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## Desert and Dissociation<sup>1</sup>

In this paper, I argue against the idea of *basic desert* that has been prominent in recent literature on incompatibilism and retributivism. I claim that the supposed normative force of desert considerations is better understood in terms of *dissociation*.

My argument starts from the observation that an important strategy in spelling out the apparent normative force of desert considerations is through the idea of *complicity*. The intuition I will be interested in is that giving wrongdoers what they deserve is necessary to dissociate oneself from wrongdoing and thus not to become complicit in it. However, I argue that the idea of basic desert cannot give a good explanation of this connection. I thus propose to explore the idea that it is dissociation, rather than desert, that is explanatorily basic.

I then argue that the best way to understand dissociation is as an *expressive action*. Expressive actions are actions that have expressive properties that relate to the salient features of some extraordinary situation. It is through such expressive actions that we attempt to ‘honor’ or do justice to the significance of these situations. Expressive actions are familiar and appropriate in contexts such as welcoming, mourning, thanking, and so on, as well as in contexts of wrongdoing. Dissociation from wrongdoing – expressed as

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<sup>1</sup> This paper has been presented to audiences at the universities of Oslo, Reading, Bristol, and the Hebrew University of Jerusalem. I am very grateful to those involved for inviting me to these occasions, and for the helpful comments I received there. I would like to record a special debt of gratitude to Anders Brekke Carlsson for a conversation that led me to write this paper.

distancing from the wrongdoer – is an expressive attempt to do justice to the significance of wrongdoing in a way analogous to the expressive attempt to thank someone adequately for a favor they have done you.

Seeing dissociation as an expressive action has explanatory benefits. Specifically, I draw on the idea of dissociation as an expressive action to explain why it should be that a failure to dissociate is a source of complicity. If an act of dissociation is the appropriate way of acknowledging or ‘honoring’ the significance of the wrongdoing, then a failure to dissociate constitutes a failure of appropriate response to the offence that can be a source of complicity. Having made the case for the nature and importance of dissociation, I then argue that it is proportionate distancing – rather than giving someone their just deserts – that is necessary for removing complicity. It is *dissociation* and *distancing* rather than *desert* that turns out to have normative force as a distinctively backward-looking response to wrongdoing.

### **1. The debate over desert**

Desert is controversial. While ‘desert’ can be used in a variety of ways,<sup>2</sup> this paper focuses on the idea that those who do wrong deserve to (and hence *should be made to*) suffer as a result and in proportion to that wrongness.<sup>3</sup> Reasons that have been given for rejecting

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<sup>2</sup> For instance, the winner of the race might be said to deserve the prize; a student may deserve a better grade than they got; workers may deserve higher wages. For more examples along these lines, and some discussion see Fred Feldman, ‘Desert,’ *Stanford Encyclopedia of Philosophy*.

<sup>3</sup> Desert might also be framed in terms of the badness of character, but for simplicity I will ignore this aretaic possibility and stick with the deontic.

desert include: that desert judgements are appropriate only for agents in possession of an impossibly strong type of control, or free will, over their actions;<sup>4</sup> and that, even if we do have the relevant free will, desert judgements are inherently morally problematic (e.g. because they endorse suffering; or are inimical to compassion or understanding; or because they fixate on the past and are not focused on changing things for the better).<sup>5</sup>

Despite these criticisms, desert, or something like it, has seemed to many to be an important facet of our interpersonal interactions. Influential here has been P. F. Strawson's thought that a conception of human relations that did not involve some kind of desert-like accountability would be reduced to a mere 'objective attitude,' where people treat one another solely as risk-factors to be avoided or accommodated rather than as persons whose responses matter non-instrumentally.<sup>6</sup> Thus a number of theorists have sought to defend something like desert by means of a two-pronged line of reply to the critics. The

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<sup>4</sup> E.g. Galen Strawson, 'The Impossibility of Moral Responsibility,' *Philosophical Studies* 75 (1994), pp. 5-24; Neil Levy, *Hard Luck: How Luck Undermines Free Will and Responsibility* (Oxford: Oxford University Press, 2011); Bruce Waller, *Against Moral Responsibility* (Cambridge MA: MIT Press, 2011); Derk Pereboom, *Freewill, Agency and Meaning in Life* (Oxford: Oxford University Press, 2014); Gregg Caruso, *Rejecting Retributivism: Free Will, Punishment and Criminal Justice* (Cambridge: Cambridge University Press, 2021).. For some of these authors, the relevant kind of control is rendered impossible by determinism; for others, it is impossible because of the ineradicability of luck.

<sup>5</sup> For some of these responses, see Lawrence Stern, 'Freedom, Blame and Moral Community,' *Journal of Philosophy* 71 (1974), pp. 72-84. These concerns may also underpin T. M. Scanlon's rejection of 'the Desert Thesis' in his *What We Owe to Each Other* (Cambridge MA: Belknap Press, 1998), pp. 274-277.

<sup>6</sup> Strawson, 'Freedom and Resentment'. Strawson's concerns have not been universally accepted. See e.g. Tamler Sommers, 'The Objective Attitude,' *Philosophical Quarterly* 57 (2007), pp. 321-341.

*deflationary* move argues that desert – or what is important in desert – is mis-described by desert critics. On this move, the critics' concerns apply only to an inflated conception of desert that our practices (or a reformed alternative) do not commit us to. Meanwhile the *vindictory* move provides an explanation of the essential role that – on a better or more accurate interpretation than that provided by critics of desert – our accountability practices play in an attractive conception of human interpersonal relations.<sup>7</sup>

These deflationary vindications have not convinced everyone. The line of critical response that I am interested in in this paper is that the deflationary vindications fail to capture the significance of desert. This line comes from at least two directions: incompatibilism; and desert-focused retributivism. These are not mutually exclusive groupings, but neither are they identical. Incompatibilists who are also free will skeptics disagree with desert-focused retributivists about whether those true commitments are defensible in the light of what we know about human agency.<sup>8</sup> Meanwhile, desert-focused retributivists could be either compatibilists or libertarians. But both incompatibilists and desert-focused retributivists might be attracted to the conclusion that an important part of our understanding of desert judgements – an important notion of *basic desert* – is lost in the deflationary vindications.

