

## SKEPTICISM ABOUT DESERT

**ABSTRACT:** On the classical picture of distributive justice, the burdens and benefits of society are to be distributed according to desert. The classical picture is in stark contrast to modern accounts of justice which leave no significant role for desert. This de-emphasis of desert is partly explained by a general skepticism that desert can supply first principles of justice. In this essay, I wish to draw out an underappreciated form of this skepticism. I will begin by briefly clarifying and offering a motivating argument for the classical picture. I then discuss a standard form of skepticism commonly attributed to John Rawls, and argue that it rests on an unsure footing. The final two sections develop an alternative motivation for skepticism that does not rest on this same unsteady base.

On an account of distributive justice, I will call “the classical picture,”<sup>1</sup> the burdens and benefits of society should be distributed according to desert. The classical picture is in stark contrast to modern discussions of justice in which desert plays no significant role. This de-emphasis of desert is partly explained by the idea that promoting equality (or limiting excessive inequality) is of paramount importance in our thoughts about justice. But even this focus on equality cannot fully account for our modern refusal to let considerations of desert influence our theories of distributive justice; in addition to this alternative focus, the classical picture is also undermined by a general skepticism that desert can supply first principles of justice.

I wish to draw out an underappreciated form of skepticism. I will begin by briefly clarifying and motivating the classical picture. Section II will present a standard form of skepticism commonly attributed to John Rawls, and argue that it rests on an unsure footing. The final two sections develop an alternative motivation for skepticism that does not rest on this same unsteady base.

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<sup>1</sup> This label is inspired by Jeffrey Moriarty (2002).

I.

As I shall understand the view, the classical picture is committed to what I will call The Desert Thesis:

The Desert Thesis: Facts about distributive justice are determined (at least in part) by facts about desert.

As it stands, The Desert Thesis is in need of clarification. Philosophers generally distinguish two different types of desert claims.<sup>2</sup> The first variety can be illustrated as follows. Walrus lives in a society in which those who work at least half-time are guaranteed full dental coverage from the government. If Walrus happens to work at least half-time, he has an important claim on the government: other things being equal, Walrus seems to have a right to full dental, and the government would do him wrong if it failed to pony up. Pre-theoretically, few of us would hesitate to say that Walrus deserves dental coverage. Yet if instead, Walrus's society only guarantees full coverage to those who work full time, we might not so readily accept that he has such a right; more importantly, we wouldn't readily accept that Walrus deserves full dental coverage. This suggests that Walrus's desert claim, if he has one, gets its force from the fact that he has done what the conventional rules of his society qualifies him for full dental coverage.

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<sup>2</sup> This distinction is discussed by Joel Feinberg (1963, 56; 86), Jeffrey Moriarty (2002, 131-132), Serena Olsaretti (2004, 16-19), Rawls (1971, 10; 84; 103; 311-313), Rawls (2001, 72-79), Samuel Scheffler (1992), Scheffler (2001), David Schmidtz (2006, 62-64), and George Sher (1987, 14-17).

Generalizing from the example, it seems that some claims of desert get their normative force from the conventional rules of actual social institutions. Social institutions define sets of rules that determine how some specified set of claims are to be distributed. These rules determine expectations for those participating in those institutions and guiding their behavior by these rules. To have an “institutional” desert claim to some social good, an agent must satisfy the conventional rules of her social environment according to which that good is to be distributed.

Some philosophers have suggested that all desert claims are like this. These philosophers accept the following:

Institutional Dependence: Facts about desert are determined by facts about the how the rules of actual social institutions say the burdens and benefits of society are to be distributed.

According to Institutional Dependence, facts about what individuals deserve are parasitic on institutional facts. The problem is that every set of social institutions distributes burdens and benefits according to its own set of rules. So, if the classical picture were only interested in desert in the sense of institutional desert it would provide us no independent constraints by which we could determine which sets of social institutions would be most just. Thus, in order for the classical picture to get off of the ground, there must be some normative conception of desert that is not grounded in conventional rules. In other words, if The Desert Thesis is true, Institutional Dependence is false.

