

Desert and Equality

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Does justice require, at least in part, that people get what they deserve?¹ The question is whether ideals of desert play a substantial and nonderivative role in establishing the content of social justice principles. Of course, even if the correct answer to this question were negative, once one has determined the requirements of justice independently of substantive considerations of desert, one could always add that the treatment of individuals that justice demands is to be identified with the treatment that they deserve. However, on this way of proceeding, ideals of desert do no real work and could be dropped from the account without any loss.

This first question resonates with a second one. Should egalitarian justice resist or accommodate the idea that desert considerations should be incorporated into the formulation of principles of justice at the ground floor level? Are desert and equality comrades marching together or sworn enemies or what? *Egalitarian justice* here shall be understood as principles that

hold that if we are dealing with a fixed population and choosing social arrangements that will not affect the aggregate total of well-being but may affect its distribution across persons, arrangements that would bring about an equal distribution of well-being, if that is obtainable, should be chosen.² The class of egalitarian justice principles divides into two groups, one that values equality for its own sake, as intrinsically morally valuable, and a second that values equality only as a means to the maximization of weighted well-being, with greater weight assigned to a unit gain in well-being, the less the recipient's lifetime well-being would be without that gain.³ The latter family of views, which goes by the name *priority*, strikes me as more plausible, so in this essay egalitarian justice is identified with prioritarian principle.⁴ For the purposes of this essay this espousal of priority is an unargued assumption. The focus of this essay is the relationship between egalitarian justice so conceived and deservingness.

On the face of it, giving people equal shares will conflict with the policy of giving each individual what she deserves unless it happens to be the case that everyone deserves the same so that the two patterns of distribution coincide. Philosophical advocates of equality sometimes propose principles that look like amalgams of equality and desert. Offering what looks to be a canonical formulation, Larry Temkin states, "it is bad - unjust and unfair - for some to be worse off than others through no fault [or choice] of their own."⁵ I'm not sure how to understand this ideal of equality, but I'm sympathetic to pluralistic principles of justice that attempt to balance or

integrate equality ideals with some norms of responsibility and deservingness. This essay explores how this might be done, peers down some threatening analytical abysses that lie on the path, and tentatively proposes a type of amalgam.

Section 1 of this essay raises three objections against the idea that justice requires rewarding people according to their deservingness. Section 2 observes that even if rewarding desert is not morally valuable for its own sake, widespread practices of holding people responsible according to contextual norms of desert are undeniably instrumentally valuable. Section 3 explores the attempt to defend rewarding desert as morally valuable for its own sake by rejecting the principle that people should be held responsible only for what lies within their power to control. The attempt does not succeed. Section 4 explores the attempt to defend rewarding desert as morally valuable for its own sake by accepting this control principle and fashioning a norm of desert as conscientiousness that is compatible with it. This avenue looks more promising. Section 5 suggests that the view proposed obviates the circularity objection against introducing deservingness as a constituent in fundamental moral principles. Section 6 argues that desert as conscientiousness can be a constituent in principles of justice without crowding out equality values despite Shelly Kagan's endorsement of desert against equality. Section 7 countenances the possibility that part of the moral goal that morality bids us promote is that people become more deserving rather than less deserving, desert being interpreted as

conscientiousness. This line of thought issues in a form of consequentialism that is prioritarian both in the domain of desert and in the domain of well-being and gives extra priority to achieving well-being gains for those who are comparatively more deserving. Section 8 denies that desert as conscientiousness has to be nonadministratable and therefore has no place in fundamental justice principles. Section 9 notes that the position upheld here has a consequentialist flavor that some will find distasteful.

1. Three Objections

The rough idea that the content of principles of justice is partly constituted by considerations of desert confronts three major objections.⁶

A. Entanglement. In many social contexts, what an individual is deemed to deserve reflects the quality of her performances that are relevant given the context. In the economic market, the operative notion of desert is individual productive contribution. The question then arises, to what degree it is reasonable to take credit or discredit, praise or blame, for one's choices and conduct. When an individual is praised for an admirable deed and says modestly "It's nothing," surely sometimes this discounting is correct, but what determines how much discounting is appropriate?

To simplify discussion, let us stipulate an assumption favorable to desert: human agents have free will and sometimes choose one alternative when they could have chosen others in exactly the same circumstances. This claim might be interpreted in either a compatibilist or a libertarian sense. If the latter, then prior causes impinging on the agent do not then fully explain the choice made either probabilistically or deductively.

Even on this assumption, causal forces impinge differently and with varying force on different choice situations. If one is suffering torture inflicted with the aim of inducing one to betray a noble cause, it is both difficult and painful to make the right choice of noncompliance. It will be variously difficult and costly for different persons placed in the same decision problem or a relevantly similar one to make the right choice. At some threshold level of these excuses, it would be unreasonable to blame a person for choosing wrongly, and what level of difficulty and pain that is, varies with a host of hard to detect and undetectable factors including the person's genetic endowment and socialization along with myriad other environmental influences.

Even one's subjective experiences of trying to do the right thing and exerting will power and resisting temptation are evidently an unreliable guide to singling out what one can truly take credit for (discredit if one is not making a good faith try). Recall John Rawls's comment on the precept of rewarding people according to their conscientious effort. He writes, 'Once again, however, it seems clear that the effort a person is willing to make is influenced by his natural

abilities and skills and the alternatives open to him. The better endowed are more likely, other things equal, to strive conscientiously, and there seems to be no way to discount for their greater good fortune' (Rawls 1999: 274; also Barry 1973: 155).

The point is that even on an assumption that appears to be clearly favorable to the idea that we are morally responsible for our choices and conduct and come to be variously deserving according to their quality, the factors that influence choice that are entirely beyond the agent's power to control and for which she cannot reasonably assume responsibility and the residual factors that are reasonably imputable to the agent are inextricably tangled. We do not in principle know how to separate them, but even if we did, in practical terms the extent to which I am genuinely responsible for a given choice I make or inadvertent failure to attend is impossible to measure. Rawls's conclusion following the passage quoted above is that '[t]he idea of rewarding desert is impracticable' (Rawls 1999: 274). The conclusion is seemingly modest. It's not that the ideal of rewarding genuine desert appropriately makes no sense or is morally defective. Rather the concern is that as we clarify the idea of what it is to be genuinely deserving, the plausible candidates for this conceptual role reveal themselves as for practical purposes impossible to measure, so the ideal is nonoperationalizable.

The entanglement objection obviously applies to doctrine that justice requires extra rewards for the more deserving that is premised on libertarian free will and moral responsibility.

Soft determinist positions are vulnerable to this objection, so long as they allow that the moral responsibility of an individual for her choices can vary by degree according to factors that are impossible or unfeasible to measure. Any nuanced doctrine on moral responsibility will face the entanglement problem, provided the nuances that render one more or less deserving are too subtle to register reliably on any monitoring system we could implement in a satisfactory manner.

B. *The economic market and desert.* The ideal of bringing it about that people get good fortune in life corresponding to their desert loses some of its luster if one tries to envisage how institutions (feasible or not) might achieve the ideal.

Consider economic contexts. In modern times, economic activity is organized by the market framework: Let each person contract with any other on mutually agreeable terms with given endowments. The market over time distributes fruits of economic cooperation to individuals. The market distribution is set by supply and demand conditions, which have no tendency to produce results that are in conformity with any reasonable conception of individual desert. If I offer Spanish lessons for sale, the gain that will accrue to me depends on the extent to which people want Spanish lessons and are willing to pay for them, on the one hand, and on the extent to which other people are offering Spanish lessons (or more or less close substitutes) for sale. And these magnitudes in turn are affected by the ensemble of people's preferences to

produce and consume, as modeled in general equilibrium theories. If market activity unfolds in circumstances that satisfy certain constraints, the result will be efficient, and efficiency is attractive⁷ - but there is no reason to think that the economic market will shower benefits and costs on people so that each gets what she deserves according to any remotely plausible conception of desert.

