

# When Justice Matters\*

*David Schmitz*

Reasonable people disagree about what is just. Why? This itself is an item over which reasonable people disagree. Our analyses of justice (like our analyses of knowledge, free will, meaning, etc.) all have counter-examples. Why?

In part, the problem lies in the nature of theorizing itself. A truism in philosophy of science: for any set of data, an infinite number of theories will fit the facts. So, even if we agree on particular cases, we still, in all likelihood, disagree on how to pull those judgments together to form a theory. Theorizing per se does not produce consensus. Why not? An argument is sound or not. So why isn't a theory compelling to all of us, if sound, or none of us, if not?

## I. THEORIES AS MAPS

My answer: theories are not arguments. They are maps. Like maps, theories are not reality. They are at best serviceable representations. They cannot be more than that (but they can be less; some maps are useless). No map represents the only reasonable way of seeing the terrain. We would be astounded if two cartography students independently assigned to map the same terrain came up with identical maps. It would not happen. Likewise, theorists working independently inevitably construct different theories. The terrain underdetermines choices they make about how to map it. Not noticing this, they infer from other theorists choosing differently that one of them is mistaken and that differences must be resolved.

Not so. The optimal number of maps to have in the glove compartment is not necessarily one. Suppose that I have two maps, and they disagree. I infer from one that I should take the freeway; the

\* I thank the editors, especially Debra Satz, for helpful suggestions. Additional thanks for suggestions and encouragement to Matt Bedke, Jason Brennan, Tom Christiano, Chris Freiman, Jerry Gaus, Cathleen Johnson, David Kelley, Kevin Vallier, and Elizabeth Willott. The constructive sections of this article are the distilled essence of my *Elements of Justice* (New York: Cambridge University Press, 2006).

other says the freeway is closed. If I discard one, I make disagreement vanish, but that doesn't solve the problem. Discrepancies are disconcerting, yet informative. They warn me that theories cannot be trusted blindly, any more than a map can be trusted blindly in the face of road signs warning that the bridge ahead is closed. So, if I see grains of truth in incompatible theories, must I discard one for the sake of consistency? If theories are sets of necessary and sufficient conditions, yes. If theories are maps, no.

My theory that theories are maps is a theory: a way of articulating how I see the activity of theorizing. The activity of theorizing is the reality; my "map theory" is my attempt to describe that reality. If my map theory is correct, it will have the limitations that maps tend to have.

#### A

A map of Detroit is an artifact, an invention. So is a map of justice. One momentous fact about these maps: in neither case does the terrain really look like that. A map of Detroit is stylized, abstract, and simplified. We do not even try to show current locations of every stalled car, and we do not call a map false when it omits such details. It will for some purposes have ample detail; for other purposes it will be oversimplified. (Road maps would be better in the sense of allowing more detail if we printed them on ten square meter sheets. What does that tell us? It tells us road maps are functional artifacts. We design them for a purpose. Their purpose limits how accurate they can be, how detailed they can be, and how much information they can represent.)

Existing theories tend to be like maps of the globe: we aim for comprehensive scope—a set of principles covering everything. Real-life moral questions, though, are more like questions about getting to campus from the airport. A globe is impressive, but when we want to get to campus, a globe does not help. It is not even relevant. While local maps are noncomprehensive, though, never pretending to be able to tell us how to reach all destinations, they almost always are what we want when we want a map. Why? Because they provide the detail we need for solving the kind of problems we actually have. Stepping back to look at the whole globe makes the surface look artificially smooth. Life on the ground looks different.

#### B

Even simple instructions need experience, judgment, and interpretation. (Carbury said that the turn was about a mile. Have we gone too far? Is that the gas station he told us to watch for?) Those who want

principles of justice to be “idiotproof” have the wrong idea about what a theory can do.

Yet, this is not a skeptical view. There remains an objective truth that the map can (or can fail to) represent in a helpful way. Cartographers try to represent three-dimensional truth in two dimensions. Distortion is inevitable, so part of the art of cartography is to choose, from the perspective of an envisioned user, the least of evils in terms of distortion.<sup>1</sup> Yet, there remains a three-dimensional truth. The point is not to be skeptics about the terrain but to be realists about how much we can expect from the activity of theorizing.

Attempting to capture all we know about justice in a simple verbal formula is somewhat like trying to represent three-dimensional terrain in two dimensions. When hiking in the Tucson mountains, I can see the difference between a pincushion cactus and a hedgehog cactus. I unerringly see the difference, yet I cannot unerringly state the difference. If I try to state the difference, such that people with no experience could not fail to distinguish the two cacti at first sight, it won't work. My statement will be incomplete or will have counterexamples.

### C

Typically, counterexamples show that following the letter of a theory leads to counterintuitive conclusions. Maps are not meant as necessary and sufficient conditions, though, so the question is not where a map can lead in the hands of a cleverly perverse Mr. Counterexample, but whether users honestly trying to follow directions would be led astray. We can call it a folk theorem of analytic philosophy: any theory simple enough to be useful has counterexamples. (This is a simple theory. Therefore, if correct, it has counterexamples.)

### D

We may think that we see a huge disanalogy between geography and moral theory: we evaluate a geographic map's accuracy simply by checking the terrain, whereas in moral theory, there is no terrain out there to simply check. No doubt there are disanalogies, but regarding the question at hand, here is an alternative view: think of road maps as prescriptions rather than as descriptions. We choose to believe one moral theory rather than another, with no obvious way of proving that

1. For example, a Mercator Projection makes Greenland look as big as Africa, when the latter in fact is fourteen times bigger. Such a map will be useful to a seasoned navigator, but to someone more naive, it could be altogether misleading. This does not mean Mercator Projections are wrong, exactly. They are distorted in ways that matter for some users with some purposes. By contrast, a map depicting South America as round would simply be wrong.

those who choose differently are wrong. Likewise with road maps: a road map cannot point us in a direction until we choose a destination. We do not get our destination from the map. We bring it to the map. There are reasons for choosing one destination (in this case, for wanting to give people their due) rather than another, but we do have to choose. Once we choose, if we are sufficiently precise about where we want to go, there will be something analogous to checking the terrain—a truth of the matter about whether a given route is apt for getting from here to there.

A more difficult point: some role models, societies, and prescriptions for how to live arguably are better than others, given some premise about what one wants out of life. Likewise, some destinations arguably are better than others, given some premise about the point of the trip. However, one disanalogy: we are relatively comfortable with Jane simply picking a destination, even when we think that her choice is wrong. We are not comfortable with Jane simply deciding whether she wants to give people their due, because the latter choice affects the interests and indeed the rights of other people. We want Jane to be provably mistaken if her choice is not what we would have chosen.

These are some of the considerations of which I try to be mindful in my own theorizing, and in my evaluation of alternative theories such as Brian Barry's. Section II identifies the overall aim of Barry's *Why Social Justice Matters*. Section III asks what it is about justice that matters. Later sections ask whether need, equality, and desert matter in the way that justice matters.

