

Summary

Die Akteursrelativität als Meta-Norm des Rechtsstaats

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The debate about deontological and consequentialist approaches in ethics that has taken place during the last 30 years has brought about one important insight in the nature of deontological ethics: the insight that the kind of normativity which is at work here is essentially agent-relative. As the debate has evolved, this insight, however, only was applied to individual ethics. Nonetheless, a closer look at the penal law in those states that can be considered “Rechtsstaaten” reveals that it usually has an agent-relative deep structure. In this article I want to show that this is anything but coincidental, i.e. I will show that the agent-relative form of normativity not only applies to individual ethics, but also constitutes an essential feature of “Rechtsstaatlichkeit”. In order to do so I will first consider the debate on the rationale of agent-relativity, relating this debate to Fichte’s discussion of the foundation of natural law. In the second step I will show that Fichte’s principle of “Anerkennung” not only provides an appropriate rationale for agent-relativity, but also explains that and why “Rechtsstaatlichkeit” requires an essentially agent-relative penal law.