



## SHOULD DESERT REPLACE EQUALITY? REPLIES TO KAGAN

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JOURNAL OF ETHICS & SOCIAL PHILOSOPHY

VOL. 4, No. 3 | AUGUST 2010

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## Should Desert Replace Equality? Replies to Kagan

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**E**QUALITY IS FUNDAMENTALLY COMPARATIVE: whether A is equal to B with respect to income, welfare, rights or anything else, depends on how much A has *compared* to B. With respect to equality, the absolute level of income, welfare or rights is not ultimately relevant: if A and B have the same income, welfare or rights, there is full equality whether they both enjoy very high or very low levels.<sup>1</sup> Many of the criticisms of egalitarianism stem from this feature of equality. For instance, some charge that egalitarianism must be based on envy, on the grounds that only an envious person cares how much he has *compared* to others instead of what he has absolutely.<sup>2</sup> More significantly, there is the leveling down objection, according to which egalitarianism has the unacceptable result that a situation can be improved in some way by making the better-off (in terms of income, welfare, rights or anything else) worse off – by reducing them to the level of the worse-off.<sup>3</sup> Such critics complain that a situation can be made better in some way if and only if someone is in some way better off.<sup>4</sup>

To avoid such objections, many have adopted, instead, prioritarianism, a non-comparative view that tends to reduce the gap between the better- and the worse-off.<sup>5</sup> According to prioritarianism, benefiting or harming a person

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<sup>1</sup> Absolute levels are relevant, of course, because they are what is compared. Also, absolute levels may sometimes be relevant to *how* bad an inequality is. See Larry Temkin, *Inequality* (Oxford: Oxford University Press, 1993).

<sup>2</sup> See, for instance, Elizabeth Anderson, “What is the Point of Equality?” *Ethics* 109 (1999), especially pp. 302–7. Pity, which is regarded as a no less unattractive emotion, is thought to be at work if the egalitarian is among the better-off.

<sup>3</sup> See Derek Parfit, “Equality or Priority?” Tanner Lecture, University of Kansas, 1991, reprinted in *The Ideal of Equality* (Houndmills: Palgrave Macmillan, 2002), M. Clayton and A. Williams, eds., pp. 81–125.

<sup>4</sup> Similarly, it is claimed that a situation can be worse in some way if and only if someone is made worse off.

<sup>5</sup> Not all have resorted to the prioritarian alternative. Temkin, “Equality, Priority and the Leveling Down Objection,” in *The Ideal of Equality*, pp. 126–161, and “Equality, Priority, or What?” *Economics and Philosophy* 19 (2003): pp. 61–87, argues that leveling down is not an objection to egalitarianism because we should not accept the premise that a situation cannot be better (worse) in any way unless it is better (worse) for someone. Thomas Christiano, *The Constitution of Equality* (Oxford: Oxford University Press, 2008), Chapter 1, argues for a version of egalitarianism that he maintains is not subject to the leveling down objection. Others have argued that prioritarianism is in crucial respects no better than egalitarianism. Ingmar Persson, “Equality, Priority and Person-Affecting Value,” *Ethical Theory and Moral Practice* 4 (2001): 23–39, argues that prioritarianism is no better than egalitarianism because it too violates the person-affecting spirit of the leveling down objection, while Campbell Brown, “Giving Up Leveling Down,” *Economics and Philosophy* 19 (2003): 111–134, argues that prioritarianism too is subject to the leveling down objection.

matters more the worse off he is (in absolute terms).<sup>6</sup> As such, prioritarianism is a weighted maximizing theory according to which the best state of affairs is determined by aggregating benefits to persons, where benefits are weighted toward the worse-off. Thus, gains to the worse-off count more than equivalent gains to the better-off; similarly, losses to the better-off count less than equivalent losses to the worse-off. Because of this weighting, prioritarianism tends to reduce the gap between the better-off and the worse-off. At the same time, it seems to avoid the leveling down objection because, according to prioritarianism, a situation can be improved only by making someone better off: the weighted aggregate can be increased only by making someone better off.<sup>7</sup> It also seems not to be subject to the charge that it is grounded in envy because it is concerned with the absolute rather than comparative levels (of some good) that people enjoy.<sup>8</sup>

Because prioritarianism tends to reduce the gap between the better- and the worse-off, it is sometimes treated as a type of egalitarianism – a non-comparative type.<sup>9</sup> As such, it is generally agreed that the leveling down objection cannot knock out egalitarianism in a single blow.<sup>10</sup> If egalitarianism is to be knocked out with one blow, there must be a comprehensive criticism that applies to both comparative and non-comparative versions of egalitarianism. Just such a comprehensive criticism, however, has been leveled by Shelly Kagan, who argues that desert should replace equality – whether comparative or non-comparative – as a normative ideal.<sup>11</sup> The argument has two parts. First, Kagan argues that many intuitions that are taken to support egalitarianism equally support the view that each should receive just what he deserves – that, in many instances, egalitarianism and the desert view agree. For instance, many people have the intuition that if A is worse off than B, and we

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<sup>6</sup> Parfit, p. 101, notes only that, according to prioritarianism, benefiting a person matters more the worse off he is. Persson, p. 24, points out that the view also implies that harming a person counts more the worse off he is.

<sup>7</sup> As noted (fn. 5), Brown takes issue with the claim that prioritarianism avoids the leveling down objection.

<sup>8</sup> Richard Arneson, “Desert and Equality,” in *Egalitarianism: New Essays on the Nature and Value of Equality* (Oxford: Oxford University Press, 2007), N. Holtug and K. Lippert-Rasmussen, eds., pp. 262–293, makes this point. The favored move here is to suggest that as such compassion, a more appealing emotional base, replaces pity as the motivation, as compassion is a concern for persons who suffer low absolute levels (of some good). See Anderson, pp. 306–307.

<sup>9</sup> Parfit, p. 106, Arneson, “Luck Egalitarianism: An Interpretation and Defense,” *Philosophical Topics* 32 (2004): 1–20, and Shelly Kagan, “Equality and Desert,” in *What Do We Deserve: A Reader on Justice and Desert* (Oxford: Oxford University Press, 1999), L. Pojman and O. McLeod, eds., pp. 298–314, all count prioritarianism as a (non-comparative) version of egalitarianism. Temkin, “Equality, Priority, and the Leveling Down Objection,” resists this assimilation, arguing that prioritarianism fails to capture essential elements of egalitarianism. So too does Nils Holtug, “Prioritarianism,” in *Egalitarianism: New Essays on the Nature and Value of Equality*, pp. 125–56.

<sup>10</sup> Unless, as Brown argues, prioritarianism is equally subject to the leveling down objection.

<sup>11</sup> Kagan.

can help one but not both by the same amount, then it is better to help A – that, other things being equal, we ought to help A. Such intuitions are thought to support egalitarianism, since conferring the benefit on A would reduce inequality while conferring the benefit on B would increase inequality. However, of course, if A is equally or more deserving than B, then desert would also call for benefiting A. Second, he argues, when equality and desert are not in agreement intuition favors desert.

Of course the desert view will tend to have egalitarian results if there is little or no variation in what people deserve. Such a “desert-egalitarianism” depends on controversial philosophical claims about what determines desert. It is widely held that desert depends on responsibility, in which case desert-egalitarianism will depend on controversial claims about what people are and are not responsible for, and controversial empirical claims about how much variation there is in what people are in fact responsible for. For instance, while some non-egalitarians are willing to agree that differences in natural talent are the product of luck and thus the more naturally talented should not fare better for this reason, they nonetheless insist that significant differences in income are attributable to the effort people make to develop their talents and work hard – which they maintain is something for which people are responsible since it is a matter of choice.<sup>12</sup> But it is controversial whether effort really is something people are responsible for and not a matter of luck.<sup>13</sup> It is also controversial to what extent differences in income and wealth are attributable to effort rather than talent. Critics of desert-egalitarianism of course worry that egalitarians have gone so far down this path that no one is responsible for anything – that everything is attributable to luck – and desert is thus rendered empty, irrelevant, even incoherent.<sup>14</sup> Desert-egalitarians, then, face considerable challenges, though I do not mean to suggest here that they cannot be met. The point, rather, is that the implication of Kagan’s argument is that the only defensible egalitarianism is desert-egalitarianism.<sup>15</sup> The tasks to which egalitarians should set their minds, then, is to defend desert egali-

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<sup>12</sup> See, e.g., Louis Pojman, “Does Equality Trump Desert?” in *What Do We Deserve? A Reader on Justice and Desert*, pp. 283–297. Robert Nozick, *Anarchy, State, and Utopia* (Padstow, Basil Blackwell, 1974), of course, holds that natural talents are not deserved, but people are nonetheless entitled to the benefits that flow from such talents because they are not obtained illegitimately.

<sup>13</sup> See, for instance, John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), pp. 74, 104 and 312, and George Sher, “Effort and Imagination,” in *Desert and Justice* (Oxford: Clarendon Press, 2003), S. Olsaretti, ed., pp. 205–218. Rawls, pp. 310–15, ultimately rejects the idea of rewarding effort (and desert more generally) because it is a) impractical and b) not a principle that would be chosen in the original position.

