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INTRODUCTION

The center focus of this work is on the theories/philosophies of punishment. Punishment in this context can be seen as the infliction of legal sanctions and penalties on an offender. The theories behind these sanctions are what determine the kind, nature and severity of punishment meted out by the relevant authority. The theories of punishment are; Retribution, Incapacitation, Deterrence, Rehabilitation and Restitution. While the major forms of punishments include; Death penalty, Imprisonment, Canning/whipping, fine and forfeiture. Subsequently, in questions 1 & 2 reference shall be made to the aforementioned theories and forms of punishment where necessary.

Question 1.

What is the “Just Desert” principle?

The phrase is derived from the Latin maxim “*noxiae poena par esto*” which means let the punishment fit the crime. It can be seen as punishment for an act or omission which is rightly deserved it is also called the “Proportionality principle”. This theory is aimed at promoting the imposition of just and fair sentences and punishments.

This concept has its origin in one of the theories of punishment called the Retribution. This theory is founded on the concept of vengeance, in that, an individual whose acts or omissions caused societal imbalances should be held responsible. In times past, penal law gave room for greater imposition of punishments on the offender more than the harm which he had caused to the society, but developments through time provided for codes and statutes which provide for equivalent punishments for crimes committed. Punishment in some form is necessary, Scholars 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. There are two main reasons for the imposition of punishment, they are;

1. 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 perspective.

Immanuel Kant (1752) argued that;

“...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...”

2. view states 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

Jeremy Bentham (1962), stated that;

“...*General prevention ought to be the chief end of punishment, as it is its real justification...*”.

Motive of The "Just Desert" Principle

With regards to the discussed above, the question asked now is **What motivates the “Just Desert” Principle?**

To my understanding, it can be said that the rationale behind this principle is that the punishment must be proportionate to the crime, in that the severity of the crime committed and the harm inflicted on the society should match (to a reasonable extent) the magnitude of punishment/sentenced to be imposed on an offender.

Question 2.

Punishment/Treatment of Offenders

(a) What is a Capital Offence?

A capital offence, which may also be referred to as felony, is the highest class of crime which includes offences such as murder, treason etc., the treatment is usually a capital punishment i.e. death penalty. Therefore, a capital offender is a person found guilty of these such crimes.

Ways of Treating/Punishing Capital Offenders

As we all know, that there are five punishment theories which include (Retribution, Incapacitation, Deterrence, Rehabilitation and Restitution) having various motives for the various kinds of punishments imposed for different offences. Nationally, there are the five rules guiding sentences practices which are (Nature of the Offence, Character of the offender, Position of the Offender among his confederates, Rampancy of the offence, Statutory Limitation and concurrency of sentences. Having regard for all of the above, a capital offender, ordinarily, should be given capital punishment on a conventional basis.

However, as a result of development and advancements through time, we have discovered that there are other unconventional ways of treating a capital offender, other than imposition of capital punishments.

In the opinion of this writer, the **most effective method** lies in **Articles 8.1 & 8.2 of the Tokyo's Rule**, which provides for non-custodial measures which take into consideration the rehabilitative needs of the offender. It provides measures such as; Status Penalties, Economic Sanctions, Confiscation or Expropriation Order, Probation and Judicial supervision, House Arrest.

Reasons for This Assertion

- In the case of a first time offender, I believe that he or she can be given verbal reprimanding as provided for in *8.2(a) of the Tokyo's Rule* and possibly be put under house arrest for judicial supervision.
- Then in the case of an offender who killed as a result of Provocation, Mental illness or intoxication (not of their own volition) such a person may not bear murderous intent on a good day but due to certain external factors which fell beyond his control momentarily he has committed a grievous offence. I believe that those external factors should in fact be taken into consideration when imposing sentences in a bid to cater for the rehabilitative needs of such a person.
- The idea of death penalty is a bit too extreme and malicious in the opinion of this writer, in that, this form of punishment requires one individual to take the life of another. There is a form of psychological effect on the person carrying out the sentences without their own realization, they see taking lives as a norm without a second thought they lose the value for human life. They may likely become worse than the offenders.

In essence, this writer views that the criminal justice system should be more focused on rehabilitation and deterrence rather than any other thing in a bid to return the offender to a good place in the society.

(b) Will The Above Suffice If a Simple Offence Was Committed?

Yes, the answer in 2(a) above will suffice entirely for a simple offence, because the provisions of the Articles in the Tokyo's Rule provide for the rehabilitative need of various offences on different scales, in that, as long as the provisions in the Article are imposed with the appropriate severity, applying the "Just Desert" principle of the Punishment fitting the crime. Rehabilitative, Restitutive and deterrent needs should be the top priority of the criminal justice system.

For instance, an individual guilty of contempt of court is liable to a term of imprisonment or to pay a fine, going by the article 8.2, which provides for house arrest instead of an actual prison institution, it given room for rehabilitation and decongestion of prison facilities. Also the offences of unlawful selling of Army Uniform and unlawful wearing of army uniform attracts a penalty of one month or a fine, I suggest that the system can also adopt Confiscation or Expropriation Order in article 8.2 of the Tokyo's rule, all the army uniforms sold, the ones in stock as well can and should be confiscated.

Conclusively, this writer opines that the rules and sort of treatments mentioned in 2(a) above by virtue of **Articles 8.1&8.2 of The Tokyo's Rule** can be applied to all sort of criminal offenses, the relevant authority just has to apply the proportionality principle in the dispensation of justice.