What's Wrong with Libertarianism: A Meritocratic Diagnosis (penultimate draft)

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I suspect that for most people, the terms "libertarian" and "meritocratic" suggest two approaches to justice which have much in common. Some may even think that the meritocrat's ideal world and the libertarian's ideal world are one and the same. This is not so. Meritocratic justice and libertarian justice are incompatible, in concept and in application. The meritocratic ethos is not the libertarian ethos. And if we want to live in a meritocracy, we must implement public policies which cannot possibly be justified under libertarianism. In short, one can be a meritocrat, or one can be a libertarian, but one cannot be both. My primary purpose in this essay is to explain why.

My secondary purpose is to be an evangelist for the meritocratic cause, exhorting those who have been led astray by the false god of (negative) liberty to come to the truth and the light. Meritocracy can do what other theories of justice cannot: appeal to the intuitions that drive people to libertarianism—intuitions about the value of personal responsibility, the benefits of markets, and the importance of giving people their just deserts. Insofar as people believe that a just political arrangement responds to these virtues, they should be meritocrats, not libertarians.

I must admit up front that my opinion here—that a just political system is a meritocracy—is a minority one; truth be told, I am the only practicing philosopher who endorses it.[1] With a handful of exceptions, political philosophers are either egalitarians of some stripe (strict, Rawlsian, luck, *etc.*) or libertarians (of the left- or right- varieties), and the few exceptions which do exist fall elsewhere (*e.g.* anarchism). But my theory of meritocracy (Mulligan 2015, Forthcoming) is a natural development of the limited work which been done, and it coheres with the intuitive notion of a meritocracy. In other words, there is nothing idiosyncratic in the comparison between meritocracy and libertarianism that I make here.

I have organized this essay as follows. In §1, I describe the conceptual foundations of meritocracy and libertarianism and give an example of their incompatibility. I then, in §2, explain the essential relevance of equal opportunity to meritocracy, and argue that the value of personal responsibility is better-promoted in a meritocracy than in a libertarian state. §3 is devoted to matters of economic distribution; among other things, I discuss how libertarian markets fail to respond to merit and the injurious economic effects thereof. I conclude in §4, with a few thoughts on public policy.

1. Libertarianism and Meritocracy: their Core Holdings

Since I devote the rest of this essay to explaining how they are different, a few words about what libertarianism and meritocracy have in common are in order. First, both theories reject the moral relevance of equality to economic distribution.[2] The libertarian and the meritocrat agree that a world in which strict equality (of resources, welfare, *etc.*) prevails is an unjust world (except in the special case in which the equality came about through free market exchanges, or everyone is equally deserving, respectively). And any theory of justice which is guided by a desire for equality, or takes equality as presumptive (*e.g.* Rawls's (1971) theory), is misguided in the eyes of both.

Second, both political cultures put a premium on personal responsibility. As I will explain, this is the *core value* of meritocratic society. And while personal responsibility is not conceptually necessitated by libertarian principles, libertarianism is often, and fairly, supported on the grounds that it takes personal responsibility seriously. We find this codified, for example, in the American Libertarian Party platform: "Individuals should be free to make choices for themselves and *must accept responsibility for the consequences of the choices they make*."[3] While that is correct—we should hold people to account for their choices—libertarianism fails to do this (§2).

Third, both the meritocrat and the libertarian justify their theories (or at least can justify their theories) by appealing to economic realities. It is a core insight of neoclassical economic theory, verified by history, that markets tend to be the best way for societies to organize economic activity. Roughly speaking, we stand to prosper, collectively and as individuals, if we let the invisible hand of the market work. Theories of justices that are conceptually incompatible with markets, or that require inefficient intervention into markets, beget poverty.

The relevance here is that we use facts about prosperity *to decide*, in part, whether a theory of justice is true or not. We ask questions like: "What would per capita GDP be if such-and-such theory were implemented?" Facts like these play a *justificatory* role in our theorizing; that a theory promotes prosperity is a point in its favor.

On these grounds, libertarianism and meritocracy do two things better than their competitors. First, they make clear the public policies (or lack thereof in the case of libertarianism) that their principles require. In contrast, a theory of justice that provides no guidance for its implementation illegitimately dodges an important step in the justificatory process. Second, libertarianism and meritocracy promote prosperity by endorsing markets. These are two reasons—although not dispositive ones—to believe that they are onto something.[4]

It is also a core holding of neoclassical theory, and a fact of economic history, that markets can and do fail, and that governments can promote and have promoted prosperity through sensible intervention. While some libertarians attempt to accommodate these potential gains, doing so can pose a theoretical challenge. Because meritocracy views markets as a mere instrument for giving people what they deserve, it can incorporate efficiency-enhancing regulation (§§3-4) without difficulty.

