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COURSE: CRIMINOLOGY II

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QUESTION:

1. What motivates the ‘jus 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?

1.

The expression meaning that which is deserved was originally just deserts. The phrase is the last refuge of an obsolete meaning of desert—namely, something that is deserved or merited. But because most modern English speakers are unfamiliar with that old sense of desert, the phrase is often understandably written just desserts.

We cannot delve into the concept of jus desert without first looking at the theory of Retribution. The principle of just desert is often found under the theory of retribution which is the justification of punishment. It is an ancient method of dealing with offenders, it is retributory and revengeful in nature. This approach to punishment rests on the idea that a person whose conduct must have been held to cause social harm should be held responsible and this method often consist of; banishment, whipping, flogging, branding and other forms of torture.

Retribution in punishment follows the lex talionis doctrine of “an eye for an eye; tooth for a tooth” meaning an individual deserves the penalty he gets because of the crime he has committed. If a person commits a crime he must be given the exact punishment prescribed by law, he must not be given lesser penalty than he deserves meaning that there is no act of plea bargaining in retribution. For example, an individual who commits murder must face the death penalty, because there is no provision for him to bargain to plead guilty to manslaughter or anything whatsoever the reason. Likewise a person’s punishment must not be above what he deserves.

Under the retributory theory is where one finds the concept of jus desert also known as the proportionality principle. This principle addresses the issue of how much punishment should be inflicted and the answer is the measure of punishment given must be equal and in proportion to the seriousness of the crime and it should be no more or no less.

The theory of jus desert is retrospective rather than prospective. Meaning that the punisher need not be concerned with future outcomes but only with the appropriate punishments for the harm committed, although it is certainly preferable that the punishment also serve the function of inhibiting future harm doing, for its justification lies in righting a wrong not correcting future problems.

What motivates the concept of jus desert is the fact that the punishment should be equal to the harm done which then leads to the task of the jus desert theorist which is to assess the magnitude of the harm done and devise a punishment which is proportionally severe to the harm done. There are also core components of a crime that motivate the jus desert principle such as the; extenuating circumstances and magnitude of harm.

2.

The writer is of the opinion that an offender who has been found guilty of committing a capital offence should be given death penalty

Further explaining my point of view, A capital offence are crimes that are punishable by death, they can also be known as capital felonies or capital crimes and they vary depending on the jurisdiction but commonly includes serious offences such as murder, mass murder, child rape, aggravated cases of rape, child sexual abuse, treason, terrorism, espionage, drug possession, war crimes, genocide, aircraft hijacking, drug trafficking and in some cases serious acts of recidivism, kidnapping and aggravated robbery.

A harsh but true reason is that the death penalty makes it impossible for the convicted criminals to repeat the crimes due to the fact that they are already dead. Executing criminals permanently stops them and serves as a stern warning to future offenders who will then weigh their options of pleasure and pain and it make the community feel safer knowing that these criminals are no longer out there. If these criminals are put imprisoned there is the possibility of them getting out if not more hardened than they were before they entered and will be more careful as not to get caught, we also consider the fact that our taxes are used to maintain the prisons and their inmates, basically we are feeding the people who bit us in the finger which is not right.

Capital offences are serious offences and should not be taken lightly and the death penalty supports three out of five of the purposes of punishment which are; deterrence, incapacitation and retribution.

2b.

If the offences committed were to be simple offences my answer would not be the same for simple offences are offences (indictable or not) punishable on summary conviction before a magistrate’s court, by fine, imprisonment or otherwise. In Nigeria they are the offences other than felonies and misdemeanour and are often punished with an imprisonment of less than six months. Examples are; disorderly conduct, driving under the influence of alcohol and damage to property.

If it were a simple offence committed, this writer would suggest that punishments such as; fines, house arrest and electronic monitoring, probation and community service be issued for a death penalty would be too severe for such an offence.