NAME: MORDECAI WENECHIZI VICTORIA

MATRIC NUMBER: 17/LAW01/176

COURSE TITLE: CRIMINOLOGY II

COURSE CODE: LPI 304

LEVEL: 300

Assignment

1. What motivates the “just desert” principle of punishment? Discuss.
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 person was charged for a simple offence?

Answer

1. JUST DESERT PRINCIPLE OF PUNISHMENT

We can’t talk about the just desert principle of punishment without mentioning the retributive theory. Retribution is the most ancient mode of punishment and it means giving offenders the punishment they deserve. It was prevailed at times when private vengeance would take place. Retribution is based on the concept of ***lex talionis*** that is, the law of retaliation. At its core is the principle of equal and direct retribution, as expressed in ***Exodus 21:24*** as “an eye for an eye”. Destroying the eye of a person of equal social standing meant that one’s own eye would be put out. Under retribution, both elements; the actus reus (a guilty act) and mens rea(a guilty state of mind) must be present before punishment can be imposed. Under retribution, it is also important that offenders actually be guilty of a crime for which a penalty has been imposed. Retribution also forbids punishment of offenders who cannot be held responsible for their actions like insane and disabled individuals, for example, should not be penalized for acts that results from mental illness or disability. Under retribution, it is improper to allow guilty individuals to go unpunished. Because punishment must be deserved and follow culpable actions, it is inappropriate to deny individuals the consequences of their actions.

Under the retributive theory, there is a concept of “just desert” also known as the “doctrine of proportionality or proportionality principle”. Just desert, as a philosophy of punishment, argues that criminal sanctions should be commensurate with the seriousness of the offence; that is it advocates that punishment should be proportionate to the seriousness of the offence and criminals should get exactly what they deserve, no more, no less. It is a theory designed to promote fairness and equality of sentencing for the imposition of a sentence; fair and appropriate punishment related to the severity of the crime committed. The principle behind just desert is that the punishment should fit the crime. When such instance occurs, it is said that the offender has received their just deserts. One popular justification for punishment is the just deserts rationale: A person deserves punishment proportionate to the moral wrong committed. The theory of just deserts is retrospective rather than prospective. The punisher need not to 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 harmdoing, its justification lies in righting a wrong, not in achieving some future benefit. The central precept of just deserts theory is that the punishment be proportionate to the harm. Kant(1952) recommended censure proportionate to a perpetrator’s internal wickedness, a quantity that may be approximated by society’s sense of moral outrage over the crime.

There are several core components of an offence that determine moral outrage and the magnitude of punishment according to just deserts theory. It is these factors that should trigger the motive to punish if people adhere to a just deserts theory of punishment. First and perhaps the most important is the magnitude of intended harm. This is indexed typically by the type of crime and the degree to which it offends the sensibilities of citizens. Second, mitigating or exacerbating circumstances often affect the moral outrage felt by citizens and hence, the magnitude of punishment that is called for under the just deserts theory. Just desert theory is highly sensitive to such contextual factors that mitigate or exacerbate the degree to which a perpetrator deserves punishment. Just deserts is an attempt to blend justice with fairness. By focusing on the past behavior of the offender, punishment is not based on predictions of the likelihood of recidivism or on how long it will take to change the offender. Instead, the seriousness of the offence and past record of offending become basis for determining appropriate punishment. Policies that are based in just deserts attempt to limit judicial sentencing discretion, and advocate the abolition of parole boards. Just deserts does not consider diagnosis and treatment, predictions of future criminal activity, or deterrence of criminals or potential criminals as elements of the guiding philosophy in sentencing decisions. Instead the equitable distribution of punishment among offenders is of key importance.

In conclusion, according to the just deserts theory, the punishment of the offender must be fairly and equally apportioned to all individuals who commit the same crimes. This can sometimes be controversial area of the theory as the circumstances surrounding the commission of crimes vary; therefore the equality of the punishment can be a tricky area. In reality the doctrine of proportionality is difficult to achieve. There is no way that the various legislatures can go about objectively measuring criminal culpability. The process is one of legislative consensus and is imprecise at best. A few critics of retribution note that doing unto others what they do unto you is not as fair as it may initially seem and that it is not feasible to establish a satisfactory scale of punishments for crimes.

