Desert

by

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ABSTRACT

This thesis examines the idea of desert as expounded in the work of John Rawls, and some of the implications of this conception of desert for moral and political philosophy.

In this work, I analyse a series of arguments against retaining this particular conception of desert. I argue that none of these arguments sufficiently diminishes the force of Rawls' argument for desert, while many of them do state, and I argue that they are correct in doing so, that this conception of desert is dangerous for political or moral philosophy to maintain. I argue that the moral, political and legal implications of accepting this account of desert severely undermine various institutions of differential treatment, and indeed, moral assessment. I regard it as obvious that societies must, on occasion, treat members of those societies differently, for moral, as well as practical reasons. The Rawlsian account of desert, and the account of responsibility on which it rests, however, will endanger the legitimacy of such procedures.

I argue further that the Rawlsian account of desert requires that differences in wealth, and inheritance of wealth, influence and privilege be diminished, if not abolished, if we are to talk of any form of desert meaningfully. I argue that this is a strength of Rawls' account, and further that any account of desert that is true to the philosophical tradition of the concept will require similar steps to be taken.

The primary aim of this thesis is to show that Rawls' arguments against desert are serious ones, both in

terms of strength and scope, and that they must be addressed. I intend to show that these arguments are founded on strong moral intuitions, and that it is plausible that these intuitions may need revision. Finally, I intend to show that desert is an important moral and political concept, and that the disciplines of moral and political philosophy will be impoverished by the absence this concept. This absence, I will argue, is a natural consequence of the acceptance of the Rawlsian arguments.

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Contents:

CHAPTER ONE

Introduction:

When we are told by an author, particularly one as highly regarded as John Rawls is, that one of our fundamental moral concepts actually has no meaning as commonly applied, some investigation of the argument in question is required.

John Rawls' attack on pre-institutional desert is intended to have a political application. Therefore, the larger part of this thesis will be conducted using the language and concepts of political philosophy. Naturally, however, the language and concepts of political philosophy are often also the language and concepts of moral philosophy. Many of the issues have a moral, as well as political impact, as they affect both political policy and the morality that must underlie this.

This is a debate largely within the framework of liberal political philosophy. It relies on the morality which informs this philosophy, and thus readers may notice that I take certain liberal values, such as the prioritization of autonomy, as uncontroversially desirable. I offer no defence of the position I have taken other than that it seems to me to be the strongest and most coherent political doctrine.

The question this thesis is intended to address is twofold: firstly, can we deserve things for which we are not, in a strict sense, responsible for bringing about, and can we deserve the fruits of our skills and characteristics and even our moral character if we do not have strict responsibility for their creation?

The assumption of this thesis with regard to such attributes of the individual is that, though the acquisition of these attributes may be voluntary, and may require considerable personal effort, it is not possible for the individual to bring into being every necessary pre-condition for the acquisition of such a characteristic. For example, my ability for logical thought is one that required considerable personal effort. I did not however, bring into being the necessary institutions (and by institutions I refer both to the fine university I was granted access to, and the various intellectual traditions, such as philosophy) which could provide me with such an ability. There are countless people who have never had access to such resources, through no failing in effort or ambition of their own. In addition, and this is important to Rawls, certain of my abilities have been formed as a result of inherited characteristics combined with fortuitous circumstances in upbringing and education. Again, I have not been able to bring such preconditions about, and am thus not, in the strong sense, responsible for their acquisition. There are also many people who have not received such inherited characteristics or fortuitous circumstances, once more through no fault of their own. The second part of the question is whether or not these attributes so developed should influence the just share of a member of society. In a distribution of wealth, in other words, should my friend's good character or my own bad character influence the share I get relative to her[1], and is such an occurrence just?

[1]The author is well aware of the problem of sexist language. As English possesses no suitable gender-neutral pronouns, and since the inclusion of both forms of pronoun in every example is cumbersome and tiresome (to the author as well as the reader), I have chosen to alternate pronouns across chapters when the examples are gender-neutral. The gender-neutral pronouns suggested by some authors simply sound ridiculous, and would impede the flow of writing and subsequent comprehension.

I will argue that Rawls has taken his attack too far. While it may be true that I do not deserve an education that most of the world will never acquire, some sense of competitive desert still survives. I can deserve to achieve what another who has been granted the advantages I have had does not. I even more deserve to have achieved what those who have been granted advantages that I have not, do not achieve. My character and the effort I exert are desert-worthy. At least, this is the intuition we have to evaluate.

The most startling consequence of the Rawlsian attack is that it threatens to remove individual accountability from moral language. If I cannot deserve my abilities and character, and my abilities and character are a necessary precondition for my action, then I cannot be held accountable for my actions or the type of person I am. It is a general hallmark of those who find the individual not responsible that they blame the society. Naturally, if we lose responsibility as a concept, we have reduced morality and political philosophy to a Pavlovian exercise. By this I mean that our reasoning about morality and political philosophy will be aimed at eliciting a particular outcome from people, with a deterministic and instrumental view of people themselves. By doing this, we treat people as a means to an end[2]. Responsibility can thus be seen to be an important conceptual component of personhood, in so far as viewing people as responsible seems to a be necessary precondition for seeing them as fully human.

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[2]With apologies, the author finds that it runs counter to the spirit of this investigation to treat people as a means to an end. For the sake of the arguments at hand, the concept of desert derives its value not only from the instrumental value of the concepts of desert to the broader society, but from connection to an assumed inherent human value, and the value, derived from the same source, of the satisfaction of certain individual projects. Desert, then, is important as a personal concept because individuals and their relations to the concepts they hold are important.

Much of the discussion will also revolve around how we view responsibility, and whether or not a new account of responsibility is necessary for us to talk meaningfully of desert, or even responsibility itself.

In Chapter Two, I explore Rawls' attack on desert, the implications for moral and political philosophy, as well as some of the assumptions he has made in order to make this attack as seemingly efficacious as it appears to be. I explore some problems with his assumptions, as well as his explicit argument, and address attacks on the argument itself made by other authors. I find it necessary to re-formulate the argument. Both the original form and the re-formulation of this argument are taken from the work of Sher. I then explore this second argument in detail, make some criticisms of it, and clear up some basic theoretical issues within the area under examination. These issues include the idea of responsibility with which Rawls is working, the difference between moral and non-moral desert, and the denial (by Rawls) of the phenomenon of moral luck.

A more detailed analysis of moral luck and responsibility follows in Chapter Three, in which I also lay out in some detail the arguments of George Sher. Sher's evaluation of Rawls' conception of desert and the arguments for and against it are examined. I also lay out Sher's analysis of the bases of moral and non-moral desert, and evaluate this analysis.

In Chapter Four, I examine the possibility of character or virtue as the basis for desert. I give an exposition of the Aristotelian position on the development of virtue, as I consider it to be a plausible account, and a valuable one for the reason that it stresses both the desirability of comprehensive moral

education and because it portrays this moral education as voluntarily entered into and pursued. I explore Rawls' conception of the self, and Sandel's elucidation of this conception to highlight Rawls' reasons for dismissing character as a source of pre-institutional desert.

Chapter Five explores the relationship between desert and equality. I give an exposition and analysis of the work of David Miller in this area, and show that desert and equality are not antagonistic. I explore a desert-based theory of equality, and lay out Miller's conception of meritocracy as an example of a society based on non-moral desert.

In the conclusion of the thesis, Chapter Six, I sum up the final position with regard to desert and responsibility, and the need for an alternative account.

The object of this thesis is to suggest that desert needs more examination, particularly with regard to the relationship between desert and responsibility, desert of virtue and moral and non-moral desert. I hope to have convinced the reader of the need for such further examination. Another goal is to convince the reader that the concept of desert is fundamental to moral and political philosophy, and that removing the concept from these disciplines will greatly impoverish both.

Political and moral philosophy need desert. I will argue that desert is central to concepts of justice, ethical treatment and equality, as well as the justification of certain rights. I hope to go some way towards convincing the reader that political philosophy without desert will lose the greater part of its appeal: one of the basic political intuitions is that our distributive systems and social interactions should

give people what they deserve, and it is possible that without this intuition political philosophy will be incoherent.

CHAPTER TWO

Rawls' treatment of Desert

In this chapter, I wish to outline Rawls' concept of desert, his dismissal of the possibility of including the notion of desert in a theory of justice, and, in the process, outline his intuitions concerning the nature of the concept. I further intend to explore the place this weakened, if not annihilated, concept of desert takes within the greater framework of Rawlsian moral and political philosophy, and explain why moral and political philosophers should be concerned about this attack and where it leaves the notion of desert.

The concept of desert is central to moral and political philosophy and is used in considerations of justice and distribution. Desert, in the context I will use the term, is a concept which picks out a certain relationship between a particular action or quality and a corresponding good. This relationship confers on an individual who has performed such an action, or who possesses such a quality, a claim on a certain good. So we say that the student who worked hard for his grades deserves them. In most desert-claims, David Miller argues, there is a desert-base, a characteristic or action in virtue of which we ascribe desert. Desert-bases can include moral and non-moral activities or characteristics[3]. The question of what exactly moral desert requires me first to define the scope of morality, which is a tough one, to say the least. I take moral desert to encompass, therefore, those desert-claims which are based

[3]Miller, David(1998)"Desert and Merit" in Routledge Encyclopedia of Philosophy, Routledge, New York. pp 24-25

on characteristics or actions which are moral in nature. A brave soldier or policeman who knowingly sacrifices his own life for others deserves our respect, and the claim made is a moral one. Non-moral desert will therefore relate to those qualities or actions which are not moral in nature, such as the most beautiful woman deserving the prize in the beauty contest. The characteristic in question, the soldier's bravery, or the acts he performed, form the desert-base[4]. For the purposes of this investigation, I wish to confine the discussion of desert to the distribution or conferring of certain goods. It is possible that the definition of desert given above may, with a small amount of adjustment, cover retributive desert, but it is not intended to. Naturally, there are certain moral rules and intuitions governing the class of legitimate desert-bases; they have to constitute either particular acts or facts about oneself: one's personality, one's commitments, character, and so forth. Illegitimate desert-bases, are, for example: gender, skin-tone and ethnicity. I cannot deserve anything on the basis of the fact that my skin is "white" instead of "black" or being male instead of female, as these characteristics are irrelevant to my performance of a particular task and to my worth as a person[5]. These are morally arbitrary categories, in any case, and describe my appearance, not my identity. Naturally, I am assuming that the reader will agree with me, and that the basic liberal values, whereby attributes of appearance or culture are deserving of societal recognition in only special cases (such as a beauty contest), and attributes of

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[4] Feldman, Fred (1995) "Desert: Reconsideration of Some Received Wisdom" in Mind Vol 104, 413, January, 1995

[5] In some political reasoning, such a morally arbitrary fact about oneself can be the basis on which preferential treatment is given, and plausibly so. An example is the practice of affirmative action. These cases, however, occur when there is a history of discrimination on arbitrary grounds against a given group, and the new measures are an attempt to redress this undeserved discrimination.

character or particular actions are the basis for discrimination[6]. Traditionally legitimate desert-bases are diligence, correct choices or actions, or characteristics like intelligence, wisdom and courage. For reasons I will reveal later, there is a lack of clarity in the intuitions governing the class of legitimate desert-bases.

The account I have just given of desert I will call the traditional account, the essential elements of which are reliance on a desert base, the existence of moral and non-moral desert, and the notion that certain dispositions of character, as well as certain actions, can produce desert. The traditional account is characterized by a tendency towards responsibility in the deserving towards the desert base being a pre-condition for desert. There are exceptions, but these are mostly trivial, and will be cleared up later. This is the concept of desert that has been used in political and moral philosophy prior to Rawls, and it persists in our common sense accounts of moral reasoning. We say that people deserve a certain good on the basis of what they have done or on the content of their character. Rawls' primary contention concerning this account of desert, as we shall see, is that it cannot co-exist with our intuitions of justice, and that it must be abandoned.

Rawls, as we shall see, chooses to justify the class of legitimate desert-bases on the basis of the following intuition: that one can use as a legitimate desert-base only what one has had a significant part

[6]An argument could be made that attributes such as courage or intelligence are as arbitrarily acquired as things such as culture or skin colour. I take it as uncontroversial that there is a significant difference between the former, for which the process of acquisition is active, and the latter, for which the process of acquisition is a passive one.

in bringing about. The meaning of the phrase "significant part" will have a large impact on one's intuitions concerning desert. If an individual has to work hard to overcome societal conditioning and basic impulses to develop a particular trait, such as intelligence, and is rewarded for being intelligent by being given a greater share of a particular distribution, it is on the basis of this hard work that he could be said to be the author of his own desert-base. Since we cannot truly be said to be the sole authors of *any* desert-base, for reasons which will be made clear below, we cannot deserve anything, because the part we have played in the formation of our desert-base is insignificant. Effort, or free choice, becomes a prime factor in the conferring of desert. This is a daunting argument, and I will examine it below.

First, however, it is necessary to give an exposition of sections of the work of John Rawls that are relevant to this chapter.

Rawls' conception of justice takes the form of a single central idea:

> "All social primary goods — liberty and opportunity, income and wealth, and the bases of self-respect— are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured."[7]

To more fully flesh out this conception, he derives two principles of justice.

> "a)Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value.
>
> b)Social and economic inequalities are to satisfy two conditions: first, they are to be attached to positions

[7]John Rawls, (1972), A Theory of Justice, Clarendon Press, p 303

> and offices open to all under conditions of fair equality of opportunity, and second, they are to be to the greatest benefit of the least advantaged members of society."[8]

These principles of justice are good ones because, firstly, they will guarantee equality, and they will ensure that our lives are not dominated by factors beyond our control, and secondly, because they will be chosen by rational agents in an "original position" a hypothetical situation in which the agent, behind a "veil of ignorance", ignorant of his natural talents or the place he will occupy in society, is given the task of deriving principles of justice. [9]

> "Among the essential features of this situation is that no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength and the like. I shall even assume that the parties do not know their conceptions of the good or their special psychological propensities. The principles of justice are chosen behind a veil of ignorance. This ensures that no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances."[10]

Now, what I have termed factors beyond individual control can be what Rawls calls natural endowments, one's intelligence, strength, diligence and so forth. One justification for his principles of justice will thus fail if the fruits of these natural endowments can be shown to be deserved. The construction of his original position also relies heavily on the contention that natural talents are not

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[8]John Rawls, (1993), Political Liberalism, Columbia University Press, New York, pp 5-6

[9]Will Kymlicka, (1990), Contemporary Political Philosophy, Clarendon, Oxford pp 52-60

[10]Rawls, (1972) p 12

deserved and thus provide an unfair advantage in any distribution, which is why they are excluded from the agent's knowledge while that agent is in the original position. It is thus not in an agent's best interests to structure the principles of justice chosen behind the veil of ignorance in such a way as to benefit those who hold certain natural endowments, no matter what the natural endowment in question is. He would thus not choose to recommend principles that favour compassion, for example, in case his nature was such that he was a callous and uncaring person. Unless Rawls provides an argument addressing the question of why natural endowments are undeserved, his arguments for his principles of justice are on shaky ground.

Principles of justice, in the Rawlsian view, are therefore those chosen by rational individuals behind a "veil of ignorance"[11]. It is in their interests, for example, to maximally benefit, either directly or indirectly, those least well off, because it is possible that they (the choosers) will indeed be the least well off. If you favour a desert-based theory of justice in the original position, you run the risk of shooting yourself in the foot, because you may possess no qualities that are worthy of desert. A distribution that is going to favour those most gifted or those who work hardest is going to create a new class of least well-off (the lazy, the stupid, and so forth). Further, these principles are chosen in a position of ignorance. I wouldn't know, for example, that I had lived a life of idleness and never bothered to cultivate any excellences of character. On the other side of the veil of ignorance, I find myself a thoroughly undeserving person, badly handicapped in the race to become deserving, and I would curse myself for choosing principles of

[11]Rawls, (1972), pg 16

justice based on desert. Rawls has to show, therefore that desert in any situation is impossible to indicate with any clarity . He cannot, as we have seen, rest on the justification of the principles of justice, because he needs to be able to show that knowledge of certain natural endowments must be removed from the agent in the paradigm contract situation of the original position in order to derive the principles of justice that he does, in the first place. He wants to show that substantive equality is inconsistent with desert-based claims. Claims to differential treatment based on great ability, for example, which is a strong intuitive objection to equality of opportunity for all, rest on desert. If he can show that these qualities, whatever they may be, are undeserved, or that desert is not a valid moral concept, then he can dismiss this objection, as well as rid himself of at least one competing theory of social justice.

Rawls[12] argues that his conception of justice, which he calls "justice as fairness", rejects the conception of distribution according to moral desert, because this is not a principle that would be chosen in the original position. This can be seen from the fact that not everyone will have equal talents, or an ability to maintain those talents:

"All of this is perfectly obvious and has long been agreed to. It simply reflects the fact noted before that it is one of the fixed points of our moral judgements that no one deserves his place in the distribution of natural talents any more than he deserves his initial starting place in society." [13]

[12]Rawls, (1972),pp 310-313

[13]Rawls, (1972) p 310

Reward on the basis of natural characteristics such as virtue or courage is as unfair as reward on the basis of characteristics such as skin tone, gender or ethnicity. If we want to outlaw race as a possible desert-base, then we should outlaw virtues on the same criterion: namely, lack of the subject's control over the desert-base. Further, as Rawls argues[14], the ability to exert effort itself, does not result from anything we have done, and is therefore undeserved[15].

The argument against pre-institutional desert is as follows, when fully formalized, and I shall call it Argument I:[16]

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

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

Therefore

Premise 3: No person deserves to have his basic abilities.

