

COMPARATIVE DESERT VS. FAIRNESS

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ABSTRACT

In the recent book *The Geometry of Desert*, Shelly Kagan explores, with a rare degree of precision, how best to cash out two fundamental and widely shared intuitions. The first intuition says that virtuous people deserve to be doing well, and that less virtuous (or vicious) people deserve to be doing less well – and thus, that it's *good* (other things equal) if virtuous people are doing well and if less virtuous (or vicious) people are doing less well (or even badly). The second intuition says that the distribution of the satisfaction of people's desert claims *across persons* matters: that it's good (other things equal) if people's desert claims are satisfied in accordance with the demands of interpersonal fairness. The former intuition states the basis of what Kagan calls "absolute desert." The latter articulates the basis of what he calls "comparative desert." I advance an internal critique of Kagan's conception of comparative desert; I argue that it contravenes the demands of interpersonal fairness in the domain of desert, and so fails on its own terms.

INTRODUCTION

In the recent book *The Geometry of Desert* – and earlier, in the article "Comparative Desert" – Shelly Kagan explores, with a rare degree of precision, how best to cash out two fundamental and widely shared intuitions about distributive justice.¹ The first of these intuitions says that virtuous people deserve to be doing well, and that less virtuous (or vicious) people deserve to be doing less well – and thus, that it's *good* (other things equal) if virtuous people are doing well and if less virtuous (or vicious) people are

¹ Shelly Kagan, *The Geometry of Desert* (Oxford, 2012), and "Comparative Desert," in Serena Olsaretti (ed.), *Desert and Justice* (Oxford, 2003), pp. 93-122. *The Geometry of Desert* elaborates on the position articulated in "Comparative Desert," but does not significantly diverge from it. I shall thus largely refer to the two interchangeably.

doing less well (or even badly).² The second intuition says that the distribution of the satisfaction of people's desert claims *across persons* matters: more specifically, that it's good (other things equal) if people's desert claims are satisfied in accordance with the demands of interpersonal fairness. The former intuition states the basis of what Kagan calls "absolute desert." The latter articulates the basis of what he calls "comparative desert." These two intuitions, taken together, yield Kagan's complete conception of desert. I shall focus on the second of these intuitions in the present paper.

Kagan does not, himself, claim to be concerned with distributive justice – he identifies his subject as the goodness and badness of states of affairs. But his discussion has direct implications for our thinking about distributive justice. The claims (1) that it's good (other things equal) if people get what they deserve, and (2) that it's good if people's desert claims are satisfied in accordance with the demands of fairness, have normative correlates, namely, that we have reason try to bring about a situation in which people are getting what they deserve and in which their desert claims are satisfied in accordance with the demands of fairness.³ Presumably, bringing this situation about would involve the (re)distribution of society's resources, and this is the subject matter of distributive justice.

It's also worth making explicit that Kagan's two basic intuitions about desert can come apart in various ways. Let me mention just one, which pertains to the discussion at hand. Someone might be skeptical about the existence of absolute desert, but believe that if it *were the case* that virtuous people deserved well-being (etc.), then it would be

² Kagan, *The Geometry of Desert*, p. 5 and p. 8. He allows that it might even be a good thing if sufficiently vicious people are doing badly (or are suffering), but does not take a stand on this issue.

³ At least this is so given the plausible premise that we have reason to promote the good.

important to satisfy people's desert claims fairly. If one holds this view, then Kagan's discussion of comparative desert would still hold considerable interest, since his exploration of how the demands of fairness apply to the satisfaction people's desert claims might yield important insights about how the demands of fairness apply to the satisfaction of other, non-desert-based, types of claims. I suspect aspects of Kagan's discussion of comparative desert can indeed be exported fruitfully in this way (even if – as I shall go on to argue – certain key conclusions of his should be rejected). But I will not pursue this matter here. The discussion to follow will be strictly internal to Kagan's project. My task, in this paper, is to offer an internal critique of Kagan's theory of comparative desert: I will be concerned with whether Kagan's theory of comparative desert succeeds on its own terms. I shall argue that it does not.

Kagan codifies his intuitions about absolute and comparative desert in the following four stipulations. (It's important to lay these out now, since I'll adopt his lexicon in the subsequent discussion).

- (1) There's some amount of well-being that each person deserves absolutely (or noncomparatively).⁴
- (2) It's intrinsically good if a person has exactly the amount of well-being she absolutely deserves.
- (3) It's worse in at least one respect if a person has either more or less well-being than she absolutely deserves.

⁴ As he notes, nothing turns on using well-being (as opposed to, say, resources) as the metric of desert.

(4) It not only matters morally that each person has what she absolutely deserves.

It also matters how well off people are compared to one another, in light of how absolutely deserving they are.⁵

(1) – (3), above, pertain to absolute desert. For the sake of argument, I accept these. I shall focus, again, on (4), which articulates the essence of comparative desert. It asserts that if desert matters, then how people fare relative to one another given what each deserves also matters.

Kagan makes the connection between comparative desert and fairness explicit at the outset of his discussion of comparative desert. Before developing his account of comparative desert, Kagan identifies “fairness” as its apparent rival alternative. But he denies that “fairness” is a genuine rival to comparative desert.

