

The Fitting, the Deserving, and the Beautiful

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Punishment is punishment even if it is not (perceived by the punisher to be) deserved. But punishment which is not (perceived by the punisher to be) fitting is not punishment. This paper explores the differences between desert and fittingness, and argues that incorporating fittingness into the definition of punishment is not problematic, whereas incorporating desert in such definition is, in contrast, infamously problematic. The main difference between these two notions turns on the interesting differences between two types of normativity. Fittingness is exclusively concerned with aesthetic normativity, whereas desert is more directly concerned with moral normativity. When something is fitting, then it is, to an extent, intrinsically good, and, to an extent, it is also beautiful. The notion of fittingness has largely been ignored in discussions of punishment, yet it helps us better to understand the phenomenon of punishment, and in particular the thorny relationship between this phenomenon and desert.

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Notwithstanding the considerable attention which it has received, the relationship between desert and punishment remains obscure. The prevalent view is that desert is the essential element in retributivist justifications of punishment, i.e., those justifications which assert that punishment is justified by its being deserved (and, in some versions, by nothing else).¹ Blunt

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1. See Mirko Bagaric and Kumar Amarasekara, 'The Errors of Retributivism', *Melbourne University Law Review* 24 (2000), pp. 124-89; R.A. Duff, *Punishment, Communication, and Community* (Oxford: Oxford University Press, 2001), pp. 1-34; J.L. Mackie, 'Retributivism: A

assertions of this sort, however, have struck many as empty, or even as unintelligible.² Thus, as a way of infusing these assertions with some content, or with intelligibility, some have sought to incorporate desert into the very definition of punishment, claiming that so-called ‘punishment’ which (the punisher believes) is not deserved is, purely as a definitional matter, simply not punishment. Contemporary analytic philosophers, especially after an influential article by Antony Quinton in *Analysis*,³ have been conspicuously prone to endorse versions of this minimalist move.⁴

Yet, we should resist minimalism, for it forces us to choose between two inconvenient options. On the one hand, if we include desert into the very definition of punishment but we also appeal to it when discussing the justification of punishment, then we are guilty of committing the sort of fallacy that G.E. Moore famously called naturalistic. The conjunction of the claim that (a) what justifies (recommends, suggests, etc.) punishment is that it is deserved, and (b) that part of the definition of punishment is that it is deserved, resembles the erroneous conjunction that Moore attributes to Bentham (and others) of the claim (a) that what renders an action good, i.e., what justifies (recommends, suggests, etc.) an action is its tendency to promote general happiness, and (b) the claim that (part of) the meaning of ‘good action’ is that it tends to promote general happiness.⁵ In both cases the definitional and the justificatory enterprises end up hopelessly confused.

On the other hand, if we appeal to desert *only* in the definition of punishment, we do not merely confuse these two different enterprises: in fact, we altogether *evade* the important justificatory debate. It is in general a bad idea to include in our definition of this or that entity the assessment criteria which tell us when we are in the presence of a good or bad example of such entity: we ought to define ‘marriage’ without requiring that marriages be good in

Test Case for Ethical Objectivity’, in Joel Feinberg and Jules Coleman (eds.), *Philosophy of Law* (Belmont, CA: Wadsworth, 6th edn, 2000); Michael Moore, *Placing Blame* (Oxford: Clarendon Press, 1997), pp. 83-103; Ted Honderich, *Punishment: The Supposed Justifications* (New York: Harcourt, Brace & World, 1970), pp. 9ff. (Honderich’s recent, revised edition [Pluto Press, 2005] maintains this orthodox account of the relationship between punishment and desert).

2. For the unintelligibility thesis, see, e.g., John Cottingham’s influential ‘Varieties of Retribution’, *Philosophical Quarterly* 29 (1979), pp. 238-46 (p. 239).

3. See, e.g., Antony Quinton, ‘Punishment’, *Analysis* 14 (1954), pp. 133-42. Minimalism is related to, though not identical with, the mixed justification of punishment which Quinton and Rawls more or less simultaneously put forth (see, e.g., John Rawls, ‘Two Concepts of Rules’, in Samuel Freeman [ed.], *John Rawls: Collected Papers* [Cambridge, MA: Harvard University Press, 2001], pp. 20-46); for an earlier formulation of thesis in embryo see J.D. Mabbott, ‘Punishment’, *Mind* 48 (1939), pp. 152-67.

4. I borrow the term ‘minimalism’ and its cognates from Cottingham’s ‘Varieties’, pp. 240-41, who in turns borrows it from M.P. Golding, in his *Philosophy of Law* (Englewood Cliffs, NJ: Prentice Hall, 1975), p. 85.

5. See E.G. Moore, *Principia Ethica* (Cambridge: Cambridge University Press, rev. edn, 2000), *passim*, but especially pp. 69ff.

order for them to really be marriages; we ought to define 'argument' without claiming that an argument needs to be valid in order for it to really be an argument, or 'law' without claiming that it needs to be just in order for it to really be law, etc. Those who, like Quinton, turn retributivism into a merely logical thesis seem rather enthused about their having 'solved' the age-old, thorny debate between retributivists and consequentialists, insofar as minimalists think that this move reveals nothing less than that the debate was spurious from the start. Consequentialism (the view that punishment is justified by its consequences), they believe, is a moral thesis whereas retributivism is merely a logical thesis, and thus these two views do not really oppose each other. This is of course wholly, and understandably, unacceptable to retributivists, who wish to bring desert into the discussion of the justification of punishment and thus disagree with relegating it to a purely definitional matter.

A further reason for rejecting minimalism has to do with the fact that the most pressing rationale for including desert in the very definition of punishment, a rationale particularly conspicuous in Quintonian-inspired minimalisms, has been to defend utilitarianism from the famous objection that it may tolerate punishing innocents (utilitarians, like anyone else, simply *cannot*, logically speaking, punish innocents). This is, however, a bad rationale: it amounts to a mere word game, a definitional stop, a move which, in my estimation, has been sufficiently discredited by H.L.A. Hart and others.⁶ The obvious rejoinder is to scuff at the evasion, reformulating the objection in terms of utilitarianism allowing for the victimizing (to use Ted Honderich's apt term⁷), or harming, or hurting, of innocents.

Yet, many capable authors throughout history have been attracted to minimalism, and not all, not even the majority of them, were trying to defend utilitarianism. Perhaps, then, there exists a bona fide, robust analytical reason which recommends the incorporation of desert into the very definition of punishment.

