

# **The Role of Desert in Distributive Justice**

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## **ABSTRACT**

The idea of desert is central to the way in which we evaluate the distribution of rewards to others. This thesis looks to outline the core idea of desert and then defend it against the charge that it is inherently inegalitarian.

Part I begins with an analysis of the concept of desert in which it is argued that, while otherwise indeterminate, it requires that the claimant must (a) express value to the world, and (b) in at least some minimal sense control the expression of that value. It is shown that the control condition, which permits us to say that the value displayed actually belongs to the claimant, is undermined by the influence of good and ill luck. Requitment is contingent on whether one's initial endowments and the subsequent episodes of chance happen to favour the realisation of what is valued by others. The standard response by liberal egalitarians to this problem has been to maintain the contributory, or output-based, model of desert, while looking to offset the effect of uneven endowments.

In Part II it is proposed that a compensatory model of desert is superior because it is insensitive to the amount of value people produce, whilst remaining sensitive to their personal ends. On this reading, the basis of desert is twofold: Firstly, the denial of something that a person would prefer to have done, rather than what she has actually been able to do. Secondly, that the person's denial was brought about as a result of her choices and actions designed to contribute value to the world. But while effort towards contributing value is a minimum pre-condition of desert, it is not a determinant of the amount and form of requital that is deserved. Rather that is a function of the personal ends that the person foregoes. This conception of desert, it is claimed, remains compatible with the intuitive core of the concept and with the pursuit of socially optimal outcomes.

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London, August 1998

Simon Wigley

For Hamish

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## Introduction

Desert is an evaluative concept that pervades the way we relate to one another in everyday life. When a person does something that we consider brings value into the world we admire it, approve of it, and show our gratitude for it.

Perhaps I may not find it of value to me personally, but I may still see how others might appreciate and approve of its qualities. Indeed, we may even be inspired to express our recognition of a person's worthy display by giving something of value in return; We give rewards, prizes, grades, promotions, praise, recompense, and so on, in return for the value expressed by the person.

As a person we look to others for recognition of our worth. We may feel in our own mind that we are capable of creating something of value for the world, but we are still not completely sure whether we are right. Perhaps more importantly, we want others to appreciate our worth. And so we seek out confirmation of our self-appraisal by expressing ourselves to others. But, at the same time we want to be able to say that the value expressed belongs to us in some way. We want to be appreciated for something we have done, rather than for something that has been brought about by events and circumstances beyond our control. If the valuable expression was produced by another or influenced by good fortune we do not feel a sense of self-worth. And so we seek recognition for the value that is self-created and that we can therefore take credit for. However, this is surely not the only reason why we seek out the approval of others, for it is through public recognition that we acquire those things necessary to lead a meaningful life. What we receive in return for our valued display provides the means to pursue and realize our chosen ends and life-plans. Hence, the receipt of deserved praise, wages, promotions, prizes and so on, not only reassures and promotes our self-esteem, but also permits us to realize those things we value most in life. And finally, we may also be inspired to create value, not only so as to obtain public approval and the means to self-realisation, but also because we wish to contribute to the quality of life of our

fellow beings. Indeed the whole enterprise is dependent on our ability to do so for it is only through appreciation by others that we can be said to be deserving in the first place.

The practice of desert, therefore, is central to how we conceive of ourselves and each other. We conceive of ourselves and others as: Firstly, recognition-seeking agents—insofar as want confirmation of our ability to bring about value that we can take credit for. Secondly, as value-creating agents—in virtue of the fact that our deserving performances add value to the world. Thirdly, as purposive agents—because what we receive for our expression of value is instrumental to the pursuit and realization of our personal ends and life-plans.

One problem we face in contemplating the concept of desert is that it applies to a number of disparate contexts. For this reason, some might argue it is an inherently fragmented concept with no underlying coherent thread. I argue here that if the scope of desert's application is limited, there is indeed a unity to the concept. This coherence can be established provided we focus on distributing objects of value according to something *done* by the person, rather than something they need or are entitled to in virtue of some rules or prior agreement. Moreover, the idea of requiting according to something valuable that has been done by a person, presupposes a particular view of the self; namely, recognition-seeking, value-creating and purposive agency. Once we combine this with the closely connected fact that desert underlies the way we respond to each other in our everyday relations, we can see that desert is crucial to the viability of the principles and rules of justice. From this, it will be apparent that I shall be primarily concerned with distributive justice rather than retributive justice (i.e. punishments). Nevertheless, I shall argue that the desert of punishments employs the same characteristics as the desert of benefits, albeit in a negative fashion. That is the allocation of disvalue for the creation of disvalue, rather than the allocation of value for the creation of value.

That desert is central to our everyday relations is indicative of the fact that it flourishes in liberal society. As compared with the Greek period where personal merit and social standing were conflated, we now more clearly associate desert with controlled outcomes, rather than *given* characteristics (i.e. sex, race or inherited wealth, status, privilege and so on). There has been, if you like, a conceptual transition from 'merit' (recognition of possessed qualities) to desert (recognition of performed qualities). Hence, contemporary societies in theory permit greater mobility because the controlled value of the individual is respected more than her uncontrolled characteristics. Liberal society promotes self-governed rational agents who are, therefore, not shackled to their 'allotted' status. The transition from hierarchical ordered society (natural hierarchy of feudal society) to rational independent beings was heralded by the rise of an 'individualist' theory; Man born free and equal, possessing sets of rights deriving from inherent natural capacities. Man's duty was no longer to remain within his station and perform a given function, but to carry out what his abilities permitted. One's value derives from meeting the wants of individuals in society, rather than from one's given social role.<sup>1</sup>

A number of commentators have argued that, in spite of the fact that liberal society is peculiarly conducive to the idea and practice of desert, the concept has been neglected by political theory: 'when we seek a theoretical understanding of desert - we find a striking omission. For in stark contrast to the recent outpourings of work on rights and justice, desert has received very little philosophical attention'. (Sher 1987:ix)<sup>2</sup> Desert clearly does not receive nearly the same attention as that garnered by the issues of rights, needs and equality. Moreover, most of literature has been restricted to the philosophical issues surrounding the desert of punishment rather than the desert of benefits.

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<sup>1</sup> (Miller 1976: 295-296; Miller 1991:385-386) (Miller 1994b:257-260) and (Barry 1990:112-113&1xi-1xiii) Contrary to the charge made by Alasdair MacIntyre (MacIntyre 1985) (MacIntyre 1988), the concept of desert not only persists in modern culture, but it is also at home in that context.

<sup>2</sup> See also (Miller 1991:372&386) (Miller 1992b) (Miller 1994a:1) (MacIntyre 1985: chap. 17) (Galston 1991: chaps. 8-9) (Scheffler 1992) (Lamont 1989:114) (Pojman 1997: 549-550)

The reason for desert's relative neglect, in spite of its importance to our everyday discourse, is by no means clear. However, we may point to three possible explanations as to why desert may be said to have received comparatively less attention: Firstly, desert is directly faced with the challenge of determinism because it is fundamentally concerned with the level of control a person has over a valuable performance. Secondly, desert theory is faced with the problem of objectively and accurately discerning what portion of a valuable state of affairs, a person can take credit for. This problem is compounded by the fact that although the instrumental relations of capitalist society mean that that socio-historical context it is well-suited to the notion of desert, the shift from individual producers to large organizations has obfuscated our ability to measure each individual's contributions. Thirdly, desert is a tricky philosophical proposition not only because of the issue of responsibility, but also because it relates to a heterogeneity of seemingly disparate applications.

Indeed up to the mid-1970's some philosophers were inclined to argue that the idea of desert was in decline.<sup>3</sup> However, I would suggest that desert is increasingly being looked upon with renewed interest by political theory. This is witnessed by the recent growth in the number of philosophical treatments of the subject.<sup>4</sup> Indeed an ironic feature of almost all this recent literature is to argue that it does not play a significant role in philosophical discourse even

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(McLeod 1995: chap 1)

<sup>3</sup> 'In examining the concept of desert we are examining a concept which is already in decline and may eventually disappear.' (Barry 1990:112) 'The notion of desert seems by and large to have been consigned to the philosophical scrap heap.' (Kleinig 1971:71) 'The concept of desert has become less popular in recent years.' (Miller 1976:104)

<sup>4</sup> For book length analyses and defences see (Miller 1976) (Miller 1989) (Miller 1994a) (Sterba 1980) (Galston 1980) (Sadurski 1985) (Sher 1987) (Cupit 1996) For book sections devoted to the concept see (Lucas 1993:chap 7) (Campbell 1988: esp. chap. 6) For recent articles (excluding articles by the above authors) see (Young 1992) (Scheffler 1992) (Ripstein 1994) (Lamont 1994) (Lamont 1995) (Lamont 1997) (Feldman 1995b) (Feldman 1995c) (Feldman 1995a) (Feldman 1996) (Smilansky 1996b) (Smilansky 1996a) (McLeod 1996) (Pojman 1997) (Arneson 1997). For desert as part of a critique of philosophical liberalism see (MacIntyre 1985) (MacIntyre 1988) (Sandel 1982). For critiques of desert see (Goodin 1985) (revised and reprinted in (Goodin 1988:chap. 10) (Griffin 1986)

though it is central to our interpersonal relations.<sup>5</sup> But the very fact that this claim has now been made so frequently by theorists, who then proceed to analyse the concept of desert, it is becoming something of a self-denying assertion.

Moreover, it is questionable whether desert was ever ignored by political theory to the extent that has been implied. For, as Brian Barry notes, despite the undoubted influence of *A Theory of justice*, Rawls's anti-desert argument has almost universally been rejected. (Barry 1990) Furthermore, liberal egalitarians, whilst perhaps not explicitly advocating the notion of desert, have become adroit at stealing the idea, crucial to desert, of responsibility from the libertarian camp. (Cohen 1989) Indeed, I shall make the argument that, within the context of socially useful performances, desert is wholly compatible with an egalitarian distribution. Furthermore, some communitarians have been by no means averse to employing the idea of desert, either as a critique of modernity, or as an important principle of justice.<sup>6</sup> Nevertheless, libertarians such as Nozick and Hayek clearly hold no place for desert as a principle of justice.<sup>7</sup> Similarly, utilitarianism appears to consider desert only as, at most, an indirect means to the achievement of future value. However, this line of thought has been severely criticized in contemporary theory for its treatment of persons as merely 'bearers' of utility (see Chapter Four). It is true to say, therefore, that desert has not received as much attention as it should have in contemporary theory. But it is also the case that desert has not been neglected to the extent that some desert theorists suggest.

I would argue that the most significant challenge to the viability of desert, and probably the main reason theorists have given it lesser attention than it is due, is the influence of luck over a person's means of creating something valuable.

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<sup>5</sup> All the desert theorists noted in footnote 4 make this kind of claim.

<sup>6</sup> I elaborate on this point in Chapter 1, Section 1.4

<sup>7</sup> Although Nozick criticizes Rawls's anti-desert argument for failing to leave any room for free agency. See Chapter 3; Section 3.2.

Because desert is fundamentally concerned with whether and to what extent a person can take credit for a valued outcome, the notion appears to be undermined by instances of good and ill fortune that contrive to help or hinder the realization of each outcome.<sup>8</sup> We may ask, for example, whether the fact that a person is born with greater ability to pursue what happens to be valued by others is any different from the advantage gained from winning the lottery? We may ask a similar question where a person happens to have exceptionally talented teacher in their youth; or where a person's application for a job is successful, despite the existence of better-qualified people who would have applied had he known of the vacancy. In each case, a person gains an advantage because they are granted a better opportunity to create value and realize his personal ends. In response to this problem I argue in Part II that the desert for valuable contributions can be sustained once it is combined with the idea of compensation for the denial of one's personal ends and life-plans. Socially valuable activities such as work deserve compensation in virtue of the fact that they constitute a contributory sacrifice on behalf of others. We look to requite a valuable performance according to the extent to which the performer's ends are foreclosed, rather than the extent to which the contribution is controlled (and valued). Thus, all that need be shown in order for a person to claim credit for a performance is evidence that she chose to forgo her personal ends.

In Part I, I shall be concerned to describe the concept of desert and outline its role and significance within distributive justice. In so doing I will be caching out the standard or contributory model of personal desert in which the evaluation of each person's deservingness is based upon her addition of value to the world. I begin in Chapter One by arguing that, provided we do not overextend the scope of desert within justice, we may describe the core idea underlying desert-claims as the 'controlled expression of value'. I then seek to

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<sup>8</sup> Although, perhaps the real problem posed by luck, is not necessarily the possibility of responsibility *per se*, but rather the practicality of discerning the level of responsibility. (Young 1992) (Arneson 1997).

distinguish it from other reasons for the distribution of resources with which it competes. In Chapter Two I emphasize the crucial distinction between desert and entitlement, but nevertheless, make the case that desert may define the qualifying conditions of entitlement. In Chapter Three I conclude Part I by showing how the prevalence of luck in everyday life threatens to undermine the idea of requital according to productive efforts or contributions. The problem is not satisfactorily evaded by establishing an equal starting point from which each person has an equal opportunity to pursue his personal ends. Episodes of luck subsequent to the initial equal start will systematically advantage and disadvantage persons, and thereby, threaten the possibility of an egalitarian allocation of resources.

Having established that desert, though crucial to our interpersonal relationships, is severely challenged by the pervasive influence of luck, I propose in Part II to situate it alongside the idea of compensation. I argue that, in the determination of wages, the challenge posed by luck is resolved because the metric of requital is determined by the extent to which a person is frustrated in the pursuit of her personal ends. The core conception of desert is retained on this account because deserved compensation is contingent upon there being at least a choice whether or not to contribute value to the world. In addition, I argue that this theory of wage desert is compatible with the realisation of socially optimal goals.

I begin to show how this might be so in Chapter Four by arguing that although desert is standardly interpreted as being a concept that is orientated towards the past—that is, based on what has been *done* by someone—it is not entirely at odds with the realisation of future value. However, because desert takes persons *per se* as fundamental, rather than merely receptacles of value it is crucially different from strictly consequentialist schemes. I then discuss a sophisticated attempt to make utilitarian aggregation more sensitive to desert by assigning justice-value to the receipt of deserving treatment. I conclude that such an approach only manages to take personal desert seriously by making it a prior and overriding constraint on the allocation of benefits. In Chapter Five I

analyse the concept of compensation and argue that it is compatible with the voluntariness requirement of desert. However, that conclusion only follows where the person's denial of personal well-being is deliberately chosen so as to create value for others. I then seek to outline the nature of the well-being that is forgone by the performer and, therefore, what constitutes a full and correct compensation. In Chapter Six I respond to the claim made by some that desert and compensation cannot be compatible because the latter does not entail the expression of something valued by others. Finally, in order to bring together the various strands of Part II—future value, voluntariness and appraisal—I conclude by showing how the idea of compensatory desert is consistent with the allocation of incentive payments. I argue that payments designed to induce socially useful performances are deserved because they require people to forgo their personal ends.



## Part I Contributory Desert.

### Chapter One: The Concept of Desert

When we consider the idea of desert, we find that there is a bewildering diversity of ways in which the concept is used; consequently, the possibility of finding a coherent underlying structure that runs through all of them is unlikely. However, we can begin to limit the scope of possible notions of desert by excluding non-human desert-claims that are concerned with persons (e.g. the Niagara Falls are deservedly famous). More importantly, we can concentrate on the narrow or core sense of desert rather than its wide usage. Hence, while we do speak as if needs (e.g. Shelly deserves sustenance, she is very hungry) and rights (e.g. Frank deserves the wage he agreed to with his employer) are deserved, both kinds of claim lie outside of the primary sense in which we use desert. Desert in the wide sense tends to be equated with ‘dueness’ and, therefore, justice in general. But what I am interested in here is desert as an important and distinct aspect of justice, rather than desert as an abstract description of justice in general.<sup>9</sup> Some have argued that desert should not be restricted to its more narrowly defined sense (Feldman 1995c) (Feldman 1995a) (McLeod 1996). But as I shall argue (Section 2) this does not deny the separateness and significance of narrow desert. Call justice what you will, but narrow desert remains a crucial component of it. Wide desert is merely employing a more expansive description of the concept, whilst retaining the narrow notion under that rubric. Yet we should resist the idea of using desert in its wide ‘justice as desert’ sense, because employing the concept in this way may obscure desert’s importance as a distinct aspect of justice.

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<sup>9</sup> David Miller also argues that desert is a distinct and crucial component of justice. (Miller 1976:27-28,83-85)

In the first section of this chapter, I shall begin by unpacking the core characteristics of the concept of desert. Based on this analysis, I shall then identify those justice claims that misappropriate the meaning of desert. Subsequently, I shall look to emphasize that the substantive content of desert is external to the concept. Section Two will look to outline the differing and conflicting positions that theorists have taken with regard to the concept; Section Three will seek to show how the concept of desert is crucial to the way persons relate to one another and, thereby, its significance to the construction of the rules of distributive justice.

### **1. The nature of desert.**

Even within the narrow sense of desert that I will be analysing here, there are a variety of ways in which desert is used both in terms of the reasons for desert and the forms of deserving treatment (punishments, prizes, wages, jobs, praise, blame, grades and so on). Nevertheless, from the manifold ways in which we use the concept of desert we can detect a ‘family resemblance’: characteristics implicit in the concept that we intersubjectively accept describe when it is appropriate to say that a person is deserving of something. Hence, each instance of desert, I shall argue, shares the same general conceptual criteria. Indeed, there is a remarkable degree of agreement among theorists over these characteristics. What I will seek to show is that we can discern a single coherent notion of desert, which can be summarized as follows: Deserved requital is based, firstly, on the expression by a person of something valued by others and, secondly, on the extent to which that person can take credit for that display of value. It is only where we try to expand desert into its more abstract or wide meaning that this core idea falls away. However, how the *substantive content* of each of the desert characteristics is fleshed-out cannot be derived from the concept itself and is, therefore, open to debate.

### 1.1 Characteristics of the concept.

I shall examine each characteristic of personal desert in turn. The objective for the moment is to obtain a grasp of the idea of desert before elaborating upon it in more detail in later chapters. As with most discussions of personal desert I am indebted to Joel Feinberg's seminal article *Justice and personal desert*. (Feinberg 1970)<sup>10</sup> My claim is that desert has the following characteristics:

- Triadic structure: Amongst the variety of contexts in which we use desert (desert-claims) we may detect a three-way relationship between the *deserver*, the *desert-basis* (some fact about the deserver which provides the reason for desert) and the *mode of treatment* (prizes, wages, punishment, praise and so on). It is because of the desert-basis that the deserver deserves some form of treatment. Putting this schematically we may say that all desert-claims take the form 'K deserves Y in virtue of A.'
- Desert-basis: desert claimants must provide a justifying reason for desert that is logically appropriate to the form of treatment. (Feinberg 1970:59)
- The modes of treatment: the deserved treatment (I shall also refer to this as the deserved object and the deserved receipt) is an appropriate or fitting response to the desert-basis. Moreover, deserved objects are 'affective' in character, that is, 'favoured or disfavoured, pursued or avoided, pleasant or unpleasant.' (Feinberg 1970:61)
- Agent-relative: desert-claimants must also show that they possess that desert-basis. 'The facts which constitute the basis of a subject's desert must be facts about the subject.' (Feinberg 1970:59) A person's desert is based on something done or displayed by him, rather than by another person.

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<sup>10</sup> See also (Kleinig 1971) (Kleinig 1973) (Barry 1990) (Sher 1987) (Miller 1976:87-95) (Miller 1994a) (Lamont 1994) and (Cupit 1996:35-48).

Consequently, both the desert-basis and the deserving treatment that follows from it are attributable to him.

- Responsibility: Following from the propriety of the desert-basis and the deserving treatment, the desert-claimant must also show that they were in at least some minimal sense in control of the desert-basis. If they were not in control of the desert-basis—if it occurred through chance rather than intentional design—then the person cannot be said take credit for the desert-basis; they may claim possession over it in some sense, but that will not be sufficient to establish desert. Desert, therefore, is contingent on a minimal level of voluntariness over a performance that brings about valued qualities. As Brian Barry puts it, ‘a person’s having been able to have done otherwise is a necessary condition of ascribing desert.’ (Barry 1990:108) The claimant must at least choose to do or not to do something. Hence, a person cannot deserve based on passive characteristics about themselves (say beauty) for which they were in no way responsible (although if the person bears qualities, e.g. skills, as a result of previous performances, then desert is relevant). Similarly, if a person accidentally apprehends a wanted criminal, that does not mean she deserves a reward. (Miller 1976:97) Equally, if a person is coerced or manipulated into carrying out a valued performance he would not have otherwise done he cannot deserve. (Miller 1994a:4)

Furthermore, the amount of deserving treatment is proportional to the *degree* of voluntariness inherent in the performance: the level of control beginning from intention, choice and action, through to the valued outcome. Hence, if an outcome is intended but only arrived at through sheer good fortune (e.g. a novice archer who hits the bulls-eye on his first attempt (Miller 1994a:4)), then the level of desert is at a minimum. Hence, to be ‘fully’ deserving the valued qualities must be not only intended, but also brought about through deliberate choices and actions rather than

happenstance.<sup>11</sup> I shall consider the issue of control in more detail in Chapter Three.

Appraisive: the basis of desert requires that a performance's outcome be not only controlled by the performer, but also evaluated by others. Hence, deservingness hinges on the appraisal by others of the overall quality of a person's performance. We may interpret broadly the nature of the value that is being appealed to here by the desert appraiser. It may include performances that have valuable consequences for the appraiser themselves (i.e. improves his well-being), or which while not valuable for him, he nevertheless recognizes as of value for others. This also leaves room for the creation of value that is not valuable to anyone in particular, but which is of value to the world. Successfully climbing Mount Everest, for example, may have valuable consequences for the climber himself, but not for anyone else, and yet it is still a performance that we value. In other words, our appraisal of a person's performance need not be based on the valuable consequences it has for others. Hence, the evaluation of deservingness can be made based on either 'value for the world' or, 'value for others'.<sup>12</sup> (Although I take the latter description of value to be a subset of the more abstract 'value for the world') From this we can see that desert is a social concept, in the sense that the judgement of a performance's worthiness is made by others, based on the effect it has on them or, the world. In short, the basis of desert appeals to something done by a person that is valued by others.<sup>13</sup>

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<sup>11</sup> However, a person may intend an outcome and actually begin to realize it through choices and actions, but be thwarted through sheer ill-luck (e.g. if a favourite who is comfortable leading a race is tripped by a race steward in the final metres). In that case we would say that the person deserves for what she would have done. I discuss the complexities surrounding counterfactual performances in Chapter Four.

<sup>12</sup> I am grateful to Jonathan Wolff for making this distinction apparent to me.

<sup>13</sup> However, we should be careful not to overextend that claim for it is conceivable that a performance is in some way valuable (to others or to the world) although it is not recognized as such by any *actual* appraiser. For that reason it might be argued that 'valuable to the world' is the least problematic description of the nature of the value that is being appraised.

However, the appraisal is based not only on the creation of value, but also the control over that creation. The level of control that the person has over the valuable consequence adjusts the extent of desert. Based on the control and value expressed the observer responds via ‘appraising attitudes’ (admiration, approval, gratitude, and so on). And those evaluative responses lead us to confer a positive (or negative in the case of harm done) status on the performer; due to the performance, the status of the agent changes in the eyes of the observer. (Cupit 1996:38) Finally, we express our approval (or disapproval) by giving deserving treatment (praise, blame, rewards, etc.). In its simplest form, for example, we express our approval at the end of a piano recital through applause. Appraising attitudes, therefore, are a combination of our (a) ‘reactive attitudes’ to the quality of the will a person displays towards us (the level of control, due care etc.), (Strawson 1982) and (b) our response to the valuable consequences of the performance.<sup>14</sup> (I discuss the significance of desert to our interpersonal relations in Section 4.) However, our evaluation of value does not presuppose control: we can admire a state of affairs, but not a person if nobody can be shown to be responsible for it. Although we might attach desert to an inanimate object, (e.g. Mount Everest deserves to be the most famous mountain *qua* being the tallest mountain) personal desert requires both value and control.

- Proportionality: In virtue of the provision of controlled value for the world the performer herself receives value. But the receipt must be a fitting response to the performance both in terms of the form of treatment and the

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<sup>14</sup> Both Feinberg and Miller (Feinberg 1970:67-70) (Miller 1976:88-90) acknowledge and develop Henry Sidgwick’s perceptive claim that reward is ‘gratitude universalized’ and punishment is ‘resentment universalized.’ (Sidgwick 1962:book III, chap 5) Geoffrey Cupit argues that only some modes of treatment presuppose reactive attitudes (namely punishment and rewards), while all presuppose appraising attitudes. (Cupit 1996:174) Cupit seeks to disprove the necessity of couching all desert-claims in terms of responsibility. This, as I will argue in Section 2, is a function of seeking to defend the wide conception of desert. Clearly if one wishes to employ desert to describe justice in its entirety the responsibility requirement cannot be sustained. Within the narrow and primary sense of desert that I am arguing for here such problems do not arise; responsibility and therefore our reactive attitudes remain crucial to all

extent of treatment (e.g. an essay deserves a grade of a certain percentage). Desert therefore looks to provide proportionality between the appraisal (i.e. the amount of value arising from a performance adjusted according to the degree of control over it) and the extent of requital that a deserver receives. This follows from the formal principle of justice that requital should adjust according to the more one has of a certain property. In the context of desert the relevant property is the desert-basis.

- Comparative: However, in order to gauge the worth and the extent of requital, desert is inevitably comparative. That is to say, we judge the relative worth of performances against other performances of the same or different kind. (Feinberg 1974) In its most clear-cut form, we would say that two persons, who have performed the same task with the same quality, deserve the same level of requital.

However, clearly we are faced with the problem of gauging the comparative worth of the two different tasks. On what basis, for example, can we compare different kinds of task and argue that they are of equal worth? (e.g. it may be argued that the worth of the work done by nurses is equal to that done by police officers) However, this presumes that we have a basis for comparing the relative worth of distinct kinds of performance. In other words, the proposed desert-basis, and thereby the metric of deserving treatment, must be relevant to each context that is being compared. While in general terms we can say that each kind of desert-basis falls under the idea of a controlled expression of value, once we narrow down the more specific content of each kind comparison may not be plausible. For example, we cannot use the desert-basis of grades to gauge the desert of work. Nevertheless, within the context of work we can appeal to the contribution made by each occupation to the well-being of society (leaving aside for the moment the actual value contributed by each worker and her control over

it), and, therefore, legitimately compare between say, the work of nurses and the work of police officers. Clearly, however, a lot of work still needs to be done in order to narrow down more precisely what contribution to social well-being is to entail.

While we can generally make an ordinal judgement between two different kinds of task, where we are called upon to attribute cardinal value to each, measurement becomes more problematic. And, even though we can roughly rank the relative deservingness of each kind of performance, that does not tell us the actual amount of deserving treatment to be allocated. This problem is resolved by the scarcity of resources that places a limit on what can be allocated to everyone—available resources are allocated to each deserver, maintaining the comparative proportions, until they are exhausted.

Consequently, there appears to be little scope for non-comparative desert judgements. At most, we can make only general non-comparative judgements ('he deserves some reward for the huge effort he has made'). We can state whether a person deserves from the fact that they were responsible for a contribution of value. In other words, the conceptual characteristics of desert enable us to non-comparatively ascertain that a person is deserving. However, as soon as we are required to evaluate and gauge a performance's quality and the appropriate level of requital we must inevitably compare it to other performances. (Miller 1994a:24)

- Backward-looking: Desert is dependent on something that has been done, rather than the something that will be done. In other words, the desert-basis must be enacted before a person can deserve. And as a corollary, deserving performances demand a subsequent requital; thus 'past actions or events bear directly on what ought to occur now or in the future.' (Sher 1987:5) While this is basically a correct characterization of desert, I will argue in



Chapter Four (Section 3) that desert is not as straightforwardly past-orientated as this initial description suggests.

## 1.2 Contributory Desert and Compensatory Desert

Taking these features together we have the conceptual core of desert in its narrow sense: the receipt of benefits in return for the controlled addition of value to the world. Consequently, positive desert is inherently contributory in nature—a person is deserving for their controlled addition of value to the world (henceforward, the controlled expression of value). It is the contributory aspect of desert that forms the focus of Part I of this thesis: I conclude that while desert is indeed contributory, requital need not and indeed should not be based on the *extent* of contribution, whether that be the degree of effort shown, the amount of value added, or a combination of the two. This is because contributory performances cannot evade the pervasive influence of good and ill luck.

In Part II, I argue that deserving performances are best interpreted as both *additive* to the world and *subtractive* to the performer: additive insofar as the person has contributed value to the world and subtractive insofar as she forgoes her personal ends in the process. In other words, desert can be based on the valuable consequences of a performance for the world *and* the ‘disvaluable’ consequences for the performer. This compensatory account of desert recognizes the worth of a person’s performance, but argues that requital should be based on denial of the performer’s personal well-being. Hence, deserving treatment is not a matter of *adding to* the well-being of the performer in return for adding value to the world, but rather of *restoring* the well-being that the performer has forgone *in the course of* adding value to the world. In this way, it is argued, desert is sensitive to the personal ends and life-plans of each performer, not the extent of his actual contribution.

However, compensatory desert is primarily relevant to the remuneration of socially useful performances (i.e. work): that is, the appropriate desert-basis and metric of requital for rewards in the workplace is the sacrifice incurred in making a contribution. This does not preclude us from basing the desert of prizes, praise and honours on a person's contributory sacrifice; however, it seems wholly inappropriate to allocate offices and jobs based on contributory sacrifice. But the reason for this inappropriateness, I take it, rests on the issue of social optimality, rather than on desert *per se*. The cooperative enterprise looks to equate the right level of quality (contributory potential by a job or political candidate) with the socially desired task.<sup>15</sup> However, while there is undoubtedly intrinsic benefits for the successful candidate (status, self-esteem, self-realisation etc.), the extrinsic benefits of the job or office are contingent on the performance. Successful selection based on contributory potential only provides the opportunity to receive remuneration. (Miller 1992a:173) (See Chapter Four, Section 3) Hence, compensatory desert would have a significant role to play in the way resources are distributed in society.

Where, we may ask does this leave the desert of punishments? Retributive justice, I would argue, remains consistent with the characteristics of Narrow Desert because harm is imposed on wrongdoers in proportion to the harmful consequences of their actions for which they had control over. In other words, the criteria of agent-relativity, responsibility, proportionality, and backward-orientation remain in place. Where the desert of punishments diverges from the desert of benefits is in the fact that the basis of desert is the controlled creation of disvalue for others, rather than the controlled expression of value. Similarly, the mode of treatment is the receipt of disvalue. The desert of punishments, therefore, represents the negative application of narrow desert.

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<sup>15</sup> It should be noted that grades are also deserved based on contribution—effort, achievement or potential displayed—rather than denial. Here again I take it that compensation is not relevant because the objective of this form of deserving treatment is to discern those students who best equate with what is valued by others.

However, the desert of punishments is not subtractive in the same way as the desert of compensation. This is because, in the context of deserved punishments, it is the deserving treatment that is subtractive to the deserver, rather than the desert-basis. The desert of punishments requires that the desert-basis is harmful to others (or at least deemed to be morally wrong), but not that it is harmful to the deserver (indeed, they will often benefit from committing the wrong). Moreover, the deserving treatment is not beneficial to the deserver. In contrast, deserved compensation is based on the loss of value to the deserver rather than to others and the deserved treatment is beneficial to them.

### 1.3 Misuses of desert.

We are now better placed to distinguish desert, in its narrow sense, from the other aspects of justice which, if applied to desert, only serve to misconstrue its meaning.

(a) *Entitlement*: that a person is entitled to receive some benefit does not necessarily mean that she deserves that benefit. Positive rights to receive benefits only require the fulfilment of certain qualifying conditions. Merely because someone has qualified to receive benefits does not mean that she deserves them, because the conditions may not adequately reflect desert, or the claimant's successful qualification may have been dependent on good fortune. Hence, a presidential candidate may fulfil the requirements for successful election to office (i.e. polling the majority of votes), but not actually have the best ability, compared to rival candidates, to perform the job. Similarly, a person who wins an athletics race is entitled to the gold medal in virtue of running the designated distance and crossing the line first, but if a superior rival is accidentally tripped, the winner does not deserve the gold medal. (Feinberg 1970:57-58,63-65,85-86)<sup>16</sup> I shall elaborate upon this crucial

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<sup>16</sup> See also (Kleinig 1971:74-75) and (Miller 1976:85,91-92).

distinction between entitlement and desert in 1.5 and in Chapter 2. For the moment our concern is to comprehend what desert is not.

(b) *Utilitarianism*: The primary concern of utilitarianism in its elementary form is the addition of value to overall well-being and not who produced the value and how it was brought about. Desert too is concerned with the contribution of value, but it is inherently concerned with who created the value and how much control they had over its creation. In other words, utilitarianism is future-looking whilst desert is essentially backward-looking. As we shall see in Chapter Four, there have been some quite sophisticated attempts by utilitarians to accommodate the agent-relativity and past-orientation of desert, but such attempts ultimately involve making utility subordinate to deservingness.

(c) *Needs*: So far we have noted two accounts of justice that disregard not only the meaning, but also the independent ethical force of desert. The idea of needs, in contrast, does not threaten to subsume desert; rather, it constitutes a principle of justice that is in competition with desert, where there is a scarcity of resources. ‘A person may very well deserve treatment of a certain sort without needing it, and may need it without deserving it.’ (Kleinig 1971:74) This is because unlike desert, need claims are not based on something done by the claimant or something valued by them or others. While the receipt is desirable, the reason for receipt is undesirable. (Miller 1976:86) (Galston 1980:169-170)

Needs, therefore, are conceptually akin to compensation for harms that are done or happen to a person. In both cases benefits are due for harmful circumstances that the person would not wish to suffer (pain, deprivation, hunger and so on) and for which he was not responsible. According to needs, receipt is based on preventing the denial of personal well-being, while according to compensation, receipt is based on the actual denial of personal well-being. By contrast, desert is typically based on a person’s contribution of

value to the well-being of others. However, I argue in Part II that desert and compensation overlap in the context of work because the harm is voluntarily self-inflicted and value is created for others. Nevertheless, the principles of need and compensation for *non-voluntary* harm remain conceptually distinct from, and (in terms of distribution), competitive with desert.

However, we may note from the outset that compensations for voluntary or non-voluntary harm and needs all gauge the extent requital based on preserving or restoring each person's well-being. The desert of compensation is distinguished by its consideration of a contribution of value; and, under this form of desert, harm is something 'done' rather than something which has 'happened to' the claimant.

(d) *Merit*: As we have seen, in order to deserve the claimant must to some degree have been responsible for what is valued. Consequently, the mere possession of something valuable is not sufficient to establish desert. The desert-basis must be something valued which is *also* the result of a controlled performance. Hence, we may distinguish desert from merit insofar as the latter is based on valued qualities that are merely possessed rather than performed by a person (e.g. a high IQ, beauty, running speed and so on). (Lucas 1993:124-126) However, possessed qualities may be deserved in the following two ways: (a) if they are the result of past performances such as the personal development of one's skills, fitness and so on. In this sense we admire the bearer of qualities not simply because of the qualities *per se* but also because she was responsible for realizing them; (b) if the performed qualities predict a future controlled performance—that is to say, if the existing qualities, borne of previous performances, anticipate future desert. On this basis a person may deserve a job, promotion, political office, scholarship and so on because the qualities he bears indicate he has the best potential from amongst the rival candidates to create value. As David Miller usefully puts it, he deserves the opportunity to reap the benefits of the anticipated performance. (Miller 1992a:173) (I discuss the desert of opportunities further in Chapter 4, Section 3)

But if the qualities that indicate a future performance are uncontrolled (e.g. innate ability) then, I would argue, the opportunity to perform is merited, *not* deserved: they may deserve the benefits accruing from the job (i.e. wages, status etc.) *once* they have enacted the anticipated performance, but not the opportunity itself.

(e) *Moral desert*: While a deserver must intend a performance and its outcome, they need not be morally motivated: the performance does not have to be altruistic in order to deserve. A deserving performance must provide value for the world in some way, but the performer may see it as purely instrumental to her own ends. If a person's performance is motivated by greed, selfishness, ambition and so on, that does not, as some have argued, negate their claim to desert. Rawls, for example, argues that people only deserve for performances that are voluntary (under their control) *and* which are not motivated purely by self-interest. (Rawls 1971:310) I do not mean to claim that virtuously motivated performances (e.g. acts of courage) are not deserving in their own right, but rather that deservingness does not depend on the quality of a person's motives.<sup>17</sup>

Thus, qualifying conditions, maximum utility, needs, non-voluntary harms, and passive qualities are reasons for the distribution of resources that lie outside the bounds of narrow desert (while moral desert represents an overly narrow construal of desert). From within this narrow sense of desert we have a core conception whereby resources are allocated in proportion to the controlled expression of value (with the desert of punishments constituting the negative application of that conception). I shall argue shortly (Section 3) that this comprises a crucial component within justice because to reject it would require the abandonment of not only how we relate to each other in everyday

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<sup>17</sup> This point is well made by David Miller. (Miller 1989:158-159) (Miller 1996:281-282)

discourse, but also a particular conception of the self (i.e. how we conceive of each other and ourselves).

#### 1.4 The determinacy of the concept of desert.

Desert is a normative concept because it tells us what benefits ought to be received for a particular performance, or what ought to be done in order to receive benefits. But aside from the characteristics of desert (agent-relative, minimum control, expression and appraisal of value, conferral of status, past-orientation, proportionality), the concept *per se* does not provide the resources to determine the substantive normative content of desert in each case. This is because each desert-claim is partly internally defined and partly externally defined.<sup>18</sup> The characteristics will limit what can count as deserving, but will not tell us what is actually valued by others and the degree of voluntariness that is necessary in each case. Rather, the more precise content of desert is given by the purposes present in the particular situation in which desert is being applied. That is to say, the mode of deserving treatment (i.e. grades, wages, prizes, honours, office, punishments etc.). Hence, the specification of control and value depends on the general objectives of each mode. (For example, the employer will allocate wages to existing staff based on contribution to revenue. But in choosing a new member of staff the employer will be more concerned with the control the candidate has shown over their productive outputs in the past, so as to predict the likelihood of continued productivity in the future.) Even greater specificity is provided by the objectives stated in each case (e.g. grades may be allocated based on effort shown by the student or the student's grasp of the subject).

All that the concept of desert *per se* demands is that the way that each desert-claim is fleshed-out remains consistent with the core criteria. Consequently, if

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<sup>18</sup> Here I take from Julian Lamont's perceptive analysis of desert. (Lamont 1994) David Miller makes a similar point (Miller 1994a:5&19)

we try to derive the precise content of each desert-claim from the concept itself we impute more determinacy to the concept than it actually possesses. And as Julian Lamont rightly argues, the tendency of desert analysts to exaggerate the determinacy of the concept has given desert the appearance of being incoherent. (Lamont 1994:52) Many theorists claim to have derived legitimate descriptions of desert from an analysis of the concept in itself, when in fact they are importing values that are not, and cannot be, internal to it. Effort-based theorists, for example, insist that desert demands a high degree of control, while in contrast contribution-based theorists insist that desert requires only a low degree of control. Both positions fail to realise that the required degree of control (and the required value of the performance) is resolved by external values and goals.

Moreover, those values (quality of the will and value for the world) are subject to the same degree of plurality and conflict as any many other value concepts such as justice. Desert theorists, then, have unwittingly tended to reduce discussions about desert to protracted and fruitless debates between competing value judgements. Similarly, anti-desert theorists have also failed to recognise that the substantive indeterminacy of desert, which they employ to question its viability, is actually a feature of the concept itself. (Lamont 1994:52) (Young 1992:321)

Thus, both the pro and anti-desert camps have encouraged the mistaken belief that desert is an incoherent principle of justice. This, I would suggest, might go some way toward explaining why desert has garnered surprisingly little attention in contemporary political theory. The overstatement of desert's determinacy has meant that desert theory has collapsed into a series of conflicting positions, with the proponents of each believing they have extracted the true and accurate interpretation of the concept. Not only is the determinacy of desert exaggerated but also, as a consequence, no argument is provided for why a particular interpretation is legitimate; there is no justification for the external values that are appealed to. Desert theorists, therefore, tend to utilize



the core conception of desert to further their own theoretical objectives. While justificatory force *is* given to a theory of justice that is consistent with the criteria of desert, the concrete content imputed to desert clearly does not assume authority until it has been independently defended.

It is interesting to note that the conclusion reached here bears a close resemblance to Alasdair MacIntyre's interpretation of modernity. (MacIntyre 1985) (MacIntyre 1988:39) MacIntyre argues that although the vestige of desert persists in modernity, it lacks the contexts needed to give it meaning. The concrete content of desert, he argues, must be provided by social practices (which he defines as coherent forms of social activity) that have their own internal goods and standards of excellence. Justice is done when individuals are required for striving towards and attaining the excellences internal to practices. However, the determinate content of desert-claims (and normative claims in general) is subject to interminable debate. This predicament is symptomatic of the overall state of epistemological disorder, where points of view are logically consistent (based on their own individual premises) and yet in conflict with one another. Modern theory wrongly explains this moral conflict in terms of a plurality of conceptions of the good, when in fact it is, on MacIntyre's account, a thoroughgoing disorder peculiar to modernity. Therefore, the appeal to procedural neutrality by modern theory is only an inevitable and unwitting response to the historical predicament of interminable debate.

MacIntyre—albeit implicitly—correctly interprets desert as relying on external values in order to determine its substantive content. However, despite the close similarity, his account of why theory has neglected desert differs from the view that I have outlined above. Desert has come to appear incoherent because theorists have failed to recognize the distinction between the external and internal dimensions of desert; they have tended to make the mistaken tacit assumption that desert is entirely self-defined. From that point of view it is thought that uncovering the correct interpretation of desert is solely a matter of analysing the concept itself. Hence, it is not the conflict between external

values that is the problem *per se*, but rather the failure by desert theorists to recognize that it is in the realm of external values (assuming the criteria of desert are agreed) that the debate between conflicting interpretations of desert must be carried out.

Nevertheless, it may be argued that this merely adds to the strength of MacIntyre's argument: that is to say, interminable debate arises because theorists have exaggerated the determinacy of desert *and* because the goals and values unwittingly imputed to desert are in themselves subject to debate. The problem is that MacIntyre's account of the social contexts that, he argues, provide the standards for evaluating desert-claims is overly restrictive. Clearly, desert-claims also take their content from wider social goals and values, not just narrowly defined social practices. Indeed, the standards of deservingness given by wider goals and values are often critical of those standards embodied in the narrow practices. (Miller 1994b:256) Moreover, the standards of deservingness that lie outside of the narrowly defined practices are not as subject to irreconcilable debate as MacIntyre implies. For in advanced capitalist societies, we have a reasonably clear-cut idea of what constitutes a valued performance based on the idea of contributing to consumer want-satisfaction (and this basis of evaluation remains even if the market fails to reward in proportion to the contribution made). (Miller 1994b:259) (Barry 1990:Ixiii) What this means is that desert is not dependent on MacIntyrean-style practices in order to obtain its substantive content. Hence, once desert theorists recognize the external dimension of desert they may proceed to establish a defensible account of desert based on goals and values which are either widely or narrowly defined.

The fact that desert requires filling out through external goals and values may partly explain why quite a few of the theorists who advocate desert as an important aspect of justice have communitarian leanings of some kind or

other.<sup>19</sup> Moreover, as I have already indicated, desert is inherently social in that it is based on value for the world, appraisal by others and the allocation of benefits by others. However, the mistake here is to assume that the content of desert must take from shared meanings or understandings. The substantive content of desert may be determined by higher order or reflective arguments, provided the conceptual core remains undisturbed. (See Section 3)

Having established a clearer picture of what is entailed by the concept of desert, I shall now be concerned with the various ways in which desert theorists have interpreted and employed the concept within distributive justice.

## 2. The scope and structure of desert.

Most of the dividing lines between desert theorist's center on the scope of desert within justice and the structure of desert-claims. Theorists are divided over whether desert encompasses all of justice (Wide Desert) or only part of justice (Narrow Desert). In addition, they are divided over whether desert is composed of a plurality of desert-bases (Pluralism) or only one overarching desert-basis (Monism). However, the picture is confused by the fact that both Wide and Narrow desert theorists may advocate Pluralism or Monism. I shall employ the following matrix in order to provide an overview of the differing positions taken up by desert theorists:

<i>Scope</i>	<i>Desert-basis</i>
Wide Desert	Pluralism
Narrow Desert	Monism

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<sup>19</sup> In this group we may include Alasdair MacIntyre, David Miller, Charles Taylor (see (Taylor 1994)), and Michael Sandel (Sandel 1982).

Because of the number and variety of possible desert-claims, desert-bases and forms of deserving treatment, desert is notoriously difficult to get a handle on. However, I will argue here that we can obtain a much clearer understanding of desert if we remain faithful to its narrower conception. Moreover, that narrow conception should be maintained because it is a distinct and important component *within* distributive justice.

## 2.1 Wide Desert.

I have argued that, irrespective of the mode of treatment, desert requires a minimum degree of voluntariness. Some, however, have taken issue with the idea of restricting the scope of desert in this way. Fred Feldman, Owen McLeod and Geoffrey Cupit all argue that voluntariness is not a necessary condition of *all* modes of treatment.<sup>20</sup> Nonetheless, I would suggest that the objective of these desert theorists is actually to justify desert in its widest sense. Once the voluntariness condition is discounted then the door is left open to include any kind of justice-claim as a legitimate basis for desert: entitlements, needs, compensation for innocent suffering, and merit would all then become possible reasons for attributing desert.

Owen McLeod actually goes a step further and argues that *all* the characteristics I have ascribed to desert are overly restrictive. (McLeod 1995: esp. Chap. 2) For example, he argues that desert is not necessarily based on the creation of value, because punishments are deserved based on the infliction of harm on others.<sup>21</sup> However, each of the counterfactuals he applies to the characteristics is drawn from outside the narrow conception of desert. In other

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<sup>20</sup> (Feldman 1995b), (Feldman 1996), (McLeod 1996), (McLeod 1995), and (Cupit 1996: chap. 7)

<sup>21</sup> McLeod and Feldman also argue that desert need not be as strictly backward-looking. (Feldman 1995b) (Feldman 1996) (McLeod 1995: 26) In Chapter Four I argue that desert is indeed *not* as past-orientated as has been thought. Nonetheless, it still remains the case that anticipated performances cannot be deserved in the full sense of the word until the desert-basis is actualized.

words, they only contradict the characteristics *if* they are taken to be descriptive of justice in general. But most theorists who employ this core conception of desert have no intention of applying it to other aspects of justice such as entitlement, needs and so on. Hence, the critique is somewhat misdirected. There is no doubt that the characteristics are, as McLeod and Feldman note, ‘the received philosophical wisdom’ with regard to desert. (Feldman 1996) (McLeod 1995:16) But, as I will argue, that they are only the received wisdom with regard to Narrow Desert.

## 2.2 Narrow Monism.

The main target of McLeod’s critique is Wojciech Sadurski’s theory of desert. (Sadurski 1985) McLeod’s counterexamples are not relevant to Sadurski’s theory because he does not mean to apply desert beyond Narrow Desert. Sadurski argues that desert is composed of a single desert-basis (Monism) rather than a plurality of desert-bases. However, he recognizes that in some circumstances considerations of desert may be trumped by formal entitlements or human needs. Nevertheless, he assigns desert much greater importance than the other two principles because desert attempts to remove ‘the impact of uncontrollable factors upon the distributive shares.’ (Sadurski 1985:156-157) Hence, because outcome-based reasons for desert (contribution, success, productivity, achievement etc.) are contingent on good fortune, desert should be based on the idea of compensating for the effort exerted by a person. (Sadurski 1985:134-138) The fundamental importance Sadurski places on desert within justice is evidenced by the fact that he takes requital for needs and non-voluntary harm as a precondition of a person being able to deserve. That is to say, they are necessary *because* they provide the opportunity for a person to deserve. (Sadurski 1985:145-146,169-170) The needy ‘are prevented, due to

these deprivations, from developing their life-plans with this minimal degree of autonomy which makes ‘desert’ possible.’ (Sadurski 1985:169)<sup>22</sup>

The main problem with Sadurski’s approach is that he is taking *one* characteristic of Narrow Desert (basically those outlined in section 1.1; See (Sadurski 1985:116-122)), namely the voluntariness requirement, and claiming that it demands a *high level* of voluntariness for all modes of treatment. Hence, rather than arguing that desert is not necessarily conditional on voluntariness as McLeod *et al* do, he argues that desert is conditional on a high level of voluntariness in *all* cases. But this ignores the fact that firstly, the concept of desert *per se* is indeterminate and that, therefore, it does not explicitly demand a high-voluntariness (see 1.3), and secondly, that the level of required voluntariness fluctuates according to the mode of treatment. Indeed, the overall substantive content of each desert-basis—value and control—is contingent on the particular mode of treatment.