Of course, some people may prefer to couch these comparative claims in terms of “fairness” rather than “desert.” They may happily concede that the comparative value I have just been pointing to is a genuine one, well worth exploring, but insist that desert proper is limited to noncomparative desert alone; what I have just been describing as comparative desert is, rather, a matter of fairness. (If I am as deserving as you, then it isn’t fair if you have more than me; if you are more deserving than me, it isn’t fair if you aren’t better off than I am. And so forth.) But as far as I can see nothing important turns on this dispute. Judgments about fairness, after all, can be sensitive to many kinds of differences (or similarities), and all that is important for my purposes is that we recognize that one set of fairness claims turns upon judgments about how I am doing compared

⁵ Kagan, “Comparative Desert”, p. 97, and *The Geometry of Desert*, p. 349, reiterated throughout.

to you, in light of how deserving we both are. One could, I suppose, call this “desert-sensitive fairness.” I prefer to call it “comparative desert.”⁶

Thus, Kagan claims that the only difference between comparative desert and fairness, as applied to the domain of desert (or, in his lexicon, “desert-sensitive fairness”) is one of nomenclature.

In this paper, I shall advance the following claims. First, that desert-sensitive fairness and Kagan’s theory of comparative desert come apart. They articulate distinct norms (or different values), and so are genuine, rather than chimerical, rivals. Second, the canonical articulation of comparative desert stated in (4) (above) does not track the substance of Kagan’s theory of comparative desert. Rather, it offers an articulation of desert-sensitive fairness. Third, denying Kagan access to (4) thereby denies him access to the intuitive basis of his theory of comparative desert. Thus, I claim that desert-sensitive fairness is superior to Kagan’s comparative desert. I conclude by offering a brief positive account of desert-sensitive fairness.

Let me begin by laying out the pertinent details of Kagan’s account of absolute and comparative desert.

ABSOLUTE DESERT

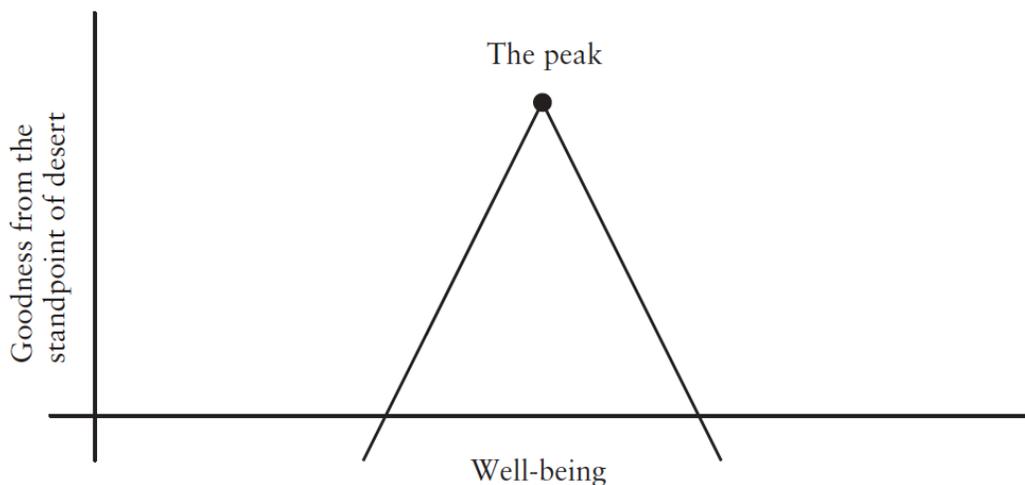
As stated, Kagan claims that it’s true of each person that there’s some amount of well-being she absolutely deserves, and that it’s intrinsically good if she has that amount well-being. For Kagan, *how good* it is (from the point of view of desert)⁷ for any person to get what she deserves is something that can be quantified: On this view, there’s some

⁶ Kagan, “Comparative Desert”, p. 98 and *The Geometry of Desert*, p. 351. Emphasis mine.

⁷ By ‘from the point of view of desert’, Kagan means ‘taking only desert into consideration.’ For the sake of brevity, I’ll sometimes leave this qualification implicit.

magnitude of impersonal value that's realized by a person getting what she deserves. If a person gets less than she deserves, then there's a loss of intrinsic value. And there's likewise a loss of value if a person gets more than she deserves. Thus, the *most* good that can be done, vis-à-vis the satisfaction of a person's desert claims, is to give her exactly what she deserves.

Kagan claims that the goodness of a situation, from the point of view of desert, can be plotted graphically. Here's a replica of Kagan's basic desert graph:



The X-axis of the graph tracks how much well-being a person has. The Y-axis tracks how good it is for that person to have any given amount of well-being. For each person, there's a point on the graph that marks her "peak": this represents the maximum (impersonal) good that can be done, vis-à-vis the satisfaction of her desert claims. The "X" coordinate on which a person's peak is located marks the exact amount of well-being she absolutely deserves. (Kagan sometimes refers to a person's peak as representing how

much a person absolutely deserves;⁸ but strictly speaking, this formulation's inaccurate. This mischaracterization will matter later).

For each person, a "slope" descends on either side of her peak. The slopes track the loss of value – how much worse the situation gets, from the point of view of desert – as the person gets increasingly more than, or less than, she deserves. The greater the distance along the X-axis between the *actual* amount of well-being a person has and the amount she *would* have at the location of her peak, the worse the situation is from the point of view of desert (and thus, the greater the drop down the Y-axis).