Discipline and Punish...and Fittingness

Other than the attempt to defend utilitarianism from recalcitrant attacks (which I have just deemed unsuccessful), the main reason for including desert in the definition of punishment is that it seems helpful, or even necessary, in order to distinguish punishment from related phenomena. One classical example is the suggestion that punishment, quite unlike revenge, is only (from the punisher's perspective) inflicted upon the deserving. Elsewhere, however, I have argued that this is not a compelling way of distinguishing

6. H.L.A. Hart, *Punishment and Responsibility* (Oxford: Clarendon Press, 1995), pp. 5ff.

7. Ted Honderich, *Punishment: The Supposed Justifications* (New York: Harcourt, Brace & World, 1970), *passim*.

punishment from revenge.⁸ I will not repeat my views here, but will just mention that the standard arguments which supposedly show punishment and revenge to be different are capriciously stipulative and euphemistic: rather than offering any analytical elucidation, they often serve merely rhetorical purposes.

Consider, however, the difference between punishment and disciplining. Desert seems useful in distinguishing between these two phenomena. There seems to be an obvious difference between, say, a parent disciplining her daughter and a parent punishing her daughter (though complications surely arise because the two activities can be, and often are, carried out simultaneously). I believe that a distinction between punishment and disciplining can be obtained without appealing to desert: appealing to other less problematic aspects of punishment (aspects incorporated in my, and in others', definition of punishment): say, by noting that we can discipline (though we cannot punish) beings who are not moral agents, or by pointing out that when we discipline (but not when we punish) we need not believe that the world would have been a better place had the act to be disciplined not occurred in the first place, or even by claiming that we can engage in disciplining (but not in punishing) acts which are not instances of wrongdoing. Still, distinguishing punishment from (mere) discipline via the differential role played by desert seems to go to the heart of the matter; it seems that the presence or absence of desert is the *crucial* element in grounding a distinction between the two phenomena. In fact, I think that the desire to distinguish punishment from discipline is the best rationale for including desert into the definition of punishment. Moreover, this strategy comes with a bonus, for, from the perspective of the history of ideas, it provides a charitable explanation of the popularity of some forms of minimalism.

My view is, however, that including desert in the definition of punishment is problematic even in this case. This problematic nature is perhaps not as obvious as it is in the case of defending utilitarianism, or in the attempt to show how punishment allegedly differs from revenge, but it obtains here too nonetheless. Thus, elsewhere I have proposed a definition of punishment in which I do not include desert: a punisher need not believe that the punishment she is about to inflict is deserved by the soon-to-be punishee.⁹ Yet, in my definition of punishment I require that the punisher believes that what she is about to inflict upon a potential punishee 'somehow offsets' the punishee's wrongdoing. This requirement may seem too loose, in that it is not clear what this 'somehow offsetting' is, and, more poignantly, it is not clear how it is not simply a way of doing precisely that which I criticize, i.e., smuggling desert (while avoiding the mere word) into the very definition of punishment.

What should be part of the definition of punishment is not desert, but something else, admittedly similar, but still importantly different, having to

8. See my 'Punishment and Revenge', *Law and Philosophy* 25.1 (2006), pp. 81-118.

9. See my *Punishment and Retribution* (Aldershot: Ashgate, 2006).

do with *fittingness*: when we punish we wish to offset wrongdoing insofar as this offsetting strikes us as fitting, but when we discipline we are not trying to offset anything. Disciplining, as I understand the phenomenon, is *instructional* or *pedagogical* through and through; it is a form of teaching. It is a form of teaching that may involve some infliction of pain, or some form of otherwise severe treatment, but it is teaching nonetheless. The discipliner is not at all interested in offsetting wrongdoing (and much less in giving *wrongdoers* what they deserve), but simply in teaching something to someone (or to a dog or a parrot), i.e., in making sure that she acts in this or that way in the future. Of particular importance is the fact that the discipliner need not at all believe that the actual means of discipline she employs are in themselves of any value; if she can impart this or that bit of knowledge, or promote this or that behavior, without inflicting any pain whatsoever, she would probably prefer this alternative.

The infliction of pain (or of severe treatment) is, *in itself*, virtually irrelevant in cases of disciplining, except, of course, in those rare cases in which the disciplining/teaching can only be accomplished by means of the pain. The punisher, in contrast, believes that the very pain of punishment is important in the sense that it is this pain, itself, that offsets (even if only partially) the wrongdoing; it is, itself, *fitting*, even if not necessary or conducive to *attain* anything further. Moreover, this pain of punishment is fitting, even if it is not even *deserved*. Thus the appeal to fittingness seems to provide us with that poignantly compelling way of distinguishing punishment from discipline which seemed to call for an appeal to desert, without actually appealing to desert.

Including fittingness claims into the very definition of punishment does not face the problems associated with including desert-claims into such definition. For, insofar as retributivism is linked to desert-claims, and I have excluded desert-claims from the definition of punishment, surely I have not evaded the traditional, thorny debate between retributivism and consequentialism. I am, moreover, not *reducing* any venerable and robust normative position (retributivism) to a merely logical thesis (minimalism). Still, since I have included fittingness into my definition of punishment, and fittingness seems to be (and I believe it is) a normative notion, I may have unwittingly evaded *that* normative discussion when discussing the justification of punishment (or else committed yet another version of the naturalistic fallacy). The rest of this paper relates to the relationship between the deserving and the fitting, and I hope to assuage this worry in due course.

For now, however, it is important to emphasize that even if the incorporation of fittingness claims into my definition of punishment were a problem, it would be an entirely different problem from the one facing the usual smuggling of desert-claims into the definition of punishment. After all, I have not claimed that *all* the normativity which may be pertinent to discuss regarding the justification of punishment is exhausted by the reference to the fittingness included in the definition of punishment. In fact, I will argue that the

specific normativity of fittingness claims is but a small part of the normative universe which is pertinent to discuss when dealing with the justification of punishment—although it is a part which has been routinely overlooked, and a part which holds important clues regarding the structure of such a normative universe.

To consider a given course of action fitting, i.e., to think that the state of affairs which it helps to bring about exhibits more fittingness than the state of affairs that would obtain if we did not act in this way, is different from considering that this course of action is what desert demands. (Or, expressed in terms of Moorean organic wholes: the organic whole which contains what we deem fitting is intrinsically better than the organic whole which lacks what we deem fitting, and this is not to thereby equate the fitting to the deserving.) Consider a few examples which illustrate this difference.

