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**COURSE TITLE: CRIMINOLOGY**

**COURSE CODE: LPI 302**

**ASSIGNMENT**

## **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 reason(s) for your answer
- b) Will your answer be the same if the accused was charged for a simple offence?

## **'Just Desert' Principle of Punishment**

### **ABSTRACT**

Just deserts, as a philosophy of punishment, argues that criminal sanctions should be commensurate with the seriousness of the offense.<sup>1</sup>

One popular justification for punishment is the just deserts rationale: A person deserves punishment proportionate to the moral wrong committed. A competing justification is the deterrence rationale: Punishing an offender reduces the frequency and likelihood of future offense.<sup>2</sup>

### **What is the Just desert principle?**

Just deserts 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.'<sup>3</sup>

The "just deserts" theory of sentencing advocates that punishment should be proportionate to the seriousness of the offense committed.<sup>4</sup> Advocates of the just deserts philosophy emphasize the importance of due process, determinate sentences, and the removal of The theory of just deserts is retrospective rather than a prospective. The punisher need not to be concerned with future outcomes, only with providing punishment appropriately 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 is that punishment be appropriate to the harm. The task of a desert theorist is to assess the magnitude of harm and devise a punishment that is proportionate in severity of not in kind. *Kant (1952)* recommended censure proportionate to a perpetrator's "internal wickedness" a quantity that may be approximated by society's sense of moral outrage over the crime.<sup>5</sup>

## **MOTIVATION OF THE DESERT PRINCIPLE OF PUNISHMENT**

There are several core opponents of an offense that determine moral outrage and the magnitude of punishment according to the just desert principle. It is these factors then that

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<sup>1</sup>[https://www.researchgate.net/publication/249719667\\_Just\\_Deserts\\_The\\_Severity\\_Of\\_Punishment\\_And\\_Judicial\\_Sentencing\\_Decisions](https://www.researchgate.net/publication/249719667_Just_Deserts_The_Severity_Of_Punishment_And_Judicial_Sentencing_Decisions)

<sup>2</sup>[https://www.researchgate.net/publication/11232979\\_Why\\_Do\\_We\\_Punish\\_Deterrence\\_and\\_Just\\_Deserts\\_a\\_s\\_Motives\\_for\\_Punishment](https://www.researchgate.net/publication/11232979_Why_Do_We_Punish_Deterrence_and_Just_Deserts_a_s_Motives_for_Punishment)

<sup>3</sup> <https://study.com/academy/lesson/just-deserts-model-definition-theory.html>

<sup>4</sup> <https://sk.sagepub.com/reference/prisons/n189.xml>

<sup>5</sup>[https://www.researchgate.net/publication/249719667\\_Just\\_Deserts\\_The\\_Severity\\_Of\\_Punishment\\_And\\_Judicial\\_Sentencing](https://www.researchgate.net/publication/249719667_Just_Deserts_The_Severity_Of_Punishment_And_Judicial_Sentencing)

should trigger the motive to punish if people adhere to the just desert principle of punishment<sup>6</sup>. They are:

- Magnitude of harm: the magnitude of harm done in the crime affects the amount the offender should be punished in. If the offender through his crime causes great pain then he should go through great pain also.
- Extenuating circumstances: extenuating circumstances is any information or evidence presented to the court regarding the defendant or the circumstances of the crime that might result in reduced charges or a lesser sentence. It is also known as mitigating factor. It affects the sanctions and thereby serves to reduce the damages to be awarded or the punishment to be imposed.
- Actus reus : Actus reus literally means "guilty act," and generally refers to an overt act in furtherance of a crime. Requiring an overt act as part of a crime means that society has chosen to punish only bad deeds, not bad thoughts.
- Mens rea: Mens rea means to have "a guilty mind." The rationale behind the rule is that it is wrong for society to punish those who innocently cause harm.

### **Most Effective Way of Treating Capital Offenders**

As a Criminology student, I believe the most effective way of treating a capital offender is through punishment. To clarify, I believe most effective way of treating a capital offender should be a punishment proportionate to his crime which is capital punishment

What is punishment?

Punishment is the infliction or imposition of a penalty as retribution for an offence. It is the meting out of a stipulated penalty for the commission of an offence. Punishment serves as a deterrent. Punishing lawbreakers serves as a deterrent to the general populace from committing the same or similar crimes. It serves as a basis of constitutionalism. Because punishments have to be stipulated in a recognised law book, punishment is constitutional and it therefore enhances democracy. Punishment also helps in the stabilisation of law and order in every society. Punishment in form of imprisonments or fines will help to maintain order in the society as the offenders will not go Scot free. Punishment also aims to Rehabilitate. This is the treatment or reorientation of offenders in order to prevent future commission of the crime. It can be inform of vocational training, counselling etc

Also, what is a capital offence ?

