Evaluating the usefulness of punishment theories in the context of crimes committed by those in custody

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ABSTRACT

It is an inevitable and regrettable reality that inmates continue to commit crimes while serving their sentences. This is rather bizarre because prisons are naturally confined spaces that leave one with little or no liberty to do what one would normally do outside of prison, let alone committing crime. This raises questions concerning the pragmatic position of scientific theories that are not only formulated to explain, predict, and understand phenomena but are also seen as a bedrock of scientific research. It would not be far-fetched to expect any research paper to include a section on a theoretical framework that is essentially a representation of some level of the application of particular scholarly theories. However, not much has been documented about the usefulness of scientific theories that normally form part of research papers. This analytic paper evaluated the usefulness of the scholarly theories in the criminal justice system field, specifically punishment theories, by reflecting on the crimes committed by inmates while serving their time. This study found that retribution, deterrence, and incapacitation are not useful theories in terms of theoretical scope. The incapacitation theory is not useful in terms of heuristic value, and deterrence, incapacitation, and rehabilitation are not useful in terms of validity.

INTRODUCTION

The use of scholarly theories is common among academics and an acceptable way of integrating them as part of scientific research papers. One is almost tempted to say that they are academics’ way of life. Adrignola, Spaynton and Trijnstel (2012) state that theories guide how we actually communicate. Theories form the academic foundation of every discipline and allow the transformation of information into knowledge (Littlejohn & Foss, 2008). The development of theory within our respective disciplines is crucial to our research endeavors. This part of many research articles is usually identified as the theoretical framework. This is generally an acceptable practice but it would be interesting to know what purpose theories serve, but first it is important to understand the meaning of the concept of theory itself.

What is a theory? Bezuidenhout (2014) defines theory as a systematic description of the concepts, constructs, and relationships of specific processes or phenomena in a given discipline. A theory is a set of ideas or statements that explain a particular social phenomenon (Bless, Higson-Smith and Sithole, 2013). Neuman (1997) defines theory as a system of interconnected abstractions or ideas that condenses and organizes knowledge about the social world. Sutton and Staw (1995) view theory as connections among phenomena; a story about why acts, events, structure, and thoughts occur. Theory emphasizes the nature of causal relationships, identifying what comes first, as well as the timing of such events.

With these non-exhaustive definitions of the concept of theory, it becomes clear that many scholars agree that a definition of this concept must include key words such as concepts, constructs, system, relationship, or interconnectedness. This means that closer scrutiny of many of the definitions reveals the elements of what constitutes the definition of this concept. On the contrary, we cannot...
say the same thing in respect of the purpose that theories serve. It is important to understand that theory plays an important role; as Hoover and Donovan (2011) put it: “Without the many roles that theory plays, there would be no science”. Gregor (2006) posits that a theory can be used for analysis and description, explanation, prediction, and prescription, and further contends that a combination of these goals leads to five types of theory, namely analysis, explanation, prediction, explanation, as well as design and action. Weber (2012) contends that the first and fifth types of theory identified by Gregor (2006) are not theories but typologies and models respectively.

According to Hoover and Donovan (2011), theory provides patterns for the interpretation of data, links one study with another, supplies frameworks within which concepts and variables acquire substantive significance, and allows us to interpret the larger meaning of our findings for ourselves and others. At their core, theories are used to organize and systematize our thinking and to deepen and extend understanding (Neuman, 2014). The organized knowledge of a field or theories, developed by generations of previous scholars, provides a starting point for understanding that field (Littlejohn & Foss, 2011). In our quest to develop a theoretical framework for our research, it is of the utmost importance to understand that theory forms the central foundation upon which readers and other scholars want to find the connectedness of ideas, an explanation of phenomena under study, and a description of relationships between different variables that will enable a deeper understanding of a particular field.

