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QUESTION

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 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?

QUESTION 1

INTRODUCTION

In most societies today, there are rules that have been enacted and codified for the sole purpose of maintaining peace and order. The violation of these laws call for societal reactions. These societal reactions take the form of punishment and correctional homes.

Punishment is the affliction of pain by the state or an instituted legal authority on someone who has been convicted of a crime. The various elements of punishment include; it must involve pain, it must be for an offence against legal rules, it must be imposed on an actual offender for his offence, it must be administered by human beings and lastly, it must be administered by an authority constituted by a legal system. The concept of punishment is solidified on five basic theories which serve as the foundation of punishment. These theories are; retribution, deterrence, incapacitation, rehabilitation and restitution. The 'just desert' principle is however found under the theory of retribution. This explains why this term paper will focus on the principle of retribution.

THE 'JUST DESERT' PRINCIPLE OF PUNISHMENT (RETRIBUTION)

Under the retributive theory, there is the concept of 'just desert'. Retribution is therefore the force that gave birth to the '**just desert**' principle. Retribution is the most ancient method for dealing with offenders. It is revengeful in nature and believes that every offender should have a taste of his own cake. In this theory, every offender should be punished proportionally according to the crime he has committed. It has no room for plea bargaining. Plea bargaining entails some situations where there is room for the defence council to plead on behalf of the defendant in order to reduce the punishment or free the offender. Under the retributive theory, the punishment cannot be mitigated or negotiated. It is a strict way of treating criminals. The punishments here include; banishment, whipping, flogging, death etc. Earlier, the penal law allowed for the infliction of greater pain on the offender other than the one inflicted on the victim. Penologists, however, advocated for more humane punishments. This consequently advocated for the Latin maxim of "**les talionis**" which means an '**eye for an eye**' and a '**tooth for a tooth**'. The '**just desert**' principle simply means the proportionality or equality of a punishment with the crime committed. According to philosophy, desert is the condition of being deserving of something, whether good or bad. It is also called the **proportionality principle**. It believes in getting revenge, one that is equal to the victimization. One should not suffer more than the pain he inflicted and should not suffer less than the pain he inflicted. This principle is of the opinion that this is the best way the crime will be reduced. If the offender is convicted for murder, then this principle believes that killing him will be the best way to deter the rest of the population from committing that crime. It is the belief in proportionality, revenge and a more humane punishment that gave rise to the principle of '**just desert**'. The principle behind 'just desert' is that the punishment should fit the crime. One popular justification for punishment is the just deserts rationale. Advocates of the 'just deserts' theory emphasize the importance of due process and determinate sentences. The '**just desert**' theory seeks to answer the following questions:

1. What is the justification for a system of punishment at all?
2. Who should be punished?
3. How should a punishment schedule be determined?

4. How much punishment should a particular offender receive?

Recent scholarship on theories of criminal punishment has focused on retributivist justifications for punishment. While within this retributivist camp opinions differ as to the particulars of such policies, there is a general agreement that criminals getting what they deserve, that is, their 'just deserts', should be the underlying goal of the criminal justice system.

QUESTION 2A

INTRODUCTION

In most societies today, there are rules that have been enacted and codified for the sole purpose of maintaining peace and order. The violation of these laws call for societal reactions. These societal reactions take the form of punishment and correctional homes.

Capital offence is an offence that carries the possibility of a death sentence. However, in my opinion, that should not be the right approach. Capital offences include; murder, treason, armed robbery etc. In our Criminal Justice System, the available punishments for a capital offence are death penalty and imprisonment.

BEST PUNISHMENT FOR A CAPITAL OFFENDER

As a criminology student, I suggest that the best punishment and treatment for a capital offender would be deterrence and rehabilitation. These two should however go in hand with each other. More precisely, I am suggesting an imprisonment term but one conditionally with high level of reformation. In Nigeria, we are battling with a shaky criminal justice system, this is the reason why rehabilitation has been pushed behind when we talk about imposing sentences. We forget the fact that jail sentences are unnecessary if the offender doesn't come out with a changed character. Death sentence is not even an option in my opinion. This is subject to the fact that this punishment has been abolished in various countries because of its high negative implications. Also, in as much as this deters the criminal, what do we gain from killing? Sometimes, we don't even think about the emotional trauma that might overwhelm the law agency personnel who does the killing of the offender. Furthermore, some offenders are not even scared of being killed after they commit the crime. Some are already aware of the punishment before they commit the crime.

