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**What motivates the “just desert” principle of punishment?**

The just desert principle of punishment can be traced back to the old testament in the book of Leviticus 24: 17-22 “when one man strikes another and kills him he shall be put to death...” which led to the *Lex talionis* doctrine “an eye for an eye, a tooth for a tooth”.

The just desert principle of punishment proposes that the punishment fit the crime that has been committed. This is to promote the idea of fair and appropriate punishment relating to the severity of the crime that was committed. It is sometimes referred to as the retribution type of sentencing.

There are two versions of the retributive theory<sup>1</sup>: revenge theory and the expiation theory.

1. Revenge theory: This is the Lex Talionis doctrine<sup>2</sup>. It treats all crimes as if they were of physical violence. An illustration is if Mr. John hurts Mrs. Joy, Mr. John would receive equal pain as Mrs. Joy had suffered. This theory treats punishment as a collective expression of private desire to revenge and the suffering of the criminal is a source of psychological satisfaction to the person who has been injured.
2. Expiation theory: This theory claims that it is only through punishment that the punishment can expiate his sins. It treats crimes as if they were financial transactions. An illustration is if Mr. John got something from Mrs. Joy, Mrs. Joy must give something of equivalent value.

The retributivist approach holds 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 breaking the law. Thus there is no act of plea bargaining, an individual who commits murder must face the death penalty because there is no provision for him to plead guilty for manslaughter. Likewise, a person’s punishment must not be above what he deserves.

The just desert theory does not have any aim for crime control but focuses exclusively on the criminal behaviour and punishment given solely to express condemnation of that behaviour. Punishment under this theory is not given for the benefit of the society.

In conclusion, what motivates the just desert principle is the Lex talionis doctrine<sup>3</sup>. This doctrine posits that punishment should be equivalent to the crime that has been committed, not higher nor lesser and this can be traced back to the Old Testament.<sup>4</sup>

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<sup>1</sup> Dambazau, A.B. (2007) “Penology” criminology and criminal justice p. 303

<sup>2</sup> “an eye for an eye, a tooth for a tooth”

<sup>3</sup> ibid

<sup>4</sup> Leviticus 24: 17-22

### Most effective way of punishing and treating capital offenders.

Capital offenders are perpetrators of crimes classified as capital offences under Nigerian law like the criminal code. Examples of capital offences are:

1. kidnapping **section 364 cc**<sup>5</sup>
2. Armed robbery **section 402 cc**<sup>6</sup>
3. Rape **section 358 cc**<sup>7</sup>
4. Treason **section 37cc**<sup>8</sup>
5. Treasonable Felony **section 41 cc**<sup>9</sup>
6. Murder **section 319 cc**<sup>10</sup>

These offences are violent crimes against public order, against the administration of law and justice, against public authority, injurious to the public in general and against persons hence, the criminal justice system in Nigeria commences from the commission of the crime and continues with subsequent intervention by the law through the acts of arrest, arraignment, trial, conviction and then sentencing. Sentencing as defined in the seen the case of **Ichi v state** is the judgement formally pronounced by the judge or a court upon an accused person after his conviction in a criminal prosecution imposing the punishment to be inflicted.

Under **section 17 criminal code 2004**, the forms of punishment include: death penalty, imprisonment, caning, fine and forfeiture. In light of this discourse, these various forms of punishments will be discussed in relation to their applicability to capital offenders.

1. Forfeiture: This form of punishment is recognized under **section 17 criminal code**. This form of punishment is however only applicable in cases of bribe, postal offences, smuggling etc. this is because these offences are relating to property and contracts, a tangible gain has been derived from their illegal act and thus the law requires that the offender gives up a tangible property as a punishment for their crime. This form of punishment cannot be applicable in cases of capital offences for instance if Mr. John kills Mrs. Joy, it won't be efficient sentencing for the court to pronounce a judgement of forfeiture on Mr. John for that crime. because the punishment is unrelated to the crime committed.
2. Fine: **section 17 criminal code** provides for the punishment of fine in Nigeria, a fine is often a punishment for minor crimes but could also be an option for major crimes or a compliment to such crimes **section 382(1) criminal procedure act** provides for the discretionary power of a court to impose fine in place of imprisonment. **Section 390(3) criminal procedure act** provides that fine in Nigeria must be not only to the offence but also to the means of the offenders to pay. This can be seen in the case of **Goke V Police**. While it is often claimed that fine as a means of punishment is economical both in money

