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ASSIGNMENT

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 treating and punishing capital offenders. Give reasons for your answer.

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

1.) The “Just desert” principle basically refers to where the punishment fits your crime. In other words, it is the act of punishment offenders in accordance to the crime that has been committed. One popular justification for punishment is the just deserts rationale: A person deserves punishment proportionate to the moral wrong committed. A competing justification is the deterrence rationale: Punishing an offender reduces the frequency and likelihood of future offenses. There are many situations in which people wish to punish another. When a person is unjustly harmed through assault or robbery, people typically experience a strong desire to punish the offender. Although most scholars agree that punishment in some form is necessary, they disagree on the underlying reason that makes punishment an appropriate and justified response to social norm violations. Some claim that punishment’s primary purpose is to pay back harm doers for their past crimes; others claim that its function is to prevent or reduce future crimes. As this debate suggests, there are two broad justifications for the use of punishment. One perspective holds that when an individual harms society by violating its rules in some normatively unallowable way, the scales of justice are out of balance, and sanction against the individual restores this balance. Under this perspective, the perpetrator deserves to be punished in proportion to the past harm he or she committed. The punishment is an end in itself and needs no further justification. This approach is typically referred to as a just desert or deservingness perspective.

An opposing perspective holds that social harmony is best served by the prevention of future harm and that the justification for punishment lies in its ability to minimize the likelihood of future transgressions. This rationale is outcome focused in that it seeks some particular future purpose by administering the punishment. This approach is referred to as utilitarian or consequentialist and is most often associated with Jeremy Bentham (1962), a contemporary of Kant. He argued that “general prevention ought to be the chief end of punishment, as it is its real justification. There are two general sorts of reasons why we should be interested in the question of what motivates punishment in ordinary people’s thinking. The most important reason is a psychological one. What is it that people in a society seek to do when they punish actors who intentionally commit known wrong actions? Perhaps because everyone has instantly available intuitions that supply their own definitive answers about this, people generally have failed to notice that there are no research-based answers to this rather fundamental question about human nature.The second reason concerns social policy and public compliance with criminal law.

The theory of just deserts is retrospective rather than prospective. The punisher need not 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 harm doing, 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. The task of a just deserts theorist, then, is to assess the magnitude of the harm and to devise a punishment that is proportionate in severity, if not in kind. 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 offense that determine moral outrage and the magnitude of punishment according to just deserts theory. It is these factors, then, that should trigger the motive to punish if people adhere to a just deserts theory of punishment.

Magnitude of harm. First and perhaps most important is the magnitude of intended harm. This is indexed most typically by the type of crime (e.g., petty theft, felonious assault) and the degree to which it offends the sensibilities of citizens. A growing body of research (Darley, Sanderson, & LaMantia, 1996; Kahneman, Schkade, & Sunstein, 1998; Rossi, Waite, Bose, & Berk, 1974; Warr, Meier, & Erickson, 1983) demonstrates the considerable consensus regarding the rank ordered severity of various offenses.

Extenuating circumstances. 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. A person who embezzles to maintain a lavish and lascivious lifestyle is judged more harshly than one who embezzles the same amount for the relatively noble purpose of subsidizing the company’s underpaid and exploited overseas workers. Although the amount of harm is constant in this example, the punishment is not. Just deserts theory is highly sensitive to such contextual factors that mitigate or exacerbate the degree to which a perpetrator deserves punishment (Finkel, Maloney, Val- buena, & Groscup, 1996; Robinson & Darley, 1995).

A fully formed theory of just deserts is concerned with more than just these factors. For example, an expression of remorse (or lack thereof) speaks directly to the moral outrage evoked in victim or observer (LeBoeuf, Carlsmith, & Darley, 2001). How- ever, remorse also signals the possibility that the outcome may have been accidental and may raise questions of the perpetrators responsibility for the harm. Moreover, it may also signal the likelihood that the perpetrator will repeat the harm. Remorse is associated with numerous justifications of punishment and thus does not uniquely differentiate one motive from another. Magnitude of harm and extenuating circumstances are notable because they are the components of just deserts theory that differentiate it from utilitarian theory.

