ABSTRACT. Victor Tadros’ The Ends of Harm is the most recent systematic attempt to defend the good old utilitarian justification of punishment. The attempt fails for a variety of reasons, which are here explored. First, the attempt presupposes an implausible account of human’s psychology. Second, the attempt confuses an attack on retributivism with an attack on certain criminal justice systems. Finally, Tadros admits that his justification of punishment is best seen as a mere step along the road to full-blown abolitionism – and so he unwittingly admits the extraordinarily thin sense in which he could be said to be really attempting to justify punishment.

While utilitarianism has proven to be an extraordinarily resilient, comprehensive moral doctrine, specifically utilitarian (or consequentialist)\(^1\) justifications of punishment appear to face insurmountable obstacles. It is thus unlikely that an unabashedly consequentialist justification of punishment will be attractive nowadays. The main opponent of consequentialist justifications of punishment is, of course, retributivism, and it, too, has been attacked in many different ways. For reasons I will present below, any justification of punishment worth its salt must at least have a retributivistic aspect, but, still, the current state of the debate is such that it seems convenient to not present oneself as a straight-up consequentialist or as a straight-up retributivist. So, at least since H. L. A. Hart’s seminal remarks to this effect almost half a century ago, any novel contribution to the debate regarding the

\(^{1}\) For current purposes, and unless otherwise noted, I will use ‘utilitarian justification of punishment’ and ‘consequentialist justification of punishment’ interchangeably.
justification of punishment is best advertised as if it were somehow ecumenical.\textsuperscript{2}

Victor Tadros’ \textit{The Ends of Harm} is a case in point.\textsuperscript{3} Although Tadros is in fact rather explicit about his vehement anti-retributivist aims (he wishes to ‘defend that historically familiar view’ whereby ‘retributivism is barbaric’ (p. 61)), he nonetheless presents his position as if it were less sectarian than it really is. For example, while Tadros’ favored justification of punishment can be called consequentialist (or utilitarian), Tadros calls it ‘instrumentalist’, and it is hard not to see this move as at least a bit euphemistic. Moreover, Tadros readily concedes that there is ‘good reason’ why consequentialism ‘is not popular amongst punishment theorists’; and that ‘it is often wrong to act in a way that maximizes good consequences’ (p. 3). The reader may then be misled into thinking that Tadros’ ‘instrumentalism’ is either not fully consequentialist, or at least an improved version of traditional consequentialist justifications of punishment. But I will here argue that Tadros’ views on the justification of punishment constitute, in the end, just a new rendering of the rightly discredited consequentialism.

The main reason why Tadros thinks that his ‘instrumentalism’ faces fewer problems than other consequentialist justifications of punishment is that his comprehensive moral views are non-consequentialist (3 ff.). But, as I will argue in the first section below, the specific combination of comprehensive moral view and justification of punishment that Tadros advances faces an important difficulty. In the second section, I shall argue that in spite of his apparent efforts at ecumenism, Tadros’ views are in crucial respects extremely similar to Jeremy Bentham’s, and that he inherits some well-known problems of utilitarianism. In the third section of the paper I shall argue that Tadros’ treatment of retributivism is both obscure and tendentious, and that Tadros’ book appears to be motivated more by an ideological agenda than by an effort to advance our understanding of the truly thorny issues surrounding punishment and its justifications.


\textsuperscript{3} Victor Tadros, \textit{The Ends of Harm} (Oxford: Oxford University Press, 2011). References to this book will henceforth appear in the main text.