<sup>14</sup> See Pojman, pp. 283–4. Also see Persson, “A Defense of Extreme Egalitarianism,” in *Egalitarianism: New Essays on the Nature and Value of Equality*, pp. 83–97, and Galen Strawson, “The Impossibility of Moral Responsibility,” in *What Do We Deserve? A Reader on Justice and Desert*, pp. 114–124, both of whom argue, on determinist grounds, that no one deserves or is responsible for anything.

<sup>15</sup> This conclusion is only implicit in Kagan, who is himself, at least in the work under consideration, agnostic as to whether the desert view is egalitarian or not.

tarianism – to argue that, with respect to the proper bases of desert, there is in fact little variation. I think, however, that Kagan’s arguments are not sufficient to reduce egalitarian options to just this one. Although existing replies to Kagan’s argument are, in my estimation, inadequate, there are responses that make room for an egalitarianism that is independent of desert. It is premature, then, to conclude that desert should replace equality.

## II

Kagan’s argument has several steps, and requires first distinguishing three different aspects of desert. First there is what Kagan calls what a person deserves absolutely, or absolute desert. Though Kagan does not specify the desert base – what determines a person’s level of desert – he does assume that more deserving people deserve to be doing better in terms of some relevant magnitude, and that this can vary from person to person depending on how they fare in terms of whatever it is that grounds desert. He assumes further that the relevant magnitude is well-being, such that the more deserving warrant a higher level of well-being. As a consequentialist about desert, Kagan thinks that people having what they deserve is good – a state of affairs being better insofar as people have just what they deserve. If people have more or less than they deserve, this makes a state of affairs worse.<sup>16</sup> This allows Kagan to represent absolute desert graphically, as in Figure 1 below. The X-axis represents the level of well-being that a person enjoys, while the Y-axis represents how much his level of well-being contributes to the value of the state of affairs. The “desert graph” for each person, then, looks like a mountain, with his absolute level of desert represented by the peak. To the west of the peak, the person represented has less (well-being) than he deserves; to the east, more.

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<sup>16</sup> Anderson, among others, rejects two foundational assumptions in Kagan’s approach. First, she argues that desert can only be understood as applying in very narrow and institutional contexts, as in the awarding of prizes in competition. The idea of desert applying globally, outside of such limited contexts, is regarded as incoherent, and therefore that desert is irrelevant to justice. Moreover, the consequentialist view that it is intrinsically good if some (bad) people suffer is rejected as malicious and a mere holdover from the theological view that God will render cosmic justice on judgment day. See Anderson, “How Should Egalitarians Cope with Market Risk?” *Theoretical Inquiries in Law* 9 (2008): 239-270. Second, she argues against the consequentialist view that egalitarianism is a view about the value of states of affairs describing distributions across persons. Instead, she maintains that egalitarianism is a view about justice between persons, defined in terms of the relations in which they stand to one another. See her “What is the Point of Equality?” Such sweeping critiques of desert theory and the consequentialist approach (to both desert and equality) will not be addressed here.

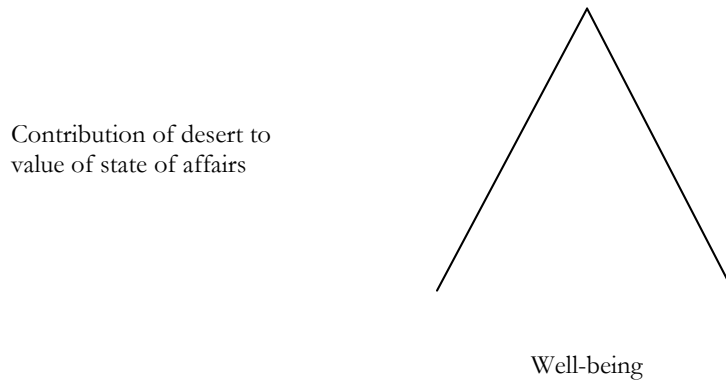


Figure 1

Kagan adds two controversial complications to his account of absolute desert. First, the further someone is from his or her peak, the greater the significance of each additional unit of well-being. Thus, absolute desert is “curved”: the slopes of the mountain are curved, getting steeper farther from the peak. Second, he suggests that how bad it is for a person to be below or beyond his peak can vary. For a better person (in terms of absolute desert), it is worse to be a certain amount below his peak than for a worse person to be below his peak by the same amount. It is also less bad for a better person to be a certain amount beyond his peak than for a worse person to be beyond his peak by the same amount. Thus, there is what Kagan calls “bell motion”: for better people their mountain swings to the right (if we think of the peak as fixed) and for worse people it swings to the left.

Absolute desert must be distinguished from comparative desert. According to comparative desert, if A is equally deserving in absolute terms as B, then A ought to be at least as well-off as B (and B at least as well-off as A); if A is more deserving in absolute terms, then A ought to be better off. Thus, if A and B are equally deserving in absolute terms (and are thus represented by the same mountain), but B is worse off, then B has a comparative desert claim. Similarly, B has a comparative desert claim if he is more absolutely deserving than A but nonetheless worse off, as in Figure 2, in which each B’s “desert mountain” is the one further to the east, and each person’s level of well-being is indicated by a point on his respective mountain:

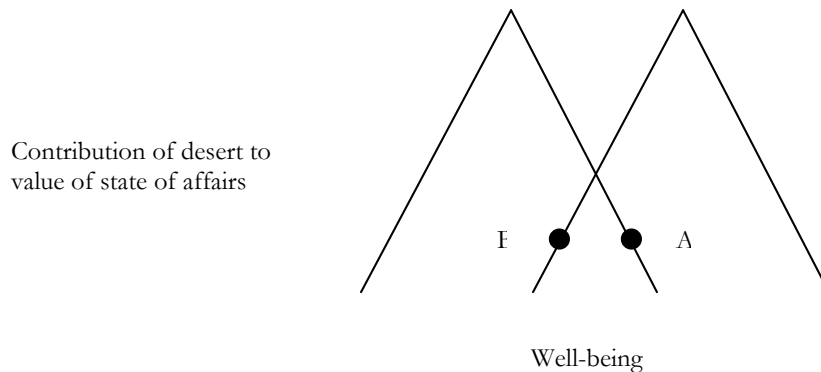


Figure 2

Finally, both absolute and comparative desert must be distinguished from what Kagan calls specific desert. Consider Figure 3, in which B is more absolutely deserving than A, though A is farther below her peak.

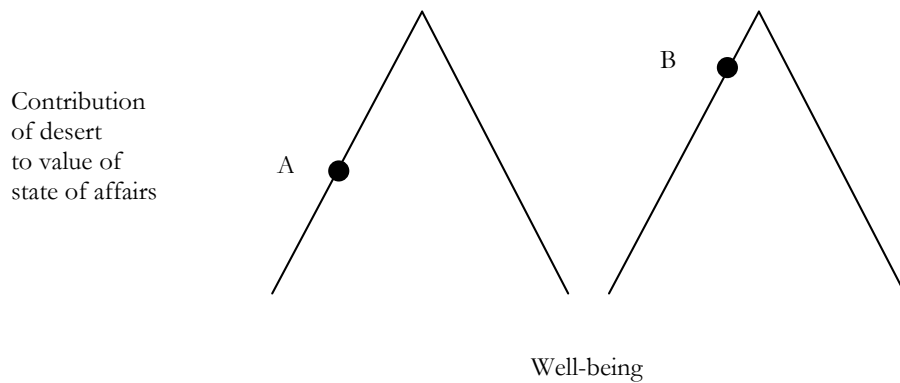


Figure 3

Though B is more absolutely deserving, due to curved desert, things are improved more in terms of (non-comparative) desert if we improve the condition of A by some fixed amount rather than B's condition by the same fixed amount, because A is farther below his peak.<sup>17</sup> In this sense, the one farther from his peak, in this case A, is more specifically deserving: in this specific case, things are improved more in terms of desert by improving A's condition. Specific desert can also be affected by comparative considerations: B is more specifically deserving than A if B is more absolutely deserving than A but nonetheless worse off, as in Figure 2.

<sup>17</sup> This is because the person farther from his peak is at a steeper point of the curve, in which case an equivalent move toward his peak leads to a larger move up the Y-axis. I have chosen to draw the figures without curved slopes to keep them consistent with Kagan's diagrams (and the literature generally), which do not represent the slopes as curved.

The first step in Kagan’s argument, as indicated earlier, is to suggest that intuitions frequently thought to support egalitarianism can also be explained in terms of desert. Many people, as noted, have the intuition that if B is worse off than A, and we can help one but not both by the same amount, then it is better to help B. Such intuitions seem to lend support to egalitarianism, since both comparative and non-comparative egalitarianism favor benefiting B.<sup>18</sup> However, such intuitions can also be explained by desert. For instance, if B is more deserving than A in absolute terms but nonetheless worse off, as in Figure 2, then B is more specifically deserving. Egalitarians can respond by suggesting that many have the intuition that we ought to confer the benefit on B even if A and B are equally deserving in absolute terms. Here too, though, B is more specifically deserving (because he is further below his peak).