2a.). Personally, I do not think there’s a specific way of punishing capital offenders that will be effective in every scenario. But I feel rehabilitation should be a fit punishment for some capital offenders but in a situation when it re-occurs then such an offender should be killed. The first traditional justification of the death penalty is that it is a direct application of the retributive conception of punishment: the death penalty is justified as a proportionate punishment for a serious crime, which should be carried out because it is deserved for its own sake, and not because of any benefit that it might bring to society. The oldest example of this is the “eye for an eye” principle of retaliation, which when applied to murder means “a life for a life”. Advocates of retributivist capital punishment, past or present, do not often explain the moral foundation of the “eye for an eye” principle of retaliation, or present any compelling argument. Instead, it is often appealed to as time-honored common sense or an article of religious faith: the idea has been around with us for thousands of years and has become a normal part of our thinking when it comes to punishment. An important exception to this, however, is German philosopher Immanuel Kant (1724-1804) who offers a thoroughly original argument in its defense.

             For Kant, the death penalty is grounded in the idea that every person is valuable and worthy of respect because of their ability to make rational and free choices. The murderer, too, is worthy of respect, and we consequently show him that respect by treating him the same way he declares that people are to be treated. Accordingly, we execute the murderer. At first, Kant's theory seems backwards. Ordinarily we might think that murderers are worthless beasts, deserving of no dignity, and should therefore be executed. Kant, though, disagrees. If I, as a rational person, choose to behave towards you in a particular manner, I am declaring more generally that in my assessment this is how everyone should be treated, including myself. It is as though I am making a request whereby through my actions towards others I tell others how I should be treated. If I behave badly towards others, then that behavior should come right back on me in the form of a comparable punishment. I am deciding for myself how I am to be treated, and society is respecting my decision in how it reacts to my bad behavior. This, then, is what happens when people commit murder. Because every person is a valuable human being who is worthy of respect, including the murderer himself, the dignity of a murderer demands that he be executed.

Thus, according to Kant, whoever commits murder must die. However, his execution must be human and as painless as possible: “His death must be kept free from all maltreatment that would make the humanity suffering in his person loathsome or abominable” (ibid). Kant's account of capital punishment is retributive insofar as society is merely giving the criminal what he deserves.

             There are three problems with retributivist capital punishment, particularly when based on the “eye for an eye” principle. The first criticism is that a strict application of “eye for an eye” justices leads to counterintuitive judgements. As we have seen, in non-death penalty cases it leads to the troublesome judgement that arsonists should have their homes burned down or that rapists should be raped. This problem also applies to Kant’s version: we do not punish an arsonist by burning down his house, even if that is how the arsonist himself deems that people should be treated. In death penalty cases, we find the same problem, such as this from Hammaurabi: “If it kills the son of the owner, then the son of that builder shall be put to death” . If this sentence was carried out, the pain of the builder would be parallel to the pain of the owner, but, at least by today’s standards, the builder’s son is an independent person from his father and killing him would be wrong. The problem is that mechanically applying the “eye for an eye” formula will not guarantee that the punishment will be always an appropriate or even logical one. If we did start out by using the formula, we would then need to make an independent moral judgment about whether that application of the formula was a good one. If we are then reliant upon that independent moral judgment for a proper assessment of a punishment, then the “eye for an eye” formula is not only unnecessary, but harmfully misleading. It distracts from the assessment of true justice and should be set aside.

2b.) No my answer won’t be the same if it was a simple offence. And this is because ****Simple Offence**** means offence or act for which a person is liable by law, upon a finding of guilt before a Justice or Justices, to be imprisoned or fined or both or to be otherwise punished; but does not include an indictable offence which can only be heard and determined in a summary way as a minor indictable offence. ****Simple Offence**** means any offence (indictable or not) punishable, on summary conviction before Justices, by fine, imprisonment, or otherwise;

In essence punishment that can be used in a capital offence may not also be suitable in a simple offence