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Citar este artículo como: Jasper von Alemann (2015): The Distributive Justice of Waves for Surfing, *Fair Play. Revista de Filosofía, Ética y Derecho del Deporte*, 3:1

The Distributive Justice of Waves for Surfing

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Abstract

Who is entitled to surf a wave? Despite its boom, surfing has seen little formal regulation of ocean waves, the scarce and precious resource at the heart of the sport. Among the few best practices that have emerged, surfers either wait their turn or take off on a wave when they are closer to the breaking point than others. However, three informal doctrines tacitly rule the sport and challenge the authority of such formal rules. Around the globe, surfers claim special rights to waves on behalf of their local affiliation to a spot, their better skills or their longer experience. This paper examines the moral plausibility of these informal doctrines – localism, performance, and seniority –, confronting them with theories of distributive justice. The analysis suggests that none of the three matters intrinsically, but that we need to add additional criteria to the local, high performing, or experienced surfer's claim to make it plausible.

Keywords: Surfing, Waves; Distributive Justice, Ethics; Localism, Performance, Seniority

1. Introduction

In Political Philosophy, surfing has so far only been a memorable illustration used by a few authors. As unproductive but harmless beach bums, surfers have served Philippe van Parijs (1991) to defend his proposal of an unconditional basic income. Alongside climbing, it has been discussed as an example of reckless gambles for which an agent may be liable – a question that bears on what society owes practitioners of risky sports and on hypothetical insurance markets. Such topics concern surfers and the wider non-surfing society. However in this paper, the focus lies on the surfing community from the inside, discussing the norms that rule the appropriation and enjoyment of the ocean.

The sport has become more and more popular over the last decades. With an increasing number of surfers all over the globe, overcrowding of surf spots has become a serious issue. Battles over the distribution of waves have occasionally resulted in acts of severe violence – prominently executed by surf gangs like the well-mediatised *Bra Boys* (2007) from Maroubra Beach, Sydney,

Australia. In other cases, the surfing community has witnessed privatization of surf spots, such as in the Maldives (Surfermag, 2012). The struggle for the scarce resource of surfing waves can be examined in terms of distributive justice, which this paper attempts to do.

From the inside of the community, two sets of rules have emerged to regulate crowded surf breaks. On the one hand, we find two formal rules that are promoted by surf clubs and associations as an attempt to codify behaviour in surfing. Section 3 outlines that the *doing-turns* as well as the *closest-to-the-peak* rules are both egalitarian in principle, as they don't privilege any special group of surfers. On the other hand, informal priority rules have emerged which challenge the authority of the formal codes. Namely, surfers claim special priority over others on the grounds of their local affiliation to a surf spot, their better surfing skills, or their longer experience as a surfer. We can call these informal rules the three 'doctrines' of wave distribution which shall be labelled *localism*, *performance* and *seniority*.¹

In practice, the doctrines often rule the sport. Mechanisms to exclude surfers from breaks can happen in or outside the water – including verbal claims, physical demonstrations of superiority such as dropping in on other surfers² or violence against things (broken fins or surfboards or flattened car tyres) and against persons (such as beatings). Surfers are excluded in manifold forms, from friendly but firm to aggressive. As one of the few scholars concerned with the topic, Steve Olivier (2010) groups these forms of exclusion under the banner of localism, advocating the positive effects of showing good manner in the water on an account of virtue ethics. Olivier's practical proposal is based on a rejection of the idea that the notion of surfing can operate in a special moral context (ibid: 1223).

Yet this is exactly what this paper aims at, as it sheds light on the rationales and justifications that motivate the special claims to which localism, performance or seniority might refer. To critically

¹ The essay refers to 'doctrines' as a set of beliefs that surfers refer to in questions of wave distribution in order to avoid confusion with the tools of distributive justice – equality, utility, priority etc. – which are usually termed 'principles' (Arneson, 2013).

² Throughout the paper, surfing jargon is explained to non-surfers using footnotes. In surfing, 'dropping in on someone' refers to stealing the wave from another surfer who is already riding on it by dropping down the face of the wave in front of him.

examine the three doctrines, it asks how plausible they are when confronted with theories of distributive justice. An answer to this question is the primary aim of the paper. The secondary aim of the discussion will be to extract a coherent set of applicable priority rules for surfing, highlighted throughout the text.

Two terminological clarifications are necessary. First, theories of distributive justice can be concerned with different types of ‘currencies’, that is, the good to be distributed. If not stated differently, the paper’s currency is ocean waves for surfing. Second, the term ‘priority’ is used in the common sense meaning when we talk about priority rules in surfing as ‘letting someone go on a wave before someone else’. This usage only changes when the ‘principle of priority’ of ethics is introduced in the last section, the different meaning of which is explained in that section.

Before we proceed, a potential objection to the focus needs to be anticipated. Topics in applied ethics typically deal with questions that have potential implications of life and death or that affect large numbers of people. Distributive justice is mostly concerned with assessing questions of income and welfare which are prevalent for us all. Why write a paper about *surfing*, in presence of thousands of potentially more essential topics?

The reply is simple. Surfing might not matter much for ethics, but ethics definitely matters for surfing: To find fair rules in wave distribution for the sport. There is no doubt that the issue of surfing interacts with considerations of welfare. The surf industry and surf-related tourism move a lot of money around the globe and good waves have become a precious resource in the economical sense. But it also matters immensely for people personally – think of the many self-declared soul surfers around the planet –, as some surfers claim the sport to be their religion, even if this phrase itself has been turned into marketing products (cp. Surfingismyreligion, 2014).