Substantial literature about theories has been documented, as can be witnessed from the foregoing definitions and the role or purpose of a theory in research. However, not much has been documented about the usefulness of scientific theories that normally form part of research papers. This analytic paper evaluated the usefulness of the scholarly theories in the criminal justice system field, specifically punishment theories, by reflecting on crimes committed by inmates while serving their time. Neuman (2014) states: “Theories are not static. Older theories are constantly modified and new ones developed.” A theory is only as good as its present and potential uses in explaining observations (Hoover and Donovan, 2011).

Due to the analytic nature of this study which is slightly different from a traditional research report, this paper is organized as follows: following the introduction part, a second part is a literature review that reflects on the theories of punishment and criminality in prisons to enable a determination of the usefulness of the theories of punishment. These theories and empirical studies on criminality in prisons demonstrated the linkage between punishment theories and criminality within in prisons. The third part introduces the background information on research and methodology. After evaluation and findings of the study, the author finally concludes this paper with key points and recommendations.

**Literature Review**

The purpose of this study’s review is to gain an understanding of the current state of knowledge about the theories of punishment and their usefulness (du Plooy-Cilliers, 2014). It summarises claims that have emerged from prior research efforts in respect of theories of punishment and prevalence of crime in prisons. In order to ensure that the reader understands exactly what this study is about, the meaning of concept of theory was dissected in the foregoing section to demonstrate its usage in this study. According to du Plooy-Cilliers (2014), the conceptualisation of the key term forms an important part of research because it improves effective communication. First, a summation of the theories of punishment is presented. This helped in identifying the flaws (Knopf, 2006) relating to the classifications of the theories of punishment despite their irrelevance to this study. This is then followed by a review on the prevalence of criminality within prisons. This enabled an evaluative discussion in line with the objective of this study and concomitant presentation of the findings of study.

**Theories of punishment**

Snyman (1991) poses rather pertinent questions about why the police go to the trouble of tracking down the suspect of a crime and why the court and the legal practitioners have to painstakingly establish whether the accused is guilty of a crime committed or not. The answer to these questions is simply to punish the accused if found guilty. Snyman (1991) also poses a follow-up question: Why should the offender be punished? The answers to this question lie in the following theories of punishment as classified by various scholars.

According to Rabie and Strauss (1985), there are a number of theories of punishment that belong to two groups, namely the absolute theory of retribution and relative theories of prevention. Theories belonging to the latter include individual prevention (incapacitation, individual deterrence, rehabilitation, and social defense) and general prevention (general deterrence, the socializing function of the criminal sanction, the habituative function of the criminal sanction, the informative function of the criminal sanction, and the morale-sustaining function of punishment). According to Snyman (1991), theories of punishment are divided into three classifications: firstly, the absolute (retributive) theory; secondly, the relative theory; and lastly, the unitary theory. The relative theory is further classified into preventive, deterrent (individual and general deterrence), and reformatory.

Burchell and Milton (2005) are of the view that theories of punishment are classified into two schools, namely retributive theories and utilitarian theories. Retributive theories include appeasement of society, expiation or atonement, denunciation, and just deserts. Utilitarian theories include prevention/incapacitation, deterrence (individual deterrence and general deterrence), reinforcement, and reformation/rehabilitation. According to Samaha (2011), theories of punishment are classified into two schools, namely retribution...
theory and prevention theory. The prevention theory is further classified into general and special deterrence, incapacitation, and rehabilitation.

The foregoing contrasting submissions by various scholars as to whether there are two or three classifications of the theories of punishment are immaterial and of no significance to this study. This study confines itself to the four popular theories of punishment, namely retribution, deterrence, incapacitation, and rehabilitation.

Retribution

According to Snyman (1991), this theory is the oldest of all theories of punishment. According to Carney (1974:61), Carlson, Hess and Orthmann (1999), Joyce (2006), and Seiter (2011), this theory is based on the premise that the commission of a crime disturbs the balance of the legal order, which will only be restored once the offender is punished for his/her crime. Punishment must therefore automatically follow upon the commission of a crime. It presupposes that the offender merely gets what he/she deserves based on the Old Testament principle of “an eye for an eye and a tooth for a tooth” (lex talionis) (Carney, 1974; Joyce, 2006). According to this theory, punishment must be proportionate to the harm done or the violation of the law. In other words, punishment should primarily fit the moral gravity of the crime and, to a lesser extent, the characteristics of the offender (let punishment fit the crime) (Mára Lustes, 2014; Joyce, 2006).

