

WHY THERE IS NO DEFENSE OF PUNITIVE DAMAGES

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ABSTRACT

This paper is a response to the comments by David Luban and Theodore Eisenberg on my article on punitive damages to be published in the Georgetown Law Journal (1998) and entitled “The Social Costs of Punitive Damages against Corporations in Environmental and Safety Tort.” Neither of these authors presents any evidence indicating that there is a deterrent effect of punitive damages. They suggest, however, that there could be retribution objectives or other rationales for punitive damages. In addition, they claim that punitive damages are predictable and that cognitive biases may not tilt juries against corporations. This paper reviews these diverse arguments on behalf of punitive damages and concludes that they are without foundation. Indeed, the evidence on the predictability of punitive damages suggests that there is no evidence in the literature that would enable firms to distinguish the different expected punitive damages costs associated with alternative safety choices. This paper also includes sensitivity tests to ascertain whether classifying Louisiana as a no-punitive damages state alters the assessment of the deterrent effects.

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