So defenders of the classical picture must reject Institutional Dependence. To do this, they must maintain that there is some range of true pre-institutional or natural desert claims—desert claims that are not ultimately determined by or grounded in the rules of social arrangements. Different proponents of this account may fill in the details in different ways, but our discussion will abstract away from these differences. Instead we will take as our model a fairly commonsensical, if vague, responsibility-based conception. On this model, the relevant desert claims are grounded in the agent’s making use of the factors involved in taking responsibility for her own life and its prospects.<sup>3</sup> To make things easier on ourselves, let’s think of these factors as “virtues of personal responsibility”.<sup>4</sup> This model would allow, for example, the plausible suggestion that ordinarily, the products of one’s conscientious effort are deserved.

Using this model, we can provide the beginnings of a motivation for The Desert Thesis. Consider Aesop’s Ant and Grasshopper. Ant spends her summer tending to the plot of beans she planted on some fallow plot of land, while Grasshopper lounges around all summer long and does nothing to prepare for the upcoming winter. Other things being equal, when winter comes, Ant seems to have a special claim to the crop produced—Ant

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<sup>3</sup> I would like to stay neutral, to the extent possible, whether the responsibility-based view is committed to a desert-for-effort picture or if it can be compatible with a desert-for-success account. For a discussion of this, see Alan Zaitchik (1977). Part of the worry here is the way in which brute luck can have an impact on success—two individuals could be equally diligent, inventive, responsible, and so on while, because one caught a string of bad luck, have very different levels of success. In one common use of the concept, the unlucky individual deserved whatever is supposed to be at issue just as much as the lucky one. However, there is another perfectly legitimate sense according to which the lucky individual has a special sort of desert-based claim on his success that prima facie, at least, should be reflected in their distributive shares.

<sup>4</sup> Admittedly, this way of putting things only helps to make sense of the positive side of desert. Yet desert-based accounts also have a negative side—punishment, for example, ought only to be given out when deserved. If we really wanted to, we might think of this sort of desert as attaching to the exhibition of certain vices. For the purposes I wish to illustrate, however, I will only focus on the vague positive picture outlined in the text. For a fuller discussion of these two “sides” of desert, see Eugene Mills (2004), Scheffler (2001), and Sher (1987).

deserves it because of her diligent labor (one aspect of the virtues of personal responsibility). Grasshopper has no such claim; if he deserves anything, it may be to go hungry.

The difference between the claims of Ant and Grasshopper is clear enough. Yet in our description of the case we did not invoke any social institutions to ground this asymmetry. Indeed, Ant and Grasshopper need not be members of any common society at all, in which case no social institutions are capable of explaining the difference between the two. Instead, we need to explain the difference by appealing to something else—such as natural desert grounded in the virtues of personal responsibility. So, intuitively, Institutional Dependence cannot be true. If this is right, our desert theorist thinks, we have a conception of desert that can serve as an independent constraint on social institutions. In short, justice requires that we arrange social institutions so that they respect the difference-maker between Ant and Grasshopper—that is, the differences in how they employ the virtues of personal responsibility—when distributing the benefits and burdens of society. This is, essentially, the Desert Thesis.

## II.

Distrust of The Desert Thesis is largely undergirded by skepticism about the notion of natural desert on which it relies. The most recognizable form of skepticism is inspired by a brief passage from Rawls (1971, 104):

Perhaps some will think that the person with greater natural endowments deserves those assets and the superior character that made their development possible. Because he is more worthy in this sense, he deserves the greater advantages that he could achieve with them. This

view, however, is surely incorrect. It seems to be one of the fixed points of our considered judgments that no one deserves his place in the distribution of native endowments, any more than one deserves one's initial starting place in society. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases.