So it seems that either the theory of justice, if it requires that individuals should get what they deserve, must be utterly in conflict with the market, or the theory of justice, if it is to be in principle tolerant of the market economy, must not include as a fundamental requirement that each person should get what she deserves. If the idea of abolishing the economic market and organizing economic life as some form of moral meritocracy, to bring it about that individuals tend to get what they deserve, looks unattractive, we have reason to accept a theory of justice that does not attach great intrinsic significance to any ideal of desert.

C. Circularity. The third objection is that the search for a plausible standard of desert settles on a notion that renders the idea that justice is (in part) distribution according to desert viciously circular (Rawls 1999: 275).

To avoid basing desert on characteristics of persons and their conduct that are clearly beyond their power to control, stipulate that the relevant desert basis is moral desert. But if we

then say, as seems sensible, that a person is morally more deserving, the more firmly she is dedicated to bringing about fulfillment of the principles of justice (the fundamental moral principles), we immediately start spinning in circles. If justice in part is rewarding people according to their moral desert, and one becomes morally deserving by bringing about fulfillment of the principles of justice, then one becomes morally deserving (in part) by bringing about the rewarding of people according to their moral desert - which is, what? In this way the search for a viable conception of what makes one morally deserving runs into a dead end.

2. Desert: More than Instrumentally Valuable?

To my mind the most pressing conundrum the arguments expose is that the norm that people cannot reasonably be deemed deserving or undeserving in virtue of what lies beyond their power to control appears massively in conflict with our common-sense understanding of norms of responsibility and desert as they function in many different and significant social settings. The control principle thus appears to be radically at odds with a host of social practices and arrangements that will strike many of us as in fine working order and not at all a fitting target of radical critique.

This conflict will be grossly exaggerated if we fail to notice the extent to which common-sense assignments of responsibility and desert would survive as instruments for achieving uncontroversial goods even if we entirely embraced the control principle and on this basis concluded that no one is ever truly responsible for anything or deserving or undeserving in any respect.⁸

Social life is laced with the regulation of conduct in many practices by ideas of desert and responsibility. We could barely imagine social life without such regulation; nor would any sober person wish to eliminate it. We punish criminals and require those who tortiously injure others to pay compensation. We enforce contracts. We tend to leave individuals for the most part responsible for their own well-being, in the sense that well-being gains and losses that accrue to them in the course of legally permitted interactions with others are allowed to stick. In a wide variety of relations with associates, work mates and colleagues, acquaintances and strangers and friends, kinfolk and lovers, we seek to return good for good and evil for evil, with an emphasis on the former if we are decent. We seek to identify people who will not cooperate in transactions that have the form of single play Prisoner's Dilemmas and avoid interaction with these noncooperators. From the moral point of view, holding people responsible for their conduct in these and many other ways is broadly justifiable on the ground that this practice of responsibility

is instrumentally useful in bringing about consequences that are morally far superior to what would come about if we dropped the practice.

It bears emphasis that the good effects of holding people responsible and treating them according to their achieved deservingness are suffused throughout social life. That responsibility and desert serve the purposes of a wide variety of social practices is of course no accident. Sometimes they are designed to be functional in this way and sometimes they emerge by processes that tend at least in part to be shaped by pressures that push in the same direction. Within the various social practices, spheres of justice as they have been called, standards of performance, merit, and worth emerge that serve the practices in the sense that they encourage conduct that helps people achieve the goals that drew them to the practice or the goals that the practice has been established to serve. Since different practices serve different ends, standards of responsibility and desert tend to be heterogeneous across the range of practices. The traits we prize in a lawyer, politician, professional athlete, priest, entrepreneur, employee in a bureaucratic hierarchical agency, artist, unskilled laborer, medical doctor, plumber, cook, shaman, criminal law judge, husband, lover, soldier, fellow crook, clerk, and friend differ in gross and subtle ways that register the different uses of these social roles. A priest becomes deserving by being holy and a sensitive, nurturing minister to his congregation. A defensive cornerback in the National Football League becomes deserving by skillfully preventing pass completions and by viciously

tackling pass receivers and running backs. And so on. Instrumental desert correlates with appropriate compensation and reward; the more deserving should get more. Again, the supporting ground is an instrumental consideration. Human nature being what it is, people in any sphere of activity tend to be motivated significantly by the desire for personal advantage. For this reason, the behavior and traits that conduce to the flourishing of the people who have a stake in a social practice and that accordingly get tagged as deserving should be rewarded. In general, the more deserving one is by the standards of the practice, the more it should be the case that one is advantaged by participation in the practice.

This does not mean that whatever the prevailing standards and norms happen to be in a sphere of human activity, they must automatically be judged “functional” and regarded as normatively appropriate. On the contrary: egalitarian justice will condemn some practices and propose that others should be altered so that they function in ways that do better to achieve egalitarian goals. Prevailing standards of responsibility and desert, assessed by egalitarian standards, may be found instrumentally deficient. I only mean to insist that if one regards practices of holding people responsible according to norms of desert as (possibly deficient) means to the achievement of social justice goals, one will not be led to propose across-the-board uprooting or elimination of these practices, which would drastically and unjustifiably reduce human well-being, but rather their regulation and adjustment at the margins.

3. Relaxing Control

The question for this essay is whether or not responsibility and desert are intrinsically morally significant, so that it is morally valuable to reward the truly deserving independently of any possible further good effects of doing this. Given the undeniably vast instrumental benefits of holding people responsible in various ways in sundry domains, the dispute regarding the putative intrinsic moral value of rewarding the deserving is a somewhat delicate residual issue. I shall focus on the idea that justice demands that people who are more deserving should enjoy higher lifetime well-being than those who are less deserving.

The thesis that people's getting what they deserve is a *per se* requirement of justice takes two different forms. One version denies the control principle and appeals against it to the claimed evident rightness of common-sense assignments of desert in various social spheres. These should be taken at face value and not explained away by reconstructing them in thought as means to other goals that have nothing *per se* to do with desert. The alternate version accepts the control principle and strives to revise ordinary common-sense norms of responsibility and deservingness to bring them into conformity with it.⁹

Political theorists who champion desert as a principle of justice typically reject the control principle, which they believe is subversive of the project of taking desert seriously. David Miller has vigorously pursued this approach (1999: chap. 7).

One generic difficulty that anyone who rejects the control principle faces is where to draw the line: in what ways and to what degree are people reasonably held responsible for what lies beyond their power to control, so that these uncontrollable factors legitimately render them truly deserving and undeserving? Once the control principle is rejected, why not say that children born into wealthy families deserve to inherit their elders' great wealth? A principled stopping point, a boundary where true desert peters out, is difficult to locate.¹⁰

If justice requires rewarding the truly deserving, true desert tracks common-sense norms that vary from sphere to sphere, and rewarding desert in this way is intrinsically and not merely instrumentally morally valuable, it should be possible to find unambiguous cases in which rewarding the deserving serves no useful purpose but should be upheld anyway as valuable for its own sake. Such cases are hard to find. Perhaps the retributive theory of criminal punishment is the best source of plausible instances in which it might with some plausibility be held that rewarding the deserving and punishing the undeserving are morally valuable for their own sakes even if doing so serves no further valuable goal. Even here, controversy abounds (retributive justice is discussed briefly later in this essay).

The relaxation of the control principle and the challenge to desert when its instrumental advantages give out create a pincers movement. What becomes pinched and maybe broken is the thought that it is morally valuable to uphold common sense ideals of desert as significant for their own sake even when they are not serving as means to any other valuable ends. At any rate, my suggestion is that the lackluster appeal of common-sense desert stripped of its instrumental advantages calls into serious question the relaxation of the control principle.

