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QUESTION 1: WHAT MOTIVATES THE ‘JUST DESERT’ PRINCIPLE OF PUNISHMENT.

Introduction

Punishment is the infliction of some kind of pain or loss upon a person for a misdeed. It is the act of inflicting a consequence or penalty on someone as a result of their wrongdoing, or the consequence or penalty itself. Punishment has been a subject of debate among criminologist, philosophers, lawyers etc. and over the years, various principles such as retribution, rehabilitation, restitution, deterrence have been developed to attempt to justify the several aims of punishment. For the purpose of this question, we shall be analyzing the ‘just desert’ principle critically examining what inspired the idea behind it.

The ‘just desert’ principle of punishment, was founded under the Retribution theory of punishment. The theory states that an individual deserves the penalty he gets because of the crime he has committed. If a person commits a crime, he must not be given lesser penalty than he deserves for instance, a person who commits murder should be killed, there should not be an option for pleading let’s say manslaughter. Likewise, he must not be given a punishment above what he deserves. Along the line, as the theory developed, some philosophers felt that the revengeful principle of this theory was too harsh so they modified it to the ‘just desert’ principle which states that **punishment must be equal in proportion to the seriousness of the crime.**

The ‘just desert’ principle is one of many principles that criminologist have founded to be the adequate means or way of punishing a criminal offender. Just deserts, as a philosophy of punishment, argues that criminal sanctions should be commensurate with the seriousness of the offence i.e. punishment should be proportionate to the offence committed.

One of the notions I can construe from this principle is the need for a **just criminal justice system** especially because one of the objectives of the criminal justice system is punishing and reorienting a criminal accordingly. So, adopting a tougher punishment for a minimal offence would counter their objective. Thus, this principle is **designed to promote equality and fairness** of sentencing for the imposition of a sentence hence the argument that punishment should fit the crime. This principle also entails that one should be punished simply because he committed a crime so the punishment should be fair and appropriate and should be related to the severity of the crime that was committed.

In simpler terms, it can be said this principle just seeks to right the wrong done by the offender. It also provides a check on the power of the state in determining the amount of punishment necessary to pay the price of a crime no more, no less.

QUESTION 2A: WHAT DO YOU THINK IS THE MOST EFFECTIVE WAY OF PUNISHING AND TREATING A CAPITAL OFFENDER

Who is a Capital Offender?

A person who has been found guilty of a capital offence e.g., murder, treason. Usually the punishment for this kind of offenders is death penalty, but I don't agree with this means as there are other more effective forms of punishing a capital offender such as

- Imprisonment with hard labor
- Solitary confinement
- Indeterminate Sentence
- Confiscation or an expropriation order
- Corporal punishment
- Incapacitation
- A combination of some of the punishment.

I am against the idea of punishing capital offenders with death penalty because of the finality of death sentences and the fact in Nigeria, error in judgement is prevalent as a result of the laissez-faire attitude of the officials and such errors cannot be reversed in the event that such an individual has already been executed. Also, the recent clamor for upholding of human rights of all humans including criminals has hinged on the sanctity of life, hence informing the reluctance of the appropriate authorities to sign the execution of capital offenders who have been sentenced to death and this defeats the entire essence of the punishment. I believe that a combination of one or more of the punishment mechanisms listed above will be highly effective in dealing with capital offenders for a plethora of reasons.

1. **A medium for rehabilitation:** Rehabilitation in this context is the process of restoring a criminal offender to living a normal life through training and therapy during or after imprisonment. It is the process of reinstating a criminal to a useful and constructive place in the society. A person who has been sentenced with a punishment of death penalty, will not have the opportunity to be given another chance to be a better person in the society. On the other hand, if one of the punishments listed above is adopted, such offender would have undergone the consequence of his action and along the line, he would have experienced proper positive development.
2. **Deterrence:** The death penalty does not have a deterrent factor and does not necessarily decrease crime rate in the society. Many criminals do not get caught, some do not receive

death penalty and those that do are on death row for a very long time. So potential criminals do not make a connection between their crime and capital punishment. But if one or more of the alternative punishment is enforced there is a high chance that such crime would be reduced in the society.

