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Desert, Bell Motion, and Fairness

Abstract: In this critical review I address two themes from Shelly Kagan's path-breaking *The Geometry of Desert*. First I explain the so-called bell motion of desert mountains—a notion reflecting that, *ceteris paribus*, as people get more virtuous it becomes more important not to give them too little of whatever they deserve than not to give them too much. Having argued that Kagan's defense of it is unsatisfactory, I offer two objections to the existence of bell motion. Second, I take up an unrelated issue—the relation between comparative and non-comparative desert. I argue that, given a certain disaggregationist view of comparative desert, it is possible that comparative desert is not satisfied, even if noncomparative desert is perfectly so. Unlike my objections to the bell motion, this possibility adds further complexity to an already complex Kaganian account of desert.

Keywords: bell motion, complaints, desert, fairness, Shelly Kagan.

1. Introduction

The general topic of Shelly Kagan's *The Geometry of Desert*—the nature of desert—has received considerable attention over the years. In the literature preceding his book, many pieces address familiar philosophical questions about desert, such as: What is the basis of desert? What is it that someone, who is more deserving, deserves more of? Can one deserve something now in virtue of what one will do in the future? Can anyone truly deserve anything if we have no free will in the “metaphysically robust sense of the term” (Kagan 2012, p. 12)?

Kagan largely and explicitly ignores such questions. Instead, he focuses on a new set of philosophical questions about desert. These arise once we depict the relation between “whatever it is that individuals deserve more or less of by virtue of being morally better or worse individuals” (Kagan 2012, p. 47)—which, for simplicity, we can assume to be well-being—and the amount of intrinsic goodness from the point of view of desert in graphs. I concur with Kagan that this representational device generates a whole new set of questions about desert that we probably would not have asked had we thought of desert in a more conventional manner. One such question, “Do desert mountains display bell motion [notions to be explained shortly: KLR]?”, is addressed in Sections 2–4.

Philosophers often appeal to moral intuitions, and Kagan is no exception (e.g. Kagan 2012, pp. 3, 638). As we shall see (Section 4), however, he also appeals to graphical intuitions, as it were, i.e. to intuitions about which functional relationships are generally plausible (Kagan 2012, pp. 156, 200, 214, 223, 253–254, 305). These intuitions might speak to issues in which we do not have any relevant *moral* intuitions—or we have but they differ—and, thus, resolve issues that we could not resolve were we to restrict ourselves to moral intuitions.¹

In a manifestation of great creativity, Kagan is able to reveal how our pre-Kaganian view of desert only addresses a limited number of the questions that a fully worked out theory of desert must answer.² Another issue is whether Kagan’s unfamiliar questions regarding desert are as important as the familiar questions.³ This question is difficult to tackle, as “importance” is not a readily operationalized

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¹ I suspect, however, that people’s graphical intuitions also differ. See the discussion in Section 4 in relation to Figure 5.15.

² As Kagan acknowledges, others have discussed desert while using graphs as heuristics, e.g. (Feldman 1997; Hurka 2001).

³ For some misgivings, among praise, in this direction, see (Smilansky 2013).

concept. For present purposes, it suffices to note that the questions he raises must be answered by a complete theory of desert. This is so whether one thinks that desert is a central part of morality or one is opposed to or undecided about the idea that it is. Still, as a reader, one would have appreciated a clear summary of Kagan's set of main, novel questions about desert, which he thinks rivals the familiar ones in importance.

Basically, Kagan's book has two main parts: one that addresses noncomparative desert and one addressing comparative desert. Its overarching claim is that desert is a much more complex notion than it is normally assumed to be—something which the book convincingly demonstrates (Kagan 2012, p. xiv).

In the course of exploring the complexities of desert, Kagan meticulously shows how a large number of logically possible different positions exist—e.g. that desert mountains (do not) have plateaus—that one can take on each of the many issues that he addresses. He often lists various strengths and weaknesses of logically possible views, dismissing some as logically possible but implausible. On many issues, he concludes that more than just one of several conflicting positions is plausible. In other cases, Kagan takes his own stand on the correct view on desert, although always noting possible problems and issues in a fair-minded way where others may reasonably disagree with him. While I am sympathetic to Kagan's approach, it makes it difficult to write a critical response. It is difficult to write a critical response to a conceptual map—especially one that is drawn as carefully as Kagan's. Accordingly, this article will focus on two of Kagan's substantive claims. In so doing, I ignore one of the most important achievements of Kagan's book—laying out the contours of an entire, previously largely unexplored theoretical landscape.

The first issue I address is the so-called bell motion. Section 2 explains it and its significance, while Section 3 critically assesses Kagan's argument in its favor. Section 4 presents two objections to the existence of bell motion. Section 5 takes up a second and unrelated issue—the relation between comparative and non-comparative desert. It argues that, given a certain disaggregationist view of comparative desert, it is possible that comparative desert is not satisfied, even if noncomparative desert is perfectly so. Unlike my objections to the bell motion, this possibility adds further complexity to an already complex Kaganian account of desert.

2. Bell motion and its significance

Before assessing Kagan's defense of bell motion, I must present the idea. For this purpose, let us assume that, for any given person, there is one particular level of wellbeing such that most intrinsic value from the point of view of desert results if he has this particular level of wellbeing. Call this point this person's *desert peak*. If he is better or worse off than at his desert peak, the situation is less good. We can assume that the level of intrinsic value drops at a constant rate the more wellbeing this person gets above his peak (/the less wellbeing this person gets below his peak) until the situation becomes intrinsically disvaluable at some point. Given these assumptions, we can depict the situation as follows (where, to repeat, the x-axis signifies level of wellbeing and the y-axis the level of intrinsic value from the point of view of desert):

Figure 3.23

This graph depicts a situation in which a person has a desert peak and wellbeing level at 50, i.e. at S.⁴ More intrinsic value is realized when the person is at his desert peak than when he is above or below, as illustrated by the fact that the value on the y-axis of the graph is lower when he is at A, B, or C. Call this figure *the desert mountain* in view of its shape. Kagan considers all sorts of alternative shapes that a desert mountain may take—indeed, he considers whether desert should be depicted as mountains at all—but for present purposes we can ignore these complications.