This passage is often interpreted as defending the conclusion that no one deserves anything, at least not in the fullest (i.e. pre-institutional) sense.<sup>5</sup> In essence, this argument would be aimed at the backbone of the classical picture: if the concept of natural desert is empty, and no one pre-institutionally deserves anything, the Desert Thesis is false.

But what, exactly, grounds the rather shocking conclusion that no one deserves anything apart from what the institutional rules say? On one reading, this argument presupposes that to deserve some good, an agent must deserve those factors that enable her to obtain it. However, the argument continues, all agents draw on at least some resources, abilities, character traits, and other elements from a background for which she can claim absolutely no credit or responsibility. Since these key elements are ultimately undeserved, our assumption entails that no one ever really deserves anything.<sup>6</sup> Ant, for example, employs natural talents—including, among other things, her native foresight and natural penchant for diligent labor—that she simply cannot claim credit for. Since her activity in producing the beans ineliminably involved her employment of these native

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<sup>5</sup> It is often acknowledged that this interpretation of the argument does not entirely capture Rawls' thoughts about desert. For more detailed discussions, see Moriarty (2002), Robert Nozick (1974), Olsaretti (2004), Sandel (1982), Scheffler (2001), Sher (1987), and Zaitchik (1977). Also of interest is Rawls (2001, 72-79). For the sake of the simplicity, I will continue to call the argument presented in the text "Rawlsian."

<sup>6</sup> This argument relies on the claim that the relevant features of the background are undeserved. This is obviously true on our responsibility-based conception, since they are not obtained by the agent's employment of the virtues of personal responsibility. Yet even if we do not accept this particular conception of natural desert, Rawls is surely correct that this claim should be true on any plausible conception of desert.

talents, abilities, and character traits, this activity is itself infected in such a way that excludes her from actually deserving the resulting produce.

How plausible is this sort of skepticism? There are at least four main objections. First, critics are correct to point out that the Rawlsian argument leads a little too quickly to skepticism about desert. George Sher (1987, 25), for example, notes that its main assumption is blatantly incompatible with there being any desert because

If deserving the benefits of our actions did require that we deserve everything that makes our actions possible, then all such desert would immediately be canceled by the fact that no one has done anything to deserve to be born or to live in a life-sustaining environment.

David Schmitz (2006, 35) similarly notes that on this picture, “the possibility of our being deserving ended with the Big Bang.”<sup>7</sup>

Interpreted in this way, the Rawlsian argument against The Desert Thesis rests on an extremely strong assumption about natural desert. If this assumption were a conceptual truth about desert, or something that the proponent of the classical picture were necessarily committed to, then the assumption would not be too strong. However, and this is our second objection, it is not obvious why anyone friendly to desert should be committed to it in the first place.

The main thought behind the assumption is that insofar as individuals can claim no credit or responsibility for these enabling factors they are “arbitrary from the moral point of view.”<sup>8</sup> Natural desert, as we have been discussing it, is clearly sensitive to factors like native endowments and initial resources. The virtues of personal responsibility can only get one so far, and in employing them we must clearly rely on the available resources, our native endowments, as well as our developed abilities and

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<sup>7</sup> See also, for example, Zaitchik (1977, 373-374), and Nozick (1974, 225).

<sup>8</sup> See Rawls (1971, 104) and Rawls (2001, 74-75).

capacities (along with whatever made their development possible). It is not implausible to think that what one deserves should not be ultimately grounded in such arbitrary factors.

Rawls is clearly correct, I think, that the distribution of these things is “arbitrary from a moral point of view.” But this way of putting things is not entirely helpful. The desert theorist thinks that the virtues of personal responsibility have a special moral role that prevents the arbitrariness of the natural and social lottery from reverberating outward and thereby calling into question the significance of the desert claim itself. The employment of these virtues is supposed to expel the problematic nature of the original arbitrariness. To the Rawlsian skeptic, this might seem like a strange bit of “moral alchemy,” to borrow a phrase from H.L.A Hart.<sup>9</sup> However, if one is at all amenable to The Desert Thesis, this simply doesn’t seem that objectionable—at the very least, it seems far less objectionable than the main premise of the Rawlsian argument.

