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QUESTION

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

Answer

First of all, it is important to understand the 'just desert' principle of punishment before attempting to identify what motivates it. The phrase 'just desert' is derived from the latin maxim "*noxiae open par esto*". This principle is also called the 'Proportionality principle' and has its roots and origin in one of the five theories of punishments known as Retribution. The 'just desert' principle of punishment is a principle which is designed to promote equality and fairness of sentencing for the imposition of a sentence and it basically operates on the philosophy of the saying "let the punishment fit the crime". It represents the idea of a fair and appropriate punishment related to the severity of the crime that was committed; hence, it can also be seen as the idea of retribution for a crime committed.

In the past, penal law allowed for the punishment of an offender to be greater than the offenses committed, but with time and development, codes and statutes have been provided for proportional punishments for the crimes committed.

In conclusion, in my understanding, the 'just

desert' principle is motivated by a need for equality based on vengeance which is the natural human nature, "an eye for an eye, a tooth for a tooth" which is the principle of justice that has been popular for ages as retribution is considered to be the oldest theory of punishment.

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

Answer

First of all, a capital offense is the highest classification of crime which includes offenses considered by the law to be serious, examples are murder, treason and armed robbery. The treatment or punishment for this punishment is usually a capital punishment, also called the death penalty.

There are 5 theories of punishment including, Retribution, Restitution, Incapacitation, Rehabilitation and Deterrence, all with different motives as to why offenders should be punished. In my opinion, the most effective punishment for capital offenders is incapacitation in form of imprisonment, coupled with a fine and community service.

My reasons for this assertion include the following;

- In identifying the most effective punishment, one should try to include all the theories of punishments in order to achieve a balance, the more the punishment satisfies the theories, the more chance of effectiveness it has.
- Retribution: Although imprisonment, fine and

community service as punishments isn't quite proportional to a capital offense, it is still retributive and vengeful as it takes something valuable from the offender; their freedom, money and time.

- Restitution: This process focuses on restoration of all parties, including the offender. In a capital offense, it is most likely that the victim cannot be restored, as they may be dead, however, imprisonment, fine and community service as punishment for a capital offense is more likely to restore the offender to their previous condition, as opposed to the capital punishment.
- Incapacitation: The idea of this theory of punishment is to prevent or reduce the possibility of future crimes by those convicted of future crimes. An example of how this can be achieved in this case is the imprisonment of the capital offender.
- Rehabilitation: This theory of treating offenders focuses on restoring a convicted offender to a constructive place in the society through combinations of treatment, education and training. These are treatments that should be and sometimes are made available in prisons.
- Deterrence: This theory suggests that punishment should be severe enough so that people in the general population will not want to commit crime; general deterrence and so that the offender will not want to commit a crime again; specific deterrence.
- Also, the capital punishment is quite extreme and as so, has been stopped in many countries.

(b) Will your answer be the same if the accused was charged for a simple offense

Answer

In my opinion, imprisonment would be too severe for a simple offense, however, fine and community service would suffice as adequate punishment for a simple offender.