly broad. Suppose I steal some money from an innocent bystander. It seems clear that I deserve punishment. So, on Kleinig's view, my theft must have constituted an evaluation of me. But this is surely a non-standard use of 'evaluation.' Of course, it may seem fairly obvious that I deserve punishment for my crime, but the act of theft itself is not an evaluation. The evaluation is something extra. It is a judgment about my theft (or about my character). In any case, the evaluation is an act of judgment that is made about the theft. It is not the theft itself.

Furthermore, it would appear that a person can be deserving even when the person has not done anything that could be even broadly construed as a self-evaluation. Let us return to the case of poor Jim, whose house was smashed by the lightning-felled tree. It is hard to say that in this circumstance, Jim did anything that would constitute a self-evaluation. Thus, it is hard to say why, given DA8, we

should think that Jim is deserving of compensation. Yet he does appear to deserve something for his house.⁹⁴

There is something about Kleinig's approach that is consistent with my own view that desert bases are primarily virtues and vices, since it is often on the basis of virtues and vices that a person's character is evaluated. So, my bases would constitute, in Kleinig's terms, an "evaluation" of the person. However, unless we are naturalists about moral properties, we will not be able to simply "read off" the evaluation from the action. The judgment will be added by the observer according to her or his moral scheme.

Perhaps I am unfair in my criticism of Kleinig's approach. You might think that though it is not literally true that your acts are an evaluation of yourself, it is true that they *provoke* evaluations in others (and, on occasion, in yourself as well); and this is what Kleinig's approach emphasizes. I cannot disagree with this. However, to say that your actions provoke evaluation in others hardly seems to get at the core of desert. After all, much, if not all, of what we do provokes evaluation by people. No one would claim that desert is *not* an evaluative concept. Thus, this construal of Kleinig appears too broad to be of much help.

Desert as Attitude

David Miller develops his analysis of desert along lines similar to Feinberg's and Kleinig's. His analysis

includes concepts of fittingness, evaluation, and responsive attitudes. In a passage that I did not include in my attempted reconstruction of Feinberg's view, Feinberg says,

...then the kind of propriety characteristic of personal desert...is also to be likened or even identified with a kind of "fittingness" between one person's actions or qualities and another person's responsive attitudes.⁹⁵

Responsive attitudes, according to Feinberg, include such attitudes as recognition, admiration, the objective stance, gratitude, appreciation, resentment, disapproval, remorse, sympathy, and concern. Indeed, Feinberg goes so far as to suggest that the *true* deserts are responsive attitudes, and that the modes of treatment typically counted as deserts are derivative. They are merely an accepted way of expressing the attitudes in a concrete form.⁹⁶

While it may seem plausible that all cases of desert involve responsive attitudes as part of the desert, it hardly seems correct to assert that responsive attitudes are the *sole* true deserts. If someone saves my life at some risk to herself, she surely deserves my gratitude, though it may not be clear that she deserves anything else. However, a look at the other kinds of desert claims shows that responsive attitudes cannot be all that is deserved. For instance, these desert claims:

5. Jackson deserves more than minimum wage; her job is important and she does it well.
8. Anderson deserves his twenty-year sentence; he planned the murder.

While it may be true that in addition to her wages, Jackson deserves our admiration, or recognition for her well-performed important work, it is certainly not true that she deserves only those attitudes. Similarly, though Anderson deserves our disapprobation for his premeditated evil deed, he deserves more than just our attitudes. Our attitudes do not punish him. They do not make him pay for his wrong-doing. Similarly, our good attitudes toward Jackson do not pay her rent. She may not even know we feel them. She deserves the money.

It might be thought that I am not doing justice to Feinberg's claim. Feinberg never claimed that people do not deserve more than attitudes. He only claimed that the modes of treatment are "deserved only in a derivative way, insofar perhaps as they are the natural or conventional means of expressing the morally fitting attitudes."⁹⁷ My view is that the force of such claims as (5) and (8) is not captured by any analysis of deserts that views responsive attitudes as the "true" deserts and modes of treatment as merely derived from them.

In any case, Feinberg's talk of the nature of what is deserved does not provide a clear suggestion for an analysis of desert claims. It seems to be merely a proposed modification of the view of what kinds of things the deserts themselves might be. I mention it here because Miller's analysis makes extensive use of the concept of appraising

attitudes, which appear to be very similar to that of responsive attitudes. Because of the similarity of the two concepts, Feinberg's discussion may support, help clarify, or at least presage Miller's view, though Miller does not credit Feinberg's paper in this connection. Here is a summary that Miller makes about desert.

When we make a judgment of desert, we are judging the appropriateness of this particular individual, with his qualities and past behavior, receiving a given benefit or harm--an appropriateness which is made intelligible by considering the appraising attitudes that we may take up towards the person.⁹⁸

This summary suggests the following analysis of desert.⁹⁹

DA9 *S* deserves *x* =df. (i) *S* possesses characteristics or has done something, *B*; (ii) there is an appraising attitude, *A*, toward *S*; (iii) *A* is evoked by *B*, and (iv) giving *x* to *S* would be an appropriate way to express *A*.¹⁰⁰

Clearly, appraising attitudes play a fundamental role in this analysis. Examples of positive appraising attitudes are admiration, approval, and gratitude.¹⁰¹ Just as desert judgments always require a base, so do appraising attitudes. You cannot admire someone for no reason at all. There must be some reason for your admiration. Further, the restrictions on what kind of reasons are acceptable are the same as the restrictions on what kinds of bases are acceptable for desert judgments. The reason (or base) must consist of some feature or past action of the person toward whom you hold the attitude (or about whom you make the

desert judgment). Miller makes several more key points about appraising attitudes, which are summarized below.¹⁰²

- A) It is contingent that people have appraising attitudes.
- B) There is no purpose in our having them, we just have them because they are "evoked" by the situation.
- C) If there were no appraising attitudes, then there would be no use of the concept of desert. *The word would have no meaning.*¹⁰³
- D) The range of desert bases coincides with the range of bases for appraising attitudes.
- E) Appraising attitudes make intelligible the connection between a desert judgment and its base.

Note the switch in roles of attitudes from Feinberg to Miller. Feinberg wrote that responsive attitudes are the true deserts. Miller does not make this claim. He thinks that the appraising attitude explains the connection between a desert claim and its base. Still, this role makes appraising attitudes more fundamental than desert claims. Point (C), above, makes this very clear. Desert requires the attitude, but it is possible (and not ruled out by Miller) that there could be attitudes without desert.

While not as precise as we might like, DA9 is specific enough that certain possible desert bases are ruled out. In particular, Miller claims that entitlement and need are not true desert bases. In addition to those more controversial claims, DA9 allows Miller to rule out such possible bases as belief, preference, and interest.

Miller thinks that legal rights (entitlements) are not true desert bases because they do not make essential reference to the individual's personal characteristics.¹⁰⁴ Needs are disqualified as desert bases because they do not evoke appraising attitudes. "No one wishes to have them [needs], or admires others for having them."¹⁰⁵ So needs are ruled out by clause (iii) of DA9. Similarly, we do not admire people for possessing beliefs, preferences and interests.¹⁰⁶ Thus, they too are ruled out by clause (iii).

The reason that entitlements are ruled out is, I think, also clause (iii). But this is not explicitly stated by Miller. What he does say is that the reason has something to do with the fact that rights can be apportioned "without essential reference to personal qualities."¹⁰⁷ The following example shows why I think that Miller is making an appeal to the principle embodied in clause (iii) of DA9.

29. Pike deserves \$50; that amount was offered to anyone who climbed this peak, and Pike did.

The ostensible base for desert claim (29) is of the kind that Miller thinks is really just entitlement, and not a desert base after all. To become entitled to the \$50, all Pike had to do was climb the peak. The offer existed before Pike decided to climb the mountain, and so falls under the rubric of claim-rights¹⁰⁸ or legitimate expectations.¹⁰⁹ But to decide if Pike *deserves* the \$50, "we should have to investigate several other matters, such as the difficulty of

the climb," as well as Pike's individual qualities as a climber.¹¹⁰ Actually, according to DA9, what matters is whether Pike's fulfilling the conditions of the offer evoked an appraising attitude toward Pike. I think that Miller believes that Pike's fulfilling a contract would not evoke any appraising attitudes. But his having certain characteristics, combined with his climbing of the peak, would evoke such attitudes (assuming certain characteristics in Pike and the climb). That is the reason Miller wrote that we would need to investigate the rock-climbing in more detail before we could decide about the deserts. Thus, entitlement, need, and the possession of interests, preferences, and beliefs are excluded from desert-basehood by appeal to the claim that appraising attitudes would not be evoked in the relevant situation.

Miller's analysis of desert makes an interesting connection between appraising attitudes and desert claims. It seems, at least initially, a plausible approach to the problem. However, I think there are several serious problems that need to be addressed before this analysis could be truly viable. The most fundamental problem is the need for an analysis of appraising attitudes, because of the amount of conceptual work they do in DA9. I list here three reasons I think that much more work needs to be done on appraising attitudes. I will deal with them in more detail below. First, I do not think that Miller's analysis

eliminates the possible bases that he says it does. I can think of situations where an appraising attitude might very well be evoked by a person's beliefs, or by her having fulfilled a legal contract. Second, I do not see why the fact that an appraising attitude is evoked is so important. I have in mind cases where the appraising attitude is evoked in an evil or sick person. It seems to me that more than mere evocation is needed; the attitude must somehow be "appropriate." Third, the information provided by Miller on appraising attitudes (and summarized above) is not adequate to characterize which of our attitudes qualify as of the appraising kind. Even assuming the list of positive attitudes is exhausted by admiration, gratitude, and approval, that still leaves negative appraising attitudes to be covered.

In a footnote, Miller discusses an objection to his claim that having a belief is not a desert base. He admits that "I admire him for being a Marxist," is an intelligible claim. However, Miller deals with this by claiming two things. First, that there must be some special background, such as that the person is being persecuted for his belief. Second, that what is actually admired is not the content of the belief, but the courage shown in keeping the belief in the face of that persecution.¹¹¹ I think that Miller's explanation is, in many cases, plausible. However, I think that it is possible to admire a person for the content of

her or his belief, and not just for the circumstances under which that belief is held. For instance, my wife says, "I love you. You are the best husband in the world," and I am grateful to her for those beliefs! (The other appraising attitudes, admiration and approval, are also evoked in me.) It is not just the circumstances under which she holds the beliefs, and it is not just the fact that she holds the beliefs, that evokes my appraising attitudes. It is also the contents of the belief: that she loves me; that she considers me the best husband in the world. Again, consider the Marxist from Miller's discussion. Maybe it is true that the admiration evoked is due entirely to the person's courage. But the same person may say, "I approve of him for being a Marxist," and this approval may be evoked because the person approves of Marxism. The *content* of the belief evokes the approval, even while it is the courage shown in maintaining the belief that evokes the admiration. In fact, we approve or disapprove of people all the time based on the contents of their beliefs, their interests, and their preferences. This is evident in the way we go about making friends and choosing the social groups we become affiliated with. We also feel gratitude, at least in part, for the contents of people's beliefs. So I do not at all see why Miller believes that the possession of beliefs, interests and preferences cannot function as appraising attitude (and thus also desert) bases.

Needs are a bit different. It seems unlikely that a person's being in need would evoke either admiration, approval, or gratitude. Miller does admit that in an extended sense of needs, people can be admired for certain needs, such as the need of love from another human.¹¹² However, even granting such needs as those, most desert claims based on needs do seem ruled out by DA9. The question to be asked here, then, is what justification has Miller provided for claiming that DA9 is the right way to go? Instead of claiming that the range of desert bases is delimited by the range of appraising attitude bases, and thus ruling out most needs as bases, it might seem that it should be admitted that the ranges of the bases for the two concepts only imperfectly overlap. Thus, some desert bases are not appraising attitude bases, and vice versa. Of course, if in all other cases but needs, the ranges overlapped, and if, in addition, appraising attitudes really "make intelligible" the desert claims, then DA9 would get the nod. However, I think I can show that there are many other cases than needs where appraising and desert bases do not overlap, thus strengthening the case against DA9.

Above I showed that several bases that Miller thought were ruled out by DA9 actually are *not* ruled out. The possession of beliefs, interests and preferences can evoke gratitude, admiration, or approval. But, at least some times, it does not seem that the evocations due to those

bases are sufficient bases for desert. For instance, I approve of my friend's interest in chess. But it hardly follows that because his interest in chess evokes my approval, he *deserves* anything. Maybe that is just that what he deserves is so minor, such as my verbal expression of approval (he cannot deserve my approval itself, for that is something that is just evoked - see point (B) above).

Nevertheless, there are certain instances where the attitude evoked clearly does not correspond to a desert base. For instance, in the case of admiration and approval evoked in sick, twisted, or evil people. In the past, there were many evocations of approval and admiration for the beliefs, interests, preferences, and actions of Hitler and the Nazis. There are still many today, in the Neo-Nazi and KKK movements. Such positive appraising attitudes do not correspond to any *positive* deserts for Hitler and Nazis!

Indeed, this example brings to light what is to my mind one of the serious flaws of Miller's analysis: it places too much emphasis on the attitudes actually evoked by people. Such attitudes are highly influenced by factors which a thoughtful moralist would disregard. For instance, one who accepts DA9 must accept that when the residents of Massachusetts approved of burning women for witchcraft, that was their deserts. Whereas these days, since people do not approve of such barbaric practices, no one deserves to be

burned as a witch. But surely no one deserved to be burned for a witch, then or now.

Furthermore, in some cases people can hold the opposite appraising attitudes at the same time, toward the same person, evoked by exactly the same characteristic or action of a person. What evokes Jack's approval is the very thing that evokes Jill's disapproval. Therefore, the very same characteristic, described in exactly the same way at all times, can be a base for both positive and negative deserts. The absurdity of these claims seems reason enough to reject DA9.

There is yet another problem. DA9, like the analysis suggested by Kleinig (DA7 above), does not make any mention of the deserved (x) in the analysand. Thus it has the same problem as Kleinig's in accounting for how much, and what kind of thing is deserved given that a certain appraising attitude is evoked. Miller does have something to say about this (see point (E) above), "The existence of appraising attitudes makes intelligible the connection between a desert judgment and its basis."¹¹³ Since a desert claim includes what (if not always how much) is deserved, I think that somehow the intent of what the sentence expresses should be, if possible, included in the analysis presented. It is not included in DA9 because I was not certain how to get it in there, and because the criticisms presented so far do not depend on its presence or absence.

Even if I could see how to get the intent of that sentence into an analysis, though, I do not think it makes any more of a case for Miller. According to him, the connection between "Smith deserves to win the mile," and "Smith has trained harder than anyone else," is intelligible because "we admire the kind of determination and effort which goes into a course of training."¹⁴

There are two interesting senses of 'intelligible' that I think are relevant here. The first is the sense expressed when someone's behavior has a psychological explanation. Given what is known about my beliefs, and the fact that I admire hard work, etc., then it is psychologically consistent that I also believe that Smith deserves to win. In this sense it seems clear that a person's belief in hard work could help make intelligible her belief that Smith should win the mile.

However, the sense of 'intelligible' that is called for in the connection between desert claims and their bases is rather more normative. Desert bases are supposed to *justify* their desert claims, not just make them psychologically understandable. But as I have shown, above, the evocation of an appraising attitude does not always show that a desert base justifies its desert claim. Thus I do not think that Miller is right to base the analysis of desert on attitudes.

Desert is a Primitive Concept

The alleged analyses of desert by Feinberg, Kleinig, and Miller all fail. Although desert does seem related to propriety, evaluation, and attitude, those relationships are not as simple as their analyses allege. Furthermore, even if there is a complex relationship between desert and propriety, or evaluation, or attitude, it is not clear that any one of them is enough to explicate desert. Thus, I have no analysis of the concept of desert. I must present it as a primitive concept that is not further analyzable.

Nevertheless, there are some principles about desert that make it more than a mere appeal to an obscure intuition. These principles have to do with the nature of the desert bases.

CHAPTER 4

EXPECTED CONSEQUENCES

In the last chapter, I was unable to provide an analysis of desert. However, by examining the alleged desert bases, and presenting my own view about which ones are legitimate, I can at least shed some light on the nature of desert. Once the true desert bases have been enumerated, it will be possible to show that certain kinds of desert claims are justified, and why, and that certain kinds of desert claims could never be justified, and why. This will at least provide some understanding of how desert works, even if it is not as satisfactory as an in-depth analysis.

Desert and Autonomous Action

In this chapter I consider the view that autonomous action (freely-willed action) is a legitimate ground for desert. This view is formulated and defended by George Sher.¹¹⁵ I will argue that his argument fails to establish that autonomous action is a legitimate desert base.¹¹⁶ This leaves open the question of whether some other argument might suffice. Before addressing this question, I examine the formulation itself in some detail. I show that Sher's view is implausible independently of any argument for or against it. The view itself is flawed in such a way as to make it seem unlikely that there is any account of autonomous action that would make a plausible case for autonomous action as a desert base. Finally, I argue that

autonomous action is *not* a desert base. In part, I base this on the failure of Sher's account to stand up to any serious examination; but I also argue that the examples he used to generate initial plausibility for his view can be explained by appeal to other, more plausible desert bases.

