

Response to “Skepticism about desert”

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By itself, the title “Skepticism about desert” may evoke the claim that, in truth, nobody deserves anything, a claim that is often—although possibly wrongly—attributed to Rawls. The position defended in the paper we have just heard is both more modest and more promising.

1 The conclusion

Swartzler concludes the paper with the claim that desert is not a *basic* normative notion. It cannot “supply first principles of justice.” (p. 1) In other words, desert is to be defined in terms of justice, not the other way around. What we deserve *just is* what we are to receive according to the demands of justice. On this view, to say that a just distribution of goods is such that everyone receives what they deserve is—not wrong, but—tautological. In other words, to state what people deserve is but one of the ways in which we express claims of justice. It is *not* to be understood as evincing a prior realm of moral facts that could *ground* these claims.

2 Why the conclusion is attractive

I am very sympathetic to Swartzler’s conclusion. I have always felt, when a state of affairs was being justified by the claim that it accords with what the persons involved deserve, that there was something fishy about such an assertion, without being able to put my finger on what it was. Swartzler’s thesis explains and vindicates my impression. What is fishy about justification by desert is that, by itself, it is empty. It provokes the further question: *Why* do the persons involved deserve the state of affairs at issue? And only the answer to *this* question will do the justificatory work.

At the same time, Swartzter's conclusion accounts for the fact that philosophers have so often been inclined to define justice in terms of desert, to assert that justice consists in giving everyone their due. It now appears that they have been allured by a tautology. It is not until one has fleshed out *what* everyone's due is that philosophical work has been done.¹

3 The argument

So this is the conclusion. What is the argument?

The position Swartzter defends has first been developed by Samuel Scheffler in his paper "Justice and desert in liberal theory."² Swartzter proposes an argument different from Scheffler's, an argument which, if successful, will put the position on a stronger footing. More precisely, Swartzter can be seen as addressing an important objection to which Scheffler's reasoning is vulnerable.

Both Swartzter and Scheffler present the position in question as a third option vis-à-vis, on the one hand, the desert theorist who seeks a notion of desert from which to derive principles of justice and, on the other hand, the institutionalist who holds that (legitimate) desert claims are generated by and hence contingent on the societal institutions in place. They thus offer a standpoint to those who are dissatisfied with both of the opposing views.

That the institutionalist picture is unsatisfactory is, as Swartzter shows, fairly obvious. By conceiving desert claims to be dependent on the institutional status quo, the institutionalist simply abolishes desert as a normative notion. The institutionalist can therefore not make sense of the fact that the notion of desert is often used to *criticize* existing institutions.

The desert theorist, however, is a more challenging opponent. It is against this rival that the proposed position needs to prove itself.

The desert theorist maintains that to define justice in terms of desert is *not* a tautology, that the notion of desert can be developed in a substantive, non-circular manner such that considerations of justice can be based on statements of what people deserve.

Scheffler, in the mentioned paper, has offered a somewhat indirect argument for why, when it comes to issues of distributive justice, the notion of desert is of no avail. His central claim is that "distributive justice is *holistic* in

¹ In the first book of the *Republic*, Socrates replies to Polemarchus' assertion that "it is just to give to each what is owed to him" by asking what exactly this means. (331e)

² *California Law Review*, 88 (2000), pp. 965-990. See in particular p. 979.

the sense that the justice of any assignment of economic benefits to a particular individual always depends [...] on the justice of the larger distribution of benefits in society.” (p. 984) Desert, by contrast, is inherently individualistic. What a person deserves is thought to be a fact *about this person*. It is considered to be independent of what other people deserve. Therefore, Scheffler argues, desert can play no role in the domain of distributive justice. Individualistic facts cannot serve to justify a distribution of goods if the latter can only be judged as a whole. In other words, when we ask how the benefits of a society’s economic activity can be distributed justly, we must argue from the best overall arrangement to what a particular individual is to receive, and not the other way around.

I do not have the time, nor is this the place, to present Scheffler’s argument for the pivotal claim that distributive justice is holistic. What I want to point out is that the desert theorist has an argument for why this claim must be false. The desert theorist insists that our moral intuitions tell us that, under certain conditions, an individual deserves—that is, *ought to receive*—certain goods, irrespective of what and how much other people receive. The societal distribution of goods ought to do justice to these intuitions and thus cannot be holistic in Scheffler’s sense.

