

Name: Adepoju Tomiwa

Matric No: 17/LAW01/019

Course Code: LPI 304

Course Title: CRININOLOGY II



Assignment question;

- 1) What motivates the 'just desert' principle of punishment? Discuss
- 2 a) As a criminology student, what do you think is the most effective way of punishing and treating capital offenders. Give reason(s) for your answer
- 2 b) Will your answer be the same if the accused was charged for a simple offence?

Note: Maximum of 5 pages. (font: Times New Roman)

Answer to question 1

There are various philosophies and justifications for punishment in societies today and as a result of the urge to maintain order among human beings, violating already laid down (and codified) rules and laws ultimately results in social reaction which takes the form of punishment.

According to Thomas Hobbes, where there is no law, life will be short, brutish and nasty. This undoubtedly leaves a mark and in order to avoid lawless acts or to curtail them at least, Society's solution was the introduction of punishment into the scheme of things. What then is punishment?

> Punishment can be defined as a means of treating offenders through various methods of infliction of pain so as to correct any defect or criminal tendency in the offender and to ensure the safety of the society

> Punishment can also be defined as the affliction of pain by the state on someone convicted of an offence

> the infliction or imposition of a penalty as retribution for an offence.

"crime demands just punishment"¹

There are principles of punishment which serve social control functions and they include

- Retribution
- Incapacitation
- Deterrent
- Rehabilitation
- Restitution

For the purpose of the question, this writer would only treat the principle of Retribution.

Retribution: With its prefix re-, meaning "back", retribution means literally "payback". It is

¹ Oxford dictionary

the dispensing or receiving of reward or punishment.²

This method of dealing with offenders connotes the Latin maxim, *lex talionis* which means "eye for an eye" and "a tooth for a tooth." While being one of the most ancient methods of dealing with offenders, it stakes its roots in the offender being given equal punishment to the gravity of crime committed.

Note that in earlier times, penal law allowed the infliction of fatal injury on an offender than that which he inflicted on his victim however more humane treatments and punishments were sought out by penologists, hence the *lex talionis maxim*. It is in this retributive theory that there exists a familiar concept known as "just desert"

Just deserts: Just deserts uses this, relatively uncommon, noun form of desert, which may mean "deserved reward or punishment" (usually used in plural), "the quality or fact of meriting reward or punishment," or "excellence, worth."³

The main ideology behind this principle is the determination of punishment in relation to the offense already committed. Also known as the "proportionality principle," it seeks to address the quagmire of how much punishment should be inflicted on an offender and it answers that the measure of punishment given must be equal in proportion to the seriousness of the crime and it should be no more, no less.

The principle of proportionality is the idea that an action should not be more severe than is necessary, especially in a war or when punishing someone for a crime.⁴

The motivation behind this is to effectively fairness and justice take its course being that the offender can, in literal terms, get a taste of his own medicine. To achieve this, just desert is employed which serves as a guidepost that dictates the balance of distribution of equal punishment to equal offences that have been committed. Its importance can be seen in relation to the earlier stages of the principle of retribution in which the penal law allowed for grievous and fatal injuries to be inflicted on the offenders irrespective of his crime or its effect on the victim. It was crude and therefore was not practical enough to be seen as a justifiable means of punishment. The introduction of the proportionality principle thereby amended this issue and inflicted punishment only in proportion to the seriousness of the crime committed, thus an effective method of punishing offenders.

² <https://www.merriam-webster.com/dictionary/retribution>

³ <https://www.merriam-webster.com/words-at-play/just-deserts-or-just-desserts>

⁴ <https://www.collinsdictionary.com/us/dictionary/english/proportionality>

Answer to question 2a.

There are different forms of punishment in existence today including the death penalty, imprisonment, caning (haddi-lashing), fine, forfeiture, community service, probation, deportation etc. Most times, these punishments are dished out in response to the types of crimes committed. For example, people who commit murder (section 317 of the criminal code) or treason (section 37 of the criminal code) are faced with the death penalty while those who commit manslaughter usually have a life sentence or lesser awaiting them while simple offences like contempt of court or unlawfully wearing an army's uniform attract lesser punishments. Basically, the dictates of the law affirm that the graver your offences in the eyes of the law, the more serious the punishment would be.

With this in mind, this writer would now attempt to answer the question.

The term 'capital offender' mean only 'a person punishable by death', or may it also mean 'a Crimes punishable by death vary from state to state and country to country. In some American states these offenses may include first degree murder (premeditated), murder with special circumstances (such as intentional, multiple, involved with another crime, with guns, of a police officer, or a repeat offense), and rape with additional bodily harm, and the federal crime of treason. person who has committed a murder' (i.e that he/she does not necessarily get a capital verdict)⁵

Basically, the most effective way of punishing criminal offenders is through the death penalty.

The Rationale Behind My Answer

The death penalty, also called capital punishment, is when a government or state puts a person to death because they've committed a serious crime.

There are various reasons why I am in support of the death penalty and it's effectiveness in curbing the emergence of capital offenders

Firstly, we have to recognize the admissibility of the theory of Recidivism. Recidivism, in simple terms simply means the act of committing another crime after being punished for an offense. There's this theory that whenever a person goes to prison and comes out, they become a more hardened version of themselves.

It is important to note that there are many faults with the prison system and its inefficiency in actually treating the offenders. Prisons are congested, there is barely any

⁵ <https://legal-dictionary.thefreedictionary.com/capital+offense>

space and the idea of personal space is cast in the gutter. Also, there's no category system. This means that people who commit the more heinous crimes can be mixed with those who commit trivial crimes. This is one of the factors that triggers the recidivism rates. Imagine hardened drug dealers and murderers and armed robbers mixing with petty thieves or those who ignored traffic rules. The effect on them will definitely be negative. Therefore, it is of this writer's opinion that the death penalty is of a more sound reasoning than imprisonment.

Premeditation: this being my second reason amounts to disputing any idea of rehabilitation. As is well known, two elements of crime; the *actus reus* and the *mens rea*. The popular Latin maxim, *actus non facit reum, nisi mens sit rea* posits that for there to be criminal liability, the act only is not enough but the criminal mind is also necessary. What is my point? Before most crimes are committed, there is always that period of premeditation where the offender carefully thinks out his plan and strategy and prepares for the commission of the offence. People who fully and knowingly committed certain crimes can't be expected to feel sorry for what they did. A scenario here would suffice. In the event that a black father has his daughter raped by two white men, and then he carefully picks out their route, location and movement and he carries an m-16 and kills the both of them, I believe that such a father who premeditated the whole crime and took law into his own hands would believe that justice has been served. In this case, no amount of rehabilitation would convince the offender that he was in the wrong and that he shouldn't have committed that crime. If he eventually gets out of prison again and something similar to the rape happens again, there is a 90% chance that he will do the same thing all over again. The death penalty here will not only prevent that but will also serve as a deterrent.

Finally, Justice is served. Criminals who commit capital offences deserve a severe punishment for the crimes they've committed. Therefore, in the interest of justice, the death penalty serves as the appropriate medium through which this is done and the society is better off for it.\

Answer to Question 2b.

If the accused was charged for a simple offence, this writer's response would take a shift away from the death penalty because the gravity of the offence does not deserve the death sentence. Capital offences are literally offences that deserve the death penalty⁶, therefore it would be unruly and undeserved to give punishments of a higher calibre to lower crimes and offences. The usual fines, community service, short term

⁶ Check the Latin origin of the word, Capital

imprisonment etc. would suffice.

In conclusion, the death penalty should be readily and easily admissible for capital offenders not just as a form of sufficient and satisfactory punishment, but also as a form of deterrent in the society.