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<sup>7</sup> There is not space to give a meaningful survey of deflationary vindication strategies, and doing so is not necessary to our argument. However, I sketch some such strategies in what follows.

<sup>8</sup> Strictly speaking *incompatibilism* argues for the impossibility of basic desert given the truth of determinism. However, the range of metaphysical arguments against basic desert extends further than this. For instance, Galen Strawson's influential Basic Argument claims that basic desert is impossible independently of determinism. See his 'Impossibility of Moral Responsibility.'

I will reject basic desert. But what is it? According to Pereboom:

‘For an agent to be *morally responsible for an action in the basic desert sense* is for the action to be attributable to her in such a way that if she was sensitive to its being morally wrong, she would deserve to be blamed or punished in a way that she would experience as painful or harmful, and if she was sensitive to its being morally exemplary, she would deserve to be praised or rewarded in a way that she would experience as pleasurable or beneficial. The desert at issue is basic in the sense that the agent, to be morally responsible, would deserve such blame or punishment, praise or reward, just by virtue of having performed the action with sensitivity to its moral status, and not, for example, by virtue of consequentialist or contractualist considerations.’<sup>9</sup>

As I will show in more detail below, basic desert so understood can be distinguished from instrumentalist views on which the appropriateness of blame is nothing more than the likelihood that blaming will lead to a relevantly desirable outcome;<sup>10</sup> and from the contractualist view that it would be fair to subject wrongdoers to reactive attitudes that are

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<sup>9</sup> Derk Pereboom, *Wrongdoing and the Moral Emotions* (Oxford: Oxford University Press, 2021), pp. 11-12.

<sup>10</sup> See J.J.C. Smart, ‘Freewill, Praise and Blame,’ *Mind* 70 (1961), pp. 291-306; Cheshire Calhoun, ‘Responsibility and Reproach,’ *Ethics* 99 (1989), pp. 389-406; Manuel Vargas, *Building Better Beings* (Oxford: Oxford University Press, 2013); Victoria McGeer, ‘Civilising Blame’ in D. Justin Coates and Neal Tognazzini (eds), *Blame: Its Nature and Norms* (Oxford: Oxford University Press, 2013); David Shoemaker and Manuel Vargas, ‘Moral Torch-Fishing,’ *Noûs* 55 (2021), pp. 581-602.

natural to us.<sup>11</sup> But it can also be distinguished from two other non-instrumental forms of responsibility – responsibility as attributability and responsibility as answerability – that might be proposed as a deflationary vindication.<sup>12</sup> *Attributability* involves appropriately understanding an action as reflecting the agent’s character or self. An agent who is not fully free and responsible may appropriately be judged cold-hearted, or selfish, or callous, even if they are not to be blamed for what they do. On the *answerability* conception of responsibility, meanwhile, reasons-responsive agents can properly be subject to moral criticism should they fail to have a good justification for doing prima facie morally problematic things. Neither attributability nor answerability is committed to basic desert because neither is committed to the intrinsic appropriateness of suffering as a response to moral wrongdoing. It is the claim that wrongdoing intrinsically speaks in favor of the suffering of the wrongdoer that distinguishes basic desert from these deflationary vindications.

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<sup>11</sup> R. Jay Wallace, *Responsibility and the Moral Sentiments* (Cambridge MA: Harvard University Press, 1994); James Lenman, ‘Compatibilism and Contractualism: The Possibility of Moral Responsibility,’ *Ethics* 117 (2006), pp. 7-31.

<sup>12</sup> These alternatives go back at least to Gary Watson, ‘Two Faces of Responsibility’ *Philosophical Topics* 24 (1996), pp. 227-248. See also the tripartite view presented in David Shoemaker, *Responsibility From the Margins* (Oxford: Oxford University Press 2015). Either attributability or answerability could be argued for as the ‘quality of will’ view underpinning P. F. Strawson’s claim that reactive attitudes are constitutive of our accountability practices; alternatively Strawson’s view could be seen as a further alternative.

For a helpful discussion of the debate on ‘attributionism,’ see Matthew Talbert, ‘Moral Responsibility,’ in *Stanford Encyclopedia of Philosophy*.

To vindicate their claims, however, and to show decisively that deflationary vindications are inadequate, defenders of basic desert require a strategy that hews closely to that of their opponents. First, they need to show that basic desert *is* a commitment of our practices that neither instrumentalism, attributability, answerability nor any better account properly captures. And second, they need to show that the practices underpinned by basic desert are attractive, such that something important would be lost if we instead adopted an alternative. At a minimum, this will involve explaining what the normative force of basic desert is.

In this paper, I offer qualified support to the defenders of basic desert. I defend the view that our practices involve a conception of accountability that goes beyond instrumentalism, contractualism, attributability or answerability. I am also sympathetic to the claim that this further conception of accountability is important, and that it would be a significant loss if we abandoned it. However, my ultimate aim is not to crown desert but to bury it. I argue that when we restore the missing part of our understanding of our accountability practices, we find that the key concept is not so much *desert* as *dissociation*. I argue that it is dissociation that is essential to an attractive conception of human relations. I conclude that my account of dissociation is stronger than either 'basic' desert or the deflationary vindications at capturing what we need from our accountability practices. Nevertheless, it seems false to suppose that dissociation would be relevant to accountability only if we had an impossibly strong form of agential control. I defend an improved deflationary vindication rather than a return to basic desert.

## **2. The conceptual role of desert**

Let us start by identifying our target. The logical structure of desert judgements as I am interested in them is as follows:

DESERT: A deserves T in virtue of XYZ and C

In this formulation, desert judgements are taken to be a kind of appraisal of an agent for some moral failing, where the appraisal has as its conclusion that the agent should suffer in some way as a result.<sup>13</sup> This formulation will be important as I proceed, so let us explain it in more detail.

A is an agent. XYZ are background conditions that qualify A as the sort of being about whom desert judgements can appropriately be made. In particular, XYZ stand for the conditions that make A not just an agent, but a responsible agent (thus XYZ might include e.g. responsiveness to reasons as on Fischer and Ravizza's influential account).<sup>14</sup> C stands for particular triggering conditions that incur desert. C is often called the 'desert base.'