Premise 4: Each action a person performs is made possible, directly or indirectly, by some subset

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[14]Rawls, (1972) pp310-313

[15]Rawls, (1972) p 312: "Once again...it seems clear that the effort a person is willing to make is influenced by his natural abilities and skills and the alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously, and there seems to be no way to discount for their greater good fortune."
The ability to expend greater effort than the norm is thus not a natural endowment, but is influenced heavily by other factors which are natural endowments, and thus is undeserved.

[16]Sher, George, (1987), Desert Princeton University Press, Princeton, New Jersey, p 24. The standardisation of the argument is Sher's.

of his basic abilities.

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

Therefore

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

There is, in the literature on this subject, considerable confusion and debate concerning exactly what Rawls means with this argument, and what he attempts to accomplish with it. In order to clarify, I wish to draw on the work of Thomas Pogge[17].

First, I wish to examine exactly what Rawls means by the term "natural endowment". Rawls' treatment of natural endowments has been widely misunderstood, as we shall see when we come to the work of Sandel. By the term, he covers such diverse characteristics as physical strength and moral virtue[18], claiming that "the initial endowments of natural assets and the contingencies of their growth and nurture in early life are arbitrary from a moral point of view"[19]. I understand him to intend by the term all physical and psychological characteristics that arise as a result of things either partially or wholly beyond the individual's control. The discussion of character or virtue will turn on this particular point.

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[17]Thomas W. Pogge, (1989), Realizing Rawls, Cornell University Press, Ithaca and London

[18] Rawls, (1972) pp 310-314

[19]Rawls, (1972) pp 311-312

As Pogge writes, Rawls does not claim that natural endowments must be equalized or that economic systems should not offer the better endowed greater rewards. Rather, his point is that the better endowed have no special claims on the process of construction of the principles of social justice. When the system is negotiated, those with particular endowments should have no greater bargaining power than those who are less well-off in terms of natural endowments. How the better endowed should be rewarded is influenced by the principles of justice and does not itself influence them. Ideally, any reward for inequalities of ability will merely increase the minimum share.[20] For example, a person of great ability would be allowed to utilize more resources than people of lesser ability, in the expectation that such a person will be able to better utilize those resources such that more profit is generated than were resources to be generated equally. Allow me to explain by example:

Howard is a very gifted carpenter. There are ten carpenters in the collective to which he belongs, and the collective has enough wood to make 100 tables. The tables that Howard manufactures fetch 20 dollars, because of the remarkable craftsmanship Howard puts into his work, while those made by the nine less gifted carpenters fetch only 10. If the wood is evenly distributed, the collective generates 1100 dollars from table manufacture, 200 dollars of which is contributed by Howard. Allowing a 10% taxation on the income of the carpenters, the collective possesses 110 dollars to re-distribute for such purposes as education, public works, and increasing the minimum share of those least fortunate in the collective. Each of the less gifted carpenters will possess 81 dollars, while Howard will possess 180.

[20]Pogge, (1989) p 73

Now, if we were to tax Howard more than others (he has greater income, after all, and owes that greater income to morally arbitrary factors), say 40%, he would still be left with 120 dollars, more than the average carpenters, and the collective possess 170 dollars to re-distribute. Now, in order to increase the minimum share, Howard is given enough wood to make 55 tables, while each less gifted carpenter is given enough to make five. Their income will be 45 dollars each, and Howard's will be 1100. Howard has been pushed into another income bracket, and his taxation is now 70%. The collective now possess 770 dollars to redistribute. Giving each of the carpenters an extra 36 dollars to bring their share back up to 81 (what they would be earning were the distribution even), the collective will still be left with 446 dollars to redistribute. Howard will still work harder than the other carpenters, as he will earn significantly more than they will (330 dollars). But his greater reward for his greater abilities will generate a larger minimum share for the collective.

Sher[21] holds that the most prominent weakness in Argument I is in Premise 5. We will lose all desert if we accept Premise 5, because all the things we have as a result of merely being human will be undeserved: a planet with an oxygen-rich atmosphere, opposable thumbs and thus invalidate any subsequent desert-claims to anything. Nelson Mandela does not deserve to share the peace-prize with De Klerk because he has the ability to think rationally, which he did nothing to deserve. The weakness in this argument can be demonstrated by the fact that even though there are millions of people in South Africa who do possess the ability to think rationally, this does not affect the invalidation of Mandela's

[21]Sher, (1987), pp 25-27

desert claim. The mere fact that a pre-condition for his winning the prize is that he is a rational being, and that he did nothing to deserve being a rational being, invalidates his desert claim. Is the move from saying we don't deserve X, and X makes Y possible to the conclusion that we don't deserve Y, a legitimate one? Sher claims that this is too strong, because if this were true, we would not deserve anything, life included. Premise 5 begs the question, and, as Sher points out[22], makes Rawls' argument superfluous, as we have to accept the conclusion of Argument I (that no one deserves to perform his actions, and no-one deserves the fruits of their actions) in order to accept Premise 5. In order to accept premise 5, which is part of Argument I, intended to prove that we do not deserve anything, we must accept that we do not deserve anything. Further, this is not the sense in which we use desert. There is a qualifying intuition that Rawls misses. Rawls cannot argue that desert is an untenable concept by assuming that desert is an untenable concept. There are certain basic abilities, certain X's, which do not prejudice anyone in society, do not confer unfair advantage or disadvantage, such as being human, being alive, and so forth. We can therefore re-state the argument. Again, the formalization is Sher's[23] .

Premise1: Each person has some basic set of abilities, including an ability to exert effort, which does not belong to him as a result of anything he does. Suppose *M*'s basic abilities include $a_1 \ldots a_5$ while *N*'s include only $a_1 \ldots a_4$.

Premise 2: If a person's having *X* is not a result of anything he has done, then he does not deserve to have *X* while another does not.

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[22]Sher, (1987), pg 25

[23]Sher, (1987) p 27

Therefore,

Premise 3: *M* does not deserve to have a_5 while *N* does not.

Premise 4: Let *A* be an action that a_5 enables *M*, but not *N*, to perform.

Premise 5: If one person does not deserve to have *X* while another does not, and if having *X* enables the first person to have or do *Y* while the second does not, then the first person does not deserve to have or do *Y* while the second does not.

Therefore

M does not deserve to perform *A* while *N* does not, and neither does *M* deserve to enjoy the benefits of *A* while *N* does not.

This is a far stronger argument, and I will name it Argument II. Sher's criticism of Argument I clearly does not apply to Argument II.

With the second premise of Argument II, Rawls (or at least Sher's reconstruction of him) asks us to consider the following: there are some people who have achieved great things through dint of incredible personal effort or exercise of free will. There are others who have achieved great things through happy coincidence (their parents had good genes, for example). Consider two moral saints. One has nothing but good inclinations. Her first reaction in every situation is the moral one. She does good her entire life. Let's call her Mary. Now we have the other kind, Paul. Paul is not gifted in this way. He has the occasional evil inclination, and the tendency towards moral imperfection that we all have. Through supreme exercises of will, Paul manages to get through his life battling his nature and never commits an

immoral act. Rawls suggests to us the fairly natural intuition that Paul, though living a life of virtue indistinguishable from that of Mary, is more deserving of our respect than is Mary, who merely followed her nature, which was good. This could be granted. Free will or effort, and the demonstration of such in one's actions, are more important than what kind of a person you are[24]. So free will or choice or effort are the bases for desert. The argument behind this would run as follows:

Paul and Mary both have X (virtuous life)

Mary got X through Z (Natural ability, good upbringing, luck, etc.)

Paul got X through Y (authorship of X)

X because Y > X because Z

ˆY is the true basis of desert.

Does this conclusion follow? All that the intuition tells us is that, at most, Paul is more deserving than Mary. I say "at most" because the argument does not show that Mary is *un*deserving, simply less deserving than Paul . She deserves *something*, in virtue of her abilities, some recognition of what is, in essence, a remarkable personality, or at least this is the intuition one attempts to satisfy with such an assertion (the Rawlsian assertion that effort, and only effort confers desert seems counter-intuitive). It is just that Paul deserves more. We cannot move, on this basis, to the conclusion that active obtaining of X is the sole desert criterion. We may accept it as more important, and this is possible, but no argument against Z (natural ability, upbringing, etc) as a desert-base has been advanced. Rawls only strengthens my contention by saying that, as it turns out, that the things that bring Y (exercise of will, authorship of

[24]Alternatively, actions are the way in which we evaluate what type of person a particular agent is, which makes character primary.

X) about are actually only the end results of different brands of Z. So, by that argument, any route to the virtuous life is as deserving as another, which is to say that no route to the virtuous life confers desert. Unless of course, I am wrong, and everyone does want to consign Mary to the ranks of the undeserving, or my analysis of the moral intuitions in question is incorrect. The point of this clarification is then, that Rawls' argument, while compelling, is valid only if we accept the third premise of Argument II, and accepting this premise runs counter to at least one moral intuition, namely, that people deserve at least some recognition for the what they do achieve. A good man or woman deserves to be recognized as such, as a good athlete should be recognized as a good athlete. Rawls assumes that we have to be fully responsible for something in order to deserve it.

Now let us imagine that Paul has not achieved a virtuous life. He has merely followed the inclinations of an normal person. Mary, through nothing she has done, is not a normal person, and as a result, has achieved a virtuous life. We still don't have a problem with saying that Mary deserves some reward for her virtuous life. Whenever Paul and Mary have been faced with a choice; they have followed their strongest inclination. Paul's strongest inclination happened to lead him away from morality, Mary's led her towards it. So why does Paul deserve no credit? When Mary is rewarded and Paul is not, the intuitions are not as clear. It seems clear that Mary still deserves something, but does she deserve what Paul does not? Neither of them did more than react to a situation in accordance with their nature. They have essentially done the same thing: why do they deserve differential treatment? In cases where desert is "competitive", our intuitions are less than clear, particularly where some are rewarded while others are denied reward.

To deserve something (the adulation of my peers, a retirement package, and so on), I must be responsible for bringing about the desert-base myself. To deserve something that someone else does not receive, there must be no difference between myself and that person that does not result from my own actions alone. If I enter a strength competition, and the basis of my desert is my greater physical strength than others, every difference in my strength and theirs must result solely from something I have done. If my parents have passed on a rare genetic predisposition towards great physical strength that all my competitors do not possess, I do not deserve to be stronger than my competitors and thus do not deserve the results of that greater strength. The same is true if I had access to training equipment that they did not possess, or if I had nutritional opportunities that they did not. If I were more intelligent than they were and thus better able to construct a beneficial training regimen, I would not deserve to have what they do not. Any difference in our experience or in us that is relevant to the strength competition can invalidate my desert claim.

Responsibility, Rawls is arguing, is where we find desert. It turns out there is no such thing as responsibility in the sense in which he means it, or at least that our choices are so heavily influenced by our "natural endowments" that we cannot claim "pure" or complete responsibility. Our actions are affected by our nature, and our upbringing, so we are as undeserving of our rewards or punishments as the criminally insane are. If we reward or punish people based on their actions or achievements, then we are rewarding and punishing them on the basis of who or what they are, without concern for how they got to be that way. This, according to the Rawlsian argument, is all we do with judgements of desert, and desert makes no sense within this context.

There are three interesting assumptions that Rawls has made to come to the conclusion that he does. I shall address these assumptions in order.

The first assumption Rawls makes is that we are not talking about desert unless we are talking about moral desert. All desert, for Rawls, is moral. Moral desert is desert on the basis of moral qualities[25], such as altruism, courage, moral actions, and so forth. Gandhi deserves respect not due other human beings because of what he did and what he was. Non-moral desert is desert on the basis of morally arbitrary or irrelevant qualities, such as physical strength, fulfilment of specified criteria, and so forth. I can, in this sense of desert, deserve to win the 100 metres on the basis of being the athlete who crossed the line first. It is clear that I can non-morally deserve to win the 100 metres while at the same time being morally undeserving. Theorists such as Feldman have failed to note this critical distinction. Rawls, however, did make a distinction. To talk about desert, Rawls says, is to talk of moral desert. To quote Pogge[26]:

"Desert, for Rawls, is *moral deservingness*, a reflection of one's moral worth in virtue of which alone one can Deserve anything...It follows that many things deserved in the ordinary sense are not deserved in Rawls's. You may have worked all your life on your autobiography and thus deserve the National Book Award, but you would still not Deserve it in Rawls's sense, unless your efforts somehow testified to your superior *moral* worth."

Running fast and having a Master's degree, or even great intelligence, do not testify to our greater moral

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[25]Miller, David,(1989)Market, State and Community: Theoretical Foundations of Market Socialism Clarendon Press, Oxford pp 158-159

[26]Pogge, Thomas W,(1989), Realizing Rawls, Cornell University Press, Ithaca and London, pp77-78

worth. We do not deserve these things, in the Rawlsian sense, and, because they are morally arbitrary, they cannot be used to influence a distribution in our favour. I will explore this point in more detail in Chapter Three. When we talk about deserving to win a race on the basis of being the first across the line, or deserving a job on the basis of being the most qualified applicant, what we are talking about are "legitimate expectations"[27]. This term is the Rawlsian term for non-moral desert, desert which is not a reflection of my moral worth. I will discuss legitimate expectations in the next chapter, but I will note here that moral desert requires complete responsibility for the desert-base, as is clear from Argument II, while legitimate expectation does not require complete responsibility for the basis of the legitimate expectation.

The second assumption is the denial of moral luck. I turn to Nagel for a definition of moral luck:

" Where a significant aspect of what someone does depends on factors beyond his control, yet we continue to treat him in that respect as an object of moral judgement, it can be called moral luck."[28]

Rawls excludes moral luck from desert. By his argument, if I display moral worth by sacrificing my life for those of my comrades in combat, I do not deserve any special accolades from society, because there are billions of people who were not placed in the same situation as I was, and I do not deserve my accolades while they do not. I have, by being placed in the line of fire, been given an undeserved advantage (although I would probably not see it as such) with regard to my desert-base. I cannot be said to deserve a reward for bravery while another does not deserve such an award until that person

[27]Rawls, (1972) p 311

[28]Nagel, Thomas,(1979),Mortal Questions Cambridge University Press, Cambridge p26

has been placed in the same situation as me, been given all the advantages relevant to that situation that I possess. I may, however, have a legitimate expectation to an award for bravery. By taking part in the war, and by doing so in the army of my country, which has specified rewards for undertaking dangers that are above the call of duty, I have a legitimate expectation to that specified reward (the Victoria Cross, perhaps, if my country is Great Britain). Barring any disqualifying factors (such as being in a highly altered state of consciousness due to the consumption of recreational pharmaceuticals), I should receive an award for bravery. Posthumously, in this case. In the discussion which follows in the next chapter, I will point out the dangers of the position on moral luck that Rawls has taken.

The third assumption, which is related to the first, is that desert relies on responsibility, and that the responsibility must be total. In order to deserve something, I must be responsible for the basis of that desert. My desert-base can be invalidated by anything which can be shown to diminish that responsibility. Any factor which is beyond my control and which bestows on me an undeserved advantage over another with respect to the desert-base diminishes my responsibility. Every possible desert-base can be shown to be influenced by such a factor, and therefore all desert is lost. This account of responsibility, I will argue, is a dangerous one to maintain. It is also this account on which Rawls' Argument II rests.

Argument II can lead us rather neatly to the conclusion that differential treatment of people because of exceptional abilities or even suitable character is not justified on the basis of desert. Since any variation in human abilities or accomplishments, Rawls argues, can be classed as undeserved, including the

amount of effort above or below the norm that the individual can exert, no person ultimately deserves any preferential treatment whatsoever. In a sense, to discriminate between people and claim desert, is to tie desert to a more or less random physical occurrence. Saying someone deserves to be President is like saying murder victims deserve to be killed. Luck, ultimately, governs both occurrences, and we cannot allow luck to be the primary determinant of how well or badly a person will fare in society.

I wish to consider, for the moment, the opposing view, that of a desert-based theory of social justice. Distribution according to desert would entail the possibility of the most disadvantaged being those who richly deserve to be most disadvantaged. A desert-based theory of justice need not lead to the extremes of libertarianism. There are aspects of circumstance which have to be eliminated, if those truly deserving are to receive discriminatory treatment. There will have to be equality of opportunity, formal, in the sense of guaranteed rights to competition, as well as substantive equality. Public education systems will have to be improved. Inheritance will have to be outlawed, to prevent cumulative privilege from giving people an unfair advantage over others. The playing fields will have to be made as level as possible, and this in itself will involve major restructuring. The free market system does not reward desert, particularly moral desert. The morally choiceworthy paths in life, whether they be career-choices or codes of behaviour, are notorious for the relative poverty of those who choose them. If one chooses, for example, to be an emergency-room surgeon, arguably a morally good career path, one can expect to earn significantly less than a cosmetic surgeon of comparable ability. Saving lives does not pay. Increasing cup-sizes does. A desert-based theory of social justice means that emergency-room surgeons will receive more than cosmetic surgeons. Policemen will finally be paid what they deserve, as

will educators, social workers, and so forth. If desert is to be an active moral concept, some things are going to have to change.

What Rawls' attack on desert (Argument II) means for moral and political philosophy, apart from the demise of several theories of justice, is that we lose our strongest basis for differential treatment of individuals, prior to the redistribution recommended by Rawls. Differential treatment is itself a social necessity: punishment is a deterrent and reward is an incentive. If we reward those who on the traditional view of desert are regarded as most deserving, we provide an incentive to others to become deserving. If we reward courage, for example, self-interest will provoke others to perform courageous acts, or develop courageous characters. If we punish vices, behaviour associated with those vices is thereby discouraged. We could merely rely on this "good for society" consequentialist argument to maintain differential treatment, but what Rawls has also done is give a very powerful weapon to use against those who would base differential treatments on character or psychological makeup, or any characteristic whatsoever: that it is unjust to discriminate between people without some moral ground for doing so.

