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COURSE TITLE: CRIMINOLOGY II

QUESTION 1: What motivates the ‘just desert’ principle of punishment? Discuss.

QUESTION 2A: As a Criminology student, what do you think is the most effective way of punishing and treating capital offenders? Give reasons for your answer.

QUESTION 2B: Will your answer be the same if the accused was charged for a simple offence?

1. **MOTIVATION OF THE ‘JUST DESERT’ PRINCIPLE OF PUNISHMENT**

**INTRODUCTION**

Criminologists emphatically advocate for the psychology of crime as a determining factor for prescribing adequate punishment. Over time, the Nigerian criminal justice system, with the aid of the Judiciary, has adjusted the scope for sentencing to include the presence of actus reus (the overt act) and mens rea (criminal intent) inter alia. Nonetheless, there is a popular notion for punishment as proportionate to the crime, commonly termed ‘just desert’ model.

**JUST DESERT MODEL**

In its orthodox form, the proverbial phrase implies a conduct or character which deserves reward or punishment or to that which is deserved a due reward, whether good or evil, is considered to be what the recipient deserves. It stems in agreement to the biblical reference “an eye for an eye, a tooth for a tooth”. In the context of criminality, there is no reward as there is only punishment. Hence, the introduction of the ‘just desert’ in criminal law would signify a deserved punishment based on one’s actions or activities.

The ‘just desert’ model represents the idea of a fair and appropriate punishment based on the nature of the crime committed. In simpler terms, it means one should be punished when a crime is committed, notwithstanding the circumstances. As opposed to the legal ingredients of crime to include actus reus and mens rea, the ‘just desert’ principle of punishment focuses solely on the actus reus as the defining factor for prescribing punishment. The philosophy of the model proposes that those who commit crime deserve to be punished. In the same vein, the severity of the punishment should be commensurate with the seriousness of the crime, proposing that one should not overlap the other as it should be proportionate to the other.

**THE JUST DESERT PRINCIPLE AND RETRIBUTION**

The ‘just desert’ principle of punishment is motivated by the principle of retribution, which is considered an ancient form of dealing with offenders due to its vengeful and retributive nature. This approach rests on the idea that a person whose conduct equates to a crime should be held responsible. In primitive times, such acts would warrant punishments in the likes of banishment or exile, flogging, torture or exorcism, and so on. These outdated styles were replaced with humane treatment for offenders which advocated for the Latin maxim “lex talionis” which means “an eye for an eye, a tooth for a tooth”. This birthed the proportionality principle which is now known as ‘just desert’ principle of punishment. This method delivers the exact punishment prescribed by law, crossing out the feature of plea-bargaining. This implies that the act of a party admitting guilt will not mitigate the charges against him, which is an overturn of justice.

**SHORTCOMINGS OF THE JUST DESERT PRINCIPLE**

A major defect of this principle is that the narrow minded feature of equal punishment is unachievable. The punishment of the offender must be fairly and equally apportioned to all individuals who commit the same crimes based on the theory. This can sometimes be a controversial area of the theory, as the circumstances of the crime committed may vary.

Another shortcoming of the ‘just desert’ model is its input of actus reus as the defining factor for punishment. The offender may not have criminal inclination or intent in the course of committing the crime. The theory focusing on actus reus alone is likely to lead to unjust and unreasonable sentencing, which eliminates the main purpose of the law.

Third, the victim may have arbitrary desires, such that the matter can be easily settled outside the court setting. Some victims are distasteful for revenge and true injustice occurs when the victim is not satisfied in the end. Some people would rather be compensated than punish the offender as the latter has no material benefit for the victim. However, this principle of punishment does not give way for such recommendations as it is thirsty for vengeance and proportionate punishment, having no exception for the victims’ needs.

Notwithstanding its controversial nature, it is an effective way of curbing crime and prescribing punishment, especially as a deterrent.