David Miller's position on desert and justice looks to be squeezed by the pincers just described. He holds that justice requires that human performances that are perceived as socially valuable should be recognized in some way, by some benefit-conferring institution or practice, and that in that setting those individuals who perform better deserve proportionally greater benefit. What happens if individuals' performances are affected by factors beyond their power to control? Miller distinguishes integral luck (luck that occurs during performance and influences its outcome) and circumstantial luck (luck that influences whether someone has the opportunity to perform), and both of these from luck in endowments and socialization that render some more talented than others at the type of performance in question. Integral luck nullifies desert, circumstantial luck reduces but does not eliminate it, and luck in possession of native talent does not subvert desert arising from performance.

Consider the economic marketplace, where Miller identifies the extent of one's socially valuable contribution with what others are willing to pay for it.¹¹ Miller then holds markets should be reformed so that each individual's economic benefit is proportionate to her economic contribution. Nothing in the nature of an unregulated market would tend to cause it to function so that the payoffs individuals receive reflect their economic contribution with adjustments that undo their integral luck and discount somewhat for their circumstantial luck. A well-functioning market, that operates so as to achieve efficiency, will then deviate systematically from what justice as desert according to Miller's interpretation would demand.

But the notion of desert that Miller is deploying here is already so thoroughly shaped to reflect the workings of the economic market that I do not see that the notion has any critical edge that provides any reason at all for regulating or rearranging market practices. In effect, Miller urges that some things that happen beyond my power to control that affect the quality of my performance really do not make any difference to what I truly deserve and should get in virtue of my economic contribution, whereas other factors that happen beyond my power to control and affect the quality of my performance do legitimately play a role in fixing what I truly deserve. I can make sense of this, if one is making a case that the goals that should lead us to establish and preserve the market economy would be better served if the reward structure were altered somewhat. If efficiency required eliminating the impact of integral luck on economic payoffs, we

should perhaps restructure the market reward structure. But a market operating efficiently does not distinguish integral luck, circumstantial luck, and luck in talent possession. Why should we care about these matters if the market does not? Miller's idea of economic deservingness appears to fall between two stools. It is not anchored in any normative ideal, conceived independently of considerations of how markets function, that can command our allegiance in conflict with efficient market functioning. But nor is it closely enough anchored to considerations of how markets function and the purposes they serve to capture the normativity that inheres in the limited but important ideal of the competitive economic market.

The point readily generalizes. Suppose one takes at face value the different ordinary norms of desert that operate in practices that are uncontroversially valuable. One says, these norms fix what people truly deserve, and since they allow that people can become deserving due to factors beyond their power to control, so should we allow desert and control to be severed. Then imagine circumstances altered so that the instrumental advantages of rewarding and punishing people according to these common-sense norms cease to accrue. We assume the practices continue to generate results that people value and within practices people continue to perform in socially valuable ways but proportioning payoffs in the practice to these individual performances ceases to be in any respect useful. One would then be committed, improbably in my view, to holding that it is morally valuable to at least some degree to continue rewarding

people according to these common-sense norms of desert even though doing so no longer serves any goals except bringing about a closer fit between people's good fortune and their "true" desert.

4. Deservingness as Conscientiousness.

The focus now shifts to the alternative strategy of devising an account of what makes people deserving that accommodates the constraint that people cannot become more or less deserving due to factors that are beyond their power to control.

Whether or not an agent's noble goals issue in admirable actions and excellent achievements depends in part on factors beyond her power to control such as the opportunities she faces and the native talent potential she possesses. Moreover, whether or not the agent's intentions and aims are oriented toward what is noble and fine also depends at least in part on sheer luck. One agent is mistrained in early childhood and seeks under the guise of good what is not really good as a consequence. Another agent lacks the intelligence to think through a difficult evaluative exercise to the proper conclusion concerning what is truly choiceworthy in her circumstances. Another agent through no fault of her own lacks crucial information needed to orient her will toward what is genuinely right and good.

So here is a proposal: what renders agents deserving or undeserving is the degree to which they are steadily disposed to pursue what they believe to be right and good, provided that they have made good-faith efforts to discover what is genuinely right and good and are not culpable for embracing false beliefs. If one conscientiously strives to live as one ought, according to this proposal, one qualifies as virtuous. For simplicity, I drop the reference to what is good and speak only about seeking to orient oneself to what is right.

To avoid confusion, given that one might suppose a person who is virtuous really does achieve wisdom, courage, temperance, and so on, I shall call a person who satisfies the proposed criterion of deservingness *subjectively virtuous*. In *Middlemarch*, George Eliot observes that for every Saint Theresa of Avila, who has the opportunity to lead a grand noble life of great accomplishments and rises magnificently to this challenge, there are many shadow Theresas who never get such opportunities.¹² They might face only choices of little consequence through no fault of their own, or (I would add) they might lack the great talents needed for heroic deeds. On the proposal I am advancing, all of the shadow Theresas who are just as disposed firmly and steadily to the good and the right as Saint Theresa are deemed equally deserving as the saint herself.

Objection: According to this proposal, conscientious Nazis become ever more deserving as they remain steadily disposed to roast their victims.

Reply: It would be consistent with acceptance of the proposal that what makes a person truly deserving is conscientiousness (subjective virtue) to hold that the person who makes good-faith efforts to detect correct moral principles will always succeed, so in fact there can never be nonculpable belief in false moral principles. Or one might hold that there is a gray area of candidate principles all of which are sufficiently reasonable that good-faith efforts might lead a person to accept any of them, even a false one. But some putative moral principles including those that exalt racial purity and approve slavery, are beyond the pale, and will never be approved by a conscientious agent.

The reply implicitly assumes that the fundamental moral principles must be intellectually simple and easy to recognize (or at least that some principles are so bad that no complex argument can make them appear good). It also denies that bad socialization can place evil fundamental principles in a sufficiently attractive light that a person who has undergone the socialization might then innocently and without blameworthy fault affirm evil as right and good. I doubt that these assumptions are correct. There is no a priori reason to suppose that correct moral principles must be simple and easy to detect, or to suppose that socialization is a weak force that cannot mislead any agent who sincerely seeks to form correct ethical beliefs. The conclusion then should be that if the reply is correct, there cannot be conscientious Nazis, and if the reply fails, we should not deny that conscientious Nazis can be genuinely deserving.

Objection: A person who seeks to discover correct morality and conform to its requirements must be motivated by some desire or equivalent psychological state. This initial desire is either present in the agent or absent. Either way, the individual cannot be responsible for having it (on this theme see Persson, this volume).

Reply: The objection might be understood as invoking hard determinism, the doctrine that determinism is true and incompatible with moral responsibility. So understood, it is irrelevant to this essay's project, which is to explore the moral status of desert on assumptions that are favorable to the claim that desert matters and do not rule it out of court from the outset.¹³ The objection becomes pertinent if understood as the assertion that even if we have free will and exercise it in ways for which we bear responsibility, still, different individuals find themselves with desires and given psychological traits that make it more difficult or easy and more painful or pleasant to dispose their wills conscientiously. In a metaphor, the individual is not responsible for the hand she is dealt by genetic endowment and environmental influences. She is responsible for how well she plays the hand she is dealt. Promoral and antimoral dispositions are part of the hand she is dealt, so their influence must be subtracted to find the residue of conscientious effort for which she can take credit.

One might be concerned that the proposal as stated does not after all succeed in drawing the line between what does and does not lie within the individual's control, so far as what might

be thought to render her deserving is concerned. Compare two individuals, of whom one makes good-faith efforts to discover the right and the good and goes on to become subjectively virtuous, whereas the other one does not make such good-faith efforts and does not become subjectively virtuous. The difference might be that one is socialized to perceive and value conscientiousness and the other is not.