Sher thinks there is an important connection between desert and free action. He thinks the link goes beyond the widely accepted notion that if there were no free acts, then no one would ever deserve anything.¹¹⁷ Sher says that "the value of a person's acting autonomously is somehow transmitted to, or inherited by, what he is said to deserve."¹¹⁸ This transfer of value from free action to desert is what Sher thinks justifies the claim that free action is a desert base. Since Sher's argument is rather long and complex, I will first provide a lengthy quotation of it. I will then try to summarize what I think he is trying to say, and extract and explain an argument from his text. Sher starts by noting the value of autonomous action.

Few would deny that persons ought to be able to choose and act freely, and indeed that their doing so is of paramount importance...But if the opportunity to act freely has value, then so too must its exercise. We can hardly say that it is a good thing when someone *can* determine his own fate, but not a good thing when he does.¹¹⁹

The next task for Sher is to show that the value of autonomous acts is transmitted to particular outcomes.

Before acting, we typically weigh alternative acts whose consequences extend from the present into the intermediate and more distant future. Our deliberations thus encompass both possible initial

acts and the various later events we expect them to cause...Because we deliberate with an eye to consequences, our free choices *must encompass not just our immediate doings, but also the later lines of development to which we expect them to lead.* Thus, at least one connection between free acts and their consequences is internal to the notion of free agency itself. And, given this connection, we can indeed see why any value that attaches to an autonomous act might carry over to that act's consequences. Because (at least some of) those consequences are part of what an agent chooses, it would be quite arbitrary to say that it is good that the agent perform the act he has chosen, but not good that he enjoy or suffer the act's predictable consequences. Since choices encompass both acts and consequences, *any value that attaches to the implementation of choice must belong equally to both...*In light of this, one natural reason for saying that free agents *ought* to enjoy or suffer specific consequences is that those consequences, where predictable, have acquired value from the fact that they are part of what the agent has chosen. And where the consequences are what the agent intuitively deserves, our belief that he ought to have what he deserves will also fall into place.¹²⁰

So Sher's reasoning seems to proceed something like this. Freedom has value, so actually acting freely is valuable. The concept of freedom is such that when you make a choice that has foreseeable consequences, then you can legitimately be said to be choosing those consequences. Thus, since choosing freely has value, and the consequences of a free choice are *part* of that choice, the consequences also have that value. Because it is good that an agent act freely, it also good that an agent receive the consequences of that act. So the agent ought to receive the consequences of her or his free action. This sense of 'ought' is captured by our intuitive notion of desert. Therefore,

because freedom is good, we deserve the consequences of our freely chosen actions. Here is the argument I extract from Sher's text.

1. Freedom has value.
2. If freedom has value, then the exercise of freedom has value.
3. If the exercise of freedom has value, then the expected consequences of the exercise of freedom have value.
4. If the expected consequences of the exercise of freedom have value, then we ought to receive the expected consequences of our exercises of freedom.
5. If we ought to receive the expected consequences of our exercises of freedom, then we deserve to receive the expected consequences of our exercises of freedom.
6. Therefore, we deserve to receive the expected consequences of our exercises of freedom.

Premise (1) is alleged to be a basic intuition about freedom. Premise (2) makes clear the meaning of 'freedom is valuable.' It really means 'free acts are valuable.'

The rationale for premise (3) is a little more complicated. Sher claims that free acts cannot be separated from their expected consequences, because free acts would not have value if their consequences did not occur.

If someone did *not* have to live with the predictable consequences of his choices--...--then he would have only a semblance of freedom. His 'autonomy' would be worth little; and if ours is worth more, it is only because we do inhabit a world in which choices have consequences.¹²¹

He then appears to make use of something like the following Principle About Value.

PAV If x has value n , and y is part of x ,
then y has value n .

In this case, x = autonomous action, y = the consequences of the autonomous action, and n = the value of the autonomous action. Thus, the consequences of autonomous action have the same value as the autonomous action itself.

I think the rationale for premise (4) has to do with the great value that Sher places on free action. He says that "free agents ought to enjoy or suffer specific consequences" because those consequences "where predictable, have acquired value from the fact that they are part of what the agent has chosen."¹²² So, if free acts ought to be done, then their consequences ought to occur. Since free acts are valuable, they ought to be done. Thus, we ought to receive the expected consequences of our exercises of freedom.

In premise (5), the sense of 'ought' used here is not one that produces moral obligations. It is weaker than those, and is in fact captured by our intuitive concept of desert. Sher says, "Like desert, freedom impinges on our moral scheme not primarily by creating tightly structured sets of obligations, but rather as a value whose promotion always tells for an act or institution."¹²³

I think this argument is fundamentally misguided, and that it commits several serious philosophical blunders. There are serious objections to every premise except premise (2).

First, the objection to premise (1). Sher notes that many people think it is "of paramount importance" that people be able to choose and act freely, so freedom has value.¹²⁴ This is, unquestionably, true. In fact, it is a central premise in one of the most popular responses to the problem of evil for the existence of a benevolent, all-powerful god. It is obvious to many that a world in which people freely choose to do good is greatly better than a world in which people do good only because they are robots forced to follow deterministic laws. Furthermore, freedom has many practical consequences, such as allowing us to do what we want to do, in the ways we see fit. Lack of freedom, as when one is a slave, is terrible, because one's dignity is taken away, but also because of all the pain that the slave-owner can inflict. For these reasons, the value of freedom is indisputable.

However, the use of the premise as a starting point shows that Sher makes a fundamental mistake about what *kind* of value freedom has. The plan of Sher's argument is to show that the value of making a free choice can somehow be transferred to the outcome of that choice. So, it is clearly required that the making of a free choice have value *independently* of its outcome. Otherwise, there would be no value to be transferred. Thus, I think premise (1) should be rewritten as follows.

1'. Freedom has intrinsic value.

While it is clear that (1) is true, it is not clear that making a choice freely actually has value independently of the outcome in which it results. It is not clear that (1') is true. For instance, we hold freedom to be so valuable, because it is (allegedly) what allows us to do what we want. When we do what we want to, we are pleased, and this is good. Exercises of freedom often lead to pleasure, so they are instrumentally, or extrinsically good. Similarly, the lack of freedom often leads to pain, and so is often instrumentally, or extrinsically, evil. Nor does the free-will response to the problem of evil show that freedom, independently of its consequences, is intrinsically good. The free-will defense compares more complicated states of affairs than choosing freely to choosing unfreely. It compares freely choosing *good* to unfreely choosing *good*. It is unlikely that it is just the mere fact of free choice that is so important. Instead, it is freedom combined with what is freely chosen that makes such a great good that many theists believe freedom to be necessary in the best of all possible worlds.

Since (1') is needed to make Sher's argument work, and since all the evidence about freedom is consistent with the truth of (1), but the falsity of (1'), I think there is no reason to accept (1'). So Sher's argument does not even get off the ground, because he is working with a muddled concept of the value of freedom which will not get him what he

needs. But even if I am wrong, and freedom has intrinsic value, there are other grave problems with the argument.

I have three objections to premise (3). First of all, Sher's rationale for this premise undermines his whole chain of reasoning. He wants to start with the fact that freedom has value, and then show that it can be transferred to the free action's consequences. But in his rationale for (3), he says that freedom would not have value at all if its consequences did not occur. A standard test for intrinsic value is to consider whether the object is valuable considered "in and of itself." If we accept Sher's rationale for (3), then it appears that freedom does not have intrinsic value. So Sher's reason for (3) contradicts (1'), which I argued above is the premise Sher needs to start with if there is any chance to make his argument work. However, there is a way to justify (3) which does not undermine (1') by appealing to a not-implausible metaphysical view about the nature of actions. On this view, there is one sense of 'action' that includes all of its consequences, because they are causally connected to it. For instance, if I perform the action of crooking my finger, and it happens to be on a gun's trigger at the time, then that action includes the pulling of the trigger, the firing of the gun, the shooting of the bullet, and the death of the person who is hit by that bullet. There is a very plausible sense in which all of those consequences are part of my

crooking my finger. So, when I choose to crook my finger, it can be said that I also choose those consequences listed above, since they are causally connected to it. This view, coupled with PAV, could justify premise (3) without contradicting (1').

A real problem with (3) is that PAV is false. For one thing, PAV is a form of the fallacy of division. This is the fallacy that asserts that if a thing has property x, then its parts have property x. To see that the properties of an action are not generally the same as the properties of its parts, consider an action that takes three hours to occur. It certainly is not true that every (or indeed any *proper*) part of that action takes three hours to occur. So, unless there is some reason to think that value is unique in respect to the part-whole relation, it is not legitimate to appeal to PAV to justify (3). In fact, there are plenty of examples where the value of an action as a whole is not the same as the value of its parts. For example, a doctor saves a person's life by removing his appendix just before it bursts. Many parts of that operation have negative value, because of the pain they produce. One such part was the shot that delivered the anesthetic. That shot was painful, and so any extrinsic positive value that shot had (it led to less pain during the operation) was at least somewhat offset by its disvalue (it was immediately painful). Clearly the part of the operation consisting of the administration of a

painful shot and nothing else does not have the same value as the operation as a whole. Indeed, the shot was, by itself, useless--it did not do anything to prevent the appendix from bursting, nor did it help remove the appendix. Thus, it is highly implausible that all the parts of an extended action have the same value as that action does as a whole. The Principle About Value is false, and so there does not appear to be any reason to accept premise (3).

The third problem is this. If we grant that a free action includes its consequences, then there is no reason to claim that it is only the *expected* consequences of the action that have value. Sometimes the expected consequences of an action do not occur, so they do not get any value from the free choice. Instead, the actual consequences "inherit" that value, if anything does. So it seems to me that Sher's consideration of only those consequences that are expected is not justified by the reasoning for (3). If that justification works at all, it works for the actual consequences of free actions, not the expected (except where the two are the same, of course).

Here is my objection to premise (4). Consider a person who freely donates a large amount of money to a charity. The expected consequence is the construction of new facilities, which allow the charity to do its business better, thus benefitting many more people. On Sher's account, then, the donor ought to receive all of the value

of the expected consequences of the donation. But this seems wrong. Just because this consequence is the expected outcome of the donor's free act, it certainly does not follow that the donor ought to receive all of this positive value. Indeed, the reason the donor gave in the first place was to help others. So, it seems ridiculous to think that we always ought to receive the value of the expected consequences of our free actions.

Finally, in premise (5), Sher claims that because we *ought* to receive the consequences of our free actions, therefore we *deserve* to receive them. As Sher himself notes, there are many different senses of 'ought,' and many desert-claims do not correlate with moral obligations.¹²⁵ Thus, we cannot just infer that because a person ought to receive something, that therefore she deserves to receive that thing. In the case of receiving the consequences of our free choices then, it is incumbent upon Sher to show why in this case the senses of the two concepts correlate. He does not show this; instead he seems to appeal to our intuition that they are the same. But consider a person who is very skeptical about desert, perhaps a philosopher like Rawls. He might agree that we ought to receive the consequences of our free actions, but deny that we deserve them. So, it appears that Sher's argument has not really advanced the issue in such a way as to convince those who

think that freedom is not a desert base, that it really is one.

The Expected-Consequences Account

I have already criticized Sher's argument for free action as a desert base. This was a criticism of his argument, not its conclusion. I do not think the premises justify the conclusion. However, such criticism does not show that the conclusion must be false. In fact, I think there is some plausibility to the notion of free action as one of several desert bases. In this section, I will focus my criticism on the actual proposal. I will show that Sher's formulation does not work.

Sher never explicitly formulates what he calls "the expected-consequences account."¹²⁶ However, from the remarks he has made above, and his discussion of the various kinds of alleged instances of desert grounded in free action, I think that EC1 is a natural first attempt at formulating his account.

EC1 S deserves X for action A if S freely chooses A, and X is a predictable consequence of A.

According to Sher, this account is consistent with the fact that deserts do not confer obligations. It also works with many specific cases. For instance, Wilson deserved to be disqualified; he knew the deadline for applications was March 1. Further, Harris, who did not bring his raincoat, now deserves to get wet; Simmons, who did not study for his

exam, now deserves to fail.¹²⁷ Additionally, EC1 works for positive deserts. Just as the non-bringer of the umbrella deserves to get wet when the forecast is for rain, so does the bringer of the umbrella deserve to stay dry.

More important, we believe that persons who resourcefully seize opportunities deserve the resulting benefits, that persons who carefully make and execute plans deserve success...¹²⁸

EC1 accommodates all of these beliefs.

To deal with the problem of uncertainty in prediction, Sher takes the expected-consequences model of choice from decision theory and uses it to determine what is deserved. Suppose the probability of rain is fifty percent, and I am considering whether to bring my umbrella with me. In such a case what is chosen "is neither to get wet nor to stay dry, but rather the combination of a certain risk of getting wet and a certain chance of staying dry."¹²⁹ I think this can be understood as follows: if I choose to leave my umbrella home, then what I deserve is $.5 * (\text{disvalue from being rained on with no umbrella}) + .5 * (\text{value of not carrying around an umbrella when there is no rain})$.

EC1 only constitutes a partial analysis of desert. So saying it does not account for all cases is trivial and easy, and shows nothing wrong. For instance, a criminal deserves to be punished though it is predictable that he will get away, or a worker deserves wages that she predictably will not get; these cases show that there are other principles of desert at work.¹³⁰ Thus, EC1 is supposed

to be an account of sufficient but not necessary conditions for desert.

Problems occur when we can show that someone gets what is predicted, yet *does not* deserve it. For instance, the burglar who predictably gets away with the robbery *does not* deserve the spoils. There are five types of case where expected consequences seem undeserved. When the consequences are:

1. Very easily acquired.
2. The disastrous results of merely careless acts.
3. The spoils of wrongful acts.
4. The harmful effects of self-sacrificing acts.
5. The results of choices made under threat, or in some other illegitimately structured choice situation.¹³¹

Consider alleged problems of type (5). If I surrender my money at gunpoint, it may be rather predictable that I will not get it back. Nevertheless, I do not deserve to so lose it! Such apparent objections are easy to solve, for such an act is not truly free. It was made under duress. Only the predictable consequences of freely-chosen acts are deserved.¹³²

While alleged problems of type (5) do not seem to be too troublesome, problems of type (1) are a little more difficult. Examples of type 1 include the person who signs papers to inherit a fortune, the person who chooses to keep a wallet full of money that was just found lying on the

street, and the entertainer who performs one concert that earns millions.¹³³

Sher says it is easy to show that these are not actual desert cases. "What initially has value, and thus what confers that value upon expected consequences, is an agent's genuine exercise of autonomy." Sher claims that these are not cases of "genuine exercises of autonomy." Exercises of autonomy

are surely more than unimpeded acts that will obviously yield large benefits at little cost. Where no more is involved--where the agent neither has to choose among real alternatives nor has to exercise thought or ingenuity nor has to do anything difficult--his choice is too easy, too automatic, to be significant. Though not unfree, it is also not a meaningful expression of his will.¹³⁴

Just what Sher might mean by claiming that an agent's genuine exercise of autonomy must be a "meaningful expression of his will" is not entirely clear. It seems to have something to do with the way in which the agent made the choice. In a "meaningful expression of his will," it seems an agent must have had to exercise thought or ingenuity, or take a risk, or do something difficult, and his doing one of these things seems to be a sign that the choice really expressed who he was, or something like that. Whatever the agent's meaningful expression is though, thought, ingenuity, risk-taking, etc., are suitable criteria for it. This suggests a principle about free acts, and a modification to EC1.

GEA S's choice, A, is a genuine exercise of autonomy =df. S had to exercise thought or ingenuity, or had to take a risk, or do something difficult, to choose A.

EC2 S deserves X for choice A if i) A is a genuine exercise of autonomy, ii) S freely chooses A, and X is a predictable consequence of A.

EC2 appears to handle problems of type (1). Problems of type (2) include the person who gets terminal lung cancer from smoking, and the ice fisherman who does not just lose a truck, but actually dies from driving on the ice in late spring. In such cases, the consequence is fairly strongly predictable, but the disvalue is far higher than what is intuitively deserved. Sher's response is that this shows that the intrinsic disvalue of certain consequences is far higher than the positive intrinsic value of genuine exercises of autonomy.

To say that personal autonomy is a great good is not to deny that suffering and death are great evils. Thus, when a free act's consequences include such misfortunes, there comes a point at which the value they inherit from the agent's exercise of freedom is outweighed by their intrinsic disvalue.¹³⁵

This seems to suggest a sort of "cap" on the amount of disvalue from a free act's consequence that a person can deserve; it cannot be more than the original value of the autonomous act (or choice).

EC3 S deserves X for choice A if i) A is a genuine exercise of autonomy, ii) S freely chooses A, and X is a predictable consequence of A, iii) the intrinsic disvalue of X is not greater than the intrinsic value of A.

EC3 thus handles problems of type (1) and (2). There are plenty of examples that fit into problems of type (3). The mobster who predictably gets away with murder, the corporate executive who predictably gets away with embezzling a fortune, etc. Sher imagines that Adams has predictably made a fortune through the exploitation of the poor and uneducated. Here is the passage where he explains why Adams does not deserve his riches.

The positive value of the agent's exercise of freedom is plausibly said to be offset by the negative value of the way he has exercised that freedom. Although it is good that Adams has acted freely, it is bad that he has freely chosen to do what is wrong. And because this is bad--because it would have been far better if Adams had not made this choice--it would also have been better if the consequences of the choice had not played themselves out.¹³⁶

Sher seems to reason as follows. Although it is good to act autonomously, it is bad to choose to do wrong. Because Adams's choice is not the best, it would be better if the consequences had not occurred. Part of the consequences are that Adams gets rich. So it would be better if he had not got rich. Before discussing Sher's solution, it will be worthwhile to discuss the fourth type of problem.