## II. BAD AND GETTING WORSE

Brian Barry opens *Why Social Justice Matters* by acknowledging that reviewers of his previous book, *Culture and Equality: An Egalitarian Critique of Multiculturalism*, noted that "while the book delivered its promised critique, the egalitarian premises from which my criticisms were derived—equal opportunity, equal treatment, and so on—were never systematically set out or explained. This was not an oversight" (vii).<sup>2</sup> Barry says that the previous book was the critical part of a larger project; *Why Social Justice Matters* is the positive part.

Barry adds, "I did not follow that book with this one simply to fulfil the rest of the original plan, but because I again felt that nobody else had written the kind of book that was needed. I doubt if it will do anything for my standing among professional philosophers, but it is not intended for them. To the best of my ability, I have aimed to reinforce

2. Citations in the text, except where otherwise noted, are to Brian Barry, *Why Social Justice Matters* (Cambridge: Polity, 2005).

the convictions of those who think things are bad and getting worse” (ix).

When Barry says his book is not intended for professional philosophers, he means it.<sup>3</sup> Barry quotes John Roemer: “The major problem for the left today is a lack of theory. Where do we go from here? What kind of society do we wish to fight for? If we socialist intellectuals can provide some direction that will be of inestimable value” (13). Barry adds, “Without claiming inestimable value for this book, it certainly is my intention to offer definite answers to the questions Roemer asks and provide a systematic rationale for them based on a theory of social justice” (13). Lack of systematic theorizing, though, is not the problem that Barry’s book aims to solve. Barry’s aim is as he says: to reinforce our propensity to believe people who say that things are bad and getting worse.

One way for things to be bad would be for people to not get what they need. However, Barry calls it an “archaic notion . . . that the obligations of the state extend only to meeting ‘basic needs.’” Instead, “social justice is about the treatment of inequalities of all kinds” (10).

Barry assures us, “There will be nothing startling about the principles of social justice that I put forward: they are widely accepted by politicians, media pundits, and the general public, at least nominally” (vii–viii). Late in the book, Barry is still assuring us that his conclusions follow from widely accepted premises. “The left has an enormous advantage over the right: the case for radical change of the kind advocated in this book can be shown to flow from widely accepted premises without any need to indulge in obfuscation or lies. All that has to be done is to clarify the logical implications of the principles that people maintain they espouse and relate them to the facts. In contrast, the only honest

3. Barry asks, “What if the vested interests own the media, finance the hired guns such as [Charles] Murray, and fill the airport bookshelves with superficially authoritative books?” (235). Superficially? Curious to see what Barry considers deeply authoritative, I checked the citations in the chapter from which this quotation is drawn. There are twenty-five. The first is the aforementioned mention of Murray. Fourteen are to Eric Alterman, *What Liberal Media?* (New York: Basic, 2003), Barry’s source for the tip that Murray is the hired gun of a right-wing conspiracy. One reference is to the *New York Times*. Three references are to a work of political satire called *The Little Book of New Labour Bollocks*. And six references are to the *Guardian*. Overall, nineteen of the book’s twenty chapters cite the *Guardian*. In a book with thirty-seven pages of notes, many of them statistical references, I find no references to the U.S. Census Bureau or any country’s comparably reputable statistical bureau. I find two references to sources commonly deemed authoritative: one to U.S. Department of Education statistics on the percentage of students in nonsectarian schools; another from the U.S. Department of Justice on the increasing prison population. Regarding media bias, obviously there is some. Just as obviously it is neither systematic nor one-sided. We all have a full menu: from the *National Review* to the *Guardian*, or more respectably, from the *Wall Street Journal* to the *New York Times*.

case that can be made for the agenda of the right is that it suits the people who benefit from it very nicely" (234).<sup>4</sup>

Barry says, "If we accept that the distribution of income and wealth is unjust, and that it would be more just if it were more equal, we cannot get around the answer that money has to be redistributed from the rich to the poor. That should be enough for anyone who accepts the premises advanced in this book. I should like, however, to address those who, for whatever reason, wish to maintain that poverty should be eliminated and that whatever redistribution is required to do so is just, but that there is no case for being concerned with the distribution of income and wealth beyond that" (171). This is the challenge. A few pages later, Barry rises to the challenge, finally unveiling his enormous advantage over the right. "We are still left with the question of what is wrong with a society in which poverty has been eliminated but in which there are still very large inequalities above the level of the median income. From the perspective of this book, the obvious answer is that it is simply unjust" (175). Inequality has bad consequences, but "in addition to the bad consequences of extremely unequal holdings of wealth, there is, of course, its intrinsic injustice. Not a great deal needs to be said in support of this claim" (189).

This, then, is the widely accepted principle: a case for radical change can be shown to flow from the premise that unequal holdings of wealth are simply unjust. Plus, not a great deal needs to be said in support of this claim, and anyone who says otherwise is indulging in obfuscation or lies.

A

What did Barry mean by the "bad consequences" of inequality? What he specified in the immediately preceding sentences is, "runaway incomes at the top end." With runaway income goes runaway wealth, so that, "between 1989 and 1998, the number of households worth a million dollars increased by 58.2 percent" (189). Barry could have added that there likewise are many more inflation-adjusted incomes over \$100,000. In 1967, only 3.1 percent of U.S. households made the equivalent of \$100,000 in 2002 dollars. By 2002, the number was 14.1 percent. For whites, the increase was from 3.3 to 15.0 percent. For blacks, the increase was from 0.9 to 6.6 percent.<sup>5</sup> By drawing our attention to this ongoing

4. Barry starts one chapter by saying, "I shall lay out the facts, as I have come to understand them, in the next chapter. These are the basis for well-founded fears, and those who belittle them are liars" (243).

5. U.S. Census Bureau, *Current Population Reports, P60-221, Income in the United States: 2002* (Washington, DC: U.S. Government Printing Office, 2003), table A-1.

explosion of real inflation-adjusted wealth, Barry means to be reinforcing our will to believe that things are bad and getting worse.<sup>6</sup>

So, Barry thinks, “If we think that the rich are too well off anyway, the answer is to tax them more highly” (10). Who are the rich whom Barry wants to tax more highly? Barry suggests that “a wealth tax could be introduced with a high enough threshold that only a few thousand people would be involved, then extended downwards” (218). However, although Barry says, “‘Soak the rich’ would be an appropriate response anywhere” (31), he realizes that confiscatory taxes create a problem of capital flight. Is this a problem? Barry sees this as a problem only insofar as the objective is to maximize tax revenue. In fact, “the objective is not to maximize revenue but to reduce inequality as much as possible” (192). If we were instead aiming to help the poor, we might want to maximize revenue with which to help them, or at least not to exceed revenue-maximizing tax rates. Alternatively, we can at least imagine that cutting down the rich would help the poor automatically. Barry nostalgically recalls that the Labour Party was founded on a premise “that the interests of labour and capital are necessarily opposed to one another and the Labour Party’s job is to support those of labour” (238). If labor’s interest necessarily opposes capital’s, then cutting down capital necessarily benefits labor. Society is thus a class war, necessarily.<sup>7</sup>

## B

Anticipating qualms about soaking the rich, Barry says, “To say ‘no one should pay punitive levels of taxation’ is literal nonsense. Even if the marginal rate on high incomes were 99 per cent, it would still be true that the more pre-tax income people have the more they would have after paying their tax. This is the kind of ‘punishment’ we would all enjoy being subjected to!” (8).

