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QUESTION:

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

2a) 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?

1.

Just Desert Principle.

The popular justification for punishment is the just desert principle. A person deserves punishment proportionate to the crime committed. The just desert principle of punishment attempts to blend justice with fairness by focusing on the past behavior of the offender and seriousness of the offense. It argues that criminal sanctions should be correspondent with the seriousness of the offense. Punishing an offender reduces the likelihood of future crimes. This theory of just deserts is retrospective rather than prospective. The punisher does not need to be concerned with the future outcome only with providing punishment appropriate for the given harm. There are many situations in which people wish to punish another. When a person is unjustly armed through assault or robbery, people typically experience a strong desire to punish the offender. A perpetrator of a crime deserves to be punished in proportion to the past harm he or she has committed, the punishment is an end in itself and needs no justification. This approach is referred to as just desert or deservingness perspective.

According to Immanuel Kant, punishment can never be administered merely as a means for promoting another good and should be pronounced over all criminals proportionate to their internal wickedness. Punishment was given bases on the “eye for an eye theory and tooth for a tooth”, this was the ancient way of dealing with offenders, it would comprise of various forms of torture, death, banishment or whipping. In earlier terms, penal law permitted greater infliction of punishment on victims. This principle attempts the question “how much punishment can be inflicted on a criminal?” As it helps to provide a check on the power of deciding punishment to crimes committed

2A.

Capital Offenders

A capital offense is any criminal charge which is punishable by death. This is known as the harshest form of punishment. It is the intentional infliction of death on an offender by the court of law as a means of punishment for a crime. In my opinion, I think the most effective way of punishing and treating capital offenders is also giving them capital punishment. The term death penalty is used interchangeable with capital punishment. Capital punishment sends the message that such acts would not be tolerated in the country. This is a practice that has been in place right from time, which integrated a retributive approach that was classified as an eye for an eye and a tooth for a tooth. There are seven (7) types of capital punishment known to the world. They are:

1. Death by hanging.
2. Execution by firing squad.
3. Lethal injection.
4. Electrocution.
5. Death by stoning.
6. Death by beheading.
7. Gas chamber executions.

Justice: The most fundamental principle of justice is that punishment should fit the crime committed. An argument behind retribution and punishment is that all guilty people deserves to be punishes, only the guilty deserves to be punished and guilty people deserved to be punished in proportion to the severity of the crime. Those who commit murder have taken the life of another have forfeited their own right to live. This is bases on the “an eye for an eye” principle. I believe capital punishment is a just form of retribution not only for citizens but also for the victim’s relatives. It is possible to put in place provisions that would make sure that those that really deserve deaths are the ones that would be executed. Justice can only be served by lawful execution.

Deterrence: Deterrence is more effective when the punishment happens immediately after the crime. To make an analogy, a child learns not to put his hand in fire, because the consequence is instant pain. it will deter people from committing such crimes and would have an effect on violent offenders. Prison time is enough to deter people from committing crime but for some people, much more is needed like death. Death penalty saves lives. Ultimately, only the most severe punishment possible would dissuade the most violent crimes. Also executions in painful, humiliating and public ways may create a sense of horror that would prevent others from being tempted to commit such crimes.

Closure: the death penalty gives closure to the families that suffered much, some families may take a long period to recover, maybe years or decades to recover from shock and loss of a loved one, some never recover. This type of punishment hastens recovery from shock and gives some type of closure so they feel somewhat safer knowing that the perpetrator of the crime is no longer alive.

B.

No, my answer would not be the same if the accused was charged with a simple offence.

According to section 3 of the criminal code; Simple offences are offences other than felony and misdemeanor. A simple offence is any offence (indictable or not) punishable, on summary conviction before a magistrate, by fines, imprisonment or otherwise. It is also known as summary offence. If the crime is not otherwise designates (e.g. as a misdemeanor) it is automatically a simple offence. They are often punishable with an imprisonment of less than six (6) months. Examples of simple offences are contempt of court, petty theft of useless articles, noise pollution, attempt to commit suicide, unlawful wearing of army uniform, unlawful selling of army uniform, offences committed after a record of ill health, contravention of local bye-laws etc.

The reason behind this custodial punishment or sentencing for a simple offence has been that criminal justice does not have to incarcerate offenders in order to be effective. That is, convicted offenders do not need to be sent to prison for every minor infraction of the law. The maxim is the law should not concern itself with trifles (de minimis nin curat lex) such offenders may only be required to do some work which will be beneficial to the community. The objective is to correct the offender, convict him of his guilt and eventually reform him. The contention here is that the states aim should not be to mass produce convicts but rather to make the culprit pay back for his bad misdeeds while deterring others who might be tempted to commit the crime or to deter the particular crime from being a constantly committed crime. Punishment should be given based on the theory that punishment should be based on the seriousness of the crime and the more serious the crime, the more serious the punishment.

Section 460 of the Administration of Criminal Justice (ACJA) 2015 provides that the aim of community service order is to reduce prison congestion, rehabilitate prisoners for productive purposes and prevents convicts from mixing with hardened criminals. Community service orders therefore constitute a form of corrective justice system which does not dispense harsher, cruel, and severe sentencing than necessary. So the convicted can be sentences to do community service, pay fines, receive lashes of cane, and may be required to do some other things within his capability based on the discretion of the court.