We may be particularly kind to a friend who has recently been affected by a series of misfortunes. Our *supererogatory* niceness, we may think, is a way of bringing some joy into her life—joy which would somehow be fitting, i.e., it would tend to offset the sadness that has afflicted her. The crucial point, of course, is that we need not at all believe that our friend *deserves* our special kindness (the relationship between desert and supererogation is complex: is it possible for someone ever to *deserve* something which is merely someone else's *supererogatory* action?). We simply believe that it is *good* if we do something to offset, counterbalance or compensate (I use these expressions as synonyms—they are forms of fittingness claims) the bad things that have afflicted her.

Or recall the scene in Woody Allen's *Annie Hall*, where Marshall McLuhan unexpectedly appears at the entrance of a movie theater, and humiliates a loudmouth moviegoer who had been blabbering pompous but half-baked references to McLuhan himself. Again, we need not believe that the loudmouth *deserved* the humiliation (or the correction) in order for this scene to crystallize, i.e., in order for us to see its *fittingness*. Similarly, you may know of an arrogant colleague who is very irresponsible in his outlandishly absurd views; you really despise him, and you yearn for the opportunity to one day expose his obscurantist fluff. One day, as you listen to him give a talk on a topic about which he knows very little, but about which you consider yourself an expert, you fantasize about just standing up in the middle of his talk and slapping him. Now, there are many good and important reasons (beyond pragmatic considerations) why you should not do this; but still, there is a sense in which it may seem *fitting* to do it, independently of whether or not he deserves to be slapped.

Or consider the following true story. Down the street where I grew up in Caracas lived a couple of public intellectuals of some repute. They stood out as the only savvy intellectuals in my neighborhood. In addition to their smug arrogance, these neighbors often lectured us kids (their sons were my contemporaries) about the absurdity of religion's appeal to supernatural entities. Interestingly, however, the intellectuals believed in (and were terrified by)

ghosts, witches, and the like. A friend of mine (who lived in a fifth-floor apartment overlooking the intellectuals' house) and I occasionally phoned them late at night pretending to be the ghost of this or that famous dead person, and we instructed them to perform all sorts of silly things, i.e., water their garden at midnight, or turn on all the lights in their house at similarly odd hours, and so on, as we watched in fits of laughter.

I am not particularly proud of having done this; I tell the story simply because, as I reflect about it some twenty-five years later, I see it as exhibiting the sense of fittingness in which I am now interested. I suspect that my friend and I caused these neighbors some suffering, some discomfort; yet, even if we could have inflicted an identical amount of suffering or discomfort in some other way, say, by damaging their car, or by breaking something inside their house, nothing other than these prank calls ever crossed our minds. We were simply concerned with this very *scene*, with this particular *state of affairs*, whereby two snobby and arrogant intellectuals were made fun of by two perfectly frivolous teenagers, and in a way that highlighted their incongruous beliefs—this, and only this, was *fitting*. Their stupidity offset, in our minds, their haughty Olympian demeanor, and it was only the pranks which brought about this offsetting. Again, it did not occur to me then, or now on reflection, that the two intellectuals *deserved* our pranks (or that we were *punishing* them), though the pranks seemed somehow fitting. And inflicting pain or discomfort in any other way seemed clearly not fitting.

Perhaps the most obvious way of bringing out the difference between desert and fittingness, however, is to note examples of fittingness which do not revolve around the actions of moral agents (something which, I will argue, cannot happen in cases of desert). We may find it *fitting* when our favorite scotch is finally recognized as one of the best, or when a certain meal is accompanied by a certain wine; or we may find it rather not fitting when our friend who led a particularly healthy lifestyle, dies young, of a heart attack (or even if struck by lightning).

The Scope of the Deserving

The examples above show that fittingness is not intimately connected to ethics, to justice, or to human agency—for there seems to be little (or nothing) immoral or unjust about dying young (in spite of living healthily), or about the best scotch not being so recognized, or even about holding incongruous beliefs about the supernatural, and so on. To claim that someone deserves something is a more normatively robust claim than merely to claim that it would be fitting if she got that something—and this is the crucial difference between fittingness claims and desert-claims. Historically speaking, to view desert as intimately linked to justice or morality is neither an original nor a contentious thesis. What is original about my approach in this article is that I want to discuss the connection between desert and fittingness in earnest, something which, astonishingly, is very rarely done. (As we shall see

immediately, many authors take desert-claims to be a subset of fittingness claims, but these authors hardly ever discuss those fittingness claims which are not desert-claims, or their relationship to desert-claims.)

Before discussing the relationship between desert and fittingness any deeper I need to deal with a recent development in the specialized literature. As of late, the traditional connection between desert-bases and human agency (or at least between desert and responsibility) has been questioned.¹⁰ This poses an immediate problem for my thesis, because if desert is not intimately connected to justice, ethics, and human agency, then I lose my crucial way of distinguishing it from fittingness. As she discusses the state of this current specialized literature on desert, Serena Olsaretti tells us that:

Desert is said to be a sort of ‘fittingness’ between certain features and actions of one person on the one hand and another’s evaluative attitudes on the other....
Most desert claims have, or are *supposed* to have, moral force. To say that someone deserves something is to say that she ought, other things being equal, to get that thing, or that it would be morally better that she get it.¹¹

Olsaretti’s treatment of the relationship between desert and fittingness is a mainstay in the specialized literature: as just noted, often desert is seen as a type, sort, or form of fittingness, although, as also noted, there is rarely a discussion of those types of fittingness which are not cases of desert. The neophyte may also be surprised by the tentativeness of Olsaretti’s remarks, particularly in the statements which I have emphasized, regarding the ‘supposition’ that ‘most’ desert-claims have moral force. For the connection between desert and morality used to be assumed to be rather obvious throughout the history of philosophy.

Olsaretti’s overview of the current literature of desert reveals a rather complicated state of affairs. There are many different *types* of desert; and the distinctions between these types are sometimes extraordinarily subtle. I will ignore here most of the distinctions which Olsaretti aptly discusses; I just wish to briefly mention one of them: the distinction between *ecumenical* and *selective* theories of desert. These labels themselves indicate the main characteristic of each of these theories: the ecumenical theories of desert allow for variegated factors to constitute bases of desert-claims, whereas the selective theories of desert are more or less restrictive as to what can count as bases of desert. (By a ‘basis of desert’ is meant, simply, a feature of the deserving entity which grounds or warrants a desert-claim, i.e., in punishment’s case: culpable

10. See Geoffrey Cupit, *Justice as Fittingness* (Oxford: Clarendon Press, 1996), *passim*; Fred Feldman, ‘Desert: Reconsideration of Some Received Wisdom’, *Mind* 104 (1995), pp. 63-77; John Kleinig, ‘The Concept of Desert’, in Louis Pojman and Owen McLeod (eds.), *What Do We Deserve? A Reader on Justice and Desert* (Oxford: Oxford University Press, 1999), pp. 84-92; George Sher, *Desert* (Princeton, NJ: Princeton University Press, 1987), pp. 6ff., and *passim*.