## 2.3 Wide Pluralism

(a) Owen McLeod: As we have seen, Owen McLeod (along with Feldman and Cupit) argues that desert is not always contingent on agent control. Consequently, reasons for distribution for which the claimant is not responsible are accepted as legitimate desert-bases. But this is not quite an accurate rendition of McLeod’s argument, for he does concur that needs and entitlement

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<sup>22</sup> Curiously Cupit has a similarly structured argument: needs are *indirectly* deserved because they are necessary to being deserving. (Cupit 1996:62) Desert-bases alter the status of the person in the eyes of others; that is, we appraise the person so as to determine whether they are ‘more or less worthy of respect, admiration and so on.’ (38). But the desert-bases that Cupit argues are foreclosed by the non-receipt of needs are best described as deserving ontological *attributes* of the person, rather than deserving performances of the person (e.g. efforts, as Sadurski claims). Those attributes are *being* either (a) a whole and separate person, or (b) a member of a societal whole, or (c) a partner in a societal whole. (65-71) The attributes (a), (b) and (c) effect the status of the person in the eyes of others and, therefore, his desert. But the person cannot have the opportunity to be deserving in this way unless his needs are met (i.e. we cannot admire or respect him for his personhood, membership, or partnership). (72-77)

are not co-extensional with desert (basically for the reasons I outline in 1.3 and 1.5.). But that, he argues, does not prevent them from being valid *bases* of desert. (McLeod 1995:60-61, chap.7) (McLeod 1996:216, fn28) This argument depends entirely on the strictures the concept of desert places on what can count as deserving. Clearly, if we take the abstract conception of desert that McLeod advocates, then no justice claim is precluded. But that position collapses as soon as the narrower and more restrictive conception of desert is employed.

(b) George Sher: George Sher also takes a pluralist approach to desert. But he argues for an interpretation of desert in which each mode of treatment is so distinct that there is no ‘single compelling normative base’. (Sher 1987:xiii) Rather, desert is composed of separate deserving objects, each with their own independent normative basis. Consequently, it is a concept that is inherently ‘fragmented and diffuse’. (Sher 1987:150) Sher, therefore, goes to the other extreme compared with Sadurski’s Wide Monism. However, he does argue that, despite this fragmented structure, desert has an underlying unity because it presupposes a particular view of the self: namely, ‘a vision of persons as both constituted by (most) of their current preferences and abilities and extended over time.’ (Sher 1987:174:)

His approach is less expansive than McLeod’s in the sense that he takes desert as distinct from the concepts of rights and justice.<sup>23</sup> (Sher 1987:194,205-206) However, his approach is more broadly defined than Narrow Desert (i.e. the controlled expression of value) because it does not demand that each desert-basis adhere to the idea of a minimum level of voluntariness. Thus, for example, he includes compensation for harms that the claimant was not responsible for—i.e. for which another was responsible (wrong-doing) or for

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<sup>23</sup> Sher takes justice to be the ‘structure of large-scale social arrangements’: his claim is that other considerations—equality of opportunity and liberty—come into play in the determination of such arrangements. Desert cannot be justly ascribed if choice and access are unequally possessed amongst persons in the first place. Therefore, desert works in tandem with other distributive objectives to determine the institutions of justice. (Sher 1987:49,206)

which no one was responsible (accident)—as a valid desert-basis. (Sher 1987:97-98)<sup>24</sup> In other words, the conception of the self that Sher argues is presupposed by desert does not demand that the deserver be responsible for the desert-basis. All that is required is that people who are innocently harmed at one point in time should receive recompense at another point in time, so as to preserve their denied preferences and temporal extendedness.

## 2.4 Narrow Pluralism

I would agree that we do actually speak of desert in a Wide Pluralist sense, yet the fact that we do so does not obliterate the distinct, narrower sense of desert which has a significant role *within* justice, the idea of the controlled expression of value which is in competition with other distributional principles that are based on entitlement, needs, merit, utility, compensation for non-voluntary harms, and so on. The desert of harms (i.e. punishment), I take to be consistent with a *negative* characterisation of Narrow Desert: that is to say, the creation of disvalue rather than value, a negative appraisal of a performance (or the failure to show due care) and the allocation of harms rather than benefits. However, it is clear that while punishment is a legitimate desert-basis it is not, directly at least, in competition with positive desert with regard to the distribution of benefits.

Within that core conception, deservingness *does* vary according to the narrower range of relevant modes of treatment (prizes, wages, rewards etc.). Narrow Pluralism preserves the idea of desert as a coherent principle of justice, rather than a radically fragmented description of justice in general. On this view, Wide Pluralism merely changes the *name* of justice to desert, but not the actual *structure* of justice (and in particular the significance of narrow desert within it).

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<sup>24</sup> Joel Feinberg also overextends compensatory desert by including harms for which the claimant was not responsible. (Feinberg 1970:74-76,93-94) (I discuss Feinberg in relation to



David Miller also takes a Narrow Pluralist interpretation of desert. He argues that desert is based on 'qualities and actions held in high regard' which are in competition with need-claims and rights-claims. (Miller 1976:85) However, in contrast to the position I argue in Part II, he argues that compensation for harm cannot be a legitimate desert-basis because desert requires actions and qualities that are valued by others. (Miller 1976:111-113) In Part II I argue that compensation for self-inflicted harms suffered in the act of creating value for others *is* consistent with the core idea of Narrow Desert (i.e. the controlled expression of value).

## 2.5 Multiple desert-bases

In concluding this section I would like to draw attention to a further aspect of the structure of desert-claims. As Owen McLeod rightly notes, desert-theorists have tended to make the tacit presupposition that there is a unique desert-basis associated with each mode of treatment. (Feinberg 1970:62)<sup>25</sup> Thus, for example, it is said that,

...reward is deserved for good deeds (but not for anything else); apology is deserved for being insulted (but not for anything else); ... grades are deserved for academic performance. And wages, depending on the theory, are deserved for effort; or for providing a marketable service; or for the harm or loss one suffers on the job. (McLeod 1996:216-217)

I agree that more than one kind of desert-basis may determine a person's desert of a particular form of treatment. But within Narrow Desert, this does not include, as McLeod claims, reasons for receipt that lie outside Narrow Desert. For justice-claims based on entitlement, needs, non-voluntary harm and so on, clearly do influence our decisions over the distribution of each form of

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this point in Chapter 5, 2.2.)

treatment, but they are not desert considerations. A worker does not *deserve* an extra wage because she is financially destitute; rather she has a genuine need-claim. Similarly, an employee may be entitled to a certain wage in virtue of the contract he has with his employer, but that may only coincide with his actual deservingness.

Nevertheless, within Narrow Desert more than one basis may determine a person's level of deserving treatment. There is no doubt, for example, that we can, and typically do, base the desert of wages on a combination of compensation, effort and contribution.<sup>26</sup> Similarly, we may temper the desert of a performance based on its moral quality. Hence, I concur with McLeod that multiple bases may determine the receipt of each mode of treatment, but I do not accept the same *range* of desert-bases he is willing to include.

However, the standard interpretation of the structure of desert-claims is overly restrictive in a further sense not noted by McLeod: once we recognize that more than one desert-basis may combine to establish whether a person deserves, there is nothing to say that all of those desert bases should not define the extent of requital. I argue in Part II that a worker's wages should be based on her desert; this desert depends on her contribution and her personal loss suffered in the process of making the contribution, but the amount of remuneration need only be based on the latter. Being deserving is contingent on a contributory sacrifice; but deserving treatment is contingent on the extent of the sacrifice, not the degree of contribution or some amalgam of contribution and sacrifice. This is not a unique position to hold: effort theorists make desert contingent on the productive effort but still measure receipt based on the level of effort exerted (e.g. (Sadurski 1985:116)); in other words, the desert-basis combines effort and contribution, but the gauge of receipt is effort alone.

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<sup>25</sup> See for example (Miller 1989:32) (Young 1992:319).

<sup>26</sup> For an example of a theorist who employs multiple bases in the context of wage desert see William Galston. (Galston 1980:201)

### 3. Desert and interpersonal relations

Few would doubt that desert pervades our everyday discourse. As J.S. Mill put it in *Utilitarianism*, '...it is universally considered just that each person should obtain that (whether good or evil) which he deserves; and unjust that he should obtain a good, or be made to undergo an evil, which he does not deserve. This is, perhaps, the clearest and most emphatic form in which the idea of justice is conceived by the general mind'. (Mill 1962:299) The significance of desert is born out by empirical research that looks to uncover people's beliefs about social justice.<sup>27</sup> In the Introduction it was noted that a number of theorists argue

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<sup>27</sup> For an overview of the evidence see (Miller 1992b). A recent interview survey covering 13 countries found a consistent and widespread appeal to the notion of desert. (Kluegel, Mason, and Wegener 1995). Only 24% of respondents who both "strongly agreed" and "somewhat agreed" that an equal share is the fairest way of distributing wealth and income. Although the inequality trend is ameliorated to some extent by the fact that (in a separate question) 53% both "strongly agree" and "somewhat agree" "That the most important thing is that people get what they need." That is to say people should receive at least a guaranteed minimum. However, the support for equal shares and meeting individual needs was not as great as the 62% who (also in a separate question) "strongly agree" (that is, not taking into account those who "somewhat agree") that "People who work hard deserve to earn more than those who do not". It should be noted, moreover, that the results of these questions did not vary significantly across the eight post-communist states and five capitalist states surveyed by the study. (Alwin, Gornev, and Khakhulina 1995:125) However, some theorists and empirical researchers have argued that the empirical research into social justice beliefs is undermined by the fact that people inconsistently apply their beliefs. Consequently, attitudinal surveys may only succeed in describing a collection of contradictory responses. Emphasizing this point, Jennifer Hochschild in her 1981 study found that her interviewees tended to unconsciously shift between normative principles. (Hochschild 1981:81). Based on this Brian Barry is lead to argue that, 'Attempts to reconstruct in some detail the beliefs about fairness of individual Americans tend to reveal a good deal of confusion, suggesting that not only do different people have different ideas but that different and incompatible ideas jostle one another within a single psyche, one coming out on top in one context and another in a different context.' (Barry 1995:5) Thus, it is not clear that attitudinal empirical research will help to establish what our firm justice beliefs are. Burgoyne *et al* (Burgoyne, Swift, and Marshall 1993) stress that we should be alert to the different kinds of inconsistency that empirical research might be vulnerable to. However, they, by and large conclude that most of the inconsistencies are 'apparent' rather than 'real' and that consequently, they can often be explained away by recognizing the correct contextual reasoning which is being applied by the respondents. (Burgoyne, Swift, and Marshall 1993:328-329) However in an recent piece of empirical analysis which compared the normative perceptions of respondents in three countries (Britain, the United States and West Germany – drawn from the 13 country survey noted above) to see how consistently justice beliefs are held, it was concluded that, '[P]eople organize their normative concepts about justice around established and coherent principles of justice. Justice judgements are clearly neither arbitrary nor random. Doubtless there are some respondents whose views are ill-considered and therefore inconsistent. ... But it seems that, even though there is a good deal of "noise" not captured even by our very general orientations, we find underneath it clear and interpretable patterns in the different countries under consideration.' (Swift et al. 1995:38-39)

that desert has been neglected by political theory. Samuel Scheffler, for example, has recently noted the ‘... reluctance of contemporary liberal philosophers, as well as some of their most prominent critics, to appeal to any preinstitutional notion of desert of the kind that is often associated with the common-sense conception of responsibility.’ (Scheffler 1995:230) And this trend prevails despite the fact that ‘... there is no evidence that the impulse to employ the concepts and categories of responsibility is disappearing or even diminishing in strength.’ (Scheffler 1992:303) However, as I noted in the introduction, the discrepancy between political theory and ordinary moral discourse is not as pronounced as Scheffler and other desert theorists claim it is. Indeed a number of commentators have convincingly argued that the notions of desert and responsibility are compatible with liberal political thought. (Cohen 1989) (Ripstein 1994:3) (Arneson 1997)

Nevertheless, it may be argued that the mere fact that desert pervades our pre-theoretical beliefs about justice does not necessarily entail that a theorist should attribute any significance to it in the construction of the rules of justice. In response to that claim I want to conclude this chapter by emphasizing that any proposed theory of justice cannot disregard the concept of desert because it is fundamental to how persons relate to and conceive of one another. That is to say, there is something more fundamental than just the pervasive use of desert that places a constraint on the construction of the principles and rules of justice. In Section 1.1 I pointed out that desert is based on the appraisal by others of the quality of a person’s performance, an evaluation of the value created and the level of control over that creation. From this appraisal we express suitable attitudes of approval (admiration, gratitude, recognition, appreciation and so on) which in turn are translated into deserving treatment. Moreover, these appraising attitudes are not merely ‘reactions to stimuli’ but rather self-conscious responses to some reason (i.e. the controlled expression of value) provided by the desert-claimant. (Feinberg 1970:68-71) (Miller 1976:88-89) Both the evaluation of value and the quality of the will displayed by the agent are crucial to how we as persons relate to and conceive of each other. We see

others as value-creating beings, not merely vessels of value to be used simply as a means to other ends. We thus perceive the expression of value by a person as controlled, rather than as a consequence of antecedent causes. This means that if we take a standard determinist position with regard to free will and employ the belief in controlled action and, therefore, the notions of desert and responsibility as means to achieve social ends, then persons become merely instrumental; they become no more than objects to be managed, treated or controlled. (Strawson 1982)

We see then that proposed principles and rules of justice which employ the practice of desert as a means to social utility will fail to properly respect persons as separate value-creating entities (I discuss consequentialism's disregard for agent-relativity in Chapter Four). Moreover, the idea of desert places a feasibility constraint on what the institutions of justice can hope to achieve because it is crucial to the view we hold of one another as free and rational creators of value. The conception of the self that is embodied in our interpersonal relations indicates that desert is not only prior to and independent of proposed institutions of justice, but also fundamentally at odds with them if they fail to take it into account. Or, to put this another way, because desert is crucial to how we relate to and conceive of one another it may not be as receptive to the level of modification required of it by proposed institutions of justice. Hence, if desert is presupposed by human interaction and personhood, then a theory which neglects it will struggle to obtain the compliance of the participants in the proposed institutions of justice. It is to this last point that I shall turn to in the following chapter.

Before I proceed it will be necessary to outline more clearly the methodology that is to be employed in the thesis and, thereby, the structure of the argument to be presented. In general terms, the approach that I shall follow is that of reflective equilibrium: the process of mutual challenging, and thereby illumination, revision and refinement, between our considered judgements

about justice, proposed general principles and background theories.<sup>28</sup> According to this approach we look to encapsulate our considered judgements about justice under general principles. But in virtue of the fact that there will not be a perfect fit between our considered judgements and the general principles we are lead to modify either level of abstraction in order to approach a better fit. However, because this narrow coherence may only succeed in encapsulating, say, inculcated prejudices, we must also appeal to independent background theories in order to add to the persuasiveness of the argument. Hence, each level of abstraction challenges the other until, after revision of each, a satisfactory degree of coherence—or reflective equilibrium—is approached. This I take to be a process of persuading those who will be subject to the proposed principles and rules of justice, rather than an explicit account of the epistemic status of our justice beliefs: 'In logical terms it is about justification as *process*, as a way of persuading others of one's conclusions, not justification as *product*, the logical relation between premises and conclusions in a justificatory proof.' (Norman 1998:278)

Nevertheless, as I have already argued, desert, in virtue of its significance to our interpersonal relations and our conception of personhood, will not necessarily be susceptible to revision if there is a lack of fit between them and proposed principles and background theories. However, I would argue that the process of reflective equilibrium still leaves sufficient room to modify our desert-based convictions, whilst remaining faithful to the idea of the controlled expression of value (and, therefore, the way we relate and conceive of each that is presupposed by it).<sup>29</sup>

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<sup>28</sup> See (Rawls 1971:19-21,48-51) (Daniels 1979) (Barry 1989:257-282). For a recent treatment of this methodological approach see (Norman 1998)

<sup>29</sup> It is interesting to note that desert theorists also, broadly speaking, work within this methodological framework. David Miller criticises George Sher for appealing to theoretical arguments for each kind of deserving treatment that depart from our pre-theoretical intuitions about justice. (Miller 1991) This does not seem to be entirely accurate critique to make, however, because the starting point of Sher's enquiry is the claim that desert is central to our pre-reflective thought even though, it has been neglected by political philosophy. (Sher 1987:ix) Furthermore, he emphasises from the outset that 'Although I believe that many such intuitions [about desert] do have "probative force", I will not appeal to them alone, but will instead try to

In the following, I shall argue that there are two central considered intuitions about desert; The belief that valuable performances should be requited in proportion to the amount of controlled value *added* to the world (call this the additive intuition) and the intuition that persons should be requited according to the personal value *subtracted* in adding value to the world (call this the subtractive intuition). However, these two intuitions are in tension because additive deservingness is modified by the level of subtractive deservingness (i.e. additive desert is adjusted downwards if the performance was not harmful and upwards if it was harmful). From the point of view of additive desert we are not at ease with the idea that our deservingness is ameliorated by the extent to which we enjoy carrying out the valuable performance (e.g. a worker who is far more productive than her colleagues but, because she finds the job more satisfying than them, she is paid the same amount as them). But, at the same time we are at unease with the idea that those aspects of a valuable performance that are intrinsically rewarding should be requited. Hence, the problem we are posed with is formulating a general principle that satisfactorily accommodates both convictions. Assuming we do not simply dispose of the subtractive intuition and, therefore, advocate a strictly additive version of desert,<sup>30</sup> the most appropriate principle, upon reflection, might be to firstly, take the additive intuition as the desert-basis and secondly, to conclude that despite the apparent

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unearth the justificatory arguments that underlie them. ... people's intuitions will be invoked only to suggest which beliefs are candidates for justification, and to serve as a check on the justification produced.' (Sher 1987:ix) Consequently, our desert intuitions form both the starting point and the end-point of his enquiry. This does not seem like such a radical departure from Miller's own 'reflective equilibrium' approach: 'I assume one test of an acceptable normative theory is that it should be possible to make a reasonable case for the theory to those to whom it is to apply. ...although it would be asking too much to require that there should be a spontaneous fit between the claims of the theory and the beliefs that people currently hold, it is important that where there are divergence's it should be possible to give people grounds for altering their beliefs in line with the theory. This in turn requires that the existing points of convergence are more fundamental than the points of divergence.' (Miller 1992b:588) The appropriate question we should ask of Sher, therefore, is whether our pre-theoretical point of view will be persuaded by the higher-order arguments he propounds. In other words, we should not reject his arguments outright in virtue of the fact that they abstract from our desert intuitions because, upon reflection, we may in fact be persuaded by them.

<sup>30</sup> Some have argued that there is no tension internal to desert because the subtractive intuition is simply not relevant to it. I argue against this strictly contributory formulation of desert in

tension, the additive modified by the subtractive, represents the most suitable measure of deserving treatment.

However, I would argue that this form of desert principle cannot be sustained once we take into account a third desert intuition. Namely, the conviction that the uncontrolled expression of value is undeserving (call that the control intuition). The control intuition, I shall argue (Chapter Three), comprises a significant challenge to the contributory account of desert (this would include either addition as the desert-basis and metric of desert, or with subtraction as a modifying element of the metric). This is because the pervasive and subversive influence of luck on everyday life threatens to either nullify the degree of controlled contribution or, to render it impossible to accurately determine. That is to say, the viability of contributory desert is undermined once we combine the influence of luck with the control condition.

This leads us to ask, how can we preserve desert given the influence of luck and fact that the contribution of value and control over it are both crucial to the concept? How can we maintain all three intuitions and thereby remain faithful to the core conception of desert? I shall argue that this can be achieved if the desert is construed in the following way: the basis of desert is the personal sacrifice incurred in contributing value to the world, while the measure of deserving treatment is the extent of the sacrifice. On this reading, the additive intuition is preserved because desert is conditional on contribution, and the problem of luck is evaded because requital is not contingent on the claimant's control over the contribution; rather it is a function of the personal well-being forgone in the process. Hence, we may develop a principle of desert (Compensatory Desert) that constitutes a more adequate means of accommodating our firm convictions about justice, than the standard contributory model of desert. It is this principle that I shall be concerned to establish in the following chapters. I shall conclude that although this principle



is only relevant to the desert of wages (i.e. the contributory model is relevant to the remainder of the modes of treatment), it represents an important proposal for distributive justice given the pivotal role of wages in the allocation of resources in society.

The problem that remains, however, is that although this 'narrow coherence' arises from a resolution of the tensions that exist between our considered intuitions about desert, the intuitions themselves may be wholly misguided. That is to say, even though our considered judgements undoubtedly place a constraint on the feasibility of proposed institutions of justice, that does not circumvent the possibility that the intuitions themselves may simply be indicative of injustice. With this in mind, I shall be concerned to show that the compensatory formulation of desert is also consistent with theoretical considerations that are independent of narrow coherence. Thus, I shall argue that compensatory desert remains consistent with higher-order considerations; namely, a compatibilist construal of agency (although luck threatens to undermine free agency, all that is required to deserve compensation is the choice to forgo one's personal ends), and a particular conception of personhood (persons as separate value-creating beings). In addition, I shall argue that it is consistent with two objectives that I take to be crucial to any account of distributive justice; namely equality (compensatory desert restores each person's ability to pursue their chosen personal ends that have been denied by work), and social optimality (compatibility with the pursuit of socially desired objectives).

In the following, I shall be concerned to draw out in greater detail each facet of the overall argument introduced here. After showing that the contributory model cannot satisfactorily evade the problem of luck (Chapter Three), I argue in Part II that compensatory desert does not require the abandonment of the core idea of desert (the controlled expression of value) and, furthermore, that it is egalitarian (Chapter Six) and compatible with the pursuit of social objectives (Chapter Four and in the Conclusion). My immediate concerns, however, will

be to unravel the relationship between preinstitutional desert and proposed or existing institutions of justice.

## Chapter Two: Entitlement

One of the main challenges to a desert-based account of distributive justice is the notion of rights. We are not surprised to find that what people have a right to does not equate with what they deserve. As Sher puts it:

...[P]ersons often deserve such things as success, competitive victory, and wages, to which they have no rights, and equally often acquire rights to property and opportunities that they do not deserve. Moreover, when the demands of desert conflict with those of rights ... the latter usually appear to take precedence. (Sher 1987:194)

But there is something odd about the apparent priority of rights over desert: Why is it that a principle that is central to our interpersonal relations may be trumped by right-claims which often do not appeal as strongly to our moral sensibilities?

What I shall seek to show in this chapter is that the idea of desert can play a more substantial role in distributive justice than is usually thought. My main line of argument will be that although rights and desert are conceptually distinct, desert may define the content of rights to benefits. This is because rights are ideal-regarding insofar as they lack normative force in themselves. Consequently, an ideal concept such as desert ought to define the qualifying conditions of each instance of entitlement. (Miller 1976:78-82) (Barry 1990:Ivi,Iix) In addition, where people's entitlements diverge from their desert, desert acts as a critical point of view.

I begin with a clarification of the distinction between the concept of rights and desert (Section 1). I then seek to show how desert is prior to and independent of existing and proposed institutions and rules (Section 2). In the next section I argue that rights look for guidance from normative ideals and that therefore desert can and should help to determine the qualifying conditions of entitlement

(Section 3) In the following section, and by way of illustrating the role of desert in defining claim-rights, I outline Lawrence Becker's attempt to employ a contributory account of desert to justify property rights (Section 4). Finally, I turn consider the authority of desert-claims (Section 5).

## 1. The concept of rights.

Generally speaking rights may be defined as limits on how people may treat one another. However, with respect to distributive justice, we may focus on claim-rights or entitlements, rather than liberties, powers and immunities as more pertinent to our concerns.<sup>31</sup>

### 1.1 Claim-rights

What we are concerned with therefore is a *claim* to do or have something and the corresponding *duty* of others to provide or allow what is claimed. Thus, a holder of a claim-right is 'owed' or 'entitled' to something, whilst the duty-holder is obliged to either provide something or not interfere. Such entitlements stem from either legal rights (rights conferred by rules of law) or moral rights (rights that are prior to or independent of any legal enactment. This could include conventions, promises and agreements, practices and so on). Hence, if there is a statutory requirement of free school education, then a child's parents have a claim to free education, coupled with the duty of the state to provide free education. Similarly, if A promises B her car, then B has a claim on A, who has a duty to provide the car.

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<sup>31</sup> Here I will be working mainly from David Miller's and Jeremy Waldron's analyses of Hohfeld's seminal account of legal rights. (Hohfeld 1978) (Miller 1976:58-60) (Waldron 1984:6-7)

However, it should be noted that the 'correlativity thesis'—involving the corresponding obligation of the duty-holder—may not always hold, or it may not be as stringent as it might appear. Clearly, rights cannot be enforced where it is impossible for the duty-bearer to comply. Moreover, as has been pointed out by others, a right will not always impose a strong obligation on others.<sup>32</sup> At most, in these two cases we can describe the right as a potential right; that is to say the person has a right but it cannot be enforced. Further, while the rule of law, promises and agreements are binding we generally feel less duty-bound to comply with conventions, habits, and so on. Moreover, the fact that a person has a duty to person A does not necessarily entail a corresponding right of A over the duty-bearer. If someone saves me from drowning he has a claim to my gratitude (i.e. a desert-claim), but he does not have a right to demand that I so.

## 1.2 Deserts and rights

Schematically, both desert and rights appear to be similar in that they take the form 'A should be given, or be allowed to do, X'. And this claim is correlated to some kind of onus on others to provide X, or allow X.

From this we can extract three aspects which denote a *prima facie* resemblance between the two concepts. However on closer inspection we find that this apparent overlap disguises two distinct distributive claims.

1. Valued Object: The object of claim-rights and desert-claims (X) standardly has valuable consequences for the recipient. She is not indifferent about receiving it because it is favoured or desired by her. The closest we come to a disfavoured object of desert (in the distributive rather than the retributive sense)

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<sup>32</sup> Becker gives the example of the claim-right of a woman to choose to have an abortion. In such cases we are unlikely to impose a duty on a doctor to perform abortions on demand. (Becker 1980a:14-15)

and rights, is where we say that the person is, 'undeserving' and 'not entitled,' respectively. If her actions or circumstances are detrimental, or not valuable, she is simply not eligible to make a claim. Hence, the positive value inherent in the way persons are treated is a necessary condition of claim-rights and desert-claims. Although this is not strictly true as a person may be entitled to X but not value it; And equally, he may deserve X but not want it. The object of rights and desert therefore need only be something which is valued by the world. Moreover, claim-rights could be theoretically or even practically neutral; that is, neither valuable nor harmful to the subject.

What sorts of value does this entail for holders of a claim-right? Firstly, we may suggest that the claim-right to non-interference preserves the right-holder's freedom of choice. Secondly, the positive claim-right to receive something from others promotes the right-holder's well-being and her freedom to realize her chosen ends (i.e. provides the person with greater options through which to flourish). However, the value of rights-based treatment is a necessary, but not sufficient condition for holding a claim-right. Put simply, we may receive or be allowed to do something which is valuable to us, but that does not mean that we have a right to that value. Hence a distributive claim may be based on the benefit to persons of deserving treatment or liberty, but that does not necessarily entail that they are entitled to this treatment. Equally, the value of receipt is not a sufficient reason for desert. (Sher 1987:200-201)

Indeed, the very point at which desert and entitlements begin to diverge is the *reason* for valuable receipt. For a person to be deserving, something valuable must be done by him; in contrast, entitlement only requires the fulfilment of qualifying conditions and that need not entail doing anything, let alone something valuable (e.g. a claim-right to an inheritance). This pinpoints a fundamental difference between desert and rights: If a desert-claim is satisfied then not only is the *person* made better off but also the *world* is made better off; that is to say, the world is more just if a desert-claim is required. Whereas the fulfilment of a claim-right will be valuable to the person but not necessarily

to the world. It is only if some normative ground is built into the qualifying conditions of a claim-right that the world is made more just.

2. Obligation: both desert-claims and claim-rights place some kind of onus on others to fulfil that claim. However, we generally consider the onus placed on us to be more binding in the case of rights. Desert-claims do not place as strong an obligation or duty on us. But the distinction here is between a moral obligation and a legal obligation. Hence, the latter tends to take precedence only insofar as it is enforceable.

Nevertheless, desert-claims do impart an onus on others. We typically associate the contribution, effort or sacrifice of a person with the reciprocal requirement to reward or compensate that person. But that 'motivation' or 'attitude' to requite a valuable performance, no matter how deep-seated it might be, is not the same as, or as binding as an obligation. The immediate implication of this is that where desert and rights are competing, deserts will come a poor second, unless the rule, practice or promise mirrors a desert value-judgement.

This is partly because rights are fundamentally concerned with the duty of others to provide value for the rights-holder. While deserts are also concerned with the provision of benefits, the identity of the persons who are to reciprocate is under-specified. George Sher has argued that this constitutes the defining difference between the two concepts. That is to say, rights are primarily concerned with what *others ought to do*, while desert-claims are concerned with the value to the claimant and the world of deserving treatment. (Sher 1987:201) Hence, I shall argue here that the identity and obligation of the provider is made explicit once desert has defined the qualifying conditions of a claim-right (i.e. desert defines what others ought to do.)

3. Claims to: In the broadest sense desert and rights can be said to resemble each other because they make a claim *to* be able to do something or receive something. However, the requirements of those claims are quite different in

each case. Desert-claims need not make any reference to a set of rules. Equally, claim-rights need not accommodate any of the basic criteria of desert. That is to say, a claim-right does not necessarily require: (a) a performance (e.g. the right to one's inheritance); (b) having sufficient control over one's performance (e.g. winning the race even though the sure winner tripped and fell); (c) the carrying out a performance which is valued (e.g. promising to stand on one's left leg for two hours). Furthermore, rights need not make any value judgement about the right-holder (or duty-bearer). Entitlement merely requires the fulfilment of certain conditions laid down by rules, conventions, practices, and so on. Similarly, in cases of prior transactions, a person can stake a claim based merely on a promise or agreement that has been made with another party.

What this means is that there is no contradiction in making a claim to deserved treatment which one cannot have a right to, and vice versa. To use a by now familiar example, an unsuccessful presidential candidate may deserve to win the election, but that does not mean that he is entitled to win. As Feinberg puts it, “‘deserve,’ ‘fitting,’ and ‘appropriate’ on the one hand and ‘right,’ ‘entitlement,’ and ‘rule’ on the other, are terms from altogether different parts of our ethical vocabulary.” (Feinberg 1970:86) Consequently, both concepts are in competition with each other in all cases except where desert or rights are irrelevant (either no relevant rule is in play, or at least one of the criteria of desert does not hold) or, where they happen to coincide.

## **2. Institutional and preinstitutional desert**

However, it may be argued that, in spite of this distinction, it is not desert which provides the content of qualifying conditions, but rather the qualifying conditions embodied in existing or proposed institutions that defines desert. On this reading,



established rules and procedures define what conditions have to be met before a person can be deserving. But if desert is merely an artefact of institutions it can have no *meaning* independently of them. And, following on from that interpretation, desert appears to lack any *ethical force* prior to and independent of existing or proposed institutions.<sup>33</sup> I shall argue that while desert is sometimes institution-dependent, that does not negate the fact that it can and often is logically prior to and independent of institutional arrangements.<sup>34</sup> Following Miller, I shall define institutions as ‘regular patterns of human activity in which people are given tasks to perform, encouraged to behave in one way or another, assigned rights and obligations, etc.’ (Miller 1994a:8)

Let me take the issue of meaning first. There are a number of contexts in which desert is an artefact of an institutional arrangement. (Miller 1976:92) This arises where:

- (a) The deserved object cannot exist independently of the appropriate institution (e.g. a student cannot deserve a grade until the practice of grading already exists; no one can receive an athletics medal in the absence of an institution such as the Olympics)
- (b) The desert-basis does not exist independently of the institution. That is to say, the same performance would not be deserving in another context (e.g. running around a 400 metre track cannot be a deserving performance in the absence of the institution of competitive sport).

But this dependence is only explicit in the context of narrowly defined institutional settings such as grades and competitions. Once we look beyond these contexts we note a number of desert-claims that *do not* appear institution-

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<sup>33</sup> The main proponents of this view being John Rawls (Rawls 1971:103,313) and Robert Goodin. (Goodin 1985) (Revised version in (Goodin 1988:chap. 10)). See also (Cummisky 1987)

<sup>34</sup> The idea that desert is a preinstitutional concept is also defended by (Feinberg 1970: 55-56,85-87) (Miller 1976:90-92) (Miller 1994a:8-13) (Galston 1980:170) (Holmgren 1986:265) (Sverdlik 1983).

dependent at all: for example, deserving praise for a courageous act, deserving compensation for forgoing one's personal ends in order to help others, deserving applause at the end of a piano recital and so on. This suggests that we should not be too quick to conclude from the narrowly defined institutions that all desert claims are institution-dependent.

Furthermore, it is important to keep in mind that even in the context of narrowly defined institutions each desert-claim must remain consistent with the conceptual core of desert. That is, even where desert is *prima facie* dependent on an institution in order to make sense, it also requires the core notion of desert for it to make sense. Thus the rules explicitly and implicitly embodied in the public institution are constrained by the idea of the controlled expression of value; if the core criteria of desert are not met, then the institution is simply not referring to the idea of deservingness. This provides the most clear-cut sense in which desert is preinstitutional—in the conceptual sense desert is logically prior to and independent of the institutions of justice because it would make no sense to claim that somebody was deserving without them. The criteria of the concept are held in the mind of each individual prior to and independently of the inception or existence of particular institutions and practices.<sup>35</sup>

This, I take it, is the primary explanation for the distinction between desert and entitlement. Whereas someone may be entitled to receive benefits in virtue of meeting the qualifying conditions embodied in a set of rules, that does not necessarily mean that they deserve those benefits. This is because the qualifying conditions may not adequately reflect the conceptual core of desert. If the characteristics of desert are not met the institutions may require someone (1) although the performance is not valued by others; (2) for value that was created

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<sup>35</sup> That is not to say that the concept itself is 'natural' in the sense that it is not contingent on historical context. The concept of desert has indeed historically evolved: thus, for example, the Homeric notion of merit, although closely related to the present-day concept of desert, is distinct because it permitted the attribution of value to those qualities which were not the result of a controlled performance. However, the criteria represent a comparatively fixed conceptual background which we employ to make normative claims. For a discussion of the role of merit

by someone else; (3) for value arrived at through sheer chance; (4) for value based on uncontrolled characteristics (sex, race, beauty etc.); (5) out of proportion to the another performance of the same kind; and so on. Just because a presidential candidate is elected because she attained the majority of votes does not necessarily mean that she is actually the best-qualified candidate. (Feinberg 1970:55-56,85-87) The presidential candidate may be successful through good luck (say the economic cycles entail that the incumbent must defend her record during an economic downturn) or because the rules of election fail to adequately ascertain who is the best qualified candidate.

So far I have argued that even when desert is institution-dependent it remains pre-institutional because the conceptual core places a constraint on the application of desert. Some, however, would argue that desert lacks normative weight independently of legitimate rules and institutions. That is to say, the normative significance of desert follows from the principles that define the institutions of justice. (Rawls 1971:103) (Goodin 1985) In that case there is no confusion of desert and entitlement because the latter is legitimate (i.e. the successful presidential candidate deserves because the qualifying conditions are just), rather than being merely dependant on extant institutions. Robert Goodin, for example, argues that desert in itself bears no ethical force because it is merely what is left over after legitimate institutions have defined what is undeserving. In other words, undesert, defined in this way, constrains what people can legitimately expect to receive. Desert is simply the residual after the undeserving aspects of a person's claim to receive benefits has been discounted. (Goodin 1985:580-583)

Again, however, this account of desert does not necessarily remain faithful to the core conception of desert. Both Rawls and Goodin construe legitimate entitlements without directly taking into account minimum voluntariness, value to others, agent-relativity and so on. Consequently, while they may be

providing a satisfactory normative argument, it is not an argument that necessarily bears any relevance to desert. Unless they overlap, imposing legitimate entitlements onto desert would constitute a misuse of the latter. (Similarly, utilitarians who define deserving acts as those which are utility-maximizing also misappropriate the concept of desert). Desert thus remains potentially critical of institutions whether they purport to be just or nor not (i.e. merely extant institutions and practices). However, if the purportedly legitimate institutions are consistent with the criteria of desert then they *would* add normative force to the concept (presuming of course that the argument is sound). But that outcome would only be borne of coincidence, not design.

There is a further sense in which desert is prior to and independent of both existing and proposed institutions. So far I have been arguing that desert is preinstitutional because of the criteria internal to the concept itself. But as I outlined in chapter 1 (1.4) external goals and values make up the substantive content of desert, and this means that the more precise definition of each desert-claim need not *necessarily* be drawn from existing and proposed institutions (although they are also external to the concept). There is no doubt that desert appeals to social goals and values to flesh out the substantive content of each claim, but that does not necessarily entail appealing to existing or proposed institutions. And it is because the institutions may not successfully embody those goals and values that they may be subject to criticism by desert.

David Cummisky argues that desert is institution-dependent because it is defined by the point or purpose of institutions; desert cannot be said to place a constraint on the construction of those institutions because it is defined by those institutions in the first place. (Cummisky 1987:18-19) We may agree that desert is indeed institutional where the content of desert is given by the purposes of existing or proposed institutions. However, Cummisky's argument neglects the fact that desert may draw from goals and values that are independent of the purpose of the institution. That is to say, the substantive content of desert need not derive from existing or proposed institutions and practices. Consequently,

drawing from both the external goals and values and the conceptual criteria, we have an independent point of view which may either *define* the purposes of the institution (and thereby its qualifying conditions), or *criticize* the purposes of the institution (and its qualifying conditions).

The potential for conflict between rules and desert is illustrated well by A.W.H Adkins in his discussion of the role of merit in Homeric and Greek societies. (Adkins 1960)<sup>36</sup> Adkins points out that the persistence of the earlier Homeric world's more desert-orientated value system in a Greek society looking to employ a more rule-governed value system, lead to argument and a tangle of confusion. The latter based reward on meeting certain qualifying conditions (e.g. determining the winner of a chariot race based on who crossed the finishing line first without cheating), while the former was quite willing to accept that the person who qualified as the race winner did not necessarily deserve to have won (a man's *arete* is more important than the actual place he finishes in the race). But as Adkins points out, 'Unless the allotment of prizes bears some relation to the result of the race, there is no point in running at all, since the prizes could be distributed before the race starts. Accordingly, some attention must be paid to the result; and yet clearly in this [Greek] society some attention must be paid to the *arete* of the respective competitors as well.' (Adkins 1960:55-56) This illustrates that even in those contexts where desert appears to be institution-dependent (i.e. one cannot deserve to win a chariot-race unless the practice already exists) desert remains potentially critical of the person who *qualifies* to be successful. This is either because of the influence of luck or because the rules fail to adequately reflect the conceptual core and substantive content of deservingness.

As David Miller puts it,

Desert is a predominantly preinstitutional notion. When we invoke it, we are very often assessing the way that our institutions work in the light of prior ideas about what constitutes

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<sup>36</sup> Quoted at length by (Feinberg 1970:84, fn25).

a fitting response to individual performances ... the logic of a desert-claim isn't 'this is what A has coming to him as the institution now operates' but 'this is what A would have coming to him if the institution operated so as to give proper recognition to his performance.' (Miller 1994a: 13)

Desert therefore is primarily a critical concept insofar as the rules embodied in institutions are always subject to scrutiny by the conceptual core of desert *and* the goals and values that enter in to provide the substantive content of desert.

However, as I have already hinted, if the institutions and rules of justice are consistent with the criteria of desert, then ethical force is added to desert. Thus, where the argument is deliberately constructed with the criteria of desert in mind, then clearly legitimate entitlement and desert would overlap through design rather than artefact. What emerges from this integration of desert into entitlement is a set of qualifying conditions of entitlement, embodied in the institutions and rules of justice, which are given legitimacy by a higher-order desert-based argument: in other words, legitimate, desert-based qualifying conditions for the receipt of benefits.<sup>37</sup> It is this form of argument that I shall be employing in this thesis.

### 3. Rights as ideal-regarding.

I concluded the previous section by suggesting that distribution according to entitlement and distribution according to controlled and valuable performances need not be incompatible. This is because preinstitutional desert can define the

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<sup>37</sup> However, the critical perspective of desert remains even where institutional rules attempt to formally reflect desert. Unless the qualifying conditions of entitlement perfectly reflect the 'qualifying conditions' of the desert-claim (i.e. the conceptual criteria and the specific substantive content) the distributive outcome will only concur with desert by sheer coincidence. This means that, we will always be in a position to criticize the allocation of benefits from the point of view of desert. That is to say the rules, to use Rawls's terminology (Rawls 1971:85-86), will be imperfectly procedural: we have an independent criterion of the right distributive consequences (i.e. deservingness), but it is not certain that the rules will arrive at those consequences. Hence, desert remains a critical perspective and a bottom-up influence on the construction of the rules of just distribution.

institutional rules, which in turn confer entitlements. I now want to take this idea further in the context of David Miller's distinction between positive rights and ideal rights. (Miller 1976:65-78)

Miller makes the distinction in the following way: positive rights follow from socially recognized laws, conventions, agreements, promises and so on, which hold independently of the moral worth of the latter's contents. Thus, A promising B that he will return B's book at the end of the week constitutes a 'social' transaction between two people that does not require an appeal to value. To establish whether someone has a positive right we need only refer to the relevant law, promise and so on. In contrast, ideal rights need not be recognized in practice and are constituted by value-claims stemming from freedom, general welfare, needs, desert and so on. What Miller has in mind here is natural or human rights, and in particular rights such as the right of parents to special consideration by their children. Thus, if someone has a natural right to free speech, we have a duty not to interfere in their will to express themselves.

However, the distinction between positive and ideal rights appears to become blurred where ideal rights are socially recognized, and therefore appear to take on the guise of a positive right. Miller still wants to maintain that, even though both types of right may be socially recognized, the value basis of each remains unique. 'It is clear that the *value* of ideal rights cannot be understood in the terms which are appropriate to positive rights.' (Feinberg 1970:78) Positive rights are valuable in that they promote individual freedom and security of expectation, while ideal rights are valuable in that they express need and desert. Hence, when we are talking about a right to an adequate level of subsistence, we are actually making a need-claim. When we talk of a parent's right to special consideration from their children, we are actually expressing a desert-claim.

Hence, ideal rights that are not socially recognized are not rights at all, but merely a rhetorical or eccentric way of expressing a desert-claim or need-claim. (Miller 1976:79-80) (Feinberg 1970:86) But they are as, Feinberg puts it, 'potential rights' in that they might influence future rules of conduct. (Feinberg 1979:90) And so, value claims like desert can become rights. Indeed, as Miller points out, desert-claims like the right of parents to special consideration, are recognized in current society. (Miller 1976:23) In such cases, desert does not confer rights directly—instead, the qualifying conditions of rights are determined by the criteria of desert. The fact that the two types of 'right' are valuable for different reasons does not entail that ideal rights cannot become rights proper. Indeed, combining two kinds of value seems to be advantageous rather than detrimental to an account of distributive justice, if only because rights would thereby be more in line with our interpersonal relations.

But how would the two sets of values combine? As we have already seen, desert and rights are compatible from a consequentialist point of view. When the right-holder receives deserving treatment it both increases their well-being and the likelihood of fully realizing themselves—and hence their freedom. Moreover, deserving treatment would not deny the right-holder freedom from interference and harm. Thus the freedom to choose remains intact. Nor would desert that is socially recognized appear to undermine the right-holder's expectation that they will be able to do or receive something in the future.

However, even if rights encapsulated the requirements of desert the two concepts would still remain conceptually distinct. Although the outcomes might be the same, we would still not say that a person deserves a reward in virtue of satisfying various qualifying conditions; they would deserve because of their controlled and valuable performance. At most, we can say that the claim-right reinforces the desert-claim, or that the desert-claim reinforces the claim-right. Moreover, we would want to maintain this distinction because the compatibility of desert and rights is limited by the ability of the qualifying conditions to



accurately reflect desert. Typically we devise procedures which attempt to extract the same distribution as desert judgements demand. However, in reality, 'codifying' desert often leads to a poor representation of it. We often doubt the ability of electoral procedure to elicit the most deserving candidate (the candidate who will best serve the people), and question the process of wage bargaining to determine the deserved wage. Indeed, most rules of honours, prizes, competitions and so on do in fact attempt to accommodate the notion of desert, but their inaccuracy tends to undermine the whole enterprise. This serves to emphasize the need to retain desert as a critical pre-institutional concept.

The temptation to base entitlements on desert is clear given that the prevailing reality of inequality entails that people who are equally deserving will often be allocated quite different distributive shares. Hence, any redistribution according to desert would entail a radical change in the allocation of society's resources. Nonetheless, by removing people's rights we deny people security of expectation, the freedom from interference, and the freedom to receive and act. And, if the rights of others are not protected (particularly in circumstances of moderate scarcity and self-interest) then they will feel less obliged to comply with the distributive scheme. Moreover, given that there are no agreed standards for measuring and apportioning desert, allowing desert rather than qualifying conditions to dictate distribution would '... overload officials with dangerous discretion to be used as they see fit, and thus, in the long run, given human fallibility, generate more injustice than is avoided.' (Feinberg 1970) Because of these costs, it may be argued that we should abandon any attempt to distribute according to desert, even if desert does underpin much of our everyday considerations about distributive justice.

However, the theory of desert that I have been advocating does not sweep away the existing set of rights or the notion of rights itself. It criticizes the existing distribution with an eye to informing the rules of entitlement. Redistribution is not susceptible to overzealous legislators, as it is based on the requirement of

sufficient social recognition—and there is nothing to say that that may follow from a convincing theoretical argument. Moreover, because desert is translated into the qualifying conditions embodied in rules and procedures, it is not called upon to make specific substantive judgements; rather, desert-defined general principles constrain or guide what may be accepted as rules of justice. Nevertheless, substantive desert judgements remain in place to criticize the distributive consequences and, thereby, the adequacy of the qualifying conditions.

#### **4. Becker's labour-desert theory**

We may conclude from the discussion so far that although desert and rights are conceptually distinct, they are compatible when the rules of entitlement are interpreted in terms of desert. Others are legitimately obliged to requite the claimant in virtue of the fact that they have fulfilled the desert-defined qualifying conditions. In order to explicate the claim that desert can and should determine the content of claim-rights I shall now consider Lawrence Becker's attempt to justify and explain property rights in terms of desert. (Becker 1980b) By doing this I hope to illustrate one possible way in which desert, in the guise of a claim-right, can place a duty on others to requite. In addition, I take Becker's account to epitomise the Contributory Model of desert insofar as requital is based on each person's success in providing a valued output.

Put simply, Becker's version of labour-desert theory runs like this: (1) people are entitled to property in proportion to how much value their labour adds to the 'raw materials' they take up; (2) the best way of defending and explaining that entitlement is to ground the qualifying conditions in the notion of desert. In effect the notion of 'the right to the whole product of one's labour' is adapted to the concept of desert. Hence, we are asked to respect a person's property claim-right (i.e. a person's right to access and control of things) and in lieu of their voluntary and valuable performances.

### (1) The labour-desert argument for property

Becker's labour-desert argument can be broken down into two stages beginning with John Locke's labour theory.

1. Mixing labour: Becker extracts from Locke two distinct claims as to why labour entitles us to property: (a) Locke argues that because we have a prior property right over our own bodies we also own the product of our bodies—our labour. Extending this line of thought, one stage further he concludes that we also own the product of our labour. We do so because we mix our labour in the thing that we change. Immediately we have a parallel with the concept of desert in that to have a claim on the product of one's labour there must be a performance connected with the object (the claimant cannot just intend, declare, or occupy) which was intended (not accidentally brought about). (Becker 1980b:33-34); (b) Because one expects some return for one's pains (labour) it would be unjust to deny a person that return. (Becker 1980b:35-34)

The labourer is entitled to property (the thing they have laboured on) in proportion to the value that they themselves added to the thing (that is, over and above what already existed and what other's have produced).

However, Locke's thesis fails to accommodate a problem noted by Robert Nozick: Given that the fruit of one's labour is separate from one's body and the activity of labouring, how can we say that a property right is extended to it? Why, when we mix our labour in an object, are we not just a losing our labour rather than making the object our own? (Nozick 1974:174-175) Even though we have a pervasive conviction that we are owed for our pains, there seems to be no explicit grounds on which we can place an obligation on others to meet that claim.

Entitlement arguments by themselves fail to establish an obligation on others to furnish the claim-right property. To justify acquisition, use, and transfer, therefore, we need to interpret the relationship between labour and rights in a different way.

2. Reformulating the labour theory in terms of desert: (a) Desert is a fundamental or indisputable principle ('[T]he concept of desert is constitutive of the concept of morality.' (Becker 1980b:51)); (b) The labour theory is compatible with the criteria of desert: that is, labouring (performance), moral responsibility (control), adding value to the world (valuable).

Thus, because desert is an indisputable principle and because mixing one's labour mirrors the concept of desert, we can be said to deserve a property right, although what a person deserves does not need to be something which has been produced. In keeping with the concept of desert, the reward for one's labour should 'fit' the purpose of the performance. (Becker 1980b:52) And even if the reward does fit the purpose, a substitute may suffice so long as it is commensurate with the performance. (Becker 1980b:52-53) This gets around the inflexibility of Locke's claim that the person is only entitled to the thing which they have added value to.<sup>38</sup>

Becker's labour-desert argument does more than explain property rights in terms of desert: it claims that an account of desert is necessary if we are to take them seriously.

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<sup>38</sup> Although Becker is arguing from the fundamental principle of desert, the actual account of desert he proffers is peculiar to the context: First, it is based on contribution or achievement and therefore it does not have anything specific to say about effort or compensation. Second, in recognition of the combined problem of scarcity and Proudhon's claim that 'I have no obligation to you. I did not ask you to mix your labour,' all value lost is penalized proportionally and those effected compensated proportionally.

## (2) Property rights and obligation.

Becker is wary of claiming that the obligation of property rights is dependent on desert, even though this seems to be the natural conclusion of the labour-desert argument for property. Surely the claim-right to property is grounded in the fact that the person deserves it. That is to say, they would not have the claim-right if they did not deserve it. Or, to express this in another way, we would not have an obligation to the right-holder if they did not deserve the right. If it were not for desert, then—following Nozick's critique of the labour theory—we would have no reason to provide the claimant with their due.

