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IN MEDIO STAT VIRTUS
The Justification of Punishment between Deontology and Utilitarianism

Abstract
In this paper, we aim to defend the claim that psychologically and normatively plausible justificatory theories of punishment are those that virtuously merge deontological (notably retributivist) and consequentialist (utilitarian) elements. In many ordinary cases, such alternative views readily converge – in practice, if not in principle – when it comes to determining whether, and to what extent, a given culprit ought to be punished. Punishing the offender may indeed often subserve both retributivist and utilitarian ends at once – say, respectively, restoring justice by punishing those who deserve to be punished and maximizing the general utility. In the paper, however, we will present a case study displaying the tension occurring when retributivist and utilitarian views point to different punishing behaviors. Especially in such cases, but also in principle, subscribing to utilitarian views might appear to be the best option. Utilitarianism, indeed, is often described as both more humane and more in line with an empirically sound understanding of human action. At the same time, utilitarian views – be they understood in their "act" or "rule" version – can be challenged by worrisome objections, among which there are the risks of scapegoating and exaggerating punishment. To avoid such excesses, we will argue that mixed theories of punishment, merging retributivist and utilitarian criteria, are to be preferred.

Keywords: Mixed Theories, Punishment, Retributivist Theories, Utilitarian Theories

1. *Introduction*

In this paper, we aim to defend the claim that psychologically and normatively plausible justificatory theories of punishment are those that virtuously merge deontological (notably retributivist) and consequentialist (utilitarian) elements. In § 2, we will introduce the distinction between retributivist and utilitarian theories of punishment. In many ordinary cases, such alternative views readily converge – in practice, if not in principle – when it comes to determining whether, and to what extent, a given culprit ought to be punished. Punishing the offender may indeed often subserve both retributivist and utilitarian ends at once – say, respectively, restoring justice by punishing those who deserve to be punished and maximizing the general utility. In the section, however, we will present a case study displaying the tension occurring when retributivist and utilitarian views point to different punishing behaviors. Especially in such cases, but also in principle, subscribing to utilitarian views might appear to be the best option. Utilitarianism, indeed, is often described as both more humane and more in line with an empirically sound understanding of human action. At the same time, as discussed in § 3, utilitarian views – be they understood in their 'act' or 'rule' version – can be challenged by wor-

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risome objections, among which there are the risks of scapegoating and exaggerating punishment. To avoid such excesses, we will argue that mixed theories of punishment, merging retributivist and utilitarian criteria, are to be preferred.

2. *Retributivist and Utilitarian Justifications. A Case Study*

Deontological and consequentialist (utilitarian) aims represent the most invoked justifications of punishment both at a psychological[1] and a normative level[2]. Given their widespread diffusion, it would be impossible to recount all the varieties of deontological and utilitarian theories of punishment in a single paper. Screening off the details – for instance between desert[3] and communicative theories[4] of deontological punishment – we can offer certain general indications drawing on some of the most discussed accounts.

Retributivism, as a version of deontology, is committed to the claim that punishment is just when it is deserved, in virtue of the harm the offender has caused to the victim or the society, and independently of the positive or negative effects that such punishment may produce[5]. In its purest form, this substantive notion of *desert* requires the agent to have freely willed to commit the crime in a way that makes her responsible for harming the victim or, to some extent, society. Derk Pereboom describes this requirement in terms of *basic desert*: «for an agent to be morally responsible for an action is for this action to belong to the agent in such a way that she would deserve blame if the action were morally wrong, and she would deserve credit or perhaps praise if it were morally exemplary»[6]. Retributivist justifications are backward-looking in aim to the extent that they are concerned with stigmatizing the agent's past action or the guilt the agent must atone for, rather than with promoting positive future outcomes[7]. In this respect, they are inspired by deontological views of morality according to which the broken norms must be restored in ways that legitimately take a toll on the offender, to the extent provided by law, i.e., proportionally to the harm caused.

Conversely, as the tag readily suggests, consequentialist views are forward-looking and are thus interested in the positive (notably the useful) consequences – utilitarianism is indeed a form of consequentialism – that punishment may produce at an individual

1 See J.W. Buckholtz, C.L. Asplund, P.E. Dux, et al., *The Neural Correlates of Third-Party Punishment*, in «Neuron», 60, n.5, 2008, pp. 930-940. M.J. Crockett, Y. Özdemir, E. Fehr, *The value of vengeance and the demand for deterrence*, in «Journal of Experimental Psychology: General», 143, n. 6, 2014, pp. 2279-2286. F. Tan, E. Xiao, *Third-party punishment: Retribution or deterrence?*, in «Journal of Economic Psychology», 67, 2018, pp. 34-46.