Depending on the conception of desert, C can include actions, or intentions, or mental states such as beliefs, desires, or emotions, or states of character. Whatever C includes, it has to involve some departure from a moral norm – i.e. some kind of wrongdoing, or

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<sup>13</sup> 'Desert' can be used in various senses other than this one. See e.g. George Sher, *Desert* (Princeton: Princeton University Press, 1989); Fred Feldman, 'Desert,' *Stanford Encyclopedia of Philosophy*.

<sup>14</sup> John Martin Fischer and Mark Ravizza, *Responsibility and Control* (Cambridge: Cambridge University Press, 1998). See also Susan Wolf, *Freedom Within Reason* (Oxford: Oxford University Press, 1990).

transgression or vice. Meanwhile T is some form of negative treatment 'deserved' by A on the basis of (XYZ and) C.

That explains the letter-variables. But the major variable has not yet been covered. The key justificatory question concerning DESERT is to elaborate the 'in virtue of'. Precisely what is the relation between (A, XYZ, C) and T, such that A receiving T is pro tanto justified or right or good or fitting or appropriate, etc.? It is in spelling out 'in virtue of' that the proponent of basic desert needs to answer the two questions noted above: to explain what the deflationary vindications miss about our practices of accountability; and then, to elaborate a normative conception of DESERT that explains why missing *that* means losing something of great importance.<sup>15</sup>

Regarding the first step, the DESERT theorist can argue that any conception will have to respect, not simply the logical structure of DESERT, but also various features of its *conceptual role*.

i. Desert judgements are often characterized as distinctively *backward-looking*, by which is meant that they are valid independently of future good consequences. (This is Pereboom's point about instrumentalism in the passage quoted above). This characterization may be

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<sup>15</sup> It might be said that the elaboration of 'in virtue of' should also, in a complete conception of desert, cohere with, and perhaps ground, the other variables. For instance, it might be hoped that getting clearer about what desert involves and why it matters would help us to resolve the question of whether intentional actions or states of character incur desert.

queried, say, on the basis that giving a person their deserts could be said to bring about the future good of justice (or a more just world). However, although this seems correct as far as it goes, there is still a point to the backward/forward distinction. When proponents of DESERT agree that giving out deserts serves the future good of justice, the term 'serves' specifies a constitutive rather than a contingent, causal relation. When proponents of DESERT agree that the rightness or goodness of giving out deserts is valid independently of good consequences, they mean that it is valid independently of any good consequences that might be brought about as a contingent matter of fact, and which, as an empirical matter, might have been otherwise. What the backward-/forward-looking distinction does is to highlight the non-instrumental rightness or goodness of wrongdoers receiving T.

ii. Desert differs from other evaluations of responses to wrongdoing, in particular, judgements of the *fairness* of a given response. (This is Pereboom's point about contractualism.) To see this, consider that the natural reading of DESERT is in terms of positive desert. If A deserves T then this implies that A positively ought to get T, or that it would be good if A did get T. By contrast, if we say that it would be fair if A gets T then the natural reading of this is in terms of negative desert, for instance, as the thought that, if *someone* has to bear certain costs arising from A's wrongful action then it is fair that it should be A who does so. Thus A deserving T and the fairness of A getting T differ in their force: one is a categorical (though presumably defeasible) end while the other is hypothetical.

iii. Desert judgements, if valid, directly license judgements of the non-instrumental rightness or goodness of wrongdoers suffering, or being made to suffer.

iv. Desert judgements align non-contingently with judgements about the appropriateness of certain characteristic emotional reactions, reactions that share the feature of being unpleasant to experience, or to have directed at oneself. The emotions that are relevant here include those, such as resentment and indignation, discussed by Strawson; but they might also include guilt, remorse and some forms of shame, some forms of contempt, and blame, if blame is an emotion. Furthermore, it might be said that the unpleasantness, in particular of the first-personal emotions, is not a contingent matter. It is not simply that being the object of indignation or blame is unpleasant because most of us don't like being subjected to the disapproval of others. There may be a minority who don't find this unpleasant. By contrast, it is a non-contingent matter that one who experiences guilt experiences something unpleasant.

I have now filled out DESERT in more detail, explaining not simply the logical structure of desert judgements, but also something about its conceptual role. It is now clear that DESERT is a different conception of responsibility from the deflationary vindications reviewed above. Unlike them, DESERT is committed to the non-instrumental rightness or goodness of treatment T, where T is taken to involve something painful or harmful to the wrongdoer. The next question for the proponent of DESERT is: why do we need a concept that plays *this* role?

### **3. The normative force of desert?**

Why does desert matter? It might be said that there is no non-circular answer to this question because desert is 'basic.' For instance, Michael McKenna has argued that part of

the idea of the ‘basicness’ of basic desert is that ‘[t]he normative warrant it provides is not supported by any more fundamental normative principles and values’.<sup>16</sup> There are at least two ways in which desert might be argued to be basic. One of these would be deontic, and would claim that there is a fundamental duty to give wrongdoers what they deserve; while another might be axiological, and would claim that a state of affairs in which wrongdoers get what they deserve (or in which happiness is apportioned to virtue and unhappiness to vice) is a fundamental good.<sup>17</sup> Both of these views, the deontic and the axiological, could be understood as basic in the sense McKenna spells out.

However, I now want to argue that DESERT is *not* basic in the sense just mentioned. The opening step in this argument is the claim that a natural way to articulate the normative force of DESERT is through the idea that failing to give wrongdoers what they deserve is a source of *complicity* in the initial wrongdoing.

Complicity is a broad phenomenon. The basic idea concerns ways in which an agent who was not the perpetrator of an offence can be connected to wrongdoing in such a way as to share in the perpetrator’s blameworthiness (and perhaps liability). Anglo-American criminal law tends to define complicity (or ‘secondary liability’) narrowly, only reluctantly extending the reach of this concept beyond the relatively clear cases of accomplice liability.<sup>18</sup>

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<sup>16</sup> Michael McKenna, ‘The Free Will Debate and Basic Desert,’ *Journal of Ethics* (2019), p. 241-255 at p. 245.