So much for the similarities. I turn to describe the conceptual foundations of the two theories, which are utterly distinct. In doing so, a problem arises straightaway, since many distinct theories of justice march behind the libertarian banner.

For the purposes of this essay, when I talk about "libertarianism," I shall largely be focused on the class of deontological theories that are founded in the philosophy of John Locke. For this camp, liberty is an emanation of our natural rights, which we necessarily possess and which are immitigable. As Robert Nozick famously puts it, "individuals have rights, and there are things no person or group may do to them (without violating their rights)" (1974, ix). This is why affection for free markets is a necessary, not a contingent, feature of libertarianism: Any interference into market exchanges would violate economic agents' categorical liberty to exchange (properly acquired) goods as they see fit.

The libertarian justification for markets is therefore distinct from what might be called the "classical liberal" justification, which has its roots in the writings of 18th- and 19th-century philosophers and political economists—men like Adam Smith, John Stuart Mill, and David Ricardo. These thinkers' arguments for liberty are consequentialist in character: the general utility, or the economic surplus, or some other normative goal, is promoted through market economies, in which citizens make their own decisions about how to satisfy their preferences and the invisible hand of the market determines prices, coordinating the interaction of buyers and sellers.[5] For the classical liberal, interference into the market is immoral only to the extent to which it introduces inefficiency into the pursuit of the independent normative goal. For reasons that I hope shall become clear over the course of this essay, these thinkers and their descendants have more in common with meritocracy than libertarianism.[6]

Meritocracy, on the other hand, is a theory of justice based on the idea that *people ought to get the things that they deserve*. Like all desert-based theories, meritocracy holds that the question of whether economic justice prevails or not is answered by looking at facts about economic agents' character and contributions. The goal of desert-based theories, which have their roots in Aristotle's philosophy, is to provide a systematic way of thinking about, and a justification for, claims like "the best-qualified applicant deserves the job," "the most productive employee deserves the highest salary," and "the fastest runner deserves the medal." The key idea here is that justice is *intrinsically* connected to individuals' character and actions.[7]

To illustrate the conceptual differences involved: Just about everyone agrees that the fastest runner ought, morally, to receive the medal. But why is this so? One possible justification is consequentialist: The world will be made happiest (or some other good will be maximized) if we award the medal in that way. Another justification—the libertarian justification—is proceduralist: If it's true that the fastest runner ought to receive the medal, it's because he freely agreed to participate in a race, the rules of which provided that the fastest runner would receive the medal.

For the desert theorist, neither of these justifications holds water. Imagine a 100m dash held in a racist society. The rules of this race require that 5 seconds be added to the finishing times of all black runners. Brian, who is black, finishes the race 2 seconds ahead of William, who is white. But, under the rules, William wins the medal.

The consequentialist requires that we give the medal to William: Society enjoys seeing white people receive prizes and dislikes seeing black people receive prizes. The libertarian also requires that we give the medal to William, since Brian was aware of the rules when he agreed to participate in the race. The desert theorist disagrees: The fastest runner, Brian, ought to get the medal *because he was best*. And that is all there is to it.

Meritocracy, like any desert-based theory of justice, requires significant conceptual elaboration. Providing that is outside of the scope of this essay. It shall suffice to understand meritocracy as consisting in two core principles: In a meritocracy, (1) jobs are distributed strictly on the basis of merit (because the most meritorious applicant deserves the job), and (2) income is distributed on the basis of productivity (because those who contribute more to our shared economic life deserve more in return). There are complexities related to both of these principles ((2) especially), but they do not affect the arguments I give here.

2. On Fair Equality of Opportunity and Personal Responsibility

When *merit*, and only merit, is the criterion used to discriminate between those competing for a good (a job, a prize), it is sometimes said that *formal equality of opportunity* (Formal EO) prevails. In the above example, Formal EO was lacking because Brian was not judged strictly on the basis of his merit (*i.e.* his athletic performance). He was judged, in part, on the basis of his race.