On corporate philanthropy, Barry says, “Since what they are giving is far less than they should be paying in tax, corporations are, morally speaking, in the position of a thief who expects your gratitude for returning a tiny fraction of his haul” (31). Barry’s next sentence is, “Even

6. Another way in which, as Barry sees it, things are getting worse is that families are fragmenting. Why? One suggestion (for which I thank Elizabeth Willott): land has become far less valuable compared to forms of “new property” such as job skills, to a point where a prospect of inheriting the farm no longer counts as a reason to stay home, so we don’t. We move to where our job skills are worth the most.

7. Class is a structural characteristic in a caste society and was so in Europe. In North America, by contrast, income quintiles are nothing but a matter of convenience for statisticians. Nothing requires today’s Americans to remain in a particular town, a particular occupation, or a particular income range, or to abstain from seeking higher education. The rigid class structure Marx observed in nineteenth-century Europe is not a feature of twenty-first-century North America.

if you could not get any of it back by your own efforts, gratitude is still not the right response, as against anger at his keeping the rest" (31). (He does not say, "get any of it." He says, "get any of it back.") Here is why, from Barry's perspective, it is nonsense to call a 99 percent tax rate punitive. If people who gain from trade are thieves, then for the government to make them return 99 percent of their gains is for the government to pay thieves a commission for transferring wealth from their victims to the government when we should instead be throwing them in jail.

### C

In any society, some will get rich, at least in relative terms. In any society, some will get rich at other people's expense. In some societies, though, there is another way to get rich: that is, by making customers better off. One of the first things people need from each other is mutual acknowledgment that justice does not condone getting rich at other people's expense. Barry may agree, since his antipathy toward the rich, he suggests in the remarks just quoted, derives from a premise that the way to get rich is at other people's expense. Although I do not aim to find common ground with Barry, it is noteworthy when we do agree. Our conceptions have this much in common: we agree that getting rich at other people's expense is paradigmatically unjust.

This may not be the essence of justice. However, if our conception of justice serves the purpose of deterring people from enriching themselves at the expense of others, then we have reason to respect justice so conceived and to be glad we have as much of it as we do.

By contrast, I would say that we have decisive reason to reject any purported principle of justice that would deter people from engaging in mutually beneficial trade. I gather Barry would disagree. As a basic principle of justice, Barry offers the socialist slogan: 'people before profit' (5). The idea: producing for use does not produce enough wealth to generate inequality, but producing for profit does. True, with a vengeance. But if producers are making a profit, they are selling what they produce. If they sell what they produce, they are putting a product in the hands of consumers who judge themselves better off paying for that product (thereby financing its continued production) than they otherwise would be. In our world, to say people before profit is, in effect, to say that people should not be allowed to produce in such a way as to have large numbers of customers who gain from trade. When trade results in mutual gain, then to say "production for use, not for profit" is to say production for personal, not mutual, gain. Likewise, "people before profit" says personal before mutual benefit, thereby repudiating gains from trade. "People before profit" is an idea whose time has passed, and whose time should never have come. Historically, and not acciden-

tally, the heyday of the slogan ‘people before profit’ was the heyday of Stalin and Mao.<sup>8</sup>

### III. JUSTICE FOR A POSITIVE-SUM SOCIETY

The concept of justice is the concept of what persons (beings with moral standing) are due. Conceptions of justice are conceptions of what persons are due. I take this to be analytic.

The basic concept does rule out some things. For example, punishment cannot be what the innocent are due. But the basic concept by itself will not often settle substantive debates. The conceptions philosophers defend are all, I would surmise, conceptions of what persons are due. Moreover, few and perhaps none endorse punishing the innocent. (Barry seems to endorse punishing the rich, but he says that they are thieves, not innocents, also calling it literal nonsense to classify what he wants to do to the rich as punishment.)

What would make Barry’s conception of justice preferable to, say, mine? What could we say that would not beg the question—would not presuppose Barry’s conception? Does what Barry calls justice matter more, in the way justice ought to matter, than what I call justice? Perhaps begging the question is unavoidable, but let us do the best we can.

#### A

So long as rival conceptions are minimally credible (so long as they do not endorse punishing the innocent), the basic concept by itself cannot settle which is best. Neither can we settle much by appealing to one of the rivals. Put it this way: if opposing players are disputing a rule, we cannot settle the dispute by consulting a player. We need a referee. We need to go beyond the kind of weight players have. We need a different kind of authority.

For example, we can evaluate a conception by asking whether it gives people a framework for living good lives together. This idea is not a conception of justice and does not presuppose one, which means we

8. To his credit, Barry acknowledges that Marx’s view that a socialist utopia would not need a robust liberal respect for individual rights was a recipe for the horrors of Stalin and Mao (22–23). What robust individual rights does Barry have in mind? Barry has a chapter called “Rights and Responsibilities,” but I found no answer there. One of that chapter’s few references to rights mentions “the reeking hypocrisy of the rhetoric about rights carrying personal responsibilities” (147), leaving me doubting that Barry’s conception of rights and mine have much in common. I am not saying that Barry does not believe in individual rights. I suspect he does, and I accept at face value his stated wish to dissociate himself from Stalin and Mao, but he does not say how he would do so in concrete terms.

can appeal to it without prejudice.<sup>9</sup> It can be a referee precisely because, on the field of justice, it is not one of the players. The idea of a framework for living well together lacks the gravity we associate with principles of justice. But since the idea is not a principle of justice, this is as it should be. It is the players who inspire us, not the referees.

We have various ways of fleshing out a framework for living well. Is the idea to meet basic needs, promote welfare in general, provide better opportunities, or foster excellence? In practice, in the long run, such ends may all be promoted by similar policies. Even when standards conflict, though, they still matter. Asking whether a policy fosters excellence is not a mistake. Asking whether a policy empowers the least advantaged is not a mistake. Seeing that various things matter without always pointing in the same direction is not a mistake. If relevant standards sometimes point in different directions, that is life. Complexity and ambiguity are not theoretical artifacts.

Granting that living well is a complex, ambiguous idea, the role justice plays in enabling us to live well may yet be relatively well-defined. Suppose that justice is a framework, not a panacea. Justice is not a campaign speech; it doesn't promise the world. What, then, does justice do for us?

### *B*

If embracing a certain principle resolves a conflict, this is not enough to show that the principle is a principle of justice. However, if practicing a principle leads us to take responsibility for the consequences of our actions, then it is apt not only for resolving conflict but also functions like a principle of justice, for it requires paying attention to what people around us are due. It requires us to think about whether we are trying to get rich at other people's expense. Henry Shue says, "If whoever makes a mess receives the benefits and does not pay the costs, not only does he have no incentive to avoid making as many messes as he likes, but he is also unfair to whoever does pay the costs."<sup>10</sup> In this way, what many philosophers have in mind when they speak of justice is related to what economists have in mind when they speak of internalizing externalities.<sup>11</sup>

9. John Rawls says that "even though justice has a certain priority, being the most important virtue of institutions, it is still true that, other things equal, one conception of justice is preferable to another when its broader consequences are more desirable" (*A Theory of Justice* [Cambridge, MA: Harvard University Press, 1971], 6).

