


## INTRODUCTION

# Symposium: ethics of economic ordeals

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Economic ordeals are allocation mechanisms that impose non-financial ‘deadweight costs to qualify for a transfer’ (Nichols and Zeckhauser 1982: 372). Examples include long waiting times, travel and form-filling as conditions for certain healthcare services. Appropriately designed, ordeals can enhance target efficiency so that the goods being allocated better reach the intended recipients. The logic behind this is simple: ‘Say one welfare eligible would receive 100 utiles from a particular transfer, yet another would receive only 10. Then an ordeal that imposes an 11 utile loss in order to qualify for the transfer will be an effective sorting device’ (Nichols and Zeckhauser 1982: 376). In other words, recipients who would receive smaller benefits are expected to be dissuaded by the ordeal and refrain from requesting the good, whereas recipients who would receive larger benefits from the transfer are expected to seek out the good even if there is a deadweight cost. Moreover, unlike financial participation, which can similarly dissuade users with relatively little to gain from the good in question, ordeals are in no direct way financially regressive: the poor are not necessarily more dissuaded by losing time or by having to fill in a form than the rich are.

Take an example from health care. Imagine that a distributor desires to allocate a limited amount of specialist care to a diverse population that already has universal access to family physicians. Assume that the correct basis for entitlements to specialist care is candidate recipients’ degrees of need for it and that the population has different needs, unknown to the distributor. Inasmuch as candidate recipients’ respective preferences for specialist care track their need for it, publicly making individuals *wait* before gaining access to a specialist, a wait avoidable by seeing a family physician instead, could dissuade individuals with lesser needs from requesting specialist care. Introducing this ordeal (viz., imposing the deadweight cost of *waiting*) might target resources to the most suitable candidates more accurately than speculating as to whose needs are greatest, e.g. based on candidates’ potentially exaggerated reports. And the ordeal

is less regressive than cost-sharing if losing a dollar affects a poor person more severely than it does a rich person, while waiting a day may affect them similarly. Non-regressiveness further improves ordeals' target efficiency compared with cost-sharing, because some people with little to gain from expensive specialist care will be very rich and some people with a lot to gain from it, very poor (cf. Zeckhauser 2020).

Randomized controlled trials in development economics show that ordeals can improve target efficiency by allocating goods to recipients with the strongest tendency to use the goods in the ways deemed most urgent by the planners, while avoiding co-pays' known tendency to dissuade the poor (cf. Alatas *et al.* 2012; Dupas *et al.* 2016; Olken 2016). But ordeals have features that make them ethically controversial. Consider two examples. Jeremy Bentham is often said to have proposed that industry houses feed poor residents but, to stave off the idle poor, intentionally do so in denigrating fashions. The intentional use of denigration as an ordeal is then often said to contravene human dignity, wrongfully. While this turns out to be a misunderstanding of Bentham,<sup>1</sup> perhaps the assumption that it would have been wrongful suggests that ordeals can be wrongful as such – in this case, perhaps because the deadweight cost of offence against human dignity should remain off limits. Second, the classical essay that introduced ordeals as a general category to a broader audience used the paradigm example of make-work, roughly, conditioning unemployment support, for instance, on candidate recipients' public work, rarely in reflection of their personal hopes or talents (Nichols and Zeckhauser 1982: 376–377).<sup>2</sup> But many activists and scholars oppose make-work, arguing for instance that to condition benefits to which recipients are in some cases perfectly entitled on specific performance outside their areas of expertise amounts to denigration or humiliation (Margalit 1996: 59).

We need to ask, then, when ordeals are ethical. Are the deadweight costs to individuals always justified by ordeals' social value? Might it be that specific deadweight costs like denigration, or physical pain, are normally wrongful and inappropriate regardless of what social value they generate? Might other costs be inappropriate as preconditions for certain transfers (e.g. for transfers that help satisfying basic needs, or for ones to which some candidate recipients are entitled)? And what about the *full* distributional effects of ordeals – which go beyond target efficiency? This symposium explores the ethics of using economic ordeals to allocate resources.

Exploring ordeals in this role shifts the focus of distributive theory to a largely neglected area: the ethics of employing different means of distribution. In recent decades, distributive theory has focused on identifying either the appropriate currency or the appropriate pattern of distribution (Cohen 1989). For example, should we care about the distribution of welfare, resources, capabilities, prospects, democratic power, or a yet different 'currency'? Should we promote equality, sufficiency, maximum, priority to the worse off, or still other 'patterns' of what is being distributed? Little attention has gone into what *method of*

<sup>1</sup>Philip Schofield, email to the authors, 29 April 2019.

<sup>2</sup>The general idea had been discussed earlier, but with different terminology. See Nichols *et al.* (1971).

*delivery* is ethically best. This symposium points to the importance of this question, and offers provisional answers.

