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MATRIC NO: 17/LAW01/079

COURSE: CRIMINOLOGY II

ASSIGNMENT: 1. what motivates the just desert principle of punishment? Discuss.

2. A) as a criminology student what do you think 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. WHAT MOTIVATES THE JUST DESERT PRINCIPLE OF PUNISHMENT

Punishment means, the imposition of some deprivation, hard treatment, suffering or other unpleasantness beyond mere censure or social stigma, on an offender, for his commission of an offence, deliberately administered by an agent or agents other than the offender himself, who condemn the offender for his committing the offence, and who intend to convey this condemnation at least to the offender, this or these agents having authority from the institution whose regulation defines the offence. The 'just desert' theory is a retributivist theory that seeks to justify a social institution that is designed to threaten and impose hardship or suffering on offenders for their offences, it intends to justify punishment in its general legal meaning. This doesn't mean any form of punishment is justified; it only seeks to justify punishment in so far as it is the imposition of suffering or hardship on an offender for an offence. It is designed to promote equality and fairness of sentencing for the imposition of a sentence. The philosophy behind this theory is the phrase 'let the punishment fit the crime' this means the severity of the punishment should commensurate with the severity of the crime. The measure of punishment given must be equal in proportion to the crime and it should be no more no less. Professor Andrew Von Hirsch had a major role in highlighting the role of retribution in criminal justice and developing the just deserts theory. His opinion was that, sentences should be determined by past behaviour, by what is deserved for the crime already committed, and sentences must be morally just, regardless of future effects on convicts or others.

Moreover, the just desert theory of punishment seeks to address certain questions such as; A) what is the justification for having a system or institution of punishment at all? B) Who should be punished? C) How much should offenders be punished or, how should a punishment schedule be determined? D) How much punishment should a particular offender receive? The theory certainly gives answers to all these questions. The just deserts being a retributivist theory, posits that one should be punished simple because one committed a crime. The retributist approach holds that punishment is just because it is deserved, and the principle of just deserts requires the punishment to be proportioned to the unfair advantage the offender has taken by law-breaking. According to professor Von Hirsch, by threatening future crimes, the criminal law means to deter them, and by punishing those who were not deterred(criminals), we carry out legal threats and make them credible, by punishing offenders as threatened by the law, we do justice. He insists that to do justice, criminals must be punished according to what is deserved by the seriousness of their crime. Thus according to this theory, the seriousness of the crime alone should determine the punishment deserved. Serious ness here refers to the degree of harm done and the culpability of the offender. The theory asserts that the punishment can be imposed on any particular offender in accordance with the determined comparative seriousness of the specific case. In the case of the recidivist as compared to the first offender, this unfair advantage can be seen to be that of taking more than one's fair share of unfair advantage. Thus, it is argued that because of this, the recidivist deserves additional punishment or that the recidivism itself constitutes an additional crime to be punished. The theory regards the criminal as a morally responsible person, who deserves blame and punishment in some proportion to his crime.

Furthermore, despite the surface picture of a tidy and helpful theory, the just desert theory has failed in some aspects. Just desert theory rejects the recidivist idea of selective

incapacitation where criminals who are predicted to fall back into crime after incapacitation will have prolonged incapacitation until they are predicted to be not dangerous, and it favours categorical incapacitation where the length of incapacitation would depend on the recidivism associated with the category into which the crime committed falls, rather than on the predicted recidivism of the individual. Thus, to the extent to which a sentence is based on predicted recidivism, the sentence may not be what the crime and criminal deserves since it doesn't take into consideration as the just deserts theory itself proposes, reference to the criminal's past. Retributionists resolutely disregard the effects of the punishments on the criminal as criteria for sentencing, since they are irrelevant to the moral desert which they see as the only justification for punishment. The theory also remains silent on culpability versus harm, it doesn't tell us whether more punishment is deserved by an offender who is more culpable but does little harm or, an offender who does great harm but was merely negligent. Also, although reasonableness and ordinary thinking guides the court and legislators in determining what crime is more serious than the other, but not how much more, and as a result not how much more punishment is deserved. The theory doesn't offer any principle on which to base these determinations. The theory is therefore not conclusive.