10. Henry Shue, "Global Environment and International Inequality," *International Affairs* 75 (1999): 531–45, 532.

11. A *negative externality*, sometimes called a spillover cost, is the part of an action's cost that affects bystanders. To internalize externalities is to minimize the extent to which bystanders have to bear the costs of other people's choices.

If we follow Rawls in thinking that an ideal society is mainly a cooperative venture for mutual advantage, then justice in that society should be conducive to society's approximating that ideal. Justice cannot guarantee that people will interact in mutually advantageous ways, but it can minimize opportunities and incentives for trying to get rich at other people's expense—leaving others to pay the cost of what one does to improve one's own situation. In other words, justice matters because it reduces opportunities and incentives to externalize cost, in the process making society a more dependable framework for playing positive-sum games.

Unfortunately, Robert Axelrod thinks, we have a propensity to see life in zero-sum terms. (Barry is hardly alone when he says, "In a finite world, everything that anyone else has is something that others cannot have" [229].) Axelrod says that he puts students in game situations, instructing them "that it should not matter to them whether they score a little better or a little worse than the other player, so long as they collect as many dollars for themselves as possible. These instructions simply do not work. The students look for a standard of comparison to see if they are doing well or poorly." Moreover, "people tend to resort to the standard of comparison that they have available—and this standard is often the success of the other player relative to their own success. This standard leads to envy. And envy leads to attempts to rectify any advantage the other player has attained."<sup>12</sup>

### C

Saying that justice matters—especially saying that it helps us live better lives—may seem to presume that the good is prior to the right. When I sort out rival conceptions of justice by asking which are conducive to, and which are inimical to, our living well together, I mean simply to acknowledge that if we want to argue for our conception of the right, we must start with something other than an appeal to our conception of the right. If something is foundational, that does not mean there is no argument for it. We might argue for a foundation in epistemological terms, justifying a belief in a foundation by appealing to the goodness of what we can build on it. We can in this way argue for a foundation without ever doubting that a foundation is more foundational than what is built on it.

## IV. WHEN NEED MATTERS

Questions about what people need bear on questions about what people are due in two ways. First, on virtually any conception, there are times

12. This paragraph is a digest of Robert Axelrod, *The Evolution of Cooperation* (New York: Basic, 1984), 110–11.

when a person's needs give rise to need claims. Second, when we are trying to sort out how to conceive of justice in the first place, reflecting on what actually helps people to meet their needs can give us reason to think of one thing rather than another as a person's due.

*A*

Barry and I agree that corporate welfare is not what people need. Barry says, "A completely wasteful, and very expensive, use of tax money that is not simply a cash transfer, though it is not exactly a public service, is the subsidization of farming by the United States and the European Union. As we have seen, the surplus produce is dumped abroad at below the cost of production and has ruinous effects on farmers in poor countries. Getting rid of the whole system would therefore be a major contribution to global justice" (220). Further, "massive subsidization of agriculture by the USA and the EU could be phased out unilaterally. Currently the USA dumps corn, soybeans, and rice on the world market at half the cost of producing it. Farmers in poor countries are ruined and are driven out into the already overburdened cities" (34). Somewhat to my surprise, writers on the right and left have come to agree that U.S. agricultural subsidies are a disaster. Agricultural subsidies are so large and concentrated that they now finance one of the most powerful political lobbies ever. Whether the United States will muster the political will to abolish agricultural subsidies is unclear, but doing so would make the world (not only the country) a better place. Barry says that "contact with reality [is] a virtue not as common as one might hope for among political philosophers" (17). In this case, though, Barry is in contact and on target. I commend him for this.

*B*

Although Barry and I may disagree to some extent about the justice of need-based distribution, we probably could agree that distributing according to need is not guaranteed to meet needs. So far as I can see, there is exactly one reason to distribute according to need. Here is the reason: distributing according to need solves the problem. The point of distributing according to need is not to prove that our hearts are in the right place but to meet the need.

Therefore, people's needs stop calling for distribution according to need when distribution according to need stops being what people need. Need-based distribution must, under the circumstances, pass self-inspection. Sometimes, distributing according to need does not result in needs being met. It induces people to do what manifests need rather than what meets need.

Thus, even if meeting needs were all that mattered, we still would not want to detach the awarding of paychecks from what actually meets

needs, namely, productive work. We still would want resources substantially to be distributed according to productivity. If we care about need—if we really care—then we want social structures to encourage people to do what works. Societies that effectively meet needs, historically speaking, have always been those that empower and reward exercises of productive capacities in virtue of which people meet needs.

### C

Philosophers debate about what to call a genuine need and what to call a mere want. When we ask what makes one society better than another, though, there is no reason to work with anything less than the whole spectrum of human flourishing. We know roughly what we mean by the word ‘need’. For better or worse, this meaning is roughly as much as the word has, barring more precise articulation for use in a specific context. There is no naturally sharp line between needs and wants. But we do not need a *naturally* sharp line. If and when we need a sharp line, an artificially sharp line will do. There is no natural line between driving at a safe speed and driving too fast, either. But because we want grounds for penalizing people who drive too fast, we fabricate bright legal lines, picking thirty miles per hour as a residential speed limit. The artificial bright line tracks the inherently vague boundaries of safe speed. The same is true of need. If we wanted to define boundaries of need claims, we would fabricate an artificially precise bright line. Why? Because we need our need claims to be sharply limited, not because needs themselves are so limited.

In Abraham Maslow’s theory, there is a hierarchy of needs, with physiological needs forming the base of a pyramid and spiritual transcendence forming the apex, and with safety, belonging, esteem, and self-actualization forming some of the intermediate levels. Are any of these levels privileged? Not really. They all matter. If Michelangelo is dying of thirst, drinking water will be more urgent than any need to be sculpting. Circumstances determine which needs are most urgent. But most important? That is another matter, tied more to questions of what counts as a life lived well, and less to questions of which need is most urgent at any given moment. A society is better if citizens can meet their rudimentary survival needs. It also is better if citizens can afford to look beyond the moment to ask what really matters. So, there is a hierarchy of needs, and they all matter. The bottom of Maslow’s pyramid matters in part because the top matters.<sup>13</sup>

When wondering how well a society enables Michelangelo to meet his needs, we are free to ask the obvious: needed for what? We can acknowledge that we have different purposes and that different purposes

13. Abraham Maslow, *Motivation and Personality* (New York: Harper & Row, 1970).

imply different needs. So long as Michelangelo is not claiming a right that we meet his needs, we can admit that in a genuine, obvious sense, Michelangelo needs to sculpt.

#### D

Some societies excel at meeting needs. Distributing according to need is not the secret of their success. What is? Consider a pair of thought experiments.

*Trolley:* A trolley is rolling down the track on its way to killing five people. Switching the trolley to another track on which there is only one person would save five and kill one.

Most people say you ought to switch tracks and kill one to save five. Compare this to:

*Hospital:* Five patients are dying for lack of suitable organ donors. A UPS delivery person walks into the hospital. She is a suitable donor for all five patients. Kidnapping her and harvesting her organs would save five and kill one.

