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**ASSIGNMENT TITLE: PUNISHMENT**

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**QUESTION:**

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

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

**Introduction**

The kind and degree of punishment that is to be inflicted on an offender will be determined either based on the nature of the crime committed or the statutes governing the society stating the gravity of the offence committed and the type of punishment that is to be delivered proportionate to the offence. Punishment serves various purposes, some of which include; to deter others from committing the same or similar offences, to make the offender take responsibility for the action he committed, to comply with laws governing the society i.e. those that set out punishment for disobeying the law amongst others.

**WHAT MOTIVATES THE ‘JUST DESERT’ PRINCIPLE OF PUNISHMENT.**

Punishment can be defined any pain, penalty, suffering or confinement inflicted upon a person by the authority of the law and the judgement and sentence of a court for some crime or offence committed by him, of for his omission of a duty enjoined by law and it ranges from child discipline to criminal law. The five major purposes of punishment include; rehabilitation, incapacitation, retribution, restitution and deterrence. The infliction of punishment on any person has to be done with regards to the degree of crime committed, i.e. a person ought to receive punishment proportionate to the kind of crime committed and this ideology is backed up by the ‘just desert’ principle. The phrase ‘just desert’ represents the idea of a fair and appropriate punishment related to the severity of the crime that was committed. Just desert is a theory which is designed to promote equality and fairness of sentencing for the imposition of a sentence. The principle behind “just desert” is that the punishment should fit the crime, when such an instance occurs, the offender is said to have received their ‘just deserts’.

The just desert is a popular justification for punishment. One of the main rationales for this principle is that a person deserves punishment proportionate to the crime committed; another is the rationale for deterrence, that is, making the punishment in such a way that it would prevent others from committing the same crime. Punishing an offender reduces the frequency and likelihood for future offences, thereby discouraging others from committing the same or similar offences. The just desert theory is sometimes referred to as the ‘retribution’ type of sentencing, in other words, one should be punished simply because one committed a crime. the severity of the punishment should be appropriate with the severity of the crime. Under this theory, those who commit crimes deserve to be punished; in addition, according to just deserts, the punishment of the offender must be fairly and equally apportioned to all individuals who commit the same crimes. Just desert is an attempt to blend justice with fairness, by focusing on the past behavior 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 offence 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. The focus is on the criminal act and not on the criminal as is true of other policies. Just desert does not consider the 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.

One popular justification for punishment is the just desert 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 offences. This theory is more retrospective than prospective. The punisher need not be concerned with future outcomes, only with providing punishment appropriate to 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 of just desert theory is that the punishment be proportionate to the harm and to devise a punishment that is proportionate in severity, if not in kind. There are components such as the following:

1. magnitude of harm
2. extenuating circumstances

These factors are what determine moral outrage and the magnitude of punishment according to the just desert theory. It is these factors then that should trigger the motive to punish if people adhere to the just desert theory of punishment. However, a fully formed theory of just desert is concerned with more than just these factors.

**THE MOST EFFECTIVE WAY OF PUNISHING AND TREATING CAPITAL OFFENDERS.**

Capital offences refer to a crime that is treated so seriously that death may be considered as an appropriate punishment/ capital punishment. They are also be known as felonies. Capital punishment as known as the death penalty, is a government-sanctioned practice whereby a person is put to death by the state as a punishment for serious crimes such as murder, trafficking, treason, rape, arson etc. *Section 17 of the Criminal Code 2004* provides various forms of punishment for both simple and capital offences, but we would only be looking at the punishment for capital offences (capital punishment) which include death penalty and life imprisonment.

1. Death Penalty

This is also known as capital punishment is a punishment by execution. It is also defined as a practice whereby a person is put to death by the state as a punishment for a serious crime. The term death penaltyis sometimes used interchangeably with capital punishment, though imposition of the penalty is not always followed by execution (even when it is upheld on appeal), because of the possibility of commutation to life imprisonment. Supporters of the [death](https://www.britannica.com/science/death) penalty believe that those who commit [murder](https://www.britannica.com/topic/murder-crime), because they have taken the life of another, have forfeited their own right to life. Furthermore, they believe, capital punishment is a just form of [retribution](https://www.britannica.com/topic/retributive-justice), expressing and reinforcing the moral indignation not only of the victim’s relatives but of law-abiding citizens in general. Moreover, they urge, when it is used for lesser crimes, capital punishment is immoral because it is wholly disproportionate to the harm done. Death penalty usually takes place through various means such as electrocution, lethal injection, firing squad, hanging, crucifixion etc.

