

NAME: NWOGU OGECHUKWU ELYSIA

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

“Let the punishment fit the crime” is the philosophy behind the just desert principle/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 concept of just desert also known as ‘proportionality principle’ usually is associated with retributive theories of punishment. Retribution, as the term ordinarily is understood, means punishment imposed because the offender deserves it, to the extent that he deserves it. This is associated with the Latin maxim of “*lex talionis*” which means “an eye for an eye and a tooth for a tooth”. There is no act of plea bargaining in retribution.

In other words, one should be punished simply because one committed a crime. Under just deserts, those who commit crimes deserve to be punished. The severity of the punishment should be commensurate with the severity of the crime.

According to just deserts, the punishment of the offender must be fairly and equally apportioned to all individuals who commit the same crimes. This can sometimes be a controversial area of the theory, as the circumstances surrounding the commission of crimes vary. The just desert principle is supposed to avoid the kind of apparently arbitrary individualization that occurs when efforts are made to tailor punishment to fit the offender rather than the offence.

This principle however, has a number of shortcomings;

- a. The fact that the person has committed the crime does not always mean that the person has a criminal mind or that he is inclined to evil or immoral act. Circumstances may have an effect on the person. Such as poverty, age and state of mind (insanity).
- b. The victim may not be interested in revenge
- c. There is no full proof method of determining those who are guilty. Vengeful punishment may be directed at the innocent.

Also the deterrence rationale motivates the just desert principle of punishment in the sense that punishing an offender reduces the frequency and likelihood of future offences. The severity of a crime committed by an offender is what basically motivates the just desert principle. This is because when a person commits a serious crime such as a capital offence, it would be unjust in the court of law and in the eyes of a reasonable man if the punishment he is given is not proportionate to the capital offence committed, hence, the just desert principle is brought about to promote fairness and equality in the system of justice.

2. As a criminology student, what do you think is the most effective way of punishing and treating capital offenders? Give reasons for your answers.

Capital offenders refer to individuals who have been found guilty of committing capital offences. Punishment can be seen as the infliction of pain by the state on someone convicted of an offence.

In Nigeria, offences are classified as felonies, misdemeanors and simple offences. Felonies are the most serious offences and it include capital offences.

By virtue of *section 3 of the criminal code*, a felony is any offence which is declared by law to be a felony, or is punishable, without proof of previous conviction, with death or with imprisonment for three years or more. Some capital offences have capital punishment in Nigeria, for example, offences of murder/homicide (under the penal code), treason, armed robbery, treachery, rape, burglary and also kidnapping which has been made a capital offence in some states.

In Nigeria, capital offences are punished with the death penalty and the mode of execution include:

- Hanging
- Shooting
- Stoning
- Lethal injection

This is because of the severity of the capital offence. Hence, the principle of retribution is applied. In the sense of retributive method of dealing with an offender is such that when an individual commits a crime, he must be given the exact punishment prescribed by the law. In other words the punishment should be proportionate to the crime committed.

As a criminology student, I agree that the death penalty is an appropriate punishment in treating capital offenders, this is because;

- It is a way to provide justice for victims while keeping the general public safe. This is so because in every society, there is an expectation that every individual should be able to live a life without the threat of harm. When there is someone who decides to go against this expectation by committing a violent crime, then

there must be steps taken to provide everyone else the safety that they deserve. Although there is the need for rehabilitation, there are people who would continue their violent tendencies no matter what. Therefore the only way to keep people safe in circumstances like that and also provide a sense of justice for the victims is to use the death penalty

- It provides a deterrent against serious crimes. The reason why there are consequences for criminal offences is because of the need to have a deterrent effect on specific behaviors. People who have the intention to commit crimes must understand the consequences of the crime they are about to commit. This punishment serving as a deterrent would prevent the crime from reoccurring and would also prevent future crimes. Although some criminologists have reported that capital punishment is not an effective deterrent to homicide, the fact that it can prevent violence makes it a useful structure to have in the society.
- It offers society an appropriate consequence for violent behavior. Like I stated earlier, the theory of retribution comes to play in the sense that the punishment given is appropriate and proportionate to the crime committed. By keeping capital punishment as an option within the society, we create an appropriate consequence that fits the actions taken by the criminal. The death penalty ensures that the individual will no longer be able to create havoc for the general population because they are no longer around. This creates peace for the victims, their families and the society in general.
- It eliminates sympathetic reactions to the criminal charged with a capital crime. The justice system should be able to make decisions based on logic instead of emotion. The law must be able to address the actions of the criminal in a way that discourages other people from deciding to involve themselves in similar crimes. The goal should be to address the needs of each victim and their family more than it should be to address the physical needs of the person charged with capital crime.
- It stops the threat of an escape that an alternative sentence would create. The fastest way to stop a murderer from continuing to kill people is to eliminate their ability to do so and this is what capital punishment does. The death penalty makes it impossible for someone convicted of murder to find ways to kill other people.

Although there are issues from a moral standpoint about taking any life, we must remember that the convicted criminal made the decision to violate the law in the first place, knowing fully well the consequences surrounding the criminal offence.

Before executing capital punishment due care should be taken in order to ensure that an innocent person is not wrongfully killed. Also circumstances surrounding the offence committed, the nature of the offence and also the criminal record of the capital offender should be taken into consideration before executing capital punishment.

2b. Will your answer be the same if the accused was charged for a simple offence?

By virtue of *section 3 of the criminal code*, all offences, other than felonies and misdemeanors, are simple offences. They are often punished with an imprisonment of less than 6 months. In simple offences, bail is normally granted except if the court feels otherwise. Simple offences are punishable, on summary conviction before a magistrate's court, by fine, imprisonment or otherwise.

Simple offences may include; unlawful wearing of the uniform of the armed force (*section 110*), selling of army uniform to unauthorized persons(*section 111*), contempt of the court(*section 133*), advertising a reward for the return of stolen or lost property (*section 129*), all stated in the criminal code.

My answer would differ in the case of a simple offence. This is due to the fact that capital punishments cannot be used to treat simple offences because of they are minor crimes. Capital punishment such as death penalty can only be used to treat capital offences.

Using a capital punishment to treat a simple offence would go against the retribution principle and the just desert principle which states that the punishment should be proportionate to the crime, in other words the punishment given for a crime should be commensurate with the evil represented by the crime itself, the punishment should fit the crime.

If a simple offence is treated with a capital punishment, it would portray the justice system as bias, unjust, partial, and unequal and it would bring about incompetency of the justice system.

Simple offences should be punished with the payment of fine and imprisonment less than 6 months as stated in the criminal code. Going against this would be considered as violating the law.