<sup>17</sup> For this distinction, see e.g. Michael McKenna, *Conversation and Responsibility* (Oxford: Oxford University Press, 2011).

<sup>18</sup> For some discussion see my ‘Complicity and Normative Control,’ *The Monist* 104 (2021), pp. 182-194.

Nevertheless, morality recognizes the concept of complicity as correctly applied to situations other than that of the accomplice.

For instance, in a recent review of two books on the Benin Bronzes,<sup>19</sup> Adewale Maja-Pearce quotes Dan Hicks, curator of the Pitt Rivers museum in Oxford, as holding the view that ‘mere ownership of the artefacts’ makes museums such as the Pitt Rivers ‘complicit in the “indiscriminate attack on human life, in which tens of thousands died; the purposeful and proactive destruction of an ancient cultural, religious and royal site; and the looting of sacred art works.”’<sup>20</sup> Here the idea is that one can become complicit in wrongdoing, not simply by actions that precede its commission, but also by one’s responses to the wrongdoing after it has been committed – perhaps even long after it has been committed.

Although the notion of complicity invoked by Hicks and Maja-Pearce demands philosophical scrutiny, it does not seem an overreaction to think that attitudes and behavior towards an offence on the part of otherwise unconnected individuals, and which takes place after the offence, can have the effect of implicating those individuals in that offence. For instance, one source of complicity might be explicitly approving of the offence after it has been

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<sup>19</sup> Bronze statues and artefacts from Nigeria looted by British soldiers in an operation aimed at enforcing the monopoly of trade of the British Niger Company in 1897.

<sup>20</sup> Adewale Maja-Pearce, ‘Strewn With Loot,’ *London Review of Books* 43 (16), p. 22. The books being reviewed are: Dan Hicks, *The British Museums: The Benin Bronzes, Colonial Violence and Cultural Restitution* (Pluto 2020); and Barnaby Phillips, *Loot: Britain and the Benin Bronzes* (Oneworld 2021).

committed. Another might be that of failing to disgorge certain benefits that have come to one as a result of the offence.<sup>21</sup>

Is it plausible that a further source of complicity might be a failure to blame wrongdoers adequately for what they have done? For instance, say B has the chance to further his career by taking a position working in close personal support of a socially powerful individual whom he knows to be a sexual predator who exploits the less powerful. B judges that this individual should be blamed for the way they have acted. However, with few other options open to him, B decides to take the position, even though this means that, for prudential reasons, he does not express that blame. Indeed, B finds himself in a position in which he has to laugh and joke with his employer, treating them as if they were a good sort of person, and behaving as if everything was normal between them. B engages in this behavior because the job demands it, and he wishes to keep the job. Nevertheless, he cannot help but feel in some way tainted, or compromised, by the fact that he does stay in the job, and that he has to grin and bear his employer's jokes, overlook their behavior, and continue to work hard to support their day-to-day activities. This feeling of being compromised is not irrational, I suggest, but rather reflects B's sense of complicity in his employer's wrongs.<sup>22</sup>

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<sup>21</sup> On the latter, see e.g. Daniel Butt, 'On Benefiting from Injustice,' *Canadian Journal of Philosophy* 37 (2007), pp. 129-152.

<sup>22</sup> For a real-life version of this case, consider the racism directed at Pakistani cricketers at Yorkshire County Cricket Club in the UK, which put Pakistani players in the position of either speaking out and jeopardising their position or accepting a morally compromised position. Former player Rana Naved-ul-Hasan was quoted as saying: 'I never spoke about it because, as foreigners, we were temporary and somehow I managed to accept

The view that seems to underpin B's reaction can be expressed as follows:

SOURCE OF COMPLICITY: when XYZ and C are true of A, failing to give A treatment T can be to fail (properly) to treat the act as wrong, and thus to acquiesce in it, and become partly complicit in it.

SOURCE OF COMPLICITY has at least some normative force. Complicity is something we plausibly have reason to avoid. And it is plausible that some treatment T is constitutive of removing complicity. B can sensibly think that he would be a better, more admirable person if he had not taken the job, or if he were to leave the job after openly expressing his blame. And he can sensibly think that he does wrong in continuing to treat the predator in a normal way. He can think that the predator's victims (and others) could justifiably reproach him for what he is doing, and that his compromise puts him in an indefensible relation to those victims. And he can think that in acting as he does, he acquiesces in his employer's treatment of those victims, not taking the victims' side as he is required to do.

Something like SOURCE OF COMPLICITY has been defended by a number of philosophers. For instance, Pamela Hieronymi, Aurel Kolnai and Jeffrie Murphy have defended the view

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the way it is. So I just focused on playing cricket. I never wanted to jeopardise my contracts. There was systematic taunting and it's tough to do much about it ... I used to feel bad, but I decided to ignore it because I knew I was not going to live there permanently.' <https://www.theguardian.com/sport/2020/sep/16/second-cricketer-backs-azeem-rafiqs-racism-claims-against-yorkshire>

that forgiving too readily can involve – to use Hieronymi’s term – ‘compromising’ with the wrongdoing and its perpetrator.<sup>23</sup> Meanwhile, Jean Harvey, Thomas Hill Jr and Joseph Raz have defended the idea that protest against injustice can have a moral point even when it is clear that it cannot change the situation for the better, again because it removes the protestors from a situation of moral compromise, whereby they are merely acquiescing in the wrongdoing.<sup>24</sup>

Can the DESERT theorist avail themselves of SOURCE OF COMPLICITY to explain DESERT’s normative force? They could do if it is plausible that *it is giving someone what they deserve that is necessary to remove complicity*. Consider the following:

DESERT-COMPLICITY: when YYZ and C are true of A, failing to give A what they deserve can be to fail (properly) to treat the act as wrong, and thus to acquiesce in it, or be partly complicit in it.