All things considered, the just desert theory may be viewed as a very standard theory of punishment. However, following the inconclusiveness of the theory, it is trite that all theories and forms of punishment should be considered and possibly combined in the establishment of criminal justice. This is because; dependence on a single theory or form of punishment may lead to unjust and unfair punishment, improper sentencing and possibly unnecessarily prolonged sentences. It may further lead to failure in the deterrence of crime if the sentencing procedures and criminal justice is perceived as unstable. Thus, the job of criminologists is not quite finished, as they must assess the present situation of crime in their various jurisdictions and attempt to provide solutions in accordance with their respective issues.

2. A) WHAT IS THE MOST EFFECTIVE WAY FOR PUNISHING AND TREATING CAPITAL OFFENDERS?

Capital offenders are people who have committed capital offences. A capital offence is a criminal offence for which the punishment, or one of the punishments, is death. In this writer's opinion, although there are many arguments as to why the death sentence should no longer be enforced, ranging from arguments that no one has the right to take another's life to arguments that retribution is not a standard justification for such punishment, it still stands that the enforcement of death penalty is one of the most effective ways to rid the society of certain menaces. It is said that people should be offered a second chance to change, I ask, what about the people who were injured or killed by that offender, were they given a second chance? Through the assessment of human nature, existing cases and reasonable man thinking, it is clearly understandable to assume that a person who is a murderer and has an obvious taste for blood should never be exposed to the society or a person who is somewhat of a sadist and enjoys inflicting pain on others cannot for any reason whatsoever be exposed to the society. A crime cannot be made a capital offence if it is not gravely injurious to the society and its values, thus if a person is found guilty of a capital offence, he is deemed to be injurious to the society. In accordance with this, the event of a death penalty is irreversible so the court must put in considerable effort to ensure that the accused is guilty beyond reasonable doubt, totally and actually guilty to avoid finger pointing at the law.

However, when the offence is not so terribly grave or where the state doesn't deem it necessary to be rid of the offender or if the state can reasonably deduce that the offender can be changed, it may impose a punishment of imprisonment instead of death. Imprisonment in the law is the specific state of being physically incarcerated or confined in an institutional setting such as a prison. It is the act of taking away someone's freedom, restraining someone against his will. In this situation, it means the offender will be locked up in a prison and restrained from having full contact with the general society. The term of imprisonment may vary depending on the provision of the law on the criminal act. As for capital offences, to this writer, it is important that capital offenders are incarcerated for longer periods such as twenty years to life imprisonment. The longer the person stays, the more time he has to reflect on his actions and the more time the state has to attempt to correct and treat him. When the offender is imprisoned, he will be required to participate in rehabilitation activities which help to rehabilitate the offender. Thus, correctional facilities, as prisons are now called, should be well equipped with instruments and structures for rehabilitation programs. The offenders may be made to go through counselling sessions to help deal with mental issues, physical therapy to improve physical health, skill acquisition programs, sports and games to engage them and help them see the good things in life. Therefore if by any chance, they are to be released into the society, the correctional facility would have performed its duty of reshaping the criminal into a person of moral standard.

2. B) WHAT IF THE OFFENDER WAS CHARGED FOR A SIMPLE OFFENCE?

According to the Criminal Code of Nigeria, a simple offence is any offence other than felonies and misdemeanour and is punishable by a term of less than six months. It means any offence indictable or not, punishable on summary conviction before a magistrate court by fine, imprisonment or otherwise. It is usually not described as a crime since it is not gravely injurious to the state. The criminal code has already set a standard for imprisonment for a simple offender as a maximum of six months which this writer wholly agrees with. However, as opposed to capital offenders, a simple caning preferably publicly as it used to be done in the indigenous places, should be enough to deter others and the offender himself from committing an offence. Also, the offender may be charged with fines that are considerable to his standard and also to the offence committed. The offender may also be required to perform unpaid work for the society in which the offence had been committed for a certain period in order to atone for his offence. An order of probation may also be given, where the offender will be kept under a period of supervision to ensure that he has repented from his offence. These I believe, will deal with simple offenders in a way that will prevent recidivism.

Ultimately, this writer corresponds to the popular opinion that capital offenders should be severely punished based on the severity of their crimes. As for simple offenders, whose offences most at times are committed out of negligence and sometimes hardship, they deserve lesser punishments which aim at familiarizing them with the undesirable consequences of their actions and correcting their wrongdoings. Thus the sentence of a capital offender should not be equal to that of a simple offender.