Some people think that surfers are “happier, friendlier and more relaxed” (The Inertia, 2013) human beings when they ride waves. If that is true, such psychological benefits might have broader positive effects on society and thus we would have good reason to care about fair wave distribution. Even though the author does believe in the happiness claim, speculation about endorphins and other bodily reactions are not of concern here. But we can claim that the use and ow-

nership of a sought-after resource such as ocean waves is an issue of justice in distribution. Moreover, the code of conduct of an international cultural community like the one of surfers deserves some critical examination.

The essay will proceed as follows. Exploring the ethics of wave distribution concerns both appropriation and use. The following section demonstrates that the appropriation of waves or surf spots is hard to justify. Section (3) sheds light on the existing formal rules of wave distribution. The rest of the paper discusses the plausibility of the informal doctrines that can be understood as exceptions to the formal rules. In one section each, the plausibility of possible justifications of the localist (4), performance- (5) and seniority-claims (6) are assessed in detail. The last section (7) introduces an additional consideration based on personal experience, before the conclusion (8) sums up the results of the analysis.

2. Establishing Property Rights over Waves and Surf Breaks?

One general way for surfers to ground special priority claims would be to establish property rights over waves or surf breaks that they call ‘theirs’. Imagine a surfer discovers a new surf spot. Can he acquire it and exclude others by making it his own?

We could think of grounding these kinds of special rights with the account of John Locke’s first occupancy theory. Locke’s core idea of acquisition relies on the assumption that everyone ‘owns’ themselves which expresses the idea of self-ownership over one’s body and labour. By mixing one’s labour with the material world, one can legitimately acquire it. He further stresses that the land one occupies has to be cultivated or used productively (Locke, 2008: § 27). The mixing-metaphor can be claimed to be true by a surfer riding a wave, assuming he surfs well and makes use of the waves.

We can raise two critical objections to this kind of view. First, Locke’s account obviously aims at acquiring land, not waves. Therefore, we need to further assess whether waves (or whatever else) might be well-suited to such a claim. The second objection comes with a further qualification

that Locke himself attaches to his theory, assessing the entitlement of surfers to establish property rights.

2.1 What Goods can Surfers make Special Claims to?

Can somebody ‘own’ a wave? Can waves belong to someone? What type of goods are waves? In trying to establish property rights over a *wave* a surfer would have to be able to claim an amount of water for himself. But this seems implausible because of the fact that water elements are constantly moving around surf breaks. Robert Nozick illustrates the absurdity of acquiring unbounded water. If you own a can of tomato juice and you pour it into the ocean, you don’t come to acquire the ocean as the molecules mingle (Nozick, 1974: 174). As long as waves break on the moving open sea, they can hardly be claimed someone’s property. Thus, Locke’s mixing-metaphor is a bit of a stretch here.

However, some people assume that local surfers *own surf breaks* (Kaffine, 2007). Thus, we could refer to the sea bottom as the good that is claimed property. The two most common types of sea bottom generating waves for surfing are sand bars and underwater reef formations. Sand bars are loose formations of sediment and are in this regard similar to water or tomato juice: They can hardly be claimed property on an open ocean. If we did, our property would soon start spreading around the world. Reef formations are more stationary; they can be coral reefs or rocks that move very little or not at all during a human’s lifetime.

Due to these empirical concerns, reef formations are the most likely goods to be claimed as property. Note that the most ‘localised’ surf spots are often reef breaks; *Pipeline* on Hawaii is by many seen as the prime example of localism (New York Times, 2009). In other cases, heavily crowded and localised waves break on a mixture of sand and rocks such as at *Lafitenia* in France, populated with the industry’s headquarters right in front of it. Of course there are exceptions like the famous *Mundaka* in the Spanish Basque Country which breaks on a long sand bar shaped by a river mouth.

Locke thinks that “these days the chief issue about property concerns the earth itself rather than the plants and animals that live on it, because when you own some of the earth you own what lives on it as well” (Locke, 2008: § 32). As an analogy, we can assume that waves are like animals in this regard, whereas reefs (and, to a lesser extent, sandbars) are like land – and are therefore potentially goods open to be claimed property. But can we plausibly establish property rights *in theory*, after all?

2.2 Leaving Enough and as Good for Others

To answer this question, we need to have a further look into Locke’s theory of acquisition. The philosopher subjects a legitimate acquisition of the earth to an important qualification: By mixing a piece of the earth with one’s labour, one has to make sure to leave enough and adequately valuable pieces for others to acquire (Locke, 2008: § 33). This qualification has been called the ‘enough-and-as-good proviso’ in Locke. The proviso forms the core idea of *geoism* as “a philosophical tradition [...] that affirms the equal claim of all humanity to land and other planetary resources” (Casal, 2011: 308-9).

The egalitarian geoist claim is the counter-perspective towards any surfers claiming special rights about ‘their home breaks’. To put it positively, a surfer claiming special rights over a break would have to make plausible that he is in fact leaving enough – and as good – rideable waves for everyone else. However in practice, this is unlikely to be the case when we consider different qualities of surf breaks. Take *Lafitenia* in South-West France as an example again. The right-hand point break starts on a rocky ledge, breaking on the very outside before perfectly peeling down the crescent shaped bay. On good days, you can ride the wave for 150 meters down the line into the picturesque bay. Do surfers who claim the break for themselves leave enough waves for others? Indeed, there are certainly several hundred kilometres of rideable beach breaks up north the *Landes* coastline. But there is simply no *adequate* wave around in terms of quality.