2 M.C. Altman, *A theory of legal punishment: deterrence, retribution, and the aims of the state*, Routledge, Abingdon 2021. D. Boonin, *The problem of punishment*, Cambridge University Press, New York 2008. J. Braithwaite, P. Pettit, *Not just deserts*, Oxford University Press, Oxford 1990.

3 A. Von Hirsch, *Deserved criminal sentences: an overview*, Hart Publishing, Portland (Oregon) 2017.

4 R.A. Duff, *Punishment, communication, and community*. Oxford University Press, Oxford 2001.

5 M.S. Moore, *Placing blame: a theory of criminal law*, Oxford University Press, Oxford 1997.

6 D. Pereboom, *Will, agency, and meaning in life*, Oxford University Press, Oxford 2014 p. 127.

7 T. Brooks, *Punishment*, Routledge, London 2012.

and societal level. Punishment may yield various sorts of appreciable consequences, the most debated of which have to do with rehabilitating or re-educating the offender, protecting society from potentially dangerous individuals, and deterring wannabe criminals from causing harm or damage[8]. These more specific utilitarian aims raise concerns in terms of their legitimacy or feasibility, for instance in relation to the low efficacy and the excess of paternalism associated with the project of reforming offenders through punishment. Incarceration has been indeed linked also with worrisome social effects, such as recidivism, unemployment, and workplace stigma[9]. Notwithstanding these legitimate concerns, utilitarianism is often indicated as more humane than its retributivist counterpart. Indeed, it does not rely on the offender's suffering, and it is seemingly more immune from turning into a domesticated form of retaliation[10].

In this respect, retributivism is allegedly closer to what our sense of justice intuitively implies. The emphasis on basic desert concerns might be linked with the natural tendency to moralize our negative feelings towards the offender. In particular, the feeling of anger would motivate, deep inside, an institutionalized, but brutish, desire for revenge. Experimental evidence in the fields of experimental economics and social psychology has indeed suggested that punishing tendencies are ubiquitous and that average agents tend to be retributivist, especially when dealing with concrete cases, and despite valuing utilitarian principles in theory[11]. More recently, research has stressed that retribution is a central motivation for punishing others, but also that backward-looking and forward-looking punishing tendencies are usually intermixed in real-case scenarios[12].

Consider the following scenario as a case study eliciting people's alternative or intermixed intuitions regarding the legitimacy of retributivist and utilitarian considerations about justified punishment. The scenery is a small, semi-unknown island, in the middle of the Pacific Ocean. Several decades have passed since the island, populated by an isolated, but technologically advanced, community, has proclaimed itself an independent state. The living conditions of the community are enviable: in fact, the inhabitants constantly abide by the norms of morality and education, are respectful and supportive of each other, and all potential conflicts are immediately resolved by virtue of everyone's reasonableness and goodwill.

Quite an achievement on its own, this peaceful condition can be easily explained: the community is successfully ruled by a virtuous old sage. With his charisma, humanity,

8 T. Brooks, *Punishment*, cit.; A. Ellis, *A Deterrence Theory of Punishment*, in «The Philosophical Quarterly», 53 (212), 2003, pp. 337-351.

9 M. Bhuller, G.B. Dahl, K.V. Løken, M. Mogstad, *Incarceration, Recidivism and Employment*, in «Journal of Political Economy», 128 (4), 2020, pp. 1269-1324.

10 J. Greene, J. Cohen, *For the law, neuroscience changes nothing and everything*, in «Philosophical Transactions of the Royal Society of London B», 359, 2004, pp. 1775-1785.

11 K.M. Carlsmith, *The roles of retribution and utility in determining punishment*, in «Journal of Experimental Social Psychology», 42 (4), 2006, pp. 437-451; Carlsmith, *On justifying punishment: the discrepancy between words and actions*, in «Social Justice Research», 21(2), 2008, pp. 119-137; K.M. Carlsmith, J.M. Darley, P.H. Robinson, *Why do we punish? Deterrence and just deserts as motives for punishment*, in «Journal of Personality and Social Psychology», 83 (2), 2002, pp. 284-299.

