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Desert as an Upper Bound: Justifying Leniency and Rehabilitation Beyond What Offenders Deserve

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Abstract. The theory of penal legitimacy has long revolved around the "just desert" principle, which holds that offenders deserve punishment commensurate with their moral wrongdoing. However, in practice, punishment systems centered on just desert—especially in highly punitive institutional environments—have not only failed to effectively reduce recidivism rates but also been accompanied by severe human rights issues and social exclusion effects. This reality raises a fundamental normative question: Can, and in what sense can, criminal punishment treat offenders in a manner that goes beyond their strict just desert? This paper argues that the just desert principle should not be understood as a baseline that punishment must meet, but rather redefined as the moral upper bound of penal legitimacy. Drawing on the well-established penal philosophy framework of "Limiting Retributivism," this paper demonstrates that, on the premise of not violating the principles of responsibility and proportionality, institutionally adopting lenient and rehabilitative measures for offenders that are below their maximum just desert is morally legitimate and socially beneficial. Furthermore, by integrating empirical research in comparative criminal justice, the paper illustrates the systematic failure of pure retributive punishment systems in practice. It also introduces the normative concept of restorative justice to show how the punishment model of "beyond just desert" can simultaneously promote responsibility-taking, social integration, and public safety. By repositioning just desert as the restrictive boundary of punishment, this paper provides a theoretical path for contemporary penal reform that balances moral seriousness with humanitarian care.

Keywords: Penal Desert, Restorative Justice, Rehabilitation, Criminal Justice

1. Introduction

In contemporary penal philosophy, the principle of just desert has long been regarded as the core foundation of penal justification. Both in academic theories and public intuition, it is widely held that the justice of punishment depends on whether it matches the offender's moral wrongdoing [1]. The appeal of this principle lies in its respect for individual moral agency, framing punishment as a moral response to wrongful acts rather than a mere instrumental tool.

Nevertheless, when the principle of desert is institutionally interpreted as a necessary baseline rather than a restrictive condition for punishment, its consequences have gradually revealed severe flaws. Highly punitive criminal justice systems, exemplified by that of the United States, uphold

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long prison terms and strict retribution, yet have long struggled with persistently high recidivism rates, mass incarceration, and disproportionate impacts on vulnerable groups [2,3]. These phenomena indicate that even if punishment formally complies with "proportionality," its overall outcomes may still undermine social welfare, exacerbate inequality, and weaken public safety.

This reality highlights a profound normative tension: If punitive measures that strictly adhere to the principle of desert ultimately fail to achieve satisfactory social effects, must we still regard desert as the minimum requirement for punishment? In other words, is the moral legitimacy of punishment determined solely by "giving offenders the punishment they deserve," or must it also take into account its impacts on social integration, recidivism prevention, and human dignity? This paper revolves precisely around this question. It does not deny the important role of the desert principle in justifying punishment, nor does it advocate abandoning core elements such as responsibility, proportionality, or moral condemnation. On the contrary, this paper puts forward a more rigorous argument: the proper position of the desert principle is not to specify "how severe punishment must at least be," but to limit "how severe punishment can at most be." Under this understanding, as long as punishment does not exceed the offender's moral desert, the state has sufficient moral basis to impose more lenient treatment than the maximum desert level on offenders, based on considerations of rehabilitating offenders, repairing relationships, and safeguarding social welfare.

This paper attempts to propose a solution that combines theory and empirical evidence: treating desert as the upper limit of punishment rather than a fixed standard, thereby providing legal and ethical justification for leniency that is "better than desert." To argue this viewpoint, the paper unfolds in three steps: first, elaborating on Limiting Retributivism in detail at the theoretical level and how it redefines the principle of desert; second, comparing the social effects of highly punitive systems and rehabilitation-oriented systems with the help of empirical data analysis; third, exploring the moral legitimacy of restorative justice and rehabilitative punishment from a normative perspective, as well as their institutional application boundaries. Through this framework, the paper demonstrates that punishment that is "better than desert" is not only practically feasible but also more morally reasonable, providing a new idea for criminal justice reform.