Setting aside the issue of whether there are upper bounds to virtue (vice) or to how much wellbeing (suffering) a person can deserve, for any particular desert peak there are—or least could be—persons whose desert peaks fall at higher or lower levels of wellbeing. We could depict this in our graph by adding additional desert mountains representing how well-being translates into value for other, more or less

⁴ One could also express the person's desert peak by referring to the y-value of S.

deserving people. This gives us a series of desert mountains from left (viciousness) to right (virtuousness), where the mountain peaks have the same value along the y-axis.⁵

One might initially think that the steepness of the eastern and western slopes of the desert mountains is constant across the whole series and that, for all desert mountains, the uphill steepness of the western and eastern slopes is the same. If so, it does not matter from the point of view of desert if a more deserving person is at the same distance from his peak as a less deserving person or that someone has more wellbeing than he would have at this desert peak than if he has less by the same amount. However, Kagan thinks that the eastern slope is gentler in the case of very virtuous persons, whereas the western slope is gentler in the case of very vicious persons. Other things being equal, it is more important that Hitler does not suffer too little than that he does not suffer too much. At the same time, *ceteris paribus*, it is better that Mother Theresa is better off than she deserves to be than that she is worse off.⁶ These claims generate the so-called bell motion of the aforementioned series of desert mountains—“the more virtuous you are, the steeper your western slope; the more vicious, the less steep the slope” (Kagan 2012, p. 100). When depicting the situation in the desert graph, we get the following picture:

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⁵ Again, Kagan considers many alternatives to the assumption—the standard skyline—made here, but these can be ignored for present purposes.

⁶ Of course, of both of them it is true that it is best if they receive the exact amount of wellbeing that they deserve. Assuming that this is not possible, however, we can still assign a (lower) value to various levels of wellbeing below and above their peaks.

Figure 3.33

If we imagine the series of desert mountains as depicting the movement of a bell, it is as though the bell swings from the left, over the symmetrical desert mountain (“Sym”), the slopes of which are equally steep (Kagan 2012, p. 108–109), to the right as we move from the extremely vicious to the extremely virtuous.⁷ Hence, the apt term “bell motion.”

While much of Kagan’s rich discussion of desert does not draw on the bell motion, throughout the entire book he often refers back to it, refines the idea, and shows its implications for other notions. For instance, he argues that bell motion implies that, given continuous rotation, there is only one Sym mountain, and that not all individual desert lines can “pass through the origin” (Kagan 2012, p. 118). He also appeals to the bell motion to explain the difference between one person currently being more deserving than another in terms of the amount due to him and being currently more deserving in terms of the amount of good that can be done (Kagan 2012, p. 164). Moreover, he takes care to explain how one can endorse desert plateaus—the idea that increasing a person’s well-being (suffering) increases value up until a certain point after which more well-being (suffering) does not affect the amount of desert-related intrinsic value—and yet partially, but not completely,

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⁷ In Figure 3.33, the peak of the Sym mountain is on the y-axis. It could be located elsewhere, as Kagan argues, but its location is irrelevant for my purposes below.

accommodate bell motion (Kagan 2012, pp. 184–185). Meticulously, he accounts for why, even if one accepts curved desert, one can still endorse—or, for that matter, not endorse—bell motion (Kagan 2012, p. 230). Moreover, Kagan shows that if you accept the right–left constraint—roughly, a constraint that rules out “drawing desert lines that cross into the upper left quadrant given that the peak is located in the upper right quadrant” (Kagan 2012, p. 296), because that would imply that it can be an intrinsically good thing that someone who deserves a positive level of well-being leads a life that is worse than not existing—you must reject the standard skyline (Kagan 2012, p. 301); that is, the view that the peaks of the desert mountain form a continuous straight line parallel to the x-axis from east to west (Kagan 2012, p. 130).⁸

These examples of the significance of the bell motion may not be entirely comprehensible to someone who is not familiar with Kagan’s work on desert without further explication.⁹ For the purpose of showing that it plays an important role in Kagan’s account, however, this is not much of a problem. Bell motion is an idea that Kagan finds not only logically coherent but one that he embraces and plays an important role in his book (Kagan 2012, p. 106).

3. Kagan’s argument for the bell motion

In this section, I assess Kagan’s argument for asserting bell motion. Initially, he bases his case for its existence on the idea that “fault forfeits first.” To see what is behind this slogan, we must consider the case of Amos and Boris: “Amos and Boris have both been injured in an explosion caused (either negligently, or deliberately) by Boris. Both are now at the same (lower) level of well-being, and you can help either one by

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⁸ Kagan (1999, p. 308) appeals to bell motion in a critique of egalitarianism.

⁹ All of the examples I give relate to non-comparative desert. He thinks that comparative bell motion is implausible (Kagan 2012, pp. 490–492).

a fixed amount. Given Boris's greater degree of culpability it [seems] clear that since you can help only one of the two, it [is] better—in terms of who deserve[s] the aid—to help innocent Amos, rather than culpable Boris. This lead[s] us to the idea that fault forfeits first (which, in turn, eventually support[s] the [idea] of ... bell motion)" (Kagan 2012, pp. 232–233). Call this *Kagan's First Argument for bell motion*.

