

Why We Should Reject Semiretributivism and Be Skeptics about Basic Desert Moral Responsibility: A Reply to John Martin Fischer

Gregg D. Caruso

ABSTRACT: John Martin Fischer has recently critiqued the skeptical view that no one is ever morally responsible for their actions in the basic desert sense and has defended a view he calls semiretributivism. This paper responds to Fischer's concerns about the skeptical perspective, especially those regarding victims' rights, and further explains why we should reject his semiretributivism. After briefly summarizing the Pereboom/Caruso view and Fischer's objections to it, the paper argues that Fischer's defense of basic desert moral responsibility is too weak to justify the kind of retributive blame and punishment he wishes to preserve. It then turns to the issue of victims' rights and argues that Fischer is mistaken that victims want retribution above all else, and that the public health-quarantine model is better able to deal with the concerns of victims. It concludes by offering two additional objections to Fischer's semiretributivism.

KEY WORDS: free will, moral responsibility, punishment, victims rights, retributivism, criminal justice

Gregg D. Caruso is Professor of Philosophy at SUNY Corning, Visiting Fellow at Northeastern University London, and Honorary Professor of Philosophy at Macquarie University. His research focuses on free will, moral responsibility, punishment, philosophy of law, jurisprudence, social and political philosophy, moral philosophy, philosophy of mind, moral psychology, and neurolaw. His books include Moral Responsibility Reconsidered (with Derk Pereboom, Cambridge University Press, 2022), Rejecting Retributivism: Free Will, Punishment, and Criminal Justice (Cambridge University Press, 2021), Just Deserts: Debating Free Will (with Daniel C. Dennett, Polity Press, 2021), and Free Will and Consciousness: A Determinist Account of the Illusion of Free Will (Lexington Books, 2012). SUNY Corning Community College, Corning NY 14830. gcaruso@corning-cc.edu.

In “Moral Responsibility Skepticism and Semiretributivism” (2023), John Martin Fischer critiques the skeptical view that no one is ever morally responsible for their actions in the *basic desert* sense—the sense according to which agents deserve the harm or pain of blame or punishment *just because* they acted wrongly, given that they were aware or should have been aware that the action was wrong (Pereboom 2021). He maintains that, although aspects of the skeptical perspective are appealing, it is also “overall unconvincing” (Fischer 2023: 38). In particular, he argues that basic desert moral responsibility skeptics fail to establish that no one is ever morally responsible in the relevant sense. He also challenges the alleged bad consequences of belief in basic desert moral responsibility and argues that normatively and empirically there is a legitimate role for moral anger, especially with regard to the moral anger of victims and their loved ones. In contrast to the skeptical views of Derk Pereboom and me, which not only reject basic desert moral responsibility but also retributive blame and punishment,¹ Fischer sketches an account he calls *semiretributivism*, which he maintains “captures what is appealing in retributivism and also moral responsibility skepticism” (2023: 52).

In this paper, I respond to Fischer’s concerns about the skeptical perspective, especially those regarding victims’ rights, and further explain why we should reject his semiretributivism. I begin, in Section 1, by briefly summarizing the “Pereboom/Caruso view,” as Fischer (2023: 42) refers to it. In Section 2, I then outline Fischer’s main objections to the view. In Section 3, I turn to the central arguments for skepticism about basic desert moral responsibility along with Fischer’s critique of them. I argue that Fischer’s defense of basic desert moral responsibility is too weak to justify the kind of retributive blame and punishment he wishes to preserve. In Section 4, I turn to the issue of victims’ rights and argue that (a) Fischer is mistaken that victims of crime want retribution above all else; (b) he is also mistaken that retributivism is fundamentally concerned with victims—since this confuses vengeance (which is victim-centered) with retributivism (which is agent-centered); (c) even if victims of crime wanted to see criminals suffer, it would not be a violation of victims’ rights to deny them the satisfaction of desires that are themselves unjust; furthermore (d) my own non-retributive alternative (the public health-quarantine model) better aligns with what victims actually want; and (e) instead of seeking vengeance, restorative justice methods can be used to provide victims and their families the closure they seek. I conclude in Section 5, by offering two additional objections to Fischer’s semiretributivism, which I contend further strengthen the case for basic desert moral responsibility skepticism.

1. BASIC DESERT MORAL RESPONSIBILITY SKEPTICISM

When philosophers discuss moral responsibility, what they generally have in mind is the kind of responsibility that makes agents justified targets of certain approving or disapproving attitudes, judgment, and treatment. It is important to recognize that our practice of holding agents morally responsible has backward- and forward-looking aspects. The most prominent backward-looking aspect is *desert*—that is, the deserved harm of blame and punishment for wrongdoing, and the deserved benefit of praise and reward for morally exemplary action. A *basic* conception of desert is backward-looking to its core. That is, *basic desert* claims are fundamental, and thus not in turn grounded in forward-looking considerations such as the future moral formation of agents, reconciliation, or safety. Skeptics about moral responsibility are skeptics, specifically, about this sort of responsibility—they

typically maintain that who we are and what we do is ultimately the result of factors beyond our control and because of this we are never morally responsible for our actions in the basic desert sense (Pereboom 2001, 2014, 2021; Levy 2011; Waller 2011, 2014; Caruso 2012, 2018, 2021a; Caruso and Pereboom 2022; Caruso in Dennett and Caruso 2021).²

Historically, debates about moral responsibility have also been intimately connected with the traditional free will debate. This is because, for an agent to be morally responsible for their action—that is, to justly deserve to be praised and blamed, punished, and rewarded for it—it is typically held that they need to satisfy two individually necessary and jointly sufficient conditions: an *epistemic condition* and a *control condition*. The first condition is concerned with whether the agent’s epistemic or cognitive state was such that they can properly be held accountable for the action and its consequences (Rudy-Hiller 2018). The second condition has to do with whether the agent possessed an adequate degree of control in performing the action. Whereas the first condition prompts us to ask, “was this person aware of what they were doing (of its consequences, moral significance, etc.)?” the second condition prompts us to ask, “was this person acting freely when they did A?” (Rudy-Hiller 2018). It is this second condition, the control condition, that philosophers typically associated with free will.

Following tradition, I define “free will” in terms of control in action required for an agent to be morally responsible for an action, though I further specify that the kind of moral responsibility at issue in the traditional free will debate is *basic desert* moral responsibility (see, for example, Pereboom 2001, 2014; Caruso and Morris 2017; Caruso 2021a; Caruso and Pereboom 2022). Understood this way, free will is a kind of power or ability an agent must possess in order to justify certain kinds of desert-based judgments, attitudes, or treatments—such as resentment, indignation, moral anger, and retributive punishment—in response to decisions or actions that the agent performed or failed to perform. These reactions would be justified on purely backward-looking grounds—that is what makes them *basic*—and would not appeal to consequentialist or forward-looking considerations (see Pereboom 2001, 2014, 2021; Caruso and Pereboom 2022). Since I understand free will as the control in action required for true attributions of basic desert, if the skeptical arguments against free will (discussed in Section 3) succeed, they also establish a skepticism about basic desert moral responsibility.

One of the practical implications of adopting basic desert moral responsibility skepticism is that *no one* is ever truly deserving of retributive blame and punishment. The retributive justification of legal punishment, for instance, maintains that, absent any excusing conditions, wrongdoers morally deserve to be punished in proportion to their wrongdoing. For the retributivist, wrongdoers deserve something bad to happen to them just because they have knowingly done wrong—and this can include pain, deprivation, or even death. The desert invoked in retributivism is *basic* in the sense that it is not in turn grounded in forward-looking reasons such as securing the safety of society or the moral improvement of criminals. Thus, for the retributivist, the claim that persons are morally responsible for their actions in the *basic desert* sense is crucial to the state’s justification for giving them their just deserts in the form of punishment for violations of the state’s laws. A fundamental tenet of the skeptical perspective is the rejection of retributivism since it does away with the notion of basic desert altogether (see, for example, Pereboom 2001, 2014, 2021; Caruso 2021a, 2021b, 2021c).

The skeptical view also entails that *no one* is ever truly deserving of resentment, indignation, moral anger, and backward-looking blame—at least not in the basic desert sense. This is because these reactive attitudes are often accompanied by the supposition that its target *deserves* (in the basic sense) to be the recipient of the expression of such emotions, which presupposes the kind of moral responsibility skeptics deny. For instance, in the face of wrongdoing, one might express a kind of anger or blame, one that intentionally causes pain or harm, because it is believed that the wrongdoer deserves such pain or harm. A paradigm example would be when we confront a wrongdoer with expressions of *angry blame* (Wolf 2011; Fricker 2016; Bagley 2017; Shoemaker 2018; McKenna 2019). Such blame is associated with a certain negative emotional attitude toward the wrongdoer—such as resentment or indignation; and more broadly, moral anger—that goes beyond the mere absence or withdrawal of good will (Wolf 2011: 335). This kind of moral blame is non-trivially painful or harmful, and, when accompanied with a supposition of desert, qualifies as retributive.³

Importantly, while skeptics deny that agents are morally responsible in the basic desert sense, they do not deny that agents are responsible in other important senses. This is because, even if an agent fails to be morally responsible in the basic desert sense, it may remain legitimate to say that they have *take-charge responsibility*, *role responsibility*, *liability responsibility*, and the kinds of responsibility associated with *attributability* and *answerability*, since these in no way presuppose or depend upon desert (see Caruso and Pereboom 2022). Additionally, on Pereboom’s forward-looking account of moral responsibility (Pereboom 2014, 2021), which I also endorse and defend (Caruso 2021a; Caruso and Pereboom 2022), when we encounter wrongdoing, it is perfectly legitimate to engage in moral protest and ask the agent, “Why did you decide to do that?” or “Do you think it was the right thing to do?” If the reasons given in response to such questions are morally unsatisfactory, we regard it as justified to invite the agent to evaluate critically what their actions indicate about their intentions and character, to demand an apology, or to request reform. Engaging in such interactions is reasonable in light of several forward-looking considerations. A first is the right of those harmed or threatened to protect themselves from immoral behavior and its consequences, thereby securing safety. Second, we might have a stake in reconciliation with the wrongdoer, and calling them to account in this way can function as a step toward realizing this objective. Third, on both a personal and societal level we have an interest in the moral formation of the wrongdoer, and the address described functions as a stage in that process. Last, such interactions are also justified by the good of the recovery and restoration of victims harmed by wrongdoing. On this forward-looking account of moral responsibility, then, moral protest and exchange is grounded, not in basic desert, but in forward-looking non-desert-invoking desiderata, such as protection, reconciliation, moral formation, and recovery and restoration of victims.

Optimistic skeptics, like Pereboom and me, maintain that this forward-looking account of moral responsibility can preserve most of what we care about when it comes to our interpersonal relationships (see, for example, Pereboom 2014, 2021; Caruso and Pereboom 2022). We further maintain that life without basic desert moral responsibility is not only possible, but preferable since it does away with an often-destructive form of moral anger (see, for example, Pereboom 2001, 2014, 2021; Caruso 2019, 2021a; Caruso and Pereboom 2022). Prospects of finding meaning in life or sustaining good personal relationships, for instance, would survive (Pereboom 2001, 2014; Caruso 2018, 2019, 2021a; Pereboom

and Caruso 2018). And although retributivism and severe punishment, such as the death penalty, would be ruled out, we argue that an ethically defensible and practically workable alternative for addressing criminal behavior exists, which we call the *public health-quarantine model*.