2. Theoretical framework

The purpose of this section is to establish the theoretical foundation of this paper: to explain why the "just desert" of punishment should be regarded as an upper limit rather than a fixed baseline.

Traditional retributivist theory usually interprets the principle of just desert as a sufficient condition for penal justification. In other words, punishment is morally justified as long as it is commensurate with the offender’s moral wrongdoing [4]. From this perspective, desert serves as both the starting point and the goal of punishment. However, this strong retributivist stance faces two critical problems. First, it cannot provide an independent moral constraint on the upper limit of punishment. Second, it struggles to explain why punishment might still be morally excessively harsh or socially counterproductive even when it meets the requirement of proportionality.

Limiting Retributivism offers a more flexible theoretical approach to resolving this dilemma. This theory acknowledges that the principle of just desert has an irreplaceable role in penal justification, but it also argues that desert constitutes only a necessary or restrictive condition for punishment, rather than its sole normative goal [5]. In other words, the function of the desert principle is to rule out excessive punishment, not to mandate that punishment must reach a specific level of severity.

Within this framework, desert is redefined as the moral upper limit of punishment. As long as punishment does not exceed the maximum severity that an offender deserves based on their

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responsibility and wrongdoing, the state does not violate the principle of proportionality. Meanwhile, within this upper limit, legislators and judicial practitioners can reasonably incorporate other normative considerations, such as recidivism prevention, social integration, human dignity, and the efficiency of resource allocation [6,7].

This interpretation conceptually opens up a legitimate space for penal practices that are "better than desert". Importantly, this does not mean denying offenders' responsibility, nor does it imply reducing punishment to a purely instrumental tool. On the contrary, Limiting Retributivism insists that any punishment must be based on the offender's responsibility and constrained by the principle of proportionality. Yet it rejects the idea that "imposing the maximum deserved punishment on offenders" is a moral obligation.

In this sense, Limiting Retributivism not only avoids the moral rigidity of strong retributivism but also lays the theoretical groundwork for the subsequent introduction of restorative justice and rehabilitative goals. If desert is merely a boundary rather than a goal of punishment, then, without crossing this boundary, it is not only permissible but also potentially morally preferable for the system to adopt more humane and socially beneficial forms of punishment.

3. Empirical context

Having established the normative position that "desert serves as the upper limit of punishment", the question is no longer whether the state has the authority to choose more lenient penalties within this upper limit. Instead, it becomes: are there sufficiently strong reasons to drive systematic preference for rehabilitation and social reintegration over maximizing punitive severity? At this level, empirical research in comparative criminal justice provides background evidence that cannot be ignored for normative judgments.

Highly punitive penal systems, like that of the United States, have long depended on retribution, just desert, and deterrence as their main pillars of legitimacy. Since the 1980s, the United States has systematically raised the severity of punishment through mandatory minimum sentences, three-strikes laws, and mass incarceration. Yet, this institutional design has not achieved social results matching the moral legitimacy it asserts. A long-term follow-up study carried out by the U.S. Department of Justice shows that around 68% of released prisoners are rearrested within three years, and over 80% get re-involved in the criminal justice system within nine years [8]. This not only proves the limited effectiveness of deterrent measures, but also exposes the failure of the punitive system in correcting offenders' behaviors.

Further research has also revealed that structural issues such as homelessness, social injustice, family breakdown, and exclusion from the labor market are significantly correlated with recidivism rates. This means that recidivism is not merely an individual moral issue, but is closely linked to a person's living environment [9]. More importantly, the drawbacks of the high-punishment model are not limited to recidivism rates. Relevant sociological and economic studies indicate that mass incarceration imposes long-term negative impacts on individuals, families, and communities, such as exclusion from the labor market, disruption of family structures, and the continuous accumulation of intergenerational crime risks [2]. From this perspective, punishment is never an isolated moral response, but an institutional choice that profoundly reshapes social structures.

In stark contrast, penal models centered on rehabilitation and social reintegration—particularly those in Nordic countries—exhibit distinctly different institutional logics. Norway's penal system is built on the principle of normalization, which holds that punishment should only deprive offenders of their freedom, without imposing additional social exclusion or personal degradation. During their

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imprisonment, inmates receive education, psychological counseling, and vocational training. The goal is not to "make them suffer", but to prepare them for reintegration into society [10].

