DESSERT IN CONTEXT

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A Dissertation

Submitted to the Graduate College of Bowling Green
State University in partial fulfillment of
the requirements for the degree of

DOCTOR OF PHILOSOPHY

May 2009

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The two main goals of this dissertation are to provide a clear and practical conception of desert that is applicable across distributive contexts and to provide a detailed account of the role that desert can and should have in different contexts on different levels of a just society. This dissertation advances the view that desert is \textit{an} important, but not \textit{the only} important, conceptual component of justice. In addition to offering a defense of the concept of desert itself and its use as a distributive criterion, the dissertation provides a detailed conceptual account of desert. The dissertation advocates a conception of desert in distributive contexts that is based on a person’s efforts and performances, and it includes important distinctions between different types of desert and between desert and other important distributive concepts. A main contention in this work is that, since desert is an important conceptual component of justice, it should always be considered when questions of justice arise.

John Rawls has written about the basic structure of a society, which he understands to be the structure of a society’s major political and social institutions. Rawls rejects the idea that desert is an important criterion that must be accounted for in basic-structure principles of justice. While giving special attention to Rawls’s difference principle, the dissertation examines certain difficulties surrounding his rejection of desert as an important component of basic-structure justice. The opposing view of this dissertation is that, if they are to be just, basic-structure principles must leave room for desert in various contexts so that it is not trumped by some overarching social concern. In addition, the dissertation advances the view that the use of desert
as a distributive criterion is most appropriate in local contexts. The dissertation ends with an examination of the role of desert in certain issues of local justice, such as employment and university admissions decisions, and with an examination of the extent to which the use of seniority and affirmative action policies track, and can be justified on the basis of, desert.
ACKNOWLEDGMENTS

I thank the members of my committee for their insightful comments on and criticisms of my work. I thank Steven Wall for the time and effort he spent while guiding me through the researching and writing of this dissertation. I appreciate the support and encouragement given to me by my parents, sisters, grandparents, and other family members. I thank my precious daughter for always reminding me about what is truly important and for providing me with all of the motivation that I need. I am especially grateful to my beautiful wife for supporting me throughout my graduate studies and for enabling me to have the time and opportunity to complete this project.
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CHAPTER 1. INTRODUCTION

1.1 Some Notes about Desert and Justice

Justice concerns what is appropriate for a person or what a person is due. The terms “just,” “justice,” “unjust,” and “injustice” are sometimes used to describe states of affairs, but this can be misleading. Justice and injustice, strictly speaking, apply to products of human actions. These actions should be understood to include not only the actions of individuals, but also the actions of people working together in various associations and organizations. To claim that justice or injustice can be brought about only by human actions is to claim that a person cannot be treated justly or unjustly by something with dubious or no moral agency. For example, neither cats nor hurricanes can treat people unjustly.

Strictly speaking, states of affairs are not just or unjust. If one is wont to use these terms to describe states of affairs, one should do so only when the states of affairs are the direct result of human actions. Although a person’s poverty might be regrettable, the fact that she is poor is not a matter of injustice unless her plight is the result of people’s unjust actions toward her. Nevertheless, states of affairs, such as the existence of widespread poverty, often provide evidence for the existence of injustice. The degree of poverty in a society will be relevant in assessing the rules of transfer that guide a society or that guide associations or organizations within a society. In order to learn if the rules of transfer help or hinder an individual’s free pursuit of his ends, one will first need to know what individuals have and why they have what they have.

Examinations of the concept of desert and its role in theories of justice have a long history in the philosophical literature. After spending years “consigned to the philosophical

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1 For stylistic reasons, I will treat the terms “human” and “person” and their respective variants as synonyms.
2 Friedrich Hayek argues this point in Law, Legislation, and Liberty, 2:31ff.
scrap heap,”¹³ interest in desert has waxed over the last few decades. Much of this more recent interest was sparked by two rather short sections on desert in John Rawls’s *A Theory of Justice* (*Theory of Justice*), in which he argued against the importance of desert in developing theories of justice.⁴ Rawls’s account of desert is indebted to one offered by Herbert Spiegelberg thirty-seven years earlier⁵, but one can look as far back as the ancient Greek philosophers for discussions about the role of desert in justice.

The concept of desert is often invoked in discussions about justice, but appeals to desert cannot be examined properly unless some issues are clarified. One must clearly explain what one thinks is included in the concept of desert. That is, one must clearly define desert while explaining what distinguishes desert from related and sometimes competing concepts including, but not limited to, entitlement, merit, and need. As I will discuss, scholars argue that what one deserves can be based on a variety of factors, including effort, contribution, and even compensation for burdens and costs incurred. I will argue for a conception of desert in distributive contexts that is based on a combination of one’s efforts and performances. At this point, it is sufficient to note that I consider desert to be an important conceptual component of justice and, therefore, that I understand desert claims to be moral claims with *prima facie* force.⁶

Some people claim that justice involves one getting what one deserves.⁷ If one’s claim about the role of desert in justice is to be meaningful, one must clearly identify the contexts in which desert can and should have a role. One must not only detail under what circumstances desert is relevant, but, when it is relevant, one must explain what basis or bases justify desert in a

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³ Kleinig, *Punishment and Desert*, 49.
⁴ Rawls, *A Theory of Justice*, esp. § 17 (100-108) and § 48 (310-315).
⁶ This view is akin to David Miller’s view that all desert judgments are, at least, “low-level moral judgments” that entail a “weak ‘moral ought.’” *Social Justice*, 87n8.
⁷ J. S. Mill, David Miller, David Schmidtz, and many others have argued that desert is an important conceptual component of justice.
particular case. Which desert bases will be most important in any given distributive context will be influenced by the specifics of that context.\(^8\)

Although their views about justice and desert differ in several important ways from each other’s and from the view that I will advocate in this dissertation, I agree with both David Miller and David Schmidtz in holding a “pluralist” view of justice. According to this view, desert is an important, but not the only important, conceptual component of justice. Miller explains this view as follows:

Desert is relevant to justice. In deciding what justice requires we should consider what different people deserve. But this is not the only, nor even necessarily the main, relevant consideration. It may conflict with other criteria, such as need, in which case we may have to balance the various criteria against one another in deciding what justice requires.\(^9\)

The extent to which these criteria conflict in any given distributive context will vary. A number of different concepts serve as criteria for establishing what is appropriate for a person. Since desert is an important conceptual component of justice, it should always be considered when questions of justice arise. The extent to which desert will influence one’s decision about an issue of justice in a particular context will depend to some extent on the particulars of that context, however.

The discussion in this dissertation will focus primarily on desert in distributive contexts. Still, some of what I write will be relevant, mutatis mutandis, to retributive contexts as well. In particular, many parts of the discussion of my conceptual account of desert will be relevant to issues in retributive contexts. Since my primary focus will be desert in distributive contexts, it is

\(^8\) “Bases of desert” or “desert bases” are phrases commonly used to denote any fact about a person (or thing) that gives rise to desert.

important that I am clear about how I will use the term “distributive justice” from this point forward. I claimed above that, strictly speaking, justice applies to products of human actions. One can discuss the distributive justice in a society, understood as the practice of justice between and among members of that society in various distributive contexts, without presupposing that there is a central agency that distributes goods and services to the people and without assuming that issues of distributive justice range over every aspect of a society.\textsuperscript{10} One can talk about distribution within a society without positing a central distributing agency that either controls the distribution or corrects the distribution according to perceived desert, entitlement, merit, need, or any other criteria. This means that one can talk about distribution within a society that has a limited government and is marked by the free exchange of goods and services between and among various free individuals, associations, and organizations.

Michael Polanyi wrote, “When order is achieved among human beings by allowing them to interact with each other on their own initiative – subject only to the laws which uniformly apply to all of them – we have a system of spontaneous order in society.”\textsuperscript{11} Friedrich Hayek noted that this kind of order arises within societies composed of free individuals acting alone or as a part of free associations and organizations. He contends that “what is called ‘social’ or ‘distributive’ justice is meaningless within a spontaneous order and has meaning only within an organization.”\textsuperscript{12} But this idea can be easily misunderstood. There are a multitude of individuals, associations, and organizations within a spontaneous order. These associations and organizations are composed of various actors who distribute and redistribute goods and services according to the practices and rules of their groups. Hayek agrees that distributive justice has

\textsuperscript{11} Polanyi, \textit{The Logic of Liberty}, 159.
meaning within these associations and organizations that are within the spontaneous order. 13 Therefore, distributive justice does have meaning within a spontaneous order, but at one remove. That is, distributive justice can be seen as occurring within a spontaneous order without being seen as applying to the spontaneous order as a whole.

There is a way in which the term “distributive” and its variants can be used to apply to the spontaneous order as a whole, however. Jon Elster notes that the term “distribution” is ambiguous “in that it can denote a process of distributing or redistributing goods among individuals as well as a state which is described by specifying the quantities of goods possessed by individuals.”14 One can talk about the distribution that results from the workings of the spontaneous order if one is using the term “distribution” to denote a state. One might be concerned that using the term “distribution” to denote a state smuggles in certain presuppositions about the way in which goods and services are exchanged within a society. Distribution can be understood as a state without presupposing any distributor, however, in a way similar to the statistician’s use of the term “random distribution.”

I will not present of a detailed discussion of Hayekian social-political theory in this dissertation. My reason for introducing his views on distributive justice and spontaneous order is merely to clarify how I am using the terms “distributive” and “distribution” so that my views on desert in distributive contexts are not misunderstood. Although Hayek downplays desert’s

13 In social-political theory, people often appeal to social justice. In Law, Legislation, and Liberty, Hayek writes that the term “social justice” is often used to refer to “an attribute, which the ‘actions’ of society, or the ‘treatment’ of individuals and groups by society ought to possess” (2:32). Hayek’s concern is that thinking of society in this way involves a category mistake since it seems to presuppose that society is a thinking being who acts to bring about particular results deliberately. Today, the terms “social justice” and “distributive justice” are often used interchangeably in the literature. Hayek notes that this is a somewhat recent development, perhaps first seen in the writing of J. S. Mill (2:63) (See also Mill, Utilitarianism, 45, 61-62). But conflating these terms can lead to confusion over the way in which a society works. I share Hayek’s suspicion that invoking social justice involves the “anthropomorphism” or “personification” of the self-ordering processes of a free society. For this reason, I will not use the term “social justice” and thereby suggest any controversial assumptions on which it might be based. Instead, after offering some clarifying remarks about the meaning of the term in the text above, I will continue to concentrate on “distributive justice.”

14 Elster uses “allocation” to describe the first sense and “distribution” to describe the second sense.
relevance, I will argue for a conception of desert and its role in distributive contexts and distributive justice that can be used even in a society structured according to Hayek’s favored view.

1.2 The Structure of the Dissertation

In Chapter 2, I begin by detailing the classical tradition of the role of desert in distributive justice and by discussing certain specific conceptions of that role which are a part of the classical tradition. Next, I offer preliminary comments about some of the categories of desert bases used in theories of distributive justice. These categories include the aforementioned effort, performance, contribution, and compensation for burdens and costs incurred. Next, through the work of David Hume and Herbert Spiegelberg, I examine certain of the arguments against desert’s role in distributive justice. These arguments can be separated into three categories: metaphysical, epistemological, and pragmatic.

Through the metaphysical argument against desert, detractors seek to undermine the concept of desert itself by claiming that desert is based on dubious metaphysical presuppositions. As I will explain, this metaphysical argument can come in a weak or strong version. The epistemological argument against desert is based on the idea that even if desert is metaphysically defensible, it is exceedingly difficult, if not impossible, to know enough about individuals in order to ascertain their desert and treat them accordingly. The pragmatic argument against desert is that even if we could ascertain people’s desert, treating them according to their desert would require too much time, effort, and money, and could lead to negative consequences, e.g., losses of personal freedom.

Although I begin by examining the anti-desert arguments made by David Hume and Herbert Spiegelberg, I focus primarily on the anti-desert arguments offered by Rawls. There is
some dispute as to the nature of Rawls’s anti-desert arguments. I argue that Rawls offers a strong metaphysical argument against desert and that this argument is not successful in undermining desert. In addition, I contend that Rawls’s metaphysical argument is problematic since it suggests either a degrading view of people or the idea that desert is a more robust concept than Rawls acknowledges.

Chapter 3 contains a conceptual account of desert. First, I explain what it means to claim that someone or something deserves a particular mode of treatment. This section includes an examination of the kinds of entities that can be deserving, the kinds of things that can be deserved, and the kinds of actions and characteristics or qualities that can ground desert claims. Next, I argue for the importance of one’s responsibility in establishing one’s desert. After arguing that desert must have a backward-looking orientation, I detail the relationship between desert and the closely related concept of merit. By the end of the chapter, who or what is included in the class of deserving subjects and what is included in the category of desert bases will become clear. Once my conception of desert is clarified, I begin to examine what role, if any, desert should have in distributive contexts.

In Chapter 4, I focus on the importance of context to the concept of desert. I argue that precise interpretations and applications of desert are context dependent. That is, I argue that a failure to consider fully the context in which a desert claim is made can result in fallacious arguments for or against desert’s use in that particular context. In order to highlight the importance of context to desert, I discuss important distinctions between moral and nonmoral desert and also between comparative and noncomparative desert. Then, I examine distinctions among pre-institutional desert, institutional desert, and entitlement.
In the last section of Chapter 4, I revisit the epistemological and pragmatic arguments against desert-based distributions. Because desert-based distributions require a specific knowledge about people, I argue that desert can and should be a guiding distributive criterion only in those contexts in which such knowledge can be readily gained. Therefore, due to epistemological and pragmatic constraints, I argue that desert is most appropriate in local contexts. Although there are important differences between our views, I base my discussion of local contexts and the corresponding idea of local justice on the work of Jon Elster.

John Rawls has written about the basic structure of a society, which he understands to be the structure of a society’s major political and social institutions. Many, including Rawls himself, have noted that it is not entirely clear which institutions are included in this structure. In Chapter 5, I discuss certain difficulties that result from this lack of clarity while noting that, according to the understanding that I employ, every society has a basic structure. Rawls argues that the basic structure is the primary subject of justice and, as such, the basic structure of any society has a unique set of principles that apply to it directly. Rawls dismisses desert as an important criterion to be considered while promoting his preferred basic-structure principles of justice. I contend that, although Rawls might be correct in promoting basic-structure principles that do not attempt to reward people directly based on their desert, he mistakenly jettisons desert as an important distributive criterion. I argue further that, if the basic-structure principles of a society are to be just, they must be formulated with desert in mind. That is, these principles must leave room for desert in various contexts, including local contexts, so that it is not trumped by some overarching social concern. One important upshot of my understanding of desert and the basic structure of a society is as follows: if Society A and Society B have equally just basic structures, but in Society A individuals give too little consideration to desert in local contexts
whereas those in Society B give appropriate consideration to desert in local contexts, then Society B is more just in this regard.

In Chapter 6, I examine in greater detail the role of desert in certain local contexts. First, I define issues of local justice to include certain relationships one has with one’s family and friends, one’s employer, and other associations and organizations. Then, I explain that issues of local justice require that local actors have a fair amount of freedom in their decision making. I explain that, in order to ensure that local actors are able to gather the requisite information in order to make accurate desert-based decisions, they cannot be overburdened by the number of decisions that they must make. I focus on the workplace and colleges and universities, and I consider the role that desert can and should have in hiring, layoffs, promotions, and university admissions decisions. The chapter concludes with an examination of the extent to which race-based affirmation action policies track desert. I argue that, although race itself is not a desert base, race can be a factor, perhaps a major factor, in giving rise to differing levels of desert among people.

In Chapter 7, I conclude the dissertation with some brief remarks. I highlight certain of the most important aspects of my account of desert and its role in distributive contexts and distributive justice. I reiterate the ways in which my theory about the role of desert in distributive contexts differs from other theories on the subject. Overall, I seek to accomplish two main goals in this dissertation: First, to provide a clear and practical account of desert that is applicable across distributive contexts. Second, to provide a detailed account of the role that desert can and should have in different contexts on different levels of a just society.
CHAPTER 2. CHALLENGING DESERT’S ROLE IN DISTRIBUTIVE JUSTICE

2.1 Introduction

I begin this chapter by examining the classical tradition of the role of desert in distributive justice (section 2.2). Next, through the work of David Hume, Herbert Spiegelberg, and, especially, John Rawls, I examine three kinds of arguments against the use of desert as an important distributive criterion (section 2.3). These arguments are the epistemological, pragmatic, and metaphysical arguments against desert. Then, I focus in greater detail on Rawls’s version of the metaphysical argument (section 2.4). I maintain that his argument does not successfully undermine desert as a metaphysically robust concept.

2.2 The Classical Tradition of Desert in Distributive Justice

Introduction

When examining the principles of justice, it is important to remember the distinction that John Rawls makes between a concept and a conception. In *Theory of Justice*, Rawls writes:

Men disagree about which principles should define the basic terms of their association. Yet we may still say, despite this disagreement, that they each have a conception of justice. That is, they understand the need for, and they are prepared to affirm, a characteristic set of principles for assigning basic rights and duties and for determining what they take to be the proper distribution of the benefits and burdens of social cooperation. Thus it seems natural to think of the concept of justice as distinct from the various conceptions of justice and as being specified by the role which these different sets of principles, these different conceptions, have in common.\(^\text{15}\)

\(^{15}\) Rawls, *Theory of Justice*, 5. In a footnote (5n1), Rawls notes that he is following Hart’s concept-conception distinction found in *The Concept of Law*, 155-159.
On a fundamental level, the concept of justice involves each person getting what is appropriate. Conceptions of justice will seek to explain how this appropriateness is determined. In order to avoid terminological confusion, it should be noted that scholars sometimes write of the one "classical conception" of justice that, according to them, runs from ancient through contemporary theories of justice. But under the taxonomy employed here, there will be no mention of the one classical conception of justice. Instead, I will refer to a “classical tradition” of justice. This tradition includes many different conceptions, for there is more than one classical conception that can be included as a part of the classical tradition. A conception of justice can be categorized as being a part of a certain tradition, based on what the conception takes to be the most important element or elements of justice.

In the *Republic*, Plato gives an extensive account of justice. Early in Book 1, Socrates examines the following definition of justice: “speaking the truth and repaying what one has borrowed.” Finding this definition unsatisfactory, Socrates reformulates it as giving “to each what is appropriate to him.” This reformulation allows Socrates to speak of what is appropriate for someone more generally. For example, a person might be owed honor as a result of performing certain actions. In addition, it might be appropriate that a person hold a certain political office because of his manifest characteristics. Although Socrates highlights some problems with this reformulation, Plato uses the voice of Socrates to define justice in a similar manner in Book 4 when Socrates claims that justice is “the having and doing of one’s own.”

As Frederick Whelan notes, understanding justice according to the more general measures of appropriateness or fittingness is important for Plato’s Socrates as he develops a

16 Plato *Republic* 1.331d.
17 Ibid., 1.332bc.
18 Ibid., 4.433e-434a.
theory of distributive justice in the *Republic.*\(^{19}\) Whelan writes that “the criteria of ‘fittingness’ may be specified in various ways – as merit, desert, contribution, and so on….\(^{20}\) In Plato’s *Laws,* the Athenian notes the importance of basing distributions on appropriateness or fittingness when he claims that “the most genuine equality, and the best” involves granting “much to the great and less to the less great.” According to one translation of the *Laws,* this way of distributing benefits or goods amounts to treating people “as they deserve.”\(^{21}\)

Throughout the dissertation, I will distinguish between desert and other important distributive concepts such as entitlement, merit, need, (moral) value, and (moral) worth. It is important to emphasize that, according to the classical tradition, justice in general, and distributive justice in particular, is not simply one getting what one deserves. This misunderstanding of the classical tradition is a result, at least in part, of the difficulty with accurately translating the Greek word *axia.* *Axia* - a word used by both Plato and Aristotle in their discussions of the distribution of things such as goods, honors, services - can be translated as “desert,” “entitlement,” “merit,” “[moral] value,” or “[moral] worth.” The ambiguity of the meaning of *axia* in certain contexts contributes to different interpretations Plato’s and Aristotle’s conceptions of justice. As I will argue throughout this dissertation, desert is a concept that involves certain elements that *axia* does not always suggest.\(^{22}\)

Although there are many important differences between their theories, Aristotle joined Plato in arguing that justice involves a type of equality. Aristotle maintains that in distributions it is just for equals to receive equal shares, while it is unjust for equals to receive unequal shares

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\(^{20}\) Ibid., 441. For Whelan’s full discussion of both Plato’s and Aristotle’s views on justice, see 438-446.

\(^{21}\) Plato *Laws* 6.757bc.

\(^{22}\) David Miller makes a similar point about how it can be misleading to use “desert” for *axia* and how it can be misleading when translators of Aristotle use “desert” and “merit” interchangeably (*Principles of Social Justice*, 125-126). I add that, depending on the context, *axia* could be understood not only as “desert” or “merit,” but also as “entitlement,” “[moral] value,” or “[moral] worth.” Whether Aristotle would agree with any particular translation of the term is debatable.
and for those who are unequal to receive equal shares. So, Aristotle’s theory of justice in distributions involves proportional equality between or among people. People are judged based on certain normative concepts that I mentioned above - desert, entitlement, merit, (moral) value, and (moral) worth – to determine whether they are equal or unequal. What each receives should be geometrically proportional to his amount or level of one or more of these criteria. Let $P_1$ and $P_2$ stand for two different people in a distributive context in which each is to be treated according to his desert. According to the idea of geometrical proportionality, the distribution should be as follows:

$$\frac{\text{Desert of } P_1}{\text{Desert of } P_2} = \frac{\text{Share of } P_1}{\text{Share of } P_2}$$

Consider a situation in which the desert of $P_1$ is three times the desert of $P_2$. An example of a just distribution in this situation would be as follows:

$$\frac{\text{(Desert of } P_1)}{\text{(Desert of } P_2)} = \frac{\text{(Share of } P_1)}{\text{(Share of } P_2)}$$

$$\frac{3}{1} = \frac{9}{3}$$

In practice, it will not only be very difficult, but perhaps impossible, to give to each person exactly what he deserves. In both this and the following chapters, I will discuss the implications of this difficulty for the role of desert in distributive contexts. Regardless of the difficulties, however, Aristotle thinks that the proportional equality model serves as the ideal for distributive justice.

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23 Aristotle *Nicomachean Ethics* 5.3.1131a10-b16.
25 Aristotle does suggest that, in addition to proportional equality, numerical equality should be employed in some cases. Numerical equality is explained as follows: the excess of three over two is one. The excess of two over one is one. In the two cases, the excess is numerically equal (one), but not geometrically proportional. *Politics* 5.1.1301b30-1302a8.
Accounts in which justice consists wholly, or primarily, of individuals being treated according to their desert seem more typical of certain modern conceptions of justice than of classical conceptions of justice. Michael Slote notes that we can find such modern conceptions, at least as regards “social justice,” in J. S. Mill’s *Utilitarianism* and Henry Sidgwick’s *Methods of Ethics*.26 Again, at least as far back as Plato, desert has been considered an important conceptual component of justice. The modern conceptions that primarily focus on desert differ from the more broadly construed classical conceptions, which focus not only on desert, but also entitlement, merit, (moral) value, (moral) worth, and other concepts. Therefore, it is incorrect to maintain that the classical tradition of justice in general, and of distributive justice in particular, merely involves one getting what one deserves.27

*Modern Conceptions of Desert in Distributive Contexts*

In the philosophical literature, the most commonly advocated criteria for determining one’s desert in distributive contexts are effort, contribution, and compensation.28 Effort-based accounts focus primarily on one’s effort toward some goal.29 These accounts do not focus on the contribution one makes, e.g., on the value or usefulness of the end result of one’s effort.

According to contribution-based accounts, people deserve certain benefits or harms based on the contributions they make as a part of some group, such as a family, company, community, or even a society as a whole. Depending on the context, this contribution can be measured in

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26 Slote, “Desert, Consent, and Justice,” 333. Mill wrote that “it is universally considered just that each person should obtain that (whether good or evil) which he deserves, and unjust that he should obtain a good or be made to undergo an evil which he does not deserve” in *Utilitarianism*, 45. See also Henry Sidgwick, *The Methods of Ethics*, 279ff.

27 See Moriarty, “Desert and Distributive Justice,” 131 and McLeod, “On the Comparative Element of Justice,” 126. See also Kekes, *Against Liberalism*, 121-123, for a discussion of how desert fits in with the classical tradition of justice. As noted in the text above, I write of a “classical tradition” of justice whereas others often write of a “classical conception” of justice.

28 See McLeod, “Desert”

29 Not just any goal will do. In Chapter 4, I will argue that the goal must be morally acceptable or, put differently, at least morally neutral.
terms of productivity, success, or some other similar measure. Throughout this dissertation, I will highlight the importance of the idea that one’s contribution can be accurately assessed only in the light of the particular context in which the contribution is made.

According to compensation-based accounts, desert involves compensating people for the burdens they endure and costs they incur while pursuing a goal.\(^{30}\) Since appeals to compensation can take different forms, it is necessary to distinguish the role of compensation in distributive contexts from the role of compensation in retributive contexts. In addition, it is important to note the kinds of burdens and costs that are thought to give rise to desert in distributive contexts.

The idea of desert as compensation is not limited to distributive contexts. In cases in which a person is the victim of some wrong, one might argue that the victim deserves to be compensated. Since it concerns retributive contexts, however, this account of desert as compensation is different from the account of desert as compensation in distributive contexts that I described above. Since these two accounts are distinct, one need not advocate both of them if one advocates either one of them. For example, one might advocate a compensation-based account of desert in retributive contexts and an effort-based account of desert in distributive contexts.

One can advocate an account of the role of desert in distributive contexts that incorporates effort, contribution, and compensation to some extent. One difficulty with compensation-based accounts of desert is that people often undertake great burdens and incur

\(^{30}\) Again, the goal must be morally acceptable. Also, it should be noted that, in theories of distributive justice, compensation can be understood in yet another way. This understanding involves compensating people for things they lack through no fault of their own, such as native talent or opportunities. This last understanding is often argued for under egalitarianism or other welfare-based distributive schemes. As such, this understanding of compensation is not guided by desert, but by some other concepts or principles.
great costs in the pursuit of foolish ends. It does not seem as if such foolish effort should give rise to any positive treatment, however. It is true that people also contribute to foolish causes and put forth futile effort. Since burdens and costs can easily be subsumed under effort and contribution, however, and since burdens and costs in and of themselves do not seem to give rise to desert, a compensation-based account of desert should be jettisoned. In Chapter 3, I argue for a conception of desert in distributive contexts that leaves out appeals to compensation.

By jettisoning compensation, it seems as if I am left with an account of desert based on effort and contribution. One concern with limiting desert-making criteria to those based on effort and contribution is that such an account appears to misdescribe desert bases in certain cases, such as winning a race or performing well in a music competition. Certainly, winning a race or performing well in a music competition involves some effort, but it is unclear how either involves a contribution. One could attempt to save the connection between the winning of the race and contribution by arguing that a person deserves to win a race because of the contribution that she made to furthering the purpose of the race or to promoting a certain type of excellence in running. A similar type of argument could be made in the case of a music competition. But this is needlessly clumsy. A solution to this problem is to use (successful) “performance” in the place of “contribution.” Performance can incorporate the examples of winning races and performing well in music competitions, as well as cases that are more naturally understood as cases of contribution, e.g., one’s performance in contributing to the profit of a company. Although I will argue for a conception of desert that combines effort and performance, I will argue that effort is the primary of the two conceptual components of desert.\(^{31}\)

\(^{31}\) My view of desert as a combination of effort and performance is backed by the views of participants in certain experimental studies. In “Distributive Justice: What the People Think,” David Miller refers to the work of Gerald Leventhal and James Michaels, in “Locus of Cause and Equity Motivation as Determinants of Reward Allocation” and Stanley Rest, et. al., “Further Evidence Concerning the Effects of Perceptions of Effort and Ability on
Conclusion

According to the classical tradition, justice involves one getting what is appropriate and what is appropriate is understood to include not only as desert, but also entitlement, merit, (moral) value, (moral) worth, and perhaps other concepts. Desert is given more weight in certain modern conceptions of justice than it was given in many classical conceptions. Mill and Sidgwick, for example, offered modern conceptions in which justice was strictly or primarily about one getting what one deserved. I follow David Miller and David Schmidtz in thinking that desert is one of a number of important conceptual components of justice. According to the philosophical literature, one’s desert is usually explained in terms of effort, contribution, compensation, or some combination of the three. I argued that there are good reasons to substitute “performance” for “contribution.” According to the conception that I will advocate, desert is best understood as being based on a combination of effort and performance.

2.3 Three Kinds of Arguments against Desert

Rawls’s Predecessors

David Hume was an early critic of those theories of distributive justice in which merit was assigned a prominent role. Although he limited his comments to merit, what he wrote is relevant to the conception of desert that I will advocate. Hume granted that although the assigning of possessions according to merit might have a place in “a perfect theocracy” governed by an “infinitely intelligent” being, such a system under the execution of mankind would result as an “immediate consequence” in the “total destruction of society.” The reasons for Hume’s

Achievement Evaluation,” while noting that people often assess desert “through some amalgam of performance and effort” (562). In Gordon Marshall, et. al., “What Is and What Ought to Be: Popular Beliefs About Distributive Justice in Thirteen Countries,” sample surveys showed that a large majority of people in thirteen countries thought that “people who work hard deserve to earn more than those who do not.” A similarly large majority believed that “an employee’s individual effort” should have much influence in determining his level of pay. This appeal to effort could be seen as an appeal to the employee’s desert, although attributing that thought to the respondents in the absence of additional information might be a bit problematic.
skepticism about the use of merit and, one might say, his realistic assessment of human limitations are that humans are both fallible in their knowledge of the factors that would establish others’ merit and prone to overestimating their own merit. For these reasons, Hume argued that “no determinate rules of conduct would ever result” from distributive schemes based on merit.32

Hume offered two of the three major kinds of arguments against the use of merit or desert as a basis for large-scale systems of distribution. The first is that, since we cannot know the specific details of the lives of every member in a community or society, we cannot accurately treat people according to their desert. This is the epistemological argument against desert (hereafter “the epistemological argument”). The second argument is that regardless of whether we could gain the knowledge needed to accurately treat people according to their desert, attempting to do so would have negative consequences, such as losses of personal freedom and great financial costs. This is the pragmatic argument against desert (hereafter “the pragmatic argument”). While the pragmatic argument overlaps the epistemological argument to some extent, the pragmatic argument still has force in the absence of the epistemological argument.

In “A Defense of Human Equality,” Herbert Spiegelberg offered a metaphysical argument against desert (hereafter “the metaphysical argument”).33 In order to fully understand Spiegelberg’s metaphysical argument, one must understand the main argument in “A Defense of Human Equality.” This main argument is as follows:

1. Undeserved discriminations call for redress.

2. All inequalities of birth constitute undeserved discriminations.

3. Therefore, all inequalities of birth call for redress.34

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34 Ibid., 113ff.
In support of this argument, Spiegelberg attempts to undermine the more popular conceptions of desert at the time (1944). If successful, Spiegelberg’s argument would have the secondary effect of undermining certain popular conceptions of justice in which desert had a prominent role. Like John Rawls’s metaphysical argument that followed, Spiegelberg’s metaphysical argument can be interpreted as providing a weak or a strong challenge to desert. The weak challenge is as follows: most of who we are and what we do as humans is greatly influenced by undeserved native advantages and disadvantages and by the undeserved circumstances into which we are born. According to this view, despite the existence of these “inequalities of birth,” we can still be deserving in certain, albeit limited, ways. The strong challenge is as follows: since the inequalities of birth have such a profound effect on everything a person is and everything a person does, they completely undermine desert on a metaphysical level. According to the strong challenge, no one can deserve anything.

Rawls cites Spiegelberg in *Theory of Justice* and Spiegelberg’s influence on Rawls’s arguments against desert is obvious. Rawls advocates a principle of justice, which he calls “the difference principle,” according to which “social and economic inequalities are to be arranged so that they are…to the greatest benefit of the least advantaged” member of society.35 Through his use of the difference principle, which is one of his basic principles of political justice, Rawls seeks to set rules whereby those who are “favored” by the inequalities of birth could advance their socio-economic position only if such advancement thereby improves the lot of the less fortunate. Therefore, although the upshot of Spiegelberg’s argument is a call for straightforward

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redress, whereas Rawls rejects straightforward redress in favor of the difference principle, Rawls’s rules achieve, in his own words, “some of the intent” of the principle of redress.36

Taken together, Hume and Spiegelberg challenge the role of desert in distributive justice using three kinds of arguments – epistemological, pragmatic, and metaphysical. I will argue that Rawls advances some version of all three of these arguments. And since much of the contemporary discussion and debate about the role of desert in distributive contexts focuses on Rawls’s more widely read arguments, I will turn my attention to them.

The Rawlsian Arguments against Desert

There are two seminal passages that need to be examined when discussing Rawls’s views on desert as presented in Theory of Justice. At a minimum, these passages suggest different challenges to certain conceptions of desert and to the role of desert in distributive justice. I will argue that the passages suggest that Rawls thinks the concept of desert itself is metaphysically dubious. Understanding these passages is important for understanding Rawls, since they help provide the foundation for Rawls’s views about the role of desert in his theory of justice as fairness. I will argue for what I think is the more accurate interpretation of these passages. Regardless of which interpretation accurately reflects Rawls’s views, however, the arguments suggested by these passages present challenges that any defensible theory of the use of desert in distributive justice must meet.

The first passage that I will examine presents a metaphysical argument. Again, the metaphysical argument can be interpreted as being strong or weak. The strong version attempts to totally undermine the concept of desert, whereas the weak version attempts to greatly limit both the number and kinds of things that can be deserved. The second passage that I will

36 See Rawls, Theory of Justice, 100–101, including 100n18 and 101n19. See Chapter 5 below for a more thorough treatment of Rawls’s difference principle.
examine presents a metaphysical argument as well as epistemological and pragmatic arguments against the role of desert in distributive justice. I will draw upon the work of David Schmidtz, George Sher, and Jeffrey Moriarty while analyzing these arguments.

**The Strong Metaphysical Argument**

In *Theory of Justice*, Rawls challenges desert on a metaphysical level. Although it is clear that Rawls offers a metaphysical argument, the strength of the argument that he offers is disputed. Consider the following passage from *Theory of Justice*, which, for ease of reference, I will refer to as *MA* (short for “Metaphysical Argument”):

> It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one’s initial starting place in society. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases.37

In *MA*, Rawls claims that desert does not apply to the following three separate yet related things:

1. One’s place in the distribution of native endowments.
2. One’s initial starting place in society (the family and social circumstances into which one is born).
3. One’s superior character.

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David Schmidtz claims that \textit{MA} is viewed as an uncontroversial assertion by most who write about justice and desert.\footnote{Schmidtz, “How to Deserve,” 775. See also Rakowski, \textit{Equal Justice}, 112 and Scheffler, “Responsibility, Reactive Attitudes, and Liberalism in Philosophy and Politics,” 307.} Perhaps this is an overstatement by Schmidtz since, while the claim that (1) and (2) are not deserved might be viewed as uncontroversial, there appears to be some controversy about the idea that (3) is not deserved. The idea that one does not deserve one’s place in the distribution of native endowments or the family and social circumstances into which one is born seems uncontroversial because one is not responsible for these things and desert theorists often argue that desert presupposes some level of responsibility. The issue of one’s superior character, however, seems different. For, although one’s character might be influenced by (1) and (2), it seems as if one’s character is shaped substantially by the decisions one freely makes and the actions one freely performs. I agree that people do not deserve either (1) and (2), although, as I will explain in section 2.4, I think that this fact leads to conclusions that are much different than those that are advanced by Rawls. Since it is not clear why Rawls thinks desert does not apply to one’s superior character and what flow from it, this will need to be considered at some length.

One can agree with Rawls that people deserve neither their place in the distribution of native endowments nor the family and social circumstances into which they are born while still maintaining there is a place for desert in moral and political theory. That is, we can accept at least the first two of Rawls’s claims without being forced to adopt total desert skepticism. Schmidtz defines total desert skepticism, “in its most sweeping form,” as the belief that in order for a person to deserve anything he would not only need to be deserving of his entire own prior history, but the history of the world. The total desert skeptic claims that if what is morally arbitrary plays any role whatsoever in who one is, what one has, or both, then one cannot deserve
anything. Rawls considers one’s place in the distribution of native endowments and one’s initial starting place in society to be morally arbitrary,\(^{39}\) and he seems to think that these morally arbitrary factors play the major role in the development of future would-be desert bases. Why else would he claim that desert seems not to apply to one’s superior character, including the effort that leads to cultivated abilities?

As Schmidtz explains, the inequalities of birth are often considered to be the result of morally arbitrary luck. Schmidtz thinks that Rawls is a total desert skeptic and that Rawls’s view is based on a failure to distinguish between being lucky and being merely lucky. Although everyone is who he is and has what he has partly as a result of certain adverse or fortunate events over which he can claim no credit nor take any blame, Schmidtz does not think that such luck undermines all desert. For, according to Schmidtz, one can legitimately claim credit or take blame for a substantial portion of who one is and what one has.\(^{40}\)

Schmidtz notes, “Skeptics about desert accept an analog of hard determinism: every causal chain traces back to something morally arbitrary, therefore nothing is deserved.”\(^{41}\) The strong metaphysical argument seems akin to a hard determinist argument because it gives no weight to the role of a person’s autonomous choices in influencing who she is, what she has, or both. Rawls’s argument in MA is akin to a hard determinist argument that people are the way they are and act the way they act because they are in some strong sense determined to do so by the contingencies of life, including the inequalities of birth.\(^{42}\) If people’s actions and characters are so determined, then there seems to be no place for personal autonomy and responsibility. If there is no personal autonomy and responsibility, desert is undermined. Accordingly, desert

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\(^{40}\) Schmidtz, “How to Deserve,” 776.

\(^{41}\) Ibid.

\(^{42}\) Ibid.
should not have a role in distributive justice, since factors that have a major influence on all would-be desert bases, e.g., one’s place in the distribution of native endowments, one’s initial starting place in society, and one’s superior character, are beyond one’s control.

But as with much of Rawls’s work, there is some debate about the precise nature of his metaphysical argument. John Kekes claims that Rawls’s metaphysical argument is not “the deterministic claim that it is because everything human beings do depends on causes over which they have no ultimate control…[but] rather that when people do not make the appropriate effort to exercise or suppress some morally relevant capacity, it must be that some contingency over which they had no control has prevented them from it.” It might seem as if, far from offering a competing interpretation, Kekes has given nothing more than another definition for determinism. It is important to try to understand Kekes’s argument in order to learn if he has found an important distinction that any accurate interpretation of Rawls must consider, or if he has merely offered a distinction without a philosophically important difference.

According to a standard definition of determinism, people’s actions are the necessary results of a variety of both internal and external factors. According to Kekes’s interpretation, Rawls thinks that people can act autonomously. They do so, however, if and only if they act in accordance with the difference principle and the equal liberty principle – Rawls’s principles of political justice. According to Kekes’s interpretation, if people act otherwise, it is because they were “prevented” by contingencies from acting in accord with their true nature. One would expect a determinist to argue that, since one’s actions are determined, one always acts in accord

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43 Kekes, Against Liberalism, 138.
44 According to Rawls’s equal liberty principle, “Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.” Rawls, Theory of Justice, 250 as quoted in Kekes, Against Liberalism, 133. See above for Rawls’s difference principle (19). The revised versions of both of Rawls’s principles of political justice, or basic-structure principles, as he presented them in Justice as Fairness are listed in Chapter 5 (148). I offer a more detailed discussion of the difference principle in that chapter.
with one’s true nature. According to a determinist account, that nature would be whatever some combination of one’s biological makeup and one’s previous experiences determined it to be.

The question that one must ask about Kekes’s argument is: in what sense are these people being “prevented” from acting in accord with their true nature? If they are being physically restrained, e.g., by being tied to a chair, or if they are being mentally controlled by being placed in a hypnotic trance or by being drugged with some mind-altering chemical, then certainly they are being, in some strong sense, prevented from acting in accord with their true nature. But this is not the sense of “prevented” that Kekes is using. Kekes writes of people as being “not sufficiently conscientious, morally motivated, or careful of others because they have been brutalized, deprived, or coarsened by their undeserved circumstances.”\(^{45}\) Certainly, such experiences will influence the way in which one acts. Perhaps such experiences might even be said to change one’s nature. But unless one is causally determined to act in a particular way, these experiences do not prevent one from taking a particular course of action, nor do they seem to make one’s actions unfree. Another problem with Kekes’s account is that if one is causally determined to act in ways not in accord with the difference principle and the equal liberty principle, presumably one would be similarly causally determined when one does act in accord with these principles. If this is correct, then, contrary to what Kekes argues, there is no room for autonomous action on Rawls’s account. Although Kekes is right to reject Rawls’s metaphysical argument, his rejection appears to be based on a problematic interpretation of the argument. In the next section, I will examine a more promising account of locating autonomous choice in Rawls’s anti-desert arguments.

