

Two Dimensions of Criminal Punishment: Deterrence and Desert

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Abstract:

Frances Kamm defines nonconsequentialism as the view that both consequence-based reasons and deontological reasons are both significant in moral deliberation. I argue that if nonconsequentialism is true, then judges should take account of both general deterrence and desert in sentencing. I argue that in employing general deterrence as a ground for sentencing, the judge does not necessarily treat criminals merely as a means. Another important dimension is desert. While I do not hold Positive Retributivism, I argue that Blame Retributivism and Negative Retributivism are plausible. In particular, I subscribe to Negative *pro tanto* Retributivism, that view that to the extent that an act is outside of one's control, one does not deserve punishment. Finally, I try to show how poverty and past injustice could be grounds for legal excuse or mitigation.