

ABSTRACT

The state not only claims the right to be the exclusive punisher of criminals in society, but also the right to specify the punishments that offenders deserve to suffer. In contemporary political philosophy, these rights have been challenged on A. John Simmons' thesis that citizens have no moral obligation to obey the state's legal authority. Contrary to Simmons, I argue in this dissertation that the state's authority to punish finds moral justification in citizens' natural rights.

In the first of a series of three papers, I examine Simmons' thesis that there is no general moral obligation to obey the law. I argue that, although principles of consent and fairness are unable to justify a general obligation to obey the entirety of the law, those principles may yet justify restricted obligations to obey the law in limited domains (e.g., criminal punishment). In the second paper, I turn towards John Locke's theory of natural rights. I show how Simmons unsuccessfully relies on Lockean principles to maintain the illegitimacy of the state's exclusive right to punish. In brief, I argue that Simmons fails to show how Locke can have a plausible account of the natural right to punish, especially in light of Locke's failure to account for the authority to specify punishments. Lastly, I show in the third paper how Adam Smith's theory of natural jurisprudence remedies the shortcomings in Locke's account of the state's right to punish. I show how an account of natural right to punish, one that explains the authority to specify punishments, can be reconstructed from Smith's natural jurisprudence. I also show how Smith's critique of social contract theory allows him to think that the natural right to punish is transferred from each individual citizen to the state all while avoiding Locke's error in thinking that this right is consensual surrendered.