Kagan's theory of absolute desert is rife with complications; let me mention just two more, which are relevant to my purposes. First, Kagan says that while it's common to think that it's equally important to satisfy each person's desert claim (regardless of how much each person deserves) – and so, common to think that each person's desert graph will peak at the same Y-coordinate – this may not be the case. Rather, he proposes, it might be that the *more* a person deserves, the more important it will be to satisfy her desert claims, and, correspondingly, the more good that will be done from the point of view of desert in satisfying her desert claims. On this view, the more a person deserves, the higher up the Y-axis her graph will "peak." Kagan does not commit himself to this view outright, but he expresses partiality toward it.⁹

Second, Kagan points out that it's tempting to think that the "slope" of each person's desert graph will be the same – that as a person moves *away* from her peak along the X-axis, the drop-off rate down the Y-axis will be consistent among persons. But

⁸ See, for example, Kagan, "Comparative Desert," p. 95.

⁹ Kagan endorses this view in "Comparative Desert," but tempers his endorsement in *The Geometry of Desert*. In *The Geometry of Desert*, he claims agnosticism with respect to which of these two alternatives is superior. (*The Geometry of Desert*, p. 161).

again, Kagan submits that this may not be the case. He is inclined toward another proposal: The more deserving a person is, the greater the loss of value as she gets increasingly less than what she deserves (and inversely, the *smaller* the loss of value as she gets increasingly more than she deserves). He is attracted by the view, in other words, that the more a person deserves, the greater the good that is done *per unit of well-being* in distributing well-being to her (at least, again, from the point of view of desert).¹⁰ On this view, the more deserving a person is, the steeper the slope of her desert graph will be as she receives increasingly less than she deserves (and the gentler the slope of her desert graph will be as she receives increasingly more than she deserves). For someone who's undeserving (or who deserves little), the inverse will be true: The gentler the slope of her desert graph will be as she gets increasingly less than she deserves, and the steeper the slope of her desert graph will be as she gets increasingly more than she deserves. Again, Kagan does not absolutely commit himself to this view, but he strongly favours it.¹¹

Kagan supports differential slopes with the following example. Imagine an extremely virtuous person – a saint – to whom we must give a fixed amount either more or less than she deserves. Kagan says that in this case, it's better to give the saint more than she deserves, rather than less: intuitively, less impersonal value is lost by overcompensating the saint than by shortchanging her. (The *best* option would of course

¹⁰ Kagan *The Geometry of Desert*, p. 36.

¹¹ Kagan commits himself to variable slopes in *The Geometry of Desert* (see, for example, *The Geometry of Desert*, p. 107. See also pp. 232-5). In doing so, notice he also commits himself to variable peaks. To see this, consider: Kagan accepts, first, that the more deserving deserve more well-being (*The Geometry of Desert*, p. 8). He accepts, second, that more *good* is done (more value is realized) per unit of well-being, the more deserving someone is. (Kagan, *The Geometry of Desert*, p. 36). If I both deserve more units of well-being than you, and each of my units of well-being is worth more (or has greater value) than each of yours, then the magnitude of value realized when I have all the well-being I deserve will be greater than the magnitude of value realized when you have all the well-being you deserve.

be giving the saint exactly what she deserves, but that option is unavailable). Now imagine an extremely vicious person – a sinner – to whom we must give the same fixed amount more or less than she deserves. Here, Kagan submits that it’s better to give the sinner *less* than she deserves, rather than more: less harm is done¹² by *shortchanging* the sinner than by overcompensating her. (The best option would, again, be to give the sinner exactly what she deserves, but again, that option is unavailable). Kagan says that even if one denies the latter claim (that is, even if one denies that it’s better to shortchange the sinner than to overcompensate her), one would presumably still accept that less harm is done by overcompensating the *saint* by a fixed amount than by overcompensating the sinner by that same amount.¹³ We can extend this line of thought to suppose that if we have to *shortchange* either the saint or the sinner by a fixed amount, it’s better to shortchange the sinner: Less harm is done by shortchanging the sinner than by shortchanging the saint.

The intuitions Kagan seeks to elicit with this example are plausibly explained by his claim that the more deserving someone is, the more good that is done per unit of well-being in distributing well-being to her. This is precisely the claim represented by differential slopes.

Kagan’s theory of absolute desert is richly detailed; the present reconstruction is truncated. But it captures the central components of his view, and will suffice for the task at hand.

¹² Here and elsewhere, I’m using “less harm is done” as colloquial shorthand for “less impersonal value is lost.”

¹³ Kagan, *The Geometry of Desert*, p. 234.

COMPARATIVE DESERT

Kagan's theory of absolute desert does not constitute his complete theory of desert. He is also committed to the notion of comparative desert. He claims that it not only matters morally how well each person is doing, relative to what she deserves – it also matters how well people are doing compared to one another, in light of what each deserves. This statement captures the central intuition of comparative desert. Thus, according to comparative desert, if you and I are equally deserving, we should have the same amount of well-being. If I am more deserving than you, then I should have more well-being than you.