Formal equality of opportunity is thus tantamount to the meritocratic distributive rule. There is, however, a deeper notion of equal opportunity which meritocracy requires, sometimes called *fair equality of opportunity* (Fair EO). Suppose that the rules of the race are changed so that the runner who crosses the finish line first receives the medal. Formal EO is satisfied. Yet is still the case that the black runners are at a *de facto* social disadvantage owing to racism: They don't have equal access to trainers and facilities; they live in poverty and face substandard nutrition; and so on. Then, it is not really true that each runner has an equal opportunity to win the race—no matter what the rules say. And if a white runner is victorious under such circumstances, his moral claim to the medal—his claim to *deserve* the medal—is weakened, if not nullified.

A society which lacks equal opportunity is morally troubling for two reasons. First, some citizens are arbitrarily put at a disadvantage in the various competitions for scarce social goods. Second, it undermines the cultural value of merit and denigrates the accomplishments and character of those who *are* victorious: There is reasonable skepticism about whether they succeeded as a result of merit or of social advantage (an epistemological consideration), and there are cases in which less meritorious people prosper at the expense of their more meritorious peers (a metaphysical consideration).

Establishing conditions of Fair EO requires significant economic redistribution, aimed at providing education, healthcare, and other forms of social support to the children of the poor (§4).[8] These expenditures tend to be efficiency-enhancing (§3), but that is a secondary concern for the meritocrat, who argues for Fair EO, transcendentally, as follows: (1) A just society gives people what they deserve; (2) economic desert does not exist without Fair EO; therefore (3) society ought to establish conditions of Fair EO.[9]

The single best measure of the extent to which equal opportunity prevails in the actual world is the intergenerational elasticity of earnings (IEE): the percentage change in a person's income that is associated with a 1% change in his parents' income. A rigid, aristocratic society, with no socioeconomic mobility between generations, has an elasticity of 1; a meritocratic society has an elasticity much closer to 0.[10]

Estimates of the current IEE in the United States vary, with a mean value around 0.6 (see, *e.g.*, Mazumder, 2005)—which is among the highest in the developed world. For the meritocrat, this is a serious moral problem. A just economy responds to merit, but in the U.S. today, one's economic prospects are determined, to a commanding and increasing extent, on one's family circumstances: access to early developmental support and elite colleges, connections with persons of influence, and brute inheritance.

For the libertarian, that Fair EO is lacking is no cause for moral concern. Indeed, because its implementation requires redistribution on an unprecedented scale (§4), and because that redistribution would trod upon citizens' putative rights, the necessary policies cannot be justified. Friedrich Hayek, for example, explicitly rejects both Formal and Fair EO: "Attractive as the phrase of equality of opportunity at first sounds, once the idea is extended beyond the facilities which for other reasons have to be provided by government, it becomes a wholly illusory ideal, and any attempt concretely to realize it apt to produce a nightmare." (1976: 85).

Set aside the efficiency gains of equal opportunity which Hayek failed to appreciate.[11] Do we really regard anti-discrimination laws, public education, and government-provided healthcare for poor children with horror? I leave that to the reader to decide. To my mind, these are great moral victories, of which the United States, and the West, should be proud.

Rejecting equal opportunity also poses a problem for the personal responsibility-inclined libertarian. Just as an egalitarian society is one in which a person does not command her own destiny, the same is true, to a disturbing degree, in the United States today, and it would be true to the extreme under libertarianism. When family wealth, class, and race matter more than character, effort, and choice in determining economic outcomes, personal responsibility is an absent concept.

Moreover, everyone, regardless of ideology, has reason to fret about the potential economic danger of abandoning the meritocratic ethos of personal responsibility. As Joshua Preiss (2016) says,

> In a society where material welfare and social position increasingly reflect social connections, access to capital, and political power, rather than virtues such as hard work, prudence and honesty, it is only natural that an ethic of money-making will come to replace an ethic of personal responsibility. Such a state of affairs is bound to erode the very sentiments, including personal accountability, necessary for a high functioning economy.

These issues are intimately bound up with debates—hot ones among libertarians—about positive and negative liberty. For some libertarians (see, *e.g.*, Schmidtz and Brennan, 2010), liberty is about more than just non-interference (*i.e.* negative liberty)—it's also about the power to create one's own ends and pursue them as one sees fit (positive liberty). This is the common sense construal of liberty; as Jason Brennan puts it, "when we talk about being 'free as a bird,' we mean that the bird has the *power* or ability to fly. We do not mean to say that people rarely interfere with birds." (2012, 26).

