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Direct Paternalism: Punishing the Perpetrators of Self-Harm*

by Andrew von Hirsch**

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'Direct' paternalism in criminal law refers to the use of the criminal sanction to penalise a person who harms or attempts to harm himself. Here, two questions arise. The first concerns direct paternalism generally: namely, the legitimacy of employing state coercion at all, to help prevent the person from injuring himself. The second question – which this essay particularly addresses – concerns the appropriateness of using the *criminal* sanction for this purpose. This latter issue is to be distinguished from (the more complex) question of 'indirect' penal paternalism: namely, the use of the criminal sanction to penalise someone for assisting *another* to harm himself.

German law, like the law of most European countries, generally avoids direct paternalism in its criminal law. Attempting suicide, or deliberately injuring oneself are not crimes in Germany's criminal statutes. There are some apparent exceptions, of which the most salient is the prohibition against the acquisition and possession of drugs [1]. There has been comparatively little discussion in the German literature, however, about *why* paternalistic criminal prohibitions should be eschewed. *Roxin*, for example, asserts that self-damaging behaviour should be seen as part of the person's self-determination and hence not a proper

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subject of criminal sanctions,[2] but he does not explore this thesis further. It is this question of rationale which will be addressed here.

While existing criminal law, in Germany and elsewhere, is sparing in its use of direct paternalistic prohibitions, it makes extensive resort to indirect paternalism. Assisting another person to kill himself at the latter's request is ordinarily a crime (Penal Code, sec 216), as is (with important exceptions) assisting him to inflict injury on himself (Penal Code, sec 228). The question why the criminal law should be so stringent with assisting another to commit self-injury – when it is so permissive with direct self-injury – has elicited little general discussion in the German (or English-language) literature.[3] In order to develop an adequate theory for dealing with assisted self-injury, however, it is first necessary to provide an account of direct paternalistic prohibitions.

I. Coercive state intervention to prevent self-harm: a limited paternalism?

Paternalistic interventions have two salient characteristics. First, the aim of the intervention is the affected person's own good, or the prevention of harm to him. Second, the intervention involves compulsion: the person is not given the choice of rejecting the proffered assistance. It is this second characteristic – of compulsion --that distinguishes paternalistic interventions from other forms of state social assistance. One thus may be sceptical about paternalistic interventions, while favouring (as the present author does) an extensive scheme of social welfare supports.

In the Anglo-American literature, the debate concerning legal paternalism began in mid-19th Century, with *John Stuart Mill*'s well-known formulation of the 'Harm Principle' - and his critique of paternalistic interventions.[4] In the 1980's, there was extensive further discussion - with *Joel Feinberg, Gerald Dworkin, John Kleinig* and *Joseph Raz* being the most notable contributors;[5] More recently, however, the interest has subsided somewhat,

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even in the Anglo-American philosophical literature.[6] The discussion of paternalism in the 1980's, moreover, did not great attention to possible principled differences between paternalistic criminal prohibitions and other forms of coercive state intervention (e.g., in civil or administrative law) aimed at preventing self-damaging conduct.

My present analysis begins with a presumption against paternalistic interventions. Ordinarily, the state should not employ its coercive powers, in any manner, to prevent an individual from injuring himself. This norm rests on the idea of 'personal sovereignty', in *Feinberg's* words: paternalistic interventions infringe the actor's autonomy.[7] But we need to consider: autonomy in what sense?

Were autonomy defined as the person's rational self-interest, this could justify extensive coercive intervention: namely, whenever the actor´s behaviour contravenes his rational self-interest. This perspective, however, could involve substantial intrusions into personal self-determination. Indeed, this formulation thus would favour rather than limit paternalism - since a paternalistic perspective would support intervention precisely when that is in the rational self-interest of the person.

Personal sovereignty might be defined, alternatively, as 'deep' autonomy -- meaning a person's acting according to a coherent set of goals of his own choosing. This would imply that the person could engage in apparently self-destructive activities, provided these are part of a fuller life-conception or plan: an example would be the poet who drinks heavily, because he has found that alcohol consumption and the life it involves inspires his work. (The examples of E.T.A. Hoffmann and Charles Bukowski come to mind.) This view of autonomy, however, still would allow extensive substitution of judgement, when the person is not acting according to well-defined long range goals: for example, when the person's self-injurious behaviour contradicts his own stated goals, when these goals are ill-defined or

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mutually inconsistent, or when he has fails adequately to inform himself of the effects of his behaviour on his purported longer-term aims.