Still another objection that the proposal invites challenges the claim that one is more or less deserving to the degree that one is more or less subjectively virtuous. Consider the conundrums described by Gregory Kavka (1978). An individual might correctly foresee that she will do enormous good for the world if she brings it about that her character is corrupted, so that her will is not steadily disposed to the right and the good but instead harbors an evil conditional intention such as to retaliate with indiscriminate massive violence to nuclear attack. Suppose the individual does act to corrupt her own character and thereby does enormous good for the world say by contributing to a stalemate of great power nuclear threats. Surely the person does not thereby render herself undeserving? There will be further cases. Corruption of character might be a foreseen or unforeseen by-product of pursuing a course of character that is itself morally justified all things considered. Also, we might vary these cases by imagining that the agent either deliberately seeks or courts corruption of character as part of her engagement in a course of conduct that is not objectively morally right but that seems right according to her nonculpable

conscientious judgment. On the flip side, increases in an agent's conscientiousness or subjective virtue might come about as deliberately cultivated by the agent or as foreseen or unforeseen by-products of the agent's pursuit of other goals.

Once again the reply will be to separate what one can reasonably be held responsible for in the face of complexity, in this case alteration of character over time for which the agent is to some degree responsible. The first pass at estimating an agent's desert is to note the extent to which she is disposed to pursue what she believes to be right and good over the course of her life. One then adjusts this figure to acknowledge that to some degree the individual may fail to be steadily disposed over the course of her life to make good faith efforts to form correct beliefs about what is right and good, in general and in her particular circumstances. One then makes a further adjustment to reflect the fact that at any given time in her life, the agent's degree of conscientiousness at that time may be given a motivational boost or reduction brought about by past acts that themselves are variously conscientious. The agent may then be indirectly responsible for the current promoral or antimoral motivations she has, and deserve credit or discredit for their current impact.

The line of thought sketched in the previous paragraph must be mistaken. A simple way to see this is to note that whether an agent's conscientious or unconscientious choices bring it about that she later comes to have increased promoral or antimoral motivation will depend on

contingencies beyond the agent's power to control, or luck. Also, a desire qualifies as 'promoral' or 'antimoral' on the ground that, averaging over all the possible circumstances in which one might choose multiplied by their probability, having the desire either increases or lowers the expectation that one will choose rightly. But in unusual or unexpected circumstances a promoral desire may press one toward an immoral choice and an antimoral desire may press one toward a moral choice. Again, whether one's choice at a moment that deliberately or as a foreseeable byproduct induces a certain desire will thereby in the end inhibit or facilitate moral choice in future depends on contingencies that lie beyond the agent's power to control. What we should say instead is that moment by moment, what an agent is strictly responsible for is the degree to which the quality of her agency is due to her conscientiousness or lack of it at that time.

Here is a simple picture of how the elusive conscientiousness might manifest itself in choice. Suppose that by virtue of having free will, I can spontaneously bring about a desire to do what I take to be right that varies in strength within a given range depending on my conscientious effort expended on that occasion. The size of the desire within this range is what I can be held responsible for.¹⁴ This desire then simply is added to my other desires at the moment, and my choice depends on the resultant force of the aggregation of these desires. Some of these desires other than the conscientious desire will have been causally produced by factors that include past choices of the agent. But what really places credit and discredit on an agent, what she is truly

responsible for, what renders her genuinely deserving and undeserving, is the degree to which she strives to be for the good and the right on each occasion of choice.¹⁵

One might worry that an element of contingency beyond the agent's power to control is still present in this account of responsibility and desert. Whether one is faced with a decision problem (as well as what sort of decision problem one then faces) depends on contingency, sheer luck in another guise. One may face temptation or the opportunity for heroism, another not. We are back to George Eliot's point. But this contingency now seems benign. I may face difficult or easy decision problems, but what I am responsible for is responding as best I can within the limit of my conscientious ability to the problems I face. My task as I strive to be conscientious is always adjusted to the ease or difficulty of the choice I face, so everyone has the same opportunity to gain a good score for deserving conscientious performance no matter what choices one faces. So to speak, one's handicap adjusts perfectly to the difficulty of the golf course one is playing, so all golfers' scores achieved on no matter what course are fully comparable.

Another complication is that if free will is understood as an uncaused contribution that the agent can make to the nexus of causal factors that determines choice, there may be situations in which the agent can foresee that the difference she could make by her utmost exertion of will could not overbalance other causal forces that will be decisive in any case. In that case, conscientious striving would seem pointless, so it would be odd to blame a person for not making

a futile conscientious effort. If I foresee that the next application of torture will push me to confess and betray my comrades no matter how stridently I exert my will to resist, and on this ground I do not resist, it does not make sense to assign me credit for resisting or discredit for failing to resist. The same goes for controlling my tendency to explosive irrational outbursts of anger or fighting any other evil tendency of my nature (and *mutatis mutandis*, the same point holds for acts of will that would pointlessly augment the forces of my personality that are carrying me to a good choice in some setting). Epistemic considerations may mute the force of this line of thought. If I cannot tell whether exertion of will would be consequential for choice or not, I should make whatever conscientious effort I am capable of. Still, the difficulty remains.

What should be said that conscientious striving, what renders me deserving, is not an act that I perform on a particular occasion, but a disposition I steadily maintain. Whether I face many or few decision problems that call for action on my part is beyond my power to control, a matter of luck, so should not affect my deservingness. Whether the decision problems I face are hard or easy is also part of the situation I face, rather than what is due to me, that renders me deserving. I dispose myself, to greater or lesser extent, to pursue what is right and good, and thus I am more or less deserving. What is up to me is the character of the disposition, not whether or not it happens to manifest on this or that occasion. Or better perhaps: my deservingness score is calculated moment by moment by the quality of my disposition at that moment, the score being

continuously adjusted by the extent to which this quality now is due to factors either entirely beyond my power to control or that are difficult or painful to control.

5. Circularity

Desert as conscientiousness can be included as a constituent element in the fundamental principles of morality without introducing a vicious circularity into the account, such as John Rawls warned us was a trap for the unwary. At least, so I shall claim.

Suppose one says, what constitutes a person as morally deserving is that she seeks to bring about what justice requires. If one adds that what social justice requires is that people are rewarded according to the degree to which they are deserving, one is then asserting that what constitutes a person as morally deserving is that she seeks to bring it about that people are rewarded according to the degree to which they are deserving. A bad circularity vitiates the proposed account. What it is to be deserving has not been successfully characterized.

If being deserving is identified with conscientiousness, the problem does not arise, because the content of what morality requires is not being included in the characterization of deservingness. Deservingness is a subjective orientation of the will. To be deserving is to orient one's will toward what one takes to be morally right, That is to say, the deserving individual is

one who makes sincere efforts to discover what is morally right and makes good-faith efforts to act according to whatever she discovers. Her will is decisively oriented toward a blank check: she aims to do whatever it is that is morally right, and she tries to fill in the content of this aim by thinking through as best she can where the balance of moral reasons points, all relevant considerations being taken into account. In this project the object of her will is not really whatever she happens to take to be morally right at the moment, because she recognizes her current opinion, whatever it is, might be wrong. However, in striving to conform her will to what is morally right, the best she can do is to conform her will to what by her lights now seems morally right.

If we aimed to discover to what extent a person is deserving, we do not need to know anything at all about the true content of morality, about what is really morally right. We would look for evidence that the person is conscientiously striving to lead her life according to her conception of what morality requires, and evidence that she acquires her conception by honest seeking. That we can in principle determine the degree to which a person is deserving without knowing anything ourselves about the true and proper content of morality indicates that the substance of what morality requires is not appearing as an element in what it is to be deserving. Hence we can include this notion of deservingness as conscientiousness as a constituent element in the fundamental principles that fix what morality requires.

