

Index

- abortion, Thomson's *Violinist* case regarding, 34, 115–16
- act-by-act assessment of culpability, 133
- actus reus* (voluntary act requirement), 158–59
- aiding and abetting, conspiracy, and solicitation, 6, 20
- Airedale NHS Trust v. Bland* (UK, 1993), 128
- “already punished enough” claims, 202
- Alzheimer's disease and identity, 153–54
- amnesia, 147, 149, 156–57
- Barber v. Superior Court* (US, 1983), 127
- Beauchamp, Christine, 170, 177
- Behnke, Stephen, 154n33, 167, 170–71, 175
- Berman, Mitch, 2n3
- “blip” cases, 159–63
- Boorse, Christopher, 34
- Boozikee, Kevin, 173
- brainwashing, 159–63
- Brink, David, 98, 104
- Brute Time view of distributing retributive desert, 195–96
- camouflaging, 18, 50, 203
- capacity/choice theory versus character theory on excuses, 163–68
- causation of harm, 17, 59
- censure or stigma and retributive desert, 181
- character theory versus choice/capacity theory on excuses, 163–68
- child pornography, *de minimis* contributions to, 56–57
- choice/capacity theory versus character theory on excuses, 163–68
- circumstantial luck, 5
- coercive indoctrination, 161, 163
- Cogdon, Mrs., 175–76, 178
- compatibilism, 188
- complicity, doctrine of, 20
- conjoined twins, 173–74, 177n114
- consent
- falsehoods and, 63
 - mistakes about proxies for, 62
 - “other law” mistake, consent of victim cases as, 62–64
- consequentialism, 58n94, 105, 106n33, 130, 196–97
- conspiracy, solicitation, and aiding and abetting, 6, 20
- constitutive luck, 5
- Cornford, Andrew, 25, 87–88
- culpability, 1–14, 213–14
- act-by-act assessment of, 133
 - affirmative defenses, justifications, and excuses not regarded as, 8–9
 - basic thesis of, 1
 - causation of harm irrelevant to, 17
 - defendant's perspective and estimates as key determinant in, 2
 - determinants of, 2–3
 - duration of act affecting, 9–10
 - ignorance of law and, 11, 213 (*See also* ignorance of law)
 - incomplete attempts, nonculpability of, 5–6
 - justifying, excusing, mitigating, or aggravating facts affecting, 2, 8–9
 - moderate redistributivism and, 1
 - negligence, nonculpability of, 3–4, 45
 - persons who are culpable, 12–13 (*See also* deontological constraints; moral ignorance; multiple crimes)

- culpability (cont.)
 punishment issues, 14 (*See also* distributing retributive desert; identity; punishment issues)
 recklessness and, 3 (*See also* recklessness)
 results of acts, not affected by, 4–5, 133
 risking and, 11–12 (*See also* omission liability; proxy crimes; risking; risking others' riskings)
 single crime theory of, 7–8, 8n35, 83
 solicitation, conspiracy, and aiding and abetting, 6, 20
 vagueness of standard of, 83
 for violation of deontological constraints, 128–32
 cultural defense of moral ignorance, 105–7
- dangerousness as determination of incarceration as punishment, 199
- de minimis* risk contributions, 56–59
- defense justifications, 8
- degraded decision making, 134
- Delgado, Richard, 161
- deontological constraints (means principle/ permissibility of preventing optimistic wrongs), 13, 108–32, 213
 agent-relative permissions, 112n18, 113–15
 burden of proof and, 8n35
 choice given to preventer, 123–24
 consequentialism and, 106n33, 130
 culpability for violations thereof, 128–32
 distinguishing permissions, 124–25
 impermissible prevention of preventer, 120–23
 intentions of actors, significance of, 127–28
 moral blackmail and, 29
 preventing use as a means, 108–11, 115
 property rights and, 125–27
 reasons for permissibility of intervention, 111–15
 restricting and nonrestricting claims approach to, 117–20
 self-sacrifice, right to forgo, 32–38
 third-party interventions, 115–17
 threshold deontology, 105, 106n33
- deprogramming, 163
- desert. *See also* distributing retributive desert
 as intrinsically good, 183–86
 as noncomparative, 181
 assumption of risk and, 206–7
 self-defense and, 14, 21n6, 31, 37, 44, 201, 206
 suffering and, 181–83
- determinism, 188–89
- detrimental reliance, 45
- DID. *See* dissociative identity disorder
- Dillon v. Twin State Gas and Electric Company* (US, 1932), 51
- dissociative identity disorder (DID), 147, 169–78
 conjoined twins compared, 174n103, 177n114
 DSM-5 criteria, 169n79
 etiology of, 170
 existence/validity of, 169
 integration therapy for, 176–78
 judicial approaches to, 170–71
 “one body, multiple persons” view of, 171–74, 176–77
 “one (mentally ill) person” view of, 171, 175–76, 178
- distributing retributive desert, 14, 180–210, 214.
