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JUST DESERT PRINCIPLE

The just deserve principle of punishment is a concept under the retributive theory. It is also known as the proportionality theory. It addresses the issue of how punishments should be inflicted and the measure of punishment to be administered to the offender which should not be more or less than the offence committed. The failure of the rehabilitation, deterrence and incapacitation model brought about criticism by criminal justice scholars who advocated that the just desert principle should be a guiding policy for sentencing criminal offenders.

Just Deserts uses moral grounds to justify the punishment of criminal offenders: they are to be deemed deserving of sanctions because of what they have done, and the appropriate level of sanction would be determined by;

- 1.) The seriousness of the offense for which the person has been convicted.
- 2.) The individual's past record of offending.

In addition, sentences would be fixed by the legislature as a way of reducing or eliminating the discretion of judges and parole boards in sentencing criminal offenders. The legislature would be responsible for creating a sliding scale of penalties for specific offenses, based on the seriousness of the criminal offense, the aggravating and mitigating circumstances associated with the offense, and the offender's prior criminal record. First-time offenders would be accorded reduced penalties, while recidivists would be punished more severely. The logic for such a policy is that recidivists are viewed as being more blameworthy than first-time offenders. Implicitly then, offender blameworthiness becomes relevant for determining appropriate punishment, and prior contact with the criminal justice system is used as an indicator of blameworthiness. Some just deserts advocates argue that incarceration should be reserved only for the most serious, violent and property offenders, in those instances when the individual clearly poses a threat to others. Reduced reliance upon incarceration as an appropriate sanction is justified by deserts advocates on the grounds that depriving an individual of his/her liberty for even a short period of time is a very serious sanction and, as such, should be reserved for only the most serious offenders. Thus, with reduced reliance upon the penal sanction, increased use of community based correctional resources would occur and a reduction in prison overcrowding could well result.

In summary, just desert is an attempt to blend justice with fairness. By focusing on the past behaviour of the offender, punishment is not based on predictions of the likelihood of recidivism or on how long it will take to change the offender. Instead, the seriousness of the offense and past record of offending become the substantive basis for determining appropriate punishment. Policies that are based in just deserts attempt to limit judicial sentencing discretion, and advocate the abolition of parole boards. Instead, sentences are fixed by the legislature which reduces the likelihood of disparity: two individuals convicted of the same offense receive not only the same sanction (e.g., prison) but also serve the same period of time (e.g., five years). The focus, then, is on the criminal act and not on the criminal as is true of other policies. Just desert does not consider diagnosis and treatment, predictions of future criminal activity, or deterrence of criminals or potential criminals as elements of the guiding philosophy in sentencing decisions. Instead, the equitable distribution of punishment among offenders is of key importance.

THE MOST EFFECTIVE WAY OF PUNISHING AND TREATING CAPITAL OFFENDERS

Capital offenders are people who are accused and convicted of capital offences which attracts capital punishment. Capital offences include; murder, rape, child sexual abuse, terrorism, treason, piracy, drug trafficking, war crimes, etc.

In the administration of punishments to offenders there are five principles in which punishment justify;

1. Retribution
2. Incapacitation
3. Deterrent
4. Rehabilitation
5. Restitution

RETRIBUTION

It is an ancient method of punishing offenders. It is revengeful in nature. This approach to punishment rests on the idea that a person whose conduct appears to be harmful to social order is held responsible. It consists of various forms of torture and death. In ancient Penal law, more pain was allowed to be inflicted on an offender more than that which he inflicted on his victim. There was a later development in the administration of punishment which was advocated for by penologist. The former method of punishment was replaced by codes that advocated for the Latin maxim *lex talionis* interpreted as “an eye for an eye and a tooth for a tooth”. Therefore, when a person commits a crime, he must be given the exact punishment prescribed by law which means that there is no act of retribution.

INCAPACITATION

This theory of punishment believes that when an offender is placed in isolation it renders the offender incapable of committing a crime. The purpose of incapacitation is to reduce the possibility of the convicted offender committing that crime in future. Incapacitation is of two types; temporary and permanent incapacitation. Temporary incapacitation involves the idea of placing the offender on lockdown for a certain period of time under supervision. During this period the person is unable to commit crime due to the fact that his liberty is being limited. Permanent incapacitation involves making the offender lose a part of his body which enables him commit the crime which he is convicted, permanent denial of the offender’s freedom of movement (life imprisonment). This leads to the permanent elimination of the threat to the society.

DETERRENT

This theory focuses on inflicting punishment on offenders to prevent crime from re-occurring and to prevent future crime.

REHABILITATION

The goal of rehabilitation is to restore a convicted offender to a constructive place in the society through some combination of treatments, education and training.

RESTITUTION

This is the process of restoring all parties involved in or affected by the original misconduct of the offender. The restitution of the victim is constructive to the point that the offender provides something himself to compensate the victim. It involves not only the payment of money but also the provision of services.

In my opinion, the best form of punishment for a capital offender, rather than taking his life, is life imprisonment, with hard labour and without parole. When a person is being sentenced to life imprisonment without parole, it means that such person is going to spend the remaining days of his life in a prison without parole. This is equivalent to a death penalty. This form of punishment does not just keep the society but also help in the development of the society. For instance, rather than paying independent contractors to clear a site the government can make use of these prisoner to do the job.

Although this system seems like the best option to me it has some flaws, such as:

- a. It is an expensive system to run.
- b. It will be difficult for prisons to be used as a rehabilitation or reformatory center.
- c. It will lead to the creation of more prisons.

IF THE ACCUSED WAS CHARGED FOR A SIMPLE OFFENCE WILL THE VIEW CHANGE?

Simple offences are offences considered as not of a serious nature as felonies. They are punishable on summary conviction by the Magistrate court. The punishment of simple offences ranges from not less than six months but less than three years imprisonment. Example of these offences include; unlawful wearing of military uniform, selling military uniforms to unauthorized personnel, contempt of court, etc. Punishment for simple offences is based on the nature of the offence and the punishment stated by the law that defines it.

In conclusion I will resolve this in the negative. My view will not change.