

Mediating Desert and Punishment

Retributive theories justify punishment in terms of the desert of the agent. Even from a deontic, retributive perspective, however, the road from ‘deserved punishment’ to ‘justified punishment’ is a long one, a fact highlighted primarily by critics of retributivism and not often discussed by retributivists themselves. In analyzing the justifiability of punishment, retributivists rather tend to restrict their gaze to the morally relevant features of the offender’s act. This paper will highlight, however, that punishment involves not one, but two acts: the act of the offender and the act of punishment, both of which are morally charged. Thus, the question of whether punishment is ultimately justified will depend upon the full range of norms and reasons, both internal and external to desert, that apply to both these actions. This understanding will be used to defend a hybrid theory of criminal punishment – side constrained retributivism.