People have a different intuition here. Among students (and U.S. Congressional staffers, at whose workshops I sometimes lecture) that I informally poll, almost everyone responds to Hospital by saying you cannot kidnap and murder people, period. Not even to save lives. On a trip to Kazakhstan, I presented the cases to an audience of twenty-one professors from nine post-Soviet republics. They said the same thing. Why?

Trolley tells us that numbers sometimes matter. Hospital tells us that sometimes what matters is being able to trust others to respect us as separate persons. Hospitals cannot exist, and more generally we cannot live well together, unless we can trust each other to acknowledge that we all have lives of our own. Often we get the best result—people living well together—not by aiming at a result so much as by being trustworthy, so people can plan to deal with us in mutually gainful ways. To a cartoon utilitarian thinking about Trolley, all that matters is numbers. But in a more realistic context like Hospital, we grasp a more fundamental point. Namely, if we don't take seriously rights and separate personhood, we won't get justice; we won't even get good numbers.

When doctors embrace a prohibition against harvesting organs of healthy patients without consent, doctors give up opportunities to optimize—to hit the ceiling—but patients gain opportunities to visit doctors safely. They gain a world with a higher ceiling. Such utility stems from doctors refusing even to ask whether murdering a patient would be optimal.

This is what we need from doctors, from hospitals, and from each other. Philosophical thought experiments tend to be more like Trolley

than like Hospital, yet our real-world experience is more like Hospital.<sup>14</sup> Trolley abstracts from what matters in Hospital. When we think about Hospital, we see that, in our world, people do not need uncertainty. They do not need to be surrounded by unconstrained maximizers. They do not need perfect justice, either. They need to get on with their lives in peace. They need to know what to expect from each other. This is a fact, roughly as objective as that people need vitamin C. It does not presuppose a conception of justice. On the contrary, it is a reason to develop a conception of justice.

Whether my audience consists of local students, congressional staffers, or post-Soviet professors, when I present the Trolley case and ask them whether they would switch tracks, about 90 percent will say, "There has to be another way!" A professor's first reaction is to say, "Please, stay on topic. I'm trying to illustrate a point here! So, bear with me, and decide what you would do when there is no other way." When I said this to my class of post-Soviet professors, though, they spoke briefly among themselves, then two of them quietly said (as others nodded agreement), "Yes, we understand. We have heard this before. All our lives we were told the few must be sacrificed for the sake of many. We were told there is no other way. But what we were told was a lie. There was always another way."

They were right. The real world does not stipulate that there is no other way. Justice is about respecting the separateness of persons. We are not to sacrifice one person for the sake of another. If we find ourselves seemingly called upon to sacrifice the few for the sake of the many, justice is about finding another way.

Just institutions foster trust. When society is just, (1) people trust society to treat them as rights bearers and (2) society trusts people to use opportunities they have as rights bearers within society. The combination empowers people to play positive sum games, and thereby prosper.

14. I do not deny that many situations are like Trolley in some respect. We sometimes actively put people at risk in the hope of saving others. Suppose that soldiers are sent on a dangerous rescue mission. (They are conscripts, they did not volunteer for the mission, and they are subject to court-martial if they disobey.) Less like Trolley, but more common, are situations where we choose between rescuing a larger number or a smaller number. However, I don't mean to soften the claim made above: everyday experience is more like Hospital than like Trolley. In the real world (has there ever been an exception to this rule?) a doctor who kills one to save five is not straightforwardly choosing between maximizing utility and respecting rights but is instead ignoring that hospitals presuppose a rule of law: they work only when patients can count on doctors to understand that it is not a doctor's place to decide whether to kill the few for the sake of the many.

*E*

Justice, what people are due, is only sometimes about what people need. In a case of child neglect, we plausibly could say that justice requires parents to tend to the child's needs. By contrast, if a century ago we had wondered whether women should be allowed to vote, it would have been beside the point to wonder whether women *need* to vote, because in that context what women were due was acknowledgment—not of their needs but of their equality as citizens. Talking as if justice is about meeting women's needs would have been to treat women as children. One way to account for this is to say that different contexts call for different principles.

A context is a question that motivates us to theorize. "What are my children due?" is one context. "What are my employees due?" is another. As we come to a map with a destination, so we come to a theory with a question. The topic of our pretheoretical question (children, employees, animals, etc.), not the theory, specifies our theoretical context.

Suppose that we ask what children are due. A person of wisdom sees this as a crudely drawn context. When she says, "Children are due whatever they need," she is offering a general rule covering what she imagines to be a standard case. She realizes that there will be counterexamples whose details go beyond what she meant to cover with her crude generalization.

So, when Jane says children are due what they need, Joe cleverly replies, "What if my child is a grown-up?" Jane hears Joe's counterexample not as refuting her answer, but as refining the original question. A true refutation shows that Jane's generalization is not true even in general.

This is what analytic philosophy is (when we get past "philosophy to win"): a process of formulating generalizations for partially specified contexts that admit further refinement. (I am generalizing, of course.) Jane begins with something crude, then Joe's question refines the original. She answers in a fittingly refined way: When I said that parents should meet their children's needs—such is a child's due—I was envisioning a six-year-old. You are asking about a context to which that answer does not apply. Why does a young child's due differ from an adult's? There comes a time when your children need not that you feed and clothe them but that you start treating them like adults. To treat them like adults is to treat them as having adult responsibilities. It is part of the art of parenting: cutting children loose as they become able to handle the responsibility. There comes a time when distributing according to need is no longer what your children need.

## F

Steven Byers (whom Barry describes as a New Labour ideologue and fanatical propagandist) advocates that the sick and elderly be able to choose among competing suppliers of meals and other in-home aid. Barry's only response: "When his loss of contact with reality becomes too obvious to ignore, I hope that he has a choice of men in white coats to carry him away" (159). Barry says, "The object of public policy should much of the time be to reduce the significance of choice rather than enhance it" (158). Barry opposes giving employees more than one option regarding health insurance, in part because employees are not competent to make such decisions (158). Barry writes as if he were unaware that people compare notes. They switch to a different carrier when dissatisfied, provided they have the options Barry would deny them. Barry is not totally off-base, of course. Choosing can be hard. But Barry ignores our capacity, and our need, to learn from experience (our own and others'). Making choices goes with adulthood.<sup>15</sup>

Responsibility likewise goes with adulthood. Wal-Mart sometimes asks job applicants, "Is safety the responsibility of management?" Barry is appalled, saying that Wal-Mart asks such questions not to learn about applicants but to send a message (157). "Wal-Mart (and the same goes for other firms that administer such tests) is not content with your body; it wants your soul as well" (157). I have no interest in defending Wal-Mart's hiring practices, but Barry might have noted that by sending a message, Wal-Mart *is* taking responsibility for workplace safety. A workplace is safe only if workers are safety conscious, so employers must first hire employees who pay attention. Barry says applicants know what employers want to hear. True, but most applicants don't need to lie (and thus are not selling their souls) when they give the answer. They take workplace safety seriously, knowing that if they don't, people will get hurt.

## V. WHEN INEQUALITY MATTERS

Barry does not strive for a spurious parsimony. Barry sees various dimensions of equality and denies that we can single one out as the one that matters. He says that the hunt for a common currency of egalitarian concern was, unsurprisingly, unsuccessful. There is no such thing (22).