Numerous comparative studies have shown that this institutional arrangement is associated with significantly lower recidivism rates. Although cross-country comparisons require caution, even after controlling for differences in population size, crime types, and welfare systems, rehabilitation-oriented incarceration still demonstrates more stable long-term social benefits [11]. From an economic perspective, rehabilitative incarceration can improve employment rates after release and significantly reduce crime costs in the long run [12].

In addition, several interventions based on restorative justice have shown potential positive effects on recidivism rates, medium-to-long-term behavioral changes, and the repair of social relationships in empirical evaluations. While the effects are inconsistent, multiple assessment reports have found that restorative justice programs outperform traditional punitive models in enhancing victim satisfaction, offender accountability, and community support [13].

From a normative perspective, these empirical findings do not directly "prove" that rehabilitation is morally superior to retribution. However, they clearly show that when desert is regarded as the lower limit of punishment and drives the system toward maximizing punishment, the outcomes fail to achieve the public safety and social order promised by retributive theory. Under the understanding that "desert is the upper limit", the system can instead choose more effective and less harmful penal paths without violating the principle of responsibility.

Therefore, the role of empirical evidence in this paper is not to replace normative judgments, but to provide practical reasons for a more restrained, upper-limit-based understanding of desert: if institutional goals include public safety, social stability, and rational resource allocation, then prioritizing rehabilitation within the scope permitted by desert is not only a policy choice, but also a rational and prudent moral response.

4. Moral responsibility and context

Having established through empirical evidence that high-punishment systems often fail to reduce recidivism, this section examines whether implementing lenient, rehabilitative policies is morally justifiable. By exploring how constraints of social structure, limitations of psychological capacity, and inequality of opportunity shape behavioral choices, this section argues that moral culpability itself is context-sensitive. This analysis provides the necessary moral foundation for allowing penal responses that fall below "strict desert", without dismissing the concept of responsibility altogether.

In criminal law and moral philosophy, responsibility is not a simple binary attribute, but a concept with degrees of variation. For example, H. L. A. Hart distinguished between "the existence of responsibility" and "the degree of responsibility" [14]. Even if an offender has basic rational thinking ability and the ability to control their own actions, external circumstances can still reasonably mitigate their level of responsibility. This distinction provides a theoretical basis for mitigation of punishment, enabling punishment to acknowledge the offender’s wrongdoing while taking into account their moral situation. In-depth research on criminal responsibility in contemporary penal philosophy has also found that when imposing moral condemnation, we must consider the opportunities available to individuals, their capacity for action, and the environmental constraints surrounding their choices. For instance, in his theory of responsibility, Moore explores the complex connection between personal psychological states, social conditions, and culpability, emphasizing that even if an act violates moral obligations, the degree of condemnation towards the actor still depends on their specific circumstances [15].

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Contemporary criminology and social theory further point out that criminal behavior usually occurs in environments with highly constrained decision-making space. Structural poverty, lack of adequate educational opportunities, systemic discrimination, and experiencing violence or neglect in childhood all greatly affect a person's risk preferences, self-control, and expectations for the future [16]. Additionally, recent discussions in the field of the philosophy of criminal liability mention that the theory of fair moral opportunity holds that if an individual does not have a fair chance to avoid committing a crime, their culpability can be mitigated—a point closely related to social structural inequality [17]. These factors are not excuses for criminal acts, but make us no longer simply assume that "crime is entirely the result of individual free choice."

From a moral philosophy perspective, responsibility should be a judgment of degree rather than a fixed value. Duff argues that as a form of moral communication, punishment is only legitimate if it accurately reflects the offender's level of moral involvement [6]. If punishment ignores the social and psychological context in which the act occurred, it may turn from a reasonable moral response into an erroneous moral judgment. This point is particularly important for the theory that "desert is the upper limit of punishment." If we cannot determine the degree of an offender's culpability, yet insist on precisely setting the punishment at that hypothetical "point of strict desert," there is inherently a risk of excessive punishment. In such cases, treating desert as the upper limit of punishment rather than a target that must be met is not only a prudent institutional choice, but also an acknowledgment of the limitations in our moral cognition.