12 Crockett, Özdemir, Fehr, *The value of vengeance and the demand for deterrence*, cit.

advice, and deep moral sense, the old sage inspires in the islanders their righteousness, civic sense, and mutual respect. Life on the island thus flows placidly, to the point that the only local policeman, having nothing on the plate, is extremely bored. So, one day, the bored policeman decides to reopen the file of the last criminal case that occurred on the island and remained unsolved: a murder from fifty years earlier, in which a young sailor, passing by, was killed during a violent argument. Unpacking the file, the policeman notices that a hair was found at the crime scene. Since the sailor was reportedly bald, the most likely explanation is that someone else who was present at the murder scene, potentially the murderer herself, had lost a hair. Fifty years earlier, the investigators did not have the tools to analyze the hair and thus single out the murderer. At the time, the investigation had stopped without finding any culprit and the case remained open and unsolved.

The policeman gets to work, happy to have found something interesting to do, and runs a DNA analysis on the hair. Surprisingly, the DNA test speaks out: the hair belongs to the old sage! Dismayed, the policeman runs to the old sage and asks, "Dear old sage, why didn't you ever mention that you were present on the day of the murder sixty years ago? You could have helped the investigation!" "You see," replies the wise old man, looking him straight in the eye, "I was not only present when that murder was committed: in fact, I was the one who carried it out!" Then, staring into the policeman's dismayed eyes, he continues his confession, "We were drunk, we argued for a very futile reason, and I hit him with a bottle. He fell and died on the spot. Since then, I have lived in remorse and have tried to atone for my guilt by behaving as probly as possible and putting myself at the service of others. But if now our community decided to punish me, I would be ready to pay my debt."

The island was once part of Her Majesty's British Empire; therefore, *Common Law*, the legal system based on judicial precedent, applies there. In this case, however, there are no precedents, and so the judge must make the judgment based only on his conscience. There is no doubt that the wise old man is guilty: the important question, however, is whether it is right to punish him or not. What ought we do if we were in the place of that judge?

Although we have not tested the case aiming to produce statistically significant results, we can say anecdotally that when the story of the murderous old sage is presented in class and discussed with students, the output is usually a roughly even split of opinions. While a substantial group of hearers is inclined to think that punishing (albeit mildly) the wise old man is morally right, others think that in such a case any punishment would be unjust.

Both answers have an intuitive basis. On the one hand, it seems obvious that punishment serves to rehabilitate the convicted person, deter other potential criminals, and defend society from dangerous individuals: as mentioned, these are 'utilitarian' justifications of punishment, because they look at the utility of punishment with respect to society as a whole. And, from such a perspective, punishing the wise old man would make no sense: he is perfectly rehabilitated, he is not dangerous, and there is no reason to

think that other potential criminals be lurking on the island and be in need to be deterred. On the other hand, however, it also seems reasonable to think that punishment serves to restore the balance of justice, when this has been broken by the culprit; and that he therefore deserves to be punished, whatever the likely consequences of the punishment might be. This conception is obviously 'retributivist' in nature, in the sense that it assumes that the basis of punishment is the fact that the convicted person deserves it, and that for this reason it is just to inflict punishment on him (or her) without considering what social effects such punishment may have. In short, from this point of view, justice requires that the wise old man be punished.

3. *Retributivism, Utilitarianism, and the Role of (Cognitive) Neurosciences*

The retributivist ideal can be broken down into two, very different components[13]. The first component is the positive one, according to which all offenders deserve to be punished, with the necessary severity. Some historically relevant notions and episodes related to culpability are grounded in the positive component of retributivism. To give one example, during the Great Terror of 1793, Robespierre, obsessed with crushing the counterrevolution, gave the judges of the courts a special power: that of being able to sentence a defendant to death without evidence against him, solely based on the judge's inner conviction of the defendant's guilt. The goal, evidently, was to try to eliminate all counterrevolutionaries (i.e., the 'guilty ones'), and this even at the cost of condemning some innocent people to death as well[14]. However, retributivism also has a negative component, according to which only the guilty deserve to be punished, with no excessive severity.