1. As a criminology student, the most effective way of punishing and treating capital offenders is death penalty or death sentence. Firstly, a capital offender is someone charged with a capital offence. The term capital offense is used to describe a crime that is so serious that the death penalty may be considered an adequate punishment. Capital offence according to the Black’s Law Dictionary 10thed. Pg 1250, is a crime which the death penalty may be imposed also termed capital crime. Capital punishment has been defined as the prescribed treatment meted to an offender who has been adjudged guilty of a capital offense. According to the ***Black’s Law Dictionary 10th ed. Pg252,*** capital punishment is a criminal penalty that involves killing the perpetrator; the sentence of death for a serious crime also termed death penalty. In my opinion, a capital offender deserves a capital punishment which is the death penalty. Offences punishable by death are; murder S.319 of the Criminal Code, Treason S.37(1) of the Criminal Code and Armed robbery S.1 of the Robbery and Firearms Special Provisions Act 2004. There are two sets of people exempted from death penalty. According to S.368(2) Criminal Procedure Act, a pregnant woman cannot be sentenced to death but only life imprisonment. Young persons e.g under the age of 17years cannot be sentenced to death S.368(3) of the Criminal Procedure Act. The modes of execution are; lethal injection, by hanging and electrocution and firing squad. Under lethal injection the most popular is the three drug combination. The first drug, sodium thiopental renders the prisoner unconscious when administered. The second drug pancuronium bromide is a muscle relaxant and it paralyzes the diaphragm and lungs of the offender. The third drug, potassium chloride causes cardiac arrest.

The reasons why death penalty is the most effective for treating and punishing capital offenders is not far-fetched.

1. Justice: An eye for an eye. The death penalty is reserved for the most heinous of crimes, such as murder. Why should a murderer be allowed to live out the rest of their lives in relative comfort, paid for by the public? To continue to house, clothe and feed them for the remainder of their natural life at taxpayer expense makes mockery of justice. They gave up their right to life when they took the life of another person, and justice can only be served y their lawful execution.
2. Deterrence: The death penalty save lives. Would-be murderers have a better reason to think twice if they know their life is on the line. Ultimately, only the most severe punishment possible will dissuade the most violent crimes. Only then will it be clear that good guys aren’t messing around, because taking an innocent life would mean forfeiting your own. Without the death penalty, some criminals would continue to commit crimes. It deters prisoners who are already serving life sentences in jail from committing more serious offenses.
3. Closure: The execution of a criminal is the best way to provide closure to the family of their victim. They can finally 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. It appeases the victims or the victims’ families.
4. Protection of the public: If there was no capital punishment, people know they wouldn’t be executed for murder so they would be less hesitant. Therefore, capital punishment serves as an effective deterrent for crime.
5. Common sense tells us that the most frightening thing for a human being is to lose their life, therefore the death penalty is the best deterrent when it comes to discouraging people from carrying out the worst crimes.

In conclusion, capital punishment is commonly referred to as the death penalty; a criminal is usually punished by the state by being put to death for crimes they have committed. The death penalty is the judicial decree made by court of law and execution is the actual enforcement of the decree. Crimes punished by death penalty are usually referred to as capital crimes/ offenses.

1. No, my answer will not be the same if the accused was charged for a simple offence. What is a simple offence? All other offences other than felonies and misdemeanours are simple offences, that is offences punishable with less than 6months imprisonment. Examples of simple offences are; Contempt of court S.133 of the Criminal Code, Obstructing postal mails S.172 of the Criminal Code, Unlawful wearing of army uniform S.110 of the Criminal Code, Selling army uniform to unauthorized persons S.111 of the Criminal Code. Therefore, if the accused was charged with a simple offence he should be imprisoned for less than 6 months.

Imprisonment can be defined as a term of judicial sentence available for a convicted offender in adultage involving incarceration in prison for either life or a specified period of time. The law requires that imprisonment only impose where it is absolutely necessary. Imprisonment can run concurrently or consecutively. According to the ***Black’s Law Dictionary 10th edition pg 875,*** imprisonment is defined as the act of confining a person especially in a prison. There are 2 major drawbacks against imprisonment as a form of punishment;

1. Imprisonment is inadequate to reform or rehabilitate the offender
2. Imprisonment does not compensate or provides restitution to the victim of the crime.

REFERENCES

Black’s Law Dictionary, 10th ed.

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