Having offered this argument, Kagan suggests a counterargument. Our tendency to think that it is less bad to give too much rather than too little might reflect values other than desert, e.g. mercy, and such values are irrelevant to an enquiry into the nature of desert itself. Kagan sketches a "potential reply" to this argument, however, suggesting that in the case of the very virtuous such a "gentler eastern slope has been 'earned'" (Kagan 2012, p. 96).¹⁰

Before examining the appeal to "fault forfeits first" more closely, I want to explore the notion of earning a "gentler eastern slope" a little more. Specifically, I want to ask if it is possible for two persons to have the same desert peak but to have earned different eastern slopes. If so, this would pose a problem for bell motion in so far as the eastern/western slope steepness ratio would not, or at least not simply, be determined by desert peaks. To see how this is possible, compare the following two persons: One has acted in such a way that he knowingly has made it more likely that if virtuous people—as both of them are—do not enjoy the level of well-being that they ideally should, they enjoy more well-being, whereas the other person has knowingly made it more likely that if virtuous people do not enjoy the level of well-being that they ideally should, they enjoy less well-being. You might think that by

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¹⁰ The reverse point presumably applies to the very vicious, i.e. that in their case, the gentler western slope is earned. Hence, mercy cannot explain why it is better to make the very vicious suffer more rather than less. Note also that it is not entirely clear how seriously Kagan takes his own reply. After all, he calls his reply a "potential reply" and places "earned" in square quotes.

virtue of this difference, the latter person is less morally virtuous, even if none of them has made it more likely that virtuous people do not receive exactly what they deserve. If so, assume that this person is morally more virtuous than the former in a manner that offsets this difference such that they have the same desert peak. Even if these two persons have identical peaks, at least one of them has not earned a gentler eastern slope (relative to the other person in the example or relative to somewhat less deserving persons). If so, the location of one's peak is not the only determinant to the earned gentleness of one's slide.¹¹

Perhaps Kagan did not mean to ascribe any serious argumentative role to the notion of “earning a gentle curve.” A couple of hundred pages after initially introducing it, he concedes that his first argument for bell motion is inconclusive. The reason is that curved desert provides an alternative explanation for why it is better to help Amos than Boris: “Since Boris is at least somewhat at fault (if he was negligent), and perhaps significantly at fault (if he acted deliberately), his desert line is presumably shifted to the west of Amos's. More particularly, Boris's peak lies to the west of Amos's. But since the example stipulates that Amos and Boris are now both at the same peak of well-being, it follows that Amos is farther from his (higher) peak than Boris is from his. And given curved desert, this means that the incremental gain from aiding innocent Amos some fixed amount is greater than the incremental gain from aiding culpable Boris that same amount” (Kagan 2012, p. 233). As Kagan points out, curved desert is compatible with bell motion, so nothing in this alternative explanation of our desert intuitions regarding Amos and Boris rules out that bell

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¹¹ The example reflects a disaggregationist view of value from the point of view of desert (though “disaggregationist” in a way different from the one Kagan (2012, pp. 332–345) employs) in that the factors that determine the desert peak are not identical to the factors that determine the value deriving from a person's being below his peak. I will return to such a view in Section 5.

motion also takes place. However, the problem is that once we have this alternative explanation, we lose—given the fact that, independently of the issue under consideration here, curved desert is a plausible notion, which Kagan (2012, p. 250) embraces—our motivation for postulating bell motion in the first place (Kagan 2012, p. 233). Without any motivation for bell motion, however, we are not entitled to posit it as anything more than a logical possibility. Nevertheless, Kagan wants to claim something stronger and, accordingly, he provides two arguments in addition to his first argument for bell motion.

Kagan considers a version of the case of Amos and Boris where, after the explosion, “both are *equally* far below their respective peaks” (Kagan 2012, p. 233). Here again, Kagan finds “it plausible to claim that Amos is still more specifically deserving than Boris” (Kagan 2012, p. 233); that is, helping Amos rather Boris gives a greater increase in intrinsic goodness from the point of view of desert. This cannot be explained by curved desert, because given that they are both equally far below the respective peaks, the slopes of their desert curves are identical. However, it can be explained by bell motion, which would imply that Amos’ desert curve at the relevant distance from his peak is steeper (i.e. more intrinsic goodness from the point of view of desert results from moving him one unit closer to his peak) than Boris’ curve. Hence, to the extent that one shares Kagan’s intuition, this modified version of the Amos and Boris case supports the bell motion. Call this *Kagan’s second argument for bell motion*.

I am quite confident that I do not share Kagan’s intuition about this revised case and I am certain that to the extent I possibly do, it seems much less compelling to me than did my intuition regarding his initial case of Amos and Boris. The latter fact makes me worry that to the extent that I cannot completely rule out Kagan’s intuition,

this might simply reflect a leftover from my initial response to the Amos and Boris case. If I had been presented with the revised case first, I might have been certain that, from the point of view of desert, we should be indifferent between helping Amos and Boris.

Kagan himself does not appear too confident about this revised example's power to support bell motion: "Of course, some may not have particularly clear or robust intuitions about the case once it is modified in this way. But the same conclusion is supported by other cases as well" (Kagan 2012, p. 234). Before proceeding to the other case Kagan presents, let me note that my problem with Kagan's argument is not so much a lack of clarity or robustness of a pro-bell motion intuition, but more that I am rather confident that, from the point of view of desert, I am indifferent between whether Amos or Boris is being helped. Moreover, it seems as though Kagan's intuition regarding this revised case can be explained without appeal to bell motion.