This theory has been criticized because it is a manifestation of a primitive urge to seek revenge (Carlson et al., 1999:15; Seiter, 2011). It is often difficult to ascertain what punishment will equal the harm caused or the rule violated because the nature of the harm may differ from that of any of the possible forms of punishment that may be imposed. Simply put, the principle of lex talionis has limited applicability (Seiter, 2011). For instance, what punishment can be imposed for contempt of court or prostitution? Certain conduct such as the technical violation of rules pertaining to public welfare, such as parking offenses or urinating in public, although they constitute a crime, it is not considered by society as morally wrong. The proportional sanctions would be based on the erroneous assumption that there is public consensus in the ranking of the moral gravity of particular types of crime (Snyman, 1989).

It is a fallacy to think that this theory cannot be applied in a given situation due to its period of existence or criticism. The application of this theory in many countries, particularly in South Africa, has come handy and of course with consideration of legal developments such as the abolishment of capital punishment. Mára Lustes (2014) submits that an example of retributive principles being used as the basis for punishment involves mandatory sentencing policies and sentencing guideline systems in the United States of America (USA). This proves to be applicable in the South African context because of the existence and application of the Criminal Law Amendment Act (No. 105 of 1997), as well as the sentencing guidelines (framework) of 2000 (South African Law Commission [SALC], 2000). The Criminal Law Amendment Act lists certain serious crimes such as murder, robbery, and rape and describes the actual situations in which mandatory sentences, including life imprisonment for murder and rape, must be imposed, except where courts find compelling and substantial circumstances that justify a lesser sentence (Neser, 2001).

In its report on a sentencing framework, the SALC (2000) makes provision for the purpose of sentencing and sentencing principles. The purpose of sentencing is to punish convicted offenders for the offenses that they have been convicted of by limiting their rights or imposing obligations on them in accordance with the requirements of the Criminal Law Amendment Act. According to Terblanche (2003), this statement seems to demonstrate a clear stand in favor of retribution as a dominant sentencing consideration.

Deterrence

This theory is classified under the utilitarian philosophy by the likes of Burchell and Milton (2005) and JR rank (2014). This classification is termed differently as relative theory by Snyman (1991) and as preventive theory by Samaha (2011). It was promoted and explained by Beccaria in the 18th century and Bentham in the 19th century. It is based on a rational conception of human behavior in which individuals freely choose between alternative courses of action to maximize pleasure and minimize pain (Mára Lustes, 2014).

Snyman (1991) contends that a distinction must be drawn between individual and general deterrence. Similarly, Cole (1989, in Neser et al., 1993) distinguishes between special and public deterrence. This means that deterrence operates on individual (special) and general (public) deterrence. Individual (special) deterrence, on the one hand, focuses on an individual offender and emphasizes that the punishment imposed should discourage the offender from committing further crimes, while, on the other hand, general (public) deterrence focuses on the community at large and points out that the punishment that an individual offender receives should deter the community from committing such an offense.

Punishment imposed with an intention to deter an offender or the community from committing the same offense could either be custodial or non-custodial. Custodial punishment means incarceration and non-custodial punishment means serving a sentence in the community under strict supervision. Although Mára Lustes’ (2014) assertion that punishments have the greatest potential for deterring misconduct when they are severe, certain, and swift in their application, the question that ought to be asked is whether incarceration, as a form of punishment, can deter an offender from committing crime or whether incarceration perpetuates criminal behavior.
Incapacitation

Incapacitation is sometimes referred to as public protection and prevention. Execution, mutilation, and penal transportation were used in older legislation, while capital punishment, imprisonment, and certain types of physical mutilation are used in modern law (Burchell and Milton, 2005). The idea behind incapacitation is to restrict the individual’s movement either temporarily or permanently to prohibit him/her from committing crime. Gorr and Harwood (1995) extend the foregoing to include incapacitating an allegedly dangerous individual.

