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The crime and punishment of states / Gabriella Blum

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Abstract:	The moral rhetoric of "crime" and "punishment" of states has been excised from mainstream international law, and replaced with an amoral rhetoric of "threat" and "prevention." Today, individuals alone are subject to international punishment, while states are subject only to preventive, regulatory or enforcement measures. Through a historical survey of the shift from punishment to prevention in various spheres of international law, the preference for prevention has been motivated by a strong preference for peace over justice as the ultimate goal of the international system. Drawing on debates over preventive sanctions in U.S. domestic criminal law, it is argued that even though prevention may sound like a less oppressive policy than punishment, it may in fact be far less constrained and more ruthless. At the same time, a preventive paradigm might be paralyzed from operating where there is a crime that does not immediately threaten other international actors. The author demonstrates both possibilities using the contemporary debates over anticipatory self-defense and humanitarian intervention.
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