Of course these considerations leave egalitarianism and desert on an equal footing: both are equally capable of capturing common intuitions. The second step aims to break this tie. Imagine the following scenario: A is a sinner who fares better than he deserves, while B is a saint who fares worse than he deserves. This scenario, which Kagan calls “Twin Peaks,” is represented below in Figure 4.

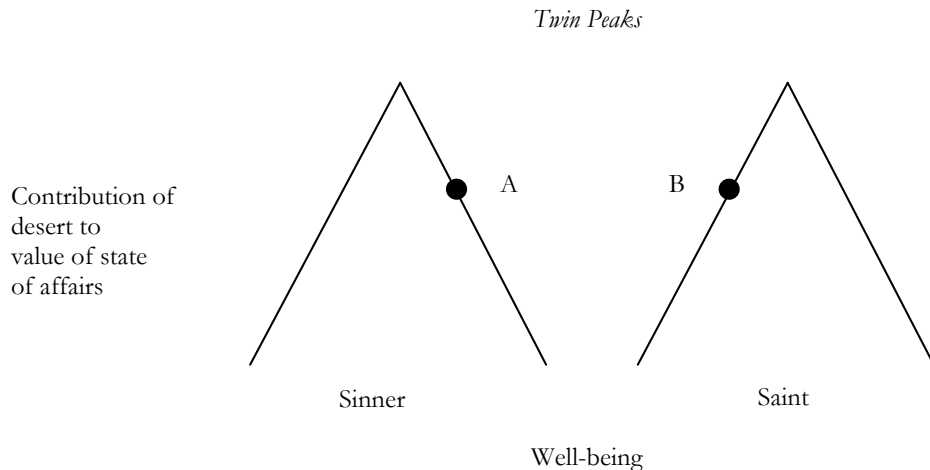


Figure 4

Since A is worse off than B, both comparative and non-comparative egalitarianism favor benefiting A. Yet, Kagan claims, if we can help A or B by the same fixed amount, intuition favors helping B. After all, Kagan says, A is a sinner getting more than he deserves, while B is a saint getting less than she

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<sup>18</sup> Comparative egalitarianism will favor benefiting A because doing so increases equality, while benefiting B will increase inequality. As such, there is no value (in terms of equality) in benefiting A – indeed it reduces the value of the state of affairs. Non-comparative egalitarianism, in contrast, will attach value to benefiting B, but more to benefiting A, just because he is worse-off.





intuition runs to the contrary. He thinks that A's claim to being benefited is no stronger than B's. In fact, he reports an intuition that A's claim is actually weaker. In this case, Kagan says, it seems intuitively better to confer a benefit on B.<sup>22</sup>

### III

In response to both of these objections, one might simply take issue with Kagan by appealing to contrary, egalitarian-supporting intuitions, as Serena Olsaretti does.<sup>23</sup> Indeed, Kagan admits that not everyone will share his intuitions, that his own intuitions are not as firm as he might like, and that there are reasons to think that there is a limit to how much justificatory weight should be given to case-specific intuitions.<sup>24</sup> However, Kagan's intuitions are hard to simply ignore. One might reject the intuition that, in Revised Twin Peaks, B (who is better off) has a *stronger* claim. Indeed, it is hard for Kagan himself to account for this within his own theory of desert because A and B are equally specifically deserving. He tries to account for it in terms of bell motion, but this proves problematic and he ultimately retreats to the weaker view that A does not have a stronger claim.<sup>25</sup> It is hard to deny this weaker

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inclined to agree with Kagan that Revised Twin Peaks presents a challenge because the intuition seems to hold even when adjustments are made to preserve desert being indifferent between benefiting the sinner and the saint.

<sup>22</sup> Kagan does provide a second argument against restricted egalitarian, which he calls "Moving Twin Peaks." The point of this very complex example is to argue that intuitively both desert and equality are continuous – that is, their force changes gradually and by small amounts rather than suddenly and by large amounts when relevant variables are changed. Kagan argues that restricted egalitarianism is beset by discontinuity because its egalitarian force suddenly and precipitously drops when the less well off person's desert-claim drops to the same level as that of a better off person. Although avoiding such a discontinuity will become an issue in what follows, I will be focusing here almost exclusively on the objection derived from Revised Twin Peaks (as have most other commentators).

<sup>23</sup> Serena Olsaretti, "Unmasking Equality? Kagan on Equality and Desert," *Utilitas* 14 (2002): 387-400.

<sup>24</sup> Kagan, p. 309.

<sup>25</sup> Kagan, pp. 308–9. There is a different way to argue for the stronger intuition, as there are grounds for thinking that B has something over A in terms of desert: his absolute level of desert is higher. It might be thought on this ground that B makes a greater contribution in terms of desert to the value of the state of affairs as a whole. The thought here is that desert contributes to the value of the state of affairs not only in virtue of the fit between desert and receipt of each person, but also in virtue of the aggregate level of absolute desert. Since B contributes more to the aggregate level of absolute desert, he is "better" (than A) in terms of desert. Such thinking might be thought to warrant Kagan's intuition that B has a stronger claim. There are two reasons to reject this. First, even if B is in this way "better" in terms of desert, it does not clearly warrant benefiting B ahead of A, because doing so will not increase this aspect of B's contribution to the value of the state of affairs. Second, if B does indeed have a stronger claim, then Revised Twin Peaks fails to serve the function it is supposed to for Kagan. To serve as a test case between desert and restricted egalitarianism, it is essential, as Kagan emphasizes, that desert is indifferent, for it is only then that desert does not prioritize benefiting A, but restricted egalitarianism does. Only under such conditions does the

claim. And in Twin Peaks, there is surely some force to the intuition that nothing favors giving the benefit to A – that there is nothing to say on behalf of a sinner getting more than he deserves. The egalitarian is surely on firmer ground if he can account for these intuitions rather than simply insist on intuitions to the contrary.<sup>26</sup>

#### IV

Fred Feldman argues that a comprehensive theory that includes an egalitarian component can cope with Kagan's objections.<sup>27</sup> On Feldman's view, the value of a state of affairs is a function of welfare, desert and equality. More specifically, the value of a state of affairs is the sum of what Feldman calls aggregate desert adjusted welfare (ADAW) and equality adjusted aggregate welfare (EEAW): the value of a state of affairs equals ADAW + EEAW.<sup>28</sup> For each person, desert adjusted welfare (DAW) is the product of his welfare and the fit between his welfare and the welfare level he deserves (his absolute desert, in Kagan's terms). If the fit is good, if a person gets just what he deserves, then his DAW is much higher than his welfare level. For instance, if he deserves a welfare level of 5, and enjoys a welfare level of 5, then his DAW might be 10 or 12. If the fit is less good, if for instance he enjoys a welfare level of 4, then his DAW will be lower, say 8, both because his welfare level is lower and because the fit between welfare and desert is worse (though still good). DAW can be lower than a person's welfare level if the fit is bad. For instance, if a person deserves a welfare level of 0 yet enjoys a welfare level of 8, DAW is adjusted down, to 2, say. Aggregate desert adjusted welfare (ADAW) is simply the sum of the desert adjusted welfare of each person in the state of affairs being evaluated. Equality adjusted aggregate wel-

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alleged lack of an intuition favoring benefiting A cast doubt on restricted egalitarianism. Thus, if B has a stronger desert claim, then Revised Twin Peaks is not a test case at all, and nothing definitive about restricted egalitarianism can be derived from it. It is exactly this latter problem, as Kagan admits, that undermines his attempt to account for the stronger intuition in terms of bell motion.

<sup>26</sup> Olsaretti does have more to say, suggesting a different example that she thinks supports restricted egalitarianism. Her example involves comparing two worlds. In both worlds, everyone has exactly what he or she deserves in absolute terms. However, in the first, everyone deserves just the same, whereas, in the second, some deserve more than others (and therefore are better off). Olsaretti suggests that, intuitively, the first world is better than the second, and claims that this supports restricted egalitarianism. I agree that the first world is, intuitively, better. However, this lends no support to restricted egalitarianism because restricted egalitarianism does not say anything at all about the desirability of levels of absolute desert being more equal. The intuition lends support, instead, to a view according to which if desert is a factor in determining levels of well-being, it is better if absolute levels of desert are more equal.

<sup>27</sup> Fred Feldman, "Return to Twin Peaks: On the Intrinsic Moral Significance of Equality," in *Desert and Justice*, pp. 145–68.

<sup>28</sup> Feldman, p. 153, eventually uses "D" to stand for ADAW, so that he ultimately describes his comprehensive view as D + EEAW.

fare (EAAW) is calculated by multiplying aggregate welfare by  $E$ , which is a measure of equality. In the case of perfect equality,  $E$  is equal to 1. As the situation moves farther from perfect equality,  $E$  decreases, approaching 0 as a limit.<sup>29</sup> If, for instance, there are two people each at a welfare level of 5, then aggregate welfare is 10. Since there is perfect equality,  $E = 1$ , in which case equality adjusted aggregate welfare is 10 ( $10 \times 1$ ). If there are two people, one at welfare level 9 and the other at 1, then EAAW might be just 1, since  $E$  might be as low as .1.