Surf breaks are special goods. One reason for Locke to endorse the acquisition of earthly resources in general was his assumption that increased productivity would generate more goods that would be available for everyone (Locke, 2008: § 37). Before knowing the whole set of positive

and negative implications of growth-driven industrialization, this might have seemed plausible to Locke. But the assumption is certainly implausible with regard to surf breaks, as the number of breaks in the world – whether it be known or not – remains constant.³

We conclude that appropriation is not legitimate unless others are compensated. But compensation in terms of waves of equal quality seems impossible or at least problematic. If ocean waves are a good that is potentially open to anyone, what rules should regulate wave use?

3. Formal Priority Rules in Surfing

Surfers around the globe find themselves confronted with two formal priority rules in their sport. They are both clearly applicable and most surf spots function on one of the two.

3.1 Pure Equality: Doing Turns

According to the *doing-turns* rule, all surfers are equally entitled to a wave and must wait until it is their turn to go. The order is fixed and includes all surfers: Surfers who have waited longer in the line-up have the right to go before newly arriving surfers – one can compare the functioning of the rule to a supermarket queue. The doing-turns rule is mostly used in clean point break situations where the take-off zone is very small.⁴ By organising momentary proximity of the surfers in the take-off zone, it corresponds to the concept of *pure equality* in distributive justice as it creates equal outcomes (cp. Parfit, 1997: 205). Every surfer gets the same amount of waves.

3.2 Rough Equality: Closest To the Peak

According to the *closest-to-the-peak rule*, the surfer positioned closest to the peak⁵ has the right to go. This rule is mostly used in spots with multiple and shifting peaks like most beach breaks

³ Note that there have been attempts to create artificial reefs for surfing which were not always a success story (The Guardian, 2010).

⁴ A ‘point break’ is created where waves hit a point of land or rocks jutting out from the coastline. The ‘take-off zone’ of a wave is the place in the water where it starts breaking and where surfers begin their rides. Compare Wavepark (2012) for a promotion of the doing-turns rule.

⁵ The ‘peak’ of a wave is the highest point of the wave where it starts breaking.

and it is promoted by surf clubs or surfing associations (Surfinghandbook, 2014). The closest-to-the-peak rule promotes unorganised momentary proximity of the surfers. In contrast to the doing-turns rule, it promotes *rough equality*: Who is entitled to catch a wave depends on where the wave breaks and how close to the peak surfers are situated in the line-up. Every surfer can possibly catch a wave. Before assessing the challenge of these rules, let us quickly consider one more intuition in surfing that can be explained in terms of distributive justice.

3.3 Pareto Optimality: Don't Waste Waves

With regard to surfing, we could appeal to a more demanding view of distributive justice. According to the *principle of Pareto optimality*, a distribution is sound when it makes someone better off without making anyone else worse off (Arneson, 2013: 8). On the account of *Pareto egalitarianism* we can endorse deviations from an equal wave distribution. Pareto egalitarianism allows for departures from pure and rough equality, but only if the quantity and quality of rides are increased and thus only benefits accrue. This is a plausible principle because it maximizes benefits for everyone without making anyone else worse off. In surfing situations, this obviously suggests to occupy every potentially surfable wave without letting good waves go.

We will later in the paper discuss the ways in which deviations from equality might be permissible, showing that skill in surfing is intertwined with the quality of waves and respective surfers' wave choices. For the moment, we can note our first practically applicable priority rule:

First Rule: Don't leave waves unridden.

The doing-turns and closest-to-the-peak rules are challenged by the emergence of three informal priority doctrines in surfing that can all be seen as deviations from the egalitarian formal rules. They claim special rights for *local* surfers, high *performing* surfers or experienced *senior* surfers. Following this order, the doctrines are explained in turn and their rationale and plausibility examined.

4. “My Town, My Wave”⁶ : Localism

The *localism* doctrine refers to the surfer’s local affiliation to a spot and/or the wider community around the particular break. He makes a claim over territory and asserts to have a special relation to it because he resides close-by and is part of the local community. Such a surfer would consider a break his ‘home spot’ that he surfs every day. The rationale of the localism doctrine refers to the *space* where the surfing is done.

Locke’s enough-and-as-good proviso is a strong statement against local surfers claiming their ‘home breaks’ for themselves. The localist claim is further weakened by the fact that the creation of swell is a phenomenon that happens thousands of kilometres offshore in waters that belong to nobody (Butt, 2014: 8). But still, the local surfer might find it frustrating to see his backyard wave overcrowded with strangers. To put forward the localist claim against the invader, we can either calculate the costs and benefits of the situation, we can show that the stranger puts an unbearable burden on the local, or try to invoke special birth rights in favour of the latter.

4.1 *Economic Inequality, Costs and Benefits of Local Surfers*

The first way of assessing this question is intuitive, doing a simple calculation in terms of costs and benefits for a local surfer when a non-local shows up at ‘his’ surf spot. In many cases of surfing related businesses, benefits outweigh the costs by far. Local residents of surf towns are often dependent on tourists to come dining in their restaurants, buy gear and equipment in their local surf shops or pay to be taught surf lessons.

Consider the case of the *Hypocrite Surf Instructor* smiling and pushing beginners into waves in the morning and becoming a shouting aggressor ‘protecting’ himself and his local buddies from outsiders attempting to catch ‘their’ waves in the afternoon.⁷ The costs-benefits view dismantles his conduct as implausible because his benefits (making a living) are clearly greater than his

⁶ The quote is from a local surfer at *Ribera d’Ilhas*, Ericeira, Portugal, confronting the author’s friend Nikolas in 2009 with his particular idea of how wave distribution was supposed to work at ‘his’ spot.