Finally, problems of type (4). Johnson has predictably suffered a broken leg while saving a child from being run over by a truck. Johnson does not deserve his broken leg because

Although it is good that Johnson has chosen freely, and good also that his choice was a virtuous one, it is bad that the price of virtue is harm or injury to a good man. It would have been far better if Johnson had not *had* to choose between injury and saving the child; and so it would have been better also if the consequences of his choice had not played themselves out.¹³⁷

Sher remarks, about cases of benefits received because of wrong acts, and harms suffered as a result of virtuous acts, that

even if neither agent has suffered a misfortune whose disvalue is great enough to outweigh the value of his free choice, *both actions have other aspects whose disvalue seems to do just this.*¹³⁸

This suggests that a slight modification of clause (iii) of EC3 will cover these cases. Using the terminology I suggested above, it seems that clause (iii) should be restated as follows:

iii') The overall value of A is not negative.

This way of putting the matter is more general than the original. It includes cases where the intrinsic disvalue of X is greater than the intrinsic value of A, but it also includes cases where there is some other aspect of A which makes its negative results outweigh its positive ones. Thus, it is designed to take care of problems of types three and four.

So EC3, along with GEA seems to be Sher's final account of free choice as a desert base. Of course, it is insufficient to cover all cases of desert, but other than

that, Sher appears to think there are no problems with it.

Here are the two principles, updated and side by side.

GEA S's choice, A, is a genuine exercise of autonomy =df. S had to exercise thought or ingenuity, or had to take a risk, or do something difficult, to choose A.

EC3 S deserves X for choice A if and only if
i) A is a genuine exercise of autonomy,
ii) S freely chooses A, and X is a predictable consequence of A, iii') the overall value of A is not negative.

My problems with the account are these: A) GEA is too restrictive. B) EC3's third clause does not solve the problems raised by problem types (2-4). (The disastrous results of carelessness, the spoils of evil, and the harm from self-sacrifice.)

(A) For instance, suppose I miss a deadline. I deserve to be disqualified because I knew when the deadline was, and I did not get my task done by that time. According to GEA, this does not count as a genuine exercise of autonomy because (leaving aside the question of whether it was a meaningful expression of my will) I did not have to use thought or ingenuity, nor take a risk, nor do anything difficult, to miss the deadline. It was quite easy to let it pass by. Yet it does seem to me that my failing to meet the deadline could have been a genuine free choice made by me. It was free in the important way that acts are sometimes said to be free, in that I could have seen to it that I got the task done on time. No disaster prevented me from doing the task, I just did not do it. Further, it

seems that I do deserve the bad results that arise from my freely missing the deadline. So this is a genuine case that GEA rules out.

In general, it seems that many genuine cases of deserving bad things would be ruled out by GEA. Note that this is an important class of desert, because Sher does think that people can deserve bad things for their foolish free actions. One of his examples that he claims his account handles just fine has to do with a person who chooses to drive his truck on a frozen pond after there has been a lot of warm weather. That person, thinks Sher, deserves the expected bad result, that his truck will break through the ice. Thus, this defect of GEA needs to be addressed before EC3 can work.

(B) Even if there is some satisfactory version of GEA, clause three of EC3 is unsuited to its task. The usual convention is that the intrinsic value of an act is the value of the act itself, the extrinsic value is the value of its consequences, and that the sum of the extrinsic value plus the intrinsic value is the overall value. Sher holds that acting freely has a certain amount of intrinsic value, and that this intrinsic value somehow gets transferred to the outcome of the free choice. In addition, Sher recognizes that an outcome has a certain value irrespective of what it might have inherited from the free choice that caused it to occur. So Sher seems to claim that when the

sum of a free act's intrinsic value plus extrinsic value is negative, then the person does not deserve that outcome for that act.

For this account to make any sense at all, it must be assumed that various free choices have differing amounts of intrinsic value. For assume that all free choices have the same intrinsic value. Then certain intuitively correct desert judgments will be shown incorrect. For instance, imagine that the intrinsic value of any free choice is only moderate, around ten units of value. This low value will do fine for showing that people do not deserve the disastrous results of merely careless (though genuinely free) acts. Sher mentions that a daredevil does not deserve paralysis for trying to leap a twenty-foot chasm, that a heavy smoker does not deserve lung-cancer, and that a fisherman who drives on ice without testing it does not deserve to lose his life (just his truck). On Sher's account, with the intrinsic value of free choice set at ten, all of these examples work. Certainly the results from being paralyzed, from having cancer, and from dying, are negatively far greater than ten units of value. However, there are certainly some decisions we make whose results are moderately disastrous, that we *do* deserve. The fisherman's losing his truck is a case in point. Sher agrees that the fisherman who drives on the ice deserves to lose his truck, though not his life. But even the loss of a truck has got

to be negatively greater than ten units of value. Only a very rich fisherman would not mind spending ten to twenty-thousand dollars in such a case.

Raising the intrinsic value of free choices enough so that cases such as the fisherman's truck work out does not work either. Then the value will be so high that there will be cases of where the desert will be too harsh a punishment.

So it must be that the intrinsic value of free choice is not fixed, but varies from case to case. Sher does seem to have this in mind in his discussion of cases of genuine autonomy. Recall that a truly free choice is supposed to involve some risk, or thought, or ingenuity, or difficulty. It makes a kind of sense to think that the more risk, thought, ingenuity or difficulty involved, the more valuable the free choice. But it hardly seems that there would be enough difference between the values of various free choices that could be made to account for the wide range of values of deserts.

In any case, consider the person who makes a difficult free choice, that required much ingenuity: to rob a bank and get away with it. Why should we think this decision has any merit? What is so good about freely choosing to rob a bank? It seems to me that in this case, freedom is a necessary condition for ascribing desert, but that it certainly is not sufficient for concluding that the expected consequence of succeeding is deserved.

There is another, deeper problem with clause (iii'). It does not really work for cases (3) and (4). First of all, in introducing these cases, Sher admits that in neither case is it true that the outcome is sufficiently tragic to outweigh the value of the agent's exercise of freedom.¹³⁹ It is not that the actual value is negative, since the "other aspects" of the cases whose disvalue is great are only counterfactual considerations. For instance, in the case of the unscrupulous Adams, *it would have been better if he had made a different choice than he actually did*, and in the case of the heroic Johnson, *it would have been better if he had had a different choice than he actually did*. A little reflection will make it abundantly clear that introducing counterfactual considerations into this account of desert will do more harm than good. According to Sher, the Johnson case is not one that is ruled out by clause (iii'), because the actual value of X plus A is positive. However, there is a state of affairs (not physically possible for Johnson to achieve, but still possible in some sense) that would have been better. That is the state of affairs where Johnson was not forced to choose between death of the infant and a broken leg. One such state of affairs is much better than what actually happened. Therefore, since it would have been much better if that (call it 'ideal') state of affairs had happened, Johnson does not deserve the broken leg. This case clearly shows that Sher is appealing to counterfactual

situations to keep his account. We need some further clause besides clause (iii').

- iv) If S had performed some other choice than A, the outcome would not have been better than it actually was.

Even this is not quite strong enough, because in the Johnson case, there was no other choice for him to make. What Sher compares the situation to is one where Johnson did not have to make such a terrible choice. I am not sure exactly how to incorporate that consideration into the expected consequences account, but that hardly matters, for this attempt to make it work is obviously flawed. Consider a different kind of case. I can choose to donate my estate to the charity of your choice. Unfortunately, though my estate is not pitiable, it is nowhere near the size of Bill Gates's. So even though I do donate my estate, and it has some predictably good consequences, it would have been far better if I had not had to choose between donating my estate, or donating less. It would have been far better if I could have donated an estate the size of Bill Gates's to that charity.

Because those consequences would have been so much better it follows, on my latest reconstruction of Sher's account, that I do not deserve whatever honors or accolades I get from the donation of my mediocre estate. This is crazy. Clearly, the fact that if I had had more money to donate, that would have been much better, can have no

bearing on whether I deserve anything for what I was able to and actually did do. It should be quite clear that any account that follows the reasoning Sher uses in the Johnson case will rule out every instance of desert. There will always be a state of affairs that is such that it would have been much better if that state of affairs had happened instead of what actually did happen. But this does not properly affect the desert at issue.

Finally, an objection to clause (ii), that the outcome must be predictable. This simply is not true. For instance, take Adams and his exploitation of the poor and uneducated. It is predictable that this will make him rich. But, suppose that something unpredictable happens -- the exploited masses revolt and Adams loses his fortune. It seems quite obvious that the revolution, though unpredictable, is just what Adams deserves for his exploitation. However, according to Sher's account, this is not a deserved outcome for Adams' free choice to exploit the workers, because it is not predictable.

Autonomous Action is Not a Desert Base

The misguided reasoning displayed in the argument for free choice as a desert base, and the failure of the expected-consequences account itself, lead me to believe that free choice is not, after all, a desert base. A re-consideration of the putative examples of free choice as a

desert base shows that each of them can be explained as some other kind of desert. Here are the examples.

- 1) Wilson, who knowingly submitted his application late, deserves to be disqualified.
- 2) Harris, who did not bring his raincoat, now deserves to get wet, while Georgina, who did bring her umbrella, deserves to stay dry.
- 3) Simmons, who did not study for his exam, now deserves to fail.
- 4) Given the warm weather lately, anyone who is crazy enough to drive their vehicle on the ice deserves to have it fall through.
- 5) Persons who resourcefully seize opportunities deserve the resulting benefits.
- 6) Persons who carefully make and execute plans deserve success.
- 7) Persons who forego immediate benefits in expectation of longer-range gains deserve those gains.

It seems to me that anyone who accepts any of (1-7) above as legitimate desert claims can do so without appeal to Sher's expected consequences account of desert. For instance, although (1) is really too vague to be sure about, it could be a case of desert due to laziness. Examples (6) and (7) seem to me to examples of desert due to diligence or hard work or effort. Example (5) could either be a desert due to the possession of certain character traits such as boldness and resourcefulness, or again desert due to diligence, it is hard to tell because it is stated so vaguely. Finally, claims (2-4) seem to me to be based on a presumed standard of rationality. That is, the appeal of these claims comes from the sense that it seems somehow

fitting that people who behave irrationally should suffer, while those who behave rationally should benefit. It is very similar to deserts due to moral behavior. Those who transgress the moral code deserve punishment, while those who stick with the code deserve reward. Here, the standard is not morality, but rationality. Thus, the person "crazy enough" to disregard rational warnings about the danger of thin ice deserves to suffer, while the person who brings an umbrella when she has reason to believe it will rain deserves to stay dry. Similarly for the test-taker, though I think this case needs to be spelled out more fully. For instance, a person who does not study for a test because he is justified in his surety that he will "ace" it, does not deserve to fail. But if we assume the test-taker not only has not studied, but also needed to study, and knew he needed to study, then it seems irrational for him to expect to pass it without studying.

This aspect of desert due to rationality is enforced by clause (ii) of Sher's expected consequence account, where it is required that only the *expected* consequences of free behavior can be deserved. After all, it is rational decision-making that produces accounts of expected outcomes and tries to act on them. We can act perfectly freely even in being willful and irrational, and since usually the *positive* outcomes of such behavior are quite unexpected, Sher's account rules them out.

In addition to this covert appeal to rationality, Sher's expected-consequences account also appeals to diligence. The second clause of GEA requires that genuine acts of free will are either, risky, difficult, or in need of ingenuity. Most choices that are risky, difficult, or need ingenuity, are choices that will require much hard work, or diligence, for their outcomes to be successful. However, there can be all sorts of free choices that do not require such hard work. Thus, I think that GEA makes desert due to diligence seem like desert due to free choice.

Once it is realized that all the putative claims of desert due to free choice can be explained as desert due to some other desert base, and once it is seen how the expected consequence account makes covert appeals to rationality and diligence, then I think there is no reason to accept it. For one thing, we can account for desert without it, and for another, any plausibility in the formal expected-consequences account can be shown to be due to its incorporation of other desert bases.

CHAPTER 5

DILIGENCE AND VIRTUE

In this chapter I will examine the relationship between effort (diligence) and desert, and then since diligence is a kind of virtue, the relationship between virtue and desert.

Why the Diligent Deserve the Goods

Of all the desert bases, diligence is perhaps the most compelling. Some have even maintained that diligence is the *only* legitimate desert base.¹⁴⁰ In his book, *Desert*, George Sher tries to provide an answer to the question of why the diligent deserve what they deserve. He thinks that desert bases themselves need justification. So he provides a justification for diligence as a desert base. My first task in this chapter, then, will be to evaluate Sher's claims about the justification of diligence.¹⁴¹

According to Sher, the solution to the puzzle about why people deserve what they diligently strive for is suggested by an examination of what it is that they deserve through their diligence. What is deserved through diligence is whatever goal that diligence is aimed at. Sher writes, "what any hard worker deserves is just the outcome he has striven to produce."¹⁴² The question of why the hard worker should get what she is striving for can be answered. First, like other desert-claims, desert for diligence does not imply that anyone has any moral obligations to see to it that a diligent worker get what she deserves.

In itself, diligent effort creates no entitlements. It does however, seem to confer upon one's goal a value it would otherwise lack...As clarified, the thesis whose rationale we want to understand is that diligent efforts confer value upon their intentional objects.¹⁴³

The thesis that diligent efforts confer value upon their intentional objects is quite similar to the thesis that desire confers value upon the object of desire. This thesis has its most famous exposition in the work of Ralph Barton Perry, *Realms of Value*. There Perry holds that any object has value (positive or negative) so long as someone takes interest (positive or negative) in it.¹⁴⁴ For Sher, this parallel suggests an explanation of the idea that the diligent are deserving. Sher thinks that diligence is closely related to desire, so that if it is true that desire confers value upon a goal, then diligent effort to achieve that goal could be said to magnify that value.

Because even idle desires are thought to confer some value on their objects, and because diligent striving is in some sense an extension of desire, we may conjecture that the far greater value of the objects of diligent striving is somehow a function of the way diligent striving surpasses mere desire.¹⁴⁵

Although Sher depends on the thesis that desires confer value, he does not assume that only desire confers value, and he also tries to justify that thesis. His explanation of the idea that desires confer value provides the first premise of his argument to show that the diligent deserve to achieve the goals toward which their efforts are directed.

Sher's argument starts with a premise that he thinks is a "precondition for morality itself," that persons are intrinsically valuable.¹⁴⁶ Since persons care "intensely and complexly" about themselves and other things, Sher thinks it is plausible to believe that if persons have intrinsic value, then what matters to them also has intrinsic value. He writes,

Not only are the beings to which morality ascribes fundamental value capable of taking other things to have value, but their taking those other things to have value is central to what makes them valuable. Thus, it does seem natural to hold that a portion of their value devolves upon what they value--that some of the absolute value of persons is transferred to, or inherited by, the things they care about.¹⁴⁷

Thus, Sher has argued that if persons have intrinsic value, then the things they take interest in have intrinsic value. That is, he takes it that he is proving something similar to Perry's claim about the conference of value by interest, but his reason why is that people are, themselves, intrinsically valuable. This view is different from Perry's, because on Perry's view, if no one takes interest in you, then you have no value; but on Sher's view, you and I have value independently of any interests. On the other hand, if I do take interest in you, then your value (presumably) is enhanced.

Sher's next task is to show that diligence confers a lot more value than mere desire confers. After all, he notes, we do distinguish between those who desire strongly,

but do not work, from those who desire equally strongly and do work. We think it far better for the latter to get what they want than the former to get what *they* want.¹⁴⁸

According to Sher, there are two reasons that diligence confers far more value than desire, and he thinks that these reasons show that diligence acts like a species of desire, in that it magnifies the value that is conferred by desire. His two reasons for why diligence confers much more value than mere desire are (1) "sustained effort stems from will and judgment as desire typically does not," and (2) "sustained effort forecloses other options as mere desires do not."¹⁴⁹

An understanding of Sher's conception of a person is needed to understand the importance of these reasons.

According to Sher,

Since our lives are constituted by our actions, our time and energy are thus the very stuff of which we fashion our lives. Hence, any agent who devotes a major portion of his time and energy to achieving a goal is quite literally making that goal a part of himself.¹⁵⁰

So it appears that one reason that the diligent ought to get what they deserve is that their diligent efforts to achieve a goal have made that goal a part of them.

Presumably, Sher's reasoning is something like this. If the achievement of a goal is a part of a person, and the person is intrinsically valuable, then it would be a bad thing if that person were not to achieve that goal. It would be as if the person had lost a part of herself. So the person

ought to get the goal she diligently strives for, so she deserves it. Here, then, is my first interpretation of Sher's Argument for Diligence.

- (1) People are intrinsically valuable.
- (2) If people are intrinsically valuable, then the things people desire are intrinsically valuable.
- (3) If the things people desire are intrinsically valuable, then the goals toward which people diligently strive are highly intrinsically valuable.
- (4) If the goals toward which people diligently strive are highly intrinsically valuable, then people deserve to get the goals toward which they diligently strive.
- (5) Therefore, people deserve to get the goals toward which they diligently strive.

I believe that this argument is suggested by the text. Premise (1) is the "precondition for morality." Premise (2) displays Sher's belief that the intrinsic value of a person can be "transferred" to the objects that person desires. Premise (3) captures Sher's view that diligent effort magnifies the value transferred by desire. Premise (4) is based on the notion that someone who is diligently striving to achieve a goal is "quite literally making that goal a part of himself," and so deserves to get that goal.