First, consider a modified version of the revised case of Amos and Boris. Like before, Boris is less deserving than Amos. Unlike in Kagan's revised case, however, both are thoroughly undeserving persons. Accordingly, their desert peaks are in the upper *left* quadrant. Hence, from the point of view of desert, it is an intrinsically good thing that they suffer. Suppose also they are both at an equal distance above their desert peaks; that is, they are both less badly off than they are at their desert peaks. However, we cannot avoid helping one of them and one of them only. As a result of the explosion, then, one will be pushed back to his peak while the other, as a result of our help, will remain above his peak. Suppose, finally, that Amos—not Boris—is responsible for the explosion. That would obviously make him a less deserving person. Still, taking everything into account, Boris is less deserving than Amos. Given

bell motion and that they are both equally above their peaks, Boris' desert curve at the relevant point is steeper than Amos'. Accordingly, it would be better from the point of view of (aggregate) desert to help Amos rather than Boris. It would be best if we helped none of them, obviously, but, by stipulation, we cannot avoid helping one of them. In this case, I am inclined to say that we should help Boris and not Amos. Given bell motion, however, one would expect the opposite intuition. My conjecture is that my intuition reflects the thought that regardless of Amos' and Boris' overall levels of moral desert, the particular problem that my help addresses is caused by Amos. So even if he is a more deserving person overall than Boris, the fact remains that he is responsible for the particular problem that I can address, and this is why I should help Boris despite his being less deserving overall than Amos. Obviously, this explanation is different from Kagan's, and its availability in the case I have imagined suggests that it may also be what explains Kagan's intuition about his revised case.¹²

To test the conjecture in the previous sentence, consider a variation of Kagan's second version of Amos and Boris. So now both have peaks in the upper right quadrant. Amos is more deserving overall than Boris, but Amos negligently or deliberately caused the explosion. In this case, I am confident that I have no inclination to say that, from the point of view of desert, it is better to help Amos rather than Boris; after all, regardless of Amos' higher level of overall deservingness, he is responsible for the explosion.

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¹² This alternative *explanans* comes in two versions. First, it might be said that the relevant intuition is explained by considerations about responsibility not desert. (A similar observation might apply to my remarks above concerning "earning a gentler slope".) Second, the *explanans* might appeal to considerations about disaggregated desert, i.e. what Amos and Boris specifically deserve with respect to the particular problem they face, as opposed to aggregate concern. Nonetheless, neither version supports bell motion.

Finally, if we consider a case in which Amos and Boris are exposed to an explosion which none of them are at fault for causing, both of them are at an equal distance from their desert peaks (above or below), and Amos is more deserving than Boris, I have no inclination to think that we should help Amos rather than Boris. I find it telling that Kagan does not introduce an example of this simpler sort in support of bell motion. My suspicion is that he could not do so, because our intuitions do not go this way once we fully take on board that the two persons involved are at an equal distance from their desert peaks. Only by adding the confusing factor that the less deserving person is responsible for the particular problem at hand are some of us inclined to assess the case in a manner that seemingly supports bell motion. I conclude that Kagan's second argument for bell motion is inconclusive.

Let us move on to *Kagan's third argument for bell motion*, which involves an appeal to a comparison between “an extraordinarily virtuous individual—a “saint”” and “an extraordinarily vicious individual—a “sinner”” (Kagan 2012, p. 234). (Recall Hitler and Mother Theresa above.) We can give each of them a fixed amount of wellbeing more or less than his peak. Kagan thinks asymmetrically of these two cases. In the case of the saint, he thinks that it is “better to err on the side of giving too much rather than too little,” whereas in the case of the sinner “it is probably better to give her too little—at the very least it seems true that less harm is done when we give too much to the saint than when we give too much to the sinner” (Kagan 2012, p. 234). This supports bell motion. For Kagan's intuition can be explained by the apparent fact that “the sinner's desert line has swung to the left, relative to the saint's” (Kagan 2012, p. 234).

Since the issue of responsibility, which arose in relation to the previous case, does not arise here, Kagan's third argument for bell motion cannot be dismissed in the

same way as the previous argument. Moreover, it cannot be dismissed in the same manner his first argument was dismissed. So the argument adds something new. However, it is quite weak. First, the argument is at best a partial argument for the bell motion. For my own part, I have no inclination to say that if we consider a situation like the one Kagan appeals to, except that the two persons in question are either both very vicious or both very saintly, albeit one of them is somewhat more so than the other, overcompensation is worse in one case than the other. More generally, I suspect that Kagan can only elicit the relevant intuition when he compares extremes, not when comparing people whose degrees of virtue are closer to one another than in the saint-and-sinner case.

Second, there is reason to think that Kagan's third argument is either inconclusive or, alternatively, only shows that, at most, the bell motion is very weak and restricted. For suppose that you have a sinner; you cannot ensure that he suffers to the exact degree that he deserves. Instead, you have two options. The first option involves a gamble. There is a 50 percent risk of the sinner suffering excessively—say, he should suffer -100 , but he will suffer -120 —and a 50 percent risk of the sinner suffering too little—say, -80 . You also have another option—namely, making the sinner suffer too much, but too much by a greater amount, say -125 —than in the second outcome of the gamble—for certain. In this case, from the point of view of desert, I think that I would choose the first option. If I choose the second option, after all, it is *certain* that the sinner will be even further away from his peak than on whichever of the two possible outcomes of the gamble! But this clashes with the existence of a strong bell motion.¹³ Should strong bell motion exist, the -80 outcome

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¹³ One noteworthy difference between the present example and Kagan's is that the present one involves an intrapersonal setting—i.e. the issue is how far from his desert peak one particular individual ends up—whereas Kagan's involves an interpersonal

is worse than the -120 outcome. Indeed, one could get significantly further away from the peak to the west of the peak before reaching a point that it as bad, from the point of view of desert, as the -80 point. However, I believe that even -121 for certain is not better from the point of view of desert than the described gamble. This suggests that the bell motion is non-existent or, at most, has a tie-breaking function.¹⁴

My third and final response to Kagan's third argument is that I suspect that what we are really responding to is not bell motion but rather another factor, and our views about his case will change once we eliminate this factor. We might think that if I can either benefit someone somewhat less or somewhat more than what she deserves, then I wrong her if I do the former, but not if I do the latter. This might make a moral difference, however, which does not directly derive from the value from the point of view of desert of the two possibilities. To eliminate the influence of this potentially distorting factor, we should compare outcomes in which people are above or below their peaks for reasons unrelated to human agency and then ask ourselves if we think that it is worse if one or the other were to occur. Unfortunately, when Kagan introduces the idea of differential slopes, he uses a case in which an agent determines whether the recipient has more or less than he deserves: "suppose that we must either give Simon 15 units of well-being too little or 15 units too much" (Kagan 2012, p. 94). In the case of the saint, if I ask myself if, by pure accident, the sinner ends up below or above his peak, I would say that, *ceteris paribus*, from the point of view of

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setting—i.e. the issue involves two different individuals, one less deserving than the other.