While states such as Alabama, California, Florida, Kentucky, Texas, Washington, etc. in the USA, and countries like Botswana in Africa are in favor of the death penalty and other types of incapacitation, the most widely known and practiced type of incapacitation is incarceration. According to Mára Lustes (2014), several new forms of incapacitation have emerged. These include shock incapacitation programs (short-term incarceration) of juvenile offenders to show them the pains of imprisonment and scare them into a future life of conformity, work release programs, placement in halfway houses, as well as intensive-supervision probation. This model is designed to target criminal offenders thought to have the greatest probability of repeat offending. High-security prisons are examples of facilities that can be used as selective incapacitation.

Like retribution and deterrence, incapacitation has its share of shortcomings. Critics of this theory argue that it merely shifts criminality from outside prisons to inside prisons and it is always temporary (Samaha, 2011). Rabie and Strauss (1985) assert that this theory is based on an unproven hypothesis that a person who committed a certain crime is dangerous and will probably repeat his/her criminal behavior unless he/she is in some way restrained and that this theory does not provide a satisfactory answer to the question of how long the offender must be kept incapable of committing crimes.

Burchell and Milton (2005) offer what could be seen as requirements to justify incapacitation and a response to the above shortcomings. These include the following:

i. The likelihood of further crimes should be investigated before punishment is motivated by this theory.

ii. A balance between the protection of society and the offender’s welfare must be achieved.

iii. Punishment should seek more positively to reform or rehabilitate the offender and deter others from crime.

The dawn of democracy in South Africa saw the promulgation of the Constitution of 1996, which contains the Bill of Rights that every citizen is entitled to, including offenders (South Africa, 1996). The Constitution made way for the abolishment of the death sentence and other degrading and inhumane treatment of offenders. Congruent to this is the promulgation of the Correctional Services Act (No. 111 of 1998, as amended), of which Chapter 3 makes provision for the treatment of offenders consistent with human dignity (South Africa, 1998). In support of this theory, section 276(1) of the South African Criminal Procedure Act (No. 51 of 1977, as amended) states that “the following sentences may be passed upon a person convicted of an offence, namely-

i. Imprisonment, including imprisonment for an indefinite period …

ii. Correctional supervision;

iii. Imprisonment from which such a person may be placed under correctional supervision in the discretion of the commissioner or parole board” (South Africa, 1977).

Rehabilitation

Various scholars agree that rehabilitation theory focuses on an offender’s personality and not the crime. For instance, Snyman (1991) submits that, according to this theory, the purpose of punishment is to reform the offender as a person, so that he/she may become a normal law-abiding member of the community. Neser et al. (1993) share the same sentiment by submitting that this theory refers to attempts made to positively change the offender’s disposition and future behavioral patterns. These attempts may be through programs directed at tackling offending behavior that are often delivered in prisons (Joyce, 2006).

According to Samaha (2011), rehabilitation theory is based on two assumptions. The first is determinism; that is, forces beyond the offenders’ control cause them to commit crimes and they therefore cannot be blamed for committing such crimes. Secondly, therapy by experts can change offenders, not just their behavior, so that they will not want to commit any more crimes. Rehabilitation theory, like retribution, deterrence, and incapacitation, has received stern criticism. Shwartz (1983, as quoted by Samaha, 2011), points out that it has been criticized because, firstly, it is based on false or at least unproven assumptions. Secondly, it makes no sense to brand everyone who violates criminal law as sick and needing treatment. Lastly, rehabilitation is regarded as inhumane because the cure justifies administering large doses of pain. Rabie and Strauss (1985) further criticize rehabilitation theory by submitting that what may be the best treatment with a view to the reformation of the offender may be in conflict with the necessity to deter others from committing such a crime.

