



Key Concepts

- **Retributivism** = the view that criminals deserve to suffer in proportion to their moral blameworthiness. [1,2]
- **Free will** = the kind of control over one's actions that is required in order to be an apt candidate for retributive punishment.[3]
- **Determinism** implies that all our decisions and actions are determined by factors beyond our control, such as our genes and environment. If determinism is true, then these factors determine how our characters develop and which reasons we see fit to act upon. Given the presence of these factors, all our decisions *had to occur* exactly as they did.



- **Compatibilism** = the view that free will is compatible with determinism and that people can have free will. Most compatibilists believe that people can have free will whether or not determinism is true. [4, 5]
- **Libertarianism** = the view that free will and determinism are incompatible, and that people can be free, because determinism is false. [6,7]

A Challenge for Compatibilist Retributivism [7,8] A judge who endorsed retribution and determinism would arguably face a paradox when sentencing. Statement 1 (retributivism): “Whatever the consequences of punishing you may be, justice requires that you are punished for the immoral thing you have done.” Statement 2 (determinism): “Of course, I would inevitably have done exactly the same thing if I had been exposed to the external forces that determined your decision.” Conclusion: “but, luckily, I wasn’t. So, you are the one who will get 20 years in prison.”

A Challenge for Libertarian Retributivism [9] Many prominent defenders of libertarianism concede that the existence of libertarian free will is merely “possible” or “conceivable” [10,11,12]. A libertarian judge who acknowledges the lack of empirical evidence for libertarian free will arguably also faces a paradox: “I strongly condemn you, because it is *conceivable* that you *might* have had free will when committing the crime. It is intrinsically good that you suffer punishment because it *possible* that you deserve it (though just as possible that you don’t).”

References: [1] H Bedau and E Kelly, "Punishment," in E Zalta (ed.) *Stanford Encyclopedia of Philosophy* (2015). URL = <https://plato.stanford.edu/entries/punishment/>; [2] M Moore, *Placing Blame* (OUP 1997); [3] D Hodgson, *Rationality+ consciousness= free will* (OUP 2012); [4] McKenna, M. and Coates, J. "Compatibilism" in E Zalta, (ed.), *The Stanford Encyclopedia of Philosophy* (2018). URL = <https://plato.stanford.edu/entries/compatibilism/>; [5] J Fischer and M Ravizza, *Responsibility and control: A theory of moral responsibility* (CUP 2000); [6] R Clarke and J Capes, "Incompatibilist (non-deterministic) theories of free will" in Zalta, E (ed.). *The Stanford Encyclopedia of Philosophy* (2017). <https://plato.stanford.edu/entries/incompatibilism-theories/>; [7] G Caruso, "Skepticism about Moral Responsibility" in Zalta, E (ed.). *The Stanford Encyclopedia of Philosophy* (2017) <https://plato.stanford.edu/entries/skepticism-moral-responsibility/>; [8] E Shaw, 'Free Will, Punishment and Criminal Responsibility' (PhD thesis, University of Edinburgh 2014) Available at: <https://era.ed.ac.uk/bitstream/handle/1842/9590/Shaw2014.pdf?sequence=2&isAllowed=y>; [9] R Double, "The Moral Hardness of Libertarianism" (2002) 5(2) *Philo* 226; [10] R Kane, 'Some Neglected Pathways in the Free Will Labyrinth', in Kane (ed), *The Oxford Handbook of Free Will* (OUP 2002); [11] J Lemos, *A Pragmatic Approach to libertarian Free Will* (Routledge 2018); [12] P van Inwagen, P, 'Free Will Remains a Mystery' (2000) 14 *Philosophical Perspectives* 1.