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<sup>5</sup> Criminal code act

<sup>6</sup> ibid

<sup>7</sup> ibid

<sup>8</sup> ibid

<sup>9</sup> ibid

<sup>10</sup> ibid

and manpower it is also believed to do minimal social damage to the offender and his family it is not a feasible form of punishment for capital offences because it either leads to imprisonment on the long run for offenders who are unable to pay their fine or these offences become offences for the wealthy who are capable of paying their fines.

3. Caning: This is also known as Haddi Lashing. **Section 77 of the penal code act** provides that a sentence of caning not exceeding twelve strokes may be passed by any court whether trying a case summarily or otherwise on any male offender in lieu of or in addition to any other punishment to which he might be sentenced for any offence not punishable with death.<sup>11</sup> The provisions of this section shows that the maximum strokes that should be administered to an offender for an offence is 12 strokes for this reason it is a suitable sentence for a capital offender, however, in the criminal code caning does not stand alone as a sentence of its own it is often attached as an additional punishment to an offender. This can be seen in **section 218 of the criminal code** that provides for defilement of girls under thirteen.
4. Death penalty: present methods of execution include lethal injection, hanging, electrocution, firing squad. While death penalty seems like a suitable punishment for an offender of a capital offence there are numerous arguments against it such as: the possibility of human error which could lead to an innocent person being executed, there is no proof that death penalty reduces violent crimes in the society, there is no evidence that death penalty accomplishes anything other than death of the executed unless the purpose of the sentencing is vengeance. Thus, in a situation where Mr. John is convicted for the death of Mrs. Joy and subsequently sentenced to death, if on the long run another party, Mrs. Joyce confesses to have committed the crime of killing Mrs. Joy and implicating Mr. John for the crime, it will be unable to restore the life of Mr. John hence an innocent life would have been lost. Another argument is that, supposing Mr. John had actually committed the Murder of Mrs. Joy, what effect does killing him have on him, the victim or even the society apart from vengeance?
5. Imprisonment: imprisonment can be defined as the incarceration in prison for a convicted offender of adult age for either life or a specified period of time. Imprisonment takes various forms depending on the type of crime committed and the outcome of the trial of the offender. Most times, the length of imprisonment is determined by the judge following the guidelines provide by law.

While imprisonment as a form of punishment is definitely not perfect, there are certain arguments against it such as: its inability to adequately reform the offender and also its inability to compensate or provide restitution to the victim. It still serves as the most plausible form of punishment applicable to capital offenders. Imprisonment as a form of punishment is neither a punishment for the poor or for the wealthy, it gives room for the correction of human error, it keeps the offender away from the society, there is a possibility of amnesty being granted to those who have been sentenced to life imprisonment, provisions are made for the rehabilitation and reformation of criminals in prisons in order to reduce recidivism. Examples of such

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<sup>11</sup> Unini C. (2017) the sentence of caning/Haddi lashing under the penal code act, laws of the federal capital territory-Abuja: whether repealed by the administration of criminal justice act, 2015, by Hameed Ajibola Jimoh.

programs are<sup>12</sup>: Academic Education programs, career technical programs, cognitive behavioral therapy, employment preparation, skills development. Although these programs are not yet feasible in Nigerian prisons, it is better to work towards achieving these rehabilitation programs.

**Effective sentencing for a simple offence.**

Imprisonment as a form of sentencing is indeed very versatile. It accommodates the three classes of offence recognized on Nigeria which are: felony, misdemeanor and simple offences.

**Section 133 criminal code** provides for contempt of court as a simple offense and prescribes a punishment of imprisonment of three months.

Thus, if the accused is charged for a simple offence, imprisonment still serves as an applicable judgement for the offender

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<sup>12</sup> Improving in-prison rehabilitation programs (2017) LAO Report