Even if Kekes is accurate in his description of Rawls’s view, however, the interpretation that Kekes articulates seems to be a determinist one. And even if one could tease out a relevant

distinction between Kekes’s interpretation and a more straightforward determinist interpretation, the upshot of Rawls’s anti-desert argument in MA would still be the same. Rawls would be offering a strong metaphysical argument against desert, the upshot of which is that desert should not have a role in distributive justice. For according to either interpretation, many or all of the things on which desert is said to rest – one’s native endowments, one’s character, other contingencies, etc. – are the result of factors that are beyond one’s control.

George Sher is one of those who interprets Rawls as presenting a strong metaphysical argument. Sher’s reconstruction of Rawls’s anti-desert argument is as follows:

1. Each person has some basic set of abilities, including an ability to exert effort, which does not belong to him as a result of anything he has done.

2. If a person’s having $X$ is not a result of anything he has done, then he does not deserve to have $X$.

3. No person deserves to have his basic abilities.

4. Each action a person performs is made possible, directly or indirectly, by some subset of his basic abilities.

5. If a person does not deserve to have $X$, and $X$ makes $Y$ possible, then that person does not deserve to have $Y$.

6. No person deserves to perform his actions, and neither does anyone deserve to enjoy any of the benefits that his actions in turn make possible. 

In order to consider whether Sher’s reconstruction accurately captures Rawls’s argument, we should focus again on MA:

It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one

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deserves one’s initial starting place in society. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases.

Although Sher’s reconstruction is promising, it can be improved with some minor revisions. Since the reconstruction I offer below might strike some as counterintuitive, it is important to focus on the last two sentences of *MA*. There, Rawls explicitly maintains that desert seems not to apply to cases in which a person’s would-be desert is based, “in large part upon . . . circumstances for which he can claim no credit.” Rawls suggests that desert is completely undermined not only when one can claim no credit for any would-be desert base, but also when one can claim no credit for a large part of a would-be desert base. What he is offering, it seems, is a type of tainting argument in which morally arbitrary links in a causal chain completely undermine any desert. The qualifier “in large part” does not leave much, if any, room for desert in other cases, since Rawls believes that one cannot claim credit for one’s superior character and what flows from one’s superior character, including the effort that leads to cultivated abilities.

With this in mind, according to the interpretation that I am promoting, the following is a more accurate reconstruction of Rawls’s argument:

1a. Each person has some basic set of abilities, including an ability to exert effort, which, to a large degree, do not belong to him as a result of anything he has done.

2a. If a person’s having *X* is, to a large degree, not a result of anything he has done, then he does not deserve to have *X*.

3. No person deserves to have his basic abilities.

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47 Emphasis added.
4a. All would-be desert bases, including each action a person performs, is made possible, directly or indirectly, by some subset of his basic abilities.

5. If a person does not deserve to have \( X \), and \( X \) makes \( Y \) possible, then that person does not deserve to have \( Y \).

6a. No person deserves any of his would-be desert bases, including the performance of his actions, and neither does anyone deserve to enjoy any of the benefits that his actions in turn make possible.

This reconstruction includes the following changes to Sher’s reconstruction: the qualifier “to a large degree” has been added to premises (1) and (2), while the scope of both premise (4) and the conclusion has been expanded from “action(s)” to “would-be desert bases.” According to my interpretation as shown in this second reconstruction, Rawls attempts to strongly undermine the concept of desert on the metaphysical level. If desert “seems not to apply” to one’s character and what flows from one’s character, then it is hard to find room for the metaphysical concept of desert. But elsewhere Rawls’s arguments suggest a different, and less sweeping, metaphysical critique of desert.

*The Weak Metaphysical Argument*

Some argue that Rawls does not advocate total desert skepticism. They claim that his theory allows for some desert based on one or both of the following: (a) certain factors or the portion of certain factors that are the result of one’s autonomous choice only and (b) what one achieves by following institutional guidelines or rules. Before continuing, some clarifying remarks about different types of desert are needed. Desert which is based on successfully following institutional rules or guidelines is sometimes referred to as “i-desert,” which is short for “institutional desert.” The counterpart to i-desert is p-desert, which is short for “pre-
institutional desert.” P-desert, which is sometimes referred to as “raw desert” or simply “desert,” is desert in its purest form or desert in the basic sense. P-desert is desert as a general normative concept and not as an institutional artifact. P-desert is the type of desert that Rawls seems to reject in *MA*.

To avoid confusion, I need to clarify the way in which I am using the term “p-desert.” P-desert is not meant to be limited to the type of desert that one can have only in a Lockean state of nature, but rather it is meant merely to mark off the type of desert that is not tied wholly to institutions. Throughout this chapter, I will use the term “p-desert” since it is used in many of the passages that I cite below. I will write more about p-desert and i-desert later in the dissertation (section 4.4).

Jeffrey Moriarty is among those who argue that Rawls does allow for p-desert in his theory. Moriarty begins by offering a reconstruction of Rawls’s argument as Rawls’s opponents commonly present it:

1. For persons to be p-deserving, they must have some control over the features of their character that make them p-deserving.

2. It is not the case that persons have control over the features of their character that make them p-deserving – what persons are commonly said to p-deserve is determined entirely by factors arbitrary from a moral point of view and character traits for which they are not responsible.

3. No one is p-deserving of anything.

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49 McLeod uses the terms “i-desert” and “p-desert” in “Desert and Institutions,” 186-195.
4. Therefore, distributing goods according to p-desert is unfair, and p-desert should have no place in a just social institution.\textsuperscript{50}

Moriarty argues that this common reconstruction of Rawls’s argument is inaccurate. While Moriarty agrees that premise (1) and the conclusion accurately reflect Rawls’s position, he denies that Rawls holds either premise (2) or (3). Recall that, in \textit{MA}, Rawls writes that a man does not deserve his superior character since it “depends \textit{in large part} upon fortunate family and social circumstances for which he can claim no credit.” Moriarty believes that the qualification “in large part” leaves room for one’s autonomous choice to play some small part in the formation of one’s character. This would make premise (2) of the reconstruction inaccurate. If Moriarty’s interpretation is accurate, then one can identify a desert base that Rawls recognizes – that portion of one’s character, effort, and the like that results from autonomous choice. This, in turn, would make premise (3) inaccurate. Moriarty interprets Rawls as offering what I have referred to as a weak metaphysical argument against desert. That is, Moriarty contends that Rawls’s metaphysical argument is not intended to undermine desert completely. This weak metaphysical argument still undercuts much of the normative force of desert, however, since it is based on the idea that one’s individual autonomous choices have a rather limited role in who one is and what one does.

\textit{The Epistemological and Pragmatic Arguments}

While agreeing that Rawls offers a metaphysical argument of the weak variety, Moriarty believes that Rawls’s rejection of desert as an important component of distributive justice is based largely on epistemological and pragmatic concerns. Moriarty draws the reader’s attention to the following passage, which I will refer to as \textit{EPA} (short for “Epistemological and Pragmatic

\textsuperscript{50} Moriarty, “Desert and Distributive Justice,” 135.
Arguments”), in which Rawls appears to be offering epistemological and pragmatic arguments in addition to a weak metaphysical argument:

The precept which seems intuitively to come closest to rewarding moral desert is that of distribution according to effort, or perhaps better, conscientious effort.

Once again, however, it seems clear that the effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously and there seems to be no way to discount for their good fortune. The idea of rewarding desert is impracticable.51

In EPA, Rawls writes that what “come[s] closest to rewarding moral desert is . . . distribution according to . . . conscientious effort.” Moriarty takes Rawls to be identifying conscientious effort as a basis for p-desert.52 Next, Moriarty contends that Rawls’s claim that a person’s effort is “influenced (as opposed to, say, determined entirely) by his natural talents and social circumstances” leaves room for “autonomous choice” as a factor in a person’s effort.53 He argues that Rawls’s appeal to the impracticability of rewarding desert is based on Rawls’s appeal to the epistemological difficulties that one encounters when one attempts to discern what part, or how much, of a person’s effort is based on his autonomous choice and what part, or how much, is based on his natural talents and social circumstances. The thought is that these epistemological difficulties would make it exceedingly difficult, if not impossible, to discern what each person deserves. The upshot of this line of argument is that any attempt to establish

51 Ibid., 137. The original quote is from Rawls, Theory of Justice, 312. Moriarty quotes slightly more from Rawls than is included here. The emphasis was added by Moriarty.
52 Moriarty, “Desert and Distributive Justice,” 137.
53 Ibid.
social institutions that aim to reward desert will be beset by pragmatic limitations that will “most likely” end up in the social institution “getting it wrong.”

Although Moriarty does not offer a reconstruction of the arguments in *EPA*, based on his interpretation, such a reconstruction would require a substantial revision of what he presents as the mistaken reconstruction offered by Rawls’s opponents (29-30). The following is a reconstruction of *EPA* that is consistent with Moriarty’s interpretation:

1. For persons to be p-deserving, they must have *some* control over the features of their character that make them p-deserving.
2. It is the case that persons have *some* control over the features of their character that make them p-deserving.
3. Conscientious effort makes persons p-deserving.
4. Autonomous choices are (partial) causes of conscientious effort, and people have control over their autonomous choices.
5. People p-deserve based on the portion of their conscientious effort that is a result of their autonomous choices.
6. But epistemological and pragmatic limitations make it impracticable to discern the portion of their conscientious effort that is a result of their autonomous choices.
7. Therefore, epistemological and pragmatic limitations make it impracticable to discern what people truly p-deserve.
8. Distributing goods according to what we think people p-deserve is unfair, and p-desert-based distribution should have no place in a just social institution.

According to the epistemological and pragmatic arguments, it is impracticable to distribute goods based on p-desert. Someone who disputes p-desert-based distributions on these

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54 Ibid., 138.
epistemological and pragmatic grounds need not make a commitment as to whether desert is a metaphysically defensible concept.

There is some debate about whether Rawls’s views include a rejection of desert on metaphysical grounds or on epistemological and pragmatic grounds, or on some combination of the two. In addition, there is some debate about whether Rawls offers a sweeping or more limited rejection of desert on metaphysical grounds. Although these arguments against desert are important regardless of whether or to what extent Rawls advocated them, arriving at a clearer interpretation of Rawls on this topic is important since his views on desert influence so much of his theory of justice as fairness. In what follows, I will argue for the interpretation of Rawls’s anti-desert arguments that I think is best supported by the relevant texts.

*Clarifying Rawls on Desert*

Unfortunately, Rawls’s work that follows *Theory of Justice* does not shed too much light on the exact nature of his anti-desert views. For example, in *Justice as Fairness: A Restatement* (*Justice as Fairness*), Rawls writes that it is incorrect to claim that justice as fairness rejects “a concept of moral desert specified independently of the rules of existing institutions” or, put differently, it is incorrect to claim that justice as fairness rejects at least one type of p-desert. But he follows this with the ambiguous claim that justice as fairness “recognizes at least three ideas that in ordinary life are viewed as ideas of moral desert.”55 The three ideas are:

First, the idea of moral desert in the strict sense, that is, the moral worth of a person’s character as a whole (and of a person’s several virtues) as given by a comprehensive moral doctrine; as well as the moral worth of particular actions;

Second, the idea of legitimate expectations (and its companion idea of entitlements), which is the other side of the principle of fairness (*Theory*, § 48); and

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Third, the idea of deservingness as specified by a scheme of public rules designed to achieve certain purposes.\textsuperscript{56}

It is one thing for a theory to recognize that certain things are viewed as ideas of moral desert and another for a theory to recognize moral desert (or any type of p-desert) as a defensible concept, let alone as an important component of distributive justice. So, it is hard to learn much about Rawls’s commitment to the concept of desert based on his recognition of these three ideas. Notice that only the first idea is directly relevant to p-desert, although the legitimate expectations that are referred to in the second idea could, perhaps, exist in the absence of institutions. The third idea appears to be about some conception of i-desert exclusively, although one could advocate a more general p-desert principle according to which one can \textit{prima facie} deserve something based on the rules of any given institution. The third idea seems to overlap the second idea to a large extent since the legitimate expectations that are mentioned in the second idea are often, perhaps always, specified by the scheme of public rules referred to in the third idea.

Tellingly, Rawls explicitly claims, “Justice as fairness uses only the second and third ideas of desert.”\textsuperscript{57} His exclusion of the first idea is based on the view that “a conception of moral desert as moral worth cannot be incorporated into a political conception of justice in view of the fact of reasonable pluralism.” The “pluralism” to which Rawls refers here is not the pluralism that I discussed in Chapter 1, but rather the pluralism of conceptions of the good that are held by the members of a society. Rawls continues, “In any case, moral worth would be utterly impracticable as a criterion when applied to questions of distributive justice. We might say: Only God could make those judgments. In public life we need to avoid the idea of moral

\textsuperscript{56} Ibid., 73.
\textsuperscript{57} Ibid., 74.
desert and to find a replacement that belongs to a reasonable political conception.”58 Since Rawls does not include the one idea that deals with p-desert directly in his theory of justice as fairness, his views on p-desert remain somewhat unclear.

Still, in the light of his claim that justice as fairness makes use of the second and third ideas of desert, Rawls can be seen as promoting some conception of i-desert. There are some difficulties with such a conception, however. It is reasonable to suppose that any legitimate i-desert claim, if it is truly a desert claim, gets its force from desert as a general normative concept, i.e., from p-desert. But Rawls’s arguments elsewhere seem to attempt to completely undermine p-desert. In addition, both the second and third ideas might hinge on the conflation of desert with entitlement. I will discuss the relationship between desert and entitlement in section 4.4. Regardless, since what Rawls refers to as “nonmoral desert” is still placed within an institutional setting, there is little to suggest that Rawls allows for p-desert in his theory and much to suggest otherwise.

In MA, Rawls writes about “desert,” while in EPA and in the selections from Justice as Fairness, he writes about “moral desert.” It is not clear whether he intends for these uses of “desert” and “moral desert” to be synonymous, since he does not address his reasons for using these different terms in different places. As I will discuss in Chapter 4, many scholars argue that there are important differences between desert and moral desert since there are types of desert that are nonmoral. If Rawls is using these terms interchangeably, then his arguments in EPA and from Justice as Fairness do not seem to be directly applicable to nonmoral desert.

In part due to the lack of clarity in Rawls’s arguments in Theory of Justice and Justice as Fairness, both the weak and strong interpretations of Rawls’s metaphysical argument have difficulties. A difficulty with Moriarty’s interpretation, according to which Rawls leaves room

58 Ibid., 73. Here, again, Rawls is presenting the epistemological argument.
for some p-desert, is the unqualified conclusion Rawls offers in MA. There, Rawls claims that
desert does not apply to one’s place in the distribution of native endowments, one’s initial
starting place in society, and, most notably, one’s superior character. In order to draw the
conclusion that desert does not apply to a man’s character after writing that his character
“depends in large part upon fortunate family and social circumstances for which he can claim no
credit,” it seems as if Rawls must be offering a strong metaphysical argument. Rawls must think
that the contingencies of life and the inequalities of birth render morally arbitrary any character
development and, therefore, anything that flows from one’s character.

One might wonder, under the interpretation that I am advancing, what work the qualifier
“in large part” is doing in MA. One answer is that if one’s character is in large part dependent on
family and social circumstances, including one’s initial starting place in society, then there
remains some small part to be played by the native endowments that Rawls mentions earlier in
the passage. These endowments, along with other contingencies of life, are more likely than
autonomous choice to be candidates for the missing part in one’s character development. If the
small part left over in MA is filled by these endowments and contingencies, then Sher seems
correct to interpret Rawls as thinking that one’s abilities do not belong to one as a result of
anything one has done (as opposed to not belonging to one, in large part, as a result of anything
one has done). A different and perhaps preferable interpretation is that the small part left over is
indeed the result of things that one has done, but since these things are the result of morally
arbitrary factors, they do not make one more deserving.

There is, however, another difficulty with interpreting Rawls as offering a strong
metaphysical argument. What, under this interpretation, is one to make of Rawls’s concern in
EPA with our inability to discount for people’s good fortune and with the impracticability of
rewarding desert? The answer, it seems, is that we cannot discount for a person’s good fortune due to metaphysical difficulties as opposed to simply epistemological difficulties. According to Rawls, we cannot discount for a person’s good fortune because a person’s good fortune caused her to be who she is and to act in the way she acts. Rewarding desert can be impracticable not only because there would be epistemological and pragmatic difficulties with gaining knowledge of a person’s desert and rewarding her accordingly, but also because of the metaphysical difficulties that undermine desert itself. Rawls claims that, although distribution according to effort or conscientious effort is “the precept which seems intuitively to come closest to rewarding moral desert,” upon reflection that precept should be jettisoned. According to Rawls, there seems to be no fact of the matter about what a person deserves.

It is important to note that, even if one believes that Rawls does argue for the sweeping rejection of desert on metaphysical grounds, one can agree with Moriarty’s argument that Rawls is also concerned with the epistemological and pragmatic difficulties of desert-based distribution. As an argumentative strategy, Rawls might be promoting the idea that even if the concept of desert is metaphysically sound, its use still poses certain epistemological and pragmatic difficulties. Employing this strategy does not, by itself, commit Rawls to a weak version of the metaphysical argument.

Conclusion

In this section, I detailed the three major categories of arguments against the use of desert as a basis for distribution within a society. If true, the strong metaphysical argument would completely undermine the concept of desert. If true, the weak metaphysical argument would undermine the concept of desert to a lesser extent. Those who offer epistemological arguments against desert contend that we cannot gain the specific knowledge needed in order to distribute
advantages and disadvantages to people based on their desert. Pragmatic arguments against desert, which are often coupled with epistemological arguments against desert, are based on the idea that even if it were possible to know what individuals deserve, it would be very costly, infeasible, or impossible for societies to develop and maintain apparatuses through which the requisite knowledge about members of a society could be gained, through which desert-based distributions could be made, or both. Regardless of which interpretation more accurately captures Rawls’s anti-desert views, MA and EPA suggest different arguments against desert and desert-based distributions, and these arguments have been influential in the literature that has followed both Theory of Justice and Justice as Fairness. Still, the textual evidence supports an interpretation of Rawls as offering a strong metaphysical argument in Theory of Justice and Justice as Fairness. With this in mind, I will examine the metaphysical argument more closely and consider whether it effectively undermines the concept of desert.

2.4 Against Rawls’s Metaphysical Argument

The Inequalities of Birth: Undeserved or Not Deserved?

Few contemporary theorists would argue that one deserves either (1) one’s place in the distribution of native endowments or (2) one’s initial starting place in society. A rejection of the idea that one can deserve these things can come in either of two forms. First, a person can question whether it is sensible to talk of one’s place in the distribution of native endowments and one’s initial starting place in society as being deserved or undeserved. Second, a person can argue that although it is sensible to talk about deserving one’s place in the distribution of native endowments and one’s initial starting place in society, such things are undeserved.

A debate over whether the inequalities of birth are deserved or undeserved might strike some readers as strange for the following reason: if a person were to ask whether one deserves
(1) or (2), we might think she was guilty of committing some sort of category mistake. A person is born with a certain genetic makeup and into a certain familial-social situation. Asking whether she deserves these things is akin to asking whether a mountain deserves its height or location. The inequalities of birth are neither deserved nor undeserved since they are simply facts about people and their initial situations over which they have no control. So, the appropriate response to a person who claims that one deserves (1) or (2) might not be to argue that one does not deserve them, but rather to argue that the claim that one deserves them does not makes sense. It appears that Michael Sandel had something similar in mind when he wrote, “…beyond a certain point, asking just wholesale whether someone deserves to be the (kind of) person he is becomes incoherent altogether.”59 A person does not have to deserve everything he has or everything he is in order to deserve anything at all. Some things, e.g., our native looks, our native intelligence, and our gender, we just have or just are. These things do not render desert impossible just because these things are not deserved. As Robert Nozick writes, “It needn’t be that the foundations underlying desert are themselves deserved, all the way down.”60

One might think that Rawls’s views on how the inequalities of birth affect people’s desert are not much different from Sandel’s and Nozick’s in some ways. In MA, Rawls does not claim that one’s place in the distribution of native endowments, one’s initial starting place in society, and one’s superior character are undeserved, but rather that desert “seems not to apply” to them. And is not Rawls’s claim that desert seems not to apply to these inequalities akin to Sandel’s claim that at some point questions about a person’s desert become incoherent? Is not Rawls’s claim that desert seems not to apply to these inequalities akin to Nozick’s claim that the foundations of desert need not be deserved “all the way down”? The short answer to both of

these questions is “no.” Sandel’s point is that such questions about desert are incoherent because desert is inapplicable to certain things, such as native endowments and initial starting places. Nozick is making the related point that one need not deserve all of one’s characteristics and qualities in order to deserve anything at all.

In *Theory of Justice*, Rawls makes it clear that his principles of justice give weight to the idea that the “inequalities of birth and natural endowment are undeserved.” This leads Rawls to advocate that those who are particularly affected by these inequalities should be compensated as if some agent had unequally, and therefore unjustly, distributed the native endowments and initial starting places. This idea of compensation is captured in the principle of redress to which Rawls’s difference principle gives weight. Rawls’s views about how to deal with these inequalities are similar to those advanced by Spiegelberg, who equates these inequalities of birth with “undeserved discrimination” and calls for their redress.

As it relates to their views about how to treat the inequalities of birth, the difference between Nozick and Sandel on the one hand and Rawls and Spiegelberg on the other can be clarified by a few simple formulas. When considering native endowments, for example, Nozick and Sandel subscribe to a view that can be formulated as follows:

\[ \text{NE1: Native Endowments + (effort and performance) = desert base} \]

This view is based on the idea that native endowments are desert neutral and that desert can be based, in part, on desert neutral factors. This idea can be represented as follows:

\[ \text{D1: Desert neutral (not deserved) + (effort and performance) = desert base} \]

Rawls and Spiegelberg, conversely, subscribe to a view about native endowments and desert that can be formulated as follows:

\[ \text{NE2: Native Endowments + (effort and performance) = no desert base} \]

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This view is based on the idea that native endowments are desert canceling. This idea can be represented as follows:

\[ D2: \text{Desert canceling (undeserved) + (effort and performance) = no desert base} \]

It appears that Rawls’s argument against desert takes the form of D2, according to which it is sensible to talk about deserving one’s place in the distribution of native endowments and one’s initial starting place in society, and that such things are undeserved. This, of course, has important implications for Rawls’s theory of justice as fairness.

At this point, some clarifications are in order. Although neither Nozick nor Sandel explicitly make a distinction between things being not deserved as opposed to undeserved, what they write suggests that they could advocate such a distinction and they believe that native endowments are not deserved as opposed to undeserved.\(^62\) In addition, according to Nozick, a person is entitled to her native endowments.\(^63\) In section 4.4, I will explain how Nozick’s use of term “entitlement” differs from the mine. For now, it is important to note that since Nozick thinks that native endowments should be understood in terms of entitlement as opposed to desert, and since he does not think that these endowments are the product of desert, it seems likely that he would view them as being not deserved as opposed to undeserved.

The Effects of the Inequalities of Birth

In *Theory of Justice*, Rawls writes about how societies should deal with unequal native endowments and other inequalities of birth. Consider the following passage in which Rawls writes about how institutions should deal with the distribution of native endowments and the contingencies of social circumstance:

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\(^62\) Schmidt also suggests that native endowments (and initial starting places) are not the kind of things that can be deserved in “How to Deserve,” 799n49.

The natural distribution is neither just nor unjust; nor is it unjust that persons are born into society at some particular position. These are simply natural facts.

What is just and unjust is the way that institutions deal with these facts.

Aristocratic and caste societies are unjust because they make these contingencies the ascriptive basis for belonging to more or less enclosed and privileged social classes. The basic structure of these societies incorporates the arbitrariness found in nature. But there is no necessity for men to resign themselves to these contingencies. The social system is not an unchangeable order beyond human control but a pattern of human action.64

According to Rawls, although the inequalities of birth are “simply natural facts” and therefore are neither just nor unjust, how they are dealt with is just or unjust. He advocates looking “for a conception of justice that nullifies the accidents of natural endowment and the contingencies of social circumstance as counters in the quest for political and economic advantage.”65 He discusses aristocratic and caste systems while advancing his preferred conception of justice. His description of why such systems are objectionable is incomplete, however. Before I explain why his discussion of the objectionable aspects of these systems is incomplete, I will offer a terminological clarification.

Although Rawls does not distinguish between aristocratic and caste systems, the two systems are, at least in theory, different in important ways. According to the definition which follows the term’s etymology most closely, an aristocratic society is one that is ruled by the best. Depending on how the term “best” is understood, such a society could be one in which those who rule do so because of their desert or merit. In practice, however, aristocracies are usually

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65 Ibid., 15. In Chapter 5, I will examine Rawls’s conception of justice in greater detail.
arranged so that those of the “best” birth, i.e., the nobles, rule. Such arrangements have little, if anything, to do with desert or merit and they can, and often do, lead to great injustice.

In a caste system, family and social circumstances are almost all that matter and native endowments are rendered almost entirely irrelevant. Caste systems take something that is beyond human control – social rank at birth – and use it as the sole reason to deny a person the opportunity to raise his social position. The reason why caste systems are considered to be objectionable is that they do not allow certain people, because of their place in the social rank at birth, to improve their lot in life. Caste systems essentially nullify the native endowments of certain people by not allowing those people to use their endowments to improve their social status. In short, caste systems do not allow people to get what they deserve because they do not allow people to use their efforts to cultivate their native endowments and then perform in an attempt to improve their lives. In this way, caste systems degrade the individual.

While Rawls correctly identifies one reason why caste systems are objectionable – their focus on social rank at birth – he fails to focus on another equally strong objection to caste systems – they do not allow people the freedom to cultivate their native endowments in various contexts. And even when people are able to cultivate their native endowments through their own efforts, those efforts are not rewarded. Since individual freedom and the recognition of individual effort are morally important these aspects of caste systems are troublesome, especially in the light of the fact that people from even the poorest backgrounds can improve their social position when they have the opportunity to do so. We know that people can do so because we see it happen, and it happens because people’s lives are not determined by their initial starting places in society. Simply put, as long as one has the requisite freedom, one’s lot in life is not determined at birth.
Against the idea that one’s actions are under one’s control, Rawls’s critics charge him with subscribing to the idea that human beings are not capable of being responsible agents, or, at least, are not capable of individual agency.\textsuperscript{66} Since individual responsibility is a prerequisite for most, if not all, desert, such a view makes individual desert quite rare, if not impossible.\textsuperscript{67} As mentioned above, both Robert Nozick and Michael Sandel dispute Rawls’s contention that, in order for a person to deserve something, he must deserve his place in the distribution of native endowments or his initial starting place in society. Their disagreement with Rawls on this point leads them to offer other criticisms of Rawls’s view.

Because Rawls’s arguments give so much weight to the role of the inequalities of birth in determining one’s character and effort, Nozick argues that Rawls’s “line of argument can succeed in blocking the introduction of a person’s autonomous choice and actions (and their results) only by attributing \textit{everything} noteworthy about a person completely to certain sorts of ‘external’ factors.” Nozick beleives that the “unexalted picture of human beings” that Rawls paints is problematic, since the principles of Rawls’s theory of justice as fairness are based on the choices of mutually disinterested persons in a hypothetical original position. Nozick writes, “So denigrating a person’s autonomy and prime responsibility for his actions is a risky line to take for a theory that otherwise wishes to buttress the dignity and self-respect of autonomous beings; especially for a theory that founds so much (including a theory of the good) upon persons’ choices.”\textsuperscript{68}

Sandel’s understanding of Rawls is slightly different. According to Sandel, Rawls’s metaphysical argument against desert rests on the idea that there is a metaphysical distance between the self and the characteristics that the self possesses. In this way, the characteristics

\textsuperscript{67} See section 3.3 for a discussion of the connection between desert and responsibility.
\textsuperscript{68} Nozick, \textit{Anarchy, State, and Utopia}, 214.
one possesses “do not attach to the self but are only related to the self.” Sandel contends that Rawls’s belief that no one can deserve anything is based on the idea that no one can possess anything, including any would-be desert base, “in the strong, constitutive sense of possession necessary to the notion of desert.” 69 Although their views differ in important ways, both Nozick and Sandel think that Rawls believes that all would-be desert bases are in a sense external to a person.

If people’s places in the distribution of native endowments and their initial starting places in society do not determine the way they think and act, and if people are capable of being responsible agents, then much of what people do is based on what they freely choose as opposed to being based largely, let alone solely, on the inequalities of birth or various other contingencies that are outside of their control. Perhaps there will come a day when science and psychology prove that humans are determined to think and act as they do. If this time comes, then this finding will affect theories of desert and distributive justice greatly. Until such proof is supplied, however, a hard determinist position remains on shaky ground in the face of everyday evidence that people seem to make choices based on their free will and that people from similar socio-economic backgrounds with seemingly similar native endowments vary widely in their accomplishments. 70

Conclusion

If Rawls is offering a strong metaphysical argument, then his view seems to contain a commitment to hard determinism. In addition, his view not only denigrates people, but denigrates them in a way that might undercut the force of some of his main arguments for his

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69 Sandel, *Liberalism and the Limits of Justice*, 86.
70 It could be argued that a soft determinist (compatibilist) position might allow one to adopt some of Rawls’s metaphysical criticisms while still allowing a place for responsibility, and thus desert, to some extent.
theory of justice as fairness. Interpreting Rawls as advancing only a weak metaphysical argument does not help his theory, however. If he allows for personal autonomy and responsibility, then there seems to be a hole in his argument. This is because there seems to be more room for desert, based on a person’s autonomous choices and the resultant efforts and performances, than Rawls allows. On either reading, his anti-desert arguments lead to a problematic conclusion. This is Rawls’s anti-desert dilemma.

2.5 Conclusion

According to the classical tradition, desert is an important conceptual component of distributive justice. Scholars such as Hume, Spiegelberg, and Rawls have argued against this idea. I argued that Rawls offers metaphysical, epistemological, and pragmatic arguments against the role of desert in distributive justice. In addition, it seems as if Rawls advances a strong version of the metaphysical argument. Regardless of which version Rawls advances, his metaphysical argument is flawed because it leads to either (1) the denigration of the individual person, which is not only troublesome on its own, but also seemingly undercuts the force of some of his main arguments for his theory of justice as fairness, or (2) it leaves too much room for personal autonomy, responsibility and desert, which deprives the argument of its force. Still, even if these metaphysical arguments are flawed, epistemological and pragmatic arguments against desert are quite common and they raise serious problems for assigning desert a major role in distributive contexts. To this point in the dissertation, I have not offered any specific solutions to the problems raised by the epistemological and pragmatic arguments. Before this can be done, and before I can more closely examine the role that desert has in distributive contexts, I must first offer a more complete explanation of the concept of desert itself.

71 In Chapter 5, I will discuss in greater detail how Rawls’s view of the metaphysical status of desert impacts his theory of justice as fairness, and I will consider some problems that result from his view.
CHAPTER 3. A CONCEPTUAL ACCOUNT OF DESERT

3.1 Introduction

The conception of desert that is advanced in this chapter is not merely stipulative, but rather it attempts to capture much of the scholarly agreement about the concept of desert. Where such agreement is wanting, I will argue for what I view as the most natural and compelling account of desert. In this chapter, I will proceed as follows. First, I will explain what it means to claim that someone or something is deserving (section 3.2). This section will include an examination of what kinds of subjects can be deserving, the kinds of things or modes of treatment that can be deserved, and what kinds of actions, attributes, and characteristics can ground desert claims. Next, I will discuss the role of responsibility in desert. Fred Feldman has argued that the connection between desert and responsibility is not as strong as many scholars think and that, contrary to the “received wisdom,” responsibility is not necessary to establish desert. I will consider Saul Smilansky’s reply to Feldman while examining the strength of the connection between desert and responsibility (section 3.3). Both Feldman and David Schmidtz have argued that, contrary to popular scholarly wisdom, desert can be forward looking. I argue that a philosophically defensible concept of desert must be essentially backward looking (section 3.4). Finally, I draw important distinctions between desert and the closely related concept of merit (section 3.5). By examining the many important aspects of desert and by distinguishing desert from merit, who or what is included in the group of deserving subjects and what qualify as desert bases will become clearer. Once the concept of desert is clarified, I can begin to examine what role, if any, desert can and should have in different distributive contexts in a just society.

3.2 Desert and Desert Bases

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72 Feldman, “Desert: Reconsideration of Some Received Wisdom.”
The Three Element View

In general terms, a desert claim should be understood as a moral claim with *prima facie* force. Desert claims seek to identify benefits that an agent ought to enjoy or harms that an agent ought to suffer based on something he is or something he has done. According to the view that I will defend, one does not have to attach any special moral significance to the aim or goal that the agent is pursuing in order for desert to make moral claims on people in certain contexts. But I will argue that legitimate desert claims do not arise from the pursuit of immoral aims or goals (section 4.2).

In order to come to a fuller understanding of the concept of desert, it is necessary to examine the formal structure of desert claims. It is widely held that desert is a relation among three elements: (1) a subject, (2) a mode of treatment or state of affairs deserved by the subject, and (3) some fact or facts about the subject, which are often referred to as desert base or desert bases. 73 This relation is shown in the formula:

\[ S \text{ deserves } M \text{ in virtue of } B, \]

where \( S \) is the subject, \( M \) is the mode of treatment, and \( B \) is the desert base (or bases).

Someone might object that understanding desert to be a three-part relation leaves out an important forth element, namely a source or supplier from which the subject deserves the mode of treatment. The concern is that, without a specified source, would-be desert claims are “free floating” in the sense that they fail to attach to any person or group against whom the claim is being made. And if the claim is not made against a specific person or group, it is unclear who is obligated to meet the claim. But there are at least two reasons for rejecting the inclusion of a fourth element.

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Again, a desert claim concerns a benefit that an agent ought to enjoy or a harm that an agent ought to suffer based on something he is or something he has done. The claim need not be directed toward another person, group, or any source for that matter, however, since the claim need not be enforceable. In some cases, the claim need not even prescribe any action. For example, the claim that hardworking men who make positive contributions to their communities deserve to prosper is a legitimate desert claim, although it need not be directed toward any source and it need not result in a call for any corrective action in cases in which particular hardworking men do not prosper.\(^{74}\) So, the first reason to jettison the fourth element is that by including it we would be forced to eliminate certain legitimate desert claims. It is important to note that desert gives rise to prescriptions for action only in certain cases. Later in this chapter and in the chapters that follow, I will examine under what circumstances and to what extent desert claims support specific prescriptions for action.

The second reason that tells against including a separate fourth element in desert is that, when needed, the fourth element can be contained within the mode of treatment. When we say, for example, that John deserves five dollars for doing household chores, we might mean that the mode of treatment he deserves is money from his parents. Similarly, when we say that a hardworking employee deserves a raise, we might mean that he deserves a raise from his employer.\(^ {75}\) Since the three-element view can capture sources of desert when needed and since it avoids eliminating legitimate, albeit perhaps non-prescriptive, desert claims, it is preferable to the four-element view. I will now briefly analyze each of these three elements in more detail.

There is some disagreement about what kinds of things can be the subjects of desert. According to a restrictive interpretation, only humans can be deserving. An even more


\(^ {75}\) McLeod, “Desert.”
restrictive interpretation might be that only humans who have reached a particular stage of
development can be the subjects of desert. Other interpretations might include certain or all
other sentient creatures as the appropriate subjects of desert. Still others might extend desert to
all living things (e.g., flowers) and even inanimate objects be they natural (e.g., rock
formations) or man-made (e.g., a supercomputer).76

Some supposed desert claims, especially claims about lower life forms and inanimate
objects, are based on what David Miller calls “sham desert judgments.” In such judgments,
“deserves” is used to mean nothing more than “should have” or “ought to receive.”77 One’s
view about who or what are the appropriate subjects of desert judgments is going to be
influenced by one’s view about whether desert requires a certain level of responsible effort that
leads to a certain kind of performance. I will discuss the relationship among desert, effort, and
responsibility later in this chapter (esp. section 3.3). In the main, my treatment of desert will
focus on the concept as it pertains to standard adult humans. This does not mean that I think that
one cannot offer a reasonable conception of desert that is not restricted to standard adult humans,
however.

The modes of treatment or states of affairs that one can deserve can be classified as
positive or negative outcomes, harms or benefits, or gains or losses.78 Owen McLeod writes that
“humans are thought to deserve, or be capable of deserving, many things: punishment, reward,
apologies, compensation, admiration, contempt, wages, grades, prizes, and so on.”79 In a similar
vein, Joel Feinberg lists five major groupings of deserved modes of treatment:

1. Awards of prizes.

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76 See Sher’s examples on 51-52 below.
78 Kristjánsson uses these terms in “Justice, Desert, and Virtue Revisited,” 41.
79 McLeod, “Desert.”
2. Assignments of grades.
3. Rewards and punishment.
4. Praise, blame, and other informal responses.
5. Reparation, liability, and other modes of compensation.

Feinberg writes that economic benefits and positions of honor are not among the separate groupings of deserved treatment since these types of benefits and honors are usually subsumed under one or more of the other groupings. \(^{80}\) Later, I will discuss whether all of these modes of treatment are the kinds of things that people can deserve as opposed to being the kinds of things that people can merit (section 3.5) or be entitled to (section 4.4). At this point in the discussion, however, it is enough simply to cite these lists in order to note some of the deserved modes of treatments that scholars have identified.

McLeod refers to desert bases as, “the sorts of things such that having [or doing] any of them would make a subject deserving.” \(^{81}\) What are these sorts of things? In Desert, George Sher offers the following examples of desert claims:

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

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80 Feinberg, “Justice and Personal Desert,” 75-76. He does not offer a detailed explanation of when and under what groupings these benefits and honors might be subsumed.
81 McLeod, “Desert.”
8. Anderson deserves his twenty-year sentence; he planned the murder.
9. Brown may have known he wouldn’t be caught, but he still deserves to be punished.
10. Winters deserves some compensation; he’s suffered constant pain since the shooting.
11. Lee deserves a reward; he risked his life.
12. Benson deserves some good luck; he’s a fine person.
13. Gordon deserves some good luck; he’s had only bad.
14. McArthur deserves a hearing; he’s an expert on the subject.
15. Cleveland deserves better publicity; it’s an interesting city.\(^{82}\)

One can see that all of these claims follow the formal structure $S$ deserves $M$ in virtue of $B$. To clarify, in all of the above examples except for (9), the desert bases are listed after the semicolons. In example (9), the desert base should be understood as some punishable offense. In all of these claims, $B$ changes the normative status of $S$ having $M$.\(^{83}\) Put differently, in all of these claims, $B$ is relevant to whether $S$ ought to have $M$. Upon further examination, however, not all of these claims will turn out to be legitimate desert claims. Regardless, the list is telling for it does track the way in which people often talk about desert.

**Some Remarks about What Desert Is Not**

A person’s deservingness is determined by whether he has or displays a relevant desert base. A judgment about whether a subject is deserving can be inappropriate or unfitting in at least the following four ways: (1) the judgment does not have a base, (2) the judgment simply is false, (3) the judgment includes a mistake in proportion, or (4) the judgment has a logically inappropriate base.\(^{84}\) Consider the following examples: (1) As noted above, the desert base or desert bases must be a fact or facts about the subject. One would not claim, for example, that

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\(^{82}\) Sher, *Desert*, 6-7.

\(^{83}\) Ibid., 7. The formula that Sher uses differs from mine, yet the point is the same.

\(^{84}\) This list adapted from Feinberg, “Justice and Personal Desert,” 75 and Kekes, *Against Liberalism*, 126.
someone deserves something for no reason whatsoever. (2) While “Jones deserves his success; he’s worked hard for it” is a logically appropriate claim, it could be false since Jones might not have worked hard. (3) One might say that Jones deserves praise as a result of his hard work at the local factory, but it would be a mistake in proportion to claim that Jones deserves to have a national holiday in his honor as a result of that hard work. (4) The claim “Jones deserves his success; his mother has had only bad luck” seems to appeal to a logically inappropriate desert base unless one can explain how his mother’s luck has changed some relevant fact about Jones. As noted above, the base or bases must be a fact or facts about the would-be deserving subject, and the luck of Jones’s mother is not such a fact. But it is not enough that the base simply is a fact, or the bases simply are facts, about the would-be deserving subject. While the base or bases being a fact or facts about the subject is a necessary condition, it is by no means sufficient. It is possible that the bad luck of Jones’s mother has made Jones sad, but it would be strange to argue that, as a result of this sadness, Jones deserves success. Likewise, Jones does not deserve success based on some insignificant or irrelevant fact about him, such as the fact that he is left-handed.