The objection to this 'deeper autonomy' perspective is that, for the large number of persons who fail to develop a coherent set of personal goals -- or fail adequately to inform themselves of the risks of their own behaviour -- the determination of those goals and the means to their achievement could be determined heteronomously, through the exercise of state power. 'Deep autonomy', in short, would mean that many people may could longer direct the course of their own lives.

This approach also fails to provide adequate recognition of the person's *capacity* for deliberation concerning his own interests. Even someone with an apparently chaotic lifestyle may be capable of choosing to live otherwise. The person who takes excessive risks because he (mistakenly) believes that he is unusually skilful or lucky should still (unless he suffers from significant mental incapacity) be capable of reconsidering such beliefs and deciding to act with a greater degree of reflection and prudence. The conception of a person as rational agent involves precisely such capacities for reconsideration, and coercive intervention would bypass that capacity for agency.

It is preferable, therefore, to define autonomy (as *Feinberg* does) as simple sovereignty of choice.[8] This would, at least *prima facie*, exclude direct paternalism entirely, for competent subjects. This approach does respect the person's capacity for choice. However it does so at considerable cost. Humans are fallible, and are tempted in moments of stress to take actions which lead to drastic and irreversible consequences to themselves. In such situations, a refusal ever to intervene may frustrate the achievement of the person's own longer-term goals.

To deal with these situations, *John Kleinig* and *Gerald Dworkin* have proposed limited versions of paternalism[9] Here, the norm would be simple self-determination: the

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person decides upon his own conduct, and no substitution of judgement would ordinarily be permissible. Exceptionally, however, the person's longer-term goals could be used as grounds for intervention (see *Kleinig* [10]). When a person, whose previous way of living suggests a long-term commitment to various continuing projects, attempts suicide or other self-injury after a serious personal setback (e.g., the collapse of his marriage), temporary intervention may become appropriate in order to provide him time for reflection and reconsideration. Here, the person's apparent long-range preferences are being into account, in deciding on the intervention. This scheme thus differs from the view discussed earlier,[11] in that - for the person whose longer-range commitments cannot be identified – or who appears to have self-contradictory or unclear life-goals – coercive intervention would no longer be permissible.

Of course, this approach would not guarantee that the intervention comports always with the person's actual long-term aims, since the latter may be difficult to ascertain in the individual case, especially when state agencies attempt such judgements. The person who appears to have been committed to his job and family, but who attempts poison himself after having recently has been fired, may truly have come to a definitive longer-term decision that enough is enough and that his life is no longer worth living -- so that pumping out his stomach and holding him for observation for several days may frustrate his considered personal choices. But arguably, the law needs to deal with standard cases -- and in most such cases, the person would probably be acting out of immediate desperation. Morever, the person should eventually be permitted to kill himself without further interference, if this is his apparent considered aim.

In this version of limited paternalism, the grounds for intervention remain narrow – since it would seldom be the case that state authorities have sufficient information to make a judgement concerning the nature of the person's longer-term projects and preferences. Indeed, *Kleinig* concedes that the state and its agencies would seldom ever be in a position to have

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adequate insight into the character of someone's longer term plans, to make coercive state intervention feasible or desirable. He thus thus would restrict the applicability of his kind of paternalism to interpersonal situations -- for example, the case of the person who hides his despondent friend's barbituates.[12] Another version, *G. Dworkin's,* would provide a less ambitious and more readily-applicable approach.[13] Intervention would be permissible, he asserts, when (1) the self-harm is potentially grave and irreversible (e.g., death or serious injury), (2) the person appears to be acting under unusual stress, (3) the duration of the intervention is limited and (4) there would be restrictions on repeated interventions.[14] In most such instances, arguably, the person may well be acting from the stress of the moment and inconsistently with his long-range plans; and in any event (because of the limits on repeated intervention) he could eventually commit the self-injury should he decide to do so.

It should be emphasised, however, that these latter schemes – to the extent they permit coercive intervention – do constitute a species of 'hard' paternalism.[15] Self-determination involves, strictly speaking, one's dealing with oneself as one *now* chooses -- irrespective of alleged longer-range preferences one has developed at earlier times. The argument in favour of these schemes is not that the intervention would not be paternalistic; but that they constitute an appropriate form of paternalistic intervention, because they may to help safeguard the person's longer-range preferences and priorities.