The idea here would be that blame or punishment – understood as implying basic desert – is the treatment T that SOURCE OF COMPLICITY marks as necessary in order to remove

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<sup>23</sup> Aurel Kolnai, ‘Forgiveness,’ *Proceedings of the Aristotelian Society* (1973/4); Jeffrie G. Murphy, ‘Forgiveness and Resentment’ in Jeffrie G. Murphy and Jean Hampton, *Forgiveness and Mercy* (Cambridge: Cambridge University Press, 1988); Pamela Hieronymi, ‘Articulating and Uncompromising Forgiveness,’ *Philosophy and Phenomenological Research* 62 (2001), pp. 529-555.

<sup>24</sup> Jean Harvey, ‘Oppression, Moral Abandonment and the Role of Protest,’ *Journal of Social Philosophy* 27 (1996), pp. 156-171; Thomas E. Hill Jr, ‘Symbolic Protest and Calculated Silence,’ *Philosophy and Public Affairs* 9 (1979), pp. 83-102; Joseph Raz, *The Authority of Law* (Oxford: Oxford University Press), Ch. 14.

complicity. As a sociological hunch, I suspect that many people who pre-theoretically feel the normative force of DESERT take such a view. A famous expression of DESERT-COMPLICITY is Kant's claim that, before disbanding, the members of a civil society would need to execute every last murderer in its prisons so that blood-guilt should not cling to them for the murderer's deeds. Kant's thought here is that members of that civil society will be complicit in the murders unless retributive punishment is carried out and the murderers get what they deserve. If DESERT-COMPLICITY is true then we have a way of explaining the problematic normative consequences of a failure to take DESERT seriously.

It is important to note that SOURCE OF COMPLICITY and DESERT-COMPLICITY do not commit us to the view that *all* persons who fail to give a wrongdoer what they deserve thereby risk complicity. These propositions are compatible with the more plausible view that it is only when further conditions are met that a failure to blame (etc.) entails complicity. This is important, because the risk of complicity cannot be unlimited. It may be unlikely that I am complicit in the wrongdoing of someone who lives remotely from me, and with whom I have no relationship, if I fail to give them what they deserve – even though, if DESERT-COMPLICITY is true, *someone* might be. The question of what the limits of complicity are in this area (and why) is complex, however, and I do not attempt to address it fully here. The present argument relies on what I take to be a pre-theoretically plausible connection between response to wrongdoing T (where T might be desert) and complicity; if

the connection is sufficiently plausible then we can leave the question of specifying the limits to another day.<sup>25</sup>

#### 4. Assessing DESERT-COMPLICITY

If DESERT-COMPLICITY were true, we would have a way of explaining what would be lost in the deflationary vindications. Deflationary vindications do not recommend treating offenders in the way they deserve. Thus, if DESERT-COMPLICITY were correct, those deflationary responses would be morally inadequate because they incur complicity. DESERT-COMPLICITY would help to explain the importance of DESERT because it would help to explain why we need a concept that plays the conceptual role that I attributed to desert judgements above.

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<sup>25</sup> To give some sense of how this might go, these issues are, I believe, related to the discussion of standing to blame, in particular the sense of standing in which it has to do with it being *one's business* to concern oneself with the wrongdoer's conduct (for an overview, see e.g. Patrick Todd, 'A Unified Account of the Moral Standing to Blame,' *Noûs* 63 [2019], pp. 347-374). Having the standing to blame in this sense can be considered not only as giving one a permission to blame, but also, at least sometimes, as involving a requirement to blame. A person who fails to blame when they have standing to do so thereby themselves becomes blameworthy because their behavior involves acquiescing in the wrongdoing, treating it as acceptable rather than as transgressive. We might call this phenomenon the standing-relative nature of the risk of complicity in relation to failure to blame. One who wishes to defend DESERT-COMPLICITY will need to explain why liability to complicity varies as it does. I suspect – though I do not argue for it here – that desert theorists of the axiological or deontic varieties considered in this paper will struggle to account for standing-relativity; and that the dissociation account is better placed to capture the relational nature of the risk of complicity.

However, is DESERT-COMPLICITY true? I doubt it. The first thing to notice is that SOURCE OF COMPLICITY also differs from the deflationary vindications reviewed above in its view of the significance of responses to wrongdoing. Indeed, SOURCE OF COMPLICITY plays a conceptual role that is very close to that of DESERT. For instance, SOURCE OF COMPLICITY would explain the ‘backward-looking’ moral importance of giving wrongdoers some treatment T. SOURCE OF COMPLICITY identifies considerations that have normative force because of the need to remove complicity, independently of the production of future good consequences. Furthermore, such considerations are different from considerations of the fairness of a response to wrongdoing: whether a response is fair and whether it is adequate to remove complicity are two separate issues. SOURCE OF COMPLICITY would also explain why desert judgments license judgements about the non-instrumental rightness or goodness of wrongdoers getting treatment T: that is, on the assumption that avoiding or removing complicity is itself intrinsically appropriate. And SOURCE OF COMPLICITY could be argued to align non-contingently with emotional reactions such as guilt and blame, etc., such that, as in our example of person B, we intelligibly feel guilt when we are complicit, and remove complicity by engaging in blame.

The closeness of conceptual role played by DESERT and SOURCE OF COMPLICITY might appear to give the proponent of DESERT good grounds to appeal to SOURCE OF COMPLICITY and to defend DESERT-COMPLICITY.<sup>26</sup> However, I will now argue that if they do appeal to

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<sup>26</sup> DESERT-COMPLICITY may not be the only way to articulate the normative force of DESERT. But without it, defenders of desert face a return to square one, and will have to find some other way to articulate the normative force of desert considerations.

DESERT-COMPLICITY, they will be vulnerable to the argument that it is SOURCES OF COMPLICITY rather than DESERT that has explanatory priority in the combination of the two. The truth of the matter, I will claim, is that defenders of DESERT mistakenly attribute the normative force of SOURCE OF COMPLICITY to DESERT. Without support from SOURCE OF COMPLICITY, it is unclear why we need a concept that plays the role of DESERT. But once SOURCE OF COMPLICITY is in place, it becomes clear that DESERT no longer plays an important role. This will pave the way for the argument that the fundamental notion is *dissociation from wrongdoing* rather than desert.