Sometimes need is offered as desert base, but it too is a logically inappropriate basis for desert. Need might be a good reason to distribute a benefit or harm, but need, in and of itself, logically cannot be a desert base. I am not arguing that need cannot accompany a desert base. One might both need and deserve the same thing, such as a pay raise from one’s employer. But in such a case the relevant efforts and performances of the employee would give rise to desert irrespective of whether he needed the raise. In fact, according to some accounts, the actions or inactions that contribute to one’s need might undermine as oppose to strengthen one’s claim that one deserves a benefit. Consider the case of an unemployed, needy man who is both

85 Kekes, Against Liberalism, 126-127.
intellectually and physically gifted, yet incredibly lazy. If his need is the result of his laziness, then his need would undermine his claim to deserving certain material goods. Of course, there will be certain cases in which need is a very important distributive criterion and desert is of little importance. If this lazy man is starving, then in all but exceptional cases he ought to be given food even if he has not done anything to deserve the food.

Similar to need, want is not a logically appropriate desert base. I might give a benefit to someone because he wants it, e.g., I might give my friend a golf club that he wants. If my friend has not made any special effort or performed any relevant action, however, he does not deserve the golf club. People want many things, e.g. fame and fortune, which they do not deserve.

3.3 Desert and Responsibility

_Feldman Against the Received Wisdom_

Some hold that for a subject to deserve something, the subject must be responsible for the desert base or bases. Fred Feldman refers to this belief as part of the “received wisdom” about desert.86 Feldman, who questions this connection between desert and responsibility, formulates the belief thusly:

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DR: \text{If } S \text{ deserves } x \text{ in virtue of the fact that } S \text{ did or suffered } y, \text{ then } S \text{ is responsible for doing or suffering } y.87
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According to Feldman, one can see that this formulation is wrong by considering cases in which an innocent victim is assaulted. As a result of the assault, the victim deserves something, e.g., compensation. It is clear, however, that the victim is not responsible for the assault.

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86 Feldman, “Desert: Reconsideration.” I will discuss another part of this “received wisdom,” which concerns the temporal orientation of desert, in the next section.
87 Ibid., 64. Included in the things that S did should be facts or characteristics about S for which S is (at least) partially responsible. Feldman is not clear on this point.
It might be argued, however, that someone is responsible for the assault – namely the assailant. With this in mind, the formula can be revised:

\[
\text{DR'}: \text{If } S \text{ deserves } x \text{ in virtue of the fact that } S \text{ did or suffered } y, \text{ then somebody is responsible for the fact that } S \text{ did or suffered } y. \quad 88
\]

According to Feldman, although this formulation is an improvement on the first, it is still problematic. The advantage of DR' over DR is clear. DR' allows one to say that S (the victim) deserves x (compensation) as a result of suffering y (an attack) for which somebody (the assailant) is responsible. Also, DR' is broad enough to allow for a case in which the agent who commits the act (the assailant) does not do so on his own accord. For example, it allows for a case in which the agent was hypnotized by an evil genius. It can be said that the victim deserves compensation based on the fact that the evil genius is responsible for the attack. 89

It seems as if DR' still does not go far enough, however. Imagine if the assailant attacked the victim not on his own accord, nor because he was hypnotized by an evil genius, but because he accidentally ingested a mind-altering chemical. Although one could argue that the assailant, the person who placed the chemical at the location where the assailant contacted it, or both of them are responsible for the assailant ingesting the chemical and, by extension, responsible for the resultant attack, the example can be framed so that such responsibility would be very weak or nonexistent. Or, if one prefers, imagine a case in which the assailant suffers from neurosis, cannot control his actions, and therefore cannot be held responsible for his actions. 90, 91

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89 One might argue that the assailant, who is now a victim too, can deserve compensation as a result of the actions of the evil genius.
90 This is based on the common view that one is not responsible for one’s actions if one suffers from severe mental illness. I thank Russell DiSilvestro for this example.
91 Feldman also rejects DR', although the example he uses to refute it differs from the examples introduced here. See “Desert: Reconsideration,” 69.
According to Feldman, also telling against DR’ is the idea that people can deserve things as a result of natural phenomena. For example, if one is inclined toward the view that tsunami victims deserve support as a result of their suffering through that natural disaster, DR’ is still not an adequate formulation since no one is responsible for the tsunami. In addition to one suffering as a result of natural disasters, DR’ would also leave out desert claims that result from one’s suffering at the hands of agents with dubious levels of responsibility, be they children, mentally handicapped or emotionally disturbed adults, or nonhuman animals.

It is important to make some preliminary distinctions here that I will discuss in greater detail in section 4.2. When one claims that a person deserves something as a result of a natural disaster or based on something that is done to the person, one is often appealing to the person’s moral desert. Moral desert is based on a person’s efforts and performances toward being morally virtuous or vicious in character and deed. In many contexts, since it is not clear against whom such claims are being made or what mode of treatment such claims give rise to, moral desert claims might be classified as non-enforceable or non-prescriptive. Nevertheless, such claims are common. One might claim that if she was a good person, a tsunami victim deserves financial support to replace her home and her belongings. One could argue that she would not deserve the same support if she had used her home to engage in illegal or immoral activities or if she had obtained her belongings by engaging in illegal or immoral activities. What these examples illustrate is that desert in such cases is based on one’s past performances and present characteristics.

Negative and Positive Responsibility

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92 In cases of natural disasters, one might think that the victims deserve assistance, sympathy, and the like without thinking these desert claims give rise to any prescriptions for action.
93 This definition is based, in part, on one offered by Hurka in “Desert: Individualistic and Holistic,” 44.
Regardless of whether one thinks that responsibility is always a prerequisite for desert, one can see that responsibility often plays a major role in what one does or does not deserve since many, if not all, desert claims arise from human performance. To strengthen the connection between responsibility and desert in the face of examples that are not consistent with DR and DR’, Saul Smilansky endorses the idea of “negative responsibility” in addition to the customary “positive responsibility.”94 Smilansky argues that simply in virtue of being persons, we deserve a certain baseline of treatment unless we do something to forfeit said treatment.95 For example, since I am human, I *prima facie* deserve a certain security of life and limb. Unless I do something to forfeit this security, such as stick my head in an alligator’s mouth, then I deserve this security. If someone harms me through no fault of my own, then I deserve compensation.

Smilansky’s argument is as follows:

1. We assume background conditions delineating those to whom categories of responsibility and desert apply (persons of a certain capacity).
2. We assume a “baseline” of desert (e.g. everyone deserves fresh air).
3. The only way in which people can come not to deserve the “baseline” is through being responsible for not deserving it.
4. Hence, if people suffer from the lack of the “baseline” without being responsible, they do not deserve to suffer.
5. In such a case they deserve as a consequence e.g. compensation.
6. Desert, then, can follow from “positive responsibility”, from what one is responsible *for* doing or suffering; or from “negative responsibility”, from suffering (lack of the “baseline”) *without* being responsible for this.

94 Smilansky, “Responsibility and Desert: Defending the Connection.”
95 One might want to say that, as persons, we are entitled to, as opposed to deserve, certain treatment.
7. Desert due to “negative responsibility”, as in (5) above, can be seen as “second-order” desert, for one deserves compensation for not receiving one’s “first-order” desert.\(^{96}\)

Since I am focusing on how desert pertains to standard adult humans, sentence (1) is not troublesome. The extent to which responsibility and desert apply to chimps or dogs is an important question, yet it is not germane to this discussion.\(^{97}\) What is germane is that responsibility and desert apply to standard adult humans. If desert can flow from both positive and negative responsibility, then Feldman’s objections to the received wisdom about the connection between responsibility and desert can be met. But should Smilansky’s account be accepted?

It is important to note that Feldman does not subscribe to all of the specifics that are included in Smilansky’s argument that is detailed in sentences (1) – (7) above. Still, both Smilansky and Feldman reject DR and DR’, and therefore deny that desert is necessarily tied to the “positive responsibility” of the supposedly deserving subject or any moral agent for that matter. It is interesting to note that both Smilansky and Feldman claim that receiving or enduring something that is not deserved can, in and of itself, give rise to desert. Let us consider how this idea would apply in a couple different cases. Imagine that a person receives some benefit, such as a job, that he does not deserve. Does he thereby come to deserve something else negative that will counterbalance the benefit that he received? Or, if he were to receive some gift that he does not deserve, such a plasma television, does he thereby deserve something negative to counterbalance the receipt of the television? In both of these cases, the answer is “no.” So, if

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\(^{96}\) Smilansky, “Responsibility and Desert,” 160.

\(^{97}\) One could argue that animals can “negatively” deserve certain treatment in that they are moral patients and that some can “positively” deserve certain treatment to the extent that they are moral agents. See Tom Regan, *The Case for Animal Rights*, for a discussion of moral patients and moral agents (151-156).
a person receives something positive that he does not deserve, he does not thereby deserve to have something negative happen to him to counterbalance the positive.

Perhaps these examples overlook an important aspect of Smilansky’s and Feldman’s examples. In their examples of assailants, natural disasters, and the like, the subject first receives something negative while in the above examples of the job and the plasma television, the subject first receives something positive. But even if a person receives a job that is quite unpleasant, it would be odd to claim that he thereby deserves something, such as a new job, to counteract this unpleasantness unless he has done something else that makes him deserving of a new job. Therefore, the idea that something that is not deserved leads, in and of itself, to some other desert regardless of what a person has done should be rejected.

**Conclusion**

Smilansky refers to desert due to “negative responsibility,” which is a kind of derivative desert, as “second-order” desert. It seems that this “second-order” desert is not desert in the strict sense, but rather something that is related to desert or that is an outgrowth of desert.98 This is not to say that people should not assist those who suffer the misfortunes described by Smilansky and Feldman, but rather that the reasons why people should help the misfortunate in those situations are not necessarily based on what those suffering people deserve. Even if one accepts the idea that the misfortunate in such cases deserve assistance, this kind of “desert” is especially vulnerable to the “free floating” objection that was addressed above (49-50). The reason why this kind of “desert” is especially vulnerable is because it is unclear who, if anyone, is charged with rectifying misfortunes brought about by natural disasters, humans and nonhuman animals of dubious moral agency, or by chance. Of course, this objection does not by itself

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98 Later in this chapter (88ff), I will discuss David Miller’s idea of “secondary desert.” Like second-order desert, secondary desert seems to be an idea that is related to, yet distinct from, the concept of desert.
establish that Smilansky’s or Feldman’s accounts of the connection between responsibility and desert are wrong. The objection does lead one to wonder about the prescriptive effect of such accounts in issues of distributive justice, however. Regardless of whether one agrees with Smilansky’s or Feldman’s accounts of the connection between responsibility and desert, Feldman offers a second important challenge to the received wisdom. This challenge, which concerns the temporal orientation of desert, is endorsed by Smilansky.99

3.4 Desert and Time100

Introduction: The Temporal Orientation of Desert

Most desert theorists argue that, if desert is to be a defensible concept, it must be backward looking. James Rachels writes, “What people deserve always depends on what they have done in the past.”101 Joel Feinberg writes, “If a person is deserving of some sort of treatment, he must, necessarily, be so in virtue of some possessed characteristic or prior activity.”102 David Miller contends, “Desert judgements are justified on the basis of past and present facts about individuals, never on the basis of states of affairs to be created in the future. Desert is a ‘backward-looking’ concept, if we regard the present as the limit of the past.”103 According to this standard account, a person’s desert is based strictly on past and present facts about him.

Another part of the “received wisdom” about desert that Feldman rejects is the idea that desert based on what a person does or suffers must be backward looking.104 David Schmidt offers a promissory account of desert in which he challenges certain conventional views about

99 Smilansky claims that Feldman is “clearly more successful here than with responsibility, and we are in his debt.” See Smilansky, “Responsibility and Desert,” 161-162.
103 David Miller, Social Justice, 93.
104 Feldman, “Desert: Reconsideration.”
If desert can be forward looking, then a person can make a desert claim for a benefit before she has done anything to ground that claim. Consider a situation in which two people are interviewing for a professorship at a university. Even if they have had similar opportunities in the past, the one who has done much less with her opportunities can claim that she deserves the job based on her future performance. If desert can be forward looking, then, insofar as desert is a relevant distributive criterion in this context, the less accomplished candidate’s claim must be taken seriously.

In what follows, I examine Feldman’s and Schmidtz’s challenges to the standard, backward-looking account of desert. I argue that Feldman’s examples do not establish that a person’s desert at present can be based on what will occur in the future and that Feldman introduces an unnecessary asymmetry regarding desert’s temporal orientation in different contexts. I disambiguate the two main elements of Schmidtz’s promissory account, and I explain why those elements might be problematic. While defending the forward-looking element of his promissory account, Schmidtz suggests that people’s dispositions are desert bases. I explain why this suggestion is inconsistent with forward-looking desert. In section 3.5, as a part of a longer discussion of the similarities and differences between desert and merit, I argue that some dispositions might be desert bases and others might be merit bases.

Feldman Against the Received Wisdom

In “Desert: Reconsideration of Some Received Wisdom,” Feldman formulates the received wisdom about desert’s temporal orientation as follows:

DT: If at t S deserves x in virtue of the fact that S did or suffered something at t', then t' cannot be later than t.\textsuperscript{106}
Feldman offers two examples in an effort to refute DT. The first example involves sick children and the charitable organization the Make-a-Wish Foundation, and the second example involves soldiers who volunteer for suicide missions. Feldman refers to arguments that explain the examples of the children and the soldiers in ways that are consistent with DT as “desperate manoeuvres.”

Feldman contends that sick children can deserve charitable benefits in advance for the suffering they will endure. For those skeptical of this kind of desert-in-advance thesis, Feldman asks the reader to consider the following: Two children have been sick for several months. One child has a good prognosis, and the doctors are confident that she will make a full recovery soon. The other has a much worse prognosis, and “the doctors are perfectly certain that he will soon die.” If the Make-a-Wish Foundation were to stipulate that an all-expense-paid trip to Disneyland will be given to the most deserving child, which of the two children should receive the trip?

One could argue that these children deserve benefits based simply on what they have already contracted or already suffered. Feldman rejects this argument. He thinks that the child with the worse prognosis would be more deserving of the trip since that child is going to suffer greater misfortune in the future than his counterpart. One might object that the term “desert” is being misused in this example by claiming that, although kindness and sympathy might lead people to want to give certain benefits to the child, strictly speaking the child does not deserve anything for his suffering. Feldman rejects this idea, finding it “deeply implausible – perhaps even offensive,” although why he finds it so is unclear. A claim need not be a desert claim in

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107 Ibid., 71. Kristjánsson provides a brief argument against Feldman’s account of forward-looking desert in “A Utilitarian Justification of Desert in Distributive Justice,” 152.
109 Ibid., 7In10.
order to be an important normative claim about generosity or justice. Both morality and justice have many important conceptual components. One can deny that the child deserves the trip without thereby committing oneself to denying that there are strong moral reasons or reasons of justice why the child ought to receive the trip.

At least part of the argument about whether the child deserves the trip based on his suffering, whether that suffering is in the past, present, or future, depends on the role of a person’s responsibility in establishing his desert. Certainly, if one thinks that a person must be responsible for X in order to deserve something based on X, then one would not think that the child deserves a trip based on his suffering. As I addressed above (section 3.3), Feldman argues against the idea that a person must responsible for a desert base in this way.\textsuperscript{110} Regardless of the strength of the connection between responsibility and desert, a general concern with Feldman’s conception of desert is that it seems too broad. For example, he suggests that need can be a desert base.\textsuperscript{111} As I addressed above (53-54), what a person needs will often be a determining factor in what he ought to receive, but it is not clear how need, by itself, can make a person deserving of some particular treatment.\textsuperscript{112}

Returning to the example of the child with the worse prognosis, if the claim that he deserves the trip more because of what he will suffer in the future is correct, then DT is wrong and desert is not necessarily rooted in the past or present. But is this claim correct as a desert claim? If both children have suffered equally and are otherwise deemed equally deserving based on what has occurred until the time that the decision about the trip is made, it seems more

\textsuperscript{110} Ibid., 68-69.
\textsuperscript{111} Ibid., 67.
\textsuperscript{112} Although Schmidtz argues that need is a reason for caring about desert, he too contends that need is not a desert base. Schmidtz, “How to Deserve,” 788-789.
accurate to claim that in this case one cannot rely on desert in order to determine who ought to receive the trip.

When we are faced with a situation in which we are charged with benefiting the most deserving person, but desert does not settle the matter, we have two choices. We can either not distribute the benefit or we can invoke other concepts or principles to determine the matter. In the case of the sick children, we would likely reason that since one child has a better prognosis, chances are she will have opportunities in the future to go to Disneyland or experience other pleasures in life. Conversely, it is likely that the child with the worse prognosis will not have such opportunities. Even if we somehow know that the child with the better prognosis will not have the opportunity to go to Disneyland (although it is not clear how we could be certain of this), we think that she will have the opportunity to continue living a life that is better than that of the other child. Assuming, as the example seems to require, that the child with the better prognosis is thought to be in a better position than the child with the worse prognosis, the child with the worse prognosis ought to be given the trip. A basic egalitarian concern about the overall quality of a person’s life can support this judgment.113 We can agree with Feldman about who ought to receive the trip without invoking the concept of desert. “Deserves” is not synonymous with “ought to receive.”

In another example offered in an effort to refute DT, Feldman considers the case of soldiers who have volunteered for suicide missions. Feldman writes that these soldiers can deserve honors such as celebrations, medals, and promotions in virtue of what they will do.114 That is, Feldman thinks that the soldiers can deserve these honors before they complete their

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113 I thank Steven Wall for suggesting this point.
114 I put aside the question of whether such suicide missions are appropriate desert bases.
missions. He rejects the explanation that these soldiers deserve the honors based on the fact that they have already volunteered for the missions.\footnote{Feldman, “Desert: Reconsideration,” 71.}

We can question the way in which Feldman uses the concept of desert in explaining why we might want to or why we should want to give such honors to the soldiers. We might think that having a celebration in the honor of a soldier who volunteers for a suicide mission is the right thing to do since, if he follows through with his mission, he will not be alive to receive the honors that he deserves.\footnote{This assumes that the dead can deserve honors.} But holding the celebration before the mission is completed need not say anything about the soldier’s desert before the mission is completed. We might think that it is better to err on the side of showing our appreciation now, assuming that the soldier will complete his mission and thereby become deserving. The soldier does not deserve the celebration before he completes the mission, however.

Suppose one agrees that DT is false. One could argue that the reason the child and the soldier do not deserve any benefits before the future suffering and the suicide occur is because the desert bases in question are not settled at those times. Feldman offers the following formulation of settled desert:

\[
\text{DS: If } a \ t \ S \text{ deserves } x \text{ in virtue of the fact that } S \text{ did or suffered something at } t' \text{, then the fact that } S \text{ did or suffered that thing at } t' \text{ is already settled at } t.\footnote{Feldman, “Desert: Reconsideration,” 73.}
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Feldman suggests that the reason people might believe DT is because they believe DS and confuse the two. Feldman also rejects DS. Interestingly, in his discussion of DS, we find that Feldman considers the suffering of the child with the worse prognosis to be settled in advance.\footnote{Ibid.} But myriad events can transpire after t that would affect, for better or worse, the
extent to which the child suffers. It is possible, for example, that the child could make an unexpected recovery. If this were to happen, then the supposed desert base would not obtain.¹¹⁹ Feldman also suggests that the fact that a soldier will complete a suicide mission can also be settled in advance of the mission being completed.¹²⁰ There is always the possibility, however, that after enjoying a celebration in his honor the soldier decides not to complete the mission. Even if desert bases can be settled in advance, they are not in the cases of the child and soldier.

Feldman offers an example that he thinks involves a legitimate non-settled desert base:

Consider this example: a customs inspector may realize that he is about to invade the privacy of a traveller. The traveller has done nothing wrong, and yet his bags are going to be searched. The inspector says, “I’m sorry sir, but you will have to open all these bags, and allow us to search through them.” The inspector is apologizing for something that is about to happen. It is reasonable to suppose that the innocent traveller deserves the apology even before his privacy has been invaded.¹²¹

In this example, the subject (the traveler) is said to deserve something (an apology) based on what another (the inspector) is going to do. Let us grant that a traveler can deserve an apology from an inspector when the inspector searches the traveler’s bags.

In the traveler example, as in the examples of the child and soldier, we are confronted with a story about someone deserving something absent a desert base. In all three examples, we are told that a person deserves something at t, when there is no fact of the matter at t, no desert

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¹¹⁹ Recall that Feldman contrasts the desert of the child with the worse prognosis with the desert of another child. Therefore, events that transpire after t that affect the extent to which either child suffers would be relevant in determining which child ought to receive the trip.


¹²¹ Ibid.
base, to establish that person’s desert at t.\textsuperscript{122} Regardless of whether the inspector searches the bags eventually, there is no desert base at the time the apology is given. Why does the inspector offer the apology in advance? Perhaps he offers the apology as a polite way to make known his intention to search the bags and to inform the traveler that if he searches the bags, then he will be sorry. But the desert base will obtain later only if the inspector searches the bags. If the inspector changes his mind, or if he leaves to respond to an emergency and never searches the bags, then a desert base never obtains. In virtue of what would the traveler deserve the apology at the time it was given, a time “before his privacy has been invaded”? Feldman might reply that there is in fact a desert base before the bags are searched, perhaps the desert-making property of \textit{going to have one’s privacy invaded} or \textit{going to be inconvenienced}. We should question whether desert-making properties of this type obtain given sufficient conditions that lie in the future.\textsuperscript{123} We should question this not only for epistemological, but also for metaphysical reasons. I contend that it is doubtful such desert-making properties ever obtain.

Because Feldman’s view goes against the received wisdom about desert, he bears an extra burden of proof if he is to overturn that wisdom. In addition to the fact that the examples of the child, soldier, and traveler can be explained without relying on forward-looking desert, there is another reason to reject his account: it introduces an unnecessary asymmetry regarding desert in different contexts. Consider, for example, the distribution of benefits given to the soldier compared to the distribution of harms, particularly in cases of retributive justice. Even if one is inclined to believe that a soldier can deserve a celebration when it is held at t based on what he will do after t, it seems implausible that a person can deserve to be punished at t based on what he will do after t.

\textsuperscript{122} This assumes that one follows Feldman in rejecting the aforementioned alternative desert bases.
\textsuperscript{123} This phrasing is based on comments by Tully Borland.
Notice that this asymmetry between the desert of a celebration, or benefits in general, and the desert of a punishment, or harms in general, is not merely an asymmetry between the role of desert in these different contexts. Rather, it is an asymmetry between the metaphysics of desert itself in these different contexts. Feldman argues that the soldier’s desert obtains at t, prior to his completing the mission. If this is true, one might wonder why a criminal’s desert does not obtain prior to his committing a crime. According to Feldman’s account, desert itself seems essentially backward looking when used in the distribution of harms, but not essentially backward looking when used in the distribution of benefits. A defense of this metaphysical asymmetry is needed and Feldman does offer reasons for accepting it. I will argue that the reasons he provides are not convincing.

Feldman discusses the constraint in the United States criminal justice system according to which a person cannot be punished for a crime he has yet to commit regardless of whether we know, or think we know, that he will commit the crime. Feldman refers to the commitment to this constraint as “almost fanatical” in some cases, which suggests that he thinks there are times when the constraint should not be so constraining. But what is more interesting for this discussion of the proposed asymmetry between desert in distributive and retributive contexts are the “good reasons” he offers for abiding by this constraint. Two of these reasons seem especially relevant to the discussion here.

One reason offered by Feldman is epistemological, based on the fact that “we rarely know precisely what the future will bring.” I suggest that it is not clear we ever know precisely what the future will bring. One reason for this lack of knowledge in the case of the

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124 Schmidtz also notes and accepts a type of asymmetry between desert in distributive contexts and desert in retributive contexts. Schmidtz, “How to Deserve,” 783-784.
126 Ibid.
would-be criminal is due to the metaphysical possibility that he will not commit the crime, a possibility that is granted by Feldman. I argue that similar epistemological and metaphysical uncertainties are present in the examples of the child, soldier, and traveler.

Another reason Feldman gives for not punishing a person in advance of his committing a criminal act is based on the idea that a person will deserve a punishment only if he is responsible for committing the crime. As mentioned earlier, Feldman argues against the idea that responsibility is a necessary condition for all desert. Regardless of the relationship between responsibility and desert in general, the soldier would be responsible for the act of suicide. As regards the criminal, Feldman writes:

We think he will deserve the legally mandated punishment only if he will be responsible for the crime; and we think he will be responsible for the crime only if he will commit it “freely”; and we think that if he will commit it “freely”, then it cannot yet be quite certain that he will commit it. There must still be some possibility that he will decide not to commit it. So we insist upon a legal system that prohibits punishment-in-advance.  

The reason why we insist upon a legal system that prohibits punishment-in-advance is not merely because we are not certain that a particular person will commit a particular crime, but also because there is no desert base in advance of the criminal act. Likewise, there is no desert base in advance of the soldier completing the suicide mission. Again, as mentioned above, there may be good reasons why we should give the soldier a celebration, medal, or promotion in advance of his desert-making act. And we may be more willing to confer undeserved benefits rather than undeserved harms in most cases simply because conferring undeserved harms is

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127 Ibid., 75.
128 In some cases the punishable crime is what a person does in the present to plan or solicit another punishable crime in the future, e.g., when a person plans or solicits murder.
considered to be especially unjust. But none of these considerations are relevant to establishing a
person’s deservingness before he performs the desert-making act(s).

Schmidtz on Desert as Promissory

In “How to Deserve,” David Schmidtz argues against certain aspects of the conventional
view about desert. According to Schmidtz, one aspect of this view seems to be that “…when we
first receive (for example) our natural and positional advantages, if we have not already done
something to deserve them, it is too late. We are born into our natural and positional advantages
by mere luck, and that which comes to us by mere luck cannot be deserved.”

Schmidtz’s article is, in part, a response to John Rawls. Rawls argued that a person’s
desert is undermined by his luck starting at the moment of his birth. This view is captured in the
following passage that, in Chapter 2, I referred to as MA:

It seems to be one of the fixed points of our considered judgments that no one
deserves his place in the distribution of native endowments, any more than one
deserves one’s initial starting place in society. The assertion that a man deserves
the superior character that enables him to make the effort to cultivate his abilities
is equally problematic; for his character depends in large part upon fortunate
family and social circumstances for which he can claim no credit. The notion of
desert seems not to apply to these cases.

As I noted in Chapter 2, Rawls claims that desert does not apply to three separate yet
related things:

1. One’s place in the distribution of native endowments.

2. One’s initial starting place in society (the family and social circumstances into which

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129 Schmidtz, “How to Deserve,” 778.
130 Rawls, Theory of Justice, 104.
one is born).

3. One’s superior character.

Schmidtz believes that we can come to deserve our “natural and positional advantages” even if they are a result of luck. He argues that although we have done nothing to deserve these advantages initially, we can come to deserve them based on what we do after receiving them.\footnote{Schmidtz writes that he “followed Rawls in assuming for argument’s sake that natural and positional advantages are on a par” in “How to Deserve,” 799n49. I agree with Schmidtz in thinking that we should question this assumption. See also “How to Deserve,” 792.}

Schmidtz’s claim, which could fit nicely with Feldman’s soldier example, is:

We sometimes deserve X on the basis of what we do after receiving X rather than what we do before.\footnote{Schmidtz, “How to Deserve,” 778.}

It is important to note that this claim is more modest than what Feldman argues in the soldier example. According to Feldman, the desert of the soldier is supposed to obtain before the mission is completed. Schmidtz’s claim, however, does not specify \textit{when} it is we deserve. Based on his claim, one could argue that the soldier does not deserve the celebration when it is held, but that he can come to deserve the celebration after it is held. Although the celebration is received prior to the completion of the mission, the soldier’s desert is not established until after the mission is completed. Even if Schmidtz’s claim can be used in the example of the soldier, however, it might be problematic in some of the cases he describes.

Schmidtz thinks his claim, which may seem counterintuitive to some, is buttressed in part by ordinary language usage. He writes that when a new employee pledges to work hard in order to deserve a job offer she has already received, “No one thinks the vow is paradoxical.” He continues, “But unless such everyday vows are misguided, we can deserve X on the basis of
what we do after receiving X.”\textsuperscript{133} So, if such claims are not misguided, we can deserve X based on what we do after receiving X.

Even those who are not generally skeptical of desert, however, might think that Schmidtz’s claim is questionable. Perhaps some do not find the employee’s vow paradoxical because they do not have a well-considered view of desert, or perhaps some do not take the employee’s vow literally in the sense that there is anything she can do at t₂ (after receiving an offer) that can make her deserve an offer that was received earlier at t₁. A person can give evidence after the fact that she was or was not the type of person who deserved an offer that she already received, but this evidence is not a basis of desert for what she already received. What she does at t₂ could show that a prediction about her at t₁ was accurate or inaccurate, but this does not make her more deserving of what she received at t₁. Perhaps after t₁ the employee can show that she deserves to keep her job, but this is not the same as showing that she deserved the job offer, that she deserved being hired in the first place.

Another counterexample involving an analogous situation will be useful in strengthening my argument. Sally was intelligent and hardworking. She took the most demanding course load available at her high school while earning straight A marks, her standardized test scores were in the ninety-eighth percentile, she scored very highly on a variety of Advanced Placement subject tests, and she had a long list of extracurricular activities. She managed to accomplish all of this while working part-time during the school year and full-time during the summer, and while assisting her single mother in caring for her mentally handicapped younger brother. She was admitted into Harvard and was expelled after one year. I contend that her expulsion does not disprove that she deserved to be admitted. Why? Because nothing she does after t₁ can change what she accomplished or what characteristics she displayed before and at t₁.

\textsuperscript{133} Ibid.
Sarah was a slacker who was admitted into Harvard because her father, who had also
gone to Harvard, was a generous donor. Sarah had many advantages in life. She had a wealthy
and supportive family, she was never wanting for anything either emotionally or materially, and
she went to the best private high school in the Northeast. Once at Harvard, Sarah finally buckled
down. She became a straight A student, went to Yale medical school, and is now a world-
renowned heart surgeon.

Certainly, it should be said that Sarah made much better use of her opportunity to attend
Harvard than Sally did of hers. And a case could be made that since luck plays a role in
everyone’s life, both Sally and Sarah deserve to be where they are today. But it seems to do
violence to the concept of desert to claim that at \( t_2 \) (when Sarah is a successful heart surgeon and
Sally is doing an eight-to-ten stretch for armed robbery), Sarah, the high school slacker, deserved
to be admitted to Harvard. Although Schmidtz’s view does not necessarily commit one to such a
claim, it would be equally difficult to argue that Sally, the high school valedictorian, did not
deserve to be admitted to Harvard.

In anticipation of this type of objection, Schmidtz offers the following example:
“Two students receive scholarships. One works hard and gets excellent grades while the other
parties her way through her first year before finally being expelled for cheating. Does their
conduct tell us \textit{nothing} about which was more deserving of a scholarship?”

He continues:

can we defend the convention (that whether we deserve \( X \) depends on what
happens before we receive \( X \)) by saying the students’ conduct is relevant only
because it reveals what they were like before receiving the award? It would
appear not. When we look back at the expelled student’s disgraceful first year,
our reason for saying she did not deserve her award has nothing to do with speculation about what she did in high school. We may agree that both students were equally qualified for scholarships qua reward. Or suppose they were equally unqualified; both were chosen via clerical error and prior to the award were equally destined for a lifetime of failure. The difference lies in subsequent performance, not prior qualifications. What grounds our conviction that one is more worthy of the scholarship qua opportunity is that one student gave the opportunity its due; the other did not.\textsuperscript{134}

Schmidtz asks the reader to consider cases in which both applicants are seemingly equally deserving or equally undeserving at time $t_1$. Presumably, this is because some readers, seeing that there was no detectable difference between the students’ deserts at $t_1$, might be inclined to attempt to establish some ex post facto distinction between their deserving to receive the scholarship based on what they did with their opportunities. But when we complicate the example and consider a case in which the undeserving student excels and the deserving student founders, our convictions are not what Schmidtz claims them to be. It seems as if any tendency to claim that what a student does at $t_2$ has bearing on what she deserved at $t_1$ has to do with the thought, however reasonable or unreasonable, that there must have been some desert base at $t_1$ that we either missed or identified correctly. Again, it is not the case that what someone does at $t_2$ makes her more deserving of what she received at $t_1$, but it is simply that we might take what is done at $t_2$ as evidence for desert at $t_1$. Schmidtz asks if “their conduct [after receiving the scholarship] tells us nothing about which was more deserving of a scholarship?” He also ponders why we say, “she did not deserve her award.” As I argued above about deserving a job,

\textsuperscript{134} Ibid., 779.
I argue that the students’ conduct certainly tells us which one deserved to keep the scholarship, but not which one deserved to be given the scholarship.

Recall, Schmidtz’s claim is:

We sometimes deserve X on the basis of what we do after receiving X rather than what we do before.

So, all he would need to establish this claim is one clear example in which someone deserves X on this basis. But if I am correct that Schmidtz’s scholarship and job examples do not do the work that he thinks they do, then he has failed to give us a reason to believe that one ever deserves X on the basis of what one does after receiving X. He still has the burden of proof to supply a convincing example.

Regardless of whether one thinks that a person can come to deserve X after receiving X, Schmidtz’s more modest claim does not pose an overly strong threat to the received wisdom about the temporal orientation of desert. According to this claim, a person’s desert is not established until she performs the actions that ground her desert. Therefore, desert remains essentially backward looking.

In his promissory account of desert, Schmidtz makes further claims to both clarify and add to the more modest claim that “we sometimes deserve X on the basis of what we do after receiving X rather than what we do before.” I will argue that although Schmidtz intends for part of his promissory account to be forward looking, it is unclear to what extent any of the account is or can be forward looking. Schmidtz’s promissory account contains the following two elements:

Element (a): A person who receives opportunity X at t₁ can be deserving at t₂ in virtue of having done justice to it.
Element (b): A person who receives opportunity X at t₁ can be deserving at t₁ in virtue of what she will do if given the chance.¹³⁵

Element (b) presents a stronger challenge to the received wisdom about desert than does element (a). But before considering element (b), I will first discuss element (a).

Element (a) is ambiguous between two ideas. One idea, perhaps the less controversial of the two, is that although a person might not deserve an opportunity at t₁, she can still deserve something at t₂ that she could not have obtained without the original opportunity. Desert theorists often endorse this idea, which I will refer to as element (a₁):

A person who receives opportunity X at t₁ can be deserving of Y at t₂ in virtue of having done justice to opportunity X between t₁ and t₂ and X ≠ Y.

Element (a₁) seems to be captured by one reading of element (a). According to element (a), a person who receives opportunity X at t₁ can deserve something Y at t₂ as a result of taking advantage of the opportunity by performing desert-making acts between t₁ and t₂. The person is deserving at t₂ of something she has, but this claim is made without the stronger claim that in order to be deserving at t₂ what she has done between t₁ and t₂ somehow makes her deserve what she received at t₁.

This stronger claim is indeed what Schmidtz intends to be making in element (a) for he writes, “Element (a) therefore is the essence of the promissory model’s departure from the idea that we deserve X only if we deserve it as a reward for past performance.”¹³⁶ We can rephrase this understanding of element (a) so that it too is clearer. I will refer to this claim as element (a₂):

¹³⁵ Ibid., 781. I thank Russell DiSilvestro for his assistance in formulating the disambiguated versions of these two elements that follow.
¹³⁶ Schmidtz, “How to Deserve,” 782.
A person who receives opportunity X at t₁ can be deserving of opportunity X at t₂ in virtue of having done justice to opportunity X between t₁ and t₂.

We need to be clear about what opportunity X might designate. Being given an opportunity could be understood as single and momentary event. We could understand Schmidtz to be arguing, for example, that someone who was hired at t₁ can come to deserve that opportunity, the single event of being hired (at t₁), at a later time. This is different, and more controversial, than arguing that a person can come to deserve a job although she did not deserve to be hired. A person can deserve a job even if she did not deserve being given the job initially because, unlike being given a particular opportunity at t₁, the job continues over an extended period of time. If Schmidtz is claiming that the opportunity is the ongoing job and not simply the event of being hired, then his claim is similar to those made by other desert theorists. If this is his claim, however, then he does not address Rawls’s claims in (1) and (2) above, since only (3), one’s superior character, is ongoing in the sense that it continues to develop over time. Depending on how they are understood, the truth of some desert claims can change based on further action or based on inaction. What can change after t₁, based on subsequent performance, is whether a person deserves (present tense) to keep her job. What does not change is whether a person deserved (past tense) to be hired.

Element (a), regardless of whether it is understood in terms of element (a₁) or element (a₂), does not challenge the received wisdom about desert to the extent that Feldman’s view does. Even in element (a₂), Schmidtz does not argue that a person deserves X before she does anything to ground that desert. Rather, he argues that a person can deserve something she already

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137 One’s native endowments can be developed, but the “distribution” of one’s native endowments occurs once (presumably before birth) and cannot be changed by future events. Similarly, one’s place in society can change, but one’s initial starting place in society cannot. I am not suggesting that deserving one’s superior character is equivalent deserving to keep one’s job, nor am I attributing such a view to Schmidtz.
received, but not until she performs the actions that ground the desert. That is, although she received the deserved thing at $t_1$ she did not deserve that thing until she performed the requisite actions between $t_1$ and $t_2$. The reason why element (a$_2$) makes a departure from the idea that a person deserves $X$ only if she deserves it as a reward for past performance is not because the desert is forward looking in cases captured by element (a$_2$), but rather because one would not usually classify something that was received before a performance took place as a reward for a past performance.

Turning our attention to element (b) we see that, since it appears to be forward looking, it presents a much stronger challenge to the received wisdom about desert than does element (a). Element (b), which seems to capture some of Feldman’s arguments against DT, also needs to be disambiguated. We can rephrase this claim, which I will refer to as element (b$_1$), to read:

A person who receives opportunity $X$ at $t_1$ can be deserving of opportunity $X$ at $t_1$ in virtue of what she will do if given the chance.

According to this element, a person can be deserving at $t_1$ based on what she will do after $t_1$. Schmidtz thinks we need this element “only insofar as we seek to vindicate ordinary practice, and in particular our tendency to speak of candidates as deserving a chance in virtue of what they can and will do if given a chance.”$^{138}$ In defense of this element, Schmidtz offers the following:

Suppose at $t_1$ we say Jane will be married at $t_2$. Jane then gets married. In that case, events at $t_2$ have indeed settled the truth-value of a claim uttered at $t_1$. Does anyone find this puzzling? So far as I know, no one speaks of future events as backward-causing a prediction to be true. Future events simply settle that a prediction was true. Events at $t_2$ can settle the truth-value of a claim like, “She’ll

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$^{138}$ Schmidtz, “How to Deserve,” 782.
get married, given the chance.” They also can settle the truth-value of a claim like, “She’ll do justice to X, given a chance.” There comes a time when we can say, “You said she’d get married; it turns out you were right,” or when a committee can say, “We said she’d do justice to the opportunity; it turns out we were right.” In either case, Jane settles what had been unsettled. “She deserves X,” meaning she will do justice to it if given a chance, is no more paradoxical than “Salt is soluble,” meaning it will dissolve in water if given a chance.139

It is noteworthy that Schmidtz equates “deserves X” with “will do justice to X, given a chance.” Certainly, this understanding of “deserves” is not commonly found in the literature. Notice that he defines the present tense “deserves” in terms of the future tense “will do justice to.”140

This definitional issue is especially important when one considers that Schmidtz attempts to draw an analogy between “will be married” and “will do justice to” or, put differently, “will be married” and “deserves.” When one makes a prediction at t₁ that Jane will be married at t₂, one is predicting a state of affairs that will obtain at t₂, yet does not presently obtain at t₁. When one claims that another deserves X at t₁, one is - or one usually thinks one is - making a claim about a state of affairs that obtains now. If one were to make a prediction at t₁ that another will do justice to something at t₂, one would be making a prediction about a state of affairs that will obtain at t₂, yet does not presently obtain at t₁. Referring to element (b), the claim Schmidtz makes is “a person . . . can be deserving at t₁,” but the claim he chooses for his analogy is “Jane will be married at t₂.” Something is amiss.