There is a residual puzzle. One might wonder, what is the content of a person's intentions, when she happens to discover correctly what morality does require. In this case, which can hardly be regarded as a marginal case, won't the content of morality become included in the object that the person strives to achieve, if she is to qualify as deserving? Circularity then appears to emerge again. I have to say that even when the person has justified correct beliefs about what morality requires, these justified beliefs will not enter into the considerations that qualify her as deserving. The person would be just as deserving (provided she sincerely seeks to find out the moral truth and conform to it), whether her beliefs were true or false. What matters is just that she orients her will toward whatever she happens to believe, after good-faith efforts on her part to come to believe the truth about moral requirements. And of course the person herself can be aware of this: she can be aware that the question, whether or not she is deserving, does not hinge at all on the quality of her beliefs about what morality requires. They could be perfectly true or utter malarkey; no matter.

6. No Peaks

Suppose that we have determined that subjective virtue or some suitable modification of it is what constitutes the desert basis for the desert component of distributive justice. The more

conscientious one is, the more deserving one is. The next question is how deservingness modifies the distributive share that the individual at that level of deservingness ought to get (on this issue, see Feldman 1999).

The core of this question has been subjected to instructive analysis in recent essays by Shelly Kagan (1999 and 2003; see also Olsaretti 2002 and Feldman 2003). He considers equality and desert as values that might be thought to affect the value of outcomes. Other things equal, one might suppose, more equal distributions are morally better, and other things equal, one might suppose, distributions in which people get what they deserve are morally better. Kagan disagrees. He argues that when desert values are properly understood, they completely crowd out equality values, which should probably have no influence at all in determining the moral value of the outcomes that action and public policy can shape. In my contrary view, in the framework that Kagan sets it becomes clear that equality values do have independent weight and one can discern how equality and desert might sensibly be integrated at the level of fundamental moral principle.

Distinguishing noncomparative and comparative desert, Kagan asserts that more deserving people deserve to have more well-being than less deserving people and that for each person there is some absolute amount of well-being that the person deserves. Getting less well-being than that deserved amount is less good or bad (from the standpoint of desert) and getting more well-being than that deserved amount is also less good or bad. For each person, the amount

of well-being that she deserves fixes her peak - the level of well-being for her, having which would be best from the standpoint of desert.¹⁶ This is the idea of noncomparative desert.

Comparative desert is defined in terms of it. The idea is that people who are equally absolutely deserving should be equally well off and people who are more deserving in absolute terms than others should be better off than others. Kagan also stipulates that one person is specifically more deserving than another if one suffers a greater shortfall from the well-being level she absolutely deserves (or a lesser surplus of well-being beyond what she absolutely deserves) than the other, so that from the standpoint of desert it is better to confer a one unit gain of well-being on the specifically more deserving.

The thought experiment that is supposed to induce the judgment that desert supplants equality is this: suppose that one can provide a well-being gain either to a saint who enjoys a high level of well-being, but far less than she deserves, or to a sinner who enjoys a much lower level of well-being, that level being far greater than he deserves. An egalitarian view that holds that if a one unit gain can go either to a better off or worse off person, it should go to the worse off, must hold that (so far as equality values are concerned) it is better that the worse off sinner get the benefit in the offing rather than the better off saint. Kagan notes that both noncomparative desert and comparative desert agree that (so far as desert values are concerned) it is better that the benefit go to the saint who is far worse off than she deserves rather than to the sinner who is

already far better off than he deserves. Moreover, his response to the example is that not only is it the case that desert values and not equality values have greater weight in determining which outcome would be better all things considered, it is also the case that in no respect would it be better that the worse off sinner should get the benefit as equality values would dictate. No faint shadow of equality considerations shades the judgment in these circumstances in any respect. (He adduces other examples to explore and strengthen the judgment that equality values have not just less weight than desert values but no weight at all).

A first clue that this dismissal of equality values proceeds too quickly emerges if one imagines a world in which everyone has exactly what she deserves according to Kagan-style noncomparative desert. Then a windfall gain in resources that can improve people's well-being appears.¹⁷ Perhaps huge oil fields are discovered. The upshot is that we can distribute resources that will bring about a tripling of everyone's well-being level. If everyone initially enjoys as much well-being as she noncomparatively (and comparatively) deserves, then multiplying each person's well-being by three does not worsen the situation as it would be assessed by the standard of comparative justice. But from the standpoint of noncomparative desert, we must say that tripling everyone's well-being level is a disastrous change. We would move from a world of perfect correspondence between desert and well-being levels to a world in which everyone has grossly more well-being than she deserves. Saying this is compatible with holding that all things

considered, tripling the well-being of humanity is morally desirable, in view of the aggregate well-being gains thereby realized. But my own judgment is that there is nothing undesirable from the standpoint of desert that occurs in the transition to the world where everyone enjoys huge well-being gains proportionate to their deservingness (their virtue or desert basis). This is the judgment that there is no such thing as noncomparative desert as Kagan conceives it - a peak of well-being suited to one's desert such that to have more or less well-being than that amount would be undesirable from the standpoint of desert. Even if there is no doubt whatsoever that the person has earned a particular desert score, to my mind desert merely amplifies or reduces the moral value of channeling well-being gains to one or another person. One way to accommodate these points is to affirm that all desert is comparative.¹⁸ That is to say, even if the standard for measuring that which qualifies a person as deserving admits of cardinal interpersonal comparison with a nonarbitrary zero, the desert score that accrues to a person on this basis establishes only comparative desert: other things being equal, it is desirable that those who are more deserving should enjoy more well-being than those who are less deserving.

Another useful thought experiment for exploring the relative weight of comparative desert and aggregate well-being considers whether it is desirable that an extremely undeserving person should get a benefit if the only alternative to his getting the benefit is that the benefit is lost - spoils without advancing anyone's well-being. Suppose Hitler is very undeserving, compared to

Mother Theresa and everybody else, so that by comparative desert standards he is the least fitting person to receive a benefit. Either the benefit goes to Hitler, rendering him better off, or it goes to no one. The view that I urge recommends that in such a circumstance it is better that Hitler get the benefit than that no one get it.

This judgment sweeps together distributive and retributive justice considerations that might be implicated. Suppose Hitler has committed crimes that merit punishment. Or suppose Hitler is one of the undeserving poor, to whom a desert-oriented distributive justice policy might be expected to be stingy. Nonetheless, if the only options are really a status quo or an alternative in which Hitler is slightly better off and no one else is worse off, the alternative is morally preferred. On this view, a constraint on the influence of comparative desert on the evaluation of outcomes and actions is the Pareto norm.

For retributive justice, acceptance of a Pareto constraint implies that the imposition of punishment on a person - deliberately aiming to reduce the guilty person's well-being - cannot be justified unless punishment produces some benefit for other people either by deterrence or in some other way.

Taken by itself, comparative desert can recommend reducing one person's well-being when no gain to anyone else results. Imposition of a Pareto constraint rules out levelling down of this sort. The position thus taken is that it is morally desirable that everyone, even Hitler (the

least deserving person on earth, let's say) should have a good life, more rather than less well-being. The role of comparative desert is limited to amplifying or reducing the moral value of obtaining a benefit for a person depending on how comparatively deserving the person is.

The reader might well be puzzled that on the one hand I objected that Kagan's position on desert implied that it is in one way good to reduce one person's well-being when no gain to anyone else results, yet on the other hand I accept comparative desert, which also upholds this same thought that levelling down can be in some respect desirable even if never acceptable all things considered. In reply: my claim is that once we see that comparative desert can be understood as a free-standing doctrine independent of any notion of noncomparative desert, the appeal of the former crowds out the attraction of the latter.