⁷ This is a realistic case that every surfer can witness during summer in popular surf destinations with a lot of surfing-related business infrastructure such as in South-West France (author’s experience).

costs (sharing the waves with strangers in the summer). The same applies for surfing shop-owners, waiters or cooks in restaurants, and more. A prominent example of such reasoning in politics is the declaration of a collection of good-quality point breaks in Ericeira, Portugal, under the special protectoral status as a ‘World Surfing Reserve’. The rationale for this project, amongst others, was to stimulate Portugal’s economy, protect the environment and to ensure the *quality of life for the residents* (World Surfing Reserve, 2014).

On the other hand, the costs may outweigh the benefits for locals when reckless travellers invade a place and cause severe damage. The surfing-related cultural imperialism in Kuta on Bali, Indonesia, might be such a case: Western international travellers disrespect local customs, abuse alcohol or recreational drugs and cause severe environmental pollution⁸.

4.2 Putting Severe Burdens on Locals

But is a costs-and-benefits calculation always a good solution to assess whether a non-local surfer inflicts a burden on a local or bestows a benefit? Consider the following objection. Seana Shiffrin (1999: 127) imagines a rich man – *Wealthy* – who has an extravagant hobby: He likes flying around with his helicopter dropping gold bars to the earth. One of the 1.5 million dollar bars falls down on *Unlucky* and breaks his arm. Shiffrin thinks that Unlucky has still a reason to complain: It may be impermissible to inflict a certain burden on someone, even if you (over-) compensate him for the costs. Wealthy has no right to break Unlucky’s arm by dropping a gold bar from his helicopter, even if Unlucky gets rich. The same applies for tourists who ‘invade’ local surfing communities: One cannot justify putting a severe burden on locals arguing that despite the costs, they benefit overall.

Local residents might feel offended by tourist masses of surfers coming to their community, creating fuller line-ups and parking lots or dense traffic. But they would have to show that they have special rights *as residing surfers* – and that visiting surfers infringe those rights. Certainly, local

⁸ The impression is based on the author’s email correspondence with his friend Helge on 18 June 2014 who complained about excesses in techno music as well as drunk, drugged and nude Australians in Kuta. (After these experiences, the witness fled to the inlands of the island.)

residents could appeal to *general rights* they possess just as anyone else to convict tourists of harming them. In surfing, such cases would involve drop-ins infringing the closest-to-the-peak or doing-turns rules. Outside of surfing we could think of littering, assuming that local residents (not only surfers) have a right to a clean beach or the right to a quiet sleep.

Again, this problem is intertwined with general questions of economic inequality. We could imagine the *Poor Local Surfer* having a special right to surf ‘his home break’ whereas the *Rich Travelling Surfer* showing up with his precious equipment could simply move on and go somewhere else as he possesses not only a fancy camper van but also enough means to spend on petrol and the like. But shouldn’t the local poor in this case try and extract some of the rich surfer’s wealth (as the Hypocrite Surf Instructor does) instead of sending him away?

With regard to economic inequality, a local would have to prove that the non-local inflicts a harm that he cannot bear, a question that entails a threshold problem. But couldn’t the local simply claim special birth rights against the invader?

4.3 Special Rights for Being Born a Local Surfer?

Imagine two surfers, a local resident and a traveller showing up at a surf break in the morning at the same time. They both regularly surf the break. Can we think of residency as the decisive criterion here?

For Ronald Dworkin, it makes a moral difference whether one’s success results from factors that this person has control over – and is therefore responsible for the outcome – or it results from options beyond this control. Dworkin labels the first kind of factors *option luck* and the second kind *brute luck* (1981: 293). We can plausibly say that the fact where a surfer is born – whether on the coastline of the beautiful Basque Country or landlocked in the desert around Zaragoza – is a matter of brute luck and should therefore have no impact on how many waves he is entitled to. Instead of claiming a special birth right, the Zaragoza surfer simply has bad brute luck whereas the local on the coast has good brute luck. Neither of the two should be disadvantaged for that.

Furthermore, a surfer who regularly comes to surf a break although he doesn't live very near – let's say, the Zaragoza surfer is willing to go for a three-hour car ride to the Atlantic every day – should not be disadvantaged considering the effort he puts into surfing. On the contrary to privileging the local resident, the commuting surfer might even have a stronger claim to be compensated for the effort and energy he puts in locomotion. Quite contrary to the space-related claim of the local, would we actually be inclined to grant priority to him, because he might *deserve* it?

Before turning to a more detailed examination of what role desert plays in the distribution of waves with regard to the surfer's skill level, let us consider an argument in defence of the local: If we considered the amount of kilometres to a surf break as the decisive criterion to privilege travellers over residents, this would entail a vicious circle as surfer *a* from zone A would have to move to zone B, and surfer *b* to zone C and so on. Nobody could stay in his area, a situation in which local surfers are worse off and therefore is against the principle of Pareto optimality.

To sum up, the rights of local residents are intertwined with considerations of economic inequality and costs-benefits calculations are complex and not easy to assess in reality. With regard to the problem of what a 'severe burden' is, we would need to define a threshold between an acceptable burden and an unacceptable harm that outsiders put on locals, a problem that goes beyond the aim of this paper. As long as such an unacceptable burden is not imposed on local surfers, we neither have reason to privilege locals over non-locals nor the other way around. Claiming a special birth right is implausible because it is a matter of brute luck where a surfer is born.

5. “Out of My Way, You Kook”⁹: Performance

The *performance* doctrine refers to how well somebody surfs; it is a claim towards one's ability level. A surfer with a good performance will be able to show a large variety of manoeuvres and

⁹ According to Surflines's *Surfing A to Z*, a 'kook' is a "person who can't surf and gets in everyone's way. Someone who pretends to be something they're not. Almost always thinks they surf better than they really can" (Surflines, 2014).

will be secure in performing them. The rationale of the performance doctrine refers to the surfer's *skill* level.