**2A. PUNISHMENT AND TREATMENT OF CAPITAL OFFENDERS**

**INTRODUCTION**

Subsequent to the ‘just desert’ principle of apportioned punishment for crime, there are specific punishments prescribed by law for specific offenders. Where there is an obstruction of justice, the guilty party is sentenced appropriately and the law provides a suitable punishment for the crime committed. This allows for adequate dispensation of justice in situations of crime. Due to the severity of some crimes to others, it is almost impossible to propose a fixed punishment for all crimes, which gives rise to the different categories of offences.

**KINDS OF OFFENCES AND PUNISHMENT**

Offences in general, under **Section 1(3) of the Criminal Code**, are categorized namely, felonies, misdemeanours, and simple offences. A felony is punishable by death or with imprisonment for 3 years or more e.g. participation in a riot. A misdemeanour is an offence punishable by imprisonment for not less than 6 months but less than 3 years e.g. negligently permitting the escape of any prisoner of war. A simple offence is any offence aside from a felony or misdemeanour e.g. contempt of court. Likewise, under **Section 17 of the Criminal Code**, the different forms of punishments include death, imprisonment, fine, forfeiture and caning, Other forms of punishment may include deportation, probation, and community service order.

**CAPITAL PUNISHMENT**

The most grievous punishment allotted to criminals is capital punishment. Also known as death penalty, it is the execution of an offender sentenced to death after conviction by a court of law of a criminal offence. Such execution takes place after due process of law. In ancient times, it was widely employed in Ancient Greece under the laws of Draco, though suggested to be used on those considered unrepentant and incorrigible. Different modes of execution include lethal injection, hanging, electrocution, and firing squad. However, this punishment is for the commission of specific crimes. Such offences punishable by the death penalty in Nigeria include armed robbery, murder, treason, etc.

**CONTROVERSY OF CAPITAL PUNISHMENT**

A defective stance from capital punishment is that it embraces a deterrent approach, which proposes that the focus of punishment is to prevent offenders and potential offenders from committing crime. However, since the inception of capital punishment, the incidence of crime has not changed. If anything, it has taken an overturn, worsening the state of criminality in the country. The visibility and frequency of capital offences has not lessened, neither is it under control.

In the same vein, the inhumane nature of capital punishment overrides the justifiable system we fight for. It goes against human and religious standards, intensifying the controversy attached to it. This makes its authority ineffective as it is frowned upon by society itself. Emphatically, it does not evade the presence of crime, which is still as rampant as ever. It is not a true test to confirm the effectiveness of the punishment as people are killed. No statistical data can be formed to analyze how effective the measure of capital punishment is.

In my opinion, the most effective way for treating and punishing capital offenders is incapacitation and rehabilitation. Incapacitation presumes that the isolation of the offender makes him incapable of causing harm to others. This keeps both the society and the offender safe from death or life threatening harm. As opposed to capital punishment, incapacitation is a likely substitute to death. A capital offender can be sentenced to life imprisonment in place of death. This is a preferable humane treatment and punishment of a capital offender as statistical data can be formed on the curbing of such crime, and it is a humanistic approach to punishment. This confinement may be temporary or permanent, but in the case of capital offenders, it ought to be permanent to completely eliminate the threat of perceived danger in the society.

Rehabilitation is a measure of treating capital offenders permanently. It is a system of change, through which criminals are transformed into respectable persons of society. Using the criminological approach to crime, criminals are therapeutically and psychologically challenged and nurtured to become better people, who are not prone to criminality. This personality change is the true result of punishment as it gives the offender a chance to be a different person, rather than the harsh measure of death which in no way, produces better results.

**2B. IN THE CASE OF SIMPLE OFFENCES**

Simple offences are offences other than felonies and misdemeanours. Such offences are not as serious as the others and they have less or no punishments. If the accused person was charged for a simple offence, my answer will vary, giving rise to the ‘just desert’ principle of punishment. A person should be punished based on the crime committed. Though this may not be the defining factor, it is likewise important. In the case of a simple offence, the offender may be punished by alternative measures such as fine, probation, community service, etc.