More needs to be said to clarify how comparative desert affects the moral value of outcomes and how this desert value interacts with equality and aggregation of well-being. Aggregation holds that an outcome with more aggregate well-being is morally better than an outcome with less. Equality holds that if the total of well-being for a given number of persons is fixed, the state of affairs in which all persons have the same amount of well-being is morally preferred. I believe that the least controversial doctrine in the family of egalitarian views that is consistent with this construal of equality is prioritarianism: one ought always to choose an action among the available options that induces no less moral value than any other option, the moral

value of obtaining a well-being gain or avoiding a loss for a person being greater, the larger the well-being gain, and greater, the lower the person's lifetime well-being would be in the absence of this benefit. Priority so characterized is an act-consequentialist doctrine that takes the value of consequences to be set by some function of aggregate well-being and priority for the worse off. It should be noted that this characterization is not mandatory. Priority might on an alternative view be construed as the consequentialist component of morality, which includes other components such as deontological constraints and options. However, the promise of the project is that by introducing distributional considerations that qualify the principle of well-being maximization one ends up with a principle that is not vulnerable to the most damaging counterexamples that tempt one to abandon the consequentialist faith. I tentatively want to explore how one might keep the faith (see also Areneson 2003a and 2003b).

To consider how aggregation and equality (melded into priority) and comparative desert interact, consider a two-person world consisting of a very deserving person, a saint, and a very undeserving person, a sinner. Suppose that it is possible to obtain a small well-being gain for either the saint or the sinner but not both in four situations: (a) the saint and the sinner are both already very well off and each has the same amount of well-being, (b) the saint and the sinner are both very badly off, and each has the same amount of well-being, (c) the saint is very badly off and the sinner is very well off, and (d) the saint is very well off and the sinner is very badly off.

In (a) and (b), whatever relative weight comparative desert should have against priority, the morally preferred outcome should be the one in which the more deserving saint gets the benefit. In (c), priority and desert both favor the outcome in which the worse off and more deserving person gets the benefit. In (d), the two considerations of comparative desert and priority pull in opposite directions. Considering a somewhat similar example, Kagan holds that the putative value of equality is entirely eclipsed by desert. I do not share this judgment and want to explore views according to which either desert or priority might determine right conduct when they conflict.

Up to now comparative desert has been thinly described. Consider situations in which one can bring about a one-unit increase in well-being for only one of a number of persons who are unequally deserving (they vary in virtue, or in whatever is the applicable desert basis) and also are at various well-being levels.

Here is a familiar proposal. So far as comparative desert is concerned, the ideal state of affairs is one in which each person enjoys well-being proportionate to her deservingness, so that if Smith's deservingness score is 3, Jones's is 2, and Ben's is 1, the ideal distribution of well-being among them would be in that same patterned proportion 3:2:1.

The picture then is that increasing human well-being and preventing reductions of it is always morally a good thing, but the moral goal is not to maximize the sum total of well-being

but to maximize the total of well-being weighted by distributional factors. One factor is priority as already described. A second is that it is better to obtain a gain for a person who is specifically more deserving than others to whom the same-sized gain might be given. One is specifically more deserving than others who might be accorded the benefit in question if channeling the benefit to one rather than to any of the others would do most to bring it about that the well-being levels these people are at are proportional to their level of desert. Other things being equal, it is better to get a benefit to someone who is more deserving in this sense, and other things being equal, it is better to get a benefit to someone, the lower her lifetime well-being without this benefit, and no other matters affect the moral value of the state of affairs in which a benefit is obtained for a person other than the size of the benefit. Everyone is deserving but some are more deserving than others. It is intrinsically desirable that any person's well-being be increased, but it is more desirable to increase the well-being of the worse off.

Distributive justice can be regarded as setting criteria that establish queues of persons standing in line to receive various benefits that are in the offing. Comparative desert and prior well-being level affect one's place in the queue, but no one is deemed intrinsically unfitting to receive any benefit. If there is some good that might be obtained for me, getting which would increase my overall lifetime well-being, the only morally acceptable reason not to obtain the good for me is that someone else stands in front of me in the queue.

This standing-in-the-queue amalgam of comparative desert and priority is controversial along many dimensions, including its denial of noncomparative desert. Perhaps the area of social life in which the denial of noncomparative desert looks most incongruous is criminal justice. Many of us have the belief that a given crime of given culpability, taken by itself, deserves a specific penalty - or perhaps better, a penalty within a certain range. Comparative desert yields the judgment that if several individuals commit equally heinous crimes and are equally blameworthy, they ought to receive the same punishment. Comparative desert applied to retributive justice, justice in the punishment of crime, holds that people who commit legal offenses of varying wrongfulness ought to be punished in proportion to their culpability - the evil of their crime adjusted to reflect their degree of responsibility for its commission. But most retributivists hold that 'for every offense there is an ideally deserved punishment,' and that being punished by a lesser or greater amount is less than ideal and if the gap between what one noncomparatively deserves and the punishment meted out is too great, this is positively evil. Thomas Hurka observes, 'It is also plausible that failing to punish an offense is not just not good but evil' (2003: 53). David Miller also affirms the noncomparative element in retributive justice: 'When we say that no one deserves to be hanged for stealing a sheep, we are saying not merely that this penalty is disproportionate to others, but that there is an absolute lack of fit between the wrong committed and the proposed penalty (1999: 154).

People do affirm strict retributive justice, but others find the doctrine appalling, so it cannot be argued by invocation of retributive justice that common sense decisively rejects the standing-in-the-queue approach. This approach applied to criminal justice issues holds that inflicting suffering on a criminal is never morally right unless doing so improves the world by depriving the criminal of the opportunity to commit further crimes or by deterring the criminal or others from perpetrating crimes. Many who are not consequentialists at all approve this judgment. Pointing out under what conditions punishment of one who violates the law of nature is morally acceptable in a state of nature, John Locke asserts that anyone ‘may bring such evil on any one, who hath transgressed that law, as may make him repent the doing of it, and thereby deter him, and by his example others, from doing the like mischief’ (1980: 10). I suppose Locke means that if punishing an offender would not do good - beyond the alleged intrinsic value of bringing suffering upon one who deserves it - it would be unjustified. Locke’s position so understood is still compatible with belief in noncomparative desert in the criminal justice context. For example, one might hold that it is intrinsically morally valuable to bring it about that an offender receives the exact punishment that his offense merits, but that this intrinsic value is always outweighed by the disvalue of the suffering thus brought about, so is never justified all things considered unless some extrinsic benefit is added that tips the scale. But even so interpreted, the view would radically downgrade the supposed intrinsic moral value of making

those who are negatively deserving worse off, The view is just a whisker away from the denial of negative noncomparative desert altogether.

7. Desert Prioritarianism?

The previous section stitches together considerations of desert, priority, and well-being, but further thought threatens to pull this patchwork apart at the seams.¹⁹

Suppose that we can by action now affect the extent to which people, ourselves or others, are deserving in the future. Then if morality requires, *inter alia*, that one bring it about that people achieve good fortune proportionate to their desert, it will sometimes be right to bring it about that a well-being gain should go to a (now) less deserving rather than to a more deserving person, just because this (as it seems) deliberate maldistribution will bring it about that those who are now more deserving will become less deserving. Maybe the mistreated will become inappropriately resentful or envious. This apparent implication of my view is weird and counterintuitive.