Both the positive and negative components of retributivism center on the notion of merit, which in turn presupposes those of moral responsibility and, consequently, of free action: only an agent who has freely performed a wrongful action is morally responsible for the action-related outcome and therefore deserves to be punished. It is important to note that it is the positive component that motivates the severity aspect of retributivism, according to which justice requires the severe punishment of all offenders. Conversely, the negative component of retributivism underlies its legal implications in a substantive, rather than merely formal (as is often the case with other legal traditions), way. This is the case for two reasons. First, because this negative constraint intimates not to punish those who do not deserve it – and this is so even if such punishment had the potential to increase collective utility. This is the case, for instance, when scapegoats are punished – a practice that is rightly considered an outright violation of basic human rights – to satisfy the community's thirst for revenge. Second, negative retribution prevents the application of disproportionate and inhumane punishments (such as, for example, torture),

13 J. Mackie, *Persons and values*, Oxford Clarendon Press, Oxford 1985.
14 About the politics of the French Revolution see P. McPhee, *Robespierre: A revolutionary life*, Yale University Press, Yale 2012.

even when these could bring some social benefits. This could happen, for example, if one tortured a terrorist to make him/her confess his or her group's future attack plans[15].

In the last few decades, however, a growing number of scientists, jurists, and philosophers has argued that cognitive neuroscience shows – or, at least, strongly suggests – the illusory nature of our standard notions of free will and, therefore, of the associated notions of moral responsibility and merit[16].

If these authors were right, retributivist conceptions of punishment (in both their positive and negative components) should be abandoned and replaced by a strict form of utilitarianism. According to many authors – such as those just mentioned – this solution is not only inevitable but also desirable. Greene and Cohen[17], for example, have argued that if people were convinced that free will and moral responsibility are mere illusions, it would make no sense to continue to punish individuals who, being determined at the genetic and neurophysiological level, could not have acted otherwise than they in fact did. This, however, in their view would be good both for the individuals who are punished (at least in cases where punishment would effectively rehabilitate them) and for society as a whole. According to Greene and Cohen, indeed, the law already applies non-retributivist criteria when judging people whose behavior is clearly the byproduct of forces that they are unable to control. The ambition is that, in the future, all criminals would be treated in the same way, i.e., «humanely»[18].

The thesis of Greene and Cohen, and of the other authors sharing the same view, in short, is twofold. First, science has by now clearly defined a framework in which there is no longer any room for normative and intentional phenomena (free will, intentionality, rational choice, etc.), which are indispensable for attributions of responsibility in the proper sense; from this perspective, therefore, the only way in which the law underpinnings can be preserved is by taking a radically utilitarian perspective. Second, these authors argue that such a shift, in addition to being justified, would also be deeply desirable because it would make the institution of punishment more humane.

We have, however, important reasons to think that – at least given the current state of the art – both theses have serious limitations and drawbacks. It is beyond the scope of this paper to discuss the bombastic claim that free will – and cognate notions belonging to the sphere of intentionality and normativity more generally –, can be debunked by referring to the results of empirical sciences[19]. Without being exhaustive, we can, however, hint at some of the reasons why it is reasonable to conclude that – *pace* Greene and Co-

15 But see S. O'Mara, *Why torture doesn't work. The neuroscience of interrogation*, Harvard University Press, Cambridge (MA) 2015 for a neuroscience-based account of how torture, besides being cruel and inhumane, may even fail to reach its target and extract trustworthy information from prisoners.

16 S. Harris, *Free will*, Oxford University Press, Oxford 2012. M. Gazzaniga, *The law and neuroscience*, in «Neuron», 40, 2008, pp. 412-415. D.M. Wegner, *The illusion of conscious will*, MIT Press, Cambridge (MA) 2002.

17 Greene, Cohen, *For the law, neuroscience changes nothing and everything*, cit.

18 Ivi, p. 1784.

19 See M. De Caro, *Il libero arbitrio. An introduction*, Laterza, Roma-Bari 2020[9]; S. Bonicalzi, M. De Caro, *Libero Arbitrio*, in A. Lavazza, V. Sironi (eds.), *Neuroetica*, Carocci, Roma 2022. M. De Caro, M. Marraffa, *Science and morality*, LUISS University Press, Rome 2016.

hen – a purely utilitarian theory of punishment theory would not fulfill all its promises.

