Name: Olawole Boluwatife Olasubomi

Assignment Title: Punishment

Course Title: Criminology II

Course Code: LPI304

Question One

The “just desert” principle means that a person gets the punishment that he deserves. When punishments are attached to a particular crime or a person is punished for a particular crime, the punishment must be strictly proportional to the crime or offence. The just desert principle posits that justice is served only when an offender receives the punishment that he deserves and this motivates the principle. It seeks justice through vindication of victims by punishing offenders in proportionality to the offence they committed.

This principle can be said to have originated from the Mosaic Law which states: life for life, an eye for an eye, tooth for tooth, hand for hand, and foot for foot. Similar phrasing is also found in the Code of Hammurabi’s ‘lex talionis’.

This principle is paramount when considering retribution as a justification for punishment. Retribution as a theory of punishment is defined by Herbert Hart as the application of the pains of punishment to an offender who is morally guilty[[1]](#footnote-2). Retributivism holds that the best response to crime is punishment proportional to the offence committed because the offender deserves it.

According to Stanford Encyclopedia of Philosophy[[2]](#footnote-3), these are the principles guiding retribution

1. Those who commit certain kinds of wrongful acts morally deserve to suffer a proportionate punishment.
2. It is intrinsically morally good
3. It is morally impermissible intentionally to punish the innocent or inflict disproportionately the large punishments on wrongdoers.

These show that retributive theory centers on Just Desert principle. Some advantages of retribution include that it emphasizes proportional punishment only to those who deserve it; an innocent person as such is not expected to be punished because the individual must have been proven guilty before punishments were meted out. Retributive theory also sends out the message that through punishing an offender, the society has denounced such a criminal and his criminal acts. Nevertheless, this theory has also faced criticisms such as difficulty in achieving the just desert principle of proportionality of punishment to offence. It is also important to note that retribution does not compensate victims of crimes. Not all victims are compensated when offenders get punished.

Question Two

I am of the opinion that the capital punishment should not be the only treatment and punishment available to capital offenders. Rehabilitation and probation can be considered better treatments and punishments for persons convicted of capital offences. These options will be given to persons who are promising to be of better behavior. Through these, we can build a better society where punishments are given with reformation in mind and not just retribution.

A capital offender is someone who has been found guilty of an offence that is punishable by death which is known as capital punishment. Examples of this type of offence are treason, murder and armed robbery. The state has prescribed death as the punishment to be imposed on a person guilty of a capital offence; an example can be seen in Section 319 of the Criminal Code Act 1990.

There have been several debates on capital punishment around the world and especially in the United States[[3]](#footnote-4). Some arguments for death penalty include James Fitzjames’ position that “…no other punishment deters men so effectually from committing crimes as the punishment of death”. Another point argued in favour of the death penalty is based on the “just desert” principle that suggests that murderers should be executed for retributive reasons.[[4]](#footnote-5)

My reasons for providing rehabilitation and probation as better treatments lie in the criticisms and arguments against the death penalty which include the possibility of human error; innocent persons can be executed and it cannot be reversed. There could be mitigating circumstances for certain persons who commit vicious crimes due to neglect and other social conditions. It has also been argued that death penalty is lacking in ethical purpose. The people who carry out the executions suffer the psychological effect of having to kill people.

Rehabilitation of convicted offenders save us the stress of worrying about human errors that cannot be reversed because instead of just punishing the offender, the offender just might have gained one or two things. It also considers the offenders who are willing to become better persons in the society instead of completely deleting the potentials a person has that may still add to the development of the society.

In conclusion, the aim of punishments should be beyond a desire to give offenders what they deserve but to also consider the overall benefits that can be gained.

Question Three

My answer will be the same if an accused was charged for a simple offence. This is because there is really no loss in rehabilitation but all gains. Offenders get to be humanely treated and are given another chance of becoming better people in the society.

1. R.A. Duff and Stuart P. Green, ‘Introduction: The Special Part and its Problems’ in Defining Crimes: Essays on the special part of the Criminal Law (OxfordL Oxford University Press, 2005) [↑](#footnote-ref-2)
2. Edward Zalta, ‘Stanford Encyclopedia of Philosophy’ (1995) <http://plato.stanford.edu> accessed 28th July 2020 [↑](#footnote-ref-3)
3. Dambazau, A.A. (1999), “Penology”, Criminology and Criminal Justice. [↑](#footnote-ref-4)
4. Bedau, H.A. (1978), “Retribution and the Theory of punishment”, The Journal of Philosophy, 75, pp. 601-20 [↑](#footnote-ref-5)