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LPI 304

Question

1) What motivates the 'just desert' principle of punishment? Discuss

2) A) As a criminology student, what do you think is the most effective way of punishing and treating capital offenders. Give reason(s) for your answer

b) Will your answer be the same if the accused was charged for a simple offence?

Note: Maximum of 5 pages. (Font: Times New Roman)

1. The Just Desert Principle

This principle states that the punishment is to fit the crime the offender committed. Basically, one should be punished because of the crime he or she committed. Sometimes it is referred to as the (Retributive Theory). According to Just Desert, those who commit the same crime get awarded with the same punishment. Just deserts, as a philosophy of punishment, argues that criminal sanctions should be commensurate with the seriousness of the offence. A principal rationale of just deserts is proportional sentencing, in which equal punishment for equal crime means not that the punishment should be exactly like the crime, but that the ratios of sanction severity should have a corresponding set of ratios of crime seriousness. This theory is that punishment should be determinate. Meaning that if the prescribed punishment for a crime is 8 years imprisonment, the court should not be able sentence the offender to any punishment that is more or less more or less. It doesn't support the three strike rule, for example, if Steve was caught robbing from a shop and did it for the third time, according to three strike rule, he would be sent away for a long time, but Just Desert principle opines that he should serve the punishment prescribed by the appropriate written law.

The main motive behind the Just Desert principle is to prevent those offenders from committing crimes in the future. The just desert perspective is of the view that punishment is a valuable and just end to those who have been found guilty of committing a crime. In the late 18th century, Immanuel Kant argued that "punishment can never be administered merely as a means for promoting another good" and that punishment ought to be "pronounced over all criminals proportionate to their internal wickedness." Typically, the future benefit for punishment is to avoid or reduce future harms from occurring, and as such this type of approach is referred to as utilitarian. The concept of just desert provides a check on the power of the state in determining the amounts of punishment necessary to pay the price of crime, no more, no less. Without these checks, the society could punish the loved ones of the criminal instead of the criminal himself, and the state won't prosecute those who took revenge, instead, they'll focus their attention on the person who violated the law.

In conclusion. Just desert is used to deter people from committing crime, it also makes the offender suffer for the pain he or she caused to the victim or their family.

2. As a criminology student, what do you think is the most effective way of punishing and treating capital offenders? Give reason(s) for your answer

b) Will your answer be the same if the accused was charged for a simple offence?

- a. As a criminology student, I think the most effective way of punishing a capital offender is by incapacitating him or her. A capital offence is a felony. A felony according to Black's Law Dictionary is "a serious crime usually punishable by imprisonment for more than one year or by death. It involves capital punishment, sending an offender to prison, or possibly restricting their freedom in the community, to protect society and prevent that person from committing further crimes. Incapacitation is also utilized, for example, in cases involving offenders who are deemed dangerous (such as those guilty of murder) and likely to commit grave and violent crimes unless restrained. Incarceration, as the primary mechanism for incapacitation, is also used as to try to deter future offending. This can be done in various ways, but the most popular and effective one is Incarceration. Incarceration can be defined as the state of being imprisoned and confined to a particular space or area. In most areas of the law, various types of institutions are used to incarcerate persons convicted of crime. There are state prisons and local jails for adults convicted in state courts; federal prisons for persons convicted in federal courts; and various types of residential institutions for example, training schools for juveniles found delinquent in juvenile courts. Incarcerating prisoners involves physically removing them from the society against which they offended or endangered. While incarcerated, an offender is restrained from committing crimes, at least outside the prison walls, and thus it is said that prisons incapacitate offenders from "additional mischief," as William Blackstone once put it. The overall aim of incapacitation is to prevent the most dangerous or prolific offenders from reoffending in the community. The aim of sentencing an offender to prison for a long term is to prevent recidivism. The type of penitentiary centre the offender would be taken to would be based on the degree of the offence the person committed. According to this theory, punishment is not concerned with the nature of the offender, as is the case with rehabilitation, or with the nature of the offence, as is the case with retribution, rather, punishment is justified by the risk individuals are believed to pose to society in the future. As a result, individuals can be punished for "hypothetical" crimes. In other words, they can be incarcerated, not for crimes they have actually committed but for crimes it is anticipated or assumed they will commit. The term of ones incarceration depends on the crime the person committed.