¹⁴ Some might think that the very idea that there is something good about the fact that a wrongdoer suffers is unappealing or even repugnant. Rationally speaking, however, nothing prevents people who hold this view from sharing the comparative intuition that I appeal to in the present argument against bell motion. Indeed, the view that -121 is definitely worse than 0.5 risk of -120 , and 0.5 risk of -80 seems congenial to the rejection of the present retributivist view.

desert neither is better nor worse than the other. In fact, I would say the same about the case of the sinner who deserves to suffer.

While this is incompatible with the bell motion, one might respond that the latter fact is not compatible with my error theory either. It is not so, because Kagan believes that it is better to make the sinner suffer too much rather than too little. Clearly, however, one is wronging the sinner in so doing if the sinner is wronged in either case.¹⁵

In response, let me first point out that, at least in many local contexts, people think differently about desert. In relation to criminal punishment, for instance, which is one point where Kagan's general exploration of desert is highly relevant to an issue often discussed in the present journal, most people—including most retributivists—think it is worse to over-punish rather than under-punish. As Sir William Blackstone put it: "Better that *ten guilty* persons escape than that one innocent suffer."¹⁶ For many, then, Kagan's view here might not seem very appealing. Kagan himself emphasizes that his concern is with moral desert and, thus, he is not concerned with desert claims made in particular contexts, e.g. punishment. He also notes that it "seems to me likely that much of what I have to say with regard to moral desert would also be relevant for thinking about these other forms of desert as well" (Kagan 2012, p. 4). I agree. While there might be non-desert reasons why it is more important to avoid over-punishment than under-punishment—people's acceptance of the legal

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¹⁵ Perhaps we are influenced by the thought that the sinner has wronged others and that we wrong *them* by under-punishing him.

¹⁶ For a critical discussion of this view, see (Lippke 2010). Strictly speaking, for Blackstone's quote to support my claim that many hold the view I attribute to them, punishing an innocent would have to be thought of as an extreme case of over-punishment. This might seem a bit strained but is actually quite realistic. Most people who are innocent of a crime of which they are accused but ultimately not punished for are not innocent *as such*; e.g. they might have committed speeding offenses for which they have received no punishment. Thanks to Victor Tadros for objecting to my appeal to Blackstone's slogan.

system might be instrumentally valuable and corroded more easily in response to the former than the latter—at least it is significant that, to the extent that bell motion applies to desert in a criminal punishment context as well, from a retributivist point of view we should probably not worry much about over-punishing vicious criminals.¹⁷

Second, I conjecture that a possible source of confusion here is that there are two ways of erring on the side of “giving too much or too little” (Kagan 2012, p. 234). One is the case in which we are not certain exactly where someone’s peak is and, accordingly, are uncertain as to whether a certain level of suffering is too much or too little. Another is where we are certain where the peak is but, as in Kagan’s case, will either make the person suffer too much or too little. Some people who would go for more suffering in the former situation might not do so in the latter, and Kagan’s intuition here might reflect how these two cases are being run together. Perhaps that which could be underlying such a difference is a thought such as the following: Being willing to run the risk of over-punishing in the first case is a way of showing oneself to be serious about desert, because one thereby shows that one will go to great lengths to ensure that a sinner receives all of the suffering he deserves. This is not so in the second case, because one knows that, in going for the harsher option, one will make the sinner suffer too much, and being willing to do so is not a sign of being serious about desert. Ultimately, I am not sure that this line of argument can be put into any coherent form, but it strikes me as something that could explain Kagan’s intuition pertaining to the sinner.

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¹⁷ We should, of course, worry a lot about punishing *virtuous* criminals in general. I set this aside in part because in order to explore it, I would have to discuss whether deserved punishment depends on the overall level of desert or on the particular criminal act; see (Tadros 2011, pp. 66–73) for an insightful discussion. While important in itself, this matter is different from the one I draw attention to here.

All in all, I do not find Kagan's three arguments for bell motion convincing. This is not to say that bell motion is not logically possible (it is) or for that matter extremely implausible (it is not). Given its central role in Kagan's exploration of desert, however, it would have been nice if the book had offered a more thorough defense of bell motion.

4. Two arguments against bell motion

In this section, I propose two arguments against bell motion over and above arguments against Kagan's argument in favor of it. Here is the first. Consider a community of people, all of whom live to age 80. People are special in the sense that they have good (saintly) and bad (sinful) days. The few best people in the community live lives consisting of 80×365 saintly days. The few next best persons live lives consisting of saintly days except for a single sinful day, and so on and so forth until we get to the limited number of most sinful persons, who live lives consisting of 80×365 sinful days. Saintly days are qualitatively identical across saintly and sinful persons, as are sinful days. So my example is designed to make us take a purely quantitative, gradualist view on the distinction between saints and sinners—the difference between them simply consisting in the fact that the latter have more sinful days and there is a very gradual transition from sinner to saint. Once we take this view, bell motion looks quite implausible. If we compare the most saintly person to the saint-minus-one-single-day person, I do not see why the fact that the latter had one bad day should make it worse to overcompensate him than to overcompensate the perfect saint. If being saintly is a purely aggregative matter, why is the desert value derived from benefiting more or less saintly people not also a purely aggregative matter?