Notwithstanding the above criticism, it is evident that South Africa is in favor of rehabilitation as a punishment theory. It is a well-known fact that South Africa is undoubtedly faced with major challenges of unemployment and poverty. Research has proved that there is a relationship between unemployment, poverty, and crime and it is therefore inevitable that South Africa’s crime rate is
influenced by unemployment and poverty. Evidential to this is the current state of our prisons, which are characterized by overcrowding. Paragraph 4.2 of the White Paper on Corrections of 2005 is succinct about rehabilitation as an objective of the South African correctional system (Department of Correctional Services, 2005). Rabie and Strauss (1985) assert that we can use prisons to educate the illiterate, teach people a useful trade, and accomplish similar benevolent purposes. The plain disheartening fact is that we have very little reason to suppose that there is a general connection between these measures and the prevention of future criminal behavior.

The South African Department of Correctional Services makes provision for the following programs in the interest of rehabilitating offenders:

i. Care: The purpose of this program is to provide needs-based care programs and services that are aimed at maintaining the personal wellbeing of incarcerated persons in the department’s care.

ii. Development: The purpose of this program is to provide needs-based personal development programs and services to all offenders. Personal development of offenders involves programs and services that are aimed at developing skills and social development competencies, including technical training, recreation, sports, education, and the operation of prison farms and production workshops.

An earlier submission by Rabie and Strauss (1985) that there is very little reason to suppose that there is a general connection between these measures and the prevention of future criminal behavior is rather premature. The question that ought to be asked is with regard to the sufficiency, if available, and the effectiveness of such programs aimed at rehabilitating offenders.

Prevalence of criminality within prisons

It is not easy to detect criminal activities within prisons because, as Bayer, Hjalmarsson and Pozen (2009) put it, “there are no formal schools for acquiring criminal skills or knowledge, and the hiring practices of criminal gangs and networks are conducted without general advertising or open-application recruiting. As a result, social networks interactions are likely to play an extensive role in the proliferation of criminal activity within prisons”.

The commission of crime by those incarcerated is prevalent not only in South African prisons but in many prisons in the world. In Brazil, waves of violence, including rebellions in 73 prisons in the state, aggression, and attacks against penitentiary agents, erupted in 2006 that were linked to organized crime, particularly the so-called Primeiro Comando da Capital, which originated from the prisons in the São Paulo penitentiary system (Adorno & Salla, 2007). In the USA, it is estimated that approximately 1,045 inmate murders have occurred in state and federal prisons between 2001 and 2015. Noonan (2016) reports that data from the Deaths in Custody Reporting Program, which is the only national statistical collection that obtains information about deaths in adult correctional facilities, reveal that 2% to 3% of all inmate deaths within prisons are attributed to inmate homicide and between 39 to 90 inmates are murdered by other inmates each year.

People still commit crimes within the walls of prisons in the USA, and there are several contributing causes for violence to occur among prisoners or between inmates and prison staff. Types of prison violence include murder, manslaughter, sexual assault, theft, and aggravated assault. When a murder or aggravated assault happens in prison, it is usually done with a shank made out of illegal contraband within the prison system (Study.com, 2016). Cook and Lane (2017) confirm that the sexual victimization of people incarcerated in America’s correctional facilities is still a problem that merits attention.

In Western Australia, offenses committed by the incarcerated include disobeying a rule or order, disorderly behavior, swearing or the use of indecent language, breaking or damaging property, behaving in a riotous manner, assaulting another person, escaping or preparing to escape, use or possession of drugs or alcohol, and refusing to submit to a drug test (Phillips, 2019). Kainar (2016) has found that the problem of organized crime combating and liquidation of its manifestations in the penal system of Kazakhstan Republic still remains open and compared it to that in the penal systems of all former Soviet Union states. Their similarity is accounted for the established punishment system under the codes of thieves in law, organized crime groups inside the penal system.

It is common knowledge that South Africa’s prisons are infested with subculture phenomena. Subculture refers to a social system with a strong class system, a strict code of behavior, and a value system that differs from the code of behavior of prison authorities. This subculture leads to certain phenomena that are interrelated and they include, inter alia, gang activities, unrests and riots, escapes, and sexual activities (Carney, 1974, as quoted by Coetze & Gericke, 1997). According to Kristine (2011), there are various definitions for prison gangs but a generally accepted definition is that a prison gang operates within the prison system as a criminally oriented entity that threatens or is perceived to threaten the orderly management of a prison. As in South Africa, American prison gangs are responsible for much of the violence, distribution of drugs, manufacturing of weapons, and loan sharkining in prisons (Jali Commission, 2005).