These latter two claims don't yet distinguish between the demands of comparative desert and the demands of absolute desert. To see how the demands of comparative desert differentiate themselves from those of absolute desert, consider this simple case. Suppose you and I are equally deserving, and, as it happens, we both have exactly what we deserve. This situation is optimal from the point of view of absolute desert. The situation is also optimal from the point of view of comparative desert: we deserve the same, and we have the same. Now suppose you're given an additional 5 units of well-being. From the point of view of absolute desert, the situation has gotten worse, since you now have more than you deserve. The situation has also gotten worse from the point of view of comparative desert: we both deserve the same, but now you have more than I do. Suppose, finally, that I'm also given an extra 5 units of well-being, so that once again, I have the same amount of well-being as you do. From the point of view of absolute desert, the situation has gotten worse still: now both of us have more than we deserve. But from the point of view of comparative desert, the situation has been completely rectified: once

again, we both deserve the same, and we both have the same.¹⁴

Note that comparative desert doesn't only apply to cases in which two (or more) people are equally deserving. Suppose that you and I are *unequally* deserving – I deserve more than you. Comparative desert therefore demands that I *have* more than you (regardless of how much each of us has).¹⁵

Kagan stipulates, plausibly, that when each person has exactly what she deserves, comparative desert will obtain.¹⁶ In other words, if absolute desert is satisfied, then comparative desert will also be satisfied. This will be true regardless of how much each person happens to deserve.

Suppose we want to distribute well-being in accordance with the demands of comparative desert. Suppose, also, that we know how much each person deserves absolutely. If we have just enough well-being to give each person what she deserves absolutely, our task will be straightforward: we can just give each person what she deserves. If we have either a paucity or an excess of well-being to distribute, our task will again be straightforward – as long as everyone is equally deserving. Here, we can just distribute well-being equally. But suppose we have either a paucity or an excess of well-being to distribute, and our intended recipients are *unequally* deserving. Identifying the distribution of well-being that will satisfy comparative desert suddenly becomes a complicated task.¹⁷

To cast the difficulty in sharper relief, consider another simple two-person case. Suppose I deserve 100 units of well-being, and you deserve only 50. And suppose you

¹⁴ See Kagan, "Comparative Desert," p. 97.

¹⁵ *Ibid.* pp. 97-8.

¹⁶ *Ibid.* p. 99.

¹⁷ I'm assuming that however much well-being we have to distribute, it will be an amount that will enable us to satisfy comparative desert.

have less than you deserve – a mere 30 units of well-being. How much well-being must I have in order to satisfy the demands of comparative desert? Certainly, I should have less than the 100 units of well-being I absolutely deserve. But how *much* less I should have is not clear.

After dispensing with various rivals, Kagan offers his own novel solution to this puzzle. He proposes the following: ‘[C]omparative desert is perfectly satisfied when (and only when) the offense against noncomparative desert is the *same* for all relevant individuals.’¹⁸

It’s not obvious what this means, so let me explain. Recall Kagan’s claims that (1) some magnitude of impersonal value is realized by a person getting what she deserves, and (2) a lesser magnitude of impersonal value is realized by a person getting either more or less than she deserves. That is, the situation becomes progressively *worse* (from the point of view of absolute desert) as a person receives increasingly more or less than she deserves. The extent of the offense against desert in any particular case is measured by the magnitude of value lost when a person moves from having the amount of well-being she deserves to having a certain amount more or less.

Kagan identifies two necessary conditions for the satisfaction of comparative desert. First, he says that the *size* of the “offense against desert” must be the same for each person. That is, it must be just as bad for me to have what I have (relative to how much better it would be for me to have what I deserve) as it is for you to have what you have (relative to how much better it would be for you to have what you deserve). Second, Kagan says that all offenses against desert must be “symmetrical.” If the offense against desert was caused, in my case, by my getting more than I deserve, then you must get

¹⁸ Kagan, “Comparative Desert,” p. 107. Italics his, other emphases mine.

more than you deserve, too. (He calls this latter condition the “Symmetry Principle”).¹⁹

This does not yet solve the problem posed by the two-person case above, but it provides a formula for solving that problem. In our two-person case, I deserve 100 units of well-being, and you deserve 50. You have only 30. How much must I have in order to satisfy comparative desert? The Symmetry Principle requires that it be less than 100, but how much less? Note, once again, that some magnitude of value is realized by your having 50 units of well-being. Call this magnitude of value “V”. Some lesser magnitude of value is realized by your having 30 units of well-being. Call this magnitude of value $(V - n)$, where “n” is a positive number. This number, n , represents the offense against desert caused by your having 30 units of well-being. For the offense against desert to be *the same* in our two cases – for comparative desert to be satisfied – I must have *however much less well-being* it takes to realize n units of value less than would be realized by my having 100 units of well-being.

It’s worth noting that here, Kagan’s desert graphs fulfill more than just an illustrative function. Recall that the X-axis for a person’s desert graph tracks how much well-being she has. The Y-axis tracks how *good* it is from the point of view of desert that a person have a given amount of well-being. The *peak* of a person’s desert graph represents how good it is – how much value is realized – by a person having exactly what she deserves. Thus, in the present case, your desert graph will peak at $(50, V)$. When you have a mere 30 units of well-being, your location on your graph will be $(30, V - n)$. My desert graph peaks at $(100, V_1)$. (Remember that on Kagan’s view, the more a person deserves, the greater the intrinsic value realized by her having what she deserves. Thus, the peaks of our graphs won’t be the same – rather, mine will be higher than yours). The

¹⁹ Ibid. p. 109.

amount of well-being I should have when you have 30 units is represented on my desert graph by the X-coordinate²⁰ my graph intersects with at the Y-coordinate ($V_1 - n$). Kagan is thus able to call his conception of comparative desert the “*Y gap view*”²¹: On this view, comparative desert is satisfied when the drop down the Y-axis (relative to the person’s peak) is the same in everyone’s case. As long as we know (1) the location of our graphs’ respective peaks and, (2) our graphs’ respective *slopes*, then, for any amount of well-being you have, we can determine how much well-being comparative desert requires that I have.

