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**MATRICULATION NUMBER: 17/LAW01/097**

**COURSE: CRIMINOLOGY II**

**COURSE CODE: LPI 304**

**ASSIGNMENT TITLE: PUNISHMENT**

**Questions**

1) What motivates the 'just desert' principle of punishment? Discuss

2a) 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

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)

**Question 1**

Have you ever heard the saying 'let the punishment fit the crime'? Well, this is the philosophy behind the ***just deserts*** model of justice. The phrase represents the idea of a fair and appropriate punishment related to the severity of the crime that was committed.

The ***just desert*** principle is sometimes referred to as the 'retribution' type of sentencing. In other words, one should be punished simply because one committed a crime. Throughout history, the idea of retribution for the commission of a crime can best be explained in the Old Testament quote 'an eye for an eye, a tooth for a tooth.' According to ***just deserts*** theory, the seriousness of the crime alone should determine the punishment deserved. Seriousness, in turn, depends on the harm done and on the culpability of the offender. Surely both are relevant.

The idea of the ***just desert*** principle is motivated from the ideas of one of the earliest retributionists called Immanuel Kant from the eighteenth century. Kant sees the ides of punishment meted to the offender as a categorical obligation, and according to him: Punishment can never be administered merely as a means of promoting another good, either with regard to the Criminal himself or to civil society, but must in all cases be imposed only because the individual on whom it is inflicted has committed a crime. For one man ought never to be dealt with merely as a means subservient to the purpose of another, nor to be mixed up with the subject of Real Right. Against such treatment his inborn personality has a right to protect him, even though he may be condemned to lose his Civil Personality. He must first be found guilty and punishable, before there can be any thought of drawing from his punishment any benefit for himself or his fellow citizens.

The theory of ***just deserts*** is retrospective rather than prospective. The punisher need not be concerned with the future outcomes, only with providing punishment appropriate to the given harm. Although it is certainly preferable that the punishment serve a secondary function of inhibiting future harm doing, its justification lies in righting a wrong, not in achieving some future benefit. The central precept of the just desert theory is that the punishment be proportionate to the harm. The task of a just desert theorist, then, is to assess the magnitude of the harm and to devise a punishment that is proportionate in severity, if not in kind. Kant (1952) recommended censure proportionate to a perpetrator’s “internal wickedness”, a quality that may be approximated by society’s sense of moral outrage over the crime. ‘Just desert’ is a philosophy of justice whereby a criminal offence is viewed as lowering the victim or community’s status or power relative to the offender, which requires a degradation of the offender to redress the moral balance. However, ‘just desert’ means to ensure that a punishment is both appropriate to a crime and that it is consistent. Someone who steals a loaf certainly does not deserve life imprisonment. Neither does one convicted of willful homicide necessarily deserve such sentence.

In conclusion we can see that the Just Desert principle is motivated by the retributive theory of punishment that tries to say that a person must simply be punished because he or she committed a crime. That is to say that a person will not be punished until it is proven that said person committed said crime and also the punishment for the offence must be in correlation with the crime. This means that the punishment should not be heavier that the crime or rather that the offence should equal the punishment. The just desert theory believes in the saying “an eye for an eye”, which tries to explain almost literary that whatever crime is committed, its punishment must be in reflection of that crime. The principles general ideology stems from the fact that it should be reasoned that when a person commits a crime that person should simply be punished for that crime no more no less and also no one is to be punished for an offence unless proven guilty of it.

**Question 2**

Capital punishment is the supreme sacrifice paid by an offender, who has been adjudged guilty of a capital offence by a court of competent jurisdiction. Simply put, it is a sentence of death, mostly for the commission of serious offences. It is a non-institutional disposition method of treating an offender, and it is principally premised on the penological theories of deterrence, elimination and retribution.

In a bid to control and prevent commission of crimes, certain punishments are meted to offenders in order to prevent or discourage the future commission of such offences by potential offenders. Capital punishment is, therefore, one of the punishments targeted at preventing the repetition or commission of such crimes. Capital punishment is currently a global issue which has generated much controversy over the years. Different groups and persons have viewed the subject from different perspectives. Thus, the attitudes of nations vary from one to the other. This variance is confirmed by the fact that crimes that attract the capital punishment in the retentionist countries differ from jurisdiction to jurisdiction.

In Nigeria, today, five offences are punishable by death. These include: murder, treason, treachery, directing and controlling or presiding at an unlawful trial by ordeal from which death results, and conviction for armed robbery. The introduction of the sharia criminal law in some states in northern Nigeria widened offences punishable by death. For instance, under sharia law, death penalty can be applied for sexual crimes.