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139 Ibid., 782-783.
140 Schmidtz also writes of “having done justice to” an opportunity in element (a). One could question that formulation too. Regardless, that formulation does differ from “will do justice to” in that “having done justice to” speaks of justice having been done in the past as opposed to the promise of justice being done in the future.
In addition to the problem with the analogy, there is a question about what people mean when they “speak of candidates as deserving a chance in virtue of what they can and will do if given a chance.” I hesitate to give too much weight to this way of talking for it might be attributable to inexact language usage as opposed to a well-considered view of desert. That concern aside, we should ask: what is the underlying basis for making the claim that a person can and will do well if given a chance and, therefore, that she deserves a chance? Elsewhere, Schmidtz writes, “We may say a young job candidate deserves a chance not because of any work she has done but rather because she is plainly a talented and well-meaning person who wants the job and who will throw herself into it if given the chance.”\textsuperscript{141} But in order to claim that a person is talented and well meaning, she must have exhibited these characteristics in some way.

Consider the case of a young scholar who has applied for a junior faculty position. Although she might not have done any work in the department to which she has applied, certainly she has done \textit{some} work. It seems as if claims about her being talented, well meaning, and the like must be based on some characteristics possessed by or things already done by her. How else could we know either what she can do or make an informed prediction about what she will do? Unless we have identified a base that is present at \( t_1 \), what reason would we have for thinking that she can or will do anything in particular? If it is granted that such a base is needed, as it seems it must be, then her deserving a chance at \( t_1 \) would be based on her characteristics present at \( t_1 \), her actions at or before \( t_1 \), or both. Schmidtz does not deny that these bases exist,

\textsuperscript{141} Schmidtz, “How to Deserve,” 780. This quote suggests that at least part of the reason why the candidate deserves a chance is because she is presently talented and well meaning.
nor does he deny that they can be identified. According to element (b), however, these bases are not what establish a person’s desert at $t_1$.\footnote{While comparing and contrasting deserving with earning, Schmidtz writes that “what Jane deserves has relatively more to do with her character” and that “Jane’s character can be manifest before she supplies the requisite [desert-making] inputs.” Schmidtz, “How to Deserve,” 784.}

Schmidtz might be committed to a backward-looking view in Jane’s case. He uses the example of salt’s dispositional property of solubility and he writes about Jane having “relevant dispositional properties at $t_1$.\footnote{Schmidtz, “How to Deserve,” 783.}” If Jane does have these dispositional properties, then these properties could serve as the desert bases. But these properties are part of her character at present. If this is indeed the case, then the example of Jane seems to undermine Schmidtz’s account since her dispositional properties at $t_1$, and not any subsequent performances, ground the desert claim. One might be troubled by the idea that a person has dispositional properties in the same way that salt has dispositional properties, since adopting this idea might entail a commitment to hard determinism about people’s dispositional properties. This might be a problem for Schmidtz’s account, but I will put the problem aside.

Regarding whether Jane deserves to be hired, Schmidtz writes, “At $t_1$, though, it remains to be seen whether Jane is or will become that kind of person. Jane settles that later, in an epistemological sense, and perhaps in a metaphysical sense too, insofar as Jane will have to decide, not merely reveal, whether she really is that trustworthy, hardworking, and so on.”\footnote{Ibid, 783.} But if Jane’s dispositional properties are like salt’s dispositional properties, this cannot be correct. If Jane does have the relevant dispositional properties at $t_1$, then she is that trustworthy, hardworking, and so on. Salt is soluble. If we put salt in a cup of water, it will dissolve. Likewise, if Jane’s dispositional properties are like those of salt, she will simply reveal her
properties while on the job.\textsuperscript{145} To the extent that people have dispositional properties, however, these properties are different from salt’s dispositional properties.\textsuperscript{146} People can decide how to act. If Jane has to decide whether she is that trustworthy, hardworking, and so on after \( t_1 \), then at \( t_1 \) she cannot deserve being hired based on \textit{those} criteria.

We may think that if Jane does not perform well on the job, then she did not have the relevant dispositions (understood as properties or characteristics) at \( t_1 \), or perhaps at any time, to be successful in that position. If she does perform well, then we may think that she did have the relevant dispositions at \( t_1 \). But events after \( t_1 \) do not have any bearing on whether she had the relevant dispositions at \( t_1 \). Events after \( t_1 \) merely provide evidence as to whether she might have had the dispositions at \( t_1 \).

Schmidtz claims that, according to element (b), what is supposed to be true of Jane at \( t_1 \) is that she is “choice-worthy.” He discusses a few ways in which element (b) can be interpreted, but it is debatable whether any of the interpretations that he proposes are accurately captured by the wording of element (b). Recall that, according to element (b), a person deserves something \textit{at} \( t_1 \) based on what she will do after \( t_1 \). Schmidtz writes that “our invocation of element (b) at \( t_1 \) is, in effect, a prediction that by the time we get to \( t_2 \), we will be in a position to invoke element (a). We are predicting that by \( t_2 \), she will have supplied the relevant desert-making inputs.”\textsuperscript{147} This explanation does not seem to be consistent with element (b), however, because it suggests that Jane will not be deserving until \( t_2 \), when she supplies the inputs on which her desert is based.

\ \textsuperscript{145}As Schmidtz notes, the opportunity Jane receives could end up being something different than what the hiring committee intended for her to receive. Schmidtz writes that this is analogous to a situation in which one intends to dissolve salt in water, but mistakenly puts the salt in olive oil. He argues that one could still insist that the salt would have dissolved in water and, likewise, that the hiring committee could still insist that Jane would have done justice to the intended opportunity. The most likely explanation for the committee’s insistence that Jane would have done justice to the opportunity is that it believes Jane has some relevant property or characteristic. This backs my contention that if Jane deserves the opportunity at \( t_1 \), her desert is better understood as being based on something about her at \( t_1 \) as opposed to being based on what she will do after \( t_1 \). Schmidtz, “How to Deserve,” 797n24.

\textsuperscript{146}This is true unless one is referring to the dispositional properties of a person’s (physical) body.

\textsuperscript{147}Schmidtz, “How to Deserve,” 782.
Schmidtz continues, “However, we are not merely wagering on future performance. Rather, we are wagering that the person has desert-making internal features that will translate into future performance barring unexpected misfortune. We are saying she is the kind of person who will do the job given the chance.”

But if her desert at \( t_1 \) is to be understood in terms of choice-worthiness and her choice-worthiness is based on her desert-making internal features at \( t_1 \), then it seems as if her desert at \( t_1 \) is based on those present features.

Another interpretation Schmidtz offers for element (b) is as follows: “Still, we might hold that what makes it true that she is choice-worthy [at \( t_1 \)] is the fact that she truly is the kind of person who will supply the requisite desert-makers and thus become deserving at \( t_2 \) in the sense of the promissory model’s element (a).” This last interpretation might be preferable to the others, but it too does not seem to be accurately captured by the wording of element (b).

According to this last interpretation, Jane is not deserving at \( t_1 \), but rather she will become deserving at \( t_2 \). According to element (b), however, the desert is supposed to obtain at \( t_1 \).

David Miller claims that “the basis of ‘desert’ when someone deserves a job turns out to be (predictable) future performance.” Although it might appear as if Miller is endorsing a forward-looking account of desert, he explicitly rejects such accounts. According to Miller, the best-qualified candidate’s claim to a job “rests on facts about herself which show that she is the candidate who, if given the job, is most likely to perform it in such a way that she will deserve the remuneration that is attached to it.” This quote suggests a view that is similar to last interpretation of element (b) in the preceding paragraph, although Miller is writing about a candidate coming to deserve the remuneration that is attached to a job as opposed to coming to

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148 Ibid.
149 Ibid.
151 Ibid., 163.
deserve an opportunity. But Miller argues that one’s present desert cannot be based on future performance. He writes:

Since we are trying to establish a claim of desert, the future performance cannot itself be the basis of the judgment: the claim is not simply “she deserves it because she will perform in such and such a way.” The claim, rather, is that she has, now, qualities that we can say with some degree of confidence will allow her to perform at the level required by the job and so earn the corresponding rewards. It is these qualities that form the basis of desert.\textsuperscript{152}

Although Miller does not advance such a view, one could argue that the desert bases for a job include certain past performances in addition to certain present qualities. Regardless, I agree with Miller’s contention that, if a person deserves a job (or anything else for that matter) at present, then her desert must be based on past or present facts about her.

Let us return to Feldman’s soldier example. As Schmidtz notes, the example of the soldier differs from Schmidtz’s examples since Schmidtz concentrates on the desert of opportunities, while the soldier is supposed to deserve honors.\textsuperscript{153} That distinction aside, in the light of Schmidtz’s work one could argue that if the soldier has the appropriate disposition, e.g., courage, then he deserves the celebration. But his desert would be based on a relevant dispositional property at the time of the celebration and before the mission takes place. Feldman denies that the soldier’s desert was based on any past or present facts of this type. If one does not appeal to dispositions or any other past or present facts about the soldier, however, then there are no other bases on which the soldier could deserve the celebration before he completes the mission.

\textsuperscript{152} Ibid, 167.
\textsuperscript{153} Schmidtz, “How to Deserve,” 796n18. Feldman refers to the celebrations, medals, and promotions as “honours” whereas Schmidtz refers to them as “rewards.”
One could insist that neither a disposition nor anything else past or present grounds the desert of the soldier before he has completed the desert-making performance. Rather, one could argue that, although a specific disposition or characteristic will be displayed when the performance is completed in the future, the future performance is the desert base. But as I have argued above, an explanation such as this grants that the desert base does not obtain before the performance take place. The soldier will not deserve any honors unless and until he completes the mission. So, although we may think at t₁ that a person will deserve a certain thing at t₂, this does not mean that the person deserves that thing at t₁.

Conclusion

The argument I am presenting against desert as a forward-looking concept is primarily based on the metaphysics, not the epistemics, of desert. The argument is not that forward-looking accounts fail simply because predictions at t₁ can be proven wrong by events that occur after t₁. Certainly, one also can incorrectly evaluate another’s deservingness based on events that occur, or events that are thought to have occurred, at or before the time the desert judgment is made. Rather, the argument is that in order for a person to be deserving at t₁, some desert base must (metaphysically) obtain at t₁. In order for a person to be deserving at t₁, there must be some relevant fact or facts about that person at t₁ that give rise to her desert. A supposed desert base with sufficient conditions that lie in the future cannot be such a fact, for it is metaphysically, and not merely epistemologically, dubious. According to forward-looking accounts, desert bases are wanting at t₁. And while appeals to dispositions or other present characteristics might supply the requisite desert bases, they do so by making these accounts no longer forward looking.

¹⁵⁴ One could also argue that the suffering of the child with the worse prognosis is an appropriate desert base and that, although the child does not deserve the trip to Disneyland when the decision about the trip is made, he might come to deserve the trip later when the further suffering occurs.
An important question that this dispositional account leads one to ask is this: are dispositions, and characteristics in general, desert bases or something else? One might, for example, accept the idea that people merit as opposed to deserve things based on their dispositions or characteristics. This is just one reason why merit, a close conceptual relative of desert, should be examined more closely. But before turning to a discussion of desert and merit, a recapitulation of the arguments against forward-looking desert is in order.

The received wisdom about desert’s temporal orientation is that it must be strictly backward looking. Both Fred Feldman and David Schmidtz have argued against this wisdom by claiming that desert can be forward looking. A major difficulty with forward-looking desert is that it gives us desert without desert bases. The problem with claiming that a person can deserve something at t₁ based on what occurs after t₁ is metaphysical, in the sense that no desert base obtains at t₁, and not merely epistemological, in the sense that a desert base is simply unknown at t₁. There may be good reasons for distributing benefits to people based on what we think they will do, or will deserve, after they receive the benefits. But what a person will deserve later should not be conflated with what she deserves at present.

3.5 Desert and Merit

An Introduction to the Desert – Merit Distinction

The distinction between desert and merit is often glossed over in contemporary philosophical literature. Some, like Owen McLeod, think this glossing over is for good reason. McLeod claims that distinctions between the two are “ad hoc, since ordinary language doesn’t support a sharp merit-desert distinction.”¹⁵⁵ I argue that, since it is important for conceptual clarity, such a distinction is not ad hoc. In what follows, I will discuss the work of Louis McLeod, “Desert.”
Pojman, David Miller, and J. R. Lucas in an effort to identify some important differences between desert and merit.

Pojman is among those who want to press the distinction between desert and merit. According to Pojman, a merit base is “any feature or quality that is the basis for distributing positive (or, in the case of demerit, negative) attribution.” So, merit can be understood more broadly than desert in that it results from a quality or feature of a person, regardless of whether he has done anything to bring about the quality or feature. On this account, desert is a species of the genus merit. Pojman’s formula for merit is:

\[
S \text{ merits } M \text{ in virtue of some characteristic (or quality) } Q \text{ which } S \text{ has,}
\]

where \( S \) is the subject, \( M \) is the mode of treatment, and \( Q \) is the merit base (or bases).

For Pojman, what separates desert from merit is that desert involves effort, responsibility, internal motivation, intention, and what a subject does voluntarily. Conversely, one can merit treatment based on factors over which one has little or no control, based on characteristics that one did little to develop, and based on performances that required very little effort. A man can merit admiration for his native good looks, but he does not deserve said admiration.

David Miller supports a type of desert-merit distinction noting that “in contemporary discourse we use the term ‘merit’ to refer broadly to a person’s admirable qualities, while tending to reserve ‘desert’ more specifically for cases in which someone is responsible for the results he or she brings about.” It is important to be clear about what is meant by “cases in

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157 Ibid.
158 Pojman’s account of the differences between desert and merit has interesting implications for the epistemological argument against desert. I will consider these implications in section 4.5.
159 Of course, a man can do certain things and have certain things done, both surgically and non-surgically, to improve his looks. In these cases, he might be deserving of admiration or perhaps even contempt.
which someone is responsible for the results he or she brings about.” Let us consider one more quote, this one from J. R. Lucas, which will aid in clarifying the desert – merit distinction.

Referring specifically to human subjects, Lucas writes, “Merit is often understood in the same sense as desert, but it is useful to distinguish the two, using merit to refer to personal qualities a man may possess and desert to refer to the deeds he has done.” Lucas uses the term “merit” to refer to personal qualities, but personal qualities can be deserved. Many personal qualities result, at least in part, from things a person has done. A man might be courageous only because he spent years building up that courage. In this case, it seems appropriate to say that the man deserves not only what flows from his courage but also his courage itself. The extent to which one deserves something based on these personal qualities will mirror the extent to which these qualities are a result of one’s responsible efforts and performances. Recall that Pojman also included internal motivation, intention, and what one does voluntarily as important factors for distinguishing desert from merit. What one does voluntarily can usually be subsumed under those things for which one is responsible. In section 4.2, I will further examine the role that internal motivation and intention have in establishing desert.

Desert, Merit, and Secondary Desert Judgments

Although David Miller supports a desert – merit distinction, he offers a unique way of understanding the relationship between the two by introducing the ideas of “primary desert judgments” and “secondary desert judgments.” According to Miller, a primary desert judgment has the form:

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161 Lucas, *On Justice*, 166. Lucas continues, “we give scholarships on merit and military decorations on desert.” The thought that we give military decorations based on desert where desert is understood as resulting from deeds done lends support to the view that Feldman was incorrect in arguing that a military parade can be deserved prior to the deed being done.
Some agent $A$ is said to deserve some benefit $B$ on the basis of an activity or performance $P$.

Miller writes that “$P$ should in the relevant sense be A’s performance.” This means that $A$ should be responsible for $P$, which includes the idea that the performance of $P$ must be sufficiently within $A$’s control, and that $A$ must intend to perform $P$. Cases in which $A$ has been coerced or manipulated, hypnotized, or cases in which the performance is inadvertent or almost entirely the result of luck are not cases that fall under primary desert judgments.\footnote{162}{David Miller, \textit{Principles of Social Justice}, 133-134.}

Miller thinks that merit judgments as Lucas describes them, in which the basis of the merit claim is a personal quality as opposed to a performance, are best understood as “secondary desert judgments.” Secondary desert judgments would include deserving a scholarship, a job, or winning a race, in cases in which “past performance may yield evidence that the person in question does have the qualities that we attribute to her, but the basis for desert seems to be the quality itself rather than the performance.” According to Miller, the case of the best-qualified job candidate that I discussed in previous section (83-84) involves a judgment of this type. He argues that these secondary desert judgments derive their force from or “are parasitic on” primary desert judgments.\footnote{163}{Ibid., 133.}

Miller writes:

Roughly speaking, when we say that a person deserves some benefit on the basis of a quality, we are anticipating a future performance in which that quality is displayed. When we identify $A$ as the fastest runner and say that he deserves to win, we mean that we expect him to turn in a performance when the race takes place such that he will deserve to win.\footnote{164}{Ibid., 137.}
According to Miller, certain merit, or secondary desert, judgments derive their force from an anticipated future performance that will ground a desert judgment.

At this point one should stop to consider whether Miller’s claims about how people think and talk when they are anticipating a future performance are accurate. The idea that a person would think and say that a runner deserves to win a race prior to the race occurring and based on what the runner will do in the race might strike some as unusual. If people did think and talk in this way, it would be hard to know what they had in mind.

Miller notes that claims about who deserves to win a race might mean different things and involve different desert bases depending on the context in which they are made. He discusses two different contexts in which a person is making a desert judgment about a runner prior to the completion of the race in which the runner is competing. Miller considers both of the judgments that are made in these contexts to be primary desert judgments. In one of the contexts, the desert judgment is based on past performance. An example of this is the judgment that runner A deserves to win the race because he has trained harder than of all the other competitors. In the other context, the desert judgment is based on what Miller calls “present performance viewed retrospectively” or a performance that has just occurred or is presently occurring. A spectator who is watching an ongoing race in which runner A was just tripped might make a judgment of this type based on the idea that “Runner A deserved to win the race because it was not his fault that he was tripped while in the lead.” It is likely that such a desert judgment would encompass both what the runner did to prepare for the race and what he did during the race.

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165 Ibid., 301-302n15.
166 Ibid.
Returning to the claim that a runner deserves to win a race prior to the race occurring, we can see through Miller’s own analogies why the claim is problematic. Miller writes that the same judgment that applies in the case of the runner “applies to the scholarship case, in which the person who deserves it is the person who, other things being equal, will subsequently perform at the highest level, and…to the case of deserving a job.”167 Two things about this quote are particularly noteworthy. First, we must remember that these are cases of secondary desert for Miller whereas under the taxonomy I am promoting in this essay, these cases might be better understood as involving merit. I have argued that desert is not supposed to hinge on any future performance. I will return to this idea in the next couple pages. Second, and perhaps more importantly, the analogy between deserving to win a race and deserving a scholarship or a job is flawed. Insofar as receiving a scholarship or a job is not based on past performance, it is presumably based on what one thinks the recipient will do with the opportunity. Certainly, receiving a scholarship or a job could be viewed as a reward in a sense, but it is also an opportunity in which one can, based on subsequent performance, succeed or fail.168 For example, one can lose a scholarship and be expelled from a university and one can be fired from a job if one fails.169

The claim that a runner secondarily deserves to win a race before the race occurs and based on an anticipated future performance is a much stronger claim than the claim that the runner merely deserves an opportunity to run. The former claim is based on the idea that the runner deserves to succeed in that particular race before it is ever run. Such a claim is not akin to claiming that a student deserves a scholarship or an opportunity to excel in school, but rather it is akin to the much stronger claim that she deserves to do well in school, perhaps to be

167 Ibid., 137.
168 David Miller rejects the idea that jobs are deserved as rewards in Principles of Social Justice, 163.
169 See the discussion of Schmidtz’s views about deserving scholarships and jobs (section 3.4).
valedictorian, after receiving the scholarship. I argue that, once in school, the student deserves to do well only if she puts forth a certain amount of effort and performs well in relation to a particular standard or standards. Likewise, once in the race, the runner deserves to do well only if he puts forth a certain amount of effort and performs well in relation to a particular standard or standards.

Miller writes:

If a judgment of merit cannot be linked in this way to an anticipated performance, then we do not have desert in its proper meaning. Thus when we say, to take a well-worn case, that Miss Australia deserves to win the Miss World contest because we think she’s the best looking contestant, we are simply assessing her according to the criteria used in this contest; we are saying that she fits the criteria best.¹⁷⁰

There are at least two problems with Miller’s idea of merit in this passage. First, a judgment of merit need not be linked in any way to an anticipated performance, although some judgments of merit can be. I will explain this idea below. Second, Miller claims that merit must be linked to an anticipated performance to give us desert in its proper meaning. I have already shown why forward-looking desert is problematic. Since Miller argues that in cases of secondary desert the actual underlying desert base is a quality, he does not argue that secondary desert claims are forward looking in the way that some of Feldman’s and Schmidtz’s claims are forward looking. Still, the suggestion that something must be linked to an anticipated performance to give us desert in its proper meaning is problematic. Desert is an essentially backward-looking concept. As such, although one can reasonably expect that a person with a particular quality will perform in a particular way, his anticipated future performance is, strictly speaking, irrelevant to what he

deserves prior to that performance. With these difficulties in mind, I think that Miller’s view of merit judgments that are based on personal qualities being understood as “secondary desert judgments” ought to be rejected.

Although I find Miller’s introduction of “secondary desert judgments” to be problematic, I think that he, Lucas, and Pojman highlight some important differences between merit and desert. In the light of their work, I offer the following as an alternative way in which to distinguish between the two concepts: both merit and desert are types of appropriateness. What separates merit from desert is that merit results from qualities or things that are not the result of one’s efforts and performances to any sizeable extent. These qualities or things can be of two types: (1) qualities that simply cannot be the result of one’s efforts and performances (e.g., native good looks, a mountain’s majesty) and (2) qualities that one has, but that one has not attempted to develop or use. In some cases, qualities of this second type will be akin to, or a part of, one’s promise.

*Clarifying the Desert – Merit Distinction*

David Miller’s view of merit as being a type of secondary desert that includes a forward-looking element has some support in the philosophical literature. As noted by Schmidtz, both Fred Miller and Jeremy Waldron find forward-looking elements in Aristotle’s discussion of merit.\(^{171}\) Since Schmidtz does not make a clear distinction between merit and desert, he notes this in support of his account of desert as forward looking. I argue that, even if one’s qualities give us a good reason to predict that certain efforts and performances will come in the future, both desert and merit are backward looking in the sense that they are grounded in past or present facts about the deserving or meriting subject.

Recall David Miller’s claim that some supposed desert judgments are actually “sham desert judgments,” in which the term “desert” is being used to mean nothing more than “should have” or “ought to receive.” According to my favored account, some of these sham desert judgments are actually merit judgments. Again, merit bases include a variety of things such as native good looks and undeveloped natural endowments and abilities. As mentioned, effort and responsibility have a major role in desert, but they do have such a role in merit. Admittedly, where merit ends and desert begins is not always clear. One’s efforts and performances might be part desert base and part merit base and there are some difficulties with distinguishing one’s desert from one’s merit in certain cases.

Perhaps with the right knowledge one could determine what minimum amount or percentage of a distributive base must be the result of efforts and performances for which one is responsible in order for that base to qualify as a desert base as opposed to a merit base. If Joe can easily master an exam without studying for it, we might wonder whether he simply merits as opposed to deserves the high grade that he receives. That he has done other things in the past to develop his intelligence, things that played some role in his success on the exam, might further complicate the issue. One could argue that in order for Joe to truly deserve the grade that he received on an exam, he must be directly responsible for at least 51% of his effort and performance on the exam. But since we humans do not have the kind of knowledge necessary to determine such a minimum, we must be satisfied with the rather unspecific and inexact standard that in order for a person to deserve something he must show some combination of effort and performance for which he is significantly responsible.

While the distinction between desert and merit is rough at the edges, it is clear in many cases. Let us consider two of the supposed desert claims offered by Sher (51-52). It seems clear
that claim (15), “Cleveland deserves better publicity; it’s an interesting city,” is a merit claim rather than a desert claim. The city of Cleveland might merit publicity, but, since a city cannot put forth effort nor perform in any way, it cannot deserve anything. The citizens of Cleveland might deserve something for their efforts and performances toward making the city interesting, but that is different from the city itself deserving something. Depending on the judging criteria, the claim that (7) “Miss Vermont deserves to win; she’s the prettiest entrant” might be best understood as a merit claim. The examples given by both Sher and Miller (92) reflect the idea that such pageants are based primarily, if not solely, on one’s looks. If this is indeed true, then one can see that, although Miss Vermont likely put some effort into maintaining her looks, her ability to win the beauty contest would be due almost entirely to her native good looks for which she can claim no credit.\footnote{\textsuperscript{172} Such contests can also involve certain efforts and performances that give rise to desert. Examples of possible desert bases include the ability to formulate an answer about one’s wish for world peace, the ability to twirl a baton, and one’s effort toward getting one’s body in a certain physical condition.} Claim (15) is in some sense a “sham desert” claim, since in it the term “deserves” is used incorrectly. But it is also a merit claim, since the speaker used the term “deserves” when he should have used the term “merits.” Depending on the judging criteria of the contest, the same might be true of claim (7).

Desert, Merit, and Dispositions

In the light of this proposed distinction between desert and merit, it is worthwhile to return to Schmidtz’s discussion of people’s dispositional properties and how these dispositions affect a person’s desert. Since Schmidtz appeals to dispositional properties and since I have argued that certain properties or qualities can be merit bases as opposed to desert bases, it is worthwhile to consider whether at least some dispositional properties might be merit bases as opposed to desert bases. I have argued that one of the important differences between merit and desert is that, although both are a form of appropriateness, desert requires more from a subject
than does merit. At its most basic, what a person deserves depends on what she does. Merit, however, can be understood more broadly in that it results from any property or quality, regardless of whether a subject has done anything to bring about the quality or feature. An implication of this distinction is that one can agree with Rawls in thinking that a person cannot deserve her native endowments and one can agree that those native endowments are not desert bases, while instead maintaining that those native endowments are merit bases.

A person could do nothing, or very little, to develop her native dispositions. But oftentimes a person does many things to develop those dispositions. Perhaps developed dispositions are desert bases whereas undeveloped dispositions are merit bases. So, when we claim that a person deserves something based on her dispositions, we are recognizing her effort in developing those dispositions. Of course, in some cases it will be difficult to determine whether a person deserves or merits something as a result of her dispositions, since we might not know whether her dispositions are primarily a result of native endowments or her effort. This is an epistemological difficulty with making the distinction, however, and not a metaphysical difficulty with the distinction itself. Epistemological difficulties notwithstanding, in many cases the distinction should be clear enough to be useful. And even if one thinks that the distinction between desert and merit should be made differently, or not at all, whether a person has developed a particular disposition seems to be relevant to whether she deserves anything as a result of having that disposition.

It is reasonable to suspect that these epistemological difficulties will not be so great in many local justice contexts, where detailed knowledge of people is more common, and that these difficulties will be much more pronounced in other contexts. Whether an individual, a small group, or a society decides to take the necessary steps to benefit or harm people based on their
desert, whether that desert is based on dispositions or some other fact or facts, will depend on many contextual factors. One such factor will be the magnitude of the epistemological barriers to uncovering a person’s desert. If the barriers are too great, then great pragmatic difficulties with setting up and operating desert tracking and rewarding apparatuses are to be expected. One will also need to consider how important it is to benefit a person based on her desert in the given context. As I discussed in Chapters 1 and 2, justice might dictate that desert play a greater role in some contexts and a lesser role in others.

Conclusion

The relationship between merit and desert is as follows: both merit claims and desert claims are claims about appropriateness. A merit base is “any feature or quality that is the basis for distributing positive (or in the case of demerit, negative) attribution.” These features or qualities do not have to be the result of human agency. As such, the animate and the inanimate alike can merit certain modes of treatment. Desert, conversely, requires effort and responsibility. As such, it is limited to those beings who can put forth effort and be responsible for that effort.

3.6 Conclusion

In the previous two chapters, I defended the view that one becomes deserving through one’s efforts and performances. In this chapter, I explained in more detail what it means to say that someone or something is deserving. Desert claims are moral claims about what a subject ought to receive and they have *prima facie* force. Desert is best understood as a three-part relation among a subject, a mode of treatment deserved by the subject, and some fact or facts about the subject. The fact or facts about the subject must change the normative status of the subject’s receiving a particular mode of treatment. When understood in its strict sense, desert can result from positive responsibility only. That is, desert is based on efforts and performances

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173 See 87 above.
for which one is significantly responsible. Negative responsibility might give rise to some sort of derivative desert, but this type of “desert” is distinct from desert in the strict sense. In fact, the differences between desert and a type of derivative desert based on negative responsibility are great enough that it might be best to consider them different, albeit related, concepts. I advanced the view that desert is essentially backward looking. Finally, I argued that while both merit and desert are types of appropriateness, they are distinct concepts since merit does not presuppose either effort or responsibility.
CHAPTER 4. ON CONTEXT AND DIFFERENT TYPES OF DESERT

4.1 Introduction

If two people are competing for a promotion at the local widget factory, is the fact that only one of the two candidates is morally deserving of happiness relevant to who gets the promotion? Can a terrorist be morally deserving of anything? Can whether one deserves something, or how much one deserves, be affected by what someone else deserves? To what extent is desert an institutional artifact? The answers to these and similar questions are important to understanding which considerations are relevant in establishing one’s desert in various contexts.

In the previous chapters, I examined the role of desert in many different contexts. Such contexts included, among others, academe, athletic competitions, and the workplace. Although I offered a detailed account of desert in Chapter 3, hitherto I have not focused specifically on the effect that context has on the role of desert. In any given distributive context in which desert is relevant, there are going to be factors that are relevant and factors that are irrelevant to whether one deserves something. Sometimes people fail to clearly distinguish the relevant factors, or desert bases, from the irrelevant factors. Likewise, sometimes people fail to clearly distinguish between modes of treatment that are appropriate and modes of treatment that are not appropriate in a particular context. Imagine a situation in which a professor is trying to determine whether a student deserves the opportunity to earn extra credit. The fact that the student does a good job as a grocery bagger at the neighborhood supermarket is not relevant to the professor’s decision. The student’s previous class performance might be a relevant desert base, however. And when the student does a good job bagging groceries, her deserved mode of treatment might be a raise,
but it certainly is not receiving an A. This example highlights the seemingly obvious fact that when making desert judgments one needs to keep context in mind in order to avoid errors.

In this chapter, I will offer a more detailed examination of which desert bases are relevant and what modes of treatment are appropriate in different contexts. In section 3.5, I examined distinctions between desert and merit. In this chapter, I will examine distinctions between and among various different types of desert that are discussed in the philosophical literature. The overall purpose of this chapter is to make clear to the reader my views on these various types of desert since they inform my arguments in Chapters 5 and 6.

In section 4.2, I discuss the differences between moral and nonmoral desert. Separating these two types of desert is important, since in most cases only nonmoral desert will be relevant in distributive contexts. Although I argue in favor of a clear distinction between these two types of desert, I defend the view that what is often referred to as “nonmoral desert” has a moral element. I conclude this section by arguing that Rawls fails to distinguish clearly between moral desert and nonmoral desert and that this failure is problematic for Rawls’s arguments against the importance of desert as a distributive criterion.

In section 4.3, I examine the differences between comparative and noncomparative desert. These differences apply both to desert bases and deserved modes of treatment. Understanding the differences between comparative and noncomparative desert is crucial for understanding how desert judgments are made, or at least how they should be made. In most distributive contexts, one’s comparative desert is the more relevant of the two. I conclude section 4.3 with a discussion of the differences between actual and ideal desert, and I explain the role of these two types of desert in making desert judgments.
In section 4.4, I highlight important distinctions between and among pre-institutional desert, institutional desert, and entitlement. This section includes an examination of how the aims of associations, organizations, and larger social institutions might affect one’s desert. I argue that Rawls’s discussion of desert and his explanation of desert as being based on legitimate expectations under social institutions is problematic, since it does not clearly distinguish between and among pre-institutional desert, institutional desert, and entitlement.

Recall the epistemological and pragmatic arguments against desert that were first examined in Chapter 2. As it relates to the account of desert that I have advanced in this dissertation, the epistemological argument is based on the idea that we cannot discern what part or how much of one’s effort and performance one is responsible for and what part or how much is the result of such things as one’s luck, native endowments, or initial starting place in society. As I detailed in Chapter 2, scholars such as Spiegelberg and Rawls attach great significance to the idea that desert is undermined by things such as luck, native endowments, and initial starting places. In Chapter 2, I also examined the pragmatic argument against desert. This argument is based on the idea that even if one could discern what part or how much of one’s effort and performance one is responsible for, any attempts to do so would have unfavorable consequences, e.g., exorbitant financial costs or a loss of freedom.

In section 4.5, I reexamine briefly both the epistemological and pragmatic arguments. This reexamination includes a discussion of the strength of these arguments and of how the challenges that are presented in these arguments can be met or, in some cases, largely avoided. The main argument in this section is that once one has delimited the factors that are relevant to a person’s desert in a particular distributive context, the epistemological and pragmatic arguments lose much of their force.
Although I will be discussing some problems with Rawls’s treatment of desert, this chapter is not meant to serve merely as a critique of Rawls. In fact, much of the discussion that follows in this chapter does not focus explicitly on Rawls. It is important to discuss Rawls’s views, however, since his writings contain illuminating examples of problematic ideas about desert and its role in distributive contexts.

4.2 Moral, Nonmoral, and Nonmoral* Desert

The Differences and Similarities between Moral and Nonmoral Desert

Certain scholars have made a distinction between moral and nonmoral desert, while others have either downplayed the significance of the distinction or rejected it outright. One might downplay or reject the distinction because one has misidentified what the distinction is supposed to be. In addition, some scholars have offered problematic accounts of the distinction. So, there are three ways in which one can err as regards the moral desert – nonmoral desert distinction: (1) by rejecting the distinction altogether, (2) by downplaying the significance of the distinction, or (3) by offering a problematic account of the distinction.

Thomas Hurka explains moral desert as the concept according to which morally good or virtuous people deserve to have pleasure and to prosper, and morally bad or vicious people deserve to have pain and to suffer. According to this view, people who act in an all-things-considered moral way deserve some pleasure or benefit whereas people who act in an all-things-considered immoral way deserve some pain or punishment. The idea that a moral saint deserves to prosper whereas a moral sinner deserves to suffer has intuitive appeal. This explains why, when a morally bad person does poorly in any context, whether it is in school, the workplace, or elsewhere, one might think that he gets what he deserves. This thought seems to

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result from the idea that a person’s happiness is often positively affected by his success and, since a morally bad person does not deserve to be happy, he does not deserve to be successful.

The type of desert that is most often relevant in distributive contexts can be broadly classified as nonmoral desert. Owen McLeod argues that at least one kind of attempt to distinguish between moral and nonmoral desert is “both ad hoc and implausible.” McLeod’s target does not seem to be theory like Hurka’s, but rather those theories in which “moral desert presupposes responsibility, while nonmoral desert does not.”175 According to such theories, moral desert would be based on actions or characteristics for which one is responsible while nonmoral desert would be based on things for which one is not responsible. Therefore, the plights of (innocent) tsunami victims or suffering children could give rise to nonmoral desert, but not moral desert. According to the account that I will defend in this chapter, what separates moral desert from other kinds of desert is not responsibility or lack thereof, but rather one’s motivations, one’s deserved mode of treatment, and the aspects of one’s efforts and performances that are being assessed.

In certain distributive contexts, the deserved mode of treatment includes money. As Hurka argues, this type of benefit is not relevant, or at least not directly relevant, to one’s moral desert. Hurka writes, “What people deserve on the basis of virtue is not money, but happiness; what makes them deserve money is not virtue but the instrumental qualities of contribution and effort.”176 As it stands, this quote leaves the distinction between moral and nonmoral desert somewhat incomplete, because it is not simply virtuousness or viciousness that gives rise to moral desert. As I argued in the cases of other types of desert, moral desert is best understood as being based on effort and performance. According to this understanding, positive moral desert

175 McLeod, “Desert.”
results from one’s effort and performance toward being virtuous in character and deed, while
negative moral desert results from one’s effort and performance toward being vicious in
caracter and deed. It is also important to note that, since it appeals to one’s virtuousness or
viciousness, moral desert requires a particular kind of moral motivation that is not required in
cases of nonmoral desert. This idea will become clearer through the examples that I provide
below.

Hurka claims that moral desert, as it is usually understood, is based on a person’s entire
life. According to this view, “on the basis of the virtue and vice in their lives as a whole people
deserve happiness or suffering.”177 One way in which this view can be explained is that people
build up moral capital or positive desert for morally positive acts and moral debt or negative
desert for morally negative acts and that one’s moral desert at any moment in time is the sum
total of this capital and debt.178 Even if one subscribes to this view, however, one can also
maintain that individual acts can give rise to moral desert.

One can isolate a certain act done by a person and judge that the person deserves
happiness or unhappiness, or moral praise or blame, for that particular act. Perhaps even a
terrorist can deserve moral praise for a particular act of kindness, such as rescuing a kitten from a
tree, viewed in isolation from his otherwise morally reprehensible ways. This view might strike
some readers as troublesome, since it might be difficult for some to believe that any act done by
someone as morally reprehensible as a terrorist can be morally praiseworthy. Desert bases often
are viewed in isolation, however. For example, one determines the commission that a person
deserves for one particular sale or the grade that a student deserves for one particular assignment
irrespective of what the salesman or student have or have not done in other contexts or situations.

177 Ibid., 52.
178 This is my explanation, not Hurka’s.
I argue that, in one respect, moral desert bases can be viewed in isolation too. Therefore, a person’s individual act can be morally praiseworthy or blameworthy and thus give rise to context- or situation-specific moral desert. A person can act morally at times and immorally at others and a conception of moral desert should be able to account for this fact. But despite the fact that both moral and nonmoral desert bases can be viewed in isolation, Hurka is correct to note that a person’s moral desert tends to be viewed as being based on his whole life.

The fact that a person becomes morally better over time does not mean that she is no longer responsible for what she did in the past or that she should have her moral debt forgiven. But the fact that a person was morally bad in the past does not exclude her from being morally deserving based on her actions in the present, even if what she morally deserves is a reduction of her overall moral debt. To hold that a morally bad person can have positive moral desert based on one particular act or that a morally good person can have negative moral desert based on one particular act is not inconsistent with the “whole life” view that is advocated by Hurka. Of course, a person’s whole life is still the only consideration when determining his moral desert overall and is still likely to be an important consideration, perhaps the most important consideration, when determining the mode of treatment that he ought to receive based on one isolated act. One’s praise of a mass murderer who saves a drowning baby is likely to be muted and, considering his past actions, one is unlikely to think that the mass murderer deserves happiness for the act of saving the baby. In this way, the deserved mode of treatment in cases of moral desert is affected by a person’s previous efforts and performances in other contexts toward being morally virtuous or vicious in character and deed.

Unlike those contexts in which moral desert is most relevant, other contexts in which desert is an important distributive criterion are more or less morally neutral. In these contexts,
what is rewarded is effort and performance toward achieving some goal as opposed to some
morally virtuous goal. Admittedly, in some cases a clear distinction between moral and
nonmoral desert seems problematic. These are cases in which someone is pursuing a goal that
seems to be morally positive, or a goal that would lead to something morally positive, but in
which the person does not necessarily have a morally positive motivation. But even in these
more difficult cases, one can identify a clear distinction between moral and nonmoral desert.

Consider the following two similar cases. In Case 1, a scientist sacrifices a good deal
with the aim of developing a groundbreaking drug for the treatment of AIDS. He works long
hours and he is not compensated well. He works toward this goal out of an altruistic concern for
his fellow man. This scientist, hereafter referred to as “Scientist 1,” eventually develops the
groundbreaking drug. In Case 2, a scientist sacrifices a good deal with the aim of developing a
groundbreaking drug for the treatment of AIDS. He works long hours and he is not compensated
well. He works toward this goal out of a concern for his own well-being. He hopes that his
sacrifices will bring him great fame and fortune. In addition, he is motivated to develop this
drug based on the desire to best his rival. Not only is he not concerned with the pain and
suffering of people with AIDS, but he sees AIDS as a just punishment for what he perceives to
be the sins of those who have AIDS. This scientist, hereafter referred to as “Scientist 2,”
eventually develops the groundbreaking drug.

