
REVIEWS

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Liberty, desert and the market: A philosophical study, Serena Olsaretti, Cambridge University Press, 2004, viii + 184 pages.

It is a familiar observation that entrenched social practices tend to bring along with them supporting ethical ideas that strike participants as common sense. Take the central legal institutions of a market economy – the law governing property and its transfer. Probably most people believe that legal property rights reflect natural or moral entitlements to holdings and that breach of contract is a breach of an intrinsic moral obligation that flows from exercise of the promisor's will and requires no instrumental justification. If these ideas were right, they would provide a direct moral justification for the legal institutions that make markets possible. More than that, they would provide a direct moral case for *laissez-faire* markets since redistribution away from market returns would count as a violation of people's rights.

If the philosophical case for *laissez-faire* were advanced and believed by only a handful of philosophers, the debate would be of academic importance only. But the correspondence, at the level of slogans at least, between libertarian philosophy and ethical ideas that come naturally to most of us who live in capitalist societies gives libertarian thought enormous practical significance.

This is what justifies the mostly negative agenda of *Liberty, Desert and the Market*. Serena Olsaretti criticizes at length Robert Nozick's moral argument for a libertarian conception of property rights and their transfer. In the course of that discussion, she also considers the ostensibly rather different thought that what the market has going for it is that it maximizes individual liberty – which explains the appearance of "liberty" in the book's title. And before turning to these ideas, she discusses a line of thought that, while not nearly so well represented among political philosophers, does resonate with the everyday ideas of participants in

capitalist practices: the idea that free markets are ethically desirable because they reward desert.

It is plausible enough to think that people who expend more effort than others deserve to do better. And it is true that some differences in market rewards could be said to track differential effort. But the conclusion that market outcomes reflect desert rather obviously does not follow, since it is obvious that market rewards also depend on all kinds of factors other than effort – factors which, since they are not under people's control, can't possibly be the basis of a claim of desert. It is not surprising that it is hard to find an academic defence of the idea that *laissez-faire* markets reward in proportion to effort and therefore desert.

A different kind of desert argument, however, has always found some support among economists and political theorists since the development of marginal productivity theory in the late nineteenth century: the argument that markets reward people in proportion to their contribution to the overall social product. Olsaretti focuses her discussion of desert on the contribution argument, restricting her discussion here almost entirely to the writings of David Miller. At the end of a careful and illuminating critique, Olsaretti's main complaint is the one that dooms the effort argument: people are not responsible for much of what determines their productive contribution. For one thing, we are not responsible for our natural talents or social/educational start in life (82–3).

Earlier in the book Olsaretti had announced as a constraint on plausible principles of desert that they must meet a "fair opportunity requirement" (24–33). By this she means not just that the conditions of Rawlsian fair equality of opportunity are satisfied, but that acceptable claims of people's desert are grounded only on "the choices they make and the activities they undertake, rather than on the basis of the sheer possession of unequally distributed unchosen factors, or on the basis of certain things happening to people not as a result of their choices" (28). So the unequal distribution of natural talents is within the scope of Olsaretti's fair opportunity principle. The principle essentially says that you cannot deserve on the basis of any factor for which you are not responsible.

Now if it is given in advance that no justification grounded in desert that runs afoul of the fair opportunity principle will be acceptable, it might be wondered why it was worth discussing Miller's view in the first place. But we need to distinguish two threats to responsibility discussed by Olsaretti. In addition to unchosen characteristics of individuals, such as educational/social background and natural talent, there are the factors having to do with the contingencies of the operation of the market itself – factors that affect market returns that have nothing to do with the abilities of each of us. Here there is something for Olsaretti to discuss. In her view, since a person's productive contribution, as measured by market returns, depends upon who else may decide to supply the good or service, and

also on contingencies of demand, factors over which individual suppliers have no control, productive contribution is to that important extent not under a person's control and so cannot ground a claim of desert (70–84).

Miller's view is that desert claims are compatible with some luck in some of the circumstances that may affect market returns. He is inclined to distinguish between luck in stumbling across a desirable product by pure fluke, which does undermine desert, and luck in the lack of competing suppliers, which does not. This is not an entirely implausible position, it seems to me. We could think of productive desert in terms of a person's intentional contribution, *given* what everyone else wants to buy and produce. It is true that it may be tricky to square this with a strict requirement of responsibility. But it would be worth exploring the idea that even sudden changes in the competitive scene – Olsaretti puts a lot of weight on the case of the sudden appearance of a competitor who sells at a much lower price (72) – might properly be considered the responsibility of the original supplier, in the sense that part of what a deserving supplier gets credit for is anticipation of, and flexibility in response to, changes in competitive circumstances.