See also suffering
 administrative issues, 195–98
 “already punished enough” claims, 202
 balance, restoration of, 185, 187
 creating or allowing crime in order to achieve intrinsic good of, 187–89
 culpability as basis for, 186
 dangerousness as determination of incarceration as punishment, 199
ex ante suffering, 189, 198
 Existing Bad Person view of, 195n66
 incarceration as main method of punishment, 199
 intrinsic goodness of, 183–86
 means principle and, 187–94
 meshing with other distributions of benefits and harms, 198
 mode of, 195–96
 moral ledger approach to, 209n105
 as noncomparative, 181
 positive versus negative desert, 194n63, 196–98, 207–9
 prepunishment and determinism, 188–89
 reactive attitudes toward, 182
 resource constraints and choice among the deserving, 194n63, 196–98
 stigma or censure and, 181
 subjective experience of punishment and, 199
 taxation to support, 189–94
 timing of, 195–96
 unequal susceptibility to punishment, 198–99
- Double Jeopardy Clause, 90
- double prevention, 34, 113–14, 120
- Dresser, Rebecca, 151–53, 164
- Dressler, Joshua, 19n3, 162
- ducking, 34, 113–16
- due care principles, 45
- Duff, Antony, 26n21
- duration
 of act affecting culpability, 9–10
 omission liability and, 10, 79–81
 of punishment, 195–96
- duress, 9, 160

- euthanasia
 mercy killings, and criminalization of causally upstream acts, 50–51
 passive, 127–28
 Ewing, Ben, 143
ex ante suffering, 189
 excuses, character theory versus choice/capacity theory on, 163–68
 Existing Bad Person view of distributing retributive desert, 195n66
- falsehoods and consent, 63
 family members, legal duty to aid, 67
 Firth, Joanna, 201
 FitzPatrick, William, 102
 forcible medication of mentally ill patients to stand trial, 163n60
 free will and risking others' riskings, 23, 33n34
 freeriding, 59
 Frowe, Helen, 35–38, 129
 fugue states, persons in, 171–72, 176
 futile rescue, preventing, 55–56
- Guerrero, Alex, 97
- Harman, Elizabeth, 102–3
 harms
 causation of, 17, 51, 59
de minimis, 56
 defined, 17, 51, 53
 mediated, 35–38
 risking (*See* risking; risking others' riskings)
- Hart, H. L. A., 39, 43, 183
 Hearst, Patty (“Tania”), 160–63
 Hensel, Abby and Brittany, 173
 Hitler, Adolf, 137–38, 141, 183
 honor killings and cultural defense of moral ignorance, 105–7
 Honoré, Tony, 39, 43
 Horder, Jeremy, 166
 Hurd, Heidi, 21n6, 22n7, 41–42, 45
 Husak, Douglas, 95–96, 99, 101, 107, 190, 202
 Husserl, Edmund, 185
- identity, 14, 147–79, 214. *See also* dissociative identity disorder; Relation R/R-relatedness
 Alzheimer's disease, 153–54
 amnesia, 147, 149, 156–57
 “blip” cases and brainwashing, 159–63
 character change, 149, 156, 164, 168
 children, 155–56
 conjoined twins, 173–74, 177n14
 excuses, character theory versus choice/capacity theory on, 163–68
 mass murderers and, 138
 memory of event, absence of, 168–69, 178
 moral responsibility and rational agency, 155–57
 passage of time between crime and conviction, 148–49
 philosophical accounts of personal identity, 149–55
 psychological connectedness/continuity over time, 150–51, 153–55, 167
 radical conversion, 156
 situations calling continuing personal identity into question, 148–49
 somnambulist homicides, 175–76
 voluntary act requirement (*actus reus*), 158–59
 idiosyncratic beliefs, actions, or conditions of innocent actors, 47–48
 ignorance, moral. *See* moral ignorance
 ignorance of law, 11, 213
 no mistake of law problems in culpability analysis, 10–11
 omission liability and, 81–82
 “other law” beliefs, 61–65
 proxy crimes and, 86–88
 In the End view of distributing retributive desert, 195–96
 incarceration as main method of punishment, 199
 incomplete attempts, nonculpability of, 5–6
 incorrigibility, 140
 indiscriminate evaluators, 156
 innocent actors, culpability for riskings of, 43–48
 integration therapy for DID, 176–79
- Jekyll and Hyde, 162
 Johnson, Eric, 39
- Kadish, Sandy, 23
 Kagan, Shelly, 56–57, 108n2, 183, 186