Any structures of reward or punishment are in danger of being eroded, and one pictures some kind of PC utopia, where murderers are "re-socialized" and the "obsessive need to achieve" is picked out as deviant by social scientists. Desert bolsters differential treatment, which is a social necessity. The comprehensiveness of the attack on desert means that not only can we not reward those who are good and claim justice, but we also cannot punish those who are vicious, or recompense, ironically, those

who are undeserving of their circumstances. We endanger concepts of redress and retribution.

What kind of reply are we in search of? An appeal to the existing application of the concept of desert is insufficient, because the anti-desert lobby can simply argue that our existing usage of desert leads to, or is itself an instance of, injustice. We require a justification, a defence of our usage of the concept, as well as perhaps a clear account of what we use as bases for desert, and why, and our reasons for including some desert-bases and not others. We are also going to have to conduct a fairly close examination of the initial Rawlsian contention that agency in the desert-base is the primary indicator of the validity of that desert-base, because this contention provides the major impetus for his refutation of desert itself. This will require, also, a defence of why (and indeed, if) we grant desert on the basis of other factors, such as character traits, as well. We are going to have to show that desert belongs within the framework of justice. If we can consistently maintain desert for certain bases that are beyond the control of the person concerned, we also need to show why these bases are different from other aspects of the person that are beyond their control, such as sex or ethnicity.

Naturally, this undertaking will rely heavily on the intellectual task already completed by George Sher. I will also examine other philosophers, and determine whether their answers to this question are sufficient. In the remaining chapters, I will give an exposition of the work of these philosophers around this subject, addressing the issues raised by them in turn.

CHAPTER THREE

Factors beyond the control of the individual: The responsibility thesis and George Sher.

The relationship between desert and responsibility, as well as a particular worry in the disciplines of political and moral philosophy, is summed up rather neatly by the following extract from Geoffrey Cupit's "Desert and Responsibility":

> "It is often supposed that there is a relationship between desert and responsibility: that to be deserving we must be responsible for that which makes us deserving. Indeed, there seems little doubt that a supposed relationship between desert and responsibility, combined with a growing tendency to view less and less as the responsibility of the individual, contributed to the reluctance to appeal to desert which has been a feature of much recent moral and political philosophy."[29]

The assumption on which the efficacy of Argument I and Argument II rests is , what Fred Feldman calls "a thesis about desert and responsibility"[30], and is as follows:

" If *S* deserves *x* in virtue of the fact that *S* did or suffered *y*, then *S* is responsible for doing or suffering *y*"[31]

To deserve something, you have to be responsible for it. We have explored this theme briefly already.

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[29]Cupit, Geoffrey,(1996), "Desert and Responsibility" in Canadian Journal of Philosophy, Vol 26, Number 1, March 1996, p 83

[30]Feldman, Fred (1995) "Desert: Reconsideration of Some Received Wisdom" in Mind Vol 104, 413, January, 1995

[31]Ibid.

The contention that desert rests on responsibility may sound intuitively correct, as might the contention that this responsibility be total. David Miller agrees in part, claiming that desert does convey a sense of responsibility[32]. Certainly, a similar formulation to the one above is true:

> "If *x* (responsibility for an action exists), then *y* (subject deserves *x* or what *x* produces).

However, it seems to be a leap from this common-sense formulation to the contention that there is no desert without responsibility. As we use it in everyday life, desert certainly does not require responsibility in every case. Or does it?

David Miller[33] argues that our conventional use of the term "desert" does not necessarily involve full responsibility. An agent may deserve rewards for saving a drowning man, in our conventional usage, despite the fact that the possession of certain personal qualities (Miller uses the example of inherited physical strength being necessary to save the man, and character is another relevant quality) may not be voluntary. Rawls, as we have seen, thinks our conventional use of the term "desert" is incorrect.

In placing this debate within the field of political philosophy, and specifically distributive justice, we want an answer to the question: "Can our character, virtues or personality traits count in our favour in a distribution in such a way that we can say we deserve such a skewed distribution?" Do we have to be responsible for the development of our character in order for our character to count in our favour in

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[32]Miller, (1998) REP, p 25

[33]Miller, David, (1976), Social Justice Clarendon Press, Oxford p 97

such a way that we can claim justice, for example? Must we really disregard all the abilities that Rawls claims?

Rawls would have us believe that we must. We must, because to have such things count in our favour in a distribution, justice demands that they be deserved. Further, in order to discriminate in this fashion, the differences between people must be based on moral grounds. We can have non-moral desert, or legitimate expectations, but only after a decision-making process in which principles of justice are selected and agreed upon has taken place. Prior to such a decision, factors beyond our control cannot be deserved, because we cannot claim full responsibility for them, and after such a decision-making process, we cease to talk of desert and all claims are framed in the form of legitimate expectations, even moral ones[34]. The fact that Rawls addresses his argument to moral desert alone appears to elude certain philosophers. Feldman, for example says that the responsibility thesis is "...clearly false"[35]. Feldman uses the example of victims of food poisoning at a hamburger outlet. The victims are not responsible for their being poisoned, yet they deserve some form of compensation, or at least our sympathy, for their loss of health. When a thug attacks a figure-skater, Feldman argues, the figure skater deserves some compensation, despite the fact that she wasn't responsible for being attacked. An agent does not have to be responsible for the desert-base in order to deserve something. One could argue further that an intelligent and hard-working person deserves to succeed, and if they don't, then the economic system is

[34]Rawls, (1972) pp 311-313

[35]Feldman, Fred, (1995) "Desert: Reconsideration of Some Received Wisdom" in Mind Vol 104, 413, January, 1995

at fault.

This is a tempting angle to take, but Rawls saw this particular attack coming. What Feldman has been discussing is not desert, Rawls argues. Rawls is using the concept of desert in terms of political philosophy, with reference to a distributive system. Within this framework, to claim an advantage from the distributive system or process, you must deserve the characteristic on which you base such a claim. One cannot deserve one's noble birth, or one's skin colour, or the wealth of one's parents. Further, when one has been part of an unjust distributive system, and has received privileges essential to the development of such characteristics that others have not, one cannot be said to deserve such characteristics, particularly if the privileges in question have been distributed on the basis of arbitrary factors such as accident of birth. For any member of a free-market economy with private ownership, seeking entrance into a Rawlsian society and undergoing a Rawlsian distribution, the message is simple: you cannot bring your talents to the bargaining table because you do not deserve to have them while another does not.

"…it is true that as persons and groups take part in just arrangements, they acquire claims on one another defined by the publicly recognised rules. Having done various things encouraged by the existing arrangements, they now have certain rights, and just distributive shares honour these claims. A just scheme, then, answers to what men are entitled to; it satisfies their legitimate expectations as founded upon social institutions. But what they are entitled to is not proportional to nor dependent upon their intrinsic worth. The principles of justice that regulate the basic structure and specify the duties and obligations of individuals do not mention moral desert, and there is no tendency for distributive shares to correspond to it."[36]

[36]Rawls, (1972) p 311

Victims of food-poisoning and wounded figure-skaters therefore do not morally deserve to be recompensed[37]: rather, they have a legitimate expectation for recompense. An earthquake victim, who finds her house levelled by an earthquake, has not changed in moral status. She has a legitimate expectation that something be done about her condition. She had paid taxes, obeyed the laws of her state, and is a full citizen. The state owes her something, as her appointed protectors. Similarly, an intelligent and hard-working employee has a legitimate expectation that the institution for which she labours recognise these qualities in her. If they don't, our intuition is that she is cheated. She undertook to labour for them, and her labour is productive above the minimum standards legitimately expected by the company. She has given them more than they asked, and therefore deserves recognition or compensation for that extra productivity. Likewise, the corporation possesses a legitimate expectation that she fulfil the minimum requirements of her job. Should she fail to do so, they would be well within their rights to fire or otherwise discipline her. Indeed, to belabour a point, it would be expected.

The responsibility thesis is thus not a weak point of Rawls' arguments. The question arises, however, if the stipulation of complete responsibility being the basis for moral desert in a distributive system is too

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[37] It has been pointed out to me that there is a vast difference in moral status between earthquake victims and wilfully or negligently harmed people. The difference involves human agency. I am prepared to concede this point, and to admit that people deserve compensation for being stabbed or poisoned. However, this desert-claim targets particular individuals (the assailant, or, in the case of food-poisoning, perhaps a corporation), and is further very different from a claim based on attributes of an individual such as intelligence. When I say: "I deserve the fruits of my labour", I say something very different from "I do not deserve to be treated like this." The second claim is normative for other people, while the first is an assertion concerning the relation of producer to product. Because I deserve not to be stabbed does not imply a greater claim on society's resources. The examples of figure-skaters and poisoned diners are not a central concern of distributive justice.

strict. There have been various criticisms of this stipulation. As we see in Argument II, the spirit of Rawls' argument is that we must show complete responsibility for an advantage that another does not have, in order to deserve what that person does not. We must show, therefore, that our advantage or natural endowment does not arise from an unfair advantage over another of social or other circumstance. This we cannot do.

Consider the following situation: Chloe is walking along one bank of the Zambezi river. David is walking along the opposite bank. Both tourists are, for the purposes of this thought-experiment, of roughly equal swimming ability. Chloe observes, as she is walking, a child at play in the water a few feet from the bank. Towards this child is swimming a crocodile. Should she fail to intervene, the child's death is certain. Chloe dives into the water, retrieves the child, and at great risk to her own life, narrowly evades the crocodile and carries the child to a safe distance from the bank. David, on the opposite bank of this river, can only watch. Chloe deserves recognition for the action she has performed. Further, it is obvious that this is moral desert, and not legitimate expectation. Her desert is also in no way diminished by the fact that David was not given a similar opportunity to drag the child from the water, or by the fact that David would have acted in the same way given the same opportunity. Her desert is clear (although exactly what she deserves is not). Others may be tempted to argue that this situation is analogous to the development of certain natural talents: simply because one person has been given a rare opportunity to develop a natural talent does not deprive them of the desert that derives from its use. Indeed it does not. It also does not, however, allow them to claim superiority or special advantages over others who have not been given the same opportunities. Were one to specify that all and only people who have saved

children from crocodiles be appointed to high office, one could expect a number of people to rightly claim that they have been unfairly treated, because there are billions of people on the planet who have probably never seen a live crocodile outside of captivity. Principles of equality demand that if one is going to tie particular privileges to particular criteria, one must make the opportunities to achieve such criteria available to all. We cannot legislate the crocodile-to-child ratio in the Zambezi river, but we can make the opportunities to develop talents more equal in our societies. If one person has been given an opportunity to develop a particular talent that another has not, and if such opportunities are consistently made available along arbitrary lines, then we cannot tie those talents to corresponding privileges and claim justice.

Is this not going too far? By having such a strong stipulation of responsibility, Rawls has effectively removed any possibility of anyone being responsible for anything. As Miller[38] points out, Rawls' argument rests on the acceptance of determinism, a controversial doctrine for political and moral philosophy, to say the least. Nagel argues that to deny moral luck as Rawls has done will endanger the concept of responsibility, and with it, all moral assessment[39]. In all cases, Nagel argues, the content of a moral assessment is influenced by external factors. Even with the best intentions "There is a morally significant difference between rescuing someone from a burning building and dropping him from a

[38]Miller, (1996), "Two Cheers for Meritocracy" in *The Journal of Political Philosophy:* Volume 4, Number 4. pp 280-283

[39]Nagel, (1979) p 26

twelfth-storey window while trying to rescue him.[40]" To assert that in order to be responsible for an action one must be in control of even only those things which differentiate one person from another faced with similar decisions would make all moral assessment impossible. The decisions we make, the character we adopt, the values we hold, all depend in some degree on factors beyond the control of the individual. Moral assessment without desert and responsibility cannot exist. Responsibility in the sense in which it is used in Argument II is not possible, because complete control over all the factors which affect a particular action is not possible. This means that accepting Argument II requires us to accept a view of responsibility which undermines the way we think about morality. We lose accountability for our actions, beliefs and values if we accept this account of responsibility.

To return to Paul and Mary, it would make sense to say that, were there no salient differences between their abilities and personalities, and Mary managed to live a life of virtue while Paul did not, then Mary would deserve the benefits gained from a life of virtue (the adulation of others, possible entrance into a comparatively pleasant afterlife) and Paul would not. This does seem intuitively correct, even on the Rawlsian account of responsibility. They were given the same tools, and Mary made more out of herself than Paul did. But were Mary to be given miraculous abilities, such as the ability to overcome temptation at any point with the smallest exercise of will, purely or even only partially as a result of her upbringing or genetics, or a fortuitous combination of both, while Paul does not possess such abilities, and the outcome remains the same, then Mary does not, indeed, morally deserve to have the advantages of the virtuous life while Paul does not. That Rawls presumes that all of our natural endowments are merely a

[40]Nagel, (1979) p 25

product, in one way or another, of our genetics and our upbringing or a combination of the two, is perhaps as hasty as asserting that genetics and upbringing has no role to play. More on that in the next chapter.

There are, Kymlicka argues, instances of moral desert which Rawls does not cover, or examples of desert that run counter to Argument II:

> "What if I was not born into a privileged social group, and was not born with any special talents, and yet by my own choices and effort have managed to secure a larger income than others?"[41]

The same is true of someone with no natural talents and unremarkable birth who manages to develop a particular ability to the point where it is greater than normal. While, as we have clarified in the previous chapter, Rawls has no objection to differential income due to natural ability, hard work or prudent choices, as long as these differences are structured in such a way as to increase the minimum share, his account does not accommodate those who have built something out of nothing, so to speak. Or does it? In essence, a person of disadvantaged background who has made a success of her life is exceptional. There will be something about her that marks her as different from other people of similar background. Some aspect of her rise to success must be influenced by factors beyond her control. Even negative experiences which give us the desire to improve ourselves (a life of poverty may make us wish to avoid similar situations, for example) can constitute an unfair advantage over others. Any such advantages, any relevant differences in the experience and makeup between one agent and another which are not completely of their own making are sufficient to invalidate the desert claim.

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[41]Kymlicka, Will, (1990) Contemporary Political Philosophy, Oxford University Press p58

It is with competitive desert that we are concerned, and it is competitive desert that Rawls attacks. Competitive desert I understand to mean one in which a comparison of desert-bases is made, such that the stronger claim invalidates the weaker (as it would when a single resource or prize goes to the most deserving) or such that reward is proportional to the strength of the desert base (as would be the case where the resources to be distributed are finite, but not singular). To give some idea of the comprehensiveness of this attack, consider the following. According to Rawls' account of desert, the Nobel prizes are often undeserved. American scientists and academics have access to far more equipment, education, community support and funding than do most African scientists or academics. They do not deserve this differential treatment, and this differential treatment is responsible for the Americans receiving more prizes than the Africans. Therefore American scientists do not deserve more Nobel prizes than their African counterparts (it follows naturally that even if the Americans show consistently higher standards of natural ability, their prizes are still undeserved). The practice of rewarding leaders in various fields with the prizes, therefore, merely serves the global community in various ways, by promoting the fields themselves, and inspiring workers in those fields to produce work worthy of the Prize. It has a functional, not a moral, justification.

Why is this important? It is important because a moral justification is stronger than a functional one. Democracy has won its wide popular support, not for being an efficient form of government, or maximally beneficial to all individuals in a society but at least partially because it has a moral justification. The appeal to equality is one of the strongest we have, a kind of moral trump. Argument II against a desert-based distribution is a moral one. If we can show that a desert-based distributive system is more

efficient than a Rawlsian distribution, this will not be enough, because Rawls will occupy the moral "high ground". He will have a strong moral justification for his distribution (namely that, by his argument, the destiny of people should not be determined by morally arbitrary factors), and we will not.

To illustrate the difference, let us look at what the award of the Peace Prize to Nelson Mandela says about him, when Argument II does not hold. When Argument II does not hold, Mandela can receive credit, the award of the Peace Prize is a mark of gratitude and of respect. He deserves it, because of what he is and what he has done. The sort of person he is and the actions he has performed form the basis for the award, and the positive effects on the society of the institution of the Prize itself are secondary. With Argument II in place, the sort of person he is and the actions he has performed are irrelevant, except as criteria for the award itself. He does not deserve the prize, as any abilities or actions above and beyond the norm are merely the result of his genetics or environment, beyond his control, and undeserved. Here, positive effects on society are primary, and the character of Mandela incidental. To the desert-theorist, Mandela's character is paramount, and to the Rawlsian, merely the product of social and biological forces beyond his control.

Sher's evaluation of Argument II begins with a look at the claim made in the first premise that people differ in the ability to make effort[42]. Rawls, according to Sher, offers no justification for the claim that they do. He does not understand Rawls at this point, because Rawls does not have to show that they do. Everything which could possibly result in one person's producing more effort than another can be

[42]Sher (1987) p 28

regarded as an ability (a Protestant upbringing, higher energy levels, or, and this is important, an occurrence which prompts one to exert greater effort) which another does not possess. Anything which results in your bringing about of an act or circumstance which I did not bring about, and which did not happen to me, can be treated as an undeserved ability on your part, as long as you did not yourself bring it about. If it happened to you, if your relationship to it was partially or fully passive, then you did not bring it about, and you do not deserve it as long as I do not deserve it, too. Therefore, you do not deserve whatever you brought about because of it, as long as I do not deserve it. Even differences in agency (qualitative or quantitative), can be viewed as differences in ability in this way.