Since we have developed and defended the public health-quarantine model at length elsewhere (see Pereboom 2001, 2014, 2016, 2021; Caruso 2016, 2017, 2021a, 2021b, 2021c, 2023; Pereboom and Caruso 2018; Caruso and Pereboom 2020), I will here simply note that the core idea of the model is that the right to harm in self-defense and defense of others justifies incapacitating the criminally dangerous with the minimum harm required for adequate protection. The justification for this right draws on a comparison between treatment of dangerous criminals and treatment of carriers of dangerous diseases. In its simplest form, the argument can be stated as follows: (1) Free will skepticism maintains that criminals are not morally responsible for their actions in the basic desert sense; (2) plainly, many carriers of dangerous diseases are not responsible in this or in any other sense for having contracted these diseases; (3) yet we generally agree that it is sometimes permissible to quarantine them, and the justification for doing so is the right to self-protection and the prevention of harm to others; (4) for similar reasons, even if a dangerous criminal is not morally responsible for his crimes in the basic desert sense (perhaps because no one is ever in this way morally responsible) it could be as legitimate to preventatively detain him as to quarantine the non-responsible carrier of a serious communicable disease (see Pereboom 2001, 2014).

Importantly, the model does not justify the sort of criminal punishment whose legitimacy is most dubious, such as death or confinement in the most common kinds of prisons in our society. In fact, the model is not only non-retributive, it is also completely non-punitive since it does not seek to intentionally harm or impose harsh treatment on wrongdoers. The model also requires special attention to the well-being and dignity of criminals that would change much of current policy. Just as fairness recommends that we seek to cure the diseased we quarantine, so fairness would counsel that we attempt to rehabilitate the criminals we detain (Pereboom 2014: 156). Rehabilitation and reintegration would therefore replace punishment as the focus of the criminal justice system. Last, and perhaps most importantly, the model advocates for a broader approach to criminal behavior that moves beyond the narrow focus on sanctions. It not only situates the quarantine analogy within the broader justificatory framework of public health ethics, it also develops and defends a public health approach to crime that prioritizes prevention and social justice and aims at identifying and taking action on the social determinants of health and criminal behavior (see Caruso 2017, 2021a).⁴

2. FISCHER'S CRITIQUE

Fischer begins his paper by accepting, or at least granting for the sake of argument, that basic desert moral responsibility is what is of central philosophical and practical importance in the traditional debate. He also accepts/grants a "control" or "free will" requirement for basic desert and acknowledges that the relevant form of basically deserved blame and punishment are "'punitive' in that they seek to cause something 'bad' for the agent/offender—suffering, broadly speaking, or the deprivation of goods" (2023: 39). By doing so, Fischer proposes to address the skeptical position head on.

Fischer begins his critique of basic desert moral responsibility skepticism by writing:

Until recently, most of us thinking about these issues have dismissed moral responsibility skepticism as a radical or fringe doctrine that would wreak havoc in very basic and important ways with our ordinary ways of treating each other (or, at the very least, our ways of conceptualizing them). Perhaps surprisingly, the doctrine has emerged as an influential view in contemporary agency theory. A big part of the reason is the subtle and sophisticated work of Derk Pereboom (2001, 2014, 2021) and others. For example, Gregg Caruso builds on and extends Pereboom's theory (Caruso 2021; Dennett and Caruso 2021). The proponents of this view have marshaled impressive arguments that invoke both abstract metaphysical considerations and disturbing empirical facts about crime and our judicial and penal institutions, as well as requirements for human psychological health. (2023: 38)

One aspect of the "Pereboom/Caruso view" that Fischer admires is "its insistence on a kinder, more humane, and respectful treatment of human beings, as well as significant reform of our prisons, which are in dire need of such reform" (2023: 42). He also admires the fact that the Pereboom/Caruso view is sensitive to the "myriad social factors that can significantly affect human behavior, and the best, most humane ways to discourage recidivism and encourage re-entry" (2023: 52). Nevertheless, Fischer finds the skeptical view unacceptable and charges that "a central part of blame and punishment is missing in the forward-looking approach of the moral responsibility skeptics: moral anger" (2023: 45)—he focuses on the moral anger of victims of crime and their families as his primary example.

One of Fischer's central goals is to defend moral anger and, along with it, punitive blame and punishment that is backward-looking, hence retributive. As Fischer defines it, the retributive justification of blame and punishment maintains:

Retributivism: (i) People sometimes basic-deserve blame and perhaps punishment of a certain extent and/or degree for their wrong actions, and (ii) it follows just from this that there is a strong *pro tanto* reason to deem it all-things-considered justified to blame or punish them in a way that is proportionate to the badness of the actions in question. (2023: 40)

Since basic desert moral responsibility skeptics reject retributive blame and punishment, Fischer claims they fail to properly engage with "the legitimate feelings, interests, and reactions of the wronged victims [of crime] and their loved ones" (45). He further maintains that "an adequate theory of moral responsibility must accept condition (i) in the definition of retributivism" (50). That is, "such a theory must imply that some (perhaps many) criminals (and other norm-violators) basic-deserve to be punished in a way that (roughly speaking, adding in an element of (ii)) is proportionate to the crime (or norm violation)" (50). Fischer therefore targets the doctrine of basic desert moral responsibility skepticism in part to preserve the retributive notion that, absent any excusing conditions, wrongdoers morally deserve to be blamed and punished in proportion to their wrongdoing.

Fischer's defense of retributivism departs, however, from the *strong retributivist* view that negative desert,⁵ which is what the criminal law is concerned with when it holds wrongdoers accountable, is both necessary and sufficient for punishment and, as such, grounds a duty to punish wrongdoers. Instead, Fischer maintains that, "desert gives rise to *pro tanto*, not necessarily 'sufficient' or 'all-things-considered' reasons" (2023: 50). That is, "desert is a big part, but not the only part, of one's all-things-considered judgment about punishment" (2023: 50). Hence, Fischer's position, which he calls *semiretributivism*,

maintains that “although . . . a criminal fully deserves proportionate blame and punishment (and that our legal and penal institutions should reflect this), *other factors* also play a role in determining the justified response to a criminal offense, all things considered” (2023: 50). Among these “other factors” are “those highlighted by the moral-responsibility skeptics,” including “various forward-looking considerations, many of which help to render our practices and institutions more humane and progressive” (2023: 51). These forward-looking considerations may include considerations about safety and deterrence as well as those “familial and social factors that causally influence an individual’s behavior, including poverty and abuse” (2023: 51).

While Fischer labels his view *semiretributivism*, I should note that it is really just a form of *moderate* or *modest* retributivism—arguably the most popular form of retributivism. *Weak retributivism*, for instance, maintains that while negative desert is a necessary condition for punishment, *it is not enough on its own* to justify punishment—other conditions must also be met. As Alec Walen (2014) describes it, weak retributivism is the view that “wrongdoers forfeit their right not to suffer proportional punishment, but that the positive reasons for punishment must appeal to some other goods that punishment achieves, such as deterrence or incapacitation.” On this view, then, the desert of the wrongdoer is a necessary condition for punishment, since it removes the protection against punishing innocent people, but *it does not itself provide a positive justification for punishment*—additional justifications for punishment, ones that go beyond the backward-looking desert of wrongdoers, must be provided before punishment is justified.⁶ As I understand it, this is *not* Fischer’s view.

Instead, Fischer imparts an important and positive role to negative desert in justifying the punishment of wrongdoers. As such, he accepts what I would call a *moderate retributivism*, which maintains that negative desert provides positive *pro tanto* reasons for punishment but that desert does not mandate punishment or provide an obligation to punish in all circumstances—that is, there may be other goods that outweigh punishing the deserving or giving them their just deserts (Robinson and Cahill 2006). Leo Zaibert (2018), for instance, defends a kind of moderate retributivism when he argues:

There are many reasons why sometimes refraining from punishing a deserving wrongdoer is more valuable than punishing him—even if one believes that there is [intrinsic] value in inflicting deserved punishment. Perhaps the most conspicuous cases are those in which the refraining is related to resource-allocation and opportunity costs. . . . To acknowledge the existence of these cases is not to thereby deny the value of deserved punishment: it is simply to recognize that this value, like any value, can be—and often is—lesser than other values. (20)

Mitchell Berman (2016) also defends a form of moderate retributivism, which he calls “modest retributivism,” since he maintains that negative desert grounds a justified reason to punish, but not a duty to do so. Fischer’s semiretributivism can therefore be treated as a form of moderate retributivism, one that maintains that the negative desert of wrongdoers provides “strong *pro tanto* reason to deem it all-things-considered justified to blame or punish them” (Fischer 2023: 40).⁷

Moving on to Fischer’s critique of basic desert moral responsibility skepticism, it centers on three key aspects of the doctrine. As he describes it:

Basic Desert Moral Responsibility Skepticism:

(1a): denies (*i*) in the definition of retributivism, that is, [it] holds that no one ever basic-deserves blame or punishment.

(1b): points to numerous problems putatively stemming from retributivism.

(1c): suggests a forward-looking account of moral responsibility, and, in particular, [a non-retributive alternative for addressing criminal behavior], contending that this account avoids problematic features of a belief in basic-desert responsibility. (Fischer 2023: 40)

Fischer's paper is organized around responding to each of these claims.

In response to (*1a*), he argues that “we indeed have basic-desert responsibility because we *do* have the relevant kind of control—the capacity to act freely (guidance control)—whether or not causal determinism or indeterminism is true” (2023: 44). According to Fischer, acting freely is exhibiting guidance control—where an agent exhibits guidance control “just in case she acts from her own, appropriately reasons-responsive mechanism” (2023: 43). Since Fischer believes guidance control is compatible with both causal determinism and indeterminism, he maintains that “[a] retributivist theory of moral responsibility thus remains an open option (at this point)” (2023: 44). It is important to note, however, that despite his own conviction that guidance control is sufficient for basic desert moral responsibility, Fischer acknowledges that not everyone will agree and proceeds to candidly write:

I recognize that these “metaphysical” debates about the relationship between causal determinism, free will (acting freely), and moral responsibility are contentious, and my views are not shared by all. I deem some of them “dialectical stalemates” or “philosophical cold cases”—unresolved metaphysical mysteries. (2023: 45)

In fact, he goes so far as to concede that “the arguments for [his own] conclusion are not decisive” and “reasonable people can certainly disagree about the metaphysical debates surrounding the relationships between causal determinism and various kinds of freedom and moral responsibility” (2023: 49). Nevertheless, he feels basic desert moral responsibility skeptics rest too much on their views about these debates. He writes:

They are certainly entitled to these views, and it is not obvious they are wrong. . . . I do however find it philosophically infelicitous to rest so much on so little. They are willing to give up central features of our ordinary and significant views about the most fundamental features of our personhood on the basis of their conclusions about instances of very close calls. (2023: 45)

Fischer's view, then, is that we should retain our practices of retributive blame and punishment since it is not at all clear we lack basic desert moral responsibility.

In response to (*1b*), Fischer denies that belief in retributivism and basic desert moral responsibility leads, as some skeptics suggest (for example, Caruso 2021a), to punitive excess in criminal justice, allowing cruel and demeaning treatment of prisoners, and ignoring the social determinates of crime. He cites me as the main proponent of this view since I have forcefully argued that the notion of basic desert is a pernicious one that does more harm than good. In response, he writes:

Retributivism does *not* encourage or, indeed, permit meting out more punishment than is deserved, or in ways that are needlessly cruel or inhumane. These would be abuses of retributivism. That some are inclined to abuse a doctrine or

to use it to bad ends, does not show anything about the truth status of the view; nor does it say anything about the inevitability or even probability of its abuse, especially after appropriate publicity of, and education about, our baleful and in some instances horribly inhumane prisons. (2023: 52–53)

It is Fischer’s contention that there is nothing “*intrinsic and unique* to retributivism” that makes cruel treatment of offenders “more likely” (2023: 53). Rather, he maintains that any cruel or excessively punitive practices that result from embracing retributivism is the result of abuses or misapplications of retributivism, not retributivism itself.

