

Department of Philosophy

Guest Lecture Series

Three Natural Rights of Punishment

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Locke's theory of punishment is exclusively concerned with the permission to punish. As a result, this theory fails to account for two other important rights of punishment, an authority to specify punishments and a claim to demand them. To demonstrate these failures, I argue that Lockean theory neither explains the state's authority to impose punitive sentences nor victims' right to demand the infliction of those sentences. Next, I support this argument in a historical way by showing how Hugo Grotius, Locke's predecessor, initiated an exclusive focus on the permission to punish. Finally, I suggest that we can move past this focus by looking to an alternative theory found in Adam Smith, a successor of Locke's. My contention is that, whereas Locke cannot explain the right to specify punishments in the state of nature, Smith can, since he believes that victims' natural right to demand their offender's punishments includes a right to specify them.

Tony Hernandez is a Visiting Assistant Professor in Philosophy at the University of Kansas. He received his PhD from the University of Illinois Chicago, where he wrote his dissertation on moral issues in criminal punishment, and the problems that natural rights pose for criminal punishment, and how those problems bear on our understandings of political authority and political legitimacy.