The three strike rule should be used, this rule makes it possible for an offender to be sentenced to life imprisonment despite what the prescribed punishment the offender committed. The three strike rule entails that when an offender who has already been convicted twice for various offences and is released back into the society and commits more crimes, he or she would be sentenced to prison for life.

While serving their jail term, prisoners should be reformed so that those who would return to society can have a better outlook on the society and better opportunities to get a job when he gets out. Without being reformed in prison, the tendency of them returning to the life of crime after being released is high. While in prison, prisoners should have mandatory counselling sessions, training areas, places where they can learn new skills, etc.

In the worst case scenario, a person found guilty of committing a capital offence can be sentenced to death if he is seen to be a major threat to the society at large and even those in prison. The death penalty is usually given to those who committed the offence of murder. However, the death penalty isn't given unless it is necessary. Incarcerating individuals found guilty of a crime would deter others from committing crimes that would lead to capital punishment. Incapacitating an offender can also be in form of amputation of a body part of the offender.

b. No, my answer will not be the same because if the offence was a simple one. I believe that a person who commits a simple offence should not be incarcerated, instead, he should be rehabilitated, or he should serve a less severe punishment like community service, probation, house arrest, etc. A simple offence is a minor, petty or not-so-serious crimes which extreme punishment attract imprisonment up to six months in a prison ([see section 3 of the criminal code](#)). In Nigeria, some of the offences classified under simple offences include; petty theft of useless articles, repeated theft of the same articles, offences committed after a record of ill-health, contravention of local bye-laws, noise pollution, being disorderly and engaging in acts or conduct likely to cause a breach of the peace, attempt to commit suicide, desertion of a pregnant woman/girl and other minor sanitation offences. Less severe forms of punishments should be used on those who commit simple offences, such as, imposition of fines, imprisonment, caning/flogging, deportation, parole, correctional orders, restitution, curfew orders, binding-over orders, conditional discharge, probation order, compensation or restitution, payment of prosecution costs, forfeiture, deposit of money for bail, victim offender mediation, community service order and other restorative justice measures. All these are in line with the United Nations Standard Minimum Rules for Non-Custodial Measures of 1990 also known as Tokyo Rules, whose basic principles are to promote greater community involvement in the management of criminal justice taking into account the political, economic, social and cultural conditions of each country. In modern times, non-custodial punishments have been put in place because the criminal justice system has discovered that incarcerating offenders isn't the only way to effectively punish offenders. The ideology behind the Tokyo rules is to correct the, convince him of how guilty he is, and eventually, reform him.

Community service orders amongst other less severe punishments should be given to offenders who commit simple offences. The court should consider how serious an offence is before sentencing the offender. In [Onyilokun v COP \(1981\) 2 NLR](#) the court held that in sentencing, a trial court is bound to consider many factors such as the seriousness or otherwise of the offence. [Section 460 of the Administration of Criminal Justice Act 2015](#) provides that the aim of community service order is to reduce prison congestion, rehabilitate prisoners

for productive purposes and prevent convicts from mixing with tough criminals. Countries all over the world have adopted non-custodial methods of punishment, including Nigeria, USA, UK, etc.

Rehabilitation can be defined as the idea that the purpose of punishment is to apply treatment and training to the offender so that he is made capable of returning to society and functioning as a law-abiding member of the community. The goal of rehabilitation is to prevent future crime by giving offenders the ability to succeed within the confines of the law. Rehabilitative measures for criminal offenders usually include treatment for afflictions such as mental illness, chemical dependency, and chronic violent behaviour. Rehabilitation also includes the use of educational programs that give offenders the knowledge and skills needed to compete in the job market. Rehabilitation gives the offender a good chance of being a better person after the rehabilitative process is over.

These non-‘custodial methods of punishment creates an opportunity for convicts to re-orientate their mind sets and amend their ways for the better. It will correct, redeem, rehabilitate, regenerate, educate and restore the offender to the status of a law-abiding citizen. Therefore, a creative sentencing is just, more human and more effective than incarceration.

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