In the case of Twin Peaks, Feldman argues,  $ADAW + EAAW$  is greater if a fixed amount is given to B rather than A. Thus, he claims, his comprehensive theory accords with Kagan's intuition that if we can help A or B by some fixed amount it would be better to help B. Here's his analysis. In Twin Peaks, assume that A deserves -5 but in fact has -3; assume B deserves 10 but has just 8. If the fixed amount that can be given to either A or B is 1, then if it is given to A he will have -2 while B will still have 8. In this scenario, Feldman suggests, A's desert adjusted welfare (DAW) is 0, because the fit between his welfare (-2) and what he deserves (-5) is still pretty good – after all, he deserves “negative” welfare and suffers negative welfare, if not as negative as he deserves. B's DAW, according to Feldman, is 16.5, again because the fit between what he deserves (10) and what he actually enjoys (8) is pretty good. Aggregate desert adjusted welfare is therefore 16.5. Equality adjusted aggregate welfare (EAAW) in this case is 2.4, Feldman suggests, on the grounds that  $E$  is .4 because there is considerable inequality (B has -2 and A has 8) and aggregate welfare is 6. Thus, when the fixed amount is given to A rather than B,  $ADAW + EAAW$  is 18.9 ( $16.5 + 2.4$ ). Now if the fixed amount is given to B, then B's welfare level will remain -3 while A's will be 9. In this case, Feldman suggests, A's DAW is 0 (because, though his utility is lower than in the previous scenario, the fit between his welfare and what he deserves is better), while B's is 19 (higher than before, both because his welfare level is higher and the fit between what he deserves and what he has is better).  $ADAW$  is therefore 19. EAAW, he then claims, is 1.8, because, though aggregate welfare is the same (6),  $E$  is lower (.3) because there is greater inequality. Nonetheless,  $ADAW + EAAW$  is 20.8, which is greater than when the fixed amount is given to A. Thus, Feldman concludes, his comprehensive view – which includes an egalitarian component (EAAW) – agrees with Kagan that in Twin Peaks it is better if the fixed amount is given to B rather than A.<sup>30</sup>

Now one might surely quibble with Feldman's numbers – with the numerical value he assigns to the fit between desert and receipt when calculating DAWs, and with his choice for the values of  $E$  in calculating EAAWs.

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<sup>29</sup> Temkin, *Inequality*, has shown that inequality is complex, and that it is very difficult to determine when and to what extent one state of affairs is better or worse than another in terms of inequality, especially in cases involving more than two people. Feldman does not address these complexities.

<sup>30</sup> Feldman, p. 156.

However, even if the values he chooses are granted, Feldman's analysis fails to capture Kagan's intuition. For, as Kagan emphasizes, the intuition is not simply that it is better all-things-considered to give the fixed amount to B, which is compatible with considerations of desert favoring B outweighing considerations of equality favoring A. Rather, the intuition is that there is *no* reason to favor A. However, on Feldman's view, the reason to favor B all-things-considered is that, while equality favors A (because when the benefit goes to A EAAW is 2.4, while it is only 1.8 when it goes to B), desert even more strongly favors B (because when the benefit goes to B ADAW is 19, while it is only 16.5 it goes to A). Feldman, or someone sympathetic to his view, might think it is enough to capture the all-things-considered intuition – and to deny Kagan's intuition that there is no reason to give the fixed amount to A. However, this renders Feldman not substantially different from Olsaretti, simply insisting on intuitions contrary to Kagan's. And, as with Olsaretti, the egalitarian is on firmer ground if he can account for Kagan's intuitions rather than simply insist on an intuition to the contrary.<sup>31</sup> Of course Feldman offers a theory to back up his intuitions. However, it seems, first, that the theory is only as plausible as the results it generates, and, second and more importantly, that the theory is not sufficiently independent from the results it generates when the values assigned to central variables are as unconstrained as they are – when it is so easy to plug in values (for DAW and E) that will generate whatever results one prefers.

Feldman applies his comprehensive theory to Revised Twin Peaks with the same result that ADAW + EAAW is greater if the fixed amount is given to B rather than A.<sup>32</sup> But the problem is the same here: Feldman's theory shows only that all-things-considered it is better to provide a benefit to B rather than A, because although equality favors benefiting A, considerations of desert more strongly favor benefiting B. Yet Kagan's view is that equality does not count at all in favor benefiting A ahead of B.<sup>33</sup>

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<sup>31</sup> The problem with Feldman's response is that he endorses what Kagan, p. 305, calls strong pluralism, which holds that equality is always normatively relevant, though it can be outweighed by other considerations (such as desert). Twin Peaks shows, Kagan argues, that such strong pluralism must be rejected in favor of a pluralism in which equality is normatively dependent on desert – in which equality comes into play only when desert does not oppose it.

<sup>32</sup> According to Feldman, p. 158, if the fixed amount is given to A, ADAW = 15.5 and EAAW is .4; if given to B, ADAW = 17.5 and EAAW = .3.

<sup>33</sup> Feldman, p. 159, does consider the suggestion – the intuition – that in Kagan's examples there is no reason at all to favor A over B. He replies by saying that this would have no effect on a "real egalitarian" because the case should not be seen as involving any favoritism of A over B, but instead as simply involving the claim that there is good reason to prefer the state of affairs that results from giving the fixed sum to A rather than B because it is intrinsically better. But this simply begs the question, as it is exactly this claim that Kagan denies.

## V

Richard Arneson defends egalitarianism against Kagan's challenge in a different way. On Kagan's view, desert has both a non-comparative and a comparative element. What Kagan calls absolute desert is non-comparative: a person's level of absolute desert depends only on facts about him – in particular, facts about his “score” with respect to the desert base, whatever that turns out to be. One's score determines how one should fare in absolute terms – the specific level of well-being that one deserves. From the point of view of desert, it is good if what one receives (in terms of well-being) matches what one deserves. It is less good, or bad, if one gets either more or less than what one deserves absolutely. Hence, each person's desert graph, as we have seen, is represented by a mountain with a peak representing what the person deserves in absolute terms, or non-comparatively. Comparative desert, in contrast, is determined by comparing how one person is doing compared to another in light of how deserving each is in absolute, or non-comparative terms. If one person is more deserving in absolute or non-comparative terms, but is nonetheless worse-off, for example, then things are amiss in terms of comparative desert. Arneson's response to Kagan is to reject entirely the idea of absolute or non-comparative desert – to deny that there is some specific absolute level of well-being that one deserves based on one's desert score. According to Arneson, all desert is comparative. A person's score in terms of the desert base does not specify an absolute level of well-being a person deserves. Instead, “the desert score that accrues to a person ... establishes only comparative desert ... [that] other things being equal, it is desirable that those who are more deserving should enjoy more well-being than those who are less deserving.”<sup>34</sup> Thus, because Twin Peaks and Revised Twin Peaks depend on a notion of absolute or non-comparative desert, they can be dismissed by the egalitarian.

Arneson's reason for rejecting absolute or non-comparative desert is quite simple. He asks that we imagine a world in which each person has what she deserves according to Kagan's conception of non-comparative desert – a world in which each person is at her peak. Now imagine a windfall that makes it possible to triple everyone's well-being. Perhaps, Arneson suggests, huge oilfields are discovered. Were each person's level of well-being tripled, on Kagan's view this would make things worse in at least one respect. For now each person would have much more than she deserves, which is bad from the point of view of absolute or non-comparative desert.<sup>35</sup> However, Arneson insists, this is implausible. Intuitively, “there is nothing undesirable from the standpoint of desert ... where everyone enjoys huge well-being

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<sup>34</sup> Arneson, “Desert and Equality,” p. 281. Ultimately, Arneson thinks that comparative desert can say more – namely that people can be ranked cardinally in terms of the desert base and that receipt should be proportional to desert.