My main point is that the most suitable punishment for a capital offender is jail sentence but one subject to high level of rehabilitation as it is however supposed to be the sole purpose for sentencing them to prison in the first place. There is no point if the offender still commits crime after he has been released. Moreover, rehabilitation is supposed to take place in the prison after all but it has become impossible because the atmosphere just breeds hatred and bitterness. I think what Nigeria needs is a more developed prison where they will not be exposed to worse treatment from inmates. Somewhere they will not just be confined to for the sake of pain instead of coming out anew. Rehabilitation is an expensive form of treatment but that's what capital offenders actually need to at least reduce the rate of recidivism. Prisoners do not necessarily have to be caged with other prisoners that probably committed worse crimes. They can be put in single cells. I am not talking about solitary confinement because that comes with inhumane treatment. The single cells is to reduce bullying in prison from other inmates. Bullying makes no sense as the predators are also guilty of one crime or the other and should not see the prison

as a room for ill treatment. If the prisons are developed and there are training facilities, the justice system will definitely be better. Rehabilitation focuses on how receptive to treatment the offender is and not how dangerous he is. Moreover, rehabilitating the criminal is a form of deterrence as it helps to prevent crime by changing the character of the offender.

Talking about deterrence, imprisonment is needed and this is what is suitable for a capital offender as it will come with both pain and joy. The pain here has to do with the incapacitation, the fact that they will not be able to commit that crime while in prison since they are restricted. The pain also deals with the solitude they will get while in a cell alone without anyone, they will obviously miss their loved ones and the outside world. We never can tell how far this would go in helping them have a rethink about their actions. The prison is supposed to have counsellors, training facilities, school, religious centers and even hospitals. There is no harm in wanting to inflict pain on them as this would deter them from going back to the crime and as well deter potential criminals. But the pain should be limited and not inhumane, they can be canded, giving tedious tasks etc. The pain inflicted should however not go as far as being tested with their life. Punishments in prison like electrocuting them, almost drowning them should be abolished. If they refuse to talk or say the truth about their role in the crime, its simple, they should be taken to court where the judge would determine if they are guilty or not. And even when they are found guilty, the priority of the law enforcement agencies should be how to reform them. A prison should not be called a prison because of pain but should be called a prison but because you are restricted and therefore have no opportunity to go back to the crime. A prisoner without adequate rehabilitation sometimes returns to the society which has incarcerated him as a hardened criminal. Counsellors and therapists should be made available for the mental health of the criminal. Schools and training centers are necessary to teach and inform them on better crafts or activities they can engage in instead of committing crimes. Hospitals are obviously needed for treatment as imprisonment does not mean the offender should die. Lastly, religious centers also contribute in training and reforming people.

When the offender has even stayed for a reasonable time and has improved on his character, he can be given a parole (temporary or permanent release of a prisoner before the expiration of the jail term on the promise of good behaviour). This parole should however be subject to some conditions like the recommendation of a sentencing judge, length of time an offender has served etc.

CONCLUSION

In conclusion, the best punishment for a capital offender is imprisonment and this would be solidified under the philosophy of deterrence and rehabilitation. We however need to improve our prisons and make it a place for reformation rather than pain. Criminals who know that going there would be unnecessary as it will make them return to their previous personality would not want to go there in the first place.

QUESTION 2B

My answer wouldn't really be the same if the accused was charged for a simple offence however, rehabilitation doesn't select. Every offender needs to be reformed even if he is a capital offender or one accused of a simple offence. Simple offences are offences other than a felony or misdemeanor. But simple offenders do not need to be imprisoned.

My answer to this question is **NO**. My answer would not be the same if the accused was charged for a simple offence. Imprisonment is not the best punishment for a simple crime offender as punishment should be determined by the gravity of the offence. One of the guidelines laid down by the Supreme Court to aid the courts in passing sentences is even nature of the offence. So, this would not be handy if offenders are not punished in accordance with the seriousness of the crime. Deterrence is also meant to prevent the crime and there are various examples of minimal punishments that are suitable for an accused who commits a simple offence. But even when the minimal punishments are imposed, rehabilitation should not be excused. The offender does not have to be in prison to be reformed, he can be compelled to go to a reformation center for a week. That can even be part of the judge's pronouncement on him.

An offender accused of a simple offence should be given punishments less than imprisonment. Punishments like:

- Canning
- Fine Payment
- Community Service
- Probation
- Verbal Sanctions
- Rehabilitation

Canning entails whipping or flogging the person which is suitable for a simple crime offender. Fine payment is an economic sanction where the offender is asked to pay a certain amount of money as a form of compensation or restitution for the crime he or she committed. The amount of money is left to the discretion of the court. Community service is an unpaid work which the offender is compelled to perform for the community in which the offence has been committed for a specific period. Probation in criminal law is a period of supervision over an offender ordered by the court instead of serving term in prison. Lastly, verbal sanction basically has to do with talking to the offender. It could be by reprimanding them especially first time offenders.

Conclusively, less punishments should be imposed on people accused of a simple offence. Imprisonments and death sentences are not options for someone accused of a simple crime. There are other minimal punishments. Having said this, no matter the punishment imposed, rehabilitation should not be excused.

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