I take it as uncontroversial that many people lack positive liberty today, even in a prosperous country like the United States—and not because they were irresponsible. A child born black in the inner city, raised without a father and amidst a culture of violence, is hugely limited in his prospects—no matter his natural merits. The same is true for the children of the white rural poor, who face underfunded schools and broken local economies. And their positive liberty is further limited by the extraordinary privilege that other children, black and white, enjoy (resources like jobs and university slots are scarce, and so competition is inevitable.) In short, there is no level playing field.

In a meritocracy, positive liberty is maximized. This is not to say that it is unlimited; I could not have been a jockey, or a basketball star, or a fashion model—no matter how much opportunity I was provided. But in a meritocracy, each citizen has the positive liberty to develop a plan-of-life as he sees fit, in accordance with his interests and character. He is neither aided nor disadvantaged by social circumstances (*i.e.* neither aided nor disadvantaged by others' successes or failures). And in his pursuit of that plan-of-life, he is judged strictly on the basis of merit. No other non-ideal framework, including libertarianism, can provide more positive liberty.

In this way, the libertarian and the meritocrat differ on where to make the "responsibility cut"; that is, where to mark the boundary between the factors that justify unequal economic outcomes and those that do not. For the libertarian, no cut need be made, since justice is a procedural notion. If stupid, lazy, non-contributing, and wicked Dudley is richer than brilliant, sedulous, productive, and virtuous Rudolph because Dudley's parents were rich and Rudolph's were poor, well, so long as the relevant bequests were freely given, there is no injustice.

The meritocrat disagrees. Dudley's wealth is a result of fortunate social circumstance, and is, thus, unjustly held. However, the meritocrat does not go as far as the egalitarian, following Rawls (1971), does, regarding *all* features of a persons' character as matters of luck and thus unable to justify inequality. The meritocratic view is that genetic advantages are legitimate but social advantages, like Dudley's, are not. The argument, which is a metaphysical one, is somewhat technical, so I will not explain it here.[12]

Two more things. First, although I give my own response to Rawls's attack on the moral relevance of genetic advantages, powerful objections have already been lodged by Sher (1987) and Zaitchik (1977),[13] and some desert-friendly pluralists, like Schmidtz (2002, 2006), have proposed ways to evade the Rawlsian worry.

Second, the meritocratic view of the responsibility cut accords with human intuition: We find economic inequalities that derive from the social advantages the libertarian protects as deeply unjust; but we are not disturbed by inequalities that result from genetic differences (see Goya-Tocchetto *et al.*, 2016). The reason is that our natural traits provide the basis upon which we form our plan-of-life and are essential parts of our identity. Social advantages, which we have by virtue of the choices of others, are not.

3. On Justice in Economic Life

The principle that that the most meritorious applicant deserves the job is unacceptable to the libertarian, who maintains that business owners and their agents are free to hire and fire as they see fit (see, *e.g.*, Narveson, 1993.) If owners/agents wish to favor family, friends, or members of their preferred race, they are morally permitted to do so. The job belongs to them.

The meritocrat disagrees on principle, adding that deviations from merit-based hiring are economically undesirable. In turn, the libertarian (*e.g.*, Narveson (1995)) typically replies that deviations from merit-based hiring do not in fact arise, since free markets push out employers that fail to hire with an eye towards merit. But there are two problems with this reply.

First, only some forms of anti-meritocratic discrimination can be eliminated by market forces. If employers have a "taste for discrimination" (Becker, 1957) then it is true that, given sufficient competition, those tastes will doom them. But consider *statistical discrimination* (Arrow, 1973 and Phelps, 1972)—the use of facts about the distribution of ability within an applicant's race (*e.g.*) to assess a particular applicant's ability. Statistical discrimination cannot be competed out of the market, and it is an inefficiency (see, *e.g.*, Lundberg and Startz, 1983) which could, in principle, be eliminated through regulation. Meritocracy leaves open the possibility of such regulation, which libertarianism cannot do. As an example of the potential gains involved, Hsieh *et al.* (2013) estimate that 15-20% of the growth in per capita output since 1960 is attributable to the reduction of anti-meritocratic discrimination against blacks and women.

Second, the libertarian's reply masks the more important, underlying challenge: Isn't it simply immoral *in itself* to hire anyone less than the best? The meritocrat thinks so, and this challenge cannot be evaded by appealing to the mere possibility that unfettered liberty will, as a contingent matter, result in meritocratic hiring. The libertarian must come down on the matter one way or another, insisting on the total moral dominance of ownership, or paying mind to merit itself.

