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COURSE TITLE: CRIMINOLOGY II

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ASSIGNMENT TITLE : PUNISHMENT

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 reasons for your answers

B) will your answer be the same if the accused was charged for a simple offence?

**INTRODUCTION**

In most societies today there are rules that have been codified and set as laws whose main purpose is the maintenance of order among human beings consequently the violation of this calls for societal reaction. Societal reaction is most cases takes the form of punishment.

Punishment is therefore on if the devices for treating offenders in the society and to restore harmony or repair the damage done by violation of the law. Punishment can be defined as the affliction of pain by the state on someone convicted of an offence .according to Parker elements of punishment include the following

* It must involves pain or some other consequences normally considered unpleasant
* It must be for an offence against legal rules
* It must be imposed on an actual offender for the particular offence which he had committed
* It must be properly administered by human beings other than the offenders
* It must be imposed and administered by an authority constituted by a legal system against which the offences commited

**QUESTION 1**

1. Firstly we should know that just desert punishment is mainly about equity and it is very similar to retribution. Just deserts theory is a theory which is designed to promote equality and fairness of sentencing for the imposition of a sentence. The principle behind just deserts is the the punishment should fit the crime which has been committed that is the punishment must be equal or on the same level with the crime which has been committed. When such an instance occurs it is said that the offender has received their just deserts.

Just deserts as a philosophy of punishment argues that criminal sanctions should commensurate with the seriousness of the offence. It explains that the frequency and visibility of crime are linked to punishment severity. Only retribution can provide the basis for a theory of the just desert punishment .The retribution approach gold that punishment is just because it is deserved . The principle of just desert requires the punishment to be proportioned to the unfair advantage the offender has taken by lawbreaking. One popular justification for punishment is the just deserts rationale , A person deserves punishment proportionate to the moral wrong committed.

The term just desert principle represent the idea of a fair and appropriate punishment related to the severity of the crime that was committed . Just deserts is sometimes referred to as the retribution type of sentence in other words one should be punished simply because one committed a crime . This philosophy became influential in the United States during the 1970s after publication of the book doing justice by **ANDREW VON HIRSCH (1976)** Who is the leading proponent of the just desert model. The primary sentencing tool of the just desert theory is imprisonment . The main goal is crime prevention among other things.

One popular justification for punishment is JUST DESERT rationale. A person deserves punishment proportionate to the moral wrong committed .

T**he main motive behind the just desert theory is that those who commit crimes deserve to be punished .**

However there are some differences between the retribution theory and the just desert theory

* + 1. Retribution is said to be more of a revenge as the desire to punish criminal offenders to retaliate a past wrong by making the offender suffer while the just desert is the preference to restore justice through proportional compensation from the offender
    2. Retribution as revenge also predicts the support of harsh punishment and the willingness to deny fair procedure while the just desert is mainly predicted by a value of restoration motive and by right wing authoritarianism .

CONCLUSION

In conclusion the just desert theory fights and focuses on the issue of equality that is someone who has committed a minor offence should be given a minor punishment compared to someone who committed a capital offence who would be given more serious punishments this would be further discussed in the questions below .

It focuses on the fact that every criminal should be punished no matter how little the crime is that has been committed.

**QUESTION 2(A)**

**2a.**  Firstly a capital offender is someone who commits any criminal charges which is punishable by the death penalty called Capital since the defendant could lose his or her head Latin for caput. Crimes punishable by death vary from state to state and from country to country. A capital crime includes any crime that is so severe a person may be out to death as a punishment For example simply killing someone may not qualify as a capital crime in some state but torturing and killing the would be .

The descion to charge an offender with a capital crime falls on the prosecuting attorney . If an offence meets the requirement to be considered a capital crime , the prosecutor may choose to seek the death penalty. If a defendant is facing a capital charge they may decide to plead guilty in exchange for a life sentence rather than an execution

Therefore, as a criminology student in my opinion the best and effective way to punish a capital offender is either a DEATH PENALTY OR IMPROSONEMT to further explain this :

* DEATH PENALTY : The death penalty is also know as a capital punishment is a government sanctioned practice whereby a person is put to death by the state as a punishment for a crime . The death penalty is the sentence of death imposed by courts as punishment for a crime . Offences that are punishable by death penalty include murder **see section 319 of the criminal code ,**treason **see section 37 (1),** armed robbery **see section 1 of robbery and fire arms provision act .**

There are two people exempted from death penalty :

1. A pregnant woman cannot be sentenced to death **see section 368 (2) of criminal procedure act** instead she can be sentenced to life imprisonment

ii) A young person under the age of 17 years **see section 368 (3) of the criminal procedure act**

MODE OF EXECUTION: during squad, death by hanging , lethal injection electrocution .

* IMPROSONMENT : Imprisonment can be defined as a term of judicial sentence available for a convicted offender of adult age involving incarceration in prison for either life or specified period of time . The law requires that imprisonment should be imposed when it is necessary and should not exceed the offence. Imprisonment can run concurrently or consecutively

Imprisonment use the act of confining someone in a prison or as if in prison . Imprisonment is carried out generally as a penalty imposed by a court. As a such penalty, the individual is contained to an institution . Most obvious modes ate confinement in a prison or a private house.

My main reason for the punishments sated above is mainly because anyone who committed a severe or a capital deserves a punishment as serious as a death penalty of long term imprisonment . Referring back to the theory of just desert which was discussed above whose main objective was for the punishment given to be equal to the punishment

**QUESTION 2 (B)**

**2b.** However if the offender was a simple offender my answer will be different from the one mentioned above . A simple offender is someone is someone who commits a simple offence which is punishable on summary conviction before magistrate court , by fine , imprisonment or otherwise.

There are alternative means of punishing an offender especially if the individual is a simple offender and not known as a regular offender also is considered sometimes I’ll brush through some of the alternatives e.g.

1. Retribution: this is the most ancient method for dealing with offenders it is retributive and revengeful in nature this is similar to the Just desert theory it relies on the idea that a person whose conduct appears to have caused social harm should be held responsible e.g. banishment whipping etc

ii) Rehabilitation : this will help the offender mend his or her criminal ways and encourage the defendant to adopt a lawful lifestyle it is the most operating it may be used to prevent crime by changing the personally of the offender

iii) suspended sentence: A suspended sentence is jail or prison time that is put on hold if the defendant complies with certain obligation

iv) Fines: fine is money that a court of law other authority decide has to be paid as punishment for a crime or other offence. Fines are used especially for less serious offences committed by first time offenders e.g. minor drug possession, fish and game violation, shoplifting traffic and even some first time drunk driving cases. **See section 382 of criminal procedure act , see section 316 of the administration of criminal justice , section 23 of the criminal procedure act .**

**See also the case of goke v police**

v) probation : probation is a leash that the criminal justice system outs in defendants in lieu of incarceration in jail or prison

vi) restitution : while fines go the state restitution is money paid by the defendant to the victim or to a state restitution fund.

vi) community service: judges can sentence defendants to perform unpaid community work called community service to repay a debt to society for having committed the offence.

There punishment listed above can all be said to be appropriate for a simple offender for someone who is not a capital offender.