15. Barry seems more sanguine about letting people choose narcotics. The "legalization of marijuana in the United States and taking a public health rather than a punitive approach to other drugs, would have the prospect of halving the prison population all by itself; the United States has more people in jail on drug offenses than all those in jail in western Europe on all offenses put together" (220). The issue is too complex for me to take any position with confidence, but surely Barry is right to insist we can do better than we are doing now in coping with the drug traffic.

A reductionist, monistic analysis sounds elegant, but when Barry says that no such analysis is in the cards, he is telling it like it is. Barry is up front about this, and such honesty is not a mistake. Again, I commend him.

Notice what follows. Responding to a letter to the editor, published in the *Wall Street Journal*, saying that Americans in the top half of the income distribution pay 96.1 percent of federal income taxes, Barry says, "What the writer takes to be his trump card—that those in the bottom half of the income distribution pay only 3.9 per cent of federal income tax, so they can hardly be expected to benefit much from tax reductions—is, as far as social justice is concerned, insignificant. It is the inequality of incomes that cries out as the key point" (13). By contrast, Tony Blair's Commission on Social Justice concluded that no one should have to pay more than 50 percent of their income in taxes, but Barry replies, "If we take seriously the idea that social justice is about (among other things) what incomes people enjoy after taxes and transfers, the Commission's way of looking at it is simply frivolous" (9). I wonder what Barry has in mind by "among other things"? He says that justice concerns inequalities of all kinds, implying that justice concerns issues other than after-tax income. But if, as a matter of justice, the commissioners should be interested in inequalities of all kinds, then the interest they take in other kinds is not frivolous.

Whenever a politician proposes a tax cut, editorials appear saying 90 percent of the cut's benefit would go to the rich. Pundits write as if this were evidence of political corruption, but in fact it is simple arithmetic: when the rich pay almost all of a given tax, then inexorably they get almost all of the benefit of no longer having to pay it. Suppose that Jane Poor earns \$10,000 and pays a flat 10 percent, while Joe Rich earns \$100,000 and pays a flat 38 percent. Together they pay \$39,000, 95% of which is paid by Joe Rich. If we cut all rates by 1%, Jane saves \$100, while Joe saves \$1,000, which is to say, Joe gets about 90 percent of the benefit. Pundits belabor this point, never mentioning that Joe still pays \$37,000, compared to Jane's \$900. Is social justice about the treatment of this inequality? Which one? The forty-fold difference in what Jane and Joe pay, or the seven-fold difference in what they have left after paying? So long as there are dimensions of equality, inequality is not *simply* unjust, because equality along one dimension entails inequality along others.

A

Barry introduces, "as a quasi-technical term, the concept of a starting gate" (40), "if we take the horse race as a simple model of competition among people" (41). Society, though, is not a race. In a race, people need to start on an equal footing. Why? Because a race's purpose is to

measure relative performance. By contrast, a society's purpose is not to measure relative performance. Society's purpose is to enable people to live well, period, not to enable people to live well relative to the Joneses.

Barry discusses positional goods, where "what matters is not how much you have but how much you have compared to other people" (176). Capitalism's critics once scoffed at the cliché suburban goal of "keeping up with the Joneses," but Barry laments that "the cost of 'keeping up with the Joneses' thus rises in line with the standard of material prosperity" (177). Barry says, "Social mobility has thus become a zero-sum game; working-class children can rise only if an equal number of middle-class children fall" (61). Barry says "has become" as if this were a recent empirical development. I agree that what Barry calls "social mobility" is, as Barry says, zero-sum, but it is zero-sum by definition. It is not a recent development that income shares necessarily add up to 100 percent; it hasn't "become" true that one person's percentage rises only if another's percentage falls. If we want to be aware of ways in which things are getting better, we must acknowledge overall changes: in the real purchasing power of the twentieth income percentile, say, or in life expectancy.<sup>16</sup>

Barry says, "If poverty is to be eliminated, the money will have to come from those who have plenty of it" (169). This is no slip. It is a pivotal premise of Barry's philosophy. Barry says, "Universal pensions are very rare in poor countries, and, again, the money for them is going to have to come from the rich ones, simply because there is nowhere else for it to come from" (263). Suffice it to say, so long as people in poor countries can work, it won't be true that rich countries are the only place for money to come from. If something in poor countries (our agricultural subsidies, say) is stopping people from creating wealth, then (insofar as we make this our problem) our objective should be to find out what the obstacle is and get it out of their way.

Oddly, education is, for Barry, one of the key respects in which society is zero-sum. More educated people are more competitive on the job market, thus making the market more of a rat race. Barry says,

16. Between 1900 and 2001, life expectancy for whites rose 63 percent, from 47.6 to 77.7 years. Life expectancy for blacks rose 119 percent, from 33.0 to 72.2 years. National Center for Health Statistics at the Centers for Disease Control and Prevention (CDC). "Death is on the decline for babies, adults, and older people alike, with AIDS, homicide, cancer, and heart disease all claiming fewer lives." National Center for Health Statistics at the CDC, as reported by the Associated Press, September 16, 2002. (For up-to-date figures, try <http://www.cdc.gov/nchs/fastats/>.) Undeniably, the persisting difference between 77.7 and 72.2 years matters. Just as undeniably, it matters relatively little next to the difference between 33.0 and 72.2. (For a discussion of the more complex question of what has been happening at the twentieth income percentile, see the chapter on "Equality and Opportunity," in Schmidtz, *Elements of Justice*.)

“There is no mechanism for producing better jobs in response to better qualifications. A high level of qualifications merely ratchets up the qualifications that employers demand for any given job” (169). In particular, “Increasing the proportion of those who go to university does not do anything to ameliorate the struggle, since it simply means that the level of qualifications to get the *fixed number* of middle-class jobs—and especially the most desirable ones—will increase to keep pace” (62; emphasis added). “Having more education pays off *for the individual* because what matters is not how much you have but how much you have in relation to others” (171). (That is, becoming more educated will not help labor *at the expense of capital*. Education helps applicants to beat other applicants, but not to beat their employers.) If Barry is right, employers *think* that higher education means higher productivity, but in truth, education pays off only in the application process. The point of education is to impress prospective employers who by hypothesis ought to know better than to be impressed. What takes my breath away is that this is coming from an educator.

### B

To oppress is to put and keep people in a position such that they would be better off without you. It is to treat a class of people as if prospering at their expense were OK. Some forms of egalitarianism repudiate oppression. Others enshrine it. Equality as a repudiation of oppression is equality as a repudiation of society as a zero-sum game, a repudiation of winning at other people’s expense. This is the kind of equality that matters in the way that some conceptions of justice (the ones we have non-question-begging reason to embrace) matter.

Elizabeth Anderson says, “Those on the left have no less reason than conservatives and libertarians to be disturbed by recent trends in academic egalitarian thought.”<sup>17</sup> To Anderson, “The proper negative aim of egalitarian justice is not to eliminate the impact of brute luck from human affairs, but to end oppression.”<sup>18</sup> Anderson suggests that when redistribution’s purpose is to make up for bad luck, including the misfortune of being less capable than others, the result in practice is disrespect. “People lay claim to the resources of egalitarian redistribution in virtue of their inferiority to others, not in virtue of their equality to others.”<sup>19</sup>

Political equality has no such consequence. In the nineteenth century, when women began to present themselves as having a right to vote,

17. Elizabeth S. Anderson, “What Is the Point of Equality?” *Ethics* 109 (1999): 287–337, 288.

18. *Ibid.*, 288.