II. Paternalistic *criminal* prohibitions: Why they are specially problematic?

The limited paternalism just discussed (I.) merely provides a case for state intervention of some kind: it does not provide a case, specifically, for intervention through the *criminal* law. In my judgement, there are special difficulties of invoking the criminal sanction, even where a limited-paternalism model might justify coercive state intervention in some other ('civil') form. In simple cases, such as that of attempted suicide, the point seems obvious.

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Perhaps it might be appropriate for the state to interfere under certain circumstances with suicide attempts, by holding the person for a limited period to allow him to reflect and reconsider. It is a quite different matter, however, to *punish* his attempt at suicide. Indeed, the latter crime has been removed from modern criminal statute books.

A simple, and oft-cited, argument against such paternalistic criminal prohibitions is that they would contravene the aim of paternalism itself, because the penal sanction – with its deprivations and censure – would not be in the interest of the person.[16] With severe punishments for supposedly self-damaging behaviour such as drug abuse, this argument is obviously correct: how could a drug user's interests be fostered through visitation of the lengthy terms of confinement that drug laws (especially of the American style) prescribe? But with more modest criminal sanctions, the case is not so clear. If certain seriously and irreversibly self-damaging conduct were subject to limited criminal sanctions, and if that helped diminish the incidence of such conduct, the 'cure' might not always be worse for the person than the disease.

The principal argument against invoking the criminal law runs differently, and concerns the *censuring* implications of punishment. That punishment centrally involves censure -- that is, a judgement of disapproval or blame for the act and its perpetrator -- has been a well known theme in German as well as Anglo-American penal theory.[17] It also has been argued – by Antony Duff and by myself, for example [18]–that this censuring element has a crucial normative role, that cannot be accounted for in purely consequentialist terms. This normative role, we have suggested, concerns addressing the actor as an *agent* capable of moral deliberation; and recognising the moral status of the injured party as someone *wronged* by the actor's culpable act. [19]

In the context of conduct that is harmful to others, such a censuring response can readily be accounted for. When D commits an assault against V, he infringes the legitimate

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claim that V has to his personal physical integrity; and this infringement, when done intentionally, shows culpable disregard for V's vital interests and thus constitutes a censurable wrong.[20] In such situations, the behaviour not only is wrongful, but the rationale for the state's censuring response lies precisely in that response's public recognition of the conduct's wrongfulness.[21] Even if the criminal sanction is viewed as having also some significant preventive elements,[22] or as entitled to modest degree to utilise preventive criteria, [23] an inescapable feature of the criminal sanction is its ascription of fault for past wrongdoing and its resulting imposition of censure.

When this wrongdoing/censure paradigm is applied to self-injurious conduct, however, it becomes much more strained. Suppose the 'assault' is committed by D against himself: having just lost his job, he becomes despondent and tries to kill himself. Perhaps, he is being most unwise; had he waited for a while, he would have realised that he had reasons to go on living. Arguably, state intervention to provide a 'cooling-off' period would be warranted (for the reasons discussed in I.). But can the conduct be plausibly described as a censurable violation on D's part of legitimate claims he has against himself? And even if the conduct could be viewed as wrongdoing of some kind, is it plausible to assert that a reason, or one of the main reasons, for the intervention of the criminal law is to give public recognition of this 'wrong'? I think not.

The central objection to utilizing the criminal sanction in such situations of attempted self-injury, is that it accords badly with the rationale for permitting paternalistic intervention at all. In the discussion (I. above) of a limited paternalism, the basis for intervening related to preserving the person's future life chances: restraining him now, in order to permit him later to pursue his (apparent) longer-term goals.[24] This ground for intervention is plainly a *future*-oriented one; and this orientation to the future makes the criminal sanction – with its strong retrospective and censuring features – an inappropriate form of response.

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Consider our just-cited case of the recently-fired person who tries to kill himself. The basis for any intervention, it was earlier suggested (I.), is to give him time to reconsider and reflect on his options. But such reasons relate to preserving his life-chances in future, not to give recognition to the reprehensibleness of his past conduct. Hence a censure-oriented response, with its emphasis on the wrongfulness of his past behaviour, is out of place.