When it comes to distribution of income and wealth in a meritocracy, it is "patterned," to use Nozick's term—it is distributed on the basis of desert—and as such is unacceptable to the libertarian. But, like libertarianism, meritocratic distribution is "historical" (and in that way unlike utilitarianism and Rawlsian egalitarianism)—one cannot know how to give people what they deserve unless one has historical information about their desert bases.

Now, the degree to which desert-based income distribution differs from that of a *laissez-faire* market economy depends on the particular desert basis chosen. If, for example, people's economic deserts were grounded in their efforts (as, *e.g.*, Sadurski (1985) thinks), then radical redistribution would be necessary, and the resultant society unclear. But the meritocratic approach—rewards in proportion to productivity—is *roughly* akin to what a worker's total compensation would be in a competitive market: the value of his marginal output.[14]

But the meritocrat does not fetishize the free market as the libertarian does, thus leaving open the possibility of intervening into markets that fail to respond to merit. And there is no shortage of contemporary examples of such failures: exorbitant golden parachutes given to executives who drive their businesses into the ground; talented young people unable to find jobs because they lack family connections; the now-ubiquitous importance of "networking" (*i.e.* nepotism) over substantive self-improvement; and the growing obsession with pedigree in its various forms.

As just one example of divergence, let us contrast the meritocratic approach to economic rents with the libertarian approach. Classically defined, economic rents are "free gifts of nature"—payments to owners of scarce factors of production, independent of their merit or effort. This definition is not completely satisfactory (rent-seeking can be hard work!), but neither is the neoclassical definition (under which rent is factor income above and beyond opportunity cost), and it will suffice here.

Consider a plain case of rent extraction: A corporate executive who gains control over her own pay-setting process. Her influence here may be obvious and morally blameworthy: She promises her directors lucrative contracting fees if they increase her salary. Or it may subtle and unknown to all parties: Personal relationships between executives and directors lead to the latter paying more than a purely disinterested, profit-maximizing board would provide.

For the meritocrat, that distinction is irrelevant for the purposes of answering whether the rent is deserved. It is not, since it is a payment to an executive in excess of her productivity (or expected productivity.) Because she has no claim of justice on that portion of her compensation, it can be confiscated without moral worry (and without deadweight loss, I hasten to add, because it is a rent.)

And indeed there is abundant evidence that today's sky-high corporate incomes are the result of rent extraction and do not reflect increases in underlying productivity. Bebchuk and Fried (2004) find that CEOs are able to set their own pay as described: by exerting influence over their boards generally and compensation matters specifically. Bertrand and Mullainathan (2001), in their analysis of CEO pay, find that performance and luck play equal roles in determining compensation. Baker (2016) argues that four classes of rents (copyright/patent protection, the finance industry, corporate executive compensation, and anti-competitive practices in professional sectors), not exhaustive of all possible economic rents, comprise between 6.2 and 8.5 percent of GDP, and that these are the principal cause of the redistribution of income to the top 1% of earners which we have seen over the past 35 years. Bell and Van Reenan (2013) find that the majority of gains the top 1% has enjoyed since 1999 have gone to bankers, and that a large part of these are rents. Bivens and Mishel (2013) conclude the same.

The libertarian addresses rents in one of two ways: First, he sometimes insists that there is nothing morally problematic about their extraction. Nozick himself provides an example with his famous "Wilt Chamberlain" case: Wilt earns his high income not purely on the basis of his merit (his athletic talent), but also his monopoly power. With respect to the above examples of corporate officer pay, the libertarian believes that so long as owners freely chose their company's directors, and so long as the directors and the corporate officers freely contracted to the pay package, no injustice can be done—no matter how incompetent the officers were or turn out to be. The meritocrat disagrees.

A second typical libertarian strategy is to insist that these rents are *caused* by government: Regulation generates the potential for rent-seeking. Of course, this is true to some extent—but it is naïve to think that most, let alone all, rent extraction comes via this mechanism. Consider, for example, the "beauty premium," first investigated by Hamermesh and Biddle (1991). They found that "homely men" incur a 9% penalty in hourly earnings while handsome men enjoy a 5% premium, all else equal. But, obviously, for virtually all jobs appearance is not a productive characteristic—and so beauty premiums are rents. Do homely men deserve the penalty, and handsome men the premium? The meritocrat says "no": When we think about what a surgeon (*e.g.*) ought, morally, to be paid, that should turn on his surgical skill and not irrelevant facts about his appearance.