Last, in response to (1c), Fischer argues that the Pereboom/Caruso view, with its forward-looking account of moral responsibility and non-retributive alternative for dealing with criminal behavior, fails to adequately deal with victims and their families since it claims their moral anger and desire for retribution are unjustified. He writes:

[T]he proponents of forward-looking accounts of the justification of punishment fully concede that we human beings actually have anger—and associated vengeful and retributive sentiments—at what we take to be moral wrongs. They argue, however, that these natural reactions are not morally admirable and ought not to be elevated to a role in the justification of punishment. The justification of moral responsibility and punishment is what is at issue, and I . . . contend that the skeptics are incorrect. Both normatively and empirically (in particular, from the point of human psychological authenticity and mental health), there is a legitimate role for moral anger. (2023: 45)

To help justify this claim, Fischer discusses a number of cases of horrible and disturbing crimes designed to illicit strong retributive reactions—including mass murders, brutal wars with torture and indiscriminate killing of civilians, and sexual misconduct and assault. He also points to victim impact statements and testimonials of family members. For instance, he quotes Mike Fanone, one of the Capitol police who was injured in the January 6th riot, saying of the rioters: “I hope they suffer. They can do anything they want—turn around their lives—if they want, but all I care about is that they suffer.” He also quotes one of the women horribly abused by singer R. Kelly, who stated: “I hope you [Kelly] go to jail for the rest of your life.” He further quotes the parent of Alyssa Alhadeff, one of the students murdered in Marjorie Stoneham Douglas High School in Parkland, Florida, who said of the shooter, “I pray that animal suffers every day of his life in jail.” With regard to these statements, Fischer writes, “I simply cannot conclude that their quest for what they take to be justice, including punishment that expresses retributive emotions, should be dismissed as base, inhumane, or in any way morally indefensible” (2023: 46). Instead, Fischer contends that the “lifelong anger and resentment” that victims and their families experience is not only natural but morally justified (2023: 45).

In the following, I respond to each of these criticisms and explain why we should reject Fischer’s semiretributivism and embrace skepticism about basic desert moral responsibility.

3. BASIC DESERT SKEPTICISM AND (SEMI)RETRIBUTIVISM

The arguments for basic desert moral responsibility skepticism aim to justify the claim that for an agent to basically deserve the pain or harm of blame or punishment, they must have a kind of control in action—that is, free will—that is unavailable to us (see, for example,

Strawson 1986; Pereboom 1995, 2001, 2014, 2021; Levy 2011; Waller 2011; Caruso 2012, 2021a; Caruso and Pereboom 2022). In the past, the standard argument for such skepticism was based on the notion of *determinism*—the thesis that facts about the remote past in conjunction with the laws of nature entail that there is only one unique future. *Hard determinists* argued that determinism is true and incompatible with free will and basic desert moral responsibility—either because it precludes the *ability to do otherwise* (leeway incompatibilism) or because it is inconsistent with one’s being the ultimate or appropriate source of action (source incompatibilism).

More recently, however, a number of contemporary philosophers have presented arguments against basic desert moral responsibility that are agnostic about determinism—for example, Pereboom (1995, 2001, 2014), G. Strawson (1986), Levy (2011), Waller (2011, 2015), and Caruso (2012, 2021a). My own preferred route to free will and basic desert moral responsibility skepticism presents arguments that target the three leading rival views—event-causal libertarianism, agent-causal libertarianism, and compatibilism—and then claims the skeptical position is the only defensible position that remains standing. In brief: against the view that free will is compatible with the causal determination of our actions by natural factors beyond our control, I argue that there is no relevant difference between this prospect and our actions being causally determined by manipulators (see Pereboom 2001, 2014; Caruso 2012, 2021a; Caruso and Pereboom 2022; Dennett and Caruso 2021). Against event causal libertarianism, I object (among other things) that on such accounts agents are left unable to *settle* whether a decision occurs and hence cannot have the control required for moral responsibility (see Pereboom 2001, 2014; Caruso 2012, 2021a; Caruso and Pereboom 2022). I further maintain that non-causal accounts of free will suffer from the same problem (see Pereboom 2001, 2014). While agent-causal libertarianism could, in theory, supply this sort of control, I argue that it cannot be reconciled with our best philosophical and scientific theories about the world and faces additional problems accounting for mental causation (Caruso 2012, 2021a; Caruso and Pereboom 2022). Since this exhausts the options for views on which we have the sort of free will and moral responsibility at issue, I conclude that basic desert moral responsibility skepticism is the only remaining position.⁸

If these arguments succeed, they establish a kind of *hard incompatibilism* (Pereboom 2001, 2014) and show that no one is ever morally responsible in the basic desert sense.⁹ And since retributive blame and punishment require basic desert moral responsibility in order to be justified, the skeptical conclusion entails that retributivism is unjustified. Basic desert moral responsibility skepticism therefore poses a threat to retributivism. We can call this the *Skeptical Argument* against retributivism (Caruso 2021a) since it maintains that basic desert moral responsibility skepticism undermines the retributivist notion that wrongdoers deserve to be blamed and punished in the backward-looking sense required.

While Fischer offers some replies to the arguments for hard incompatibilism outlined above, these will not be the focus of my comments here. To properly defend hard incompatibilism would require more space than I have available. Plus, these arguments have been defended at length elsewhere (see, for example, Pereboom 2001, 2014, 2021; Caruso 2012, 2021a; Caruso and Pereboom 2022) and if readers are not already persuaded, I doubt there is anything I can say here that will change that.¹⁰ So, rather than trying to conclusively prove agents lack basic desert moral responsibility, I will set my sights on a more manageable goal: showing that Fischer’s own position is *too weak* to justify the kind of retributive

blame and punishment he wishes to preserve. To do this requires only a weaker form of skepticism—or so I will now argue.

It is Fischer's contention that all he needs to do is "play defense" and show that the arguments against basic desert moral responsibility are not "*obvious and indisputable*" (2023: 42). He writes:

[I]t is important that I am "playing defense," not offense (as are the moral responsibility skeptics). That is, they aim to dismantle a central and important feature of our conceptualization of ourselves, whereas I merely seek to defend it. This presumably sets the bar higher for them. (2023: 45)

He goes on to argue that, despite his own conviction that guidance control is sufficient for basic desert moral responsibility and compatible with both determinism and indeterminism, the arguments for this conclusion "are not decisive." He further acknowledges that "reasonable people can certainly disagree about the metaphysical debates surrounding the relationships between causal determinism and various kinds of freedom and moral responsibility" (2023: 49). It is Fischer's view, then, that we should retain our practices of retributive blame and punishment since skeptics have failed to *prove* we lack basic desert moral responsibility. This, I contend, is mistaken.

To see why, let us ask: What if Fischer is correct that the philosophical arguments against basic desert moral responsibility are inconclusive and result (at best) in "dialectical stalemates," "philosophical cold cases," or "unresolved metaphysical mysteries"? What would follow from this? I contend that *even in such a situation* (that is, under uncertainty about the existence of basic desert moral responsibility) retributive punishment remains unjustified. This is because the burden of proof lies on those who want to inflict harm on others to provide good justification for such harm. This means that retributivists who want to justify legal punishment on the assumption that agents are free and morally responsible (and hence justly deserve to suffer for the wrongs they have done) must justify that assumption. And they must justify that assumption in a way that meets a high epistemic standard of proof since the harms caused in the case of legal punishment are often quite severe. It is not enough to simply point to the mere possibility that agents possess libertarian or compatibilist free will. Nor is it enough to say that the skeptical arguments against free will and basic desert moral responsibility fail to be conclusive. Rather, a positive and convincing case must be made that agents are in fact morally responsible in the basic desert sense, since it is the backward-looking desert of agents that retributivists take to justify the harm caused by legal punishment.

I have elsewhere called this the *Epistemic Argument* against retributivism, and have developed and defended it in Caruso (2020, 2021a). Versions of this argument have also been developed and defended by Pereboom (2001), Benjamin Vilhauer (2009, 2012), Elizabeth Shaw (2014), Michael Corrado (2018), and Sofia Jeppsson (2021), but my version of the argument can be summarized as follows:

1. Legal punishment intentionally inflicts harms on individuals and the justification for such harms must meet a high epistemic standard. If it is significantly probable that one's justification for harming another is unsound, then, *prima facie*, that behavior is seriously wrong.
2. The retributive (and semiretributive) justification for legal punishment assumes that agents are morally responsible in the basic desert sense and hence justly deserve to

suffer for the wrongs they have done in a backward-looking, non-consequentialist sense (appropriately qualified and under the constraint of proportionality).

3. If the justification for the assumption that agents are morally responsible in the basic desert sense and hence justly deserve to suffer for the wrongs they have done does not meet the high epistemic standard specified in (1), then retributive (and semiretributive) legal punishment is *prima facie* seriously wrong.
4. The justification for the claim that agents are morally responsible in the basic desert sense provided by both libertarians and compatibilists face powerful and unresolved objections (something Fischer admits) and as a result fall far short of the high epistemic bar needed to justify such harms.
5. Hence, retributive (and semiretributive) legal punishment is unjustified and the harms it causes are *prima facie* seriously wrong.

Note that the Epistemic Argument requires only a weaker notion of skepticism than the Skeptical Argument, namely one that holds that the justification for believing that agents are morally responsible in the basic desert sense is too weak to justify the intentional suffering caused by retributive legal punishment. Unlike the arguments for hard incompatibilism, which aim to establish that no one is ever morally responsible for their actions in the basic desert sense, the Epistemic Argument does not require the refutation of libertarian and compatibilist accounts of free will. Instead, it simply needs to raise sufficient doubt that they succeed.

Since Fischer himself acknowledges that there remain “unresolved metaphysical mysteries” and, hence, grounds for legitimate disagreement regarding the existence of basic desert moral responsibility, I contend that it would be moral malpractice to continue to impose retributive punishment on wrongdoers—especially in the context of legal punishment, since the harms caused in this case are often quite severe, including the loss of liberty, deprivation, and in some cases even death. Given the gravity of these harms, there should be a presumption against intentionally inflicting harm unless justified to a high epistemic standard—since a reasonable moral principle here is that one should refrain from intentionally doing harm unless otherwise justified. Fischer seems to assume that we should retain our practices of retributive blame and punishment in conditions of uncertainty about the existence of basic desert moral responsibility, but this is mistaken. When reasoning under conditions of moral uncertainty—that is, when there is no consensus among theorists on whether agents are morally responsible in the basic desert sense—we should prefer the option that produces the least amount of harm (which I contend would be the public health-quarantine model).

The burden of proof therefore lies on Fischer and others to prove that wrongdoers are morally responsible in the basic desert sense and hence deserve something bad to happen to them just because they have knowingly done wrong. Support for this claim can be found both in the law and everyday practice. The notion of burden of proof comes to us from the adversarial courtroom, where it guides the presentation of evidence. Our ordinary everyday practices also place the burden of proof on those who knowingly and intentionally cause harm to others. In the case of legal punishment where the severity of harm is beyond question, I maintain that we should place the highest burden possible upon the state.¹¹

Vilhauer, for instance, has persuasively argued that, “if it can be reasonably doubted that someone had free will with respect to some action, then it is a requirement of justice to

refrain from doing serious retributive harm to him in response to that action” (2009: 131). Pereboom has also proposed applying the reasonable doubt standard in this way (2001: 161). I contend that the proof-beyond-a-reasonable-doubt standard is the appropriate epistemic standard to apply when we are talking about intentional harm and institutional punishment—since it has a close kinship with another “reasonable doubt” principle, which is widely recognized to be a requirement of justice: “[T]hat is the requirement in Anglo-American criminal legal proceedings that the accused can only be convicted of a crime if it is proven beyond reasonable doubt that he acted criminally” (Vilhauer 2009: 133). The grounds for accepting this high epistemic standard for criminal conviction are the same as the grounds for accepting it with regard to premise (1) of the Epistemic Argument. I therefore contend that given the practical importance of basic desert to retributive legal punishment, and the gravity of harm caused by legal punishment (to the individual punished as well as those family and friends who depend upon the imprisoned for income, love, support, and/or parenting), the proper epistemic standard to adopt is the burden of proof beyond a reasonable doubt (see Pereboom 2001; Vilhauer 2009, 2012; Caruso 2021a). Until and unless Fischer can satisfy this high epistemic standard, something he admits cannot be done, his view is *too weak* to justify the kind of retributivism he wishes to preserve.