Besides, focusing on contextual factors doesn't mean giving up accountability. On the contrary, this helps us have a more forward-looking understanding of responsibility: punishment is not only to deal with past mistakes, but also to help control future behavior. After realizing that guilt has different degrees, the related system can put resources into areas that really affect people's behavior, instead of just making prison terms longer to show moral condemnation. So, understanding responsibility from a specific contextual angle won't weaken the principle of desert. Instead, it can make its role clearer: desert is no longer an exact standard to measure punishment, but a moral bottom line that stops the state from misusing power and giving too severe punishment. This understanding also builds a solid theoretical foundation for introducing restorative justice and rehabilitation goals later.

5. Normative argumentation

After demonstrating that moral responsibility is context-sensitive and does not rigidly mandate maximal punishment, this essay now turns to the normative rationale for why criminal justice systems should prioritize rehabilitation and restorative justice within the bounds of desert. Earlier in this paper, three key arguments have been made: first, theoretically, it is valid to regard "desert" as the upper limit rather than the target of punishment; second, in practice, purely punitive systems have failed to fulfill their promised social functions; third, culpability itself is contextual and gradable. This section does not attempt to recalculate the exact degree of desert an offender deserves. Instead, it shifts to a normative reflection on the goals of the penal system. By introducing the concepts of restorative justice and rehabilitation-oriented punishment, this section argues that treating offenders "better than they deserve" is not merely an act of leniency or mercy. Rather, it is a justified penal practice aimed at social integration, internalization of responsibility, and prevention of future harm. In this way, punishment is redefined as a forward-looking moral institution, instead of just a retributive tool to atone for past wrongs.

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5.1. Restorative justice: from inflicting pain to repairing harm

The core claim of restorative justice is that crime is first and foremost a harm done to individuals, not just a violation of legal norms. Therefore, the key to justice does not lie in making offenders suffer an equivalent amount of pain. Instead, it focuses on addressing the losses of victims, rebuilding damaged social relationships, and urging offenders to take on reparative responsibilities [18]. This concept aligns closely with the theory of "desert as the upper limit": it does not deny the wrongfulness of crimes or the accountability of offenders, but offers an alternative way to express responsibility.

Empirical studies show that restorative justice programs generally outperform traditional judicial procedures in terms of victim satisfaction, offender compliance with compensation orders, and reduction in recidivism rates [13,19]. Moreover, the restorative justice process emphasizes dialogue and community participation. This enables the system to focus not only on the pain of punishment, but also on rebuilding social trust [20]. These findings indicate that systematic leniency is not an "excess of mercy", but an institutional choice that responds rationally to the needs of victims and society.

From a normative perspective, the key advantage of this model is that it avoids an often-overlooked paradox: highly punitive systems tend to pay the least attention to the actual needs of victims. Empirical research shows that many victims care more about being heard, receiving explanations, and preventing repeat harm, rather than simply seeing offenders imprisoned for long periods [21]. In this sense, restorative justice is not "kindness to offenders", but a refocus on the interests of victims.

5.2. Rehabilitation as an extension of responsibility, not a denial of it

Like restorative justice, rehabilitation is often misunderstood as a utilitarian strategy that sacrifices moral judgment for practical outcomes. However, this view ignores the profound normative commitment behind rehabilitation: treating offenders as moral agents capable of learning and change. Duff points out that if punishment is to serve as a form of moral communication, its purpose should not stop at condemnation. Instead, it should encourage offenders to understand their mistakes and reintegrate into the moral community [6]. Rehabilitation is precisely the way to put this idea into practice at the institutional level. Through education, psychological intervention, and social skills training, rehabilitation seeks to address the internal and external factors that lead to crime. In doing so, it transforms responsibility from a one-time punishment into an ongoing moral practice.

