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ASSIGNMENT

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

Just deserts is viewed as a form of retributive punishment or sentencing. Retribution is an ancient means or method of dealing with those who commit crimes. It is of a vengeful nature. It propagated the ‘lex talionis' doctrine which meant ‘an eye for an eye; a tooth for a tooth'. It was even more heinous in earlier times as this doctrine or methodology of punishing offenders brought about and even enhanced the infliction of greater punishments on the offenders than that which was inflicted on the victim. The phrase ‘just desert' can be traced as far back as the 16th century; however, it can be referred to, in a more modern manner, as ‘justly deserved'. This is borne out of the belief that an individual who receives a penalty, is deserving of that, for a crime committed. The phrase entails that criminals should get exactly what they deserve, no more, no less. Simply put, the punishment should fit the crime.

The Retributive theory of punishment is seen from two stand points. The first being the revenge theory. This view is based on an Old Testament quote in the Bible which is ‘an eye for an eye; a tooth for a tooth'; also known as ‘lex talionis'. The revenge theory sees all crimes committed as acts of physical violence from one individual to another and as such, a remedy to that is to therefore inflict the same amount or an even higher amount or degree of hurt on the criminal. This was the ideal form of punishment for quite some time because the desire of the masses was to avenge and the mere seeing a criminal suffering would give them that satisfaction, otherwise, the state would be in danger of people engaging in jungle justice. The second stand point of retributive punishment was the expiration theory and this viewed crimes as financial transactions in which whatever a criminal did to another, he would receive same in equivalent value.

In earlier times, retributive theory of punishment was very inhumane and sought more to revenge than to reform the offender, therefore, in a bid to demand forbade more humane treatment of offenders, the ‘just desert' principle was established. This principle, also known as the proportionalism principle, aims at achieving a means by which offenders are given the exact penalty which they deserve; no more, no less. It tries to measure the seriousness of the crime which is a yardstick for the determination of punishment, that is, the punishment inflicted must be equal in proportion to the seriousness of the crime committed. Just desert, as promulgated by penologists, tries to balance and at most, provide a way by which offenders get exactly what they deserve in terms of punishment in order to satisfy their bid for humanity whilst meting out punishments. Typically, retribution theory views a criminal offence as lowering the community or the victim's power in relation to the offender which requires a degradation of such offender for the moral balance of the society to be returned to normalcy and in such a situation, crime control is not the first thing that this theory seeks to achieve, rather it seeks to condemn such behaviour and it will stop at nothing to condemn it. Thus, the necessity for the call of ‘just deserts' principle which preaches and propagates the idea of punishing an offender in a manner that is proportionate to the crime committed. Just deserts is a principle which also serves as a form of checks and balance on the state's power in determining the punishment necessary to be served in order to pay for a crime committed because if the state is left without such a check, the state can take matters into their own hands, to the extent of locking up those whom they feel are threats to the society without them actually violating any law. Just desert is a principle which seeks to ensure that a punishment is both appropriate and consistent because the way, someone who steals bread does not deserve life imprisonment is the same way a person who is convicted of committing wilful homicide deserves to be punished.

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

Capital offenders are people who commit crimes which are likely going to earn them a death sentence and these crimes range from murder, treason, sedition to even sexual abuse. These crimes warrant capital punishments. The approach used in the treatment of offenders are classified into five namely: retribution, incapacitation, deterrence, rehabilitation and restitution. Capital offences are crimes committed which will warrant capital punishments. According to **section 17 Criminal Code 2004,** forms of punishments include, death, imprisonment, caning, fines, forfeiture, deportation and many more. Imprisonment, in my opinion is a more effective way of dealing with capital offenders. Imprisonment is a term of judicial sentence available to a convicted person, who is of the age to be imprisoned and this process or form of punishment involves an offender being incarcerated for either life or a specified period of time; all depending on the type of crime committed and the outcome of the trial of such an offender. The highest or longest term a person can get is life imprisonment and this is usually in extreme cases. Incarceration in its temporary form covers imprisonment whereby the person is out of the society but it also working to reform his or herself. In many countries, the term of imprisonment is dependent on the discretion of the judge which is in line with the stipulated guidelines provided by law. The law requires that imprisonment must be imposed where necessary and should neither exceed the maximum nor fall below the minimum. There are however shortcomings to this form of punishment such as : the fact that imprisonment does not compensate the victim and also the fact that imprisonment is inadequate to reform the offenders. Imprisonment as a punishment, rids the society, for the time being, of an offender, punishes him or her by placing such an individual in confinement and also reforms the individual through the facilities which are put in place in the prisons for a purpose as that. Imprisonment gets the job done in the sense that it punishes and reforms the offender and also makes the society safe by ridding itself of such an offender and terms of imprisonment can run concurrently, if a person is found guilty of more than 2 offences, especially if the offences are of similar disposition; or consecutively, that is, one after the other. Thus, in my opinion, imprisonment is a more effective way of punishing and treating capital offenders than the other types of punishment.

2b) Will your answer be the same if the accused was charged for a simple offence?

Yes, my answer would be different. Simple offences, under **Section 3 Criminal Code** refer to offences which are not felonies or misdemeanours and such offences comprise of disorderly conduct, criminal damage to property, driving under the influence of alcohol and drugs and other examples. Under **Article 8.1 of the Tokyo’s Rule,** the judges, who are the decision makers need to take into cognisance the rehabilitative needs of the offender and the interest of the society at large. It is not everyone who commits an offence that is a criminal mind and bearing that in mind, the judges are implored to make use of the non custodial measures in place to mete out punishments, especially for simple offences, which would both serve the rehabilitative needs of the offender and also protect the interest of the society at large. These non custodial measures come in forms of fines, probation, solitary confinement, deportation and other forms of punishment which would help reform the offender. An individual who steals a loaf of bread should not be imprisoned, rather should be made to pay a fine ; likewise a person who unlawfully wears army uniform should not be punished with death penalty but can be made to pay a fine or be flogged. It is in the same vein that simple offences do not warrant capital punishments , however, such offenders should be rehabilitated through reformatory institutions. These institutions even provide facilities and services such as skill acquisition programs, which will enable the offender to gain skills which will be beneficial to him or her when he or she is released; educational skills which provide from basic education even up to tertiary education for offenders in order to help them better their lives in the outside. Their spiritual, health and even personal well being is also looked after. After care services provides in some of these institutions help the offender to find his footing in the society upon release. Thus, simple offences will warrant a much milder form of punishment than capital offences.