Sher's next point[43] is rather a strong one, and one which I have already covered in brief. The fifth premise of Argument II, that undeserved possession of a certain ability which another does not have, which makes it possible to achieve X , makes X undeserved for one person while another does not possess X, is initially plausible. For our African physicists, who have less education, fewer resources and less time (because of having to shoulder more lecturing duties), it does indeed seem unfair to assert that the differences between their tenured American cousins' publishing record and their's is deserved. Most desert theorists would concede this. The American physicists do indeed "enjoy benefits from which another has been barred through no act or omission of (their) own" [44]. Sher argues that this impression is given by a narrowing when comparing the two. What the American physicists do not deserve is a higher level of well being than their African counterparts. If it can be shown that their level

[43]Sher, (1987) p 32

[44]Sher, (1987) p 32

of well being is higher than the Africans, then there is something unjust about the situation. Rawls, in other words, does not allow scope for alternatives. Michael Jordan does not deserve the well being that results from his skill at basketball while Nelson Mandela, were he to consider a basketball career, does not possess that level of well being. However the fact of the matter is that Nelson Mandela is quite capable of achieving a proximate, or superior, level of well-being by exploring different avenues. So we amend premise 5 to read:

5: If M does not deserve to have X while N does not, and X makes it possible for M to achieve a particular level of well-being which N does not share, then M does not deserve to exist *at that level of well-being* while N does not. [45]

Provided people are capable of achieving comparable levels of well-being in other ways, then people of superior talent can be said to deserve their treatment[46]. Indeed, it makes sense that a just society should adjust its distributions in this way. The American physicists can be said to be deserving of their Nobel prizes while the African physicists do not possess them, if it can be shown that their access to education and training were roughly equal, and that the same choices were available to both. If the level of well-being available to the Africans was equal to the Americans (perhaps because of a less stressful lifestyle, a genuine enjoyment of teaching), then the Americans deserve their prizes while the Africans do not.

[45]Sher, (1987) p 30-31

[46]Sher, (1987) p 32

There will, however, be many cases in which one person achieves a level of well-being which another person would find it impossible to achieve, either because of a great difference in talents, or circumstantial luck. In these cases, such premises will suggest that the greater achiever doesn't fully deserve the benefits of her achievements, but instead deserves only the "proportion of it that the other could reasonably have been expected to match"[13], because of differences in ability or circumstance which the agent was not responsible for. We cannot discriminate on arbitrary grounds, as already pointed out, so the ravages of moral luck have to be eliminated in this case. Sher points out that because virtually every high achiever in every field could be paired with a low achiever, it follows that very few people could be said to be able to claim the full benefits achieved.

This has obvious implications for political philosophy, according to Sher. We cannot allow people to enjoy what they have achieved, on the Rawlsian account. Undeserving inequalities will have to be compensated. Consider the situation, Sher argues, in which M has great talent and has achieved a lot, N has great talent but has achieved relatively little, and O has relatively little talent and has achieved a low amount. N and O may deserve the same amount relative to each other. M will, however, deserve more with regard to N than she does with regard to O, because O is less well-off as a result of the natural lottery. Because of this, M getting precisely what she deserves relative to N will require that she not get what she deserves relative to O. This kind of situation gets really complicated, and tends to suggest that it will be impossible to give everyone what they deserve relative to everyone else.[14]

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[13]Sher, (1987) p 33

[14]Sher, (1987), p 33

This contradiction, however, is illusory. The fault with Sher's appraisal of the situation is his assertion that N and O deserve the same. O, with relatively less ability, has achieved the same amount that the talented N has. She has worked harder, or chose better, or simply applied herself more than N. O therefore deserves more than N does. Therefore, we can simply deduct a small amount from the share of M, so that she has more than both N and O, and we award this small share to O.

Sher's criticism of the second premise of Argument II is interesting. The premise states that:

> If a person's having *X* is not a result of anything she has done, then she does not deserve to have *X* while another does not.

This is a fairly acceptable premise. We do not like to think of people's lives being determined by uncontrollable factors. This is not consistent with Rawls' own reasoning, Sher argues, because after dismissing all "particular facts about people[15]", or rendering such things as character and abilities impotent in his distributive scheme, Rawls then goes on to derive his principles of justice from "abstract and hypothetical facts...even further removed from anything persons have done or can control"[16]. By this Sher refers to the fact that Rawls' principles are based on hypothetical choices made by artificially constrained agents (they have access to very limited knowledge) in a hypothetical situation. These choices, being hypothetical, and not actual, are morally arbitrary, by Rawls' standards, because they are not controlled by the actions of agents. Remember that Rawls argues that all actions not under the control of agents are morally arbitrary, so that we get the conclusion that all choices made under the

[15]Sher, (1987), p 34

[16]Sher, (1987), p 33

original position, being hypothetical, are morally arbitrary too[17].

Again, Sher appears to be hasty in his judgement. Characteristics and abilities are morally arbitrary for Rawls because they arise from an uncontrollable situation. The original position is a paradigm case of justice: an abstraction. It is a hypothesis concerning the consensus a group of rational agents would reach on the governance of their society. They are unaware of their social class and abilities, and are thus free of bias in these respects. The content of their hypothetical decisions is of the greatest moral salience, because they can be clear-headed about issues that we cannot. They are not making judgements about political systems while immersed in those political systems, and can see clearly. While there might be some disagreement concerning exactly what these people will decide, these decisions would form a good model for the moral construction of a society. The original position and the veil of ignorance are conceptual devices along the same line as the legal "reasonable man", whose hypothetical decisions are binding on us.

Sher argues, also, that this premise will involve never considering, for moral or political reasons, the character of a person, but judging them completely upon their acts (a strong interpretation of Rawls will make this impossible, too). But we do evaluate people on the basis of their character, at least partially[18], as we shall see in the next chapter. However, this last point is not a direct argument against Argument II, except that it seems counter-intuitive to some, if not all philosophers that character should have no role

[17] Sher, (1987), pp 32-35

[18]Sher, (1987), p 35

in the evaluation of a person. Naturally, Rawls would agree that we can and do judge people by their character. We are, however, misguided in doing so, prior to the distribution he proposes.

Sher then goes on to attack premise 4 of Argument II, the contention that if one possesses an ability which one does not deserve to have while another does not, and this ability makes it possible that one achieves something that another does not, then one does not deserve to achieve that something while another does not. The intuitive reason for acceptance of this premise is that it confers an unfair advantage on a person. However, an advantage is only unfair if it prevents one from competing on equal terms with another. Understood correctly, this seems to presume that only competitive desert exists, disregarding what I have called "personal" desert. The fact that this premise applies to merely competitive desert[19], Sher regards as a major victory over Rawls.

It is likely to leave those concerned with distributive systems feeling a little unwell, however, since it still applies to competitive desert, which is the sense of desert with which those interested in distributive systems are concerned. That a distributive system is competitive should be fairly uncontroversial. For a distributive system to be based on pre-institutional moral or non-moral desert, it follows that those who have exhibited certain excellences should be given more, both because this is what they deserve and because they are likely to make maximally beneficial use of resources. With a finite amount of resources, those who deserve more will have to be given their share from the resources of those who deserve less (the less talented, or morally inferior). So there is clear competition for a limited amount of resources, where a more than mean share will result in someone receiving a less than mean share.

[19]Sher,(1987), pg36

Sher regards the Rawlsian attack on desert as important, as it highlights the problem of desert-bases. More work and thought is needed in the area of desert-bases, particularly concerning the legitimacy of desert-bases, and which desert-bases are more important. However, I disagree with Sher on this point, because Sher thinks that saving pure desert from Rawls is a major step, and that this, combined with the problems of implementation of systematic desert, has severely weakened the Rawlsian attack. From the point of view of political philosophy, competitive desert is, however, all we are concerned with, and the problem of pure desert is trivial. Rawls' objections to competitive desert still stand, and a stronger reply than Sher's is required, a reply that will address competitive desert.

Now to the problem of desert bases. The ultimate desert base, or at least the one desert base that there appears to be no objection to, is the desert base of autonomous action. To deserve a thing, I must have done something to deserve it.

Indeed, this has some intuitive basis. Even Rawls will not directly assail free action as a desert-base, except to deny that any act is without erosion of desert by a pre-existing and undeserved state of affairs. Brian Barry holds that "having been able to have done otherwise is a *necessary condition* of ascribing desert [20] Naturally, Sher wishes to find out whether it is plausible, and whether it is a sufficient base. There must be a definite link between desert and free action. But how would such a relationship hold?

[20]Quoted by Sher (1987), p 38, from *Political Argument*, (New York, Humanities Press, 1965), p 108.

Sher proposes that it is fairly uncontroversial to say that exercise of autonomy should be encouraged. It is a good. It is possible to infer from this that it is good that the moral agent have certain things which follow from the exercise of this autonomy [21]

To make this argument successful, we must show, Sher argues, that the exercise of autonomy is valuable , and that the link between the exercise of autonomy and the "outcomes we take to be deserved is a suitable conduit for this value"[22] The first part is easiest, for Sher. It seems self-evident, from a liberal perspective, that people should be given the opportunity to act and choose freely. But if such opportunity is valuable, the exercise of autonomy must also be valuable. However, there remains the question of how the value of autonomous acts are transmitted to the outcomes we discuss. A brief examination of free action, Sher feels, will answer this question. For purposes of conferring desert, Sher feels, projected consequences of a free act are more important than antecedent conditions (From the analysis of Rawls' argument, it should be apparent that the reverse is true for Rawls. The antecedent conditions are precisely why no desert makes sense). Before action takes place, the agent deliberates about both the initial acts and the projected consequences of such actions. Deliberation is thus highly complex, and it follows therefore that free action does possess a link to consequences. So if autonomous action carries value, its consequences, because of autonomous deliberation, carry value too. Since deliberation and choice encompass acts and consequences, any value that "attaches to the

[21]Sher, (1987) p 38

[22]Sher, (1987), p 38

implementation of choice must belong equally to both"[23]Therefore the value of autonomy itself will underline our desert-claim. This account Sher calls the "expected-consequence account". The question remains, however, whether this account holds with regard to intuitions about specific cases. Autonomy definitely meshes with punishment as a basis of desert-claims. A man who knowingly commits murder deserves a life sentence. This can even accommodate cases in which the outcomes are good, and the desert positive: a student who worked hard for a final deserves to do well, and so on. Sher wishes to suggest that there is only a one-to-one conferral of clear desert to autonomous action if the autonomous action is guaranteed to produce the desired outcome. He uses the example of a lottery, where the winner has risked one chance in a thousand to win the jackpot. The desert here is highly affected by the probability such that the "amount of the outcome that is deserved is proportional to the outcome's antecedent probability"[24]. So the lottery winner deserves one thousandth of the credit of a woman who autonomously chose to seek a path that led with certainty to the jackpot. However, there are cases in which this rule does not apply, for example, in the case of a person who has taken every reasonable precaution against being involved in a car crash. If the chances against her being involved in a car wreck are even millions to one, we would not say that even one millionth of the pain and suffering involved are morally deserved.

This difference in intuitions illustrated by the car crash example, Sher claims, is a result of different types

[23]Sher, (1987), p 39

[24] Sher,(1987), p 43

of risks, namely risks which are parts of all normal lives, and risks which are optional [15]. The former categories are not desert-conferring. The fact that in the normal course of my life I run a one-in-ten thousand chance of having a rich and unknown relative die and leave me millions does not confer desert of those millions on me as a result. However, if I choose to engage in a risky endeavour, I deserve to fail. Sher thinks that the latter intuition is not uncontroversial. Sometimes the predicted consequences of free acts are undeserved. I choose not to anger my rich relative, for example, and falsely attend church services in her parish, while remaining a committed atheist in my heart of hearts. In her somewhat senile eyes, my apparent devotion is a sign of good character, and she leaves me the whole bundle when she shuffles off her mortal coil. The consequences of the church-going are obvious to me each morning as I don my Sunday best: that the aged relative will leave me her little all. But no-one, certainly, would be willing to say that I deserve her money on the basis of the front I have presented to her.

Such examples point to the possibility that the expected-consequence account of desert is flawed. There are five conditions under which expected consequences seem undeserved:

1. When the expected consequence is very easily acquired.

2. When the expected consequences are merely the disastrous results of merely careless acts.

3. When they result from harmful acts.

4. When they constitute the harmful effects of self-sacrificing acts

5. When they are the results of choices made under duress, or other illegitimate choice situation.[16]

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[15]Sher, (1987), p 43

[16]Sher,(1987), p 44-45

Sher gives a good analysis of why these examples of autonomous action are invalid on the expected-consequence account. Suffice to say, however, that all of these invalid circumstances occur when luck has played a massive role (examples 1 and 2), when evil purposes have placed a negative value on the exercise of autonomy (example 3), or when choices have been constrained by undesirable circumstances out of control of the chooser (4 and 5). The last case is particularly interesting to Sher. If, placed under a situation of duress (where the chooser is presented by an evil person with two unpalatable alternatives) the person does not deserve to bear the consequences of the outcomes. However, social institutions and genetic predispositions may so conspire as to place exactly such unpalatable alternatives before the chooser. A man of poor family in mediaeval Britain, for example, is faced with the alternatives of breaking the law or starvation. He has no marketable skills, begging is outlawed, and his constitution is such that military service is impossible. He must steal, or starve. Does he deserve to bear the consequences of his action? After all, although he is free to act in the way in which he chooses, his choices are highly constrained by his circumstances. He faces a morally repugnant act (theft) or his own death. This is not a fair choice to put before someone. Most of us would say that he is not responsible for his action, that he was forced into the path he chose for the lack of a viable alternative, and that he does not deserve to bear the consequences that people who have other alternatives and choose to steal must bear. Unjust institutions affect desert, moral and non-moral. But this is unproblematic for the question of the effect of autonomy on desert, as we know that unjust institutions almost by definition adversely affect autonomy too. When institutions are unjust, and threaten autonomy, we often can, and always should, attempt to remedy this.

Sher goes on to assert that there are a plethora of desert-bases which do not reduce to free action. We do feel, for example, that effort deserves something. Hard workers deserve success more, as Sher states [17].

A second class of cases, cases which do not involve effort, involves what Sher calls "reward schedules". Why do minimally qualified software tycoons deserve billions while A.J. Ayer had to supplement his pension with lecture tours? The sizes of the rewards are known in advance, and rather predictable. Philosophers will not be rich. What is deserved, in this case, is not what is foreseeable[18].

A third class of cases involve a type of merit, unselfish or heroic action that "beats the odds", to produce an unlikely outcome. [19] I return to Mary (allow me to specify her life of virtue). Suppose this remarkable young woman decides to attempt to bring about democracy in a totalitarian country. She knows the path she has chosen is arduous, dangerous, and most importantly, extremely unlikely to succeed. Suppose a series of flukes results in her surviving all attempts at assassination and "silencing", and she eventually succeeds in bringing about a people's revolution in opposition to the wishes of the governing body. Does she deserve only a small part of the credit as a result of the improbability of her actions producing the desired consequence, or does the fact that she did what was right in the face of almost certain annihilation somehow multiply the desert? Because she brought about democracy, she deserves

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[17] Sher,(1987), p 50

[18] Sher, (1987), p 50

[19]Sher, (1987), p 50

respect, or the Nobel Prize. But because it was so difficult, because the probability of her being successful was so small, and she did it anyway, she deserves something more than someone, who, for example, brought about democracy in a country without opposition. The desert-bases here are both what she accomplished and the character that made her attempt it in the first place. The expected-consequence account does not explain why she deserves anything.

Sher now turns to specific desert-bases, beginning with diligence. Diligence is a compelling and uncontroversial desert-base. What mechanisms are at work when we say a diligent student deserves his high mark? Simply put, according to Sher, our basic intuitions are satisfied by the statement that the reason the diligent student deserves high marks is that this is the outcome at which his efforts were aimed. What is the moral "should" at work here? How can we say that the diligent student should get high marks, should get what he deserves? There is no obligation on anyone to bring about the satisfaction of his desert claim, according to Sher. A lecturer is not honour-bound to reward misguided diligence, for example. Diligent effort alone does not confer desert. It does, however, add value to one's endeavour (although obviously not in the case of diligent evil). Diligence, for Sher, is an extension of desire, indeed often a reflection of how strong the desire is. Desire for a state of affairs confers value upon it (at least for the desirer). Is value a function of desire, in at least some cases? Sher asks whether desire is a sufficient condition for value. According to Kant, persons are ends in themselves, unconditionally valuable. The ends they seek thus draw some value from being the projects of human beings. "If persons themselves matter, then what matters to persons should matter as well"[20]. For the

[20]Sher,(1987), p 58

moment, we can accept the contention that value derives (with certain caveats), from desire, in at least some cases. But, in the case of the diligent worker's desire and the indolent worker's desire, why is it better that the diligent worker's desire be satisfied? We feel that, given a choice we would rather satisfy the diligent worker's desire, as this desire has more value.

Why? This follows naturally, Sher argues, from the intuition that if a desire is strong, we will work harder towards it. Therefore, the diligent worker's desire is strongest, and thus more valuable. However, if strength of desire is the relevant criterion, we should regard the worker who would have worked hard had he not been constantly sick, or the worker who would have worked hard had her socialization been better, in the same light: their desert would be equal. This is not the case. We think that the worker who actually did the work is highest in desert. We pity the others, at best.

Why is diligence so different from desire? Sher thinks the difference is one of commitment and identity. The diligent agent gives of his time and his effort, limited and non-renewable resources, which are indeed the raw materials of action. "Since our lives are constituted by our actions, our time and energy are thus the very stuff of which we fashion our lives"[21]. One makes a goal part of oneself by diligent effort, "weaving it into the fabric of his life"[22]. Next to such a force, desire has relatively little capacity to confer value by itself. The diligent thus ought to succeed because their efforts are "investments of themselves" into their projects. So far we have seen that diligent effort confers far more value than mere

[21]Sher, (1987), p 61

[22]Sher, (1987), p 61

desire. Clearly, however, all diligent work is not deserving of reward. A terrorist who works for hours laying explosives in a church is not deserving of accolades. This is clearly a case of value from another source nullifying the value conferred by diligence. Human life has value, and the value the terrorist removes by her actions far outweighs the diligence involved. That we have to resort to other sources of value to explain this merely indicates that value has a plethora of sources [23].