Escape is defined as any unauthorized departure of a prisoner from custody (Killinger and Cromwell, 1979, in Coetze and Gericke, 1997). Escape from lawful custody is a crime in itself, poses danger to society, and is expensive in nature as limited state resources are used for rearrest. There is an average of 48 escapes from South African prisons each year (Luvhengo, 2022), with the latest being on 18 October 2022 when seven trial-awaiting detainees escaped from the Grahamstown Correctional Facility in Makhanda in the Eastern Cape province (Marais, 2022). Sexual violence is pervasive in South African prisons, yet also massively underreported (Jali...
Prisoners, particularly those who are aligned with the 28 gang, who practice homosexual relationships, engage in sexual malpractices (Human Rights Watch, 1994). This kind of relationship is regarded as sexual malpractice and is forbidden in South African prisons; hence it is referred to as a subculture activity (Coetze and Gerick, 1997). The Centre for the Study of Violence and Reconciliation (2009) contends that it is a myth that consensual sex between inmates is not an offense because there is no prison policy that criminalizes it. According to Saferspaces (2022), overcrowding in African prisons makes it difficult to separate predatory detainees from sexually vulnerable detainees, which makes it harder to prevent sexual violence in prisons.

Research and Methodology

Academic writing nearly always describes research methods because academic work is judged first on the merits of its methods. Findings must be supported by how the information was collected, and whether it was thorough and unbiased, and addressed the research objective appropriately (Patten & Newhart, 2018). Mohanal Sukhadia University (2022) further defines research methodology as specific procedures or techniques used to identify, select, process, and analyze information about a topic. In other words, the methodology section of a research paper should address the question of how the data was generated and analysed? In this paper, no specific data collection methodology was adopted except through literature review due to the nature its nature which is analytical.

Analytical research is a specific type of research that involves critical thinking skills and the evaluation of facts and information relative to the research being conducted. It is mainly used to find the most relevant information (Mohanal Sukhadia University, 2022). This analytical research focused on the evaluation of theories of punishment by reflecting on the crimes committed by inmates while serving their time. This was done to determine their usefulness by using the widely recommended criteria to evaluate the usefulness of the theories, as articulated by Littlejohn and Foss (2008). These criteria include the theoretical scope, appropriateness, heuristic value, validity, parsimony, and openness. According to Adrignola et al. (2012), these criteria serve as a starting point for generating and evaluating theories.

Evaluative discussions and findings

In an attempt to address the objective of this study, namely to evaluate the usefulness of the scholarly theories in the criminal justice system field, punishment theories to be specific, by reflecting on the crimes committed by inmates while serving their time, the study utilized widely recommended criteria to evaluate the usefulness of the theories, as articulated by Littlejohn and Foss (2008) as indicted in the previous section.

Theoretical scope

Theoretical scope refers to how broadly and generally a theory explains a single phenomenon or a whole range of phenomena. In other words, assumptions made about a single instance or event are not considered a theoretical explanation or description. In an attempt to simplify this definition, Infante, Rancer and Womack (2003) refer to theoretical scope as how broad or narrow a theory is.

Retribution, deterrence, and incapacitation as theories are limited to a single event of crime and punishment. Any theoretical framework of a research paper that develops its theoretical foundation with retribution, deterence, and incapacitation as theories will not be considered as meeting the theoretical scope criteria because such would be limited only to an event of punishment. Retributition, deterrence, and incapacitation are therefore not useful theories in terms of theoretical scope.

Rehabilitation as a theory may be applied to more than one event of crime and punishment. Rehabilitation programs, depending on their nature, may be applied to rehabilitate offenders, the physically injured, or even those addicted to drugs or alcohol. The use of this theory in any research effort therefore passes the test of theoretical scope. In other words, rehabilitation as a theory is considered useful in terms of theoretical scope.