Libertarians have long been aware that markets may not track merit or desert. Some, like Hayek (1960, 1974), are frank about this and think it desirable: "We do not wish people to earn a maximum of merit but to achieve a *maximum of usefulness* at a minimum of pain and sacrifice and therefore a minimum of merit." (1960: 96). That is, according to Hayek, giving a person what she deserved would come at the cost of her "usefulness"—that is, her ability to create value for others in the marketplace.

There is something oddly collectivist about this common libertarian position. Observe how, under *laissez-faire*, individual merit gets subordinated to the tastes of others. Rather than enjoying prosperity by developing a plan-of-life and then pursuing excellence within that plan, under *laissez-faire*, prosperity comes by catering as efficiently as possible to the tastes of others. Ayn Rand laments that “the man at the bottom . . . contributes nothing to those above him, but receives the bonus of all of their brains” (1961: 186), but in fact just the opposite is true: In the Randian paradise, those “men at the bottom” determine demand and thereby wield control over the social and economic fortunes of those at the top. Meritorious men and women who desire prosperity must utterly conform their plans-of-life to popular opinion.

Now to be sure, we do not want an economy that cares not a whit for the creation of value. But it seems to me, and *pace* the libertarian, that we also do not want an economy that is blind to merit. Maybe the fact that Justin Bieber makes $80 million a year, roughly 150 times more than the concertmaster of the New York Philharmonic, should give us pause.

At this point, the libertarian may reply in one of two ways. First, he may say that the government could not possibly distribute income on the basis of merit effectively, since it lacks information that only the market can access. This is probably so, but it is not a normative objection to rewarding merit; it is a positive objection to central planning (*cf.* Schmidtz 2016). The meritocrat agrees: If central planning does a bad job of tracking merit, then we should not use it.

A more powerful libertarian reply is that any argument along these lines requires understanding economic value in objective terms, at odds with the neoclassical conception of the market. However, this is not true. One can insist that goods have value only to the extent to which they satisfy consumers’ preferences while at the same time holding that market interactions can fail to produce value in this way owing to inattention to merit.

Consider the anti-vaccination movement. When these parents make decisions about their children’s medical care in the market, what is the preference they are trying to satisfy? The answer is that they are trying to maintain the health of their children. But observe that, because they hold false beliefs about the efficacy and safety of vaccines, they do not act in accordance with this preference.[15] This suggests that something may be awry with a theory like libertarianism that puts all the moral weight in the exchange itself. There is a case to be made to market defenders that the world would be a better place if intervention into the market could help individual preferences be better satisfied.

Let me mention two other reasons why merit matters. First, note that in a meritocracy, capital accrues to those best able to make economic use of it—people of merit. Capital is not distributed among citizens equally; that would give some citizens more capital than they could make efficient use of, and some less (as it gives some citizens more than they deserve, and some less than they deserve.) At the same time, unrestricted capital transfers, permitted under *laissez-faire*, are undesirable. Some capital transfers which the libertarian finds unproblematic—for example, intergenerational transfers in the form of inheritance (§4) and the enormous salaries of corporate executives, which are gotten through cronyism rather than performance—put capital in the hands of those with the "right" family or friends, rather than in the hands of those who can invest it wisely. Whatever we might want to say about how justly egalitarianism or libertarianism treats individual citizens, both theories lead to suboptimal investment.

Second, meritocracy can deal with the problem of *endogenous preferences*.[16] Even assuming that markets do in fact satisfy economic agents' preferences, there is a circularity involved in valuing markets on these grounds. Why? Because those preferences are created, to a hefty extent, by the market itself. Affinity for Justin Bieber's music is not God-given—that preference is inculcated in consumers by the market.

If we do think that satisfying consumers' preferences is valuable, we must break this circularity. We must either appeal to a fiducial standard of goodness or provide some guidance to the market on how preferences ought to be shaped. One way to do so is to vest the resources that generate demand in those who have displayed merit. Even if we cannot enumerate the "correct" preferences, it is reasonable to think that they may be pursued indirectly by attending to merit.

4. Remarks on Public Policy

That the libertarian and meritocrat are hopelessly at odds is obvious when one considers the public policies (or lack thereof) that each demands in the name of justice.

Consider again the Libertarian Party platform. Among other things, it calls for a "repeal of the income tax, the abolishment of the Internal Revenue Service and all federal programs and services not required under the U.S. Constitution"; unlimited freedom of contract, without regard for differentials in bargaining power; an end to universal health care; no public assistance to the poor, including poor children; and no public spending on education. These are typical libertarian demands.