A follower of Rawlsian doctrine would have a reply at this point. We do regard diligence as a valid desert-base, according to our common-sense conception of desert, and Rawls would probably agree to this, but, from a Rawlsian perspective, our diligence may be affected by actions beyond our control (differential work-ethics, high levels of health, and so on), benefits or disadvantages others do not have, which make the achievement of goals harder or impossible for some. Until the problem of circumstances beyond the agent's control is settled, there can be no desert.

We now move on to merit in both its moral (a display of virtuous character or the performance of virtuous acts[24]) and non-moral (a display of unusual skill [24]) forms. Why are the meritorious deserving? The answer to this, Sher says, will not constitute a single principle, but a plurality of sources of value. Sher briefly considers the following construal: meritorious acts call forth praise, admiration and so on. Might not the source of the desert of the meritorious lie in the tendency of their acts to call forward such

[23]Sher, (1987), p 53-68

[24]Sher,(1987), p 132

responses? This is an unsatisfactory reason, and indeed, Sher attacks it. This account does not have a normative aspect, because although it explains the practice of rewarding merit, it does not justify it. What kind of normative aspect do we need? If the meritorious are to be rewarded, there are two possible reasons, either that by doing so we are telling them that they are meritorious, stating a fact, in other words, or that by doing so we express admiration. The first reason, which Sher denotes as the moral obligation to tell the truth, leaves us open to the objection that the intuition that we feel the meritorious deserve reward is not met by this. We could simply say that the meritorious are meritorious, and our duty to tell the truth is fulfilled. A slight re-working of the principle that we should tell the truth is required We could adopt this principle if our institutions specified when rewards should be handed out, by conventions, or rules of competition or comparison, and so forth. This principle of veracity would then apply to evaluation of when desert has been earned, a highly limited role. We still have to justify the conventions, however, so we have ultimately gone nowhere. Truth-telling is a justification for giving the best student the highest mark. There are other sources of this justification, however, and these include the honouring of reasonable expectations (the first person past the line can reasonably expect to be the winner), and the practice of keeping of promises (Jesse Owen getting the gold because the institution of the Olympic games guarantees a gold for winners in various events).[25]

Is there a pre-institutional justification of desert, however? What about cases like the selection of the most meritorious applicant for a job? That the best able deserve to be chosen appears to be a basic and enduring intuition. Since this effort is often not determined by dint of greater effort, but by native ability,

[25]Sher, (1987) pp 109-119

while not undermining desert (Sher asserts), something other than autonomous action is at work here. The primary purpose of finding someone to fill the job is that the job is done well. A skilled applicant will do the job well. There is a link between the trait (doing the job well) and the award of the job to the possessor of the trait. We have explained why it is maximally efficient to seek such pairings, but why does the possession of the trait confer desert on the possessor? When one hires on merit, Sher says, one evaluates the potential for successful action of the applicant within a successful field. Taken seriously, one is evaluating the potential contribution of the applicant to the community at large, and evaluating her agency. To fail to select on merit is to fail to take people seriously. Several questions spring to mind. In employment and education, do we really need the best qualified applicant? Does an assembly-line worker really have to be the man with the best mechanical aptitude and motor co-ordination, for example, when a certain threshold level of skill is sufficient to do the job adequately? Sher's reply is that it is rational of employers and educational institutions to seek maximum return on their investments. The employer seeks to achieve the best possible productivity from his or her workers in exchange for their wages, and the educational institution seeks to extract maximum understanding and insight on the part of the student from the educational process (one could spend the same amount of resources producing mediocre researchers, when each position these mediocre students fill could be taken by students of exceptional ability who will become better researchers). Thus, to treat educational institutions and employers seriously, the best applicants should be accepted. This brings us to the second issue, which is how these opportunities are linked to rewards. In some cases, opportunities for education or employment are also opportunities for enrichment and prestige (a certain type of employment is particularly lavish of remuneration, or a certain educational qualification holds predictable

levels of prestige and reward).There is, however, no internal relationship between merit and the high wages, for example, because highly skilled people can choose not to pursue high-paying careers, while those of lesser skill or intelligence but greater greed often do [26]. Suffice it to say, however, that, questions of social justice or historical disadvantage having been met, the merit criterion should dominate.[27]

What is the case for selection on merit criteria, ultimately, Sher asks? Not paying attention to the connection between the purposes of employment and education, and qualifications is failure to take the applicants seriously. Why is this significant?

To answer this question, Sher asks that we consider a person who is hired for non-merit criteria, for example for the company to maintain a racial quota. In this case, the applicant is not treated as an autonomous agent. She is a means to an end unrealised through his or her action. Her presence is sufficient to achieve the end. She is not treated "as an individual whose actions will matter"[28]. Her presence is largely passive, and indeed, interchangeable with others who meet their group criterion. This contrast, as Sher says, clarifies the argument for selection by merit. The requirement that we accept applicants on the basis of qualifications or merit is a requirement that we treat them as rational agents. This requirement demands that we respect their ability to make choices, as well as their ability to undertake projects advancing their own ends and those of others. We do not do this by selecting for

[26]Sher, (1987) pp 123-125

[27]Sher, (1987) pp 119-125

[28]Sher, (1987) p 126

non-merit criteria (unless, interestingly, if the criterion concerned involves what the agent has already done, as when the criterion of diligence is used. This is still respect for agency and personhood). In short, Sher makes a strong case for merit, grounding it in a particular view of the person as agent. [29]

Moral merit is a stronger base of desert claims than non-moral merit, for Sher, and, as we have seen, for Rawls. Moral merit, or virtue, is not competitive, unless one sees the conditions for the development of such merit or virtue as being various resources or situations which are not available to everyone. Where persons deserve rewards for acts of virtue, we can often ground this desert in the debts that these acts bring about. If someone saves my life, I owe him or her something. They deserve my gratitude. If this is the case, we can move to the principle that desert-claims are normative because of the principle that generates the debt of gratitude. Several theorists (such as Sidgwick) raise the objection that such debts are engendered only when actual benefits to the debtor have occurred. This contradicts our intuition that even the attempt at moral virtue creates desert. Sher does not see, therefore, why the benefits have to be actual. The performer who attempts a virtuous act conveys on the person for whom she performs it, an increased chance of a particular outcome. To use Sher's example: by giving you a lottery ticket, I increase (by however small a percentage) the likelihood that you will be wealthy. It is this increase in potential that generates a debt of gratitude (obviously, if I give you a winning lottery ticket, you are going to be somewhat more grateful to me than would otherwise be the case). These debts of gratitude are context-sensitive, naturally. To repay my debt of gratitude to a homeless person, I can offer him or her a job, but the same offer aimed at an Oppenheimer would be

[29]Sher, (1987) pp 125-130

insulting. There are different classes of virtuous acts. The first class Sher identifies as praiseworthy or heroic acts aimed at a particular outcome. I save the child of a software tycoon from drowning because I expect a reward, or care for a widow in her declining years in the hopes that she will leave me money in her will. The motives in these cases are less than pure, and if there is desert in these cases, it is grounded wholly in debts of gratitude owed by the beneficiaries of my action. The agent in question has given them something they value, or restored something to them. It is on the basis of this thing that the agent deserves reward. A paramedic who saves a child is just doing her job. The parents of the child still owe her at least gratitude, although the motivation for the action would be different from the case of the same child being saved by a non-professional Good Samaritan. This class of cases occurs when the basis for desert is a heroic or virtuous act that does display good character. Foster parents who take in children nobody else wants, health-care workers in poor areas who go where their skills are needed instead of performing unnecessary and remunerative surgery on the idle rich, are examples Sher gives. The debts of gratitude only account for part of the desert in these cases. Part of the force of this desert comes from the very fact that the recipients of such acts cannot repay these debts, and it is why such acts are regarded as evidence of selfless nature[30].

The third and final class of cases are at the opposite extreme from the debt-repayment desert cases. The desert-claim here is based not on singular acts, but on the entire course of a person's life. People of good character, who can be counted on in any situation to do the virtuous and good thing, deserve happiness, Sher argues, and their desert claim is not based on any particular act, but rather on their

[30] Sher, (1987), pp 132-138

character. The view that happiness should be proportional to moral virtue is not a philosophical view that is often defended, claims Sher, but it is one which seems basic to our moral assessment. The objection considered is the practicality objection, namely that it is hard to accurately assess character, and any attempt to systematically reward good character seems impossible to implement. This is not an important concession for the virtue theorist, Sher argues. The fact that a desert-claim is justified does not obligate anyone to fulfil it. Society does not have to allocate vast resources to the reward of the virtuous, and most of the time, such desert-claims can be met in day-to-day life.[31]

From the point of view of distributive justice, and the hope of matching desert to reward in political and distributive systems, this is a serious objection, and some investigation of the plausibility of assessing moral virtue will have to be undertaken if we would make our distributions match morality. Either that, or we have to admit that moral virtue should not affect distribution, except where its presence or absence is obvious.

A second considered objection - that attempts to bring happiness to the virtuous are self-defeating is examined next. Were virtue matched up to rewards, people would perform virtuous acts in order to receive rewards. This would defeat the objective of cultivating the virtues, because as far back as Aristotle, it is a mainstay of our moral scheme that virtue must be sought for itself. Virtue performed or cultivated with selfish ends is no longer virtue. Sher argues that the matching of rewards to virtue will not, however, necessarily have the effect that people will adopt virtue out of pecuniary interest. Virtue

[31]Sher, (1987), pp 132-138

consists of dispositions of personality, not fixed acts. These seem too stable to be "dislodged by other motives"[32]. A virtuous person is not likely to become less virtuous simply because she learns that her life will be improved by others' recognition of her virtue. Rewarding the virtuous does not automatically invalidate their virtue. Their character is certainly not going to change. If anything, a virtuous person might find reward of their virtue embarrassing. The other worry, that a non-virtuous person, acting in imitation of virtue for reward, and who, as a result, never embraces virtue for other motives, is also unrealistic. As Aristotle could have predicted, those who cultivate virtue for reward eventually internalize the values they have picked up, and virtue becomes automatic. This rationalization may be a little too quick, and it also does not settle a related concern, coming, unsurprisingly from Rawls, who argues that the principles of morality are logically prior to virtue.[33] These principles of morality are formed by fair social structures (those chosen in the original position), which then determine what virtue or "moral worth" [34] is (it will be action and predisposition to action in accordance with these structures, or structured in such a way as to maximally bolster these principles). Favouring those with virtue in a distribution would be getting things backwards. Sher disagrees. Sher's reply to this is again, mysterious, as he seems to think that the strength of Rawls' claim lies in the contention that those who should maximally benefit from a distribution skewed towards pre-institutional virtue will be those who are most prepared to give to others what they deserve. Because what they deserve will be dependent on what they think the original agent deserves, things might become horribly confused, according to Rawls. Sher

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[32]Sher, (1987) p 138 - 139

[33]Rawls, (1972) p 312

[34]Rawls, (1972) pp 312-313

argues against this contention, citing other pre-institutional and largely intuitive examples of virtue, such as generosity, empathy, kindness and honesty. We can say that a person deserves to be rewarded if they show such virtues, and rewarded over and above this if they also show the virtue of giving to others what they deserve. In this way, we can avoid the confusion that Rawls points out.[35]

I venture to suggest that Sher has missed Rawls' point. Rawls' point is that, before we derive a distribution and draw up moral principles, we do not know what morality is, and therefore, don't know what moral virtue is, either. Furthermore, we don't know what behaviours we want to encourage or reward in people before the initial position, be they moral or not. There is a danger that reward of virtue in this pre-institutional stage will result in us rewarding perceived virtues that are not, on closer examination, virtues at all. If we don't have the institution to draw on yet, we are either rewarding only an a priori virtue necessary for the original position to take place (such as the virtue of fairness, or rational self-interest), or virtues from another moral scheme. Since we don't want other moral schemes to affect our initial distribution, in case those moral schemes are those favoured and implemented by unjust systems, we don't want an initial distribution based on virtue. Sher does not address this objection, and thus leaves much of the strength of Rawls' criticism unopposed.

Sher remarks that Rawls has a tendency to talk of moral virtue in terms of moral worth. Does the possession of virtue necessarily increase a person's worth? It seems unproblematic that at least instrumentally, virtuous people have relatively greater worth. We would rather have them around than

[35]Sher, (1987) pp 139-140

not, and we feel that a society is made stronger by their presence. The contention central to democracy, that all people have equal worth is, Sher argues, merely a "dramatic"[36] way of saying that the worth of people derives from something other than their instrumental worth. To quote Sher: "Its point may be simply that no differences in how useful people are can matter, unless those to whom persons are useful (that is, themselves and other people) have some value in themselves."[37] This value is prior to instrumental value, but it can vary with differences among persons. When we look at the differences between the virtuous and the non-virtuous, or even the vicious, we do find differences in worth. Sher argues that one of the main reasons why persons have worth is that they are possessed of a drive to seek out value, and moderate their behaviour in accordance with such values. The moral virtues that we are concerned with are "heightened and concentrated"[38] dispositions toward seeking out various forms of value. The virtuous person embodies, more than the non-virtuous, this value-seeking propensity constitutive of the worth of individuals. Her worth is greater than others who do not possess this propensity because of it. If a virtuous agent has more worth than others, then her desires, beliefs and so forth have more worth than that of a non-virtuous person, and have more power to convey value to the objects of such desires, for example. It is a greater good for a diligent virtuous person's desires to be gratified than for a diligent non-virtuous person's. Now this contention raises some questions. The first is whether or not the existence of differential worth erodes the treatment of all people with equal respect. Let us consider a person who has less than the normal propensity to seek value. Is her worth less than is

[36]Sher, (1987), p 141

[37]Sher, (1987), p 141

[38]Sher, (1987) p 143

the norm? Is her lower worth reflected in the rights she bears? No .Rights are limits on how others may treat us and it is thus nonsensical to say that one person has fewer or weaker rights than another. There are certain things you cannot do to another human being, regardless of how unworthy he or she is. The contention that morally virtuous people have more worth than the non-virtuous or the vicious does not, therefore, threaten universality of rights.[39]

This brings us to the question of how desert is related to rights and justice. In the final chapter of his book (perhaps the most interesting for political philosophers), Sher addresses this question. In defence of the moral strength of desert, Sher argues that desert, justice and rights constitute separate, and non-conflicting demands, so as to avoid the argument that desert's weakness lies in the propensity toward overriding the demands of justice and rights in order to satisfy desert-claims. Most significant desert-claims are based, for Sher, not on obligations, but on the value of persons coming to have what they deserve. Some desert-claims are justified, Sher argues, with appeals to value. This allows us to avoid the dominance of rights over desert, since at least most of the rights-claims are addressing the obligations of others towards the right-holder, and not questions of value inherent in the holder, or the holder's actions. This obligation model does not apply to what are known as "liberty-rights", where the holder of the right does not have to cease or refrain from certain activities, nor does it apply to "powers and immunities". But because these rights do not concern themselves with claims on ownership or possession, as do desert-claims and claim-rights, they do not conflict with desert. When we say that people deserve things, we generally are asserting what it would be good for them to have, whereas

[39]Sher, (1987) pp 141-149

when we invoke rights, we assert what others should do or should refrain from doing. These assertions do not compete. Therefore, if desert claims are properly understood, they do not compete with rights, and are indeed neither weaker nor stronger.[40]

As regards the Rawlsian objection against pre-institutional desert, Sher searches for an account of desert that is independent from institutional arrangements. He also argues that it is too much to expect that an account of desert will provide us with a theory of justice. We cannot expect to base a theory of justice entirely on a theory of desert. What people deserve may be influenced by social institutions. Can the reverse be true? Is the justice of a society affected by the tendency of its citizens to get what they deserve? To Rawls, this cannot be the case. Justice as fairness is designed with neutrality towards all conceptions of the good in mind. Choosers in the original position cannot know what their values are precisely because of this. A desert-based distribution, particularly a distribution on the basis of character, would not be chosen in the original position, both because one cannot know whether one is going to be deserving, and because one cannot know what the worthy aspects of character are, before the institutions are in place. From a non-Rawlsian perspective, this does not make as much sense. Sher has shown that rewarding the virtuous, bringing about happiness, and punishing the vicious are valuable. Why should our institutions not reflect such judgements? The values that underline our judgements of desert are going to affect our societal institutions, and indeed, they should.

While Sher has not shown that we can have a desert-based distribution, he has shown that talk about

[40]Sher, (1987), pp 194-206

desert does not necessarily reduce to outmoded and old-fashioned discussion of values that are no longer necessary. His is an important account of desert, and a significant contribution to the field.

However, we do not have an account which will allow us to influence a distribution with desert, nor do we have an account that allows us to claim that our competitive desert is real. We still cannot deserve, in pre-institutional terms, our places in society, and many of our achievements. We certainly have been presented with nothing which allows us to claim that the personality traits we have cultivated are deserved. A promising defence of pre-institutional desert is derived from the concepts of character and virtue, which is the subject of the next chapter.

CHAPTER FOUR

Character, the self and Desert.

If we can show that our traditional usage of desert implies desert of the character that one possesses, then we have an account of desert that is not based on the account of responsibility that Rawls gives us. It appears to be a basic moral intuition that we deserve differential treatment on the basis of who we are. Our admiration for the great figures of history is based as much upon the type of people they were as the things they accomplished. In politics, the character of elected officials is regarded as highly important. This is true also for morality. Indeed, the question of the content of one's character, the extent to which one possesses vices or virtues, appears to impact on one's moral worth. As Sher argues [41], the person of virtue is generally regarded as having a higher intrinsic worth than other people (he does not intend that they be given rights that the less virtuous are denied). We want more of them around. Persons of great virtue relative to ourselves will even make us feel inferior, or make us feel awed in their presence. To give such people a share of society's goods that corresponds with their greater worth seems a natural thing to do.