11. Serena Olsaretti (ed.), *Desert and Justice* (Oxford: Clarendon Press, 2003), p. 4, emphasis added.

wrongdoing.) Olsaretti rightly suggests that an immediate problem for the ecumenical views is that they ‘run the risk of utilizing the notion [of desert] in too loose a sense, so that the claim that someone deserves something just [would simply mean] that it would be good if that person got that thing’.¹²

Olsaretti’s worry is well founded. In principle, that ‘it would be good if a person got a thing’ may be sufficient to claim that it is fitting if she gets it—but not to claim that she deserves it. This sort of worry is further exacerbated when we see that some notable contemporary philosophers allow for desert-claims to be meaningfully, and unproblematically, applicable even to inanimate objects, which is something that I have suggested should be restricted to fittingness claims alone. For example, in an influential article John Kleinig claims that ‘we can quite properly speak of the Niagara falls being deservedly famous or of the Western Australian coastline deserving to be as well known as that of the East’.¹³ Geoffrey Cupit, who, as I shall argue below, is one of the very few authors to discuss fittingness in particular, still claims that ‘we may say that a poodle, a pig, or a pansy deserves a prize, that flags and holy places deserve respect, that a manuscript deserves to be published...and so on’.¹⁴ Fred Feldman has defended similar views; his position is that the connection between desert (bases) and (human) responsibility is much more complicated than has historically been maintained. Feldman’s attempt to sever, or at least to complicate, the connection between (human) responsibility and desert (bases) does not entail that inanimate objects can deserve things, though it points in that direction. Feldman seems to endorse Kleinig’s claim as to the effect that ‘the Niagra [*sic*] Falls deserve to be so famous’, and he appears to bemoan the fact that perhaps Kleinig would, in the final analysis, prefer to treat statements of this sort as *metaphorical*.¹⁵ To be sure, however, Kleinig is emphatic in that ‘desert is not a specifically moral notion’, and he further adds that desert ‘belongs within the general field of evaluation’ and that it is not ‘tied to moral contexts’.¹⁶

The suggestion that inanimate objects can deserve is obviously problematic in a general sense, independently of the fact that it is particularly problematic in light of my suggested way of distinguishing desert from fittingness. Consider what, in extreme versions of the ecumenical theory of desert like Kleinig’s and Cupit’s and Sher’s (and apparently Feldman’s), would be metaphorical usages of ‘desert’. For if the western Australian coastline can really deserve something, then the proposition ‘Today is Monday’ can *deserve*

12. Olsaretti, *Desert and Justice*, p. 6.

13. Kleinig, ‘The Concept of Desert’, p. 86. Similarly, George Sher admits without much ado that ‘the deserving party need not always be a person’ (see *Desert*, p. 8), although of the fifteen cases of desert that he discusses, fourteen are cases in which the deserving party is a person (the sole exception is a case in which the deserving entity is the city of Cleveland).

14. Cupit, *Justice as Fittingness*, p. 36.

15. Feldman, ‘Desert’, p. 69 n. 9.

16. Kleinig, ‘The Concept of Desert’, p. 86.

something too, i.e., in some contexts, to be followed by the proposition ‘Tomorrow will be Tuesday’, just as the series ‘2, 4, 16, ...’ would *deserve* to be followed by 256. Using ‘desert’ in these cases seems to me to stretch the meaning of the term beyond manageability. Consider an additional problem Kleinig (alone) faces. In an uncharacteristically cryptic remark, Kleinig states that the fact that some putative recipients of desert happen to be artifacts ‘limits the sort of thing that they can deserve—praise and fame are about all’.¹⁷ Kleinig’s restriction strikes me as arbitrary: could not, on his very view, Beethoven’s *Fifth* deserve an energetic conductor, or could not a painting by della Francesca deserve a frugal frame, or a certain wine a more knowledgeable drinker, etc.?

Independently of the merit of many of the arguments of these ecumenical authors, on this point I am perfectly in tune with what they and others take to be the orthodox view that desert is intimately linked to morality (and to human agency). And this orthodox view seems to be much more consistent with a rejection of those versions of ecumenism which allow non-humans to be recipients of desert. Consider the consequences of not rejecting this sort of extreme ecumenism: Cupit asserts that ‘to accept justice as fittingness [his own theory of justice] is to accept that desert is central to justice, that we shall avoid acting unjustly if only we treat all in accordance with their deserts...justice is exclusively concerned with desert’.¹⁸

Desert is a moral notion, one which, as we shall see, can and does relate to other forms of valuation, but an eminently moral notion nonetheless. Regarding the manifoldness of the valuation of desert, and the way in which it affects desert bases, I do not disagree with Kleinig or other ecumenists. It is specifically when ecumenism extends to include non-human (or non-moral) agents or artifacts as deserving parties that I find it objectionable. There seems to be an irreducible connection between deserving and human (or moral) agency: if I deserve X, then X is *owed* to me, and if X is *owed* to me, then someone *owes* me X—there is no debt without a debtor. I did not owe my intellectual neighbors prank calls; we do not owe sympathy to those afflicted by misfortune; and, of course, coastlines, numbers and propositions cannot possibly be owed anything at all.

It should by now be clear that, regarding the sort of party which can deserve anything at all, I endorse a selective view of desert: only moral agents can deserve anything, and, in principle, only in virtue of their actions. In my opinion, then, claiming that a certain painting deserves to hang at a more important room in a museum is, if not a metaphorical use of ‘desert’, then a mistaken, misleading use. The claim that the prettiest contestant in Miss

17. Kleinig, ‘The Concept of Desert’, p. 86.

18. Cupit, *Justice as Fittingness*, p. 60. Problematically, however, it follows from his ecumenical views that not to recognize that the western coastline of Australia deserves to be famous, or that a given bottle of wine deserves a better wine cellar, is, in a specifically moral sense, to be unjust.