1. Life Imprisonment

Life imprisonment (also known as imprisonment for life, life in prison, life order, a life sentence, a life term, lifelong incarceration, life incarceration or simply life) is any sentence of imprisonment for a crime under which convicted persons are to remain in prison either for the rest of their natural life or until pardoned or paroled or otherwise commuted to a fixed term. Life imprisonment (as a maximum term) can also be imposed, in certain countries, for traffic offenses causing death, however, the life sentence does not exist in all countries. Where life imprisonment is a possible sentence, there may also exist formal mechanisms for requesting parole after a certain period of prison time. This means that a convict could be entitled to spend the rest of the sentence (until that individual dies) outside prison. Early release is usually conditional on past and future conduct, possibly with certain restrictions or obligations. In contrast, when a fixed term of imprisonment has ended, the convict is free. The length of time served and the conditions surrounding parole vary. Being eligible for parole does not necessarily ensure that parole will be granted.

From the explanation given for the two major forms of capital punishment, it can be deduced that in order to prevent the continual growth of crime and commission of crimes in the society in order for there to be a peaceful and organized way of living, the adaptation of this two forms will go a long way in fulfilling this aims of the society. If the society can diligently and without any form of corruption to cover up the sins of the society adopt these forms of capital punishment, then the society can boast of achieving these dreams.

**WOULD YOUR ANSWER BE THE SAME IF THE ACCUSED WAS CHARGED FOR A SIMPLE OFFENCE?**

Simple offences can be defined as wrong doings or offences committed that do not require major punishment. It could also mean offence or act for which a person is liable by law, upon a finding of guilt before a Justice or Justices, to be imprisoned or fined or both or to be otherwise punished; but does not include an indictable offence which can only be heard and determined in a summary way as a minor indictable offence They are usually punishable by fines, community services, house arrests, probation, forfeitures amongst others. Examples of some simple offences include; over-speeding, driving without a license, disobeying traffic rules, disregarding the instructions of a police officer etc. If a criminal offence is not otherwise designated (e.g. as a misdemeanor or crime), it is automatically a simple offence. In most cases, there is a time limit of one year within which information or a complaint about a simple offence must be laid. Simple offences are usually heard in the Magistrates Court.

Supposing that the offence committed was a simple offence and the offender is a first time offender, then the just desert principle would not be strictly adhered to. In the sense that, although the offender is meant to said to have committed a wrong doing in the society, he wouldn’t be punished with the kind of crime committed been put on the line, the main aim of punishing him is to make him attain responsibility for the damage done to the victim and the society at large. If paraventure, the crime committed is a serious one and the offender is always fud of committing crimes, even if it is not the same crime or an offence similar to the similar one he is being punished for, then the brute of the principle of his punishment being proportionate to his crime will be placed on him. He would be severely punished for the crime in which he has committed in relation to the level of damage which he has caused both on the victim and his family (the family of the victim) and to the society as large. This principle also act as a means of deterrence in the sense that, when other members of the society and offenders see the kind of punishment that is being meted on one person for the crime that he has committed, they tend to keep away from committing similar crimes or any crimes at all.

**CONCLUSION**

The infliction of punishment on convicted persons will be determined by the kind and degree of offence that has been committed. Supposing it is a serious offence and the person is a recidivist, then the just desert theory should be strictly applied in the situation, but supposing the crime done is a simple offence and the person is a first time offender, then the punishment meted on such a person shouldn’t be as strict as that of the capital offender. However, in cases where the capital offender is a first timer or the simple offender is recidivist in nature, then the main aim of punishment would now be the rationale for retribution. The punishment then inflicted would now serve as a giving the offender the avenue to take responsibility for the action which has caused harm or damage to the plaintiff. It is important to note that when simple offenders become recidivist in nature, then the just desert principle should be used on them too because while they still have hope of redemption as a first time simple offender, the first time capital offender is not offered such opportunity