In contrast, if there were a Meritocratic Party, these would be the first items on its agenda:

(1) Establishing a new, confiscatory top marginal income tax rate (say, a 75% tax on all income over $5 million). Why? Because these incomes are mostly rents: undeserved and inefficient.

(2) Reforming the current estate tax, rejiggering rates and closing the loopholes which have rendered it so toothless (the stepped-up property basis is particularly problematic). The rate

would be set no lower than that determined by optimal tax theory—50-60%, or perhaps higher (Piketty and Saez, 2013)—and could well be much higher than this, since any intergenerational passage of wealth or influence can undermine the fair, meritocratic framework for society.

(3) Proscribing the use of sex, race, religion, sexual practice, political opinion, eyebrow size, and all other features irrelevant from the point-of-view of merit in hiring. (Small American firms can still legally discriminate on the basis of sex, race, and religion.)

(4) Proscribing nepotism (now perfectly legal in the U.S. private sector.)

(5) Implementing new affirmative action programs, aimed at combating anti-meritocratic implicit bias against blacks and women.

(6) Ending the many affirmative action programs that provide unjust advantage to less-qualified black or female applicants (*e.g.* programs justified on grounds of "diversity.")

(7) Most important, embarking on a social megaproject for the 21st century, aimed at providing equal opportunity to each young American. There is no justice unless people get what they deserve, and there is no (economic) desert without equal opportunity. Hundreds of billions of dollars would be raised via taxation in order to enrich the human capital of children born into disadvantage. Education, and especially early education, would be the largest expense; but other determinants of human capital, like healthcare, would be attended to as well. This social spending would charge economic growth, given the direct returns to human capital formation and the concomitant positive externalities. (As one example of a consumption side positive externality, Lochner and Moretti (2004) estimate that a 1% increase in the high school graduation rate for men saves, conservatively, $1.4 billion in social costs—property loss, incarceration expenses, *etc.*)

Of course, there are complexities associated with all of these policies (how far should the government intrude on the family in the name of establishing equal opportunity?), which I cannot explore here. I hope only to give the reader a sense of what would be required of us in practice, were we to commit ourselves to the meritocratic ideal.

While I doubt that I have convinced many Hayekian or Nozickian libertarians here, I hope that some supporters of liberty, especially those in the classical liberal tradition, find the ideal described in this essay appealing. And I do suspect that there are readers of this type.

Indeed, it seems to me that something like the following has happened within the distributive justice debate: (1) People pretheoretically like the "meritocratic ideal"—unequal outcomes, achievement-based-on-merit, an emphasis on personal responsibility; (2) they seek a principled justification for this sentiment; (3) they believe that libertarianism provides it, in part because they judge, correctly, that egalitarianism is hopelessly at odds with the ideal; and so (4) they endorse libertarian public policies—even as these are precisely the wrong ones for pursuing the ideal they found compelling in the first place.

This is by no means a hard mistake to make; consider what Gregory Mankiw, Harvard economist and former Chairman of the Council of Economic Advisers, has to say about these matters:

> My sense is that people are rarely outraged when high incomes go to those who obviously earned them. When we see Steven Spielberg make blockbuster movies, Steve Jobs introduce the iPod, David Letterman crack funny jokes, and J.K. Rowling excite countless young readers with her Harry Potter books, we don't object to the many millions of dollars they earn in the process. The high incomes that generate anger are those that come from manipulating the system. The CEO who pads the corporate board with his cronies and the banker whose firm survives only by virtue of a government bailout do not seem to deserve their multimillion dollar bonuses. The public perceives them (correctly or incorrectly) as getting more than they contributed to society. (2010, 295)

The general intuition is correct here (although note that Spielberg *et al.* enjoy enormous rents), and Mankiw's assessment of popular sentiment is spot-on. But his normative diagnosis is wrong:

> Let me propose the following principle: *People should get what they deserve*. A person who contributes more to society deserves a higher income that reflects those greater contributions. Society permits him that higher income not just to incentivize him, as it does according to utilitarian theory, but because that income is rightfully his. This perspective is, I believe, what Robert Nozick, Milton Friedman, and other classically liberal writers have in mind. (2010, 295)

It's true that Nozick thinks that Steven Spielberg's wealth is rightfully his, but that has nothing to do with Spielberg's merits, deserts, or contributions—as I have explained. Were we to look to libertarianism for moral guidance, we would be led to a world very different than the one that I, Mankiw, and so many others find compelling.