To assess the plausibility of the skill claim, it is necessary to distinguish what factors it derives from. We can imagine several possible justifications for granting high performing surfers special rights to waves: Because the best have worked harder to get to where they are, because they possess favourable genetic endowments, because they enjoy themselves most, or because they provide more enjoyment to others watching them. Before examining the latter two options, we will discuss two plausible ways of rewarding surfers for their effort and talent as well as the implausible limits of the performance doctrine, namely technical enhancement and other external factors. Lastly with regard to performance, we will then discuss how skill and wave types are related from the view of Pareto egalitarianism.

5.1 Effort, Compensation and Desert

High performing surfers could claim they *deserve* to ride a wave before a worse surfer *because* of their higher performance but such a claim needs to be plausibly motivated. Literature in distributive justice suggests that we can motivate an appeal to desert because of the *effort* one person spends in her activity or for *compensating* her for the costs she has taken in order to get where she is (Arneson, 2013: 26). According to the *desert principle* – so understood –, a distribution is just when it reflects the extent to which a good performance is deserved for the effort one shows. We have already suggested that compensating the Zaragoza surfer for his effort in locomotion seems plausible but it may entail problematic consequences that are worse for others.

But surfers could to some extent be compensated for their training in- and outside the water. Consider *Pauline*, who is a regularly engaging surfer, making a lot of effort to get herself into the ocean and who sacrifices other things she could do in the meantime. She goes surfing whenever she can – even in the gnarliest winter months putting on a lot of thick neoprene and enduring water temperatures just above the freezing point. *Paul*, on the other hand, is an occasional good-weather surfer who prioritizes other things over surfing. There seems to be no reason why we shouldn't prioritise Pauline over Paul on the desert principle when we look at the striking diffe-

rence in effort both put into surfing. Pauline, other things being equal, should be rewarded for her greater effort.

A good performance in surfing *can* result from hard training. But it can also be a simple matter of talent or favourable external conditions. We have to further consider these differences.

5.2 Skill, Talent and Externalities

One problem when we look at skill solely from the output dimension is that it might rely on factors outside of people's control. We can plausibly assume that many factors in becoming a good surfer are outside of this surfer's control, like having the right surfing conditions or being born into circumstances favourable to meet possible sponsors – which are a matter of brute luck again and are therefore arbitrary.

However, whether or not natural endowments such as talent should make a moral difference is contested in distributive justice (Arneson, 2013: 16). But shouldn't talent in surfing count in the distribution of waves? If it didn't, we should push the most untalented surfers into great waves. This seems counterintuitive as we have strong instrumental reason to let the gifted flourish: They can become professionals pushing the sport into new dimensions or they can become good instructors for the next generation of surfers. The spirit of most sports actually endorses, favours, or virtually celebrates differences in natural talent. And most of us think they do so for good reason. Assume *The Talented Sprinter* runs world records solely due to his favourable genetic conditions – he trains equally hard as other athletes from his field. Should we make him pull a 20 kilograms training sledge when competing against others in order to compensate them for their natural disadvantage? No. Here, just as in surfing, the morality of sports diverges from accounts of distributive justice: Unlike in some cases of economic and social injustices, genetic differences like talent are clearly to be rewarded in surfing.

From these conclusions, we can note the priority rule number two before turning to a further limitation of the performance doctrine:

Second Rule: Surfers should, to some extent, be rewarded with waves for their efforts they put into and talents they have for surfing.

5.3 Limiting Performance: Natural Skills and Technical Enhancement

One illustrative example of why performance is an arbitrary criterion when looked at purely from the output side is the *Dave Wassel vs. Bodyboarder* case. Surfer Wassel used a jet ski to be pulled into the waves at the infamous lefthander of *Teahupoo*, Tahiti, although there were other surfers paddling into the waves with their mere hands. By using the ski, Wassel left no chance to paddling surfers to catch the best waves and was eventually dropped in by a bodyboarder who felt provoked. The case caused a discussion about priority rules within the surfing community (Indo-surflife, 2013).

Dave Wassel vs. Bodyboarder can be compared with the practices of big fishing companies that use special radars to detect fish swimming just across international boundaries, catch it quickly and thereby leave other nations without fish. In a closest-to-the-peak scenario which is egalitarian in principle, fishery companies just as surfers can abuse the criterion of momentary proximity by putting unfair burdens on their competitors through the use of technology. The case demonstrates that technical enhancement of skills is beyond the limits of the morally permissible in surfing. But it entails a threshold problem: What is to be counted as unfair ‘technological enhancement’? The analysis suggests that jet skis are. But what about better surfboards, more flexible wetsuits for faster paddling or even nutritional supplements for surfers?

The intention of the paper is not to face these questions here. Instead, let us now turn to the other two possible justifications of the performance doctrine, namely the claims that better surfers enjoy more or provide more enjoyment to those watching them.

5.4 Personal Utility: Best Waves to Best Surfers?

We might assume that beginners don’t enjoy surfing one particular wave as much as good surfers. Thus, the more skilled should be entitled to have priority over the less skilled. This claim can be explained by the *utility principle* of political philosophy according to which a distribution

is good when it creates the greatest sum of benefits (Parfit, 1997: 205). According to this principle, a surf break should be given to those making the greatest use of it, here understood in terms of preference satisfaction. This gives us a general rule to start. If surfers create a greater utility the better they perform, the utility principle endorses the performance doctrine.