Third, even if we modify the major assumption to avoid the preceding two objections, some deeper assumptions thought to lie beneath Rawlsian skepticism are no less problematic. Robert Nozick (1974, 214) and Samuel Scheffler (1992), for instance, suggest that this skepticism about desert is explained by a deeper skepticism about agency, autonomy, and responsibility in general.<sup>10</sup> Michael Sandel (1982, 82-94), on the other hand, locates its source in a very thin sense of the person that he attributes to

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<sup>9</sup> When talking about the retributivist justification for punishment, Hart (1968, 234-235) says, “To some critics, it appears to be a mysterious but of moral alchemy in which the combination of the two evils of moral wickedness and suffering are transmuted into good ....” This passage is quoted by Sher (1987, 4).

<sup>10</sup> For an alternative diagnosis, see Scheffler (2001).

Rawls.<sup>11</sup> If deeper skepticisms or thin persons could themselves be defended, they may help to ground a general skepticism about desert. However, these assumptions actually make such a skepticism no easier to defend, since even many of us who are comfortable with the rejection of desert are not equally comfortable with generalized skepticism about responsibility or incredibly anemic accounts of persons.

The final objection is that such a generalized skepticism about desert simply flies in the face of our intuitions about Ant and Grasshopper. We did, after all think that there really is a difference between the two. Moreover, as we saw, these differences are not obviously grounded in social institutions. So the Rawlsian skeptic must provide an explanation of what is going on in cases like this. One possibility is to argue that there really is no relevant normative difference between the claims of Ant and Grasshopper. This, however, is not entirely plausible. At the very least this is not acceptable unless we have a really good explanation for why our intuitions were so radically off base. A second possibility is to provide a different ground for the intuitive asymmetry between Ant and Grasshopper. But this is no easy task for a Rawlsian skeptic. It seems like the alternative ground must itself be pre-institutional, even if it is not pre-institutional desert. Yet if successful against pre-institutional desert, why shouldn't the Rawlsian argument be applicable to any pre-institutional normative ground of claims—why shouldn't the arbitrariness that was meant to undermine natural desert equally show that any “natural” normative category is empty?

### III

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<sup>11</sup> Interestingly, as Scheffler (1992, 308) points out, Sandel ultimately endorses Rawlsian skepticism about desert, despite rejecting what he identifies as its basis. In particular, see Sandel (1982, 139).

There is an alternative path to skepticism about desert that avoids these objections. The strategy we have been discussing so far was aimed at the account of desert that is supposed to fill out the classical picture. In effect, this strategy was to offer an internal criticism of the concept of natural desert, thus showing it to be empty and of no use to undermine Institutional Dependence. But we do not actually need to deny that there is a coherent, non-empty conception of natural desert, at least if we restrict the notion in a particular way. Instead, we can offer an external criticism that, appropriately restricted, the notion of natural desert can not, or should not, serve the crucial role that the classical picture claims for it.

Our earlier discussion pointed out that, property understood, The Desert Thesis is incompatible with Institutional Dependence. Thus the proponent of the former must reject the latter, and we seemed to have a more-or-less principled reason to do this—namely our intuitions about cases like Ant and Grasshopper. However, and this is the crucial point, this is not enough to establish the truth of The Desert Thesis.