This point is brought into sharp relief when one considers the quantum of intervention. Because of the criminal sanction's censuring features, the quantum of intervention should strongly be constrained by considerations of desert-based proportionality: that is, the degree of harmfulness and culpability of the criminal conduct.[25]. Suppose that D-l stabs someone, and D-2 drives recklessly under the influence of alcohol but does not actually injure anyone. In these cases, the proportionate sentence for D-1 should be significantly greater than that for D-2, because the harm was greater (actual injury vs. risk), and the degree of culpability was also greater (intent vs. gross negligence).[26] But carrying this analysis over to self-harm would make it much more strained. Suppose D-3 stabs himself, but D-4 endangers his owhealth by habitually drinking too much. Should the state (if it may intervene at all) necessarily intervene more stringently against D-3, the attempted suicide, because the degree of harmfulness and 'culpability' of his conduct was greater? Hardly so. Were it appropriate for the state to intervene coercively, the aim should be a prospective one, and the emphasis might well be reversed: D-3, the suicide attempter, might be dealt with by holding him for a short a 'cooling off' period, whereas D-4, the alchoholic, - to the extent it were appropriate to deal coercively with his alcoholism - might possibly require a somewhat more protracted course of residential treatment.

Might it not be argued, however, that self-destructive behaviour may sometimes be reprehensible and thus worthy of censure? Possibly it might, when the consequences of the behaviour are irreversible, and the grounds for the attempted self-harm appear manifestly

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short-sighted and unreasonable. Consider an extreme case: that of the patriotic pop-music enthusiast, who decides that he will kill himself if his country gets 0 points (as England did recently) in the Eurovision Song Contest. This is doubtless a ridiculous reason for his attempt at self-annihilation, and the person (supposing he survives) could rightly be criticised by friends and acquaintances for thus trying to 'throw away' his personal resources and prospects. But such private judgements of blame cannot be made the basis of a state scheme of penal censure, if the principle of self-determination is taken seriously: the legitimacy of his reasons for his past self-regarding actions should be a matter for himself, not the state to decide. State coercive intervention, under the limited-paternalism scheme discussed above (I.), could only be permissible were it to accord with his own apparent longer range goals and thus help preserve his ability to achieve these goals. This, however, is clearly a matter of safeguarding his future interests, not expressing penal censure for wrongful and self-destructive past choices.

My conclusion is that *criminal sanctions are not an appropriate way of intervening coercively to prevent the actor from injuring himself.* Thus even in cases where a limited paternalism might be deemed to justify state intervention of a civil character, the criminal law is not the appropriate mechanism.

This argument against criminalisation of self-damaging conduct takes as its starting point the 'limited paternalism' perspective of *Kleinig* and *Gerald Dworkin,*[27] which does permit coercive state intervention but only in narrowly defined situations -- namely, when the intervention would accord with the person's apparent longer-term goals. What, however, if one were to adopt a somewhat more permissive standard of paternalistic intervention? Suppose, for example, that intervention over a significantly longer (but not indefinite) period were viewed as permissible, in situations where the person's self-damaging habits appear to have beclouded his ability to pursue his longer-range interests -- as some may argue should be

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the case for certain kinds of drug abusers.[28] I would be sceptical of such an extension of the grounds for paternalistic intervention.[29] But even if this wider ambit of paternalistic interventions were deemed appropriate, its aim would still concern preserving the person's subsequent life-chances. This would remain a future-oriented orientation, which would comport badly with the retrospective and blaming focus of the criminal sanction. Thus *punishing* such persons would remain unjustifiable, even if a broader ambit of 'civil' (that is, non-criminal) intervention were thought warranted.

III. Ulterior grounds for intervention?

What practical difference would such a principle against direct-paternalism make in criminal law? It is sometimes suggested most seemingly paternalistic prohibitions law can be rationalized on other grounds – particularly, on grounds of the Harm Principle.[30] Such claims, however, do not stand up well under scrutiny. Let me consider three examples.

Duty of rescue? Under German law (Sec.323c of the Penal Code) a person has the duty of rescuing someone in danger. The public rescue services are also called upon to provide assistance to the person. To what extent do these requirements – or the conceptions underlying them – support coercive state intervention to prevent in attempts at self-injury?

