

SCHLEGEL Just Deserts for Corporate Criminals

1. Why needed?
 - a. Confusion about the goals of punishing corporate offenders
 - b. Some popular suggested approaches – adverse publicity – are problematic
2. What is needed?
 - a. Desert-based approach to classifying harm and guilt; these add up to seriousness
 - b. Linking up seriousness and punishment so there is a match “It is actual harm and culpability on which punishment should be based” (94).
 - i. Harm GUIDES (109-110)
 1. need theory of collective interests
 2. extent of injury caused or risked
 3. “ranking of the different interest injured”(95).
 - a. Welfare
 - b. Security
 - c. Accumulative
 - d. Comprehensiveness
 4. gravity and probability
 - ii. Culpability
 1. Grades
 - a. Purpose
 - b. Knowledge
 - c. Recklessness
 - d. negligence
 2. Corporate
 - a. Internal decision structure
 3. Individual (134)
 - a. Actors
 - b. managers
 - c. Revitalizing attention to the condemnatory aspects of punishment
 3. Focus of a desert-based approach: **the distribution of punishment** (72) – not WHY we punish, but rather who gets punished (those who committed the offense) and how much (proportional to seriousness) “‘it is the condemnatory element that requires punishment or be distributed according to offenders’ degree of fault.’ To base punishment on anything other than the offender’s act itself would be to condemn that person *unfairly*.” (74)
 4. Some hurdles (72-74)
 - a. Are corporate crimes morally neutral? – “it’s just bidness.”
 - b. Are those within the corporation shielded by the “corporate shield?”
 - c. Getting away from a utilitarian, deterrence-based perspective
 - d. Confusing revenge with retributive claims
 5. Special problems of corporate crimes
 - a. Multiple victims
 - b. Harms diffused
 - i. Over time
 - ii. Over space
 6. Current landscape: current forms of corporate punishment
 - a. Administrative responses
 - i. Warning
 - ii. Recall
 - iii. Unilateral orders
 - iv. Consent agreements
 - v. Injunction
 - vi. fines
 - b. Civil remedies – 90%

- i. Fines: how used? What are problems? Is the corporation being penalized appropriately? Is this creating deterrence? Can we know the dark figure? Spillover effect – do costs get externalized?
 - ii. Equity fines
 - iii. Structural interventions see espec. P. 36
 - iv. Community service
 - v. Adverse publicity; main idea is deterrence – fear of loss of prestige leads to changes which reduce chances of re-occurrence. Problems? (37; 159-161)
 - vi. Injunctions
 - c. Criminal remedies
 - i. Fines
 - ii. Incarceration
 - iii. Probation
- 7. From a desert perspective: how to scale punishments
 - a. Ordinal magnitude “how crimes should be punished relative to each other” (147); “By punishing like offenses alike and by grading sentences according to the comparative seriousness of offense, ordinal proportionality requirements are satisfied” (148)
 - i. Parity
 - ii. Rank ordering
 - b. NOT concerned with absolute levels of severity: cardinal proportionality; what are anchor points
 - c. Do separately for
 - i. Corporations
 - ii. Individuals involved
 - d. Possible sanctions potentially following desert principles – issues associated with each
 - i. Corporate
 - 1. Community service
 - 2. Structural intervention
 - 3. Adverse publicity
 - 4. Fines
 - 5. Day fines
 - 6. Suspend activities
 - ii. Individual
 - 1. incarceration
 - 2. fines
 - 3. community service