Remember, once again, our discussion of that case. Our intuitions—the intuitions that are supposed to make it plausible that there is a non-empty conception of natural desert—establish the viability of natural desert in a relatively weak sense. Our intuitions suggest that Ant may have a claim to the beans despite the fact that she and Grasshopper were not members of any common society. Insofar as this claim is grounded in her proper employment of the virtues of personal responsibility, we may even accept that it is a fact about what she deserves. Yet this fact about desert holds in the absence of any social institutions, and is therefore not determined entirely by how any social institutions

say that burdens and benefits are to be distributed. Thus cases like this seem to support the following:

Weak Independence: Some facts about what individuals deserve are not determined by facts about how the rules of actual social institutions say the burdens and benefits of society are to be distributed.

Weak Independence is incompatible with Institutional Dependence. However, the truth of Weak Independence is not sufficient for the truth of The Desert Thesis. To establish The Desert Thesis, the proponent of the classical picture must do more than show that some desert claims can hold in the absence of social institutions—she must argue that even in the presence of social institutions such claims have what Scheffler (2000, 972) calls “critical force”. Otherwise, such claims cannot be used to criticize social institutions that defy their distributional demands. So the proponent of The Desert Thesis must establish a stronger claim:

Strong Independence: Some true desert claims hold regardless of whatever social institutions are in place.

Can the case of Ant and Grasshopper be used to support Strong Independence? That depends on whether our intuitions support a relativized or non-relativized conception of desert. In particular, the answer depends on whether Ant’s desert claim only holds relative to what we might call “the social background.” But how can we tell?

One possible test can be gleaned from our earlier discussion of institutional desert. Recall that Walrus deserved full dental coverage. However, this was only institutional desert—desert that depended on certain institutional arrangements. We arrived at this result by looking at a range of cases incorporating different fillings-in of the institutional rules (while keeping facts about Walrus’s employment status as constant as possible). In some cases, Walrus seems to deserve (and thus have a right to) full coverage; in other cases, it seems like he does not. The conclusion we drew was that Walrus deserved full coverage, but only relative to a particular range of social backgrounds—those backgrounds in which by being employed at least half time, Walrus had a legitimate expectation to receive full dental.

The discussion of Walrus was focused on institutional rules—different social institutions, with different sets of institutional rules make for different social backgrounds. The claims of Ant, however, are clearly not dependent on the presence of such rules. Yet Ant’s claim to the beans may still be relative to her particular social background—including, among other things, the fact that she and Grasshopper are not members of any common society or engaged in any cooperative endeavor for mutual benefit. After all, being in a state of nature is just one of many possible social backgrounds.

To determine whether or not this is the right way to look at the case, we need to apply our test. What we need to do is to look at a variety of cases in which we fill in the social background differently, while keeping constant, as much as possible, facts about Ant’s employment of the virtues of personal responsibility. When this is done, one recognizes that we cannot simply treat the example as abstracting away from social

factors. For, when the social background is changed in various ways, our intuitions may weaken or change completely. For instance, if Grasshopper had earlier been part of a community effort to build the well from which Ant drew her water, or if he simply made it a point not to tread on the young plants (when he otherwise would have frequently used that route) it is not as clear that Ant retains the claim to the whole hill of beans. Our intuitions can thus change despite the fact that Ant employs the same virtues of personal responsibility to the same degree across all of these different fillings-in of the background. Indeed, there may even be some ways of filling in the background so as to shift our distributive intuitions despite the fact that neither Ant's nor Grasshopper's level of our virtues are altered. For example, suppose that 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. In this variant, Ant is no more diligent, and Grasshopper no less lazy, than we originally imagined. Even so, we might not think that Ant deserves all of the beans.<sup>12</sup> At the very least, she certainly doesn't seem to have a right to them.

We have tracked down an illicit move in the motivating argument for The Desert Thesis. The intuitions used to undermine Institutional Dependence do not yield a picture of desert capable of providing independent normative constraints on social institutions. What is needed is a range of true desert claims that hold relative to all social backgrounds. Our intuitions simply don't give us that much. Thus without some reason to think that such a range exists, there is plenty of reason to be skeptical of the classical picture.