The most traditional form of utilitarianism is 'act utilitarianism'. According to this family of views, in order to behave morally, one must perform actions that maximize the general utility, usually framed in terms of the greatest good (say, happiness) for the greatest number (the majority of the entities who are entitled to moral consideration)[20]. One problem is that this definition – although *prima facie* very simple and appealing – unfortunately leaves room for practices that are intuitively unjust and inhumane. These include the already mentioned practice of scapegoating as well as the imposition of disproportionate punishments[21]: these dreadful scenarios include cases where an agent is punished even if she is innocent or is disproportionately punished when guilty, and this is done to deter other potential criminals. One can easily imagine situations in which the imposition of these – intuitively unjust – forms of punishments would represent a general benefit to the community, e.g., in cases of scapegoating, when the police have little to go on and finding the culprit would calm down the mob. In practice, there might be other (both utilitarian and non-utilitarian) reasons why the practice of scapegoating is tendentially avoided, e.g., because, if discovered, it would be detrimental to the state's reputation. In principle, however, scapegoating might be *ipso facto* acceptable from the perspective of act utilitarianism. Analogously, disproportionate punishments might be considered acceptable by virtue of their deterrent effect on other potential criminals. These worrisome scenarios can be invoked to argue that the mere maximization of social utility cannot be the only standard to justify the correctness of punishment.

On these grounds, some authors have developed an alternative version of utilitarianism, known as 'rule utilitarianism'[22]. According to rule utilitarianism, to behave morally, one must follow the rules whose application ensures the maximization of the general utility. A key question is thus whether rule utilitarianism could convincingly respond to objections such as those of scapegoating and disproportionate punishment. For this to be the case, it ought to be shown that rule utilitarianism prevents the acceptance of rules allowing scapegoating and disproportionate punishments, i.e., allowing that, under certain conditions, an innocent person can be punished, or some guilty ones can be disproportionately punished. This must be because such rules could not, in principle, maximize the general utility and are therefore not to be adopted. Otherwise, according to rule utilitarianism, such rules would have to be adopted anyway, independently of how inhumane they might look. Indeed, at first glance, it may seem that rule utilitarianism can meet this challenge. If wannabe criminals knew that, according to an existing rule,

20 J. Bentham (1843), *Rationale of reward*, Book 3, Chapter 1, in J. Bowring (ed.), *The Works of Jeremy Bentham*, William Tait, Edinburgh 1838-1843. J.S. Mill (1861), *Utilitarianism*, edited with an introduction by Roger Crisp, Oxford University Press, New York 1998. H. Sidgwick, *The Methods of ethics*, seventh edition, Macmillan, London1907 (first edition 1874).

21 See V. Tadros, *The ends of harm: the moral foundations of criminal law*, Oxford University Press, New York 2011.

22 R.B. Brandt, *A Theory of the good and the right*, Prometheus Books, Amherst, N.Y. 1979. J. Harsanyi, *Rule utilitarianism and decision theory*, in «*Erkenntnis*», 11, 1977, pp. 25-53. For some key objections to rule utilitarianism, see R. Arneson, *Sophisticated rule consequentialism: some simple objections*, in «Philosophical Issues», 15, 2005, pp. 235-251.

they could be punished even if they committed no crime, they would certainly not be discouraged from misbehaving, and thus the deterrence effect of punishment would decline. Analogously, once the proper ratio between crime and punishment is lost and heinous crimes are legally equated to minor ones, it is at best unclear whether potential criminals would be held back by such arbitrarily severe sanctions.

In real life, although there is evidence that high punitiveness sometimes deters crimes, research has shown that countries with strongly punitive sanctions may also have high crime rates and that, for instance, mass incarceration is scarcely effective[23]. Moreover, it could be argued that punishing innocent individuals or applying disproportionate punishments could generate widespread community outrage; and certainly such outrage would not represent a good *viaticum* by which the general utility can be maximized.

On closer inspection, however, it appears that rule utilitarianism is not sufficiently equipped to really solve the problems of scapegoating and disproportionate punishment. Indeed, one can imagine that there might be cases in which the general utility would be maximized by accepting a rule permitting scapegoating or disproportionate punishments, at least under extreme circumstances. While this is certainly possible in principle, one must be cautious about a drift in that direction. For instance, if we look back in history, decimation was a fairly common practice in World War I – at least it was common in the armies of the Triple Entente and in the Italian one, and way less common in the armies of the Central Powers[24]. The practice of decimation consisted in executing a few soldiers chosen at random from a company, usually because the company, as a whole, had shown little war enthusiasm in fighting the enemy. The purpose of this punishment was to provide a long-lasting warning to the comrades of the executed soldiers, deterring them from exhibiting similarly coward behaviors in the future. In this regard, since the victims were chosen at random, it could certainly happen that soldiers who had not shown themselves to be cowards were selected to be shot.