Moreover, desert cannot be just the basis of the right to the acquisition of property. A desert-based account of acquisition cannot ignore questions relating to the rights of ownership in general (right to use, manage, exclude, generate income, transfer and so on). It would be absurd to argue that although you deserve X you only have a right to receive and possess X. Positive desert, by definition, requires that what is received is valuable. Hence, a desert-based explanation of property rights (and rights in general) must be related to the value of using that initial entitlement. Thus, the right to receive and possess a property right, and the corresponding duty of others to provide it without interference, cannot be separated from the claim-rights to use, transfer, generate income, exclude and so on.<sup>39</sup> It seems to me then that the very nature of the labour-desert argument extends it beyond just acquisition. Thus, the

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<sup>39</sup> The difficulty here might be seen as trying to determine what limits, if any, should be placed on the future stream of benefits that will accrue from property ownership. Clearly future benefits may be far out of proportion to the original desert-claim. This is not a problem for an account of entitlement that is not based on desert, because it has no proportionality requirement. The right-holder is free to choose what he does with his property right. A desert theory and labour theory, however, would have to separate future rewards from the initial claim. Thus, when benefits increase to the point where they are out of proportion to the original performance, then they become the subject of a separate desert-claim. But this does not avoid the basic problem because the second tier desert-claim will always depend on the original bestowal. Because it has no direct bearing on the question of obligation I will not attempt to solve this problem here. What we can say at this point is that desert-claims cannot be concerned with what might be. The person in the future need not choose to act upon their property right; indeed, the fact that they did would be valuable in itself. Finally, desert-claims can be said to reward persons in the sense of giving them the choice to act on their property right.

obligation imposed by desert is not limited to merely providing the property right *per se*.<sup>40</sup>

Some might argue that this conclusion overextends desert to the point where it becomes a right. What I take Becker to be arguing for here is that property claim-rights must be based at least partly on desert if we are to take them seriously. Thus in some cases the concept of desert—which is socially recognized or fundamental—informs the qualifying conditions or rules of eligibility of a claim-right; but the conditions or rules themselves can only be an expression of entitlement. The fact that the *actual rules* of entitlement might not reflect desert further emphasizes that the two concepts are not in fact coextensive.

## 5. The normative force of desert-claims

In this chapter I have attempted to show how desert can define claim-rights. The fact that the claim of right-holders over duty-bearers is stronger than that of the deserving in relation to their providers appears to annul the possibility of desert re-defining *existing* rights. Even though desert is crucial to our interpersonal relations, desert-claims cannot be as binding as claim-rights and, therefore, they may not adequately challenge existing rights. In effect, rights perpetuate their own dominance.

George Sher's analysis does not avoid the problem of priority as I have stated it here. He argues that desert and rights are concerned with completely different questions and hence they are not competing. Rights are concerned with what others ought to and ought not to do, while desert is concerned with the value to the deserver, and to the world, of receipt. (Sher 1987:201-202) On this

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<sup>40</sup> In contrast, Stephen Munzer argues that the right to acquire property is distinct from the right to property ownership in general. (Munzer 1990:263)

reading, rights do not in fact dominate—it is just that the overwhelming majority of distributive questions we ask concern obligation, rather than the value of treating somebody in a certain way. (Sher 1987:201-202) However, as Sher admits, only if desert-claims take on the status of obligations (that is to say, if they define a claim-right) will they overcome the priority of rights. He argues that ‘... if there is significant *value* to persons' getting what they deserve, then this must (of course) affect others' obligations towards them. Moreover, because rights are grounded in obligations, it must affect the nature of rights as well.’ (My emphasis.) (Sher 1987:202-203) In other words, the reason why we should permit desert to dictate what others ought to do (i.e. the claim of deservers to requital by others) is the underlying normative value of desert. This is what is lacking in Becker’s labour-desert argument. For he presumes that desert adds justificatory force to the producer’s claim to her productive output, but does not explain why this is so. On what basis, then, is desert a legitimate ground for defining rules of justice?

David Miller argues that the authority of desert extends from nothing more than the primitive or brute intuition that underlies desert: that is, our appraisive responses (admiration, approval, etc.) to the quality of a person’s performance. When our appraisive attitudes are appealed to, it is simply morally fitting that the performer receives the appropriate benefits. (Miller 1991:379-380) Sher takes the opposite view by arguing that for each mode of treatment we can extract an objective basis that need not appeal to our pre-reflective beliefs and attitudes, for there are deeper values that may be derived from each mode of treatment. (Sher 1987:19-20) Miller argues that this leads Sher to reconstruct desert to the point where (1) ordinary important desert claims are rejected because they lack normative force (e.g. superior political candidates deserve recognition) and (2) there is no single coherent idea running through each instance of desert, but rather a plurality of independent desert-bases. (See Chapter One, Section 2.) (Miller 1991:379-380)

It seems to me that the most profitable approach to take here, and the one that I will follow, is to recognize desert as crucial to the way we relate to one another and thereby to how we conceive of one another as purposive value-creating agents. It is the conception of the self that is presupposed by our interpersonal relations which provides the normative force of desert. Consequently we have a core idea of desert (as the controlled expression of value) embedded in our relations and personhood, which determines how we ought to treat one another. Or, to put it negatively, this core notion of desert places a constraint on what proposed institutions of justice can legitimately hope to achieve. Sher also argues that there is a conception of the self that is presupposed by each desert-claim, but his is a far more expansive conception than what I am suggesting. (Sher 1987:174) As I see it, it is the interpersonal relations that Sher rejects as a sufficient basis for desert that define what constitutes people's personhood.

However, there is an obvious problem with this account of the normative force of desert-claims: namely, the role of luck in undermining the control that the desert-based conception of the self takes as crucial. In appraising the quality of each person's will displayed towards us we may conclude upon reflection that the value was created through the help of good fortune. Hence, the idea of the controlled contribution of value may be subverted by the pervasiveness of chance. I take up this issue in the following chapter. However, I want to briefly outline here the form of argument that I wish to take in regard to the authority of desert and the problem of luck. The idea of requital according to the contribution of value or valuable efforts is severely undermined by the pervasiveness of luck in everyday life. Therefore, I propose that we retain the value-creating element that is central to our interpersonal relations (and personhood), but combine that with the recognition that an agent foregoes personal value in creating value for the world. Desert, then, follows from sacrifice incurred in adding value to the world. On this reading, the contributory idea central to our appraisive attitudes is retained, but it is the personal ends forgone that determines the degree of deserving treatment due. The justificatory force of this argument, I claim, stems from recognizing the



core idea of desert that pervades our everyday relations (the appraisal of valuable performances) whilst taking into consideration the role of good and ill fortune in everyday life. And, as I concluded in the previous chapter, the persuasive strength this compensatory formulation of desert is further bolstered once we see how it is consistent with a particular account of agency, personhood and equality, and, in addition, with the pursuit of socially desired goals.

### Chapter Three: Luck and Desert

The core idea of desert, I have argued, is composed of a person's performance that is valuable to the world and the degree of responsibility he has over that performance. This is consistent with the classic contributory formulation of desert that perhaps finds its paradigmatic statement in Aristotle's *Nicomachean Ethics*. (Aristotle 1976:Book V) Requitel should be proportional to the person's display of virtue or excellence (i.e. merit). Goods should be distributed in proportion to the indebtedness created by a person's exceptional and chosen contributions to society.

However, the contributory model is vulnerable to the influence of good and ill luck because the valued outcomes that a performer arrives at (what he actually manages to do or display) depend at least to some extent on episodes of good and ill luck.

That is to say, a person's desert is undermined where instances of antecedent luck conspire to bring about something that *happens* to be valued by others. Thus the relationship between control and performance is influenced by two general forms of chance: Firstly, the performance itself may be aided by natural and social advantage and subsequent episodes of good fortune. Secondly, that good fortune must coincide with what is valued by the world. Hence, upon reflection we may find that the quality of a person's will displayed towards us is diminished and even completely negated by the fact that it is consequent upon random events beyond the agent's control. But if good and ill luck dominate our ability to realize valuable outcomes, then the possibility of control and therefore deservingness appears to be severely undermined; consequently we may begin to question whether it can constitute a legitimate basis for defining the qualifying conditions of entitlements.

## 1. The problem of luck.

The control element embodied in our interpersonal responses to one another's performances threatens to undermine the very possibility of desert. The problem of luck stems from the pre-reflective intuition that control is a condition of moral worth. As Thomas Nagel puts it:

Without being able to explain exactly why, we feel that the appropriateness of moral assessment is easily undermined by the discovery that the act or attribute, no matter how good or bad, is not under the person's control. [But] If the condition of control is consistently applied, it threatens to undermine most of the moral assessments we find it natural to make. The things for which people are morally judged are determined in more ways than we at first realize by what is beyond their control. And when the seemingly natural requirements of fault or responsibility is applied ... it leaves few pre-reflective moral judgements intact. (Nagel 1982:175-176)

Thus, for example, we would judge a drunk driver who kills a pedestrian is guilty of manslaughter and yet, because he was mentally incapacitated, the intuition of control suggests that he is not guilty at all. This shows that our use of moral judgements is in effect a paradoxical one in that the condition of control rules out judgements which we hold dear.

Judith Andre, in response to the apparent paradoxical nature of our moral practices, makes the useful suggestion that our moral judgements are characterized by an Aristotelian and a Kantian viewpoint. (Andre 1983) Thus, in the first instance we have an aspiration to complete self-sufficiency.

Although this point of view was held by some of the ancient Greek thinkers—notably Plato—it is through Kant that we have its modern expression. Kant sought to push the intuition of control to its furthest extreme. All external and internal contingencies are banished from the self until we arrive at the only thing that is unconditional and thereby possessed by all: the good will that is good in itself. According to this scheme there can be no room for luck when it comes to desert because morality cannot be associated with contingency. And

so desert rests upon the agent's pure intentions rather than the possibly lucky outcomes of their actions. Here then we have an outlook that attempts to resolve the tension between luck and desert by removing luck from the equation entirely. From the Aristotelian point of view, we see ourselves as inevitably subject to the whims of fate; thus we are more inclined to attach deservingness to outcomes born, at least in part, through luck. Furthermore, we do not concentrate solely on the intention of the agent: the effect of an agent's actions on the world, even if fortuitous, is not deemed irrelevant to desert-claims. This outlook recognizes the tragic inevitability of good and ill fortune—tragic in that although we may pursue self-sufficiency (indeed we may believe that we have attained it), we cannot in the final analysis avoid chance. The self, therefore, perceives itself as part of and partly defined by 'the course of events.' Given then that we employ both introspective and outward-looking perspectives, it is not surprising that our use of desert is inherently confused.<sup>41</sup>

The problem for desert, therefore, is that random events beyond the agent's control diminish if not negate his responsibility for the valued performance. And because of this it is not clear what account of control is sufficient for us to say that a person is responsible or can legitimately take credit for a valued outcome. Whether and to what degree an agent is responsible for a valued outcome therefore hinges on how the idea of control is fleshed-out. As was noted in Chapter One (Section 1.4) desert *per se* does not provide the resources to tell us what specific description of control is required to countenance responsibility. Consequently, accounts of responsibility range from high-voluntariness accounts (only efforts, rather than outcomes, are not vulnerable to good and ill luck) to low-voluntariness accounts (minimum condition of control is that the agent could have chosen to do otherwise). This conflict of accounts,

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<sup>41</sup> But this is by no means exclusively a modern predicament, for as Martha Nussbaum explains, the tension between self-sufficiency and contingency concerned Greek philosophical discourse as much as it does present day discourse: '... on the other side of this pursuit of self-sufficiency, complicating and constraining the effort to banish contingency from human life, was always a vivid sense of the special beauty of the contingent and the mutable, that love for the riskiness and openness of empirical humanity which finds its expression in recurrent stories

I would suggest, reflects at the theoretical level the tension between the Kantian and Aristotelian perspectives.

Leaving aside the problem of the appropriate account of responsibility, I want to turn to the more pressing, albeit related, problem of whether luck undermines the tenability of desert altogether; for it appears that if we take the high-voluntariness account to its full extent it ‘threatens to shrink desert to the point of vanishing.’ (Miller 1996:283) That is to say, if from the Kantian perspective we seek to factor out all contingencies (events and circumstances beyond the agent’s control) desert loses all meaning; hence the only residual we are left with is something like the noumenal ‘good will.’

## **2. Intention and outcome.**

Desert is based on the relationship between the intention behind an agent’s actions and its valuable consequences for others. As J.R. Lucas succinctly puts it, ‘Actions are two-faced. They are done by agents, intentionally and therefore expressing what the agent has in mind. But they are also causes of effects in the public external world of events, and have consequences irrespective of whether they were intended or not. Actions typically both manifest reasons and bring about results.’ (Lucas 1993:33) But it is crucial to deservingness that the valuable consequences are both intended and not arrived at accidentally.

In Jerzy Kosinski's novel *Being There* (Kosinski 1973) we are introduced to the character of Chance, a simpleton who, since childhood, has experienced nothing more than the world of his garden and the world of television. Upon venturing into the outside world Chance, by acting out roles he has learnt through television and proffering simple gardening tips which are misinterpreted as metaphors for proper business and government, avoids being identified as the simpleton he really is. As a consequence, simply in virtue of

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about gods who fall in love with mortals.’ (Nussbaum 1986.:3)

'being there,' Chance inadvertently rises to become an informal advisor to the president. Kozinski's satire highlights in stark form the role luck plays in our daily lives. The notion of 'being there' neatly encapsulates what we mean in general by luck. Fortune is defined as being at the right place at the right time (or the wrong place at the wrong time). This leads us to the corollary that if fate had dictated that I were there (that is, if circumstances had been different) then I would have been lucky as well.

Nevertheless, given that the agent could choose to *be there*, this notion does not fully explain luck. The minimum condition of control and therefore desert is intention; that is to say, the agent must at least intend to arrive at a particular outcome. But, while intention is necessary to the definition of self-control, it is not sufficient. A lottery player, for example, may intend to win first prize but he can only achieve that end through sheer luck. (Although the lottery player may be said to exhibit a minimal element of control by buying the ticket, or by increasing his chances by buying more than one ticket.) Hence, there must also be at least the attempt or effort by the agent to realize that outcome through choices and actions. The attempts may be thwarted for reasons beyond the agent's control, but at least we can recognize their effort to realize a valued outcome. However, if a valued outcome is unintended but inadvertently arrived at, then there are no grounds for desert (e.g. accidentally accosting a criminal on the run). Similarly, if the outcome was intended but is arrived at through good fortune rather than design, then there is no warrant for desert (e.g. a novice golfer might by sheer luck achieve a hole-in-one). But the converse also appears to be true: an experienced golfer may fail to win the tournament because a gust of wind blows his last winning putt off target. Nevertheless, despite the actual outcome, we can still say that the golfer deserved to win the tournament (although he does not have an entitlement-claim to win the tournament).

Control requires not only that the performance was intentional but also that it was based on an appropriate degree of rational deliberation. In some circumstances we can control fortune by limiting the role chance has to play:

we can behave rationally both in terms of predicting the likely future outcome and in terms of increasing or reducing (due care towards others) the chances of a future outcome. Thus the drunk driver is guilty of manslaughter at least to the extent that she was aware before or while she was driving the car that her action might result in an accident. Similarly, an unemployed person who is capable of working could increase her chances of employment by applying for more jobs. Where such possibilities exist to control the future events we can argue that an agent cannot claim with quite the same force that she was unlucky. Although in the case of harm the person may also be absolved of culpability if the harm was foreseeable, *but* unpreventable. And in the context of benefits, the corollary of this is where the person can foresee ways of maximizing her chances but is prevented from doing so (e.g. involuntary unemployment due to say racial or gender prejudice). Therefore, only in cases where the future proves to be unforeseeable or unpreventable can we say that the agent is subject to genuine good or ill fortune in the full sense.

Foreseeability also places a constraint on what an agent can hope to claim credit for (or be blamed for) in terms of the future stream of consequences. Even if knock-on effects are foreseen as a probable future consequence, the level of control dissipates as the valued outcome becomes more distant from the original performance.

The general rule being applied here is: control requires that the agent at least could have chosen to have done otherwise. That is, she could have acted to avoid the harm or to improve her well-being. From this we are able to make the crucial distinction between those personal preferences and tastes that are cultivated and adaptable and those that are compulsive and unchangeable.

Hence, I take it that if a person is responsible for a preference that is expensive (the predilection for 'claret and plovers eggs') or unrealizable (either because the bearer lacks the requisite capacity or because a society characterized by scarce resources is unwilling to provide it), then they do not deserve compensation for its denial. Similarly, if they are able to adapt their preferences, then we need not compensate to the same extent (although some

*lesser* claim to compensation remains in virtue of the fact that the person's choice has been denied). Wanted and/or adaptive preferences place a lesser obligation on others to provide. But if the preference is compulsive and unstoppable then there are grounds for compensation, for the agent himself is not at fault (e.g. the kleptomaniac). We may make the same distinction between wanted preferences that are *harmful* to the agent or others (e.g. playing chicken on the motorway) and unwanted preferences that are harmful (e.g. the kleptomaniac; the heroin addict). I return to discuss the issues surrounding expensive and harmful preferences in greater detail in Part II. For the moment it is important to note that the control over preferences (cultivation and adaptability) dictates both the grounds for compensation and the grounds for blame.

The consequences of performance are also often seen as relevant in two further senses that I have yet to mention. Firstly, the outcome provides epistemic proof that it was intended and therefore not just the result of fortuitous action. Moreover, it seems intuitively peculiar that a person should have a strong intention but not, even though he is able to do so (they are not coerced, impaired, ignorant and so on), act upon it. Where there is no outcome we are led to question whether there was an intention at all. Secondly, an outcome is important from the Aristotelian point of view in cases where the consequences of the agent's actions are seen as more relevant than the agent's intention. Thus, for example, the drunk driver who kills a pedestrian is deemed guilty of manslaughter even though, due to her impaired mental state, she did not intend to cause harm.

It is from this (the demand for epistemic proof and the prioritisation of the actual consequences) that we have the basis of the paradox noted by Nagel: a control condition which focuses on intention and a value judgement which is more concerned with the outcome of the performance. Moral luck arises in some cases because the actual consequence of a person's actions takes precedence over the actual control over the consequence. Thus, our moral



practice rests on the paradox that ‘we judge people for what they actually do or fail to do, not just for what they would have done if circumstances had been different.’ (Nagel 1982:182) <sup>42</sup>

### 3. Forms of luck

Now that we have in place the account of the form of agency required to sustain a desert claim, I want to outline the different forms of luck that, it might be argued, undermine that account. Following Dworkin and Cohen I shall refer to each of these forms of luck as instances of *brute luck*: factors beyond the agent’s control that aid or hinder the pursuit of personal well-being. This may be contrasted with cases of *option luck* which are risks and gambles that the agent could have chosen not to take (i.e. calculated gambles), and which are therefore not entirely beyond the agent’s control. (Dworkin 1981b:293) (Cohen 1989:908) I shall turn to discuss option luck shortly (3.3).

#### 3.1 Brute Luck

Consider the following cases of unavoidable brute (good or ill) luck: <sup>43</sup>

- (a) Starting luck: natural and socio-economic advantages and disadvantages that people are endowed with at birth and which, therefore, are beyond the agent’s control.
- (b) Constitutive luck: the preferences, tastes, inclinations, capacities etc. that one is born with. Hence, for example, if the agent’s preferences, tastes etc. do not equate with what is valued by the world or his preferences do not

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<sup>42</sup> Norvin Richards contends that there is no inconsistency in concentrating on the actual performed outcome, for this is a reflection of our ‘epistemic shortcomings, and the agent’s good or bad fortune in those.’ (Richards 1986:199)

<sup>43</sup> I base these distinctions on (Nagel 1982) (Cohen 1989) (Miller 1994a).

permit him to realize his preferences, tastes etc. then he is at a comparative disadvantage.

- (c) Sheer luck: individual episodes of good fortune. Namely, unintended valued (e.g. accidental arrest of a criminal) and intended outcomes that are fortuitously arrived at (e.g. the lottery winner or the novice golfer's hole-in-one).
- (d) Circumstantial luck: being at the right place at the right time—the job seeker who happens to apply for a job at a firm that unexpectedly requires new staff. But if she had enquired the previous day she would have been unlucky. The agent is lucky to be given the opportunity to perform.
- (e) Consequential luck: luck in the way things turn out. Say the drunk driver who goes through a red light without incident.
- (f) Opportunity luck: in each of the cases taken above the lucky agent is provided in some sense or other with an opportunity she would not have had in the absence of luck. That is to say, the agent is granted a greater range of options that they are capable of realizing; consequently they are better placed to realize their personal ends and life plans.

I do not mean to say that each instance of brute luck comprises a completely independent form of luck, for it is clear that not only do they conspire for and against each other (e.g. a person born rich who subsequently wins the lottery. Alternatively a person born rich who loses all his savings in a stock market crash), but also that they are often referring to a similar form of luck. Moreover, sheer luck and consequential luck might be said to overlap with option luck given they involve, in some minimal sense, some kind of calculated choice.

Brute luck I take it is two-sided insofar as there is, firstly, an event or circumstance beyond the agent's control which, secondly, happens to coincide (or not, in the case of ill luck) with what is valued. From the point of view of desert, that value is determined by the appraisal of *others*. From the point of view of the agent that value is her *personal* ends and life-plans. Because of

these two sources of value an individual agent may be brute unlucky on three levels:

- (1) She is constituted by personal ends beyond her control (i.e. not cultivated or adaptable) and which cannot be realized feasibly (e.g. expensive tastes).
- (2) The pursuit of her personal ends, whether chosen or not, is thwarted by episodes of brute bad luck.
- (3) Her personal ends do not coincide with what is valued by others; for example, a person may be fascinated and extremely proficient in working on 19<sup>th</sup> Century steam engines but the pursuit of that end is of little use to others.<sup>44</sup>

Consequently once we take into account each form of brute luck and how they may act in concert, we see that the control element in the expression of value is increasingly nullified. Desert based on personal contributions and efforts appears to be negated once we have factored-out each instance of brute luck. As Nagel puts it, 'The area of genuine agency, and therefore of legitimate moral judgement, seems to shrink under scrutiny to an extensionless point. Everything seems to result from the combined influence of factors, antecedent and posterior to action, that are not within the agent's control.' (Nagel 1982)

However, that conclusion only follows to the full extent if we take the Kantian line of thought to its logical conclusion. We may question whether we ought to

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<sup>44</sup> I argue in Part II (esp. Chapter Five) that it is because of (3) that wage desert must be based upon the denial of personal ends, rather than the contribution of value to the well-being of others. This is because the steam engine enthusiast, in order to pursue his preferred ends, must take on tasks that are valuable to others, but not to himself (i.e. work); the resources reaped from working (i.e. wages) provide the means necessary to pursue his preferred ends. In effect, the wage compensates the steam engine enthusiast for the denial of his personal ends by providing the means to pursue them. Wage resources are converted into preferred ends. Although the extrinsic benefit of work (i.e. wages, self-esteem, self-realization, status etc.) may balance out the loss of the personal end (equal but different satisfaction through alternative ends), it is the pursuit of the personal ends *per se* which is fundamental to the proper compensation of denial (resources necessary to realize the agent's *chosen* ends). It is only where the worker consents to the former or ends-displacing variety of compensation that it is morally permissible from the point of view of agent autonomy. Hence, the mismatch between what is valued by the person and what others value is overcome by deserved compensation.

obliterate the basis of our interpersonal relations and our conception of personhood simply in virtue of the Kantian regress to the noumenal self. The question to be answered therefore is: what episodes of uncontrol should and should not be discounted from our account of responsibility? This conclusion is consistent with the idea that desert is an indeterminate concept which relies on an external account in order to flesh out the content of value *and* responsibility.

And so, as Arthur Ripstein has noted, ‘The real disagreement is political through and through, for it does not concern whether or not individual responsibility matters, but where to locate the standard of care that each of us owes to the others. This is a political question because the formal apparatus of responsibility cannot address it on its own.’ (Ripstein 1994:23) By ‘political’ Ripstein means the Rawlsian ‘not-metaphysical’: that is to say, an interpretation of responsibility and desert that does not rest on controversial doctrines that cannot be given a public justification. (Rawls 1993) As I noted in the concluding section to Chapter One, desert and responsibility are indeed central to the ‘public culture of contemporary liberal societies,’ not only in terms of justice beliefs, but also in terms of our interpersonal relations. Furthermore, desert presupposes a particular view of the self that must be accommodated if a theory of justice is to be uncontroversial, and therefore is to establish compliance and stability.

As will be hopefully clear by now I propose to argue in Part II for a theory of wage determination in which the core idea of desert (the controlled expression of value), which I take to be part of the ‘public political culture,’ is scrutinized by our higher-order concerns regarding the influence of luck on efforts and contributions. I contend that deserved compensation for socially valuable work satisfactorily reaches a balance between both ‘mutually challenging’ points of view. On this reading the *desert-basis* of wages comprises a hybrid of (a) contribution and (b) personal ends voluntarily forgone (i.e. contributory sacrifice), whilst the *metric* of wage desert is the personal ends forgone.

In order to arrive at this point it will be instructive to consider how other theorists have looked to resolve the subversiveness of luck on ordinary moral thought. It is clear that, as a minimum starting point, hard determinism can be put to the side because it is clearly a controversial doctrine.<sup>45</sup> Hence, we may begin to sketch out possible answers by looking at effort-based theories of desert (i.e. high-voluntariness interpretations of responsibility).

### 3.2 Deserving efforts

One view argued by John Rawls is that valuable performances are contingent on natural and social advantages that people are born with; the lucky starters, for reasons beyond their control, are granted an uneven start in their pursuit of their personal ends and life-plans. Hence, because the head-start is undeserved, its influence over a person's valuable performance should be factored out.<sup>46</sup>

It seems to be one of the fixed points of our considered judgements 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. (Rawls 1971:104)

Consequently, what we are left with after the influence of starting luck has been discounted from the performance is the performer's efforts. Rawls, however, states that even striving conscientiously cannot form the basis of distribution because there is no practicable way of determining for each performer whether they are conscientiously striving. This suggests that Rawls

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<sup>45</sup> Miller makes this point with regard to Rawls's project. (Miller 1996:281) But, as we shall see, the Rawls of *Theories of Justice* maintains that not all efforts are uncontrolled.

<sup>46</sup> The claim that endowments should be discounted from desert is also argued by (Rachels 1978) (Sadurski 1985:116,122-134) (Sadurski 1990) (Campbell 1988: chap 6).

is not, as some have argued (Nozick 1974:214), rejecting outright the idea that an agent may take credit for some aspect of his performance; rather he is noting the extreme difficulty of discerning luck-free efforts. 'The better endowed are more likely, other things being equal, to strive conscientiously, and there seems no way to discount for their greater good fortune. The idea of rewarding desert is *impracticable*.' (My emphasis.) (Rawls 1971) It is for this reason that qualified desert (i.e. conscientious efforts) and therefore desert in total cannot form a basis for defining the legitimate institutions of justice—Rawls is not taking a hard determinist line. As G.A. Cohen puts it, Nozick misreads Rawls as saying, in the passage quoted, 'wholly determined' rather than 'influenced'. (Cohen 1989:914) Hence, Rawls actually means to say that 'effort is partly praiseworthy and partly not, but we cannot separate the parts, and the indicated policy consequence is to ignore effort as a claim to reward.' (Cohen 1989:915)<sup>47</sup> (Cohen also notes that Rawls is inconsistent in his application of what is and what is not 'impracticable.' Rawls argues that although both efforts and expensive preference formation are only partially controlled, the latter is penalised in full (i.e. not compensated). (Cohen 1989:915-916))

But, going back a step, we may question whether uneven starts should reduce a person's desert in the first place. Alan Zaitchik argues that Rawls's argument is flawed because it presupposes that all antecedent desert-bases must be deserved given that starts are undeserved. This puts desert into a regress which, if we go 'all the way down' means that desert vanishes from view: in order to deserve Z, a person must deserve Z's ground Y, in order to deserve Y, he must deserve Y's ground X, and so on. (Zaitchik 1977) Desert is nullified not because the starts are undeserved but because each desert-basis preceding the immediate performance must be deserved. Zaitchik is of the opinion that the Rawlsian argument is anathema to our pre-theoretical certainty that at least some people deserve something. (Zaitchik 1977:373) However, because Rawls argues that

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<sup>47</sup> See also (Young 1992:324-325).

starts are undeserved *qua* uncontrolled, this does not entail the general rule that *all* antecedent desert-bases of a performance must be controlled. It is not necessarily true of Rawls nor egalitarians in general that they wish to reject all desert-claims, and consequently the general rule begs the question. (Sher 1987:25) (Young 1992,324)

What is being argued is that merely possessed or passive qualities (e.g. high IQ, beauty etc.), that are not the consequence of previous volition—not cultivated or developed by the person—are in themselves undeserved. This remains the case irrespective of whether we find it appropriate to admire or respect them; passive as opposed to active qualities may merit but not deserve admiration. In that case we clearly go beyond the low-voluntariness end of desert: the basis of requital is no longer something the claimant could have chosen not to do or, (in this case) chosen to have.

As we have seen, Rawls does not wish to hold allegiance to a full-fledged determinist position. As Miller succinctly states it, 'People are willing to believe both that a man deserves rewards and other benefits for actions he performs, and that these actions can be explained in causal terms.' (Miller 1976:102) And it seems that most egalitarians also want to remain consistent with that view, but nevertheless are inclined, upon reflection, to permit a narrower range of deserts *qua* uncontrol.

However, as Sher points out Rawls's position does overstate the case. It is unnecessary to argue that the starts themselves are undeserved, because what is really at issue is the fact that they are unevenly distributed at birth, rather than the fact that they are uncontrolled. Hence where advantages are *evenly* held we need not factor them out of the desert-basis. (Sher 1987:26-27) Thus, what we arrive at is the idea that a person can claim credit for at least (a) the choice to deploy talents towards a chosen end and (b) the subsequent exertions required to realize that end.

In another attempt to resolve the problem of brute bad luck Ronald Dworkin argues that persons should deserve *qua* their ambitions and efforts, but not in virtue of greater talent. (Dworkin 1981b:311) However, like Rawls, he argues that it is impossible to differentiate between what efforts a person can and cannot take credit for. (Young 1992:324-325) The issue of determining responsibility is circumvented in the following way: persons begin with an equal allocation of tradable resources which in turn provide the equal opportunity to pursue one's *chosen* ends. To represent this, Dworkin proposes a hypothetical auction in which persons use their equal resources to bid for those things possessing the objective properties required to help them pursue their ambitions. (Dworkin 1981b:285-289) To get around the problem of unequal initial endowments, Dworkin proposes a hypothetical compensation scheme in which, prior to the allocation of resources, and without knowledge of their endowments, people take out insurance against the possibility of being unlucky in the natural lottery. (Dworkin 1981b:292-304,314-319) In effect, people are compensated for the comparatively lesser powers—material resources and mental and physical capacities—they have to pursue their tastes and preferences. From the point of view of equal opportunity through resources, whatever value or disvalue accrues from each person's subsequent pursuit of their personal ends is theirs. This is because the person *chooses* what premium they pay to the insurance pool and what they do with the equal initial allocation of resources—they make calculated risks and gambles based on the initial equal holdings.

Now the Dworkonian solution to the problem of brute luck is, I contend, flawed for the following reasons: Firstly, despite the equal initial allocation of resources it underestimates the ability of ill luck in one's calculated gambles to systematically disadvantage some persons over the long run. Secondly, it ignores those who possess expensive tastes for reasons beyond their control—it fails to provide the resources sufficient to compensate for those costly preferences that are beyond the agent's control. (Cohen 1989) Thirdly, it is by no means clear how, beyond acting as a guiding principle, the hypothetical



auction and insurance scheme can be implemented in reality. Because the second two points have already been discussed in the literature, I shall, in the following section, focus on the problem of option luck. Moreover, it directly concerns the question of deservingness implicit in Dworkin's idea of ambition-sensitivity.

### 3.3 Option luck: Cumulative advantage and gambler's ruin

Some theorists have mistakenly argued—for example (Dennett 1984: 95-96) (Goodin 1988:294 fn.2)—that starting differences will even out over the long run. In fact, it is far more plausible to say that initial differences will be accentuated over time. (Waller 1989:209-211) The better-endowed will cumulatively reap comparatively greater benefits because they are more able and better placed to make successful, calculated gambles. In general we may say that those who enjoy good fortune at some point in time (including initial endowments) increase their chances of subsequent success. Life gambles are not analogous with coin tossing because the outcome of each decision is partly contingent on the previous outcome: the success or failure of the previous decision thus influences the chances of future success. For example, a person who makes a career choice based on existing consumer preferences, which then change, may be left with undervalued skills. This problem is compounded by the relative difficulty of changing one's skills. In contrast, and leaving aside for the moment uneven natural endowments, the socio-economically worst-off face a greater chance of ruin. As a result of this, and also because they will be more risk-averse as a consequence, their success rate will be comparatively lower.

As Alexander Coram has recently noted (Coram 1997) (Coram 1998)<sup>48</sup>, the very idea that fortunes will even out as the number of gambles is increased is in itself misguided, for even if we leave aside the problem of uneven starts

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<sup>48</sup> See also (Tedin 1998).

entirely, successes do not necessarily balance out as the number of gambles is increased. The *proportion* of successes will even out, but not necessarily the *number* of successes. For example, it still might be the case that after a large number of gambles, that the actual number of successes and failures between person *A* and person *B* are not the same. After 1000 gambles, suppose *A*'s success rate was 0.509, and therefore she has had 18 more successes than *B*. After 10 000 gambles *A*'s success rate may have reduced (although not necessarily) to 0.505. *A* would have been successful 100 more times than *B* in spite of the lower success rate. Success has evened out as a proportion of the total, but not in terms of the actual or absolute outcomes. Person *A* is only fractionally more successful than *B* after 10 000 gambles in terms of a proportion, and yet she has accrued a significantly greater number of successes.

David Miller accepts the problem of cumulative advantage when discussing market outcomes: 'capitalist markets amplify the role of luck by allowing participants, if they choose, to carry forward winnings in the form of capital investment.' But he commits the law-of-large-numbers fallacy: 'if periods were numerous, and the gains and losses relatively small and randomly distributed, then each person's long run level of benefit might not deviate significantly from their deserts.' (Miller 1989:171) But as we have seen, actual outcomes can deviate from expected outcomes (desert), and in absolute terms that may be significant. Assume that there are no contingent influences (i.e. ability). If after 1000 performances the expected outcome (desert) is attained at a rate of 0.490 then the due desert is not received 10 times. After 10,000 performances the expected outcome is attained 0.495 then the due desert is not received 150 times. Moreover, even though those 150 non-receipts of deserts (expected outcomes) were each relatively minor (which in reality they very well might not be) they would add up to a significant amount of total non-receipts (and each would have a cumulative effect).

Once we combine the fact that gambles over a person's life may not even-out with the cumulative effect of luck noted previously we can see how luck may

systematically cut against the ideas of desert and responsibility (and also socio-economic mobility). This means that unless we accept desert's inegalitarian implications, then some manoeuvring is required to maintain it as a viable principle of justice. We can allay the problem of circumstantial luck if we employ a probabilistic account of responsibility, i.e. what people deserve are the expected outcomes of their intentions and actions, rather than the actual outcomes. But that does not resolve the issue of uneven starts: Should the expected outcomes be based on each person's initial advantage or disadvantage? For although circumstantial luck is removed by equating desert with expected outcomes, birth luck cannot be eliminated in this way. It would appear that even more drastic manoeuvring will be required to rescue desert from the problem of uneven starts. This leads Coram to conclude that 'If what people deserve is the expected outcome of an action, then the poor get less than they deserve with much higher probability than the rich get less than they deserve.' (Coram 1997:77)

Dworkin argues that the outcomes of calculated gambles and risks (i.e. option luck) should be left to lie as they fall because are chosen based on an initially equal distribution of powers. That is to say, he evades the problem of brute luck by providing greater or lesser opportunities to realize one's personal ends (i.e. access to a greater variety of gambles and greater probability of successful gambles) by ensuring the equal power to pursue one's ends. But that neglects the fact that one unsuccessful gamble will effect one's subsequent choice of gambles and the probability of success. And, as we have seen, that need not even out over one's life-span—a failure (no matter how small) at one point in a person's life precludes access to subsequent gambles that might very well have been successful. The outcome of each gamble cumulatively advantages or disadvantages each person over the future stream of gambles. For this reason I take it that Dworkin drastically underestimates the factor that motivates his whole thesis: namely, the influence of events and circumstances beyond the agent's control. The idea of desert, therefore, is severely threatened even where there is an initially equal distribution of powers.

#### 4. Deserving compensation – a preliminary statement

The problem posed by luck is that it threatens the possibility of agent control. But even if we reject this claim and advocate a compatibilist position, the pervasiveness of luck still challenges the practicality of discerning the controlled expression of value. The solution is to employ procedures to constrain the evaluation of deservingness rather than leaving it to individual subjective judgement. The question, therefore, is whether pre-institutional desert should define the just qualifying conditions embodied in the rules and institutions of justice.

Rawls and Dworkin look to circumvent the problem of discerning genuine deserts by setting up just institutions from which legitimate entitlements may follow. Desert follows from, rather than being definitive of, just qualifying conditions. Because Dworkin permits subsequent receipts to be ‘ambition’ or ‘choice’ sensitive his thesis is more amenable to the idea of desert than Rawls’s although its exact content is, I take it, deliberately under-specified. But the institutional formulation of desert is undermined, I argue, because luck is far more pervasive than Dworkin contends. Consequently, the resulting distribution of resources will not satisfactorily reflect personal ambition.

In a similar vein John Charvet has suggested that if fortuitous windfall losses place a person below the baseline (i.e. initial equal tradable resources) then they are to be compensated from the windfall gains that others have been fortunate enough to secure. That is to say, undeserved losses (below the baseline) are compensated by undeserved gains. In other words, inequalities arising from luck subsequent to the initial equality of resources are only problematic where persons are placed below that threshold. (Charvet 1995:204–206) However, we may as result of gambler’s ruin and cumulative (dis)advantage be obliged to compensate losers far more extensively than it first

might appear. Moreover, the problems associated with establishing the ideal of an initial equality of opportunity that includes equality of internal resources (talents, capacities, abilities and so on), appears insurmountable; and, assuming such a starting point and that desert is therefore legitimate, how are we then to deal with those who are unwilling to contribute value to the social enterprise?<sup>49</sup> Finally, as others have noted, Dworkin is inconsistent with his recognition of luck because he does not take into account unwanted or exorbitant preferences that are beyond the bearer's control. (Cohen 1989:921-924)

I would propose a different solution to the problem. Rather than taking a stand along the spectrum ranging from high-voluntariness and low-voluntariness it is preferable to argue that desert should be sensitive to the personal ends denied in the course of contributing value, rather than making it sensitive to the *extent* of the contribution itself (i.e. the degree of controlled value expressed). Desert, therefore, does not rest on the *extent* of responsibility over the performance (as with contributory desert), but only on the fact that they were responsible for it—they need only meet the minimum voluntariness requirement of desert (i.e. could have chosen not to suffer the harm). We can say, therefore, that the performer of a contributory sacrifice can take credit in full for the contribution and the denial combined because it is the latter that forms the relevant metric of deserving treatment. There is no need to speak of degrees of responsibility. All that is required is the minimum voluntariness: that the agent could have done otherwise. We only need be concerned with the degree of denial resulting from the work, or, put perversely, 'how much harm the agent can take credit for'.

In Part II, I shall argue that the core idea of desert is not discarded because there is control and value: that is to say (a) voluntary contribution and a voluntary harm, and (b) something to admire in the form of a contributory sacrifice. If the argument is successful then desert can be shown to be a pre-

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<sup>49</sup> On the question of exploitation by the beneficiaries of an egalitarian redistribution, see the recent debate between Stuart White and Phillipe Van Parijs (White 1997) (Van Parijs 1997). See also (Arneson 1997).

institutional determinant of the qualifying conditions of legitimate entitlement. We need not abandon pre-institutional desert because of the impracticability of measuring the degree of controlled contribution. What matters is each person's ends and life-plans; distribution resources according to personal welfare (qualified to take into account expensive ends that the person has control over) is the best means of ensuring that people's ends are met. The metric of desert is the performer's loss in well-being, rather than the addition to the well-being of others (or of value to the world). Nevertheless, by taking the level of well-being foregone as the metric of deserving treatment, we appear to be merely relocating the problem of measurement. Thus, in arguing for the desert of compensation I will also be concerned to show what is to count as a genuine sacrifice in personal well-being and how it is to be gauged.

## Part II: Compensatory Desert

### Introduction

In the preceding chapters I have attempted to defend the view that desert is characterized by a coherent set of distinguishing features, that is to say, an intersubjectively agreed-upon set of family resemblances that allow us to identify whether a particular claim to requital is a genuine instance of desert. However, the more specific content of desert—the required value and degree of control—are external to the concept. Consequently, we are left to debate the precise content that is to emerge from the accepted criteria. Nonetheless, the criteria do allow us to identify misuses of the concept (e.g. desert as those acts and requitals that enable an improvement in public well-being; entitlement; claim-rights; need; merit; and so on). Or, to put this in another way, they denote the primary sense in which desert is prior to, independent and therefore critical of distributive procedures and their outcomes. Desert will challenge rules of justice that allocate rewards where there is no controlled and valued action, or where the reward is comparatively disproportionate to the quality of the performance. It was concluded that conceptions of desert based on a subject's contributing or adding value to the world are seriously challenged by the pervasiveness of luck in everyday life. If desert is taken to be based upon the outcomes that people arrive at (both in terms of the effort displayed and contribution made to other's well-being), then uneven initial endowments and subsequent episodes of good and ill fortune lead us to question whether they can be said to 'take credit for' their outcomes. The responsibility criterion of desert, therefore, threatens to undermine the possibility of desert, because our life chances are unavoidably influenced by circumstances over which we have no control.

We appear therefore to be faced with two possibilities, both of which are not entirely palatable. Either we abandon desert altogether, or we accept that our initial advantages may affect what we deserve. The first possibility is untenable because the practice of desert is deeply embedded in the way people relate to each other in everyday discourse. More significantly, it would require the abandonment of the ideas of responsibility and free agency that lie at the heart of our interpersonal relations. The second possibility appears equally undesirable because it follows the ‘fatalistic’ rationale that unequal endowments should be accepted as inevitable determinants merely because they are unavoidable; this would imply that if we want to retain desert and responsibility for our actions we are forced to concede that our performances are at least partly influenced by uneven starts. It is surely true that our initial endowments are unavoidable in the sense that they form part of the identity of the self, but it seems deeply unsatisfactory that by default they should influence the distribution of benefits. There is something deeply wrong when the way someone is constituted happens by chance to produce that which is socially valued, for a person’s purchasing power, pension payments, children’s education, access to medical care and so on then become a function of whether or not her initial endowment enables her to contribute social value, rather than result from her own freely chosen actions and intentions.

In the remaining three chapters I shall make the case that deserved compensation provides the resources to answer the problem of uneven starts without compromising social efficiency. Compensation for disutility provides a means of constructing a conception of desert that responds to the charge of inegalitarianism, but which remains faithful to the core criteria of desert (the controlled expression of value—henceforward, CEV). Compensation, it is argued, is deserved for the voluntary denial of personal ends and life-plans in the course of creating value for others. Henceforward, I shall refer to the ‘value to others’ rather than the more abstract ‘value to the world’: This is because I take it that the basis of evaluation of in the context of work typically



rests on performances which add to the well-being of others. (Although this is not necessarily the case: see footnote 85).

In Chapter Four I argue that desert is more compatible with a future-oriented or social-goal based outlook than is typically assumed. And, in preparation for the following chapters, I argue that desert is fundamentally concerned with counterfactual performances. In the following chapter I aim to show that compensation, in the context of performances that are socially valuable, is consistent with the requirement of control; in addition, I outline how compensatory treatment must be defined and measured if it is to restore the personal ends of the harmed. In the sixth and final chapter I respond to the claim that desert cannot be a legitimate desert-basis because the harmed have not expressed any value. I conclude by showing how, based on the Theory of Compensating Differentials, the idea of deserved compensation can accommodate a normatively justified and socially efficient allocation of resources.

## Chapter Four: Desert and Future Value

### Introduction

In the following chapters I will argue that the core idea of desert—the controlled expression of value—can be retained if the reason for desert is construed as the disutility incurred by the deserving subject in the course of her adding value to the world; in this case, the metric of deserving treatment is the personal ends forgone in the process. On this reading desert is sensitive to the personal ends of each person, but insensitive to the outcomes produced.

Our immediate concern here is the second main aspect of desert: The expression and appraisal of value. While utilitarian arguments are typically criticized for prioritizing social well-being over individual justice-claims (in this case personal desert), equally we may question desert's disregard for future value. Desert, as we have already seen, appears to be inherently backward-looking in that requital cannot precede the past (or present) expression of value by a person. Desert, therefore, does not appear to be concerned with the consequences of that expression, and the requital of it, for the world. Rather, the focus of attention is on the events that lead up to a particular outcome.

This preoccupation with the past exposes the concept of desert to the problem of luck. If the outcome of a person's actions were all that mattered in the determination of desert, then whether or not this outcome had been aided by good fortune would not concern us. But the past-oriented nature of desert forces us to look not simply at the outcome *per se*, but also at the instances of chance that conspired to help bring about that outcome. And there is no in-built limit on how far back our control over the outcome should go (or to use Nozick's metaphor, how far 'down' it should go). Formally speaking, it is the concept of responsibility that is backward-looking rather than desert *per se*. That is to say, it is the *past* control of the claimant that defines her

deservingness. But, because responsibility is a fundamental requirement of desert we may ascribe the past-looking characteristic to the concept of desert as well. It is from this last point that consequentialism derives much of its strength: since a utilitarian calculus does not necessarily need to contemplate the pre-history of the value expressed by a person, it can evade the tension between control and luck. It is no surprise, therefore, that utilitarians are often unconcerned with the ideas of desert and responsibility.

The main question posed by the consequentialist is: Why should the past matter? Why is it that a past sequence of events should be at all relevant to what we value in the present? Should we not forget the past and be more concerned with what is going to happen in the future? In the following I will argue that while desert presupposes that we respect the quality of will that each person exhibits, it is compatible with a future outlook. Consequentialist schemes are pre-occupied with the valued outcomes of performances—value for the world—rather than who performed it and the quality of the performance. What this means is that a consequentialist allocation of resources may at most coincide with a desert-based allocation. Personal desert is only taken seriously if it is instrumental to attaining future social objectives.

In Section One I will argue that while desert has some consequentialist elements it cannot be conflated with a utilitarian scheme. Nevertheless, the distributions utilitarians advocate will tend to coincide with desert-based distributions because the value basis is often the same. Section Two will make the argument that there are strong utilitarian reasons for taking personal desert seriously. I will then, in Section Three, seek to outline in more detail the ways in which desert is consistent with the pursuit of future value. I will argue that desert is not in fact as confined to the past as many theorists usually presuppose it to be. In Section Four I will consider Fred Feldman's recent attempt to make consequentialism sensitive to personal desert by incorporating it into a utilitarian aggregation. I conclude that Feldman's thesis only succeeds by making desert a prior and independent constraint on the maximization of utility.

(Feldman 1995a) (Feldman 1995c) In conclusion, and by way of introduction to Chapter Five and Six, I will suggest how desert can be equated with social optimality, and at the same time respond to the claim that social goals fail to respect the personal commitments and projects of persons.

### **1. The distinction between desert and utilitarianism.<sup>50</sup>**

The implications of desert and utilitarianism may at times coincide, but must not be thought to equate, since the question each asks is distinct. Desert asks: ‘How much control and value did the person display?’; while utilitarianism asks: ‘What outcomes will ensure the improvement of overall well-being?’ In other words, consequentialist and more specifically utilitarian theories are not agent-relative: ‘For they do not embody judgements about which overall states of affairs are best for particular individuals, but rather judgements about which states of affairs are best all things considered, from an impartial standpoint.’ (Scheffler 1982:1) From its evaluative standpoint utility is unconcerned with control, with who bears the value (i.e. who was responsible for it) and whether it has been actually been performed. (I take up this last point in the following section.) At most, for the utilitarian, the character of a person’s performance is valued because of its outcome and/or because it indicates the likelihood of the valued outcome being repeated. By contrast, the standpoint of evaluation for desert is sensitive to the level of control and value that is attributable to a person.

Despite this, desert and utility will tend to converge because the value on which a performance is appraised is often the same. Desert is typically, though not necessarily, based on the value of a person’s performances for the well-being of others. That is to say, the performance is evaluated in terms of the claimant’s

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<sup>50</sup> The following is largely drawn from the analyses made by (Miller 1976) (Sher 1987) and (Lamont 1994). For earlier influential discussions see (Feinberg 1970:80-83) (Barry 1990:165-6) and (Kleinig 1971)

ability to satisfy people's desires or more broadly speaking her contribution to the overall standard of living. (Lamont 1994:58-59) (Lamont 1995:219-222)

Also relevant to this evaluation are the harms incurred in the process of adding value, the effort exerted in adding value, and the actual degree of value that is added. Desert, in its contributory form, is consequentialist in the sense that people are deserving partly because of the effect their performance has had on the well-being of others. As with consequentialism proper, desert is usually evaluated in terms of satisfying people's desires (though in the case of effort and compensation it may not be based on the amount of want-satisfaction achieved—but exertions towards want-satisfaction may be a precondition of requital).

Nevertheless, utilitarianism and desert diverge on two important conceptual issues: firstly, the desert-basis and secondly, the connection between the desert-basis and the amount of requital.

