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Criminology Assignment

Question 1:

The phrase “Just desert” can be said to mean a punishment or reward that is considered to be what the recipient deserved. The phrase represents the idea of a fair and appropriate punishment related to the severity of the crime that was committed. Just desert is sometimes referred to as the ‘retribution’ type of sentencing. In other words, one should be punished simply because one committed a crime.

Just desert has also been referred to as a theory which is designed to promote equality and fairness of sentencing for the imposition of a sentence. The principle behind just desert is that the punishment should fit the crime. When such an instance occurs, it is said that the offender has received their ‘just deserts’. Just desert also refers to the retribution punishment that is deserved for the seriousness of the crime.

The theory of just desert is retrospective rather than prospective¹. The punisher need not be concerned with future outcomes, only with providing punishment appropriate to the given harm. Although it is certainly preferable that the punishment serve a secondary function of inhibiting future crimes, its justification lies in righting a wrong not in achieving some future benefit. The central precept of the theory is that the punishment be proportionate to the harm. Therefore, the task of a just desert theorist is to assess the magnitude of the harm and to devise a punishment that is proportionate in severity.

This writer is of the opinion that what motivates the just desert theory of punishment is the translation of the call for just punishments into a workable scheme to guide sentencing policy and individual sentencing decisions. The desert theory gives conceptions of justice a central role in sentencing policy through the mechanism of proportionality which is intended to ensure the penal sanctions fairly reflect the culpability of an offender and the harmfulness of his offence.

This theory appears to rely upon an understanding of punishment broad enough to encompass at least foreseeable, substantial risks of serious harm, proximately caused by the state in the context of incarceration. By this, the sentencing judge can take steps to ensure that the chosen penalty as experienced will equal the degree of condemnation actually warranted by an offender’s criminal act.

¹ Paul H. Robinson, ‘why do we punish? Deterrence and just deserts as motives for punishment’ (2002) <https://www.researchgate.net/publication/11232979> accessed 25th April, 2020

Of the myriad actors in the criminal justice system, the sentencing judge is the institutional player charged with selecting and conveying, within constraints established by the legislature and possibly a sentencing commission, the type and length of sentence that constitutes an offender's just desert. This is because the judge typically cannot select the facility where an offender will serve a term of incarceration. He possesses only a limited ability to ensure that an offender's ultimate punishment as executed is not harsher than intended.

Also, some just desert advocates argue that incarceration should be reserved only for the most serious violent and property offenders, in those instances where the individual clearly poses a threat to others. Reduced reliance upon incarceration as an appropriate sanction is justified by desert advocates on the ground that depriving an individual of his/her liberty for even a short period of time is a very serious sanction and as such, should be reserved for only the most serious offenders. Thus they believe that with reduced reliance upon the penal sanction, increased use of community based correctional resources would occur and a reduction in prison overcrowding could well result.²

In conclusion, this writer is of the view that the 'just desert' theory is just an attempt to blend justice with fairness. Its motive is to focus on the past behavior and record of the offender as well as the seriousness of the offence that has been committed to determine the right punishment that will be suitable for him/her. By focusing on the past behavior of the offender, punishment is not based on the predictions of likelihood of recidivism or on how long it will take to change the criminal. Instead, the seriousness of the offence and past records of the offender as stated earlier, becomes the substantive basis for determining the appropriate punishment.

This writer is also of the view that the policies that are based on the just desert theory attempts to limit judicial sentencing discretion and reduce the likelihood of disparity where two individuals convicted of the same offence receive not only the same sanction but also serve the same period of time. The focus then is on the criminal act and not on the criminal as is true of other policies. This is why Longshore, a just desert theorist in 1984 stated that just deserts does not consider diagnosis and treatment, predictions of future criminal activity, deterrence of criminals or potential criminals as elements of the guiding philosophy in sentencing decisions. Instead, it is the equitable distribution of punishment among offenders that is of key importance.

Question 2 (a):

A capital offender is someone who has been found guilty of a capital offence. A capital offence is any criminal charge which is punishable by the death penalty and may include the offences of murder and treason. This death penalty is an institutionalized practice designed to result in

² John F. Sloan, 'just desert: the severity of punishment and judicial sentencing decisions', March 1990
<https://www.researchgate.net/publication/249719667> accessed 25th April, 2020

deliberately executing persons in response to actual or supposed misconduct and following an authorized, rule governed process to conclude that the person is responsible for violating norms that warrant execution. Death penalty also known as capital punishment is therefore the supreme sacrifice paid by an offender who has been adjudged guilty of a capital offence by a court of competent jurisdiction.