However, premise (2) is highly implausible. Sher writes, "some of the absolute value of persons is transferred to, or inherited by, the things they care about."¹⁵¹ (By "absolute" value, I can only think Sher has in mind intrinsic value.) Taking Sher's concept of transference seriously leads to bizarre results. If I have

some money, and I *transfer* it to your account, then I will have less money than before. If you inherit money from me, then that money is no longer mine. According to Sher, then, whenever I take interest in something, some of my intrinsic value goes out of me and into the thing I care about. If I cared about a lot of things, I could run out of intrinsic value, just like I could run out of money. But this makes no sense at all. Surely my intrinsic value cannot be decreased by my taking interest in something.

So the value of what is cared for is not transferred from person to object by desire, but must be created by desire. But then it is unclear why anyone would think that this is "absolute," or intrinsic value. Intrinsic value is the value something has regardless of its usefulness to people, regardless of the interest people take in it. Intrinsic value is value-in-itself. The value a thing has because of the interest people take in it is extrinsic value, and so not "absolute" value. It is value-for-a-person. Thus, this argument fails in premise (2). The intrinsic value of a person cannot be transferred to the objects she cares about.

However, although Sher's reasoning does seem to make this mistake, I think there is a similar argument that maintains Sher's key points without making any highly implausible claims about transfers of intrinsic value. This

Second Argument for Diligence is suggested by Perry's view about what states of affairs have intrinsic value.¹⁵²

- (1) The state of affairs *that a person desires an object* is intrinsically valuable.
- (2) If the state of affairs *that a person desires an object* is intrinsically valuable, then the state of affairs *that a person diligently strives for goal g* is intrinsically valuable.
- (3) If the state of affairs *that a person diligently strives for goal g* is intrinsically valuable, then people deserve to get the goals toward which they diligently strive.
- (4) Therefore, people deserve to get the goals toward which they diligently strive.

However, both of the arguments suggested so far suffer from a grave defect. They depend upon Perry's view that desire confers value. Few would accept this view, because it makes it too easy to come by value. For instance, if a sadist is positively interested in torturing babies, then torturing babies has value. This seems just plainly false. Thus, Perry's view is, at the least, highly controversial. It is not the kind of premise on which one wants to rest such an important argument.

Another weak link in the two arguments presented is the contention that we deserve to get what we strive for because our striving increases the value of that thing. One may wonder why the fact that diligent striving increases the value of an object is any reason to think that, therefore, the person deserves to *receive* that value. We do not in general assume that just because some object has value for

someone, that the person deserves to get it. Otherwise, for instance, I deserve to have rather more material wealth than I do now. Similarly, if a statue has value, that does not mean I deserve to have that statue. Suppose that statue's value is increased. It certainly does not follow that I am more deserving of it than when it was less valuable. Thus, it appears to me that this whole project of showing that the objects of diligent striving acquire more value the harder we work for them is rather pointless. What we need to show is that the harder we work for our goals, the more we deserve to have them. But that is not accomplished by showing merely that the object *itself* acquires value.

There is another possible way to interpret the argument, and it does not require the controversial "Perry Premise," that desires confer value. Furthermore, this Third Argument for Diligence does not assume that as an object increases in value, so does a person's desert for that object.

- (1) People are intrinsically valuable and constituted by their actions.
- (2) If people are intrinsically valuable and constituted by their actions, then people deserve to get the goals toward which they diligently strive.
- (3) Therefore, people deserve to get the goals toward which they diligently strive.

Since this argument does not make use of the "Perry Premise," it avoids the issue of whether intrinsic value can be inherited by the objects of interest. Instead, this

argument takes seriously the notion that "you are what you diligently try to do." Consistent with a line of thought that Sher has expressed before, we may reason as follows.¹⁵³ Given that it is true that you are intrinsically valuable, then what you diligently try to do is intrinsically valuable too, since it is also part of you. At any rate, this appears to be the upshot of Sher's discussion of the importance of diligence to what constitutes a person. He writes,

They [the diligent] ought to succeed because their sustained efforts are substantial investments of themselves--the ultimate sources of value--in the outcomes they seek.¹⁵⁴

Here are the rationales for the premises. Premise (1) follows from the Kantian conception that people are ends in themselves ("a prerequisite for morality is that people matter"), plus Sher's notion that a person is largely the sum of her or his actions. The rest of the work of this argument is done in premise (2). Sher's concept of personhood is important as well, but I will put that aside until last. Premise (2) makes use of Sher's notion that when people diligently strive toward a goal, they invest a substantial portion of their limited, and valuable resources. They ought to be compensated for such expenditures. The best compensation is, of course, to achieve that goal. This interpretation of the argument rests heavily on the words quoted above, about sustained

efforts being substantial investments of the persons themselves.¹⁵⁵

Perhaps Sher thinks that this premise is strengthened by the belief that the things people strive for are increased in value by the very fact of their striving for them. If so, then premise (2) would make a covert appeal to the "Perry Premise." Nevertheless, given the controversial nature of the view that interest confers value, I think Sher should not make use of this kind of appeal. Thus, the "Perry Premise" appeal aside, it seems to me that Sher's reasoning for (2) depends upon his notion of how a person makes a goal a part of herself.

One problem with Sher's justification is this. He claims that a diligent worker is "quite literally making that goal a part of himself."¹⁵⁶ But it is clearly possible to work hard towards a goal, and yet not achieve that goal. It is even possible to work supremely hard and yet not succeed. Thus, it is not always true that as a person works hard, she makes the goal a part of herself. For if she does not achieve the goal, then it cannot be a part of herself. In such a case, it could be said that the person is trying to make the goal a part of herself, but is failing.

So it seems that when it comes to the justification of the view that a person should achieve the goal she diligently strives for, that one cannot appeal to the fact that the goal is part of the person. Otherwise it would

turn out that this justification only works for people who actually achieve their goals. Someone who works hard but does not achieve her goal could not be said to deserve it, because she has not made it part of herself. But clearly, in many cases we would say that even though the person did not achieve the goal, and so has not made it part of her, she nevertheless deserved to achieve that goal.

Perhaps the claim could be modified. She could claim that when a person is diligently striving for a goal, it is not that he is actually making that goal a part of himself, but that he is *attempting* to, that makes him deserve the goal. But people do not generally deserve a thing just because they are attempting to achieve it. Thus, it is not the attempt that makes a person deserving, but the quality of the attempt. A diligent attempt is clearly more deserving than a half-hearted attempt. But now the attempt to justify desert for diligence is circular. It starts with the assumption that when a person diligently strives toward a goal, the person is trying to make that goal a part of himself. The next claim is that it would be a good thing for the person to succeed. The reason why is that it is a diligent attempt. But this is just what was to be proved: that the diligent are deserving. Thus, it does not seem possible to make a non-circular argument without appealing to the "Perry Premise," and yet this premise is too controversial. Any argument that appeals to the "Perry

Premise" to conclude that the diligent are deserving has the following characteristic. Its conclusion is more plausible than its premise. This is a defect.

Finally, Sher seems to be fundamentally confused when he concludes that because our *lives* are constituted by our actions, that therefore we are constituted by our actions. He seems to be confusing a person with a person's life. Clearly though, a person is not the same as her life. A person is constituted by her body and (some would say) her soul. But a person's life is filled with all sorts of events. Thus, when a person tries to make a goal a part of her life, she is not "quite literally" trying to make that goal a part of herself. It is not as if the goal will become another one of her body parts.¹⁵⁷ Sher's concept of a person is simply confused, and premise (1) is false.

So it seems to me that all three interpretations of the diligence argument fail. Perhaps I have not understood Sher's reasoning, but so far as I can tell, it is mistaken. In any case, since diligence is a species of virtue, I will next consider Sher's more general argument for the legitimacy of desert claims based on virtue.

Why the Virtuous Deserve the Goods

When George Sher takes up this subject, he appears to think that the question to ask is, "Can we show that it is a good thing for the virtuous to be rewarded?" He notes that W. D. Ross claimed that there was value in "the

proportionment of happiness to virtue,"¹⁵⁸ but says, that "Ross, typically, offers no defense of this claim. Can we do better?"¹⁵⁹ Sher writes,

...[M]y argument rests on two premises. It assumes that (1) persons derive (some of) their worth from the fact that they seek value, and that (2) the intentional objects of persons' desires and efforts derive value from the fact that they are sought by beings *with* worth.¹⁶⁰

Sher claims that seeking value is "part of what confers worth on person," so "we can conclude that the happiness of the specially virtuous has special value."¹⁶¹ In addition, Sher claims that "the moral virtues that interest us are all heightened and concentrated propensities to seek forms of value."¹⁶² For instance, the generous person seeks to bring about good results. So each case of a person exhibiting a moral virtue is a case where, "the person exemplifies, to a higher degree than others, the value-seeking propensity that is crucial to the worth of persons."¹⁶³ Therefore, "we may reasonably suppose that he acquires greater worth than do others from his possession of it."¹⁶⁴ Sher finishes the argument with the following reasoning:

But if a virtuous person does have greater worth than others, then his desires and sustained efforts 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 efforts 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.¹⁶⁵

At this point, Sher starts considering objections to his argument. He appears, therefore, to think that he has shown that the virtuous are deserving. Here is my interpretation of the argument suggested by the above text:

- 1) Seeking value confers worth on persons.
- 2) If seeking value confers worth on persons, then the virtuous are worth more than the non-virtuous.
- 3) If the virtuous are worth more than the non-virtuous, then the happiness of the virtuous is more valuable than the happiness of the non-virtuous.
- 4) If the happiness of the virtuous is more valuable than the happiness of the non-virtuous, then it ought to be the case that the virtuous are happy.
- 5) If it ought to be the case that the virtuous are happy, then the virtuous deserve happiness.
- 6) Therefore, the virtuous deserve happiness.¹⁶⁶

Here are Sher's rationales. He gives three reasons for premise (1): A) When people seek value, they seek that which results from their seeking. B) In addition, premise (1) brings together the concepts of being a moral subject and a moral object, thereby expressing the "compelling Kantian idea that morality is somehow rooted in reciprocity." C) Premise (1) accounts for the fact that agency, rationality, sentience, and consciousness are necessary conditions for "full human worth"--because they are necessary for the ability to seek for value, and for the ability to consider oneself an "I."¹⁶⁷

For premise (2), Sher notes that the moral virtues "are all heightened and concentrated propensities to seek forms

of value." Some examples that he gives are: the fair-minded, honest person seeks to do what is right. To do right is to increase value. The generous person seeks also to do good. Thus, the virtuous all seek value to a greater extent than the non-virtuous. Since seeking value makes us worthy, seeking more value makes us more worthy.¹⁶⁸

To explain (3) Sher makes use of what I have called the "Perry Premise," from his argument for diligence. The Perry Premise states that objects acquire value through our desire for them. Since the virtuous have more value than the non-virtuous, what they desire acquires more value. Everyone desires happiness, so happiness acquires more value for the virtuous than the non-virtuous.¹⁶⁹

Since even the non-virtuous have value (because they seek value), the objects of their desires acquire value, and therefore they ought to get those objects. The case is strengthened for the virtuous, so premise (4) is true.¹⁷⁰ Premise (5) is not explicitly in the text. I assume that as in all of his other arguments, Sher thinks that the sense of the 'ought' in the antecedent is captured by the concept of desert.

I think that this argument fails. The rationales for the first two premises are so hard to understand that I will not bother to try to comment further on them, and the third premise depends upon a rationale I have already criticized at length in Chapter Five. Thus, I will make just two

points about this argument. First of all, Sher's argument does not "do better" than Ross in showing that there is value in proportioning happiness to virtue. In fact, Ross does offer some argument for his view, and it appears that Sher has completely overlooked it. Secondly, even if it can be shown that it ought to be the case that the virtuous are happy (and I think a case can be made along the lines that Ross does in *The Right and the Good*, rather than lines that Sher attempts), this fact is irrelevant to the question at hand, which is, "Why do the virtuous deserve to be happy?" Showing that it is good for the virtuous to be happy is not at all the same as showing that the virtuous are deserving.

When he is considering what things are good, Ross makes an argument to show that pleasure is not the only good. He asks us to consider two different possible worlds. The worlds are alike in the amount of pain and pleasure they contain, as well as the amount of virtues and vices. The difference is that in the first world, it is the virtuous who are all happy, and the vicious who are miserable, whereas in the second world, the vicious are happy and the virtuous are miserable. He writes (plausibly), that "very few people would hesitate to say that the first was a much better state of the universe than the second."¹⁷¹ It seems to me that an argument along these lines is far more likely

to show that it is good for the virtuous to be happy than anything that Sher presented.

Desert Bases Cannot be Justified

I think it is very hard to prove that the virtuous are deserving; and as I have tried to show with George Sher's attempts, although we can always ask for the justification of a moral claim, we will not always get one. Eventually there have to be some primitive claims that are justified only by appeal to intuition or to the claim's alleged self-evidence. My view is just such a primitive claim. As a matter of fact, I think that my view has the benefit of showing how the desert bases are closely related. Many people do not pay enough attention to desert because they think that it is just a collection of disparate intuitions that have no unifying theme. I hope to show that view is mistaken.

Since I take the connection between virtue and desert as primitive, I can not present an argument for its truth. Nevertheless, there are some facts that support it, such as existence of the book *When Bad Things Happen to Good People*¹⁷², a contemporary theodicy. Implicit in the title is the idea that good people do not deserve bad things. But of course, this world is not ideal, and it is very clear that often, and maybe even more often than not, bad things happen to good people. Another fact that indirectly helps my case is Sher's weak attempt to show that the virtuous deserve the

goods. He ends up using as premises propositions that are either opaque, or far less clearly true than what he is trying to prove. When a claim is truly primitive, then attempts to justify it are likely to run into problems of this sort.

CHAPTER 6

THE VIRTUES

In this chapter I claim that the abundance of apparent desert bases makes desert seem little more than a bundle of, at best, loosely connected intuitions, and that this makes principle PJD appear *ad hoc*. As a solution to this problem, I propose an account of the desert bases that is relatively restrictive: desert is due to the fit between one's previous deserts and receipts, one's virtuous and vicious behavior, and one's potential for developing virtues in the future. Since they are so important to my view about the true desert bases, the bulk of this chapter centers on my account of the virtues and vices.

The Plurality of Desert

Consider the amazing variation in the bases of the different desert claims listed in Chapter Three: past actions of all sorts, including hard work, good work, successful work, evil deeds, risk-taking, and careful planning; the past receipt of suffering, bad luck, and undeserved benefits; many characteristics of the deserving, such as beauty, moral worth, personhood, talent, being interesting, being an expert, being fair and just; and lastly, having fulfilled some set requirements for the desert--being entitled to it. Thus, although every desert claim must have a desert base, it may appear that just about any reason will do. Furthermore, since I have shown that

George Sher's attempts to justify the various desert bases fails for each desert base, and since Sher's is the only serious, sustained attempt to justify the various desert bases, it appears that intuition is the only arbiter between competing accounts of the desert bases. Feinberg claimed that "the facts which constitute the basis of a subject's desert must be facts about that subject,"¹⁷³ but this is clearly too general to be useful. Some facts about me, such as the fact that my middle name was chosen because it was my mother's uncle's first name, or the fact that I have brown hair, do not seem to be important for any desert claims about me. It does not seem reasonable that I should deserve anything on the basis of those facts.

These appearances lend a disreputable air to JD, the claim that distributive justice is achieved when each person gets what she or he deserves, because they make it appear that JD can accommodate most any intuition about justice. Thus, principle JD appears *ad hoc*, because it is so easy to manipulate its content by choice of desert bases. I would like to remove the appearance of ad hocery from JD. I would like to offer principled reasons to accept certain desert bases and to reject others. Sher claimed that "what a person deserves is always determined either by what they have done, or by what, in some important sense, they are."¹⁷⁴ I think that this statement is on the right track, but that the "important sense" of what a person is can be specified:

what is important is that people are *good* people. I think that what makes a person a good person is possession of the virtues, and avoidance of the vices. Furthermore, since virtues and vices are dispositions to act, insofar as a past action is an exemplification of a virtue or a vice, then that past action will also modify the desert of the agent.

So, my view (roughly) is that all desert is based upon the possession of virtues and vices. However, there are some auxiliary principles which modify this basic claim, so I think it will be clearer to start with a discussion of the virtues and vices themselves, whose features motivate these modifications. There are two main tasks that need to be accomplished in an adequate account of virtue: (1) an account of the nature of virtue, and (2) a specification of the virtues themselves. My view of the nature of virtues is influenced by Aristotle. However, there may be many philosophers who disagree with the Aristotelian conception of virtue. Some of these would probably also disagree with my modified Aristotelian view, as might some who consider themselves to be Aristotelian. If so, then these philosophers will also disagree with my view of the desert bases. In fact, my claim is that the disagreements should be linked. For instance, if you do not think that beauty is a virtue, then you should not think that beauty is a desert base. So, while I will present a virtue/vice theory to give substance to my view that the desert bases are all and only

virtues or vices, if your view of the virtues is different from mine, then your view of the desert bases will also be different from mine. That is no objection to my theory, so long as the desert bases are linked to the possession of virtues and vices in the way that I say they are.

Some Notes on the Nature of Virtue

Virtue theory is a theory about the evaluation of persons, rather than of acts or states of affairs. A virtue is a disposition to act in certain ways under certain conditions. Part of what makes a particular act the exemplification of a virtue is the motive that produced the act. For example, Kant makes a distinction between the grocer who does not overcharge his customers from the motive of self-interest, and the grocer who does not overcharge from the motive of duty.¹⁷⁵ Although Kant does not express himself this way, I think this distinction corresponds to the difference between performing a virtuous action¹⁷⁶ (the action of the grocer who does not overcharge from the motive of duty), and performing a neutral action (the action of the grocer who does not overcharge from the motive of self-interest).