 Kant, Immanuel, 33n34, 46, 71
 Katz, Leo, 136
 Kershman, Stephen, 99
 Kingston, Barry, 165–66
Kirkland v. State (US, 1983), 172
 Klosko, George, 191
 Kolber, Adam, 199
 Kovarsky, Lee, 197n74
- Lee, Youngjae, 142
 legal duty to act, 66–71
 lesser evils justification, 8, 78, 90
 Levy, Neil, 99
lex talionis, 196
 liberty interests and risking others' riskings, 23–26, 43, 48n75
 “limits of the criminal law” questions, 2n3

- Locke, John, 33, 150n17
 Lomansky, Loren, 156
- Madoff, Bernie, 139
malum in se crimes, 81, 83, 88, 89n9, 213
 Mao Zedung, 137–38, 141
 Marine Corps basic training, as brainwashing, 160n53, 160
 mass murderers, 137–39
 mayhem, harm inflicted in, 54
 McMahan, Jeff, 111, 127
 means principle
 deontological constraints (*See* deontological constraints)
 distributing retributive desert and, 187–94
 mediated harms, 35–38
 medication, forcible, of mentally ill patients to stand trial, 163n60
Memento (film), 156–57
 memory of criminal event, absence of, 168–69, 178
 mental disability. *See also* dissociative identity disorder; moral ignorance
 amnesia, 147, 149, 156–57
 forcible medication of mentally ill patients to stand trial, 163n60
 fugue states, persons in, 171–72, 176
 psychopaths, 97–99
 merchants' culpability for risking others' riskings, 40–43
 mercy killings, and criminalization of causally upstream acts, 50–51
 mistake of law. *See* ignorance of law
 Modally Robust Act Consequentialism, 58n94
 mode, of retributive desert, 195–96
 moderate retributivism, 1, 100, 196
 Mogensen, Andreas, 108n2, 109–10, 114n27
 Moore, G. E., 185–86
 Moore, Michael
 on distributing retributive desert, 191
 on identity, 174, 176n11
 on moral ignorance, 96
 on risking others' riskings, 22n7, 23n11, 34, 41–42, 52
 moral blackmail, 27–32
 moral ignorance, 12, 95–107, 213
 cultural defense of, 105–7
 mistake of law/fact versus, 11
 as negligence, 102
 ordinary criminals and, 99–105
 of psychopaths, 97–99
 as recklessness, 100–1
 theoretical approaches to moral responsibility and, 95–97
 types of, 95
- moral knowledge/moral opportunities theory of multiple crimes, 142–44
 moral responsibility
 agents of crimes without, 9
 coexistence with culpability, 5
 DID, “one person” view of, 175–76, 178
 identity and, 155–57
 risking others' riskings, as moral question, 17
 theoretical approaches to, 95–97
 Morris, Herbert, 186
 Morse, Stephen, 19, 157n45
 multiple crimes, 133–44, 214
 character account of, 141–42
 degraded decision making in, 134
 Lee's theory of duties of convicted offenders, 141–42
 mass murderers, 137–39
 moral knowledge/moral opportunities theory of, 142–44
 more than one attempt at same crime, 133–37
 overlapping offenses, 137n6
 recidivism, 13, 139–41
 “three strikes” statutes, 140
 volume discounts, 13, 133–39
 multiple personality disorder. *See* dissociative identity disorder
 multiple punishments for single proxy crimes, 90–91
- negligence
 moral ignorance as, 102
 nonculpability of, 3–4, 45
 suffering for acts of, 182
 Nelkin, Dana, 104
 New, Christopher, 188–89
 Newton, Huey, 158–59, 175, 178
 nonrestricting claims, 117–20
- objective versus subjective experience of punishment, 199
 omission liability, 12, 66–82, 213
 ability to rescue victim, belief of actor in, 75, 79
 creation of peril and duty to render aid, 68–71
 culpability analysis, 72–79
 direct culpable harm of victim and, 81n37
 duration of perilous event, 10, 79–81
 excusing or justifying facts, 78–79
 futile rescue, preventing, 55–56
 ignorance of law and, 81–82
 increasing risk of peril versus simple omission to rescue, distinguishing, 71n22
 legal duty to act, 66–71
 lesser evils justification, 78

- moral blackmail and, 31
 peril, belief of actor in existence of, 74, 79
 risks faced in attempting rescue, belief of actor
 in, 75–79
 status relationship to person in peril, 67
 statutory commands to render aid, 68
 triggering responsibility, belief of actor in
 existence of, 73–74, 79
