

SRJC Preliminary Examination 2010

Paper 2 Insert

This Insert consists of 2 printed pages.

Passage 1

Trevor Turner writes on the behaviorist and psycho-analytical understanding of punishment.

- 1 Punishment is the infliction of some kind of pain or loss upon a person for the transgression of a law or command. There are various reasons for modern chastisement. These include the need for revenge; the need for compensation for losses suffered; the need to consider the wider safety of society; and some sort of re-instatement or even therapy for the offender. These four horsemen of the correctional apocalypse vary throughout history as to their level of influence. It is well established in industrialized societies that there is an inverse relationship between the numbers of people in prison and the numbers in mental hospitals. Discharge people from the latter, as in the present era of community care and prison, and numbers start to climb. Expand your 'asylum' system and prison numbers tend to fall. 5
- 2 The two most powerful theories shaping punishment in the twentieth century are behaviourism and psycho-analysis. The former suggests that behaviour is all and that inner feelings, fantasies, and fixations are but metaphysical claptrap. Rats in cages can be punished - usually by electric shock - to conform to certain behaviour patterns. Behaviour modification is frequently used in bringing up children even in the most liberal societies, including measures of verbal or even physical admonition. While there is a debate about the effects of corporal punishment and its excesses on the personalities of young children, many parents still accept the use of some physical sanction to deter wayward behaviour. 10 15
- 3 The more complex approach of Freud and the psycho-analysts gives a rather sexier reading. This theory suggests that as we grow up we develop, initially, our basic instincts; then our control centre for balancing these primitive drives with the realities of the outside world. Then, finally, a Superego. This subconscious self derives from the control our parents exercised over us and acts as a kind of conscience. This may sometimes involve the need for the pain of punishment to alleviate the chronic guilt coming from our Superego. Thus, accepting punishment – and, of course, seeing other people accept punishment – becomes part-and-parcel of our personal stability. 20
- 4 Freud seems to suggest that punishment is a natural part of the human state. We can enjoy it. We all enjoy a good thrashing; whether it is the 'thrashing' of the opposition at a game of rugby or football, or whether it is the thrashing we receive from an angry parent. In a fragmented, individualized world, the desire for discipline in oneself and others becomes an increasingly influential undercurrent. Such primordial instincts may even be seen as the basis for the new 'tough-on-crime' approach. The dark army of medieval moralists, increasingly threatened by the outriders of post-Darwinian rationalism, is becoming ever more fierce in its demands. Just as the new ideas of the Reformation generated the heightened reactions of the Inquisition, with its' burning of witches and hunting down of heretics, so the heightened awareness, in the modern world, of crime and criminality leads to similar demands to control and punish. The return to the death penalty in many American States reflects exactly this primitive, sadistic urge. 25 30 35
- 5 It may be that punishment has yet another derivation. A particular feature of modern times is the perception of violence on the rise, simply because a growing number of people no longer accept such behaviour as normal. There is also the fact that we are more aware of what is going on. Whatever the cause, an urgent feeling persists that 'something must be done' to quell this awful upsurge in violence. The Superego within us has its desire to punish, and the 'criminal' is an obvious target. Getting rid of a few degenerate human beings seems less troubling in an over-peopled world, where life seems cheapened daily with public deaths from Bosnia to Somalia, or in awful air crashes or natural disasters. Is this punishment for our own excessive breeding? As the crush gets noisier the demand to get rid of the overt criminals becomes more insistent. Even adolescents and the intellectually disabled are no longer immune from the death penalty in America. A fervour for moral 40 45

eugenics has taken over the administration of justice.

Adapted from the article "Naughty Naughty"

Passage 2

Michael Hwang writes on the purposes of punishment.

- 1 The old view of punishment holds that there is a necessary moral connection between wrongdoing and punishment, termed 'retributive justice' which is based on the 'eye for an eye' principle. I prefer an alternative view, which is that offenders are punished only for social reasons. This principle is best expressed in the words of the Utilitarian philosopher, Jeremy Bentham, who wrote: All punishment is in itself evil. It ought only to be admitted in as far as it promises to exclude some greater evil. 5
- 2 Retributive justice looks to the past when it seeks to punish the offender for what he has done, while the utilitarian looks to the future to justify the imposition of punishment. The utilitarian justification for punishment is not to take revenge on the offender for his wrongdoing but to prevent future offences of a similar kind, whether by that offender or others. In short, the principle of deterrence should underpin a rational policy of sentencing. The sentence should be determined by its effect upon the person punished or by serving as a warning to others. 10
- 3 In addition, the penal process can have a certain educational effect, both on the offender as well as the community at large in reinforcing the social values of the community as expressed through its criminal laws. However, the educational process should only be regarded as a side effect of punishment, and not as its primary justification. To that extent, I would therefore disagree with Lord Denning who once famously said, "The ultimate justification of any punishment is not that it is a deterrent but that it is the emphatic denunciation by the community of a crime." The purpose of the criminal law is not to enforce the moral standards of the community as such, but to protect the community and individuals from tangible harm. Accordingly, punishment should not be based on moral denunciation as its primary justification. 15
20
- 4 But utilitarianism does not provide a self-contained justification of punishment. If one carries utilitarianism to its logical conclusion and makes deterrence the sole criterion for punishment, there would be times when the easy way to abolish a socially undesirable practice would be to impose extremely harsh penalties, such as to impose huge fines or even imprisonment for parking offences. But the community would, rightly, reject such penalties because they would violate another principle that is commonly accepted as a necessary ingredient of a rational sentencing policy, that is, the principle of *proportionality*. That principle reflects the correct place where retribution ought to be reflected in punishment – in the distribution of justice. The extent to which an offender ought to be punished cannot be determined solely by the need to stamp out future repetitions of the same offence; there is a moral limit to the law's power to make an offender an example for others to fear. 25
30
- 5 Conversely, there may be occasions where an offence may result in no overt harm, but may attract such moral outrage that, a failure to punish - or punish adequately - such an offence will lead to those outraged to take physical action to vent their feelings. This is the basis for laws and punishment against those who express views which give serious offence to religious or racial groups. Indeed, this was the original justification for having laws at all, because, in the absence of government having a system of law and order and punishment for violation of those laws, victims of wrongs committed against them would have to resort to self-help to gain redress for the loss and suffering they had sustained. 35

Adapted from the article "Crime and Punishment"