<sup>35</sup> In other ways, it might be better, or neutral. In terms of aggregate well-being, it would of course be better. Thus, it could be better all-things-considered.

gains proportionate to their deservingness [doubled, tripled or whatever].” There is, therefore, no such thing as absolute or non-comparative desert; there are, as Arneson puts it, simply “no peaks.”<sup>36</sup>

There is, however, a way to capture the intuition that, in terms of desert, there is nothing bad in tripling everyone’s level of well-being without giving up on absolute or non-comparative desert. The alternative is to maintain that, in the case of such windfalls, each person’s level of absolute desert increases (proportionally): if there are resources to triple each person’s level of well-being, then each person’s level of absolute desert triples (each person’s mountain shifts to the east). The thought here is simply that the level of well-being that each person deserves depends on the capacity or resources of society (or the world). Absolute or non-comparative desert is relative to capacity or ability to supply. This might sound crazy: how can what is absolute be relative? Perhaps, then, calling it absolute desert is misleading. But what matters here is that this notion of desert remains non-comparative, because the level of well-being that each person deserves is determined without a direct comparison to others; instead, it is determined entirely by considering each person’s desert score and aggregate capacity or resources to promote well-being.<sup>37</sup> Consider a domestic analogy. Most families draw a distinction between chores that children are responsible for simply as members of the family and tasks that go beyond their basic responsibilities. The latter, if performed, warrant some kind of compensation – a reward. For some families, taking out the garbage will be in the first category, while for others it will be in second. Suppose it is in the second. What does a child deserve for taking out the garbage? It seems plausible to me that what a child deserves depends on the means of the family. If the family has very little disposable income, then 50 cents or a dollar might be appropriate. For a family with greater disposable income, two or three dollars might be appropriate. On this view, there is no set amount that such a chore merits for all kids in all families. However, for each kid, there is a certain amount (or a certain range) that is appropriate, independent of what other kids in other families deserve for the same chore.<sup>38</sup> So the notion of desert here is non-comparative, but nonetheless changes depending on the means of the particular family.

The most obvious objection to this suggestion is that it is in fact no different from Arneson’s view – that it is a purely comparative view in disguise. For if each person’s level of absolute desert is always proportionately increased to keep up with windfalls that are distributed proportionately, then absolute desert is stripped of any meaning. It is stripped of meaning because

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<sup>36</sup> Arneson, “Desert and Equality,” p. 280.

<sup>37</sup> Other peoples’ share has to be taken into account, because what each person deserves will depend on total resources and the desert level of each person. However, this does not render the idea comparative.

<sup>38</sup> Arneson, “Desert and Equality,” p. 283, himself suggests just such a model for non-comparative desert in criminal justice: while there is no specific sentence appropriate for each kind of crime, there is a (non-comparative) range that is appropriate.

what makes the proportional increases in well-being just or fair in terms of desert can be entirely captured in terms of comparative desert. What makes the end result just or fair in terms of desert is that each person's increase in well-being is proportionate to his or her score in terms of desert. But, of course, well-being levels being proportionate to desert is a purely comparative notion, since proportionality is independent of absolute levels. To add that the new well-being levels correspond to proportionally adjusted levels of absolute desert adds nothing.

It seems to me, however, that in only slightly different scenarios preserving a notion of absolute desert is meaningful. Imagine that instead of vast oil fields being discovered (in country), oil fields in another country are seized, making it possible to triple the level of well-being of everyone in the aggressor country. Without a notion of absolute desert, there is no clear basis, within desert, to challenge the new levels of well-being enjoyed by those in the aggressor country. Yet it seems that, in terms of desert, there is something amiss – that, now, all the people in the aggressor nation are enjoying a level of well-being greater than what they deserve. The point, of course, is that there is a difference between a windfall and ill-gotten gains. Proportional increases in well-being that are the product of ill-gotten gains can make things worse in terms of desert. This cannot be captured on a purely comparative view of desert.<sup>39</sup> A view of desert with a non-comparative element can capture this, while also capturing Arneson's intuition about genuine windfalls.

A second objection to the suggestion that, in the case of windfalls, each person's level of absolute desert increases proportionally appeals to the analogy of taking out the garbage. Most of us have a sense that, no matter a family's means or resources, there is a limit to what is a reasonable reward for taking out the garbage. If family A has one thousand times the disposable income of family B, most of us would reject the idea that if the child in family B gets one dollar for taking out the garbage that the child in family A should get \$1,000. Surely no one should get \$1,000 for taking out the garbage. There's a simple solution, of course, which is to suggest that non-comparative desert is relative to means or resources, but there is a non-

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<sup>39</sup> This is perhaps an overstatement, because there are ways to explain the injustice in terms of comparative desert: while nothing has changed with respect to desert in either country, those in the aggressor nation have much greater levels of well-being while those in the victimized country have lower levels; thus, changes in well-being are not proportional to desert. Although this suggestion has merits, it seems to me that it is possible to make the judgment that something is amiss in terms of desert without taking up the global perspective. It is enough to know that what made it possible to triple everyone's well-being in the aggressor nation was ill-gotten. A different example might be more definitive: imagine that wealth sufficient to triple everyone's well-being is produced by destructive extraction of natural resources from a wilderness preserve. These considerations suggest that to capture our judgments of desert requires a notion of absolute desert.



relative cap or upper limit.<sup>40</sup> Now if there is, analogously, a cap or upper limit in the case of well-being in general, then the view might be able to capture the idea that there is nothing bad about tripling everyone's level of well-being, so long as such trebling does not lead people to exceed the cap. However, as Arneson makes clear, his example does not hinge on the fact that well-being is being tripled – that the multiplier is three. His intuition is that no matter how large the multiplier – no matter how large the windfall – there is nothing undesirable in terms of desert if the well-being of all is proportionally increased. Whether each person's level of well-being is tripled, quadrupled or multiplied by 100, there is nothing bad in terms of desert.

One could dig in one's heels at this point and insist that, while it might be clear that there is nothing undesirable in terms of desert if each person's level of well-being is tripled, it is not so clear when the multiplier is greater, as seems plausible in the case of taking out the garbage. After all, we do say sometimes of people who are doing very well that "no one deserves to be that happy." But I suspect that when we make this apparently non-comparative assertion, we really mean it comparatively: no one deserves to be that happy *when so many others (equally deserving) are not so happy*. Consider the fact that in some parts of the world it seems that life is much easier than elsewhere. In the South Seas, or at least in a romanticized version, food grows abundantly without cultivation; the seas and forests teem with life that can be easily captured for consumption and other uses; the climate is moderate, such that comfort requires neither heating nor cooling. In other parts of the world, e.g., Siberia or parts of the Arctic, life is much harder. Now we can imagine saying, with respect to South Sea Islanders, that no one deserves to be that happy. But this plausibly seems a comparative judgment: South Sea Islanders do not deserve to be that happy when others (seemingly equally deserving) have to work so hard just to eke out a meager existence. Imagine that no one lived in Siberia, or the Arctic, or that the whole world were like the (real or imagined) South Seas. Would we still be tempted to say that no one deserves to be that happy? I suspect not.

That we would not be so tempted suggests that the analogy to the domestic example of taking out the garbage is not perfect. In the case of taking out the garbage, it makes sense that there is an upper limit to how much any child should get for doing such a minor chore, regardless of the family's resources. But the same does not seem to be true in the case of overall well-being at the societal or global level. Consider this question that in lay terms might be deemed existential: Would it be better if the entire Earth were more like the (perhaps idealized) South Seas, such that high levels of well-being were easily achieved? Or is there some upper limit to the desirability of an abundant world? I am inclined to think that the answer is that there is not.

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<sup>40</sup> Is there a non-relative minimum floor? In this case it seems not: if a family has little or no disposable income, then the child might deserve nothing at all, or perhaps only something non-monetary, e.g., a kiss, or an extra half hour of TV.

When it comes to what the world provides, there is no point at which there is too much, unlike the case of rewards for children taking out the garbage.<sup>41</sup>

Some might object by reminding us of the old nugget that you can have too much of a good thing. After all, it is said that “wealth skips a generation” because children who grow up in indulgent wealthy families rarely accomplish as much as their parents (who did not enjoy a wealthy lifestyle as children). In general, the thought is that people are driven to achieve only when there is scarcity – that “necessity is the mother of invention.” A cousin of this claim is that if people are too comfortable in terms of material satisfaction, they will simply luxuriate rather than strive for excellence in art, science, philosophy, and the many other things that make for a good life. Orthodox Marxists hold, in contrast, that material abundance will unleash human creativity on an unprecedented scale – that science, art and philosophy will flourish when people are freed from the necessity of working long hours to adequately provide for our material necessities. But this debate need not be resolved here, because the point of all these common sayings is that too much of one component of well-being (material satisfaction) can result in less total well-being because the other components are ignored. This may or may not be true, but it is surely irrelevant because Arneson’s objection is couched in terms of levels of well-being: his claim is that in terms of desert there is nothing bad in tripling (or quadrupling, or multiplying by 100) each person’s level of well-being. The abundance in question, in other words, is abundance in well-being, not in simply one aspect of well-being, or in terms of resources (as the South Seas example perhaps misleadingly suggests). So the objection that abundance is not necessarily a good thing simply does not apply here, because that objection applies only to resources or elements of well-being, and not to well-being itself.

It seems to me, then, that it is possible to capture Arneson’s intuition without abandoning non-comparative desert. One can, instead, adopt the view that non-comparative desert is relative to resources or capacity – that increased resources raise each person’s level of non-comparative desert.<sup>42</sup> Arneson, then, has given us no reason to abandon non-comparative desert. Indeed, as he admits, abandoning non-comparative desert has a high cost, e.g., in the domain of retributive justice, because it is hard to resist the thought that each crime has a fitting punishment, not simply that worse crimes de-

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<sup>41</sup> I do not mean to suggest that all that the world provides is for human beings to consume as they please. Humans may well have obligations to the non-human world that require limits to their consumption. But this is largely beside the point.