What I mean by explanatory priority is that, when we seek to explain why or whether DESERT-COMPLICITY is true, one of these notions is more fundamental than the other. Thus, compare two ways of understanding the relationship between the elements in DESERT-COMPLICITY. On one reading, we appeal to DESERT to explain why DESERT-COMPLICITY is true (that is, to explain why SOURCE OF COMPLICITY is true for a failure to give wrongdoers what they deserve). On the other reading, we appeal to SOURCE OF COMPLICITY to explain why DESERT-COMPLICITY is true. The question is which of these approaches gives the better explanation. I argue that the second strategy gives the more powerful explanation. Why so? Recall the two theories of basic desert that I noted earlier: one was deontic, and held that DESERT represents a fundamental duty; the other was axiological, and held that states of affairs in which wrongdoers get what they deserve are fundamental goods. Neither of these views, I claim, gives a powerful explanation of why DESERT-COMPLICITY should be true. I therefore conclude that we are better to assess the truth of DESERT-COMPLICITY by elaborating our understanding of SOURCES OF COMPLICITY. (Though as I mentioned, when

we elaborate our understanding of SOURCES OF COMPLICITY, we will come to see that giving someone their supposed just deserts is *not* necessary to remove complicity.)

Take the axiological version first. Presumably the axiologist about basic desert believes that there are fundamentally valuable states of affairs other than desert. For instance, perhaps states of affairs in which people are happy, or virtuous, or knowledgeable are all intrinsically valuable. The explanatory problem for the axiological desert theorist is that a failure to bring about these other inherently valuable states of affairs does not incur complicity whereas, according to DESERT-COMPLICITY, it *is* a source of complicity to have failed to bring about desert. Thus, the proponent of axiological desert has to explain why desert has this distinctive feature in order for their explanation to be a powerful one. My concern is simply that it is hard to see how the theorist can do this other than by the ad hoc means of stipulating that desert has this distinctive feature.

The deontic version has similar problems. There are various fundamental duties, on this view, but complicity arises only in connection with desert. Now the deontic view might be able to make more progress in providing the requisite explanation than the axiological version. The deontic basic desert theorist could argue that fundamental duties can be of two sorts, primary and secondary. As well as there being primary duties not to e.g. treat a rational agent as a mere means, there are secondary duties that concern how to respond when someone violates a primary duty. Included among these secondary duties is, according to the desert theorist, a duty to give out deserts. Although secondary duties are secondary, it could be argued that they are nevertheless fundamental, in the sense that no further normative grounding is needed to explain their validity. Because it is a further wrong

to violate these secondary duties, we can explain why a failure to give out desert is wrongful. Might this, if the dots could be filled in well enough, account for DESERT-COMPLICITY?

Not quite. While this deontic version may seem more initially plausible than the axiological version, it still has a crucial failure of explanatory power. It fails to account for the intuition that in complicity one *shares* in the responsibility for the initial wrong.<sup>27</sup> On the deontic desert theorist's explanation, a violation of a secondary duty constitutes a *further* wrong, namely, the wrong of failing to respond as a secondary duty requires to a violation of a primary duty. However, the violation of secondary duty in relation to some violation of primary duty is not the same thing as a *sharing in* blameworthiness for that initial violation. Complicity attaches to someone who, through their participation in some violation of a primary duty, has some responsibility-incurring relation *to the wrong*. The explanation just offered on behalf of the deontic version of basic desert cannot capture this. The best that it can do is to explain how a failure to respond to wrongdoing by giving out deserts is a further wrong.

These claims about the nature and sources of complicity are put forward here as independent data that a theory in this area should account for. These data might also be

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<sup>27</sup> According to Sanford Kadish, the distinctive role of the idea of complicity is 'to define the circumstances in which one person (to whom I will refer as the secondary party or actor, accomplice, or accessory) becomes liable for the crime of another (the primary party or actor, or principal.' Kadish, 'Complicity, Cause and Blame: A Study in the Interpretation of Doctrine,' *California Law Review* 73 (1985), pp. 323-410.

helpful in explaining the normative force of responding to wrongdoing. But it looks as though DESERT struggles to account for these data. It may be that the proponent of DESERT, on either its deontic or axiological version, can yet find an argument to show that DESERT has explanatory priority in DESERT-COMPLICITY. However, given the problems noted above, I suggest that we explore the possibility that it is SOURCE OF COMPLICITY that has explanatory priority.

If SOURCE OF COMPLICITY has explanatory priority then the issue immediately takes on a different cast. Rather than being limited by whatever grasp we have on the notion of DESERT, we rather start with the potentially richer resources of the notion of complicity. For this to work, what we need is, first, an explanation of why a failure to respond adequately to wrongdoing is a source of complicity *at all*; and then, second, an explanation of what an ‘adequate response’ is that removes complicity. Thus, SOURCE OF COMPLICITY could be further spelled out as involving two distinct steps:

(DISSOCIATION): It is necessary to treat the act properly as wrong if one is not to acquiesce in it and risk complicity with it

(ADEQUACY): Treatment T is necessary in order to treat the act properly as wrong

What kind of claim is the combination of (DISSOCIATION) and (ADEQUACY)? I will now argue that it is a claim about expressive action. Without the expressive action of dissociation, one has not ‘honored’ the wrongdoing as one ought, and therefore remains associated with it.

