

# Textbook cj2012 fagin-which philosophy of punishment do you believe in and why

Law



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Law 08 November The Philosophies of Punishment The law prescribes punishment for offences based on the moral principle that one who commits a wrong must receive an appropriate penalty for the misdeed. Though penalties seek to exercise certain social as well as control functions, the award of punishment is normally rooted on the premises such as retribution or vengeance, incapacitation, deterrence, rehabilitation and/or restoration. Retribution theory of punishment believes that the perpetrator of a crime must be awarded a punishment which is “ proportionate to the harm” done to the victim (Carlsmith et al. 285). The theory of incapacitation, on the other hand, is founded on the philosophy that criminal circumstances must be negated so that the crime will not occur again while deterrence theory contends that the punishment awarded to an offender should be “ sufficient to prevent future instances” of such crimes (285). Rehabilitation theory attempts to provide the offender a positive environment and creating awareness whereas restoration theory focuses on a restoring process by bringing the stakeholders together, with the offender taking responsibility for the offence and providing restitution to the victim. I believe restoration is the best approach because while refuting the effectiveness of other theories, it strives to bring positive outcomes for both the victim as well as the perpetrator.

Punishments should rather address the crime than the criminal, especially in the context that an offender commits a crime not merely based on the faculty of free will. Several factors, such as biological, psychological and social influences contribute to criminal behavior in people. Therefore, punishments need to be focused on these causative elements rather than on

the person who commits a crime. The approaches of vengeance and deterrence are found on the concept of punishing the perpetrator and not on eliminating the tendency to commit crimes. Thus, these may not yield any positive outcomes either for the person who commits the crime or the one who falls prey to it. Similarly, the philosophy of incapacitation also will not preempt a criminal from committing a crime, when the opportunity ripens. The concept of rehabilitation, focuses on providing positive environment for the criminal, and can be understood as a better approach than the other three. However, it does not guarantee a transformation of the offenders because they may embark on criminal behavior when the environment changes. Besides, it does not take into account the victim in any manner. On the other hand, the restoration philosophy approaches crime with the purpose of eliminating the tendency of offenders to engage in criminal behavior and also attempts to generate in them repentance. Besides, it also endeavors to integrate the perpetrator and victim into the community system to bring positive outcomes to both. In the modern world, where humans have attained a high level of sophistication, the criminal justice system also must evolve according to the needs of the time. Previous systems of punishments have, to a certain extent, been effective in combating crimes and reducing crime rates. However, the approach of restoration, with its focus on addressing the crimes, will remove future possibilities of the offenders engaging in criminal behaviors.

#### Works Cited

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