CRITIQUE

Notice that Kagan identifies the concern of comparative desert with two distinct formulations (both of which will now be familiar). The first says: “[C]omparative desert is perfectly satisfied when (and only when) the offense against absolute desert is the *same* for all relevant individuals.”²² The second says: “[C]omparative desert is concerned with how people compare in terms of how they are doing relative to what they noncomparatively deserve.”²³

Kagan sometimes appears to use these two statements interchangeably. But he also posits an entailment connection between them: specifically, he posits that the former entails the latter. To see this, consider the following passage:

Suppose, then, for example, that someone has less than they absolutely deserve. Clearly, this situation falls short of what is ideal from the

²⁰ Note that the Symmetry Principal requires that this X-coordinate be a number smaller than 100.

²¹ Kagan, “Comparative Desert,” p. 107.

²² *Ibid.*

²³ *Ibid.*

noncomparative standpoint, and so it constitutes an “offense” against noncomparative desert. But so long as others similarly fall short, and fall short enough — so long as the situation of others involves a similar offense against noncomparative desert — then no one has an advantage compared to the others with regard to how they are doing relative to what each absolutely deserves. The offenses against noncomparative desert are the *same*, and so *comparative* desert is satisfied.

Similarly, if someone has more than they absolutely deserve this constitutes an offense against noncomparative desert. But so long as the situation of others is such as to involve precisely the *same* offense against noncomparative desert, then no one has an advantage compared to any of the others with regard to how each is doing relative to what each absolutely deserves. Thus comparative desert will again be satisfied.²⁴

The entailment Kagan posits, however, doesn’t obtain. In the emphasized statements, the consequent doesn’t follow from the antecedent. Familiarly, “offenses against desert” track variations in the magnitude of value realized by different states of affairs. More specifically, “offenses against desert” track the *decline* in impersonal value when a person moves from having the amount of well-being she deserves to having more or less well-being than she deserves. Thus, Kagan’s claim that offenses against desert are tracked by the “Y-gaps” between persons’ peaks and persons’ actual locations on their desert graphs. But notice, now, that Kagan offers *no support for the claim* that keeping the Y-gaps consistent among persons will yield a corresponding pattern among people’s

²⁴ Kagan, “Comparative Desert,” pp. 107-8, and *The Geometry of Desert* pp. 390-1. Italics his, others emphases mine.

X-coordinates, relative to the X-coordinates of their respective peaks. Since it's the relationship between the X-coordinate of a person's actual location and the X-coordinate of her peak that represents how much well-being a person actually has, relative to what she deserves, the foregoing (again, undefended) claim states a necessary condition that must be met for the entailment connection Kagan posits to obtain.

In summary: Kagan gives us no reason to believe that comparisons among offenses against absolute desert track comparisons among how much well-being people actually have, relative to what they each deserve. Thus, even if we establish that each person's situation involves the same-sized offense against absolute desert, we do not thereby establish that no person has an advantage compared to anyone else with respect to how much well-being she has, relative to what she deserves.

In fact, given Kagan's favoured conception of *absolute* desert, the opposite will be true. As long as (1) people are unequally deserving, and (2) we're dealing with cases of scarcity or excess, then establishing equal-sized offenses against desert among persons will entail that some (namely, the more deserving) end up more advantaged than others, relative to what each deserves.

To see this, recall Kagan's claim that the more deserving a person is, the greater the good that is done per unit of well-being in distributing well-being to her. This implies that the more deserving a person is, the greater the loss of value per unit of well-being in taking well-being away from her. Now recall our two-person case, in which I deserve 100 units of well-being and you deserve 50. You have 30 – and so are running a well-being deficit of -20. This constitutes an offense against desert of some magnitude. (I called this magnitude “ n ”). To produce an offense against desert of magnitude n in my case, my

well-being must be reduced by *less than* 20. This is because each unit of well-being is worth *more* in my case than it is in yours, so it takes a loss of fewer units of well-being to produce the same loss of value (or to produce the same sized offense against desert). Thus, on Kagan's view, if I deserve 100 and you deserve 50, and if you have 30, then comparative desert demands that I have *more than* 80. It demands that I lose a smaller *amount* of well-being than you; it also demands that I lose a smaller *proportion* of my well-being than you lose of yours. Keeping the offenses against desert the same in our two cases therefore ensures that I will be *more* advantaged than you (on any plausible understanding of what makes one person more advantaged than another), relative to what we each deserve. The entailment connection Kagan posits between offenses against desert and people's comparative advantage relative to what each deserves comes out false on his preferred conception of absolute desert.

