



Law Q2

“Use every man after his desert, and who should 'scape whipping?” Should the law treat offenders better than they deserve?

Recommended Readings

Historical Resources

1. John Locke - "Second Treatise of Government" (1689)

Locke argues that punishment should be proportionate to the crime

Explores the concept of natural rights and the role of government in protecting those rights

Discusses how punishment should serve three purposes: reparation, deterrence, and reformation

Key chapters to focus on: Chapter 2 (State of Nature) and Chapter 7 (Political Society)

2. John Locke - "An Essay Concerning Human Understanding" (1689)

Examines human knowledge, identity, and moral reasoning

Explores how we form ideas of right and wrong

Relevant sections on moral accountability and personal identity in Book II



3. Cesare Beccaria - "On Crimes and Punishments" (1764)

Groundbreaking work advocating for criminal justice reform

Argues against cruel punishments and for proportionality in sentencing

Influenced by Locke's ideas on natural rights and social contract

4. William Shakespeare - "Hamlet" (ca. 1600)

Source of your essay question quote (Act 2, Scene 2)

Hamlet speaks these lines when discussing how to treat the actors

Reflects on universal human fallibility and the question of mercy vs. justice

5. Immanuel Kant - "Metaphysics of Morals" (1797)

Presents retributivist theory of punishment

Argues for strict proportionality between crime and punishment

Contrasts with more utilitarian or rehabilitative approaches



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6. Jeremy Bentham - "An Introduction to the Principles of Morals and Legislation" (1789)

Foundation of utilitarian approach to punishment

Argues the purpose of law should be to maximize happiness and minimize suffering

Provides contrast to Locke's natural rights framework

Contemporary Resources

1. Michael Sandel - "Justice: What's the Right Thing to Do?" (2009)

Accessible exploration of different theories of justice

Compares Kantian, utilitarian, and virtue-based approaches

Includes discussions of desert, mercy, and proportionality

2. Martha Nussbaum - "Anger and Forgiveness" (2016)

Examines the role of retribution and forgiveness in justice

Questions whether anger and the desire to punish serve constructive purposes



Offers perspective on mercy and restorative approaches

3. R.A. Duff - "Punishment, Communication, and Community" (2001)

Develops communicative theory of punishment

Argues punishment should communicate moral censure while respecting offenders as moral agents

Balances retributive and rehabilitative concerns

4. Michelle Alexander - "The New Jim Crow" (2010)

Examines mass incarceration and racial disparities in criminal justice

Questions whether current system truly delivers deserved punishments

Provides contemporary context for discussing proportionality

5. John Braithwaite - "Restorative Justice and Responsive Regulation" (2002)

Outlines theory and practice of restorative justice



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Focuses on repairing harm rather than punishing wrongdoing

Offers alternative to desert-based approaches

6. Douglas Husak - "Overcriminalization" (2008)

Examines the expansion of criminal law and proportionality concerns

Questions whether we criminalize too much conduct

Relevant for discussing what truly "deserves" punishment