 of voluntary undertakers of professional duties
 (lifeguards, police, etc.), 67–68
 optimistic wrongs, preventing. *See* deontological
 constraints
 “other law” beliefs, 10–11, 61–65
 overall proportionality, 139n8
 overdetermination, preemptive, 51–56
 overinclusive crimes, 87–88
 overlapping offenses, 137n6
- Parfit, Derek, 56, 149–53, 168, 177, 179, 185
 passive euthanasia, 127–28
 Penn, Kevin, 165
People v. Kibbe (US, 1974), 27
People v. Newton (US, 1970), 158–59, 175, 178
 personal identity. *See* identity
 persons who are culpable, 12–13. *See also*
 deontological constraints; moral ignorance;
 multiple crimes
- Pinkert, Felix, 58n94
 Pol Pot, 137
 preemptive crimes, 84n2
 preemptive overdetermination, 51–56
 prepunishment, 188–89
 promises, 23, 45–46, 147
 property interests
 deontological constraints and, 125–27
 “other law” mistakes and, 61–62
 proportionality and mass murderers, 138
 provocation, 9
 proxies for consent, mistakes about, 62
 proximate causation, 19
 proxy crimes, 12, 83–92, 213
 as both over- and underinclusive, 49
 camouflaging, 18, 50, 203
 conduct as conclusive presumption of
 culpability, 88n9
 consequentialism and, 131
 dangers of, 89–90
 definition of and rationale for, 83–84
 ignorance of law and, 86–88
 information-providing function of, 87–88
 lesser evils justification, 90
 measuring culpability for, 131
 merchant culpability and, 42
 misinterpretation of violations, 18, 49–50
 mismatch between culpability and punishment,
 84–86
 multiple punishments for single acts, risk of,
 90–91
 in nonretributive punishment frame, 91–92
 overinclusive crimes as, 87–88
 preemptive crimes versus, 84n2
 scofflaws, 85, 85n5, 86n6
 single crime theory of culpability and, 7
 psychological disconnection between culpable
 actor and person to be punished.
 See identity
 psychopaths, 97–99
 punishment issues, 14. *See also* distributing
 retributive desert; identity; multiple crimes
 memory of criminal event, punishment in
 absence of, 168–69, 178
 repunishment, 188–89
 proportionality and mass murderers, 138
 of proxy crimes
 measuring culpability for, 131
 mismatch between culpability and
 punishment for, 84–86
 multiple punishments for single acts and,
 90–91
 in nonretributive punishment frame, 91–92
 recidivism, increasing punishment for, 139–41
 subjective versus objective experience of
 punishment, 199
 “three strikes” statutes, 140
- quality-adjusted life years (QALYs), 181, 199
 quality of will theory of moral responsibility/
 ignorance, 96–97
- Quong, Jonathan, 201
- rational agency and identity, 155–57
 reactive attitudes toward retributive desert, 182
 reason-responsiveness theory of moral
 responsibility/ignorance, 95–97
 recidivism, 13, 139–41. *See also* multiple crimes
 recklessness
 actions toward but not amounting to, 6
 culpability as matter of, 3
 culpable riskings of causally downstream actors,
 18, 25, 41
 of merchants, 41
 in moral responsibility, 100–1
 proxy crimes, definition of and rationale for,
 83–84
 reliance of innocent actors on our (culpable)
 conduct and, 45
 single crime theory of culpability and, 83
 redistributivism, moderate, 1

- redundancy, immunization of culpability through, 54
- Regina v. Dudley and Stephens* (UK, 1884), 129
- Regina v. Smith (David)* (UK, 1974), 61, 63–65
- Relation R/R-relatedness
- defined, 150, 179
 - DID, integration therapy for, 177
 - excuses, character theory versus choice/capacity theory on, 164, 167
 - philosophical theories of identity and, 150–51, 153–55
 - voluntary act requirement (*actus reus*) and, 159
- reliance of innocent actors on our (culpable) conduct, 44–47
- restricting claims, 117–20
- results of acts, culpability not affected by, 4–5, 133
- retributive desert, distributing. *See* distributing
- retributive desert
- retributivism, 1, 100, 196
- Rickless, Sam, 127
- risking, 11–12. *See also* omission liability; proxy crimes; risking others' riskings