In political philosophy, the question of virtue is most often brought up in questions such as "what type of citizen should our society encourage" or "what type of person is it best to be?". This, George Sher

[41]Sher, George, (1987), pp 143-150

points out[42] is often contrasted with "duty ethics", which addresses such questions as "what are we morally obligated to do?". For the purposes of this essay, I regard both traditions as expressing truths about human moral intuitions, and I do not regard any particular tradition as superior. The two questions in some ways overlap, as one of the answers to the question of what it is my moral duty to do would be that it is my moral duty to cultivate a particular moral character. I will further not stipulate which moral virtues or vices are desirable or undesirable, addressing the question of whether good character should affect one's shares in a distribution without specifying what the content of such a character would be.

In this chapter, we will examine both a plausible account of what virtue and character might consist in, and how it might arise in people. As the issue of character is related to the issue of the self, I will also outline the issues concerning the self and desert.

The question of what makes up a person's character is a complex one. Good character has been identified with certain philosophical and religious positions, as well as general values. The definition of good character, or virtue, with which I work is derived from the work of Fenichel, who observed that, "Virtue is the habitual mode of bringing into harmony the tasks presented by internal demands and by the external world....[It] is also decisive in forming the habitual patterns of character. What an individual considers good or bad is characteristic of him, likewise whether or not he takes the commands of his

[42]Sher,. George,(1998),"Ethics, Character and Action" in Social Philosophy and Policy Cambridge University Press, p 1

conscience seriously, and whether he obeys his conscience or tries to rebel against it."[43]

Character, then, is the basic makeup of an agent's personality: his moral virtues, values and ambitions, and the standards of performance he uses to judge his behaviour. Propensities towards certain types of behaviour are partially constitutive of character. There is, however, an assumption that character has at least a partial voluntary aspect.

One's character affects one's behaviour, naturally, and sufficient knowledge of the character of a friend or relative is sometimes quite effective in the prediction of their behaviour. As Trianosky points out[44], how one comes to be in possession of certain traits of character is a critical question in order for one to take credit for that character. An agent only deserves credit for moral character if that character is virtuous, and if the agent can show that he is responsible for the acquisition of that character.

Virtues and vices are aspects of character. A virtue or vice is a predisposition towards action of a particular type. Someone who is afflicted with the vice of cowardice will have a tendency in their behaviour to avoid risky situations is more likely to run from danger than stand and face it. The most realistic account of virtue and vice I have yet encountered is rather ancient: Aristotle's, to be exact.

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[43]Fenichel, (1945), The Psychoanalytical Theory of Neurosis W.W. Norton and Company New York, p 467 quoted in Peck, Robert and Havighurst, Robert The Psychology of Character Development, John Wiley and Sons, New York, pp1-2

[44]Trianosky, Gregory (1990), "Natural Affection and Responsibility for Character" in Rorty, A.O. and Flanagan, O (1990) Identity, Character and Morality MIT Press, Cambridge, Massachusetts, p95

Virtue, for Aristotle, is a "disposition to choose the mean"[45]. Faced with a dangerous enemy, the cowardly man will flee, the rash man will immediately attack, and the courageous man will arm himself, prepare for the conflict, and then deal with his enemy. Rashness and cowardice are extremes of behaviour and thus both vices. Courage is a mean between the two extremes. This simple formula can be applied in a plethora of situations. What is virtuous for me might be less than virtuous for another. For example: if Mary is a martial artist confronted with an attacker whom she is capable of subduing, the courageous course of action is to subdue the attacker. Paul, who has no such abilities, confronted by the same attacker, would be rash to engage in combat, as his attacker would easily overcome him. Virtue is subject-sensitive, not subjective, because although what is virtuous may vary from person to person, there is nevertheless a universal standard, and a person with sufficient knowledge of my abilities can accurately legislate what is virtuous for me.

Let us begin, then, an account of virtue and its development. Aristotle's remarks on the acquisition of virtue I take to be true for the acquisition of good character, as the virtues he outlines are consistent with good character. Aristotle did not think that virtue or the lack thereof was innate. "Neither by nature, then, nor contrary to nature, do the virtues arise in us: rather we are adapted by nature to receive them, and are made perfect by habit."[46]. What we deduce, then, is that we have the physical/psychological mechanisms with which to acquire virtue or lack thereof, but not an inborn predisposition to act in a virtuous way or not.

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[45]Aristotle, (1980), The Nicomachean Ethics, World's Classics, Oxford University Press p 36

[46]Aristotle (1980) NE, II, 1 p 28

Aristotle regards the most important starting point for development of virtue as knowledge of "the that"[47]. For an understanding of what "the that" is, we turn to Burnyeat, who holds that "the that" is "knowledge of actions in accordance with the virtues"[48]. We must have some pre-theoretical understanding of what types of actions are regarded as virtuous. This understanding is derived from paradigm examples, specific cases which we evaluate other actions in terms of. Obviously, this knowledge is not available to those who do not have the correct experiences to learn from. Virtue thus consists partly in achieving a degree of knowledge of what categories of action are regarded as virtuous.

Aristotle says more than this. He also, according to Burnyeat[49], says that it is important that one learn to do noble and just things by *doing* them. A more complete understanding is gained through practice of the virtues. At this early stage, then, the learner has had some experience in performing virtuous actions. The learner requires this experience to come to the conclusion that what he has learned about virtue is true, can judge for himself, making the judgement about the worth of virtue more real for the subject, by grounding it in his experience[50]. What we can glean about virtue from this, is that virtuous action is more than knowledge of the rules of behaviour, but experiential knowledge. This difference is the difference between, to use an example, knowing what boxing is, and actually being in the ring. By reading about

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[47]Aristotle (1980) NE, I, 4

[48] Burnyeat,, M.F.(1980) "Aristotle on Learning to Be Good" *in* Essays in Aristotle's Ethics by A.O Rorty (ed), University of California Press p71)

[49]Burnyeat, p 73

[50]Burnyeat, pp73-74

boxing, one can gain knowledge of how one should fight, which way to circle one's opponent, how to throw combinations, what the scoring system is, and so forth. One can read all there is to read about boxing, and still not have the skills and knowledge that will make one a master of the "sweet science". There is a lot of experiential knowledge in boxing: how it feels it be hit, the deterioration of your performance as you tire, and so forth. There is a whole wealth of information that can only be accessed by getting in the ring and boxing. The same is true, Aristotle argues, of morality. I can know all the rules of morality, and still not know how it feels to be generous, or courageous, or the obstacles in the path of acquisition of such virtues. Morality is difficult, and, like boxing, requires training. A good boxer, after a while, will have internalised his training to such an extent that the correct moves and tactics are second-nature. The good moral student aims to achieve the same thing. The ultimate goal of the acquisition of virtue is to have one's first reaction to a situation be the moral one, to train oneself until the good is automatic.

But what does this experiential knowledge consist of? An understanding of *why* virtuous action is noble? Burnyeat argues that the student does not possess this knowledge yet. In NE X, 9, Aristotle gives a description of the learner, in which he says that the learner has to love what is noble. He loves what is noble because he has come to take pleasure in it. Further, he takes the right kind of pleasure in it and has learned to enjoy it properly, or appropriately.[51] To give an explanation by example, the virtuous soldier takes pleasure in the appropriate action, in this case, valour in combat, *because* it is virtuous. The act gives him pleasure or happiness because it is a virtuous act and thus fulfilling. The act

[51]Burnyeat, pp 75-76

demonstrates to him that he has achieved at least in part the goal of acquiring virtue. It is self-affirming, and the pleasure derives from this fulfilment of self. The thrill-seeker or the homicidal man may take pleasure in valour in combat for more hedonistic reasons, such as the "rush" of danger, or the savage joy of killing. These are defective pleasures: happiness or pleasure for the wrong reasons. Virtue consists in part of finding pleasure in doing the virtuous because it is virtuous. The fact that an action is virtuous should be the source of pleasure or happiness. Virtue must be sought, then, for its own sake. If I perform an outwardly virtuous act because it's going to bring me the adulation of my peers, then I have performed the act for the wrong reasons. I have taken inappropriate pleasure in it, and my actions are not virtuous.

Our learner can now be said to have "the that". He does not know why his actions are virtuous yet, but has proven that he has the capacity to absorb this knowledge. As Lear points out[52], there is little that is rational about the ethical student's feeling about virtue at this stage. Further development of virtue will consist of building on and refining the existing love of virtue, giving it theoretical justification in the student's eyes. Have we gone far enough? Here we have a person who acts virtuously. From an external viewpoint, his or her actions are indistinguishable in outcome from the more fully virtuous person's. Lear argues[53] that Aristotle holds that there is more to acting virtuously than the virtuous act and that the source of the act is important. A truly virtuous act has as its originator a person with a virtuous character. What is missing from the person who knows "the that"? Well, at this point, the

[52]Lear, (1988), p 169

[53]Lear, (1980), p 170

learner begins ethical tutelage, comes to understand why the actions that are virtuous are viewed as such. True virtue thus requires knowledge of "the reason"[54], which is the true understanding of virtue. Presumably, then, the learner acquires "the reason" through instruction and ethical reflection, in the light of his or her possession of "the that", and in light of the conception of the good life. Burnyeat[55] argues that Aristotle holds shame responsible for helping the learner to approach virtue through argument and discussion. Avoidance of the shame that comes with knowing that one's actions are not truly virtuous, combined with the pleasure derived from virtuous action, will lead toward virtue. The learner, having evolved a reasoned scheme of values, now undergoes further habituation, possessed of the appropriate emotional responses and full information, until the state of virtue is achieved. It is obvious from this that the end point of this method of acquisition is a settled state of character, a predisposition toward virtuous action. It should also be obvious, as Broadie points out[56], that the state of virtue involves, prior to dispositions toward certain actions, also predispositions to certain feelings. Indeed, it is obvious that pleasure and shame play a major part in the habituation toward virtue, in the early stage of habituation, and the later stage. Without the proper emotional responses, the coming to take pleasure in virtuous action, the learner cannot reach the stage where he possesses "the that", and thus cannot ever possess "the reason" completely. He cannot possess the reason because, without the proper conditioned emotional responses, he will not come to desire further study into perfecting virtue. He further cannot perfect virtue without the correct emotional responses, as is apparent from the above.

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[54] Aristotle, NE, I,4

[55]Burnyeat pp78-80

[56]Broadie, (1991), Ethics with Aristotle Oxford University Press p 75

What has the process of acquisition of virtue revealed to us of the nature of virtue? From the fact that virtue requires habituation, we can deduce that virtue is not innate. It has to be instilled in us. Instilling virtue requires training, and the expected results of this training allow us to show that the performance of virtuous acts requires appropriate emotional responses for the acquisition of virtue to be successful. The fact that the acquisition of virtue does not cease once "the that" has been attained shows us that merely acting in the right way does not constitute Aristotelian virtue. Knowledge of "the that" would be sufficient were one merely to foster an understanding between right and wrong, but the process of moral habituation does more than this. It will produce not merely the person who knows what the virtuous thing is, but a person who *is* virtuous, who will take the right kind of pleasure in the virtuous action because of a complete understanding of it, and will be motivated by this pleasure. True virtue further requires a theoretical understanding, not merely of what constitutes virtue, but why what we see as virtue is constitutive of the good life. From this framework, virtue is given a very strong justification, as necessary for the realisation of the good life. It could be argued that virtue eases the acquisition of the good life for those we share our environment with, in addition to the benefits it brings to our life, even if we view it as an end in itself. Virtue is thus more than the adherence to a set of rules generally agreed upon to constitute virtue; it is constituted by a deep understanding of what it is to be virtuous, as well as an emotional attachment to a state of virtue which comes about partly through our training and partly through an understanding of what virtue is. Further, it is a state of character which predisposes us towards actions regarded as virtuous because of this emotional attachment and knowledge. Virtuous action for this person will require relatively little effort of will once the state of virtue has been achieved, although the energy expended in reaching this state is unquestionably immense, and itself worthy of

accolades. This is not to say that the virtuous person will not encounter temptation, but the strength of the motivations towards virtue, as a result of the strenuous nature of the acquisition, will be far greater than most, if not all, temptations.

Now, if this construal of virtue and its acquisition is accurate, and I assume that it is, several things about moral virtues are made clear. One is that not every one can be virtuous. The acquisition of virtue requires good upbringing, moral training of a fairly high degree, and presumably a fair amount of leisure time in which to pursue the cultivation of virtue. If we want a society where more people are virtuous, we are going to have to ensure that more people have access to the tools of the acquisition of virtue, such as moral education and so forth. Another fact is that it seems impossible to acquire virtue without in some sense engaging with the process. One may be aided by upbringing and natural gifts, but it requires a great deal of effort, as well as personal commitment. Surely we can say without fear of contradiction that the person of good character, or one who possesses virtues, deserves that character or those virtues.

That societies should choose a particular view of the person to embrace in their laws is obvious. Laws require us to regard members of a society as distinct units, as selves. There are normally attributes or bases in virtue of which laws apply. Unless one is minimally rational, one cannot be responsible for one's actions, and one thus occupies a special status under the law. People who are not responsible are generally protected from the consequences of their actions, given a status that does not grant them full citizenship or accountability. Children are such people, as are the severely retarded or mentally unstable.

There are aspects of the identity of the individual such as ancestry, sexuality, religion or wealth which a liberal society should ignore. These are grounds on which one cannot discriminate between people, and are viewed as contingent facts about them, rather than essential to their identity as members of a society. We feel that the law should take cognisance of things like responsible acts, the way we relate to others and the positions we occupy in society. A judge, for example, might have certain special legal abilities which others do not: a socially recognised ability to decide the fate of others in certain respects, and so forth. These things are regarded as essential to the identity of the individual in some cases, and in others (voting in elections, for example) not. The question is whether or not character should be taken into account by the society, and used as the basis of discriminating treatment, either through the reward of good character, or through the punishment of evidence of bad.

An action is a de-contextualised fact about a person. It occurs in time, and the evaluation of an action tells us very little about the person in question other than that under a certain set of conditions, they acted in a certain way. Several actions evaluated over a period of time may help us to understand the character of the person in question.

In the course of our lives, we are faced with many choices that require a particular type of action. Should I work hard for my exams or not? Should I seek out a career in philosophy, or follow the path of least resistance and go into advertising? For some of us, it seems apparent that these choices are easier to make than for others. The right decision to people of good character seems like reflex, done almost without thought. Similarly, the correct moves in a boxing match seem to have come easier to

Muhammad Ali than to virtually anyone else. He had a genius for boxing. Comparing him to other boxers seems to suggest that he would not deserve to beat them. He would find it a considerably easier task to beat them than they would find it to beat him. Ali and his opponent are doing different things. There is a temptation to think that different people deserve different rules, and that the ascription of desert such that some people are disadvantaged by such an ascription seems unfair if there are differences between them. We don't put a heavyweight into the ring with a featherweight and expect the outcome to be a fair reflection of the boxing skill of the two opponents. The heavyweight will have proven nothing, on his inevitable victory, but that he is larger and stronger than the other fighter. This difference is not one that we can reasonably expect to eliminate, as there is no way that the featherweight can expect to be the same size as the heavyweight. Likewise, we may feel that someone of poor character deserves differential treatment when his behaviour is evaluated.

Whether one agrees with the final statement of the previous paragraph or not will depend on one's assumptions concerning the development of character. If the development of character is viewed as a process in which luck plays the overwhelming role, character is taken as external to the individual being evaluated. If the acquisition of character is viewed as an active process for the individual, character is integral to the self, and to fail to discriminate between people on the grounds of their character is to fail to treat the person as a full self.

The former view is Rawls'. Rawls does not need necessarily to assert that character is always undeserved; he merely has to prove that no matter what advantage someone has gained, they owe it to

a bewilderingly complex interplay of forces wholly or partially beyond their control. On his view, one must control at least the majority of the forces responsible for a particular advantage in order to deserve it. This can be seen from Argument II, in that desert is undermined if the individual has not himself brought about the difference in fortune that another does not possess. Since these forces are so diverse and often simply uncontrollable, we cannot be said to deserve our character , because we cannot claim to have developed it ourselves, and thus his distributive procedure as far as possible eliminates it. After the fact of distribution, some theorists represent Rawls as saying that those of bad character may be discriminated against [57](it is not clear whether this is because such discrimination is deserved or not, but a very strong argument can be made for such discrimination on the grounds of benefits to society in general), but only after the distribution has taken place[58]. In this way, Rawls hopes to bring about a society where one's future is minimally affected by chance by ensuring that one's initial starting-point is as fair as possible.

The question of which one of these views is correct is not an easy one, and one which I cannot address here. In a fair and just society, where one's chances at the good life are not determined by accidents of birth, it would be an easier question to answer. With the existing inequalities, it is impossible. The gaps between rich and poor are simply too great. There are people who have overcome background and

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[57]Rawls, (1972) p 49 "...a propensity to commit such (criminal) acts is a mark of bad character, and in a just society, legal punishments will only fall upon those who display such faults."
This particular quote is highly popular. I am not suggesting that Rawls is a closet virtue-theorist, but simply that character is viewed by even him as at least occasionally relevant to moral assessment.

[58]Rawls, (1972) p 103

possibly their genetic heritage to develop exemplary characters. Likewise, there are people of good background and seemingly excellent parents who have not. With the development of good character, it is hard to say for certain even what types of backgrounds produce it. Without some level of input from parents or society it is obvious that a child will find the acquisition of good character in later life an impossible task, while a child with a superior moral upbringing will find it easier. If the habits of morality, the virtues, are deeply ingrained, then the virtuous behaviour will come more naturally to the person. It is equally obvious that the virtuous life, the life of a person of good character is not passively acquired. The development of excellences of character requires effort. For some, this effort is greater than for others, but it always involves at least some hardship. This hardship may be viewed as the process by which the virtues obtained are incorporated into the self, made part of oneself. If one therefore fails to address character, one fails to treat the person as a full human being.