For the foregoing reasons, I contend that Fischer is mistaken when he claims basic desert moral responsibility skeptics “rest so much on so little”—since this fundamentally misconstrues who carries the burden of proof.

4. VICTIMS’ RIGHTS

While the Epistemic Argument sufficiently undermines Fischer’s defense of retributivism, I do not want to stop there. I want to go further and respond to Fischer’s concerns about victims as well. According to Fischer, on the Pereboom/Caruso view, victims of violent crime and their families will never receive proper justice or satisfaction. This is because the non-retributive alternative we favor, that is, the public health-quarantine model, rejects harsh punishment in favor of rehabilitating dangerous criminals and implementing the least restrictive forms of sanctions needed to secure public safety. Fischer maintains that the public health-quarantine model, and the skeptical view in general, focuses more on rehabilitating criminals than on their victims. He writes:

It is striking to me in reading [the skeptical] literature that, although there is meticulous attention to and deep concern about the plight of offenders, there is almost none given to actual, and not merely potential, victims. This is puzzling, and it shows how this area of philosophical theorizing is radically out of sync with the views and concerns of ordinary, reflective people. (2023: 45)

Here, Fischer seems to be echoing the “tough on crime” rhetoric often heard from politicians. For instance, Democratic Senator Dianne Feinstein and Republican Senator Jon Kyl have argued that “for too long, our court system has tilted in favor of accused criminals and has proven appallingly indifferent to the suffering of crime victims.”¹² While I think this is a gross misrepresentation of the US criminal justice system over the last few decades—evidenced by the mass incarceration crisis in the United States, the heavy-handedness of mandatory minimums, and the three-strikes-you-are-out laws that have swept the nation—it does capture a common concern critics have with reformist proposals like my own. The concern is that such models put the rights of criminals above the concerns of victims and

advocate for reforms that run contrary to the concerns of victims. While I take this objection seriously, I do not think the public health-quarantine model is “indifferent to the suffering of crime victims.” Rather, I maintain that it better reflects the attitudes and preferences of most victims and does a better job preventing future victims.

First, I contend that this objection is predicated on a mistaken assumption. The underlying assumption seems to be that most victims of violent crime want retribution above all else and that to deny them the satisfaction of seeing the perpetrators suffer is an injustice. Proponents of the death penalty and other punitive forms of punishment typically argue that whatever deterrence factor such punishment may or may not have, such punishment provides justice for the victims and their families since it satisfies their desire for retribution. But setting aside the issue of what counts as proportional punishment for the moment, it is an empirical question what victims actually want, what their preferences and attitudes are, and what kind of justice they would like to see from the criminal justice system.

Fortunately, the Alliance for Safety and Justice (2016) has recently investigated exactly these questions. In its first-of-its-kind national survey, they found that victims of violent crime say they want to see shorter prison sentences, less spending on prisons, and a greater focus on the rehabilitation of criminals. The survey polled the attitudes and beliefs of more than 800 crime victims pooled from a nationally representative sample of more than 3,000 respondents. According to the report:

Perhaps to the surprise of some, victims overwhelmingly prefer criminal justice approaches that prioritize rehabilitation over punishment and strongly prefer investments in crime prevention and treatment to more spending on prisons and jails. These views are not always accurately reflected in the media or in state capitols and should be considered in policy debates. (2016: 4)

An examination of the data reveals that victims prefer an approach much closer to the public health-quarantine model, with its focus on prevention, social justice, and rehabilitation, rather than retributivism. For instance, the survey found the following:

- By a two to one margin, victims prefer that the criminal justice system focus more on rehabilitating people who commit crimes than punishing them.
- By a margin of fifteen to one, victims prefer increased investments in schools and education over more investments in prisons and jails.
- By a margin of ten to one, victims prefer increased investments in job creation over more investments in prisons and jails.
- By a margin of seven to one, victims prefer increased investments in mental health treatment over investments in prisons and jails.
- By a margin of nearly three to one, victims believe prison makes people more likely to commit crimes than to rehabilitate them.
- By a margin of seven to one, victims prefer increased investments in crime prevention and programs for at-risk youth over more investments in prisons and jails.
- Six in ten victims prefer shorter prison sentences and more spending on prevention and rehabilitation to prison sentences that keep people incarcerated for as long as possible.

- By a margin of four to one, victims prefer increased investments in drug treatment over more investment in prisons and jails.
- By a margin of two to one, victims prefer increased investments in community supervision, such as probation and parole, over more investments in prisons and jails.
- Seven in ten victims prefer that prosecutors focus on solving neighborhood problems and stopping repeat crime through rehabilitation, even if it means few convictions and prison sentences.
- Six in ten victims prefer that prosecutors consider victims' opinions on what would help them recover from the crime, even when victims do not want long prison sentences.

The report also found that victims' views remained consistent across demographics—that is, for each of the questions mentioned earlier, they found majority or plurality support across demographic groups, including age, gender, race, ethnicity, and political party affiliation.

In fairness to Fischer, he is aware of these findings, but dismisses them outright for two reasons. First, he claims that it is “imprudent and unwarranted to rely heavily on questionnaires.” Second, he notes that the Alliance for Safety and Justice is devoted to fighting overincarceration and “we need to be wary of data presented by advocacy groups who are clearly non-neutral” (2023: 50). While I acknowledge that one should always be mindful of the methodology and source of empirical studies, I also think it is imprudent to dismiss a large and comprehensive study like this simply because you do not like the results. Fischer provides no reason for thinking *this specific* study is flawed. Nor does he provide alternative data that suggests the results are mistaken. Instead, he relies on anecdotes and a handful of victim impact statements to support his intuitions.

We need to be careful, however, in drawing broad conclusions about what victims want from a handful of carefully selected statements by victims and their loved ones. For instance, Fischer quotes the following haunting passage from a Los Angeles Times article about the execution of Robert Harris, who had murdered two innocent boys in Californian in the 1980s:

[After he had walked into the gas chamber at San Quentin, Harris surprisingly said, “I’m sorry.”] She [Marilyn Clark, who witnessed the execution] cried in relief and joy. Minutes later, as he was dying, she felt a tranquil wave of forgiveness wash over her, literally felt it bring her peace, driving away the hatred that had darkened her soul when Harris killed her brother, John Mayeck, and his best friend, Michael Baker.

“It was spiritual,” Clark said. “When he leaned over for the last time, everything I went there for just lifted off my shoulders. I felt peace. I felt for Harris that he was at peace.

“. . . I have justice.” (As quoted in Fischer 2023: 46)

While it is unclear to me whether Fischer, himself, supports the death penalty, I find the use of this anecdote to support the retributivist view troubling for a number of reasons. First, it is unclear that Marilyn Clark received “justice” with the execution of Robert Harris rather than simple “revenge.” Would Fischer consider this “justice” if the death penalty were itself unjust (as I believe it is)? And what of those retributivists who *themselves* concluded

that the death penalty is inhumane, extreme, and disproportionate punishment? I doubt they would think it a violation of justice to deny Marilyn Clarke the “peace” of seeing Harris executed (more on this point in a moment).

Second, while the execution of Harris may have brought peace and closure to Marilyn Clark, studies show that *in general* the death penalty prolongs pain for victim’s families (see Armour and Umbreit 2012; Radelet 2016; Vollum and Longmire 2007). For instance, a study examining the experience of families of murder victims found that those navigating the legal process in a state without the death penalty exhibited better psychological and physical health as well as higher overall satisfaction with the criminal justice system than those facing the same challenges in a state with the death penalty (Armour and Umbreit 2012). These findings challenge the assumption that the death penalty brings closure to survivors. Instead, the data suggest that the well-being of victims and their families is better served by doing away with the death penalty. In fact, a study conducted by the University of Minnesota found that just 2.5 percent of family members reported achieving closure after the execution of the perpetrator (Vollum and Longmire 2007). Fischer’s reliance on Marilyn Clark’s statement is therefore misleading since pursuing the death penalty as a form of retribution does *not* generally succeed in bringing satisfaction and closure to murder victims’ families.

It is also worth noting that, unlike Marilyn Clark, many victims’ families strongly oppose the death penalty. In fact, family members of murder victims have become increasingly outspoken over the years in their opposition to the death penalty. New Hampshire State Rep. Renny Cushing, whose father and brother-in-law were murdered in two separate incidents years apart, helped successfully repeal the state’s death penalty in 2019. On January 27, 2021, twenty family members of murder victims released an open letter to members of the Virginia General Assembly, calling on lawmakers to abolish capital punishment.¹³ In Iowa, John Wolfe, whose two daughters had been brutally murdered, gave highly emotional testimony opposing the efforts to reintroduce the death penalty in that state, arguing that it would only drag on his family’s agony. While these are only a few examples, there are many, many more. There is even an organization, Murder Victims’ Families for Human Rights (MVFHR), dedicated to challenging “the assumption that all families of murder victims support the death penalty.”¹⁴

I am not convinced, then, that Fischer is at all correct about what victims need and want. In fact, independent of the death penalty, there are additional studies that support the findings of the Alliance for Safety and Justice. For instance, a study conducted by Victim Support and Smart Justice interviewed a random sample of 982 adult victims of crime between December 19, 2005, and January 7, 2006, and found that the overwhelming majority of them believe that the best way to curb non-violent crime is to provide more activities for young people, ensure they are better supervised by their parents, and provide more treatment for drug and mental health problems. The study also found that 61 percent of crime victims did not believe prison reduced reoffending for non-violent criminals. Peter Dunn, Victim Support’s head of research, said, “Victims are often assumed to be vengeful towards offenders and favour harsh punishments. This is misleading. Most victims, while feeling angry about what has happened to them, want the offender to stop offending both against them and against other people.”¹⁵ Additional studies have found similar results with the victims of violent crime. A recent study conducted by the Californians for Safety and Justice (2021) found that more than 700 survivors of violent crime supported changes to

the criminal justice system, with greater focus on rehabilitating offenders and preventing future crime, and less on simply punishing people.¹⁶ For instance, 75 percent of victims surveyed favored reducing sentence lengths by 20 percent for people in prison who are assessed as low-risk to public safety and utilizing the savings to fund crime prevention and rehabilitation. These findings are completely in line with those of the Alliance for Safety and Justice.

It would seem, then, that retributivists like Fischer who invoke the names of victims of violent crime and claim to speak for them often misrepresent their actual preferences, attitudes, and desires. To say that approaches like the public health-quarantine model are “appallingly indifferent to the suffering of crime victims” is to discount what victims say they actually want. It also overlooks the fact that the best way to reduce crime and the suffering caused by it is to (a) prevent the crime from occurring in the first place by addressing the causal determinates of crime and (b) to rehabilitate criminals so as to reduce the likelihood of recidivism. The public health-quarantine model attempts to do both; retributivism by its very nature does neither. Since retributivism myopically focuses on justifying backward-looking blame and punishment, it does not have the resources needed to address rehabilitation or preventative measures. I question, then, the claim that retributivism reflects a deeper concern for victims and their families. If one really cares about victims and their suffering, the best way to honor this concern is to reject retributivism and adopt a more holistic approach to criminal behavior that focuses on preventing crime, rehabilitating criminals, and reducing the number of people who become victims of violent crime.