Scientist 1 was driven by an altruistic concern for his fellow man. Scientist 2 was driven
by a desire for fame and fortune and a desire to best his rival, and he holds some troubling views
about those with AIDS. In both cases, the scientists developed the groundbreaking drug. So
how does the desert of Scientist 1 compare to and contrast with the desert of Scientist 2 in these
cases? Since he did not have any morally positive motivation, Scientist 2 has no moral desert as
a result of developing the drug. Conversely, Scientist 1 does have moral desert as a result of developing the drug. But this is not the end of the issue regarding the scientists’ deserts. A scientist can deserve a certain mode of treatment for developing a drug regardless of whether he had a morally virtuous motive for doing so. Therefore, since both Scientist 1 and Scientist 2 developed a groundbreaking drug of major medical and social significance, both deserve financial compensation, (nonmoral) recognition, and perhaps other benefits. These examples help clarify the distinction between moral and nonmoral desert. It is important that one does not lose sight of this distinction so that one keeps separate which considerations are relevant and which considerations are irrelevant to one’s desert in a particular context.

It could be argued that, even if there is a distinction between moral and nonmoral desert, all desert presupposes some moral motive. I follow David Miller in thinking that although intention is relevant to one’s deservingness, motive often is not.\(^{179}\) In particular, motive often is not relevant in establishing one’s nonmoral desert. Miller’s argument is based on the idea that desert generally depends on the performance of an agent as opposed to his motivation. As I discussed in Chapter 2, one must intend to perform an action in order to deserve something as a result of that action. Although the view of desert that I am promoting in this dissertation combines both effort and performance, whereas Miller explained the distinction between moral and nonmoral desert by focusing on performance in particular, his point is germane. For, while one’s effort or performance might shed some light on one’s moral character, what one deserves often does not depend on one’s moral character.

In an effort to further clarify why a moral motive is not necessary for all desert, I offer the following case: Jessica works at a widget company. She is neither morally virtuous nor morally vicious. Because of this, she can be described as morally average. If she sells the most

widgets for the month, whether she deserves a bonus does not depend on whether she was driven
to sell the widgets by some benevolent concern for others or some other moral motive. Unlike
Jessica, Jill is a morally virtuous person. If Jessica and Jill work at the same widget company
and Jessica, through a combination of effort and performance, has done much more for the
company, then it seems clear that Jessica deserves more money than Jill. The fact that Jill is
morally superior is irrelevant in this economic distribution.

Perhaps a complicating factor in this example would be if Jill’s substandard performance
was due to her laziness. Laziness is sometimes considered to be a moral deficiency. Yet, in
most distributive contexts, when one judges a person’s effort and performance one is not
considering what these factors show about a person’s moral character. If Jill’s laziness leads her
to produce very few widgets, then she will not deserve many, if any, benefits. This is not a
judgment of her moral desert, but of her nonmoral desert based on her effort and performance
toward some morally neutral goal.

As illustrated by the examples of both Jessica and Scientist 2, one can readily identify
cases in which a person deserves some benefit based on his or her effort and performance
without that effort and performance giving rise to moral desert. Any type of desert that is not
based on effort and performance toward being morally virtuous or vicious in character or deed
can be broadly classified as nonmoral desert. As I will explain below, however, this does not
mean that moral considerations are irrelevant in cases of nonmoral desert.

Nonmoral* Desert

As should be evident by now, one can identify many different types of desert bases and
deserved modes of treatment. I have explained how desert can be divided into moral and
nonmoral desert. Some scholars further divide nonmoral desert depending on the distributive
context and corresponding deserved mode of treatment. Hurka writes about economic desert, which is a type of nonmoral desert that is best understood as the desert of economic goods—salary or wages, bonuses, medical coverage, etc.—resulting from work.\textsuperscript{180} In all likelihood, the association or organization for which Scientist 1 and Scientist 2 work would reap great financial gains from the development of the groundbreaking drug. Because of this, one could argue that each scientist has a certain level of economic desert. Whether either deserves additional compensation above and beyond his current salary and benefits package would depend on many factors, including the particulars of that current package. For example, if either is already being paid a very high salary and already has a very good benefits package, then he might not deserve additional remuneration.

In many cases of nonmoral desert, modes of treatment other than economic goods, such as awards or recognition, will be deserved. Some awards and recognitions are accompanied by economic benefits, or at least provide opportunities for the recipient to enjoy greater economic benefits, but they need not provide such benefits or be accompanied by such opportunities. So, whether the scientist deserves greater economic benefits is a separate question from whether he deserves awards or recognition.

Nonmoral desert, whether it is economic desert or some other type, is the kind of desert that is most germane in many distributive contexts. Certainly, a scientist’s claim to economic desert would be undercut if he were found to have stolen much of his research from a colleague. What is most relevant to the scientist’s economic desert in this case is not that he acted immorally by stealing the research, but that, since he stole the research, it cannot be a basis for his desert. That is, if the scientist was able to develop the drug in large part because he stole the

\textsuperscript{180} See Hurka “Desert: Individualistic and Holistic,” 57ff. Hurka’s definition of economic desert differs somewhat from the one that I am using here.
research from his colleague, then the scientist’s effort would be minimal and the scientist’s successful performance would not truly be his performance, but that of his colleague from whom he stole.

Although not all desert claims are based on the moral virtuousness or viciousness of one’s character or deeds, I contend that all desert of something positive, whether that desert is classified as moral or nonmoral, must meet a minimal moral standard. According to this standard, no positive desert can be based on efforts or performances that are directly tied to an activity or activities that are undertaken in pursuit of some morally negative aim or goal. Consider the case of a Nazi officer who had a major role in stealing some gold from the home of a man he sent to a concentration camp in Auschwitz.181 Certainly, the officer does not have any moral desert claim to the gold. In addition, I contend that he does not have any nonmoral desert claim to the gold.

David Miller disagrees with the view that all desert must meet some minimum moral standard. He claims that there is “nothing incoherent or bizarre” about maintaining that those who contribute more to a morally harmful activity, e.g., robbing a bank, can deserve more of the spoils that result from that activity.182 In cases like those of the bank robber and the Nazi, however, the morally vicious actions in question - the robbing of the bank and the stealing of the gold (to say nothing of the participation in genocide) - are directly tied to the would-be economic

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181 Although Nazi examples abound in the philosophical literature, I believe that I developed this example after reading Owen McLeod’s “Desert and Institutions,” 193. His explanation of why the Nazi would not deserve the gold differs from mine in that he makes a distinction between the *prima facie* desert of the Nazi, which might suggest that the Nazi deserves the gold, and the all-things-considered desert of the Nazi, which clearly suggests that the Nazi does not deserve the gold. McLeod does suggest, however, that the reason why the Nazi does not deserve the gold all things considered is because of the Nazi’s evil ends. In “Desert,” McLeod also suggests that “effort is a basis for desert only if it’s directed toward a morally unobjectionable end.”

182 Miller, *Principles of Social Justice*, 135. Miller uses the bank robbery example to argue that there is “nothing incoherent or bizarre” with the view that those who contribute more to socially harmful activities can deserve more of the spoils that result from those activities. Unlike Miller, I am making this point in terms of moral as opposed to social harm.
desert bases in question. I argue that neither the bank robber nor the Nazi deserve anything positive as a result of these morally negative activities. The most plausible view in these cases is that the bank robber and the Nazi have no desert claims to the spoils of their activities. Again, I am not claiming that the morally vicious can never be deserving in any context. Nor am I claiming that unjust people cannot be treated unjustly. One cannot appeal to desert to lay a claim to spoils that are a direct result of one’s immoral activities, however.

In order to make my views on moral and nonmoral desert clearer, I will use some basic diagrams. The immoral activities of the bank robber and Nazi give rise to negative moral desert. Moral desert is best understood as operating on the following scale, in which the top row refers to one’s moral desert and the bottom row refers to the moral status of one’s character and deeds:

<table>
<thead>
<tr>
<th>Negative Moral Desert</th>
<th>No Moral Desert</th>
<th>Positive Moral Desert</th>
</tr>
</thead>
<tbody>
<tr>
<td>Morally Negative</td>
<td>Morally Neutral</td>
<td>Morally Positive</td>
</tr>
</tbody>
</table>

Hurka makes an important distinction between the moral desert of something negative based on moral viciousness and the retributive desert of legal punishment based on the commission of a criminal offense. Moral desert and legal desert can come apart in certain cases. As a result of his acts, the bank robber has negative moral desert and he also deserves legal punishment. The situation of the Nazi is somewhat different than that of the bank robber, however, since although the Nazi clearly committed immoral acts, the acts might have been legal according to the law in Germany at the time. It is clear that his acts should have been illegal, however, and this suggests a distinction between deviant legal desert in an unjust society and what legal desert should be in a just society.

It would not be surprising if the bank robber or the Nazi made a desert claim against his fellow deviants. But such a claim would be a sham desert claim since it is based on a sham

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Certain deviant practices parallel or simulate legitimate practices. The bank robber who put forth the most effort and performed the best in orchestrating the heist might feel as if he ought to get the most money and his accomplices might agree. He does not deserve any money, however, let alone the most money.

Because I argue that all desert must meet a minimum moral standard, perhaps I should add an asterisk to what others have referred to as “nonmoral desert” and therefore refer to my understanding as “nonmoral* desert.” As I noted above, nonmoral (or nonmoral*) desert is the kind of desert that is most relevant in many distributive contexts. It is best to understand nonmoral desert in distributive contexts as operating on the following scale, in which the top row refers to one’s nonmoral desert and the bottom row refers to the moral status of one’s deeds:

<table>
<thead>
<tr>
<th>No Desert</th>
<th>Positive Desert</th>
</tr>
</thead>
<tbody>
<tr>
<td>Morally Negative</td>
<td>Morally Neutral</td>
</tr>
<tr>
<td>Morally Positive</td>
<td></td>
</tr>
</tbody>
</table>

In contexts in which the moral virtuousness or viciousness of one’s character and deeds are not the main basis for distribution, efforts and performances that are not immoral can give rise to positive desert. Since the bank robber and the Nazi act immorally in the examples above, neither deserves any benefits as a result of his activities.

I argued that legitimate desert claims cannot exist in situations in which an individual or group is pursuing immoral ends. I argued that certain groups, such as groups of bank robbers, might be guided by a deviant form of justice. The bank robbers might press what they consider to be legitimate desert claims based on the efforts and performances of the members in the planning and commission of the robbery. But as I argued above, these would be sham desert.

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184 See Chapter 3 (50, 94-95) for some discussion about sham desert judgments. There, following David Miller, I defined “sham desert judgments” as confused judgments in which “deserves” is used to mean nothing more than “should have” or “ought to receive.” Here, the judgments are “sham desert judgments” not only due to the fact that “deserves” is used to mean nothing more than “should have” or “ought to receive,” but also because it is clear that the subjects should not have or receive any of the goods or monies that they took.
claims. Even if one subscribes to my view about this lack of desert among the bank robbers, however, one might still worry that my overall account of the role of morality in desert is problematic in certain cases.

Consider two organizations – the National Rifle Association (NRA) and Planned Parenthood. I chose these two groups because each elicits strong moral reactions from both its proponents and opponents. Some think that the work of the NRA, particularly as regards its work in favor of the rights of individual gun owners, is morally positive, or at least morally neutral. Others view this same work as morally negative. There are similar divergent opinions regarding the work of Planned Parenthood and countless other associations and organizations in the United States and around the world. If it is true that there cannot be legitimate desert within associations and organizations with immoral aims or goals, and if it is true that many people’s opinions differ greatly as regards the moral status of the aims or goals of certain groups, then how is one to know if what occurs within these groups counts as legitimate desert or sham desert?

This question raises both epistemological and practical issues. Even if one assumes that for every association and organization there is an objectively correct evaluation of the moral status of its aims or goals, fallible people could not know this status in every case. Presumably, a God with perfect knowledge of such things could identify without fail which associations and organizations have aims or goals that pass moral muster. But in the absence of such knowledge, the best that fallible people can do is to reject appeals to desert in the case of bank robbers, Nazis, and other moral deviants and recognize desert within those associations and organizations with aims and goals of a less troublesome moral status.
One’s moral desert is separate from one’s nonmoral desert since the former is based on one’s efforts and performances toward being morally virtuous or vicious in character and deed, while the later is based on efforts and performances more generally. It is reasonable to suppose that, like the morally unsavory Scientist 2, the bank robber and the Nazi can have nonmoral desert based on facts about them that are not tied to their morally deplorable activities. The fact that one is morally bad and therefore generally undeserving of happiness and the fact that the receipt of goods, monies, and other benefits often affects one’s happiness might lead some to argue that one’s morally bad character and deeds have some bearing on whether one ought to receive one’s nonmoral desert in any and all contexts. If this is true, some might not always see a perfectly clear distinction between moral and nonmoral desert. Although the distinction between moral and nonmoral desert might be somewhat problematic in certain cases, in general the distinction is clear: moral and nonmoral desert involve different types of desert bases and different, albeit sometimes related, deserved modes of treatment.

The Importance of the Moral – Nonmoral Desert Distinction in Distributive Contexts

In Chapter 1, I noted that Rawls’s use of the term “moral desert” is problematic (35). Because the two are clearly distinct and involve different desert bases and modes of treatment, it is important not to conflate moral desert with nonmoral desert. Rawls seems to commit such a conflation throughout both *Theory of Justice* and *Justice as Fairness*. In *Theory of Justice*, Rawls writes about the supposed “tendency for common sense to suppose that income and wealth, and the good things in life generally, should be distributed according to moral desert.”185 Later, he writes that “the notion of distribution according to virtue fails to distinguish between moral desert and legitimate expectations,”186 and also that “the precept which seems intuitively

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186 Ibid., 311.
Rawls’s use of “moral desert” is problematic for a number of reasons. First, in the above quotes, he does not clearly distinguish between “moral desert” and “nonmoral desert.” In fact, he appears to use the two interchangeably in those quotes and throughout much of *Theory of Justice*. Following Thomas Hurka and David Miller, I have argued that people often deserve benefits such as income and wealth on the basis of nonmoral desert, as opposed to moral desert. Since Rawls writes about income and wealth being distributed according to moral desert, he seems to misidentify one of the presuppositions of his opponents’ arguments. Rawls also writes about effort or conscientious effort being a possible basis for moral desert. While effort can be a (partial) basis for moral desert, it can also be a (partial) basis for nonmoral desert. In addition, Rawls equates moral desert with distribution according to virtue. This understanding of moral desert resembles Hurka’s, but, since I focus on one’s effort and performance toward being morally virtuous (or vicious), it differs from mine slightly. The important point about Rawls equating moral desert with distribution according to virtue, however, is that in most distributive contexts people look to reward nonmoral desert as opposed to one’s virtue.

I have just argued that Rawls seems to conflate moral desert with nonmoral desert. At one point in *Theory of Justice*, however, Rawls does refer to “nonmoral desert” while drawing a distinction between one’s being entitled to something as a result of meeting the legitimate expectations of society and one’s deserving something. He writes:

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187 Ibid., 312.
188 Ibid., 310-315.
189 See 103 above.
Now it should be noted that even though a person’s claims are regulated by the existing rules, we can still make a distinction between being entitled to something and deserving it in a familiar although nonmoral sense. To illustrate, after a game one often says that the losing side deserved to win. Here one does not mean that the victors are not entitled to claim the championship, or whatever spoils go to the winner. One means instead that the losing team displayed to a higher degree the skills and qualities that the game calls forth, and the exercise of which gives the sport its appeal. Therefore the losers truly deserved to win but lost out as a result of back luck, or from other contingencies that caused the contest to miscarry . . .

Its bearing here is that although we can indeed distinguish between the claims that existing arrangements require us to honor, given what individuals have done and how things have turned out, and the claims that would have resulted under more ideal circumstances, none of this implies that distributive shares should be in accordance with moral worth. Even when things happen in the best way, there is still no tendency for distribution and virtue to coincide.  

But once again, the distinction that he offers is not very clear. Rawls does not follow through with an examination of his idea of nonmoral desert, but instead he merely notes that he is following Joel Feinberg’s use of the term in *Doing and Deserving*. Also, by the end of the paragraph in which he broaches the subject of nonmoral desert, Rawls is arguing that “none of this implies that distributive shares should be in accordance with moral worth” and he claims that “even when things happen in the best way, there is still no tendency for distribution and virtue to coincide.” But it is unclear if such an argument is meant for those who recognize a distinction

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191 Rawls cites Feinberg, *Doing and Deserving*, 64ff.
between moral and nonmoral desert. As I have detailed throughout this section, many scholars who argue in favor of using desert in distributive contexts do not claim that desert in those contexts should be understood in terms of “moral worth” or “virtue.” In fact, as I have also detailed above, some explicitly argue against the conflation of all desert with “moral worth” or “virtue.” This would render Rawls’s argument against the use of moral desert as a distributive criterion irrelevant to most accounts that advocate the use of (nonmoral) desert as a distributive criterion. ¹⁹² I will revisit this passage later in this chapter when I discuss the differences between and among pre-institutional desert, institutional desert, and entitlement.

Conclusion

As I discussed in Chapters 1 and 2, and as I will address in greater detail in Chapter 5, in many distributive contexts concepts other than desert will serve as criteria for whether a person should receive some benefit. One could argue that, since distributions affect one’s happiness, moral desert should be used as a tiebreaker when two or more candidates for one position seem equally nonmorally deserving and no other distributive concept can settle the matter. Even this limited tiebreaking role for moral desert in nonmoral cases might prove problematic, however, for the introduction of moral desert into such cases in which it is not relevant might result in the promotion of one conception of the good over another. Regardless, it is important to understand the distinction between moral and nonmoral desert in order to understand which criteria are relevant and which criteria are irrelevant in a particular context and in order to know what information needs to be gathered and considered when making a desert judgment.

In this section, I discussed several important differences between moral and nonmoral desert. Furthermore, I argued that it is important to clearly distinguish between these two types

¹⁹² See David Miller, Social Justice, 47n36 for a similar point.
of desert since in most cases only nonmoral desert will be relevant in distributive contexts. Now, I will consider some issues regarding the comparative and noncomparative elements of desert.

4.3 Comparative and Noncomparative Desert

Some Important Distinctions

Recall that, according to the view of justice that I have defended, desert is one of many concepts that is relevant to justice. Many argue that justice has both comparative and noncomparative elements. For the sake of convenience, I will refer to cases involving comparative elements of justice as “comparative justice” and cases involving noncomparative elements of justice as “noncomparative justice.”

When considering noncomparative justice, the justice or injustice of how a person is treated or of what a person has can be discerned with reference to the situation of that person only, i.e., in isolation from how others are treated. For example, one can hold that it is noncomparatively just for person A to receive some benefit. Therefore, if person A receives that benefit, he is treated justly regardless of how person B is treated or what person B has. In the case of comparative justice, conversely, how person A is treated or what person A has does have an impact on whether how person B is treated or what person B has is just or unjust. Therefore, in cases of comparative justice, whether one is being treated justly cannot be determined without taking into account how others who might be similar or dissimilar in relevant respects are being treated. As I discussed in Chapter 2, Aristotle advocated such a view in certain distributive contexts.

I have argued that in order for a person to be deserving there must be an appropriate desert base. Furthermore, I have argued that this desert base must be a fact about him, including

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193 Including, as I will discuss below, Thomas Hurka, Shelly Kagan, and David Miller.
194 See Chapter 2 (12-13).
something he has done (section 3.2). Because the only way in which a person can be deserving 
is if there is some desert-making fact about him, one could argue that desert is entirely 
individualistic or noncomparative. I will argue that there are good reasons to reject this view.

The relationship between comparative and noncomparative desert parallels that of 
comparative and noncomparative justice. In cases of comparative desert, what or how much 
person A deserves is affected by, and in part determined by, what or how much person B 
deserves. According to noncomparative desert, what or how much person A deserves can be 
determined in isolation from what or how much others deserve. David Miller notes that when a 
person talks about desert being comparative or noncomparative, he can mean one of two things, 
or both. First, he can mean that the desert bases are comparative or noncomparative. Second, he 
can mean that the deserved modes of treatment are comparative or noncomparative.195 I will 
examine both of these ideas.

One seemingly uncontroversial example of a noncomparative desert base is when one 
intentionally risks one’s life in order to save the life of another.196 Presumably, no matter how 
common or uncommon such an act becomes, it will always give rise to some positive desert. 
One seemingly uncontroversial example of a noncomparative desert base that is negative is the 
rape of a child.197 Presumably, no matter how common or uncommon such an act becomes, it 
will always give rise to some negative desert. In both of these examples, a person who 
committed the act would be deserving of some benefit or harm regardless of what others around 
him did.

195 David Miller, “Comparative and Noncomparative Desert,” 25-44. The account of comparative and 
noncomparative desert that I offer here, while not identical to Miller’s, is based on his account. 
196 To make the example even less controversial let us add the stipulations that (1) the life being saved is that of a 
morally good person and (2) the consequences of saving the life are positive according to any commonly accepted 
moral view. 
197 For those who might justify such an act on consequentialist grounds, let us add the stipulation that, no matter how 
the example is framed, the consequences that result from this horrific act are negative.
Comparative desert bases are common in situations in which two or more people are pursuing the same aim or goal or contributing to a common venture. An example of such a situation is when people are engaged in an athletic competition. In Olympic footraces, for example, the relevant desert bases are effort and performance toward winning the race. Since such races involve more than one person pursuing the same goal, the place that one deserves is determined by comparing two or more people. In such races, whether a competitor deserves to win the race is determined by comparing how much effort each competitor put forth in preparing for the race, how much effort each put forth during the race, and how well each performed during the race.

Many deserved modes of treatment are comparative. In athletic competitions, the places in which competitors finish are usually noted by ordinal ranking, and the first, second, and third place finishers are often given medals or trophies. The appropriateness of the modes of treatment in these competitions is determined in large part by how the value or size or beauty of one medal or trophy compares to the value or size or beauty of another medal or trophy. A gold medal is given to the first place finisher because it is more valuable than the silver medal given to the second place finisher. It would not be sensible if the first place finisher received a tin medal while the second place finisher received a gold medal.

If the place in which one finishes in such competitions tracks desert, then the medals and trophies are awarded according to desert. It can be argued that these places track, and thus these medals and trophies are awarded according to, rules that serve as proxies for desert. Based on the account of desert given in the previous chapter, it is also possible that these medals and trophies sometimes or oftentimes track merit, but not desert. But to the extent that athletic competitions track desert, the modes of treatment that are deserved are comparative.

\[198\] In Chapter 6, I discuss proxies for desert in greater detail.
Noncomparative deserved modes of treatment are harder to identify than comparative deserved modes of treatment. The view that noncomparative judgments about what a person deserves are possible in at least some cases might be based on the view that in some cases a person can have a fixed level of desert regardless of the economic, political, and social situation of the society in which he lives. According to David Miller, sometimes people seem willing to make these types of desert judgments in cases of retributive justice. For example, one might support the idea that a rapist ought to get, at a minimum, a serious punishment.\footnote{David Miller, “Comparative and Noncomparative Desert,” 34.}

I argued that child rape is a noncomparative desert base since it always gives rise to some negative desert. It might also be argued that what the rapist deserves, i.e., his deserved mode of treatment, is noncomparative. According to this view, there is at least one deserved mode of treatment for the rapist that can be determined with reference to him and his actions only. Even if this is the case, however, it is not clear how such a mode of treatment could be determined with much accuracy. The idea that a rapist deserves some punishment, perhaps time in prison, is likely to elicit wide agreement. But what is the duration of imprisonment deserved? Is it ten years? Twenty years? Is it life imprisonment? One might question whether imprisonment is the deserved punishment. Perhaps the rapist deserves fifty lashes. Perhaps he deserves to be raped in return, or castrated, or put to death.\footnote{Hurka claims that the death penalty for rape is “an intrinsically excessive punishment” (“Desert: Individualistic and Holistic,” 55). But considering the severe, long-term emotional and, in some cases, physical damage that rapists cause, it is not clear why the death penalty for rape would always be an excessive punishment. It certainly is not clear why the death penalty for rape would be an intrinsically excessive punishment.}

Let us say that the preferred way of determining a rapist’s deserved punishment would be based on matching how much suffering he caused with how much suffering any given punishment will cause him. Because there is no way to determine exactly how much suffering the rapist caused, or to determine how certain punishments would uniquely affect him, there
seems to be no way to determine accurately the absolute or fixed level of deserved punishment in this case. Similar difficulties should be expected in many, if not all, cases of retributive justice. Therefore, as Miller also notes, desert judgments in such cases typically set upper and lower limits to punishment rather than pinpoint a perfectly or absolutely appropriate punishment. As a result, typically such judgments are somewhat vague.

One might argue that the treatment of criminals in retributive justice involves comparative desert as well. One can compare and contrast two criminals and, based on their crimes, their culpability, and a number of other factors, determine whether one deserves a more severe punishment than the other. If one is deserving of a more severe punishment, then this should be reflected in the sentences that each receive. One might argue that such comparisons are matters of fairness as opposed to desert. Shelly Kagan suggests that what is sometimes referred to as “comparative desert” might in certain situations be more accurately termed “desert-sensitive fairness,” although he sticks with the former terminology.

Comparative desert might be seen as a component of retributive justice most clearly in cases in which more than one person participates in a common criminal venture. In such cases, one would consider the actions of each criminal to determine how each criminals’ contribution to the crime and culpability for the crime compared and contrasted with the others’ and thereby determine who deserves what punishment. If three people commit a crime, the one who has the largest role in that crime will usually deserve a more severe punishment than his accomplices.

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202 David Miller, “Comparative and Noncomparative Desert,” 37.
204 Once a crime reaches a certain level of severity, desert considerations might suggest that all of the criminals involved should be punished at some absolute level regardless of whether one had a larger or lesser role in the commission of the crime than the others.
I have mentioned Miller’s point about people being likely to make noncomparative desert judgments in retributive cases. A strong case could be made that people are equally willing to make noncomparative judgments, at least to set upper and lower limits, about desert in distributive cases as well.\(^{205}\) The idea that an honest and hardworking person deserves, at a minimum, to have a roof over her head, clothes on her back, and food on her table is likely to elicit wide agreement. In addition, many likely would agree that no one, no matter how much effort she has expended or how well she has performed, deserves to have a monopoly on all of the goods and services in a society. But these desert judgments are somewhat vague.

Desert judgments in most distributive cases should be based primarily on comparative desert. This does not mean that questions regarding what benefit a person deserves irrespective of how others are benefited are not important. But in most distributive contexts the more relevant questions will concern how the overall quality and quantity of a benefit that one person receives compares and contrasts with the overall quality and quantity of the benefits of others who put forth efforts and performances that are similar and dissimilar in relevant respects. Again, comparisons among benefits in such cases might be more an issue of fairness, or desert-sensitive fairness, than desert. Regardless, in most contexts, is it necessary to make such comparisons when attempting to determine or assess desert-based distributions.

*Comparative and Noncomparative Desert: Balancing the Actual and the Ideal*

It seems reasonable to suppose that, were one to have perfect knowledge about noncomparative desert, one could determine an absolute benefit or punishment that corresponds to each desert base in any given context.\(^{206}\) Whereas such exactness might have a place in ideal

\(^{205}\) David Miller, “Comparative and Noncomparative Desert,” 38.

\(^{206}\) David Hume seemed to have something like this in mind when he claimed that the assigning of possessions according to merit might have a place in “a perfect theocracy” governed by an “infinitely intelligent” being. Hume, *Principles of Morals*, § 154 (193). See Chapter 2 (17-18) above.
theory, in non-ideal practice one must be satisfied with the somewhat vague upper and lower limits mentioned above. It seems reasonable to suppose that, were one to have perfect knowledge about comparative desert, in any context one could determine exactly how one person’s desert compares with another’s desert and, therefore, one could determine exactly what each should receive. Whereas such exactness might have a place in ideal theory, in non-ideal practice one must be satisfied with less than perfect desert judgments and corresponding distributions. The epistemological limitations in both determining one’s desert and governing ourselves according to such determinations provide no more reason to abandon desert than does human fallibility in general provide us with a reason to abandon any of our important normative concepts, however.

To this point, I have discussed comparative and noncomparative desert in actual or “real world” situations. Because of the gap between the actual and the ideal, it is important to distinguish between comparative and noncomparative desert in actual, real world situations and comparative and noncomparative desert in ideal situations in which everyone gets what she ideally deserves.  It is important to note that my discussion of desert in ideal situations is not based on what someone would or might have done counterfactually. Therefore, in each example, I will hold the desert bases constant when comparing and contrasting actual and ideal situations. Since the desert bases will be held constant, I will be focusing on how deserved modes of treatment will compare and contrast in actual and ideal situations.

When making desert-based distributions, people are necessarily limited by the particular economic, political, and social circumstances in which they find themselves. One might think that, ideally, a person deserves more money than he received. But if that person lives in a

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207 Since justice involves many important distributive concepts, justice might not always recommend that one gets what one deserves (see section 2.2).
A person’s noncomparative desert is determined in isolation from what or how much others deserve. There are two ways in which this can be determined. First, one can determine what a person would deserve in an ideal situation in which every person got exactly what he noncomparatively deserved. Take an ideal situation involving three people - Bobby, Mark, and Mike – in which the deserved mode of treatment is receiving widgets. One might judge that in an ideal situation Bobby deserves five hundred widgets for his effort and performance regardless of what Mark or Mike deserves. And since this is an ideal situation, one can ignore the fact that only one hundred widgets actually exist. In this case, five hundred widgets would be Bobby’s ideal, noncomparative desert.

The second way in which a person’s noncomparative desert can be judged takes into account facts about the availability of deserved modes of treatment in his association, organization, or perhaps the larger society or world in which he lives. This type of desert would be determined by taking stock of the resources in the actual world and making a noncomparative judgment based on those resources. Based on Bobby’s effort and performance, one might judge that he deserves some widgets. Imagine that only one hundred widgets actually exist. One could make a judgment about how many of those one hundred widgets Bobby deserves, regardless of how many widgets Mark or Mike deserves. So, one might judge that of those one hundred widgets that actually exist, Bobby deserves fifty of them regardless of what Mark or Mike deserves. In this case, Bobby’s actual, noncomparative desert would be fifty widgets. This could be true concurrent with the fact that Bobby ideally, noncomparatively deserves five hundred widgets.
According to comparative desert, a person’s effort and performance is weighed against others’ efforts and performances in order to discern what each deserves. As with noncomparative desert, comparative desert can also be assessed in terms of actual or ideal circumstances. First, one can judge what a person would deserve in an ideal situation in which every person got exactly what he comparatively deserved irrespective of what amount or number of a particular thing actually exists. So, even if only one hundred widgets exist, one could judge that Bobby deserves five hundred widgets, Mark deserves three hundred widgets, and Mike deserves two hundred widgets. This would be a judgment about the ideal, comparative desert of each.

The second way in which a person’s comparative desert can be judged takes into account facts about the availability of deserved modes of treatment in his association, organization, or perhaps the larger society or world in which he lives. This type of desert would be determined by taking stock of the resources in the actual world, and making a comparative judgment based on those resources. In this case, one would compare Bobby’s, Mark’s, and Mike’s desert and determine how much of the actually existing or available one hundred widgets each deserves. In this case, Bobby might deserve fifty widgets, Mark might deserve thirty widgets, and Mike might deserve twenty widgets.

Actual desert, whether it is comparative or noncomparative, can be heavily influenced by economic, political, and social circumstances. Someone might actually comparatively deserve very little in a communist society, but this can be due to the fact that one is not given many opportunities to distinguish oneself in such a society or because there is a scarcity of resources in such a society, or for both of these reasons. Hurka argues that in cases of economic desert,
“proportional distributions at very different levels of income seem equally just.” This might be true in some cases, but its truth depends in large part on why the income levels are higher or lower. If the income levels are proportional and low because people freely choose a more leisurely lifestyle with relatively little time devoted to work, then proportional distribution at low levels of income might be just. If the income levels are proportional and low because of the policies of a repressive regime, however, then the situation is likely to be unjust irrespective of the extent to which distributions are based on people’s actual, comparative desert.

Conclusion

As the examples of Bobby, Mark, and Mike illustrate, in many cases there will be a gap between a person’s actual and ideal desert. In cases in which desert is deemed to be a relevant distributive criterion, one should look to ideal desert for guidance, determine to what extent an actual distribution does or can match-up with the ideal, and judge the situation accordingly. In most (actual) distributive contexts, noncomparative desert will not give us much guidance as to what a person deserves in the actual or real world. This is due to the fact that in order to discern what someone deserves oftentimes we must compare his desert to the desert of others. Since we must often rely on comparative desert in order to make distributive decisions, an important question to answer is: with whom should one be compared?

A comparative class or comparative group is, quite simply, a class or group with which a person or thing is being compared. When trying to determine a person’s comparative desert, identifying the appropriate class or group of people with whom that person should be compared is of the utmost importance. As I presented them, the comparative group in the examples of Bobby, Mark, and Mike consisted of only those three persons. Determining the appropriate comparative class or group can be difficult. Still, if one does not isolate the appropriate

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comparative class or group, one cannot make appropriate comparative desert judgments. As I will argue in the chapters that follow, in most cases the most appropriate or relevant comparative class or group will be those people who are pursuing the same aim or goal in a given local context.

4.4 Pre-Institutional Desert, Institutional Desert, and Entitlement

Some Important Distinctions

Some claim that people deserve things like awards, prizes, jobs, and first place in competitions. Of course, such modes of treatment are connected to certain conventions or practices within associations, organizations, and larger social institutions. One cannot deserve first place in a competition absent the existence of the competition itself, nor can one deserve a job at an accounting firm absent the existence of the accounting firm and the economic system of which the accounting firm is some very small part. In the light of such examples, some scholars claim that desert cannot exist in the absence of such institutional practices or conventions. I will argue that Rawls is one scholar who makes such claims.

As I noted in Chapter 2, desert can be separated into pre-institutional desert and institutional desert. Again, I will refer to pre-institutional desert as “p-desert” and institutional desert as “i-desert.” As I discussed in Chapter 2, a person can attempt to undermine the concept of desert itself completely. Such a person would not recognize desert in any robust form, whether that desert is understood as a pre-institutional or institutional concept. Others might advocate something that they refer to as “desert,” but that is mostly or wholly specified by existing criteria or rules within institutions. This is what I refer to as “i-desert.” Others might claim that desert is nothing more than what one is entitled to based on existing criteria or rules.

209 See Feinberg’s and Sher’s examples above (50-52).
211 See Chapter 2 (28-29).
within institutions. This is what I refer to as “entitlement.” It is important that one does not conflate the concepts of p-desert, i-desert, and entitlement and that one clearly explain the distinctions between and among these concepts.

It bears repeating that p-desert is not limited to desert in some pre-institutional state of nature. Rather, p-desert is meant to signify desert that does not get its force from institutional criteria and rules. In this way, p-desert can be understood as “raw desert,” or simply “desert.” But in order to be clear that I am focusing on a distinction between desert that is not institutionally influenced and desert that is institutionally influenced, I will use the terms “p-desert” and “i-desert” when needed.

Desert is a concept that is logically prior to and independent from both tacit and explicit institutional criteria and rules. Specific desert bases or specific deserved modes of treatment, however, are often defined within a particular associational, organizational, or institutional context. As Julian Lamont has argued, “desert requires external values and goals to make it determinant” since “the criteria for its application are not entirely ‘internally determined’ by the concept itself.”\textsuperscript{212} Incorporating this idea into the view of desert that I have advocated in this dissertation, one would say that although all desert is based on a combination of effort and performance, what that effort and performance should be geared toward and what mode of treatment should result from that effort and performance are in part determined by the external values and goals of associations, organizations, or institutions.

The conflation of p-desert and i-desert is based on a failure to recognize a distinction between desert as a general normative concept and a particular type of desert that is influenced by institutions. The distinction between p-desert and i-desert tracks an important difference between one deserving something regardless of whether one is a part of an institution and one

\textsuperscript{212} Lamont, “The Concept of Desert in Distributive Justice,” 45.
deserving a specific thing based mostly or wholly on institutional criteria or rules. Understood in another way, the difference between p-desert and i-desert also tracks an important difference between what one deserves regardless of institutional criteria or rules and what an association, organization, or institution recognizes desert to be. The reason why someone deserves a medal for his effort and performance toward winning a particular race is because there exists an institution that regulates such an event. But the underlying reason why the person deserves something for winning the race based on his effort and performance is that, pre-institutionally, effort and performance give rise to desert.

The reason why people might tend to lose sight of the important distinction between p-desert and i-desert is that oftentimes people do not deem it necessary to distinguish between the two when the distributive context in which a desert claim or judgment is being made is understood. In many cases, specifying that a desert claim is an i-desert claim is unnecessary for it is assumed as a background condition of the discussion. If one were to claim, for example, that Alonzo deserves a promotion, it would likely be understood that one is making this claim in the specific and somewhat narrow local context in which Alonzo works. Still, it is important to remember that what gives rise to i-desert is effort and performance in a particular institutional context.

Earlier in this chapter (section 4.2), I advocated a distinction between legitimate desert claims that are tied to morally acceptable aims or goals and sham desert claims that are tied to morally unacceptable aims or goals. To revisit an example that I used earlier, in Nazi Germany certain associations, organizations, and institutions were engaged in immoral practices. People within these groups might have thought that their efforts and performances while engaged in these immoral practices gave rise to desert and they might have made distributions accordingly.
One could refer to effort and performance in these cases as giving rise to i-desert, since these cases did involve distributions based on what an association, organization, or institution recognized desert to be. Perhaps it is best to draw a distinction between i-desert and sham (or mistaken) i-desert in order to handle such cases.

Entitlement is specific to a particular association, organizations, or institution. Entitlement results from a subject having a claim or right as a result of following the rules and meeting some explicit criterion or criteria of an association, organization, or institution. Sometimes, people use the term “entitlement” in a different sense according to which people are entitled to or have a right to certain things pre-institutionally, such as their bodies or the products of their labor.213 This is not how I am using the term “entitlement,” however. Perhaps I should use the term “i-entitlement,” short for “institutional entitlement” for my view. Since the distinction between the way in which I am using the term here and the uses of the term that I described above is clear, however, and since nothing else substantive hinges on whether it is called “entitlement” or “i-entitlement,” the term “entitlement” will suffice.

Some argue for a close connection between desert and i-desert and desert and entitlement, almost to the point of making the concepts synonymous. Below, I will look at two quotes from Rawls in which he might be understood as making such arguments. Regardless of how Rawls’s view is interpreted, accounts that draw too close a connection between desert and these related concepts are problematic. If desert and entitlement were synonymous, for example, the claim that one deserves something although one is not entitled to it would be nonsense. But there are many cases that show that such claims are perfectly sensible. Consider a footrace in which the leading runner is accidentally tripped and falls just prior to crossing the finish line. In such races, crossing the finish line first is the criterion used to establish the winner. If the fall

213 See Nozick, *Anarchy, State, and Utopia.*
prevented the runner from winning, one could reasonably argue that, although the runner is not entitled to win, he deserved to win because he had made the requisite effort, performed better than all of the other runners for the entire race leading up to the fall, and was clearly going to win before he was tripped and fell right in front of the finish line.\textsuperscript{214} Since such a claim is perfectly reasonable, it is clear that desert and entitlement are not synonymous.

In addition to the fact that one can deserve something that one is not entitled to, one can be entitled to something that one does not deserve. To revisit a familiar example yet again, based on the laws of his country, a Nazi could be entitled to the property of a man he just sent to Auschwitz. But as I discussed in section 4.2, since the Nazi only became entitled to the property by committing a vicious act, most would shudder at the thought that he deserved the property. To use another common example, a grandson might be entitled to his grandfather’s inheritance, but he might not have done anything to deserve the fortune left to him. In some cases a person is entitled to things in virtue of some characteristic or quality that does not presuppose any effort or performance on his part, let alone any effort or performance for which he is significantly responsible. For example, one can be entitled to citizenship simply in virtue of being born in a particular place. In all three of these examples, a person is entitled to something that he neither p-deserves nor i-deserves.

Jeffrey Moriarty notes that i-deserts are sometimes called “entitlements.”\textsuperscript{215} Above, I offered three examples in which a person’s entitlement and i-desert might come apart. It is true that, like i-desert, entitlement is based on criteria or rules within associations, organizations, and institutions. As I will explain, however, entitlement is more strongly tied to explicit criteria and rules than i-desert. Let us revisit the example of Alonzo deserving a promotion (130). Alonzo

\textsuperscript{214} See 89-92 above for a more complete discussion of the desert of runners in footraces.
\textsuperscript{215} Moriarty, “Desert and Distributive Justice,” 132.
works at the local factory and, along with Sal, he is being considered for a promotion to shift supervisor. Alonzo can i-deserve the promotion over Sal because Alonzo has put more effort into his job and done more to promote the company’s goals. This can be true without Alonzo being entitled to the promotion, especially in the absence of any explicit company policy according to which all promotions will be given on the basis of who has put more effort into his job and done more to promote the company’s goals. In order for Alonzo to justify a claim that he is entitled to the promotion, he would have to show that he meets some objective standard that was promulgated by the company.

