

## Iconoclasts? Who, Us? A Reply to Dolinko

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It is always humbling to have others pay serious attention to your work. We are thus greatly honored that David Dolinko has taken the time to work through our book and offer a critique of our views.<sup>1</sup> The four arguments on which he focuses, and finds iconoclastic, are (in ascending order) (1) our claim that results do not matter; (2) our claim that negligent conduct is not culpable; (3) our claim that there should be only the mens rea of recklessness; and (4) our claim that only one crime should exist—creating an unjustifiable risk to a legally protected interest (p. 94). We will take up these arguments and Dolinko’s reactions in turn.

### Results Don’t Matter<sup>2</sup>

As Dolinko himself notes, our claim that results do not matter hardly casts us outside of criminal theory orthodoxy (p. 94).<sup>3</sup> Dolinko reads us as taking the view that the problem with punishing for results is that we are punishing for something the actor lacks complete control over (pp. 94–95). Having cast our argument in terms of a control objection, Dolinko runs the familiar reductio on us—namely that we lack complete control over everything down to whether we form or execute our intentions (p. 95).<sup>4</sup> Dolinko also argues that if Archie shoots at Betty, intending to kill her, and succeeds, then the state should punish him for what he has chosen to bring about, not just for what he tried to do (p. 96). Finally, Dolinko objects that results matter to our identity as persons, and we should

<sup>1</sup> Dolinko (2011). Numbers in parenthesis refer to the Dolinko review.

<sup>2</sup> For our discussion, see Alexander and Ferzan (2009, chap. 5).

<sup>3</sup> Dolinko himself cites Schulhofer (1974), Smith (1971), Kadish (1994), Becker (1974), Ashworth (1988), and Feinberg (1995).

<sup>4</sup> Feinberg (1970, p. 35), Moore (1997, pp. 236–46).

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