- (a) Deserving performance: Although contributory desert is concerned with the effect of a person's performances on the well-being of others, the value-basis and the end-point need not be the same. More importantly, the utilitarian need not be concerned with the quality of the person's will. Hence, even if the outcome were entirely fortuitous it would still be valuable with respect to overall well-being. Conversely, attributing desert to a person may not improve, and may even be detrimental to, the public interest.
- (b) Deserving treatment: if a utilitarian advocates rewards it is in order to encourage the repetition of valued acts. Rewards are thus granted not because of the controlled expression of value *per se*, but as an incentive for the person and others to carry out acts that maximize utility. As a result, provided it has the desired incentive effect, a person may be allocated rewards that are out of proportion to the controlled contribution they have made.

So far we have ascertained that desert and utility will tend to converge, but only because they are usually grounded on the same value basis: the overall standard of living. But while utilitarianism is concerned with the positive (and negative) effects of a performance, it is not necessarily concerned with a person's control over the performance and its outcome. While desert and utility are both concerned with the contribution of value, utility is unconcerned with the level of control over the contribution or in what order receipt and contribution occur. Desert, on the other hand, pulls in two directions: people deserve because of the positive and negative consequences of their performance, but deservingness is also qualified by the degree of control that *was* shown over the performance.

Some indirect utilitarians have looked to align with desert more closely by arguing that maximal utility follows from deserving acts and deserving treatments.<sup>51</sup> It is argued that recognizing the role that desert and responsibility play in everyday discourse will help establish overall well-being. The assumption is that rewarding the controlled expression of value will maximize utility because (a) deserving acts are in the public interest, (b) rewards act as incentives to repeat those acts and (c) recognizing responsibility indicates that the rewarded person is capable of repeating the valued performance. The positive attitudes of gratitude, admiration, approval and so on become attached to useful acts. These attitudes are reinforced by the receipt of more tangible benefits (praise, rewards, prizes and so on). As a result, the practice of desert inculcates a disposition to carry out utility-maximizing acts. This applies even if the practice of desert and responsibility are argued to be merely a pervasive belief structure—in that case the belief in the importance of desert is taken as instrumental to achieving a desired social goal.

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<sup>51</sup> This indirect utilitarian case for desert is more usually applied to retributive justice, but it is equally applicable to social justice. (Kleinig 1971:73)

On this reading of utilitarianism the pre-history of an outcome is taken into consideration. But the question asked by the utilitarian remains distinct. The past control subjects exert over the outcome is only relevant insofar as it indicates the efficiency of allocating them an incentive. That is to say, the marginal productivity and control displayed is taken as an indicator of whether they are capable of not only repeating the performance, but also increasing the amount of valued outcome. Where there will be no incentive effect on the performer or others, then a person will not be rewarded in spite of deserving to be. (Miller 1976:93-94) The whole framework, therefore, only succeeds if the content and implications of both desert and utility happen to coincide. Where they do not and the utilitarian point of view prevails, then the desert theorist will be deeply critical of the resulting allocation of benefits. The utilitarian is then forced to salvage his alignment with desert theory by claiming that since desert and responsibility are so deeply embedded in our interpersonal relations, the disutility caused by ignoring desert may suggest we not do so. (Sher 1987:11)

The indirect account of utilitarianism only remains consistent with the logic of desert provided it is the controlled expression of value that maximizes well-being. If the utility valuation were not sensitive to the responsibility and the extent of value exhibited, then we would still have a misuse of the concept of desert. For desert is not simply those acts and rewards which are utility-maximizing. (Sidgwick, for example, takes this kind of position when he argues rewards are allocated solely because it would be expedient to do so. That is, desert is interpreted as incentives to perform irrespective of whether the incentive is deserved. He thus argues that though determinism rules out desert, it is socially efficacious to maintain the practice of desert and responsibility. (Sidgwick 1962:284)) The utilitarian sees desert as purely instrumental to the achievement of a desired end, rather than as being prior to and independent of that end. Yet, in order to take desert seriously, the utilitarian must assign it priority.

To this end it may be argued that a rule-utilitarian framework is more sensitive to personal deserts. According to this proposal we have two tiers: one which is past-looking, the other forward-looking. Individual acts are evaluated in terms of their value and control, while the institutional structure is justified in terms of utility. But, as we have already seen<sup>52</sup> this strategy fails because the institutions constrain what is to count as deserving. (Rawls's approach is similar insofar as prior rules and principles of justice define which deserts are legitimate.) That is, desert-claims that lie outside the *a priori* rules of justice cannot be justified. The legitimate or ideal rules proposed by the institutional strategy might very well fail to embody desert-claims that are intuitively sound and which the theorist may herself wish to include.

## 2. The disutility of disregarding desert.

So far we have noted that although desert is compatible with a forward-looking perspective, it remains conceptually distinct from utilitarianism. Utilitarianism, even in its indirect guise, is only concerned with recognizing the person associated with an outcome insofar as it helps determine the most efficient allocation of benefits. The utilitarian schema, therefore, is at most only instrumentally concerned with a person's controlled expression of value. If the person's performance is not useful in maximizing well-being, then the utilitarian evaluative standpoint remains indifferent—the 'creator' of value is regarded as only a means to the attainment of overall well-being. Whether or not a valued outcome 'belongs' to an agent is of no direct concern. However, this suggests two related reasons why a utilitarian would want to take desert seriously.

Firstly, a utilitarian scheme treats our interpersonal relations as at most instrumental to achieving a maximal outcome. But to do so ignores the fact that

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<sup>52</sup> I have responded in more detail to the Rawlsian and rule-utilitarian challenge to pre-institutional desert in Chapter Two.



we impute agency to others and judge people based on the level of agency they appear to exert. That is to say, we react to the quality of the will displayed towards us by people (i.e. the amount of care they take in avoiding harm to us and others and the level of control over the expression of value they exhibit) and based on that ascribe the appropriate level of deserving treatment to them. Moreover, based on this notion of agency we say that people's choices and actions belong to or are attached to them. Hence, the way we relate to one another presupposes individuated selves capable of free agency. Utilitarianism, however, disregards the significance of agency, taking persons as objects to be managed and controlled in order to achieve social goals. But given that desert is central to the way we relate to one another and the way we conceive of one another, to ignore it will have deeply disutilitarian consequences. At the very least, such a scheme will struggle to obtain compliance from persons and will thereby endanger societal stability.

Secondly, disregarding agency in this way threatens to undermine how we conceive of others and ourselves. If we take past choices and actions and their outcomes as constitutive of personhood, then to ignore them may have deeply disutilitarian consequences. Hence, preserving personhood may turn out to be the strongest reason why the utilitarian ought to cede priority to desert. For the dislocation of morality from personal identity implicit in utilitarianism would, over the long-run, be detrimental to overall well-being. In other words, our interpersonal relations, upon which desert is founded, also presuppose that persons are purposive agents. Desert is based on past facts about *a* subject, in particular the choices and actions the subject directs towards chosen goals. And those goals define the self that the agent wishes to arrive at in the future; hence the ends or goals of the person and the choices and actions aimed at realizing them are constitutive of that person's self. They comprise what the agent wants to be and also strives to be. This purposive agency tends to generate value for the agent and the world. Desert requires that where the creation of value does not directly meet the agent's personal ends, she should be requited sufficiently for the pursuit of them. In this way, the production of value for others becomes

instrumental to the pursuit of goals and life-plans. Intentions, choices, and actions aimed towards personal goals are then closely integrated with the idea of a deserving performance.

Desert, therefore, is closely linked to the personal ends, commitments and life-plans of the agent. In other words, the past matters because it is formative of the self's identity. And by the same token the future matters because we perform with our future selves in mind, mindful of where we want to be as a result of our choices and actions. In this sense the future is also formative of identity.<sup>53</sup> If we want to show equal respect for each person, then we are bound to take into account personal desert. This in turn requires that we consider the past characteristics of an outcome. But if we appropriate that 'past' (and what results from it), and ascribe it to common ownership, we remove the possibility of a coherent individual person. Consequently, if we want to preserve self-identity, there are strong utilitarian reasons to ensure that desert is given priority over utility. Because, as we have seen, contradicting the practice of desert would generate net disutility, not only because doing so undermines the way we relate to each other, but also because it obliterates our sense of separate identity.

I have argued here that the agglomerative nature of the utilitarian scheme not only fails to treat persons with equal respect as autonomous, value-creating agents, but also that such a scheme is counterproductive because it generates disutility. It appears therefore that a plausible utilitarian theory must embody personal desert not merely as a belief that is instrumental to the achievement of

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<sup>53</sup>Even if we concur with Derek Parfit that personhood is a 'less continuous and connected' phenomenon than we assume, there still remains a person to whom we ascribe personal identity. We may be less concerned with maintaining the separateness between them, but it remains the primary object of our appraisals. What does fall away if we begin to question the temporal continuity of the person is what can be added into a person's desert. We may note three ways in which the deservingness of a person may be constrained: (1) distant and unrequited performances bear less force in the present; (2) the further we go back the less determinants of a deserving outcome bear any significance for desert (e.g. natural talents); (3) the further we go forward the less the beneficial effects of an outcome can count towards the desert of the person.

future goals (impersonal point of view), but as a principle that is necessary in itself. In section 5 I will consider a novel attempt by Fred Feldman to incorporate desert into the maximal calculus. But first I want to address the question of just how much desert is restricted to the past.

### 3. The temporal boundaries of desert.

It is the received wisdom about the principle of desert that the desert-basis must precede the ascription of desert to a person. (Feldman 1995b) In *Social Justice* David Miller notes that, 'Desert judgements are justified on the basis of *past* and *present* facts about individuals, never on the basis of states of affairs to be created in the future. Desert is a 'backward-looking' concept, if we regard the present as the limit of the past; utility is a forward-looking principle.' (Miller 1976:93)<sup>54</sup> According to this reading of desert, antecedent events carry normative force in the present: the past enactment of the desert-basis by a person leads us to confer value on them now. But desert-bases yet to be enacted do not confer value on us now. Unless the desert-basis is actualized, desert cannot be attributed and requited. (Sher 1987:5,59,99,128)

Utility, by contrast, is not directly concerned with when or whether a desert-basis has occurred. Incentives, to take a clear-cut example, are allocated based not on a past performance, but in order to encourage a *future* performance (say a wage increase for existing staff to encourage greater productivity *and* attract new staff). Let us now examine, however, the extent to which the practice of desert, as the received wisdom proclaims, is limited to the past and present facts about a person.

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<sup>54</sup> And as Feldman notes there are a number other of philosophers who make statements to similar effect. (Feinberg 1970:72) (Barry 1990:111) (Kleinig 1971:73) (Rachels 1978:154) (Sadurski 1985:118).

Firstly, we may acknowledge that the performance itself is future-directed; it is concerned with both the antecedents *and* the consequences of the performance. The definition of the desert-basis (the required value and the required level of control) typically precedes the actual expression of it by the performer. In other words, the evaluative standpoint is prior to the performance. That standpoint prescribes evaluation based on the person's ability to help realize a future state of affairs. (Hence, the sculptor deserves plaudits for successfully adding aesthetic value to the world; the worker deserves a bonus for meeting the new production levels and so on.) And, closely related to this point, the agent's performance itself is future-directed in that it is based on his intention *to* achieve a particular outcome (whether that be his own want-satisfaction or the want-satisfaction of others). Putting this the other way round, if a valuable outcome is unintentionally arrived at by the person, then they are not deserving (although an outcome which is intended but presently not valued may be retrospectively valued and thereby deserving).

It will quickly be pointed out that these points do not contradict the idea that the performance or quality displayed must predate the attribution of desert. But they do reinforce the point already made: that the framework of desert is in important respects future-looking. While the actual appraisal is past-orientated, the performance of the agent and the criteria of appraisal are future-directed. The practice of desert is fundamentally concerned with the agent's ability to fulfil a valuable future state of affairs.<sup>55</sup> We can begin to see, therefore, how desert is more compatible with the attainment of socially optimal outcomes than has usually been thought. Social goals may be proposed and a person's

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<sup>55</sup> One implication of this is that like consequentialism, desert appears to have no in-built end-point. Given that a person's performance may be said to continue, albeit indirectly, to add value to the world, we may ask: What is the *end*-value on which deservingness is to be judged? It seems that not only does the concept of desert not tell us how far back we should go to ascertain a person's responsibility over an outcome; it also fails to inform us how far forward we have control over the consequences of our choices and actions. However, desert is not subject to a forwards regress because, as the idea of control suggests, a person cannot take credit for consequences they did not intend and/or are incapable of realizing. And, extending the same point, the end-value is explicit in the performance because it is directed towards a pre-defined objective.

deservingness determined based on their controlled performances to realize those goals. (Lamont 1994:60-62) However, unlike desert, utility is not necessarily concerned with whether the value has *already* been brought about (i.e. past-orientated) and, if so, how that value was brought about (i.e. whether it was controlled) and who brought it about (i.e. the bearer of value). Utility will tend to coincide with desert in regard to the contribution of value, but not in regard to the other features of desert.

However, we may go further and also question the temporal ordering that the received wisdom has imposed on desert. Desert requires that there be a desert-basis (the controlled expression of value) and that it is fitting or appropriate that this basis should be ‘balanced-out’ by deserving treatment at some point in time. Hence, we are indebted to the worker for his performances and, therefore, repay him proportionally to the control he displays and the value he contributes. To borrow a phrase from George Sher, desert requires *diachronic fairness* between the display of a desert-basis by a person at some point in time, and the receipt of deserving treatment at another point in time. But it is not clear in all cases that desert is conditional on the prior enactment of a desert-basis. To illustrate this point I will consider three contexts in which the attribution of desert precedes the enactment of the desert-basis: anticipating desert, pre-empting desert and, in the following section, counterfactual desert.

#### (i) Anticipating desert.

A person is chosen for a job promotion, educational opportunity or scholarship based on the valuable performances *to be made*. In each of these cases it seems that we can ascribe desert prior to the desert-basis without fear of misusing the concept of desert.

However, I am persuaded by David Miller’s more recent claim that jobs, scholarships, etc. are opportunities that are based on the evidence of past and present facts about the person. (Miller 1992a:173) That is to say, the mode of

treatment is deserved based on antecedent performances rather than the performances that will subsequently be made. Once we construe jobs as opportunities to contribute in the future we can see that job-desert is backward-looking. That is to say, the most deserving (best-qualified) candidate is the one whose past performances indicate that he is likely to contribute the most value in the future. On this reading jobs, promotions, scholarships etc. are deserved *opportunities to perform*. And they are deserved based on past and present facts about the candidate that indicate his potential. In a sense, the successful candidate deserves the opportunity to perform based on the capacities or potential he *now* possesses. But a candidate's potential is evidenced by prior performances (including the development of skills and ability through work experience and education) and so the desert-basis is not simply possessed qualities (i.e. merit).<sup>56</sup>

Clearly future states of affairs do play some role in the determination of a candidate's deservingness. Personal qualities relate to past performance as well as the potential or capacity to perform a future task. Hence, the desert of opportunities is both forward and backward-looking. The desert of jobs, scholarships etc. anticipates a future performance: past and present facts about the candidate are evaluated *in the light of future contribution*. (Miller 1992a: 173-174<sup>17</sup>) The desert of opportunities predicts that the successful candidate *will* contribute value at a later stage. Without that prediction the desert of opportunity in these cases does not make sense.

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<sup>56</sup> It may be argued that because the anticipated performance has not been enacted (i.e. the potential has not been realized), entitlement provides the best description of the allocation of jobs etc. That is to say, the candidate is entitled to the opportunity *qua* meeting certain qualifying conditions (e.g. educational credentials, number of years spent working in the field, etc.). On this reading the best-qualified candidate is entitled to the position now, but only deserves it when the future contribution is actually made; however, this interpretation ignores the fact the candidate must have demonstrated potential rather than merely satisfying a series of criteria. The fact that a candidate has five years work experience and speaks English as her first language may conceal the fact that she has been unproductive during those five years and has poor communication skills.

By incorporating the idea of an anticipated performance, Miller appears to be permitting a lot more elbow-room for the future perspective than the analysis presented in *Social Justice* affords. Opportunities are deserved based on proven potential to carry out a future performance. This is in keeping with Sadurski's claim that actualization requires something to be *performed* rather than merely *shown* or displayed (i.e. merit). That is to say, the desert-basis must be something *done* rather than merely *possessed* as personal attributes or potential. Hence, he argues, mere possession of personal attributes is insufficient to establish desert:

In order to be revealed to others and to be perceived by others, they must be materialized in some effort. For instance, a person's talent as a pianist may be admirable in itself (though available for admiration only so far as it is manifested in some actual performance), but considered in itself, it yields no judgement about the pianist's 'desert.' (Sadurski 1985:145)

Sadurski does not take the additional step of noting that personal attributes, capacities, potential etc. may not only be 'shown' by past performances but may also anticipate future performance. As a consequence, he construes the temporality of desert too narrowly. On his reading, jobs can only be deserved based on past contributions, without regard for the candidate's future potential. (Sadurski 1985:118) But this is tantamount to conceding that jobs are never deserved, because clearly the practice of job selection *is* focused on future objectives. A person is not going to be chosen based merely on what they have contributed, but only insofar as that predicts future contributions. As Miller rightly construes it, jobs and opportunities in general are deserved based on past performances *and* anticipated performances.

However, Miller and George Sher argue that the benefits that follow from the receipt of opportunities (wages, scholarship money, self-realisation, status etc.) cannot be deserved based on the prior performance (i.e. the performance upon which the opportunity is deserved), nor in advance of the anticipated performance. (Miller 1992a:166,173) (Sher 1987:59,99,128) This is because

the attribution of desert and the receipt of benefits are consequent on the *actual* performance. Like a runner who has qualified to enter a race, the job-holder or scholarship-holder now deserves the opportunity to perform (and thereby prove that the allocation of the opportunity to him or her was the right decision). But the resultant benefits are only deserved in the light of the subsequent performance. We do not give the hot favourite first place before the race has been won or completed. (Miller 1992a:173) So, while desert can anticipate future performance, it cannot *pre-empt* it. In anticipating desert, then, we presuppose that the person *will* enact the desert-basis *ceteris paribus*, but the requital is delayed until the deserving performance actually occurs; in pre-empting desert we presuppose that the person *has* already enacted the desert-basis and the requital is allocated *ex ante*.

(ii) Pre-empting desert.

Nevertheless, we may question whether the desert-basis must be actualized prior to desert. There are a number of cases in which the desert of benefits contradicts this temporal restriction. Making desert conditional on the enactment of the desert-basis neglects the fact that wages, scholarship money and so on, are set in advance of the worthy performance. Indeed they are often defined in tandem with the offering of the opportunity. And, in the case of scholarships, the deserving treatment (financial awards) is actually received in advance of performance (indeed it typically has to be because the performance is conditional on the receipt of the financial reward). Similarly, other benefits such as social status are received *with* the opportunity, so to speak, rather than as a result of the anticipated performance. Fred Feldman provides a further example of where we ascribe desert in advance of the actualization: He points out that if a person is diagnosed with a fatal illness, and we know she will shortly suffer, there seems to be no reason why she should not receive deserved compensation now while she can enjoy it, rather than waiting for the suffering to occur. (Feldman 1995b:70-71) (I will argue shortly, and in the following



chapters, that the basis of compensation is what the person would have done in the absence of the harm they are about to incur. This, I will argue, makes compensation a legitimate basis for desert.)

The logic behind the temporal condition that Miller and Sher place on desert derives from the possibility that the desert-basis will not be enacted; for we can never, from an epistemic point of view, be certain that the person will carry out the anticipated performance. In other words, a predicted or hypothetical performance can have no bearing on the world until it has actually been performed. And from an incentive point of view, requital *ex ante* would mean that the recipient has no reason to carry out the performance.

Feldman suggests that the reason temporal priority is given to the desert-basis derives from the allocation of punishments. In the context of punishment, we demand proof of responsibility because there always remains the possibility that the desert-basis will not be enacted. (Feldman 1995b:74-76) Thus, we do not re-incarcerate the paedophile who is released from prison when he and his psychologists are convinced that he will re-offend, until the basis for deserved punishment actually occurs. Similarly, the liability of a person who fully intends and attempts to commit a murder but is thwarted, is less than the person who *actually* succeeds in carrying out her murderous intentions. To this we add the fact that pre-emptive punishment removes the incentive not to commit the crime. Saul Smilansky goes a step further and argues that punishing someone who we know will offend violates the obligation to respect persons as autonomous human beings, since this sort of pre-emptive punishment discounts the possibility of a last minute moral improvement. (Smilansky 1996b:162) Thus there are moral as well as epistemic and incentive grounds for not advocating punishment *ex ante*.<sup>57</sup>

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<sup>57</sup> For a discussion of the issues surrounding the actualization of responsibility in the context of punishment see (Statman 1997)

However, as the cases noted above indicate, it is not clear in the context of the distribution of benefits that we need be so obsessed with the actualisation of the desert-basis, since in this case no harm is distributed to the recipients— i.e. there is no sense in which their autonomy can be violated. The most we can say if the recipient of pre-emptory benefits fails to actualise the desert-basis is that the beneficiaries of the anticipated performance and the providers of the deserving treatment (e.g. the firm) have not been treated with respect.

However, there is no doubt that the desert of benefits also hinges on the actualization of the desert-basis, albeit for different reasons. The rationale is that both the performer and the allocator of receipts demand validation of the expression of value. The performer seeks out public recognition and approval to confirm the belief she has about her own potential. For example, a student may be absolutely sure that they are more than capable of passing an exam, and thus that they deserve to pass it (i.e. the student believes she already has the knowledge and skill which the exam is designed to measure); nevertheless, she takes the examination in order to confirm that belief to herself and to others. Similarly, the appraiser seeks out demonstrable proof before he is willing to impart recognition and express that recognition through requital.

But although we may grant that desert is inherently a public rather than private practice, it may be necessary in some cases to ascribe desert in advance because the deserving performance is contingent upon advance requital. For example, to not grant the scholarship winner the money now would be counter-intuitive because she requires this money so as to enact her desert. Similarly, the employee often needs remuneration in advance, or at least needs to predict its future receipt so as to plan the future. The deserving performance, in these cases, is therefore dependent upon the receipt or foreknowledge of compensation. And, failing to compensate the person diagnosed with a fatal illness until she is suffering great pain would be, to say the least, perverse; in contrast to the distribution of punishments, it would be the failure to pre-empt her desert that violates her autonomy.

Thus, while desert cannot be ascribed in the full sense (actual rather than predicted or hypothetical) until the anticipated performance has been enacted, it is often necessary to require in advance of that performance. Desert is ascribed *as if* the desert-basis has in fact been enacted. In a sense, therefore, these cases are backward-looking because they presuppose that the desert-basis *has* actually occurred. But at the same time they are future-orientated because the desert-basis *has yet to be* enacted.

In the discussion presented here we have seen that there are a number of features and uses of desert which indicate that it is not strictly backward-looking. Firstly, as we have noted, agents direct their performance towards the attainment of future value, and the evaluation of the performance is partly based on the amount of value attained. Secondly, the desert of opportunities anticipates a future performance. Thirdly, in some cases a person's deserved requital is allocated in advance of the performance. This significantly challenges the standard interpretation of desert: that the desert-basis must be actualized before desert can be attributed. To add further to this conclusion I now wish to show how the normative core of desert is constituted by the performance that would have been done in the absence of constraint.

#### **4. Counterfactual desert-claims.**

So far we have established that desert can be based on a hypothetical performance; that is, desert can be grounded on performances that *will* be done (anticipating the performance) and *have* been done (pre-empting the performance). I now want to discuss another type of hypothetical performance that can form a basis for a claim to desert: those performances that *would* have been done in the absence of constraint. In this case desert is attributed as a result of events that prevent the expected performance. As we shall see, the fact that desert can be based on what would have been done is a crucial element of

the argument to be made in the following chapters—that a person can deserve compensation for what they are innocently constrained from carrying out.

It may be pointed out that such desert-claims refer to a *past* counterfactual performance and that, therefore, the issue of actualization, but not past-orientation arises. However, as will already be apparent, the question of temporality is fundamentally one of actualization. Moreover, counterfactual desert may also refer to the performances that are prevented from being done in the future (i.e. it may pre-empt the future denial). As with the person diagnosed with a fatal illness, the permanently injured worker may receive requital in advance of the future denial. In other words, given that we know that he is unable to carry out in the future ‘what he would have done,’ then there is no reason not to pre-empt his *actual* future deprivation.

Take the case of the athlete who is comfortably leading a race that she is heavily favoured to win. If she is accidentally tripped by a race steward we would say, without fear of misusing the concept of desert, that she deserves to have won the race. The fallen favourite deserves in respect of what *would have been done, ceteris paribus*. We can reinterpret this concept in positive form by altering the tense of the desert-claim: the tripped runner deserves in respect of what she *will do* in the absence of interference. In both negative and positive forms the desert-claim is based on what hypothetically would have occurred in the absence of constraint, as opposed to what did actually occur. Similarly, if a worker were injured we would still say that he deserves the benefits that would have followed from the contribution he would have made. Implicit in the ‘wouldiness’ of desert is the fact that not only would the person actualize the desert-basis but also that they *can* actualize the desert-basis: for instance the worker, say, is capable of realizing what he has been constrained from doing.

As with anticipated and pre-empted desert, the tripped runner and injured worker’s desert follows from what we expect the person to do, *ceteris paribus*. That is, desert depends on whether a person intends and is capable of winning

the race or of contributing value to the firm. Similarly, if the constraint on performance is not innocently suffered then desert cannot legitimately be attributed. Hence, to give a trivial example, if the worker left the job he would not deserve in respect of the future performances that he would have made. But, if we know a person would have won the race or contributed value to the firm there is no grounds to withhold his or her desert.

If we demand the actual performance in such cases we seem to be going beyond the conditions required to establish desert. Moreover, and as in the case of the person who contracts a fatal illness, denying the tripped runner or injured worker their desert fails to properly respect them as persons, for if we fail to say that the tripped runner deserves first place (even though they are not entitled to it), or if we fail to requite the worker for the contribution they would have made, then we are violating their autonomy.

It is this counterfactual aspect of desert that captures its essential character. Deservingness follows from what the person would (and could) have done in the absence of circumstances beyond their control, rather than from the *actual* outcome. In other words, we appraise a person's performance by factoring out the uncontrolled aspects of the performance. Hence, the claimant cannot take credit for those aspects of the outcome that were unintended or beyond his capabilities (i.e. performance aided by lucky circumstances). Equally, the claimant *should* take credit for intended and realizable outcomes that were prevented by unlucky circumstances. And, by the same token, if the agent was in control of those constraints on her performance, then the mitigated outcome is deserved (or, putting this the other way round, what would have been done in the absence of the constraint is not deserved). (The complexities entailed in the innocence requirement are discussed in Chapter 5, Sections 2 and 4.)

This in turn explains the critical force of desert-claims. We criticize existing distributions of benefits when they do not reflect what *would have been done* if the uncontrolled aspects of a contribution were discounted. (For example, we

disparage the CEO who magnifies her salary grossly out of proportion to what she would be allocated if the actual worth of her performances were the designated metric.) This critical perspective is apparent in our interpersonal responses to the quality of one another's performances: we resent the person who receives undeserved benefits (i.e. receives advantaged performance) (Scheffler 1992:316) and 'pity' the person who does not receive deserved benefits (i.e. suffers hindered performance). And, going a step further, we can see that the counterfactual character of desert illustrates the normative core of the concept, since what would have been done indicates what *ought* to be received. Hence, although the fallen runner is not entitled to first place according to the rules of track running, we would still say she ought to have been granted first place.<sup>58</sup>

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<sup>58</sup> Robert Goodin also analyzes desert in terms of 'would.' (Goodin 1985) (Reprinted in Chapter 6 of (Goodin 1988)). However, his analysis is quite different from that given here because it concerns what we would expect a person to *receive in the normal course of events*, rather than what we would expect a person to *do under specified conditions*. He argues that the concept of desert *per se* lacks normative force because it entails nothing more than what we would *normally expect* to happen (i.e. that A deserves x, entails nothing more than 'A would normally receive x'). Moreover, what we normally or ordinarily expect a person to receive is arrived at by default. That is, we arrive at a positive desert claim by ruling out all those cases of receipt that we deem inappropriate. Hence, positive desert bears no force in itself because it is merely what is left after undeserts (inappropriate or unfitting receipts) have been discounted. And what is undeserving is external to the concept of desert. Instead, institutional arrangements (which already exist or are proposed) define what is undeserved and therefore 'normal', not desert itself.

By contrast, I am suggesting that the 'wouldiness' inherent in the concept of desert lies in the performance: desert is fundamentally concerned with what the person would do, or would have done, under specified conditions. The 'would' is couched in terms of what outcomes would have been realized in the absence of unintended disadvantages and advantages. In a sense Goodin is right to point out that desert is the residual after undeserts have been factored out, given that we do not deserve the (dis) advantage of the unintended aspects of the performance; in other words, we do not deserve receipt for that part of the outcome over which we bore no control. (It should be noted it is not the unintended feature of the performance *per se* that is undeserved, but the (dis) advantage resulting from it: if there is no (dis) advantage, then there is no undesert.) But Goodin identifies undesert with non-ordinary or non-expected, rather than with uncontrol. Moreover, desert is not derivative from undeserts. In fact undeserts are typically derived from the positive and extra-institutional claim that choices, actions and outcomes must be intended: we know what is undeserved based on what *is* deserving. What would be received, therefore, is treatment in proportion to the controlled expression of value (or the expression of value less the effect of the uncontrolled aspects of the performance). This means that force of desert is not reliant on an institutional context. David Miller seems to have something similar in mind when he argues that 'the logic of a desert claim is not 'this is what A has coming to him as the institution now operates' but this is what A *would* have coming to him if the institution operated so as to give proper recognition to his performance.' (My emphasis) (Miller 1994a:13)

The core idea or reference point for all desert claims, then, is what would have been done in the absence of uncontrolled factors. Positive discrimination is founded on a similar logic: opportunities are allocated to those persons whose past *controlled* performances indicate they would have contributed greater value if they had been given the chance. Desert is here couched on a counterfactual performance—what would have been done in the absence of past ‘discrimination.’ And what they *would have done* indicates what they *will* do in the future, given the opportunity. Desert thus looks to determine the ‘real’ potential of each claimant based on the evidence of prior performance in the absence of constraint. That the beneficiary would have contributed more in the past if they had been given the opportunity is, I take it, at least tacitly assumed by affirmative action schemes. This does not simply entail providing equality of opportunity, because the allocation is based on a prior (actual or hypothetical) performance. In fact, affirmative action assumes that equality of opportunity (non-constraint) has been denied in the past, that the person was constrained from making their full controlled contribution. While the deserved opportunity, therefore, provides the means with which to realize one’s true potential, it is only deserved based on evidence of that potential.

More significantly for the argument to be made here, desert bears the same logic as the practice of compensation in that both rest on a counterfactual performance. In the same sense that we say the felled race favourite deserves to have won, we can also say that a person who is innocently constrained from pursuing her personal ends is due compensation. In both cases the person is due requital for what they would have done in the absence of unintended or unforeseeable eventualities. Some might argue that because there is no actual performance, what we are in fact referring to is a basis for compensation rather than desert. That is to say, because the desert-basis is not actualized, to apply desert would be to misuse the concept, as unrequited intentions and unfulfilled ability do not constitute a sufficient basis for desert. In such contexts, it may be said, compensation, not desert, is the legitimate basis for requital.

George Sher, in discussing effort as a desert-basis, argues that, ‘We regard persons who have not worked hard because they were incapacitated, or because they lacked opportunities, as unfortunate rather than deserving. Intuitively only actual sustained effort creates actual desert.’ (Sher 1987:59) But Sher fails to provide a sustained argument as to why this is the case. His argument, and indeed those of the other adherents to the received wisdom, rest on the claim that non-actualized desert is intuitively unsound. But we may question the appeal to our intuitions that is being made here. There are a number of everyday examples, such as that of the tripped runner, where we typically apply the principle of desert without fear of counter-intuition or conceptual misuse. Similarly, the incapacitated worker surely deserves recompense for the performance that he intended and was, before his injury, capable of carrying out. He is indeed unfortunate, as Sher says, and as a result is due the reward for what he would have done under normal circumstances.

Clearly the main concern of these theorists, although not explicitly stated, is the lack of certainty over whether the performance would in fact have been carried out (and the related practical problem of ascertaining exactly what the person would have done: see Chapter 5, Section 4). But each of these theorists is willing to accept compensation claims as a legitimate (non-desert) basis for distributing resources, even though these claims clearly rest on counterfactual performances. Hence, by rejecting counterfactual desert they must *a fortiori* reject compensation. This highlights the epistemological question concerning distributive principles in general and not desert *per se*— more than just counterfactual desert stands or falls if a rigid epistemological requirement is imposed. Furthermore, and perhaps most strikingly, Sher, *et al* broadly concur that it is what the person would have done in the absence of inadvertent advantage or disadvantage that is definitive of desert. With these two points in mind it seems that the received wisdom is inconsistent in its application of the actualization requirement. I therefore argue that Sher *et al* fail to explain satisfactorily why performances that we know with a reasonable degree of



certainty will or would have happened, do not qualify as legitimate bases for desert-claims.<sup>59</sup>

The question of whether compensation can legitimately be deserved clearly needs more careful elaboration than I have presented thus far; I will address the issue further in Section 6 before taking the issue head-on in Chapters 5 and 6.

Before moving on to consider Fred Feldman's attempt to make utility sensitive to desert, we should conclude by emphasizing that, even in its pre-emptory and counterfactual forms, desert must be distinguished from utility. As we have seen, utility and desert both focus on the valuable consequences of the performance, but each evaluate these consequences differently. Desert factors out those aspects of the performance and outcome for which the person was not responsible; in other words, desert is only concerned with the value that the person can legitimately take credit for producing. While these uncontrolled factors are irrelevant to desert, they are not, however, dismissed by utility, since they affect the future stream of value for the firm or society. Using a decision-making process based on utility, a firm may, for example, make a prediction of future value that factors in the inadvertent aspects and consequences of the agent's performance that may reduce or add to this agent's contribution. For example, an employer might decide not to offer a position to a woman, even though she is the best-qualified candidate, based on the probability that women will take time out to have children. Similarly, the employer may be less inclined to increase a woman's salary because it may be estimated that the money would be more efficiently spent on a male employee of lesser ability. In choosing a person for a scholarship, promotion etc. the sole focus of attention for utility is the value that the successful candidate will contribute, and not the quality of the performance that brought about that value.

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<sup>59</sup> Interestingly, in discussing positive discrimination, Sher appears to open the door to the possibility that counterfactual performances do form a legitimate basis for desert. While stressing that 'merely possible actions cannot create actual desert,' he argues that preferential treatment is allocated on the basis of what the agent '*would have* been able to perform in a more just world.' (His emphasis) (Sher 1987:128)

Nevertheless, as was suggested in section 1, utility will often be *indirectly* concerned with the quality of the performance entailed in bringing about a valuable outcome. In most cases it would be prudent for utility to look backwards in order to determine the most effective way to allocate resources. Incentives, I take it, represent a paradigm mode of utilitarian resource allocation. An incentive (e.g. a wage increase) is offered in order to encourage a future performance; although incentives are offered *ex ante*, they may only be received after the future performance (meaning that receipt may be conditional, although not necessarily so, on future performance). Nevertheless, at least the offer or opportunity to receive the incentive is determined *ex ante*.

But in order to allocate incentives efficiently the utilitarian will be concerned, albeit instrumentally, with whom is to be offered them—she will be interested in the past and present facts about people so as to ascertain their potential for realizing the future goal. Thus the primary concern will be the *controlled* value expressed by each person, rather than simply the actual value produced. If a person A's past contributions are less controlled than person B's, then she is less likely to be able to repeat or improve upon past performances in the future. In this situation the incentive would be better spent on B, even if her past contributions have been less valuable (say due to ill fortune). To put it another way, evaluating candidates' level of control over past performances may lead the utilitarian to determine that B displays greater 'real' potential for producing the greatest utility in the future. Construed in this way, the requirements of desert and utility overlap. The *offer* of an incentive is both a deserved opportunity *and* an efficiently allocated inducement to realize a future state of affairs.<sup>60</sup> But the desert of the incentive payment itself only follows once the anticipated performance has been enacted *and* only inasmuch as the payment is

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<sup>60</sup> The offer or opportunity is also an incentive insofar as people are encouraged to prove their real potential in order to then reap the benefits attached to it.

proportionate to the quality of the performance. (This is the case even if the incentive payment has been received *ex ante* as in the case of the scholarship.)<sup>61</sup>

For the same reasons it may be efficient from the point of view of social utility to positively discriminate in the following sense: The social product will be enhanced if jobs, educational chances etc. are allocated to those who have displayed comparatively less marginal productivity in the past, but who would have been far more productive given the opportunity. That is to say, their *controlled* performances in the past (i.e. intentions, choices and actions in the absence of constraint—prejudice, economic destitution, social immobility and so on) might indicate that they have greater potential than those who have actually contributed more, but who were less constrained. Construed in this way, positive discrimination is not grounded simply on ensuring even starting positions, but on desert (the controlled marginal productivity that has been displayed by the claimant).

However, despite possibilities for an overlap between the objectives of utility and desert, the emphases for each principle remain fundamentally distinct: Desert focuses on the justice of the allocation for each person, while utility is concerned with the efficiency of the allocation for overall well-being.

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<sup>61</sup> I discuss in more detail the relationship between desert and incentive payments in Chapter 5. It is argued there that the benefits that follow from opportunities are best characterized in terms of compensation. This is because while the provider (employer) is concerned with future contribution, the primary concern of the recipient (worker) is her personal ends. From the point of view of the recipient, economic benefits are only instrumental to the realisation of personal goals and life-plans. Hence, in order to encourage greater contribution the wage/incentive payment must be sufficient to enable the realization of any personal ends forgone in the process of contributing value. This means that the worker does not deserve in proportion to the contribution he has made, but rather according to the personal ends he has been denied in the process. In effect the incentive is a compensation payment for the opportunity cost of contributing value. While opportunities are deserved based on the displayed potential to contribute value, the benefits of those opportunities are calculated based on deprivation. But even though the motives of the recipient and provider are distinct, the deserved compensation will be met because, under ideal conditions, the provider will pay enough to encourage the requisite amount of contribution. See (Lamont 1997).

## 5. Feldman's Justicized Act Utilitarianism.

Referring to Rawls in *A Theory of Justice*, Fred Feldman acknowledges that utilitarian theory on its own fails to recognize the morally relevant differences between persons. Faced with the choice of giving 1001 units of value to the bad man or 1000 units of value to the good man the utilitarian would allocate to the former. (Feldman 1995a: 568) Consequently, he argues, desert should act as an adjustment to the overall utilitarian calculation. With this project in mind, he wants to incorporate his 'justice as desert' thesis<sup>62</sup> with the separate utilitarian position, such that distribution according to justice adjusts the value in the world of the receipt of pleasure and pain. (Feldman 1995c) Positive desert enhances the intrinsic goodness of pleasure, while negative desert ameliorates the intrinsic badness of pain. That is to say, 'the greater value might arise from the amount of justice in the consequence.' (Feldman 1995a:573)

Hence, where desert and the receipt of pleasure over pain coincide, the value of the pleasure received is significantly enhanced. (Feldman 1995a:573) This is in keeping with other utilitarians who seek to make utility maximization sensitive to justice by assigning value to say a distribution that is more egalitarian or one that prioritizes the worst-off.<sup>63</sup>

Feldman's thesis (Justicized Act Utilitarianism, henceforward JAU) is similar to the line taken here inasmuch as it is constructed so as to make desert compatible with the realization of a future state of affairs. That is, allocating

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<sup>62</sup> In the following chapter it will be argued that Feldman and others take compensation for non-voluntary harm as an example of why desert is not dependent on responsibility. It is argued in reply that compensation is in fact crucially linked to responsibility because the baseline upon which compensation is grounded is defined by each agent's controlled choices and actions. Therefore, the claim that the desert of compensation undermines the connection between desert and responsibility is unfounded. Feldman does not see this point and therefore proposes a comprehensive account of desert (justice as desert) in which responsibility is not a necessary requirement.

<sup>63</sup> Feldman attributes the idea of making consequentialism sensitive to justice and injustice to Franz Brentano and Amartya Sen. (Feldman 1995a: 572, fn. 12) (Feldman 1995c:194-195) For an analysis of the idea of adjusting a utilitarian calculus according to justice-value see (Barry

according to desert is consistent with the possibility of adding value to the world. The difference is that JAU hardwires desert directly into a calculation of the total intrinsic value in the world. Rather than regarding desert as constituting a substantive prior claim about how goods ought to be distributed, Feldman aims to take desert seriously within a future-looking scheme by taking note of the intrinsically valuable consequences it has for the world. In effect therefore, justice, in the guise of desert, is covertly imported into a theory of the good. The value of receiving utility is then modified by the degree to which that receipt is deserved (i.e. the amount of desert (dis)value in the receipt).

Feldman's novel proposition warrants careful consideration because, if it can be sustained, we have a non-instrumental consequentialist basis for taking desert seriously. Unfortunately, as we will see, the project fails because in attempting to resolve the issue of distinct identities Feldman effectively grants priority to desert.

### 5.1 Feldman's thesis.

Feldman argues that 'The intrinsic value of a whole consequence is the sum of the justice-adjusted intrinsic values of the episodes of pleasure and pain that occur in that consequence.' (Feldman 1995a: 580) In order to develop a clearer picture of what is entailed here we will need to unpack the various components of this proposed value calculation.

Desert, argues Feldman, is valuable in and of itself because 'the world is made better when people receive it.' (Feldman 1995a: 572-573) Not receiving what one deserves constitutes a loss in value to the world. This, I take it, is analogous to the thesis that if a person desires something then the world is a better place if they receive it; under normal utilitarian theories, this remains the case even if desirer has no entitlement to the desired thing, or even if it is

unobtainable. Similarly, a deserved receipt would bear intrinsic value for the world even though there is no obligation on others to provide it. Construed in this way, desert has intrinsically valuable consequences for the world (intrinsic desert-value, *DV*), but does not constitute a prior constraint on the allocation of rewards.<sup>64</sup> On this reading, deserved receipt has valuable consequences for the world, but that is expressed in terms of increased justice-value rather than increased overall well-being (i.e. deserved receipt is not valued because it acts as an incentive to perform utility maximizing acts).

Unfortunately Feldman's account of *DV* is somewhat ambiguous because it permits two different interpretations—namely 'fit' and 'merit.' (Persson 1997) According to the 'fit' interpretation, *DV* is based on the degree of fit between the level of receipt that is deserved and the actual receipt level. 'Justice and injustice, in turn, are understood to be determined by reflection on the quality of the fit between pleasures and pains received and pleasure and pains deserved in each outcome.' (Feldman 1995a:583-584) The closer the receipt is to a person's desert level (D-level) the more valuable the receipt. According to the 'merit' interpretation the higher the D-level of a person the greater the *DV* of receipt. More *DV* is attached to those who have a higher D-level irrespective of where one's receipt is relative to the D-level. Hence, of two people, the one with the higher D-level will receive even if she is considerably closer to her D-level than the other person.

In allocating between competing claimants the question is not whether a person deserves, but who is the *most* deserving (comparative). In other words, given every person's desert (D-level) how should that determine who should receive?

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<sup>64</sup> David Miller also alludes to the fact that desert is in some way valuable to the world: 'It is implicit in the idea of desert that it is a good or desirable for *A* who has performed *P* to have *B*; the world is in a better state when he has *B* than when he does not.' (Miller 1994a:6) But how that value is fleshed out is not specified. I take it he simply means to say that where a person does not receive his desert there is something *bad* and where he receives his desert there is something *good*. Miller does not, I take it, intend that desert should be incorporated into a theory of the good (i.e. assigned numerical weight according to the degree of fit or indeed a perfect fit). Rather desert is a prior constraint or critical perspective on the formulation of the institutions of justice.

Which account best approximates justice will depend on how justice is conceived. We must ask: Is justice best served by considering the *closeness to* the D-level, or the *height of* the D-level? Both, I would argue, are legitimate cases of desert. If justice is concerned with under-receipt and over-receipt then the fit idea will prevail. Maximizing the closeness to D-level (or minimizing differential in D-levels) is an equalizing principle because it focuses on the disparity of receipt. But if justice is concerned with those who make the largest controlled contributions, then the merit idea will prevail. *DV* based on merit will tend to coincide with utility more than *DV* based on fit because it allocates according to which person contributes the most. *DV* based on fit will tend to be less 'supportive' of utility because deservingness is only relative to a person's contribution (D-level). Ingmar Persson argues that the fit idea is more just, but as I have suggested, that depends on how justice is conceived in the first place. Although Feldman confuses the issue by employing both interpretations, the fit idea seems to be closer to the idea of justice he is promoting and I shall, therefore, remain faithful to it in the ensuing discussion.

David Miller recognizes that the world is made better if a person receives her deserts. But, as will be clear by now, he argues that greater justice pertains when deserved receipt equates with contribution (merit), rather than distance from desert (fit). Consequently, allocating according to merit should follow even where the person who does not receive is farther away from her D-level. (Miller 1992a:170-171) Miller argues that more justice is done overall when the distribution of resources is based on merit, even if that means under-receipt for others initially. This is because those who do not receive their desert because of the allocation may be requited elsewhere. The market, for example, looks to match-up a person's desert (actual or potential contribution) with receipt. Hence, if someone is unable to get a particular job, promotion, wage increase etc. because someone else will contribute more, their desert may still be met through a different job, promotion and so on. Miller's suggestion is that we should not interfere because a person's under-receipt may be requited, and so we would have denied the best-qualified person their desert unnecessarily

(i.e. we would have committed an unnecessary injustice in order to resolve another injustice). (Miller 1992a:171-172) This is consistent with his overall claim that desert is based on contribution, not denial; consequently he not only rules out desert based on a person's denial of their D-level, but also based on the denial of personal ends in the process of contributing value. (This point is discussed more thoroughly in Chapter 6.)

As we have seen, according to the standard reading of desert the principle remains indifferent to a future state of affairs, and thus the practice of desert may only coincide with what is required to achieve future value. *Prima facie*, JAU appears to misuse desert, because the concept is considered from the point of view of the world rather than from the perspective of the deserving individual—it is the value for the world rather than the facts about the person, which is the basis of evaluation. But JAU nonetheless preserves the backward-looking and agent-relative character of desert, since under JAU intrinsic value arises from respecting each person's prior performance.

Greater utility or welfare for the person is also considered to be intrinsically good (intrinsic utility value, *UV*). (Feldman interprets this as pleasure over pain to facilitate the argument, but preference satisfaction would also suffice in the present context. Hereon, I will use the terms utility and disutility to describe the consequences of outcomes to personal welfare). In contrast to *DV*, the *UV* emerges from the utility to the *person* of the receipt, rather than for the *world*. Feldman takes *UV* to derive from the consequential value of the receipt for the person, rather than the world. (Feldman 1995c: 194-195) Hence pleasure is intrinsically good for the person (positive *UV*); pain is intrinsically bad for the person (negative *UV*).

The intrinsic value following from a person's hedonic receipt is adjusted according to whether it is deserved or not. A person's receipt of pleasure over pain increases the *UV*, but creates intrinsic desert disvalue if it is not deserved. The overall intrinsic value for the world (World Intrinsic Value, *WV*) is less



than it would be if the receipt were deserved; conversely, a person's receipt of pain over pleasure decreases *UV*, but creates intrinsic desert value if it is deserved, as the disvalue created by the pain is counteracted by the desert of that pain.

Although Feldman does not explicitly state how it may be possible, his thesis presupposes that the *DV* and *UV* are in some way commensurable. But it is not clear how the hedonic value and desert value of the receipt of benefit or harms combine. They must be commensurable in such a way as to maintain the independence of desert from utility, for to interpret the value of desert simply in terms of the amount of utility it generates (e.g. hedonic value) would undermine the backward and agent-centered character of desert. In other words, *UV* and *DV* must independently contribute to *WV*, because what one deserves may only *coincide* with what maximizes utility, not equate with it.

I take it that Feldman intends that both *independent* sources of intrinsic value (*DV* and *UV*) combine to form the net intrinsic goodness for the world. Hence we can express the overall value function as,  $DV + UV = WV$ . This equation expresses the idea that rather than adjusting the hedonic level of an episode, desert adjusts the *world* intrinsic value of the episode. (As Feldman states it, *DV* adjusts the intrinsic value in the world, but it is perhaps more accurate to say that *both DV* and *UV* adjust the intrinsic value in the world.) The world intrinsic value is sub-optimal if the pleasure over pain is less than it would be if it were deserved. Conversely, the intrinsic value of deserving treatment is lessened if it does not generate pleasure over pain (e.g. deserved punishment).

With this in mind we may distinguish JAU from the standard indirect utilitarian means of embodying desert. Firstly, the valuable consequence of desert is not expressed in terms of utility. (Nonetheless, it is possible that the practice of desert may be instrumental to the realization of utility.) Secondly, the receipt of desert has direct and immediate value consequences for the world. Desert is not instrumental to the realization of intrinsic value in the world; rather it directly

adds to it. Instead of making desert a prior constraint on the distribution of goods and harms, desert is thus incorporated into a theory of the good by assigning it intrinsic value.

## 5.2 The problem of trumping.

There is no doubt that inserting desert into the consequentialist function renders JAU more sensitive to the morally relevant differences between persons.

However, problems arise once we begin to look at Feldman's consequentialist account from the interpersonal rather than merely personal perspective. In the interpersonal context, JAU will choose that distributional arrangement which maximizes *WV*.<sup>65</sup> As we shall see, it is quite plausible that maximum *WV* may advocate distributions that override a person's claim to desert. Let us first consider a case in which two people, A and B, are equally deserving (i.e. the same distance below their D-levels) and then secondly a case where they are unequally deserving (i.e. different distances away from their D-levels).