<sup>42</sup> An objection to this view is that it inappropriately raises the non-comparative desert level of even the morally wicked – even Hitler – when there is a societal windfall. Surely, critics could plausibly argue, Hitler – whose absolute level of desert is very, very low – should not fare a thousand times better (which could be quite well) if society’s resources increase a thousand-fold. This important objection could be handled simply by a constraint limiting the (proportional) increase in non-comparative desert to those who meet some minimum standard of non-comparative desert.

serve more severe penalties.<sup>43</sup> This cost can be avoided by the view I suggest, it seems, while capturing his intuition in the case of windfalls. It surely then emerges as a superior alternative.<sup>44</sup>

## VI

It seems to me, then, that these existing replies to Kagan are inadequate. I believe, however, that there are nonetheless at least three more viable egalitarian replies. The first aims to explain away Kagan's intuitions rather than simply dismiss them. According to restricted egalitarianism, considerations of equality come into play if and only if the worse-off are equally or more (specifically) deserving – only if equality does not conflict with desert. This means that if the worse-off are equal in terms of (specific) desert, as in Revised Twin Peaks, they are “on the border”: if they were any better off (higher up the western slope of their desert mountain) then equality considerations would no longer count in their favor. What is compatible with restricted egalitarianism in such a situation, then, is improving the condition of the worse-off by a tiny, tiny amount – only by the smallest unit of well-being possible. For as soon as the condition of the worse-off has been improved by this tiny amount, they are no longer favored by restricted egalitarianism. Any measurable improvement of the condition of the worse-off, then, could not be justified on restricted egalitarian terms. It is no embarrassment to restricted egalitarianism, then, it seems to me, if in Revised Twin Peaks there is no intuition that it would be better to benefit A, who is worse-off. For any such benefit is likely to improve the condition of the worse-off “too much” – more than can be justified in terms of restricted egalitarianism. This, it seems

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<sup>43</sup> Arneson, “Desert and Equality,” p. 284.

<sup>44</sup> There is another plausible way to deal with Arneson's objection. The feature of Kagan's view of non-comparative desert that makes it worse (in terms of desert) if each person's level of well-being is tripled (from an initial starting point where each person has exactly what he non-comparatively deserves) is that it is bad not only if people have less than they non-comparatively deserve but also if they have more. In terms of Kagan's graphical representation, the problem is that each person's desert graph has a (unique) peak – that it has both a western and an eastern slope. But one can give up the idea that it is bad if people have more than they deserve without giving up non-comparative desert. One can hold the view, instead, that, while it is bad if people have less than they non-comparatively deserve, having more than they non-comparatively deserve is no better or worse than their having exactly what they non-comparatively deserve. In terms of Kagan's graphical representation, one can deny that there is a downward sloping eastern slope. Instead, east of the point where a person has just what he deserves, the line is horizontal. To stick with Kagan's topological metaphor, the idea is that a person's non-comparative desert graph is not a mountain with a peak but is, instead, a bluff with a plateau (I propose to call it “Kagan's Bluff,” for the sake of Clint Eastwood fans). The disadvantage of this view is that it does not account for the fact that, as Kagan suggests, sometimes it is bad if someone gets more than they deserve. It is for this reason that I favor the response to Arneson above, as it maintains that each person's desert graph has a peak, and thus it can make things worse, in at least one respect, if a person gets more than he deserves.

to me, explains an intuitive hesitancy to benefit A ahead of B. In other words, the intuition that in Revised Twin Peaks A does not have a stronger claim than B can be explained (away) in terms of restricted egalitarianism.<sup>45</sup>

The second viable reply starts by noting that when Kagan seeks to elicit intuitions – both in Twin Peaks and in Revised Twin Peaks – he frequently appeals to extreme cases in which the worse-off are sinners and the better-off are saints. In such cases, it is hard to disagree with Kagan’s intuitions. It is, as I have said, hard to deny that A does not have a stronger claim in Revised Twin Peaks when A is a sinner and B is a saint. An adequate reply to Kagan, it seems to me, must capture at least this intuition. Olsaretti’s reply to Kagan is inadequate, I suggested earlier, for this reason. But what about less extreme cases? Here, I think, things are less clear. If in Revised Twin Peaks A and B are both saints, and B is just a bit more saintly, it is far from clear that nothing favors A. My intuition is that A’s claim is indeed stronger in this case. So too when A and B are both sinners. Most people, of course, are neither saints nor sinners. So consider the case where A and B are ordinary people, neither saints nor sinners, though B is slightly more (absolutely) deserving than A. In this case too, my intuition is that there is (an egalitarian) reason to prioritize benefiting A. When the two parties are in the same general category, whether it be sinner, saint or “average person” (neither sinner nor saint), my intuition is that the worse-off have an egalitarian claim. Kagan suggests that he does not share this intuition: he suggests that in all cases like Revised Twin Peaks his intuition is that A does not have a stronger claim – even when the contrast between A and B is not the contrast between a sinner and a saint.<sup>46</sup> But it seems to me that here one might more plausibly insist on intuitions to the contrary.<sup>47</sup> The restricted egalitarian, then, might suggest the following highlighted amendment to his view: considerations of equality come into play if and only if the worse-off are equally or more (specifically) deserving, *and the worse-off are not radically less deserving in absolute terms (e.g., are not in a different category)*. With this additional restriction, restricted egalitarian captures Kagan’s intuition that A does not have a stronger claim in Revised Twin Peaks when A is a sinner and B is a saint.<sup>48</sup>

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<sup>45</sup> This solution might not be able to deal with the objection stemming from Moving Twin Peaks, which complains about radical discontinuities. This might be a compelling objection, though I find Moving Twin Peaks so complex that I find it hard to generate any intuitions about it at all, nevermind intuitions that I have great confidence in.

<sup>46</sup> Kagan, p. 308.

<sup>47</sup> It might be objected that I am just picking and choosing which intuitions must be captured and which can be dismissed. How is this approach any better than Olsaretti’s if I too dismiss some of Kagan’s intuitions? The answer, I think, is simply that this approach captures more intuitions than does Olsaretti’s, and, moreover, it captures the intuitions that are most compelling – the intuitions generated by the examples in which A is a sinner and B is a saint.

<sup>48</sup> It would bolster the argument to provide a rationale for such intuitions – to provide an account of why intuitions are different when the two parties are in the same category. I am inclined to think that the reason may have to do with doubts about the reliability of fine-

In fact, my intuitions go a bit further. In the less extreme cases, where there are not significant differences in terms of absolute desert, I am inclined to think that the worse-off should be benefited first even if they are a little bit less specifically deserving, as in Figure 6 below:

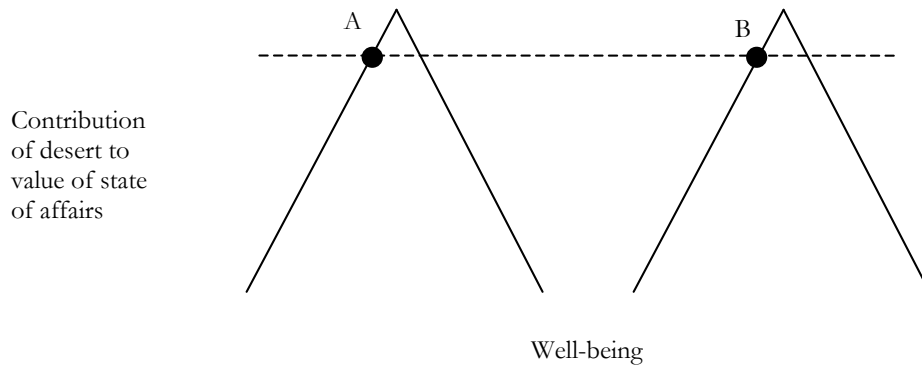


Figure 6

If in such less extreme cases the worse-off are significantly less specifically deserving, as in Figure 7, below, my egalitarian intuition subsides:

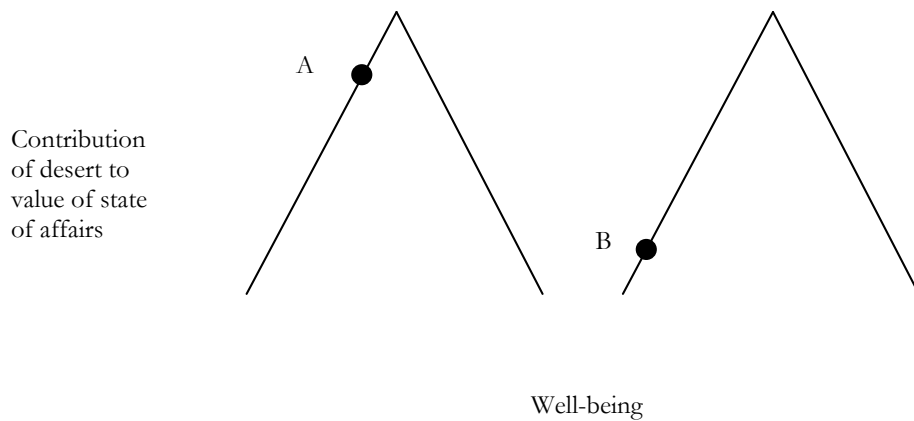


Figure 7

The view that ultimately emerges is that considerations of equality come into play if and only if the worse-off are not radically less deserving absolutely *or* specifically. Of course one could accept the first amendment without accept-