An interlocutor might interject at this point that little of substance turns on the objection I've raised against Kagan. The notion that comparative desert is concerned with comparisons among *offenses* against desert constitutes the substance of Kagan's account; clearly, he's committed to this view. But he doesn't demonstrate a similar commitment to the notion that comparative desert is concerned with people's comparative advantage, relative to what each deserves. So, my interlocutor would say, I haven't presented Kagan with a significant dilemma. Kagan could simply repudiate the problem passage to which I've called attention, and restate his commitment to offenses against desert as the appropriate measure of comparative desert.

My interlocutor is correct that the substance of Kagan's view commits him to a response of this kind. But it's a mistake to suppose that this move only requires a trivial

concession from Kagan. On the contrary, severing Kagan's conception of comparative desert from a concern with people's comparative advantage (relative to what each deserves) comes at considerable cost to his view. First, it belies his claim that comparative desert is equivalent to – and therefore unrivalled by – desert-sensitive fairness. Second, it's tantamount to repudiating the intuitive basis of his conception of comparative desert. These two charges are connected, but let me explain each in turn.

Take fairness first. Recall that in the passage quoted at the beginning of this paper, Kagan says that one might be tempted to reject the claim that there is such a thing as comparative desert. One might believe, instead, that desert-proper is only concerned with absolute desert. On this alternative view, the set of comparative judgments that Kagan attributes to comparative desert, would, instead, be classified as judgments of fairness. (More specifically, they would be judgments of desert-sensitive fairness). Kagan claims, however, that nothing of substance turns on this debate: he purports that the only disagreement is one of nomenclature. He has no quarrel with others calling “desert-sensitive fairness” what he calls “comparative desert.”

The substance of Kagan's view, however, renders this line of response to the “fairness” challenge unavailable to him. If comparative desert is, as Kagan claims, concerned with keeping the size of the offense against absolute desert the same in each person's case, then comparative desert and desert-sensitive fairness will come apart, both conceptually and in their substantive demands.

With respect to the concept of fairness, the point is straightforward. It says that (whatever its parameters) the scope of fairness' concern does *not* extend to the comparative goodness and badness of states of affairs. Judgments of fairness don't track

the comparative goodness and badness of states of affairs. Since, on Kagan's view, judgments of comparative desert are concerned exclusively with the comparative goodness and badness of states of affairs, desert-sensitive fairness and Kagan's comparative desert are conceptually distinct.

Indeed, Kagan's advancing his account of comparative desert as a conception of distributive fairness is a stealth radical move. Standard theories of distributive fairness are *interpersonal* in the following sense: they determine whether a distribution of benefits and burdens is fair by comparing certain facts about persons. For example, John Broome's theory of fairness, as the proportionate satisfaction of claims, compares the extent to which persons' claims are satisfied.²⁵ Luck-egalitarian theories compare the extent to which persons are (dis)advantaged by brute luck. Contrastingly, Kagan's conception of distributive fairness as comparative desert is *impersonal*: it determines whether a distribution of benefits and burdens is fair by comparing certain facts about components of states of affairs. In particular, it determines whether a distribution is fair by comparing (1) the magnitude of impersonal value that would be realized by my having what I deserve, and magnitude of impersonal value that is in fact realized by my having what I in fact do, and (2) the magnitude of impersonal value that would be realized by your having what you deserve, and the magnitude of impersonal value that is in fact realized by your having what you in fact do. My polemical claim against Kagan is that, in the absence of positive argument for assessing distributive fairness via an impersonal metric, its "outlier" status gives us decisive reason to reject it.²⁶

²⁵ John Broome, "Fairness," *Proceedings of the Aristotelian Society*, vol. 91 (1990-91), pp. 87-101.

²⁶ I'm grateful to Shelly Kagan and Victor Tadros for independently pressing me on this point.

I thereby reject the claim that desert-sensitive fairness and comparative desert are equivalent to one another. But it's also important to recognize that the substantive demands of comparative desert and desert-sensitive fairness will frequently diverge on Kagan's preferred conception of absolute desert. Specifically, they'll diverge in all contexts in which (1) people are unequally deserving, and (2) there's a scarcity or an excess of well-being to distribute. As discussed, according to Kagan's comparative desert, if I deserve more well-being than you, and you have less well-being than you deserve, then I should also have less well-being than I deserve – but not as much less. Comparative desert demands that when I deserve more than you and we can't each have what we absolutely deserve, I should not only be doing better than you in *absolute* terms, I should also be doing better than you *relative to what we each deserve*. This is not an intuitively plausible demand of fairness. On the contrary, desert-sensitive fairness demands that we suffer the same well-being deficit, relative to what we each deserve. This might mean that we should both be docked the same percentage of what we deserve absolutely, or it might be that we should be docked the same amount of well-being. (I'll discuss these two alternatives shortly). In sum: Given the details of Kagan's preferred (if unsettled) views about absolute desert, namely, his leanings toward differential peaks and differential slopes for the differentially deserving, his "Y-gap view" of comparative desert will yield prescriptions that are, intuitively, unfair.