Thus, part of what makes an action an instance of a virtue is the motive that produced it. However, there is another requirement, that the motive be part of a general disposition to act. It cannot be a one-time circumstance, but must be a developed habit. For instance, consider an

habitual thief who has spent most of his adult life stealing. Imagine that on one occasion, in the midst of a theft that was going well for him, he had a change of heart, and decided to abort his mission. The next day, however, he went on with his schedule of stealing (a new house, not the one where he had had an attack of conscience). Even if the motivation for his aborting his theft was love of duty, or love of his fellow humans, or the realization that he should not steal, etc., his action would not indicate that he possessed the relevant virtue, because it was clearly *not* part of his disposition to be motivated to refrain from stealing even though in that case, he did exemplify a virtue.

A comprehensive and influential conception of the virtues can be found in Aristotle's *Nicomachean Ethics*. Aristotle makes several points about the nature of virtue before listing the virtues themselves. Since his remarks are consistent with, but also more extensive than, what I have said above, I have summarized four main points below.

First, Aristotle distinguishes between two main kinds of virtue, moral and intellectual.¹⁷⁷ Intellectual virtue is developed through learning, but moral virtue is developed through habit. We are not born with the moral virtues, but acquire them through performing virtuous actions. For instance, "we become just by performing just actions...We

may sum it all up in the generalization, 'Like activities produce like dispositions.'"¹⁷⁸

Second, Aristotle makes it clear that what makes a person virtuous is not the mere performance of virtuous actions. The mind of the performer must be in the correct state as well. "Actions, to be sure, are called just and temperate when they are such as a just or temperate man would do. But the doer is just or temperate not because he does such things but when he does them in the way of just and temperate persons."¹⁷⁹ There are three conditions to be fulfilled for the doer to be virtuous.

(1) The agent must act in full consciousness of what he is doing. (2) He must 'will' his action, and will it for its own sake. (3) The act must proceed from a fixed and unchangeable disposition.¹⁸⁰

From this, it follows that the action of a non-virtuous person can appear identical to the action of a virtuous person. For instance, if some person's normal habit is to lie, but on one occasion tells the truth, the liar might appear to be virtuous. The actual instance of truth-telling is not enough, by itself, to allow an accurate judgement of the merit of the utterer. In this case, the liar is not to be judged virtuous, even though he told the truth. To become virtuous, the liar would have to become in the habit of always telling the truth (and consciously, and for its own sake).

Third, according to Aristotle, virtue is neither a feeling nor a capacity, but a certain disposition.¹⁸¹ Which dispositions are virtues? The dispositions which make a person a good person, and make that person function well.¹⁸² Possession of the virtues is necessary for humans to flourish.

Fourth, Aristotle appears to claim that virtue is always a mean between two extremes. Thus, for every virtue, there will be two associated vices.

Now virtue is concerned with passions and actions, in which excess is a form of failure, and so is defect, while the intermediate is praised and is a form of success; and being praised and being successful are both characteristics of virtue. Therefore, virtue is a kind of mean, since as we have seen, it aims at what is intermediate.¹⁸³

In my view, Aristotle's third point is problematic. The third point seems to imply that humans are like tools-- they have particular functions, and the virtues are what allow them to perform those functions well. For instance, the characteristic function of the saw is what it was designed to do. Thus, the characteristic function of a saw is to cut things, and so a virtue of the saw is sharpness. If we apply this to people, then there is a characteristic function of persons, and the virtues allow each person to achieve that function. However, it does not appear that there *is* a characteristic function of persons. We are not like tools in at least one important respect: we were not designed to do anything, either well or poorly, because we

were not designed. So, the virtues are not those dispositions which allow us to achieve our function.

Let me note a tension between the conception of a good person, and the conception of a person that is good for some particular task (a good boxer, a good military commander, a good philosophy professor). Above, I expressed disagreement with Aristotle's notion that there is a characteristic function of people, and that the virtues are what allow us to achieve that function. I found this notion unacceptable, because it does not seem that, in general, people have a characteristic function. Thus, the judgment that a person is, overall, a good person does not seem to require some conception of what that person is good for. On the other hand, it is often the case that a person must fulfill a particular task, or profession. In such cases, we clearly do judge that so-and-so would make a good doctor, or a good lawyer, or a good carpenter. Furthermore, we also make judgments of desert with respect to these concepts. It seems to me that there is a difference between judging a person good overall, and judging a person a good doctor. However, I do think that the judgments of desert that are made in the more narrow contexts (good doctor, good boxer) still depend on the virtues that I enumerated in the last chapter, as do the judgments about desert made in the context of judging a person good overall.

Of course, what makes a person good overall is not the same as what makes a person a good boxer, otherwise it would be clear that someone like Mike Tyson would not only be judged not a good person, but that he would be judged a poor boxer. Since we distinguish between the judgment that Mike Tyson is a good boxer (probably true), and the judgment that Mike Tyson is a good person (probably false), we must have different standards.

I think that this tension between the virtues that make for a good person, and the virtues that make for a good boxer, or good lawyer, etc., is mirrored by the conflict between judgments of desert for a person overall, and for a person as a boxer, or lawyer, etc. For instance, measured by most boxing standards, Mike Tyson is one of the great boxers (hardest hitting at least), and deserves recognition as such. However, he also deserved his prison sentence for raping a woman, and the fact that one of his self-admitted unforgettable punches was not even in the ring (he knocked his (now) ex-wife into the walls of their apartment), indicates that he is not deserving of many good things as moral person.¹⁸⁴

Aristotle's fourth point, about virtue being a kind of mean, is also problematic. Although he does mention again and again that virtue is a mean, it is not clear that he really believes it.¹⁸⁵ Furthermore, whether or not Aristotle truly affirms it, it is simply false. As Aristotle himself

admits, there is no way of committing adultery in a moderate way. Adultery is always a vice, no matter when, with whom, or what way it is committed. In addition, the virtue of justice is not presented as a mean, and neither are the intellectual virtues. Thus, while some virtues and vices clearly can be "tripled up" (the virtue as the mean between two extreme vices) in a useful way, I will not follow this device when presenting Aristotle's list.

The Virtues and Vices

Aristotle notes that not all virtues and vices have names, and that some of the names he uses do not fit exactly. He then goes into a detailed discussion of the moral virtues, and then the intellectual virtues. I have listed the virtues below, with related vices across from them where appropriate. (The quotations indicate names that Aristotle made up because there was not any in common use.)¹⁸⁶

<u>Virtue</u>	<u>Vice</u>
courage	cowardliness rashness
temperance	"insensibility" (extreme asceticism) self-indulgence
liberality	meanness prodigality
magnificence	stinginess vulgarity
proper pride	undue humility empty vanity
proper ambition	unambitiousness excess ambition
good temper	"inirascibility" irascibility
truthfulness	mock modesty boastfulness

ready wit	boorishness
friendliness	buffoonery
	surliness
	obsequiousness
modesty	bashfulness
	shamelessness

There is another kind of moral virtue, justice. But this virtue is actually comprised of several closely related virtues. One sense of 'justice' is that of "virtue entire." It is possible to be virtuous in one's private dealings, while not being virtuous in relation to one's neighbor. Aristotle says,

...justice is often thought to be the greatest of virtues...It is complete because he who possesses it can exercise his virtue not only in himself but towards his neighbor also; for many men can exercise virtue in their own affairs, but not in their relations to their neighbor.¹⁸⁷

However, there are also other meanings of 'justice' which indicate separate virtues not already listed above. There are at least two separate kinds of justice: distributive, and rectificatory.¹⁸⁸

Finally, there are five major, and three minor intellectual virtues: Science, Art, Practical wisdom, Intuitive reason, and Philosophic wisdom, and excellence in deliberation, understanding, and judgment.¹⁸⁹ Since it may not be clear what Aristotle intends by each of the five major virtues, here is a brief description of them. Science is the capacity to demonstrate one's knowledge of necessary truths,¹⁹⁰ art is the capacity to make things¹⁹¹, practical wisdom is the capacity to achieve what is desired (the good

ends),¹⁹² intuitive reason is the capacity to grasp first principles,¹⁹³ and philosophic wisdom is scientific knowledge combined with intuitive reason.¹⁹⁴

As I noted above, Aristotle divided the virtues into two broad categories, moral and intellectual. From the list of moral virtues, however, it appears that he had a much wider conception of morality than I do. For instance, he counts friendliness and ready wit among the moral virtues. Furthermore, he counts art among the intellectual virtues. Again, this seems a bit of a stretch to me, but my quarrel is not (except for a couple of exceptions that I will mention below) with the individual virtues, it is with Aristotle's using only two categories to classify them. I agree that two of the important ways in which people can be judged good are morally and intellectually, but I also think that people can be judged artistically, athletically, and socially. I think that there is a set of virtues for each of these major ways of being judged good. In my virtue scheme, I keep most of the virtues listed by Aristotle, but some of them are classified under the different categories I just mentioned, and there some other virtues that I add. Here is a table of the virtues:

<u>Moral</u>	<u>Intellectual</u>	<u>Artistic</u>	<u>Social</u>	<u>Athletic</u>
courage	practical	talent for	ready wit	beauty
temperance	wisdom	the fine	friend-	strength
truthful-	(prudence)	arts as	liness	hand-eye
ness	rationality	well	good temper	co-
liberality	talent for	as for	proper	ordination
(charity)	intellectual	crafts &	pride	& talent
justice	activities,	hobbies:	proper	for
fidelity	such as	painting,	ambition	various
diligence	science,	music,	modesty	athletic
etc.	math,	literature,	leadership	activities
	philosophy,	gardening,	ability	etc.
	etc.	carpentry,	cooperative	
		the	ability	
		culinary	etc.	
		arts, etc.		

Most of Aristotle's virtues appear on this list, with the exception of magnificence. Aristotle says that "the magnificent man is like an artist; for he can see what is fitting and spend large sums tastefully."¹⁹⁵ This does not seem to be a moral virtue. If anything, it may be a combination of artistic and social virtues, but I do not think it needs a special mention on my list. Also, I put 'charity' in parentheses after 'liberality' because that is what I understand by it. I also added two moral virtues, fidelity and diligence. These seem to me to be dispositions that make their bearer a better person. Finally, note that this scheme is not meant to be an exhaustive and exclusive list of the virtues. It is not exhaustive because there are other virtues (many of them minor virtues) that I have not listed. This list is not exclusive, because some virtues seem to fit under more than one heading. For instance,

grace of movement seems to be an athletic virtue, but perhaps is also an artistic virtue (in a ballet dancer, for instance). Nevertheless, I think that list is complete enough to provide substance to my claim that the desert bases are either virtues or vices. Remember, if you disagree with my chosen virtues, that is not an objection to my view, so long as you also disagree with the corresponding desert base. So if you do not like this list, substitute your own. That list will, if I am correct, generate your desert bases.

I am now ready to present my view in detail, along with some criticisms and modifications.

CHAPTER 7

DESERT AND VIRTUE

In this chapter, I defend the view that desert is determined by possession of virtues and vices. I first explain what it is for an action to exemplify a virtue and present a couple of technical terms that make use of this concept. Then I present the first version of my thesis, and show that it succeeds in many cases. Then I discuss some problem cases that force a couple of revisions to my view. Finally, I discuss some implications of this view of desert for PJD, the principle that distributive justice is achieved when people get what they deserve.

The simplest view of the connection between desert and virtue is that a person deserves good things for possessing a virtue or acting virtuously, bad things for possessing a vice or acting viciously, and that these two categories exhaust the desert bases. For a person to act virtuously, she must perform some action which both exemplifies that virtue, and for which the virtuous disposition was a significant motive. (An action that exemplifies a particular virtue is a typical action for that virtue. A virtue is a disposition to do certain acts, and those acts exemplify that virtue.) For instance, truthfulness is a virtue, and an action that exemplifies it occurs when someone tells the truth. Or consider friendliness; it could be exemplified by the actions involved in introducing a new member to the rest

of the group, and making the new person feel welcome.

Below, I have used the notion of exemplification to define virtuous and vicious actions.

VirA An agent, *s*, performed a virtuous action, *a* =df. *a* is an action that *s* performed, *a* exemplifies a virtue, *v*, and a significant part of *s*'s motive for doing *a* was either *v*, or the same intentions that one who possessed *v* and performed *a* would have.

VicA An agent, *s*, performed a vicious action, *a* =df. *a* is an action that *s* performed, *a* exemplifies a vice, *v*, and a significant part of *s*'s motive for doing *a* was either *v*, or the same intentions that one who possessed *v* and performed *a* would have.

Note that a person does not have to possess a virtue in order to do a virtuous action (nor does he or she have to possess a vice in order to do a vicious action). This is somewhat different from what Aristotle claimed. To be able to say that someone acted virtuously, he required that the person's action must "proceed from a firm and unchangeable character."¹⁹⁶ But I think that a person can begin to act virtuously without already possessing the virtue, that is, without already having a fixed and unchangeable character from whence the action proceeds. My idea is that a person acts virtuously (or viciously) when she or he acts the way a person would who had the relevant virtue (or vice). A person without some particular virtue can act similarly to the way a person would who had that virtue. This happens especially when a person is learning a particular virtue.

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As Aristotle said, "we must become just by doing just acts."¹⁹⁷ So, because the person has not before now had the disposition to be just, one just act is not enough for him to be judged to possess the virtue of justice. Nevertheless, that instance, if from the right motive, is a virtuous action. It counts positively towards his desert. On the other hand, consider a person who could be said to possess the virtue of truthfulness. Suppose that person one day breaks down and tells a serious lie. If that one lie was the only one he told, he could not be said to possess the vice of mendacity. Yet his action was vicious, and counts negatively toward his desert. Thus, one does not need to actually possess a virtue or vice in order to act virtuously or viciously.

However, since virtues and vices are dispositions, and it seems that some desert is based on the possession of a disposition without any obvious action, it is also possible for someone to deserve without having performed the relevant action. Thus, some desert is based on the possession of a certain disposition, without specifying any particular virtuous or vicious action.

With the above definitions, the first version of the relationship between virtues, vices, and desert can be stated.

VD1 An agent deserves something good (bad) in virtue of his or her action, *a*, or disposition, *d*, only if *a* was a virtuous

(vicious) action, or *d* is a virtue
(vice).

I think that VD1 captures an important insight about the connection between desert, virtue, and vice. Furthermore, in many cases it agrees with intuitions about when a person is deserving. For instance, the following desert claims from Chapter Three all have either virtuous or vicious actions, or virtues or vices for their grounds.

1. Jones deserves her success; she's worked hard for it.
3. Walters deserves the job; she's the best qualified applicant.
6. Baker deserves to win; he's played superbly.
7. Miss Vermont deserves to win; she's the prettiest entrant.
8. Anderson deserves his twenty-year sentence; he planned the murder.
9. Brown may have known she wouldn't be caught, but she still deserves to be punished.
12. Benson deserves some good luck; he's a fine person.
14. McArthur deserves a hearing; he's an expert on the subject.
22. Martin deserves to be punished; he lied to Jackson and Burns about ringing up yesterday.
23. Nolan deserved the prize for her efforts; her painting was by far the best.
25. McKenzie deserves to go to jail; he robbed that old lady.

The ground of claim (1) is diligence, a moral virtue. Claim (3) appeals to a set of virtues which the candidate possesses. Included are probably several social virtues, plus some intellectual and (perhaps) moral virtues. The grounds of (6) and (7) are athletic virtue and physical beauty. Claims (8), (9), (22), and (25) seem to be grounded

in various moral vices (it is hard to know for sure, since these claims are very sketchy, but it is at least plausible). Claim (12) is grounded in the goodness of Benson, which would presumably indicate that he possesses several virtues. Claim (14) is grounded by an intellectual virtue. Finally, claim (23) is grounded by artistic virtue.

Problems for the Simple View

I think that VD1 is on the right track about the relationship between virtue and vice to desert. However, there is a range of very plausible desert claims whose desert bases cannot be considered virtues or vices. Here are four cases where the subjects seem deserving, but it is not the case that the desert is due to virtuous or vicious behavior.

Case 1: Suppose an innocent person suffers a natural disaster. For instance, suppose a farmer's corn is wiped out by a tornado. It seems that now this person deserves some compensation. This is not deserved because of any virtue, but because of the past receipt of the person. Of course, one reason the disaster is undeserved is that the person was innocent, and so did not deserve such a mishap. But the disaster happened. The person did not get her just desert.

Case 2: Suppose a rich, famous athlete murders a guy, and the victim's parents then sue him for millions of dollars. They deserve recompense for the loss of their

child, and it is only fitting that the murderer's fortune should be forfeit to them. The parents' desert is not based on anything that *they* have done (or failed to do). It is based on the wrong that was done to them.

Case 3: Imagine that a married couple with a young child find that their marriage cannot work. They get a divorce. Neither party has done anything particularly bad to the other. There were no beatings, intimidations, or adulterous acts. The two found that they had irreconcilable differences in religions, politics, etc. They could not get along. In this case, suppose that the wife had not pursued a career after marriage, so that after the divorce, she had no means of supporting herself or her child. She needs money, a job, day-care for her child. It seems that she deserves to get these things. This desert is based, not on her virtue, but on her need.