Within the framework of "desert as the upper limit", rehabilitation does not require the state to abandon its punitive power. Instead, it demands that the state use this power rationally: neither exceeding the moral boundaries set by culpability, nor reducing punishment to a symbolic act of revenge. When the system chooses to prioritize resources for rehabilitation within the scope permitted by desert, it expresses a normative judgment about human nature—that individuals should not be permanently defined by their worst actions.

5.3. "Better than desert" as an institutional virtue, not individual forgiveness

It is important to emphasize that the "better than desert" approach defended in this paper does not require the justice system to show moral tolerance or personal forgiveness to individual offenders. On the contrary, it is an institutional virtue: when faced with uncertain assessments of culpability,

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complex social consequences, and long-term public safety goals, the system chooses not to push punishment to the limit of moral permissibility [22].

This stance avoids two extremes. On one hand, it differs from strong retributivism, which tends to see "maximal deserved punishment" as the realization of justice. On the other hand, it is distinct from thoroughgoing utilitarianism, which may ignore individual responsibility for the sake of social welfare. By setting desert as the upper limit and incorporating restorative and rehabilitative goals within that limit, the penal system can maintain both moral accountability and social rationality. Therefore, "better than desert" is not a departure from justice. Instead, it represents a renewed understanding of justice's function: justice is no longer merely a response to past wrongs, but a shaping of future social relationships.

6. Discussion

Having articulated the normative case for treating offenders better than they strictly deserve, the discussion now addresses the limits of this approach, exploring difficult cases such as serious offenses and repeat offenders to clarify the scope of leniency. The theory that "desert should be regarded as the upper limit of punishment" is most likely to face challenges not in ordinary criminal cases, but in so-called hard cases: situations involving extremely serious crimes and repeat offenses. By analyzing severe crimes, recidivism, and contexts where social security is a major concern, this section clearly states that lenient penal strategies are not applicable unconditionally, but rather a restricted, context-specific institutional choice. Examining these extreme or special cases not only tests the robustness of the limiting retributivism and restorative justice framework proposed earlier, but also provides actionable guidance for policy practice, ensuring that the leniency system both respects the principle of desert and does not compromise public safety. This section tests the robustness of the theoretical framework by directly responding to these strongest counterarguments.

6.1. Serious crimes: does leniency undermine moral condemnation

When it comes to serious crimes such as murder, rape, terrorism, or crimes against humanity, a common objection is that:lenient treatment will weaken the moral condemnation function that punishment is supposed to serve. In the retributivist tradition, severe punishment is deemed necessary for serious crimes precisely because punishment is seen as a "deserved response", whose symbolic significance lies in clearly expressing society's repudiation of such acts [6]. From this perspective, sentencing below the level of "strict desert" seems to signal a weakening of moral norms.

However, the theory of "desert as the upper limit" does not deny the importance of condemnation; instead, it challenges the implicit assumption that condemnation must be expressed through maximizing suffering. When elaborating on limiting retributivism, von Hirsch clearly points out that the function of desert is to prevent excessive punishment, not to demand the maximum possible severity in every single case [23]. In other words, condemnation is a necessary condition, but the intensity of punishment is not the only vehicle for it.

In cases of serious crimes, the state can still express strong moral disapproval through long-term imprisonment, deprivation of liberty, and formal conviction. Yet this does not necessarily require the addition of dehumanizing prison conditions, permanent social exclusion, or the denial of rehabilitation opportunities. As Frase notes, the principle of proportionality requires that punishment match the gravity of the offense, but it does not preclude choosing more forward-looking and restorative institutional arrangements within that scope [24]. Therefore, even in serious criminal

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cases, applying the "better than desert" approach does not eliminate punishment; rather, it expresses condemnation while refusing to equate punishment with revenge.

6.2. The problem of recidivism: will leniency be abused

Another more practical challenge comes from the issue of recidivism. Critics worry that if leniency and rehabilitation are institutionalized, rational offenders may repeatedly exploit the system's mercy, thereby weakening deterrent effects and undermining public safety. This concern is not entirely unfounded from an institutional design perspective. Nevertheless, it is important to note that the concept of "desert as the upper limit" inherently contains mechanisms to restrict abuse. Limiting retributivism does not advocate for unlimited forgiveness; instead, it emphasizes that in cases of repeated offenses, society's assessment of risk can justifiably alter the structure of punishment [5].