Olsaretti stipulates that the kind of circumstantial changes she discusses count as brute rather than option luck, in Ronald Dworkin's terminology – where the latter refers to contingencies that, though we cannot control them, can be anticipated (77–8). As she notes, it is commonly believed by those who take the issue of luck seriously in the theory of distributive justice that we can be held responsible for outcomes affected by option luck. Her decision simply to stipulate that luck in market circumstances is a matter of brute luck is disappointing for a number of reasons. First, it seems to beg the question in the debate with Miller. Second, and more important, if she had pursued the question, she may have been able to extend her critique, perhaps calling into question the very distinction between option and brute luck.

Of course, by Olsaretti's lights Miller's account is doomed because he does not believe that inequalities in individuals' social/educational background and natural talents necessarily undermine comparative desert claims (83). But it would have been natural to turn, at this point, to a desert-based justification of market mechanisms that are understood to be combined with institutions that correct for precisely these inequalities. Ronald Dworkin's view is that market returns are always just in a world in which the value of opportunities and resources – understood to include natural talents – are somehow or other equalized (Dworkin 2000). Dworkin himself does not ground this claim in an explicit appeal to desert, but at least one philosopher offering a similar theory does just that (Rakowski 1991). And in any case, if not desert, what does justify the idea that justice is to be found in a suitably modified market system where market returns depend only on factors for which we are responsible? For a number of

different reasons, Olsaretti's penetrating critique of desert and the market could have led her, I believe, to a deeper critique of the whole contemporary school of distributive justice that puts great weight on responsibility and luck. Olsaretti spends a chapter effectively disposing of the idea that markets satisfy some criterion of compensatory desert (chapter 2). This seems a minor issue, compared with the wider implications of Olsaretti's trenchant views on responsibility for other influential non-instrumental defences of market institutions.

The second half of the book discusses Robert Nozick's entitlement theory of justice. Nozick's view and several powerful lines of criticism are well known. What makes Olsaretti's discussion important is an unusual focus on the principle of justice in transfer, rather than that of acquisition.

To set up her discussion, Olsaretti goes over some familiar ground. The libertarian slogan that, in Jan Narveson's words, "individual liberty is the only proper concern of coercive institutions" (101) is rightly criticized as invoking a contentious moralized concept of liberty. But Olsaretti attributes the idea behind this slogan to Nozick, which seems to me quite wrong. One of the striking things about *Anarchy, state, and utopia* is that it consistently presents a theory of individual rights, with an almost entire absence of rhetoric about liberty as the only or foundational value. It is true that Nozick claims that liberty is preserved where his entitlement theory is honored and not otherwise, and that this claim can be challenged by questioning the notion of liberty he employs. But there is no attempt by Nozick to argue from an idea of liberty to a theory of justice. Olsaretti also writes that Nozick aims to "establish that individuals cannot be claimed to incur any obligations towards their fellow human beings to which they have not consented and which they have not voluntarily undertaken" (101–2). Even allowing, as she does, for the exception of those obligations that correlate with others' rights, this is an odd and misleading claim. As far as I can tell, the only obligation any of us is in the position of undertaking voluntarily is a promissory one. Nozick's concern is not with consent to obligation, even "enforceable obligation" (110) – he has no particular interest, for example, in the idea of legal obligation – but with the justification of the use of force and other kinds of interference. It seems that Olsaretti makes these points in order to justify focusing her critique of Nozick on his use of the notion of voluntariness. But in fact, as she notes (106), she has independent reasons for that, and in adding extraneous and, in my view, inaccurate supporting considerations, she obscures somewhat the importance of her contribution – which lies in confronting the entitlement theorist, represented here by Nozick, with the need to give a better defence of the principle of transfer.

All libertarians hold that property rights transfer by way of voluntary and fraud-free agreements. Olsaretti's claim is that proper understanding of the norm of voluntariness threatens to undermine the libertarian defence

of free market exchange. She demands that both entitlement theorists and their critics think harder about the libertarian account of voluntariness and, in particular, not assume that so long as my assent was given in circumstances where my freedom was not curtailed, it was voluntary. On the face of it, this seems clearly right: there is no inescapable conceptual link between the two notions that has this implication. But I think she is wrong to suggest that Nozick derives his account of voluntariness from his account of freedom (122–6). She is much closer to the mark, I think, when she writes that the whole thing is driven by Nozick's view of what rights people have and that this grounds the accounts both of freedom and of voluntariness – the thought seems to be that so long as people's rights are not being infringed, everyone is free and all agreements are voluntary. Olsaretti holds that if this is the right interpretation, the idea of voluntary agreement is doing no independent work (128). A better way to put the objection is that the intuitive plausibility of the entitlement view depends upon the intuitive plausibility of the idea that voluntary exchanges preserve justice, and that intuitive plausibility may vanish once we reflect on Nozick's understanding of what voluntary assent amounts to.