19. *Ibid.*, 306.

they were presenting themselves not as needy inferiors but as autonomous equals, with a right not to equal shares but to equal treatment. As Gerald Gaus aptly describes the liberal egalitarian tradition, “The fundamental human equality is the absence of any natural ranking of individuals into those who command and those who obey.”<sup>20</sup>

Egalitarianism has a history of being, first and foremost, a concern about status, not stuff. Iris Marion Young calls it a mistake to try to reduce justice to a more specific idea of distributive justice. Anticipating Anderson, Young says, “Instead of focusing on distribution, a conception of justice should begin with the concepts of domination and oppression.”<sup>21</sup> Young sees two problems with the “distributive paradigm.” First, it leads us to focus on allocating material goods. Second, while the paradigm can be “metaphorically extended to nonmaterial social goods” such as power, opportunity, and self-respect, the paradigm represents such goods as though they were static quantities to be allocated rather than evolving properties of ongoing relationships.<sup>22</sup>

### C

Suppose that we have a certain moral worth, and there is nothing we can do to make ourselves more worthy, or less. In this case, we might turn out to be of equal worth. Now suppose instead that, along some dimensions, our moral worth can be affected by our choices. In that case, realistically, there never will be an instant when we are all of equal worth along those dimensions.

Egalitarianism cannot survive inspection as a call for enforcing a static pattern (e.g., of income shares), but that is not what liberal egalitarianism is. The point of the liberal ideal of political equality is not to stop us from becoming more worthy along dimensions where our worth can be affected by our choices but to facilitate our becoming more worthy.

### D

Traditional liberals wanted people—all people—to be as free as possible to pursue their dreams. Accordingly, the liberal tradition of equal opportunity put the emphasis on improving opportunities, not on equalizing them. The ideal of “equal pay for equal work,” within the tradition from which that ideal emerged, had more in common with meritocracy,

20. Gerald F. Gaus, *Political Concepts and Political Theories* (Boulder, CO: Westview, 2000), 143.

21. Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990), 3.

22. *Ibid.*, 15–16.

and with the equal respect embodied by the concept of meritocracy, than with equal shares per se.

Liberal political equality is not premised on the absurd hope that, under ideal conditions, we all turn out to be equally worthy. It presupposes only a traditionally liberal optimism regarding what kind of society results from giving people (all people, so far as we can) a chance to choose worthy ways of life. We do not see people's different contributions as equally valuable, but that was never the point of equal opportunity and never could be. Why not? Because we do not see even our own contributions as equally worthy, let alone everyone's. We're not indifferent to whether we achieve more rather than less. Some of our efforts have excellent results, some do not, and we care about the difference. In everyday life, genuine respect to some extent tracks how we distinguish ourselves as we develop our unique potentials in unique ways.

## VI. HOW MERIT MATTERS

Barry says the idea that the United States is a meritocracy "is wildly contrary to the facts" (78). Is Barry right? It depends. Is a meritocracy a society where having talent and knowing what to do with it tends to be rewarding? Or a society that makes some attempt to level the playing field, while making no attempt to level the players? If so, then, the United States is a meritocracy after all. However, what Barry calls meritocracy is something else.

Barry says, "Let me start, then, by listing a number of empirical propositions that the theory of meritocracy has to maintain. The first is that IQ is genetically determined to a large degree" (117). This is the *first* thing "the" theory of meritocracy has to maintain? Defenders of merit-based distribution do not maintain this, so what is the sense of saying that they must?

As Barry describes it, England until recently segregated children, at the age of eleven, into different schools based on IQ test scores (115). Such educational segregation, if it be meritocracy, is nightmarishly bureaucratic meritocracy, conceived as a socialist would conceive meritocracy, replete with central planners. Barry finds this system appalling, and rightly so. What makes it appalling is its quintessentially big-government insistence on regimenting people's lives.

If this were meritocracy, Barry would be right to deny that the United States is a meritocracy. The denial is a cliché, though, and its point is to disparage the United States, so this particular cliché should not be surfacing in the midst of Barry's argument that meritocracy is bad.

## A

Right-wing ideologues believe that differences in ability are innate, Barry says, but “the more we learn about the power of the early environment, the more plausible it becomes that, absent some definite neurological deficit, all children have the same cognitive potential” (51). Three problems.

First, it would be curious if genes could affect intelligence in large ways (as in Down syndrome), but not in small ways. (Barry does not say what he learned about the power of early environment that left him thinking that all children have the same cognitive potential.)

Second, when Barry supposes that our cognitive differences are entirely a function of nurture, he in effect assumes that differences are a product of other people’s choices (parents, politicians) but never our own. We are big parts of the environment of other people (our children, say), so our choices determine how they turn out but have no bearing on how we ourselves turn out. Our parents giving us something to read can affect our intelligence, but somehow our giving ourselves something to read cannot.

Finally, meritocrats need not (and do not) maintain that IQ is genetically determined. Meritocrats per se could not care less. If we were born genetically identical, would that be any reason to stop preferring to do business with people who are good at what they do? No. Principles of desert would still track manifest phenotypic characteristics, as they do now. To celebrate great performance is to celebrate performance. Whether great performance implies great genes is moot.

## B

Barry thinks that meritocracy presumes persons have free will, and he hints that the presumption is untrue. He describes the free will thesis as holding “that ‘we’ (situated in some sort of non-locatable black box that is somehow capable of controlling our brains) can decide what to do in a way that is somehow outside the realm of causation to which the rest of the universe is subject” (138). I am left wondering why free will should need to comport with nineteenth-century physics. Twentieth-century physics does not pronounce on whether psychological phenomena are deterministic but does say that if they were not deterministic, that would not make them special. More in tune with twentieth-century science, Barry correctly notes that free will is not superabundant (138). Those who acknowledge that we have free will should at the same time acknowledge that we have only so much. Free will is limited and can be compromised. If free will were an on/off switch that happens to be on for humans, then wanting to have free will would be like wanting to be composed of atoms. A freedom worth wanting will be a kind that

can be at stake: that can be gained or lost. What is fascinating about human free will is that the unity of consciousness and the free will that goes with it are achievements, not givens, and are achieved in degrees.

### C

Twentieth-century egalitarianisms came to define themselves in opposition to meritocracy. By contrast, nineteenth-century egalitarianism and meritocracy went hand in hand, defining themselves in opposition not to each other but to unearned and oppressive aristocratic privilege.

Barry rightly rejects what he calls meritocracy, but there are other ways of conceiving merit claims, and viable theories of justice make room for them. When we consider how much sheer good luck we needed to get where we are today, we naturally wonder, "Do I deserve this?" What do we mean? If we translate the question as, "What did I do, at the moment of the Big Bang, to deserve this?" the answer is, "Nothing. So what?" If we translate the question as, "What did I do, before being born, to deserve this?" the answer is, "Nothing. So what?" However, if we translate the question as "What did I do to deserve this?" then the question will have a real answer. Also eminently sensible would be to ask, "What *can* I do to deserve this?" This question too will have an answer. (I may not be able to do anything in a given case, but that is not preordained.) A theory that lets us ask this question is letting the concept of desert be what it needs to be in human affairs: a message of hope that is also life's greatest moral challenge. Such a theory acknowledges the existence of persons: beings who make choices and who are accountable for their choices.