3. **Nature of the offender:** This is a very huge consideration in capital offences because there is a need to consider first time offenders and the likelihood of offenders to commit such crime again. In some situations, a person that commits a capital offence does not have a criminal mind or is not inclined to do evil, circumstances such as poverty, mistake or even the person's state of mind at that moment might have led to the commission of such crime. Subjecting such people to death penalty would be very unfair, however, adopting one of the above means would be just right as the person can have another opportunity to redeem himself to the society. Therefore the combination of these punishments can vary depending on how hardened the criminal is, hence a chronic criminal can be subjected to more of these punishment to allow them to feel the impact of their criminal act.
4. **Probability of error and possibility of correcting such errors:** In Nigeria today, we have seen instances in which the wrong judgement has been passed either because of inadequate investigation, corrupt judges and lawyers etc. thereby leading to an innocent person convicted for an offence he did not commit. In such a situation, if such person is sentenced to any of the alternative punishment listed above, such punishment can be revoked if the truth comes out and can be compensated adequately but if he had been sentenced to death, there would be no way of reversing the punishment as a dead man cannot be raised back to life destroying one of the aims of the criminal justice system, having a fair and just judgement.
5. **Cost:** Death penalty can be more expensive than every one of the alternative punishments listed above. Over the lifetime of a case, executing prisoners can be three times as expensive as life imprisonment, usually due to the higher costs of capital punishment trials, automatic appeals and heightened security on death row. So, converting death sentence to one or more of the alternative punishments would save a lot of cost that can be channeled to the development of other lacking aspects of the society.
6. **Humanity:** The death penalty is inhumane. Killing people makes us no different from the murderers. It is not only about what capital punishment does to those killed and those in whose name the killing is done. It is appalling enough that we are victimized by crime in the society, we do not need to be further victimized by becoming perpetrators and enacting death penalty. Instead, alternative punishments such as long term imprisonment, indeterminate sentences or even incapacitation can be adopted in most situations.

However, some instances have shown that no matter how much consideration you put a criminal offender in, they have no remorse and they continue to be a major threat to everyone around them in such a situation, there might be no other option than to kill such person. In the end, one would

need to examine what is sought to be achieved through the punishment of an offender and how best the applicable punishment caters for that reason. Capital offenders may be first timers or people who have been brainwashed to commit these crimes as well as people who committed them willingly but are heavily remorseful. For them, a system that puts them to death may be counter-productive. It does not see the greater good that can be achieved from cleaning up those individuals after punishment has been severely meted out. However, other forms of punishment mentioned above correctly capture the essence of punishment with a view to allowing the criminals understand the error of their ways and feel the remorse for their actions.

In conclusion, many times, death penalty does not do justice for the victim of the offence which is why some of these punishments have been suggested as the offenders while serving the punishment, suffer the consequences of their action and at the same time are given a chance to redeem themselves. I strongly believe that these other measures would be effective ways of punishing and treating a capital offender.

QUESTION 2B: WILL YOUR ANSWER BE THE SAME IF THE ACCUSED WAS CHARGED FOR A SIMPLE OFFENCE?

NO, a simple offence is an offence punishable on summary conviction before a magistrate court by fine, imprisonment, or otherwise. The highest jail term for simple offences is six (6) months. Examples of simple offences include, Contempt of court, unlawful wearing of army uniform, unlawful selling of army uniform, obstruction of postal mails, road traffic offence etc.

Usually, offenders who are guilty of simple offences do not commit such crimes with a criminal mind or intention, it is either due to ignorance like in a case of wearing of army uniforms, disrespect in a case of contempt of court, peer group influence, stubbornness in a bid to prove what is not. So, adopting the same type of punishment given to capital offenders in such case would not be fair because the severity of both type of offences can not be compared. Instead, minimal punishment should be adopted bearing in mind the aim to both educate and correct them. Some of the measures that may be adopted include:

- Fines: The offender can be required by the judgement of a competent court to pay an amount of money that will serve as his/her punishment.
- Community Service: The offender may be subjected to do unpaid work intended to be for the benefit of the society.
- Short term imprisonment: The offender may be sentenced to prison for a jail term not more than 6 months.
- Probation: The court may order that the offender is put under probation i.e a process of testing or observing his/her character before further actions will be taken.
- Reprimand and warning: Depending on the gravity of the offence the offender may just be reprimanded or given a strict warning.

In addition, the authorities must also strike a balance between punishing them and educating them so that it would not be taken for granted. In the sense that, if the people realize that when a

particular offence is committed there is no punishment attached to it, instead they just warn the person, more people will be getting involved in such crime. The rationale behind this is that by nature, simple offences are less weighty and more prevalent among mostly poor citizens and it would be a better approach for the government to effect a means of examining the root cause of the problem and address it while punishing them so as not to turn them into hardened criminals by treating them as one. Hence, I recommend that when offenders of simple offence are treated, there should be more of educating and correcting but the aspect of punishment should not be ignored totally.

In conclusion, punishment of offenders is a delicate affair, one that should be handled with utmost precision if the government aims at achieving a state with less crime rate. The government should also focus on improving the standard of living of the average citizen as this will reduce the rate of petty crimes and allow the justice system to have more time and resources for other offences. An effective balance of punishment and reformation will be the best and most effective way to handle majority of criminals and offenders in Nigeria to bring about an improved criminal justice system.