- causation of harm and, 17, 59
 - as determinant of culpability, 2
 - ignorance of law/"other law" beliefs, 10–11, 61–65
 - negligence (inadvertence to risk), nonculpability of, 3–4
 - subjective and epistemic nature of, 2, 4
- risking others' riskings, 6, 11, 17–60, 213
- causation of harm and, 17, 59
 - criminalization of causally upstream acts, 48–51
 - culpable riskings of causally downstream actors, 18–43
 - increasing risks of another's wrongs, 19–32
 - increasing risks of our own wrongs, 38–46
 - merchants, 40–43
 - moral blackmail and, 27–32
 - proximate causation, 19
 - self-sacrifice, right to forgo, 32–38
 - situations leading to culpability, 21–26
 - situations not leading to culpability, 32–40
 - vulnerability of victims to downstream harms, creating, 27
 - de minimis* contributions, 56–59
 - free will and, 23
 - futile rescue, preventing, 55–56
 - innocent actors, riskings of, 43–48
 - liberty interests and, 23–26, 43, 48n75
 - moral blackmail and, 27–32
 - as moral question, 17
 - preemptive overdetermination, 51–56
 - self-sacrifice, right to forgo, 32–38
 - in tort law, 21n6
 - vulnerability of victims to downstream harms, creating, 27
- Rodin, David, 35n46
- Rosen, Gideon, 99
- Ross, W. D., 184
- R-relatedness. *See* Relation R/R-relatedness
- rule-based constraints. *See* deontological constraints
- Rummel, William, 142n15
- Ryberg, Jesper, 139n8
- Saks, Elyn R., 177n114
- Sandstrom v. Montana* (US, 1979), 88n9
- Sassman v. Brown* (US, 2015), 199n79
- Scanlon, Thomas, 45
- Schauer, Fred, 59
- Schechtman, Marya, 153
- scofflaws, 85n15, 85, 86n6
- Segev, Re'em, 109–11, 113n21, 129
- self-defense, 14, 21n6, 31, 37, 44, 201, 206
- self-sacrifice, right to forgo, 32–38
- Shiffrin, Seana, 45–46
- Simester, A. P., 25n14
- single crime theory of culpability, 7–8, 8n35, 83
- Sinnott-Armstrong, Walter, 154n33, 167, 170–71, 175
- SLA (Symbionese Liberation Army), 148, 159–62
- Soliah, Kathy (Sarah Jane Olson), 148–49, 163, 167, 177
- solicitation, conspiracy, and aiding and abetting, 6, 20
- somnambulistic homicides, 175–76
- Sorensen, Roy A., 34, 188
- Stalin, Joseph, 137–38, 141
- Star Trek*, 148
- State v. Grimsley* (US, 1982), 172–73, 175
- stigma or censure and retributive desert, 181
- Strawson, Galen, 99
- subjective versus objective experience of punishment, 199
- suffering
- counted as punishment, 200–4
 - as currency of retributive desert, 181–83
 - ex ante*, 189, 198
 - intrinsic goodness of, 183–86
 - negligence, for acts of, 182
 - not counted as punishment, 205–7
- Sullivan, G. R., 166–67
- Symbionese Liberation Army (SLA), 148, 159–62
- Tadros, Victor
- on deontological constraints, 111
 - on distributing retributive deserts, 182n4, 183n7, 183–85, 189–94
 - The Ends of Harm*, 189
 - on identity, 161n56, 166–67, 174n103

- on moral ignorance, 96
- on risking others' riskings, 23n12, 33
- Talbert, Matthew, 98
- Taurek, John M., 135
- taxation to support retributive desert, 189–94
- Temkin, Larry, 209n104
- terrorism
 - cultural defense of moral ignorance and, 107
 - risking others' riskings and, 25, 51
- Thomson, Judith Jarvis, 34, 115, 129
- threats, as crimes, 7n28
- "three strikes" statutes, 140
- threshold deontology, 105, 106n33
- timing
 - identity and passage of time between crime and conviction, 148–49
 - of retributive desert, 195–96
- Tomlin, Patrick, 183, 185, 195–96
- tort law, risking others' riskings in, 21n6, 52
- United States v. Fountain* (US, 1985), 20
- unreasonable reliance, 44
- vagueness of culpability standard, 83
- volume discounts, 13, 133–39. *See also* multiple crimes
- voluntary act requirement (*actus reus*), 158–59
- von Hirsch, Andreas, 25n14
- Wagon Mound* case (UK AC, 1967), 47
- Walen, Alec, 25n15, 32–33, 38, 114n27, 117–20
- Wasserstrom, David, 32
- Wellman, Christopher Heath, 189n36
- Wieland, Jan Willem, 103
- Wilkes, Kathleen, 170, 176–77
- Williams, Bernard, 29
- Zaibert, Leo, 183–86
- Zimmerman, Michael, 99