In turn, let us consider two versions of this relation. Firstly, we can assume that *personal* utility is what matters. In surfing, preference satisfaction can be measured by how much each individual person enjoys riding a wave. High performing surfers could claim the best waves for themselves because they are better able to maximize *their individual* enjoyment by doing fancier manoeuvres than beginners and intermediates. It seems intuitively plausible that a good surfer, doing a combination of turns before being spat out of a barrel and finishing off with a rotation in the air, enjoys a wave to a higher extent *for himself* than a beginner who falls from his board on the take off, frustratingly getting washed on the shore. But endorsing the performance doctrine in principle would only be plausible if we could soundly assume that better surfers always have larger benefits from riding a wave than beginners or intermediates.

But there are certainly highly demanded waves that can be ridden by surfers with a large variety of skill levels. On a medium-sized day, *Bells Beach* in Victoria, Australia presumably is such a wave – a long right-hand point break winding down the bay in a relatively mellow movement offering sections that are not too fast so that even slower surfers can cope with the pace. The personal utility account doesn't tell us that we should prioritize better surfers here: Assume an intermediate surfer who catches the first 150-metre ride of his life. The sensations he feels in this moment are likely to give him a greater enjoyment than a pro rider who considers this wave to be just of average quality.

5.5 Overall Utility: Maximising Aggregated Benefits?

But what if we consider *overall* utility as our benchmark of what a good distribution is, that is utility understood as maximising benefits for the society in general? High performing professional surfers often show up on a surf spot entourage with film-makers and photographers. Assume a professional riding a beautiful wave, doing an incredible manoeuvre which is recorded by the

media crew and consequently spread over the internet. The footage arguably creates the greatest utility possible as the excitement about an as yet unseen photo or video might match the preferences of millions of surfers around the planet. Note that on a classical understanding of utility, the benefits in terms of welfare jeopardize this effect: The sponsor's economical success might not only make the employees of the company better off but even the rest of the society via tax money. Should average surfers leave waves to professionals in that kind of a situation?

In distributive justice, one of the main criticisms to this kind of view states that focusing on the overall *aggregated* benefit doesn't allow us to consider *how* the good is distributed. It can lead to highly unequal distributions that are counterintuitive. To illustrate this mechanism, consider a surf break which is populated with a dozen of average surfers sharing the waves and having each a good time. Now imagine *The World Champ*, the most successful and best known surfer of all time, arriving to shoot a video. To be absolutely sure he can pick the waves he wants, the other surfers would have to leave the water and let him go, as he could arguably create a greater benefit in the sense described above when surfing a break on his own. But wasting the waves like that is unsound as the World Champ's privilege would decrease the enjoyment of others.

5.6 Pareto Egalitarianism, Wave Types and Skill

We stated earlier that on behalf of *Pareto egalitarianism* we should occupy empty spots and avoid letting waves go unridden in order to increase benefits for everyone. Thus, the World Champ cannot send anyone away just because he bestows a great benefit. But what if in a situation of wave scarcity two (or more) surfers claim the right to go for one and the same wave? Do we have any reason to privilege a more skilled surfer over a less skilled surfer here? Consider the following case.

Many surfers consider it frustrating when someone wipes out right at the beginning of his ride, dissipating the wave and thereby ruining the opportunity for other surfers. In surfing, preferences for different types of waves are largely a matter of skill level: Mushy, foamy or slow waves are suited for beginners whereas steep, fast and dangerous ones are for experts as they require high skills such as a quick take-off, a steep drop, high speed, a safe 'line' on the face and good antici-

pation of breaking sections to be successfully ridden. In between these extremes, as a matter of scale, we have all imaginable varieties of waves, each of which fits one or multiple skill levels. This intuition can be expressed with the following rule: If a surfer paddles for a wave, he should have a sufficient ability level to complete his ride. The minimally required abilities include a safe take-off and being able to ride along the sections with the speed demanded by the wave.

Note that not only the frustrated crowd, but also the wiped-out surfer himself would have enjoyed more, had he picked another wave suited to his ability level. The *Pareto egalitarian* account acknowledges different surfers' preferences and distributes waves according to these. Both well and badly performing surfers are better off as they both have more and better waves, rides and enjoyment.

It is crucial in surfing that waves are ridden according to surfers' skill levels. Exclusion can further be justified by pointing at the dangerous consequences for surfers who try to surf waves unsuited to their ability level, which can result in getting washed over and slammed on the sea bottom, causing heavy injuries. This is even more plausible for reef breaks and big surf where sharp corals can bring about deep cuts in the flesh, blunt rocks can cause head injuries, and surfers risk drowning from multiple hold-downs. We can thus modify our practically implementable priority rule number one:

Modified First Rule: Don't leave waves unridden. Occupy empty spots and choose your break and waves according to your abilities.

To sum up, simply claiming priority over other surfers because of one's better performance is a morally flawed view. Performance per se is not a good reason for being privileged in wave distribution as a surfer's skill can stem from plausible factors like effort as well as talent or from arbitrary factors such as being lucky to have grown up under favourable circumstances. Technical enhancement of one's performance can be rejected. Personal utility is a plausible factor but not necessarily related to skill, whereas overall utility is implausible. On behalf of Pareto egalitarianism, we can send beginners away from an overcrowded spot as long as they find waves that suit their ability level equally well or better and they don't decrease their enjoyment.

Having considered the moral plausibility of the skill-related performance doctrine, we now turn to the third way surfers claim special rights to waves over others.