Case 4: In Chapter Three, I presented the following desert claim involving bad luck as a desert base, taken from Sher's list of initially plausible desert claims:

13. Gordon deserves some good luck; she's had only bad. To flesh out this example a bit, imagine that Gordon has been playing bridge with some friends. She's played well, but all night has had only miserable hands, each less than ten points. To make matters worse, her partner has not had very good hands either. It is plausible to think that because Gordon has had bad luck all evening, she deserves

some compensation. It seems that she deserves to get a better hand.

So here are four cases of desert that seem to involve grounds other than either virtue or vice. Instead, the grounds are (1) suffering a natural disaster, (2) suffering at the hands of an evil man, (3) need, and (4) bad luck. While it might appear that these cases are four separate reasons to reject VD1, I think that each of these four cases has something important in common with the other three. In each case, there has been a poor fit with respect to the subjects' past deserts and past receipts. In case (1), the farmer had done nothing to deserve such a natural disaster. The same is true of the parents in case (2). They had not done anything to deserve the severe harm imposed upon them (not to mention upon their son--he had not done anything to deserve being murdered) by the rich athlete. In case (3), the separated mother did not deserve to be in such need--she was as innocent as her husband in their divorce. Finally, in case (4), Gordon had been playing well, and long enough that evening, that she should have got a good hand at least once. Thus, while there were different reasons for the poor fit between desert and receipt in each case, it was that poor fit that was the ground for the desert.

So it is clear that desert is affected by receipts as well as virtues and vices. The fit between what a person has previously deserved and received is a feature that I

think must be taken account of in all desert no matter what other desert bases there are. It is independent of desert bases, but is fairly empty until those bases have been specified. The match between desert and receipt is part of the fundamental concept of desert. All desert claims require a deserver, a desert, and a reason why the deserver deserves the desert, as well the correct match between past receipts and deserts.

So VD1 is an incomplete account of the determinants of desert. There is another factor that must be incorporated into the account.

Past Receipts

To modify VD1, I must introduce some new concepts. I need the concepts of a virtue desert-level and a vice desert-level, each of them time-relativized. These indicate what a person deserves at a time, based upon all his or her virtuous and vicious dispositions and behavior up to that time. I also need to make use of the concepts of a goods-received-level at a time, and a evils-received-level at a time. These indicate the total amount of good and bad things that the person has received up to that time. Finally, I need a comparison between the goods deserved and received, and the evils deserved and received. These are measures of how well a person's deserts and receipts match up. They determine whether a person deserves anything at a time. Roughly, the idea is that people are deserving of

good things only if they have done virtuous actions, or have virtuous dispositions, and have not yet received anything good for them; and that people are deserving of bad things only if they have done vicious actions, or have vicious dispositions, and have not yet received anything bad for them; otherwise they are not deserving of anything.

A person's Virtuous Desert Level at a time is the amount of good things that she deserves in virtue of her virtuous dispositions or actions up to that time. This Virtuous Desert Level is independent of any goods that she might have already received, but to determine her actual deserts, this must be modified by her past receipts. So, a person's Goods-Received Level at a time is the amount of good things that she has received for her virtuous dispositions or actions up to that time; and a person's Deserved Goods Match is computed by comparing her Virtuous Desert Level to her Goods-Received Level. If a person's Virtuous Desert Level is higher than her Goods-Received Level, then her Deserved Goods Match is positive, indicating that she still deserves some goods for her virtuous dispositions or actions that she has not received. On the other hand, if a person's Goods-Received Level is higher than her Virtuous Desert Level, then her Deserved Goods Match is negative, indicating that she has received more good things than she deserves for her virtuous dispositions or actions. Finally, if a person's Virtuous Desert Level is

equal to her Goods-Received Level, then her Deserved Goods Match is zero, indicating that she has received exactly the goods she deserves for her virtuous dispositions or actions.

For convenience, a person's Deserved Goods Match is represented by a real number, n , between -1 and +1. If n is positive, then the larger the value of n , the more her virtuous dispositions or actions have not been rewarded. If $n = +1$, then she has not received any of the goods that she deserves for her virtuous dispositions or actions. If n is negative, then the smaller the value of n , the more goods she has received in excess of what she deserves for her virtuous dispositions or actions. If $n = -1$, then she has not deserved any of the goods that she has received for her virtuous dispositions or actions.

A person's Vicious Desert Level and Evils-Received Level together determine his Deserved Evils Match. These concepts correspond to a person's Virtuous Desert Level, Goods-Received Level, and Deserved Goods Match, respectively, except that they involve vicious dispositions, vicious actions, and deserved evils rather than virtuous dispositions, virtuous actions, and deserved goods. Past receipt plays the same role in determining a person's Deserved Evils Match as it does in determining his Deserved Goods Match.

Lastly, a person's Deserved Evils Match is also represented by a real number between -1 and +1. If a

person's Vicious Desert Level is higher than his Evils-Received Level, then his Deserved Evils Match is positive, indicating that he still deserves some as yet un-received goods for his vicious dispositions or actions. On the other hand, if a person's Evils-Received Level is higher than his Vicious Desert Level, then his Deserved Evils Match is negative, indicating that he has received more evil things than he deserves for his vicious dispositions or actions. Finally, if a person's Vicious Desert Level is equal to his Evils-Received Level, then his Deserved Evils Match is zero, indicating that he has received exactly the evils he deserves for his vicious dispositions or actions.

These concepts are summarized below, where s is an agent, and t is a time.

VRDL s 's Virtuous Desert Level at t =df. the amount of good things that s deserves in virtue of s 's virtuous dispositions or actions up to t .

VCDL s 's Vicious Desert Level at t =df. the amount of bad things that s deserves in virtue of s 's vicious dispositions or actions up to t .

GRL s 's Goods-Received Level at t =df. the amount of good things that s has received for s 's virtuous dispositions or actions up to t .

ERL s 's Evils-Received Level at t =df. the amount of bad things that s has received for s 's vicious dispositions or actions up to t .

DGM s 's Deserved Goods Match at t =df. a number, $-1 \leq n \leq +1$, such that n represents the degree to which s has got the goods that s deserves up to t , where

(i) $n = 0$ indicates an exact match between desert and receipt of goods,
(ii) $n > 0$ indicates that s has not received all the goods that s deserves,
and (iii) $n < 0$ indicates that s has received more goods than s deserves.

DEM s 's Deserved Evils Match at t =df. a number, $-1 \leq n \leq +1$, such that n represents the degree to which s has got the evils that s deserves up to t , where
(i) $n = 0$ indicates an exact match between desert and receipt of evils,
(ii) $n > 0$ indicates that s has not received all the evils that s deserves,
and (iii) $n < 0$ indicates that s has received more evils than s deserves.

With these definitions, I can present the relationship between virtues, vices, virtuous and vicious actions, past receipts, and desert. Roughly, the relationship is this: one's virtuous dispositions or actions make one deserving of good things so long as one has not already received them; one's vicious dispositions or actions make one deserving of bad things so long as one has not already received them; and if one receives an undeserved evil, then one deserves something good in compensation. This idea is expressed in VD2, below (again, s is an agent, t is a time, and in addition, x is a desert).

VD2: VD^G and VD^E .

VD^G s deserves something good at t if and only if
(1) s 's Deserved Goods Match is positive at t , or
(2) s 's Deserved Evils Match is negative at t .

VD^E s deserves something bad at t if and only if

(3) s 's Deserved Evils Match is positive at t .

The three parts of VD2 capture the three general kinds of desert: reward, punishment, and compensation. According to clause (1), if you have done something virtuous, or have possessed a virtue, before now, then you deserve a reward now if you have not already been rewarded. According to clause (3), if you have done something vicious before now, or have possessed a vice, then you deserve punishment now if you have not already been punished. Finally, according to clause (2), if you have received more evils then you deserve up to now, then you deserve compensation now for having received those evils.

In VD2, there is no clause about your now deserving something bad for having previously received more goods than you deserved, because I do not think that you do deserve evils for having received more goods than you have virtuously deserved. Compensation is not symmetrical. Though we do deserve recompense for undeserved bad fortune, we do not deserve to be punished for undeserved good fortune. Of course, if you have received more than you virtuously deserve, then your Deserved Goods Match will be negative, and so you will not deserve any more goods until you have "caught up," so to speak, with your receipts. But this is not the same as saying that you deserve to have some of your receipts taken away.

Principle VD2 explains why the deservers in cases (1-4) above are deserving. In each case, the Deserved Evils Match is negative, so the people involved deserve recompense. In case (1) the farmer's corn was wiped out, a bad thing that she did not deserve, because she had not done anything vicious enough to deserve it. Thus, her Deserved Evils Match is negative. She deserves recompense. The parents in case (2) also had a negative Deserved Evils Match; they did not deserve to suffer the loss of their son because of any of their vicious actions, so they too deserve recompense.

In case (3), the divorced mother has needs because of a radical change in her living situation. In her case, the divorce was a bad thing that happened to her. Of course, there was a sense in which she brought the divorce on herself, because she willingly signed the divorce papers. But I specified that in this case the divorce was a result of irreconcilable differences between the husband and wife, and that neither of them was "at fault." Thus, I think this case falls under the same general scheme that others fall under. The woman suffered a bad thing which she did not deserve; her Deserved Evils Match was negative, so she deserves recompense. Finally, case (4) is no different from the others, except in scale. What Gordon suffered was unusually bad luck at cards, and she did not deserve it. Her deserved recompense is correspondingly small. But this

is still a case where her Deserved Evils Match was negative, however slightly, so she deserves to get a good hand.

VD2 also has no problems with another kind of case, where two people are equally virtuously and viciously deserving (say they are twins), but one has received a lot more good things than the other. If a third person (their mother) is in a position to benefit either of them, then VD2 will inform her that the one with the greater inequality between past receipts and deserts is the more deserving. So there are a range of cases that VD1 was not able to handle, but which VD2 is successful at, in addition to the cases that VD1 was successful with. Since it seems to me that all desert depends upon what a person has received,¹⁹⁸ I do not find VD2 an unacceptable modification of VD1. However, I think that there is a closer connection between desert and the virtues and vices than VD2 posits, and so I would like to strengthen the claim made there. But a stronger version of VD2 is more controversial, and will require some modification in turn. I will discuss the strengthened version of VD2, plus two objections, in the next section.

Insipidity

I would like to make the claim that there is a virtue (or vice) involved in every desert-claim:

- VD3 (A) *s* is deserving if and only if
 s has some virtue or vice; and
(B) VD^G and VD^E.

VD3 is more restrictive than VD2 in two ways. First, according to VD2, a person does not actually have to possess a virtue or a vice in order to deserve something. It is sufficient that the person has, on one occasion, acted like a virtuous or vicious person (so long as this act makes the person's DGM or DEM positive). VD3 requires more. It requires not only that a person act like a virtuous or vicious person, but that the person actually have some virtue or vice. Second, VD2 does not even require that a person act like a virtuous person in order to be deserving of something good. According to clause (2) of VD2, if a person had not performed any virtuous or vicious actions, but had received some disaster, then the person would deserve recompense. Thus, in clause (2), there is no connection between virtue and desert, and there is no more than a fairly tenuous connection between vice and desert. To deserve a positive desert, it suffices that the person has refrained from any vicious actions and has suffered a disaster. On the other hand, according to VD3, it is not enough just to be needy, or to be suffering. The person must also have some virtue (it does not necessarily need to be innocence).

It might appear that there is a clear counter-example to VD3: imagine a person who has no virtues and no vices (I characterize such a one as insipid). He deserves nothing good and nothing bad. But suppose he gets hit, through no

fault of his own, by a major disaster. Then it seem that he deserves compensation. This desert cannot be based on any virtue or vice, since it has been stipulated that he has none.¹⁹⁹ Furthermore, we can imagine that he has not performed any virtuous or vicious actions. He has truly been insipid.

This example would show that VD3 is false, except that this example is impossible. It might sound reasonable at first consideration, but upon closer scrutiny it becomes clear that no insipid persons could exist. There is too close a connection between at least some of the virtues and vices. Although not all virtues are means, it does seem that Aristotle was right about several of the virtues being means, e.g. temperance, courage, and proper ambition. A temperate person has a disposition that is neither too ascetic nor too self-indulgent. There is a continuum along which all dispositions concerned with seeking pleasure must lie. Either the disposition is to seek pleasure too often, or too rarely, or somewhere in the middle (of course, the borders between too little, just right, and too much are vague, but that does not matter). Everyone must have some disposition or other toward seeking pleasure. So everyone must have some virtue or vice. The same point can be made for courage, the mean between cowardice and rashness, and for proper ambition, the mean between overweening zeal and sloth.

Furthermore, other virtues that are not means do seem to have complementary vices, e.g. charitableness and hard-heartedness, fidelity and infidelity, diligence and laziness, and rationality and irrationality. If a person is not charitable, then she must tend toward hard-heartedness, or at least selfishness. A person whose word is untrustworthy is a person who lacks fidelity, and it seems that everyone is either more or less diligent or lazy, and more or less rational or irrational. Thus, I do not think that there can be insipid adults, so the example fails to show that VD3 is false. But it suggests a more severe problem, that of the desert of children.

Children

Above, I argued that there could be no insipid adults, due to the close connection between certain virtues and vices. But very young children have not yet had time to develop any dispositions, and they may have no past sufferings to make up for, so it would appear that on my account, very young children almost never deserve anything. But this seems wrong, so it seems that there is a problem with my account.

It does seem that in many ways, children cannot deserve the same things that adults can. For instance, it is absurd to think that a very young child could deserve a large promotion, or first prize in a body-building competition, or a Pulitzer prize. And in part, this is because children at

that age cannot possess the relevant virtues. Furthermore, children are not expected to be as moral as adults. We realize that they do not have the same judgment, clarity of thought, and training to make many of the moral decisions that adults make. Both secular law and religion make this distinction. All of this seems to have implications about virtuous and vices in children: it seems reasonable to suppose that children do not have as much ability to display virtue and vice as adults. Therefore, it would seem that if VD3 is true, then children are generally less deserving (of both good and bad things) than adults.

However, it does seem that such young children deserve something. They deserve the chance to develop their budding virtues which might someday make them deserving of those grand deserts. This desert is clearly not based on any past receipts, and is also not based in any straightforward way on their present virtues, because children have at most the rudiments of virtues. I think that this desert is based on the potential of children to develop their virtues. This potential needs nurturing to have a chance to be fully developed, and so I think that children deserve to get those things that they need to develop their virtues based on the potential of those virtues. For instance, musical talent is sometimes evident from a very young age. In such cases, it seems clear that the child deserves the kind of environment that will give him or her the chance to develop that virtue.

Thus, I need to modify VD3 to take into account the desert due a person for his or her potential virtues.

Although I introduced this modification in the context of what children deserve, I think it applies generally to anyone who has an undeveloped virtue through no fault of his or her own. For instance, a person may not realize that she has the potential to be a very good runner until late in life. Mavis Lungren is a veteran runner who has set numerous age-group records at distances from the mile to the marathon. She did not start running until in her fifties. But when she did, it was apparent very quickly that she had a lot of talent. She deserved the chance to develop that running talent no less than a high-school boy who runs a sub-four minute mile. Thus, the modification to VD3 is applicable to all persons, not just children. Of course, if a person has neglected a virtue for most of his life through laziness, it is not so clear that he would deserve, at the age of eighty, all the conditions necessary to develop that virtue. Only those virtues that have been undeveloped for reasons beyond the person's control, and suddenly appear later in life, can cause the person to deserve something not based on past receipts or previous actions.

VD4: VD^{Gp} and VD^{Ep} .

VD^{Gp} s deserves something good at t if and only if
(1) s 's Deserved Goods Match is positive at t and s has some virtue or vice at t , or

- (2) s's Deserved Evils Match is negative at t , and s has some virtue or vice at t , or
- (3) through no fault of s's, s has a potential virtue that s has not developed, and that good is necessary for s to develop that virtue.

VD^{EP} s deserves something bad at t if and only if

- (4) s's Deserved Evils Match is positive at t and s has some virtue or vice at t .

Principle VD4 represents my most developed view about the connection between desert, and the virtues and vices. It takes into account three general types of desert: reward, punishment, and compensation; and it takes into account the idea that those who can develop virtues deserve to get the chance to do so. In addition, I have shown that VD4 can successfully account for a wide variety of desert claims. In the next section, I will discuss several alleged desert bases that might appear to ground desert claims that VD4 would not ground.

Other Alleged Desert Bases

Besides virtues, vices, and past receipt, the following characteristics are plausible desert bases: suffering, need, autonomous action, personhood, success, and entitlement. In this section, I will show that suffering, need, autonomous action, and personhood are not needed as separate desert bases if VD4 is true, because VD4 accounts for the plausibility of each of them. Then I will argue that success is not a desert base. Finally, I will argue

that entitlement is not a desert base either, but because entitlement is more complicated, it will be discussed in the next section.

Suffering and need seem to me to be closely related, since many people who are in need can be said to be suffering. Furthermore, if a person's need is due to her own negligence, then we are unlikely to think she deserves any help. Thus, innocent need is more plausible as a desert base than just general need. I think the same is true of suffering. If a person deliberately brings about her own suffering through some vice, then it is not so plausible that the person deserves compensation. Need and suffering are not virtues or vices. Thus, on my account they cannot be desert bases. However, as I have just noted, both are much more plausible if they are attributed to innocent people. This suggests that the plausibility of these two kinds of situation as desert-inducing can be explained by the fact that each case is an instance of a virtuous person being wronged. In each case the Deserved Evils Match (DEM) is negative, so the person deserves compensation. Thus, I think that VD4 can account for the plausible cases of desert involving need and suffering. Cases (1-4) above are specific instances of involving need and suffering, and I have shown how they are handled by my principle.