In the case of Alonzo, what could one say about his p-desert, i-desert, and entitlement? One could say that Alonzo’s hard work, understood as a combination of effort and performance, is a desert base even absent the existence of associations, organizations, or institutions. This would be his p-desert. Next, one could say that Alonzo i-deserves something specific, in this case the promotion, for the reasons given above. Lastly, if there were explicit criteria for the promotion, and if Alonzo met those criteria without qualification, he would be entitled to the promotion.

Earlier, I argued that one could be entitled to something without deserving it. Certain cases of entitlement are based on certain facts about a person that are not the types of things that can be deserved, such as one’s entitlement to citizenship based on one’s place of birth. I also argued that entitlements that arise as the result of immoral activities will not be based on one’s desert. In certain cases, however, there will be a closer connection between entitlement and desert.216

216 McLeod argues that entitlement can be a basis for desert, but he does not explain this in terms of one’s effort and performance. McLeod, “Desert and Institutions,” 192.
Although Rawls argues against the concept of p-desert while promoting his theory of justice, he also argues that “a just scheme gives each person his due: that is, it allots to each what he is entitled to as defined by the scheme itself.” Rawls claims that a person’s due is based on whether and to what extent he succeeds or fails by following or rebelling against the rules and precepts of a society.217 One might wonder why a person is due anything as a result of succeeding by following the rules and precepts of a society. One plausible answer, at least in certain cases, is that he deserves it based on his effort and performance.218 Another way in which entitlement and desert can be connected is that an association, organization, or institution might develop explicit criteria or rules that attempt to accurately capture people’s deserts. Depending on how well those criteria or rules are developed and implemented, what one is entitled to might often correspond to what one deserves. Even if this were so, however, one’s desert still would not be synonymous with one’s entitlement.

Rawls on P-Desert, I-Desert, and Entitlement

There are good reasons to question whether Rawls advocates any robust conception of desert. But insofar as Rawls is understood as advocating a conception of desert, he is usually understood as advocating a purely institutional conception. One key passage that suggests Rawls holds a purely institutional conception of desert is:

There is a natural inclination to object that those better situated deserve their greater advantages whether or not they are able to benefit others. At this point it is necessary to be clear about the notion of desert. It is perfectly true that given a just system of cooperation as a scheme of public rules and the expectation set up by it, those who, with the prospect of improving their condition, have done what

217 Rawls, Theory of Justice, 313.
218 See Kekes, Against Liberalism, 146 for a similar point.
the system announces that it will reward are entitled to their advantages. In this sense, the more fortunate have a claim to their better situation; their claims are legitimate expectations established by social institutions, and the community is obligated to meet them. But this sense of desert presupposes the existence of the cooperative scheme; it is irrelevant to the question of whether in the first place the scheme is to be designed in accordance with the difference principle or some other criterion.219

Rawls begins the passage by referring to the idea that people who are “better situated deserve their greater advantages” and in the next sentence he writes that “it is necessary to be clear about the notion of desert.” Notice that Rawls does not claim to be discussing a particular type of desert or a particular conception of desert, but rather the notion of desert. Here, he does not qualify desert in any way.220 Of course, there is more to desert than whether the better situated deserved their greater advantages, irrespective of how one interprets the terms “situated” and “advantages.” Rawls then discusses how those who have done what the system announces “are entitled to their advantages” based on meeting “legitimate expectations established by social institutions.” So, on Rawls’s account, meeting legitimate expectations gives rise to entitlements. He then claims that “this sense of desert presupposes the existence of a cooperative scheme.”221 This last quote suggests that there could be other senses of desert. But more importantly, notice that “this sense of desert” refers to entitlement claims that are based on meeting “legitimate expectations established by social institutions.” Since Rawls has argued so forcefully against a standard conception of p-desert as a defensible concept (Chapter 2), and since he has explained

219 Rawls, Theory of Justice, 103.
220 Rawls does refer to desert as a “notion.” This could suggest from the outset that he does not view desert as a robust concept that should be given much weight.
221 Emphasis added.
desert in the terms of entitlements based on meeting legitimate expectations within an institution, it is easy to interpret this passage as offering a purely institutional theory of desert. This purely institutional theory of desert also seems to include a conflation of one’s entitlement with at least some “sense of desert.”

In an effort to clarify Rawls’s view on desert, I will reconsider a quote that I first introduced when discussing Rawls’s views on moral and nonmoral desert:

Now it should be noted that even though a person’s claims are regulated by the existing rules, we can still make a distinction between being entitled to something and deserving it in a familiar although nonmoral sense. To illustrate, after a game one often says that the losing side deserved to win. Here one does not mean that the victors are not entitled to claim the championship, or whatever spoils go to the winner. One means instead that the losing team displayed to a higher degree the skills and qualities that the game calls forth, and the exercise of which gives the sport its appeal. Therefore the loser truly deserved to win but lost out as a result of back luck, or from other contingencies that caused the contest to miscarry…Its bearing here is that although we can indeed distinguish between the claims that existing arrangements require us to honor, given what individuals have done and how things have turned out, and the claims that would have resulted under more ideal circumstances, none of this implies that distributive shares should be in accordance with moral worth. Even when things happen in the best way, there is still no tendency for distribution and virtue to coincide.222

The first thing to note is that Rawls does not mention effort, or responsible effort, as giving rise to desert. Rather, he merely mentions the display of skills and qualities. In most cases, failure to

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explicitly mention effort or responsible effort would be unremarkable, since many scholars who defend p-desert discuss how skills and qualities give rise to desert without explicitly tying those skills and qualities to effort or responsible effort. But since Rawls rejects any robust conception of p-desert, he might not view any skills and qualities as giving rise to any particular treatment in the absence of institutions. While Rawls does offer a distinction between entitlement and some notion of desert in this passage, he still ties desert to a hypothetical claim under ideal circumstances in an institutional context.

Samuel Scheffler has argued that Rawls does not advocate a purely institutional theory of desert, but rather a purely justicial theory of desert. On Scheffler’s reading, Rawls rejects “prejusticial” desert because Rawls thinks that desert can exist only after the principles of justice have already been established. Scheffler explains the difference between rejecting pre-institutional desert and rejecting prejudicial desert as follows: One could argue that a person deserves whatever it is that justice dictates that he should receive and only what justice dictates that he should receive. Scheffler writes that “on this view, desert would not be prejudicial, since it would be defined in terms of justice rather than vice versa; nevertheless, it would be preinstitutional, since it would be a normative notion that was independent of actual institutions and their rules, and could be used to assess them.”223 It is possible that Rawls rejects both prejudicial and pre-institutional desert in some way. For example, Rawls could argue that desert is defined in terms of justice and in terms of (just) institutions. Regardless, it is clear that he rejects at least one of these types of desert. Therefore, it is worthwhile to consider the problems with rejecting either of the two.

One difficulty with rejecting pre-institutional desert and thereby endorsing institutional desert only is that such a view would disallow the entirely reasonable claim that a person can

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deserve something even if he is not part of any identifiable institution. For instance, it seems true that a person could deserve something in a state of nature. Even if a man were the last person on Earth, he could deserve something based on his effort and performance. For example, if he were to work hard to build shelter or grow crops, then he would deserve the benefits that resulted. Another difficulty with rejecting p-desert is that by doing so one would not have an independent normative concept of desert to use to access the criteria and rules of institutions.

As with the rejection of pre-institutional desert, the rejection of prejudicial desert is problematic. As I have argued throughout this work, desert is an important conceptual component of justice. If one were to claim that desert is purely justicial, one would seem to get the relationship between desert and justice backward. I maintain that desert must be prejudicial since justice must be defined, in part, in terms of desert. Justice concerns what is appropriate for a person, and this appropriateness will be defined in terms of desert and other important conceptual components that I have mentioned throughout this dissertation.

Conclusion

If Scheffler’s interpretation of Rawls’s conception of justice is correct, i.e., if Rawls does reject prejudicial desert as opposed to pre-institutional desert, Rawls’s view is still problematic since it gets the relationship between desert and justice backward. And even if Rawls rejects prejudicial desert, it still seems to be an upshot of Rawls’s view that desert could not exist in the absence of institutions. This is because, even if Rawls offered a conception of desert that was independent of actual institutions and their rules, it still remains the case that on Rawls’s account desert would only (actually) exist within institutions. The reason why desert would only exist within institutions on his account is because he rejects any robust conception of p-desert and he
always seems to define desert as what one is due based on legitimate expectations established by social institutions.

4.5 Conclusion: The Epistemological and Pragmatic Arguments Revisited

In this chapter, I have argued that certain steps must be taken in order to make accurate desert judgments. Such steps include delimiting the context in which the desert judgment is being made and determining the desert bases and deserved modes of treatment that are relevant in the context. The context will help determine whether moral or nonmoral desert is relevant and whether the relevant desert bases and deserved modes of treatment are comparative or noncomparative. Since the relevant desert bases and deserved modes of treatment are often comparative in practice, context will have a large influence when one is determining the relevant comparative class or group.

As I have argued, for a person, association, or organization to use desert accurately as a distributive criterion, specific information must be gathered and considered. This information must include certain specific details about a person’s relevant efforts and performances. In Chapter 2, I argued that while the metaphysical argument fails, the epistemological and pragmatic arguments have some purchase. In the light of what I have discussed in this chapter, one can begin to see how the challenges presented by the epistemological and pragmatic arguments can be met. If one clearly identifies and isolates the desert bases and deserved modes of treatment that are relevant in a particular context, then the amount of knowledge one needs in order to make accurate desert judgments becomes more limited. For example, in an Olympic footrace one need not know whether an athlete is performing from moral motives, whether he is a good husband, or whether he washes his hands after visiting the commode. What one needs to know about are the athlete’s efforts and performances in preparation for the race and during the
race, and also how his efforts and performances compare with those of the other athletes in the race. Since this knowledge often can be obtained with a fair degree of accuracy, the challenge raised by the epistemological argument can be met. Because the amount of knowledge needed in this and other local contexts is rather limited, the pragmatic difficulties involved with treating people according to their deserts are fewer and easier to manage. Therefore, in such contexts, desert-based distributions can be made with a fair degree of accuracy.

In order to determine whether a person is deserving, one must know important relevant facts about that person. In distributive contexts in which more than one person is pursuing the same aim or goal or contributing to a common venture, the amount of knowledge needed to make desert determinations is greater. As a general rule, the larger the comparative class the more knowledge needed in order to make accurate desert judgments. Also as a general rule, as the knowledge necessary to make desert judgments increases, the difficulty involved in gaining that knowledge increases. Put differently, greater epistemological challenges lead to greater pragmatic challenges. If a comparative class gets too large, it might be difficult to envision any amount of effort leading to the acquisition of the knowledge needed in order to make accurate desert judgments.

My views about the epistemological and pragmatic limitations on desert-based distributions suggest that desert is most immediately relevant in contexts that are more limited in size and scope. This would also seem to suggest that desert is not relevant in contexts that are great in size and scope. Such a suggestion is problematic, however, since desert is an important conceptual component of justice. As such, it would seem that desert should be relevant in contexts or on levels of a just society irrespective of the size and scope of those contexts or
levels. In the chapters that follow, I will examine different contexts on different levels of society in order to determine what role, if any, desert has in those contexts.
CHAPTER 5. DESERT AND BASIC-STRUCTURE PRINCIPLES OF JUSTICE

5.1 Introduction

In the preceding chapters, I discussed some of the challenges that have been leveled against the concept of desert and its role in distributive contexts. In addition, I examined the conceptual components of desert and discussed the different types of desert that are relevant in different contexts. But aside from some brief remarks in Chapter 1 (1-6) and Chapter 2 (10-17), I have not offered much specific discussion about the role of desert in a just society. In this and the following chapter, I will undertake the task of explaining that role. In order to do so, first I must explain my views on the applicability of justice within a society.

In Chapter 2, I discussed some of John Rawls’s anti-desert arguments and some of the implications that those arguments have for the role of desert in distributive contexts. Below, I provide a more detailed examination of Rawls’s view of justice and I highlight some of the difficulties with his account. First, I examine briefly Rawls’s idea of the basic structure of a society and the original position from which his favored basic-structure principles of justice are chosen (section 5.2). Then, I examine the influence that basic-structure principles have on the structure of a society and on the use of desert as a distributive concept within a society (section 5.3). In particular, I focus on Rawls’s argument that different principles of justice are directly applicable in different contexts or on different levels of a society. I argue in favor of the view that although different principles of justice might be directly applicable in different contexts or on different levels of a society, the same underlying conceptual components of justice are applicable in all contexts or on all levels of a society. Then, I examine the implications that my favored view has for the role of desert in distributive contexts.
I am focusing on Rawls’s theory in this chapter because it holds a prominent place in social-political theory and because Rawls explicitly rejects desert as an important criterion in the development of his basic-structure principles of justice. By focusing on Rawls, I do not mean to suggest that his is the only theory of justice that downplays or rejects the importance of desert in distributive contexts and distributive justice. It is important to note that I will be discussing main elements of Rawls’s theory of justice as it is presented in different works, primarily in *Theory of Justice* and *Justice as Fairness*. Rawls changed, or at least clarified, his theory in many important ways from the time he wrote *Theory of Justice* until the time he wrote *Justice as Fairness*. In order to present both a charitable and an accurate account of Rawls’s fully developed theory, I will attempt to highlight these changes when relevant to the discussion.

### 5.2 The Basic Structure, the Original Position, and the Applicability of Justice

**What is the Basic Structure?**

Toward the beginning of *Theory of Justice*, Rawls tells us that the basic structure of society is “the primary subject of justice.” He describes the basic structure as:

the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. By major institutions I understand the political constitution and the principle economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions. Taken together as one scheme, the major institutions define men’s rights and duties and influence their lifetime prospects, what they can expect to be
and how well they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start.\footnote{Rawls, \textit{Theory of Justice}, 7.}

In \textit{Justice as Fairness}, Rawls explains the basic structure as:

\begin{quote}
. . . the way in which the main political and social institutions of society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arises from social cooperation over time (\textit{Theory}, § 2: 6). The political constitution with an independent judiciary, the legally recognized forms of property, and the structure of the economy (for example, as a system of competitive markets with private property in the means of production), as well as the family in some form, all belong to the basic structure. The basic structure is the background social framework within which the activities of associations and individuals take place. A just basic structure secures what we may call background justice.\footnote{Rawls, \textit{Justice as Fairness}, 10.}
\end{quote}

Thomas Pogge notes that Rawls leaves the idea of the basic structure “not merely vague but also ambiguous” and that Rawls employs a broader version of the basic structure in \textit{Theory of Justice} and, at times, a narrower version in “The Basic Structure as Subject” and \textit{Justice as Fairness}.\footnote{Pogge, \textit{Realizing Rawls}, 21ff. Pogge also writes, “The notion of the basic structure, like many other important concepts, retains a certain vagueness, which it would be futile to try to remove completely. The notion may surely be significant and penetrating even without a sharp line between practices that are and those that are not part of the basic structure.”} In “Where the Action Is: On the Site of Distributive Justice,” G. A. Cohen also highlights some ambiguity in Rawls’s account of the basic structure. While focusing on Rawls’s views as presented in \textit{Theory of Justice} and \textit{Political Liberalism}, Cohen writes, “It is seriously unclear \textit{which} institutions are supposed to qualify as part of the basic structure.”\footnote{Cohen, “Where the Action Is,” 18.}
himself admits that what is included in the basic structure is not entirely clear when he writes, “Now admittedly the concept of the basic structure is somewhat vague. It is not always clear which institutions or features thereof should be included.” In part because his work can be reasonably interpreted as offering such divergent versions of the basic structure, Rawls’s explanation of that structure and how justice uniquely applies to it is problematic. But despite the difficulties with clearly identifying exactly what is and what is not included as part of the basic structure, one can understand Rawls’s general idea that any given society has certain major social and political institutions that will combine to give that society a particular structure.

A society does not have to be come about in the way Rawls describes, be based on the same basic principles of justice that Rawls defends, or include all of the basic-structure institutions that Rawls includes in order to have a basic structure. Pogge suggests that even an anarchist society has a basic structure based on its “practices, procedures, rules, and norms that are to regulate and pervade the entire social system.” Based on this suggestion, I will stipulate that any society, in virtue of being a society, has a basic structure. If one grants that such structures exist, one will then need to consider whether different principles of justice apply to any given basic structure and to the associations, organizations, and individuals within that structure. Rawls argues that they do. Before focusing on the issue of the applicability of principles of justice, however, I will discuss a main idea that Rawls uses to develop his theory of justice as fairness – the idea of the “original position.”

The Original Position

In order to ensure that the chosen basic-structure principles of justice are fair in his estimation, Rawls presents a hypothetical situation in which those principles would be chosen.

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230 Ibid., 21.
He refers to this situation as the “original position.” As hypothetical, the original position is not meant to be an actual historical state, but rather an imagined state of affairs that is similar to the state of nature that is often invoked in social contract theory. The principles chosen in the original position are supposed to be “the principles that free and rational persons concerned to further their own interests would accept in an initial position of equality as defining the fundamental terms of their association.”

Rawls explains the original position as follows:

Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chose behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances.

When explaining how one might justify a description of the original position, Rawls introduces the idea of “reflective equilibrium.” As described by Rawls, persons in the original position would deliberate and then choose certain basic-structure principles. These persons would then determine how well the principles matched their considered convictions. If the principles and convictions did not match, the persons would adjust one or the other. This process

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232 Ibid., 12.
would continue until the selected principles and considered convictions matched. This state, in which the principles and convictions match, is one of reflective equilibrium.234

As discussed in Chapter 2, Rawls believes that one place in the distribution of native endowments and one’s initial starting place in society are morally arbitrary facts. Because he believes these facts to be morally arbitrary, Rawls thinks that allowing them to serve as influences on the decision making of the actors in the original position would be unfair. Rawls extends this idea by arguing that fairness dictates that those in the original position cannot know the specific social and political circumstances or the assets and abilities of themselves or others. Rawls also argues that persons’ conceptions of the good and their psychological propensities, presumably since they too are morally arbitrary, must remain unknown to themselves or others.

Perhaps in response to concerns about whether his descriptions of the original position and the beings in the original position are realistic, Rawls asks, “Is it a gathering of all actual or possible persons?” He answers “plainly not.”235 As Rawls describes them, it is unclear whether any being who did resemble those in the original position would qualify as a person. Rawls himself admits that those in the original position are merely “artificial persons” used in a “device of representation.”236

Regardless of any difficulties with how Rawls describes the persons in the original position, the persons are meant only as devices of representation. Therefore, Rawls’s principles of justice need not succeed or fail based on whether or to what the extent the persons in the original position are realistic. Rawls could grant that the persons in the original position are highly implausible representations of actual persons, yet still argue that his favored basic-

234 Nozick wonders why Rawls would not use reflective equilibrium to test basic-structure principles against evidence provided in microcases that suggests the basic-structure principles are problematic. Anarchy, State, and Utopia, 205-206.
235 Rawls, Justice as Fairness, 86.
236 Ibid, 87.
structure principles are the correct principles of basic-structure justice. Whether he offers a convincing argument to justify his favored principles is debatable, however.

Rawls claims that the following principles, which are his favored basic-structure principles of justice, would be chosen by those in the original position:

(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

(b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged member of society (the difference principle).\textsuperscript{237}

Rawls intends for the first principle (a), the liberty principle, to be lexically prior to the second principle (b) and for the first condition of (b), the principle of fair opportunity, to be prior to the second condition of (b), the difference principle. Both the method by which Rawls selects these principles and the way in which he defends these principles are important. A detailed examination of these issues is crucial for understanding all of the complexities of Rawls’s theory of justice as fairness. For example, how one should interpret “conditions of fair equality of opportunity” is a very important issue since one’s interpretation of this idea and how it should be implemented would have wide-ranging effects in a society. In this chapter, however, I will focus only on the difference principle and the effects that it could have on basic-structure design and on the use of desert within a just society. Focusing on this one principle will be adequate to illustrate some of the general difficulties that arise from creating basic-structure principles without being mindful of all of the effects that those principles will have on the practice of

\textsuperscript{237} Ibid., 43. This is a revised formulation of the two principles that he offered earlier in \textit{Theory of Justice}, 302.
justice in contexts within the basic structure. I will argue that the difference principle is especially problematic due to its effects on the use of desert within a society. Before I focus on this principle, however, I will examine Rawls’s idea that basic-structure principles of justice are unique and, therefore, different from principles of justice that are directly applicable in other contexts.

Is Basic-Structure Justice Unique?

Cohen writes that “the basic structure, the primary subject of justice, is always said by Rawls to be a set of institutions, and, so he infers, the principles of justice do not judge the actions of people within (just) institutions whose rules they observe.”238 Before continuing, a terminological clarification is needed. When discussing basic-structure principles, what Rawls most often means by “institutions” is something akin to “established social rules and practices.” Rawls claims that these institutions are similar to the rules and practices in games or rituals.239 This is not the only way in which he uses the term, however. On occasion, he uses the term in a more familiar way – akin to “associations” or “organizations.” This more familiar use of “institutions” is employed in the phrases “institutions of higher learning” and “correctional institutions.”

If “institutions” is understood in the sense of social rules and practices, Cohen’s quote suggests that not only would the principles of justice not be applicable to the actions of people within just institutions, but they would also not be applicable to the guiding principles of associations or organizations within just institutions. Rawls does not claim that no principles of justice judge either the actions of people or the guiding principles of associations and organizations within just institutions, however, but rather that certain kinds of principles of

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justice are applicable only to the basic structure. Another source of confusion about Rawls’s views on the applicability of principles of justice might stem from the fact that he sometimes uses the term “justice” to refer to justice generally, i.e., to refer to justice regardless of context, and sometimes uses the term to refer to basic-structure justice only.

In *Theory of Justice*, Rawls writes that the principles of justice that are applicable to the basic structure:

may not work for the rules and practices of private associations or for those of less comprehensive social groups. They may be irrelevant for the various informal conventions and customs of everyday life; they may not elucidate the justice, or perhaps better, the fairness of voluntary cooperative arrangements or procedures for making contractual arrangements.\(^{240}\)

This quote suggests that certain principles of justice are uniquely applicable to the basic structure. But regardless of whether one believes that certain principles of justice are uniquely applicable to the basic structure, it seems as if some principles of justice are applicable to various associations and organizations and people’s actions and choices within the basic structure.

While Rawls does claim that the principles of basic-structure justice may not be directly applicable elsewhere, including to people’s actions within the basic structure,\(^ {241}\) he also suggests that there are different kinds of justice that apply in different contexts. In *Theory of Justice*, he writes that “the principles of justice for [basic-structure] institutions must not be confused with the principles which apply to individuals and their actions in particular circumstances. These two kinds of principles apply to different subjects and must be discussed separately.”\(^ {242}\) In *Justice as Fairness*, Rawls also notes a distinction between conceptions of justice that are

\(^{241}\) Ibid., 7-8.
\(^{242}\) Ibid., 54-55.
applicable to the basic structure and conceptions of justice that are applicable elsewhere. He writes, “The principles of political justice are to apply directly to this structure [the basic structure], but they are not to apply directly to the internal life of the many associations within it, the family among them.” Rawls cautions that “this is not to deny that there are appropriate conceptions of justice that apply directly to most if not all associations and groups, as well as to the various kinds of relationships among individuals.” So, while Rawls does refer to the justice of the basic structure as “primary” and also as the “most important case” of justice, this does not mean that he thinks of basic-structure justice as the only kind of justice. Rawls’s argument is that principles of justice apply everywhere, but different principles apply directly to different levels of, or different contexts in, a just society.

Although different principles of justice might apply directly to different contexts in a just society, basic-structure principles of justice certainly will affect contexts within the structure. Rawls claims that “although the principles of justice do not apply directly to the internal life of churches [or other associations], they do protect the rights and liberties of their members by the constraints to which all churches and associations are subject.” Elsewhere, Rawls explicitly notes the effect that basic-structure principles have on associations within the basic structure when he writes:

Thus, when political liberalism distinguishes between political justice that applies to the basic structure and other conceptions of justice that apply to the various associations within that structure, it does not regard the political and the nonpolitical domains as two separate, disconnected spaces, as it were, each

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244 Ibid.
245 Rawls, Theory of Justice, 7, 11.
246 Rawls, Justice as Fairness, 164.
governed solely by its own distinct principles. Even if the basic structure alone is the primary subject of justice, principles of justice still put essential restrictions on the family and all other associations.\footnote{Ibid., 166.}

Rawls claims that justice can apply not only to the basic structure, but also to associations within the structure. He argues that, although basic-structure justice is different than justice that is applicable elsewhere, basic-structure justice is not the only kind of justice. Furthermore, he argues that even if the basic-structure principles of justice are the primary subject of justice, the application of those principles to the basic structure would have an effect on what occurs within the basic structure.

Perhaps in response to earlier misinterpretations of his view, in *Justice as Fairness* Rawls focused on the interrelation of the principles of justice in different contexts in a way that he did not in *Theory of Justice*. Regardless of the extent to which this marked a change of view, it is clear that Rawls’s basic-structure principles of justice are not designed to apply directly to contexts other than the basic structure. An important question to consider is: are there strong arguments for limiting the application of certain principles of justice to the basic structure of a society only?

*Monism, Dualism, and Pluralism*

In *Theory of Justice*, Rawls argued that “there is no reason to suppose ahead of time that the principles [of justice] satisfactory for the basic structure hold for all cases."\footnote{Rawls, *Theory of Justice*, 8.} But there is no reason to suppose that those principles of justice do not hold for all cases. Now, it is unclear with which side the burden of proof should lie in this debate. Does the burden of proof lie with those who argue that the principles of justice for the basic structure are different than the
principles of justice that are applicable elsewhere or with those who argue that the principles of justice are the same? As detailed above, at least by the time he wrote Justice as Fairness, Rawls seemed to have softened his view on the separation of the principles that apply to the basic structure and those that apply elsewhere. Despite the seeming softening of his view, however, Rawls still advanced the idea that the principles that apply directly to the basic structure are different than those that apply directly elsewhere.

Liam Murphy uses the term “dualism” to describe Rawls’s view “that the two practical problems of institutional design and personal conduct require, at the fundamental level, two different kinds of practical principle.” He uses the term “monism” for the denial of this view. More accurately, monism – the idea that one kind of practical principle applies to institutional design and personal conduct – is a denial of dualism, but not the only denial of dualism. For example, one could argue that dualism is wrong because more than two different kinds of practical principles apply to institutional design and personal conduct. Also, one could argue that there are more than two practical problems to which practical principles apply within a society. That is, one could argue that the distinction between institutional design and personal conduct leaves out an important third or fourth or fifth practical problem.

Recall that, in some instances, Rawls uses the term “institutions” to designate established social rules and practices that are similar to the rules and practices in games or rituals and, in other instances, he uses the term in a way that corresponds, roughly, to associations or organizations. One could argue that within any given society different practical principles are applicable to basic-structure institutional design, the design of associations and organizations,

249 Murphy, “Institutions and the Demands of Justice,” 254.
and personal conduct. This would be a denial of dualism that could be described as a type of pluralism.  

I noted some of the ambiguity and vagueness in Rawls’s account of the basic structure above. In large part because the exact nature of Rawls’s basic structure is unclear, it is somewhat difficult to interpret his views about the applicability of different principles of justice on different levels of a society and, therefore, to identify the important implications of his views about these principles. One example of the effect of this interpretive difficulty is illustrated in a question posed by Robert Nozick in *Anarchy, State, and Utopia*. Nozick asks, “In virtue of what features of the basic structure, features not possessed by microcases, do special moral principles apply that would be unacceptable elsewhere?” As Pogge notes, this question suggests a mistaken interpretation of Rawls’s view according to which the basic structure is equivalent to the macro level and contexts within the basic structure are equivalent to the micro level. Pogge argues that, as a result of this misinterpretation, Nozick misidentifies the nature of Rawls’s distinction between basic-structure principles of justice and principles of justice that are applicable elsewhere. Pogge notes that, contrary to what Nozick’s question suggests, Rawls’s discussion about how different principles of justice apply to the basic structure and to contexts within that structure is not necessarily about how different principles of justice apply to larger and smaller contexts. To illustrate why Nozick’s question misses the point, Pogge notes that a very small society of only two people would have a basic structure. And since calling a society

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250 This pluralism is not to be confused with the pluralism that I discussed in Chapters 1 and 2. The pluralism discussed earlier is the view that many different concepts have a role in justice and not the view being presented here that principles of justice differ depending on the context in, or level on, which they operate.

of two people a ‘macrocase’ seems inaccurate, Nozick should not have identified the basic structure with the macrocase.\textsuperscript{252}

There are a number of reasons why one might be confused about Rawls’s views on the uniqueness of basic-structure principles of justice. I will offer three possible reasons, the first two of which were mentioned above. First, it is hard to know exactly what Rawls includes within the basic structure. As quoted above, Rawls himself is not sure. Second, Rawls uses the term “institutions” in two different ways. When referring to basic-structure institutions, Rawls uses the term in the unusual sense of “established social rules and practices.” In other places, he uses the term in the more familiar sense of “associations” or “organizations.” Rawls further blurs the distinction between institutions in the sense of a basic-structure institutions and institutions in the sense of associations or organizations when he claims that the family is a basic-structure institution, but later writes, “Even if the basic structure alone is the primary subject of justice, principles of justice still put essential restrictions on the family and all other associations.”\textsuperscript{253} By referring to the family as a basic-structure institution, but also equating the family with all other associations, it becomes even more unclear which institutions are supposed to be guided directly by basic-structure principles of justice and why certain institutions are included in the basic structure while others are not. A third reason why one might be confused about Rawls’s views on the uniqueness of basic-structure principles of justice is based on the fact that the associations, organizations, and individuals to which Rawls refers operate within the larger society that is outlined by the basic-structure principles. Therefore, one might follow Nozick and others in thinking that Rawls is offering a distinction based on the idea that the basic

\textsuperscript{252} Pogge, \textit{Realizing Rawls}, 25.
\textsuperscript{253} This is taken from a passage quoted on 151-152 above. Much has been written about Rawls’s inconsistent classification of the family as regards its place in the basic structure. See Cohen’s “Where the Action Is” and Susan Moller Okin’s “Political Liberalism, Justice, and Gender.”
structure is larger than the individuals, associations, and organizations within it. I will now expound on the possible causes and nature of this third cause of confusion.

In *Justice as Fairness*, which was published years after Nozick’s *Anarchy, State, and Utopia*, Rawls adopts the term “local justice” from Jon Elster. Rawls claims that “the principles of justice to be followed directly by associations and institutions within the basic structure we may call principles of local justice.” Rawls uses the term “law of peoples,” and also “global justice,” to refer to the justice that is practiced between and among different societies of peoples throughout the world. Rawls places basic-structure justice in-between the law of peoples and local justice, noting that basic-structure justice “works outward to the law of peoples and inward to local justice.” Rawls offers a type of pluralist view about principles of justice by arguing that different principles of justice apply to law of peoples, basic-structure justice, and local justice.

While Rawls adopts Elster’s “local justice” terminology, it is unclear whether Rawls uses the term in the same way that Elster does. Elster employs the term to designate many, but not all, issues of justice that arise within associations and organizations. For example, while Elster includes decisions about who is admitted to a university and who is selected for layoffs at an automotive factory among issues of local justice, he does not include the allocation of salaries and wages. Since he does not seem to offer a similar qualification, it is unclear whether Rawls thinks any and all associational or organizational contexts that occur within the parameters set by the basic-structure principles are local justice contexts.

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254 Here Rawls is using the term “institution” in a sense similar to “organization” as opposed to the “established social rules and practices” of the basic structure.


256 Ibid., 13.

257 In Chapter 6, I examine in greater detail Elster’s views on issues of local justice. There, I argue that the allocation of salaries and wages could be considered such an issue.
Since basic-structure justice ranges over an entire society, while local justice applies to certain associational and organizational contexts within a society, it is understandable why Nozick seemingly equated the basic structure with the macro level and that which occurs within the basic structure with the micro level. Although these equivocations are understandable, they are still problematic. According to Elster’s view, what Nozick calls “microcases” are not synonymous with local justice contexts. If Rawls’s understanding of local justice is consistent with Elster’s, Nozick’s criticism misses the mark by equating the two. Even if Rawls thought that every case that occurs within the basic structure qualifies as local justice, however, it would still be inaccurate to call all of those cases “microcases.” For example, due to the large number of actors involved and the wide-reaching effects that often result from such bills, it does not seem appropriate to classify the passage of a bill through Congress as a microcase.

In the light of Nozick’s interpretive confusions, Pogge’s criticism is justified. Although the basic structure – local justice distinction is not identical to the macro level – micro level distinction and although Rawls’s basic structure – local justice distinction is not necessarily a distinction about size, Nozick’s point is not undermined completely by his interpretive confusion. In partial defense of Nozick, one could argue that since they establish the ground rules or background justice for a society, the basic-structure principles in a society of any size are going to range over all of the interactions within that society. Therefore, in a given society of any size, the basic-structure principles of that society will be larger in scope than those principles that apply directly to any single association, organization, or individual within that society. Still, Pogge is correct to note Rawls believes that different principles of justice apply directly to different levels or contexts primarily because the levels or contexts are of different kinds and not

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I use “within the basic structure” to refer not only to local justice contexts, but to any other kind of non-basic-structure context that occurs within a society.
primarily because they are of different sizes. Perhaps Nozick’s question about the applicability of justice in Rawls’s theory should be: “In virtue of what features of the basic structure, features not possessed by those contexts within or outside of the basic structure, do special moral principles apply that would be unacceptable elsewhere?”

Conclusion

Rawls believes that there are clear distinctions among the basic rules and guidelines of a society, the rules and guidelines that govern various associations and organizations within that society, and the rules and guidelines that govern actions performed by members of a society. That is, he believes that different principles of justice are directly applicable to different levels of a society. One might think that although the particular principles of justice that he advocates are problematic, the general process that Rawls advocates is still the preferred process of establishing a just society. Perhaps this process of developing basic-structure principles of justice first and then turning one’s attention inward to levels within the basic structure is the best manner in which to develop a just society. And perhaps such a process would lead to the establishment of different principles of justice for different levels of a society. Even if this view is correct, however, it seems as if all principles of justice in a society must be developed with an eye toward how they will affect other levels or contexts in a society. For example, because of the significant interaction among these levels or contexts, a basic structure that is arranged according to certain principles might not allow for certain important conceptual components of justice to be used on other levels or in other contexts in a society.

5.3 Basic-Structure Design, the Difference Principle, and Desert

Some Clarifying Remarks
In this section, I will argue that Rawls’s difference principle requires that desert be ignored when it should not be ignored. This is a problem that is specific to one of Rawls’s favored basic-structure principles of justice. The difficulties that result from Rawls’s use of the difference principle illustrate that when one is setting up the basic structure or working on basic-structure principles of justice, one should be considering the effect that those principles will have on justice in local contexts. I argue that, apart from the difficulties specific to Rawls’s use of the difference principle, there is a more general problem with developing basic-structure principles of justice without considering how those principles will affect the use of desert in local contexts. Failing to consider these effects could lead to injustice.

Rawls draws a distinction between basic-structure institutions, understood as rules or practices, and governmental institutions, understood as working governmental agencies or bodies. These governmental agencies or bodies might be classified as special types of associations or organizations. On this understanding, a political constitution is a part of the basic structure of a society whereas the working legislative body, which would be outlined in a constitution, is not. Although there is a distinction between the constitution and specific governmental agencies or bodies, a constitution will usually establish at least some governmental agencies and bodies. Therefore, through the constitution and perhaps other legal provisions, the basic structure will have a large role in determining both the kind of government that a society has and what kind of laws or policies that government enacts.

Because the basic structure consists of the political constitution and the principle economic and social arrangements, the effects of a society’s basic-structure principles are felt within the society in various ways. Although basic-structure principles might not be directly applicable to associations and organizations or individuals, they will influence the nature of
associations and organizations and the actions of individuals. For example, if the basic structure leads to a more limited government, then the influence that the guiding basic-structure principles have through the government is limited. By definition, the number of decisions and number of types of decisions that are dictated by the government are fewer in a society with a more limited government than in a society with a more controlling government.

The basic-structure principles in a society with a more limited government do not place many restrictions on individual actions, including on what individuals do within free, private associations and organizations. One might say that within the basic structure of a society with a limited government there exists a spontaneous order that consists of free interactions within and among countless of these associations and organizations.\textsuperscript{259} Certainly, what occurs within these associations and organizations must not conflict with the basic-structure principles. But the principles of these associations and organizations will be guided by the basic-structure principles in only a weak way. That is, although the principles of the associations and organizations must not stray outside of the parameters set by the basic-structure principles, the basic-structure principles will not have much of a direct role in the design or the functions of these associations and organizations other than allowing for the freedom of individuals to form these associations and organizations.

If the basic structure leads to a more controlling government, then the influence that the guiding basic-structure principles have through the government is greater. If a government is more controlling, its influence on all activities within the society will be greater. A controlling government can greatly restrict the number of free, private associations and organizations that exist and will greatly restrict individual actions within a society. A society’s basic structure has

\textsuperscript{259} Polanyi, \textit{The Logic of Liberty}, 159. See also Chapter 1 (4-5) above.
a great influence not only on the nature of its government, but also on the shape of the society as a whole.

**Effecting the Difference Principle**

In the light of the influence that the basic structure can have on the various associations, organizations, and individuals within a society, it is no wonder why Rawls would argue that it is the primary subject of justice. Since “its effects are so profound and present from the start,” one must be mindful of the way in which basic-structure principles of justice affect all of the contexts within the basic structure. Therefore, it is important to consider what would need to be done to (attempt to) achieve what is outlined in Rawls’s preferred basic-structure principles and to consider what effect those principles would have on various contexts within a society.

Rawls maintains that the rational persons in the original position would choose the difference principle as part of the second of two principles of basic-structure justice. In *Justice as Fairness*, Rawls offers some ideas about “the kinds of taxation by which economic and social background justice might be preserved over time.” His suggestions include (1) a bequest and inheritance tax paid by those who inherit and receive gifts and endowments, (2) a progressive principle of taxation used “solely to prevent accumulations of wealth that are judged to be inimical to background justice” as opposed to being used to raise funds for, or release resources to, the government, and (3) a “proportional expenditure tax . . . on consumption at a constant marginal rate” that could “allow for the usual exemptions . . . by taxing only total expenditures above certain income” and thereby allowing for “an appropriate social minimum.” Rawls writes that “the difference principle might then be satisfied by raising and lowering this minimum and adjusting the constant marginal rate of taxation.”

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Rawls argues that, although a commitment to a “social minimum” should be included in the body of a society’s constitution, he suggests that it be included in the preamble to the constitution. His main argument for not including the difference principle in the body of the constitution is not to undercut the strength of a society’s commitment to the principle, however, but because he does not think that judges would be qualified to apply the principle in particular cases.\(^{263}\)

Throughout this chapter, I have discussed certain ambiguities regarding the basic structure, basic-structure principles of justice, and the applicability of those principles. In particular, I have focused on the difference principle. As I noted above, Rawls maintains that the first principle of basic-structure justice, the liberty principle, is lexically prior to the second principle of basic-structure justice, which contains both the principle of fair opportunity and the difference principle (148). In addition, he maintains that the principle of fair opportunity is lexically prior to the difference principle. Assuming that the liberty principle and the principle of fair opportunity are satisfied, whatever that satisfaction might entail, one would turn one’s attention to ensuring that the difference principle was satisfied. Rawls claims that the basic structure is the primary subject of justice. Based on this claim, one could understand basic-structure principles to be the primary principles of justice. Since the difference principle is one of these primary principles of justice, Rawls seems fully committed to the idea that, as a matter of justice, it should be satisfied.