6. “First Come, First Surfed”? Seniority

The *seniority* doctrine is about the period of time a surfer has surfed a particular break. It refers to an experience claim towards the local surf conditions. Having observed a break for a long time, assessing different directions and sizes of the swell, wind conditions and tides, such a surfer has better knowledge about a spot due to his experience from having surfed it for a long time. The rationale behind the seniority doctrine refers to *time*.

Are older surfers entitled to ride a wave before younger ones, due to their higher experience with the surf conditions? Such a surfer could claim ‘I have been surfing this wave for decades. I was here *first* and therefore I have priority over you’. Such a claim might intuitively seem plausible as an account of first occupancy is the basis for many mammals and may seem hard to shake. But as we have shown above with Locke, special rights for surfers cannot be endorsed because of their usage of a break, however long they have surfed there.

Some seniority-driven surf spots are simply hierarchically organized and older surfers tell the younger ones which waves they have a ‘right’ to go for. Former professional surfer Sunny Garcia, a long time-resident on the infamous Hawaiian *North Shore*, has described the hierarchical seniority system that runs one of the world’s most legendary surf breaks, the *Banzai Pipeline*: “You know, Pipeline has a pecking order [...] and I’m glad that I’m finally on top of it” (Pipe Masters, 2013). Such a kind of “pecking order” based on succession might be hard to justify with theories of distributive justice. But isn’t there some plausibility in the senior’s claim?

6.1 Long-term Seniority

One may argue that some inequalities between generations might be defensible given the fact that all young people will eventually grow up and become seniors – thus, as long as burdens and privileges due to age are comparably distributed over generations, we have some reason to consider deviations from equality as fair. Such an account has been called *whole lives egalitarianism*

(Holtug & Lippert-Rasmussen, 2007: 10). From this view, we might have reason to grant the elderly some privileges in the distribution of waves.

Thus, should a younger surfer accept a disadvantaged treatment in the allocation of waves in favour of a more experienced surfer, plainly because of the time factor, relying on the fact that one day, he himself might be ‘on top of the pecking order’? Such a view is flawed because the younger surfer might possibly die tomorrow (for whatever reasons but especially on life-threatening surf spots such as *Pipeline*¹⁰) – without having the chance to compensation in terms of waves while growing up. Whole lives egalitarianism is not a satisfying account to ground special rights for seniors in surfing.

For a time-related justification of localism, we have to consider more than plainly the time dimension. A more plausible way to ground special rights for a senior surfer would have to add some extra criterion to simple age. Consider the *Honourable Senior* who has contributed to the preservation or maintenance of a surf spot. Let us imagine he has engaged in activism to prevent a break from disappearing because of a planned harbour jetty. The protest happened in the 1980’s. Without this senior’s engagement, the break would no longer exist and thus every surfer today would be worse off as he wouldn’t be able to surf there at all. Consequently, we can plausibly claim that a younger surfer of the 21st century owes this elderly fellow some special honours in terms of wave distribution. To ground this intuition, we can appeal to the above outlined desert principle.

Experience over time doesn’t matter intrinsically. Should this finding be alarming to senior surfers? Some reassuring evidence in favour of the elderly comes from the nature of surfing itself, as acquiring knowledge of a surf break over time means all the world to surfers. Therefore, in practice – at least in situations of the closest-to-the-peak rule –, seniors will naturally be on the better waves more often than surfers who are inexperienced with the conditions of the break, however skilled they may be in general.

¹⁰ For an attempt to list the death casualties at *Pipeline*, see Transworld Surf (2008).

But the time factor might matter in the distribution of waves on an everyday basis. Note that we deviate from the narrow understanding of seniority here, but still this factor is time-related and morally relevant.

6.2 *Everyday Seniority*

We can point to a sort of instant – or everyday – understanding of seniority. On a busy Monday afternoon, *Fernando* comes to the computer lab at Pompeu Fabra University but all the places are taken. We wouldn't consider sending anyone away in this situation, not even a person who was in the place where Fernando had regularly been sitting for weeks.

Likewise in the distribution of ocean waves, we should give some moral importance to a simple rule of who gets out in the line-up *within one session*. This is a functional principle and it doesn't disadvantage any group of surfers.¹¹ We can note our third priority rule.

Third priority rule: During one session; first come, first surfed.

Imagine however, *Lydia* arrives at the packed UPF computer lab, it is two hours before the deadline she is supposed to submit her MA thesis and she sees one of her co-students chatting with his friends on Facebook, discussing how funny and exciting their weekend was. Most of us think that in this case, Lydia has good reason to claim privileged access to the computer. Does greater urgency matter in a similar way in surfing?

Consider a surfer who is forced to come to a break only at very particular hours, let's say, within his lunch break in the afternoon. During the off-work hours, he cares about his children that he raises on his own. We might argue that this is sufficiently good reason to grant this surfer priority over another surfer who, other things being equal, can also get into the water later. This leads us to a modification of the Third Rule.

Modified Third Rule: During one session; first come, first surfed – unless a surfer plausibly claims great urgency.

¹¹ Although similar, and in principle egalitarian, 'everyday seniority' is different from the 'doing-turns' rule: It is actually a limit of how many surfers can participate in a session.

To sum up, the time factor does not matter on its own when we consider long-term seniority, unless the time claim is supplemented with some additional reason. We can think of exceptions when seniors add something honourable to their mere experience, for example having actively contributed to the preservation of a break. The short-term right of the early surfer is a reasonable applicable rule in general unless someone plausibly claims great urgency. This naturally entails the problem of defining which cases count as “great urgency” and should therefore be treated with privilege, and which cases merely count as a minor urgency. We will not try to draw this line here, as it appears to be impossible to take into consideration all the aspects of such a threshold question. However in theory, such a claim of great urgency can be grounded on behalf of the *priority principle* of distributive justice which is the matter of the following section.

