ORIGINAL PAPER

Military Veterans, Culpability, and Blame

Youngjae Lee

Abstract   Recently in *Porter v. McCollum*, the United States Supreme Court, citing "a long tradition of according leniency to veterans in recognition of their service," held that a defense lawyer's failure to present his client's military service record as mitigating evidence during his sentencing for two murders amounted to ineffective assistance of counsel. The purpose of this Article is to assess, from the just deserts perspective, the grounds to believe that veterans who commit crimes are to be blamed less by the State than offenders without such backgrounds. Two rationales for a differential treatment of military veterans who commit crimes are typically set forth. The *Porter* Court raised each, stating that we should treat veterans differently "in recognition of" both "their service" and "the intense stress and mental and emotional toll" of combat. The former factor suggests there being a "social contributions" or gratitude-based discount, whereas the latter factor points towards a "mental disturbance" discount. This Article analyzes the two accounts and raises some doubts about both. This Article then argues that a military veteran who commits a crime should not be blamed to the full extent of his blameworthiness, not necessarily because of his mental capacity nor because of his social contribution, but because the State's hand in producing his criminality undermines its standing to blame him.

Keywords   Veterans · Culpability · Posttraumatic stress disorder · Mitigation ·
Punishment · Retribution · Blame · Military · Just and unjust war · War crimes

Introduction

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Y. Lee (✉)
Fordham University School of Law, New York, NY, USA
e-mail: ylee@law.fordham.edu