According to George Sher, autonomous action is a desert base.²⁰⁰ His view is that persons deserve the expected

consequences of their freely-chosen actions. I have discussed his account at some length in Chapter Four, and showed that even the most plausible formulation of his view had grave defects. In addition, the claims that appear to have motivated Sher's account of autonomous action can be accounted for by appeal to VD4.

- 1) Wilson, who knowingly submitted his application late, deserves to be disqualified.
- 2) Harris, who didn't bring his raincoat, now deserves to get wet, while Georgina, who did bring her umbrella, deserves to stay dry.
- 3) Simmons, who didn't study for his exam, now deserves to fail.
- 4) Given the warm weather lately, anyone who is crazy enough to drive their vehicle on the ice deserves to have it fall through.
- 5) Persons who resourcefully seize opportunities deserve the resulting benefits.
- 6) Persons who carefully make and execute plans deserve success.
- 7) Persons who forego immediate benefits in expectation of longer-range gains deserve those gains.

It seems to me that anyone who accepts any of (1-7) above as legitimate desert claims can do so without appeal to Sher's expected consequences account of desert. For instance, although (1) is really too vague to be sure about, it could be a case of desert due to laziness. Examples (6) and (7) seem to me to examples of desert due to diligence or hard work or effort. Example (5) could either be a desert due to the possession of certain character traits such as boldness and resourcefulness, or again desert due to

diligence, it is hard to tell because it is stated so vaguely. Finally, claims (2-4) seem to me to be based on a presumed standard of rationality. Thus, every one of these claims involves virtues or vices, and so Sher's account is not only flawed, but unnecessary.

Personhood seems to be a likely candidate for a desert base, and it is not plausible to think that it is a virtue, either. However, I think that personhood is not in fact a desert base. Nevertheless, I think I can explain why it is often plausible to think that personhood is a desert base, even though it is not. One important thing about personhood is that it is closely connected to morality, and the virtues and vices. Thus, to say that something is a person presupposes that it has the capacity for virtue and vice. So, it seems to me that the reason that personhood seems to be a plausible candidate for a desert base is that the concept contains the moral elements that are, by themselves, desert bases. Personhood probably requires more than moral capacity, but it is this part that makes the person deserving.

Finally, success is sometimes claimed to be a desert base. For instance, suppose that two women are making equally conscientious, energetic, and intelligent efforts to find their friend's lost book, and that one of them finds it. Michael Slote claims that in this case, there is some plausibility to the view that the successful searcher

deserves something more than unsuccessful searcher, even though the failure of the unsuccessful searcher can be attributed only to bad luck or accident, and not some defect on her part.²⁰¹ If the successful searcher truly deserves something more than the unsuccessful searcher, then success is a desert base, because there is no other relevant difference between the two searchers. This would be an objection to VD4, because success is clearly not a virtue. However, my view is that if the two searchers are truly just as rational, diligent, etc., then they are equally deserving. It may not be as clear that the two women have equal desert in this case as that they have equal moral worth in this case, but that is not an objection to VD4.²⁰² Since VD4 is a substantive principle, it is not trivially true, and will sometimes clarify positions where intuitions are confused. And after all, it always seems possible to ask if a person deserves her success, which would be a strange fact if success were truly a ground for desert.

It is true that in the real world we tend to reward success, but I think this is for at least three different reasons. First, success can be a sign that a person has been diligent, rational, etc. Second, it is often expedient to reward success because it encourages good work, and brings about good things in general for those who do the rewarding. Third, very often the reward has been promised

to the successful. It seems to me that only the first reason for rewarding success is legitimately concerned with desert. The second kind of reason has nothing to do with morality, justice, or desert, but with prudence. The third reason is entitlement, and I will argue (below) that it is not a desert base. Thus, I do not think that there are good reasons to think that success is a desert base.

Entitlement

Entitlement, that is, being entitled to something either because of some law, or because of some moral convention, is not a desert base. Many of the laws are set up to reflect some of our intuitions about desert, in particular laws governing criminal behavior and laws governing civil suits. Thus, a convicted criminal can deserve the punishment that the law prescribes, and the tobacco companies may deserve to be forced to pay both compensatory and punishing fines to the states. However, in each case, the punishment is deserved because of the virtuous or vicious actions of those involved, not from the fact that the law prescribes it. Furthermore, it is clear that one can be entitled to a thing, and not deserve it. For example, a lazy stick-in-the-mud inherits the family fortune. Given the laws of this land, the lazy good-for-nothing is entitled to that fortune. However, this is a circumstance where the inheritance of that fortune does not seem deserved. On the other hand, a person may be

deserving, but not entitled to some benefit. One example might be a devoted care-taker of an elderly millionaire. That care-taker may deserve some benefit from the estate of the millionaire, but may not get it because the millionaire leaves it all to her no-good son. Thus, the care-taker is deserving, but not entitled, while the son is entitled, but not deserving, with respect to the millionaire's estate.

Entitlement also occurs in non-legal areas. For instance, if a father promises to take his daughter to a horse show, she is entitled to go to that horse show (assuming she does not in the meanwhile commit some egregious crime which would leave no choice but for the father to send her to her room for the day). So, promise-making confers entitlement. Sometimes people even say things like, "Look, you promised me that money, so I deserve to get it." These statements are not literally true. The person may be entitled to that money, but just the fact of the promise does not make the person deserving of that money.

The position that entitlement is not a legitimate desert base is somewhat controversial. Several writers have defended entitlement as a desert base, so I will consider those arguments. Fred Feldman has suggested several examples where, he claims, a person may be deserving of some good for one main reason--the person is entitled to that good. Here are two of them.²⁰³

Case 1: Imagine two identical twins that not only look identical, but also have highly similar pasts. Each has had the same advantages and disadvantages as the other in home life and schooling. They went to the same college, and majored in the same discipline. They received the same grades and got similar jobs in the same company. They have also been as behaviorally identical as possible. They have made the same moral and immoral choices, etc. They have the same amount of money and are equally happy. One day each twin goes into the local food-mart and buys a lottery ticket. The only important difference in the tickets is this: one is a losing ticket, and one is the winning ticket. The next day, there is one major difference between the receipts of these twins. The one with the winning ticket is now a millionaire, while the one with the losing ticket is not. There seems to be no injustice in this situation. They each agreed to take part in a fair lottery, and one of them was very lucky. Recall from Chapter Two the principle about distributive justice and desert.

PDJd An institutional framework is distributively just if and only if it leads to distributions in which each person's receipt is equal to his/her desert.

If you do not like talk about institutional frameworks, then consider principle PJD.

PJD A distribution of goods and evils, d , over a population of people, p , is perfectly just during time interval, $t1-t2$, if and only if under d , each person

in p gets what s/he deserves during $t1-t2$.

If PDJd or PJD is true, then if some distribution of goods is just, then each person must be getting what she or he deserves. Since the twins' situation is just, each twin must be getting what he deserves. Up until now, the twins have deserved (and received) the same things. There is no reason to think that one twin might have more virtues or needs than the other, or that the one's past receipts were significantly less than the other's. So, the reason why one twin deserves the millions that he has just won is that he purchased the winning lottery ticket in a fair lottery. He deserves the money only because he is entitled to it.

Case 2: Again, imagine identical twins with identical past actions, past receipts, virtues, etc. They have a rich aunt, who for her own reasons, decides to leave three fourths of her fortune to the twin named "Abigail," and only one fourth to the twin sister named "Lisa." Suppose that Lisa is outraged, and steals one third of the money that Abigail received. Now Lisa is satisfied, since each twin has the same amount of inherited fortune as the other twin. However, Abigail now has a legitimate complaint against Lisa. Lisa stole money that was not hers, and Abigail deserves to get it back. So there are two competing desert claims. Lisa's claim is that she deserved to receive just as much of her aunt's fortune as Abigail--Abigail did not deserve three fourths of that fortune. On the other hand,

once the will was drawn up and executed, Lisa no longer deserved that money. When she stole it from Abigail, Lisa did not deserve it. According to Feldman, while we might agree that before their aunt's will was made the sisters deserved equal portions from the fortune, after the will became active, the twins' deserts changed. Clearly then, since there was no change in the virtues, past receipts, or past actions of either of the twins, the operative desert base must have been entitlement.

I find both of these cases utterly unpersuasive, but especially the second. I will respond to it first. First of all, wills are arbitrary and entirely legal in nature. See my comments above. The mere fact that a person has been willed something hardly seems to provide any reason to think that she or he *deserves* it, or that it is fitting that she or he receive it. Second, the case is needlessly complicated by the introduction of the theft. Of course, even on a view where entitlement is not a desert base, there will be conflict. On the one hand, the twins are equally deserving of the money, but this conflicts with the legal claims of the sisters. So there is conflict--Lisa deserves as much money as Abigail, but Abigail is entitled to the amount specified in the will, and that is more than the amount to which Lisa is entitled. The implicit judgment is that it was wrong for Lisa to steal the money from Abigail. If we agree with this, we need no recourse to desert. After

all, there is no direct connection between what a person deserves, and what that person is permitted to do. Deserts do not entail moral oughts. Thus, there is no mystery why it might be the case that a) Lisa is deserving of an equal amount of fortune to Abigail, b) Abigail is entitled to more fortune than Lisa c) Lisa is not entitled to the money she stole from Abigail, d) Abigail is entitled to get her money back, and e) it was morally wrong for Lisa to steal the money from Abigail.

In case (1), it is my view that the lottery does not produce a just distribution of goods. Thus, it is not the case that there is no injustice in the one twin getting millions and the other getting nothing. I think there are two main reasons why case (1) appears plausible, but I think that they are based on confusion and error. First, it is an important feature of the example that the lottery is deemed to be fair, and fairness is often equated with justice. But in this case, that would be a confusion between two different kinds of justice, procedural and distributive.

Distributive justice is the kind of justice that PJD is about: the distribution of goods and evils throughout a population. According to PJD, there is more justice in a population where the goods and evils are distributed according to desert than in a population where they are not. Procedural justice is different. It is concerned with the methods used to bring the distribution about. If the

methods are appropriate, then procedural justice is done. The distinction between procedural and distributive justice is often clearest in a court of law. Consider the Simpson criminal trial. In that case, many people think that justice was not done. They think that Simpson did not get the verdict that he deserved. The outcome was not distributively just, though the method used to achieve it was procedurally just. The judge did not favor the prosecution or defense, the jury was not rigged, the specific procedures dictated by the law were all carried through. Thus, if there was a miscarriage of justice, it was not in the procedural realm. So, it is clear that it is possible for distributive justice to be violated even while procedural justice is maintained.

I think that this is what happened in the lottery case. The lottery was fair, and procedurally just. It did not favor any participants (except on the basis of the number of tickets bought, which is part of the rules). Nevertheless, distributive justice was not maintained, because the goods were not distributed according to desert. So, the fact that the lottery was procedurally just had no bearing on whether or not the lottery was distributively just, but this may have been obscured by the fact that the lottery was considered "fair," which is ambiguous between the two kinds of justice.

Someone who is not confused by the ambiguity of 'fair' may still think that in the lottery case, the results were just because the participants all consented to take part. None of the lottery-ticket buyers were in any way threatened or harassed about their purchase. Each agreed to risk a small amount of money on a negligible chance of winning a huge amount of money, therefore the lottery was just. One philosopher who has articulated a position like this is Michael Slote. He claims,

If certain equalities or inequalities are freely consented to, then the society that creates these equalities or inequalities can be perfectly just, no matter whether those equalities or inequalities are deserved or not.²⁰⁴

For example, suppose that each member of a group is equally deserving, but that one member is very well-liked, and so everyone freely consents to give this popular person more than she deserves. In this case, the distribution of goods is perfectly just even though one person gets more than she deserves, and the rest get less than they deserve.²⁰⁵ Thus, it appears that Slote would accept that the lottery case is just, and that PJD needs to be modified to take into account free consent. Such a modification could be made, but I think it would be a mistake.²⁰⁶ I think that Slote is mistaken to include consent in his account of justice. In the example above, my intuition is dead-opposite of Slote's: the undeserved extra goods that go to

the popular woman make the distribution unjust, and the fact that everyone agrees makes no difference to that injustice.

Of course, we have to be careful when considering this case. It is so sketchy that we might be inclined to agree that it is just for the popular woman to get extra goods because we think that she must possess some extra virtue that makes her so well-liked. But it has been stipulated that everyone is equally deserving, so if this woman has more social virtues that lead to her being so popular, then she must have counterbalancing vices that make her desert no more than anyone else's. Given that each member is equally deserving, it seems unjust for the goods to be distributed other than equally to all. For various reasons, we often consent to harmful or painful situations. I subject myself to the torture of writing a dissertation because of the future gains that it will give me. But it would be a mistake to think that because I consent to this pain, that it is not painful. The same is true of justice. We may for various reasons consent to unjust situations, for instance, when we think that happiness counts for more than justice, or when we show mercy.²⁰⁷ But that does not make the situations we consent to less unjust.

Strangely enough, Slote seems to use this same view that I hold (and that he clearly disagrees with, above) when he argues against a view that he attributes to John Rawls. According to Slote, Rawls's principle of justice permits

great differences in wealth in a population, so long as those differences improve the lot of the worst off, even if each is as deserving as everyone else.²⁰⁸ If so, then Rawls's principles clearly conflict with PJD because in that population, the goods are not distributed according to desert. Slote notes that Rawls would defend his view by appeal to what rational, non-envious people would choose in the original position,²⁰⁹ but that Slote is unimpressed by this defense:

Unless one already assumes that Rawls's original position is one in which ideally just principles would be chosen, he may be inclined to say that *this merely shows that people faced with (the possibility of) a hard lot in life are willing to tolerate certain injustices in order to achieve certain results.* And if one thinks that what people deserve from society simply depends on their conscientious efforts in behalf of society, he might well think that the situation we are discussing is unjust because goods are not distributed in accordance with deserts, even *though people (in the original position) might be willing to accept that situation for reasons of self-interest.*²¹⁰

Except for the part about conscientious efforts constituting the only desert base, this seems to be exactly what I might argue, both against Rawls, and against Slote's view that justice is desert plus consent. For it seems that the upshot of Slote's point is this: people may choose (and so consent to) certain principles for self-interested reasons, but this hardly shows that those principles are just. Thus, it appears that Slote's argument may succeed

better than he would wish. In any case, I do not think that consent alters justice in the way that Slote believes.

So, the two reasons that the lottery case appears plausible are a confusion between procedural and distributive justice, and the mistaken view that consent alters justice. Otherwise, I find no plausibility in the lottery case, and since what plausibility there is, is chimerical, I do not see any reason to accept the lottery case. Entitlement is not a desert base.

Conclusion

With VD4, I have answered the final objection that I mentioned in Chapter Two, about the concept of desert being too empty, too much of a mere appeal to disparate intuitions, to provide the basis for a principle about justice such as PJD. I have given a substantive principle about the nature of desert that asserts some unity among the desert bases. I have shown how this principle can account for many of the commonly made desert claims, and defended it against several objections.

The view that distributive justice is achieved in a population when each member gets what she or he deserves is augmented by the view that deserts are determined primarily by virtuous and vicious actions. The virtuous and vicious actions, in turn, are based on the Aristotelian conception of the virtues and vices that I presented in Chapter Six. Together, these elements constitute a plausible alternative

to Rawls's principles of justice, and is not threatened by any of his arguments that I presented in Chapter Two.

Of course, there is more to be done to provide a full examination of PJD, but that work must be left for another time. Here, it suffices to show that there is a plausible, desert-based conception of justice where the appeal to desert does not make the whole view unacceptably mysterious.

NOTES

1. John Rawls, *A Theory of Justice*, (Cambridge, MA: Harvard University Press, 1971), page 310.
2. Rawls, *A Theory of Justice*, pages 310-311.
3. Rawls, *A Theory of Justice*, page 7.
4. Rawls, *A Theory of Justice*, page 61.
5. Rawls, *A Theory of Justice*, page 62.
6. Rawls, *A Theory of Justice*, pages 92, 62.
7. Rawls, *A Theory of Justice*, page 310.
8. Rawls, *A Theory of Justice*, page 21.
9. Rawls, *A Theory of Justice*, page 18.
10. Rawls, *A Theory of Justice*, page 19.
11. Rawls, *A Theory of Justice*, page 123.
12. Rawls, *A Theory of Justice*, pages 146-7.
13. Rawls, *A Theory of Justice*, page 137.
14. Rawls, *A Theory of Justice*, pages 142-143.
15. Rawls, *A Theory of Justice*, page 143.
16. Rawls, *A Theory of Justice*, page 137.
17. Rawls, *A Theory of Justice*, page 144.
18. Rawls, *A Theory of Justice*, page 143.
19. Rawls, *A Theory of Justice*, page 310.
20. Rawls, *A Theory of Justice*, page 312.
21. Michael Slote also thinks that Rawls bases an argument against desert on the impracticality of instituting such a principle, in "Desert, Consent, and Justice," *Philosophy & Public Affairs* 2, (Summer 1973), page 337.
22. Rawls, *A Theory of Justice*, page 142.
23. Rawls, *A Theory of Justice*, page 142.