This is what is beautifully shown in *Paths of Glory* (1957), a masterpiece by Stanley Kubrick based on a true story that happened on the French front during World War I. It could be argued, and not at all implausibly, that the practice of decimation may have contributed to the victory of the Allied countries and, therefore, that it maximized collective utility in those countries. But would this prove that the practice of decimation is morally acceptable? The answer is, without a doubt, negative. This reasoning is hypothetical insofar as no clear data is suggesting that the practice of decimation verifiably contributed to the Allied victory. Of course, however, the question here is one of principle: that is, it shows that there may be cases in which maximizing the general utility is not necessarily conducive to just punishment.

Besides its potential utility, however, it would be arguably wrong to establish the moral permissibility of decimation based on its empirical utility. This shows that the

23 T. Friehe, T.J. Miceli, *On punishment severity and crime rates*, in «*American Law and Economics Review*», 19 (2), 2017, pp. 464-485.

24 I. Guerrini, M. Pluviano, *The summary shootings in World War I*, Gaspari, Udine 2004.

main problem with any form of utilitarianism, then, is that the ideal of justice cannot be entirely, and satisfactorily, translated into the terms of general utility. Therefore, without denying the relevance of considerations regarding the general utility, if utilitarianism in its purest form were accepted as the foundation of a theory of justice, we would always run the risk of justifying intuitively immoral practices such as scapegoating and disproportionate punishment.

Fortunately, we have a much more promising theoretical alternative, which proposes to put some constraint on act utilitarianism by means of negative retribution. John Rawls and H.L.A. Hart[25], two giants of twentieth-century Anglo-Saxon ethical-legal thought, have advanced proposals along these lines. Hart, in particular, offered an extensive and convincing treatment of the matter. In his view, the justification of punishment can take place only on a utilitarian basis: one can punish only those whom it is useful to punish – a thesis, it should be noted, obviously incompatible with positive retributivism, according to which one must punish all who deserve it, whatever the consequences of their punishment. In this respect, one can thus tentatively suggest that the old sage (see § 2) ought not to be punished to the extent that punishing the old sage would not subserve any plausible utilitarian end. With regard, however, to how judges give punishments to culprits, Hart instead posits a negative retributivist constraint. From this perspective, because punishment, when given, must be useful, those who do not deserve it should never be punished. While assuming a utilitarian background framework, negative retributivism places a theoretical limitation on the possibility that unjust but socially useful practices – such as punishing those who do not deserve it or inflicting exaggerated punishment – be adopted under given circumstances.

It is an open question, however, to what extent the notion of a negative retributivist constraint can survive the empirical scrutiny. The crucial point is that if the notions of free will, moral responsibility, and merit were shown to be illusory (as suggested by many cognitive neuroscientists), then, in addition to positive retributivism, negative retributivism – according to which no one can be punished without deserving it or can be punished to a greater extent than she deserves – would also fall. And in this way, there would no longer be any limitations, such as those envisaged by Hart, on the possibility that scapegoating and disproportionate punishment practices would be considered acceptable whenever useful to the purpose of deterrence. Indeed, neither act utilitarianism nor rule utilitarianism, in their pure forms, have the conceptual tools to show that such barbarian practices are unjust. In this framework, the notions and practice of punishment do not fundamentally rely on a principle of justice: there is no justice to be restored, no responsibility to be sanctioned. All that needs to be done is what is socially useful: to rehabilitate the offender; to make sure that, as long as the offender is dangerous, she cannot harm society; to set an example that serves as a deterrent to other potential offenders.

25 J. Rawls, *Two concepts of rules*, in «Philosophical Review», 64, 1955, pp. 3-32. H.L.A. Hart, *Punishment and responsibility*, Oxford University Press, Oxford 1968.

4. *Conclusions*

The most invoked justifications of punishment, retributivist and utilitarian considerations may occasionally point to different directions concerning punishing behaviors. While utilitarianism is often considered as more in line with the results of empirical sciences – notably psychology and cognitive neurosciences –, it can be challenged on several grounds, notably because it is exposed to the risk of supporting scapegoating and exaggerated punishments. In this paper, we argued that a mixed model, virtuously merging retributivist and utilitarian considerations, is better suited to ground a reasonable justification of punishment.