What is the view of the self with which Rawls works when he builds his theory? For the purposes of the distribution, for purposes of considerations of justice in general, the self is empty. In the all-important Original Position, the self is viewed as devoid of character, taking a viewpoint "removed from and not distorted by the particular features and circumstances of the all-encompassing background framework"[59]. The reason for this abstraction from elements of the self that others would regard as important is that the distribution should not be affected by such things as advantages gained as a result of cumulative unfair advantage[60]. Sandel points out that, Rawls, by the introduction of the difference

[59]Rawls, (1993), p 23

[60]Rawls, (1993), p 23

principle [61]outlines a particular way of relating to our talents, whereby I am the keeper of my talents, a guardian more than an owner, and thus have no special claim to the results of the exercise of my talents. I am the caretaker of my talents. They are not me. One objection to this view is that Rawls lumps social and genetic advantages into the same class. Certainly the claim that my genetic propensities and inclinations are more a part of me than my socially-programmed ones is fairly obvious. Or is it? Genetic and cultural advantages appear hard to differentiate: it is not clear, for example, whether genetics or environment play a greater role in intelligence. The same is true of even largely physical traits such as strength or stamina. Given proper nutrition, proper training, and encouragement, man or woman may fully develop their strength or stamina. The related factors are simply too complex to place certain advantages into either camp. Further, as Sandel points out "Those qualities most plausibly regarded as essential to a person's identity - one's character, values, core convictions, and deepest loyalties, for example - are often heavily influenced by social and cultural factors, while many natural features, such as hair color and other trivial physical characteristics - are more readily dispensable."[62] This seems intuitively correct. I am a liberal more than I am a liberal who has brown hair or short legs: the latter qualities are merely incidental. Take away certain genetic predispositions, and I am still the same person. We can even slice away such things as my bad temper or insomnia and I will remain essentially the same person. My sense of humour, at least partially determined by my culture and my family life,

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[61]" the social and economic inequalities attached to offices and positions are to be adjusted so that, whatever the level of those inequalities, whether great or small, they are to the greatest benefit of the least well off" Rawls, 1993, p 6.

[62]Sandel, Michael (1982), Liberalism and The Limits of Justice Cambridge University Press, Cambridge, p74

would be more central to my identity, as would be my value system (for example, the value of self-control). I have chosen these things; I identify with them and have made them part of myself. Yet even these result from contingent facts about me (that I grew up in a family with a certain value system for example). We are left, Sandel points out with a dispossessed self, a self that cannot have any basis on which to apply a desert-claim:

> "Even those attributes, such as a person's character and values, that intuitively seem closest to defining an essential self, are relegated to contingent status." [63]

The individual, on Sandel's interpretation of Rawls, is not constituted by his attributes. He merely possesses them.

> "To say that I possess a certain trait or desire or ambition is to say that I am related to it in a certain way - it is *mine* rather than *yours* - and also that I am distanced from it in a certain way - that it is *mine* rather than *me*."[64]

It becomes apparent that aspects of character, the content of character itself, is irrelevant to Rawls, from the point of view of his distribution. Character in the original position will depend, after all, on circumstances beyond the control of the individual. It will be an undeserved influence, and will have to be discarded. We cannot evaluate the worth of a person before the system of justice based on the dispossessed self is in place. We can make no claims concerning desert until this system is in place[65].

Rawls does not deserve to be regarded as a great philosopher while philosophers from Africa do not,

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[63]Sandel, (1982), p 74

[64]Sandel, (1982) pp 55-57

[65]Sandel, (1982) pp 85-87

because he has enjoyed advantages that they did not. Advantages which he did not bring about, and which he ultimately cannot deserve to have while another does not. We cannot claim to justly deserve what we accomplish that others do not if we cannot justly claim the advantages which made these accomplishments possible. Therefore, in determination of a just social system and a just distribution, we cannot favour those who have superior character traits unless those character traits were made possible by a just social system and a just distribution, or these character traits are capable of development regardless of social standing and advantages, either from natural propensities and gifts or from favourable education and experience. The former has never happened, and the latter is impossible to prove.

In fact, a philosopher adopting Rawls' Argument II does not even have to turn to natural endowments to invalidate desert of character: he can simply rest on the fairly safe assumption that environment plays a role in the development of favourable character traits and that certain environments promote the development of such traits while others prejudice them, and he will have proved his case. We cannot forge a socially fair system of justice without eliminating the inequalities that have resulted from unfair systems of justice, and these inequalities can extend to the self.

In order to clarify further, let us imagine a society in which a distribution which favours those whose abilities in a variety of fields are highest, occurs (let us say the distribution is based on intelligent use of resources). Prior to this distribution, Paul and Mary, twins separated and adopted at birth, and equal as far as possible as natural endowments can make them, were members respectively of a rich (Paul) and a

poor (Mary) family. Paul went to an excellent business school and has several years of experience in marketing and management. Mary, as the result of an indifferent education and an austere home life, has attained the position of barmaid. The distribution is made, and because Paul has greater ability to intelligently utilize resources, he is given a far greater share of the distribution of goods. This aspect of Paul's character is largely environmental; Mary had the same initial gift, but was not given the opportunities to utilize it. What we have done with our distribution is duplicate the previous system of unfair privilege.

Similarly, we may take a different distribution system and produce similar results. We now distribute on the basis of moral virtues (courage, honesty, and so on). Mary is taken into an honest family, the primary breadwinner of which is an Aristotelian philosopher. This devotee of the great philosopher instills as far as he can the values outlined by *The Nicomachean Ethics* in his children. They are given a sound moral upbringing, and grow up with extensive encouragement and conditioning in the moral virtues at which the distribution is aimed. Paul's family own a large corporation, and bring him up in the doctrine of self-interest and manipulation. Paul is morally worthless, and the resulting distribution leaves him dirt poor. Mary was unfairly advantaged in that she did not deserve to have the moral training while Paul did not receive it, and she does not deserve the advantages the distribution gives her as a result of the moral virtues she developed. It seems uncontroversial to assert that Mary will possess more moral virtues than Paul, given the same natural inclinations toward moral action. To achieve moral virtues, Paul has to resist his upbringing, while Mary will simply have to follow hers. Such thought experiments can just get more and more complicated. Paul can be revolted by the machinations of his family and adopt a

moral life as a rejection of them, in which case he has an advantage over Mary who has seen how poor her father's adoption of Aristotle's teachings has left him relative to less brilliant men such as that nice boy Paul's father...and so on. We can claim that discriminating between people on the basis of their character is just. Rawls can even agree with us. We then have to show, however, that by doing so we are *not* discriminating against them on the basis of their enjoying privileges that their family or community or country can give them that others do not have. This we cannot show with any reliability.

There is another attack against the exclusion of character from the original position. It is, however, as we shall see, only apparently efficacious. If ever there was a case of personal desert, it is character. I prejudice no-one's chances at a better life, or even the development of character itself, if I cultivate a good character in myself. If anything, I improve these chances for other people. I have worked on the raw materials which nature has provided and I deserve my character. On the model of responsibility that we are working with, however, this will attack will not carry the necessary force. I cannot say that I deserve to have my character while another does not, and I definitely cannot deserve that my character influence a distribution in my favour.

Perhaps we should operate with a different view of responsibility. The Rawlsian construal of responsibility and desert seems to run as follows: we can only deserve what we are responsible for. To be responsible for something, I must bring it about myself. To be responsible for something while another is not, I must bring about any differences in our talents and circumstances myself. I cannot be said to have done this in any case, because the differences between one person and another are

extremely complex and owe their origin to factors as diverse as genetics, education, chance meetings with others, as well as differences in personal efforts and ambitions. I thus cannot be said to deserve any differences between myself and another.

This view of responsibility, it can be argued, is too strong. It relies on deterministic premises, and will remove all responsibility from human interaction. A lawyer could defend his client on this account of responsibility by simply pointing out that all the necessary preconditions for his crime that another did not possess were not a consequence of the client's volition. The account of responsibility that I favour would be one where an agent's volition was important, one where an agent could be responsible for her character or talents on the grounds that they have chosen to cultivate such a character, or develop such a talent. This appears to fit our intuitions, as we do not hold those with non-voluntary character defects fully responsible for the outcomes that their character was instrumental in producing. A diagnosed kleptomaniac, for example, is treated more kindly by the law than his sane but thieving cousin; a war veteran with a post-traumatic syndrome is not expected to be courageous or ambitious, and a man with sickle-cell anaemia is not expected to be the hardest worker on the factory floor. When the agent does not choose aspects of his character, these aspects are often placed to one side for the purposes of moral evaluation. On such an account, we can deserve our character on the grounds that we were weakly responsible for its acquisition. The strength of this account is that we can then eliminate moral discrimination on grounds of non-chosen attributes or descriptions of the agent, such as social class, culture, or skin colour. However, even if we wish to assert that character is deserved, some changes have to be made. From the discussion on Aristotle's model of virtue, it is apparent that experience has

an important role to play in the acquisition of character. It is also obvious that one's experience of life will differ from person to person, often on grounds that are not chosen, such as social class or wealth.

Rawls does not assert, nor does he have to, that character does not require effort, or even that it is undeserved under a fair political system of distribution .The point is that, for a fair distribution to be just, inequalities that result from the past will have to be eliminated from the point of view of the distribution. Character will necessarily be part of this elimination, because people have had unfair advantages relative to others as a result of such arbitrary factors such as where one was born, or who one's parents were, and these advantages naturally affect the development of character. Give both these children equal advantages, equal opportunities, and you can fairly judge between them. Rawls himself will probably agree with this point, because he stresses that, after the distribution, you can punish people on the basis of bad character[66]. With all of the social systems equalized, differences between individuals will be their own doing, or at least arise completely as a result of their natural gifts and their choices and actions. To discriminate now between people on the basis of character is like discriminating between them on the basis of how much money they possess. I am not arguing that the poor generally are not of good character. There are factors in poor areas which may affect character, however, such as relatively high rates of violent crime, physical and psychological abuse, poor nutrition and education, and so forth. Even if the poor turn out to have relatively better character than the rich, on the grounds of their upbringing, this is still an unfair advantage given them by circumstances beyond their control.

[66]Rawls, (1972), p 103

It does not seem obvious that a just society will require that character and natural endowments not play a large role in the determination of the destiny of members of a fair society. Where advantages can be shown to have emerged from a fair society as a result of the application of natural endowments or intelligent choices, these differences will be deserved. The strength of Rawls' arguments against the evaluation of character rests almost completely on the fact that differences in character and in the makeup of the self are at least heavily influenced by the unjust social systems (particularly with regard to wealth) that every one of us now occupies. If our character is a result of social advantages another does not enjoy, then we cannot deserve the advantages that such a character may bring us. However, if we can eliminate as far as possible the effect that the wealth of our parents has on our lives, then these differences in character can be seen to be deserved. They result from what we are and what we do, not who our parents were, and this is a strong basis for desert. I agree that, for the purposes of the redistribution of wealth in my generation, we must adopt a dispossessed self, and the principles that this entails, because of the unjust systems we now occupy. This does not follow with a just distributive system already in place. If we all have access to the same educational opportunities, and the course of our lives is largely determined by who we are and the choices we make, then the differences between us are deserved. They are not currently deserved, and in our ideal state we cannot allow them to pass from one generation to the next: education must be standardised and probably free, inheritance outlawed, and so forth. For the next generation, and the ones following, however, the differences in character will be real and deserved, and subsequent distributions can favour character, exceptional actions, wise decisions, ambition and so on, and claim legitimacy. In a fair society, Rawls' arguments against the treatment of the self lose their force. We can, in other words, adopt a more rounded self when it is

apparent that the relevant parts of that self are of more legitimate ancestry than they are now.

It is becoming more and more apparent that if we want to talk about desert at all in political philosophy, we are going to have to eliminate cumulative privilege. It is clear that, with regard to resources, we all deserve a more equal share. The concept of desert in itself has provided us with a call for equality, and attacked the foundations of cumulative privilege. Our current social and economic systems are incompatible with desert. It is not the concept of desert that is outmoded, however.

The discussion of desert has led us to discuss equality. Rawls' construal of our traditional concept of desert has it conflicting with equality. I wish to examine, in the next chapter, and in brief, the plausibility of such a construal.

CHAPTER FIVE

Equality and Desert.

I have already made some remarks in the previous chapter concerning equality and desert. At first glance, these concepts appear to conflict. All people are equal, but some deserve more than others do. They appear to pull in opposite directions. Argument II is affected, to a large extent, by the problem of partiality in a society of equals.

As Nozick points out[67] people generally assess themselves in terms of how others are doing, or what others have. If we bring in desert, certain differences between people are said to be deserved. Relative to other people, and in some respects, the deserving are better than the undeserving. This does not seem to conform to the traditional idea of equality.

As we shall see, however, this conflict between desert and equality is only apparent. Desert and equality are compatible.

As regards justice and desert, Miller argues that justice involves giving people what they deserve, except when such a process or the attempt to bring about such a process would produce circumstances that are undesirable. He gives the example of it being impossible to ensure that the best athlete will win a particular race, or that the best scientists will win the Nobel Prize. This particular view of justice has

[67]Nozick, Robert ,(1974),Anarchy, State and Utopia Oxford, Basil Blackwell, p242-243

been challenged by various philosophers (Rawls among them, who wants no pre-institutional standards of justice) who think that concepts like "desert" and "merit" are too subjective, or too unclear to base a theory on. As Miller points out, such theorists are simply failing to take into account the fact that while moral desert may be cloudy (as moral issues always are), other forms of desert are not(Miller gives the example of economic productivity. A hard worker deserves more pay, and so forth). Another example would be the fastest runner in a race deserving to win. As Rawls points out, however, these cases are merely instances of legitimate expectation, non-moral desert and will vary with the desert-conferring outcomes specified. Another mistake made is to presume that desert will take preference over other principles of justice; that it will be the sole measure of justice in a society. This, too, need not be the case. To those, such as Iris Marion Young[68] who argue that desert and merit are social constructs designed to favour males, and white ones at that, Miller also has a reply. When it is argued that desert and merit conflict with affirmative action, it is asserted by such theorists that these "meritorious" qualities are merely qualities designed to favour white males. However, if we reject desert and merit, Miller argues, we open the door to practices that would involve discriminating against disadvantaged groups more openly[69].

That the rejection of desert leads to greater unfair discrimination is rather easy to show. The demand for affirmative action is itself strongly based on a desert-claim, namely that previously disadvantaged groups

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[68]Young (1990), "The Myth of Merit" in Justice and the Politics of Difference Princeton University Press Princeton, NJ

[69]Miller,(1998), REP pg 27

were discriminated against undeservedly. Indeed, it is precisely because no significant differences in legitimate desert-bases can consistently be shown that various institutionalized ethnic discriminations were abandoned. The contention that blacks, women, Irishmen and so forth should be equally treated is based primarily on the cold fact that in no respect can they be shown to be inferior with regard to any legitimate desert-bases. Furthermore, to remove desert from this picture would reduce affirmative action to mere institutionalized racial discrimination. The moral basis of affirmative action itself collapses without desert. Blacks do not deserve to be the poorest population group of our society, and this is what affirmative action is aimed at stopping. There is a conflict of desert with affirmative action, when it discriminates generally at the level of university scholarships, entry-level jobs and so on. Those responsible for the oppression that created the need for affirmative action are not discriminated against, while those who were not responsible for the oppression at all (young white males in almost every case) are disadvantaged as a result of something their ancestors have participated in or perpetrated. This merely strengthens Miller's earlier contention that desert can co-exist with other political and moral concepts, and by no means is it apparent that desert is to be the dominant moral and political concept within a society or an institution. With affirmative action, we have a conflict on the one hand between a process of blind merit (the legitimate expectation of young whites to fair competition for a position) and group desert (the moral desert of blacks, women, etc., to have a more active role in the economy and in politics, this equal role being deserved on the grounds that there is no significant difference between these groups and white males), and between group desert (the desert of blacks and women to have an proportional part to play in the direction their country takes) and individual desert (the moral desert of equal treatment on the part of young white males, who were not part of the decision-making process

that institutionalized oppression of women and certain ethnicities) on the other. Yet we can disregard individual desert and merit in this case, or at least recognise it as unimportant compared to the attempt at bringing about equality.

In "Equality and Justice", Miller[70] talks of people having "just claims" to inequalities, and says that "in general justice requires us to render to each his or her due. In many cases, one or other form of desert will be the relevant criterion, and distribution according to desert is not egalitarian" [71]. He clearly discusses equal distributions in terms of desert, when he dismisses the notion that all natural resources are equally deserved. Trees, for example, are a natural resource. If I plant a number of trees, my contribution to the existence of these trees should be taken into account when the wood is divided up. I have a claim to a larger share of wood than do others, as does the lumberjack who actually chops the trees down. This language of claims is used to derive a clear and cogent account of distributive justice. My claim can be immediately invalidated if it can be shown that others were not given an opportunity to avail themselves of tree-planting resources (if, for example, an ancestor of mine had established a monopoly on the acorn trade, and I inherited this monopoly), or if others were not given similar opportunities to enrich themselves.

Miller's own construal of a desert-based theory of equality is as follows. In general, demands for equality in distribution will fall into one of three categories. In the first category, the person concerned

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[70]Miller, (1997) Equality and Justice, unpublished paper.

[71]Miller, (1997) p 5

will have a claim on equality of distribution when there are no significant differences between persons (Miller uses the example of manna-from-heaven, in which no-one has had a hand in the production of the good, so everyone has an equal claim). In the second category, people will have equal claims on a good when it is unclear what the distribution of labour across persons required to perform the specified action was. An example of such a case would be when a team of players wins a rugby match. It is impossible to say whether it was the props, the wings, or the fullback in the team who was responsible for the victory, even though differences in relative performance may be observed. The third category bases desert of equal treatment on membership. Our society agrees to treat all human adults equally, and specifies the condition for adulthood as being mentally competent and over the age of 21. All members of this group therefore receive all rights attendant on this membership. I have a desert-claim on these rights the minute I turn 21, and any attempt to deny this claim should be viewed as unjust[72]. All of the above are, however, cases of legitimate expectation, and not desert in Rawls' system. These are clear cases where inequalities are not justified.