A capital offense is "any criminal charge which is punishable by the death penalty, called "capital" since the defendant could lose his/her head (Latin for caput). Crimes punishable by death vary from state to state and country to country. A person who commutes such crimes is referred to as a capital offender. In Nigeria, Capital offences includes ; murder, terrorism-related offenses, rape, robbery, kidnapping, sodomy, homosexuality, blasphemy, adultery, incest, assisting the suicide of a person legally unable to consent, perjury in a capital case causing wrongful execution, treason, some military offences like mutiny and practice of indigenous beliefs in states applying Shariah law.<sup>7</sup>These offences have sanctions which prescribes capital punishment for committing these crimes.

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<sup>6</sup>[https://www.researchgate.net/publication/249719667\\_Just\\_Deserts\\_The\\_Severity\\_Of\\_Punishment\\_And\\_Judicial\\_Sentencing](https://www.researchgate.net/publication/249719667_Just_Deserts_The_Severity_Of_Punishment_And_Judicial_Sentencing)

<sup>7</sup> "The Death Penalty in Nigeria". Death Penalty Worldwide. Retrieved 5 September 2017.

Capital punishment is the punishment whereby someone found guilty of a crime is punished by death. Any offence or crime that makes you face capital punishment or the death penalty is what is referred to as a capital crime or a capital offence.<sup>8</sup>

### **Reasons why I believe Capital Punishment is the best way of treating Capital Offenders**

There are many advantages associated with the capital punishment, which is the reason why certain countries like China, United States and Nigeria still actively practice it.

- Capital punishment is arguably the greatest deterrent to criminals and potential criminals. Many would agree with me that many people would be deterred from committing certain heinous crimes if they knew the punishment for the crime would be death. Human beings naturally fear to die. This is the reason why the death penalty is considered one of the most effective ways to discourage certain crimes in society. The average person would think twice before committing a particular crime if he or she knows that the punishment for the crime is death.
- Heinous criminal activities such as rape, treason, murder, terrorism, etc can be drastically reduced when the death penalty is practiced. This is the reason why in some countries such as Saudi Arabia, where capital punishment is still actively practiced and where one can easily be sentenced to death for committing certain crimes, not too many heinous crimes exist. For example, in China, one can easily be sentenced to death if found guilty of smuggling drugs. This has drastically reduced the usage of illegal and harmful drugs and all the vices associated with drugs. So you see how the capital punishment can reduce the occurrence of certain serious crimes?
- Capital punishment cuts down cost. It can be very expensive imprisoning criminals because of the fact that the state will have to feed, shelter, clothe, and provide the basic things needed for the prisoners to live in a humane way. Now, imagine a case of a person serving a life term for murder. This person is going to be taken care of by the state until the day he dies. By the time he would have finished serving his life term, he would have ended up costing the taxpayers a lot. But if such a person were executed, the state would have cut down cost drastically. This is the reason why many say that capital punishment is cost-effective.
- To the average person, the severest punishment on Earth is the death penalty. Certain crimes are so heinous that they deserve nothing but the death penalty. Let's take an example of a terrorist who deliberately murders dozens of innocent civilians. Is it fair to hand such a criminal a life term in prison where he is going to be taken care of by the same society he harmed? The severity of his crime deserves a severe punishment like the death penalty. Not until such a person is executed by the state, justice hasn't been served. It is only fair that a person who deliberately commits murder should also have his life taken away from him by the state through the death penalty. Justice isn't really served until the punishment a criminal receives is equivalent to his or her crime.
- There are some very violent and hardened criminals such as serial killers who are not meant to live among the general population because of their high tendency to continue killing. It is therefore in the public's interest that these people are kept in prison forever. But being sentenced to life imprisonment doesn't always guarantee that a very violent criminal such as a serial killer will be kept away from the general population forever. There are instances where these criminals who have been sentenced to life imprisonment escape from prison and end up in society where they continue to commit their violent and heinous crimes. Over the years, there have been several cases of cold killers escaping from jail and going on to hurt and kill more

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<sup>8</sup> <https://soapboxie.com/government/Advantages-and-Disadvantages-of-Capital-Punishment-Death-Penalty>

innocent people. Now, the lives of these innocent people could have been saved had these murderers been executed in the first place. That is another reason why the death penalty is very important.

B). Would my answer be the same if the accused committed a simple offence?

Yes. My answer would be the same if the accused committed a simple offence because I believe that the best way to treat an offender is through punishment. I believe that a man's crime should be proportionate to his punishment. In other words just like a capital offense should be treated with a capital punishment, a simple offence should also be treated with a simple punishment.

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