### 1. Equally deserving.

Where A and B are the same distance below their D-levels (i.e. equally deserving according to the fit interpretation), then desert dictates that the resource allocation should be shared equally. However, maximal *WV* may advocate an unequal allocation.

Equally deserving and different marginal *WV*: Given that the *DV* for both A and B is the same (i.e. receipt takes them just as close to D-level), the greater *UV* following from A's receipt determines how scarce resources are to be allocated. Utility trumps B's equal claim to desert. This may not be perceived

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<sup>65</sup> We may represent the total world value of an allocation *i* where *n* people are effected as follows.

$$\sum_{k=1}^n (DV_{ik} + UV_{ik}) = WV_i$$

as unjust given that both are equally deserving and the allocation is indivisible (e.g. allocation of a job). In that case it may be seen as appropriate to allow marginal utility to determine the allocation. However, where the allocation is divisible we may begin to question the justice of the distribution—e.g. if A receives additional units of receipt in the interest of higher marginal utility, even though the receipt could be shared.

Equally deserving and same marginal WV: In the preceding case we noted that JAU might allocate unevenly, even though the two claimants are equally deserving. Erik Carlson draws the same conclusions even where the marginal WV for A and B is the same. (Carlson 1997:310-311) (See also (Persson 1997:322-323).) He notes that in the case where A and B are equally deserving, giving A the desert level and B nothing may generate more WV overall than equally sharing the allocation. That is, the intrinsic value produced for the world by A only receiving desert outweighs the disvalue of B not receiving any desert. This allocation, then, may conceivably produce more overall value than an allocation in which both receive less than desert, but the same amount. Borrowing Carlson's example (with the intrinsic values in brackets) we can observe how this may occur.

A's desert: 10 B's desert: 10	<i>Option</i>	<i>A's receipt</i>	<i>B's receipt</i>	<i>Total World Value</i>
	<i>x</i>	10 (20)	0 (-5)	15
	<i>y</i>	5 (5)	5 (5)	10

Of the two possible allocations, *x* and *y*, the former generates far more WV, even though B receives no units. Clearly, based on the principle of equal treatment, unequal receipt would be distributionally unjust and yet JAU fails to preclude such a possibility, and therefore does not rule out sacrificing a person in order to generate more valuable consequences overall.

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## 2. Unequally deserving.

Desert dictates that receipt should go to the person who is most deserving. But maximal JAU may advocate allocating to the less deserving.

(a) Unequally deserving and different marginal *WV*: In this case B is more deserving because she is further away from D-level, and yet A receives *qua* higher marginal *WV*. Provided A's marginal utility does not diminish, JAU would advocate distributing each additional unit to him rather than B. Take the case of where A and B are applying for the same job: B is more deserving of the position (i.e. further away from D-level). However, the *UV* for the firm is significantly greater if A were employed (e.g. big name and so able to generate a lot of clients for the firm). Consequently, provided the *UV* is sufficient, A will be successful even though the *DV* of B's receipt is greater. Differential marginal *WV* entails that it may be more efficient for JAU to allocate to the less deserving.

Unequally deserving and same marginal *WV*: Again we can see that it may be more efficient to neglect B's greater desert provided the intrinsic value of A's receipt is sufficient. This may be the case even where A's receipt would place him in excess of his desert. JAU accepts that a person's receipt in excess of desert will continue to add intrinsic value to the world. *DV* presupposes an absolute level (D-level) of receipt—the level at which marginal changes in receipt will be undeserved (excess or deficient receipt) and therefore generate negative *DV*. In contrast, the receipt of more units of pleasure to the person continues to increase *UV*, as there is no absolute level for *UV* (except where the intrinsic goodness of utility may be marginally diminishing). What this means is that below the D-level, increases in receipt of pleasure will add to both *DV* and *UV*. However, once the receipt goes above the D-level, the negative *DV* will only partially negate *UV*. That is to say, undesert devalues the utility value of each additional unit. Nevertheless, receipt greater than desert will continue to generate a higher level of *WV*. For that reason the optimal outcome (i.e. the

maximization of *WV*), is not the point at which the (dis)utility received is fully deserved.

So we see that, from a consequentialist standpoint, though the utility value (greater personal pleasure than pain) of excess receipt will be partially negated by the disvalue of undesert, world value will still increase (albeit at a lesser marginal rate) when excess receipt takes place. Feldman is aware of this scenario: ‘as a person begins to receive more than she deserves, additional increments of pleasure have decreasing marginal intrinsic value.’ (Feldman 1995a: 575) What this means is that JAU is compatible with receipt greatly in excess of personal desert. We may argue that that possibility is perhaps not in itself unjust because the person’s desert has been fulfilled; indeed, it would seem unjust to limit a person’s receipt if there is a possibility of greater personal well-being. But we may begin to question excess receipt to one person when it supplants the receipt to another person. Adapting the previous table we can see how this possibility might arise.

A’s desert: 10 B’s desert: 10	<i>Option</i>	<i>A’s receipt</i>	<i>B’s receipt</i>	<i>Total World Value</i>
	<i>x</i>	15 (21)	0 (-5)	16
	<i>y</i>	7.5 (7.5)	7.5 (7.5)	15

Even though the additional *WV* for 5 additional units to A is only 1, the *WV* of an unequal allocation is greater than an equal allocation. That is to say, the receipt of an additional unit to A would generate greater *WV* than allocating the same unit to B. This would follow where the marginal utility to A exceeds the marginal utility to B even after both have been adjusted for undesert (desert disvalue of A’s over-receipt and B’s under-receipt). JAU therefore permits unequal receipt, even where one person’s receipt is in excess of her desert.

### 5.3 The priority of desert.

Feldman claims that assigning desert consequential value ensures that persons are not merely regarded as *bearers* of value who may be disregarded by aggregation (i.e. such that the value does not belong to the person). In a sense persons remain merely ‘vessels’ of value, but that value takes into account what the person has *done* (the controlled value that has been expressed by the person). This presents an interesting response to the claim that utilitarianism is distributionally insensitive.

However, the hypothetical cases explored above have shown that because it retains the aggregative structure of consequentialism, JAU may in some cases dictate that a person’s desert be ignored. We have seen then that incorporating desert into a theory of the good fails on its own to take justice seriously enough, because utility may outweigh the value of desert. JAU permits unequal treatment where persons are equally deserving and, more significantly, allows receipt to the less deserving (even where this receipt is in excess of desert). (It should be noted that the same conclusions are not precluded if *DV* is based on merit rather than fit.)

In order to evade these unjust allocations, the desert disvalue of under-receipt (and over-receipt) must be set at a higher level. That is to say, the further away from the desert level a person’s receipt level is, the desert disvalue becomes incrementally greater. In effect, either side of the D-level marginal *DV* outweighs marginal utility—marginal *WV* is always diminishing. With this adjustment, the intrinsic disvalue of B’s non-receipt of a hedonic unit is sufficient to trump the intrinsic value of A’s receipt. But as Ingmar Persson notes, this solution seems somewhat implausible because it would entail that receipt slightly less than desert would generate considerably less *WV*. (Persson 1997:324)

Feldman himself notes a further scenario where in order to preserve the separateness between persons *DV* must be set at a certain level in order to preserve it. (Feldman 1995c) Feldman is concerned with the 'repugnant conclusion' noted by Derek Parfit: Parfit points out that, provided a population is large enough, a world in which each person's life is barely worth living will be better than a less populous world in which each person's quality of life is better. Feldman resolves this problem by setting the disvalue of not receiving desert (i.e. a worthwhile quality of life; in keeping with a wide account of desert, Feldman also considers needs as a reason for desert) at a level sufficient to generate negative intrinsic value in the populous world. Rather than each person's receipt generating positive value as a result of having a life *barely* worth living, the non-receipt of desert generates a negative value for each person. The quality of life of individuals is guaranteed, after desert is given priority. (Feldman 1995c:201-203)

In each of the cases we have noted *DV* has to be set at a high enough level in order to avoid the sacrifice of the person in the name of maximal outcome. In effect the distributional sensitivity of JAU is only maintained by manipulating the value of desert such that the desert level always determines the maximal allocation. But is this not tantamount to an acknowledgement that desert trumps the good?

According to Feldman the teleological structure of JAU is maintained because morally right acts are those which maximize intrinsic value in the world. The world value (the 'good') is, in part, defined by the consequential value of desert. But the argument is not circular, argues Feldman, because the desert-claims which determine desert value do not constitute the 'right'; rather, they are a component of the definition of the right (i.e. acts which maximize *WV*). Desert thus acts as a 'primitive' in the determination of the right. As a result, JAU's derivation of the right does not presuppose the right in the guise of desert. By this I take Feldman to mean that desert-claims do indicate reasons for action, but they in themselves lack sufficient normative force to dictate

action. Desert *per se* lacks any further higher-order justification beyond its intuitive soundness, and so normative force must be derived from what maximizes overall intrinsic value in the world. (Feldman 1995a:583-585)

In order to clarify what is at issue here it will be instructive to compare Feldman's position with that presented by David Miller. Both theorists recognize desert as in some way definitive of rightness, but the way they cash-out that definition is distinct. Broadly speaking, Miller's approach is deontological while Feldman's is teleological.

Like Feldman, Miller shies away from associating desert with the language of rights. Instead of saying it would be 'right' for A to receive *x*, for instance, he says that it would be 'fitting' or 'appropriate' for A to receive *x*. The reason for this is twofold. Firstly, the authority of desert derives solely from its intuitive gravity. The fact that a person has voluntarily expressed value simply is *the* reason for receipt. (Miller 1991:379-380) (Miller 1994a:19-20) Secondly, Miller wants to avoid any confusion of desert with rights. Rights to something (claim-rights) are based on fulfilling qualifying conditions, not a person's controlled expression of value. Others of course might argue that rights rather than desert are the appropriate constraints on welfare maximization. (See for example Peter Vallentyne's critique of Feldman. (Vallentyne 1995:209-210)) However, desert is prior to and critical of entitlement. Indeed desert may define the qualifying conditions of a claim-right, thus giving it normative force. (I have argued this point in detail in Chapter Two.) Because desert defines the right, it is perhaps a little misleading to describe Miller's account as deontological.

Feldman's motive for eschewing the language of rights is to avoid presupposing the right from the outset. For the same reason, he does not wish to attach too much normative force to desert beyond its intuitive soundness. Instead, normative force is obtained once desert is incorporated into the consequentialist equation. Miller agrees that the core intuition lying behind desert should not



appeal to any further justificatory basis; but this is because it requires *no further* authority, not because it is indirectly and partially constitutive of rightness. The 'primitive' or 'core' desert intuition bears sufficient normative force *on its own* to determine rules of justice (e.g. entitlement). Hence, desert need not appeal to any further justification or be incorporated into a teleological framework. Desert *per se* is sufficient to *directly* define rightness, rather than *indirectly* defining it via a utilitarian calculus. Hence, the reasons Feldman and Miller have for wishing to avoid the language of rights are quite different.

However, the distinction between Miller's and Feldman's accounts disappears once we take into consideration the fact that JAU must be modified to avoid injustices. That is to say, the supposed non-circularity that Feldman ascribes to JAU is breached once the weight of desert's intrinsic value is manipulated *a priori* to ensure the distinction between persons. There seems to be no difference between desert forming a direct constraint and it imposing an indirect numerical constraint on the formulation of the rules of justice. In effect, desert judgements of how goods ought to be allocated place a prior constraint on the allocation of receipts, rather than being merely an aspect of the consequentialist calculation. JAU then becomes dependent upon prior substantive claims about how goods ought to be distributed. JAU converts our desert judgements of fittingness into intrinsic value and then attaches sufficient weight to that value such that it dominates our considerations of utility. It seems, therefore, that by taking on the issue of separateness JAU must inevitably acknowledge the priority of justice. We may agree that the receipt of desert is intrinsically good (i.e. that the world is made better when it is received), but it is first and foremost a justice constraint on the distribution of benefits and harms. In other words Feldman's attempt to incorporate desert into aggregative justice, ultimately collapses into distributive justice.

## 6. Desert, personal integrity and social objectives.

We have seen how desert can be made compatible with the realisation of others' want-satisfaction and proposed social value. But a problem arises from this project resembling the one which faces consequentialism—the imposition of proposed social goals on the personal ends of the deserver.

Consequentialism determines both the kind of activity, or value, and the level of control and value required. This entails that people are obliged to pursue their preferred ends in proportion to what is dictated by the impersonal evaluative standpoint. Unless people's pursuit of their commitments, projects, life-plans etc. matches what will maximize overall well-being, they are required to modify the extent to which they pursue them. 'It is this feature of utilitarianism which may be thought to alienate the agent from his actions and the source of his action in his own convictions, and thereby to undermine his integrity.' (Scheffler 1982:9) Personal ends are 'appropriated' in order to achieve social ends—the person is perceived as controllable, rather than as a controlling agent.

Similarly, if we propose a social objective on which desert is to be appraised, the performer must modify the extent to which they may pursue their ends. A future-looking interpretation of desert appears untenable because it does not take seriously the personal identity of each deserver; and, as we have seen, this notion of identity is crucial to our understanding of desert. Desert is rendered insensitive, then, to the integrity of each person. How can we preserve the integrity of the person while maintaining desert's compatibility with social optimality? The answer to this question forms the subject matter of the following chapters. We may by way of introduction briefly outline here the basic idea. The practice of desert is future-looking at least insofar as it is the consequences of people's actions that form part of the basis of evaluation (the other part being the quality of the will displayed towards us). *Prima facie* the demand to perform goal-achieving actions appears to cut against each person's

preferences. But if incentives (say wages) are allocated that are sufficient to realize the ends denied by the social goal-directed performance, then the personal integrity of the performer is preserved. On this reading it is the disutility incurred *in the pursuit of* future value that constitutes the basis requital, not the social objective.<sup>66</sup>

The worker agrees to the deprivation in the knowledge that he will be able to realize his personal ends via the resources he receives, rather than simply having the social objectives imposed upon him. That is, from the point of view of his own life, he consents to the sacrifice of his personal ends to the well-being of others, on the basis that the resources received (deserving treatment) are sufficient to realize the ends forgone. This argument evades the imposition of some predefined notion of the good onto the person's autonomous will on two counts. Firstly, the agent chooses whether or not to accept the sacrifice. Secondly, the resources received in compensation enable the agent to pursue her chosen ends. The agent willingly modifies her life-plan such that she accepts short term sacrifice or deprivation in the knowledge of recompense at a later time.

This is consistent with the point made earlier that the basis of a desert-claim may rest on a counterfactual performance. Desert is attributed to a person for what they would have done, in the absence of constraint. However, the counterfactual performance (the performance that is constrained) is the value that the agent would have added to her *own* well-being. That is, the constraint is not the uncontrolled aspects of the performance that prevent (or aid) the pursuit of social value; rather, the performance itself is a constraint on the pursuit of personal ends. Hence, requital is proportionate to the personal ends forgone, rather than the controlled value contributed to the social product.

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<sup>66</sup> A similar line of argument has been put forward by (Dick 1975) and (Lamont 1997). See Chapter 6. Section 3.

## Conclusion.

It has been argued that desert can, at least hypothetically, be attributed even when the desert-basis has not been actualized. This permits us to say that desert can be ascribed (1) *ex ante*, and (2) for a performance that would have been done. The argument to be made in the following draws on both of these implications. It will be argued that persons can be required for a performance they *will be* constrained from carrying out. Persons can be offered incentives to produce social value that are sufficient to compensate for what they would prefer to do. These incentives encourage more contribution (e.g. longer work hours) or contribution of a different kind (e.g. a new job), but only because it will balance out the personal ends that will be forgone. Wages, therefore, can be construed as deserved compensation for denial in the past, present or future.

This argument will affect a significant shift in the nature of the desert-basis: it is the ends that the person would have pursued rather the extent of contribution that will now underpin the desert-claim. Indeed, a person is required based on the difference between what they would have done *personally* and what was done for the world (*impersonal value*). To ensure that this thesis is tenable, I will need to show how this opportunity cost can constitute a legitimate desert-basis. In the following two chapters I will argue that while personal desert *is* fundamentally concerned with adding value to the world, the *metric* of requital need not be the extent of that addition. A person deserves his personal ends provided they are intended and would have been realized through the agent's choices and actions in the absence of constraint (i.e. in the absence of performances that satisfy other persons' ends and not his own). The desert-basis taken as a whole, therefore, is twofold in that it is founded on value to world and value to self: the contribution of value to the world and the personal ends that are sacrificed in the process.

## Chapter Five: Compensation and Responsibility

### Introduction

The objective of the remaining chapters will be to show how distribution according to compensation does not constitute a misappropriation of the concept of desert. In our attempt to incorporate compensation into desert, we must be wary of contradicting the way we relate to one another in everyday discourse; we must heed the standards we use in our appraisal of one another's controlled expression of value. As we have seen, this places a feasibility constraint on how we employ desert, not merely because it is a deeply embedded belief structure, but because it is indicative of our fundamental conception of persons as purposive and value-creating agents. Rules of justice that neglect the practice of desert will struggle to obtain compliance from society—there is a limit on how far such rules can hope to regiment or re-interpret how we respond to each other without, as P.F. Strawson puts it, generating conceptual shock. (Strawson 1982) By the same token, the core notion underpinning desert places a limit on what we can hope to achieve with the concept itself. Nevertheless, I shall argue that we can employ compensation to help tackle the issues of equality and social optimality, whilst preserving the conceptual propriety of desert.

The idea will not be to show that the two concepts are fully co-extensional, but rather to determine those contexts in which the reasons for compensation are compatible with the conceptual requirements of deservingness: in other words, where the compensation-basis does not contradict CEV. Although there is no identity relation between desert and compensation, compensation payments can have the *property* of being deserved. Once we reflect on the ways we use the concepts of desert and compensation, we will see that they are not always discordant. There are similarities underpinning the two concepts, ways in which they resemble each other. It will be argued that this *overlap* occurs in the

context of socially valued activities where voluntary harms are incurred in the process of adding value to the world (e.g. work; but this may also include non-economic activities such as the artist who provides aesthetic pleasure for others)<sup>67</sup>. In the following discussion it will be argued that in that context it is legitimate to say that compensation is deserved.

The central claim on which my case rests is that people choose to forgo their personal ends in the foreknowledge that they will be compensated for that denial. Persons are constituted by their preferences, tastes, personal ends and life-plans. And they are also constituted by the abilities that they use to achieve both their personal ends and social goals. Desert is grounded on the fact that people choose their activities based on their personal ends. Hence, when a person *agrees* to forgo her ends in order to pursue socially valued goals, it is because she *expects* to be compensated for the sacrifice made. Although, as I shall argue (Section 2), those personal ends that are expensive are not compensated in full if the agent has control over them (i.e. if the ends are cultivated and adaptive). Performances made for the benefit of others are construed as burdens (at least insofar as they are contrary to the person's ends) to be recompensed.

What is crucial here is firstly, that the valuable performance entails a denial of what the performer would have preferred to have done and secondly, that the requital is based on that counterfactual performance; the person is requited with resources sufficient to realize the personal ends forgone. What this means is that the metric of requital derives from personal ends forgone, not the amount of value that is contributed to others.

This compensatory account of desert, I will argue, is superior to the contributory account for the following reasons: (1) It is grounded on a thickly

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<sup>67</sup> Virtuous acts that entail a personal sacrifice also seem to come under the same category. However, I take the performer of, say a courageous act, cannot do so in the expectation of compensation, for then it would be a selfless act.

constituted conception of the self (i.e. the self is encumbered with abilities, as well as commitments, preferences and life-plans); (2) It preserves the personal integrity of the person, because personal sacrifices in the name of social objectives are voluntary and the personal ends forgone are enabled through compensation; (3) Equality is promoted because the metric of requital is well-being forgone rather than valuable performances that are contingent on natural and social advantage. (4) Social efficiency is not compromised because although desert tracks personal well-being, performers are selected based on their ability to contribute value.

While desert and compensation overlap in the context of socially valuable activities such as work, they do not do so in other distributive contexts. Hence, desert does not apply to compensatory contexts where there has been no contribution of value (i.e. no intention to add value) and/or where the harm is not voluntarily incurred (e.g. accident in the work place). In both those cases we have a genuine basis for compensation (and construed appropriately, need-based receipt) but not desert in its full sense. I will argue that while such claims bear many of the features of desert, they can only be at most secondary instances of desert.

Conversely, compensation is not applicable to the desert, for example, of opportunities (jobs, scholarships etc.). This is because candidates are chosen based on past performances which indicate a person's potential to contribute value in the future, rather than according to the denial of a person's ends entailed in the past (or in future performances). Deserved compensation applies to the benefits that follow from deserved opportunities. Thus, taking from the discussion in the previous chapter, we anticipate and even possibly pre-empt future sacrifice, offering incentives which are sufficient to compensate the deprivation that will be incurred (i.e. in advance of the denial). I am not arguing, therefore, that the desert of grades, opportunities, honours, prizes and so on should be subsumed under the banner of compensation: they remain

examples of desert that are grounded in CEV. And so in that respect, desert, irrespectively of how fairly society is constructed, stays contingent on skill, abilities etc. However, I take it that allocating these benefits according to merit (i.e. the best qualified) is a necessary requirement for social efficiency (at least in the allocation of opportunities and grades). It is how we allocate the benefits that follow from these prior deserts that is crucial to an egalitarian conception of distributive justice.

The objective, therefore, is not to conflate desert and compensation completely and thereby (1) extend the scope of desert within justice by incorporating all compensation-based claims, or (2) expand compensation to all forms of desert-claim (e.g. job placement, grades, etc.). To do so would be to completely over-extend both concepts. Rather, the aim is to show how compensation provides the resources with which to construct a sustained defence of desert within the context of socially valued activities—a defence that overcomes the charges of inequality and social sub-optimality. The point about compensation is that it enables the just desert of income, jobs, and so on, in spite of the natural and social advantages and disadvantages that affect our ability to perform.

According to compensation, it does not matter whether control ‘goes all the way down’ because it is not the *actual* outcome of each individual’s actions that counts as deserving.

Others, as we shall see, also argue that desert and compensation do overlap, but they only achieve that conclusion by loosening the conceptual boundaries of desert to the point where its meaning is obliterated. (Feldman 1995b) (McLeod 1996) Indeed, they employ compensation as a counter-example to the claim that desert rests on CEV. In contrast, my argument is more akin to that presented by David Miller in that I take desert only as a principle of justice (i.e. rather than a description of justice in its entirety) and conceive of it as grounded upon control and value; however, I argue in opposition to Miller that compensation and desert can legitimately overlap in the way introduced above, without disturbing the core idea of desert—that desert and compensation can be said to



be co-extensive where harms are voluntarily suffered in the process of adding to the well-being of others. But they are not, as Wojciech Sadurski argues (Sadurski 1985:145-146), co-extensive in the context of non-voluntary harms.

In what follows I will begin by discussing the idea of compensation and noting how *prima facie* it appears to be unconcerned with the ideas of responsibility and appraisal. The following section will outline how, despite the received wisdom on the subject, compensation for voluntary harms is fundamentally linked to the idea of desert. In Section 3 I will argue that although non-voluntary harm is consistent with positive responsibility, it cannot be construed as a legitimate basis for desert. Section Four will look to unpack the idea of personal well-being and indicate how it should be requited. In Chapter 6 I will take up the second sense in which compensation appears to conflict with desert, namely in the expression and appraisal of value. The discussion will show that redressing the suffering of harm is compatible with requiring the manifestation of positive value.

### **1. The concept of compensation.**

Compensation entails remunerating a person to the point where the cost of a harm is neutralized or counter-balanced.<sup>68</sup> The basis for judging what and how much benefit the harmed person should receive is her original status before the harm occurred. Providing the exact equivalent for someone involves returning her back to her previous baseline of well-being. In other words, compensation aims to provide the *exact equivalent* of something that is lost or forgone.

Hence, in the main case cited by UK common law for personal injury, compensation is defined as follows:

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<sup>68</sup> According to the Oxford English Dictionary, compensation is 'The action of compensating, or the condition of being compensated; counterbalance, rendering of an equivalent, requital, recompense.' (2<sup>nd</sup> edition, Clarendon Press: Oxford, 1989:601)

.... In setting the sum of money to be given for reparation of damages you should as nearly as possible get at that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in if he had not sustained the wrong for which he is now getting his compensation or reparation. (*Livingston v Rawyards Coal Commission* (1880) 5 App Cas 25, 39, *per* Lord Blackburn. Quoted in K. Stanton *The modern law of tort* (1994), 144)

What this legal precedent does not pinpoint, however, is what the ‘same position’ that the sufferer is to be returned to actually is. Is it simply the same level of well-being? The same personal objectives forgone? Or is it the exact replacement of the thing that is forgone?

## 1.2 Exact equivalence.

In general terms, leaving the harmed equally satisfied as the *status quo ante* is a minimal condition of providing the exact equivalent or restoring the ‘same position’. Compensatory treatment must at the very least provide the means to return the sufferer to his pre-existing level of well-being (i.e. his baseline of well-being). Nevertheless, equal satisfaction can be achieved through the realization of either similar or dissimilar kinds of well-being. Hence, compensation does not require the restitution of what is forgone (i.e. exact replacement of the kind of well-being forgone and/or the means of achieving it). To restore the base level of well-being, substitute resources and/or alternative kinds of satisfaction may have to be used in some cases (e.g. people who are congenitally blind clearly cannot have their sight restored). (Goodin 1989:59)

Hence, what is entailed by the exact equivalent can be interpreted in two different ways:

1. Equal satisfaction through alternative preferences: Compensation may aim simply to provide the exact equal satisfaction irrespective of the content of that satisfaction. In this case, compensators supply the means to the same level of well-being forgone, but not exactly the same circumstances previously enjoyed. The harmed are thereby left subjectively as well-off as the *status quo ante*. This type of compensation involves the exact exchange of positive benefits of some kind to make up for a negative state of affairs of a different kind. For example, the compensator may quantify the level of lost satisfaction resulting from a back injury and then provide enough monetary recompense to leave the injured person equally satisfied. Hence, from the point of view of New Welfare Economists, any form of resource may be instrumental to the restoration of personal well-being. All that is required is that the compensation returns the harmed to the point at which they are just as well off as the *status quo ante*. That is, compensating the person until she is indifferent between the state of affairs prior to the harm and the state of affairs after compensation. (Hicks 1939; Kaldor 1939)
  
1. Restoration of personal ends: On this interpretation it is not enough that the harmed are left equally satisfied. What is required is compensation that enables the realization of the kind of well-being *chosen* by the sufferer. Hence, we look to provide the means with which the chronic back sufferer can re-establish mobility, return to work, continue sporting activity and so on through, say, physiotherapy, transport allowances, provision of wheelchairs etc. The sufferer is given the resources necessary for the satisfaction of his chosen preferences, and thereby well-being. In this way the sufferer is left equally satisfied because restoration is provided for what (precisely) is forgone.

This second kind of compensation is only limited by the extent to which resources are scarce or the loss is non-renewable (e.g. blindness or irreparable spinal damage). In such cases we can only approximate the personal ends forgone (e.g. the provision of Braille texts, guide dogs or readers for the

blind). To the extent that we cannot provide the means to enable the exact realization of personal ends, we must supplement with satisfaction based compensation; that is, equal satisfaction through different means.

Irrespective of the kind of compensation employed, lost well-being defines both the degree of compensation due and the reason for compensation. The degree of compensation due is dependent on the extent of harm inflicted and that in turn is defined by the extent to which the person is innocently denied their baseline of well-being. The reason for compensation (the compensation-basis) is the fact that the person's level of well-being has been innocently curtailed by the harm suffered. I will return to discuss these issues and the problem of ascertaining the degree of compensation due in Section 4. For the moment my concern is more conceptual—to determine in what senses desert and compensation can be said to overlap.

## 1.2 Compensation and desert.

### Concordance

(1) Structure: This is consistent with the general structure of the other desert-bases such as effort, contribution and punishment. The reason for the desert in those cases is the worth (or harm) of the performance, while the amount of the deserving treatment is related to the extent of that worth (or harm). Moreover, compensation is archetypically agent-relative insofar as it centers on the chosen ends of each person.

(2) Temporality: Like desert, compensation is also past-looking insofar as the reason for requiring is some *prior* event(s) that constrain the realisation of one's well-being (i.e. something that has happened to the person). It may be argued further that compensation is also past-looking in the sense that the description of the magnitude and nature of the compensation to be received is defined by

what is forgone. From this point of view, compensation is inherently conservative in that it looks to restore the *status quo ante*. That is, compensation appears to preserve the pre-existing distributions of resources irrespective of whether they are just or unjust. If compensation focuses on recreating what *actually was*, then the egalitarian agenda is somewhat restricted. Robert Goodin argues that compensation is compatible with the alteration of pre-existing distributions provided such alterations are not unexpected. Anticipated or expected 'interventions' (as opposed to unexpected interventions; the clearest case of this being a sudden event such as an accident) do not countenance legitimate compensation-claims because the person's ability to make life-plans is not unduly challenged. Because persons have foreknowledge about progressive taxation, for example, they can easily adapt their plans and projects accordingly. As a result, there would be no grounds for a compensation claim against the tax because the autonomy of each person has not been violated. (Goodin 1991:157-161)

Goodin is right to identify personal ends and the construction of life-plans to fulfil them as the central concern of compensation. Compensation is primarily concerned with respecting personal ends, rather than simply restoring what previously existed. This emphasis on the personal ends that would have been realized in the absence of intervention captures the counterfactual flavour (i.e. the 'would have done') of compensation. Properly construed, compensation attends to what *would be now* rather than simply what *was* (i.e. the pre-existing *status quo*). This, I would suggest, highlights the performative aspect of compensation; that is to say, personal ends and life-plans require the agent to actually engage their intentions, choices and actions so as to realize them. Hence, compensation is based on ends-directed *performances* that are denied, rather than simply the denial of something that previously *belonged* to the person. This type of compensation thus enables the claimant to achieve what he would have performed. In doing so, it does not aim to recreate the past in the present, so much as to provide the means to pursue the preferred well-being that would have been realized. 'Placing in the same position,' therefore, means

ensuring the *continued* realization of each person's chosen projects and life-plan.

This point is made even clearer if we consider the compensation of the congenitally handicapped. Logically, in such cases there is no *status quo ante* to be restored. Rather the idea is to provide resources sufficient to enable the person to fulfil his life-plans; the goal is to provide resources sufficient to enable what he would prefer to do in the absence of the impediment.<sup>69</sup> A similar story can be told for those who are born into socio-economic impoverishment or for a particular group in society whose ability to perform as it would wish is foreclosed by wrongs committed before its members were born. In these situations compensation looks to ensure for the disadvantaged individual the pursuit of her personal ends and the life-plans framed around these ends.

Once we have acknowledged that compensation is fundamentally concerned with personal ends, we can also note further overlap between it and desert with regard to futurity. In the first place, each person's well-being is future-regarding because it is concerned with the realization of some desired future state of affairs; compensation looks to restore the sufferer's ability to realize those states of affairs. While compensation is based on events that *have* happened, the core reason for and metric of requital is the future-directed performances that have been denied. And, in the second place, compensation does not preclude the possibility of the offering or even the receiving of compensation in advance of the denial (e.g. a worker may be offered wages for the burden they have yet to endure; similarly, the person diagnosed with a fatal illness). Compensation, therefore, bears a similar temporal orientation to

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<sup>69</sup> It may be the case that the person can mentally frame their life-plan, but not physically realize it; compensatory resources therefore look to circumvent the physical impairment so that the personal ends can be pursued. However, it may also be the case that the person is unable to construct personal ends (i.e. there is no 'life-plan *ante*') and, therefore, we must impute a species standard on them.

desert: it is past-orientated, yet compatible with some future-oriented characteristics.

(3) Counterfactual: We have seen that compensation is not the restoration of a pre-existing distribution, but rather the securing of personal ends and life-plans that the person would have pursued. Hence, both desert and compensation are primarily concerned with *the under-receipt of resources due to circumstances beyond the person's control*. For both, the basis of requital is the state of affairs that the claimant would and could have realized in the absence of constraint they could not prevent. This means that if there is no constraint, then, firstly, there are no grounds for compensation and secondly, the resources received are fully deserved (i.e. there is no under or over-desert). In the language of compensation, the constraint is described as a harm. Nevertheless, the same circumstance is being described in the context of desert: one is prevented, by interventions beyond one's control, from carrying out one's performances. Both concepts look to rectify these uncontrolled interventions in a person's performance (e.g. an accident in the workplace, not receiving a promotion due to racial prejudice, being born into an environment which is socio-economically impoverished, being tripped in the final metres of a race, and so on).

### Discordance

However, as soon as we investigate a bit deeper, the two concepts appear to pull in opposite directions. It seems that compensation cannot be a legitimate basis for desert because it refers to something which has *happened* to the agent, rather than *something of value that is done* by the agent.

(1). Responsibility: Compensation is not concerned with the positive responsibility of the agent. Each compensation-claim is based on something that has innocently happened to the claimant, rather than on something done by them; hence compensation appears to invert the logic of desert-claims because desert now rests on something the subject cannot be responsible for—namely,

harm inflicted or suffered—rather than on the valued contribution he made. With compensation, it is not the person's controlled action that provides the reason for desert. Indeed, in the case of accidents, the person may receive without even acting at all.

(2). Expression and appraisal of value: Compensation seems to be unconcerned with whether or not the claimant has contributed something valuable (i.e. that there is something done which is evaluated or appraised by others); rather, compensation is based on something lost or suffered. What counts as deserving for compensation is not only something which appears to require no action or control, but also something which is not positively valued. And because compensation focuses on the passive desert-basis of 'harm incurred' rather than the active desert-basis of 'valued performance,' it leads to counter-intuitive conclusions. For example: Because the contented doctor suffers less disutility than her fellow doctors, she will deserve less than they will even though she may have exerted just as much effort and added just as much value to society.

Consequently, it seems that in trying to side-step the problem of uneven starts, a compensation-based account of desert will only succeed in detaching desert from its core conception. Consequently, the idea that compensation can be deserved would require the reconstruction of desert such that it is no longer recognizable as the concept that dominates how we relate to one another in everyday justice discourse. If we accept this conclusion, then we are left with two alternatives. To preserve the idea of CEV we might, following Miller, reject compensation as a legitimate desert-basis. (Miller 1976:110-113; Miller 1991:379-384) Alternatively, following Fred Feldman and Owen McLeod, we might argue that desert is not in fact limited to CEV and that compensation provides one example of why that is the case. (Feldman 1995c; McLeod 1996) According to this interpretation, it is perfectly legitimate to expand the range of reasons for desert beyond the core conception by including desert-bases which are not positively valuable and for which the agent is not responsible.



What I want to show in the following is that neither of these alternatives is necessary because, provided it is applied in the appropriate context, compensation is compatible with both responsibility and valued expression. My immediate concern before taking on the issue of value in Chapter 7 is to respond to the problem posed by responsibility. It will be argued that while harms that are not voluntarily inflicted are due compensation, they cannot be said to *deserve* compensation in the full and complete sense. It is only where harms are voluntarily chosen that the claimant can be said to *deserve* compensation.

## 2. Voluntary harm.

I have argued above that it is each person's preferred well-being (as defined by their personal ends) that determines whether particular circumstances constitute a genuine intervention or constraint on performance. If the personal ends cannot be adapted in advance to accommodate those circumstances, then the outcome is genuinely harmful. This in turn pinpoints the requirement of compensation that the person must *innocently* suffer the harm: for a claim to be legitimate, the intervening circumstances must at least be unexpected or unanticipated. But innocence also seems to relate to how careful the claimant has been—whether the circumstances were foreseeable (e.g. the foreknowledge of practice of progressive taxation) or, if not, preventable. In other words, 'care' implies that the claimant was unable to adapt to, avoid, or accommodate the harm-instigating circumstances. But if that is the case, how can workers, who deliberately choose their burden, be said to deserve compensation?

### 2.1 Fault and innocence.

*Prima facie* the idea of requiting harms that are voluntarily inflicted is non-commonsensical from the point of view of both desert and compensation. The

logic of this intuition (hereon the no-fault condition) seems to be that where people are responsible for their own predicament, then there is no demand on others to repair the damage done. Hence, the ‘guilty’ sufferer is not due compensation. In the same manner, the person who deliberately constrains the pursuit of his ends does not deserve. In this respect compensation and desert apply the same condition. What we have here is a more explicit statement of the counterfactual character of desert and compensation: that is, that requital follows for the performances that would have been done in the absence of *uncontrolled* constraint. (Conversely, we are not due the consequences that we are *not* responsible for, i.e. are not ‘at fault for’ or cannot ‘take credit for.’ The good and bad consequences of events we do not control are therefore ‘undeserved’—lucky beneficiaries do not deserve their good fortune; similarly, accident victims do not deserve the harms they suffer.) But, taken to its logical conclusion, the no-fault condition appears to entail that we cannot deserve compensation for the disutility of work.

1. Sacrifice: The first point to note in response to this conundrum is that while we usually do not compensate for voluntary harms, we do use the language of compensation in contexts where the harm is suffered for the benefit of others (i.e. work). In that context, we ascribe compensation to those who voluntarily forgo their personal ends. This suggests that compensation is not strictly consistent in its application of the no-fault condition. When we look at how a harm is brought about we find that the practice of compensation generates two opposing accounts of responsibility. It would appear then that the rationale behind compensation shifts according to whether or not the sufferer is responsible for the harm. With this in mind we may distinguish two kinds of harm upon which compensation is grounded:

- *Non-voluntary harm*: compensation for harm resulting from the actions of others, accident, illness and so on.

- *Voluntary harm*: compensation for harm resulting from acting in conditions that we have voluntarily chosen or at least those in which we could have chosen not to act.

In the case of non-voluntary harm, the harmed are innocent sufferers in that they were unable to foresee the misfortune (i.e. negative responsibility). In the case of voluntary harm, the harmed are due compensation because of the adverse conditions, leisure time forgone, the alternative activity forgone, and so on that they incur in performing. But in some at least minimal sense they have voluntarily chosen to act under those conditions (i.e. have assumed positive responsibility). To put this in another way, if they had not chosen to carry out a particular activity then we would say that the harm was non-voluntary.

The distinction drawn here is not explicitly concerned with the effect of the harm on each person's well-being; rather, it is primarily concerned with how the harm came about in the first place—whether or not the sufferer was in control of the circumstances that led to the harm. Nevertheless, the relevance of responsibility is contingent on the loss of well-being. Because compensation is relative to each person's baseline of well-being, harms which increase the person's well-being or leave it constant are not compensated. Responsibility is only relevant at the point where the person's well-being is reduced. Hence, the sadomasochist is not compensated because she does not suffer a loss in well-being as a result of the harms she chooses to inflict on herself. Likewise, the sculptor, who provides aesthetic pleasure for others, is not compensated if he enjoys his vocation.<sup>70</sup> While the prior condition for compensation is lost well-being, the secondary condition is, depending on the context, negative or positive responsibility.

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<sup>70</sup> As we shall see in Chapter 6 this appears to generate counterintuitive conclusions because a person who contributes much value may deserve little or no recompense. That is to say, the activity is not a burden because it coincides with the person's personal ends.

Hence, the question arises: What explains the rationale behind compensating the worker for the disutility inherent in her actions? Why is it that wages should take into account the undue stress of the aircraft controller, or the unpleasant working conditions of the garbage collector?

2. Unwanted harm: As has already been noted, compensation is only due where there is a loss of well-being. But, assuming that the claimant is averse to harm that reduces his well-being, and is able to connect his actions rationally with his preferred ends, then he would not choose to inflict harm on himself that he did not actually *want*. In other words, it does not make sense for a person to self-inflict harm where the harm does not in some way constitute a benefit. What I am suggesting here is that the intuition that self-inflicted harm should not be either compensated *or* deserving is pertinent only to 'wanton harm' simply because wanton harm does not actually constitute a loss in well-being and is, therefore, a misnomer. Hence, the question of compensation does not even arise in such cases because there is no harm done.<sup>71</sup> The sadomasochist, for example, chooses to self-inflict wanton harm and is, therefore, not due compensation. Indeed, somewhat perversely, we may say that the sadomasochist deserves the wanton harm insofar as he was responsible for it.

The upshot of this is that the no-fault condition overstates what is required in order for a person to be said to suffer *innocently*. I would argue that it is sufficient to the establishment of innocence that the claimant would not rationally have chosen the harm in the *normal course of events*. Rather, extenuating reasons imply that it is prudent or necessary to voluntarily suffer the harm. That is to say, because a person chooses a harm does not entail that they are at fault for that harm. The harm is suffered either for the benefit of others (contribution of value) and/or because of the personal benefits that obtain

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<sup>71</sup> Although this is not always correct for we can imagine cases where people choose to self-inflict unwanton harms. This represents a tricky problem because self-destructive actions do not appear to fall under either category of compensation (i.e. voluntary or non-voluntary). For this reason I make the assumption that people are not self-destructive. I am indebted to Jonathan Wolff for making this point clear to me.

(wages, status, etc.). There are reasons *beyond the harm itself* that explain why it is endured; reasons the absence of which would mean that the harm would not be endured.

We can thus begin to see how work is both voluntary insofar as it is chosen (and therefore deserving) and innocently suffered in the sense that it would not normally be chosen (and therefore compensated). To expand on this idea, let us further consider the context of work.

## 2.2 Work: consenting to harm.

In his seminal discussion of desert, Joel Feinberg argues that compensation requires that the sufferer is not wholly to blame (Feinberg 1970: 75-76) and that the unpleasantness, risk, responsibility etc. attached to work ought to be compensated. (Feinberg 1970:75&93) But why should the worker be compensated for those aspects of the job that she would prefer not to suffer and yet she chooses to suffer?

Feinberg argues that part of the reason workers choose the harm is because of the lack of better opportunities. Hence, 'insofar as the garbage collector's plight is no fault of his own, but only due to his bad luck, lack of skill, or want of opportunity, he *deserves* more money to make up for the unpleasant circumstances'. (His emphasis.) (Feinberg 1970:92) The argument here seems to be that harm-averse persons would not rationally choose to suffer. In the absence of lesser skill, high unemployment, lesser charms, bad luck and so on, the garbage collector would not choose such an occupation. In such a case he only consents to the harm because of the lack of better opportunities with which to realize his personal well-being. But this claim to compensation appears to rest on the worker *not being at fault* for the disutility of her job. That is to say the worker in this context is not actually fully consenting to the harm. Consequently, the paradox is not resolved; the fact that the worker is faced

with a poor selection of options only serves to shift the compensation-basis from voluntary harm to non-voluntary harm. Feinberg's suggestion here is akin to the idea of forced labour or compulsory military conscription.

Furthermore, it is in keeping with his inclusion of all undesirable circumstances that are *not the fault* of the sufferer as valid reasons for compensatory desert—namely, needs (Feinberg 1970:93-94), being unemployed, wrongful injury, and bad luck (Feinberg 1970:74-76). But, what I am arguing here is that while non-voluntary harms are valid reasons for distribution in their own right, they are *not* as Feinberg claims, reasons for desert.<sup>72</sup> Nevertheless, wages paid by an employer will cover the voluntary *and* non-voluntary aspects of work such that the worker is left fully compensated for the burden of the task. He is requited on the basis of the extent to which the job denies his well-being irrespective of whether or not he is subject to poor option luck. In effect poor options, an accident in the work place, compulsory conscription etc. only modify the *reason* for compensation, not the *amount* of compensation. That is to say, if the task is not fully consented to, part of the reason for compensation will be based on non-voluntary harm rather than compensation for voluntary harm (i.e. desert). Hence, the non-voluntary element of the wage is analogous to the employer paying out compensation where she is liable for an injury to a worker. But the analogy only goes so far because the employer is not responsible for the fact that a worker was faced with a poor set of alternatives.

However, Feinberg also notes that wages act as inducements to perform undesirable tasks. (Feinberg 1970:92) This hints at why workers can be said to be innocent even though they consent to the harm. This is because the worker only chooses to suffer unwanted harm in the knowledge that she will be compensated. While the harm is chosen, it is not wanted *per se*—what is wanted is the remuneration for the harm (or some other benefits such as status or the magnanimity of adding to the well-being of others). Harm, in this sense,

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<sup>72</sup> George Sher also argues that both non-voluntary and voluntary harms are legitimate desert-

is then instrumental to the pursuit of one's personal well-being. If the unwanted disutility is not compensated (assuming that the worker is equating her actions with her well-being) it cannot be said to be chosen. Hence, she would discontinue the work and/or claim non-voluntary compensation. To put this in another way: compensation in the form of remuneration is what makes the employment of labour morally permissible. The employee consents to sacrifice his personal preferences in the knowledge that he will be compensated; consent is conditional on subsequent compensation of some kind (similarly, a minimum condition of the deployment of public policies is that those who are adversely affected are compensated and agree in advance of compensation).

*Prima facie* there is no actual difference between the rationale of the factory worker and that of the sadomasochist. Both the factory worker and the sadomasochist rationally choose their harms because these are instrumental to gaining benefits; there is no lost well-being because the harms are compensated by the benefits that accrue. But in both cases the harm would clearly not be chosen without the commensurate 'compensation'. Assuming that rational agents choose to achieve their preferred ends and therefore increase their well-being, we may conclude that *it is the benefits following from harms, rather than the harms in themselves which are voluntarily chosen*. (Similarly, the 'person who voluntarily undergoes painful surgery to provide an organ for transplantation' (Feldman 1996:167-168) would not do so in the absence of some kind of compensation—say, the feeling of magnanimity for saving a life and/or pecuniary reward). Consenting to suffer a loss in well-being is contingent upon the receipt of benefits that at least neutralize that loss.

The question of additional compensation arises where there is a discrepancy between the disutility of work and the benefits accrued from it (i.e. pecuniary rewards, job satisfaction etc.), between what the worker could have reasonably expected to obtain, other things being equal, and the actual reward (e.g. a

worker can reasonably expect that if there is greater risk attached to his job then there will be a proportionate increase in his wages). In other words, the worker is further compensated both because he would not have inflicted the self-harm if he were only to be partially compensated, and because the imbalance is due to circumstances beyond his control (i.e. circumstances that are unforeseeable, inevitable, or a consequence of bad luck).

The apparent contradiction between the no-fault condition and compensation for the disutility of work is overcome, therefore, once we recognize that the worker is an innocent sufferer. Workers are innocent in the sense that they would not voluntarily choose the harm (a) if they were provided with a genuine choice, and (b) if they were not to benefit from the harm in some significant way. Just as the accident victim would not choose to suffer harm, neither would the worker choose uncompensated harm. Thus, we can think of no good reason why either should suffer unrequited harm. In fact, the primary reason for not inflicting unrequited harm on a person is that to do so would disrespect their autonomy. The worker consents to forgo her personal ends ‘temporarily’ in the knowledge that the recompense will enable the pursuit of those ends. Consequently, compensatory wages ensure the continued realization of a person’s ends, commitments and life-plans.

## 2.4 Why compensate workers?

Given that a worker has incurred unwanted harm on our behalf, why should that entail that we compensate them? It seems appropriate that we require such sacrifices, but are we *obliged* to require? It seems that in order to establish an obligation to compensate socially valuable, but personally harmful performances, we need to show that it is valuable for the *world* that the person can fulfil his ends and life-plans—that the satisfaction of people’s ends is valuable not only personally but also impersonally. But because such a position is notoriously difficult to establish (Sher 1987:56-59,199-202) I shall confine



myself to a more limited claim. What I shall attempt to do is explore in more detail the relationship between the sacrifice made in adding value to the world (say increasing the social product) and the receipt of compensatory treatment, in order to bolster the claim that we should requite. In Chapter Two I argued that we are obliged to requite deservers if the qualifying conditions of entitlement are consistent with desert; And the authority of desert to dictate those qualifying conditions stems from its crucial role in how persons relate and conceive of each other. I now want to go a step further and argue that the principle of reciprocity adds to the force of desert for socially valuable performances. We will see that the burden upon others to requite deprivation is greater than that inherent in contributory models of desert because the desert-basis is twofold: it rests not only on the contribution of value to the world, but also on the self-denial of personal well-being. Underlying this argument is a variation on the principle of reciprocity; namely, the onus on the beneficiaries of a valuable sacrifice to requite the sufferer. (I return to the principle of reciprocity in Chapter 6, Section 2.7.)

The demand for compensatory treatment is analogous to the scenario where a person who is responsible for harming another is liable to compensate that person (i.e. pay reparation for the damage which the perpetrator's actions have caused). In both cases there is an obligation on the relevant parties (wrongdoer or beneficiary) to restore the equilibrium for the harm done or the sacrifice made. But the analogy only goes so far because it is not the case that, say, employers are responsible for their employees' disutility. (Feinberg 1970: 75) The employer should compensate for the sacrifice made, but not because she was in some way to blame for the harm; nevertheless, culpability is not a necessary condition for establishing the obligation of others to compensate claimants.

How we define the obligation would seem dependent upon whether we take up the perspective of the harmed or the perpetrator, employee or beneficiary etc. And from these perspectives we can see that the same reasons for obligation are

applied, irrespective of whether there is or is not a culpable party—redressing the well-being forgone by the harmed and repaying a debt that has been accrued by the wrongdoer or beneficiary.<sup>73</sup>

(1) *Redress Model*: By taking the victim-oriented view we interpret the obligation as consisting in the redress of a loss in well-being. On this view, the perpetrator is obliged to compensate the victim because of the denial of her baseline of well-being. In other words, the obligation to compensate is based on the non-fulfilment of her personal ends. This model is intuitively straightforward, as it is difficult to think of an instance in which the sufferer should be denied what belongs to her.