In response to the purely quantitative view of the distinction between saints and sinners, it might be argued that this view does not adequately capture the difference between sinners and saints—say, because the difference between saints and sinners is a matter of fundamentally different character traits (cf. Kagan 2012, p. 3)—and, thus, does not undermine Kagan’s intuitions pertaining to them. However, this response seems insufficient to defeat my challenge. The scenario I have imagined is one where people’s desert peaks are spread out along the x-axis and in that scenario bell motion is implausible. So at least we can say that the bell motion is not instantiated in all cases. The challenge is for Kagan to specify the particular way in which sinners are to be distinguished from saints such that the series of desert mountains perform the bell motion.¹⁸

I now turn to my second argument against bell motion. Suppose you have two persons who are almost equally virtuous—one of them is a tiny bit more virtuous than the other, e.g., we can imagine that he has one more virtuous day than the other. Now, if both of them are almost at their peak—say, the slightly more deserving person’s peak is at 101 and he is at 100, whereas the slightly less deserving person’s peak is at 100 and he is at 99—and we can benefit one of them, but not both, bell motion implies that it is a tiny bit better to bring the person, who is a tiny bit more virtuous, to his peak than to do so to the other person. As I have explained, I do not think this is so, but I also do not find Kagan’s view on this extremely implausible. The problem is that given bell motion and certain additional assumptions, the view that there is such a

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¹⁸ One implication of some versions of bell motion which Kagan does not mention and which might strike some readers as damaging is the possibility of a “virtue monster;” that is, a person who is so virtuous that her eastern slope is so steep that just a tiny drop in her level of welfare results in a worsening of the situation even if that tiny drop were instrumental in bringing about a very large number of not very virtuous people, who are below their peak, significantly closer to it. To the extent that we find such a virtue monster implausible, this is a reason for believing that the Bell Movement is restrained, not that it is non-existent.

difference implies a view which I find extremely implausible. Suppose that we are very far from the two persons' desert peaks—say, the slightly more deserving person is at 10,001 while the slightly less deserving person is at 10,000. On the assumption that the two desert lines have a constant slope even a tiny difference in slope—say, the difference between -0.99 for the slightly more virtuous person and -1 for the slightly less deserving person—results in a huge difference in the value realized by their being where they are—99 units of intrinsic value. Suppose we can do nothing about the fact that these two persons are so much beyond their desert peaks as is the case. However, we have two other options, which would improve the situation from the point of view of desert. One is to bring about the slightly less virtuous person becoming as virtuous as the more virtuous person, for example by giving him opportunity to perform a virtuous act that one is confident he will exploit or by providing him with reasons for being slightly more virtuous, which one thinks will convince him and affect his conduct accordingly. In effect, you then reduce the disvalue of his being so much better off than at his desert peak with 99 units of value. Alternatively, you can make sure that a person whose degree of virtuousness is the average of the two previous persons and who is roughly 99 units of welfare beyond (below) his desert peak is brought back (up) to his desert peak. In both cases, you thus improve the situation by 99 units of value from the point of view of absolute desert.¹⁹ It seems very implausible that the second option is better from the point of view of desert. I find it very unappealing that a slight difference in how deserving the first two persons are can make it more important, desert-wise, to improve the virtuousness of the slightly less deserving person than to reduce the level of well-being of someone

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¹⁹ Here, one should make sure to discount any influence from intuitions pertaining to comparative desert, which, in this case, would favor the first option.

who is also significantly better off than he would be if he was at his desert peak.²⁰

How can slight differences in virtuousness result in such a small difference in the actual level of well-being having such a major impact on overall value?

Kagan addresses a related point. He considers a retributivist who is favorable to desert plateaus and whose view can be represented as follows:

Figure 5.15

Kagan notes: “Although A deserves to suffer and B deserves to be happy, A is only slightly less virtuous than B” (Kagan 2012, p. 199). He then goes on to remark that he finds the discontinuity this situation involves implausible: “Small changes in virtue should elicit only small changes in the nature of the desert line. (The problem, of course, isn’t that the two right halves increasingly diverge as we move further and further to the east. That sort of divergence is inevitable, given any difference at all in the slopes. What’s troubling, rather, is the discontinuous jump in the degree of rotation. B is only slightly more virtuous than A, yet the right half of her desert line is

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²⁰ The slightly more virtuous person is not needed for its being better to increase this person’s level of virtuousness. The former is included for presentational purposes.

tremendously gentler. It is this discontinuous change in slope that I find implausible” (Kagan 2013, p. 200). I share Kagan’s view that there is something disturbing about the “discontinuous jump in the degree of rotation.”²¹ This does not reflect any intuition about desert specifically or for that matter any moral intuition. Something much more general is at stake here: for X and Y, where Y is a function of X, one would expect the function to be continuous. If, for any given substance, temperature is a continuous function of how much fuel we burn to heat it, we would expect temperature to change gradually as we gradually burn more fuel. Perhaps we cannot rule out that the function changes discontinuously at some particular point in a series of small changes in the amount of fuel consumed, but we would be surprised if it did and would at least look for an explanation of such a discontinuity; and in case we cannot come up with one, we would check our results again.²² In the case Kagan imagines, it is indeed difficult to come up with a rationale for such a discontinuity.

I am uncertain how much argumentative role one can place on the present ban on discontinuous changes of functions. However, this is not my main point here. After all, some reasonable people endorse—whether reasonably or not—discontinuous functions in ethics, i.e. sufficientarians (e.g. Frankfurt 1987; see also note 21). My main point is that it is striking how Kagan dismisses the other potentially disturbing fact about Figure 5.15, i.e. that “the two halves increasingly diverge as we move

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²¹ One wonders why Kagan does not find desert mountains problematic due to the discontinuity they involve. After all, peaks imply that a small change in the level of wellbeing can result in a discontinuous change in the slope of the desert line, e.g. slope changes discontinuously from being positive to negative. Presumably, Kagan could say that while this is *prima facie* implausible, there is a rationale for such a discontinuity, namely, that the peak expresses the exact level of wellbeing a person deserves and that any deviation therefrom, positive or negative, is bad. This seems fine, but it raises the question of whether a rationale can be provided for some of the other cases of discontinuity that Kagan dismisses as implausible.