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<sup>12</sup> It is less clear what our intuitions tell us about Grasshopper's claims in this case. In particular, it is not obvious that Grasshopper deserves or, depending on the conditions set by his benefactor, has a right to any beans. However, it does seem clear that Ant would be doing wrong by Grasshopper, if she refused to share her produce. This is, I think, enough for my purposes.

## IV

Motivated in this way, skepticism about desert avoids the problems with the Rawlsian strategy. The first two objections involved the fact that Rawlsian skepticism rested on a substantive assumption about desert that (i) led to skepticism too quickly and (ii) no one friendly to The Desert Thesis would accept. My version of skepticism does not rely on that uncharitable assumption. In particular, this version allows us to recognize a non-empty conception of natural desert in the restricted sense necessary to undermine the picture of desert embodied by Institutional Dependence. Thus skeptics of this kind do not need to incorporate assumptions about desert that are unfriendly to classical picture from the outset.

Instead, the strategy is to incorporate the account provided by the desert theorist, and show why we might still be skeptical that desert, so-specified, should support Strong Independence. This strategy is quite general. For example, we have only been relying on a vague understanding of our virtues of personal responsibility and this should be compatible with a wide array of more determinate interpretations of the classical picture. As long as our intuitions are malleable to changes in certain background conditions despite constancy of a putative desert basis, we have a general recipe for skepticism.<sup>13</sup>

Moreover, our version of skepticism need not rely on the deeper problematic ideas that are thought to underlie Rawlsian skepticism. For example, we need not be skeptics about agency, autonomy, or personal responsibility in order to think that all

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<sup>13</sup> Of course the strategy may not quite be completely general. I cannot even pretend to establish that all putative desert bases are subject to such shifty intuitions. Yet at the very least, I hope I have succeeded at shifting the burden away from the skeptic—it is the defender of the classical picture who must show that their particular interpretation of desert can meet the general challenge I have presented here.

desert claims hold only relative to certain backgrounds—nor must we only accept very thinly constituted persons. Instead, we must only be skeptical that the virtues of personal responsibility (or whatever) ground non-relativized answers to normative questions about how to distribute the burdens or benefits of society.

Finally, it should be clear that the intuitions about Ant and Grasshopper pose no problem for our skeptic. It allows that Ant deserves the beans, and does not try to explain this desert in terms of non-existent rules of social institutions. More importantly, this version of skepticism is itself partly motivated by these intuitions—in particular by the fact that our judgments shift when the social background is altered in important ways. Given this, our picture should be compatible with a very wide range of these intuitions.

The version of skepticism developed here has one further advantage over the version that relies on the purely institutional picture of desert. In some ways, it is quite difficult to see how the institutional theory provides a truly normative account of desert. For example, even unjust institutions can distribute burdens and benefits according to their own sets of rules, and therefore create certain kinds of expectations for behaving or being a particular way. Yet the fact that a set of existing social institutions declares that being of “noble birth” shall allow one to have special political and economic privileges has no implications for what those “born of noble blood” deserve—at least not on any intuitively normative notion of desert. The view I have developed here is not an institutional theory, and does allow for an intuitively normative conception of desert. The important point, on this view, is that whether or not desert is a normative notion, it is not a basic normative notion.

To see how the view can allow for this, we must understand social backgrounds as themselves having normative implications. Thus understood, we cannot just see the background as consisting of facts about what a society's distributional rules actually say. Instead, we should see them as carrying with them facts about what the rules should or could appropriately say in such and such cooperative circumstances. Only when a society's distributive rules are within the acceptable range should we see them as creating a basis for desert. At any rate, facts about desert may depend on facts about what the just or appropriate range of rules would say. In either case, facts about desert should be understood as depending on facts about what justice requires, not the other way around.<sup>14</sup>

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<sup>14</sup> This point owes much to Scheffler's (2001) distinction between a pre-institutional (or natural) and "pre-justicial" conception of desert. There are also obvious similarities to the picture presented by Rawls (2001, 72).

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