(2) *Indebtedness Model*: In this case the perpetrator owes the victim a debt for the moral wrong they have committed. Rectifying the moral wrong entails compensating the victim until the moral equilibrium between the victim and the perpetrator is restored. Similarly, where there is no wrongdoer, others are indebted to the sufferer because of the benefit *they* gain from the sufferer's performances. Although beneficiaries are not obligated because of the moral goodness of the performances of others as such (although that is a possible desert-basis), they are indebted because of the sacrifice made on their behalf in producing something of value to them. In both cases the wrongdoer or beneficiary is obligated because of a (non) moral debt that they must repay to the harmed.

Hence, we are obligated to compensate both from the point of view of the sufferer and the perspective of relevant others. One exception to this twin perspective is where nobody is at fault for the harm; in that case the Indebtedness Model does not apply because there is no relevant subject (wrongdoer or beneficiary). Consequently the obligation to compensate where there is no wrongdoer rests on the Redress Model.

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<sup>73</sup> I adapted the following from Gerald Gaus's insightful discussion of the differing models of

Where there is a liable party Joel Feinberg interprets compensation as taking from both perspectives. Wrongdoers are obligated to both redress the harm suffered by the victim and repay the moral debt for the past wrong (i.e. 'restore the moral equilibrium'). (Feinberg 1970:74-76) However, he does not clearly specify on what grounds we are obligated to compensate the disutility of work and those harms for which nobody is at fault (victims of illness, accidents etc.). I take it that in the absence of a wrongdoer, the account of obligation his analysis requires must derive from something like the Redress Model. Compensation for him is defined by the fact that there is 'no good reason' why the innocent should lose their well-being (e.g. garbage collectors should be paid extra for the unpleasantness of their work). (Feinberg 1970:92-93)

However, I would further argue that, in the context of employment, and valuable activities in general, the Indebtedness Model also applies. While employers are not liable for their workers' disutility, they are surely indebted to their employees for the personal well-being they have sacrificed in the process of producing value. (We compensate garbage collectors not only for the unpleasantness of their job, but also because they provide a valuable service for others). However, if the suffering of harm does not generate value for others, then the Indebtedness Model is not relevant.

Feinberg appears to presume that there must be a relevant subject whom we "resent" *qua* the wrong they have committed, before a debt can be formed. Hence, because there is no object of resentment in blameless contexts, there is no basis on which to apply the Indebtedness Model. However, while the debt created by a moral wrong does rest on the negative attitude of resentment, it is wrong to presume that, where that attitude is not apparent, then no debt is created. That is to say, we do not require a subject of resentment in order to establish that beneficiaries owe a debt to workers. A different feeling, other

than resentment, underpins the obligation to repay their valuable performances—namely gratitude. We are obligated to compensate the garbage collector both because of the ‘underservingness’ of forgoing one’s baseline of desert (Redress) and because of the ‘gratitude’ we feel for the value we receive as a result of that sacrifice (Indebtedness).<sup>74</sup> The obligation of others to compensate therefore follows from the viewpoint of the sufferer *and* the viewpoint of the wrongdoer/beneficiary. It is only in no-fault cases (accidents, illness, bad luck etc.), or where the suffering generates no value, that the Indebtedness Model has no clear-cut application.

## 2.5 Innocence reconsidered: due care.

I have begun to sketch here the relationship between valuable performances and compensation that places a burden on us to requite. To summarize the argument thus far we can point to four overlapping reasons for compensating work:

- (i) Work results in unfulfilled well-being (i.e. disequilibrium between the benefits of work and persons’ ends).
- (ii) The disutility of work constitutes innocent suffering because (a) it would not be chosen, were there a genuine choice and (b) the positive responsibility for the disutility is conditional on recompense.
- (iii) The worker is to some extent responsible for both the suffering of harm and the product of work (i.e. they are responsible for the harm and the value-added to the world).

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<sup>74</sup> It seems to me that the drawback of Feinberg’s analysis is that where there is no object of blame or resentment he focuses solely on the perspective of the sufferer (Redress Model). By neglecting the perspective of the beneficiary (Indebtedness Model) he forgoes the opportunity to provide an additional, and perhaps more tangible, reason why we ought to compensate workers. Moreover, this reason faces up to the argument made by some that compensation is not conducive towards adding value to the world. Compensation, it is argued, looks to the negative rather than the positive effects of people’s performances. But loss in well-being does not entail that the worker has not contributed something valuable in the process and that therefore there is nothing to be grateful for.

(iv) There is a burden on others to compensate the worker because of the non-fulfilment of well-being and also because of the value that is added to the world.<sup>75</sup>

Given what I have argued above, the no-fault condition seems to suggest merely that harm which does not reduce personal well-being is not a legitimate basis for compensation, desert, need and so on. Compensation is only irrelevant where agents would rationally choose to reduce their own well-being. Take the example of the so-called 'deserved poor': It makes no sense to argue that the impoverished deserve their loss in well-being, since poverty is not a predicament that they would voluntarily choose. That is to say, they are not responsible for their predicament because they would not rationally choose it. They only deserve to be poor, on this interpretation of responsibility, if they are not purposive agents. But if agents are not able to connect their choices with their preferences, this seems to be in itself a clear-cut basis for a prior claim to non-voluntary compensation (cf. the congenitally handicapped). This case would seem to involve an antecedent loss of well-being for which the agent was not responsible (assuming that cognitively impaired persons have a well-being level less than the norm).

However, this perhaps represents an incomplete interpretation of innocent suffering. The condition does appear to rule out unwanted harm that the agent fails to prevent due to poor judgement, folly, apathy and so on.<sup>76</sup> This would include for example sadomasochists who accidentally injure themselves even

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<sup>75</sup> It may be argued that the obligation to compensate is grounded not on desert but upon the sufferer's claim-right, and that that follows from the right not to be harmed. But as I have argued in Chapter Four, desert can coherently be said to be prior to claim-rights. Hence, the right to compensation for the disutility of work derives from the desert reasons i-iv. Moreover, an agent's baseline of well-being belongs to them not by right, but in virtue of her being responsible for it. That is, it belongs to the agent because it is voluntarily chosen and acted upon. The non-fulfilment of it is undeserved and therefore deserves compensation. Hence there is no prior right to non-harm which is required to make the argument work. (A fuller discussion of this point is given in Chapter 4 and the following chapter.)

<sup>76</sup> Feinberg, for example, argues that in such cases 'we should be loath to say that he deserved it ..., for we do not as a rule compensate people for their folly or indolence.' (Feinberg 1970:75-76).

though they can foresee the risks involved in their actions, or people who would prefer not to be unemployed but make no attempt to rectify their predicament even though there is nothing preventing them from doing so. Another example is a person who chooses to smoke even though they are fully aware of tobacco's addictive properties and the probability of developing cancer. Although these harms would not be rationally chosen, we cannot say that they are innocently suffered.

A full description of the no-fault condition would thus read as follows: Harms are innocently suffered where they (a) would not be rationally chosen in the absence of recompense and (b) cannot be prevented due to bad luck. The first basis is a minimum reason for receiving compensation; however, it amounts to nothing more than proving that the claimant would not have rationally chosen to suffer the harm. Given that people are averse to harm, which reduces their personal well-being, it is difficult to think of any suffering that would not qualify. Therefore, it is only when we include the second basis that substantive content is given to the no-fault condition.

Take the case of the car driver who is injured in an accident that resulted from an error in his judgement. Assuming that the driver is averse to harm that causes a loss in personal well-being, then we can hardly say that he would have rationally chosen to have the accident. On this basis he is innocent and is therefore due compensation. But he is not innocent in the second sense, since the harm was preventable. Although this seems to count against his compensation claim, it is not the case that it completely rules it out. At most preventability reduces the amount of compensation justified by unwanton harm. That is to say, preventability is not an absolute condition that invalidates any prior claim to compensation based on unwanton harm. Instead the driver is compensated in virtue of the fact that he would not have voluntarily chosen the harm; yet he still receives less compensation because of his carelessness. It may be that the driver's compensation is obliterated because of the extent of his

culpability—the innocent harm suffered in this situation is outweighed by the driver’s culpability (e.g. gross negligence).

In this section I have tried to explain the conditions under which voluntary harm is consistent with the no-fault rationale that underpins compensation and desert. It was argued that while this condition is primarily relevant to non-voluntary harm, it also applies to voluntary harm. However, the reverse of the position that each individual is due the bad and good outcomes of those actions for which they are responsible (e.g. the product of one’s labour and the disutility of labour), is that unless the agent is responsible for the bad outcomes, she cannot be said to *deserve* recompense. Innocent suffering may be said to be undeserved because the agent was not responsible, but because of that fact the claimant cannot be said to deserve compensation. The rationale underlying undeservingness seems to preclude the desert-claim of non-voluntary harm.

### 3. Non-voluntary harm.

If we accept that compensation for non-voluntary harm is deserved, then this undermines the prerequisite of desert that the deserver must be responsible for the basis of desert. And because a person does not need to act in order to deserve compensation for non-voluntary harm we are led to doubt whether desert in general necessarily requires controlled action. (For example, the accident victim is not responsible for the harm they suffer and yet they deserve compensation.) Hence, compensation for non-voluntary harm challenges the connection between desert and responsibility.

I will argue that non-voluntary compensation (NVC) is not compatible with desert in its primary sense (i.e. CEV). Despite this I will contend that NVC is, on reflection, consistent with the idea of controlled action. Consequently it does

not constitute a counterexample, as some have argued, to the thesis that desert is conditional on responsibility. The reason why NVC only represents at most a secondary case of desert is not because of responsibility, but rather because it is unconcerned with the expression and appraisal of value. Non-voluntary compensation is best seen as at most a secondary form of desert because it is consistent with the redress, but not indebtedness model.

### 3.1 Non-voluntary compensation and the desert-responsibility thesis.

As was noted in Chapter Three, the counterfactual argument against the desert-responsibility thesis is a standard tactic that is employed to justify the expansion of the scope of desert to include uncontrolled desert-bases. The general strategy is to present a number of supposed desert-claims (e.g. compensation, entitlement, apologies, needs, etc.) from ordinary discourse which are not grounded in controlled action. The idea is to show that there is no necessary connection between desert and responsibility. Innocent suffering is thus taken to challenge the thesis that 'If *S* deserves *x* in virtue of the fact that *S* did or suffered *y*, then *S* is responsible for doing or suffering *y*.' (Feldman 1995b:64) The next step in the strategy is to employ this conclusion to explain why the scope of desert is not limited to controlled action.

Fred Feldman, for example, argues that the victim of a vicious attack 'deserves something in virtue of something for which he bears no responsibility' (Feldman 1995b:68) and that, 'This person did not deserve this suffering, and as a result of enduring it, now deserves some compensation.' (Feldman 1995c: 196) He then goes on to equate desert with justice: 'The closer the fit between desert and receipt, the more just the outcome.' (Feldman 1995a:573) Deserved pleasure and pain is just; undeserved pleasure and pain is unjust. Given that he considers innocent suffering unjust, it is crucial to his "justice as desert" thesis to show that the concept of desert is not restricted by responsibility. He means



to show, then, that compensation for innocent suffering is deserved, even though the victim was not responsible for the suffering.<sup>77</sup>

It is interesting to note that Feldman does not argue precisely why compensation for innocent suffering undermines the connection between desert and responsibility; although it should be pointed out that Feldman does not rule out the possibility of some connection between innocent suffering and responsibility. Rather, he challenges others to adequately describe how such a position might be sustained. (Feldman 1996:166) Nevertheless, given that he wants to both describe justice as desert and equate non-voluntary compensation with justice, it is a significant weakness in his argument that he fails to offer a more precise account of the relation between innocent suffering, responsibility, and desert. Without such an argument it remains equally plausible to simply reject innocent suffering as a valid desert-basis and thereby maintain the desert-responsibility connection.

Moreover, if we accept cases like non-voluntary harm as a valid desert-basis then it seems that the concept of desert loses its distinctive meaning—it becomes merely ‘that which is due.’ Taken to its full extent, the strategy permits the inclusion of a whole list of passive characteristics such as rank, age, sex and so on that can hardly be considered as *just* reasons for the distribution of requitals. We see then that the counterfactual strategy does not so much expand the scope of desert as initiate a slippery slope towards an account of desert that lacks any normative force; for without the control criterion there are no grounds for excluding claims to benefits as valid desert-claims. In effect, the meaning of desert is obliterated once the control criterion is undermined. A wide conception of desert is simply too indeterminate to make it of any value as

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<sup>77</sup> For a further example of the counterfactual strategy see (McLeod 1996:216-220) (McLeod 1995:23). Like Feldman, he argues that although responsibility is often a condition of desert, this is not always the case. Hence the use of the concept of desert does not necessarily exclude justice-claims that have no control criterion (like entitlement, needs, etc.) from desert. Geoffrey Cupit also claims that desert does not necessarily depend on positive responsibility, but he uses counter-examples other than compensation to argue the point. (Cupit 1996: chap. 7)

a principle of justice. These drawbacks in the counterfactual strategy result from the practice of extracting the meaning of desert from the plethora of ordinary desert statements (which in itself presents a haphazard way to develop a principle of justice). The somewhat unsatisfactory conclusion reached by Owen McLeod on this issue is that while the inclusion of non-responsible desert-bases relies on unsupported intuitions, so too does the counter claim that desert is limited by responsibility. (McLeod 1996:219-220) Therefore, additional argumentation is required by justice-as-desert theorists to limit the acceptable range of justice-claims before we can accept a wide conception of desert.

How then are we to resolve the challenge to the core notion of desert raised by non-voluntary harm? Given the indeterminacy of the wide conception of desert, do we need to reject non-voluntary compensation as a desert-basis to maintain the desert-responsibility thesis central to desert? I will argue that non-voluntary harm does not undermine the desert-responsibility connection because compensation for non-voluntary harm is in fact couched in terms of controlled action; upon closer scrutiny it becomes apparent that voluntary action does in fact form the primary reason for compensation even in the context of non-voluntary harm.

As we have seen, the proper object of voluntary and non-voluntary compensation is the preferred actions forgone. The *reason* we compensate is that the harm is not what the individual would have voluntarily chosen. We compensate the well-being forgone—those actions for which the agent would have been responsible. The harmed are compensated so they may realize the preferred responsible actions that are foreclosed by the work, accident etc. The mistake of theorists like Fred Feldman and Owen McLeod, therefore, is that they fail to recognize both that the reason for compensation and the calculation of compensation is crucially linked to responsibility.

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### 3.2 Responsibility as a crucial consideration.

One possible case for the relevance of responsibility to non-voluntary harm rests on the claim that someone is responsible for this harm. However, locating responsibility in the perpetrator instead of the victim is to miss the point: desert is grounded in circumstances that claimants are responsible for themselves. Thus, while it is clear that the culpability of the perpetrator provides the desert-basis for her punishment, there is no direct connection between their culpability and the desert-basis of the harmed. The culprit may be punished in direct proportion to the harm that is inflicted, thereby ensuring that the culprit is left equally worse-off as the victim; however, on this reading of punishment, it is the responsibility of the criminal for the harm that is the prior criterion of punishment, not the degree of harm. Similarly, the reason for compensating suffering is the innocent harm and not whether or not someone else was responsible. Furthermore, as Fred Feldman rightly notes, this would not undermine the counterfactual argument because it does not rule out those harms for which nobody is liable (i.e. harm resulting from unpreventable accidents or illnesses'. (Feldman 1995b:69)

A further argument might be that responsibility is always a crucial consideration because, in determining the legitimacy of a compensation-claim, it must be shown that the individual was either responsible for the harm or not responsible for the harm. That is to say, the language of responsibility underlies the desert-basis of non-voluntary as well as voluntary compensation. Innocent suffering is deserving of compensation precisely because the sufferer was not responsible for it. Compensation rectifies that undesert.<sup>78</sup> Saul Smilansky gives the example of a polluted town to illustrate this point:

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<sup>78</sup> For an argument along these lines see Saul Smilansky's response to Feldman. (Smilansky 1996b:158-160)

Since persons can morally *expect* not to be harmed when not responsible for being harmed, and since the people of the town are *not responsible* for the pollution (they have done *nothing to deserve it*), they *deserve* e.g. compensation. (His emphasis.) (Smilansky 1996b:159)

Without being able to answer the question: 'Were the townspeople in control or not in control of the pollution?' we are unable to verify whether their compensation-claim is legitimate. Here then we have an important sense in which responsibility is a relevant to non-voluntary compensation. Compensation for non-voluntary harm is valid desert-basis because the question of responsibility remains a 'crucial consideration for the establishment of desert'. For this reason compensation does not present a counter-example to the thesis that desert and responsibility are connected. (Smilansky 1996b:161)

Smilansky's argument appears to depend upon a highly abstracted conception of responsibility. On this reading it cannot be doubted that responsibility is pertinent to both non-voluntary compensation and desert. But this abstract conception of responsibility must nevertheless acknowledge that the form of control underpinning non-voluntary compensation is the polar opposite of that which underpins desert. While the question of responsibility in general enables us to delineate between non-voluntary and voluntary compensation-bases, this does not deny that negative responsibility is a necessary criterion of the former. Since the abstract conception of responsibility does not allow us to resolve this opposition, it seems that the only way we can accept non-voluntary compensation as a desert-basis is to redefine the desert-responsibility thesis such that both lack of control and control constitute legitimate criteria for desert. But as has already been noted, this undermines the force of desert because we are left with no basis for limiting what is to count as deserving.

### 3.3 First-order positive responsibility.

However, we do not need to resort to such a drastic measure to resolve the problem because NVC can be shown to be indirectly dependent upon positive responsibility. Central to the concept of compensation is the idea that the claimant lacks something. What it is that is lacking is that which the claimant would have been in control of in the absence of harm. Once we delve a bit deeper into what lies behind negative responsibility we see that it rests on the choices and actions for which the agent *would* have been responsible. Prior or counterfactual positive responsibility is crucial to the legitimacy of any compensation-claim because in the absence of it there can be no grounds for compensation. There can only be a reduction in personal well-being when the counterfactual choices and actions are foreclosed. Now, if we accept lost well-being as the reason for compensation and define well-being as constituted by what the agent would have done in the absence of harm, then it follows that positive responsibility is central to compensation.

The language of compensation therefore is necessarily linked to the counterfactual positive responsibility of the agent. I shall call this first-order responsibility and the decision to perform a burden such as work a second-order responsibility. Given this, it follows that NVC does not in fact constitute a counter-example to the claim that desert is dependent on positive responsibility. When we compensate the accident victim we are fundamentally concerned with what they would have done in the absence of the accident. It is upon that denial that firstly, the compensation-claim is justified and secondly, the level and form of requital is determined.

We may be tempted to go a step further and argue that the pursuit of personal ends supports a first-order account of desert (i.e. NVC is based on the first-order desert forgone). We compensate the townspeople and the workers because they do not deserve to forego or sacrifice their prior desert-claim for the realisation of their personal ends. Consequently, compensation looks to

provide the exact equivalent level of desert that would have been enjoyed other things being equal. What this would mean is that voluntary *and* non-voluntary compensation are compatible with the concept of desert.

Unfortunately, this line of argument cannot be sustained because the pursuit and realization of personal ends does not in itself constitute a contribution of value for others. The fulfilment of personal ends, although clearly valuable for the individual, is not appraised. We may argue that the satisfaction of personal ends does create impersonal value for the world, but this more abstract form of value is not what grounds CEV, because although it is valuable for the world, it is not so for the well-being of persons other than the agent. The satisfaction of personal ends is not directly intended by the person to create value for others, nor is it perceived that way by the would-be appraisers. For this reason NVC, although compatible with first-order positive responsibility, cannot be taken as a basis for desert. This remains the case even where a non-voluntary harm occurs while contributing value (e.g. an accident in the workplace) because the harm is not intentionally suffered for the benefit of others; indeed, nobody benefits from the harm.

It is on this point that I think Sadurski's compensatory account of desert comes unstuck. To manoeuvre around the fact that claimants are not positively responsible for harms such as accidents, criminal injury etc. and the fact that the claimant does not contribute value, Sadurski argues that the compensation-claim rests on *prior* desert. On this reading, there are two levels of denial, one involving the prior voluntary harm, and the other non-voluntary harm. Non-voluntary harms are compensated because of the denial of the prior desert (i.e. the prior voluntary denial of personal ends). His point is not that personal ends and life-plans are deserved, but rather that the denial of desert receipt should be compensated. Hence, Sadurski's account of NVC is based on the idea that there is an outstanding debt to be paid, a debt that is 'outstanding' because of the accident, injury etc. (e.g. it is akin to the idea that a person's deserved wage packet should not be delayed, curtailed or withdrawn). Consequently, he argues

that non-voluntary harms can be deserving and that, therefore, 'the concept of compensation is *fully* co-extensional with desert.' (My emphasis.) (Sadurski 1985:145-146)

Let us accept for the sake of argument that deserved requital that is denied can be construed as deserved; indeed this seems a plausible line of argument even though the claimant was not responsible for the denial. The problem with this 'unfulfilled requital' interpretation of NVC is that the compensation basis shifts from the denial of personal ends to the denial of desert. As we have seen compensation in general is fundamentally concerned with balancing out the *total* denial of personal ends, *not just* those ends denied in the pursuit of social value. Hence, the compensation received on Sadurski's reading of NVC will be incomplete. It will not include the denial of personal ends that bear no value for others. In effect the compensatory treatment would fall short of providing the exact equivalent. Hence, Sadurski's account of NVC over-extends the conceptual overlap between compensation and desert.

Nevertheless, it is interesting to note that in the context of work there is a kind of symmetry between the two forms of compensation in the sense that both provide a different basis for requiring the loss of personal well-being due to a harm (i.e. the loss of first-order positive responsibility). Lesser volition exerted in the decision to take on the burden (e.g. forced labour such as compulsory conscription or a work accident) qualifies the amount of voluntary compensation, but increases the amount of non-voluntary compensation. This means that lack of second-order responsibility does not preclude compensation so much as shift the basis of the claim. Lack of second-order responsibility reduces the compensation due according to the context of voluntary harm, but not the overall level of compensation. Similarly, harm voluntarily inflicted reduces the amount of non-voluntary compensation. For example, a person who voluntarily chooses to work in a factory is compensated for the disutility he chooses to endure. But if he is coerced into working in the factory (as a result of say forced labour) then he is due compensation for the disutility he does not

choose to endure. The consideration of second-order positive and negative responsibility serves to delineate in which context each compensation-claim takes place. In spite of this, the degree of lost well-being and thus compensation remains constant. Both compensation-bases provide opposed but mutually balancing criteria for compensating the worker's lost well-being.

But while we compensate non-voluntary harm because of, and in order to restore, the sufferer's positive responsibility over her personal ends, we are yet not *indebted* to the sufferer. We compensate a person's voluntary harm *both* to restore the pursuit of personal ends (Redress Model) and because of the value he creates for others in the process (Indebtedness Model); in other words, positive responsibility enters the compensation-basis both in terms of personal ends and the decision to actually forgo those ends. Because positive responsibility enters at both the first-order and second-order levels, and because value is contributed to the well-being of others, voluntary harm constitutes a legitimate desert-basis: in that context desert and compensation are co-extensional.

Feldman and McLeod are right to say that compensation challenges the idea of CEV, but they alight upon the wrong reason as to why that is the case.

Negative second-order responsibility does not contradict desert because compensation, in both its voluntary and non-voluntary forms, is contingent upon on first-order positive responsibility. Where compensation actually challenges CEV is with regard to the expression of value. As we have seen, however, it is only NVC that is unrelated to the contribution of value.

Voluntary harms remain wholly compatible with CEV. But NVC is not a counter-example to CEV because it simply does not constitute a legitimate basis for desert; rather, it is a distinct basis for compensation. Consequently, if we attempt to impose NVC onto desert we are either misusing the concept or reconstructing it to the point where it loses any coherent meaning. In contrast, voluntary compensation is wholly consistent with desert because it rests on the



denial of the pursuit of personal ends and life-plans (i.e. first order positive responsibility forgone) in the course of contributing to the well-being of others.

#### 4. Compensating the exact equivalent.

An important problem that has yet to be fully considered is: At what point are the personal ends that the sufferer is innocently constrained from realizing balanced out by compensatory treatment? When we evaluate a victim's compensation-claim we have in mind what she would have preferred to be doing if she had not been harmed. In judging the exact equivalent, therefore, the compensator must ask at what point is the sufferer's well-being returned to the *status quo ante*? More specifically, they must look at the preferences or desires that the person is innocently constrained from realizing, in order to judge the extent of deprivation. However, determining the degree of lost satisfaction only tells part of the story. If we are to respect the particular personal ends and life-plans chosen by the harmed, we must look to provide the means to re-attain them rather than simply leaving them as well off as *the status quo ante*. The person voluntarily consents to suffer a harm on behalf of others in the knowledge that the compensation will properly enable her to pursue the ends forgone in the process. This question of how to compensate (how much and what form of compensation is adequate) applies equally to both non-voluntary and voluntary harm, and so I will not distinguish between them here unless otherwise stated.

Before we can consider the measure of compensatory treatment, it will be necessary to briefly consider what account of well-being underpins deserved compensation.

#### 4.1 Well-being.

Compensation follows from the non-fulfilment of something that belongs to the sufferer: namely, the well-being that would have been realized by the person. Each person's chosen well-being denotes the reference point or baseline upon which compensation is judged (e.g. a garbage collector is compensated for the extent to which the work separates him from his preferred well-being). Well-being may be described as that idealized state of mind that the agent prefers above all else. It is the satisfaction of one's desires, personal ends and life-plans. Therefore, it signifies that condition in which the agent's preferences, personal ends and life-plans are fulfilled. I do not mean by well-being mental states such as pleasure and pain, nor happiness and unhappiness, which independently judge the utility of each person satisfying a particular preference, for the value of satisfying a particular preference or desire does not necessarily relate to such mental states. Instead, an agent ranks her desires, with the more desired providing a higher level of individual well-being (and that may *coincidentally* entail a higher level of psychological fulfilment). Well-being, therefore, is that state of being which is associated with the satisfaction of discrete preferences or desires. We assume that the set of personal preferences are, at least in part, voluntarily chosen and that they are ranked so as to maximize personal well-being; therefore we infer from the fact a person chooses  $x$  rather than  $y$ , that  $x$  provides a higher level of personal well-being. I leave aside for the moment the question of control over one's preferences – I argue in the following chapter (2.4) that a crucial distinction must be made between those exorbitant preferences that are cultivated and adaptable and those which are not. It is only the latter that can be said deserve compensation in full if they are denied.

It is assumed also that agents are fully informed and, therefore, there is no divergence between preferences and well-being caused by ignorance, lack of foresight or irrationality. Informed preferences may entail a higher level of well-being even if they do not necessarily increase say, personal happiness. The

well-being choices associated with our preferences may or may not be based on increasing happiness. We may, for example, desire something even though it makes us unhappy. To use an example of James Griffin's, we may gain greater well-being from the knowledge of bitter truth, than from the psychological fulfilment gained from comfortable delusion. (Griffin 1986:13) Hence, ranked preferences are not necessarily indications of mental state fulfilment. And for the same reasons preference satisfaction cannot be properly evaluated by psychological satisfaction. Hence, accounts that place priority on the fulfilment of mental states are rejected as bases of deserved compensation on the grounds that they constitute an overly restrictive description of well-being.

Implicit in the idea of preference satisfaction is the choices and actions of the agent that are required to realize it. If we assume that agents rationally pursue their preferred ends, their choices and actions will orient towards that end. Therefore, well-being is contingent upon the choices and actions of the agent insofar as it cannot be achieved independently of them. Given that agents rationally pursue their preferred ends, it would be nonsensical to talk of well-being independently of their realization. Well-being logically presupposes our preferences; our preferences presuppose our choices and actions and are themselves, at least in part, self-determined. That is to say, our choices and actions are 'instrumental' to the realization of our personal ends (which may in themselves be voluntarily chosen), and therefore the fulfilment of personal well-being. The view of desert that emerges from this is that we are due compensation for the non-realization of the well-being that belongs to us, or would have belonged to us in the absence of constraint. The choices and actions that we are in control of are of instrumental value in that they permit the realization of personal preferences and ends that are good in themselves. Good, that is, insofar as they increase personal well-being. And, the objective characteristics of material and immaterial benefits that we seek through our choices and actions allow us to realize that good. Similarly, the distribution of benefits according to compensation is instrumental to achieving the good.

## 4.2 Ideal compensation.

What then is the appropriate mode of expressing and treating deprivation? The primary objective of compensation is to provide the means by which the harmed can re-establish their chosen ends/desires. Ideally, therefore, compensation requires that we try to provide the right kind of resources in sufficient quantity so as to enable the sufferer to re-establish his personal desires and thereby ends. This means that any generalized evaluation scale will not be useful to us; rather, what we need is a measure of the amount of those objective properties that will enable the *realization* of preferences/ends. This cannot be achieved by a generalized metric of well-being because such a formula would subsume the relevant properties and preferences. Lost well-being is expressed and treated in terms of alternative properties such as pecuniary units. We can convey the weight of someone's personal deprivation by appealing to different properties, for example by translating the person's losses into the language of pecuniary units. A valuator may take up the point of the sufferer by contemplating how much they would be willing to accept in compensation (WTA) to make up for the deprivation. WTA positions the intensity of the loss on an inter-subjectively comparable scale. It takes the non-pecuniary harms (psychological distress, loss of enjoyment of life, loss of life expectations, loss of bodily function such as sight, and mobility, pain etc.) resulting from the instance of innocent constraint and converts these into monetary units. WTA then combines this with the more tangible pecuniary harms (lost earnings, medical expenses, damage to property, etc.) so as to arrive at an indication of total deprivation. (The idea of WTA will be discussed in more detail in Section 4) By interpreting harms in terms of pecuniary units, this approach enables an inter-subjective basis for comparing the extent of personal deprivation.

But while this approach establishes a measure of the subjective magnitude of a loss, it is not couched in terms of the objective properties that are necessary to attaining one's preferences/ends. Consequently, while it is effective as a means

of conveying the extent of one's loss, it is inadequate when it comes to the actual distribution of recompense. Satisfied preferences are valuable to the bearer because, *ceteris paribus*, they enable the realization of personal ends and life-plans. And preferences themselves are satisfied as a result of two factors: Firstly, as has already been noted, the choices and actions made by the agent are instrumental to the attainment of preference satisfaction. Secondly, preference satisfaction is contingent upon the objective properties of goods. We may interpret this broadly so as to include physical as well as non-physical goods in the world (e.g. laughter may be seen as an objective property of humour in the same way as mobility is a property of say bicycles, or exchangeability is a property of money). Assuming that agents will rationally pursue their preferences, then it is the innocent constraint from appropriating and using these properties which leads to a loss in personal well-being.

Hence, for a good to be an adequate substitute for another it must exhibit similar objective properties. There is something about margarine, for example, which makes it an adequate substitute for butter, but not for a car. The agent identifies these properties in the world as the means to realize her preferences and, thereby, her personal goals and life plans. Thus, 'One thing is a good substitute for another if, however different it might be, it has the same objective capacity to promote exactly the same end as does the other.' (Goodin 1989:65) A superior form of compensatory treatment is founded on not simply the quantity of a good, but on the quantity of the *right* kind of objective properties attached to the good.

Hence a subjective estimation of preference dissatisfaction is not very useful when it comes to actually compensating the particular loss. If we require the loss in terms of the subjective estimation, then we are not necessarily providing the means for the harmed to attain their lost preferences/ends—they are left subjectively as well-off, but not objectively as well-off. It may be argued that some properties, although they are not the right kind of instrumental property, can still provide the means to attain the lost preferences. Monetary units are the

most clear-cut example of such a good: because of the property of exchangeability inherent in money, the harmed are able to purchase those properties necessary to the realization of their lost ends (i.e. the accident victim is able to restore his mobility by purchasing a wheelchair, car, mobility facilities etc.). But the scale with which subjective dissatisfaction is gauged (e.g. WTA) is not couched in these instrumental terms; it seeks to measure how many pecuniary units would make up for the fact that you have been denied x, rather than how many pecuniary units are necessary for you to acquire those properties necessary to fulfil x.

Subsuming the content of each person's well-being under a generalized scale leads to the deprivation's being not accurately requited. In effect, using such a scale fails to take into account people's different ends, because different properties are employed or they are insufficient to obtain the right amount of appropriate properties. Providing different properties but the same level of subjective satisfaction imposes new ends on the harmed other than those that they have chosen. In other words, the quantity derived is not in a language suitable to respect properly the volition and identity of the harmed (i.e. x amount of the relevant property, or x amount of the monetary units necessary to purchase the right amount of the relevant properties).

Compensating according to a generalized scale is, as Robert Goodin aptly puts it, *ends-displacing*. (Goodin 1989:60) Even if the mode of treatment is pecuniary, it is not designed to enable the satisfaction of the actual preferences forgone. What is required is treatment with the requisite properties (or treatment that produces the ability to acquire those properties) necessary to attain the personal preferences/ends denied. Compensation that aims to respect the volition and identity of each sufferer can employ different means provided the means are of the right kind. Hence, we may draw a distinction between Token Compensation, which aims to provide the subjective equivalent irrespective of personal ends, and Ideal Compensation, which aims to provide the kind and degree of treatment necessary to realize personal ends. In the latter

case, the exact equivalent is centered on the personal ends of the sufferer rather than merely the magnitude of the deprivation. Hence, Token Compensation looks to provide the harmed 'with equivalent satisfactions through different ends'; Ideal Compensation looks to provide the harmed with 'equivalent means to the same ends.' (Goodin 1989:60)

This means that if there are objective properties available that would enable the fulfilment of a sufferer's denied ends, then we are bound to compensate in such a way. Only if the necessary properties are scarce or non-renewable (e.g. eyesight) should we resort to providing the harmed solace through the satisfaction of alternative ends. But in such cases the primacy of the personal ends dictates that the Token Compensation equates as closely as possible with the ends forgone (hence we provide guide dogs, Braille texts, readers, and so on for the blind). Put another way, in these cases we are bound to provide the second-best properties instrumental to the fulfilment of personal ends.

#### 4.3 Token Compensation.

Token compensation is indicative of much of the received wisdom embodied in traditional utility theory and economic theory in general (although the significance of objective properties is being increasingly acknowledged). It has been presupposed that any kind of good in sufficient quantity will substitute for that which is forgone—that if the harmed are returned to the same indifference curve, but not necessarily the same position on the indifference curve, then the compensatory treatment leaves them as well-off. Thus, it is believed sufficient that transfers leave the sufferers indifferent between their pre-existing desires and their desires after compensation.

Welfare economists, for example, have argued that a public policy that makes some people worse-off (i.e. sub-pareto optimal) is permissible if, hypothetically, the gainers can compensate the losers such that they are left

equally well-off, with the gainers still being better-off. (Hicks 1939; Kaldor 1939) Passing this hypothetical compensation test establishes reasonable grounds for making some people worse-off because it allows the possibility to redistribute goods to the losers while maintaining a social improvement in overall well-being. 'In order [for an economist] to establish his case, it is quite sufficient for him to show that even if all those who suffer as a result are fully compensated for their loss, the restructuring of the community will still be better off than before.' (Kaldor 1939:550) Hicks expresses the same idea in a slightly different way, claiming that social improvement is obtained if the losers cannot profitably bribe the gainers to oppose the change. (Hicks 1939) According to the compensation test, gainers will accept a tax on their gains to compensate the losers in a policy change, up to the point at which they are made worse-off—the point at which the compensation tax takes them below their indifference curves (i.e. depletes their consumer surplus). If their consumer surplus is more than depleted by the transfer, then the policy change bears no social improvement.<sup>79</sup>

But the idea of consumer indifference between goods fails to fully respect the distinctive content of people's preferences. Compensating a harmed individual is essentially based on the idea of respecting people's choice of preferences and also the choices and actions designed to realize them. The reason we respect the choices of others is that these choices, in some way, are part of their constitutions. Preferences belong to agents and are, therefore, deserved by them because they were responsible for them. Hence, the presumption of consumer indifference, to borrow Rawls's phrase, fails to identify the separateness between persons. Once we recognize the significance of respecting personal ends, then it follows that the subjective restoration of personal well-

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<sup>79</sup> The compensation test has been much criticized in the literature mainly because (1) it accepts policies based on a hypothetical rather than actual social improvement, and (2) it permits a policy shift in either direction (A to B, or B to A) which means that we are unable to discern a policy improvement. (For further discussion of these and other issues see (Ng 1983) (Griffin 1986:149).) I will leave these considerations to the side here because compensation for harm is concerned with quantifying extant deprivation and the idea of indifference rather than policy



being comprises an impoverished conception of compensation. People are indifferent between the means of attaining their personal ends, but not between the ends themselves. Consequently, Token Compensation is distributionally insensitive to the goals and life-plans of the harmed.

#### 4.4 Instrumental WTA.

However, there is a way of adequately compensating in terms that remain sensitive to the ends of the sufferer. Ideal Compensation will follow if each sufferer's willingness to accept compensation incorporates those pecuniary units necessary to acquire the right kind of objective properties. By constructing WTA along these instrumental lines, we obtain a gauge of what is required to fulfil the denied ends, even though this measurement is not in terms of the requisite properties. Whether actual respondents would conceive of WTA in this way is a moot point. But if we explicitly couch WTA in instrumental terms, then it seems we have an inter-subjective basis for describing compensatory treatment which is distributionally sensitive to the will and identity of the harmed.

In effect, what is being suggested here is a modification of a standard tool employed by economists to measure the cost of proposed public policy; that is, the Contingent Valuation Method (CVM). CVM takes up the point of view of the sufferer by asking how much she would be willing to accept in compensation if she suffered a particular harm. Thus, in the context of, say, a criminal injury, we would hypothetically ask how much the victim would be WTA for the suffering of the injury. By considering the harm in terms of this thought experiment the government assessor, judge, jury, etc. acquires a more comprehensive picture of the actual deprivation incurred. Because CVM includes the more intangible or non-pecuniary preferences, and reflects the intensity with which each preference is held, we obtain a more complete

conception of the preference satisfaction forgone, and therefore the compensation due. In terms of the Kaldor-Hicks's compensation test, a project would be permissible if the gainers from, say, the construction of a dam, were able to compensate the losers for their WTA, and yet still benefit from it.<sup>80</sup>

Indeed, CVM has become a widely accepted method for evaluating the costs associated with policy proposals.<sup>81</sup> CVM is being used in the present context as a heuristic device that we may employ to describe the extent of personal deprivation resulting from a harm. It represents one way in which we might contemplate the appropriate amount of compensatory treatment—it asks the observer to take up the perspective of the victim in order to see how much he would have been willing to accept to re-establish his pre-existing level of well-being.

But, as we have already noted, the problem with this standard formulation of CVM, and economic theory in general, is that it disregards the particular ends of the harmed or losers. WTA indicates the magnitude of personal deprivation, but not in terms of the actual preferences and life-plans of the deprived. In order to make the method sensitive to those ends the question to be asked must be: 'How much would you be willing to accept in compensation which would be sufficient to realize the personal ends forgone?' In this way CVM extracts a more accurate measure of the compensatory treatment required to re-attain the well-being forgone. Similarly, it provides a legitimate basis for determining the costs of a proposed policy; the permissibility of a policy or project is contingent

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<sup>80</sup> For a fuller explanation of CVM as a cost-benefit analysis tool see (Pearce and Turner 1990:148-153).

<sup>81</sup> CVM has been applied in practice to estimate from the point of view of third parties the human cost of major construction projects. An estimate of the preference satisfaction inherent in the status quo is elicited by asking those affected how much they would be willing to pay not to have the project (e.g. The Roskill Commission, as part of the assessment of the costs of a proposed third London airport, asked homeowners: 'What price would be just enough to compensate you for leaving your house (flat) and moving to another area?' (See (Goodin 1989:74)) This is an estimation of the instrumental value of the environmental status quo; but even though willingness to pay is clearly an anthropocentric perspective, respondents may still impute non-human values (i.e. the intrinsic value in nature etc.). Clearly the issue of human bias is not a problem for personal deprivation because the relevant disvalue is internal to the subject.

upon the costs involved in restoring those personal ends that would be denied by it.

However, this modification of WTA will only make sense when there are the right kind of properties in the world that can be procured so as to re-establish one's ends. If there are not—as will often be the case—then WTA would have to be based on second-best substitute properties (e.g. monetary units necessary to acquire a prosthetic limb). But the less that we are able to fully realize the personal ends forgone, (i.e. the more substitute properties are inadequate) the more we must look to provide additional compensation through the realization of other ends; that is, the more WTA must inevitably look to Token Compensation.

This would seem to countenance a secondary compensation claim: what the harmed are willing to accept in compensation ought to factor in not only the denial of the properties necessary for the fulfilment of well-being, but also the irreplaceable nature of these properties; for the harmed in this situation suffer a further innocent constraint, since they cannot realize their ends in spite of compensation. Consequently, they are due additional or top-up compensation in the form of the alternative properties so that they are left subjectively indifferent between the state of affairs prior to the harm and after compensation.

#### 4.4.1 Consent.

One aspect of this solution to the problem of finding an appropriate mode of expressing and treating deprivation is that it is founded on the language of consent. The form and extent of compensation is contingent on the sufferer's actual or hypothetical agreement. Hence a judge or government evaluator does not ask what is the right amount of compensation, but rather attempts to determine what amount the harmed would agree to accept. This form of

compensation, therefore, does not impose upon the sufferer, even in cases where their ends cannot be met.

It should be mentioned that the question could be framed in terms of payment rather than receipt. We might ask: 'How much would you be willing to pay to not have endured the harm?' Despite the change of focus, I take it that this formulation will still generate the same outcome because the idea of consent is implicit in it. What we are asking for is not a positive valuation of the *status quo ante*; we are rather asking how much the sufferer would pay to avoid the harm. Consequently, we need not be concerned that, according to empirical evidence, what we are WTP for a good is less than what we WTA to forgo the good. (Pearce and Turner 1990:128-129&157-158) As I have framed them, both the WTA and WTP questions presuppose that the 'good' has already been lost; hence neither question asks for a positive valuation of the well-being. Indeed, because compensation is self-evidently concerned with a loss in well-being, basing compensation on the sufferer's valuation of the *status quo ante* would only serve to misrepresent the effect of the harm on the sufferer.

#### 4.4.2 Social efficiency.

In arguing for top-up payment to compensate the denial of personal ends in the proceeding, we appear to have conceded that Token Compensation in sufficient quantity will permit the imposition of alternative ends. That is, the properties instrumental to the satisfaction of one's chosen preferences can legitimately be neglected, even where they are in abundance, so long as additional compensation is provided. For such an abnegation to be permissible, the compensation would at least have to balance-out the cost of having one's personal volition infringed; and that presumes that personal freedom is not entirely inviolable. In effect, the alternative mode of treatment proposed by the compensator must reimburse the claimant for the amount of the alternative they would be willing to accept to make up for the non-receipt of their chosen

objective properties. Provided the claimant consents on this basis, then the compensator can disregard the chosen ends.

What this entails is a variation of Kaldor-Hicks compensation criterion, except here we apply it specifically to the proposal to compensate through dissimilar properties: compensators can employ dissimilar properties to requite provided that they take into account the loser's WTA additional compensation to forgo their chosen properties. For such a move to be efficient for the compensator, the cost of providing the chosen properties must outweigh the cost of providing the alternative compensation. Should that follow, then the overall outcome would be pareto-optimal in that the losers are left equally well-off and there is a social improvement (i.e. lower costs borne by compensators). The departure from the standard formulation of the Kaldor-Hicks test is that here the choice of the loser/claimant is of primary concern and also the loser/claimant actually is compensated. Hence, the claimant's wishes are not subsumed under the desire to establish pareto-optimal outcomes.

But once compensation adds into the calculus the infringement of personal freedom and identity, then it is hard to see how *not* providing the best substitute would be efficient from the compensator's point of view. The efficiency of not providing the chosen properties would only seem to follow where firstly, the scarcity of the relevant properties is such that they are comparatively costly and/or secondly, the claimant is weakly attached to her preferences. If the claimant were weakly attached to a preference then it would seem that she would be less concerned with receiving objective properties designed to achieve different ends. If the chosen preferences could be changed without the person unduly compromising her self-identity—given preferences which are weakly held are also weakly constitutive of the self— then the treatment need not be so concerned with respecting the specific content of the person's preferences. In other words, the harmed would be willing to accept comparatively less top-up compensation to shift to alternative sources of preference satisfaction. Hence, compensators could legitimately neglect the personal ends forgone. But the

viability of such a move is dependent upon the sufferer's willingness to accept an alternative end and the costs of the properties necessary to achieve that end.

Assuming that there is no shortage of the appropriate properties, the amount of instrumental WTA is a function of firstly, the amount of the preference satisfaction denied and, secondly, the market price of each unit of the properties necessary to re-establish the preference satisfaction forgone. But this amount does not provide a gauge of the actual deprivation incurred by the harmed. It focuses on the properties necessary to re-establish well-being, rather than well-being itself. Unlike the standard formulation of WTA, instrumental WTA does not directly reflect the intensity with which the preferences are held (i.e. the marginal utility weighting of each unit of a particular preferences satisfaction), nor the extent to which they are denied. This is because instrumental WTA is contingent on the market price of the requisite properties and not their value to the sufferer; moreover, while the number of units of the properties required is, in part, determined by the amount of preference dissatisfaction, there is not necessarily any unit proportionality between them. We may require only a comparatively small amount of an additional property, for instance, to ensure the realization of an extensive degree of preference satisfaction.

For this reason Standard WTA represents the best mode of expressing the magnitude of deprivation, while instrumental WTA represents the best mode of determining the amount and content of compensatory treatment. The former provides an inter-subjective basis for conveying the effect of harms on people; but the latter is more germane to our concerns because it dictates what is actually required to compensate the harmed.

However, where the requisite properties are scarce or non-renewable, then Token Compensation becomes increasingly pertinent; in such circumstances compensation must increasingly resort to leaving the harmed subjectively as well-off via alternative ends. Consequently, the intensity with which

preferences are held (the marginal utility lost as each unit of preference satisfaction is constrained) becomes directly relevant to compensatory treatment. As a result, the standard form of WTA becomes both the mode of expressing compensation and the mode of requiring it. The level of preference satisfaction that is provided by the different kinds of properties must equate with the level of preference dissatisfaction. But because the harmed are further denied their personal ends, they may legitimately claim top-up Token Compensation.

Hence, where there is a departure from Ideal Compensation, the amount of overall compensation is contingent upon the strength with which the lost preferences are held as compared with alternatives. As has already been noted, if the preferences are weakly adhered to and the proposed alternatives are equally or more valued, claimants would accept comparatively less compensation. However, there would always remain a valid compensation-claim, because no matter how fluid a person's preferences might be, they are still preferences that he voluntarily chose and would act to satisfy. There would thus be a legitimate claim even where a person is completely indifferent between two preferences, insofar as the person is constrained from realizing the preference they chose.

Compensation, therefore, is composed of a complex calculus based on (1) providing the appropriate means to achieve personal ends (Ideal Compensation), or (2) equivalent satisfaction through other ends (Token Compensation), plus a top-up requital to counterbalance the displacement of personal ends. And, lying behind both of these kinds of compensation, we must take into consideration the degree to which the sufferer is not responsible for losing her well-being in the first place.

#### 4.5 Commensurability.

One problem that is faced by Token Compensation, and therefore the mode of expression and compensation for non-renewable ends, is that some deprivations may not be translatable into pecuniary or even numeric terms. For it may not make sense to convert some aspects of a person's lost well-being into his willingness to assent to  $x$  units of monetary recompense. (This is not an issue for instrumental WTA because we are familiar with the idea of procuring goods in order to realize personal ends.) But I take it that because of the subjective nature of harm it is inevitable that sufferers will always struggle to satisfactorily express the intensity with which they hold their preferences, according to some inter-subjective scale. Nevertheless, we always look to quantify the degree of well-being, and by the same token the lack of well-being. In difficult cases, at the very least we can proffer a rough cardinal ranking or pair-wise comparison of the value of particular preferences. (Griffin 1986:75)

However, this does not rule out the possibility of the harmed suffering extreme disutility. This possibility holds particularly in those cases where the compensator is called on to provide top-up Token Compensation for the denial of a sufferer's ends: it may be argued that no level of requital would be sufficient to balance-out the denial of one's will and identity. For while the denial of freedom may not be of infinite value, it is nevertheless lexically prior to any other considerations. However, as has been noted by others, the idea of freedom trumping all other values does not accord with the observation that we are often quite willing to sacrifice some degree of freedom to achieve or permit the attainment of alternative goals or to avert harms. (Griffin 1986:83)

Nevertheless, it is quite plausible that the level of dissatisfaction incurred by the loss of freedom, or any other rigidly preferred value for that matter, may be exorbitant. Assuming that sufferers present an accurate reflection of the actual preference satisfaction forgone and that the preferences are reasonable, we are



faced with the possibility of requiring genuinely exorbitant deprivation. Because of the scarcity of resources, that would pose a significant problem for compensating non-replaceable personal ends (i.e. when we have no choice but to employ Token Compensation).

