

Political Neutrality and Punishment

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Abstract This paper is concerned with the tensions that arise when one juxtaposes one important liberal understanding of the nature and use of state power in circumstances of pluralism and (broadly) retributive accounts of punishment. The argument is that there are aspects of the liberal theory that seem to be in tension with aspects of retributive punishment, and that these tensions are difficult to avoid because of the attractiveness of precisely those features of each account. However, a proper understanding of both liberalism and retributive punishment allows us to dissolve some of the tensions whilst also bringing each position into sharper relief. The paper begins by introducing the liberal position and outlining the apparent tensions that may arise with retributive punishment. In so doing, there is also a brief discussion of how this debate relates to the more familiar dispute between legal moralists and their opponents. The paper then proceeds by considering each of the areas of tension in turn.

Keywords Liberalism · Retributivism · Legal moralism · Impartialism · Punishment · Criminalization

Introduction

The liberal... can maintain this... the criminal law is in its very nature a kind of complex ‘moral machine.’ Apprehended suspects are fed into one end of the process and either emerge, status unchanged, through various escape hatches along the way, or are processed right through to the other end of the machine, where the moral stigma is stamped on them both by a judge’s solemn pronouncements and the reprobatory symbolism of their confinement. Those who are the ‘raw material’ of the process are separated by the machinery into two classes, those who are returned unpunished to their previous lives, and those who are convicted, punished, and thereby morally condemned (Feinberg 1990: 150)

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