 Appropriateness

The appropriateness criterion relates to the soundness of a theory and its underlying assumptions, and the level of consistency between them. In other words, the extent to which the philosophical assumptions of epistemology, ontology, and axiology are reflected in the conceptual framework, research purpose, goals, questions, hypotheses, and research. Based on many published research articles that demonstrate the link between one or more of the elements of research, including the research tradition, philosophical assumptions, theoretical framework, research problem and question, as well as research methodology (Mitchell, 2012; Boeglin & Shapiro, 2017; Shelke & Dharm, 2019; Adnan, Bhatti & Hassan, 2022), it would not be difficult to arrive at a conclusion that all theories of punishment are appropriately used and therefore useful.

Heuristic value

Heuristic value means that a particular theory stimulates further investigation and allows the discovery of new ideas related to that theory. Adrignola et al. (2012) consider this criterion as important as it facilitates intellectual growth, development, and problem solving.

Retribution theory was originally based on the abstraction that punishment is an individual responsibility, but as society developed, this type of personal vengeance could no longer be tolerated and individuals were forced to relinquish their right to deal personally
with the malefactor, in return for a promise by society to punish the criminal (Meyer, 1968). Nowadays, retributive principles are used as the basis for punishment that involves mandatory sentencing policies and sentencing guidelines, such as the promulgation and implementation of the Criminal Law Amendment Act of 1997, as well as the sentencing guidelines (framework) of 2000 (SALC, 2000). This theory is and has arguably been useful in terms of its heuristic value.

In the face of continued criminality by those who are incarcerated, it is clear that incarceration does not deter criminals from committing further crimes as anticipated by the abstractions of the deterrence theory. The criticism leveled against this theory also necessitates a review of this theory. In addition to the introduction of its synonyms, such as the preventive theory of punishment or exemplary theory of punishment (Karim, 2020), this theory appears to be inspiring new ideas such as an investigation of the use and effectiveness of halfway houses and parole mechanisms as opposed to incarceration. Against this background, this theory appears to inspire research ideas and is therefore useful.

Incarcерation theory was originally based on the assumption that the execution, mutilation, and penal transportation of prisoners were used in the older law regime while capital punishment, imprisonment, and certain types of physical mutilation are used in modern law (Burchell and Milton, 2005). The idea behind incapacitation is to restrict the individual’s movement either temporarily or permanently to prohibit him/her from committing crime. Capital punishment and mutilation have been abolished in South Africa and, since then, no alternative theory has been developed. Instead, South Africa is experiencing prison overcrowding like never before. As Peté (2006) puts it, “[p]rison overcrowding in South Africa has reached such serious proportions that the country as a whole, and the government in particular, faces a stark choice. On the one hand, the government can take the difficult and drastic steps required to deal decisively with the problem of prison overcrowding, and thereby risk a massive political backlash caused by a perception that it is soft on crime. On the other hand, it can continue to tinker with the system without really addressing the problem, knowing full well that, without drastic and decisive steps being taken, chronic overcrowding in South African prisons will continue, as will the violation of the basic human rights of those confined within the prisons”.

It is against this background that many people from different sectors of society make calls for the return of the death penalty. To date, there is no evidence of new ideas to deal with overcrowding exacerbated by incarceration based on incapacitation theory. This theory’s usefulness is therefore questionable, especially since research on prison overcrowding is not new.

Rehabilitation theory is based on two assumptions. The first is determinism; that is, forces beyond the offenders’ control cause them to commit crimes and they therefore cannot be blamed for committing such crimes. Secondly, therapy by experts can change offenders, not just their behavior, so that they will not want to commit any more crimes (Samaha, 2011). On the basis of these assumptions, one is tempted to ask why South Africa is experiencing a high rate of recidivism. Why does South Africa’s correctional system not reduce the recidivism rate? An estimation of a recidivism rate between 50% and 70% within three years of release (Africa International Advisors, 2020) must be a cause for concern. These questions suggest that there is an existing problem that gravitates toward the rehabilitation theory. One can easily arrive at the conclusion that the rehabilitation theory is useful in terms of heuristic value.