The imputation of pecuniary value into the context of personal deprivation is by no means an abstract enterprise. We are accustomed to conceptualizing personal deprivation in terms of WTA compensation. Furthermore, we are able to assess the intensity of the loss relative to the intensity of the losses incurred by others. Clearly, expressing deprivation in terms of WTA is akin to the established practice of insuring against harm. The weight of these preferences is reflected in the schedule of insurance payments that would be received in the case of deprivation (i.e. the payment schedules listed by insurance companies and government compensation schemes). This is not to say that the schedules that exist represent an accurate reflection of the actual disvalue of deprivation. In the case of private insurance the payment schedules are a reflection of a number of factors (particularly the insurer's willingness and ability to pay a premium and the probability of future ill-luck) unrelated to the actual compensation required to neutralize the harm. Both state-sponsored compensation schemes and private injury claims have failed to properly reflect the total loss in well-being, primarily, it would seem, because they have neglected the significance of non-pecuniary harm.<sup>82</sup>

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<sup>82</sup> As has been well documented by others, public compensation schemes for injury are based on incomplete criteria of harm. State sponsored compensation schemes in the U.K., for example, typically do not even acknowledge pain and suffering, let alone the life chances that are forgone. Instead they are more concerned with the actual pecuniary losses incurred by the harm (lost earnings and extra expenses such as medical care, damage to property etc.), rather than non-pecuniary effects of the harm (1. loss of freedom, humiliation, bodily harm, emotional distress etc. and 2. life chances forgone). Taking from a 1979 study of compensation policies [Harris, D. *et al* (1984)] *Compensation and support for illness and injury* [Oxford: Clarendon Press] Robert Goodin notes that of, 'Eighteen categories of financial support available in the U.K. to victims of illness or injury ... only four (or perhaps five) offered any provision at all for pain-and-suffering or loss-of-faculties payments.' (Goodin 1989:61-62) It may be argued that the lack of public compensation is a function of strictures on the public funding and the expectation that the other types of requital for harm will be provided by other sources (social security benefits, charity, friends and family etc.). Nevertheless, in the context of personal injury liability where such factors are less likely to be influential, the definition of

But at least we can say that using the logic of WTA is by no means an overly abstract way of conceptualizing deprivation. (It should be noted, however, that the same cannot be said in the context of evaluating public policy proposals. Respondents do not find it easy or even coherent to express their concerns for the environment in terms of a personal utility judgement. (Barry 1995:153-159) But, as has been pointed out here, we do not find the idea of valuing the extent of personal deprivation incongruous, primarily because harm directly impinges on our personal well-being—we are acutely aware when our level of preference satisfaction has declined. Moreover, unlike the evaluation of proposed public policies, the loss is actual, rather than hypothetical.)

#### 4.6 Wages.

While we may express the magnitude of each episode of deprivation in terms of an agreed scale of dissatisfaction (i.e. WTA), the overriding objective of compensatory treatment must be to respect the chosen ends denied to the harmed. The mode of requitment must be sensitive to the kind of preference

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harm, although more generous to the sufferer is still incomplete.

In summarizing what the principle of personal injury compensation entails *Halsbury's Laws of England* states that,

[A] person injured by another's wrong is entitled to general damages for non-pecuniary loss such as his pain and suffering, past and future, and his loss of amenity and enjoyment of life ... In addition the plaintiff is entitled to recover damages in respect of pecuniary loss, past and future, such as loss of earnings, medical expenses and cost of nursing care, and for loss of earning capacity where he is handicapped in the labour market. Damages are also recoverable for loss of expectation of life. [4ed, vol. 12, para. 1146]

Clearly then the letter of the law is compatible with compensation as the full restoration of antecedent well-being. However, this precedent has not been interpreted in practice as the full restoration of personal well-being forgone. One of the conclusions of a recent Law Commission Report (Commission 1994) that aimed to 'gather information directly from a representative sample of compensated accident victims about their experiences and circumstances several years after the settlement of their claims' (xix), stated that many plaintiffs felt that the payment received did not even cover their actual costs (lost earnings and expenses). Furthermore, the report analysed the damages awarded and suggested that, in reality, they tended to reflect the seriousness of the injury in general rather than being sensitive to the actual losses that were suffered by each individual plaintiff.

satisfaction that the harmed would have been responsible for in the absence of innocent constraint. Only where the properties instrumental to the realization of those ends are irreplaceable and/or the form of treatment is sufficient to make up for the denial of one's deserved preference satisfaction is it acceptable to disregard a sufferer's chosen ends.

In order to bring the various strands in this section together it will be useful to apply them to the context of wages. One apparent problem that may have already been noted by the reader is that compensation for work in practice does not even attempt to provide the properties necessary for restoring the personal choices forgone; rather, the form of treatment is almost exclusively pecuniary units. However, I do not want to argue here that employers ought to remunerate their employees according to the objective properties necessary to fulfil chosen preferences. As has already been argued, that objective can be achieved by payment in monetary units, provided there are sufficient units to enable the purchase of preferences forgone. In other words, it is permissible to provide a basis of wage determination that ensures monetary remuneration resulting in equivalent satisfaction, rather than the satisfaction of the workers chosen ends.

Wage determination in practice fails to achieve this because the main determinate is the marginal productivity of workers as opposed to their marginal dissatisfaction. The locus of respect is the workers' productive output, but that conception of respect is impoverished because it is concerned with the value to the organization or society, rather than the value to the workers themselves. The compensatory basis of wage determination advocated here is, by contrast, directly concerned with the personal ends of the worker. It is thus my contention that if we are to consistently treat others as autonomous and rational beings, wages should equate with each worker WTA: pecuniary units sufficient to realize the ends forgone (Ideal Compensation) and/or sufficient to balance out the ends forgone (Consented Token Compensation).

This is not to say that the kind and degree of output should not be decided by social goals. Provided remuneration focuses on the denial of personal ends, socially efficient outcomes may be pursued. Moreover, compensation-based wage determination is not itself socially inefficient. A labour market based on 'compensating differentials' in deprivation is efficient because the burden borne by each party is minimized. Workers will only consent to forgo their ends if the pecuniary rewards are sufficient. In reality, however, they may agree to sacrifice some of their will and identity through lesser compensation due to say lesser bargaining power, e.g. high unemployment, or unfair wage determination procedures. This would amount to incomplete compensation. But people often choose work that overlaps with their preferences. It is these people who will tend to be employed, rather than the high-deprivation, high-wage candidate. Therefore, in contrast to circumstances involving non-voluntary harm, the workers' deprivation and the cost borne by society can be minimized because both groups participate actively and voluntarily in a system of sacrifice/remuneration.

#### 4.7 Conclusion: Non-constraint.

We may review the argument for deserved compensation presented in the foregoing as follows:

1. The basis for compensation is harm innocently suffered.
2. Harm is defined as the loss in personal well-being resulting from a constraint on the realisation of personal ends and life-plans. The proper object of compensation is not the infliction of harm in itself, but rather what has been lost or forgone as a result of this harm.
3. Well-being is defined as the satisfaction of those preferences that the agent would realize in the absence of harm.
4. Innocent constraint is defined as that constraint on performance for which the agent is not responsible.

5. An agent who voluntarily suffers harm is innocent, and thus due compensation, if the suffering is endured in the foreknowledge of subsequent requital.
6. Compensation for voluntary harm is deserved if the performance that denies personal well-being adds to the well-being of others.

The upshot of this argument is that harm and thereby compensation are empty concepts unless they refer to some preferred state of being which a person is *constrained* from realizing; harm is a constraint on what the agent *would have* been responsible for. We have seen that two familiar aspects of freedom underpin the idea of deserved compensation: firstly, responsibility for the realization of one's personal well-being; secondly, freedom from not being able to realize that well-being. As I have put it, positive freedom (preference satisfaction) is conditional on negative freedom (non-constraint from preference satisfaction). Thus, when agents are innocently constrained, they are prevented from exercising their capacity to realize their preferred well-being. Putting this in terms of responsibility, we may say that the agent's control over his preference satisfaction (positive responsibility) is impeded by a constraint over which he has no control (negative responsibility). In other words, the positive freedom cannot exist independently of non-constraint. However, while the actualization of positive freedom is contingent upon non-constraint, the *claim* to positive freedom (i.e. positive desert) is not so dependent. That is to say, the claim to positive desert exists whether or not the desert is prevented from being realized; where there is a constraint the positive freedom exists, as it were, counterfactually.

Negative and positive freedom, therefore, are not two categorically distinct concepts; rather, they are two aspects of the idea of freedom, which logically presuppose one another. (MacCallum 1966) (Feinberg 1980) Put more schematically, statements about freedom take the form: 'A is free from Y to do Z.' Hence, if constraint Y then Z would not be possible. Positive freedom is conditional on there not being an absence (e.g. lack of ability, lack of money

etc.), or an obstacle (e.g. compulsive desires, injury, illness etc.). Conversely, without Z there would be no point to A's being free from constraint; negative freedom is conditional upon being free to do or realize something.

Compensation is fundamentally grounded in this view of freedom. The reason why we compensate people is the innocent constraint placed upon them and the informed personal ends and life-plans that they are denied. Putting this negatively, we would not compensate where there is, firstly, no innocent denial and secondly, no loss in the satisfaction of personal preferences. We rectify this dual infringement of individual freedom by removing the constraint and restoring the level of well-being forgone. Equal respect for the wills of others, therefore, is first and foremost the avoidance—as far as that is possible—of constraint on the realization of personal well-being. But if personal well-being is impeded, then we ought to provide, as best we can, the means of re-establishing the well-being forgone. Interpreted in terms of desert, compensation follows from the fact that we are due the level of well-being that we would be responsible for achieving. Given that we respect the unconstrained will of others, the innocent denial of first-order responsibility in the process of contributing to the well-being of others justifies the desert-claim to compensation.

## Chapter Six: Compensation and Appraisal

Some theorists have taken issue with the inclusion of compensation as a desert-basis on the grounds that desert is inherently an evaluative basis for determining the distribution of benefits.<sup>83</sup> It is argued that the basis of desert cannot be something lost by or denied to a person (i.e. something costly or burdensome); rather, desert is based on some valuable contribution to the world. Desert, according to David Miller, 'is a matter of fitting desired forms of treatment to qualities and actions which are generally held in high regard.' (Miller 1976: 85) Miller further states that deserving treatment looks to 'add to' the people's well-being (i.e. tangible and intangible approval), rather than restore them to the level of well-being previously enjoyed. (Miller 1991:382) According to this conception, desert appears to be 'additive' in that the deserver adds value to others and receives benefits that enhance her well-being. Compensation is 'restorative' or 'rectificatory' in that the claimant loses well-being and compensatory treatment returns her to that level of well-being. Hence, it is argued, conceiving of desert in terms of a loss or denial misappropriates the concept. Compensation, on Miller's reading, is best conceived of as legitimate reason for the distribution of benefits, but one that is conceptually distinct from desert. (Miller 1976:113) It is an illegitimate desert-basis, not because of the lack of responsibility, but because there is nothing to appraise.

I will argue that deserved compensation for voluntary harm (henceforward DCV) is in fact compatible with the appraisive character of desert. I disagree with Miller's contention that *all* compensation-claims are irrelevant to desert and argue instead that only NVC can properly be said to be an illegitimate desert-basis. Reflecting on the discussion in Chapter 5 we can begin to see how

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<sup>83</sup> (Miller 1976:110-114) (Miller 1991:379-381) The conflict between the evaluative character of desert and compensation is also observed by Geoffrey Cupit. (Cupit 1996:38-43) See also (Kleinig 1971:73, fn.10). However, in contrast to Miller, Cupit argues that compensation can

this is the case: DCV is a legitimate desert-basis because it is grounded on, firstly, the denial of something that would have been done and secondly, the efforts towards contributing to the well-being of others. In the context of socially valuable activities, then, the juxtaposition of desert and compensation does not constitute a contradiction in terms.

### 1. The Contributory Model.

It is a feature of deserved compensation that a person whose preferences equate closely with a 'harm' will receive less compensation than someone whose preferences do not. Unequal requitals follow from the fact that people's preference structures are different. Hence, an accident victim with a lesser pain threshold or some other pre-disposition to greater suffering incurs more harm than another. In the same way, an accident victim whose personal ends are more curtailed by the accident incurs greater harm (e.g. a timpanist who irreparably damages her hand clearly forgoes far more than someone suffering the same injury but whose hands are not crucial to her career). While this intuition may not be disputed, it is the application of it to the context of voluntary harm (e.g. work) that is controversial. We find it difficult to accept that a hard working doctor who contributes just as much as her colleagues should be compensated less than they should, simply on the basis that she derives greater work satisfaction than they do. (McLeod 1996:214) Because the compensation-basis is relative to personal preferences it is in conflict with the positive desert intuition. This counter-intuition, represented here by the contented doctor, highlights the conflict between positive and negative distributive bases; and the fact that the two perspectives are in conflict seems to suggest that they cannot belong to one and the same concept.

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be shown to be *indirectly* relevant to the idea of desert. (Cupit 1996:87-89)



As we shall see, David Miller implies that the reason for this contradiction is that there are two competing intuitions (the doctor's expression of value and the doctor's burden) which relate to two distinct distributive concepts: desert and compensation. Furthermore, the conflict between them falls away once it is recognized that desert comprises the primary basis of wage determination whilst compensation comprises a secondary modifying factor.

In the following section I will argue that the desert-basis of wages can in fact be construed in such a way that the compensatory and contributory aspects are not conflicting (i.e. harm incurred in process of contributing). I shall proceed in this section by unpacking each strand in Miller's argument against deserved compensation.

### 1.1 The primitive desert intuition.

Desert is crucially grounded in the response we give to some change in the circumstances of the claimant. But Miller argues that the change involved is based on something expressed by the claimant, rather than on something that happens to them. That is to say, we respond to the quality displayed by expressing appraisive or evaluative attitudes. (Miller 1976:88-89) Miller states that '...desert is used to indicate the treatment that we regard as a fitting response to positively or negatively valued qualities...' (Miller 1991: 382) Hence, we deplore the actions of a criminal and admire the excellence of a chess grand master; based on these appraisive responses to the quality of people's performances we confer status on them. As Geoffrey Cupit puts it, reasons for desert must be status-affecting: '...what does not affect the status of the deserver—what does not make the deserver more or less worthy of respect, admiration, and so on—cannot function as a basis of desert.' (Cupit 1996:38)<sup>84</sup>

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<sup>84</sup> See also (Kleinig 1973:62)

The next step in the scheme of the primitive intuition is to match the appropriate mode and degree of treatment to the evaluation we have made.

Hence, the positive desert intuition or value requirement consists of two considerations regarding the effect of the claimant's personal qualities on others and the response of others to them:

- *Value added* to the well-being of others by the claimant: the aesthetic pleasure of a piano recital, the hard work to meet the firm's production deadline, the satisfaction of consumer want satisfaction, and so on.<sup>85</sup>
- *Value conferred* on the deserver by others: appraising attitudes and deserving treatment.

Hence, if we inspect our interpersonal relations we see that desert is crucially based on our positive or negative reactions to valued or unvalued performances (the applause at the end of a piano recital, the admiration of a courageous act, and so on). This is the primitive or brute intuition that Miller claims lies at the heart of the concept of desert ('what a person has done simply is a reason for giving him additional benefits'). The desert of rewards for performances, unlike compensation for harm, is not based on costs incurred; it is rather grounded in the idea that performances express qualities that encourage us to say they are more or less worthy of respect, admiration, approval, recognition and so on. This intuition places a psychological constraint on how we may

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<sup>85</sup> Owen McLeod argues that desert is not necessarily dependent on market value because in some cases desert is ascribed even though there is no satisfaction of wants. (McLeod 1996:212-213) We can, McLeod claims, quite plausibly say that a person deserves even though nobody benefits from the desert-basis. He gives the example of a wealthy eccentric who employs a derelict man to count grains of sand on the beach. Even though the task is completely worthless for others and probably the grain-counter (maybe his self-esteem would be diminished?), he still deserves the wage that the wealthy eccentric gives him. McLeod offers this example to refute the claim that wages are contingent on the market value of a performance (which is the position of course that Miller himself advocates. (Miller 1989) (Miller 1996)). But, the example given (and ones like it) seem to appeal more to the principle of need rather than desert. However, even in this case we can still admire the skill and perseverance of the grain-counter and ascribe desert on that basis. Hence, McLeod is right to argue that our notion of desert and more specifically the desert of wages need not be based on want-satisfaction.

interpret desert. Consequently, any attempt to conceive of desert in terms of a loss leads to a misuse of the concept. (Miller 1991:379-381)

*Prima facie* the innocent suffering of harm does not inspire a similar set of responsive attitudes, even though the victim's circumstances have changed (i.e. his well-being has been reduced). There is no object for our admiration or respect and thus no reason to ascribe desert. The reason for compensation—the innocent denial of personal well-being—does not appear to inspire similar reactive attitudes, for unlike displays of effort, contribution, culpability and so on, we do not admire or resent the sufferer for their losses. Rather, our responses are ones of sympathy and pity for the sufferer's misfortune. To the extent that they are innocent, sufferers' value-status in the eyes of others remains unaltered. Indeed, Miller goes as far as to suggest that compensation is more akin to the concept of needs than desert, because it is grounded in circumstances that the sufferer would not agree to and which are not desired by others. (Miller 1976: 86&112) The costs borne by a sufferer do not support deservingness because the distributor is not concerned with the qualitative nature of these costs.

As it stands, including compensation as a reason for desert appears to demand the abandonment of the requirement that the claimant contribute positive value to the world. This explains our unease regarding the excellent doctor who enjoys his vocation immensely and is therefore requited little. In other words, the primitive intuition makes it difficult to accept that our respect for the positive expressions of worth are secondary to our concern for people's disutility.<sup>86</sup> Our positive desert intuition that effort and contribution should be requited thus cuts against the logic of compensation.

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<sup>86</sup> Or for the that matter any other consideration: Take for example Rawls's claim that while desert is rendered untenable due to the influence of uneven starts, incentive payments are justified insofar as they help improve the lot of the worst off. But this would mean that those workers who, irrespective of encouragement, are diligent, hard working and productive would be rewarded less than unmotivated or slothful workers. We find it difficult to accept that sloth is rewarded, while industry is not.

## 1.2 The obliteration of meaning

Based on this intuition, Miller claims that importing compensation into desert results in the concept of desert losing its distinctive meaning. (Miller 1976:112) By including compensation as a desert-basis, desert collapses into justice in general ('getting one's due'). Desert then becomes justice as desert. Although we undoubtedly do use desert in this wide sense (i.e. deserving positive rights and deserved needs), this usage is not faithful to the core conception of desert. As we can see, then, deserved compensation constitutes a misuse of the narrow conception of desert, but not the wide conception.

What both Miller and I are interested in is a distinctive and significant component of justice, not justice in total. By equating justice with desert we do not abandon this distinctive element (i.e. the core notion), because it remains as a part of Desert writ large. Indeed, 'justice as desert' theorists recognize what I am calling CEV, but take it as one aspect of Desert (i.e. along with needs, compensation, entitlement) which we take into consideration in determining the allocation of goods and burdens. Hence justice as desert does not conflict with the idea of a plurality of distributive principles that fall under the umbrella of justice (see Chapter One) The first thing to say, therefore, is that there simply seems to be no point in employing a wide conception of desert, for we are still talking of justice and within that concept the core meaning of desert is retained. Secondly, we should be inclined not to do so because by interpreting desert as due-ness or fittingness we run the risk of losing sight of the concept's meaning and importing it for distributive justice. Or, as Miller would put it, we run the risk of obliterating the primitive intuition.

Given that the position that I am advocating is grounded in this primitive or core intuition, it seems that any attempt to build compensation into CEV is doomed to generate an incoherent theory.

### 1.3 Compensation as a distinct basis for wage determination.

Because it is contrary to the primitive intuition Miller argues that while the negative or compensatory factor is relevant to the determination of economic rewards, it should not be seen as part of desert. Compensation is not really a desert principle at all, but rather an indication of additional factors to be taken into account when rewards are calculated. It can be used in conjunction with the principles of contribution or effort, or on its own as an egalitarian principle. (Miller 1976:113) (Miller 1991:380) Compensation, on this view, is a modifying element distinct from desert proper. The garbage collector, for example, receives *more than* the effort and contribution he displays (i.e. desert), because of the particular unpleasantness of his job.

For Miller, compensation connects with desert in that the sufferance of a burden or cost may *indicate* positive qualities; compensation may indirectly countenance desert in that costs may imply positive qualities (e.g. working in a dangerous job implies the display of courage). But it is the qualities themselves, rather than the cost, which constitute the desert-basis. (Miller 1976:112&fn25)

### 1.4 Compensation as egalitarian.

Miller makes the further point that the compensatory aspect of wage determination is based on returning persons to a socially agreed level of well-being. (Miller 1976:111-113) Hence workers are not compensated for the total difference between their personal ends and the activity they perform. They are requited for the deprivations that are publicly recognized to be extraordinary—wages are topped-up to take into account unpleasantness, discomfort, hazards, risk, stress, responsibility, etc. above the norm. The garbage collector is only compensated because of the *particular* unpleasantness of the job; the aircraft controller is compensated for the exceptional stress entailed in her job. Wage

compensation, therefore, is a matter of returning each person to the same level of pre-defined well-being. As Miller points out, this is how Feinberg construes the idea of compensation:

The principle that unpleasant, onerous, and hazardous jobs deserve economic compensation, unlike the claim that superior ability deserves economic reward, is an equalitarian one, for it says only that deprivations for which there is not good reason should be *compensated to the point where the deprived one is again brought back to the position of equality with his fellows*. It is not that compensation gives him more than others (considering everything), but only that it allows him to catch up. (My emphasis.) (Feinberg 1970:)

According to Miller compensation, even as desert theorists construe it, is concerned with publicly recognized burdens rather than publicly recognized value. This means that compensation is essentially an egalitarian principle rather than a desert principle, because it entails returning each person to the same level of well-being. (Miller 1991:382)

### 1.5 Demonstrable deprivation.

In keeping with the idea that wage compensation is based on social norms Miller further limits the relevant set of harms to *unquestionable* deprivations. (Miller 1976:113) Hence, while it cannot be doubted that a top-dressing pilot is exposed to significantly greater risk than the *average* worker (indeed the average pilot), there is no accurate means of differentiating between the job-satisfaction that *each* top-dressing pilot derives from her occupation.

Miller's position is pragmatic and reflects a presumption about how workers tend to be compensated in practice.<sup>87</sup> The rationale behind his position is that not *all of each* person's deprivation is publicly demonstrable. Hence, we are

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<sup>87</sup> This point is supported by Koral Soltan in his analysis of job-evaluation schemes. (Soltan 1987:156)

restricted to clear-cut cases of harm (i.e. exceptional and knowable) and we are required to generalise those harms across particular activities (e.g. top-dressing pilots, hospital interns, aircraft controllers etc.). Hence, *all* interns are compensated for the exceptional stress and responsibility of their duties, irrespective of the actual dissatisfaction of each individual doctor.

But Miller makes the additional claim that because interpersonal variations in satisfaction are not ascertainable, compensation is inevitably a minor component in how we *actually* determine wages. For that reason he infers that workers are in practice requited in proportion to their contribution, effort, ability etc. Clearly this empirical argument, on its own, lacks normative force as it only says that the contributory model should be used by as it were, default. But we may question the claim that the additive rather than the compensatory model is more feasible. For, as I argued in the previous chapter, we can encapsulate total well-being forgone in one's willingness to accept pecuniary units sufficient to restore that well-being.

Karol Soltan, in his insightful analysis of job evaluation schemes, concludes that wage desert can be and is based on both contribution and compensation (although for him the former is the most influential determinant). His general position therefore differs from Miller's in that according to Soltan compensation can be deserved. But Soltan limits the scope of the compensatable aspects of work, in the same way that Miller does, to exceptional and socially agreed harms: 'Compensation is deserved only if the extent of sacrifice is clear and uncontroversial and if it is beyond a socially defined limit of tolerance.' (Soltan 1987:156)

To conclude, it should be noted that Miller's critique of deserved compensation includes in the set of publicly knowable deprivations those that are non-voluntarily incurred in the work-place (e.g. work accidents). Although Miller fails to distinguish between voluntary and non-voluntary deprivation, we may concur with him, in keeping with the preceding, that unforeseeable and

unpreventable harms in the workplace are compensatable, but *not* deserving. That is to say, we should distinguish between the supermarket check-out operator who takes on the job without knowledge of RSI (repetition strain injury) and the person who chooses the job with foreknowledge of RSI. The latter is due VC rather than NVC because she *consents* to the harm.

## 2. The Compensatory Model.

Intuitively we appear to find it difficult to accept that a person's efforts and contributions are immaterial to the determination of economic rewards. We may respond to this feeling of unease in the following way: it is just as plausible to make the counter-claim that people who enjoy their work should receive less by way of recompense. In the same way that we would require less of a ski instructor whose personal summum bonum is to ski all the time, by the same reasoning we would also require less of the person who derives immense satisfaction from working as a doctor. The basic idea here is that if performance coincides with the personal ends and life-plans of the person then it is not a burden; and if it is not a burden it is not work. In other words, the ski-instructor would have performed his task irrespective of whether he is rewarded in some way. If a person would choose to carry out the performances associated with a job anyway, and indeed enjoy doing so, why should they be requited? Is not the requital of a performance that is intrinsically rewarding undeserved?

### 2.1 Work as a sacrifice.

Our interpersonal relations indicate that outcomes that are 'harmlessly' arrived at (performances and outcomes that coincide with the agent's personal ends and life plans) should not be requited, since in such cases no harm or loss is incurred. Indeed, the performance may, and typically will be, inherently



beneficial to the person. Consequently, requital is undeserved not only because the performance did not require a loss in well-being, but also because it provides personal satisfaction. We may even go as far as to say that an injustice would be done if the person were requited, because requital would constitute *additional* benefits over and above those already attained— additional benefits that could have been allocated to others who have a genuine claim. Indeed, it may be argued that, based on this claim, there are distributive grounds for *reducing* the benefits accrued from fortuitously realized outcomes. The reverse of this is also true—the under-receipt of satisfaction calls for additional requital. There is no reason why persons should suffer the innocent denial of the satisfaction they would have realized; instead, they should receive the satisfaction they would have attained in the absence of constraint: the opportunity cost of voluntary harms. The general idea underlying this intuition is that receipt should be proportional to each person's preferred and realizable well-being. That is to say, what matters is that persons receive resources sufficient to realize their personal ends and life-plans.

There is a further sense in which work can be construed as a burden. Apart from forgoing personal ends, work also requires the expenditure of time and energy to realize objectives. This burden, I take it, will vary according one's capacity to fulfil the task; lesser effort is required if one's abilities coincide with the task to be performed. Sadurski, in arguing that work is a burden, seems to be employing this interpretation. (Sadurski 1985:116)<sup>88</sup> What Sadurski is actually describing is a combination of two closely connected points: taking credit for an outcome, and the cost of producing it. A performance is effortless when it is not fully controlled (i.e. realized purely through chance. In a sense it 'just happens'). The idea is that those who are lucky enough to be born with the requisite natural and social advantages to perform a particular task expend less effort, and therefore the task to be done is less burdensome for them. That is to say, the performances and outcomes are for these people effortlessly realized.

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<sup>88</sup> Julian Lamont also seems to have the same idea in mind when he argues that a person's

This, I take it, represents an extension of the opportunity cost we may associate with work: increased dissatisfaction due to the expenditure of time and energy that could have been used to realize one's preferred ends.

Miller's contributory account of desert is incomplete because it fails to take into consideration the counter-claim that requitals for harmless and satisfying performances are undeserved. What I shall argue is that we can combine contribution and deprivation within the concept of desert, in spite of the fact that they appear to advocate different distributions. I will show, then, how we can formulate a hybrid desert-basis founded on the idea of a valuable sacrifice that is incurred on behalf of others.

Wage compensation is defined by the difference between the intrinsic value (satisfaction of personal ends, including improved status, self-esteem, etc.) and the intrinsic disvalue of the task (denial of personal ends); it leaves the worker indifferent between the performance and the non-performance of the task. Hence, the form of compensation that I am arguing for is far more extensive than that put forward by Miller on two counts. Firstly, my conception of compensatory treatment encompasses the denial of personal ends, rather than focusing on *socially agreed* deprivation only. Secondly, under my position compensation is not just an additional modifying factor to be taken into consideration in the determination of wages: it is the sole metric of remuneration.

Indeed, I would go a step further and argue that most discussions of work compensation, whether it is claimed that compensation is deserved or not, provide an impoverished account of what compensation should achieve. For the currency of denial and thereby recompense is not the level of dissatisfaction (actual physical and mental discomfort of the task); as was noted in the preceding chapter, the primary objective of compensation is to provide the best

means available to achieve the personal ends and life-plans that have been innocently denied. Miller, Soltan, Feinberg and Sadurski<sup>89</sup> all restrict work harm to characteristics concerned with mental and physical dissatisfaction (exertion, hardship, stress, dangerousness, unpleasantness, risk etc.), rather than accounting for the personal ends forgone. Clearly these features of work do impede the attainment of personal ends, but they do not define harm in itself. Furthermore, restricting the object of compensation to immediate (and empirically discernible) harms, and neglecting to take into account the plans, projects, and commitments forgone, underestimates the degree of volition inherent in compensation. The worker not only consents to suffer harm *per se*, but also agrees to forgo what he would have done in the absence of that harm. Consequently, an account of work compensation that describes the content of denial and compensatory treatment solely in terms of dissatisfaction and thereby neglects the counterfactual performance (the personal ends and life-plans forgone) fails to fully respect the worker. (In spite of this crucial distinction I shall continue to use the terms satisfaction and dissatisfaction as shorthand for ends-denial.)

In arguing for this desert-basis for wage determination I am also proposing a particular definition of what work means: the voluntary foreclosure of personal ends in the pursuit of value for others. However, because we recognize the creation of value for others, work is not construed simply as a burden to be endured. At the same time, if a performance is not harmful (or is effortless), then it is not work, and it therefore is undeserving of requital. Most theorists agree that work must be additive in terms of value, but disagree that it must *also* be costly to the worker. (In Chapter 2 it was noted that a common view shared by political theorists of all persuasions is that a person is due requital for

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<sup>89</sup> Rather confusedly, Sadurski seems to take all the costs borne by workers as indicative of 'effort': that is, the difficulty ('lack of fortuitous help') and the physical and mental hardship associated with the task. But his definition of what work's costs are (and thus by correlation the effort expended) appears to be limited to the actual dissatisfaction (the toil and drudgery, exertions, unpleasantness, responsibility, stress etc.) of the task, rather than the foreclosure of personal ends.

outputs that are socially valued.) Phillipe Van Parijs, for example, states that an activity qualifies as work so long as the outcome is 'capable of being enjoyed by others' irrespective of whether it entails 'toil or drudgery' for the creator. (Van Parijs 1995:137-138)

It may be argued that the denial of appropriate requital for satisfying work amounts to the exploitation of the worker. I would dispute the claim that appropriation of the outputs of satisfying work is exploitative. Distribution is fundamentally concerned with preserving personal ends and life-plans; consequently, if a worker does not forgo or, fulfils her preferred well-being in creating social value, she is not being exploited if we do not requite that value. Rather, exploitation occurs when persons are not requited for the harms incurred in satisfying the well-being of others. We may extend this point further: if scarce resources are allocated to a worker whose performance is satisfying to her, rather than to another worker whose performance is harmful to him, on the basis that the former's performance is valued more, then the overall distribution is even more exploitative.

Exploitation occurs where the beneficiaries of the worker's efforts fail to provide the resources necessary for him to pursue the personal ends and life-plans denied by those efforts. Requiring according to some calculus of the addition of value made will not accomplish that objective because this method of requital is not directly sensitive to personal ends; that is, valuable additions are contingent on brute luck differences in productive ability. Thus, a contributory based account of desert will be exploitative because it will only incidentally take into account personal ends.

The theorist who perhaps comes closest to the account of wage desert outlined here is George Sher. He argues that a wage is deserved because the worker has had to subordinate his interests to the interests of others. 'This situation is clearly rectified by the restoration of equality between what the worker has done for others and what those others have done for him.' (Sher 1987:106)

However, he is concerned that those productive workers whose interests match those of their employer's (i.e. they are utilized but not 'subordinated') are requited less than more discontented and less productive workers.

But Sher's account differs from DCV in that the latter is concerned with the *denial* of personal ends rather than the *subordination* of personal ends; tasks that equate with personal ends do not entail self-abnegation, even though one's ends are still used by the employer. DCV looks to provide the means to attain the personal ends forgone, rather than to compensate *all* the personal ends that are utilized by the employer. But by arguing that productive and contented workers should not be discriminated against in this way he ends up inserting a contributory factor into the desert-basis. Sher argues that contented workers also tend to be productive workers; hence their lesser receipt due to lack of subordination is counterbalanced by the fact that they contribute more. In effect, they receive as much as (but not more than) dissatisfied workers because of the greater contribution they (tend) to make. (Sher 1987:107)<sup>90</sup> My claim is that the contented worker is simply not being discriminated against because he remains equally well-off in terms of his personal ends and life-plans. Hence, there is no need to manipulate the metric of receipt to take into account the addition of value to the world.

## 2.2 Coherence.

It may be argued that because deprivation and contribution represent opposed perspectives the proposed desert-basis of wages is incoherent. But that ignores the fact that while the *desert-basis* is based on both perspectives it is only the former which constitutes the measure of *deserving treatment*. On this reading of

<sup>90</sup> This point is well made by Owen McLeod. He also notes that willing or satisfied workers may only be *as* productive as discontented workers despite the positive correlation. Consequently, they will receive less than discontented workers even though they are equally productive because there is no contributory aspect to the performance to balance out the 'lack of disutility.' (McLeod 1996:215)

desert we are indebted to the worker and repay him according to the extent of the deprivation incurred, rather than the contribution made. The fact that a person's disutility coincides with social objectives is part of the reason for compensating, rather than the measure of compensation.

We can admire, display gratitude toward and even confer status upon the performer because of the quality of the performance and because a sacrifice has been made on our behalf. In a sense, then, our appraising attitudes do constitute a form of positive reward. But the appropriate gauge of remuneration is the cost incurred in making the sacrifice. Hence, while we should admire the contented doctor for what she has done on our behalf, that does not entail that we should attach economic rewards to that positive response. Indeed, our approval and conferral of status will reduce the disutility of the job and therefore the compensation due.

Hence we ascribe positive status to her for what she has *done* on our behalf, but we requite on the basis of the actual *effect* the performance has had on her. Her level of deprivation and thereby compensation is ameliorated by the degree of consonance between her preferences and the job description. In his discussion of natural endowments, Thomas Nagel reaches a similar conclusion: 'To try to sever the connection between talent and admiration would be wrong. But to sever the connection between talent and income, if it could be done, would be fine.' (Nagel 1991:113)

It should also be kept in mind that voluntary harms imply value for the world (see Chapter 5: 2.1). By this I do not mean to say that such harms *necessarily* entail the contribution of value, but rather that a person would not voluntarily impose deprivation upon herself unless benefits of some kind accrued for others. Harms are only consented to because of the compensation that will be received as a result of the value created. And others would not allocate compensation unless they benefited from the performance. Hence, the organ donor suffers on behalf of the terminally ill patient and as a result not only

gains personal satisfaction from having saved a life but also garners public recognition for his sacrifice. Similarly, the worker may forgo some of his personal ends by working longer hours, but he receives recompense in the form of pecuniary units, increased status, and so on.

Hence the apparent paradox embodied in the juxtaposition of denial and contribution fall away once we (1) separate the desert-basis (deprivation and contribution) from the metric of requital (deprivation), and (2) note that voluntary harms presuppose the creation of value.

### 2.3 Social efficiency.

Much of the disquiet we find with the case of the contented doctor is actually, I would suggest, a response to the doctor's choice of personal ends, rather than compensation's disregard for contribution. That is to say, we might question the doctor's claim that she is genuinely as well-off as her colleagues or, indeed, the ski-instructor. Thus, the example of the doctor bears close resemblance to the contented slave problem noted by Isaiah Berlin. (Berlin 1969: 139-140) I shall turn to discuss this problem shortly; our immediate concern is the claim that a compensatory based distributive scheme will fail to elicit socially optimal outcomes because it orients around personal want-satisfaction, rather than societal want-satisfaction.

My claim is that a task will only be performed in the absence of recompense provided it is intrinsically valuable for the performer. Consequently, from the point of view of efficiency, rewarding a person for an activity they would have performed anyway would constitute a surplus payment; thus an economic rent would be created. Putting this the other way round, no incentive payment is required in this situation to encourage a person to work (where the incentive payment would be the extent to which the required performance does not coincide with a person's ends). In effect, we would be remunerating those

aspects of a person's performances that she finds intrinsically rewarding anyway.

According to the compensatory account of desert argued for here (Deserved compensation for voluntary harm, DCV), the fact that the doctor receives less than her colleagues would not concern her because her personal well-being is, under ideal conditions, fulfilled. Compensation aims to leave people just as well-off relative to their personal well-being, no matter what situation or occupation they end up in. Of course, each person's work performances will rarely match perfectly their personal ends, and so there will always be room for compensation. Wages, therefore, will be unequal, not because of the differing degrees of control and valued output, but rather due to differing personal disutility (i.e. the voluntary opportunity cost of the task). One implication of job satisfaction is that the disutility of work is not necessarily proportional to the number of hours worked. But we may presume that the marginal utility of work for say the doctor or ski-instructor will eventually begin to diminish as the number of work hours increases. Moreover, marginal productivity will also tend to diminish as job satisfaction diminishes and fatigue sets in. From this point of view, marginal productivity will actually tend to be greater the less disutility (i.e. job satisfaction) the task involves. Consequently, the worker will be willing to perform only while the income received for the next unit is greater or equal to the disutility of producing it.

One notion that should be dispelled at the outset is that DCV takes disutility as a measure of *productive* effort.<sup>91</sup> In a sense voluntary disutility (the loss of time and energy that could have been spent on personal ends) does indicate efforts on behalf of others; but deprivation due to social goal-directed performances does not necessarily entail productivity. If anything, the opposite claim is being made: the success of goal-directed performances is a function of job

<sup>91</sup> For a discussion and critique of disutility as the currency of productive effort see (Van Parijs 1995:160-166).



satisfaction. Putting this negatively, total productive output will increase as a worker performs more work hours, but marginal productivity will decline because of increasing marginal disutility.

But given that jobs rarely equate entirely with personal ends, particularly when they involve producing socially desired goods and services that are far more unpleasant than others (e.g. the job of the hospital intern or the garbage collector), dissatisfaction is inevitable. In that case what is required from a societal point of view is the performances of those people who are the most capable of producing the useful things demanded. But it seems that DCV will allocate to those who derive the least disutility from the activity rather than necessarily to the most capable. We may respond to this claim by appealing to two general assumptions. Firstly, people will tend to choose tasks which equate with their personal ends (i.e. they will not choose dissatisfying activities). Secondly, people are more likely to be more accomplished at performing such tasks. The rationale behind these assumptions is that jobs which are more satisfying will tend to be those which coincide with a person's skills and abilities. Indeed a person may cultivate her personal ends and life-plans to accommodate those advantages. Part of the reason for this is that it is less burdensome to enact personal ends that coincide with one's advantages. That is to say, it requires less energy and (assuming the advantages match one's preferences), therefore less dissatisfaction to perform tasks that one is predisposed to perform anyway. But at the same time persons will also be inclined to cultivate their abilities and skills to suit their personal ends.

Nevertheless, it is by no means inconceivable that a job candidate will bear personal ends that equate with a task that they are not able to perform adequately. Conversely, another job candidate, who bears the skills and talents for performing that task, may find that its performance would inhibit her personal ends. Both candidates bear the misfortune of having natural or social advantages that do not equate with their inflexible personal ends. (I discuss the problem of inflexible preferences shortly.) Clearly, from the point of view of

productivity, the employer would prefer to hire the second candidate, provided he is willing to pay the compensation required to nullify this candidate's greater disutility.

Furthermore, if wage compensation has the effect of leaving each worker equally well-off, each and every task will be equally appealing to workers. In other words, each task *ex post* compensation is equally capable of realizing one's personal ends and life-plans. Consequently, there is no incentive for the worker to equate his productive ability with the related task, nor to develop his ability in order to improve productivity. As a result, society will tend to be burdened with a greater compensatory debt than necessary because there is no incentive for the worker to try to reduce the disutility incurred (say through greater efficiency in the workplace to reduce work hours). (Van Parijs 1995:164)

Even still, it is quite clear that social efficiency will be maintained because employers will seek to employ the best-qualified candidates; their selection is made from the point of view of the comparative worth rather than comparative disutility of each candidate. As I argued in Chapter 4, jobs are deserved based on prior performances, which are indicative of future potential. In other words, past performances entail that the applicant deserves the opportunity to carry out her chosen task—chosen in the sense that it either intrinsically or extrinsically (i.e. through remuneration) fulfils her personal ends. Furthermore, we may still confer appraising attitudes and status on the person based on the quality of the subsequent wage-earning performance. Thus, in order to fulfil her personal well-being the worker will be motivated to specialize in tasks that match his skills and will thereby reduce the disutility of performing these tasks.

## 2.4 Inexpensive and expensive tastes.

It is clear that what is constrained or denied by work cannot include simply any personal ends. Hence, by making wage remuneration relative to the workers disutility we fall prey to two standard problems of interpreting personal well-being. Firstly, how are we to deal with personal ends that are harmful? Secondly, should we restore a person's ends when they are exorbitant? In a sense the problem we are faced with is personal ends that are too inexpensive from the point of view of the worker and those personal ends that are too expensive from the point of view of a society constrained by scarce resources.

### *(a) The contented slave problem.*

I have already suggested that part of the reason behind the intuitive discomfort associated with the example of the contented doctor (apart from the fact that compensation disregards the doctor's positive contribution) is that the doctor is satisfied with what others take to be a substantial disutility (i.e. highly stressful work, sleep deprivation, extensive prior study and training etc.). We find it difficult in some cases to accept that persons with a high pain threshold or whose satisfactions equate with what we see as a harm (where the utility outweighs the disutility) should be requited less. We feel that the compensation that the worker receives (and consents to suffer harm because of) understates the harm incurred.

The advantage of DVC over exclusively welfare-based distributive solutions is that it does not have to determine and impose what the good is on the wage-earner. (Dworkin 1981a) Rather, the wage-earner decides their personal ends and life-plans and resources are allocated according to those choices, when and if they are denied. Hence the contented doctor is requited comparatively less *qua* the structure of her chosen preferences (i.e. less disutility in spite of the undoubted hardships of the job because of the personal utility she derives from

it). One person's want is another person's harm and, therefore, there may be marked differences in compensatory treatments.

But it is clear that some wants must be taken as genuinely harmful; is the prisoner of a Siberian gulag, who manipulates his thoughts so as to believe that he is happy (say because the denial of reality is essential to survival), really happy?<sup>92</sup> As we have already noted, the example of the contented doctor is a variation on Isaiah Berlin's contented slave problem: a person is negatively free if there is no constraint on him pursuing his wants, but if the wants themselves are harmful then we cannot say that he is free. The real problem, therefore, is distinguishing genuinely harmful preferences, which the agent is unaware of due to manipulation by himself or others (i.e. contented slave), from those which are genuinely satisfying preferences (i.e. the ski-instructor). At what point, if at all, is the burden on the doctor such that we can say she is not genuinely content?

At some point, objective criteria, rather than the subjective judgements of the agent, are required to discern authentic want-satisfaction (e.g. the smoker who has a chemically driven desire to smoke appeals to a second-order conscious desire to quit based on the knowledge of the health risks involved in the addiction). That is to say, a person's desires must be taken as informed. (See Chapter 5, Section 4.1.) Compensation, then, must in some way take into account the potential rather than just the actual wants of a person (what one might have wanted to do, rather than what one actually wanted to do). This is, of course, notoriously tricky territory, for by imposing a conception of what preferences should be onto the doctor (i.e. what she would have chosen if 'authentically' autonomous), even in the loose 'might want' formulation we run the risk of not properly respecting her personal ends and life-plans.

<sup>92</sup> In Solzhenitsyn's *A day in the life of Ivan Denisovich* (Solzhenitsyn 1963), Ivan derives

*(b) The problem of expensive tastes.*

A second related set of problems concerns those personal ends the compensation of which would be exorbitant (e.g. the obsessive desire to climb Mount Everest). That is, it seems unreasonable to allocate a large proportion of scarce resources so that the Everest-obsessed person can satisfy his expensive taste. But at the same time we do want to include less costly preferences that are denied by work. In other words, we need to be able to distinguish between the avid surfer who forgoes his enjoyment through working and the climber who forgoes his obsession to climb Everest.

We can begin to see how this is less problematic than it first might seem, once we take into consideration the agent's control over his preferences—the extent to which the person is responsible for his preferences and thus the extent to which he can voluntarily modify those preferences. Faced with the possibility of requiring an expensive preference we must always ask firstly, whether the bearer was responsible for bringing it about (i.e. cultivated), and secondly, whether the preference is adaptable. If the climber is able to forgo his desire to climb Everest by say wishing to climb Ben Nevis instead, then we are less obliged to compensate his expensive taste in full. Similarly, if an incredibly fussy worker is able to manipulate his fussy tastes, then the compensation may be less; the actual opportunity cost is less in this case because of the control the agent exerts over his preferences.

Hence, what really is at issue here are those preferences that are expensive and which the bearer cannot voluntarily forgo.<sup>93</sup> That is, the weight we place on our preferences and personal ends may be contingent upon their being rigidly held (i.e. 'uncontrollable'). Clear-cut cases of rigid preferences are unstoppable

contentment from the art of bricklaying, in spite of the overwhelming misery of the gulag.

<sup>93</sup> Hence I concur with G.A. Cohen that—taking Dworkin's example—Louis's cultivated predilection for claret and plover's eggs is not compensatable because he was responsible for them. But if Louis's predilection constitutes an inflexible and unstoppable craving, then he is due compensation. (Cohen 1989:922-923)

compulsions, passions, cravings, addictions etc. But in such cases the relevant form of compensation is NVC. Thus, if a smoker is forced to forgo his desire by taking on an office job in which smoking is not permitted indoors, the only conceivable avenue of compensation is non-voluntary and therefore distinct from wage determination. Consequently, while compulsive desires are problematic for compensation in general, they need not concern us directly here.<sup>94</sup>

<sup>94</sup> Compulsive desires provide satisfaction even though they are not always wanted—we can quite coherently claim that we strongly desire to eat still more food and simultaneously desire to halt this compulsion. Similarly, the sadomasochist gains satisfaction from pain but he may detest his predilection; and, a smoker gains satisfaction from smoking but may be desperate to shake the habit. *Prima facie* this appears to present two contradictory bases of compensation: Firstly, people may deserve to be compensated if they are innocently prevented from satisfying their compulsive desires. And given that they are unable to control the desire, it would seem that it is strongly held in the sense that the bearer cannot evade it and replace it with an alternative preference structure. Such a denial would constitute a particularly harmful deprivation and, therefore, the compensation due would not be insubstantial. However, we may argue that because they are not responsible for the preference they should not be compensated at all. The sufferer's will is not constrained because the preference is simply an involuntary characteristic of the self. But this would seem to imply a second independent claim to compensation. The smoker, for example, deserves compensation because they are internally constrained from realising alternative preferences such as playing sport.

I would argue that both these claims to compensation are legitimate and that they can be made simultaneously without a loss in coherence. Take the example of a heroin addict: she derives immense satisfaction from tripping on the drug, but in general she is desperate to overcome the addiction. If she is denied access to the drug it seems right that she deserves compensation for the deprivation incurred (which may very well be more intense than the preference satisfaction gained from experiencing the drug). Hence, if it is part of a drug rehabilitation program, we may compensate her suffering with treatment bearing similar objective properties (e.g. methadone) and dissimilar objective properties (shelter, food etc.).

The compensation could also be conceived of as an incentive to pursue more socially desirable preferences. That is, society compensates the addict as an incentive to shake the habit, and because this requires that she forgo her compulsive preferences the incentive is deserved. She is deserving, then, because she has been innocently denied preferences that she would have realized. As was argued earlier, we are responsible for preference satisfaction, even where the preference itself is not voluntary, because of the choices and actions designed to bring it about. But it is also consistent to claim that she deserves compensation because the addiction internally constrains her from satisfying a number of preferences that she holds. That is to say, the addiction harms her in that she is innocently deprived of leading a healthy life (although that innocence may be ameliorated by the fact that, despite being aware of its chemical addictiveness, she chose to shoot up the drug in the first place). Taking compensation by itself and leaving out other concerns (such as social objectives) we are, therefore, bound to requite her preferences forgone. The reason that these dual compensation claims appear to be incoherent is because compulsive desires are taken as both a harm and a benefit simultaneously. But as the examples of the smoker, sadomasochist and heroin addict show, this is not inconsistent or for that matter an uncommon state of affairs. Moreover, when we observe the bearers of compulsive desires we cannot deny that they forgo well-being if the desire is denied; nor can we ignore that the desire itself constrains the satisfaction of other preferences.

We may note two further constraints on what personal ends that are to count as compensatable: Firstly, in keeping with the idea of desert, opportunity costs must refer to the personal ends the person would and could have realized—what they would have been in control of in the absence of ill-luck. Where personal ends could not have been realized, even in the absence of unlucky disadvantages, then compensation is not due. Desert is constrained by the feasible set of obtainable ends limited by the existing level of resources and technological capability. Secondly, employers would not be willing to pay an incentive to an employee sufficient to compensate them for their expensive preference unless their skills were rare (but even where a person's skills and ability are rare—say the exceptionally talented pianist—there is a limit on what employers and consumers would be willing to pay). Similarly, the job-holder would not be willing to forgo the life he enjoys if the compensation for the opportunity cost were insufficient. Hence, the avid surfer trades off between the benefits that accrue from taking on a task and the enjoyment forgone; he will not take up the offer if the compensation payment is insufficient to enable him to sustain himself and his predilection, whilst minimizing the loss in surfing time. As we can see, then, wage bargaining reduces the scope of what expensive preferences are compensatable.