America deserves to win, again, seems misguided, unless it could be argued that her prettiness was ‘up to her’—and yet, it is fitting that the prettiest contestant wins, even if she does not deserve it.¹⁹ More contentiously, perhaps, the claim that all humans deserve, by the mere fact that they are humans, respect (or to be treated with dignity, or to be recognized with having some inalienable rights) is, perhaps, also a metaphorical usage of desert—insofar as ‘being human’ is not an action. (I do not, of course, wish to suggest that humans should not be respected or treated with dignity—but that, rather than deserving these things, humans are *entitled* to them.²⁰)

What’s in a Word? The Underlying Difference between Fittingness and Desert

I may perhaps be criticized by suggesting that my discussion so far is merely terminological; that is, that it amounts to the following: what others call desert, I call fittingness, and that is the end of the story. Yet, there exists a substantial difference between fittingness and desert, even if some would want to refer to this as a difference between two types of desert. Thus, even if, in the final analysis, the ecumenical views of desert turned out to be correct, i.e., if desert can properly be used in those cases where I suggest that it cannot, this would not really affect the *substance* of my thesis. The ecumenical theorist perforce has to admit that there is a difference between the traditional desert cases (closely linked to human agency and responsibility) and the new cases that she claims are also cases of desert—only insofar as some such difference exists can her theory be called ecumenical. I will avoid merely terminological discussions, and proceed with my distinction between fittingness and desert rather than between different types of desert (even if some would suggest that what I call ‘fittingness’ can also be seen as a form of desert).²¹

As a way of beginning to sketch the implications of my way of distinguishing the deserving from the fitting, I think it is important to say a word about the history of this distinction. The lack of attention which contemporary punishment or desert theorists pay to the distinction between desert and fittingness may be in part explainable by the lack of attention which the distinction received throughout recent history. We can surmise that in

19. For more on the problem of deserving something in virtue of a feature which we possess as a matter of sheer luck, see Henry Sidgwick, *The Methods of Ethics* (Indianapolis: Hackett, 1981), pp. 284ff. and John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, rev. edn, 1999), pp. 88ff., 273ff.

20. For more on the distinction between desert and entitlement see Kleinig, ‘The Concept of Desert’, pp. 87ff., and Samuel Scheffler, ‘Distributive Justice and Economic Desert’, in Olsaretti (ed.), *Desert and Justice*, pp. 79ff.

21. For reasons I have laid out elsewhere (in my *Punishment and Retribution*, ch. 5), I disagree with the talk of different types of retributivism, à la H.L.A. Hart. For other criticisms of Hart’s two retributivisms see David Dolinko, ‘Some Thoughts on Retributivism’, *Ethics* 101 (1991), pp. 537-59 (541ff.).

Augustine's lost *opera prima*, *De Pulchro et Apto* [*On the Beautiful and the Fitting*], a discussion of the fitting may have been found. Indeed, fittingness used to be of interest to medieval philosophers. But specific discussions of the relationship between fittingness and desert were, and continue to be, rather rare. Two of these rare discussions are illustrative for my purposes, insofar as they help delineate the contours of my own position.

The first instance is found in Henry Sidgwick's *The Methods of Ethics*. In this work, Sidgwick discusses the notion of fittingness, which he finds 'often blended indistinguishably with the notion of desert, and so needing to be carefully separated from it'.²² Sidgwick's discussion of the difference between the fitting and the deserving is brief, and it begins with the analysis of how this difference may play out in cases of distribution of rewards, rather than of punishments (after all: 'we may hope that crime and its punishment will decrease and gradually disappear').²³ The following passages contain most of what is important for my purposes:

I do not feel sure that the principle of 'distribution according to fitness' is found, strictly speaking, in the analysis of the ordinary notion of justice, but it certainly enters into our common conception of the ideal or perfectly rational order of society, as regards the distribution both of instruments and functions, and (to some extent at least) of other sources of happiness.²⁴

I interpret this passage as consistent with my view that the distinction between fittingness and desert tracks the distinctive way in which these two notions relate to the moral realm: fittingness is not directly, or necessarily, connected with morality, although it plays some sort of role in our overall evaluation of things, particularly as it concerns itself with 'the rational order'. Sidgwick further explains what he means:

We certainly think it reasonable that instruments should be given to those who use them best, and functions allotted to those who are most competent to perform them.... Particular means of enjoyment should fall to the lot of those who are susceptible of the respective kind of pleasure; as no one would think of allotting pictures to the blind man, or rare wines to one who had no taste: hence we should probably think it fitting that artists should have larger shares than mechanics in the social distribution of wealth, though they may be by no means more deserving.²⁵

Sidgwick's concern, of course, is to maximize utility, and his notion of fittingness seems to track just that maximizing ethos, even in cases in which what fittingness recommends appears not to be recommended by desert.

22. Sidgwick, *The Methods of Ethics*, p. 282.

23. Sidgwick, *The Methods of Ethics*, p. 283. Probably Sidgwick's strong 'instinctive and strong moral aversion' to retributive justice as it relates to punishment (*ibid.*, p. 281) explains his emphasis on that 'other branch of Retributive Justice' (*ibid.*, p. 282) which deals with rewards.

24. Sidgwick, *The Methods of Ethics*, pp. 282-83.

25. Sidgwick, *The Methods of Ethics*, p. 283.

Again, while I do not articulate the difference between fittingness and desert in utilitarian ways (and while in this paper I am not particularly concerned with distributive or comparative justice), the general point Sidgwick makes is consistent with my distinction between the two notions. For, from Sidgwick's perspective, it would be fitting if artists had larger shares in social distributions than mechanics (presumably because they are better equipped to enjoy them, or to use them best), independently of whether or not they deserved these extra shares. In other words, Sidgwick's view, like mine, is consistent with the thesis that some states of affairs exhibit fittingness and not desert.