Moving on to my second reply, I further maintain that *even if* victims of violent crime wanted to see criminals suffer and were on the whole indifferent to concerns about safety and rehabilitation—contrary to what appears to be the case—it does not follow that we should inflict such harm and suffering nor does it follow that denying victims the satisfaction of seeing their perpetrators suffer would be a violation of their rights. As the retributivist Alec Walen (2014) accurately points out, “[T]he view that it wrongs victims not to punish wrongdoers confuses vengeance, which is victim-centered, with retributivism, which is agent-centered: concerned with giving the wrongdoer the punishment *she deserves*.” Paul Robinson (2008), for instance, has argued that retributivists must distinguish between vengeful and deontological conceptions of deserved punishment. The former urges punishing an offender in a way that mirrors the harm or suffering they have caused. The problem with this approach, however, is that justifying punishment on the grounds of vengefulness or the satisfaction of retributive hatred fails to take into account the blameworthiness of the offender.

The deontological conception of desert, on the other hand, focuses at least not on the harm of the offense but on the blameworthiness of the offender, as drawn from the arguments and analysis of moral philosophy:

Thus, the criterion for assessing punishment is broader and richer than that for vengeful desert: Anything that affects an offender’s moral blameworthiness is taken into account in judging the punishment he deserves. The extent of the harm caused or the seriousness of the evil done will be part of that calculation but so too will be a wide variety of other factors, such as the offender’s culpable state of mind or lack thereof and the existing conditions at the time of offence, including those that might give rise to claims of justification, excuse, or mitigation. (Robinson 2008: 148)

To the extent, then, that retributivists want to appeal to moral blameworthiness rather than vengeful desires in justifying punishment, denying victims the vengeful satisfaction they seek would not be a violation of their rights. This point is often overlooked. But once we recognize that retributivism is a moral theory concerned with giving wrongdoers the punishment *they deserve*, rather than seeking pure vengeance, we realize that the theory is agent-centered rather than victim-centered. That is, what justifies punishment on the retributivist account are facts about the act of wrongdoing and about the wrongdoer, *not* facts about the victim—that is, in order to determine whether a wrongdoer is an appropriate target of punishment, we look to the nature of the action performed by the *agent* (the wrong) as well as the agent's level of culpability. These are taken to be the central determinants not only to the broad question of the justification of punishment, but also to the question of whether a particular agent should be punished and the extent to which they should be punished.

My third reply to Fischer takes at its starting point the Epistemic Argument outlined above. As we have seen, punishment inflicts harm on individuals and the justification for such harm must meet a high epistemic standard. If it is significantly probable that one's justification for harming another is unsound, then, *prima facie*, that behavior is seriously wrong. But if free will and basic desert skeptics are right, neither libertarians nor compatibilists satisfy this epistemic standard and hence individuals do not justly deserve to be punished. And if individuals do not justly deserve to be punished, there is no violation of the rights of victims to deny them the revenge they seek. Consider, for instance, the fact that even retributivists acknowledge that the desire for revenge and retribution has its limits. The principle of proportionality, despite its weaknesses (see Caruso 2021: chapter 4), dictates that punishments that are disproportionate to the wrong done would be unjustified. Hence, if the victim of an armed robbery wanted to see their perpetrator executed, and this was deemed disproportionate punishment by the standards of retributivism, it would not be a violation of the victim's rights on that theory to prohibit said execution. By extension, if free will and basic desert skeptics are right, and retributive punishment itself is unjustified, then to deny victims their desire for revenge (conceived here in a purely backward-looking, non-consequentialist sense) would likewise not be a violation of their rights. For victims to have the right to see suffering and harm imposed on their perpetrators, it would have to be the case that such harm was justified. According to skeptics, however, neither victims of violent crime nor the state acting on their behalf is justified in causing more harm than is minimally required for adequate protection.

My fourth reply, which builds on points already made, is that the public health-quarantine model is able to successfully deal with the concerns of victims, acknowledge the wrongs done to them, and help aid in recovery. First, recall that the Alliance for Safety and Justice Survey (2016) found that six in ten victims preferred that prosecutors consider victims' opinion on what would help them recover from the crime, even when victims do not want long prison sentences. Too often, tough-on-crime advocates and overzealous prosecutors speak for victims without listening to what they really want or considering what would help them recover. As the survey indicates, many victims prefer that the criminal justice system focus more on preventing crime by investing in job creation, education, and mental health services, as well as rehabilitating criminals rather than punishing them. Since the public health approach to criminal behavior similarly advocates for these reforms, it has the virtue of being sensitive to the concerns of victims. Many victims of violent crime want

above all else to know that meaningful efforts are being made to guarantee that others do not suffer in the same way they have. Retributive punishment is unable to provide this and in many cases simply obfuscates the need to do so. The public health-quarantine model, on the other hand, is perfectly designed to address the forward-looking concerns of victims and it is able to do so in a manner that is acutely sensitive to the harms done to them.

Furthermore, and contrary to what some critics have argued, skepticism about basic desert moral responsibility is perfectly consistent with acknowledging the moral wrongs done to victims (Caruso and Pereboom 2022). If, for instance, we came to hold that a serial killer was not blameworthy due, say, to a degenerative brain disease, we could still justifiably agree that his actions are morally bad. If this is correct, then basic desert moral responsibility skeptics can accommodate axiological judgments of moral goodness and badness, which are arguably sufficient for moral practice. Since free will and basic desert moral responsibility skeptics can retain axiological judgments of moral goodness and badness, they can recommend that one way to help aid victims in recovery is to have the wrong done to them acknowledged and a commitment made to rehabilitate the offender and protect others from similar crimes. In fact, on the forward-looking account of moral responsibility proposed by Pereboom (2013, 2014, 2021; see also Caruso and Pereboom 2022), acknowledgement of wrongful behavior can be used for the purposes of achieving future protection, reconciliation, moral formation, and recovery and restoration of victims. In this way, forward-looking moral responsibility can be used to both aid offenders in their rehabilitation and victims in their recovery, perhaps even achieving some form of reconciliation.

This brings me to my final point. Rather than seeking vengeance, as Fischer prefers, restorative justice methods can be used to provide victims and their families the closure they seek. In fact, a number of recent studies suggest that restorative justice practices have a positive psychological impact on victims, who are frequently forgotten in conventional justice (see, for example, Bonta et al. 2002; Strang 2002; McCold and Watchel 2002; Latimer et al. 2005; Ruge et al. 2006; Nascimento et al. 2022). Restorative justice models have been employed around the country over the last few decades with great success (see, for example, Camp et al. 2013; Walgrave 2002; Nascimento et al. 2022). Stated simply, restorative justice is a philosophy and set of practices that aims to repair the harm caused by criminal behavior and address the needs of both the victim and the offender. Instead of focusing solely on punishment, as retributivism does, restorative justice emphasizes the importance of repairing harm, restoring relationships, and rebuilding communities.

On the restorative justice approach, rather than seeing a criminal act as a violation of the law that leads to the punishment of an offender (Strang 2002), it considers the crime as an irregular action that caused harm to an individual or community, and therefore a criminal act is seen as a violation of a person and of the victim-offender relationship. This conception of crime stresses the offenders' moral obligation to repair the damage caused by their actions and to seek the restoration of the affected relationship (Zehr 2005). To fulfill this goal, restorative justice proposes that victims, offenders, and the community (or their representatives) come together to talk about the incident and engage in a *restorative dialogue* or *conference*, where they can discuss the impact of the crime and work toward a resolution that addresses the needs of all parties involved. In this way, restorative justice facilitates the process of communication and productive dialogue with a focus on repairing the harm caused by crime and reducing future harm through crime prevention.

Unlike retributive justice, then, restorative justice truly is victim-focused. And victims who participate in restorative justice have reported feeling more heard and validated and have experienced a great sense of closure and healing. They also report feeling more satisfied with the outcome of the process. An evaluation of studies on restorative justice found that victims who participated in these programs were significantly more satisfied with the process and outcome than those who went through the traditional criminal justice system (Latimer, Dowden, and Muise 2005). Additionally, victims who participated in restorative justice were less likely to experience post-traumatic stress symptoms compared to victims who did not (Strang et al. 2013).

Now it is true that most restorative justice methods require offenders to take responsibility for their actions and for the harm they have caused, but such responsibility need not be conceived in terms of basic desert. Some current restorative justice models probably do assume backward-looking blame and basic desert moral responsibility (for example, Sommers 2016), but these are not essential components of the restorative approach. The same ends, I contend, can be achieved on a model that does not appeal to basic desert moral responsibility. For instance, a restorative justice model consistent with basic desert moral responsibility skepticism could appeal to answerability and attributability conceptions of moral responsibility rather than accountability. Furthermore, a conversational model of forward-looking moral responsibility like that proposed by Pereboom (2013, 2014) could serve as a basis for an exchange between victim and offender in a way that does not invoke backward-looking blame or basic desert. Such an exchange could aid both in the rehabilitation of offenders and in the recovery of victims.

In summary, then, the arguments of this section have attempted to show that (a) Fischer is mistaken that victims of crime want retribution above all else; (b) he is also mistaken that retributivism is fundamentally concerned with victims—since this confuses vengeance (which is victim-centered) with retributivism (which is agent-centered); (c) even if victims of crime wanted to see criminals suffer, it would not be a violation of victims' rights to deny them the satisfaction of desires that are themselves unjust; (d) my own non-retributive alternative (the public health-quarantine model) better aligns with what victims actually want; and (e) instead of seeking vengeance, restorative justice methods can be used to provide victims and their families the closure they seek. I believe these replies go a long way in assuaging Fischer's concerns and explaining how basic desert skeptics can adequately address the needs and desires of victims.

5. ADDITIONAL PROBLEMS WITH SEMIRETRIBUTIVISM

In this concluding section, I would like to address two additional problems with Fischer's semiretributivism, and by doing so further strengthen the case for basic desert moral responsibility skepticism. The first problem has to do with Fischer's claim that there is nothing "*intrinsic and unique* to retributivism" that makes cruel treatment of offenders "more likely." For instance, he writes:

A retributivist holds that criminals should get what they deserve, not more. Does a retributivist "permit practices" that violate human dignity? Some of our practices are clearly cruel and morally objectionable, but a retributivist need (and should) not endorse them any more than proponents of other justifications of punishment. (2023: 53)

According to Fischer, any cruel or excessively punitive practices that result from embracing retributivism is the result of abuses or misapplications of retributivism, not retributivism itself. But I disagree. The fact is, there simply is no clear, objective, and agreed upon way to determine what wrongdoers deserve and what counts as proportional punishment on the retributivist view. As a result, the distorting power of moral anger and our strong strike-back emotion pushes our judgments of what wrongdoers deserve in the direction of increased punitiveness.

Consider, for instance, what I have elsewhere called the *Indeterminacy in Judgment* objection (Caruso 2021a, section 4.3). It has to do with how the state goes about judging and ranking such things as gravity of wrong, on the one hand, and what counts as proportional punishment, on the other. I contend that such judgments are wide open to subjective and cultural biases and prejudices, and as a result, the principle of proportionality *in actual practice* does not provide the kind of protections against abuse it promises (Caruso 2021a). There simply is no magic ledger to consult that objectively and impartially spells out a rank order of wrongs in one column and the punishment deserved for each in another. This is obvious from the fact that retributivists often disagree with one another about how to measure each. If the history of punitive practices and institutions has taught us anything, it is that judgments of what counts as a grievous wrong are hypersensitive to cultural biases, prejudices, and power relations. And even when there is wide agreement on the gravity of a wrong, there is still often disagreement about what kind of punishment is deserved. For instance, all retributivists can agree that murdering an innocent person is a grievous wrong, but they can, and often do, disagree on what counts as “proportional” punishment. Kant proposed death. Other retributivists propose life in prison. Still others think life in prison is too harsh. How do we decide questions like these on the principle of proportionality?