There is something necessarily and laudably ahistorical about simply respecting what people bring to the table. We respect their work, period. We admire their character, period. We do not argue (or worse, stipulate as dogma) that people are products of nature/nurture and thus ineligible for moral credit. Sometimes, we simply give people credit for what they achieve and for what they are. And sometimes, simply giving people credit is the essence of treating them as persons rather than as mere confluences of historical forces.

### D

Principles of entitlement are not principles of desert, but they too are conceptions of what people are due. Principles of desert acknowledge our status as *active* agents. By contrast, principles of entitlement acknowledge our status as *separate* agents.

Some conceptions of entitlement help people to internalize externalities and thereby get in position to interact in mutually gainful ways, with reasonable assurance that the games into which they enter will be positive sum. For example, we might ask, did Wilt Chamberlain, as a

separate agent, do justice to the potential given to him by luck of the draw in the natural lottery? One possible answer is that whether he did justice to his potential is no one else's business. Wilt was indebted to no one for his natural assets. He did not borrow his talent from a common pool. No account was out of balance merely in virtue of Wilt having characteristics that made him Wilt. Still, even if it is no one else's business whether Wilt did justice to his potential, the fact remains that one way or another, people do, or fail to do, justice to their potential.

Part of why we think it was Wilt rather than you or me who deserved credit for Wilt's performance is that, as David Miller puts it, "the performance is entirely his."<sup>23</sup> The issue is not whether a performance was Wilt's rather than the Big Bang's; the issue is whether a performance was Wilt's rather than some other person's. Whether to credit Wilt for his performance was never a question of whether Wilt caused himself to have his character and talent.

We also might say, following Miller, that if we acknowledge Wilt's effort to build character, the credit is due to Wilt rather than to, say, me. Why? Not because Wilt deserved the effort (whatever that would mean) but because the effort was Wilt's rather than mine. When we ask whether the effort was truly Wilt's, the answer sometimes is "yes." We also credit Wilt's coaches, teachers, or parents for contributing to Wilt's performance in tangible ways.

Note that giving credit is not a zero-sum game. We think less of Wilt not when Wilt thanks his parents but when he fails to give credit where credit is due. The credit due to Wilt's parents takes away from credit due to Wilt only if the implication is that the performance we thought was Wilt's was not really his after all. (Imagine Wilt, in an acceptance speech for an academic award, thanking his parents and coaches for writing all those term papers.)

### *E*

Barry says meritocracy cannot justify inequality because opportunities to achieve "merit" are so unequal (110). But some desert bases concern performance per se, not overcoming one's share of adversity or anything like that. We pay more to hear virtuoso pianists than to hear merely competent ones. Did they have the same cognitive potential? Were they nurtured equally well? We don't need to know.

Admittedly, questions of desert come up in comparative situations, but desert is not essentially a comparative notion. My models of desert make room not for honoring those with advantages as compared to those without, but for honoring people who do what they can to be

23. David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), 144.

deserving.<sup>24</sup> These elements of a larger theory of justice ask whether Jane supplied the requisite desert makers, not whether she did more than someone else did.

There are cases like this:

- a) Bill has X while you have Y,
- b) Bill did something to deserve X while you did something to deserve Y,
- c) X is more than Y, and yet (so far as desert is concerned),
- d) There is nothing wrong with X being more than Y, despite the fact that Bill does not deserve “more than you” *under that description*.

In other words, the question about Bill is not whether Bill did something to deserve more than you, but whether Bill did something to deserve what he has. Perhaps there was never a time when an impartial judge, weighing your performance against Bill's, concluded or had any reason to conclude that Bill's prize should be larger. All that happened is that Bill did justice to his opportunity and you did justice to yours.

A central distributor, intending to distribute income according to desert, would need to judge relative merit. What if there is no central distributor? For sure, it would be hard for a central planner to justify deciding that Bill is worth billions or that X should be 10,000 times Y. But no one did decide that, so no one needs to justify thus deciding. Whether I deserve my salary has nothing to do with how my salary compares to Bill's and everything to do with whether I show up and do what I get paid to do. So far as my salary goes, if what I do to deserve my salary is not the issue, then desert is not the issue.

## VII. JUSTICE AS LETTING THE WORLD GET BETTER

We have differing maps, and the differences affect how we think of justice. Whatever our differences, though, the fact that we see things differently means that our living well together must involve learning to respect the fact that we see things differently.

On some conceptions of justice, it makes sense to want to be just and to want our neighbors to be just. Wanting to be just (wanting our neighbors and children to be just) would make less sense if we conceived of justice as terrorists do. Terrorists have convictions about justice deeper than Barry's or mine, yet their conception prevents people who believe in it from living decent lives. Terrorists see themselves as licensed to pursue justice at other people's expense.

24. David Schmidtz, “How to Deserve,” *Political Theory* 30 (2002): 774–99. For the most recent version of this material, see the chapter on “Deserving a Chance,” in Schmidtz, *Elements of Justice*.

Barry says, “Those who cannot forget the past are doomed to repeat it” (254). There is wisdom in Barry’s quip. Innocent Japanese Americans were imprisoned during World War II. When President Reagan signed the Civil Liberties Act of 1988, appropriating \$1.25 billion (augmented by President Bush) for reparations, then in 1999 when President Clinton formally apologized on behalf of the nation and broke ground on a national memorial, it was too late and the crime too huge ever to make victims whole, but victims or their descendants still had to decide whether to accept the gesture.<sup>25</sup> All parties, to their credit, shifted focus away from making someone pay for the past and toward healing an ongoing relationship.<sup>26</sup>

Japanese Americans had a powerful incentive to treat justice as a doctrine of original sin, a whip they might use to punish descendants of the damned until the end of time. Instead, they chose to believe in the possibility of innocence and redemption. They chose to acknowledge that the best they could do for themselves and for their children was to forgo the opportunity to seek gain (or even full reparation) at the expense of the innocent (i.e., arguably innocent—Japanese Americans had to choose to see it that way). Japanese Americans were able to find their way to a place of closure, and hopefully to a better life for their children and for their children’s fellow citizens, even in a world whose history is everywhere unjust. They could not have found their way to this place had they been following the kind of map that represents the terrain of justice as necessarily a war between haves and have-nots. In a nutshell, conceptions of justice matter, for better or worse, when they affect our willingness or our ability to get on with our lives.

25. As Jeremy Waldron observes, the point of the money “was to mark—with something that counts in the United States—a clear public recognition that this injustice did happen, that it was the American people and their government that inflicted it, and that these people were among its victims” (“Superseding Historic Injustice,” *Ethics* 103 [1992]: 4–28, 7).

26. See Linda Radzik, “Making Amends,” *American Philosophical Quarterly* 41, no. 2 (2004): 21–42, for further discussion.