## **5. Dissociation as an expressive action**

First, let us introduce the idea of expressive action.<sup>28</sup> As I characterized them in the introduction, expressive actions are *actions that have expressive properties related to the salient features of the situation towards which they are directed*. We can explain this claim by distinguishing two ideas of ‘expression’ as it pertains to behavior. One is the idea that some behavior is expressive of some underlying state if the presence of that underlying state is what causes the behavior. The second idea of ‘expression,’ which is the one relevant here, is concerned rather with *expressive power*. It is this second sense of ‘expression’ or ‘expressive’ that we appeal to when we say that, for instance, the slow movement of Beethoven’s String Quartet No. 15 expresses the determined but fragile (re-)awakening of life in the context of an inevitable deterioration towards death.<sup>29</sup> What we mean here is that the music is weary and tentative, yet hopeful and grateful, and at the same time resigned. In just this combination it captures the situation of someone recovering, perhaps briefly, from illness, but knowing death to be close; or more broadly, it captures the ongoing struggle for life in the face of the inevitability of change and decay. The music, in other

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<sup>28</sup> In the following, I draw on ideas I have developed in a series of papers: ‘Excuses, Justifications and the Normativity of Expressive Behaviour,’ *Oxford Journal of Legal Studies* 32 (2012); ‘The Expressive Function of Blame,’ in D. Justin Coates and Neal Tognazzini (eds), *Blame: Its Nature and Norms* (Oxford: Oxford University Press, 2013), pp. 66-83; ‘Expressive Actions’ in Catherine Abell and Joel Smith (eds), *The Expression of Emotion* (Cambridge, 2016), 73-94; ‘The Problem of Expressive Action,’ *Philosophy* 96 (2021), pp. 277-300; ‘How and Why to Express the Emotions: A Taxonomy of Emotional Expression with Historical Illustrations,’ *Metaphilosophy* 52 (2021), pp. 513-529: <https://doi.org/10.1111/meta.12512>; ‘What Goes On When We Apologize,’ *Journal of Ethics and Social Philosophy* (forthcoming 2022).

<sup>29</sup> Beethoven’s inscription to this movement calls it ‘Heiliger Dankgesang eines Genesenen an die Gottheit’: ‘A convalescent’s hymn of thanksgiving to the Divinity.’

words, has expressive properties that relate to the situation of struggling life, or the condition that we are in as we are struck by a full appreciation of the significance of that struggle. What it is for these properties to be (successfully) expressive is for the music to be such as to capture or embody the nobility of that continued struggle in full consciousness that it is ultimately hopeless.

Perhaps music can be expressive in this second sense. Can actions also have expressive properties? Take the example of Christians kneeling in church. A plausible explanation of why they kneel in church is because they think that kneeling is appropriate. Why might it be appropriate? To explain this, we need to appeal to the expressive properties of the action. Thus, one reason why kneeling might be taken to be appropriate in church is that in church one takes oneself to be in the presence of the Divinity. What makes kneeling appropriate as a response to the presence of the Divinity is the perception that the Divinity has a worth or status that is incomparably higher than one's own. The act of kneeling is thus an expression of humility, and it is appropriate as an expression of humility because *making oneself low* captures or embodies an awed sense of being so impure and/or so powerless in the presence of one so pure and/or so powerful.

Why do we perform expressive actions? To *do justice* to what appear to one the salient features of the situation. Or simply to *acknowledge* that situation and lift it out of the ongoing rush of one event after another. In other words, expressive action is a category of action that does not primarily aim to bring about an alteration in one's situation, but rather to recognize or acknowledge the gravity of the situation: to dwell on it, lifting it out of the

ordinary run of things and marking it as significant. As well as having a primarily backward-looking role, such actions also shape a place for the situation in memory.

Situations of welcoming, leave-taking, thanking, celebrating, commiserating and mourning all involve distinctive actions that can be thought of as being expressive in this sense. When a parent embraces a child returning home from university, or as she is leaving, they mark the significance of the situation by doing something that captures or embodies the sense that the child is dear to them (that they want her close); and that they are either delighted to see her return, or are wishing her well as she departs. One particularly important role that expressive actions can play is in marking the passage from one normatively significant state to another.

With this account of expressive action in place, we can now argue that dissociation is the relevant expressive response to wrongdoing. Suppose that we wanted to do justice to the significance of wrongdoing, lifting it out of the mundane and marking its extraordinary nature, what kind of action would be expressively powerful in relation to such transgression? Some possibilities would include:

- i. Doing nothing
- ii. Doing something beneficial for the offender, aimed at the offender's happiness or welfare
- iii. Doing something beneficial for the offender, aimed at their moral reform
- iv. Imposing physical suffering on the offender
- v. Permanently excluding the offender from relationships/community

i) is problematic because it fails to do anything to mark the offence as wrong. ii) is problematic because of a lack of fit between the situation and the symbol. It is unclear how we could explain or justify the choice of an act that is welcoming and rewarding to mark something that is to be deplored and for which the wrongdoer is responsible. iii) improves on ii), in that it marks the wrongdoing as a failing. But the symbolism of imposed reform is inadequate because it treats the offender as though their identity, status and dignity as an independently competent agent who has committed serious wrongdoing is not a salient feature of the situation.<sup>30</sup> The corporal responses involved in (iv) (lashing, stoning, exposure to the elements, crucifixion, breaking on the wheel, or lashing out at the offender with blows) are expressively inadequate because it is difficult to see how we could explain the relation of reference between the symbolism of the action and the salient features of the situation. The treatment seems to have no intelligible symbolic connection with the situation of wrongdoing. v) involves marking the offender as lost to the moral community, but this symbolism is disproportionate to most cases of even serious wrongdoing. People who commit moral wrongs show responsiveness to moral considerations in most areas of their lives, even though they may have grossly failed in one area. It is, after all, this general

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<sup>30</sup> In *The Apology Ritual* (Cambridge: Cambridge University Press, 2008), I make this point through a distinction between qualified participants and apprentices. Note, however, that the argument here is not that imposed reform is never an appropriate response to the offender. The argument is rather that imposed reform is inappropriate in the absence of, or as a replacement for, a response such as the one recommended below, which symbolises the offender's failure as an independently competent agent. It would be compatible with this that imposed reform could accompany the latter response.

responsiveness that is partly constitutive of their being a responsible agent in the first place. At best, (v) is appropriate to a very small number of extremely serious moral wrongs.

Our review of these problematic alternatives suggests a better symbolism. What is salient in the situation of wrongdoing is that a) the wrongdoing is something to be deplored; b) it was committed by a responsible agent who could and should have done better; c) the agent is thus a member of the moral community who has violated the basic requirements of membership in that community. Our identity as a member of the moral community is a central part of our status. If the pursuit of moral ends and the upholding of moral standards is important, this can come about only through the cooperation of human agents who are sensitive to these requirements. There are signs of expressive recognition through which we mark the dignity of an agent as one who is part of this shared enterprise: certain characteristic marks of respect and goodwill. On the other hand, however, the offender is one whose membership of the moral community is troubled. This suggests that an appropriate symbolism would be that the characteristic forms of respect and goodwill that come with membership are partially and temporarily withdrawn. The agent remains a member of the moral community, so this withdrawal should be neither permanent nor comprehensive. It is thus partial and temporary *distancing* or *withdrawal* that is the appropriate way to symbolize wrongdoing when we wish to mark it expressively.