More recently, in Geoffrey Cupit's interesting work, *Justice as Fittingness*, we find another distinction between fittingness and desert. As in Sidgwick's case, the main reason why Cupit's work is important for my current purposes is that he, too, makes such distinction, not the details as to how he draws it. Consider one of his examples:

Suppose I appear to be failing to honour a contract we have made, and you go to court: and suppose that the judge has accepted my offer of a bribe and decides against you. You complain that you have been treated unjustly, that you have been denied that which is due to you. Certainly you have been denied that which is due to you. But it is by no means obvious that you have been treated unfittingly.²⁶

Or:

It is held by some that, in appropriate circumstances at least, to act justly requires the allocation of resources according to need. This view poses no problem for the claim that justice is a matter of giving to all their due, for it may be said that what is due to people is what they need. But, again, it is not clear that to fail to distribute in accordance with the need is to treat anyone unfittingly.²⁷

In contrast to Cupit, however, I would think that if in his examples you have been treated in ways which are, *prima facie*, undeserving (unjust)²⁸ then these ways are also, *prima facie*, unfitting. These cases are rather different from the previously discussed cases in which I have suggested that there is a difference between the fitting and the deserving, insofar as all the cases I have discussed so far are states of affairs which exhibit fittingness but not desert. And in these examples Cupit seems open to the possibility that there are states of affairs which are undeserving, but which may not be unfitting. It seems natural to suppose that the deserving is a subclass of the fitting and that if something is undeserving then it is also thereby unfitting; while some states of affairs may exhibit fittingness without exhibiting desert, no state of affairs can exhibit desert without thereby exhibiting (some degree of) fittingness. While so far I have limited myself to defending the much ignored thesis

26. Cupit, *Justice as Fittingness*, p. 3.

27. Cupit, *Justice as Fittingness*, p. 3.

28. For the connection between desert and justice in Cupit, see the passage referenced in note 17 above.

that there is a difference between the deserving and the fitting, the independent thesis that the deserving is a subclass of the fitting is probably true as well. In fact, I find this additional thesis extremely plausible, although it seems to contradict Cupit's views. After all, Cupit believes that there are cases in which we are treated unfairly (by which he means undeservedly) but not unfittingly.

The tension between Cupit's thesis and mine does not worry me. For Cupit himself asserts that 'all unjust treatment is unfitting', and this assertion is of course consistent with the thesis regarding the deserving being a subclass of the fitting which I find plausible, but it is inconsistent with his own examples which allegedly show that there are instances of unjust (undeserved) behavior which are not instances of unfitting behavior.²⁹ I think that what explains the inconsistency in Cupit's views (if I am right that there is such) is that while it seems diaphanously clear to me that the deserving and the fitting are different (although their difference, and its implications, remain woefully under-researched), the details of the relationship between the deserving and the fitting are extraordinarily complicated. (If Cupit believes that, in the end, those cases which are unfair/undeserving are after all unfitting as well, then I fail to see the point of the passages just quoted.)

Consider the following remarks by Sidgwick regarding punishment:

The gravity—from a moral point of view—of a crime seems at least much reduced, if the motive be laudable, as when a man kills a villain whose crimes elude legal punishment...still it would be paradoxical that we ought to reduce punishment proportionally: Common Sense would hold that—whatever God may do—men must, generally speaking, inflict severe punishment for any gravely mischievous act forbidden by law.³⁰

It is extremely significant that Sidgwick makes these remarks in the context of the discussion of the difference between desert and fittingness, for it is hard to see how that distinction is relevant in the example at hand. What seems clearly relevant in this example is a distinction between the deserving and the *politically* right or adequate. In other words, if this token act of quasi-virtuous vigilantism depicted by Sidgwick does not deserve to be punished too severely (or at all), this need not have a direct, concrete implication in terms of what the state should do. Quite clearly, the state does not punish all actions that deserve punishment, nor does it punish whatever it punishes exactly as much as it deserves to be punished, and, finally, it sometimes (too often) punishes actions which do not deserve to be punished at all. But the discussion as to what is politically sensible to punish says little about fittingness.

While Sidgwick's remarks strike me as somewhat out of place, they are useful for my purposes in that they highlight the importance of distinguishing

29. Cupit, *Justice as Fittingness*, p. 15 and *passim*.

30. Sidgwick, *The Methods of Ethics*, p. 291.

between different *types* of normativity. Sidgwick distinguishes in this example between political and moral normativity—and he seems to have either forgotten about the normativity of fittingness, or to have somehow subsumed it under moral normativity. The most important consequence of distinguishing fittingness from desert, whatever words we may want to use to mark this distinction, is that the normative implications of these sorts of claims are themselves subtly and importantly different. The normativity of fittingness, unlike the normativity of desert (or indeed unlike any form of political normativity), is *wholly* aesthetic.

Normativity and the Beautiful

By ‘aesthetic’ normativity, I mean a normativity which allows us to evaluate, praise or criticize phenomena in ways which are different from typical moral evaluations, but which nonetheless are *robustly* normative. One normative implication of saying that ‘X is beautiful’ is that this proposition entails, *ceteris paribus*, that ‘it would be good if X existed’; the scope of the *ceteris paribus* clause that we would need in order to derive from that first proposition that ‘we should bring X about’ is so immense that any talk of entailment in this case is implausible. The connection to fittingness should be obvious: to say that something is beautiful is much more like saying that it would be fitting if it existed, than like saying that we should bring it about.

By ‘robust’ normativity I refer to a type of normativity which while not moral (in the sense that its tendency to issue in recommendation for action is rather limited), is not as inane as the sort of logical normativity of minimalism. An intelligible debate can arise between what aesthetics recommends and what morality recommends, whereas an interesting debate between what logic recommends and what morality recommends is not likely—the insignificance of the second sort of debate is of course assumed by the minimalists, and this is why they think that they have solved the traditional debate about the justification of punishment. A debate between the aesthetic merit of making the prank calls to the snobby intellectuals and the immorality of calling them is intelligible (and interesting), whereas a debate between retributivism, understood as a mere logical thesis, and consequentialism understood as a moral thesis is rather unintelligible (and uninteresting). My assertion that aesthetic normativity is robust is to be understood, then, on first approximation, in contrast to the sort of rather thin normativity of logic underscoring minimalist reductions of retributivism. That is, to ‘solve’ the impasse between retributivists and consequentialists by pointing out that retributivism is really a logical thesis is to evade the interesting aspects of the impasse.

I do not wish to suggest that all normativity which is not moral is aesthetic; I do not even wish to suggest that all *robust* normativity which is not moral is therefore aesthetic. There are other forms of normativity which are in different degrees robust: political, religious, traditional, etc. Furthermore, the realm of the aesthetic is broad (it is not limited to works of art: to claim

of a sunset that it is beautiful, for example, is to make an aesthetic assessment, although sunsets are not works of art), but it is not so broad as to encompass all the non-moral.