While there are always questions about the justice of any redistributive or “redirective” tax policies, whether the taxes are levied on income, bequests and inheritances, consumption,

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\(^{262}\) Ibid., 128-129.
\(^{263}\) Ibid., 162
property of any type, or anything else, an additional concern with Rawls’s theory arises if practice shows that the difference principle cannot be appropriately satisfied by any of his suggested tax policies. One wonders what steps Rawls thinks a society should take in order to see that the difference principle is satisfied, and one might be concerned about possible freedom-limiting policies that could be enacted to ensure that the difference principle is satisfied. Most germane to the main arguments in this dissertation are the effects that the difference principle could have on the use of desert as a distributive criterion in local contexts.264

In Chapter 6, I will discuss the role that desert can and should have in local contexts. In particular, I will discuss the role of desert in employment decisions and university admissions. A commitment to the difference principle might interfere with the use of desert in those contexts in various ways. Consider a case in which practice did show that Rawls’s various suggested tax policies were not successful in producing the desired effects outlined in the difference principle. Imagine further that one thinks the difference principle could best be realized through centralized economic planning, and that the use of such planning would be consistent with both the liberty principle and the principle of fair opportunity. Such planning could lead to centralized control over wages or government involvement in who gets what job. The very deserving could have their wages capped or they could be passed over for jobs or raises in favor of the less deserving. With respect to university admissions, one might find that the difference principle is best satisfied if applicants from certain socio-economic groups are guaranteed admission in favor of others, irrespective of the applicants’ deserts.265 While Rawls might not think that such policies would be necessary, or even likely, an overarching commitment to the difference principle could lead to such policies.

264 Certainly, this is not the only difficulty with Rawls’s primary focus on basic-structure principles of justice.
265 Depending on how those principles are understood, one might think that a commitment to either the liberty principle or the principle of fair opportunity could lead to similar policies.
Rawls and the Role of Desert in Justice

Rawls is justified in being suspicious of the idea that basic-structure principles of justice should explicitly require that society be arranged in such a way as to reward desert directly. His explanation of why this idea is questionable is problematic, however. As discussed in Chapter 2, his dismissal of such a desert-based arrangement is largely the result of his skepticism about the metaphysical status of pre-institutional desert. Recall, in *Theory of Justice* Rawls writes:

> It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one’s initial starting place in society. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases.\(^{266}\)

Rather than simply questioning the practicality of attempting to arrange the basic structure so that people are always treated according to what they deserve or so that certain government apparatuses correct distributions according to determinations of desert, Rawls rejects desert as a metaphysically robust concept. Rawls argues that a conception of justice should seek to nullify the political and economic advantages that people can gain from their unequal natural endowments and starting places. A main element of this argument is the idea that the endowments and starting places are undeserved. As I argued in Chapter 2 (38-41), such things are not undeserved, but rather they are not deserved. The distinction is important because not deserved (or non-deserved) endowments and starting places, since they are not the kinds of

\(^{266}\) Rawls, *Theory of Justice*, 104.
things that can be deserved or undeserved, are desert neutral. As such, they do not undermine all desert claims.

Rawls relies on a problematic view of desert when establishing his basic-structure principles of justice. The effects of this mistaken view are particularly noticeable in his difference principle. According to this principle, economic and social inequalities are to be arranged so that they are to the greatest benefit of the least advantaged citizens. According to the interpretation that I have advanced in this dissertation, an importance premise in Rawls’s arguments in favor of the difference principle is that the inequalities that it seeks to nullify are, in a sense, undeserved. He believes that these inequalities are undeserved, at least in part, because these inequalities are possible only because one finds oneself in a particular society with a particular basic structure. That is, such inequalities are possible only because a society exists that allows a person to obtain more or less than her fellow citizens. But according to Rawls, since one cannot deserve to be in a society with a particular basic structure, one cannot object to his proposed basic-structure principles on desert-based grounds.

I raised some concerns about what a commitment to the difference principle might entail, including centralized economic planning and government involvement in university admissions. But even if the difference principle did not lead to such measures, a commitment to satisfying this purported principle of justice would have some very strange and intuitively unjust consequences. These consequences arise, in part, because Rawls focuses on general economic groups within a society when developing his basic-structure principles of justice. In the process, he does not give adequate weight to the fact that different individuals within any economic group will have differing levels of desert. Not only will individuals within different economic groups
have differing levels of desert, but those within the same economic group will have differing levels of desert.

Consider a case involving two people: an able-bodied, able-minded bum and a hardworking mother of three whose husband has abandoned her and her children. Both the bum and the mother have equally modest native endowments and they are equally financially destitute. The mother does the best that she can to support herself and her children financially and to raise her children well. The bum makes no attempt to find regular work and instead spends many of his days relaxing on the beach. According to common sense ideas of distributive justice, the mother would be considered to be one of the deserving poor whereas the bum would be considered to be one of the undeserving poor.

According to the difference principle, since the bum and the mother are equally financially disadvantaged, society should be structured in such a way that they both have the financial resources of the well off redirected to them. On Rawls’s account, the deserving and undeserving ought to be treated similarly in this regard. What is more, if the mother manages to work her way out of poverty and the bum continues with his lazy ways, according to the difference principle the mother might have some of her resources redirected to the bum through taxation and redistribution. In this way, one of Rawls’s basic-structure principles of justice requires that the money of the deserving be redirected to the undeserving. This is one problem that results from ignoring desert while developing basic-structure principles of justice.

267 In a footnote in “The Priority of Right and Ideas of the Good” (257n7), Rawls suggests that extra leisure time might be included in the index of primary goods. If this were done, the extra leisure time of those who were able, but unwilling to work “would be stipulated as equivalent to the index of primary goods of the least advantaged.” Therefore, the bum described in the text above “would not be entitled to public funds.” Even if this extra leisure time was included in the index of primary goods, however, there would be countless cases in which the money of the deserving was redirected to the undeserving. For example, people who were employed, but who failed to put forth much effort or perform well while on the job, would still have money redirected to them.
In the light of the criticism that Rawls’s difference principle results in the redirection of resources to the undeserving, one might propose a more desert-sensitive difference principle. Such a principle might advocate first distinguishing between the deserving and undeserving members of a given economic group and then redirecting resources only to those individuals in the lowest economic group who are deserving of such resources. Although such a principle would be an improvement, it might still be problematic, however, since epistemological and pragmatic limitations would make it quite difficult to discern who is and who is not among the deserving poor. Local government officials could attempt to make such determinations on a case-by-case basis, but this would be a massive undertaking.

One could argue that a person’s resources should not be redirected even if the purpose of the redirection is merely to provide a social minimum. An argument against such redirection of resources would be stronger still if the purpose of the redirection is to provide resources that go beyond a social minimum, as could be required by the difference principle. Although Rawls claims that the difference principle might not provide those in the lowest economic group much more than the social minimum, it could result in more, perhaps substantially more, redirection of money than would otherwise be required to meet that minimum.268

The purpose of a social minimum is to provide each person with enough resources to cover his basic needs. A social minimum, therefore, is justified by an appeal to the concept of need. As I have suggested elsewhere, need is an important conceptual component of justice. Even if one assumes that justice does require providing this minimum, further argument is needed to justify a principle that requires going above and beyond this minimum. This justification is missing from Rawls’s account.

*Conclusion*

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As I have written, there is some debate about whether Rawls’s various arguments rely on the complete rejection of desert. But regardless of whether Rawls rejects all desert, his difference principle at least ignores it. When Rawls discusses his notion of desert in distributive contexts, he claims that, to the extent that desert exists, it exists only after the establishment of a just basic structure. As I discussed in section 4.4, he gets things exactly backward in this regard.

As Rawls himself notes, basic-structure principles will impact what occurs within the structure. If injustice occurs in local contexts, it may be because of basic-structure flaws. If basic-structure principles result in injustices within local contexts or elsewhere within the structure, then those principles should be examined, reconsidered and, perhaps, changed. Understanding the relationship between basic-structure justice and local justice in this way makes use of an idea that is similar to the idea of reflective equilibrium that is used by Rawls.

5.4 Conclusion

Both Rawls and his commentators often focus on the question of whether different principles of justice apply to different levels or different contexts in a just society. In this chapter, I have followed them by focusing on this same question. This focus might lead one to overlook the more fundamental question of whether different conceptual components of justice apply to different levels or different contexts in a just society, however. As I have claimed elsewhere in this dissertation, justice involves a number of conceptual components such as desert, entitlement, merit, and need. Since justice involves these concepts, all principles of justice will need to be developed with all of these concepts in mind.

It might be true that a principle of justice that is directly applicable to the basic structure of a society seems totally misplaced when applied to an association within the society. For example, it might be the case that the difference principle would be misplaced when applied
within the context of a church or a family. Some might argue that, if such a basic-structure principle would be misplaced when applied elsewhere, then that principle is not a true principle of justice. Even if one grants that different principles of justice are directly applicable to different contexts within a society, however, basic-structure principles of justice must take into account all of the same conceptual components of justice that must be accounted for in any associational, organizational, or individual principle of justice within a society. My contention is that Rawls’s basic-structure principles, particularly the difference principle, do not account for the fact that justice has these many conceptual components. In a sense, the difference principle is blind to these components.

The principles of justice that are applicable to the basic structure must consistent with the principles of justice that are applicable elsewhere, including those principles that are applicable in local contexts within the basic structure. So, even if there are basic-structure principles that do not directly apply to contexts within the structure, those principles must be general enough to allow for appropriate conceptual components of justice to have a role in various contexts within the structure. If desert is indeed an important conceptual component of justice, then it must be included in any complete theory of justice. If desert must be included in any complete theory of justice, then one is led to some important conclusions about the role of desert in the development of principles of justice. All basic-structure principles should be based on a proper understanding of desert. Such an understanding would be based on the recognition of desert as a robust, pre-institutional concept. As I have argued, Rawls rejects p-desert as an important factor in distributive justice. But he bases this rejection on a problematic view of desert. The difference principle requires that desert be ignored when redirecting resources from those in the higher economic groups to those in the lowest economic group. But if basic-structure principles are to
be true principles of justice, they must not ignore desert in those contexts, including any
redistributive context, in which desert is relevant. Basic-structure principles of justice cannot
require that relevant conceptual components of justice be trumped by some supposedly
overarching social concern.

Recall, Rawls argues that one does not deserve to be born into a particular society. If this
is true, it is trivially so since the reason that one does not deserve to be born into a particular
society is because such a thing cannot be deserved. Just because one does not deserve to be born
into a particular society with a particular basic structure does not mean that societies should not
be arranged so that people have the freedom to pursue their own projects in their own way and,
in certain contexts, get what they deserve. What is more, just because one does not deserve to be
born into a particular society with a particular basic structure does not mean that societies should
be arranged so that resources are redirected to certain groups of citizens irrespective of what they
deserve.

As I noted in Chapter 1, strictly speaking, justice applies to products of human actions.
So, the justice of a society is, strictly speaking, based on how the people in a society treat one
another. Throughout this dissertation, I have argued that desert claims are moral claims with
*prima facie* force. Furthermore, I have argued that, to the extent that desert is relevant in a given
context, morality requires that desert be met. This does not mean that one ought to be legally
required to make distributions according to desert. It does mean, however, that basic-structure
principles should allow for desert to be used in the appropriate contexts.

Although the basic structure of a society must allow room for desert, this does not
complete the picture of justice in a society. Imagine two societies, Society A and Society B,
which are guided by the same basic-structure principles of justice. In both societies, the basic-
structure principles of justice allow for the use of desert in local contexts. In society B people use desert as a guiding distributive criterion when its use is appropriate and in society A people do not use desert as a guiding distributive criterion when its use is appropriate. In this case, the people in Society B act more justly in this regard. All else being equal, one could call society B “more just.”

I am not arguing that if desert is used as a distributive criterion more often in Society B, then Society B is thereby more just. People in Society B might give too much weight to desert. Or, it could be the case that Society B is composed of people who do very well considering desert when it is relevant, but do rather poorly considering other relevant distributive concepts. If people in Society B give too much weight to desert or too little weight to other relevant distributive concepts, those people might act unjustly. My argument is that the more that people in a society base their distributive decisions on desert when appropriate, the more justly they act in this regard.

Throughout this dissertation, I have discussed the role of desert in different distributive contexts. In addition, I have detailed which general criteria should be used to determine one’s desert in different contexts. Now that I have offered a detailed account of the relationship between desert on the basic structure and desert on other levels or in different contexts of a just society, I will focus on specific local contexts in which desert is a relevant distributive criterion. In the following chapter, I will explain both how desert is used in those contexts and I will offer suggestions about how it should be used in those contexts. In addition, I will examine how well or poorly certain common distributive arrangements reflect desert-based distribution.
CHAPTER 6. DESERT AND LOCAL JUSTICE

6.1 Introduction: About Local Justice

Within any society, there are many individuals who are involved in numerous associations and organizations of various types. In a free society these associations and organizations are going to be more numerous and varied. By “free society” I mean to denote any society with a fairly limited government in which there are many protected freedoms such as those of association, movement, and speech. In a free society, individuals are generally at liberty to pursue their own projects in their own way given that they do not infringe on the rights of others. Individuals are also at liberty to join various free associations and organizations. These associations and organizations are fairly autonomous, since they set their own policies and rules in pursuit of some freely chosen common aims or goals.

As I have discussed, Jon Elster refers to certain issues of justice that arise within these types of associations and organizations as issues of “local justice.” Elster contrasts local justice with “global justice.” As regards global justice policies, Elster writes:

Roughly speaking, globally redistributive policies are characterized by three features. First, they are designed centrally, at the level of the national government. Second, they are intended to compensate people for various sorts of bad luck, resulting from the possession of “morally arbitrary properties.” Third, they typically take the form of cash transfers. 269

As regards local justice policies, Elster writes:

They are designed by relatively autonomous institutions which, although they may be constrained by guidelines laid down by the center, have some autonomy to design and implement their preferred scheme. Also, they are not

269 Elster, Local Justice, 4.
compensatory, or only partially so. . . . Finally, local justice concerns allocation in kind of goods (and burdens), not of money.270

I focus on local justice in free societies for, as mentioned above, in these societies one is more likely to encounter more numerous and varied associations and organizations. In addition, in a free society these associations and organizations are not unduly “constrained by guidelines laid down by the center.” This focus on free societies is consistent with the focuses of both Rawls and Elster, although the particulars of our views about what constitutes a free society and about the preferable structure and guiding principles of a free society differ. By restricting my discussion to free societies, I do not mean to suggest that issues of local justice are unimportant or irrelevant in societies that are controlled by very restrictive governments. In those kinds of societies, however, there will be fewer autonomous local contexts than within free societies of a comparable size. In unfree societies, guidelines laid down by the center will greatly restrict what people can do in local contexts.

Before continuing, it is important to clarify the way in which Elster uses the term “global justice.” As I discussed in the previous chapter, Rawls also uses this term. For Rawls, “global justice” or “law of peoples” is the justice that applies between and among different peoples, i.e., different societies or nations, across the globe. When Elster uses “global justice,” he is referring to justice that is applicable “at the level of the national government”271 or “society-wide.”272 So, Elster’s “global justice” is closer in meaning to Rawls’s “basic-structure justice” than it is to Rawls’s “global justice.”

I will use terms such as “local justice,” “local context,” and “local level” throughout this chapter. It is important to note that my understanding of local justice is somewhat different than

270 Ibid.
271 Ibid.
272 Ibid., 184.
Elster’s, however. For example, Elster does not consider the allocation of salaries and wages to be an issue of local justice. His view does not change even when salaries and wages are the result of a negotiation between one employer and one employee as opposed to being the result of some stringent governmental policy. Although Elster grants that his decision to exclude the allocation of salaries and wages is somewhat arbitrary, his main argument for doing so is based on the way in which salaries and wages are interconnected with, and thus influenced by, the global redistributive scheme. Most, if not all, of what Elster includes among issues of local justice are interconnected in some important way with a larger global scheme, however. For example, this is true of the selection of adoptive parents, the laying off of workers, and individual decisions about who ought to be allowed to immigrate. Therefore, his argument for excluding the allocation of salaries and wages from the sphere of local justice is not convincing.

The allocation of salaries and wages within a company, particular a small company, will be determined by a small number of people with a fair amount of autonomy. These people will have a specific knowledge of the company’s resources and of any particular employee’s effort and performance toward increasing or decreasing those resources. Therefore, I contend that salaries and wages could be included among the issues of local justice. Although my conception of local justice might differ from Elster’s in other ways, I will not offer a detailed explanation of any more of those differences here. When I discuss desert in the workplace, I will focus on hiring, layoffs, and promotions rather than focusing on salaries and wages. Elster does include hiring, layoffs, and promotions among issues of local justice.

According to both my and Elster’s views, not every context within the basic structure is a local justice context. I have already noted that, unlike Elster, I consider the allocation of salary

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273 Ibid., 4.
274 See Elster’s, Local Justice, 1 and “Introduction: The Idea of Local Justice,” 1 for lists that include these and other issues of local justice.
and wages to be an issue of local justice. Although I disagree with Elster on that point, there are many decisions made within large associations and organizations that are not issues of local justice. Although the passage of a bill through Congress might have a great and wide-reaching impact on issues that arise in local contexts, it is not an issue of local justice.

At this point, I need to offer an important clarification about issues of local justice. Certain situations that are often issues of local justice, such as the hiring of a new employee, might not qualify as issues of local justice if the decision-making process used by a particular association or organization lacks certain characteristics. Issues of local justice require relative freedom in decision making by local actors. In order for local actors to have this amount of freedom, decisions need to be fairly decentralized. One can imagine, for example, an extremely large national or multinational corporation with tens of thousands of employees or more that has a highly centralized decision-making process. A fictional example is a corporation the size of Wal-Mart, which has approximately 1.9 million employees worldwide, that is structured in such a way so that all hiring decisions, even for entry-level retail positions, are made by the same relatively small committee of high-level executives.\(^\text{275}\) The hiring committee would be very far removed from the local circumstances of each store or office, and the hiring committee would be charged with making an extraordinarily large number of hiring decisions on a regular basis.\(^\text{276}\) According to both Elster’s and my understanding of the concept, the hiring in this corporation would not qualify as an issue of local justice. Desert could have some role in the hiring decisions of such a company. But if the hiring committee lacked certain relevant, specific

\(^{275}\) The number of employees was taken from Wal-Mart’s website on May 22, 2008 <http://walmartstores.com/media/factsheets/fs_2230.pdf>

\(^{276}\) Since oftentimes more than one person has significant input in the hiring process, I will use the phrase “hiring committee” when referring to those in charge of making hiring decisions. This is not meant to ignore the fact that, in some cases, only one person is charged with making such decisions.
information, or if the committee was overburdened, it might not be able to make accurate desert-based decisions.

I have claimed that determinations of salaries and wages, the selection of adoptive parents, the hiring, laying off, and promoting of workers, and individual decisions about who ought to be allowed to immigrate are issues of local justice. There are many other associations and organizations, and many issues of justice within those associations and organizations, on the local level. These include personal associations, such as family relationships and friendships, and business organizations, such as one’s place of employment. Local justice can involve situations that occur at the university one attends or at which one works, at a local social club, or at the hospital where one has surgery. Issues of local justice include, among many other things, agreements between friends, admissions to a university, and decisions about who will be in charge of the next fundraising campaign.

Recall the metaphysical, epistemological, and pragmatic arguments against desert (sections 2.3-2.4, 4.5). I have argued that, while the metaphysical argument fails to undermine the concept of desert, the epistemological and pragmatic arguments do suggest limitations on the use of desert in distributive contexts. I have argued further that the force of these limitations differs depending on context. Certain of these limitations will be examined more fully in this chapter. For now it should be noted that regardless of the importance of basic-structure justice, one thing remains true on the local level: it is on the local level where issues of justice most directly affect the individual. I am not claiming that local justice is more important than basic-structure justice. What is more, desert is most directly relevant as a distributive concept on the local level because people can best overcome the epistemological and pragmatic challenges to desert-based distribution on this level.

277 I am not claiming that local justice is more important than basic-structure justice.
As I discussed at length in Chapter 4, desert has different roles in different contexts. So, desert will have different roles in different local contexts. Sometimes the role will be great and sometimes the role will be small or even non-existent. In addition, the role of desert will be clearer in certain local contexts than in others, since some local contexts are more desert receptive than others. In *Spheres of Justice*, Michael Walzer notes, “Desert is a strong claim, but it calls for difficult judgments; and only under very special conditions does it yield specific distributions.” In the light of what he writes elsewhere, I think that Walzer’s claim about the role of desert in distributive contexts is too restrictive. Nevertheless, Walzer is correct in noting that certain conditions must obtain in order for desert to have an important role in a distributive context.

In this chapter, I will be discussing how certain distributive decisions are actually made. I will argue in favor of a particular view about the role that desert should have in local level distributions regardless of the role that it actually has in those distributions, however. The examination of the role of desert on the local level will include some discussion of certain other concepts and principles invoked on this level, but my primary focus will be desert. One important issue to consider while examining other distributive concepts or principles is whether they rely implicitly on desert for some of their force. Elster notes that in issues of local justice, “Sometimes one principle is used as a proxy or second-best approximation for another.” As I argued about the normative force of both institutional-desert and entitlement (section 4.4), some of the normative force of these other concepts or principles might stem from their relationship to desert. Perhaps some of these other concepts or principles are simply proxies or second-best

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278 Walzer, *Spheres of Justice*, 25.
approximations for desert. It might also be the case that some desert bases serve as proxies or second-best approximations for other desert bases.

Before turning to the role of desert in specific local contexts, I will offer a recapitulation of my understanding of the relationship between desert and merit. It is important to include a recapitulation here since some argue that certain types of organizations, such as corporations and universities, should be guided by meritocratic principles. Some of those who offer this argument do not make a distinction between merit and desert and, therefore, between meritocratic principles and what might be called, rather inelegantly, “desertocratic” principles. One could make a well reasoned argument to the effect that merit, as opposed to desert, should and often does have a greater role in many situations within these organizations. This argument can be made, for example, with respect to hiring decisions.

I have followed Pojman by arguing that a merit base is “any feature or quality that is the basis for distributing positive (or, in the case of demerit, negative) attribution.”280 Unlike desert, merit does not presuppose any particular amount of effort or any performance on the part of an agent. Again, merit is a broader category of appropriateness than is desert. If a hiring committee considers a candidate’s prior actions or present characteristics regardless of the extent to which those are the result of the candidate’s responsible effort, then that committee might be placing an emphasis on merit as opposed to desert. For reasons that I will discuss below, I think that desert does trump merit in certain issues of local justice.

In what follows I will consider the role that desert can and should have in two local contexts: (1) the workplace and (2) colleges and universities. I will highlight certain policies that seem to undermine the role of desert. As regards the workplace, I will discuss hiring, layoffs,

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280 Pojman, *Justice*, 22. See section 3.5 above for a more complete discussion of the distinction between desert and merit.
and promotions with a particular focus on the use of seniority in layoffs (section 6.2). As regards colleges and universities, I will focus on the role of desert in admissions decisions (section 6.3). Then, I will examine how the use of race-based affirmative action policies in hiring and college and universities admissions relates to the concept of desert (section 6.4). It is important to note that when I argue for the use of desert in a particular context I am not thereby arguing that the use of desert in that context should be backed by the force of law. Rather, I am arguing that certain desert claims have moral force and, therefore, I am suggesting that those claims should be treated as such.

6.2 The Role of Desert in the Workplace

The Role of Desert in Hiring

Commonsense suggests that in most cases a company will look to fill an open position with the job candidate who will perform best in the position. The person who will perform best in the position might be called the “best-qualified candidate.” Hiring a candidate based on what one thinks she will do seems like the very kind of forward-looking account of desert that I rejected in Chapter 3. Later in this chapter, I will explain why I am not adopting a forward-looking account while arguing that the role of desert in hiring will be based on the candidate’s efforts and performances as they relate to the requirements of the position.

If a candidate’s desert of a job is based on her efforts and performances as they relate to the requirements of the position, then one is confronted with important questions about what efforts and performances are relevant to establishing one’s desert in that context. Before continuing the discussion of desert in hiring, however, I will briefly examine some factors that suggest limits on the use of desert in hiring. Some of these factors will have much to do with the job candidate’s efforts and performances and some will not. Certain factors that a hiring
committee might consider should not be considered, since doing so would involve unfairness or injustice. For example, an unqualified job candidate should not be hired simply because he is related to a current employee of a company.

Of course, when making their decisions, members of hiring committees do consider the prior actions and present characteristics of job candidates. These committees seek to learn such things as whether the candidate is dependable and hardworking and whether he has performed well in past positions. As I have already established in previous chapters, these actions and characteristics can be desert bases or, in some cases, merit bases. But there are other factors that hiring committees should and often do consider that have little or nothing to do with a candidate’s desert.

A candidate might be well suited for a position, but the company to which she is applying might have very little to offer in terms of salary and benefits. If the candidate was interviewed and a job offer was made, the hiring committee might think that she would likely refuse the offer. This would be especially likely if the candidate has other job opportunities. If the committee is under particularly tight time or financial constraints, it might not be in a position to spend time or resources extending offers that are likely to be rejected. Even if the candidate were to accept the offer, the committee might have good reason to suspect that she would be likely to leave the position in a relatively short period of time. In such a situation, although the candidate is not overqualified for the job, the company cannot make a sufficiently attractive offer to her. So, there might be practical reasons for ignoring the best-qualified candidate, even if the claim could be made that the best-qualified candidate deserves the position. This is one example of the limitations on the normative force of desert claims.
In other situations, a candidate will be overqualified for a position because her various
characteristics, which are often developed through a combination of education and work
experiences, are greater or more developed than needed in order to do well in the position. I
have described desert as a type of appropriateness or fittingness that is based on one’s effort and
performance. A person who is overqualified for a position might not be a good fit for that
position. As with the preceding case, in this case a hiring committee might have good reason to
suspect that an overqualified candidate would be likely to leave the position in a relatively short
period of time if she were hired. The overqualified candidate could make a reasonable desert
claim to the job, but a different type of appropriateness seems more relevant in this case.
Specifically, the more relevant type of appropriateness in this case would be a non-desert-based
suitability for the position. It might seem unjust if an overqualified candidate is passed over in
favor of a less impressive, but appropriately qualified candidate. But if one is not entitled to a
job and no other plausible distributive criterion settles the matter, then it does not appear to be a
miscarriage of justice when one does not receive a job for which one is overqualified. Hiring
employees who are likely to quit undermines the aims and goals of an organization. If the
organization is morally and socially legitimate, then it cannot be a requirement of justice that
employers make decisions that so clearly and strongly undermine their organization’s aims and
goals.

In the two previous examples, I considered certain issues relating to the qualifications of
job candidates. Such qualifications are usually understood as those abilities and characteristics
that would allow a candidate to perform the job effectively. Alan Wertheimer has written about
the role of a particular type of qualification in the hiring process. Wertheimer describes these
“reaction qualifications” as “those abilities or characteristics which contribute to job
effectiveness by causing or serving as the basis of the appropriate reaction in the recipients."\textsuperscript{281}

He refers to “all other qualifications (of an ordinary sort),” which include such things as “strength, ability to solve problems, and coordination,” as “technical qualifications.”\textsuperscript{282}

Technical qualifications are often seen as desert bases or, at least, as giving rise to desert bases. It is less clear whether, or in what way, reaction qualifications are, or can give rise to, desert bases.

When he uses the term “recipients,” Wertheimer means to designate customers. But reaction qualifications can also be understood to include reactions by business partners and current employees. Wertheimer describes reaction qualifications in terms of their positive effects, but a candidate can also have abilities or characteristics that undermine job effectiveness by causing or serving as the basis of unwanted or inappropriate reactions in the recipients. I will refer to these types of abilities and characteristics as “reaction disqualifications.”

One reaction qualification that hiring committees should and do consider is a job candidate’s personality. It is true that if a candidate were to have a certain character trait, such as being prone to procrastination, then he might be less deserving of a job. Such a character trait is relevant in assessing the candidate’s desert to the extent that it speaks to his past efforts and performances. In other cases, while having a personality that others find irritating might be relevant to whether one should be hired, such a personality trait does not necessarily affect whether one deserves a job.

In the main, those charged with hiring must consider how well the personality of a prospective employee will mesh with those of business partners, current employees, and customers. Certainly, if a person has an irritating personality, then he would not be a good

\textsuperscript{281} Wertheimer, “Jobs, Qualifications, and Preferences,” 100.
\textsuperscript{282} Ibid., 100, 100n4.
candidate for a position that required much interaction with business partners or customers. If the position does not require such interaction, it still seems clear that oftentimes a candidate with an irritating personality should not be hired even if he is otherwise well qualified for the position and, perhaps, even if he is otherwise better qualified for the position than the person who is eventually hired. The fact that a new employee might disrupt a work environment is an important factor for a hiring committee to consider. It does not seem to be unjust for a hiring committee to reject a well-qualified candidate if there is a strong indication that the candidate would make other employees uncomfortable. Productivity can be affected by how comfortable or uncomfortable other employees feel at work. In addition, employers have responsibilities to their current employees and to their companies, responsibilities that will sometimes trump any considerations of treating a job candidate according to his desert.

Desert considerations can enter into deliberations about the job candidacy of a person who has an irritating personality. An important factor that a hiring committee must keep in mind is what the company’s current employees deserve. Insofar as the current employees have maintained a solid commitment to the company through their efforts and performances toward reaching company goals, they can deserve a comfortable working environment. If this is the case, and if a job candidate has a legitimate desert claim to a job, then we are confronted with a situation in which there are competing desert claims. For a variety of reasons, the desert claims of many current employees will usually trump those of a single candidate. This is true not only because the current employees outnumber the single candidate, but also because their relationship with the company will usually give rise to greater desert. Later in this chapter, I will examine in more detail the issue of the desert of current employees.

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28 In practice, the likelihood of an irritating candidate being passed over would be greater when there is a well-qualified alternative candidate.
There are going to be qualities or characteristics about prospective and current employees that should not be considered during the hiring process. I have just claimed that employees of a company can deserve a comfortable working environment. The fact that a company has many prejudiced employees who would be uncomfortable with a person of a certain gender, race, or religion should not lead the company to refuse to hire people of that gender, race, or religion, however. When understood in terms of desert, the argument for this idea is an extension of the argument regarding the bank robber and Nazi that I offered in section 4.2.\textsuperscript{284} There I argued that immoral actions or characteristics cannot be desert bases. Similarly, one cannot make a desert-based appeal for relief of personal discomfort that is caused by one’s morally unacceptable views. Therefore, although a person might deserve to have a comfortable working environment, he cannot appeal to desert for relief of his discomfort if his discomfort is caused by his racist views. In addition, if any of the employees’ racist views are made manifest in ways that hurt others employees or the company as a whole, then the racist employees should be disciplined or fired.

One might object that failing to hire a candidate with the irritating personality is morally questionable in a way similar to failing to hire an employee of a certain race since, at least for some jobs, being irritating is irrelevant to how the job candidate would perform in a given position. But a person can change or at least sufficiently control certain aspects of his personality when needed. One might argue that, if a person so desires, he could attempt to change his religion too. But except in certain religiously affiliated organizations, one’s religion is not relevant to how one performs in a particular position. Being able to control oneself, conversely, is an important aspect of being a productive employee. In addition, avoiding personality clashes among employees is an important part of operating a legitimate business.

\textsuperscript{284} Of course, there are other, stronger arguments against employment discrimination.
Appeasing the gender, racial, or religious prejudices of business partners, customers, or employees is not.

Regardless of the extent to which one can control certain aspects of one’s personality, there is something morally wrong with giving weight to the gender, racial, or religious prejudices of business partners, customers, or employees except perhaps in very rare cases. I follow both Wertheimer and David Miller in thinking that only reaction qualifications that are based on other’s morally legitimate reactions should be considered by hiring committees. I argue the same with respect to what I have called “reaction disqualifications.” I agree with Wertheimer and Miller in thinking that drawing a precise line between morally legitimate and morally illegitimate reaction qualifications would be, at best, very difficult to do. It is clear, however, that racist, religiously intolerant, and sexist reactions are not morally legitimate.

I do not mean to suggest that there are never legitimate reasons to consider gender, race, or religion when making hiring decisions. Above, I argued that one’s religious view can be relevant to how one performs as a part of a religiously affiliated organization. Because of this fact, there are legitimate reasons to consider one’s religion when hiring for jobs at such organizations. Many organizations, in the name of diversity, look to hire a person of a certain gender or race. One’s gender or race, by itself, does not establish that one is deserving of any special treatment, however. When I write about affirmative action later in this chapter, I will explain in greater detail my view about whether gender, race, and religion can give rise to desert. My primary focus there will be the relationship between desert and race.

In Chapter 3, I examined Miller’s views about forward-looking desert. There, I quoted Miller’s idea that the best-qualified candidate deserves a job based on the fact that she currently

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has the qualities that enable a hiring committee to be confident that she will perform the requirements of the position and thereby come to deserve or earn the remuneration that is attached to the position.\textsuperscript{286} Miller rejects the idea that jobs are deserved as rewards for past performance or as prizes for talents that are displayed when the hire is made.\textsuperscript{287} While Miller’s account is promising, I think that it can be improved. As I mentioned above (179), the role of desert in hiring will be based on a job candidate’s efforts and performances as they relate to the requirements of the position. I think that Miller’s view is promising to the extent that it ties the best-qualified candidate’s desert of the position to the specific requirements of the position. I disagree with the particulars of his view, however. Miller’s contention that the desert of the best-qualified candidate is based on her qualities as they relate to what she will come to deserve or come to earn through future performance is problematic.

Miller insists that the desert of the best-qualified candidate is based on her present qualities as opposed to her future performance and, therefore, that his view is not forward looking. Earlier, I argued against forward-looking desert while stressing the importance of distinguishing between what one deserves at present and what one will deserve in the future (section 3.4). One problematic aspect of Miller’s view is that by appealing so strongly to future performance while explaining a present desert base, he risks blurring the line between the backward-looking account that he favors and the forward-looking account that he wants to reject. In addition, by tying desert to the earning of future remuneration, Miller risks glossing over an important distinction between what one deserves and what one earns.\textsuperscript{288} One earns remuneration by doing what a job requires, irrespective of the amount of effort that one puts forth. For

\textsuperscript{286} Chapter 3 (83-84) and David Miller, \textit{Principles of Social Justice}, 167.
\textsuperscript{287} David Miller, \textit{Principles of Social Justice}, 163.
\textsuperscript{288} In \textit{Principles of Social Justice}, 167, David Miller alternates between claiming that deserving a job is tied to deserving the remuneration and earning the remuneration that is attached to it.
example, a person might earn money by completing a task that was quite easy for him to complete. In addition, he might earn more than his coworker even though she puts forth more effort. Because desert is based on a combination of effort and performance, what a person earns and what he deserves can come apart in certain cases.289

I suggest that the clearest way to explain the desert of the best-qualified candidate is to stress the relationship between the present qualities of the candidate that are relevant to the position and the candidate’s previous efforts and performances toward developing those qualities. In this way, there remains a direct connection between what the position requires and the backward-looking components that establish one’s desert. Miller might object that my view treats jobs as being deserved as rewards. Although I think jobs could be viewed as such in certain situations, that is not the view I am promoting here. In fact, I am amending rather than rejecting Miller’s view. Like Miller, I base the desert of job candidates on their present qualities or qualifications. Also like Miller, I think that the relevant qualities or qualifications are those that the candidate needs in order to perform the job well. If those qualities or qualifications are desert bases, however, it is because they are the result of the candidate’s prior efforts and performances. As I discussed in Chapter 3, qualities are not desert bases unless they are largely the result of past efforts and performances.

In this section, I have examined some of the factors that hiring committees consider when choosing whom to hire, including some factors that are and some factors that are not based on the candidates’ deserts. The brief discussion of reaction qualifications, reaction disqualifications, and gender, race, and religion foreshadows the discussion of the relationship between desert and affirmative action at the end of this chapter. At this point, however, I will focus on the use of

289 Although I do not completely agree with the distinction he offers, David Schmidtz also marks a distinction between what one earns and what one deserves (see 81n142 above).
seniority in the workplace, particularly in union environments, and the relationship between seniority and desert.

Desert and the Use of Seniority in Layoffs and Promotions

The labor movement in the United States grew in importance in the late 1800s through the early 1900s as strikes, riots, and other employer-employee conflicts grew in scope and frequency. Workers protested against such things as long hours, unhealthy and unsafe working conditions, low wages, and a lack of job security. Their grievances could be explained in different ways – they were not receiving what they merited, needed, or they were not getting reciprocal value (wages) for the value that they produced. It could also be argued that they were not being treated as they deserved. Such a claim could be based on the idea that human beings qua human beings deserve a certain baseline treatment unless they do something to forfeit such treatment. In section 3.3, I gave some reasons for rejecting this idea. Regardless of whether one should accept or reject appeals to baseline desert, I want to focus on what workers can deserve as a result of their work. Much of the discussion in this section will focus on layoff and promotion practices within the United States. The main arguments and ideas of this section are applicable to such practices within any free society, however.

As a result of her effort and performance, a worker can deserve various things from her employer. Although there is room for disagreement about exactly what any given employee deserves, in most cases a hardworking employee would deserve a decent wage. Granted, “decent wage” is a vague term. At a minimum, a decent wage would be one that enables a person to take care of her basic needs. From historical accounts, it is clear that many workers in many industries in the late 1800s and early 1900s were not treated in accordance with their deserts.

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290 Dubofsky, *The State and Labor in Modern America*. 
This claim is based on the idea that many of these workers put forth great effort and performed their jobs well, yet they were subjected to harsh working conditions and long hours without being particularly well compensated.

In “Layoffs: Principles and Practices,” Stuart Romm writes about the “complete and arbitrary control” that foremen had over wages, hiring, layoffs, and firing in the late 1800s and early 1900s in the United States. These foremen used their power to do such untoward things as sexual harass female workers and elicit brides\(^{291}\) and they were much more interested in benefiting themselves than rewarding deserving employees. I have argued throughout this dissertation that a certain amount of decentralization in decision-making processes is needed in order for people to make accurate desert-based assessments. What the example of these foremen reiterates is that although this decentralization is necessary for accurate desert-based assessments, it certainly is not sufficient. There must be appropriate checks on the power of those charged with employment decisions and they, or the people who oversee their decisions, must make the effort to incorporate the use of desert in their decision-making processes.

Although unions were organized in order to address various injustices, certain common criteria or principles that guide unions and union contracts seem antithetical to rewarding desert. For example, some unions negotiate predetermined salary scales that are based heavily or exclusively on seniority. Many teachers’ unions have salary scales based on a combination of years of service as a teacher and highest academic degree earned. The salaries are listed in steps and each combination of years of service and highest academic degree earned corresponds to a single salary that is not negotiable on an individual, teacher-by-teacher basis.\(^{292}\)


\(^{292}\) The types of salary scales that are common in public school systems within the state of Ohio are typical. Years of service can be understood as years of service to the profession or years of service within a particular school district. Oftentimes, school districts will recognize years of service outside of the district up to a particular limit.
The issue of layoffs and, in particular, layoffs of members of unionized workforces raises interesting questions about the role of desert. Many unions have written into their contracts that strict seniority, where time of service is the sole criterion, or limited seniority, where time of service plays an important but not exclusive role, will guide layoff decisions. Sometimes the use of seniority is limited to comparing people in the same or similar jobs. Other times it allows for more senior members who have had their position cut to displace or “bump” less senior members who work at different jobs in the same factory or even at different factories. These contractual agreements seem to ignore desert, since we can imagine a mediocre worker with thirty years of experience being much less deserving of keeping her job than a much better worker with only five years of experience.

The use of strict seniority is not limited to union companies, since it does occur within nonunion companies too, although to a much lesser degree. While there is almost always a contract or written policy specifying how seniority will be used in union companies, such contracts and policies are rare for nonunion companies. One reason why nonunion companies might prefer layoffs of senior employees first would be to save money on salaries and pensions. Such attempts to save money could lead to charges of age discrimination and subsequent

For example, a teacher who has taught for ten years in school district A might receive credit for five years of service if she takes a new position in school district B. As a result, in her first year in school district B she will earn the salary that corresponds to five years of service and whatever highest academic degree she has earned. Sometimes, districts recognize work toward a degree if a teacher has, for example, completed at least half of the required credit hours for that degree. So, a teacher who has ten years of service, a master’s degree, and has completed half of his coursework toward a doctorate will be paid more than a teacher who has ten years of service, a master’s degree, but has not completed at least half of his coursework toward a doctorate. For two examples of salary scales in Ohio public school districts see Westerville City Schools, “Teacher Salaries 08-09,” http://www.westerville.k12.oh.us/docs/TEACHER%20SAL%20SCHEDULE%2008-09.pdf and Hilliard City School District, “2008 Salary Schedule,” http://www.hilliard.k12.oh.us/district/salarySchedule.cfm.

294 Ibid., 168-169.
lawsuits, however. In practice, in nonunion companies seniority is used primarily as a tiebreaker and it is weighed more heavily when management lacks reliable information about individual employee performance. I have argued throughout this dissertation that such information is necessary in order to make accurate judgments about employees’ deserts. Since desert is an important component of justice, company managers should attempt to collect such information. There are other reasons why company managers should collect such information, e.g., to track and attempt to improve worker efficiency.