Maybe the initial supposition that generates the problem makes no sense. The question arises, whether the idea of acting in a way that causes a person, oneself or another, to become more or less deserving at a later time makes any sense if deservingness is interpreted as conscientiousness as this essay proposes. What it is to qualify as deserving on any occasion for

any person adjusts to the ensemble of the person's circumstances, so that changing a person's circumstances may render it easier and more pleasant for the person to choose the right course of action, but cannot render it easier or more pleasant for the person to orient her will in a way that qualifies as deserving. This must be so on pain of violating the condition that what one deserves at any given time is not due to luck in one's circumstances. Thus it may be wrong for me to enter a bar, because that act increases the probability that I will indulge excessively in alcohol. But once I am in the bar, the level of orientation of my will toward the right and the good that qualifies me as deserving on that occasion must adjust to my circumstances, so that it is no harder or easier for me to qualify as deserving in the bar than it would be to qualify as deserving if I were outside it. The same is true if my choice is to encourage or discourage another person from entering a bar, when entering would incur the same excessive risk of later wrongdoing.

The condition that how deserving a person is cannot be due to moral luck rules out the possibility that one can cause any person, oneself or another, to be deserving. Nor can one cause it to be more difficult or easier for a person to be deserving. Can one cause the probability that a person will be deserving to increase? I'm unsure. A disposition that it is always equally within my power to sustain or create, whatever my circumstances, will suffice in any circumstances to qualify me as deserving. (In some circumstances the orientation of will that qualifies me as deserving will not suffice to bring it about that I pursue the morally right rather than the morally

wrong course of action.) Still, this perhaps leaves it open that one person can act in a way that will foreseeably bring about circumstances in which, as a matter of fact, a person, oneself or another, will conduct herself in a way that is more deserving than the course of conduct she would have pursued absent the circumstance altering intervention. Although one cannot cause it to be more difficult or easy for any person to qualify as deserving on any occasion, still, perhaps it is predictable that in circumstance X, the person will in fact not be deserving, whereas in Y, she would, and one can bring about either X or Y. The alternative view would be that the formation of will that renders people more or less deserving is in principle unpredictable. I take no stand on that issue in this essay.

If one can as a matter of fact never act in a way that predictably brings it about that a person becomes more or less deserving, then the problem raised at the beginning of this section dissolves. But if one can, it does not dissolve. What then?

Suppose our actions can increase or decrease the aggregate amount of desert as well as the aggregate amount of well-being and its distribution across the better and worse off and the more and less deserving. For example, suppose we could revise the educational curriculum in a way that would bring it about that people are on the whole more conscientious but have less well-being. Perhaps other things being equal we should prefer a population of saints all at well-being level 99 than a population of sinners all at well-being level 100. (One should notice that the

Pareto constraint introduced earlier will now be reinterpreted, so that it judges unacceptable a state of affairs that can be altered by making someone better off [in virtue and welfare combined] without making anyone else worse off [in virtue and welfare combined]). The idea would be, not that there is some absolute amount of well-being that any person, given her deservingness, deserves, but rather that it is better from the moral point of view that persons be more deserving rather than less deserving. At the very least, surely it is the case that other things being equal, it is better that a given population at a given well-being level should be more deserving rather than less deserving. Moreover, it is not the case that well-being increases take lexical priority over deservingness increases (so that the greatest possible increase in desert would not outweigh the slightest increase in well-being if the two values are in conflict in given circumstances).

If our acts can affect the total quantity of deservingness in the world, they can no doubt also affect the distribution of deservingness across persons. To stick with a simple-minded example, suppose one can either bring it about that a very deserving saint becomes slightly more deserving or instead that a very undeserving sinner becomes just that same degree more deserving. Which to choose? Or does morality hold that the distribution of virtue across persons is a 'don't care'?

I tentatively propose a prioritarianism of desert. That is to say, it is an intrinsically better state of affairs when persons are more deserving rather than less deserving, and the moral value

of bringing about a one unit increase in desert is greater, the lower the person's lifetime desert level would be absent this increment. Bringing about a one-unit gain in the deservingness of a sinner is more valuable than bringing about an identical one-unit gain in the deservingness of a saint.

The Christian New Testament contains the comment, 'There is more joy in heaven over one sinner who repents than over 99 [non-sinners] who have no need of repentance' (Luke: 15: 7). This statement is ambiguous, but does seem to convey a concern for the distribution of deservingness. On its face, the statement is perhaps most naturally read as asserting a sufficientarianism of desert: it is more important morally to get people to the good enough level of virtue than to bring about additional gains in people's virtue above this good enough threshold. The sufficientarianism makes sense given the background view that a certain level of deservingness gets one to the threshold of salvation. In my nontheist world view, there is no salvation, so there is no nonarbitrary "good enough" threshold level, so sufficientarianism loses its appeal. With perhaps some strain, one could interpret the passage as asserting a priority view in the domain of desert: It is better that the sinner repents a bit, gaining one unit of deservingness, than that 99 saints, already at a high level of deservingness, repent of some small sin and in this way increase their deservingness by one unit for each yielding a total gain of 99 units. I accept the basic prioritarian view that a gain in virtue that accrues to a sinner is intrinsically more

valuable than the same gain that accrues to a saint. I doubt that the moral intuition supporting desert prioritarianism is as strong as the moral intuition that supports well-being prioritarianism, but if this is so, this thought could be captured by the idea that the extent to which extra moral value is gained when gains go to those who are worse off rather than better off is less in the domain of deservingness than in the domain of well-being.

The position we then arrive at is desert and well-being prioritarianism with extra priority to well-being gains for the comparatively more deserving. One ought always to choose the act that maximizes moral value. Increasing people's desert (as conscientiousness is morally valuable, and the moral value of bringing it about that a person becomes more deserving by a unit is greater, the lower the person's lifetime desert would be absent that increase. Increasing people's well-being is morally valuable, and the moral value of bringing it about that a person gains a unit of well-being is greater, the lower the person's lifetime well-being would be absent that gain, and also greater, the more that gain brings it about that people have good fortune (well-being) in proportion to their desert. Desert is scaled so that everyone always has positive desert, in order to register the judgment that it is intrinsically good for anyone, no matter how low his virtue or desert level, to enjoy more rather than less well-being. *Mutatis mutandis*, what is true of well-being and desert increases is also true of avoidance of well-being and desert losses.

The position as described might seem to magnify the value of increasing saintliness and rewarding saintliness beyond their true value. But nothing said so far specifies the comparative weight that well-being and desert should have in the determination of what should be done, so it is compatible with well-being and desert prioritarianism that desert should count for comparatively little. Well-being does not rule the roost but may be the first among equals.

In this section a difficulty was raised for simple desert-weighted prioritarianism. The view seems to countenance deliberately acting to bring it about that people become less deserving, in order to bring about greater correspondence between people's good fortune and their desert. One reply to the objection is that desert as conscientiousness might be such that one cannot act to increase or decrease anyone's future deservingness. The second reply to the objection is that if people's desert can be altered in this way, then one should acknowledge that it is desirable, other things being equal, that people in the aggregate be more deserving rather than less, and also that the distribution of desert matters, and we should be desert prioritarians. Although I have not tried to show that the resultant more complex combination of desert and priority considerations will not be vulnerable to counterexample, my sense is that appropriate weighting will usually rule out the unappealing implication that sometimes we should deliberately act to bring it about that people become less deserving rather than more deserving just to bring about greater satisfaction of the ideal that people's good fortune should be proportionate to their desert. People's becoming

less deserving will itself register as a disvalue on the revised view proposed in this section. Of course, this disvalue can be outweighed, for example, by the conflicting consideration that we ought to increase the extent to which people get priority-weighted well-being increases. But my sense is that this balancing of moral costs and benefits is not counterintuitive. Recall also that on the view being suggested, one who acts with a view to bringing about a more just outcome by bringing it about that some come to be less deserving cannot be lessening anyone's fair opportunity to qualify as deserving. One is simply providing a perfectly fair test that one expects some to flunk.