7. An Alternative Rule: Prioritizing the Vulnerable

On a good day in the autumn of 2013, the author of this essay went surfing in Vilassar de Mar, half an hour north of Barcelona. Sharing the waves with a handful of other friendly surfers, the atmosphere was relaxed as there were enough waves for everyone. Several peaks were on offer but there was one lefthander that broke especially frequently, powerfully, cleanly, and all the way down the line from off the jetty covering the little harbour in the direction of the beach.

When he came out of the water, a paraplegic surfer drove by in his car. As this surfer was unable to move his legs, it took him 40 minutes to get from his car into his wheelchair, then into his wetsuit and back into his wheelchair. He grabbed his surfboard and rolled down to the beach. Left impressed, the author watched the scene and saw him catching a few nice waves on that beautiful lefthander, riding the waves down to the beach on his stomach, with a big smile on his face and enjoying the waves just like everyone else. Naturally, due to his handicap, he wasn't as agile and fast in paddling as the other surfers. But he still got his waves in a closer-to-the-peak scenario, sharing the line-up with stronger, fitter surfers. Why? Because they granted him special rights to go for the waves he wanted.

The behaviour of the other surfers can best be explained with an appeal to the priority principle of distributive justice which states that “[b]enefitting people matters more the worse off these

people are” (Parfit, 1997: 213). According to this principle, less fit surfers, including many children, women, elderly, or precisely handicapped surfers – consider Bethany Hamilton as a celebrated example matching three of these criteria¹² – should be given priority because otherwise they wouldn’t catch waves at all. This leads us to add a fourth point to our practically applicable rule book of wave regulation before turning to the conclusion.

Fourth Rule: Let the vulnerable go.

8. Conclusion

This paper has examined how plausible the three doctrines of wave distribution in surfing – localism, performance and seniority – are in the light of theories of distributive justice. First of all, we demonstrated with John Locke that waves or surf breaks cannot plausibly be appropriated. This finding undermines any surfer’s claim to exclude others from ‘his’ break. We then outlined two formal priority rules in surfing, namely the doing-turns rule and the closest-to-the-peak rule which are both egalitarian in principle. Furthermore, we outlined Pareto egalitarianism which turned out to be a plausible principle that we should never neglect. The rest of the discussion was dedicated to assessing the plausibility of the informal doctrines that actually rule wave distribution around the globe.

None of the doctrines matters intrinsically. Thus, surfers cannot plausibly refer to claims because of their status as a local, high performer or experienced senior per se. With regard to *localism*, the account of brute luck is a strong statement against the view that local surfers have special rights over non-locals. The analysis suggested that locals do have general rights outside of surfing that might be intertwined with considerations of economic inequality. Travelling surfers must take care not to infringe these. As the issue entails a threshold problem and therefore exceeds the focus of this paper, further research is required.

¹² Well-known professional surfer Bethany Hamilton lost her left arm in a shark attack in 2003, but nevertheless has kept on surfing on a competitive level since then.

Furthermore, we clarified the implausibility of claiming special rights to waves as a result of good *performance* itself. However, it does matter what factors such high skill derives from. Surfers might have a special right to be rewarded with waves for their talent or the effort they show in their surfing, but not for other arbitrary factors. Referring to utility has some plausibility with regard to the individual surfer's enjoyment but doesn't endorse the performance doctrine. An account of overall utility can lead to repugnant conclusions whereas Pareto optimality is what surfers should aim at.

Appeals to *seniority*, finally, cannot plausibly refer to the time-claim over generations without supplementary reasons such as having created a good for other surfers. In the short run, however, the first-come-first-surfed rule is a reasonably implementable standard to regulate everyday access to surf breaks.

Of all three doctrines, localism appears to be the least plausible. This finding is interesting as it is the most prominent of the doctrines in practice, excluding travelling surfers around the globe from pristine 'localised' surf spots. Perhaps we shouldn't conclude that there is no justification for localism at all. What we can claim is that it cannot be justified on behalf of the theories this paper invoked, although we might take them to be the most favourable. Still, the essay nourishes doubts that localism in surfing can be reasonably defended at all. Polemic functional statements that localism could be justified simply because "it works" (Surfermag, 2013) are undoubtedly not enough to ground the localist claim.

The last section pointed to the priority principle of ethics. The priority view grasps many – if not all – of the positions defended in this paper against the doctrines, but it also allows for plausible deviations from the egalitarian formal rules. Many people think that to assess topics in ethics it is good to be a moral pluralist with regard to the distributive principles one refers to. But if we wanted to opt for only a single principle to rule the distribution of ocean waves, we could most neatly assess surfing on behalf of the priority principle. This way, we could answer some of the left-open questions, e.g. whether the World Champ has priority over other equally skilled surfers,

as we could take into account not only the size of personal and overall benefits, but also all other factors in the prioritarian calculus.

Overall, fusing the problem of wave scarcity with theories of distributive justice was a gainful strategy. As a by-product, the analysis suggested four applicable rules for regulating overcrowded surf breaks. Being moderate in their claims, they are generally compatible. This is not to say they might never conflict, as they are open to a margin of interpretation – for example, what criteria a plausible urgency must meet. Some may be tempted to claim lexical priority of one rule over another. Quite to the contrary, the author believes it is more fruitful to leave this struggle open in theory but to be tested in practice.

Acknowledgement

The author thanks Paula Casal, Josh Davison and an anonymous *Fair Play* reviewer for their comments on earlier versions of the text.

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