²² In fact there are such discontinuities, e.g. when a substance changes from solid to liquid form, and from a liquid to a gas.

further and further to the east,” meaning that, despite the fact there is only a small difference in virtue between them, the value gap between the two increases as we move further and further to the east, eventually becoming huge (Kagan 2012, p. 200). I find this morally very implausible, and I am not reassured by being informed that this “sort of divergence is inevitable, given any difference in the slopes” (Kagan 2012, p. 200). My sense is that this is a (rare) case, where using graphs is confusing. To me, the moral intuition is clear, so I would say so much worse for graphical depictions where this sort of divergence is inevitable. I would certainly not discount the objection on the ground that such divergence is inevitable once the slopes differ.²³

Kagan might bite the bullet here and explain why cases such as the one I have employed are best avoided, e.g., because we find it difficult to grasp what it involves for a person to be way above or below his desert peak. Alternatively, he might retract his claim that the divergence between the two eastern sides of the mountain is “inevitable, given any difference in the slopes.” First, he might say that there is an upper limit to virtue and a lower limit to vice. If there is, perhaps differences in slope need not result in implausibly large divergences before we reach these limits and, accordingly, the present objection is softened.

Second, he might say that the inevitability he asserted was asserted on the assumption of straight desert lines and that with curved desert lines, we can combine

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²³ I might be misreading Kagan here. Perhaps he simply dismisses the “ever increasing divergence” objection because it applies to the proposal he makes to accommodate the discontinuity objection too, and not because he dismisses the objection as such. Elsewhere, Kagan writes: “Trivial differences in the level of virtue or vice should make only trivial differences in the Y coordinate” (Kagan 2012, p. 156). However, this passage need not be read as an expression of the same view that I have been espousing here. The reason is that this passage is followed the claim that “[trivial differences in the level of virtue or vice] should never result in abrupt changes” (Kagan 2012, p. 156) and if the meaning of the previous sentence is determined by the meaning of this ensuing sentence, Kagan’s point here is the same as the one I have been taking him to make in the passage quoted in the main text.

bell motion with an avoidance of implausibly large divergence between the lower slopes of adjacent desert mountains. This suggestion is unpromising, however, because it would introduce another odd feature. For compare the western sides of two adjacent desert mountains in the upper right quadrant. For the bell motion to be present it would have to be the case that the slope of the easternmost mountain is slightly gentler on the initial descent from the peak than the side of the westernmost mountain. But for an implausible divergence not to result, the side of the easternmost mountain would have to become steeper and at some point become at least as steep as that of the westernmost mountain. In effect, then, the bell motion would be retained but would be restricted to the upper slopes of desert mountains. This might work to avoid the present objection, but it is *ad hoc*. In view of the discussion in this and the previous section, I conclude that not only is Kagan's defense of bell motion unsatisfactory, there are reasons to reject it.

5. Disaggregation, fairness, and comparative desert

I now proceed to a second issue, which is (largely) unrelated to the one I have been discussing so far. In the second part of Kagan's book, he takes up comparative desert, i.e. the view that it matters from the point of view of desert how persons, who might either differ or not differ in terms of noncomparative desert, do relative to one another. While noncomparative and comparative desert are related, they are also different. First,

- (1) Comparative desert might be satisfied perfectly even if noncomparative desert is not.

This is possible for the following reason. Suppose everyone is above their peak such that noncomparative desert is not satisfied. Still, everyone's distance to their own peak might be comparable to that of everyone else, such that comparative desert is perfectly satisfied (Kagan 2012, p. 352). Second:

(2) [W]hen noncomparative desert is perfectly satisfied, comparative desert is perfectly satisfied as well (Kagan 2012, p. 352).²⁴

In this section, I argue that (2) *might be* false. While I shall not argue that, as a matter of fact, it *is* false and, thus, do not take myself to be raising an objection to Kagan's account in this section, I think the possibility that it is false is an interesting possibility, which, as I shall also argue, has at least somewhat plausible. Hence, what I shall be doing in this section is very much in the general spirit of Kagan's endeavor in his book, i.e., to show that our concept of desert is unexpectedly complex. So here is why I think noncomparative and comparative desert might be differently related from how Kagan claims.

In one of the closing sections of the part on noncomparative desert, Kagan highlights a certain assumption that has underpinned his discussion up until then, to wit, the aggregationist position that "it is possible to aggregate all... virtues and vices (and so forth) into a single measure," the aggregated desert score, and that this score "fixes *all* aspects of the desert line" (Kagan 2012, p. 336). Kagan is "strongly inclined" to think that the aggregationist position is true, but he thinks that "it is important to see that it could be denied" and that a disaggregationist position could be

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²⁴ Kagan appeals to (2) in his critique of the virtue interpretation of the ratio view (Kagan 2012, p. 373). My present objection does not undermine this particular critique.

embraced (Kagan 2012, p. 334). By way of illustration, he imagines a disaggregationist view of the following sort: “Suppose that for any given person we are given two scores—one representing the person’s total amount of virtue, the other representing their total amount of vice. Adding these two scores together could generate a measure of one’s overall level of virtue and vice. Obviously, however, people with the same total score might still differ significantly with regard to the two underlying, basic scores... Perhaps... the total score (overall virtue) fixes absolute desert, while the (pure) virtue score fixes bell motion, and the (pure) vice score fixes the height of the peak” (Kagan 2012, p. 337). As Kagan stresses, he proposes this disaggregationist position not as an attractive position, but simply as an illustration of how such a position is possible.

At this point, I want to claim that (2) presupposes the following aggregationist* position (“*” to mark the difference from the position Kagan labels aggregationist and “aggregationist” because, like Kagan’s position, it is aggregationist, in fact, doubly so because it involves two aggregate measures, one for desert and one for well-being. Denials of an aggregationist* position I will refer to as “disaggregationist* positions”.):

People’s overall desert scores and their overall levels of well-being fix *all* aspects of the desert lines, noncomparative as well comparative.