This conclusion resonates with the vignette of B provided above. B is in an uncomfortable position of moral compromise because he is not able to blame his employer. In particular, he is in a position in which he has strong prudential reason to continue to treat his employer normally. This is uncomfortable because he feels a normative pressure to distance from his

employer, not to treat them as if everything were normal. The account given in this section explains this pressure. I have sketched an argument that the expressively appropriate action in the face of wrongdoing is distancing or, as we might otherwise call it, *dissociation*. One reacts with distancing in order to do justice to the fact that wrong has been done by one who, in the absence of the wrongdoing, would be due certain marks of expressive recognition and respect. In doing so, one dissociates oneself from the wrongdoing and from the agent who perpetrated it.

## **6. Understanding SOURCES OF COMPLICITY**

We are now in a better position to understand the basis of SOURCE OF COMPLICITY. The idea that a failure to blame or withdraw from a wrongdoer can be a source of complicity makes sense if the following claims about expressive action are true. A) Actions are sometimes called for not simply to alter but to mark the significance of situations and events. B) In order properly to mark those events and honor their significance, actions have to be expressively adequate, in the sense of having appropriate expressive properties. C) Actions are expressively adequate when they have properties that manifest the appropriate attitude to the situation by referring to its salient features. D) Situations of serious wrongdoing call for expressive actions to mark their significance. E) The significance of situations of serious wrongdoing is that a member of the moral community has failed in the basic terms of their role. F) The properties (or symbols) that are expressively adequate to the situation of wrongdoing, in virtue of referring in the appropriate way to the salient features of the situation, are withdrawal or distancing, that is, dissociation. If A)-F) are correct then one who fails to engage in dissociative behavior has failed to honor the wrongdoing as they should. They remain 'associated' with it.

This recapitulation of points A)-F) allows us to see why the account of dissociation as an expressive action can give us a more powerful explanation of SOURCES OF COMPLICITY than one beginning with either the axiological or deontic interpretation of basic desert. We now have an argument to show that SOURCES OF COMPLICITY has explanatory priority over DESERT in grounding DESERT-COMPLICITY. In seeking to understand SOURCES OF COMPLICITY we now have a more powerful explanation of why complicity might arise from a failure to engage in some response to wrongdoing than we could get from attempting to explain this connection beginning from DESERT.

However, what we have ended up with is not DESERT-COMPLICITY. For one thing, my explanation of why complicity arises does not appeal to DESERT. Rather it seems to be the theory of dissociation as an expressive action that is doing the explanatory work. For another thing, according to my argument it is not the imposition of suffering as such that is the treatment T that is appropriate to such occasions. Rather, it is withdrawal and distancing that is expressively adequate to situations of wrongdoing.

An appeal to dissociation as the most basic backward-looking response to wrongdoing has various explanatory benefits over the notion of desert. One, noted above, is that appeal to dissociation allows us to explain the link between failures adequately to respond to wrongdoing and the incurring of complicity. Another benefit is that, rather than appealing to a sui generis notion of desert, dissociation is seen as an expressive action, and thus related to many other such acts, such as welcoming, thanking, mourning, which are appropriate to situations of normatively significant passage from one state to another. A

further benefit is that we have at least the beginnings of a vocabulary through which to articulate the normative significance of non-contingently appropriate responses to wrongdoing. Within the limits of space, I have sketched out a rationale for thinking that expressive actions are appropriate to certain situations, and explained how candidate actions might be compared for their adequacy as responses to wrongdoing. The reader might remain unconvinced by my sketch. But I hope that it is at least clear on what basis the argument between those who reject the account and those who accept them might proceed.

As suggested at the outset of this paper, this conclusion has significance for debates over retributivism and incompatibilism. A position that, like the one defended here, insists on the independent normative force of dissociation is, in important respects, a retributive position. Indeed, it is a backward-looking position that shares much of the conceptual role that is attributed to retributive desert. If dissociation is important, it is clearly backward-looking in the relevant sense, distinct from fairness, and licensing judgements of intrinsic rightness and/or goodness. If blame and guilt can be seen as emotions of dissociation from wrongdoing, then the account also promises to explain why it is that judgements about dissociation track judgements about emotions such as blame and guilt. Nevertheless, the account involves a reinterpretation of the basis of retributivism, and deepens and extends the debates about its nature and significance. Rather than a simple appeal to deserved suffering, inquiry should proceed by asking whether we have expressive reasons for action; whether expressive actions in regard to wrongdoing are (ever) called for; what degree of force is possessed by expressive reasons; and what kinds of action – whether of distancing

or some alternative symbolism – are adequate to situations in which a member of the moral community does wrong.

As regards incompatibilism, the question is whether the appropriateness of dissociation requires the kind of control or freedom that incompatibilists claim is required for basic desert. As I interpret it, this is a question about the capacities that are needed to be a member of a moral community in which one's wrongs will have the significance of calling for dissociation. A moral community is structured as a form of cooperation for moral ends. Each member has a place because they are needed to further those moral ends and uphold the vision of human relations structured by those ends. It does not seem implausible to think that the capacities needed are simply those involved the kind of normative competence that is treated as the defining mark of responsibility by authors such as Strawson and R. Jay Wallace.<sup>31</sup>

We do not need to stop talking in terms of DESERT. We can talk about one person deserving or not deserving a certain kind of treatment on the basis of some wrongdoing for which they were or were not responsible. However, while the surface grammar of this talk appeals to desert, the arguments presented in this paper suggest that the normative structure underpinning it has more to do with dissociation. We get a deeper understanding of the desert-focused surface grammar if we transpose these claims to the idiom of dissociation.

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<sup>31</sup> I defend a related view in *Apology Ritual*, esp. Ch. 3.