Romm notes a number of pragmatic and economic reasons why union leadership and rank-and-file union members would be in favor of the use seniority as an important criterion in layoff decisions. Union members think that seniority-based layoffs help ensure the continued existence of the union, since the more knowledgeable and experienced members keep their jobs. In addition, since the senior members tend to make more money, such layoffs help the union extract higher total rents. Romm also notes that “workers are fearful of arbitrary managerial discretion because they believe that this discretion is ‘almost certain to be abused, because foremen find it difficult to resist pressure to favor friends or members of certain social groups.’” As I discussed above, this concern about the arbitrariness of foremen’s decisions was an important factor in the initial rise of unions in the late nineteenth and early twentieth century United States. Romm notes that companies also view seniority-based layoffs as an insurance policy against such abuse. He writes, “Firms that are unsure of the fairness or

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295 As noted in the text above, much of this discussion is based on employment practices within the United States. Certainly, different countries will have different laws regarding issues such as age discrimination in employment.  
297 Ibid., 155.  
298 Ibid., 156.
objectivity of their first-level supervisors and foremen may use seniority as a convenient, albeit imperfect, proxy for ability and experience in selecting people for layoff.”

Clearly, there are a number of reasons other than those based on desert why both employees and employers are in favor of the use of seniority in decisions about layoffs. In certain cases, the use of seniority can go against the idea of treating employees according to their deserts. But both philosophical reflection and responses from employees and employers suggest that seniority can and does serve as a proxy for desert.

Regarding the specifying of seniority as an important factor in employment decisions within union contracts, Romm notes that “the substantive justification in the minds of the recipients [employees] seems to be the principle of prior contribution” or “cumulative contribution to the firm over the years.” Presumably, when a worker appeals to his prior or cumulative contribution he has in mind both his prior performance and the cumulative effort that he has put forth over the years. This fits well with the view that a worker can deserve to keep a job based on his previous effort and performance within the company. Romm continues, “Subjectively, workers also believe that senior workers are more experienced and productive and that seniority can be used as a proxy for value to the firm.” The belief that experience and productivity make senior workers more valuable is based on the idea that senior workers have a greater ability to perform their jobs going forward. This seems to fit well with Miller’s contention that a job can be deserved based on a person’s present qualities that would enable him to do the job well going forward.

The idea that senior workers always have the ability that will enable them to perform best now and in the future is problematic, however. For a variety of reasons, senior workers might

299 Ibid., 157.
300 Ibid.
not presently have more ability to perform a job better than their less experienced counterparts. Romm writes that in the light of this fact, “actual seniority systems often specify some tradeoff between seniority and ability in making layoff selection.” Sometimes senior employees are kept if they have “some minimum qualification” to perform the job. Other times ability is given more weight so that “the senior employee is retained over the junior employee if they possess relatively equal ability to perform the available work.”

While seniority is often viewed as a proxy for desert, it is an imperfect substitute for desert. Such is the nature of a proxy.

The ability of a junior employee to perform a job well is a desert base to the extent that it is a result of his previous efforts and performances. An important question to consider is whether current ability, which itself can establish desert, should trump seniority and the prior efforts and performances that accompany seniority. Perhaps the best solution to the problem of weighing current ability against past efforts and performances when determining who is more deserving of keeping his job is one which Romm notes is often followed in practice: if a senior employee has the ability to do the job effectively or, to offer a slightly higher standard, if a senior employee’s ability to do the job is relatively equal to that of an employee with less seniority, then the senior employee ought to keep his job.

As I noted above, Miller rejects the idea that jobs can be deserved as rewards. According to Miller, the use of seniority seems to treat jobs as such. So, he thinks that the use of seniority is a corruption of desert. He writes:

For all these reasons, the reward interpretation of the desert principle [with respect to jobs] we are considering seems wholly unpromising. This is not to say that jobs are never given as rewards. Clearly they are, as in “Buggins turn,” whereby promotion is routinely handed out to the longest-serving member of the
department. But rather than insinuating the principle that jobs should go to the best qualified, it is instead a corruption of that principle. Jobs are not deserved *qua* rewards. Past performance is not the *basis* of desert, but rather a source of evidence about who is now deserving. Moreover, it is not the only possible source of evidence. We might in appropriate cases want to gather information more directly, for instance, by asking candidates to take various tests. It seems that the desert basis here must be the relative ability of the candidates to perform on the job, as revealed by the best means at our disposal for detecting ability.\(^{302}\)

Miller argues that neither past performance nor mastery of particular tests would be a desert base in the case of promotions, but rather these factors would serve as evidence about who is now deserving. While this might be the clearest understanding of desert in cases in which one is a potential employee, I argue in favor of a different understanding when the people in question are current employees. Above, I agreed with Miller’s claim that a candidate for a position does not deserve that position merely as a reward for past efforts and performances. I intend for this claim to apply in those cases in which the job candidate does not have a preexisting relationship with the company to which he is applying. When there is such a preexisting relationship, however, the desert base can be more clearly identified as efforts and performances in one’s current or previous position(s) within the company. I argue that this understanding of desert should be used for promotions in addition to being used for layoffs. I argue this because, although the candidate will be promoted to a new job, his prior efforts and performances still occurred in the context of the same company.

One could argue that, in any given case, the most senior employee is likely to deserve to keep her job more than all others if she has faithfully performed her duties. This argument

would be based on the thought that her cumulative efforts and performances, which are displayed in terms of past contribution or productivity, would be greater because she has worked longer than any of her coworkers. One difficulty with this view is that, depending on how effort and performance are measured in this context, it seems to suggest that employees with more seniority almost always have a desert-based advantage over their younger counterparts.

Although a mediocre employee with thirty years of experience might have performed just well enough over the years to keep her job, she might not have put forth a great deal of effort or performed particularly well during that time. But if an employee has put forth average effort and performed decently for thirty years and if desert is based on cumulative effort and performance, then an argument could be made that she deserves to keep her job more than an employee with ten years of experience who has put forth twice the effort and performed twice as well. Let us say that the mediocre employee with thirty years of experience has a combined average yearly effort and performance of five on a ten-point scale. The better employee with ten years of experience has a combined average yearly effort and performance of nine on a ten-point scale. The first employee’s desert could be calculated as five (effort and performance) x thirty (years) = one hundred fifty (units of desert). Using the same formula, the second employee’s desert could be calculated as nine (effort and performance) x ten (years) = ninety (units of desert). According to these calculations, the mediocre senior employee deserves to keep her job more than the significantly better junior employee. This seems counterintuitive, however, especially if the better employee presently has a greater ability to do the job. This example suggests that it will be difficult to perform exact mathematical calculations in order to determine one’s desert and how that desert compares with others’ deserts.

**Conclusion**
There seem to be at least two different ways of looking at the use of desert in promotions and neither appears entirely satisfactory. One way is to follow Miller in focusing on a person’s current abilities or qualities. This would be problematic for a couple reasons. First, a person’s current abilities or qualities might not be desert bases if she has done very little to develop them. Second, focusing only on a person’s current abilities or qualities fails to give adequate weight to her prior efforts and performances. These prior efforts and performances are especially important in cases of promotions, since the efforts and performances occurred within the context of the company.

I have advocated another way of using desert in promotions. My view focuses on one’s current abilities or qualities and one’s past efforts and performances. My view has the advantage of incorporating an important aspect of Miller’s view – the focus on abilities or qualities – without ignoring both the importance of one’s prior efforts and performances in developing those abilities or ignoring the importance of one’s prior efforts and performances within the company. One disadvantage of my view, as shown in the case of the mediocre and better employee that I examined above, is that in some cases it will be difficult to calculate one’s desert based on a formula that includes current abilities or qualities and past efforts and performances. Miller’s view is not saddled with this disadvantage since it focuses only on a person’s present abilities or qualities. Determining one’s present abilities or qualities might not be so problematic, although determining one’s abilities or qualities going forward might be.

A second disadvantage for my view is that there is a common sense, intuitive appeal to the idea that a job should be given to the best-qualified candidate who is understood as the person who has the abilities or qualities to perform best in the position. This might suggest a greater role for merit than for desert in cases of hiring and promotions. But if one wants to
defend the use of desert in hiring and promotions, it seem as if the best view is one which determines who ought to be selected based on a combination of a person’s current abilities or qualities and her prior efforts and performances. The resultant view might not be terribly elegant, but such is the nature of morality and justice.

Miller is correct to note that determining promotions on the basis of seniority is a corruption of the principle that jobs should go to the best-qualified candidate. And as I have argued, using seniority to determine who will be laid off is a corruption of the principle that those who are most deserving should keep their jobs. But although both of these points are true, the use of seniority is often justified in part on the grounds that it rewards the most deserving candidates. Seniority can be viewed as a proxy for desert, albeit an imperfect one. In fact, to some extent, both workers and high-level management view seniority as a way to ensure that the desert of workers is considered when layoffs are made.

6.3 The Role of Desert in College and University Admissions

*How Admissions Decisions are Made*

How should admissions officers decide who gains admission to a college or university? Are such decisions to be based strictly on previous academic achievement? To what extent should athletics and other extracurricular activities be considered? Should demographic issues have any bearing on admissions? Should whether an applicant’s family members attended a university impact his chances for admission to that university? Should one’s ability to pay full tuition impact his chances for admission? Even if academic achievement should be the only criterion for admission, in what way should it be measured? Clearly, there are many questions regarding what criteria should guide college and university admissions.
As I discussed previously (section 4.4), the aims or goals of an organization can be evaluated from both an external and an internal perspective. From an external perspective, one can look at the aims or goals of an organization and make an evaluation of those aims or goals in terms of justice, utility, and a variety of other concepts and principles. From an internal perspective, one can evaluate whether an organization is successful in reaching its stated aims or goals. I will rely on the descriptions in Patricia Conley’s “The Allocation of College Admissions” and Jacques Steinberg’s *The Gatekeepers* when discussing the guiding objectives and criteria used by university admissions committees as they relate to the aims and goals of universities.

As is the case in many local contexts, desert is one of many concepts that has a role in college and university admissions. Conley writes, “Like other issues of local justice, the allocation of college admissions blends multiple principles. Desert, equity, and efficiency are all compelling objectives in the selection process.”\(^303\) I have argued that it is important to focus on the aims or goals of a company in order to determine what a current or perspective employee deserves. Similarly, in order to determine the role of desert in university admissions, one must first consider the aims or goals of the university. According to Conley:

> Academic excellence is the traditional and most commonly recognized goal of higher education and the most celebrated qualification among college applicants. Many believe that the university should be, above all, devoted to the extension, preservation, and communication of knowledge. According to this point of view, the university’s chief contribution to society – and the reason society insists on its preservation as an institution – rests on its capacity to cultivate intellectual excellence among young scholars. The implication for the admissions process is

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that those applicants who demonstrate the greatest potential for excellence are chosen for admission.\textsuperscript{304}

I will assume that this commonly recognized goal of higher education as explained by Conley is compatible with a just society.\textsuperscript{305} I will discuss some criteria that guide admissions decisions that do not seem to fit neatly with this commonly recognized goal. My primary focus in what follows, however, will be an examination of college and university admissions in an attempt to determine the role of desert in this issue of local justice.

Conley notes that committees grant admissions based on their determinations of a student’s academic merit, the extent to which a student will take advantage of the opportunities available at the university, the extent to which the student will contribute to the university community through advancing intellectual excellence or through tuition and donations after graduation, and the “societal context” of the student.\textsuperscript{306} This societal context includes facts about a student’s socio-economic background. Some of these factors that committees consider are not directly relevant to a student’s desert. I will offer some brief comments on each factor.

Based on the distinction between desert and merit that I have offered throughout this dissertation, academic merit will not track desert perfectly. Presumably, judgments about the extent to which a student will take advantage of opportunities at the university will be based on the student’s past efforts and performances and currently abilities or qualities. The ability of a student to contribute to advancing intellectual excellence would seem to be based on her past efforts and performances and currently abilities or qualities, but Conley notes that having a student body which exemplifies racial, cultural, and socio-economic diversity is supposed to help advance intellectual excellence. Again, being of a particular race or culture and coming from a

\textsuperscript{304} Ibid., 37.
\textsuperscript{305} I am not suggesting that this is the only goal of higher education.
particular socio-economic background are not, by themselves, desert or merit bases. A student’s ability to pay tuition and the likelihood of the student donating money after he graduates do not seem directly relevant to whether he deserves admission. Since a student’s “societal context” is used as a way to consider her performance in the light of the effort she has made to overcome various obstacles to achievement, this factor might track a student’s desert.

It is important to keep in mind that, for any given pool of applicants, those applicants in the pool are being judged by not only a set institutional standard, but also against one another. For any given applicant in the pool, the others in the pool comprise the most immediate comparative class. When comparing different colleges and universities, one recognizes that they have vastly different admission standards. What qualifies for desert-establishing effort and performance for any given applicant will in some way be contingent on the efforts and performances of the others in the pool. For example, the standard for admission at Wesleyan, at least as it is measured by such quantifiable factors as standardized test scores, is generally going to be more stringent than at an average state university.307

Conley notes that although colleges and universities differ greatly in the selectively, most schools that do not have open admissions policies make decisions based on the following “academic considerations”: (1) applicant’s class rank, (2) SAT or ACT scores, (3) grades and grade point average, and (4) achievement tests in various subjects.308 Of course, schools will emphasize or deemphasize these criteria in varying degrees. For example, even some rather

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307 At Wesleyan, the average cumulative SAT score for students offered admission for 2008 is 2150/2400 and the average ACT score for that group is 32/36. “Wesleyan University Profile. Class of 2012.” http://www.wesleyan.edu/admission/Profile2012.pdf.

308 Conley, “The Allocation of College Admissions,” 54. In contrast, some schools with open admission policies require little more than a high school diploma or GED (General Educational Development) certificate and a completed application.
selective schools such as Bates College, Bowdoin College, and Wake Forest University no longer require SAT or ACT scores for admission.

Conley also discusses a number of “nonacademic considerations” that are used by admissions committees. As one might expect, such considerations differ from university to university. At one private institution, these nonacademic considerations include such things as “personality ratings” used to capture various abilities and qualities such as “focus, sense of commitment,” “maturity, sense of humor, and sense of social responsibility,” and “organizational leadership.” A public institution mentioned by Conley considers such things as “diversity,” “hardship,” and “special talents, interests, and experiences.” A third, less selective public institution considers such factors as the quality of the applicant’s high school, whether the applicant is from an “underrepresented geographic location,” whether he or she is “an offspring or sibling of an alumnus,” “how well he or she took advantage of high school curriculum,” and his or her “‘unusual or unique’ characteristics.”

*The Gatekeepers* describes a process that might, to a certain extent, seem to undercut the relevance of desert, especially comparative desert. The admissions committee at Wesleyan, presumably like those at many colleges and universities throughout the country, is seemingly overwhelmed with large numbers of applications. In 1999, Wesleyan received nearly 6,500 applications which were read and evaluated primarily by eight admissions officers and an interim director. Each file was read by at least two people. From 1998-2008, Wesleyan received anywhere from slightly less than 6,000 to slightly more than 8,000 applications per year and the

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310 It is important to note that *The Gatekeepers* is based on the fall 1999 admissions process. The process that was in effect in 1999 might differ from those that followed.
312 Ibid., 94.
files were evaluated by approximately ten people each year, give or take a couple people.\textsuperscript{313} I have maintained that desert is most relevant in local contexts because the epistemological and pragmatic barriers to using desert are going to be less problematic in such contexts than they are going to be in other, larger contexts. But if too much is expected from too few decision makers, then these challenges might be more problematic than they should be or need to be. If the members of an admissions committee are overburdened with too many applications, then their situation could be akin to that of the hiring committee in the fictional example of the very large corporation that I discussed above (175-176). Not all contexts that could be desert receptive in theory are going to be desert receptive in practice.

\textit{Sally and Sarah Revisited}

In section 3.4, I introduced the example of Sally and Sarah while arguing against a forward-looking account of desert. Sally is intelligent and hardworking. She took the most demanding course load available at her high school while earning straight A marks, her standardized test scores were in the ninety-eighth percentile, she scored very highly on a variety of Advanced Placement subject tests, and she had a long list of extracurricular activities. She managed to accomplish all of this while working part-time during the school year and full-time during the summer, and while assisting her single mother in caring for her mentally handicapped younger brother. Sally, the epitome of the “deserving poor,” was admitted to Harvard. Sarah was a slacker who was admitted to Harvard because her father, a Harvard alum, donated large sums of money to the university. Once at Harvard, Sally foundered and was expelled whereas Sarah flourished and became a straight A student. In section 3.4, I argued that nothing that either Sally or Sarah did after they were admitted to Harvard changed the fact that Sally deserved to be admitted while Sarah did not.

\textsuperscript{313} “Wesleyan University Profile. Class of 2012.”
Based on the various factors discussed earlier in this chapter, one can see many ways in which Sally deserved to be admitted. First, she put forth great effort to accomplish all that she did in her studies, school-related extracurricular activities, additional work outside of school, and in helping her family. In the academic areas of class rank, SAT scores, grades/grade point average, and achievement tests in other subjects, she excelled. Sally did not have the advantage of attending a quality high school or being a legacy, but neither of these factors is directly relevant to whether she deserved admission. Many of the nonacademic considerations discussed above, such as focus, maturity, diversity, and hardship, provide further evidence that Sally deserved admission.

One might be troubled by my suggestion that Sally’s work outside of school is relevant to whether she deserves to be admitted to a university. Throughout Chapter 4, I argued for the importance of isolating the desert considerations that are relevant in a given context. For example, I argued that the fact that a student does well bagging groceries is not relevant to whether she deserves the chance to earn extra credit (99). As I discussed above, university admissions committees often consider factors about an applicant that go beyond grade point average, SAT score, and other scholarly accomplishments. Many of these other factors that do not appear to be directly relevant to an applicant’s scholarly accomplishments or potential, such as an applicant’s employment outside of school, can be thought to display characteristics, such as effort, that are relevant to university studies. In addition, knowing that a person had to work to help support her family financially or assist an ill family member can help shed light on how much effort was required for her to perform well in school and in other scholarly activities.

Above, I quoted Patricia Conley’s claim that “academic excellence is the traditional and most commonly recognized goal of higher education and the most celebrated qualification
among college applicants” (198). Although this might be so, as highlighted over the previous few pages, academic excellence is not the only important qualification among college applicants. In addition, academic excellence is not the only commonly recognized goal of higher education. Another, albeit to some degree related, goal is job preparation or training. And certainly, other important goals could be identified.

In Chapter 4, I discussed the idea that while desert is based on a combination of effort and performance, what that effort and performance should be geared toward and what mode of treatment should result from that effort and performance are in part determined by the values and goals of associations, organizations, or institutions. Clearly, university admissions committees have determined that effort toward and performance in scholarly activities are not the only types of efforts and performances that should be considered when determining whether one should be admitted to a university. To the extent that these committees make their decisions on the basis of each applicant’s desert, many contexts both inside and outside of school are seen as giving rise to relevant desert bases. If one thinks that the only factors that should be considered are purely scholarly factors such as grades, SAT scores, and the like, then one will think that these committees are mistakenly considering certain irrelevant desert-making factors.

Conclusion

Through the work of both Conley and Steinberg, it becomes clear that committees consider a number of criteria that are not directly relevant to the desert of an applicant. Such considerations include the gender, race, religion, socio-economic status, and certain beliefs and opinions held by the applicant. To some extent, college and universities justify their desire for a “diverse” student body on the grounds that it is a way to correct past injustices, a way to avoid future injustices, or both. Administrators believe that by having a diverse campus community
students will hear a variety of different viewpoints which, in turn, will lead to the advancement of academic excellence. In addition, administrators consider the reaction qualifications of various applicants, hoping that interaction with people from various racial, religious, socio-economic, and other groups will give rise to certain reactions in people such as a feeling of community and a greater respect for people from other groups. Other non-desert-related factors used by committees include the applicant’s, or her family’s, ability to pay tuition and whether the applicant is a legacy.

As I have detailed throughout this section, committees also use many desert-related criteria in admissions decisions. These criteria include such quantifiable measures as class rank, standardized test scores, and grades. Committees attempt to determine the effort that an applicant put forth in order to achieve in those areas as well as in school-related extracurricular activities. In addition, committees will look at one’s efforts and performances in non-school-related activities. As I discussed, one might question whether efforts and performances in non-school-related activities should be viewed as desert bases that are relevant to university admissions.

If colleges and universities think that desert is an important factor in admissions, how might they ensure that desert is accurately accounted for in admissions decisions? Here are a few suggestions: First, in order to avoid the “Wal-Mart problem” that was discussed above (175-176), universities should make sure that admissions committees do not become overburdened so that they can make fairly accurate desert-based assessments. Second, college and universities should clearly define what students need to do in order to gain admission to their school. Schools will not be able to offer an exact formula, but they should be as transparent as possible with their criteria for admission. Third, schools should explain how they see their admissions
procedures as making use of desert. Ideally, schools could detail the extent to which desert-based criteria will be ignored or trumped in favor of other criteria. Lastly, if students will be compared only, or primarily, with students of the same gender, race, religion, or socio-economic background, schools could make their use of these comparative classes more transparent.314

6.4 Desert and Race-based Affirmative Action

Introduction

Affirmative action policies could be dictated by guidelines that are laid down by the center, but they do not have to be. One could argue that affirmative action should become a society-wide policy if minorities systematically do not get what they deserve. For example, if a sizeable portion of those charged with hiring discriminate against people based on race, one method to combat this racism is by enforcing government dictated affirmative action policies. In the United States, where private associations and organizations have a fair degree of leeway in establishing their own hiring criteria, individual associations and organizations can and often do establish affirmative action policies of their own accord.

For purposes of clarification, I should explain the way in which I am using the term “affirmative action.” People often make distinctions between affirmative action in general and specific policies such as quotas and points systems. Although such distinctions are important in many ways, I will not be examining them in any detail. For the purpose of this discussion, it is enough to note that when I use the term “affirmative action” I am referring to some preferential treatment, even if such treatment amounts to little more than having one’s college application considered more carefully.

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314 If universities did clearly separate students according to these groups, it is unlikely that the universities would be completely forthcoming with this fact for fear of legal challenges.
As noted by Conley, many people think that potential for academic excellence should be the most important criterion used in college and university admissions. A major objection to certain race-based preferential admissions policies that are used by colleges and universities is that they downplay the criterion of academic excellence and instead reward an applicant based on a characteristic, race, which is irrelevant to one’s academic excellence. Certain policies that put too much emphasis on one’s race have been successfully challenged in United States courts. In the 2003 case Gratz et. Al. v. Bollinger et. Al., the United States Supreme Court ruled as unconstitutional a policy that had been used by the University of Michigan’s College of Literature, Science, and the Arts (LSA) whereby applicants were automatically awarded a substantial number of points if they were from an “underrepresented minority” group. Writing for the Court’s majority, Chief Justice Rehnquist wrote that “the LSA’s 20-point distribution has the effect of making ‘the factor of race . . . decisive’ for virtually every minimally qualified underrepresented minority applicant.” One of the main concerns of the Court’s majority was that in certain cases the admissions committee for LSA was not giving appropriate consideration to the “individual background, experiences, and characteristics” of certain applicants.315

According to the views that I have defended, both merit and desert are bases of positive attribution or, in the case of demerit and negative desert, negative attribution. Because I do not think that one’s race can, by itself, be a basis for positive or negative attribution, I do not think that one’s race can serve as a merit or desert base. For similar reasons, I do not think that one’s gender can be a merit or desert base. I am inclined to think that one’s religion can be a basis for positive or negative attribution, at least indirectly, based on the extent to which the religion advocates moral or immoral action and beliefs.

315 From 539 U. S. 244 (2003) GRATZ et al. v. BOLLINGER et al.
The idea that race is not a characteristic of positive or negative attribution should be fairly uncontroversial. One of the reasons why racism is so reprehensible is because it is based on the idea that one’s race makes one more or less valuable as a human being. Now, in some cases, race will be relevant to whether one should be chosen for a particular position or role. For example, when choosing an actor to play the role of a historical figure, it is perfectly legitimate to want that actor to be of the same race as the historical figure. It is entirely reasonable to prefer a white actor for the role of Abraham Lincoln and a black actor for the role of Martin Luther King, Jr. In certain cases, there might be other legitimate economic, social, or political reasons for considering race in hiring or admissions decisions.

Although I have closely followed Pojman’s account of merit, I disagree with him as regards the relationship between race and merit. While both of us deny that race can be a desert base, Pojman differs from me when he argues in favor of the view that race can be a merit base. Pojman writes that “skin color” can be “non-deserved merit.” He contends that “a black actor merits the part of playing Othello over equally good white actors because race is a relevant characteristic for that part, even though he did nothing to deserve his blackness” and also that “a black actor’s claim on the part of playing Othello has merit although the actor did nothing to deserve his skin color.”

I agree that, in a manner of speaking, the black actor’s claim has merit. This does not mean that race is a merit base, however. While the black actor might merit the part, he does not merit the part over equally good white actors. Rather, he simply shares a relevant characteristic, race, with the character to be portrayed. Similarly, a woman actor would not merit the part of playing Desdemona over equally good male actors. Rather, she simply is of the appropriate gender to play the part.

*Sally Revisited (Again)*

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As I noted above, the claim that race is not a desert base is not to be confused with the claim that a person cannot deserve something on the basis of her effort and performance in overcoming racial discrimination. Once again, I will revisit the example of Sally to explain some possible connections between race and desert. In an effort to make my arguments more clear, I will alter some of her academic credentials and add some more information about how Sally and her family came to live in such difficult circumstances. Sally’s father, Bernie, was an intelligent and hardworking man. But for most of his life, he lived in a society that was guided by racist policies. Such policies were in effect on all levels of government, in public and private universities, and in places of employment. In large part because of these policies, he could not exercise his talents to attempt to make a comfortable life for himself and his family. As a result of this widespread racism, Sally’s father was barely able to pay the rent for his family’s small apartment in an impoverished part of town and he struggled to keep food on the table. Sally was raised in the ghetto of a rather large southern city and the ghetto was, as many are, quite dangerous. Her father was murdered one evening on his way home after working a twelve-hour shift at the local plastics factory.

Sally’s mother, Harriet, had always spent much of her time at home caring for her mentally handicapped son, Jerome. Harriet worked part-time at the corner store. Sally had often looked after Jerome even before her father’s death, but even more so after. Sally’s parents never accepted welfare or any type of public assistance, although they easily qualified for such aid. Someone needed to help pay the bills after her father’s death and Sally took on that responsibility. Sally worked full-time at the corner store during the summer and part-time during the school year.
Due to the poverty in the area and the racist policies enacted by decision makers at various levels of government, the district in which Sally attended school was vastly under funded and quite ineffective. Still, Sally persisted. She was a very good student, she earned an equal number of A’s and B’s throughout high school, her cumulative SAT score placed her in the eighty-eighth percentile of all test takers, and she participated in many extracurricular activities, including varsity basketball, science club, and student government. She is what one might refer to as the epitome of the “deserving poor.” Although her grades and standardized test scores were worse than many white applicants who were denied admission, Sally was admitted to Harvard.

Sally’s race seems to have played a role in her being more deserving for admission to Harvard than many of her fellow applicants, especially in relation to many of the white applicants. She did not become more deserving simply because she is black, but because her being black made it harder for her to achieve most anything positive in life. She had to work extra hard to achieve relative to a white person with similar native endowments.

One can imagine a society in which being black automatically makes one more deserving than a similarly accomplished white person would be. This would hold universally, or almost so, only within a society that was marked by extreme and pervasive institutional racism. Some might argue, I think mistakenly, that this describes the modern day United States. Perhaps this describes the United States, or certain parts of the United States, in the past. Even if it were the case in a particular society that being black had such an impact on one’s desert, being black still would not be a desert base. Rather, because the obstacles to achievement would be so much greater for black people, any given black person would have to put forth greater effort in order to achieve the same result as a white person with comparable native endowments. And since desert is understood as a combination of effort and performance, if a black person achieves the same
level of success while putting forth greater effort than a white counterpart, then the black person is more deserving.

I argued that one can be more deserving than another who has achieved the same level of success. One might wonder in what way Sally can deserve admission to Harvard if her grades and standardized test scores were lower than many people who were denied admission. As I discussed in earlier in this chapter, David Miller thinks that a person deserves a job based on present qualities that will allow her to do the job and thereby come to deserve the remuneration that is attached to the job. These qualities are, in part, indicated by past performance. But as Miller notes, past performance might not be an accurate predictor for future success. He writes, “if blacks or women are owed more favorable consideration than white men, this is not to rectify past injustices, but because their past performance under-represents their present deserts.”317 We can apply what Miller argues to the case of Sally. Sally’s SAT score and grades, although very high, might still under-represent her capacity or potential to perform well at Harvard. Although her SAT score is in the eighty-eighth percentile, it might predict greater future success than a white applicant’s SAT score that is in the ninety-fifth percentile. Miller discusses how an “educational grade”318 can be used as a predictor of job performance. Miller claims that a black candidate with a lower educational grade than a white candidate might deserve the job over the white candidate if the black candidate’s grade predicts better future job performance than the white candidate. One could offer a similar argument with respect to university admissions.

A Closer Look at Race-based Affirmative Action Policies

According to Miller, one deserves to be hired for a job or admitted to a university based on present qualities that suggest future success. He also argues that if the present qualities of a

317 David Miller, Principles of Social Justice, 175.
318 Ibid.
black or woman applicant are lesser than a white man’s, then the black or woman applicant might still deserve the job or admissions slot because those qualities under-represent what one will do in the future. This does seem to make Miller’s view forward looking in a way that he wants to avoid, however. An advantage of my view of desert is that it can account for this under-representation of capacity without even the appearance of being forward looking. On my view, since desert is based on a combination of past efforts and performances, in certain cases I can advocate, on desert-based grounds, hiring or admitting applicant A instead of applicant B if applicant A has put forth more effort but performed less well than applicant B. Put differently, I can advocate giving the job or admissions slot to applicant A because, although she might not merit the job or admissions slot more than applicant B, she deserves the job or admissions slot more than applicant B.

Consider a case involving a standardized test that is used for placement at Noplace, Inc. On average, the black people who take the test are poorer than their white counterparts and, through no fault of their own, the black people have had an inferior education compared to their white counterparts. The average score for black people who take this test is sixty percent, whereas the average score for white people who take the same test is seventy percent. In order to stay consistent with an example offered by Miller, let us imagine that a black candidate for a job scores sixty-five percent and a white candidate scores seventy percent. The black candidate outperformed his racial comparative class whereas the white candidate earned the average score for his race. Because his performance is better than the average of those in his racial comparative class, this suggests that, at least according to one factor, the black candidate might be more deserving of the job than the white candidate.

319 Ibid.
If an admissions committee were inclined to follow the desert-based decision-making procedure described in the preceding paragraph, it should look at different comparative classes in an effort to gain a more complete understanding of one’s effort and performance. Let us imagine that the admissions committee for Utopia University is focusing on a particular educational exam score. For any given applicant, one comparative class would be all people who took the exam. Another comparative class would be those of the same race who took the exam. Another comparative class would be all who applied to Utopia University. Yet another comparative class would be those of the same race who took the exam and who applied to Utopia University.

As I noted above, Miller suggests that, at least in some cases, a black applicant’s examination grade should be inflated as a way to judge his desert more accurately. He explains this view using the following example:

On the basis of what we know generally about the group or groups in question, our best estimate of a particular member’s capacity to do the job we are filling requires us to apply a weighting factor to past performance. Thus, if the examination grades achieved by black students generally underestimate their capacity (as compared with white students) by 5 percent, then in the absence of specific information about the applicants, we should inflate the examination scores of all blacks by 5 percent in arriving at our judgment of desert.320

What I find particularly interesting in this quote is the suggestion that people can make desert judgments “in the absence of specific information about the applicants.” This includes the absence of specific information about the applicants’ backgrounds that would shed some light on which applicants’ grades should be inflated. A policy such as the one that Miller suggests would be offering rough estimates of desert or would be serving as a proxy for desert, but it would not

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320 Ibid.
accurately track actual desert. Insofar as judgments about who to hire for a job or admit to a university are desert judgments, however, those judgments must be based on specific information about applicants. Not all white people have the same IQ and not all black people come from the same socio-economic background.

There are reasons why affirmative action policies in their various forms might be unjust or, at least, problematic. For example, some policies might treat race itself as a characteristic of positive or negative attribution. Some policies might inexactily track and, therefore, inexactily compensate race-based societal injustices. Even if black applicants generally come from poorer families and generally have fewer or worse educational opportunities, certain policies might be structured in such a way so as to benefit black students from rich families at the expense of black students, or all students, from poorer families. Such policies might also give upper-class black applicants an advantage over similarly situated white applicants, when such an advantage is neither merited nor deserved. Conversely, there are reasons why affirmative action policies, in their various forms, might be just or at least generally beneficial for a society as a whole. They might serve as a way to compensate for past or present society-wide racial injustices. In addition, they might serve as a way to help ensure that students interact with people from a variety of racial, religious, and social-economic backgrounds.

Louis Pojman writes the following about affirmative action programs:

Affirmative action programs are to a large extent based on three anitmeritocratic moves – either the denial of the coherence of merit altogether (replacing the idea with a more therapeutic ideal of enabling everyone to be autonomous), the
justified overriding of merit because of considerations of need or utility, or the
denial that we can really know who deserves what.\textsuperscript{321}

Contrary to what Pojman suggests here, one can make reasonable desert-based arguments in
favor of affirmative action programs. If one chose to adopt Miller’s view, one could argue that
certain standardized test scores underestimate the ability or capacity of black students to perform
well at colleges and universities or that certain employment examinations underestimate the
ability or capacity of black people to perform well in a particular job. If this is true, then one
could offer a desert-based argument that black students should have a certain number of points
added to their scores. But notice that such a policy is based on information that is generally true
about a group rather than information that is specific to an individual. Because of this lack of
specificity, such a policy would serve as an inexact proxy for desert.

Although reasonable desert-based arguments for race-based affirmative action policies
can be made, calls for race-based affirmative action as it is often practiced in modern day United
States must be based on something other than desert. This is because many affirmative action
policies, at least those that give great weight to race in isolation from other factors, do not track
desert particular well. There are better ways to discern what one deserves than to rely heavily,
let alone exclusively, on race. One could argue that affirmative action should be based on wealth
and poverty as opposed to race because those who are poorer generally do not have access to a
good education. Although such a system would not track desert perfectly, since no system could,
it might come closer to rewarding desert than would race-based affirmative action. One could
counter-argue that focusing strictly on wealth and poverty overlooks key obstacles to
achievement that are primarily based on a person’s race. It may be true that all, or a vast

\textsuperscript{321} Pojman, “Does Equality Trump Desert?,” 285. In this quote, Pojman is using “merit” and “meritocratic” in ways
that incorporate the concept of desert.
majority, of those within a race will be subject to certain general obstacles. But there are always going to be differences between people within a racial group. These differences will be based on factors which, as I have discussed, are often considered by admissions committees. These factors include not only wealth and poverty, but also geographic location, family structure, and a number of other factors.

**Conclusion**

The role of desert is undermined by the use of race-based affirmative action policies when those policies fail to consider the vast differences in the “individual background, experiences, and characteristics” of people who are of the same race. This is why any policy that seeks to judge people based on a general group characteristic will always fall well short of judging them based on desert and why the only way to attempt to accurately reward desert is to compare people based on their individual efforts and performances. It might be true that in certain societies people from one race are generally more deserving than people from another race when their levels of performance are comparable. Accurate determinations of desert must be based on individual specifics and not group generalizations, however.

When they are overly reliant on group generalizations, race-based affirmative action policies neither track nor reward desert accurately. Therefore, such policies will need to be justified on non-desert based grounds. Of course, such policies are often justified on non-desert based grounds, e.g., on the grounds that they are necessary to overcome past or present discrimination. These other grounds for enacting race-based affirmative action policies might trump individual desert. This does not mean that such policies cannot be fine-tuned to more accurately track desert. Nor does this mean that such policies ignore desert entirely. Proponents of affirmative action policies would be wise to highlight the ways in which such policies are
based on desert and, perhaps, would be wise to attempt to incorporate desert more fully into such policies.

6.5 Conclusion

Within a free society, individuals are at liberty to join various free associations and organizations. These associations and organizations are fairly autonomous since they set their own policies and rules in pursuit of some freely chosen common aims or goals. The policies and rules of a given association or organization will incorporate a number of distributive criteria including, but not limited to, desert, entitlement, equality, merit, need, and value. For economic and other practical reasons, associations and organizations might enact policies that serve as proxies, or imprecise substitutes, for desert. To the extent that those policies ignore or underemphasize desert when it is relevant, those policies will lead to unjust conduct. There is no precise formula that one can use to determine which criterion or criteria will take precedence in local contexts. And even if such a formula existed, members of associations and organizations should be free to ignore desert in pursuit of their aims or goals. I argue this while also arguing that, like claims based on other important distributive criteria, desert claims have moral force. Therefore, desert is often a morally relevant factor in distributive decisions on the local level.
CHAPTER 7. CONCLUSION

In this dissertation, I have defended a robust conception of desert. I have argued that desert claims are moral claims with *prima facie* force. Scholars who argue in favor of quite different social-political systems, e.g., Friedrich Hayek and John Rawls, have argued against the use of desert as an important distributive concept. Contrary to these views, I have argued that desert is an important conceptual component of distributive justice.

I have argued that the metaphysical argument against desert is unsuccessful and that the epistemological and pragmatic arguments against desert are not devastating to the use of desert as a distributive criterion. I have offered what I view to be a natural, compelling, and consistent account of desert. I have highlighted important distinctions among different types of desert and I have distinguished desert from other related concepts. I have argued that desert should be given appropriate consideration when one is deliberating about just actions or just principles on any level of society. One aspect of my view is that one should be mindful of desert when deliberating about basic-structure principles of justice. I focused on the work of John Rawls while explaining some of the problems that result from failing to consider desert in this way.

Although one should be mindful of desert when one is deliberating about just actions or just principles on any level of society, desert cannot be used everywhere or always with great precision. Due to this limitation on its use, I have argued that desert is best accounted for in a decentralized system in which local actors can, when relevant, use it as a guiding distributive criterion. I examined the use of particular policies in specific local contexts, such as the use of seniority in layoffs and promotions and the use of affirmative action in college and university admissions, and I discussed the extent to which those policies track, and can be justified on the basis of, desert.
My account of desert and its role in distributive contexts and distributive justice will prove unsatisfactory to those who think that justice is simply one getting what one deserves. People might hold this view for one of two reasons. First, they might have an overly broad account of desert according to which what one deserves is synonymous with what one ought to receive. Such accounts tend to incorporate entitlement, merit, need, (moral) virtue, or (moral) worth, and perhaps other distinct concepts under a bloated conception of desert. I reject these kinds of overly broad accounts. Second, people might recognize these other concepts as being distinct from desert, but maintain that none of them are relevant in distributive contexts and distributive justice. It is unlikely that many would hold this view, however, since the recognition of these other concepts will usually be coupled with the advocacy of their use in at least some distributive contexts. Regardless, I reject these kinds of overly narrow accounts.

My account will also prove unsatisfactory to those who think that desert has no role in distributive contexts and distributive justice. People might hold this view for a few different reasons. Some argue that desert is a metaphysically dubious concept. Some argue that the epistemological and pragmatic difficulties with desert-based distributions render desert useless in practice, or nearly so. People who argue against the role of desert on epistemological and pragmatic grounds might at the same time recognize desert as a robust concept. It is unlikely that many would do so, however, since recognizing desert as a robust concept will usually be coupled with the advocacy of its use in at least some distributive contexts.

Based on my understanding of the role of desert in distributive contexts, I argued that local actors might not be morally obligated to make distributive decisions based on desert. This is because desert is only one of several important distributive concepts. Therefore, desert is one factor, but not the only or always overriding factor, on which to base distributive decisions. In
addition, I believe that although desert is an important normative concept, local actors should not be legally forced to make distributive decisions based on desert unless there is some contractual agreement between the relevant parties to do so. When such agreements are made, however, a person becomes entitled to whatever treatment is set forth in the agreement. So, although I think that one has a moral obligation to treat people according to their deserts in certain contexts, I do not think that one should have a corresponding legal obligation to do so. Since I do not argue that desert-based distributions are always morally required or must be legally required, perhaps this dissertation is best understood as a limited defense of the use of desert in distributive contexts and distributive justice.
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