## 2.5 The problem of discerning disutility.

The reason, I take it, that Miller limits the scope of compensation (as a non-desert determinant of wages) is largely based on the considerations just discussed: discerning each person's genuine voluntary opportunity cost appears implausible from a practical point of view, given that a harm for one person is a benefit for another. For similar reasons Karol Soltan argues that, 'Compensation arguments are persuasive as long as the undesirability of the work conditions is public, demonstrable, and does not depend on idiosyncrasies of the tastes and values of those who do the job.' (Soltan 1987:149)

But the problem with limiting the range of what is to count as compensatable is that it disregards genuine work disutilities. Indeed, Miller's position is inconsistent with his discussion of needs, which he takes to be conceptually akin to compensation. In the context of needs he recognizes that the definition of harm must be agent-relative and not based on 'general empirical criteria' or an account of 'the kind of satisfactions persons ought to enjoy.' (Miller 1976:131-132) But by basing work-compensation on a socially agreed and demonstrable level of well-being, this is exactly what he appears to be doing. That is to say, he is disregarding the personal ends and life-plans of those sufferers not adequately characterised by the social norm.

Clearly the most expedient solution to both the epistemological problem of discerning each individual's disutility and the problem of expensive and inexpensive tastes, would be to average the disutility across each occupation. Ultimately the defensibility of such a move will depend, as noted in the previous section, on the extent to which preferences are cultivated and malleable. That is to say, averaging disutility across an occupation, rather than judging disutility on a person-by-person basis is only permissible if we take the view that agents can control their preferences. If so, they can adapt their preferences so as to incur less disutility. It is up to them, in a sense, as to how much net disutility they suffer. It is only where we take the view that personal ends cannot be modified easily by the agent that we must take a more individuated approach to wage determination. (Lamont 1997:44- 45) In that case, if we average disutility across an occupation, we are ignoring genuine variations in personal deprivation (e.g. the contented intern and the near to nervous break-down intern). If we take preferences as inflexible, then employing an occupational average will be both controversial and inefficient: those whose disutility is above average will be under-compensated and those below average will be overcompensated.

Part of the concern being expressed by Miller (and Soltan) is that in order to avoid subjective valuations of disutility we require—whether on a person-by-



person basis or across an occupation—an ‘objective’ evaluative standpoint. In order to avoid human error and contentious valuations, it is preferable to appeal to general evaluative rules and criteria. This is one of the main reasons why Miller advocates a market-based valuation of contributions. He claims that the only objective means of measuring variations in contributions against want-satisfaction is to use a suitably modified market exchange. Employers evaluate an employee based on their ability to achieve goals dictated by consumer demand. (Miller 1989:159-165) (Miller 1996:Sections III-IV)<sup>95</sup> However, Miller’s market socialism ignores the fact that the market is compatible with the idea of compensating differentials in disutility. (I elaborate on the theory of compensating differentials in Section 3.) Hence, if we choose to employ the market as the ‘objective’ standpoint, then we need not restrict ourselves to evaluating individual contributions; moreover, from the point of view of compensation, I take it that individual employees can bargain with their employer based on their willingness to accept compensation and the employer’s willingness to pay compensation.

The obvious drawback of a market-based evaluation, as opposed to evaluating independently of the market mechanism, is that the bargaining power of the employee with an high level of disutility is contingent on his abilities and the availability of alternative candidates. That is to say, the person with a significant discrepancy between his preferences and his ability to realize them will be neglected for the sake of social efficiency. Ability to contribute denies the pursuit of personal ends, but only if the preferences are uncontrollable (i.e. modifiable to suit one’s abilities): then we would have to say that the worker is unlucky and that the efficient distribution is unfair. In such cases, as I have already suggested (see footnote 94), NVC by society is required.

<sup>95</sup> Although, as Miller notes himself, the historical shift from self-employed individuals and small firms to large organizations has compounded the problem of determining individual contributions. More recently, Miller, however, appears to recognize that jobs can be evaluated within firms based on objective criteria that are defined by each employee’s ability to achieve consumer demands (aptitude tests, performance targets etc.). (Miller 1996: Section IV)

## 2.6 Compensation and equality.

We may summarize the account of deserved wages that has been argued for in schematic form:

- Desert-basis—voluntary contributory sacrifice (deprivation and contribution).
- Metric of wage determination—deprivation.
- Mode of treatment—compensation.

Deserved compensation is composed of a hybrid desert-basis (chosen deprivation and contribution) and a rectificatory metric for requital. In other words, while contribution, volition and deprivation are reasons or conditions for receiving desert, it is only the latter which measures the amount of deserving treatment.

Wage determination becomes a matter of adjudging comparative disutility rather than determining the comparative worth of workers. But we do value the worth of the performance; indeed the claimant's deservingness depends on it. The minimum condition of receiving a compensatory wage must be the genuine intention to create social value. But this amounts to saying that people cannot deserve for accidental 'work'—they must at least intend to make the sacrifice. Deserved compensation depends not so much on the agent's intention to make a sacrifice, but on his *consent* to suffer disutility now in the expectation of recompense later. Of course, mere intention/consent will not incur a burden in itself: logically there must be an effort associated with the intention before alternative preferred activities can actually be forgone. That is, the issue of recompense does not even arise until choices and actions are made. Hence, in keeping with the control criterion of CEV, the value to be created and the disutility to be incurred must be at least intended and (logically) performed.

This should be distinguished from the effortless attainment of an intended outcome as a result of good fortune: in such a case there is no disutility

incurred and, therefore, the question of deservingness does not even arise. Moreover, those who are physically or cognitively incapable of intending or carrying out social value, or those who are innocently prevented from carrying through their intentions (e.g. because of a work accident) are subject to compensation, but of a non-voluntary kind.

This constitutes an egalitarian conception of desert insofar as the compensation metric is not contingent on the ability to contribute value—that is, not dependent on the extent to which one’s social and natural advantages and subsequent episodes of luck happen to coincide with what is valued by others. While contributory efforts are a necessary pre-requisite of desert, they are not the measure of deserved receipt. For no harm is incurred in either acquiring or using one’s natural and social advantages and other episodes of good fortune that aid contributory efforts. Tasks involving the use of such advantages do not require the expenditure of energy and, therefore, the outcomes are effortlessly or, harmlessly realized. (Lamont 1997:45-46) (Sadurski 1985:116&144) Thus, in response to the question ‘Desert for what?’ The answer is contributory sacrifice. In response to the question ‘Desert of what?’ the answer is resources sufficient to re-establish the pursuit of personal ends and life-plans. From this we can see that this second question also answers the question ‘Equality of what?’: equal respect for the pursuit of chosen personal ends.

The account of wage-compensation argued for here is far more extensive than the one put forward by Soltan and Miller (and for that matter Feinberg). For I contend that compensation is a matter of returning each person to *his* chosen well-being, rather than to a socially agreed description of well-being. Hence, this account of compensation is egalitarian insofar as each person is returned to the same level of well-being after *controlled* expensive tastes have been discounted. Although each person will receive different levels of compensation depending on the extent of his deprivation, they will be equally well-off in terms of their chosen well-being. That is, each will have received sufficient

resources, of the right kind, to enable them to realize the personal ends denied by the harm they have suffered.

David Miller claims in his critique of Sadurski's *Giving Desert its Due* that this amounts to a principle of equality rather than a principle of desert. (Miller 1991:382)<sup>96</sup> I concur that wage compensation *is* undoubtedly egalitarian insofar as it aims to fulfil everyone's well-being rather than differentiate between each person's contributions. However, in the account of deserved compensation that I have argued for, contribution is crucial; desert is based on the debt created by the denial of personal ends *in the pursuit of social value*. Hence, we evaluate the performance made on our behalf and ascribe to it admiration, praise, approval and so on for (a) its quality, (b) the fact that a contribution has been made and (c) the sacrifice made on our behalf. Based on that *appraisal* we requite the performer according for the opportunity cost incurred. (But the conferral of approval on the performer and the increased self-esteem reduces the disutility of the performance and therefore the deserved compensation.)

## 2.7 Reciprocity.

Miller's account of wage desert fails to recognize that the burdens incurred while producing value do generate positive responses in the way just described. Moreover, he presumes that the mode of treatment we use to express our moral approval must reflect the contribution made. (Miller 1991:382). But, as I have argued, valuable contributions can just as persuasively (maybe more so) be perceived as creating a debt of gratitude for the sacrifice made.

<sup>96</sup> It should be noted that Sadurski in his critique of Miller misconstrues his argument. (Sadurski 1985:116) It is clear that Miller is referring to the quality of the performance and *not just* personal attributes as the basis of desert. (Miller 1976: compare 85&112)

In my account of wage desert I have implicitly employed a variation on the principle of reciprocity—the idea that where a person has forgone something on behalf of others, the beneficiaries are obliged to reciprocate in some way. This I take to be one of the central rationales for why we are obliged to actually requite deserving performances, rather than merely to recognize that they are deserving. The onus is thus placed on the beneficiaries of the co-operative enterprise to requite the contributors for their contributions to the social product. But as I have argued, the appropriate mode of reciprocating (the debt we owe) is to enable the realization of the personal ends foregone in making the contribution; for to willingly enjoy the benefits of another's sacrifice without providing the contributor his recompense is to treat him as an instrument to the fulfilment of one's own well-being.

It is interesting to note that Karol Soltan claims that there is a 'fundamental' distinction between compensatable factors of work which fall under the norm of reciprocity (greater sacrifice and therefore greater gratitude) and those which fall under the norm of desert (exceptional and demonstrable deprivation).

The compensatory aspect of desert ... seems to have the logic of insurance schemes, whereas the compensatory aspect of reciprocity has more in common with notions of a fair bargain, a bargain that takes account of the costs incurred. (Soltan 1987:156-157)

This, it seems to me, is a wholly arbitrary distinction to make: productive performances that deny personal ends entail a sacrifice and therefore a debt of gratitude, *whether or not the sacrifice is exceptional*. Compensatable harms only take on the 'logic of insurance schemes' when they are *non-voluntarily* suffered (say an accident in the work place); deprivations that are deliberately consented to are self-evidently not accidents.

Both Miller's and Soltan's analyses are flawed because they tend to construe work disutility entirely as non-voluntary harms and, therefore, associate them with the conceptual schemes of insurance, criminal injury, needs and so on (i.e.

NVC). This ignores the fact that the disutility incurred in the course of contributing value is *voluntarily incurred* and therefore properly associated with the conceptual scheme represented by desert. When ‘someone runs into my car and then pays to have it repaired’ we are clearly not appraising me for something I have done. (Miller 1991:382) But that is an entirely different state of affairs from one in which when I voluntarily incur a harm in the act of creating value for others. It is because the harm incurred in providing value is consented to that we are obliged to reciprocate.

### 3. Conclusion: deserved incentives and economic rent.

In conclusion we may bring the various strands of the argument presented in this part of the thesis together by noting how it fits with the idea, familiar to labour economists, of Compensating Differentials (otherwise known as the Theory of Equalizing Differences).<sup>97</sup> The basic idea underlying this theory is that the labour market operates so as to compensate differences in the disutility for each worker so that they are all left equally well-off.

#### 3.1 Compensation payments as incentives

*Prima facie* it appears that the exclusively contribution-based account of desert that is being rejected here is actually more conducive to encouraging those activities which society values than a compensation-based account. However, as was noted in Chapter 4, contributory desert will tend towards, but only coincidentally correspond with, socially optimal outcomes. This is because it is the control and value of the past performance *per se* which is approved, and

<sup>97</sup> The classic exposition of the idea is still to be found in Adam Smith’s *Wealth of Nations*. (Smith 1950:Book 1,chaps1-10) For a comprehensive treatment of the theory See also (Rosen 1986), (Ehrenberg and Smith 1994:chap 8) and (Rees 1975). In the field of political theory James Dick and Julian Lamont have provided useful analyses of how the theory pertains to

that may not necessarily reflect the attainment of social goals. Rewards for desert will generally act as incentives to repeat socially valued performances, but there is not necessarily a connection between the two. Hence, the allocation of benefits according to contributory desert is often sub-optimal because there is a discrepancy between the valuable activities demanded by consumers and the preferred activities of workers. Moreover, if we try and define desert as those actions that fit the socially optimal outcome we are no longer employing the concept of desert. Instead we are using the phrase 'desert' to describe another conceptually distinct reason for distribution. What justifies deserving treatment is the value of prior or anticipated actions of the individual—not whether the actions fit a proposed future state of affairs.

However, as I have argued, desert is far more compatible with the realization of future value than the received wisdom has claimed. This is particularly apparent in the context of deserved wages—wages are typically determined *ex ante* performance, and sometimes even received *ex ante* performance.

Now that we have seen how compensation and desert are compatible in the determination of wages we can go a step further and incorporate personal desert into a future-regarding scheme. *Prima facie* compensation-based desert appears less likely than contribution to reach socially optimal outcomes, given that social value bears no immediately obvious relation to the costs incurred in performing. Deserved compensation is primarily concerned with the perspective of the sufferer, rather than the perspective of the beneficiary or appraiser. In contrast, contribution has a tendency towards an optimal distribution because social values enter into the judgement of a valuable performance. However, social values do indirectly define the costs to the worker in that the latter are incurred in the course of contributing value. As Julian Lamont rightly argues, social value can define what performances ought to be carried out on one level, while what a person deserves is defined by

distributive justice. (Dick 1975) (Lamont 1997) I am indebted to their insights in the following.

disutility attached to carrying out those performances on another level. (Lamont 1997:34-35) What this means is that a worker is paid an incentive in order to shift to a new job (or produce more units). Each worker is encouraged into socially desired work if the incentive payment is sufficient to cover the personal ends that are foreclosed in the process.

Somewhat paradoxically, the worker generates value for the world and disvalue to themselves—insofar as the work does not equate with their personal ends—in the act of producing social value. But if the performance would have been carried out anyway or it would not have been carried out irrespective of inducements, the incentive is both wasted and undeserved; there is no personal sacrifice in virtue of the fact that the persons ends match the task to be done.

Although compensation is less directly related to social optimality than contribution, it is perfectly compatible with it when conceived in the way just described. Consequently, when there is a discrepancy between the kind and amount of labour required by consumer preferences (i.e. goods to pursue personal ends) and the personal ends of workers, then employers increase wages to the point at which sufficient workers (or work hours) are encouraged to produce.

Similarly, the government may wish to ensure the attainment of social goals not recognized by the market (e.g. social or environmental policy, public goods, rectification of market imperfections etc.) and therefore provide incentives (e.g. work subsidies, tax relief etc.) that compensate individuals for pursuing those goals. (Conversely, the employer or government may provide disincentives not to perform e.g. decreasing real wages, income tax etc.). Hence, the wage is at one and the same time an incentive to perform and compensation for the net disutility incurred. And from the point of view of the individual worker, the incentive/compensation is deserved because of the productive sacrifice that has been consented to. Therefore, DCV is entirely compatible with the carrying out of performances that are socially valued. While the compensation claim rests on



the disutility of the agent's actions, the result of the actions may still be socially useful. And because the compensatory wage is deserved we have a normative justification of a non-utilitarian kind for incentive payments.

But although desert proper may not be fully legitimized until the sacrifice actually occurs, we may, nevertheless, anticipate it with a wage that is determined, offered and even given in advance of performance. The futurity of wages is especially clear-cut in the case of compensation for exposure to risk or danger. Workers consent to possible occupational hazards (e.g. RSI) and receive compensation prior to the injury and in spite of the fact that the harm may not actually occur. Wages offer compensation based on the probability of the harm, rather than pre-empting its actual occurrence. In other words, a 'premium' for what the worker is willing to accept in compensation for the possible harm, is built into the wage. Furthermore, one of the two central reasons for desert (along with contributory effort), and the metric of requital, is a performance that has not been actualized; namely, the counterfactual performance, or, what would have been done in the absence of work. For these reasons, but primarily because the depriving performance is social-goal directed, DCV is compatible with a future outlook. Nevertheless, the backward-looking character of desert is preserved because the desert-basis rests on something *done*. Namely, the valuable sacrifice made on our behalf that we are obliged to recognize and requite.

### 3.2 Exact Equivalence.

The disutility of work, according to my broad reading, is defined by the voluntary denial of one's personal ends and life-plans. That is to say, net disutility is not simply the dissatisfying characteristics of the job<sup>98</sup> less the

<sup>98</sup> In the literature we can detect five kinds of dissatisfying work characteristics. 1. Disamenities that create psychological and physical discomfort (boredom, unpleasantness, exertion, stress etc.). 2. Danger and risk. 3. Time and money spent acquiring and developing

satisfying characteristics of the job (prestige, power, self-esteem, self-fulfilment, etc.). The burden of work is defined by the difference between the purposes of the employee and the purposes of the employer. But I take it that the dissatisfying characteristics fall under my broader definition in the sense that they are ends-denying.

However, it is crucial that the cost thus defined refers to the actual ends abnegated, rather than being converted into the net *subjective* dissatisfaction of the job. Drawing from the conclusions reached in the previous chapter (Section 4) we can see that in order to fully compensate for the disutility of work, wages must look to provide the resources sufficient to pursue those ends, rather than merely provide the equivalent subjective satisfaction. That is to say, compensation for the voluntary harm must be enough to enable the worker to acquire those goods with the appropriate objective properties (i.e. substitute goods may suffice if they have the equivalent objective properties) to realize the personal ends forgone. And, if an employer chooses not to use the objective properties as the currency of recompense (i.e. pecuniary units sufficient to acquire the required objective properties), then the wage must provide not only the means to acquire the subjectively equivalent satisfaction (i.e. satisfaction through alternative objective properties), but also *further* compensate for the denial of one's *chosen* ends (i.e. top-up compensation). But this will only follow if, firstly, the employee consents to the top-up approach (i.e. she is indifferent to either the restoration of personal ends or subjective satisfaction with top-up) and, secondly, if the cost to the employer of the top-up approach is comparatively less (Chapter 5, Section 4.4). The consent and expense of such an approach will be contingent upon the extent to which the worker is willing and able to adapt her personal ends and life-plans to accommodate the alternative level of recompense.

the required skills. 4. Leisure time forgone. Some have also included positions of responsibility i.e. responsibility for the actions of all those who one oversees. But it is questionable as to whether this constitutes a burden *per se*; At most it appears to be a feature of some jobs that

A third alternative open to the employer is to change the characteristics of the job so that it incurs less disutility (e.g. changing the office ergonomics so as to minimize the possibility of RSI, lowering performance targets, making the work more interesting, and so on). Such an approach will often be more cost efficient to the employer than compensating the harms that they fail to prevent. Hence, compensation would be restricted to the unavoidably undesirous aspects of the job. And, as a corollary of this, unless the preventable harms are consented to by the worker (i.e. he agrees because the wage fully compensates the deprivation), then the employer has shown a lack of due care towards others and is therefore liable. That is to say, the employee has a legitimate claim to non-voluntary compensation. Almost all jobs will be ends-denying to some degree, irrespective of attempts to improve work conditions.

In general, employers will seek out workers whose ends most closely match the task in hand because (a) the disutility to be compensated will be less and (b) each worker's ability and skill tends to match his personal ends. At the same time, the worker will choose the least depriving job prior to recompense. Consequently, employer requirements and personal ends will *tend* to overlap. (Chapter 6, Section 2.3)

### 3.3 Job satisfaction and income distribution.

However, compensating differentials will not pertain, once there is high demand and a shortage of workers with the required abilities and skills. Under conditions of absolute scarcity employers will be obliged to offer wages in excess of disutility so as to entice enough workers. Take the case of a worker who is currently employed in a job which closely approximates his ends and another employer offers him sufficient compensation to cover the disutility of a different job (wages instrumental to pursuing the personal ends and including the actual cost of transferring jobs). In that case the worker will be indifferent

implies one or more of the above characteristics. See (Dick 1975:267)

between the two jobs and as a result either employer will have to outbid the other, exceeding the worker's disutility in order to retain the worker's services. Similarly, if a person's skills to perform the same task, say a computer programmer, is being sought by two rival firms, then both firms will seek to outbid each other in excess of the programmer's disutility. In both cases scarcity means that the worker receives in excess of his contributory sacrifice and in excess of what is required to ensure that he performs the task. That is to say the incentive in excess of compensating disutility constitutes an economic rent in so far as it does not ensure greater contribution to the social product.

Consequently, the idea that the market mechanism actually operates solely to compensate the disutility of contributing to the social product, rather than the contribution itself, is not borne out in reality. Empirically, the value of contribution tends to outweigh the significance of job disutility. In other words, wage differentials are non-equalizing in that workers are not left equally well-off with respect to their personal ends. Joseph Carens notes that the market actually tends to *add to* job satisfaction rather than compensate dissatisfactions. It seems that more highly paid jobs are more satisfying than lower paid jobs. Even though workers in very challenging jobs (e.g. a doctor) may often, on balance, find their work more satisfying *ex ante* wage, they are still required more than a person in a less satisfying job (e.g. office worker). In other words, the market determination of wages, whilst still compensating disutility, tends to place more emphasis on adding to job satisfaction. (Carens 1981:156-160:238-239)<sup>99</sup>

This inference seems to follow from two related factors. Firstly, where personal ends equate with the task in hand, productivity will tend to be greater; hence contributory desert is greater (See Chapter 6, Section 2.3). Secondly,

<sup>99</sup> As Carens notes, the results of empirical studies into the significance of disutilities in wage determination are inconclusive. See also (Ehrenberg and Smith 1994:248-249). But on balance it appears that the additive aspect is more significant than the compensatory. James Dick draws the same conclusion. (Dick 1975:264-266)

challenging jobs are, in spite of the burdens involved, more fulfilling due to the self-esteem, power, prestige, status self-realisation etc. attached to the task; hence the net disutility of challenging jobs is less than may at first be thought. That is to say, the doctor may in fact be more contented despite the long hours, responsibility, training etc. because of the sense of fulfilment derived from helping others in need. Similarly the CEO may generate net job utility because of the status, sense of power, and so on. In other words, the market adds to job satisfaction because satisfied performers are more productive *and* because high paid jobs are in themselves more satisfying.

But as I have already hinted at, there is something wrong with this state of affairs from both a normative and efficiency point of view. In the context of scarce resources—and given that the objective of distributive justice is to respect the ends of persons—it is unjust to requite those people whose performances are ends-fulfilling rather than those whose performances are ends-denying. That is to say, where there is no voluntary sacrifice incurred we may admire the performance but not requite it on that basis (indeed we adjust the disutility of the job downward because of that admiration). And, from the point of view of efficiency, any payment in excess of what is required to ensure that the worker performs the task constitutes an economic rent. (Dick 1975:268-269)

### 3.4 Economic rents in the labour market

According to the standard competitive equilibrium model, the hypothetical market clearing wage is the compensation level necessary to encourage just enough work hours from workers in order to meet consumer demand. (Of course consumer demand will adjust downwards as wage-compensation increases because it will push up the price of the desired good). However, economic rents arise in the labour market in three different ways.

(1) Transition Rents: rents are always being accrued because there is a delay in the labour supply reacting to increases in consumer demand. Where the wages received are in excess of the market clearing wage due to an increase in demand, workers enter the occupation in order to take advantage of the rents being accrued (presuming the rent is at least greater than the disutility they would incur). Consequently, the rent dissipates as more and more rent-seekers enter the occupation, until eventually the market clearing wage is attained. In a sense, therefore, rents also act as incentives. But I take it that unless they induce socially useful performances (e.g. meeting consumer want-satisfaction) that would not have been done otherwise, they cannot be construed as incentive payments in the proper sense. In contrast economic rents may have no incentive effect at all because the task would have or would not have been done, irrespective of receipts. Hence, the rents received will be in excess of each worker's disutility. In other words, the rent payment will be beneficial to the recipient's personal ends but not to societal ends. (Lamont 1997:30,35)

(2) Surplus Rents: the last entrant into the occupation sets the market wage, even though each previous entrant would have accepted a lower compensatory wage. In effect the market wage overcompensates the early entrants. This is the same scenario discussed in Section 2.5: generalizing across an occupation fails to take into account individual disutilities. The only way to circumvent this form of overcompensation is to individuate the wage structure (e.g. employer-employee wage bargaining).

(3) Barrier Rents: The downward adjustment to the market clearing wage presumes there are no barriers to entry. Clearly, however, there are barriers to entry and these barriers *protect* the economic rents accrued by those who were fortunate enough to overcome the barrier in the first place. In one form, Barrier Rents derive from a combination of consumer demand and an absolute shortage (i.e. irreplaceable rather than a short-term shortage) of the right kind of skills and abilities. The firm is concerned with marginal contribution to revenue—which in turn is based on consumer want-satisfaction—and, therefore, selects

and requites workers who are the best qualified to contribute. If a worker's contributive ability is irreplaceable, she is in a position to bargain the wage to a level above what is required to compensate for the disutility of the work.<sup>100</sup>

However, Barrier Rents also arise when the required abilities are *not* scarce. That is to say, when there are non-natural barriers to entry. This occurs because persons seeking the rents already being accrued by job-holders are thwarted in their attempts due to lack of information about the rents existence and institutional barriers (typically, barriers to acquiring the necessary skills, e.g. medical qualifications). In addition, barriers to entry also occur because it is often more profitable for the employer to retain existing employees at a higher wage than take on new workers who may be better qualified and/or willing to work at a lower wage. This is due to the fact that higher wages motivate existing employees to be more productive and because of the turnover costs associated with taking on new staff. As a result, the wages of existing job-holders may actually increase, in spite of the availability of persons with the requisite contributive ability who are willing to work for less.<sup>101</sup> Job holders, therefore, are in a position to demand a wage in excess of what is required to compensate for the disutility of the job. Consequently, Barrier Rents are being accrued by job-holders while at the same time job-seekers are involuntarily excluded from employment; That is to say, job-seekers who are willing to accept lesser compensation because their personal ends equate more closely with the task to be done.

Each form of barrier creates a scarcity in labour that enables those fortunate enough to be job-holders to receive more than the hypothetical market clearing wage. The wage rate is in excess of what it needs to be in order to realize

<sup>100</sup> Moreover, the employer will not be (if at all) directly concerned as to whether the employee's potential and actual contribution was contingent on good fortune; whether she actually deserves the opportunity to reap the benefits of employment and whether she actually deserves those benefits *ex post* performance. Thus, the worker's ability to receive employment rents may be undeserved even from the point of view of contributory desert.

<sup>101</sup> For a discussion of this kind of rent see (Van Parijs 1995:106-109).

consumer demand because cheaper (i.e. those whose ends equate more closely with the task) and/or better qualified workers are denied entry. But the mere fact of scarcity does not necessarily lead to overcompensation: job-holders may be asked to produce more because of the fact that there is a shortage of labour. Hence, the wage they receive will need to increase in order to cover the additional disutility of working longer hours (i.e. the wage acts as an incentive payment, rather than a rent payment). What this means is that barriers in themselves do not entail overcompensation (although Surplus Rents will accrue amongst job-holders unless wage determination across the occupation is individuated). Rather, barrier-created scarcity places job-holders in a position to *demand* payments in excess of what is required for them to perform the socially useful task. Barrier Rents, therefore, provide a further reason why highly paid jobs are *additive* to job-satisfaction. Wages add to satisfaction not just because of the greater contribution and the intrinsic satisfaction of a challenging job, but also because natural and non-natural barriers create the scarcity which *grants* the job-holder greater bargaining-power to accrue overcompensation.

I have already argued that paying the doctor or CEO in excess of their net disutility is unjustified because the appropriate desert-basis is absent (i.e. there is no contributory sacrifice) and because it denies scarce resources to those whose ends are not fulfilled (i.e. job-seekers and the undercompensated).

But as we have just seen, it is unnecessary from the point of view of social optimality. Incentive payments are ineffective because if they do not induce a socially useful performance: This is because a payment will have no incentive effect if (a) the contribution would have been made anyway (i.e. there is a contribution but no disutility is incurred in the process). (b) The valued contribution would *not* have been made irrespective of whether or not there is a payment. In both cases the economic rent payment is in excess of the disutility and therefore in excess of what is required to meet social goals. The payment



may encourage some kind of performance but not one that is socially useful (i.e. typically it will be used to further the personal ends of the beneficiary).

### 3.5 Redistributing overcompensation.

In conclusion, what I want to suggest is that rents are undeserved (i.e. there is no contributory sacrifice) and ineffective (aside from Transition Rent) with regard to social optimality. Surplus and Barrier Rents mean that people are not left equally well-off with regard to their personal ends. Rather, scarce resources are accrued by the more fortunate. Because the market fails to equalize differentials in disutility adequately we have a legitimate resource from which to base redistribution. That is to say, we may utilize job-holder overcompensation to underwrite welfare payments. As James Dick puts it, ‘at a moderate level of coercion necessary to assure that one’s own compliance is not taken advantage of by free-riders—it should be possible to tax away or withhold at the source the element of economic rent in everyone’s pay and still elicit a reasonable amount of the desired sort of work’. (Dick 1975:270)<sup>102</sup>

Moreover, we can extend the tax base further to include some of the payments in excess of the hypothetical market clearing wage other than those that are overcompensating. That is, the part of the compensation received by job-holders for the actual disutility of their performances. (I shall call the latter Employment Rents although it is important to distinguish them from rents that derive from overcompensation). But clearly we require a different form of argument than compensatory desert in order to make the argument go. But we can, I contend, make the case for extending the tax base in this way if we draw from the idea of deserved opportunities discussed in Chapter Four (Section 4). From that point of view the opportunity to reap the benefits of employment is

<sup>102</sup> On the redistribution of economic rents also see (Barry 1973:157-162). Phillipe Van Parijs also advocates using Employment Rents to finance an unconditional basic income. (Van Parijs 1995:106-109)

contingent on one's luck in overcoming barriers to entry: In the first place, deserved opportunity is contingent on having the abilities demanded. Secondly, the employer takes into account the comparative disutility that the candidate will incur. That is to say, what the worker is willing to accept in compensation will be contingent on the extent to which her purposes approximate the purposes of the task. Thirdly, the employer will not be (if at all) directly concerned as to whether the employee's potential and actual contribution was contingent on good fortune; that is, whether she actually deserves the opportunity to reap the benefits of employment and whether she actually deserves those benefits *ex post* performance. (Thus, the worker's ability to receive employment rents may be undeserved even from the point of view of contributory desert). Fourthly, the successful job candidate is also fortunate purely in the sense that he was in the 'right place at the right time', whilst other (possibly better qualified) candidates were not. Hence, the opportunity to accrue wages is in part contingent on good fortune.

Although DCV by-passes brute luck, insofar as compensation leaves everyone equally well-off (i.e. lucky advantage is simply irrelevant to the metric of requital), *access* to that desert is contingent on brute luck. Those barred from entry are simply unable to be compensated in the first place. Consequently, the fortunate job-holders derive an undeserved advantage over the involuntarily unemployed. They are 'insiders' who are able to reap the benefits of employment because they were lucky enough to overcome the barriers to entry. Hence, it is both the wages received in excess of one's contributory sacrifice *and* the good fortune of being employed in the first place that countenances redistributive taxation. From the point view of desert, it is legitimate to tax in this way because overcompensation is undeserved and because each candidate's opportunity is not fully deserved (i.e. they are not fully in control of their original selection).

These two forms of undeserved benefits provide the tax base for redistribution to those who are non-voluntarily excluded from fulfilling their personal ends

and life-plans. Namely, (1) The involuntarily unemployed: the aim here is to compensate those denied the opportunity to work for what they 'would have done' all things being equal.<sup>103</sup> Because the denial is not chosen I take it that such redistribution constitutes non-voluntary compensation. (2) Non-voluntary compensation: accidental harms to persons including to those that are cognitively or physically impaired. In this category we may also include bearers of rigid and expensive preferences for which the market will not compensate (3) Basic needs (4) Undercompensation: that is, workers who are exploited because they are compensated for less than the disutility of their productive sacrifice. This will arise because the wage incentive provided need only make the task more preferable to the employee than the next best available means of pursuing one's personal ends. Hence, the wage needs not to cover the disutility entirely in order to be an effective incentive. Only if the next best alternative covers disutility in entirety will the incentive wage need to compensate in full. Where the rules of justice defined by deserved compensation fail to prevent this form of exploitation then redistributive payments are required to make up for the compensatory short-fall.

The key factor to recognize here is that the receipt of redistributive wealth is conditional on suffering denial *non-voluntarily*. That is to say, the beneficiary receives compensation because they were innocently prevented from pursuing their ends. What this means is that the transfer payments *per se* are not deserved because they were not voluntarily incurred. Consequently, they are more akin to compensation for non-voluntary compensation (see Chapter 5, Section 3).

In this way we can circumvent the point noted by Dick, that some recipients might free-ride on the benefits of social cooperation.<sup>104</sup> That is, they might

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<sup>103</sup> This may include, for example, welfare-to-work schemes, wage-subsidies and the like. However, given that it may actually be socially optimal to demand that everyone ought to work this form of compensation may not be prudent.

<sup>104</sup> See for example Stuart White's critique of Phillipe Van Parijs unconditional basic income

exploit the contributory sacrifices made by others to the cooperative enterprise by not providing a reciprocal sacrifice. Central to my argument for deserved wages is the claim that we are *indebted* to those who have made a contributory sacrifice to the personal ends of others. But the same reciprocity argument applies to those whose compensatory wage is, in part, redistributed to others (i.e. the taxation of Employment Rents). But it should be made clear that job-holders that are overcompensated cannot be exploited by the fact that the excess payment is taxed or because the beneficiaries do not reciprocate. At most we can say that those beneficiaries who do not reciprocate are exploiting social cooperation in general.

Even so, the exploitation of genuine contributory sacrifices to the social enterprise is evaded because receipt is contingent on the fact that the beneficiaries *would have* made a contributory sacrifice in the absence of constraint. Consequently, the unemployed or underemployed would not receive transfer payments (including training, work-subsidies, tax relief, and so on) if they voluntarily *choose* not to seek work (i.e. their personal ends equate with the lifestyle of not having to carry out socially valued performances). Clearly the voluntarily unemployed are not deserving of compensation because no contribution is intended and, quite possibly, no deprivation is actually being incurred.<sup>105</sup> Hence, the 'counterfactual' reciprocity of the beneficiary, in this weak sense, is presupposed by a compensatory redistributive scheme. In addition, payments to the involuntarily unemployed further presuppose their continued willingness to take on work if the opportunity arises.

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thesis. White argues that the unconditionality of the income fails to satisfy reciprocity; that is, the beneficiary's receipt is not contingent on a reasonable level of work in return. (White 1997)

<sup>105</sup> Here a familiar tale comes to mind: a person approaches a man sleeping on the beach, drenched in sunlight. He notes the fishing line tied around the man's toe and a bag of fish lying beside him. He strikes up conversation and suggests that because the fish can be caught in abundance the man should sell them and make an easy profit. The man nods his head. Even better, the passer-by suggests, that if the man works hard enough he could buy some fishing boats take on some staff, start a business, and make some substantial profits. After that, he says, you could use your hard-earned savings to go on holiday somewhere, relax on a beach, soak-up the sun...

## Bibliography.

- Adkins, A.W.H. 1960. *Merit and responsibility: a study in Greek values*.  
Oxford: Oxford University Press.
- Alwin, D.F., G. Gornev, and L. Khakhulina. 1995. Comparative referential structures, system legitimacy, and justice sentiments: an international comparison. In *Social justice in capitalist and post-communist states*, edited by J. R. Kluegel, D. S. Mason and B. Wegener. New York: Aldine de Gruyter.
- Andre, J. 1983. Nagel, Williams and moral luck. *Analysis* 43 (4):202-207.
- Aristotle. 1976. *The ethics of Aristotle: the Nicomachean ethics Translated [from the Greek] by J.A.K.Thomson; introduction and bibliography by Jonathan Barnes*. Harmondsworth: Penguin.
- Arneson, Richard J. 1997. Egalitarianism and the undeserving poor. *Journal of Political Philosophy* 5 (4):327-350.
- Barry, Brian. 1973. *The liberal theory of justice: a critical examination of the principal doctrines in 'A theory of justice' by John Rawls*. Oxford: Clarendon Press.
- Barry, Brian. 1989. *Theories of justice, California series on social choice and political economy; No.16*  
*Treatise on social justice; No.1*. Hemel Hempstead: Harvester Wheatsheaf.
- Barry, Brian. 1990. *Political argument: a reissue with a new introduction*. New ed. Hemel Hempstead: Harvester Wheatsheaf.
- Barry, Brian. 1995. *Justice as impartiality*. Oxford: Clarendon Press.
- Becker, L.C. 1980a. The moral basis of property rights. In *Property*, edited by J. R. Pennock and J. W. Chapman. New York: New York University Press.
- Becker, L. C. 1980b. *Property rights: philosophic foundations*. Boston, Mass.: Routledge and Kegan Paul.
- Berlin, Isaiah. 1969. *Four essays on liberty*. London: Oxford University Press.

- Burgoyne, C., A. Swift, and G. Marshall. 1993. Inconsistency in beliefs about distributive justice - a cautionary note. *Journal for the Theory of Social Behaviour* 23 (4):327-342.
- Campbell, Tom. 1988. *Justice*. London: Macmillan.
- Carens, J.H. 1981. *Equality, moral incentive and the market: an essay in utopian politico-economic theory*. Chicago: University of Chicago Press.
- Carlson, Erik. 1997. Consequentialism, distribution and desert. *Utilitas*:307-318.
- Charvet, John. 1995. *The idea of an ethical community*. Ithaca, N.Y: Cornell University Press.
- Cohen, G.A. 1989. On the currency of egalitarian justice. *Ethics* 99:906-944.
- Commission, Law. 1994. Personal injury compensation: How much is enough? A study of the compensation experiences of victims of personal injury. London: The Law Commission.
- Coram, Alexander T. 1997. Social class and luck: some lessons from gambler's ruin and branch processes. *Political Studies* XLV:66-77.
- Coram, Alexander T. 1998. Why social scientists should be interested in luck: A note on some fallacies. *Social Science Quarterly* 79 (1):129-139.
- Cummisky, D. 1987. Desert and entitlement: a Rawlsian consequentialist account. *Analysis* 47:15-19.
- Cupit, G. 1996. *Justice as fittingness*. Oxford: Clarendon Press.
- Daniels, N. 1979. Wide reflective equilibrium and theory acceptance in ethics. *Journal of Philosophy*:256-282.
- Dennett, Daniel C. 1984. *Elbow room: the varieties of free will worth wanting*. Oxford: Clarendon Press.
- Dick, J.C. 1975. How to justify a distribution of earnings. *Philosophy and Public Affairs* 2:248-72.
- Dworkin, Ronald. 1981a. What is equality? Part 1: Equality of welfare. *Philosophy and Public Affairs* 10:185-246.
- Dworkin, Ronald. 1981b. What is equality? Part 2: Equality of resources. *Philosophy and Public Affairs* 10:283-345.

- Ehrenberg, Ronald G., and Robert Smith. 1994. *Modern labour economics: theories and public policy*. 5 ed. New York: Harper Collins.
- Feinberg, Joel. 1970. Justice and personal desert. In *Doing and deserving*. Princeton, New Jersey: Princeton University Press.
- Feinberg, Joel. 1974. Noncomparative justice. *Philosophical Review* 83:297-338.
- Feinberg, Joel. 1979. The nature and value of rights. In *Rights*, edited by D. Lyons. Belmont, California: Wadsworth.
- Feinberg, Joel. 1980. The idea of freedom. In *Rights, justice and the bounds of liberty*. Princeton, N.J.: Princeton University Press.
- Feldman, F. 1995a. Adjusting utility for justice: a consequentialist reply to the objections from justice. *Philosophy and Phenomenological Research* LV (3):567-585.
- Feldman, F. 1995b. Desert - reconsideration of some received wisdom. *Mind* 104 (413):63-77.
- Feldman, F. 1995c. Justice, desert and the repugnant conclusion. *Utilitas* 7 (2):189-206.
- Feldman, F. 1996. Responsibility as a condition of desert. *Mind* 105 (417):165-168.
- Galston, W. 1980. *Justice and the human good*. Chicago: University of Chicago Press.
- Galston, W.A. 1991. *Liberal purposes*. Cambridge: Cambridge University Press.
- Gaus, Gerald F. 1991. Does compensation restore equality. In *Compensatory justice*, edited by J. W. Chapman. New York and London: New York University Press.
- Goodin, Robert E. 1985. Negating positive desert claims. *Political Theory* 13 (4):575-598.
- Goodin, Robert E. 1988. *Reasons for welfare: the political theory of the welfare state*. Princeton, N.J.: Princeton University Press.
- Goodin, Robert E. 1989. Theories of compensation. *Oxford Journal of Legal Studies* 9:56-75.

- Goodin, Robert E. 1991. Compensation and redistribution. In *Compensatory justice*, edited by J. W. Chapman. New York and London: New York University Press.
- Griffin, James. 1986. *Well-being: its meaning, measurement, and moral importance*. Oxford: Clarendon Press.
- Hicks, John R. 1939. The foundations of welfare economics. *Economic Journal* 49:696-712.
- Hochschild, J. 1981. *What's Fair? American beliefs about distributive justice*. Cambridge: Harvard University Press.
- Hohfeld, N. 1978. *Fundamental legal concepts as applied in judicial reasoning*. Edited by W. Cook. Westport, Connecticut: Greenwood Press.
- Holmgren, M. 1986. Justifying desert-claims. *Journal of Value Inquiry* 20:265-78.
- Kaldor, Nicholas. 1939. Welfare propositions of economics and interpersonal comparisons of utility. *Economic Journal* 49:549-52.
- Kleinig, J. 1971. The concept of desert. *American Philosophical Quarterly* 8 (1):71-78.
- Kleinig, J. 1973. *Punishment and desert*. The Hague: Martinus Nyhoff.
- Kluegel, James R., David S. Mason, and Bernd Wegener, eds. 1995. *Social justice and political change: public opinion in capitalist and post-communist states, Social institutions and social change*. New York: A. de Gruyter.
- Kosinski, Jerzy. 1973. *Being There*. London: Pan Books.
- Lamont, J. 1989. Desert - Sher, G. In *Australasian Journal Of Philosophy*.
- Lamont, J. 1994. The concept of desert in distributive justice. *Philosophical Quarterly* 44 (174):45-64.
- Lamont, J. 1995. Problems for effort-based distribution principles. *Journal of Applied Philosophy* 12:215-229.
- Lamont, J. 1997. Income incentives, deserved income and economic rent. *Journal of Political Philosophy* 5 (1):26-46.
- Lucas, J. 1993. *Responsibility*. Oxford: Clarendon Press.



- MacCallum, G. 1966. Negative and positive freedom. *Philosophical Review* 76:754-787.
- MacIntyre, Alasdair. 1985. *After virtue: a study in moral theory*. 2nd ed. London: Duckworth.
- MacIntyre, Alasdair. 1988. *Whose justice? Which rationality?* London: Duckworth.
- McLeod, O. 1995. On being deserving (justice, merit, ethics). PhD, University of Massachusetts.
- McLeod, O. 1996. Desert and wages. *Utilitas* 8 (2):205-221.
- Mill, John Stuart. 1962. Utilitarianism. In *Utilitarianism, on liberty, essays on Bentham*, edited by M. Warnock. Glasgow: Collins.
- Miller, David. 1976. *Social justice*. Oxford: Clarendon Press.
- Miller, David. 1989. *Market, state and community: theoretical foundations of market socialism*. Oxford: Clarendon, 1989.
- Miller, David. 1991. Recent theories of social justice. *British Journal of Political Science* 21:371-391.
- Miller, David. 1992a. Deserving jobs. *Philosophical Quarterly* 42 (167):161-181.
- Miller, David. 1992b. Distributive justice - what the people think. *Ethics* 102 (3):555-593.
- Miller, David. 1994a. The concept of desert. Draft chapter presented to LSE Political Philosophy Seminar: Forthcoming.
- Miller, David. 1994b. Virtues, practices and justice. In *After MacIntyre: critical perspectives on the work of Alasdair MacIntyre*, edited by S. Mendus and J. Horton. Cambridge: Cambridge Polity.
- Miller, David. 1996. Two cheers for meritocracy. *Journal of Political Philosophy* 4 (4).
- Munzer, Stephen R. 1990. *A theory of property, Cambridge studies in philosophy*. Cambridge: Cambridge University Press.
- Nagel, Thomas. 1982. Moral luck. In *Free will*, edited by G. Watson. New York: Oxford University Press.

- Nagel, Thomas. 1991. *Equality and partiality*. New York: Oxford University Press.
- Ng, Yew-Kwang. 1983. *Welfare economics : introduction and development of basic concepts*. Revised ed. London: Macmillan.
- Norman, Norman. 1998. 'Inevitable and unacceptable?' Methodological Rawlsianism in Anglo-American political philosophy. *Political Studies* XLVI:276-294.
- Nozick, Robert. 1974. *Anarchy, state, and utopia*. Oxford: Blackwell.
- Nussbaum, Martha C. 1986. *The Fragility of goodness : luck and ethics in Greek tragedy and philosophy*. Cambridge: Cambridge University Press.
- Pearce, David W., and R. Kerry Turner. 1990. *Economics of natural resources and the environment*. London: Harvester Wheatsheaf.
- Persson, Ingmar. 1997. Ambiguities in Feldman's desert-adjusted values. *Utilitas*:319-327.
- Pojman, L. 1997. Equality and desert. *Philosophy* 72:549-570.
- Rachels, J. 1978. What people deserve. In *Justice and economic distribution*, edited by J. Arthur and W. H. Shaw. Englewood Cliffs, N.J: Prentice-Hall.
- Rawls, John. 1971. *A theory of justice*. Cambridge, Massachusetts: Harvard University Press.
- Rawls, John. 1993. *Political liberalism*. New York: Columbia University Press.
- Rees, Albert. 1975. Compensating Wage Differentials. In *Essays on Adam Smith*, edited by A. Skinner and T. Wilson. Oxford: Clarendon Press.
- Richards, N. 1986. Luck and desert. *Ethics* 95:198-209.
- Ripstein, A. 1994. Equality, luck and responsibility. *Philosophy and Public Affairs* 23 (1):3-23.
- Rosen, Sherwin. 1986. The theory of equalizing differences. In *Handbook of labour economics*, edited by O. Ashenfelter and R. Layard. New York: North Holland.

- Sadurski, Wojciech. 1985. *Giving desert its due: social justice and legal theory*, *Law and Philosophy Library*. Dordrecht Lancaster: D. Reidel.
- Sadurski, Wojciech. 1990. Natural and social lottery and concepts of the self. *Law and Philosophy* 9 (2):157-175.
- Sandel, Michael J. 1982. *Liberalism and the limits of justice*. Cambridge: Cambridge University Press.
- Scheffler, Samuel. 1982. *The rejection of consequentialism: a philosophical investigation of the considerations underlying rival moral conceptions*. Oxford: Clarendon Press.
- Scheffler, Samuel. 1992. Responsibility, reactive attitudes and liberalism in philosophy and politics. *Philosophy and Public Affairs* 21:299-323.
- Scheffler, Samuel. 1995. Individual responsibility in a global age. *Social Philosophy & Policy* 12 (1):219-236.
- Sher, George. 1987. *Desert*. Princeton, New Jersey: Princeton University Press.
- Sidgwick, Henry. 1962. *The methods of ethics*. 7th ed. London: Macmillan.
- Smilansky, S. 1996a. The connection between responsibility and desert: the crucial distinction. *Mind* 105 (419):485-486.
- Smilansky, S. 1996b. Responsibility and desert: defending the connection. *Mind* 105 (417):157-163.
- Smith, Adam. 1950. *An inquiry into the nature and causes of the wealth of nations*. Edited by E. Cannan. 6 ed.
- Soltan, Karol E. 1987. *The causal theory of justice*. Berkeley: University of California Press.
- Solzhenitsyn, Aleksandr. 1963. *One day in the life of Ivan Denisovich*. Translated by Ralph Parker: Harmondsworth; Penguin.
- Statman, Daniel. 1997. The time to punish and the problem of moral luck. *Journal of Applied Philosophy* 14 (2):129-136.
- Sterba, James P. 1980. *The demands of justice*. Notre Dame [Ind] London: University of Notre Dame Press.
- Strawson, P.F. 1982. Freedom and resentment. In *Free Will*, edited by G. Watson. Oxford: Oxford University Press.

- Sverdlik, S. 1983. The nature of desert. *Southern Journal of Philosophy* 21:585-594.
- Swift, A., G. Marshall, C. Burgoyne, and D. Routh. 1995. Distributive justice: does it matter what the people think? In *Social justice and political change: public opinion in capitalist and post-communist states.*, edited by J. R. Kluegal, D. S. Mason and B. Wegener. New York: Aldine de Gruyter.
- Taylor, C. 1994. Justice after virtue. In *After MacIntyre: critical perspectives on the work of Alasdair MacIntyre*, edited by S. Mendus and J. Horton. Cambridge: Cambridge Polity.
- Tedin, Kent L. 1998. Luck and social analysis: a comment on Coram. *Social Science Quarterly* 79 (1):140-148.
- Vallentyne, Peter. 1995. Taking justice too seriously. *Utilitas* 7 (2):207-216.
- Van Parijs, Phillipe. 1995. *Real freedom for all: what (if anything) can justify capitalism?* Oxford: Clarendon Press.
- Van Parijs, Phillipe. 1997. Reciprocity and the justification of an unconditional basic income. Reply to Stuart White. *Political Studies* 45 (2):327-330.
- Waldron, J. 1984. *Theories of rights*. Oxford: Oxford University Press.
- Waller, B. 1989. Uneven starts and just deserts (fatalism and free-will). *Analysis* 49 (4):209-213.
- White, Stuart. 1997. Liberal equality, exploitation, and the case for an unconditional basic income. *Political Studies* 45 (2):312-3261.
- Young, R. 1992. Egalitarianism and personal desert. *Ethics* 102 (2):319-341.
- Zaitchik, Alan. 1977. On deserving to deserve. *Philosophy and Public Affairs* 6 (4):370-388.