8. Azdak.

So far in this essay I have defended the idea that there is at least one conception of desert that is in principle compatible with the norm that one can become deserving or undeserving only by virtue of matters that lie within one's power to control. Desert as conscientious striving satisfies this norm. Desert so construed can be accommodated as a constituent element in the fundamental moral principles that fix what is just and unjust. I hasten to add that I have not argued against the possibility that some conceptions of desert that find people deserving in ways that are incompatible with the control principle will in the end turn out to be morally justifiable.

It is intrinsically morally desirable, I submit, that the level of well-being that people enjoy is proportionate to their desert and that aggregate well-being be greater rather than smaller. Moreover, bringing about a gain in well-being for a person is intrinsically morally better, the lower the person's lifetime well-being would be absent this gain. Of course, saying just this much does not fully specify a principle that enables us to assess the outcomes of candidate policies - such a specification would have to stipulate the relative weights to be attached to the three elements of well-being aggregate increase, well-being to the deserving, and well-being to the worse off. Of course, the weighting issue is the \$64,000 question. However, even in the absence of a proposal as to how properly to set these weights, enough has been said to render plausible the idea that desert and equality can cohabit peacefully in a pluralist conception of justice. The reasons it might make sense to value desert do not subvert the legitimate appeal of equality.

The alert and sympathetic reader may feel sadly compelled to report that I have painted myself in a corner. In the rush to accommodate the constraint that one cannot become deserving or the reverse by virtue of what lies beyond one's power to control I have embraced an ideal of deservingness that could not conceivably be put into practice. Since we cannot see into people's souls, we cannot tell who is truly deserving and who is not. Hence it cannot be fundamentally morally important to bring about a world in which people's well-being levels are, to any extent,

proportional to their desert. This is just to reiterate the entanglement objection against incorporating desert into justice at the level of fundamental principle.

In closing I wish to register a dissent from this proposal to scratch desert from justice. A fundamental principle of justice should be conceived as a regulative ideal that guides the selection and reform of practices and institutions. Even if we cannot see into people's souls, we may be able to fashion administratable, operationalizable proxies for the values that we really care about but perhaps cannot directly implement.

My sketch of how responsibility and desert might be constituents in a fundamental egalitarian justice principle accepts the control principle and singles out exertions of free will as the basis of genuine desert. Even setting aside the likelihood that human actions are entirely caused events so no such exertions of free will ever occur, it might seem that in principle there could be no way to pick out an empirically detectable proxy for the quality of choice that is supposed to render people differentially deserving. It could not then make sense for the theory of justice to require that people's good fortune be made proportionate to their true desert in this undetectable sense.

I make no brief here for the coherence of the libertarian free will hypothesis or for the claim that free will understood in a sense that is compatible with determinism is worthy of the name. Consider just libertarian free will. Accepting the hypothesis for the sake of the argument,

in order to explore how responsibility and desert might plausibly be viewed as intrinsically morally important, I do not see why it must be so that public policies could never to any degree bring about by design a state of affairs in which good fortune becomes distributed across people in a way that approximates more rather than less closely to their true desert. Free will has to be ultimately an empirical issue, so if the hypothesis is true, it would be vindicated by a future biologically informed scientific psychology. If free will is an empirical phenomenon with empirical effects, in principle there could be measurement of its quality and reward according to desert. Why not? Improbability is not impossibility.

There is all the difference in the world between upholding a norm as a good practical guide, following which will produce pretty good results so far as we can tell in circumstances as we know them, and upholding a norm as fundamentally morally significant and valuable in itself. For one thing, the world may change, or our knowledge may increase, especially our knowledge of technologies of administration, such that values that were at one time utterly unfeasible to implement become feasibly implementable. So it is always a worthwhile exercise to try to think through what we really care about without letting that question become conflated with the quite different question, which of the things that we reasonably care about is it reasonable to try and achieve here and now taking into account all morally relevant costs and benefits of the attempt.

For an example of how the social planner might devise policies that work well enough, here and now, as rough and ready instruments to try to achieve our values to the greatest feasible extent, consider the story of the judge Azdak as told by Bertolt Brecht in *The Caucasian Chalk Circle* (1966). The judge must decide a dispute between two women, each of whom claims to be the mother of a child and hence the rightful guardian. In the setting it is just given that the relevant standard of justice that determines in principle the correct decision is that the woman who is more disposed to love and care for the child for his own sake deserves to be awarded custody. (The morality that the play endorses appears to be that things belong to people who are good for them.) Nobody can see into the women's characters, certainly not Azdak, who has just been introduced to them by hearing their conflicting testimony. Azdak institutes a procedure that brings it about that the women's character is revealed by their responses to a decision problem set by the court. The child is placed in the center of a chalk circle and the women are told that whoever pulls the child outside the circle will be awarded custody. The woman who is more disposed to love and care for the child for his own sake yields immediately rather than participate in a determined tug of war that might well break the child's body. Azdak summarily awards this woman custody.

Notice that Azdak's trick fails to satisfy the norm that a just society's basic structure of institutional arrangements be public. The rules of institutions are public just in case 'individuals

are able to attain common knowledge of the rules' (i) general applicability, (ii) their particular requirements, and (iii) the extent to which individuals conform to those requirements' (Williams 1998: 233). Azdak's rule cannot fit within a stable system of rules that is public in this sense.²⁰

For one thing, the rule can be exploited by the clever. If I foresee that losing the tug of war gains me custody of the child and I want custody, I will make haste to be the first to lose the tug of war and gain custody. Azdak's trick works in a particular setting; in other settings, with other agents, different measures would be needed.

The general point is that it is an open question, given that we embrace values that cannot directly be embodied in practices, to what extent we can find good enough proxies that are implementable. These proxies might be ephemeral, like Azdak's trick, and hence could not satisfy the publicity norm. So much the worse for publicity, I would hold. Publicity is a generally good tool for achieving important values, but does not matter morally for its own sake. If we can get more justice by sacrificing publicity, we should always prefer more justice.

9. Conclusion.

The lesson I want to take from Brecht's story might provoke unease. In sketching an account of egalitarian justice that caters to desert, I presuppose a background consequentialism.²¹ This ethic

might seem to license manipulation and duplicity and even exploitation of others rather than reciprocity and a fair-minded disposition to treat each person on whom our actions impinge with respect and consideration. One recalls Thomas Nagel's characterization of the underlying mentality of purely outcome-oriented ethics: 'Utilitarianism is associated with a view of oneself as a benevolent bureaucrat distributing such benefits as one can control to countless other beings, with whom one may have various relations or none. The justifications it requires are primarily administrative' (Nagel 1979b: 68). The description that Nagel applies to utilitarianism applies so far as I can see to any consequentialist ethic, including the prioritarian family of principles with a proviso catering to true desert. The term "bureaucrat" is perhaps misleading, since the ethic is concerned to specify what anyone occupying any social role ought to do, and in particular speaks to the natural mother and to the would-be guardian in the story just as much as to the judge. Nagel of course might be suggesting that consequentialisms go astray in ceding to everyone anywhere a moral authority that only some public officials and others in circumscribed social roles possess, and then only in limited respects. Another quibble one might have with Nagel's characterization is that once we bring into the account a realistically sophisticated understanding of human well-being or "utility," what benefits and harms any agent can produce for herself or others depends in complicated ways on the special relations she has with some of them, and they with each other - friend to friend, parent to child, teacher to student, colleague to colleague,

promisor to promisee, and so on. But allowing for nuances of tone, Nagel's characterization is broadly correct. I don't regard it as in indictment - quite the contrary - but others will disagree.²²