In the normal situation of rescue, the victim emphatically does not wish to be in danger: he is in the river, at risk of drowning, because he was pushed or accidentally fell in. Such situations involve something akin to the Harm Principle. If the victim was pushed, he has been the victim of the instigator's harmful behaviour, the question is whether a bystander (who was not responsible for the initial act of putting the victim at risk) still has an obligation to provide provide succour. German law (as just noted) holds that he does, based on duties of altruism (or in the German terminology, 'solidarity') among citizens; English law holds he does not[31].

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With attempted self-harm, the situation is different.. The suicide attempter is in danger because he has decided to be. He has *jumped* in the river, for example. Rescuing him, in this situation, is plainly a paternalistic intervention: saving him notwithstanding his own wish to end his life. Does this mean that no rescue attempt should be permissible? Not necessarily, In the immediate situation, it may be impossible to ascertain his preference for living or dying, and then rescue becomes appropriate because he may in fact wish to survive. And even if it does appear that he wants to die, the limited paternalism discussed in I. above could allow rescue-type interventions – and possibly even a brief subsequent period of holding the person for reconsideration and reflection. What is to be emphasized, however, is that the attempt at *self*-injury alters the rationale. The normal basis for the duty of rescue, with its derivation from prevention of harm to others, no longer would sustain intervention. The type and extent of intervention should, instead, be governed by the paternalistic considerations of the kind discussed in I. above.

'Harm' to the state's health-protection system? It has also been argued that attempts at self-injury are actually a kind of 'harm'of to others under the Harm Principle, because their indirect financial effects – for example, their effects on the state's rescue and health- funding system. The person who jumps off the bridge affects others adversely, because he draws upon these costly, tax-supported services. But it must be borne in mind that he does not wish to be rescued – he is trying to kill himself. Must he be rescued notwithstanding his wishes? The expenditure of state money occurs only if the state decides to extend its services to those who voluntarily do themselves injury. Should it be decided that such persons must, in their own interests, receive the benefit of such services, this is paternalism, and should be judged in its own terms. The intervention cannot be justified simply by resort to the Harm Principle.

'Remote' harms? It is sometimes also suggested that many seemingly paternalistic prohibitions, such as those related to drug possession, actually generate long-run harmful

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effects – because they initiate a chain of bad consequences which ends with acts of victimization of other persons. Drug prohibitions, it is thus argued, do not need rely on paternalist claims to be sustainable. Drug use should be proscribed because it leads to further criminogenic conditions which, in turn, generate classically harmful behaviour such as increased levels of theft, assault, vandalism etc. This, however, involves 'intervening-choice' liability: the conduct (in this case, drug possession) is proscribed because of its tendency to induce another actor, or the same actor at another time, to choose to engage in injurious conduct.

The prima-facie objection to such intervening choice liability – as I have argued elsewhere[32] –is that the eventual harmful outcome *is not the initial actor's responsibility;* and because fault is not involved, it is inappropriate to levy the censuring response of the criminal law. This is most obviously the case where the chain of consequences involve intervening actors. Here the actor's own behaviour (e.g, his drug possession and use) is not per se injurious to others, It is criminalized only because intervening actors, whom the original actor does not control, may be led to engage in further behaviour that does or risks the harm. To impose criminal liability on the original actor, in such situations, ignores the principle of *Eigenverantwortung*: the separability of persons as choosing agents. (Comparable objections hold in situations where the same actor but subsequent choices are involved. [33]) Liability is appropriate for the original actor only if he does something that provides 'normative involvement' in the subsequent choices: if he, in his original conduct, does something which affirms or underwrites the subsequent actors' choices [35].

It is therefore my view that the status of direct paternalism in the criminal law *can* make a difference in deciding what prohibitions should be sustainable. Paternalistic arguments cannot be replaced effortlessly by claims about harm to others, or suchlike.

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IV. An exception for *de* minimis interventions?

The view I have just set forth in II. above -- of largely ruling out direct paternalism in the criminal law -- raises the question of the appropriateness of criminal prohibitions with restricted sanctions: for example, seatbelt or motorcycle-helmet-laws. Here, self-injurious conduct is dealt with through criminal sanctions, but the sanctions are limited – say, to fines, or suspension of drivers-licenses. If my foregoing arguments (in II) are correct – which focus on the censuring features of the sanction and the inappropriateness of penal censure for self-damaging conduct – it would then be possible to argue that, in virtue of the low levels of the sanctions involved in seat-belt-type laws, no true censuring response (of the kind characterised by the criminal law) is involved. In German law, such conduct would be deemed violations (*Ordnungswidrigkeiten)*, and hence arguably not conveying true penal censure. How sustainable this argument is, and with its limits are, is a matter for further discussion.