As a Criminology student, I am of the opinion that capital offences are some of the most nefarious and vile crimes that are committed in a country and should be punished as such. This simple means that I believe that capital offence should be punished with as much seriousness as it was committed. Capital offences should simply receives equal punishment as is explained in the retribution theory of punishment and as the law may have it, capital offences have capital punishment which is death. There are several reasons why capital offenders should receive capital punishment and a reason for this is that the capital punishment “***Death”,*** is a major crime deterrent.

In deterrence pain is inflicted on the offender to deter him or her or others from doing the act or omission in future. It may be general or specific. Specific deterrence aims to discourage crime by punishing offenders for their crime and thereby conveying to them that crime does not pay while general deterrence seeks to dissuade potential offenders by the threat of anticipated punishment from engaging in an unlawful conduct. In this sense capital punishment serves as a deterrent for others and not the person who has committed the crime. When a person sees that a capital offender is given the death sentence for committing a particular crime, then he or she gives the idea of committing such crime a second thought. It is obvious we cannot predict human behavior seeing that not all persons learn from the lessons of others and so therefore the capital punishment may deter some people from committing crimes while it may not deter some.

Ernest van den Haag, a Professor of Jurisprudence at Fordham University who has studied the question of deterrence closely, wrote: "Even though statistical demonstrations are not conclusive, and perhaps cannot be, capital punishment is likely to deter more than other punishments because people fear death more than anything else. They fear most death deliberately inflicted by law and scheduled by the courts. Whatever people fear most is likely to deter most. Hence, the threat of the death penalty may deter some murderers who otherwise might not have been deterred. And surely the death penalty is the only penalty that could deter prisoners already serving a life sentence and tempted to kill a guard, or offenders about to be arrested and facing a life sentence. Perhaps they will not be deterred. But they would certainly not be deterred by anything else. We owe all the protection we can give to law enforcers exposed to special risks."

The death penalty has been regarded as a retributive measure. Accordingly, the criminal should die for the crime he has committed. Allowing him to go free is to make him a threat to others. Just as the individual has the right to safeguard as well as take his life whenever he pleases, the state has the right and duty to take the life of a citizen in order to increase its welfare. This argument hinges on the ethical principle that evil deserves castigation and wrong doing deserves reparation by adequate deprivation and punishment for the wrong doer.

Again, it has been argued that if the death penalty is abolished, it may lead to an increase in the number of extra judicial killings by the police and survivors of violent crimes. Indeed, the knowledge that a wanton murderer, for example, would get only a life sentence with the possibility of state pardon may compel an overzealous police officer or the victim of such an offence to seek revenge outside the law.

In conclusion, we can see that capital punishment for capital offenders in its own way tends to deter some people from committing crimes due to fear of ending up the same way as a person who has been convicted for a capital offence. Capital punishment follows the retributive theory explaining that a person should be punished according to the seriousness of their crime, it helps to deter crime and also it has been explained that its abolishment may lead to increase in violent crimes in the country.

**Question 3**

According to the Retribution Theory of punishment, a person should be punished because he or she committed a crime and also the crime should always equal the punishment and vice versa. All other offences other than felonies and misdemeanors are simple offences, which are offences punishable with less than 6 months imprisonment. Crime should always be equal to the punishment e.g. contempt of court – S. 133 C.C, unlawful wearing of army uniforms – S. 110 C.C, selling army uniform to unauthorized persons – S. 111 C.C, obstructing postal mail – S. 172 C.C.

The above statement stands to explain that simple offences do not require capital punishment and this is because unlike in the bible where every sin is equal, in and according to our law and constitution every crime is not equal and every crime stated in our constitutions and statutes accordingly have their own form of punishment and no crime is to be punished above what is required by law and if this is done by any legal authority or judicial authority, it us seen as abuse of power.

Simple Offences are the most minuet of offences we have in the country and according to the “just desert” principle, the appropriate punishment must be given to a particular crime. That is to say that for example a person commits the offence of contempt in court, such a person cannot be given a capital punishment simply because the punishment does not fit the crime and when the punishment does not fit a crime the person meting out said punishment is abusing his or her power and in the process breaking the law.

In conclusion, as a criminology student, I see it fit to say that no matter the type of simple offence committed by a person, such offender never deserves the capital punishment or the death penalty. In Nigeria no simple offence as stated by our statutes are serious enough to warrant the capital punishment or equal to the death penalty.