We may characterize the delivery method of ordeals as one of indirect rationing. Direct rationing means that the distributor decides who will receive the good. For example, a regulation decrees that whoever meets certain criteria will receive unemployment benefits; a committee or a lottery on its behalf determine that the recipient of a newly available organ will be transplant candidate X. In indirect rationing, by contrast, the direct distributive decision falls to candidate recipients. For example, anyone can attend an Elton John concert, but tickets cost money so people sort themselves out. With an ordeal, whereas a family physician can be seen at once, seeing a specialist requires booking and returning another day.

Let us ask, then: When are ordeals wrong? And when are they *pro tanto* wrong? To start off that discussion, consider some ideas for what might problematize use of (particular) ordeals.

Most obviously, the deadweight costs that ordeals require of candidate recipients of goods are sub-optimal; it would have been ideal not to have to impose them. Furthermore, these costs can be substantial and undeserved. A candidate recipient who truly needs specialist care and knows it but who must undergo the ordeal of waiting to see one need not have done anything to deserve the hassle, discomfort or risk. It is true that financial participation (e.g. an insurance co-pay) likewise disadvantages innocent candidate recipients and that some types thereof are often accepted. Still, there may be something more insidious about ordeals or certain forms thereof. To impose physical pain, for example, as the non-financial cost involved in an ordeal, seems clearly wrong. In that respect, when health systems require long waits to seeing a specialist as an ordeal, knowingly and sometimes intentionally exploiting candidate recipients' physical pain, this may be cruel and unethical.

In some settings, imposing an ordeal on a candidate recipient tends simply to prompt that person's relatives to take on part of that burden. If specialists' clinics are located far from the centre of town in the hope of dissuading unnecessary reliance on specialists, the result may be that elderly patients' wives and daughters would face family pressure to give them rides to these remote clinics. An ordeal may also impose time-costs so steep that children lose access to parents who otherwise would have catered to their needs; or spouses might be forced to put in extra domestic labour. These negative externalities can undermine ordeals' justification.

Ordeals can also be wrong by undermining the system (and only indirectly and diffusely, individuals). For instance, clinicians often report feeling demoralized about 'pre-authorization', namely, red tape that insurers mandate from clinicians for covering certain medical interventions for a patient. Such ordeals tempt or force clinicians to do less than what is best for their patients (Grumet 1989; Erickson *et al.* 2017; Eyal *et al.* 2018). Since demoralization increases burnout and attrition (or, alternatively, clinicians' jadedness), these ordeals are in one respect detrimental to the medical system and anyone depending on it. Furthermore, some may argue that the source of this burnout and jadedness is

already a transgression: to tempt or sometimes to compel doctors to betray their patients' best interests may be wrongful in itself.

Ordeals may be thought to exacerbate social disparities. Specific ordeals are harder for some subgroups, including disadvantaged populations. That can be considered unfair, both in itself and because it worsens these subgroups' true access to the goods being allocated. For example, an ordeal that involves completing long and tedious application forms works systematically against people who are not native speakers, worsening social disparities. (An interesting question is whether ordeals that work systematically against a privileged group are also unfair. Affluent and busy CEOs have little spare time, so time-cost ordeals may work against them, but is that unfair?)

Finally, compared with typical financial costs, many deadweight costs may seem less quantifiable and less compensable. Distributors can predict quite reliably financial costs' disparate average impacts on the rich and the poor, and some distributors know whether candidate recipients have high or low formal incomes. It is much harder for distributors to quantify the burden of time-costs, for example. And distributors rarely have any relevant information regarding how each candidate recipient would have spent the time wasted queuing. In that respect, in an ordeal-based system, there will be less transparency in advance about the magnitude of the burdens and, often, consequently, over- or under-burdening.

Another question is whether for any ordeal (or for many), there is a possible intervention that would have similarly dissuaded relatively idle applications for the benefit in question, while imposing lower deadweight costs. In particular, a sheer *credible threat* of a cost, without an objective cost, could usually suffice to solicit the information on utilities that ordeals do. Invoking a famous scene in *Charlie and the Chocolate Factory*, call this the Willy Wonka test: The distributor tells e.g. a patient who wants to see a specialist, 'You must wait six months (but you can see a family physician right away)'. The patient carefully considers the choice and says, 'OK, I'll wait'. Then the distributor says, 'Well then, seeing how highly you value specialist care, you can have it right away'. Recall that the main function of the cost in ordeals is simply revealing candidates recipients' 'willingness to suffer' for the transfer (Eyal *et al.* 2018: 15). A distributor who gleans that willingness from this 'mock ordeal' can already ration efficiently and fairly. The actual imposition of the inconvenience becomes unnecessary.<sup>3</sup> The obvious flaw with this approach is that the distributor's ruse typically depends on the continuous opacity of her real plan, and appropriate publicity would make that impossible. But perhaps some costs are systematically more loathsome or scarier to us in advance than once actualized, and would

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<sup>3</sup>We thank Holly Fernandez Lynch and Christopher Robertson for this point. Something like these near-ordeals occurs twice in the Old Testament. First, God judges that Abraham is a faithful believer by (seemingly) only pretending that Abraham must sacrifice his beloved son. Abraham's sheer willingness to go through that ordeal is proof enough, cancelling the need for the deadweight cost itself – Isaac is spared (*Genesis* 22:1–18). King Solomon judges which of two women will receive a baby whom they both claim to be their own. He pretends to plan to cut and divide it between them, which prompts the baby's true mother to forego her claim. This reveals who loves the baby more and the King allots the baby to her, its true mother (*Kings* 3:16–28).

survive publicity? ‘Nudges’ such as default changes and minor embarrassments may dissuade utilization in precisely that way. People tend to loathe or dread certain things a lot, even if it were publicly known that the impact of their materialization on how well their lives will have gone would be small (Eyal 2014).