This is where Swartzner’s paper comes into play, for he, unlike Scheffler, discusses the intuitions to which the desert theorist appeals. Swartzner corroborates Scheffler’s thesis that questions of distributive justice must be approached holistically. Yet he does not, like Scheffler, first defend this thesis and then conclude that desert, assumed to be inherently individualistic, must be left out of the issue. Rather, he argues that *desert itself* is holistic. More precisely, he seeks to show that our intuitions concerning what people deserve vary with the social background. (In fact, this is what we should expect if Scheffler is right. If desert is defined in terms of justice, and distributive justice is holistic, then so must be desert.)

4 Why the argument is contestable

Swartzner’s case rests on the thought experiment of the ant and the grasshopper. While we feel that, in Aesop’s “naked” version, the ant deserves the whole crop, our intuitions change once we modify the circumstances. Thus, desert appears to be holistic.

I want to play devil's advocate and respond to Swartzter's thought experiment on behalf of the opponent. I believe that the desert theorist can account for the shifts in intuition Swartzter highlights without giving up the claim that the social background, properly understood, has no bearing on what people do or do not deserve.

The desert theorist may argue that what varies in the scenarios Swartzter presents is not the background but the very crux, namely the desert basis. That our intuitions concerning the ant's desert do not remain constant is therefore everything but surprising and perfectly in line with what the desert theorist would predict. Remember that Swartzter adopts a "fairly commonsensical, if vague, responsibility-based conception" of desert. (p. 4) My point is that what varies in the given scenarios is indeed who can claim responsibility for the crop. In the first scenario, "Grasshopper had earlier been part of a community effort to build the well from which Ant drew her water." (p. 13) He can therefore claim partial responsibility for the fruit of the ant's toil and so deserves a share (on the proposed conception of desert). The same holds—although obviously to a lesser extent—for the second scenario, in which the grasshopper "simply made it a point not to tread on the young plants (when he otherwise would have frequently used that route)." In the third scenario, finally, where "the seeds Ant used to plant the crop were given to her by some concerned citizen on the condition that she shares the benefits with Grasshopper," the ant again cannot claim sole responsibility for the produce and hence does not deserve it all.³

To sum up, the facts about the grasshopper building the well, or not treading on the plants, or about the concerned citizen donating the seeds, cannot be said to belong to the background. They are part and parcel of the facts that, *according to the desert theorist*, are to determine what a person deserves. Swartzter relegates them to the background because, in all of the scenarios, "Ant employs the same virtues of personal responsibility to the same degree." (p. 13) Yet no desert theorist, I believe, would claim that what makes the ant deserve the whole crop in Aesop's version is that she exercised responsibility *to a certain degree*. What is thought to give her an exclusive right to the produce is, rather, that she is *the only one* who is responsible. Since this is not the case

³ As Swartzter remarks in a footnote, it is not obvious whether the grasshopper can claim to deserve a share in this case. (p. 13) It is rather the concerned citizen who can put forward such a claim. Note that this is exactly what the desert theorist would predict.

in the other scenarios, the desert theorist has no trouble explaining the shift in our intuitions.

Thus, once we correct Swartzter's understanding of what counts as background, as I think we must, it appears that his thought experiment does not show what it claims to show, namely that our intuitions about desert vary with the social background (and are hence holistic in Scheffler's sense). To make his case, Swartzter would need to show that facts *unrelated to the ant's endeavor* affect our intuitions about what the ant deserves. For example, the grasshopper may be inept at farming, or somehow disadvantaged, or risking starvation. Yet it is not clear that our intuitions about the ant's desert change in *such* cases. And so the desert theorist may be able to defend her stand. This is the challenge I want to present to Mr. Swartzter.

I want to conclude with a more general question. Scheffler, in the cited paper, allows for the possibility that the notion of desert, while having to be banned from issues of *distributive* justice, may by contrast play a role in *retributive* justice. On this note, I want to ask Mr. Swartzter whether he understands his thesis of the background dependence of desert to apply only to desert of goods, or also to desert of punishment.

5 Further notes, not to be read at the conference

Discussing the relationship between what he calls "The Desert Thesis" and the "Institutional Dependence" thesis, Swartzter states that, if the former is true, the latter must be false. (p. 3) Strictly speaking, this implication does not hold. As he formulates them, both theses may be true. Facts about distributive justice may be determined by facts about desert, and these facts about desert may in turn be determined by the rules of the existing social institutions. The two theses are incompatible only if the term "desert" in The Desert Thesis refers to pre-institutional, or natural, desert. That this is how The Desert Thesis is henceforth to be understood only becomes clear on the next page.

It is not clear to me how the first of the four listed objections to Rawls's argument is actually an objection. That the argument's "main assumption is blatantly incompatible with there being any desert" (p. 7) hardly constitutes an objection against an argument that—according to a common interpretation—is supposed to establish, precisely, that nobody deserves anything.