I think Olsaretti is on to something here. It is especially puzzling that Nozick devotes almost no argument to the issue of voluntariness in *Anarchy*, having written the single most influential and illuminating treatment of the related (and intractably difficult) issue of coercion in an earlier article (Nozick 1997). One line of thought that Olsaretti could have pursued, but does not, is that on the moral baseline account of threats Nozick introduced in his article, the possibility is entirely open that conduct that does not infringe my negative rights might nonetheless be wrong and therefore amount to a threat that vitiates my assent to an agreement. This possibility is in fact left open by Nozick's official account of a voluntary transaction in *Anarchy*: my assent is not voluntary only if my trading partner does not act within her rights. Since, as Olsaretti notes, the rights of my trading partner in this formulation are what Hohfeld called liberty rights, my trading partner fails to act within her rights just in case she violates a duty (123). But not all duties correlate with the negative (claim) rights of others. Olsaretti misses an opportunity when she assumes that the duties of the trading partner at issue are enforceable duties and therefore, for Nozick, duties that correlate with the negative rights of others. This blocks an important objection that she could have made – that Nozick, in his focus on the justification for the state, and therefore on people's negative rights, neglects the fact that the moral considerations that pose a problem for the justification of the state are not necessarily the same as those that might be relevant to the question of whether my assent was coerced.

Olsaretti spends many pages defending her view that voluntariness is the key notion when the question is the effectiveness of someone's assent

to transfer (141–52). Coercion, she argues, is the narrower notion; coercion always undermines voluntariness but coercion is not always present when agreement is involuntary. Other critics have been as hopelessly muddled about this as they have been about the distinction between voluntariness and freedom. The truth, however, is that it doesn't much matter which concepts we employ in these debates, so long as we understand what the target political question is – in this case, the conditions for effective assent to transfer. Olsaretti in effect stipulates that her critique of Nozick could not be put in the language of coercion; in fact, as my previous paragraph shows, it rather clearly could. It is surprising to see her complaining that the argument that capitalist wage offers are coercive “stretches needlessly the notion of coercion” (152) given the free hand she allows herself with the notion of voluntariness. In giving too much weight to her own view of the conceptual terrain, she exaggerates the extent to which the issue that interests her has been neglected by other critics of libertarianism.

In any event, Olsaretti's case against the entitlement view and the case for the market it presents is that it gets voluntariness wrong. Yes, if people have property rights they can transfer them through voluntary exchange. But a choice is voluntary, she holds, “if and only if it is not made because there is no acceptable alternative” where what counts as an acceptable alternative is specified objectively, and includes, minimally, the stipulation that sacrificing one's basic needs is not acceptable (154). She defends this account of voluntariness by way of examples. She thus builds a plausible enough case for her view. But insofar as this is supposed to be an account of what voluntariness really is, as opposed to an independently justified political theory about what kinds of exchange should be enforced, success depends on convincing more or less all of us that she has the concept right, and her opponents do not. And the trouble is that many other accounts of voluntariness sound plausible too, including that of her libertarian opponents – at least, they give an account of one proper use of the concept.

Olsaretti frequently charges that philosophers have employed the wrong account of key concepts – desert, freedom, coercion, voluntariness, responsibility. She then proceeds to give what she takes to be the correct accounts. But conceptual analysis is never going to deliver a sufficiently determinate account of these politically charged concepts to allow for direct intuitive assessment of simple moral claims such as “voluntary exchanges preserve justice.” Olsaretti is right that it all depends on what we mean by “voluntary,” but wrong that there is a determinate right answer to that.

So Olsaretti's positive conclusion that “a concern with the voluntariness of choice... supports not a free market society with no redistributive measures, but a guaranteed minimum for all” (164) is no more or less plausible than the libertarian position she attacks. Given the

indeterminacy in the concept of voluntariness, the only way to proceed is to consider the plausibility of claims such as this: Where A agrees to transfer property to B and B has acted within his rights during the transaction, the transfer preserves justice. Or this: Where A agrees to transfer property to B and A's assent is not given because there is no acceptable alternative, the transfer preserves justice. Spell them out, and neither proposition seems remotely plausible to me, but that's because I believe that the law of property and its transfer is but one important part of the entire legal and economic institutional scheme, and that different possible total schemes should be evaluated instrumentally, by looking at the outcomes they produce.

Be that as it may, the real contribution of the second half of *Liberty, desert and the market* is not to provide a correct account of the concept of voluntariness and draw normative conclusions from that. Rather it is a contribution to the critique of libertarian ideology, which has so far mostly focused on the use of the rhetoric of freedom and ownership. Olsaretti highlights the crucial role of the idea of voluntariness – as the key to the libertarian 'principle of justice in transfer' – and shows that the libertarian interpretation of this notion is not irresistible, and that libertarians therefore cannot help themselves to the plausible sounding rhetoric about the free market being just in virtue of being the domain of voluntary exchange.

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Economics and philosophy: The evolutionary foundations of economics, Kurt Dopfer. Cambridge University Press, 2005, 577 +xiii pages.

The evolutionary foundations of economics is a somewhat misleading title. With the exception of Geoffrey M. Hodgson's paper, which discusses the strained relation between biology and the social sciences (and economics in particular) in the twentieth century, the papers do not address the evolutionary foundations of economics. Instead, most of the papers argue or even take for granted that what at bottom is wrong with mainstream