

‘To Serve and Protect’: *The Ends of Harm* by Victor Tadros

Kasper Lippert-Rasmussen

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Abstract In *The Ends of Harm* Victor Tadros develops an alternative to consequentialist, and non-consequentialist retributivist, accounts of the justifiability of punishment: the duty view. Crucial to this view is the claim that wrongdoers incur an enforceable duty to remedy their wrongs. They cannot undo them, but they can do something that is almost as good—namely, by submitting to appropriate punishment, which will deter potential wrongdoers in the future, reduce their victim’s risk of suffering similar wrongs again. Admittedly, this involves harming wrongdoers as a means to an end, but according to Tadros the ‘means principle’ that we should not harm others as a means, properly construed, does not apply to cases where the victim has an enforceable duty to bear the kind of harm that he or she is being made to suffer. In this article, I shall express reservations about Tadros’ defense and interpretation of the means principle. In presenting his position, Tadros also sets out some interesting anti-retributivist considerations casting doubt on the idea that wrongdoers’ suffering is non-instrumentally good. I shall challenge these. Finally, I shall suggest that the duty view may have counterintuitive implications in relation to wrongs where the offender helps to lower the risk that victims will be subjected to similar wrongs in ways other than by being punished.

Keywords Victor Tadros · Punishment · Deterrence · Retributivism · The means principle · Selfdefense

Introduction

Justifying state punishment may seem difficult. Even if we set aside the more easily correctable bad, contingent features of contemporary systems of punishment such as over-criminalization and discrimination, it is hard to imagine a penal system that is not 1) costly, 2) harmful to innocents, including the children of offenders, or 3) apt to inflict harm on

K. Lippert-Rasmussen (✉)
University of Roskilde, CUID, Section for Philosophy Universitetsvej 1, Building 3.2.1, Postbox 260,
4000 Roskilde, Denmark
e-mail: lippert@ps.au.dk