We know that a system of justice based on desert is going to require, from time to time, that certain inequalities be allowed (or encouraged) to take place. Distributive equality is widely regarded (particularly by the wealthy) as an evil, or at least an undesirable practice. Social equality, however, is not a distributive practice, as Miller points out. It is not competitive. It's a certain way of life whereby

[72]Miller, (1997), pp 6-9

people treat each other as equals, a "society of misters[73]". Miller does admit that it has certain distributive characteristics. It is an important backbone of a desert-based society, as Miller points out with his doctors example. John is a better doctor than Peter. It is just for me to prefer seeking out John when I am sick. It is not just however, to treat them with inequality in any other respect because John is a better doctor. John is not a better person than Peter simply because he has more skills, unless it can be shown that the reason for John's greater skill is a commitment to human flourishing and significant personal sacrifice. Social equality requires that "our most important associations should be formed on the basis of equality"[74]. Obviously, citizenship would be such an association, and unless we are equal as citizens, we cannot be socially equal. This is obvious. Egalitarianism, (and desert) will require the structuring of society in such a way that hierarchies are eliminated, and inherited wealth is outlawed (Miller puts the last point somewhat more cautiously. He says: "In particular, we will try to avoid the emergence of large-scale, cumulative inequalities of advantage"[75]). Some inequalities are obviously deserved (as reparation for a particularly dangerous job, or a position that requires extensive and costly training), but Miller points out that fairness and desert do not require that levels of income differ as dramatically as they do in current free-market capitalist states[76]. This, too, seems correct. Through

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[73]Walzer, M, Spheres of Justice (Oxford: Martin Robertson, 1983). Quoted by Miller. The phrase refers to an inbuilt egalitarianism in a society, whereby there are no hereditary titles and the highest social rank one can attain is no higher than any other. The usage is somewhat archaic here, but a more modern rendering would be "a society of Mr.'s and Ms.'s". Political correctness seldom makes for elegant expressions.

[74]Miller, (1997), p 14

[75]Miller, (1997) p 15

[76]Miller,(1997) p 16

judicious application of my intellect, and/or hard work, I can possibly deserve to earn three or perhaps even four times more than the workers under my authority (my work contributes more to our joint enterprise perhaps). No-one, however, can possibly point to any difference of effort or ability that would justify an inequality of hundreds of times, however, although even under the best market-based system such things might occur, as the result of market forces such as particularly high demand for the product some person produces. There are times, as has been pointed out to me, where a single individual can add value of hundreds of times to a particular company or product, as a result of market forces. Such things occur based on demand for a particular service or product. This demand has as its base the perceived value in the eyes of the consumers of this particular service or product. This perceived value may or may not correspond to the actual value or worth. One's restaurant could be famous and successful because one's head chef is French and homosexual, which could appeal to the stereotypes of certain gourmet bigots. In actual fact, the chef might be merely as good as a South African with similar training. The French chef contributes no more to the actual quality of the food than would any other, but because of some morally questionable reasons, his contribution (his sexuality and his nationality) becomes the lion's share of the value of the restaurant, and the primary determinants of his success have nothing whatever to do with his ability. Which, I hope, will make an important point about market forces: they are morally blind, and one's fortune in society often depends on factors as arbitrary as one's sexuality or ethnicity. To make market forces the primary determinant of an individual's fortune in life is unjust, particularly when the market is as uneducated as ours is . This means that desert and equality demand some form of redistribution in our society. Social equality and desert are natural bedfellows. Social equality follows from desert, and practically all resulting equalities follow

from these two factors, either one or the other, or in conjunction.

Miller advances a particular example of recognition of desert that is compatible with social equality. Suppose we were to implement an honours system, whereby public recognition (a television appearance or newspaper interview) is given to those who make a great contribution to charity. Capitalists would probably favour such honours being given to those businessmen who make large cash contributions to charity. But we're not really recognising desert, in this case, because these contributions are made possible, in the main, by the businessmen being advantaged by a system that, when applied correctly and combined with a practice of inherited wealth and opportunities, brings about an unjust distribution of wealth and power. We recognise desert, and pay homage to social equality, when we honour those who have given of their time and effort in the service of charity [77].

Sooner or later, discussion of desert is bound to turn towards meritocracy. Meritocracy is the ultimate desert-based society if we follow conventional desert theory, and is just another unfair hierarchy if we follow Rawls' anti-desert argument. By meritocracy I mean a society such as was favoured by Plato in The Republic, a society where one's power is largely determined by ability, effort and talent. If there is desert in such a case, then it will fall into the category of the non-moral, or Rawlsian legitimate expectation. In such a society, a high-ranking politician would probably be an expert legal theorist, a political theorist and a political philosopher, if not a sociologist, psychologist, economist and historian as well. At the very least, a chief executive would be a student of many such disciplines, instead of the

[77]Miller, (1997), p 16

winner of a long and convoluted popularity contest (not that I wish to suggest that chief executives are characterized by such a description, so much as to entertain the possibility of such a person plausibly rising to a position of power).

There are many criticisms of meritocracy, such as that it undermines the free market system by making the distribution of social advantages depend upon merit rather than the brute luck that dominates the free market, that it undermines equality and that merit is arbitrary, defined in such a way as to favour those who already hold too much power in society. Having already addressed the third concern, and regarding the first concern as a positive advantage, I shall address the second.

First it may be necessary to outline why moral and non-moral desert and meritocracy appear to go hand-in-hand. There may be arguments for why the traditional construal of desert does not require meritocracy, but I cannot imagine what they would be. Those with the greatest talents for a particular position are almost certainly going to be those who would perform the duties associated with such a position better than any others. They deserve to have the positions concerned on the basis of their ability (unless, as we have seen earlier, such claims conflict with other principles of justice). Further, those who rely on these positions for one thing or another (leadership, health-care or even provision of a certain service), deserve to have these positions filled by the most able citizens possible. It is fairly straightforward, therefore, that a desert-based theory of justice, even when combined with equality, should lead to some form of meritocracy. Further, true meritocracy will require the elimination of undeserved inequalities of wealth and the transmission from generation to generation of these

inequalities, to ensure that the truly talented are those who fill the positions concerned.

The concern that meritocracy undermines equality, has already been addressed by Miller[78].This is the basic Rawlsian attack already described in the first chapter. Rawls argues that, since virtually any ability and act is brought about wholly or partially as a result of circumstances which the possessor of the ability or author of the act cannot control, the person does not deserve to perform the act or possess the ability. Since a person cannot deserve to perform the act or possess the ability, she cannot deserve any advantages which result from the ability or the act. It is therefore an offense against fairness to discriminate between people on grounds that are morally arbitrary. The destiny of a person within a meritocracy will be almost completely determined by their talents, which are factors beyond their control. The invalidation of the desert-claim underlying meritocracy is a serious one. Miller points out that Rawls cannot possibly hold that there is no desert, for to do this would be to accept determinism.

"I should add that in Rawls' particular case, it appears that he is prohibited from rejecting desert wholesale by his idea that the principles of justice should not rest on controversial doctrines that cannot be given a public justification. The argument that determinism is true, and that it excludes desert is surely such a doctrine."[79]

Rawls has to accept desert partially, even if it is only theoretically possible, such as desert derived from effort. By pointing this out, Miller has driven a wedge into the Rawlsian argument. Rawls has to believe that some desert is possible. Further, he now has to justify why we should narrow the focus of desert so

[78]Miller, (1996), "Two Cheers for Meritocracy" in *The Journal of Political Philosophy:* Volume 4, Number 4. pp 280-283

[79]Miller, (1996) p 281

that only the desert-account favoured in Argument II is allowed. Rawls and Hayek, strangely enough, agree on two main ideas in their account of desert, as Miller points out. One is that all desert has resulted from an activity directly under the person's control. The other is that all desert is moral desert, that reward is deserved because of the moral excellences displayed in one's actions. With these two assumptions, it is easy to show that rewards are undeserved. One's possession of a keen mind can be shown to be beyond one's direct control and morally neutral. Undeserving on two counts. Miller wants to know why we should make these two assumptions. Why, he asks, is Hayek's winning of the Nobel Prize for economics on the basis of his writings a case of moral desert? All we need to demonstrate that he deserved the Nobel Prize is point out that he indeed wrote the texts in question. Desert is not always moral, yet both Hayek and Rawls assume that all desert is [80]. Once again, however Hayek's winning of the Nobel Prize is a case of legitimate expectation (He wrote in the full knowledge that the best text on economics would win the Nobel Prize, and wrote the best text, by the standards of the committee, so he has a legitimate expectation to the prize), so Rawls can accommodate this objection and still lay the charge that desert undermines equality, at least in some respects.

Desert is compatible with equality, and in some cases, can even be seen to buttress it. Many arguments for economic equality, or equality of socially-distributed resources, can be made on the grounds that it is apparent that inequalities in such things are often undeserved. There is, however, the large problem that in a just society, with equality of opportunity such that the same educational and training opportunities

[80]Miller, (1996) pg 281-282

are available to all, such that everyone be given equal opportunities to use and develop their skills, talent and character, the destiny of a particular person is going to still be largely beyond her control. Does this follow? I maintain that it does.

For the sake of argument, let us imagine that we are living in a society designed along Rawlsian lines. We have, by instituting a just society along Rawlsian lines, (and we are compelled to do so by his account of desert), equalized as far as is humanly possible the role played by environment, nutrition, education and so forth in the development of personality and skills. Cumulative privilege will presumably cease, as inheritance and differential education according to social class can hardly be said to best advantage those least well-off. What is left is inherited characteristics, which will then be the overwhelming determinant of success. The place one occupies within a Rawlsian society will then be determined largely by factors completely beyond the control of the individual, namely, inherited characteristics. The natural component of my intelligence will be responsible for the bulk of my advantage over someone else. The impact of these advantages will be minimized by the difference principle, but the overwhelming determinant of my destiny will be the type of person I am in the strict, genetic sense of the word. Rawls has established a meritocracy without desert, and claims it to be perfectly just.

Of course I have overstated the case. The advantage of the Rawlsian "meritocracy" is that it maximally benefits the least well-off, and though people's outcomes in life will be influenced in Rawlsian society largely by their natural talents and so forth, Rawls is not claiming any moral justification for it other than that those least well-off will benefit, and leaving the lion's share of resources in the hands of those most

able to use them will simply increase the minimum share.

It can be seen, therefore, that equality and desert are not exclusive of each other, and that bringing desert firmly back into political language, we may actually increase the trend towards equality.

CHAPTER SIX

Conclusion:

I hope, by this stage, to have given some weight to the contention that the Rawlsian conception of desert is undesirable, if not untenable.

Certain points of the argument are undeniable, however. One of these is that we cannot have desert, on the basis of either agency or actual character, without some form of economic restructuring. To maintain desert and have it mean anything to moral or political philosophy, we must either eliminate cumulative privilege and unfair advantage, or nullify their effects on the chances of success for individuals in society. This is the choice we face: to lose desert or bring our societies more into line with socialist-liberal intuitions of social justice. I would like the latter choice to be the one we adopt, both because I believe social justice to be empty without desert and because it is obvious that our societies waste crippling amounts of human potential by arbitrarily denying opportunities to those whose ancestors did not occupy favourable positions in society.

It is clear, at this stage of the debate, that we cannot be said to morally deserve anything, if we accept the Rawlsian account. We cannot, further, be said to possess non-moral desert. Rawls holds out the promise of legitimate expectations, which accommodates a form of our traditional concept of desert. We cannot, however, have legitimate expectations without a Rawlsian distribution. Our societies are not legitimate in the Rawlsian sense, because the institutions that can lead to them are not yet in place.

The problem, as we have seen, lies with the Rawlsian stipulation of responsibility as the basis for pre-institutional desert. Rawls' conception of responsibility is too strict. Unfortunately, it also conforms to our moral intuitions. The challenge, then, if desert is to be saved, lies in the account of responsibility we choose.

I have discussed responsibility at some length, and I have attacked Rawls' account of responsibility as undesirable, because of the problems it raises for moral assessment. The idea of complete control over circumstances being a condition for responsibility is not a tenable moral position. It is untenable for three reasons. One is that it makes moral assessment impossible. Another is that it makes moral desert impossible. Thirdly, and most important, it undermines the idea of the agent as master of his or her own destiny which is essential to any autonomous and deliberated action.

Any attack on the Rawlsian account of desert is going to have to deal with the Rawlsian account of responsibility. It is a problematic account precisely because it conforms to our intuitions. I cannot be responsible for an action if I have not brought about all the pre-conditions for that action myself.

Pre-conditions for an action in which all people can share (access to resources, being human, educational opportunities, and so forth) I shall call "general" pre-conditions. Pre-conditions for an action in which it is impossible for all individuals in a society to share (particularly high levels of talent, circumstantial luck, etc.), I will call "special" pre-conditions.

Even were a society to specify that the general pre-conditions for a particular action be freely available, a particular agent can only claim responsibility if there exist no special pre-conditions for the action in question. I can be responsible for the development of my own intelligence if it can be shown that I possess no special pre-conditions that would constitute advantages over another person also trying to develop their intelligence, on the Rawlsian account. If it can be shown that no special pre-conditions exist, then I possess the responsibility for my own intelligence, and can deserve both my intelligence and the fruits of my intelligence. However, this can not be shown. Part of the reason why I cannot show that I possess no special pre-conditions is that it is not known how large a part genetic heritage plays in intelligence. While another may share my general pre-conditions, in that they are capable of voluntary action, have the ability to assimilate and process information, and have access to an educational institution on an equal level with my own, I could possess a genetic condition which sets a higher upper limit on my intelligence than is true for the average person. This genetic intelligence-limit is a factor external to myself, in that it came about without my knowledge or desire that it exist. Therefore, I cannot claim responsibility for my (hypothetically) greater intelligence. I therefore cannot deserve it or the fruits of it, since I cannot deserve what I am not responsible for.

A possible line of attack is to re-define responsibility to take account of special pre-conditions such as genetic heritage. Such an account would stress that I am responsible for that which derives from me, and which I further choose to identify myself with. On such an account, I would be responsible for my intelligence because it is mine, and also because I choose to develop it. I envision such an account stressing the voluntary aspects of acquisition of values, talents and character traits.

Responsibility for personal morality could exist on the same grounds as those tentatively outlined above. Given that I am exposed to a plurality of moral positions, I choose to identify myself with a particular moral code and choose to act in accordance with that code. In that sense, I would be responsible for being a Kantian, let us assume, even though I did not bring Kantian philosophy into being.

Even this account of responsibility would require that external influences on the individual be standardized. Far greater freedom of opportunity would have to exist in order for anyone to be responsible for their actions, because the general pre-conditions for action would have to be the same for everyone in order for one person to be responsible for a particular act while another is not.

A similar account of responsibility for character is favoured by Trianosky[81], who argues that one must play an active part in the development and maintenance of a character trait in order to claim responsibility for it. The elements of moral character, for Trianosky, all involve the will in one way or another. The development and maintenance of political or moral identities and loyalties, for example, is, for Trianosky, to a great extent a matter of "doing and continuing to do certain sorts of things: choosing, deciding, endorsing, commitment, pursuing, accepting, and so on"[82]. Trianosky admits that these traits are not completely voluntary, although we are only not responsible for our character when we are completely passive in the acquisition and maintenance of this character. He does not go so far as to

[81]Trianosky, (1990), pp 97-100

[82]Trianosky, (1990), p 97

agree with Aristotle that the acquisition of character is primarily a voluntary activity, but he is clearly working with an account of responsibility which is different from Rawls'. He does not spell out the relationship between responsibility and accountability, and he barely mentions desert, but it is clear that this is a workable, although to a large extent, pre-theoretical account of responsibility. The exercise is thus, in principle, possible. If we can reasonably be said to be responsible for our character, then there must exist a similar and acceptable account of responsibility that can cover both character and action.

The problem with introducing a weakened account of responsibility, however, itself carries with it certain disadvantages. If the conditions of responsibility are sufficiently weak, we will have an account of responsibility without any "teeth", an account of responsibility which will not be able to distinguish between those things partially beyond the control of the individual and those things totally beyond the control of the individual. We will lose an important argument for social justice if our account of responsibility rests on weak criteria.

What is apparent from the analysis of issues in desert that I have completed is that competitive desert prior to a major redistribution of resources and opportunity is not possible. I cannot morally deserve my advantages over another, since those advantages are given me by forces beyond my control.

Non-moral desert may seem to be a simpler case. Since it rests on some idea of a just contract undertaken by individuals such that certain specified outcomes will generate certain rewards or accolades, such as the most productive worker being the one who receives the most benefits, it would

seem to be less complex than moral desert. Non-moral desert is invalidated, however, by the moral charge that those who compete in trying to produce specified outcomes are not equal in the opportunities they are given to fulfill the specified outcomes, or to meet the pre-conditions (such as, to use the worker example, high levels of energy, perhaps due to good diet) for fulfilling the specified outcomes.

Even were we to maintain non-moral desert, we still cannot allow such desert to influence a distribution along the lines of the one discussed by Rawls, firstly because the preferred outcomes are not yet stipulated, and secondly because we will be discriminating between people on morally arbitrary grounds. Moral desert was the only possible candidate for influencing a Rawlsian distribution, and we cannot possibly meet the criteria to claim moral desert.

I therefore must conclude that, unless a better account of responsibility is evolved, one which can accommodate the moral intuitions which force us to accept Rawls' account of responsibility and the account of desert which it informs, desert will no longer be an active concept in moral and political philosophy. All of the attacks on the Rawlsian position that I have considered have failed to rescue desert as an active concept. I hope to have convinced the reader of the importance of desert remaining an active concept in moral and political philosophy, and the urgency of the need to evolve an alternative account.

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