The connection between ethics and aesthetics has historically been fraught with difficulties, and it is such that I am not prepared to claim that these are two entirely independent realms. The two realms have perennially appeared difficult to distinguish, at least since Plato, whose amalgamation of the good with the beautiful continues to be seductive.³¹ When the two realms are not fully equated, they tend to be treated as if they are somehow parallel: in his recent discussion of torture, for example, Sanford Levinson points out that it is obvious 'that torture is both ugly and evil', and this sort of move is very common.³²

Moreover, as Colin McGinn points out, there are 'terms of moral appraisal that have a strongly *aesthetic* flavor', and he lists, amongst others, terms such as 'fine, pure, sweet, wonderful, vile, foul, ugly, sick, tarnished' as examples.³³ It is clear that terms of this sort hover over both realms simultaneously. McGinn adds this third intermediate category of moral terms with aesthetic flavor to the classical bipartite distinction between thin moral terms (very general, and supposedly not terribly informative: terms such as 'good', 'right', etc.) and thick moral terms (more specific and more informative terms such as 'courageous', 'generous', etc.). Alvin Goldman, along similar lines, suggests that aesthetic terms (at least those which apply to works of art) are in general thick, insofar as thin terms such as 'good' and 'beautiful' 'are quite uninformative'.³⁴

McGinn is no doubt right when he claims that 'morality leads back to itself, after taking a detour through aesthetics', and that 'the moral takes us to the aesthetic and the aesthetic takes us back to the moral'. Rather than fretting about this circularity, McGinn suggests that we should be reassured by it, insofar as 'it is generally folly to attempt any kind of wholesale reduction of one set of concepts to another'.³⁵ Again, right as McGinn's remarks seem to me, I wish to say a word about a way of distinguishing moral normativity from aesthetic normativity.

31. See, e.g., Plato, *Republic*, 402d ff., in Edith Hamilton and Huntington Crain (eds.), *Plato: Collected Dialogues* (Princeton, NJ: Princeton University Press, 1989), pp. 647ff.

32. Sanford Levinson, 'Introduction', in idem (ed.), *Torture: A Reader* (Cambridge: Cambridge University Press, 2004), p. 24. Similarly, Henry Shue's famous arguments against torture are in part the result of the inherently asymmetrical (a term with obvious aesthetic implications) relationship between the torturer and her victim. See, e.g., Henry Shue, 'Torture', in *ibid.*, pp. 50ff. Indeed, independently of the great moral and political evils that, say, the recent photographs of abuse at Abu Ghraib reveal, they also capture aesthetically repugnant situations.

33. Colin McGinn, *Ethics, Evil, and Fiction* (Oxford: Oxford University Press, 1997), p. 92, original emphasis.

34. Alvin Goldman, 'Evaluating Art', in Peter Kivy (ed.), *The Blackwell Companion to Aesthetics* (Oxford: Blackwell, 2004), p. 96.

35. McGinn, *Ethics, Evil, and Fiction*, p. 112.

While I cannot sensibly hope to solve the impossibly difficult problem of the connection between aesthetics and ethics, I would like to put forth at least a schematic way of doing so. I find it particularly useful to turn to a famous ethical theory which gave aesthetics a prominent place: ideal utilitarianism. While the term was initially coined by Hastings Rashdall, I would like to focus on Moore's version of ideal utilitarianism. As Tom Regan points out in the preface to his *Bloomsbury's Prophet*, philosophers' acquaintance with Moore's philosophy tends to gloss over Moore's relationship to Bloomsbury.³⁶ And while analytic philosophers typically do (superficially) know that Moore's ethics has something to do with aesthetics, they tend to ignore the way in which those members of Bloomsbury, who were aestheticians through and through, considered Moore's *Principia Ethica* an epoch-making, quasi-sacred book. Indeed, some analytic philosophers, like Ludwig Wittgenstein, tend to dismiss *Principia Ethica* altogether and rather acrimoniously, while others are in particular skeptical of Moore's strategy of connecting ethics with aesthetics.³⁷

I would like to focus upon one of Moore's most conspicuous leitmotifs: there is a difference between the question 'What ought to be?' and the question 'What ought I do?'.³⁸ The second question, which strikes many as more important than the first, relates to what Moore considers a mere 'doctrine of means', insofar as for Moore the crucial, most important question for ethics is the first one. The answer to the first question is, roughly, 'that which is intrinsically good', and what is intrinsically good is, for Moore, inseparable from aesthetic considerations. That is, the second question is ancillary to the first. Organic wholes, i.e., aggregates whose value need not be in direct proportion to the value of their parts, occupy the center stage of Moore's ethics. The most famous example of an organic whole in *Principia Ethica* is, perhaps, the whole constituted by a beautiful universe and a human being conscious of its beauty, but for my purposes the example of an organic whole constituted by retributive punishment deserves special attention. For Moore, the utilitarian, sees something intrinsically good, something beautiful, in deserved punishment and, moreover, he can be taken to endorse retributivism.

36. See, e.g., Tom Regan, *Bloomsbury Prophet: G.E. Moore and the Development of his Moral Philosophy* (Philadelphia: Temple University Press, 1984), pp. xiff., and *passim*. As Regan points out in the very first page of the preface, Moore himself may be partly to blame for this situation.

37. See, e.g., Ludwig Wittgenstein's letter to Bertrand Russell of (apparently) June 1912, in G.H. von Wright (ed.), *Ludwig Wittgenstein: Letters to Russell, Keynes, and Moore* (Ithaca, NY: Cornell University Press, 1974), p. 9; for the sort of skepticism regarding the connection between aesthetic and the aesthetic (in Moore and in general), see, amongst many other places, e.g., Robert E. Goodin, 'Utility and the Good', in Peter Singer (ed.), *The Blackwell Companion to Ethics* (Oxford: Blackwell, 1991), pp. 241-48, *passim*.

38. G.E. Moore, *Principia Ethica* (ed. Thomas Baldwin; Cambridge: Cambridge University Press, 2nd edn, 2000), p. 166 and *passim*.

Both of these results are related to the inherent aesthetic element of punishment. Punishment, by definition, exhibits fittingness, and this is an aesthetic element. Retributive punishment, that is, punishment justified by desert, exhibits this aesthetic element even more decisively, for desert (arguably itself a type of fittingness claim) also possesses, in addition to an ethical dimension, an aesthetic dimension.³⁹ The most perspicuous characteristic of fittingness claims is their aesthetic dimension. States of affairs which exhibit fittingness are to the extent that they exhibit it, and other things being equal, beautiful; insofar as states of affairs which include someone getting what she deserves are a subclass of the states of affairs exhibiting fittingness, then they, too, are beautiful (even if what she deserves is painful, even if it is punishment). A retributivist, then, need not disagree with utilitarianism, at least not with ideal utilitarianism, i.e., with a form of utilitarianism which embraces the aesthetic dimension of valuation. Punishment simpliciter (whether justified or not) is perceived by the punisher to be, in a way, beautiful; punishment believed by the punisher to be deserved is perceived by the punisher as even more beautiful.