To see just how wide-open deontological judgments of gravity and proportionality are to cultural influence, simply examine the criminal codes and punitive practices of other cultures, times, and places. Consider, for instance, the shifting attitudes about homosexuality (see Caruso 2021a: 142–145 for additional examples). In the past, many countries viewed homosexuality as a grave wrong, punishable by the state. For instance, in the United Kingdom, under the Buggery Act of 1533, same-sex sexual activity was characterized as “sinful” and was outlawed and punishable by death. The Offences Against the Person Act of 1861 removed the death penalty for homosexuality, but male homosexual acts remained illegal and were punishable by imprisonment. And while many liberal democracies have now abandoned such laws, there are unfortunately still many countries around the world where homosexuality is illegal and deemed a punishable offense.¹⁷ Such examples highlight just how easy it is for judgments about gravity and proportionality to be influenced by cultural biases, prejudices, and power relations.

Retributivists may wish to dismiss these examples as historical curiosities, or the problem of judging gravity as merely a practical one, but the putative protections offered by the proportionality principle require a mechanism for resolving such disagreements. As philosopher Julian Lamont has put it, desert is a highly indeterminate concept that “requires external values and goals to make it determinate” (1994: 45). He goes on to elaborate:

When people make desert-claims they are not simply telling us what desert itself requires. They unwittingly introduce external values, and make their desert-judgments in light of these values. The reason why so many writers have been able to affirm so confidently such a diverse and conflicting set of desert-claims in debates over distributive [and criminal] justice is not because the true concep-

tual and moral core of desert is so complex and difficult to discern. It is because the true conceptual and moral core of desert allows the introduction of external values and goals. It is the diversity and conflicting nature of these values which explains the diversity and conflicting nature of desert-claims. This is why differences of opinion over what should constitute the desert-base are not going to be solved by examination of desert itself. The differences do not lie at that level, but rather at the level of values. (49)

Moreover, radical changes in values and desert judgments need not take hundreds of years to occur. As Ristroph observes, “[P]erceptions of deserved penalty (not simply the optimal deterrent or necessary incapacitation, but the *deserved* penalty) for smuggling dangerous items onto airplanes or violating airport security regulations probably changed dramatically after September 11, 2001” (2006: 1309).

At this point, a retributivist may acknowledge that the concept of desert is indeterminate and that judgments of proportionality are elastic, but nonetheless argue that a limiting retributivism at least tells us that some punishments are *too much*. The problem, however, is that experience shows that desert does not function as an effective limiting principle. Instead, “the concept of desert is sufficiently elastic that almost any existing sanction can plausibly be defended as deserved” (Ristroph 2009: 741). For instance, the American criminal justice system has long been committed to the principle of proportionality and limited retributivism, a commitment reaffirmed by the recent revision of the Model Penal Code. Yet, despite this commitment, the principle of proportionality has not prevented the rise of mass incarceration or the large number of people serving life sentences. In fact, judgments of desert and proportionality often lead to judges and juries favoring excessively harsh sentences. For instance, in sentencing the notorious 71-year-old charlatan financier Bernie Madoff to 150 years in prison, Judge Denny Chin said, “[A]n offender should be punished in proportion to his blameworthiness.” Since Madoff’s acts were “extraordinarily evil,” Judge Chin chose the extraordinarily harsh sentence to send a message that Madoff would “get what he deserves.”¹⁸ The Supreme Court has also maintained that retributivism is the “primary justification for the death penalty” (*Spaziano v. Florida*, 468 U.S. at 461). This reveals that retributivism fails to provide the kind of protections against inhumane and disproportionate punishment it claims. In fact, the rise of the American carceral state appears to coincide directly with the rise of retributive philosophical rhetoric (Enns 2006; Ristroph 2009; Gruber 2010).

The problem is that retributivism “tells us to punish those who deserve it but fails to give any indication of who deserves it and how much they deserve” (Gruber 2010). And while there have been attempts to resolve this problem, such as the currently popular “empirical retributivism,” which defines retributive justice with reference to shared social intuitions of what is deserved and how bad certain crimes and criminals are, serious problems still remain. For instance, “the social intuitionism school is particularly disturbing in light of studies that reveal social intuitions of justice to be largely racialized” (Gruber 2010). In this sense, “judgments of ‘desert’ may serve as an opportunity for racial bias to enter the criminal justice system” (Ristroph 2009: 749). Furthermore, in the eyes of some citizens, criminals fail to get as much punishment as they deserve. Factoring these intuitions into our judgments of what wrongdoers deserve will only lead to more punitive responses.

Fischer, of course, could argue that his own semiretributivism, with its all-things-considered judgment about punishment, is less likely to give into racialized judgments and punitive excess, but there is reason to doubt this. That is because appeals to desert often

serve to shelter the most severe punishment regimes from claims of disutility and being opposed to other important social goods (see Ristroph 2009; Gruber 2010). As Ristroph notes, we can “hope that the facts will speak for themselves . . . that once people see how much sentences cost, and how little they apparently deter, the only rational response will be to reduce the length of prison sentences and look for alternatives” (2009: 748). Unfortunately, this hope is often undermined by the retributivist belief that wrongdoers deserve to be punished in proportion to their wrongdoing, no matter how much it costs, how little it deters, or how much this “deserved” punishment happens to disproportionately impact certain populations (Gruber 2010). In fact, Fischer admits that on his account there is no firm procedure for weighing desert claims against these other considerations, writing: “I concede that I have no worked out view about exactly how the considerations which generate *pro tanto* reasons, including (but not limited to) desert, will factor in the all-things-considered judgment as to punishment” (2023: 51). The danger, then, of desert is that “it preserves the possibility that some will say the costs are worth it, the inequities deserved” (Ristroph 2009: 748).¹⁹ I think Fischer underestimates these difficulties.

A closely related, but distinct, problem has to do with the distorting power of moral anger. In the first half of his paper, Fischer quotes a number of victim impact statements in an attempt to pump the intuition that their moral anger is not only natural, but justified. In fact, his appeal to the anger of victims and their families constitutes the bulk of his case for retributive blame and punishment. It is a well-known problem in criminal justice, however, that the use of victim testimony in court provokes anger among jurors, compromising the rationality of their deliberations (see, for example, Myers, Weidemann, and Pearce 2006). Jurors use the grief expressed in victim impact statements as a “proxy for the level of defendant’s . . . culpability, and by implication, the perceived seriousness of the crime” (Nadler and Rose 2003). This is a problem for retributivists, since the position seeks to distribute punishment in accordance with the desert, culpability, and moral blameworthiness of wrongdoers—not the anger of victims. Furthermore, not all victim testimony is treated equally. Research shows that jurors tend to take the suffering of some victims’ families more seriously than others, depending on their social status (Myers, Weidemann, and Pearce 2006). Prosecutors even tend to encourage families of middle-class victims to make statements while discouraging families from other backgrounds from doing so (Miller 2013). Scholars have also found that victim impact evidence contributes to the already substantial racial differences in capital sentencing, with juries giving more weight to the suffering of white murder victims’ families (Acker and Karp 2006).

These findings are consistent with everything we know about the angry emotions engaged in our practice of holding people morally responsible. Such emotions are often destructive—especially when the forward-looking aims of the practice, like those articulated by the Pereboom/Caruso account, are not on the minds of the practitioners (Pereboom 2021; Caruso and Pereboom 2022). Consider first how our practice of holding morally responsible malfunctions in personal relationships. Here the practice involves desert-presupposing confrontational moral anger in its resentful and indignant forms. This threat to relationships results from the alienating effect that expressions of such anger have on others, and from such anger’s propensity to give rise to defensive or offensive reactions rather than reform and reconciliation (see Pereboom 2021; Caruso and Pereboom 2022). Consider also how our practice of holding morally responsible malfunctions in societal relationships. The political conversation often features accusation and blame not intended to reform and re-

oncile, but to defeat and disempower. A reason why the practice malfunctions in personal and societal relationships is that the emotions it recruits are in tension with other requirements for the stability of these relationships (Pereboom 2021). In circumstances of conflict, this requires that participants believe the truth concerning the pertinent emotional attitudes and behavior of others, and that the attitudes of the participants be conciliatory and compassionate. But as Hannah Pickard (2013) points out, anger that accompanies blame has a strong tendency to distort judgments of blameworthiness.

For instance, studies by Mark Alicke and his associates indicate that subjects who evaluate the actions of others unfavorably and blame them as a result readily exaggerate the putative wrongdoer's causal control and the evidence that might favor it, while at the same time discounting the counterevidence (Alicke 2000; Alicke, Rose, and Bloom 2012). Alicke calls this tendency *blame validation*. Evidence that blaming behavior is widely subject to problems of these kinds is mounting (Nadelhoffer 2006). Furthermore, as Austin Duggan (2020) argues, there is reason to believe that the anger accompanying blame is the factor that produces these consequences. Studies show that anger degrades reasoning processes in multiple respects (Lerner, Goldberg, and Tetlock 1998; Goldberg, Lerner, and Tetlock 1999; Litvak et al. 2010). Anger results in a proclivity to overlook circumstances that would mitigate blame; it enhances the disposition to view ambiguous behavior as hostile, strengthens the tendency to rely on stereotypes about irrelevant features such as race and ethnicity, and heightens the likelihood of discounting the role of uncontrollable factors in assessing responsibility of wrongdoing. Julie Goldberg and her associates have even discovered that when retributive desires to inflict pain or harm are unsatisfied, anger "activate[s] an indiscriminate tendency to punish others in unrelated situations without regard for whether their actions were intentional" (Goldberg, Lerner, and Tetlock 1999: 783).

For the foregoing reasons, I contend that Fischer is mistaken when he claims that there is nothing unique about retributive blame and punishment that promotes cruel treatment and increased punitiveness. Retributive judgments about gravity of wrong, on the one hand, and proportional punishment, on the other, are wide open to existing cultural biases, prejudices, and power relations, and, as a result, the principle of proportionality in actual practice does not provide the kind of protections against abuse it promises, nor does it function as an effective limiting principle, since "the concept of desert is sufficiently elastic that almost any existing sanction can plausibly be defended as deserved" (Ristroph 2009: 741). Furthermore, there is ample empirical evidence that moral anger has a tendency to corrupt and distort our rational judgments of culpability, control, and what wrongdoers deserve. As a result, when we encounter behavior we dislike, behavior that elicits moral anger, we tend to judge the individual freer and more culpable, and as a result more deserving of punishment and harsh treatment.

6. CONCLUSION

In this paper, I have defended the skeptical view that no one is ever morally responsible for their actions in the basic desert sense against a number of recent objections by John Martin Fischer. I began by outlining the main aspects of basic desert moral responsibility skepticism, including its rejection of retributive blame and punishment, along with Fischer's objections to the view. I then argued that Fischer's defense of basic desert moral responsibility is too weak to justify the kind of retributive blame and punishment he wishes

to preserve. Not to stop there, though, I went further and responded to Fischer's concerns about victims and their families. I argued that, not only is Fischer mistaken about what victims want and the ability of retributivism to give them the closure they seek, skeptics of basic desert moral responsibility can adequately address the needs and desires of victims. I concluded by offering two additional objections to Fischer's semiretributivism designed to show that there *are* unique aspects of retributivism that are problematic, ones that undermine any purported protections against abuse the theory promises, and these include the radical indeterminacy of judgments of gravity and proportionality and the distorting power of moral anger.