Upon rejecting egalitarianism, a person faces a choice. He may, on the one hand, become a full-throated advocate for negative liberty and seek to protect market exchanges at all costs. Or he can exalt personal responsibility, insist on equal opportunity, and pursue an economy that gives people what they deserve on the basis of their merits. And this choice—between meritocracy and libertarianism—is as stark as any other in the distributive justice debate.

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[1] Miller (1999), in his pluralist theory of justice, is willing to give "two cheers" to meritocracy.

[2] This is not to say that meritocracy and libertarianism reject the moral relevance of equality *in toto*. Meritocracy requires equal opportunity, which is a form of equality, and Lockean libertarians hold that people possess equal natural rights.

[3] My emphasis. See <https://www.lp.org/platform/>, retrieved 22 January 2017.

[4] I discuss the justificatory relevance of economic efficiency, and the need for theories of justice to detail their public policies, in my Forthcoming. These issues are connected to debate about "ideal" versus "non-ideal theory," which has been a hot one in political philosophy in recent years (for a summary of the debate, see Valentini, 2012).

[5] It is unclear whether Mill's liberalism was in fact grounded in consequentialist considerations—namely, maximizing the general welfare—or whether his respect for liberty, concretized in the harm principle, was meant to apply categorically. See Brink (2014) for a discussion of this issue.

[6] I stress that I use these terms—"classical liberal" and "libertarian"—in the ways just described for conceptual clarity. Their natural language connotation is quite different (everyone agrees, e.g., that Locke is a "classical liberal".) Note also that there are some scholars in the tradition of liberty, such as Gaus (2012) and Tomasi (2012), who do not neatly fit within the conceptual boundaries given. For a full exposition of the tradition of liberty—its history and contemporary state—see Mack and Gaus, 2004.

[7] The most important conceptual analyses of desert are Feinberg, 1963; Kleinig, 1971; and Sher, 1987.

[8] Roemer (1998) provides the best framework for turning these relatively imprecise demands into concrete policy proposals.

[9] For the reader looking for more detail on how this argument gets justified, consider the "aboutness principle" (Feinberg, 1963): Desert bases must be *about* the desert subject. Joe cannot deserve a prize on the basis of someone else's performance. Cindy cannot deserve punishment on the basis of someone else's crimes. And so on. Now consider a case in which Fair EO is lacking, and the most meritorious competitor for some good—call him Jones—has his merit, in part, as a result of family wealth (*e.g.* it's a result of attending an elite private school).

Jones can take no credit for that part of his merit, as it is not the result of *his* character or *his* choices; it is a causal result of his *ancestor's* merit.

[10] Even for the proponent of equal opportunity, it is not obvious what the optimal elasticity is. This depends on normative judgments about the acceptability of genetics, family values, inheritance, *etc.*, playing a role in economic outcomes. Roughly speaking, the meritocrat hopes to limit the influence of family circumstances to genetics, which are morally relevant (n. 12); thus, the optimal elasticity is maybe about 0.2 (for a discussion of the intergenerational passage of earnings-relevant traits, see, *e.g.*, Bowles, Gintis, and Groves, 2005).

[11] Microeconomic models (*e.g.* Fernández and Rogerson, 1998) show how public education can remedy imperfections in credit markets, and macroeconomic growth regressions (Barro, 1991) suggest a strong, causal relationship between educational investment and economic growth.

[12] Rawls holds that we cannot deserve anything because our putative desert bases are merely matters of "fortunate family and social circumstances" (1971, 104). While social circumstances can indeed be matters of fortune as Rawls describes, this is not true of natural traits. We have these traits as a matter of *metaphysical necessity*; there is no possible world in which I exist but yet do not have the natural traits—*i.e.* the genes—that I actually do. Biological origin is an *essential property* (Kripke, 1972).

[13] Lamont and Favor (2016) regard the "strong form" of Rawls's argument as "clearly refuted" by Sher and Zaitchik.

[14] Just one example of the difficulties here: Real-world employers do not pay workers in accordance with their contributions; they paid in accordance with the contribution of the *marginal worker*. All workers, save the marginal one, are underpaid modulo their contributions.

[15] On this problem—the relevance of imperfect information to preference satisfaction—see, *e.g.*, Cowen, 1993; Hausman and McPherson, 1994; and Sen, 1977.

[16] See, *e.g.*, Bowles, 1998; Gintis, 1972; and McPherson, 1982.