Notice now that driving a wedge between comparative desert and desert-sensitive fairness severs comparative desert from its intuitive foundations. It's telling that the brief intuitive case for comparative desert, which Kagan initially lays out to support expanding the notion of desert to include comparative desert, makes no mention of offenses against

desert. Consider:

A complete theory of desert, however, will also have to include essentially comparative elements as well. For although it matters whether I get what I (absolutely) deserve, this is not all that matters. It also matters how I am doing compared to you, in light of how (noncomparatively) deserving we are. That is the basic idea of comparative desert.... When I am as virtuous as you, then I should be doing as well as you, no matter how well you are doing. If I am not, then there is something to be said in favor of improving my lot to bring me up to where you are—regardless of where you are. That is the claim of comparative desert. It is an essentially *comparative* claim, since it is concerned essentially with comparing our levels of well-being — in light of how (noncomparatively) deserving we are.²⁷

Kagan does not offer argument in support of these claims: he takes their intuitive pull to be self-evident. He subsequently indicates that the source of their appeal is that they capture the demands of fairness, as applied to people's desert claims.

I agree with Kagan on these points. But of course, the conception of comparative desert that these claims articulate is not the conception of comparative desert to which Kagan commits himself. As argued, comparisons among offenses against desert, and comparisons among people's well-being, relative to what each deserve, are distinct sets of comparisons. And as argued, the only move Kagan makes to link the two – namely, positing an entailment connection between them – doesn't succeed.

The challenge now facing Kagan is this: Kagan doesn't provide any argument for

²⁷ Kagan, "Comparative Desert," p. 97, and *The Geometry of Desert*, pp. 349-50. Italics his, other emphases mine.

the claim that we should *care* about how situations compare in their offensiveness against desert. *Some* argument is needed, since the claim has no apparent intuitive force. In the absence of such an argument, simply resurrecting desert-sensitive fairness as a genuine rival to Kagan's comparative desert is sufficient to secure its victory. This is because Kagan appealed to common intuitions about fairness as the foundation of comparative desert, and so severing comparative desert from its intuitive foundation leaves us with no reason to favour it over fairness. (My interlocutor might object that this declaration of victory is premature, since neither view has yet been argued for explicitly. But the difference is that of the two, only desert-sensitive fairness retains direct intuitive appeal).

PROPOSAL

I have argued that Kagan's conception of comparative desert should be rejected, since it fails to capture our intuitions about desert-sensitive fairness. On the contrary, Kagan's comparative desert recommends distributions that are manifestly *unfair*. But even if one rejects Kagan's conception of comparative desert, one might still believe that it matters morally that people get what they deserve (or that people's desert claims are satisfied). And one might still believe that, if it matters morally that people's desert claims are satisfied, then *comparisons* among the satisfaction of people's desert claims matter, too. One might believe, in other words, in a principle of desert-sensitive fairness. So let me now consider how best to capture the intuitions of desert-sensitive fairness.

Familiarly, desert-sensitive fairness is concerned with how people fare compared to one another, in light of what each deserves. As noted in the previous section, there are at least two ways in which this concern might be more finely specified. That is, there are at least two different ways of cashing out the demands of desert-sensitive fairness. The

first says that people's desert claims should be satisfied in proportion with one another's. The second says that each person should receive the same *amount* more or less than she deserves. Kagan himself discusses each of these possibilities, but he rejects both alternatives as inferior to his "Y-gap view." While his case against the first alternative succeeds,²⁸ I shall claim that his case against the second does not.

The first alternative – which Kagan calls the ratio view,²⁹ or the percentage view³⁰ – says that people's desert claims should be satisfied proportionately to one another's. The idea here is simple. Consider again the example in which I deserve 100, and you deserve 50, but have only 30. You have 30/50 or 60% of what you deserve. According to the ratio view, I should also get 60% of what I deserve (or 60 out of my deserved 100 units of well-being). As Kagan notes, this view is appealing. But, he argues, there are decisive reasons to reject it.

The ratio view, Kagan claims, faces insurmountable obstacles with respect to cases involving 0 and certain cases involving negative numbers. Take cases involving 0 first. Suppose you have not 30, but 0 of your deserved 50 units of well-being. Here, you have 0% of what you deserve. Presumably, the ratio view would demand that I also get 0% of what I deserve, or 0 units of well-being. But this is highly implausible. Given how much more deserving I am than you, it's counter-intuitive to suppose that, if you end up with nothing, desert-sensitive fairness demands that I end up with nothing, too.

Now imagine that you deserve not 50, but 0. (That is, you deserve neither well-

²⁸ The next four paragraphs summarize Kagan's arguments, which echo Larry Temkin's arguments against similar kind of ratio view in section 6.4 of *Inequality* (Oxford, 1993), pp. 167-182. Readers versed in either or both sources can skip ahead, accordingly.

²⁹ Kagan, "Comparative Desert," p. 100, *The Geometry of Desert*, pp. 353-4.

³⁰ Kagan, *The Geometry of Desert*, pp. 410-21. Kagan draws fine-grained distinctions between the ratio and percentage views, but nothing hangs on these for the purposes of the present discussion.

being nor suffering). You have exactly the 0 units of well-being that you deserve. We can assume that I still deserve 100. Here, it looks like the ratio view will be satisfied *regardless* of how much I have. It will of course be satisfied if I have 100, since we'll each have 100% of what we deserve. It will also be satisfied if I have 60, since we'll each have 60% of the well-being we deserve. (60% of 0 is still 0). And so forth, for any amount of well-being I might have.³¹

Finally, consider a case involving negative numbers. Suppose, again, that you deserve 50 units of well-being and I deserve 100. But suppose that you have -50 units of well-being (that is, you're suffering rather than enjoying well-being). You're thus experiencing 200% less well-being than you deserve. According to the ratio view, I should also have 200% less than well-being I deserve – so I should have -200 units of well-being. But as Kagan points out, this result is absurd: it says again that when you have *sufficiently* less than you deserve, I should have *even less* than you, despite being more deserving than you.³² This is not remotely plausible as a demand of fairness. Kagan rejects the ratio view on the strength of these arguments.