Notes

1. See, for example, Pereboom (2001, 2014, 2021, 2022), Caruso (2012, 2016, 2018, 2021a), Pereboom and Caruso (2018), Caruso and Pereboom (2020, 2022), and Caruso in Dennett and Caruso (2021).
2. Some of the summary material in this section has been drawn from Caruso and Pereboom (2022).
3. I should note, however, that free will and basic desert moral responsibility skepticism is perfectly consistent with a forward-looking account of blame, like that developed by Pereboom (2014, 2021), since it does not presuppose that agents deserve the harm or pain of blame *just because* they acted wrongly, given that they were aware or should have been aware that the action was wrong (see also Caruso and Pereboom 2022).
4. For more on the public health-quarantine model and how it can respond to various questions, concerns, and criticisms, see Caruso (2021a, 2021b, 2021c, 2023).
5. *Negative desert* has to do with the blame or punishment an agent deserves for bad or wrongful actions. It can be contrasted with *positive desert*, which has to do with an agent deserving praise or reward for good actions.
6. I should note that weak retributivism, as here defined, is considered by many retributivists to be "too weak to guide the criminal law" and as amounting to nothing more than "desert-free consequentialism side constrained by negative desert" (Alexander, Ferzan, and Morse 2009: 7) since it rejects the *positive* retributivist view that culpable wrongdoers deserve some negative, burdensome response to their wrong, while a wrongdoer's desert is taken to justify the imposition of such burden. In fact, some theorists simply define retributivism in a way that excludes weak retributivism from consideration altogether (see, for example, Boonin 2008: 86).
7. While the term "semiretributivism" may suggest that Fischer does not fully accept the retributivist claim that (absent any excusing conditions) wrongdoers deserve to be punished in proportion to their wrongdoing, this is mistaken since he makes it clear that "semiretributivism is a form of retributivism" (2023: 51). He also makes it clear that his semiretributivism "captures the claim that Putin [one of his many examples] basic-deserves to be blamed and punished (both to the greatest extent possible), simply for what he has done" (51). Fischer therefore imparts to negative desert a "very weighty" role in his all-things-considered judgment about punishment.
8. For a full defense of these arguments, see Pereboom (2001, 2014, 2016, 2021, 2022), Caruso (2021a), Caruso and Pereboom (2022).

9. *Hard incompatibilism* is the view that the sort of free will required for basic desert moral responsibility is incompatible with *both* the causal determination of our actions by natural factors beyond our control *and* the kind of indeterminacy in action required by the most plausible versions of libertarianism.
10. I should note that Fischer's replies to the arguments for hard incompatibilism deserve more attention than I can give them here, especially his reply to so-called *manipulation arguments* against compatibilism. Manipulation arguments maintain that, if an agent is causally determined to act by, say, a team of scientists who unbeknownst to them manipulate their brain, then they are not morally responsible for that action in the basic desert sense even if they satisfy all the prominent compatibilist conditions of moral responsibility. The argument then continues and maintains that there is no relevant difference between such manipulated agents and their ordinary deterministic counterparts that can justify the claim that manipulated agents are not morally responsible while determined agents are. Hence, the argument concludes, if agents are not free and morally responsible in the basic desert sense under conditions of manipulation, then they are also not free and morally responsible in conditions of ordinary determinism. In response to such arguments, Fischer writes, "My view is that the manipulation scenarios . . . either involve lack of ownership or lack of reasons-responsiveness [two conditions necessary for basic desert moral responsibility]. They are thus not relevantly similar to cases where an agent is morally responsible, in the basic-desert sense, in a causally deterministic world" (2023: 44; see also Fischer 1994, 2021, and Fischer and Ravizza 1998). I think this response fails for a number of reasons—not the least of which is that manipulation cases can be designed that satisfy both conditions (ownership and reasons-responsiveness) and Fischer has not shown that this is in principle impossible—but I must leave this battle for another day.
11. The *epistemic encroachment literature* also helps support this point since proponents of the view argue that the level of justification needed for a belief changes given the stakes at play in a given context (see Fantl and McGrath 2002, 2007; Ganson 2019; Stanley 2005). According to the thesis of pragmatic encroachment (a term coined by Jonathan Kvanvig), the pragmatic "encroaches" on the epistemic—that is, practical considerations such as the potential costs of action on p if p is false can make a genuine epistemic difference. As a result, two subjects in different practical circumstances can differ with respect to whether they are epistemically justified in believing that p even though they are the same with respect to all truth-relevant factors, such as the quantity and quality of their evidence for and against p , the reliability of the methods they rely on in forming their attitudes toward p , and so forth. Sometimes more evidence is needed to be epistemically justified in believing as the stakes get higher and the odds longer (Ganson 2019; see also Fantl and McGrath 2002, 2007).
12. As reported on in Christopher Ingraham, "Even Violent Crime Victims Say Our Prisons Are Making Crime Worse," *The Washington Post*, August 5, 2016, available at <https://www.washingtonpost.com/news/wonk/wp/2016/08/05/even-violent-crime-victims-say-our-prisons-are-making-crime-worse/>.
13. See <https://docs.google.com/document/d/1eLSwba1XUDp1ILXnUKR-NoQNT-dmYNP0LSbvPbSAaoY/edit>.
14. MVFHR website: <http://www.mvfhr.org/our-work>.

15. As quoted in Alan Travis, “Victims of Crime Reject Notion of Retribution,” *The Guardian*, January 15, 2006, <https://www.theguardian.com/uk/2006/jan/16/ukcrime.alantravis>.
16. The full report is available online at: https://safeandjust.org/wp-content/uploads/ASJ_CACrimeSurvivorBrief-RD1-1.pdf.
17. See <https://www.statista.com/statistics/1227390/number-of-countries-that-criminalize-homosexuality/>.
18. See Benjamin Weiser, “Judge Explains 150-Year Sentence for Madoff,” *New York Times*, June 28, 2011, www.nytimes.com/2011/06/29/nyregion/judge-denny-chin-recounts-his-thoughts-in-bernard-madoff-sentencing.html.
19. Fischer, himself, may be guilty of this when he writes: “There will . . . presumably be cases of such egregious wrongs that no other consideration can generate reasons that have enough weight to play a non-negligible role in shaping the relevant all-things-considered judgment. On my approach, then, Putin would get, and Hitler would have got, exactly what they deserve, so far as possible. I assume this would be the death penalty or life in prison without parole. The same would apply to rapists, torturers, murderers, and other moral monsters” (2023: 51).

References

- Acker, J. R., and D. R. Karp. 2006. *Wounds That Do Not Bind: Victim-Based Perspectives on the Death Penalty*. Durham, NC: Carolina Academic Press.
- Alexander, L., K. K. Ferzan, and S. Morse. 2009. *Crime and Culpability: A Theory of Criminal Law*. New York: Cambridge University Press.
<https://doi.org/10.1017/CBO9780511804595>
- Alicke, M. D. 2000. “Culpable Control and the Psychology of Blame,” *Psychology Bulletin* 126: 556–574. <https://doi.org/10.1037/0033-2909.126.4.556>
- Alicke, M. D., D. Rose, and D. Bloom. 2012. “Causation, Norm Violation and Culpable Control,” *Journal of Philosophy* 106: 587–612.
- Alliance for Safety and Justice. 2016. *Crime Survivors: The First-Ever National Survey of Victims’ Views on Safety and Justice*. www.allianceforsafetyandjustice.org/wp-content/uploads/documents/Crime%20Survivors%20Speak%20Report.pdf.
- Armour, M. P., and M. S. Umbreit. 2012. “Assessing the Impact of the Ultimate Penal Sanction on Homicide Survivors: A Two State Comparison,” *Marquette Law Review* 96: 1–123.
- Bagley, B. 2017. “Properly Proleptic Blame,” *Ethics* 127: 852–882.
<https://doi.org/10.1086/691626>
- Berman, M. 2016. “Modest Retributivism,” in *Legal, Moral, and Metaphysical Truths: The Philosophy of Michael S. Moore*, ed. K. K. Ferzan and S. J. Morse, 35–48. New York: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780198703242.003.0003>
- Bonta, J., S. Wallace-Capretta, J. Rooney, and K. Mcanoy. 2002. “An Outcome Evaluation of a Restorative Justice Alternative to Incarceration,” *Contemporary Justice Review* 5: 319–338. <https://doi.org/10.1080/10282580214772>
- Boonin, D. 2008. *The Problem of Punishment*. New York: Cambridge University Press.
<https://doi.org/10.1017/CBO9780511819254>

- Caruso, G. D. 2012. *Free Will and Consciousness: A Determinist Account of the Illusion of Free Will*. Lanham, MD: Lexington Books.
- Caruso, G. D. 2016. "Free Will Skepticism and Criminal Behavior: A Public Health-Quarantine Model," *Southwest Philosophy Review* 32: 25–48.
<https://doi.org/10.5840/swphilreview20163214>
- Caruso, G. D. 2017. *Public Health and Safety: The Social Determinants of Health and Criminal Behavior*. UK: ResearchersLinks Books.
- Caruso, G. D. 2018. "Skepticism about Moral Responsibility," in *Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/entries/skepticism-moral-responsibility/>.
- Caruso, G. D. 2019. "Free Will Skepticism and Its Implications: An Argument for Optimism," in *Free Will Skepticism in Law and Society*, ed. E. Shaw, D. Pereboom, and G. D. Caruso, 43–72. New York: Cambridge University Press.
<https://doi.org/10.1017/9781108655583.003>
- Caruso, G. D. 2020. "Justice without Retribution: An Epistemic Argument against Retributive Criminal Punishment," *Neuroethics* 13: 13–28.
<https://doi.org/10.1007/s12152-018-9357-8>
- Caruso, G. D. 2021a. *Rejecting Retributivism: Free Will, Punishment, and Criminal Justice*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781108689304>
- Caruso, G. D. 2021b. "Rejecting Retributivism: Reply to Leo Zaibert," *The Philosopher* 109: 118–126. <https://doi.org/10.1017/9781108689304>
- Caruso, G. D. 2021c. "Retributivism, Free Will Skepticism, and the Public Health-Quarantine Model: Replies to Kennedy, Walen, Corrado, Sifferd, Pereboom, and Shaw," *Journal of Legal Philosophy* 46: 161–216. <https://doi.org/10.4337/jlp.2021.02.09>
- Caruso, G. D. 2023. "Preemptive Incapacitation, Victim's Rights, Desert, and Respect for Persons: Replies to McCormick and Donelson," *Journal of Practical Ethics* 10: 29–56. <https://doi.org/10.3998/jpe.3547>
- Caruso, G. D., and S. G. Morris. 2017. "Compatibilism and Retributivist Desert Moral Responsibility: On What Is of Central Philosophical and Practical Importance," *Erkenntnis* 82: 837–855. <https://doi.org/10.1007/s10670-016-9846-2>
- Caruso, G. D., and D. Pereboom. 2020. "A Non-punitive Alternative to Punishment," in *Routledge Handbook of the Philosophy and Science of Punishment*, ed. F. Focquaert, B. Waller, and E. Shaw, 355–365. New York: Routledge.
<https://doi.org/10.4324/9780429507212-33>
- Caruso, G. D., and D. Pereboom. 2022. *Moral Responsibility Reconsidered*. Cambridge: Cambridge University Press. <https://doi.org/10.1017/9781009219730>
- Corrado, M. L. 2018. "Criminal Quarantine and the Burden of Proof," *Philosophia* 47: 1095–1110. <https://doi.org/10.1007/s11406-018-0026-2>
- Dennett, D. C., and G. D. Caruso. 2021. *Just Deserts*. Cambridge: Polity Press.
- Duggan, A. 2020. "A Genealogy of Retributive Intuitions." Unpublished manuscript.
- Fantl, J., and M. McGrath. 2002. "Evidence, Pragmatics, and Justification," *Philosophical Review* 111: 67–94. <https://doi.org/10.1215/00318108-111-1-67>
- Fantl, J., and M. McGrath. 2007. "On Pragmatic Encroachment in Epistemology," *Philosophy and Phenomenological Research* 75: 558–589.
<https://doi.org/10.1111/j.1933-1592.2007.00093.x>
- Fischer, J. M. 1994. *The Metaphysics of Free Will: An Essay on Control*. Oxford: Blackwell.