24. Rawls, *A Theory of Justice*, page 304.

25. Rawls, *A Theory of Justice*, page 304.

26. Rawls, *A Theory of Justice*, page 146.

27. Rawls, *A Theory of Justice*, page 9.

28. It is not clear to me that Rawls's statement of the original position actually condemns principles that are not practical. I attempted to find some support for that in element (9), but it may not be there. Rational people certainly can distinguish between principles that are supposed to be embodiments of the ideals of justice, and principles that translate those ideals into an actual institutional framework. As I see it, persons in the original position need to accomplish both of these tasks. They need to do the pure as well as the applied philosophy. Supporters of the original position might be able to show that premise (1) rather than (2) is false. Either way is fine with me, though in that case I do not know why Rawls keeps saying things about rationality preferring simple principles, or why he thinks it would matter that some principles might be so complex that some people would not agree to accept them.

29. It would be nice to put forth a more direct argument: since persons in the original position are selfish, and since anyone knows that moral worth is not increased by selfishness, this itself would be a reason to reject PDJm. Each would know that she is selfish, and therefore lacking in moral worth. But Rawls does not allow knowledge of specific character traits and life plans in the original position. Thus even though an agent is selfish in the original position, she does not know whether she is selfish in the real world. For all she knows, she might even have a life plan similar to that of Mother Teresa's.

30. Slote makes a similar argument in *Desert, Consent and Justice*, page 342.

31. Rawls, *A Theory of Justice*, page 148.

32. Rawls, *A Theory of Justice*, page 143.

33. Rawls, *A Theory of Justice*, page 148.

34. Slote, "Desert, Consent, and Justice," page 342.

35. Rawls, *A Theory of Justice*, page 312.

36. Rawls, *A Theory of Justice*, page 312.

37. Rawls, *A Theory of Justice*, page 312.

38. The true PDJ's are assumed to be those that would be chosen in the original position. Also, it is not enough to merely act in accordance with the PDJ's. One must have had the proper motivation (for example, being motivated to follow the PDJ's just because they are the true principles of justice); and it must have the correct relationship to the action. I leave this out of SJ1 and (later on) out of SJ2 for clarity of presentation.

39. I do not assume, though I am partial to, the notion that justice and mercy always conflict. All I assume is that they can conflict, and that throughout this guy's life, it just happened that they always did. See Claudia Card, "On Mercy," *Philosophical Review* 81 (1972): 182-187, and George W. Rainbolt, "Mercy, an Independent, Imperfect Virtue," *American Philosophical Quarterly* 27 (April 1990): 169-173, for a discussion of the relationship of justice to mercy.

40. I would like to thank Fred Feldman for mentioning this point.

41. Rawls, *A Theory of Justice*, page 304.

42. Rawls, *A Theory of Justice*, page 304.

43. Rawls, *A Theory of Justice*, page 306.

44. Rawls, *A Theory of Justice*, page 311.

45. Rawls, *A Theory of Justice*, page 309.

46. Rawls, *A Theory of Justice*, pages 305, 312.

47. Rawls, *A Theory of Justice*, page 307.

48. Rawls, *A Theory of Justice*, page 310.

49. Rawls, *A Theory of Justice*, page 311.

50. Rawls, *A Theory of Justice*, page 312.

51. Premise (2) is put stronger than it needs to be. It does not matter if less than all of the CPJ's conflict with PDJm. Enough do so to show its implausibility as a first principle.

52. Rawls, *A Theory of Justice*, page 312.

53. Rawls, *A Theory of Justice*, pages 15, 104.

54. Rawls, *A Theory of Justice*, page 104.
55. See Robert Nozick, *Anarchy, State and Utopia*, (New York: Basic Books, 1974), page 214, George Sher, *Desert*, (Princeton, NJ: Princeton University Press, 1987), pages 30-31 and 35, and Eric Rakowski, *Equal Justice*, (Oxford: Clarendon Press, 1991), pages 114-119.
56. One who would that I can think of is Paul Ree, "Determinism and the Illusion of Moral Responsibility," reprinted in *Introduction to Philosophy*, ed. by Fred Feldman (McGraw Hill, 1994).
57. Nozick, *Anarchy, State, and Utopia*, page 214.
58. See Chapter Seven for a discussion of how this example is fit into my own view of the legitimate desert bases.
59. Alan Zaitchik takes the same passage I used for the responsibility argument as arguing for the conclusion that no one ever deserves anything. See his "On Deserving to Deserve," *Philosophy and Public Affairs* 6 (Summer 1977), page 373. Thomas Nagel understands Rawls this way as well. See his "Equal Treatment and Compensatory Discrimination," *Philosophy and Public Affairs* 2 (Summer 1973), page 354.
60. Zaitchik, "On Deserving to Deserve," page 372.
61. Zaitchik, "On Deserving to Deserve," page 373.
62. See Chapter Seven, where I present my view about the true desert bases.
63. I use 'would' because I do not think that institutional frameworks are the subject of distributive justice. I think distributions are. Among other things, my approach avoids the problem of explaining how a framework "leads to" a distribution. Might not some ways of getting to a distribution be less just than others? Thus, my formulation of the principle of justice in upcoming chapters refers to distributions instead of institutional frameworks.
64. For instance, Joel Feinberg, "Justice and Personal Desert," in his *Doing and Deserving*, (Princeton, NJ: Princeton University Press, 1970), John Kleinig, "The Concept of Desert," *American Philosophical Quarterly* 8 (1971), David Miller, *Social Justice*, (Oxford: Clarendon Press, 1976), George Sher, *Desert*, (Princeton, NJ: Princeton University Press, 1987), Fred Feldman, "Adjusting Utility for Justice," *Philosophy and Phenomenological Research* (September 1995), and James Owen Mcleod, *On Being Deserving*, (University of Massachusetts Amherst Dissertation, 1995).

65. Rawls, *A Theory of Justice*, page 34.
66. Rawls, *A Theory of Justice*, page 124.
67. Rawls, *A Theory of Justice*, page 40.
68. This includes Joel Feinberg, John Kleinig, David Miller, George Sher, Fred Feldman, and James Owen Mcleod.
69. This term was apparently coined by Joel Feinberg, *Doing and Deserving*, page 58.
70. Items 1-15 adapted from Sher, *Desert*, pages 6-7, items 16-19 adapted from Feinberg, *Doing and Deserving*, pages 69-79, and items 20-29 adapted from Kleinig, "The Concept of Desert," pages 70-74.
71. Kleinig, "The Concept of Desert," page 72.
72. Feinberg, *Doing and Deserving*, page 75.
73. H. Scott Hestevold, "Disjunctive Desert," *American Philosophical Quarterly* 20 (July 1983), page 359. I only mean to follow him in treating the two cases separately. I do not mean to endorse his particular analyses.
74. See G. E. Moore, *Principia Ethica*, (Cambridge: Cambridge University Press, 1903), page x.
75. Feinberg, *Doing and Deserving*, page 80, my italics.
76. See Hestevold, "Disjunctive Desert," page 359, and Sher, *Desert*, p. x, for instance.
77. Robert Young, "Egalitarianism and Personal Desert," *Ethics* 102 (January 1992), page 320.
78. Wojciech Sadurski, *Giving Desert its Due*, (Dordrecht: D. Reidel Publishing, 1985), page 116.
79. Feinberg, *Doing and Deserving*, pages 77 and 79.
80. Feinberg, *Doing and Deserving*, pages 69, 91.
81. Feinberg, *Doing and Deserving*, page 71.
82. Feinberg, *Doing and Deserving*, page 71.
83. Feinberg, *Doing and Deserving*, page 72.

84. For a discussion of similar entitlement and institutional views of desert, see James Owen Mcleod, *On Being Deserving*, (Unpublished dissertation, 1995), Chapter Three, pages 31-60.
85. These analyses bear significant resemblance to some presented by Fred Feldman in his seminar of 3/15/94.
86. Feinberg, *Doing and Deserving*, page 71; italics added.
87. Feinberg, *Doing and Deserving*, page 70.
88. Kleinig, "The Concept of Desert," page 71.
89. Kleinig, "The Concept of Desert," pages 75, 71.
90. Kleinig, "The Concept of Desert," page 74.
91. Kleinig, "The Concept of Desert," page 75.
92. Kleinig, "The Concept of Desert," page 76.
93. Kleinig, "The Concept of Desert," page 77.
94. This example will be an apparent problem for my view as well, and it appears that my solution could be adapted for Kleinig's account. We could say that Jim's working hard was a self-evaluation and on the basis of that, he deserved something good. But he got something bad, so he deserves recompense. Note that this solution still requires a modification to DA8, even though it may be acceptable to someone inclined to this analysis. DA8 thus needs revision even given this solution.
95. Feinberg, *Doing and Deserving*, page 92.
96. Feinberg, *Doing and Deserving*, page. 92-93.
97. Feinberg, *Doing and Deserving*, page 93.
98. Miller, *Social Justice*, pages 92-93.
99. See Mcleod, *On Being Deserving*, Chapter Four, pages 65-81, for another critical evaluation of Miller's view.
100. Geoffrey Cupit, in *Justice as Fittingness* (Oxford: Clarendon Press, 1996), presents a similar analysis, and credits Miller for it: "And what does not affect the status of the deserver--what does not make the deserver more or less worthy of respect, admiration, and so on--cannot function as a basis of desert," (page 38). His account is

similar enough that it is subject to the same objections that I will make against Miller.

101. Miller, *Social Justice*, page 88. The similarity of these to Feinberg's responsive attitudes is evident, as the attitudes listed by Miller form a subset of those listed by Feinberg in *Doing and Deserving*.

102. Miller, *Social Justice*, page 89.

103. Italics added.

104. Miller, *Social Justice*, page 86.

105. Miller, *Social Justice*, page 86.

106. Miller, *Social Justice*, page 86.

107. Miller, *Social Justice*, page 86.

108. W. N. Hohfeld, *Fundamental Legal Conceptions as Applied in Judicial Reasoning*, (New Haven and London, 1964).

109. Miller, *Social Justice*, page 70.

110. Miller, *Social Justice*, page 85.

111. Miller, *Social Justice*, page 86, footnote 6.

112. Miller, *Social Justice*, page 86.

113. Miller, *Social Justice*, page 89.

114. Miller, *Social Justice*, page 89.

115. George Sher, *Desert* (Princeton: Princeton University Press, 1987), Chapter Three, pp. 37-52.

116. See Mcleod, *On Being Deserving*, pages 90-98, for a very similar treatment of Sher.

117. However, upon reflection it is not so clear all deserts do require free will, particularly deserts that are compensations for wrongs done to a person.

118. Sher, *Desert*, page 38.

119. Sher, *Desert*, page 39.

120. Sher, *Desert*, pages 39-40 my italics.

121. Sher, *Desert*, page 40.

122. Sher, *Desert*, page 40.
123. Sher, *Desert*, page 41.
124. Sher, *Desert*, page 39.
125. Sher, *Desert*, pages 40-41.
126. Sher, *Desert*, page 40.
127. Sher, *Desert*, page 41.
128. Sher, *Desert*, page 42.
129. Sher, *Desert*, page 42.
130. Sher, *Desert*, page 44.
131. Sher, *Desert*, page 45.
132. Sher, *Desert*, page 47.
133. Sher, *Desert*, page 45.
134. Sher, *Desert*, page 45.
135. Sher, *Desert*, page 46.
136. Sher, *Desert*, pages 46-47.
137. Sher, *Desert*, page 46.
138. Sher, *Desert*, page 46, my italics.
139. Sher, *Desert*, page 46.
140. See Wojciech Sadurski, *Giving Desert Its Due*, page 116.
141. See Mcleod, *On Being Deserving*, pages 98-105, for a very similar treatment of Sher on diligence.
142. Sher, *Desert*, page 54.
143. Sher, *Desert*, page 54.
144. Ralph Barton Perry, *Realms of Value* (Cambridge, MA: Harvard University Press, 1954), page 3.
145. Sher, *Desert*, page 55.
146. Sher, *Desert*, page 57.

147. Sher, *Desert*, page 58.
148. Sher, *Desert*, pages 58-59.
149. Sher, *Desert*, page 60.
150. Sher, *Desert*, page 61.
151. Sher, *Desert*, page 58.
152. Ralph Barton Perry, "Value as Any Object of Any Interest," reprinted in Wilfrid Sellars and John Hospers, *Readings in Ethical Theory* (Englewood Cliffs, NJ: Prentice-Hall, 1970), page 144.
153. Sher, *Desert*, pages 38-40.
154. Sher, *Desert*, page 62.
155. Sher, *Desert*, page 62.
156. Sher, *Desert*, page 61.
157. I owe this point to Fred Feldman.
158. W. D. Ross, *The Right and the Good*, (Oxford: Oxford University Press, 1930), page 27.
159. Sher, *Desert*, page 132.
160. Sher, *Desert*, page 144.
161. Sher, *Desert*, page 143.
162. Sher, *Desert*, page 143.
163. Sher, *Desert*, page 143.
164. Sher, *Desert*, page 144.
165. Sher, *Desert*, page 144.
166. See Mcleod, *On Being Deserving*, pages 118-123, for a very similar treatment of Sher on virtue.
167. Sher, *Desert*, pages 142-143.
168. Sher, *Desert*, pages 143-144.
169. Sher, *Desert*, page 144.
170. Sher, *Desert*, page 144.

171. Ross, *The Right and The Good*, page 138.
172. Harold S. Kushner, *When Bad Things Happen to Good People*, (New York: Schocken Books, 1981).
173. Feinberg, *Doing and Deserving*, page 59.
174. Sher, *Desert*, page 150.
175. Immanuel Kant, *Groundwork of the Metaphysic of Morals*, translated by H.J. Paton, (New York: Harper & Row, 1964), page 65.
176. I should note that by 'virtuous action,' I do not mean to literally claim that the action is virtuous. The term is shorthand for 'an action that exemplifies a virtue.'
177. Aristotle, *Nicomachean Ethics*, reprinted in *Introduction to Aristotle*, ed. by Richard McKeon, (New York: Random House, 1947), Book II, 1, 1103a, page 331.
178. Aristotle, *Nicomachean Ethics*, Book II, 1, 1103a-b, pages 330-332.
179. Aristotle, *Nicomachean Ethics*, Book II, 4, 1105b, page 337.
180. Aristotle, *Nicomachean Ethics*, Book II, 4, 1105b, page 337.
181. Aristotle, *Nicomachean Ethics*, Book II, 5, 1106a, page 338.
182. Aristotle, *Nicomachean Ethics*, Book II, 6, 1106a, page 339.
183. Aristotle, *Nicomachean Ethics*, Book II, 6, 1106b, page 339.
184. David Remnick, "Kid Dynamite Blows Up," *The New Yorker*, (July 14, 1997), page 46.
185. For instance, when Aristotle remarks that adultery is never virtuous, no matter how carefully it is done, *Nicomachean Ethics*, Book II, 6, 1107a, page 341.
186. Aristotle, *Nicomachean Ethics* Book II, 7, pages 341-344.
187. Aristotle, *Nicomachean Ethics* Book V, 1, 1129b, page 399.

188. Aristotle, *Nicomachean Ethics* Book V, 2, 1130b-1131a, pages 401-403.
189. Aristotle, *Nicomachean Ethics* Book VI, 6-7, 9-11, pages 429-432, 434-438.
190. Aristotle, *Nicomachean Ethics* Book VI, 2, 1139b, page 426.
191. Aristotle, *Nicomachean Ethics* Book VI, 4, 1140a, page 428.
192. Aristotle, *Nicomachean Ethics* Book VI, 5, 1140b, page 429.
193. Aristotle, *Nicomachean Ethics* Book VI, 7, 1141a, page 430.
194. Aristotle, *Nicomachean Ethics* Book VI, 7, 1141b, page 431.
195. Aristotle, *Nicomachean Ethics* Book IV, 2, 1122a, page 380.
196. Aristotle, *Nicomachean Ethics*, Book II, 4, 1105a page 336.
197. Aristotle, *Nicomachean Ethics*, Book II, 4, 1105a page 336.
198. Or will receive. See Fred Feldman, "Desert: Reconsideration of Some Received Wisdom," *Mind* 104 (January 1995), pages 63-77.
199. I owe this example to Fred Feldman.
200. Sher, *Desert*, pages 37-52.
201. Slote, "Desert, Consent, and Justice," page 328.
202. Slote, "Desert, Consent, and Justice," page 328. But I think he ultimately rejects success as a desert base. See his footnote #14 in the same article.
203. I am grateful to Fred Feldman for these examples, though he does not agree with my views about them.
204. Slote, "Desert, Consent, and Justice," page 333.
205. Adapted from Slote, "Desert, Consent, and Justice," page 334.

206. I also think it would be fairly difficult to accomplish. It is not at all clear that the notion of consent could be spelled out in a clear way. Take for instance, the problem of actual versus implied consent. This point was mentioned by Fred Feldman in his seminar of Spring 1994.

207. The view that mercy and justice always conflict is not without controversy, but it is fairly plausible that they can conflict. See H. Scott Hestevold, "Justice to Mercy," *Philosophical and Phenomenological Research*, 46 (December 1985): 281-91; George W. Rainbolt, "Mercy: An Independent, Imperfect Virtue," *American Philosophical Quarterly*, 27 (April 1990): 169-73; Alwynne Smart, "Mercy," *Philosophy* 43 (1968): 345-59; Claudia Card, "On Mercy," *Philosophical Review* 81 (1972): 182-207.

208. Slote, "Desert, Consent, and Justice," page 341.

209. See Chapter Two for a discussion of this.

210. Slote, "Desert, Consent, and Justice," page 342, my italics.

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