




# Justice Without Retribution: Interdisciplinary Perspectives, Stakeholder Views and Practical Implications

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'Free will skepticism' refers to a family of views that all take seriously the possibility that human beings lack the control in action, that is, the free will, required for moral responsibility in a particular but pervasive sense. This sense is typically set apart by the notion of *basic desert* and is defined by Derk Pereboom as follows:

For an agent to be morally responsible for an action in the basic desert sense is for it to belong to her in such a way that she would deserve blame if she understood that it was morally wrong, and she would deserve credit or perhaps praise if she understood that it was morally exemplary. The desert invoked here is basic in the sense that the agent, to be morally responsible, would deserve the blame or credit just because she has performed the action,

given sensitivity to its moral status, and not by virtue of consequentialist or contractualist considerations. ([1, 2]; cf. 3)

Some free will skeptics wholly reject this notion of moral responsibility because they believe it to be incoherent or impossible. Others maintain that, though possible, our best philosophical and scientific theories about the world provide strong and compelling reasons for adopting skepticism about free will and basic desert moral responsibility. What all varieties of free will skepticism share, however, is the belief that the requirements for basic desert moral responsibility and the practices associated with it—such as backward-looking praise and blame, punishment and reward, and the reactive attitudes of resentment and indignation—are not met.

Importantly, adopting this skeptical perspective requires us to reject one of the leading justifications of legal punishment in the criminal justice system: *retributivism*. The retributive justification for punishment maintains that punishment of a wrongdoer is justified for the reason that he/she *deserves* to be harmed or experience hardship, or deserves a type of censure that could only be appropriately expressed through hard treatment, just because of having knowingly done wrong (some influential versions of retributivism include: [4–7]). Depending on the variety of retributivism, the hard treatment could include suffering, deprivation, or death (retributivists disagree about which types of punishment are acceptable). Free will skepticism, however, rejects basic desert—and, if agents do not basically deserve blame just because of having knowingly done

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wrong, neither do they basically deserve punishment just because of having knowingly done wrong.

Treating criminals *as if* they are basically deserving of harm for their immoral behavior when they are not in fact basically deserving arguably results in ‘ultimate-level’ victimization [8]. Free will skeptics argue that treating criminals as if they were basically deserving of harm is inherently unjust because we lack the libertarian kind of free will that this retributivist justification requires. Instead, they contend that criminal policy should be justified by forward-looking aims such as the protection of society and the rehabilitation of criminals [2, 9–11].

The articles in this special issue critically assess theoretical arguments concerning the possibility and desirability of a non-retributive criminal justice system, as well as the practical implications of adopting free will skepticism for the criminal law, society, and public policy. These articles encompass the views of philosophers, forensic practitioners, health law and policy experts, and neurocriminologists on these topics, and the views of the general public on retributive punishment.

A frequently heard critique of free will skepticism is that it places offenders outside the moral community, since it does not treat them as reasons-responsive and self-governing moral agents. However, does free will skepticism deny that moral status of offenders, or for that matter, the moral status of all individuals irrespective of their cognitive, motivational and moral capacities? It need not. Free will skepticism does not in fact imply that the difference, central to the most prominent type of compatibilism, between agents who are reasons-responsive and self-governing and those who are not is irrelevant to how we should treat criminals. On the contrary, free will skeptics most often hold that this difference is crucial for determining the right response to crime. The free will skeptic’s proposal that consideration of basic desert be excluded in determining policy on crime is consistent with retaining the relevance of reasons-responsiveness and self-governance. If these capacities are in place, forms of treatment that take rationality and self-governance into account are appropriate. Those who suffer from compulsions, delusions, addictions, childhood traumas that impair rationality and self-governance would be treated differently, and in ways that aim to restore these capacities. Understanding the variety of causes that lead to impairment of these capacities would be crucial to determining effective

policy for recidivism reduction and rehabilitation. Developments in neuroscience are particularly relevant:

As advances in neuroscience can help us understand the nature and limits of our capacity to govern our own behavior, work of the sort included here will, we hope, be useful to scholars who seek to clarify both the kinds of behavior policy makers and analysts might legitimately expect people to change and strategies that would be effective in helping them – for example, [...] in efforts to rehabilitate convicted criminals, treat PTSD, or address domestic violence or substance abuse. ([12], 243)

There are numerous examples worldwide of the continuous violation of offenders’ rights such as involuntary organ procurement from prisoners, insufficient or absent health care, rape and violence within prisons, use of torture, continued solitary confinement and dramatic overcrowding [13–15]. Free will skeptics have protested these practices. But many retributivists oppose them as well, in fact on the basis of the claim that such treatment is not deserved (e.g., [16]). In response, free will skeptics have raised the concern that widespread retributive attitudes tend to increase the likelihood that voters and politicians will be complacent about such inhumane conditions. Free will skeptics and opponents of retributivism more generally have contended that a restriction to non-retributive, forward-looking justifications for policy on crime is less likely to result in compromising the rights and needs of offenders. But while this is a claim that free will skeptics tend to make or assume, it is an empirical matter that requires further adjudication.

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<sup>1</sup> <http://www.justicewithoutretribution.com/home.html>

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