The contributions to this symposium, which consists of a selection of the papers presented at the conference *Ordeals in Health Care: Ethics and Efficiency* held at Harvard University in May 2018,<sup>4</sup> address several of these issues in depth. In his opening paper ‘Strategic sorting: the role of ordeals in health care’, Richard Zeckhauser (2020) revisits the idea of distributing goods by introducing deadweight costs and further develops its conceptual underpinnings. He first presents a conceptual analysis of ordeals and illustrates that ordeals are more common than people might think (especially in current health-care systems, often unintentionally). Zeckhauser suggests further that ordeals are appealing tools for increasing efficiency in otherwise quite inefficient systems. However, he adds, greater attention ought to be dedicated to optimizing ordeals. Specifically, deadweight costs come in different sizes, and we ought to impose the smallest costs possible that generate the desired outcome.

In his article ‘Ordeals, inequalities, moral hazard, and non-monetary incentives in health care’, Daniel Hausman (2020) defends the view that ordeals in the health-care sector may help mitigate inequality. He first outlines the difficulties that surround distribution of health care and shows why market solutions in this area are both inefficient and inequitable. He connects the inadequacies of market solutions to the financial incentives for different stakeholders. Hausman acknowledges that the non-monetary disincentives posed by ordeals can effectively address moral hazard, while at the same time mitigating the inequalities in access to health care. In addition, he argues, health-care systems that make use of ordeals can strengthen compassion and social solidarity.

Julie Rose’s article ‘Rationing with time: time-cost ordeals’ burdens and distributive effects’ is critical of one central category of ordeals (Rose 2020). Contrary to the hopes of some architects of ordeals, she argues, time-costs are not as obviously non-regressive as one might hope. Building on her previous work on the value of free time (Rose 2016), Rose makes the case that leisure time is something to which individuals have legitimate claims that are disparately satisfied in our societies. Unfairly, individuals in certain social classes and sexes have more free time than individuals in others. This raises a worry about ordeals that impose time-costs on recipients of benefits. First, the deadweight cost undermines something to which individuals have legitimate claims, so imposing that cost can be a rights-violation. Second, insofar as the good in question – free time in this case – is unevenly distributed, any rationing mechanism that asks of candidate recipients to give up the good will both demand different burdens of different people, and generate inequitable distributions when those with fewer goods in general will be less willing to give up goods. In addition to these worries, Rose points out that it is easy to assess

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how much money people have, but very hard to measure how much free time people have; and easy to compensate people for money lost, but hard – or impossible – to compensate them for time lost. Rose’s careful conclusion is not that rationing with time-costs is always all-things-considered wrong. Rather, she says, her worry should give us pause before rationing with time-costs.

Anca Gheaus (2020) focuses on the potentially different effects of ordeals on men and women. ‘Ordeals, women and gender justice’ argues that one ought always heed the implications of ordeals for gender equality. Depending on how specific ordeals are designed, they might aggravate or mitigate inequalities between men and women. They will also have different implications for men and women in different social classes. A time-consuming ordeal might aggravate gender inequalities for the well-educated with little impact on gender inequalities for the poorly educated. Meanwhile, the very same time-consuming ordeal might mitigate inequalities between income groups. In all these respects, different conceptions of justice will pull in different directions. Gheaus’s suggestion is that we therefore must think hard about the shape of ordeals, and when designing them, to make sure that they are to the benefit of the worse off.

Anders Herlitz’s final contribution to this symposium, ‘Putting costs and benefits of ordeals together’ (Herlitz 2020), explores the possible relations that cost and benefit dimensions actualized by ordeals might bear to each other. He starts by identifying a series of different kinds of cost dimensions that can be relevant for evaluating the permissibility of ordeals. For Herlitz, it is mistaken to take into account only the direct good that the ordeal asks recipients to expend. If the ordeal requires candidate recipients of benefits to spend time on some activity for a transfer, this will indeed be a time cost, but it could actualize additional costs depending on what the recipients otherwise would have done with their time, and depending on the distributive effects of the ordeal. Drawing on recent research in value theory, Herlitz then outlines a set of pertinent possible relations that cost and benefit dimensions might bear to one another. Tracing conditions under which these possible relations are likely to materialize, he indicates the implications for the evaluation of ordeals.

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