

Criminal Punishment as Private Morality: Victor Tadros's *The Ends of Harm*

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Introduction

All states routinely inflict punishment, often quite harsh punishment, for criminal offences committed by persons who are subject to their laws; but it is remarkably difficult to provide a satisfactory normative justification for this practice.¹ Non-consequentialist accounts, such as retributivism, can readily explain why some kinds of wrongs are punishable, but find it difficult to accommodate the intuition that deterrence can justify punishment. Consequentialist theories can easily explain why harmful conduct is punishable, but struggle to account for the intuition that only the factually guilty should be punished or for the criminal jurist's obsession with questions of fault and responsibility. Theories that combine elements of retributivism and consequentialism are therefore quite attractive. In *The Ends of Harm*, Victor Tadros offers such a hybrid account. According to his Duty Theory of punishment, the criminal punishment of wrongdoers is a way of forcing them to discharge a moral duty they have acquired because of their wrongdoing. The theory is consequentialist in that punishment is inflicted for reasons of general deterrence, that is, as a way of protecting potential victims against potential offenders (3). But it is non-consequentialist in that the treatment of offenders is subject to a series of moral constraints on the pursuit of the good, which in turn are based on the Kantian idea that persons are owed respect, and therefore cannot rightly be treated in certain ways, simply because they are persons (2). The Duty Theory takes the purpose of punishment to be consequentialist but limits punishment in accordance with an account of the moral limits on the treatment of persons (42).²

¹ This paper is a review essay of Tadros (2012). References to the book will be by way of parentheses in the text.

² Tadros's account therefore bears a family resemblance to Hart's (1968) hybrid theory of punishment, according to which the utilitarian aims of punishment have to be tempered by moral constraints on the treatment of persons, and, for that matter, to the sentencing practices of liberal democracies, which typically try and combine factors such as the moral blameworthiness of the offender, the degree of harm caused by the

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