As a criminology student, this writer is of the opinion that the most effective way of punishing and treating a capital offender can be done only through the capital punishment which is referred to as **death penalty**. This is because the death sentence is seen to be the only proportionate punishment to the crime committed particularly where life has been lost.

This is based on the feeling that the offenders who have taken the life of another human being must also not be allowed to live. Why should a murderer be allowed to live out the rest of their lives in relative comfort paid for by the public? The idea to continue to house, clothe and feed them for the remainder of their natural life at taxpayer expense makes a mockery of justice. They gave up their rights to life when they took the life of another person and justice can only be served by their lawful execution.

Also, it is a just form of retribution, expressing and reinforcing the moral indignation not only of the victim's relatives but of law abiding citizens in general. The basic argument behind retribution and its punishment is that all guilty people deserve to be punished in proportion to the severity of their crime. This argument states that the real justice requires people to suffer for their wrongdoing and to suffer in a way appropriate for the crime they committed. Therefore, each criminal should get what their crime deserves and in the case of a murderer, what their crime deserves is death.

Furthermore, this writer supports the death sentence because of its incapacitating power; its ability to stop the criminal once and for all from committing more crimes since when the criminal is killed as ordered by the courts, he or she will never come back into the community to commit the same crime again. This is unlike the case of imprisonment whereby such vicious and notorious criminals will one day be released back into the community to cause more harm or in the case such offenders are imprisoned for life, be released into the community due to the influence of a presidential pardon.

Also, the death sentence serves as a form of deterrence. Deterrence is probably the most commonly expressed rationale for the death penalty.³ The essence of the theory is that the threat of being executed in the future will be sufficient to cause a significant number of people to refrain from committing a heinous crime they had otherwise planned. However, deterrence is not principally concerned with the prevention of further killing by an already convicted death-penalty defendant.

Finally, the punishment of death sentence for capital offenders serves as a form of closure to the family of the victims and the society at large. This is because the family of the victims can finally

³ DPIC podcast: discussions with DPIC, <www.deathpenaltyinfo.org>

put the crime behind them and move on, knowing that there is no possibility of the person who took away their loved one ever leaving prison and walking free and the society can feel free to go on with their daily activities knowing that they are safe and protected.

In addition to this, this writer is of the opinion that the only treatment available to the capital offender is that of religious rehabilitation. The criminal will be given the opportunity to repent and change their ways before their death through religious counseling and rehabilitation. This can help strengthen their faith and help them repent before their death.

Question 2 (b):

No, it will not and this is simply because of the difference in the nature of the offences. Simple offences are less serious offences and are referred to offences which are punishable on summary conviction before a Magistrate Court, by fine, imprisonment or otherwise and they include contempt of court, as well as the wearing and selling of army uniforms.

Unlike other offences such as capital offences which can be tried in the High Courts and Supreme Courts, simple offences can be tried only in the Magistrate Courts because of its simple nature. Offenders who have been found guilty of a simple offence will be liable to not less than six months' imprisonment or a payment of fine and in some cases will be liable to both.

Imprisonment is said to be the specific state of being physically incarcerated or confined. It is the act of taking away someone's freedom, though this does not always mean that the person is physically locked up in a jail cell.⁴ Fines on the other hand refer to monetary charges imposed upon individuals who have been convicted of a crime or a lesser offense⁵. This has been provided for by the following sections: **S. 382 Criminal Procedure Act, S.316 Administration of Criminal Justice Law 2011, S. 23 Criminal Procedure Code** which provides for the discretionary power of the court to impose fines in lieu of punishment.

Furthermore, they may also be liable to the punishment of probation or a community service order. Probation can be referred to as a period of supervision over an offender, ordered by the court instead of serving time in prison. A community service order on the other hand can also be referred to as a sentencing options for person convicted of crimes in which the court orders the defendant to perform a number of hours of unpaid work for the benefit of the public.

Also, there are a lot of treatments that will be available to the offender who has been found guilty of a simple offence. The most important is that of rehabilitating the offenders. It is a system designed to give guidance and assistance to the criminals to enable them become sound members of the society while spending normal social lives. It also involves the process of re-educating and

⁴ Content team, Legal dictionary, <www.legaldictionary.net> accessed 27th April, 2020.

⁵ <legal-dictionary.the freedictionary.com> accessed 27th April, 2020.

restraining those who commit crime. It generally involves psychological approaches which target the cognitive distortions associated with specific types of crimes committed by particular offenders but may also involve more general education such as literacy skills and work training.

Other forms of treatment available to the offender includes religious care, education, vocational guidance and training, social casework, employment counseling, physical development and strengthening of the moral character in accordance with the individual needs of each prisoner, taking into account his social and criminal history, his physical and mental capacities and aptitudes, his personal temperament, the length of his sentence and his prospects after release.