Endnotes

1. *Husak,* 1992. There might, however, be a number of other possible rationales for drug prohibitions that would need to be considered, including prevention of 'remote harms' to other persons. Such questions, of paternalism versus other possible rationales for intervention, will be discussed in IV, below.

2. *Roxin, 2005,* S. 23f.

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3. German legal doctrine, however, addresses extensively a number of specific penal-law contexts (a notable one being that of assisted suicide in medical contexts) where issues of indirect paternalism arise.

4. *Mill*, 1859, Kap. 4. The 'Harm Principle' is a term (subsequently coined) to denote Mill's principle that harm to others should be the main (or in his view, the only) basis for criminalizing conduct; see, *Feinberg,* 1984, S. 31 ff; v*on Hirsch,* 2005, Kap.3; *Seher*, 2000.

5. *Feinberg*, 1986, Kap. 17-19; *G. Dworkin*, 1972; *Kleinig*, 1983, S.67f; *Raz*, 1986, Kap. 16.

6. *Wolff*, this volume.

7. *Feinberg* (Fn. 5), Kap. 19.

8. Id.

9. *Kleinig* (Fn.5); *G. Dworkin* (Fn.5).

10. *Kleinig* (Fn.5), 67f.

11. Compare text accompanying Fn.7.

12. *Kleinig,* (Fn. 5), 67f.

13. *G. Dworkin* (Fn.5).

14. Id.. This last condition, concerning limits on repetitions of the intervention, has been added by the present author. Without such a limit, the person could be permanently precluded from carrying out his wishes, because the state could intrude to prevent him every time he tries.

15.This term is drawn from *Feinberg* (Fn. 5), Kap. 1. There, he distinguishes 'hard' from 'soft' paternalism. The latter refers to intervention to prevent self-harm when the actor is not fully in a position to exercise choice: for example, is suffering from a mental disability. 'Hard' paternalism refers to coercion to prevent self-harm committed by a person who is an adult, fully *compos mentis,* and suffers from no further disabilities that would impede his capacity for rational choice.

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16. For discussion of this argument, see *Husak* (Fn.1), S.76 f.

17. For useful survey of this discussion, see *Kuehl,* 2005.

18. *Hoernle/von Hirsch,* 1995, reprinted in *von Hirsch,* 2005, Kap 1. Further, on the relation of this conception of penal censure to the justification for the institution of punishment, see *von Hirsch,* 2005, Kap. 2; *von Hirsch/Ashworth,* 2005, Kap. 2; *Roxin*, in Neumann/Prittwitz, 2005, S. 177 f; *Roxin,* 2005, S.95f.

19. See citations in Fn. 18, and particularly *von Hirsch*, 2005, Kap. 2

20. Id..

21. S. 63f.

22. For an argument why a censure-based justification for the existence of the criminal sanction might still have certain preventive elements as well, see id., S. 54 f; see also *Roxin* (Fn. 2), S.95f; *Roxin* (Fn. 18), S.177f.

23. For discussion of why proportionate sentences may, to a limited degree, take preventive (most notably, rehabilitative) considerations into account, see *von Hirsch* (Fn. 19), S. 153f und more fully, *von Hirsch/Ashworth* (Fn. 18), S.140.

24. See text at Fn.9.

25. See e.g., *von Hirsch* Fn. 18), S. 146f; *Hoernle* , 1999, Teil 3.

26. See Fn. 23.

27. See Fn. 5.

28. For a critical discussion of this possibility, see *Husak* (Fn.1), S. __.

29. See the reasons discussed in text at Fn. ___

30. Harcourt 1999.

31. Simester/Sullivan 2004, S. 72

32. *von Hirsch,* in Simester/Smith, 199, S.269ff; *Wohlers*, 2000, 305f.; *von Hirsch/Wohlers*, in Hefendehl/von Hirsch/Wohlers, 2003, S. 196ff:

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von Hirsch, 2005, Kap. 4.

33. Id.

35. See citations in Fn. 4.

35. See more fully, ders.

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* A more thorough analysis of this topic can be found in the German-language book M. Anderheiden, P. Buerkli, et al, *Paternalismus im Recht,* (Tuebingen, Mohr-Siebeck), (2006).

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