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grained discrimination in terms of desert – doubts about our ability to accurately distinguish people within broad categories of desert. But there may also be “non-epistemological” explanations. Exploring such possibilities would be interesting and would indeed bolster the argument here. However, limitations of space prevent such further exploration at this time.

ing the second. Either way, the view captures Kagan's most undeniable intuitions without entirely giving up egalitarianism.<sup>49</sup>

One objection to these modifications to restricted egalitarianism is that the result is hopelessly vague. Equality has force when the worse-off do not differ radically, or significantly, in terms of absolute or specific desert. But what counts as "radically" or "significantly" different? Moreover, it seems implausible that there is some "tipping point" – that there is a point where egalitarian considerations kick in or drop out. It is more plausible that egalitarian considerations are continuous rather than being in this way discontinuous.<sup>50</sup>

There is of course a simple reply to this concern, which is to make the view a graduated one, according to which the strength of the worse-off's egalitarian claim gradually decreases as differences in desert (absolute or specific) increase. To ensure that A, the sinner, in Revised Twin Peaks does not have a stronger claim than, B, the saint, it is necessary to maintain that the strength of the egalitarian claim drops to 0 before or at the point where the gap is so large that the worse-off are sinners and the better-off are saints. But there is no reason not to have it this way to capture the intuition that A does not have a stronger claim. So the best version of this modified restricted egalitarianism must be a graduated version.

The third viable egalitarian reply to Kagan is based on restricting (strict) equality in a different way than Kagan himself suggests in reply to Twin Peaks. Kagan recommends restricted egalitarianism, according to which equality's normative force is restricted to cases in which it does not conflict with desert. However, there are egalitarian views that restrict equality's normative force in a different way. For instance, some egalitarians hold the view that the net effects of what Ronald Dworkin calls brute luck – luck that one is subject to independent of one's choices – should be shared equally. According to this view, greater equality makes a state of affairs better if and only if greater equality makes for a more equal sharing of the net effects of brute luck. Imagine, for instance, a situation in which a sinner has exactly what he deserves while a saint has less than he deserves (though still more than the sinner) due to (bad) brute luck, as in Figure 8.

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<sup>49</sup> Of course not all will share my intuitions. The point here is just that such an egalitarian view is compatible with Kagan's most hard-to-ignore intuitions.

<sup>50</sup> As mentioned before (fn. 22), this is the central point of Kagan's example of Moving Twin Peaks.

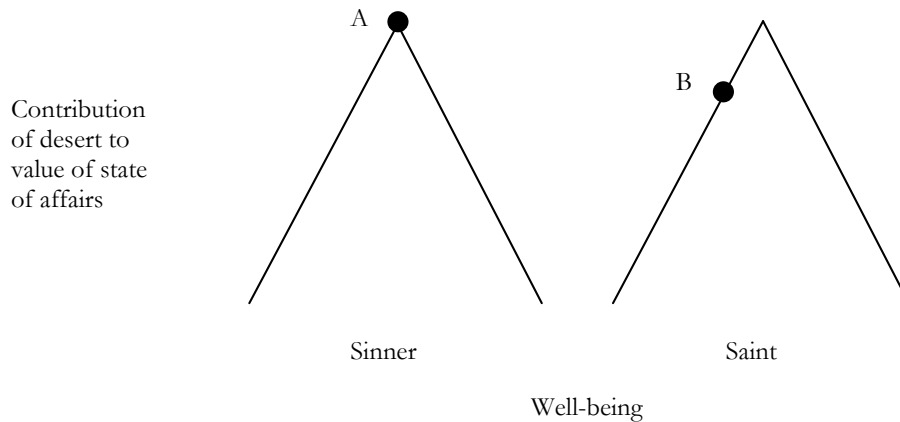


Figure 8

In this case, the effect of brute luck is not equally shared; instead, the saint bears the burden of all the (bad) brute luck. According to the view that the effects of brute luck should be equally shared, the sinner and the saint should share this burden equally, which would require, perhaps surprisingly for a view that calls itself egalitarian, a redistribution from the sinner to the saint – from the worse-off to the better-off.<sup>51</sup> Greater equality could be achieved by a transfer from the saint to the sinner, but this would lead to a less equal sharing of the net effects of brute luck. Greater equality could also be achieved by simply improving the condition of the sinner, if, for example, there was a windfall and there was a fixed amount of well-being that could be given to the saint or the sinner. Since such a windfall is a matter of brute luck, this too would make for an even less equal sharing of the effects of brute luck, as now the saint bears all the burden of the bad brute luck while the sinner enjoys all the good brute luck. Thus, if there were a fixed amount of well-being that could be given either to the sinner or the saint in this case, it should, according to the view that the effects of brute luck should be shared equally, go to the saint, for this would make for a more equal sharing of the net effects of brute luck.

This view, which Peter Vallentyne calls strong brute luck egalitarianism, captures Kagan's core intuitions in *Twin Peaks* and *Revised Twin Peaks*.<sup>52</sup> Consider first *Twin Peaks*. It will help to assign specific values in terms of well-being. So assume that the well-being the sinner deserves is 0, but he is getting 2 due to good brute luck, while the saint deserves 10 and is getting only 8 due to bad brute luck. In this case, the net effect of brute luck is not shared equally because the sinner has all the good brute luck and the saint

<sup>51</sup> A view that in this way endorses some transfers from the worse-off to the better-off might be thought undeserving of being called a variety of egalitarianism. I will return to this concern in the final section.

<sup>52</sup> Peter Vallentyne, "Brute Luck Equality and Desert," in *Desert and Justice*, pp. 169–186.

has all the bad brute luck. Since there are two (well-being) units of good brute luck and two (well-being) units of bad brute luck, the net effect of brute luck is zero. If they were to share it equally, then, neither would suffer nor benefit from brute luck. In other words, strong brute luck egalitarianism would call for a transfer of two units (of well-being) from the sinner to the saint, such that both would have exactly what they deserve. What if, as in *Twin Peaks*, there is a fixed amount of well-being that can be given to one or the other? Since this additional well-being is a windfall, it must be included in the calculation of net brute luck. So imagine that the fixed amount of well-being that can be given to either is two units. Now the net amount of brute luck is 2 ( $2 + -2 + 2 = 2$ ), which means that if it is to be shared equally between the sinner and the saint each should get one unit – each should be one unit above what each absolutely deserves. This would result in the sinner ending up at a well-being level of 1 and the saint at a well-being level of 11. Without dividing the fixed amount to be given to A or B, this could be most easily accomplished by first transferring one unit from the sinner to the saint, and then giving both of the two extra units to the saint. In this scenario, then, strong brute luck egalitarianism agrees with Kagan's intuition that there is no reason to give the fixed amount of well-being to A, who is worse-off.<sup>53</sup> An equal sharing of the effects of brute luck calls for giving the fixed amount to B.

Some people think that divergences from desert are not necessarily the product of brute luck, as was assumed in the scenario described above. For instance, if absolute desert depends on the moral goodness of a person, some, for example saints, might achieve very little well-being for themselves, since, as saints, they are focused on others rather than themselves.<sup>54</sup> If this is indeed the case, then there are versions of *Twin Peaks* in which strong brute luck egalitarianism seems to conflict with Kagan's intuition that, if there is a choice, the saint, not the sinner, should be benefited first. Consider this alternative account of *Twin Peaks*. Assume, again, that the sinner deserves 0 and receives 2 while the saint deserves 10 and receives 8. Also assume again that the sinner receives 2 instead of 0 because of good brute luck. However, assume this time that the saint actually enjoys more brute good luck because

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<sup>53</sup> There is another way to obtain the result that net brute luck is shared equally: transfer three units of well-being from the sinner to the saint, and then give the additional two units to the sinner. This possibility might be thought to be problematic (for the attempt to square strong brute luck egalitarianism and Kagan's intuitions) because it provides a rationale for giving the additional two units to the sinner. However, it is a strange way to reach the result favored by strong brute luck egalitarianism, mainly because the initial transfer runs contrary to strong brute luck egalitarianism, since it overshoots equalizing the effects of brute luck. On the more natural route described above to the result favored by strong brute luck egalitarianism, this is not the case: the initial transfer of one unit from the sinner to the saint moves only in the direction of greater equality with respect to the effects of brute luck. For this reason, it seems to me, the alternative route should not be considered the route recommended by strong brute luck egalitarianism.

