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A Transcendental Argument for Retributivism

Abstract:

Reprobative Retributivism (RR) holds that state punishment of lawbreakers is justified as a repudiation of their crimes and a reassertion of the rights of their victims. RR is especially appealing because 1) unlike other expressivist theories of punishment, RR is clearly non-consequentialist; and 2) unlike other forms of retributivism, RR does not assume any opaque or contentious notions of moral desert. However, RR faces the special problem of explaining *why* the infliction of harm can have the right kind of reprobative significance without already presupposing the legitimacy of the punitive practices that it is meant to justify. I reply to this charge of circularity by arguing that retaliation is the “natural expression” of a *practical* understanding that what someone is doing is wrong, just as crying out is a natural expression of the practical awareness that one is hurt. As a result, we must recognize a basic reason to retaliate against rights-violators if we are to acknowledge the wrongness of their crimes in the first place. Punishment does not merely communicate to other people that an act is seriously wrong. Rather, the aptness of punishment is a background condition of even being able to think this thought ourselves.