- Fischer, J. M. 2021. "Initial Design, Manipulation, and Moral Responsibility," *Criminal Law and Philosophy* 15: 255–270. <https://doi.org/10.1007/s11572-021-09561-0>
- Fischer, J. M. 2023. "Moral Responsibility Skepticism and Semiretributivism," *The Harvard Review of Philosophy* 30: 37–62. <https://doi.org/10.5840/harvardreview20239150>
- Fischer, J. M., and M. Ravizza. 1998. *Responsibility and Control: A Theory of Moral Responsibility*. New York: Cambridge University Press.
<https://doi.org/10.1017/CBO9780511814594>
- Fricker, M. 2016. "What's the Point of Blame? A Paradigm Based Explanation," *Nous* 50: 165–183. <https://doi.org/10.1111/nous.12067>
- Ganson, D. 2019. "Pragmatic Encroachment," in *Routledge Encyclopedia of Philosophy*. Available at <https://www.rep.routledge.com/articles/thematic/pragmatic-encroachment/v-1>. <https://doi.org/10.4324/9780415249126-P079-1>
- Goldberg, J. H., J. S. Lerner, and P. E. Tetlock. 1999. "Rage and Reason: The Psychology of the Intuitive Prosecutor," *European Journal of Social Psychology* 29: 781–795. [https://doi.org/10.1002/\(SICI\)1099-0992\(199908/09\)29:5/6%3C781::AID-EJSP960%3E3.0.CO;2-3](https://doi.org/10.1002/(SICI)1099-0992(199908/09)29:5/6%3C781::AID-EJSP960%3E3.0.CO;2-3)
- Gruber, A. 2010. "The False Promise of Retributive Proportionality," *JOTWELL*, <https://crim.jotwell.com/the-false-promise-of-retributive-proportionality/>.
- Jeppsson, S. 2021. "Retributivism, Justification and Credence: The Epistemic Argument Revisited," *Neuroethics* 14: 177–190. <https://doi.org/10.1007/s12152-020-09436-6>
- Lamont, J. 1994. "The Concept of Desert in Distributive Justice," *Philosophical Quarterly* 44: 45–64. <https://doi.org/10.2307/2220146>
- Latimer, J., C. Dowden, and D. Muise. 2005. "The Effectiveness of Restorative Justice Practices: A Meta-Analysis," *The Prison Journal* 85: 127–144. <https://doi.org/10.1177/0032885505276969>
- Lerner, J. S., J. H. Goldberg, and P. E. Tetlock. 1998. "Sober Second Thought: The Effects of Accountability, Anger, and Authoritarianism on Attributions of Responsibility," *Personality and Social Psychology Bulletin* 24: 563–574. <https://doi.org/10.1177/0146167298246001>
- Levy, N. 2011. *Hard Luck: How Luck Undermines Free Will and Moral Responsibility*. Oxford: Oxford University Press.
<https://doi.org/10.1093/acprof:oso/9780199601387.001.0001>
- Litvak, P. M., J. S. Lerner, L. Z. Tiedens, and K. Shonk. 2010. "Fuel in the Fire: How Anger Impacts Judgments and Decision Making," in *International Handbook of Anger*, ed. M. Potegal, G. Stemmler, and C. Spielberger, 287–301. New York: Springer.
https://doi.org/10.1007/978-0-387-89676-2_17
- McCold, P., and T. Wachtel. 2002. "Restorative Justice Theory Validation," in *Restorative Justice: Theoretical Foundations*, ed. E. G. M. Weitekamp and H.-J. Kerner, 110–142. London: Willan.
- McKenna, M. 2019. "Basically Deserved Blame and Its Value," *Journal of Ethics and Social Philosophy* 15: 255–282. <https://doi.org/10.26556/jesp.v15i3.547>
- Miller, K.-L. 2013. "Purposing and Repurposing Harms: The Victim Impact Statement and Sexual Assault," *Qualitative Health Research* 23: 1445–1458. <https://doi.org/10.1177/1049732313507753>

- Myers, B., E. Weidemann, and G. Pearce. 2006. "Psychology Weighs In on the Debate Surrounding Victim Impact Statements and Capital Sentencing: Are Emotional Jurors Really Irrational?," *Federal Sentence Report* 19: 13–20.
<https://doi.org/10.1525/fsr.2006.19.1.13>
- Nadelhoffer, T. 2006. "Bad Acts, Blameworthy Agents, and Intentional Action: Some Problems for Jury Impartiality," *Philosophical Explorations* 9: 203–220.
<https://doi.org/10.1080/13869790600641905>
- Nadler, J., and M. R. Rose. 2003. "Victim Impact Testimony and the Psychology of Punishment," *Cornell Law Review* 88: 419–456. <https://doi.org/10.2139/ssrn.377521>
- Nascimento, A. M., J. Andrade, and A. de Castro Rodrigues. 2022. "The Psychological Impact of Restorative Justice Practices on Victims of Crime: A Systematic Review," *Trauma Violence Abuse* 24: 1929–1947. <https://doi.org/10.1177/15248380221082085>
- Pereboom, D. 1995. "Determinism *al Dente*," *Noûs* 29: 21–45.
<https://doi.org/10.2307/2215725>
- Pereboom, D. 2001. *Living without Free Will*. Cambridge: Cambridge University Press.
<https://doi.org/10.1017/CBO9780511498824>
- Pereboom, D. 2013. "Free Will Skepticism and Criminal Responsibility," in *The Future of Punishment*, ed. T. Nadelhoffer, 49–78. New York: Oxford University Press.
<https://doi.org/10.1093/acprof:oso/9780199779208.003.0003>
- Pereboom, D. 2014. *Free Will, Agency, and Meaning in Life*. Oxford: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199685516.001.0001>
- Pereboom, D. 2016. "A Defense of Free Will Skepticism: Replies to Commentaries by Victor Tadros, Saul Smilansky, Michael McKenna, and Alfred R. Mele on Free Will, Agency, and Meaning in Life," *Criminal Law and Philosophy* 11: 1–20.
<https://doi.org/10.1007/s11572-017-9412-2>
- Pereboom, D. 2021. *Wrongdoing and the Moral Emotions*. Oxford: Oxford University Press. <https://doi.org/10.1093/oso/9780192846006.001.0001>
- Pereboom, D. 2022. *Free Will*. Cambridge: Cambridge University Press.
- Pereboom, D., and G. D. Caruso. 2018. "Hard-Incompatibilist Existentialism: Neuroscience, Punishment, and Meaning in Life," in *Neuroexistentialism: Meaning, Morals, and Purpose in the Age of Neuroscience*, ed. G. D. Caruso and O. Flanagan, 193–222. New York: Oxford University Press.
- Pickard, H. 2013. "Irrational Blame," *Analysis* 73: 613–626.
<https://doi.org/10.1093/analys/ant075>
- Radelet, M. L. 2016. "The Incremental Retributive Impact of a Death Sentence over Life without Parole," *University of Michigan Journal of Law Reform* 49: 795–815.
<https://doi.org/10.36646/mjlr.49.4.incremental>
- Ristroph, A. 2006. "Desert, Democracy, and Sentencing Reform," *Journal of Criminal Law and Criminology* 96: 1293–1352.
- Ristroph, A. 2009. "How (Not) to Think Like a Punisher," *Florida Law Review* 61: 727–749.
- Robinson, P. H. 2008. "Competing Conceptions of Modern Desert: Vengeful, Deontological, and Empirical," *Cambridge Law Journal* 67: 145–175.
<https://doi.org/10.1017/S000819730800010X>
- Robinson, P. H., and M. T. Cahill. 2006. *Law without Justice: Why Criminal Law Doesn't Give People What They Deserve*. New York: Cambridge University Press.

- Rudy-Hiller, F. 2018. "The Epistemic Condition for Moral Responsibility," in *Stanford Encyclopedia of Philosophy*. <https://plato.stanford.edu/entries/moral-responsibility-epistemic/>.
- Rugge T., R. Cormier, and R. Jesseman. 2006. "Restorative Justice and Recidivism: Promises Made, Promises Kept?," in *Handbook of Restorative Justice: A Global Perspective*, ed. D. Sullivan and L. Tift, 108–120. London: Routledge.
- Shaw, E. 2014. "Free Will, Punishment, and Criminal Responsibility." PhD dissertation, Edinburgh University. Available at <https://era.ed.ac.uk/bitstream/handle/1842/9590/Shaw2014.pdf?sequence=2&isAllowed=y>.
- Shoemaker, D. 2018. "You Oughta Know: Defending Angry Blame," in *The Moral Psychology of Anger*, ed. M. Cherry and O. Flanagan, 67–88. Lanham, MD: Rowman & Littlefield.
- Sommers, T. 2016. "Restorative Justice," *The Philosophers' Magazine* 72: 103–104. <https://doi.org/10.5840/tpm20167253>
- Stanley, J. 2005. *Knowledge and Practical Interests*. New York: Oxford University Press. <https://doi.org/10.1093/0199288038.001.0001>
- Strang, H. 2002. *Repair or Revenge: Victims and Restorative Justice*. Oxford: Clarendon Press.
- Strang, H., L. W. Sherman, E. May-Wilson, D. Woods, and B. Ariel. 2013. "Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims: Effects on Offender Recidivism and Victim Satisfaction. A Systemic Review," *Campbell Systematic Reviews* 9: 1–59. <https://doi.org/10.4073/csr.2013.12>
- Strawson, G. 1986. *Freedom and Belief*. Oxford: Oxford University Press.
- Vilhauer, B. 2009. "Free Will and Reasonable Doubt," *American Philosophical Quarterly* 46: 131–140.
- Vilhauer, B. 2012. "Taking Free Will Skepticism Seriously," *Philosophical Quarterly* 62: 833–852. <https://doi.org/10.1111/j.1467-9213.2012.00077.x>
- Vollum, S., and D. R. Longmire. 2007. "Covictims of Capital Murder: Statements of Victims' Family Members and Friends Made at the Time of Execution," *Violence and Victims* 22: 601–619. <https://doi.org/10.1891/088667007782312131>
- Walén, A. 2014. "Retributive Justice," in *Stanford Encyclopedia of Philosophy*. <http://plato.stanford.edu/entries/justice-retributive/#Pro>.
- Waller, B. 2011. *Against Moral Responsibility*. Cambridge, MA: MIT Press. <https://doi.org/10.7551/mitpress/9780262016599.001.0001>
- Waller, B. 2014. *The Stubborn System of Moral Responsibility*. Cambridge, MA: MIT Press. <https://doi.org/10.7551/mitpress/9780262028165.001.0001>
- Wolf, S. 2011. "Blame, Italian Style," in *Reasons and Cognition: Essays on the Philosophy of T. M. Scanlon*, ed. R. Jay Wallace, R. Kumar, and S. Freeman, 332–347. New York: Oxford University Press. <https://doi.org/10.1093/acprof:oso/9780199753673.003.0014>
- Zaibert, L. 2018. *Rethinking Punishment*. New York: Cambridge University Press. <https://doi.org/10.1017/9781108151740>
- Zehr, H. 2005. *Changing Lenses: A New Focus for Crime and Justice*. Waterloo, ON: Herald Press.