Validity

Validity refers to the worth and practical nature of a theory (Adrignola et al., 2012). Littlejohn and Foss (2008) extend the definition of validity as a criterion to assess the usefulness of theories and define it as the truthfulness of a theory in describing an experience or phenomenon that is measured in terms of value, correspondence, and generalizability. It is a general practice within the judicial system of South Africa to impose a sentence on the basis of proving beyond reasonable doubt that the accused has indeed committed a crime, thereby disturbing the balance of the legal order. This usually happens after a crime has been committed, notwithstanding delays associated with court processes. The promulgation and implementation of the Criminal Law Amendment Act of 1997 and the SALC’s sentencing guidelines (framework) of 2000 are good attempts to ensure that punishment is proportional to the crime committed. The foregoing is a simple demonstration of the value of retribution theory.

The foregoing is also a demonstration of the relationship between the explanation of the theory and its practical and observable application. Retribution theory is generalizable in the context of the criminal justice system because it is consistently applied by the judicial authority of the Republic as some judgments are usually guided by precedents. Similarly, this is also practiced in the USA as alluded to earlier. Retribution theory is therefore useful in terms of validity.

Deterrence as a theory assumes that punishment deters an offender or the community from committing the same offense. If this theory was of value, and if there was a correspondence of the explanation of this theory and what we could observe, then we would not be experiencing recidivism or continued criminality within South African prisons. Similarly, if incapacitation and rehabilitation as theories were of value, and if there was a correspondence of the explanation of these theories and what we could observe, then we would not be experiencing recidivism or continued criminality within South African prisons.

Parsimony

Parsimony is about choosing a simpler theory between two competing theories (Littlejohn & Foss, 2008). According to Neuman (2014), social science theory is often more complex and abstract than a typical layperson’s theory; however, a principle of good theory, parsimony, is helpful. It means that simpler is better, and that better theories have minimal complexity. Good theories lack
redundant or excess elements. If one must choose between two equally convincing theories, the simpler one is better. This refers to the idea that, all things being equal, the simplest solution takes precedence over a more complicated one. A theory is therefore valuable when it is able to explain, in basic terms, complex communicative situations. In the absence of competing theories that make the same predictions as the theories of punishment (retribution, deterrence, incapacitation, and rehabilitation), no assessment of their usefulness in terms of the parsimony criterion can be made.

Openness

Openness refers to the degree to which a theory is open to other possible explanations, interpretations, and improvement. The history of theories of punishment dates back to the 18th and 19th centuries (Alexander, 1922). What we know today is that retribution, deterrence, and incapacitation have been the aims or justifications for punishment in the past (Meyer, 1968), and today we have come to know them as theories of punishment. Viewed from this perspective, it means that they have somehow improved and we can therefore conclude that they were open for improvement but cannot be applied to different fields of study. By virtue of unavailable recent evidence of improvement, new explanations, or interpretations, it can be concluded that these theories are not useful in terms of this criterion.

Conclusions

This paper explored the usefulness of the scholarly theories in the criminal justice system field, punishment theories to be specific, and to a certain extent by reflecting on the crimes committed by inmates while serving their time. Theories form an important part of research as they help us to better understand a phenomenon under study in a particular field. In the criminal justice field, common theories are punishment theories, which include retribution, deterrence, incapacitation, and rehabilitation. Although many scholars are critical of these theories, they are a larger extent useful in terms of the criteria used to evaluate their usefulness. Of course some of them are not useful in terms of the said criteria. For instance, retribution, deterrence, and incapacitation are not useful theories in terms of theoretical scope. Incapacitation theory is not useful in terms of heuristic value. Deterrence, incapacitation, and rehabilitation are not useful in terms of validity. While no assessment of their usefulness in terms of the parsimony criterion in respect of retribution, deterrence, incapacitation, and rehabilitation can be made due to lack of competing theories, these theories are also found not to be open for possible new explanations, interpretations, and improvement.

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