<sup>54</sup> This suggestion was made by an anonymous referee.



he would receive only 4 absent brute good luck – because he would get much less than he deserves for reasons other than brute luck. In this scenario, the net brute luck is 6 (2+4). Now imagine, as before, that there is a fixed amount of 2 that could be given to one or the other. With this additional amount, the net brute luck is 8, which means that each should receive 4, which could be achieved most easily by simply giving the fixed amount to the sinner, contrary to Kagan’s intuition.

I think, however, that the strong brute luck egalitarian should not be overly troubled by this. It is natural to assume in Twin Peaks that the reasons for the sinner being beyond his peak and the saint being below his peak are of the same type. And when they are, e.g., when in both cases it is because of brute luck, strong brute luck egalitarianism is in accord with Kagan’s intuition. Capturing the intuition in this “standard” or “core” case seems to be sufficient, for one might well be dubious of the intuition that the saint should be benefited first in the non-standard case where the factors affecting the saint’s well-being level are very different from the factors affecting the sinner’s. In other words, there are indeed versions of Twin Peaks in which strong brute luck egalitarianism is incompatible with the view that the saint does not have a stronger claim. However, these versions of Twin Peaks introduce a level of complication that should make us dubious of intuitions derived from a generic presentation of Twin Peaks that does not distinguish between the standard scenario in which the reasons for the sinner being beyond his peak and the saint being below his peak are of the same type and the more complicated case where the reasons are different.<sup>55</sup>

Now consider Revised Twin Peaks. Imagine that the sinner deserves 0 and receives -2, while the saint deserves 10 and receives 8. In the standard or core case, the reason for each getting less than he or she deserves is the same. So imagine that in both cases the reason is (bad) brute luck. In this scenario, the net effect of brute luck is -4, with each bearing an equal share of -2. So, according to strong brute luck egalitarianism no transfer can improve the situation. If two additional units of well-being were to be given to either the sinner or the saint, the net effect of brute luck would be reduced to 2. Equal sharing would require that each bear the burden of -1 unit. Achieving this would require, contrary to the constraints of the example, dividing the extra

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<sup>55</sup> Kagan himself does not consider different versions of Twin Peaks along the lines suggested above. His intuition is about the generic case, where the causes of divergences from desert are not addressed. The point I am making, of course, is that, since it is natural in Twin Peaks to assume that the reasons for people getting more or less than they deserve are the same, we should assume that the intuition that the sinner does not have a stronger claim applies (only) to this scenario. Insofar as we are trying to capture Kagan’s intuition, it is an intuition about this case that must be captured. There is no reason to give much credence to an intuition that, in all scenarios that have the basic structure of Twin Peaks, the saint does not have a stronger claim – or even attribute such an intuition to Kagan, since he does not consider these different versions of Twin Peaks.

two units between the sinner and the saint.<sup>56</sup> There are, then, three options for what to do with the two extra units of well-being: 1) Give it to no one; 2) Give it to the sinner; 3) Give it to the saint. Some might advocate 1), despite it being Pareto-inefficient. Note, though, that if this is the right thing to do, then the saint's claim is equal to the sinner's – for neither has any claim.<sup>57</sup> Fans of Pareto must choose between 2) and 3). But which one? It seems to me that according to strong brute luck egalitarianism it is a matter of indifference, because either way one party will bear the burden of all the bad brute luck. For with the two extra units of well-being, the net brute luck is -2 (reduced from -4). If the additional two units go to the sinner, he will have exactly what he deserves while the saint will have two units less than what he deserves, thus bearing the burden of all the effects of bad brute luck. If, on the other hand, the saint is granted the additional two units of well-being, then he will have exactly what he deserves while the saint will have two units less than what he deserves, thus bearing the burden of all the effects of bad brute luck. The two alternatives, then, are equally bad according to strong brute luck egalitarianism. According to strong brute luck egalitarianism, then, the sinner does not have a stronger claim than the saint to the additional two units of well-being. The sinner and the saint have an equal claim, if they have any claim at all. Strong brute luck egalitarianism, therefore, is perfectly in accord with Kagan's plausible intuition that in Revised Twin Peaks the sinner, A, does not have a stronger claim than the saint, B, to additional units of well-being.

As with Twin Peaks, in a non-standard situation where divergences from desert are not entirely attributable to brute luck, strong brute luck egalitarianism can conflict with Kagan's intuitions in Revised Twin Peaks.<sup>58</sup> Here too, though, I am inclined to suggest that such non-standard cases are not prob-

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<sup>56</sup> Another possibility is to first transfer one unit of (bad) brute luck from the sinner to the saint, and then give the additional two units of (good) brute luck to the saint, thus capturing Kagan's intuition. However, there is just as much reason to first transfer one unit of (bad) brute luck from the saint to the sinner, and then give the additional two units of (good) brute luck to the sinner, contrary to Kagan's intuition. So it seems to me that we must assume here that there is no initial re-distribution.

<sup>57</sup> It might be thought that, since giving the fixed amount to either the sinner or the saint would upset the equal sharing of the effects of brute luck, strong brute luck egalitarianism would recommend giving it to neither, despite this being a violation of Pareto efficiency. In this case, it might seem, there is a conflict with Kagan's intuitions because though desert favors giving the fixed amount to the saint, this is opposed by egalitarian considerations favoring giving it to no one. This, I think, should not be troubling for the strong brute luck egalitarian. For, as Kagan emphasizes, what is intuitively implausible is that there are grounds for favoring (giving the fixed amount to) the sinner rather than the saint. Yet, according to this anti-Pareto interpretation of strong brute luck egalitarianism, there are no grounds for favoring the sinner. Rather, there are grounds for denying the benefit to both the sinner and the saint.

<sup>58</sup> For instance, if the saint receives 8 instead of the 12 he would have received absent (bad) brute luck.

lematic because capturing the standard case is sufficient as intuitions in the non-standard case are not robust.

## VII

There are, then, a variety of viable egalitarian replies to Kagan's challenge. This alone is significant. Surely, however, it would be desirable to say at least something about which reply is the strongest, and, given this, what direction egalitarianism should take. The first reply that explains away Kagan's intuitions might be thought the weakest because there is very little sure footing when one delves into the psychology of intuitions. One is surely on firmer ground if one can take intuitions at face value and accommodate them, which is what the second and third replies suggested do. So what about deciding between these two? As noted before, a feature of the third – according to which the (net) effects of brute luck should be distributed equally – might rankle many of those drawn to egalitarianism: this brand of egalitarianism will routinely call for transfers from the worse-off to the better-off. In a standard version of Twin Peaks, for instance, where A, who is worse off, has more than he deserves (due to good brute luck) while B, who is better off, has less than he deserves (due to bad brute luck), this brand of egalitarianism will call for a transfer from the worse-off to the better-off since this will make for a more equal sharing of the (net) effects of brute luck. Perhaps this is not so troubling if the worse-off are sinners and the better-off are saints. But in more ordinary circumstances, where the parties are neither sinners nor saints, such a transfer might be hard for an egalitarian to swallow. Maybe this is just the price of taking desert and responsibility seriously – of making egalitarianism desert- or responsibility-sensitive. On reflection, it might be concluded that this is a price worth paying. If not, one could further restrict the view, holding that the (net) effects of brute luck are to be distributed equally *if and only if it reduces inequality*. Such wrangling is unnecessary on the second suggested reply to Kagan, according to which considerations of equality favor benefiting the worse-off so long as they are not radically less-deserving (either absolutely or specifically). For it is “built in” to this egalitarian view that considerations of equality can only benefit the worse-off. Perhaps for this reason the second reply should be favored on grounds of simplicity and elegance, though such criteria are notoriously vague and controversial in application.

Rather than examining the differences between these two replies and making a strong case for one over the other, I want to conclude by noting something that they have in common. Both resulting theories will tend toward a relatively equal society if and only if, generally speaking, there are not significant differences between people in terms of desert. This is clear on the view according to which the (net) effects of brute luck are to be shared equally, because, if luck affects everyone equally, then differences in desert are preserved; when the effects of brute luck are equalized, everyone will end up

up the same distance below or beyond the peak of his desert graph. According to the view that the worse-off are to be favored so long as they are not significantly less deserving (absolutely or specifically), there is a push toward equality only if there are not significant differences in desert. The egalitarian effect, in other words, comes into play if and only if people are, generally speaking, relatively equal in terms of desert. Thus, according to both of these plausible egalitarian views, part of the egalitarian project must be to argue that in terms of desert there is, in general, relatively little variation from person to person. The implicit message of Kagan's argument that desert should replace equality as a normative idea, recall, is that egalitarianism must be desert-egalitarianism, and thus that the sole mission for the egalitarian is to establish that there is in fact relatively little variation between people in terms of desert. What this inquiry has shown is that while establishing this is not the only mission for the egalitarian, it is surely part of the larger egalitarian project.\*

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\* For helpful comments on earlier drafts of this paper I would like to thank Elizabeth Anderson, Christian Coons and Kelly Sorensen, as well as participants in my 2009 graduate seminar on egalitarianism at Bowling Green State University, especially Mark Wells. I would also like to thank two anonymous referees for the *Journal of Ethics & Social Philosophy* for numerous, detailed suggestions for improvement.