Suppose that this position is false because, say, people’s noncomparative desert is fixed by their overall desert score, but people’s comparative desert is fixed by that which is referred to in the last Kagan quote in the previous section their pure virtue score. In that case, (2) is false. To see this, suppose A has a pure virtue score of +200,

a pure vice score of -100 , and, thus, an overall desert score of $+100$, while B has a pure virtue score of $+150$, a pure vice score of -50 , and, thus, an overall desert score of $+100$. If both enjoy a level of wellbeing of $+100$, noncomparative desert is perfectly satisfied, but comparative desert is not—for that to be the case, A should be better off than B—in which case (2) is false.

In response, it might be conceded that this shows that it is logically possible that a disaggregationist* position is true and, thus, that (2) is false. However, the example I offered, using Kagan's own illustration of a disaggregationist view, does not embody any attractive disaggregationist* position, so it is not worthwhile taking this possibility very seriously.

In response to the dismissal of the disaggregationist* position in the previous paragraph, I want to offer an example of a disaggregationist* position that has some plausibility and, thus, should be taken seriously. Kagan mentions that some people might want to respect desert proper to noncomparative desert on the ground that so-called comparative desert really is 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" (Kagan 2012, p. 351). Others think that such issues do fall under the scope of the theory of desert proper. Kagan thinks that nothing important hangs on this dispute and "that all that is important for my purposes is that we recognize that one set of fairness claims turns upon judgements about how I am doing compared to you, in the light of how deserving [noncomparatively speaking] we both are. One could, I suppose, call this 'desert sensitive fairness'. I prefer to call it 'comparative desert'" (Kagan 2012, p. 351).

Consider now a set of fairness claims turning upon something slightly different from Kagan's noncomparative desert sensitive fairness judgments, to wit:

For any X and any Y, judgements about comparative desert regarding X and Y, are fixed by how deserving, noncomparatively speaking, X and Y are with the following proviso: determinants of noncomparative desert that are dismissed by X and Y as irrelevant to noncomparative desert are irrelevant to their comparative desert and, thus, do not play any part in fixing how deserving they are relative to one another.

If our overall noncomparative desert score is fixed independently of our views of the irrelevance of the different dimensions making up this overall score, whereas comparative desert is not, noncomparative desert might be perfectly satisfied even if comparative desert is not. To see this, suppose that both A and B have an assessment-independent virtue score of +200 and that both of them are at +200. If so, noncomparative desert is perfectly satisfied, because noncomparative desert is fixed independently of the relevant person's desert assessments. On the proposed view, however, comparative desert is not. So suppose that B's desert score is largely due to his being virtuous on a certain dimension that both A and B dismiss as irrelevant to desert. Once we discount this dimension, A has an assessment-dependent virtue score of +200 and B has one of +100. Accordingly, comparative desert is not satisfied, because from its point of view A should be better off than B given their respective views about which dimensions bear on moral deservingness.

Assuming that the proposed disaggregationist* view is possible, we can ask whether it is plausible. Why does it have some plausibility? Fairness, it seems, has something to do with reasonable complaints. If no one has a reasonable complaint about anything, then no one can complain about having been treated unfairly;

accordingly, no unfairness exists. Similarly, if someone has a reasonable complaint about something, then someone has a complaint about having been treated unfairly and unfairness exists. Moreover, whether one can reasonably complain about something depends on which views one reasonably accepts. In Rawls' words: "A person's right to complain is limited to violations of principles he acknowledges himself" (2000, p. 190).²⁵ More specifically, if I reasonably believe, say, that vicious acts in the distant past are irrelevant to present desert levels, I cannot complain about someone's being better off than me on the grounds that this person acted viciously in the distant past. Accordingly, there is no unfairness; or, as we might say, no badness from the point of view of comparative desert if our present levels of wellbeing are fixed independently of virtuousness in the distant past.

The underlying idea here is that while noncomparative desert is, so to speak, fixed from a third person point view, according to which the desert-related views of those between whom the relevant desert relations obtain are of no significance, comparative desert is fixed from a first-person point of view, according to which comparative desert is obtained when no one, by their own lights, has reasonable complaints about how their situation compares, noncomparative desert and wellbeing-wise, to that of others.²⁶ In describing this disaggregationist* idea, I have appealed to claims that, taken in their relevant context, are found plausible by some and, accordingly, I have described a disaggregationist* view that has some plausibility and

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²⁵ For the related view that a distribution is fair if no one believes that he is worse off than anyone else and, thus, no one can, by their own lights, complain about being worse off than others, see (Clayton 2000, pp. 75–81; Dworkin 2000, p. 294; Hansen and Midtgaard 2011, pp. 344–347; Williams 2002a, pp. 386–389; Williams 2002b, pp. 34–37).

²⁶ Cf. such a first-person perspective on justice: "from the point of view of justice, an individual can plausibly claim that she is less advantaged than another in virtue of having a physical impairment or taste only if she would prefer to have the other's physical resources or taste" (Clayton 2000, p. 76).

is worthwhile taking seriously in the light of the interesting fact that, if true, then (2) is false.

6. Conclusion

In this review, I have taken issue with Kagan's argument in favor of bell motion. Part of my aim was to show that Kagan's defense of the notion is unconvincing. Another part of it was to offer two independent arguments against the notion. Also, and more constructively, I have suggested that, given a certain disaggregationist* view with at least some degree of plausibility, comparative justice might not be satisfied, even if noncomparative desert is perfectly satisfied. This suggestion is in the spirit of Kagan's view that desert is a very complex notion. The two issues that I have covered in this article merely constitute a tiny fraction of the whole rich, new area of philosophical exploration that Kagan's book opens up. While I suspect that Kagan's book will not have much of an effect on the philosophical discussion of the familiar philosophical questions about desert, it will, I conjecture, considerably and lastingly broaden the philosophical field of exploration of desert and do so in a manner, which the narrow focus of this review does not give its due.

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