Now consider the second candidate principle of desert-sensitive fairness. This principle says that each person should receive the same amount more or less than she deserves. This principle also exerts a simple demand. Return, one more time, to our original example. I deserve 100, you deserve 50, and you have 30. You have 20 units of well-being less than you deserve. According to the present view, I should also have 20 units of well-being less than I deserve – in this case, 80 units of well-being. Kagan calls

³¹ Kagan, "Comparative Desert," p. 102.

³² Kagan, *The Geometry of Desert*, p. 417.

this the “X-gap view,”³³ since it demands that we each be moved the same distance along the X-axis from the X-coordinates of our respective peaks.³⁴

It’s worth noting, briefly, that the X-gap view avoids the pitfalls of the ratio view with respect to cases involving 0 and negative numbers. In the variation of our case in which I deserve 100, you deserve 50, and you have 0, the X-gap view says that I should have 50. It says that, like you, I should have 50 fewer units of well-being than I deserve. In the case in which I deserve 100 and you deserve 50, and you have -50, the X-gap view says that I should have 0. Again, the X-gap view says that like you, I should have 100 fewer units of well-being than I deserve. These results are entirely plausible.

Kagan regards the X-gap view as a serious alternative to his own Y-gap view, but he claims that “there is clear reason to prefer the Y-gap”³⁵ view. The reason he gives is this: the pertinent comparative judgments concern the extent to which each person’s situation offends against noncomparative desert,³⁶ and Y gaps (and only Y gaps³⁷) measure the extent to which each person’s situation offends against noncomparative desert.³⁸ Thus, he says, “only talk of Y gaps explicitly directs our attention to what is truly of direct relevance – the extent to which a given situation offends against noncomparative desert.”³⁹

³³ Kagan, “Comparative Desert,” p. 118.

³⁴ The symmetry principle requires that we move the same distance *in the same direction*.

³⁵ Kagan, “Comparative Desert,” p. 120. In *The Geometry of Desert*, he’s even more explicit; there he identifies the Y gap view as “the *correct* view of comparative desert.” *The Geometry of Desert*, p. 462.

³⁶ Kagan, “Comparative Desert,” p. 120, *The Geometry of Desert* pp. 407-8.

³⁷ At least, only Y gaps measure offenses against desert on Kagan’s preferred conception of absolute desert.

³⁸ Kagan, “Comparative Desert,” p. 121, *The Geometry of Desert* pp. 408-9.

³⁹ Kagan, “Comparative Desert,” p. 121, and *The Geometry of Desert*, p. 409. The substantive demands of the Y-gap view and the X-gap view will of course only diverge if the *slopes* of people’s desert individual graphs vary. If, contrary to Kagan’s conception of absolute desert, the slopes of people’s desert graphs don’t vary, then the substantive demands of the X and Y will be

This brief case Kagan makes against the X-gap view, however, is unsuccessful. Kagan points out, correctly, that only the Y-gap view directly measures comparisons among offenses against desert. But, as argued in the previous section, his claim that offenses against desert are the appropriate objects of our comparative judgments is both undefended and implausible. I therefore see *no* reason to accept the Y-gap view over the X-gap view. On the contrary, since of the two alternatives only the X-gap view tracks comparisons in how people are faring (relative to what each deserves), we have decisive reason to prefer it to the Y-gap view as the principle of desert-sensitive fairness.

I've considered three candidate conceptions of desert-sensitive fairness: the ratio view, Kagan's Y-gap view, and the X-gap view. Following Kagan, I rejected the ratio view, on the grounds that it makes counter-intuitive prescriptions when faced with certain cases involving zero and negative numbers. I also rejected Kagan's Y-gap view, again on the grounds that it's intuitively implausible. The X-gap view, however, avoids the pitfalls facing those alternatives. Thus, even in the absence of a positive argument in its favour, we have presumptive reason to accept it as the principle of desert-sensitive fairness.

CONCLUSION

The upshot of this discussion is to leave Kagan with a dilemma. Either Kagan's theory of comparative desert aims to capture our intuitions about fairness as they apply to the domain of desert – in which case, his theory fails on its own terms. It fails to capture (and even conflicts with) the demands of fairness, applied to the domain desert. Or, Kagan's theory of comparative desert does not aim to capture our intuitions about

identical. But even here, Kagan is explicit that the Y-gap view should be preferred, precisely for the reason stated above.

fairness, applied to the domain of desert – in which case, Kagan’s theory of comparative desert lacks an intuitive foundation. If the latter, Kagan needs to offer an argument for why we should accept his principle of comparative desert over the principle of desert-sensitive fairness. In the absence of such an argument, we have decisive reason to reject Kagan’s comparative desert.⁴⁰

⁴⁰ I am grateful to Joseph Heath, Louis-Philippe Hodgson, Shelly Kagan, Rahul Kumar, Andrew Lister, Victor Tadros, audiences at Queen’s University and the University of Toronto, and *Law and Philosophy’s* anonymous referees, for valuable written comments and discussion.