A retributivist, then, can be described as someone who takes the aesthetic dimension of punishment seriously. 'How seriously?' is a difficult question, which I cannot fully address here. But the extreme positions, namely to take the aesthetic dimension as either conclusively self-sufficient for, or as wholly irrelevant to, the justification of punishment, can be summarily rejected. To suppose that the (alleged) beauty of deserved punishment is alone sufficient to justify it is to go down the obviously inconvenient path whereby we are justified in slapping bad speakers, in humiliating showboats, in terrorizing snobby intellectuals for their incongruous beliefs, and so on. To suppose, on the other hand, that the (alleged) beauty of deserved punishment is wholly irrelevant to the justification of punishment is to embrace a position vulnerable along the same lines that simple-minded consequentialism has been shown to be vulnerable. Whatever turns out to be the (contingent) consequence which justifies punishing someone who utterly ignores the aesthetic dimension of punishment, would in principle justify anything else. In other words, if generating a certain amount of welfare justifies punishing a guilty party, or victimizing an innocent party, it may just as well justify flat-out killing or torturing an (innocent or guilty) party.

Rejecting the extreme positions, I know of no formula for determining, with anything like cardinal accuracy, the normative implications of aesthetic and moral normativity. Still, there exists then a complicated progression of ordinal normative strength regarding the aesthetic, ethical and political (or *ultima facie*) normativity. Since the normativity of fittingness is purely aesthetic, it is very rarely sufficient to fully justify anything—and it is easier to

39. Regarding the multifarious values which can enter into desert-claims I do not disagree with Kleinig, in spite of my disagreeing with him as to the multifariousness which he believes affects the agents which can possibly deserve.

defeat than moral or political normativity. The normativity of desert is mixed: while mostly moral, it is partially aesthetic as well, and thus it is motivationally stronger than the normativity of fittingness, which is wholly aesthetic. Finally the normativity of politics, while in a sense covering a much narrower domain, is motivationally stronger than the normativity of desert (*pace* legal moralism), insofar as it is more of an all-things-considered sort of normativity: neither the state, nor individuals in their everyday lives, are justified in making sure that all deserving claims (positive and negative alike) be actually satisfied.

The normativity of fittingness, which forms part of the definition of punishment, is different from the normativity of desert, and from the overall (*ultima facie*) normativity which is pertinent when discussing the justification of punishment (or of any other phenomenon)—and it avoids the minimalist reduction of retributivism. The fact that aesthetic normativity is the less morally stringent of the three types of normativity surrounding punishment does not entail that it is unimportant. This purely aesthetic normativity of fittingness can give rise to difficult choices when it opposes ethical or political normativity. For example, someone may want to insist that, in the final analysis, the aesthetic value exhibited by the state of affairs whereby two snobby intellectuals are made fun of by two teenagers as a result of their fear of ghosts may be so high that it outweighs the relatively minor moral wrong done to them (insofar as they did not deserve this treatment). To repeat, I am not defending this thesis—I am simply pointing out that the thesis is not absurd. Extraordinarily beautiful states of affairs may trump minor immoralities or minor illegalities.

Consider those sorts of cases in which we are morally entitled something, say, to an apology (for, say, a minor mistake, from someone who is in some sort of position of subordination *vis-à-vis* us, who has had a bad week, etc.), and yet it is fitting that as soon as the person apologizes, we *lie* by saying that the apology was not necessary at all. Rather than chalking up this behavior to etiquette (and thus avoiding giving an explanation of it), it strikes me that it is the (aesthetic) fittingness of denying the importance of the apology which justifies our lying about our not really deserving something which we know we in fact deserved. Similarly, there may be cases in which what recommends forgiving rather than punishing (the deserving) has to do with an immense aesthetic value of forgiving.

Moreover, the comparatively minor motivational force of aesthetic normativity can also play an important role as a *tiebreaker* in those frequent and difficult cases when a moral principle collides with a political principle (say, Sidgwick's example of virtuous vigilantism), or when two or more moral principles collide, or when two or more political principles collide. When principles of these sorts collide, the fact that aesthetic normativity may strongly recommend one of the debated courses of action may effectively function as a tiebreaker. Of course, it is possible (though not as likely—for reasons I cannot address here) that political or moral principles may also serve as tiebreakers in

cases where two or more purely aesthetic principles collide, but that in no way contradicts my thesis. Nor is my thesis contradicted by the fact that sometimes the tiebreaker in moral and political conflicts is just another moral or political principle, and not an aesthetic principle related to fittingness. My thesis is, simply, that aesthetic principles related to fittingness are never irrelevant, and that sometimes they can function as tiebreakers within the context of moral or political conflicts of normative principles.

Consider some famous examples. First, the problems associated with the tension between comparative and non-comparative desert. Susan owes \$1000 to five different people, but she only has \$1000; if she pays \$1000 to one of her creditors, she is treating her perfectly justly, giving her exactly what she deserves, but she is treating the remaining four creditors rather unjustly; if she pays \$200 to each of her creditors she does not treat anyone fully in accordance with desert, but she does not entirely ignore anyone's desert-claims. In a case like this, the fact, if it is a fact, that giving each creditor an equal amount is aesthetically superior to any other distribution may be a good way to resolve the tension between comparative and non-comparative desert.

Or consider the sort of problem with the maximization of deserved punishment which Michael Moore discusses in *Placing Blame*.⁴⁰ Should a retributivist allow a deserving person to evade punishment in order to make sure that she will be able to punish ten more deserving persons? Again, to the extent that the aesthetic normativity of fittingness may tip the scales in favor of one of these options, it may be a helpful way of solving the problem. Or, finally, consider the way in which the aesthetic normativity of fittingness may recommend forgiving someone who deserves punishment. There may be all sorts of pragmatic or utilitarian considerations recommending our forgiving a wrongdoer on this or that occasion, but this in no way negates that sometimes, even in the absence of such considerations, forgiveness may be fitting (even if not deserved).

The incorporation of normativity into the very definition of punishment, via the appeal to fittingness, then, solves the problem of distinguishing punishment from discipline in a convincing way, without reducing retributivism to a logical thesis. Moreover, by contrasting the (purely aesthetic) normativity of fittingness with the (much richer, and more motivationally stringent) normativity of desert (which although mostly moral, it has aesthetic elements as well), and with political (or *ultima facie*) normativity, we gain a deeper understanding of the relationship between desert and punishment.

40. M. Moore, *Placing Blame*, pp. 155ff.