

# Review of “Crime and Culpability: A Theory of Criminal Law”

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**Abstract** This is a review of the challenging book in which Larry Alexander and Kimberly Ferzan propose sweeping revisions to the structure of substantive criminal law.

**Keywords** Criminal law · Retributivism · Culpability

Larry Alexander and Kimberly Kessler Ferzan have written an extremely engrossing, ingenious, and provocative book.<sup>1</sup> As proponents of a retributive theory of criminal punishment, they have set out to “explore what the doctrines of the criminal law would look like if they were structured (primarily) by the concern that criminal defendants receive the punishment they deserve, and particularly that they receive no more punishment than they deserve” (p. 6).<sup>2</sup> It turns out that, in the authors’ view, conscientiously applying this retributive precept “radically recasts the criminal law landscape” (p. 289). Accordingly, the authors propose many significant changes in criminal law doctrine.

For reasons to be explained, I think a number of these changes would be neither feasible or desirable. Nevertheless, the book is an impressive achievement. The authors present cogent reasons for believing that their sweeping revision of criminal law does indeed follow from a wholehearted commitment to retributivism. Their arguments are clear, incisive, and thorough, and the book is filled with vivid hypotheticals that even professors who reject the authors’ proposals may find useful. I thought this was especially true of their discussion of the anomalies created by allowing results to affect an actor’s culpability. Moreover, Alexander and Ferzan exhibit great skill in anticipating and dealing with objections that the reader is likely to raise. Their conclusions may seem wrong, but they cannot easily be refuted.

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<sup>1</sup> The book’s title page lists Alexander and Ferzan as authors but also acknowledges “contributions by Stephen Morse.” Purely for concision, and with no intention of disparaging Professor Morse’s contributions, I will refer to the book’s authors simply as “Alexander and Ferzan.”

<sup>2</sup> Numbers in parentheses refer to pages in Alexander et al. (2009).

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