Frase further points out that recidivism is not merely an act of "worse behavior", but triggers legitimate concerns about risk management and public protection [24]. In such cases, the justification for punishment can partially shift toward preventive rationales (such as detention and supervision), but this does not mean a return to retributivism. Even for long-term imprisonment, the institutional goal should remain open to the possibility of rehabilitation, rather than treating recidivists as irredeemable individuals. In other words, "better than desert" is not unlimited leniency, but a conditional institutional choice: when leniency no longer reasonably serves the goals of safety, rehabilitation, or social integration, the scope for its application naturally narrows.

6.3. Drawing the line: the conditionality of leniency and institutional responsibility

The analysis of serious crimes and recidivism shows that the key to "better than desert" is not unlimited goodwill toward individuals, but whether the system remains consistently oriented toward public safety, accountability, and moral reconstruction. As Morris already pointed out, treating desert as the moral boundary of punishment helps prevent cruel punishment while preserving necessary discretionary space for policymakers. This discretion is not arbitrary, but must be constrained by factors such as proportionality, risk assessment, and rehabilitation potential [25]. Therefore, this study does not advocate for an "unconditionally lenient" penal model, but rather a restricted, context-specific, and goal-oriented form of leniency. It requires that the state never crosses the upper limit of desert under any circumstances, while encouraging the prioritization of options that best reduce future harm and restore social order within that limit.

7. Conclusion

This paper centers on a long-overlooked yet highly practical question in penal philosophy: must punishment strictly adhere to the principle of "desert", or can and even should offenders be treated more favorably than they strictly deserve, without compromising the values of responsibility and condemnation? Through a combined approach of theoretical, empirical, and normative analysis, this paper advances a core argument: "desert" should be understood as the moral upper limit of punishment, rather than a minimum threshold that must be met.

At the theoretical level, drawing on limiting retributivism, this paper clarifies a commonly misunderstood concept: acknowledging culpability does not equate to imposing the maximum possible punishment. Treating desert as an upper limit helps prevent excessive punishment while creating normative space for systematic leniency and rehabilitative sentencing. This interpretation

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avoids reducing penal philosophy to the binary choice of "retribution or indulgence", and instead lays a conceptual foundation for a penal system with multiple objectives.

At the empirical level, by comparing recidivism rates and social outcomes between highly punitive and rehabilitation-focused justice systems, this paper argues that penal practices relying purely on punishment intensity have failed to achieve their stated goals of deterrence and public safety in reality. On the contrary, institutional arrangements centered on rehabilitation and social reintegration often deliver better results in terms of public security and resource efficiency. This finding does not reject the idea of moral responsibility; rather, it offers an empirical adjustment to the rationality of penal practices.

At the normative level, this paper further demonstrates that treating offenders "better than they deserve" is not an emotional act of mercy, but an institutional choice guided by clear moral goals. Restorative justice and rehabilitation-oriented punishment redefine the meaning of accountability by emphasizing the fulfillment of responsibility, repair of harm, and moral reintegration. Within this framework, punishment is no longer merely a response to past wrongs, but an investment in future social order.

Most importantly, this paper does not shy away from the most challenging hard cases. Through the discussion of serious crimes and recidivism, it clearly states that "better than desert" is not an unconditionally applicable principle, but a restricted, context-specific institutional strategy. When public safety and risk assessment demand it, the scope for leniency can be narrowed. Even so, punishment should never exceed the moral upper limit set by desert, nor should the system abandon its recognition of human capacity for change.

In summary, the contribution of this paper lies in providing an analytical framework for rethinking the justification of punishment: it upholds the principles of responsibility, condemnation, and proportionality, while rejecting the equation of justice with maximum suffering. In an era that relies heavily on penal systems to address social problems, incorporating the idea of "desert as the upper limit" into criminal justice reform not only helps curb institutional cruelty, but also offers normative guidance for building a safer, more humane, and forward-looking social order.

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