

The Aim of Punishment: Positive General Prevention?

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The author analyses the idea of positive general prevention, which has become a leading theory of punishment in several legal systems, most notably the ones within Germanic legal circles. Positive general prevention is used as an umbrella term covering a variety of different effects of punishment (consolidation of confidence in the legal order, the moral-educational effect, and satisfying the public), which should, in the long run prevent crime. The main hypothesis of this paper is that the effectiveness of positive general prevention is relatively scarce, and this hypothesis is being verified in conjunction with the theory on preventive effects of ignorance and by reviewing relevant empirical research. In the conclusion, it is argued that positive general prevention is indisputably effective at the "all or nothing" level (with the complete elimination of sanctioning there would certainly be more crime), while preventive effects of making legal punishments harsher, are very limited. A specific problem of positive general prevention is that it can quickly become universal and a relatively cheap rhetorical device in the struggle for new incriminations, raising penalties and more severe penal policies, or for the apology of criminal law, as it is.

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