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Question

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

Punishment can be defined as the affliction of pain by the state on someone convicted of an offence. It is one of the devices for treating offenders in the society and restoring harmony or repairing of the damage done by the violation of the law.

It is a well known fact that there are five reasons specified for punishment which are; reform, deterrence, incapacitation, rehabilitation and retribution. However, out of these five, only retribution can provide the basis for a theory of just punishment.

The ‘just desert’ principle, also known as the ‘proportionality principle’ is a retributive approach to treating offenders. Retribution is the most ancient method for dealing with offenders. It is retributive and revengeful in nature. This approach to punishment rests on the idea that a person whose conduct appears to have caused social harm should be held responsible.

The rationale behind the ‘just desert’ principle is supported by the statement, ‘let the punishment fit the crime’. The expression symbolizes the idea of a fair and appropriate punishment related to the severity of the crime that was committed; that is ‘an eye for an eye, a tooth for a tooth’, the latin maxim of *lex talionis*.

The just desert principle posits that one should be punished simply because one committed a crime. This rule holds that those who commit crimes deserve to be punished in accordance with the severity of the crime committed. The just desert principle supports the utilitarian rationale for proportionality in punishment which was made obvious in **Onyilokun v. COP (1981) 2 NLR**.

The retributist approach holds that punishment is ‘just’ because it is deserved; punishment for disobeying a law helps assure obedience and reestablishes the balance between the benefits and burdens of obeying the law that was disturbed by the criminal act.

A straightforward formula to the just desert claims may be generally expressed as: Thing X deserves Y in virtue of Z. For example, I (X) deserve a good grade on my test (Y) because I studied hard (Z); someone who steals a loaf certainly does not deserve life imprisonment. Neither does one convicted of willful homicide necessarily deserve such sentence.

The just desert principle is motivated by the call for the preservation of human dignity through punishment. It stresses that a person is a rational individual with the free will to make a moral choice whether or not to engage in an action prohibited. Retribution under a just deserts principle treats a defendant as a dignified human being by responding to his or her conduct in a way that respects his or her choice to engage in wrongful behavior.

Just desert principle underscores the idea that a criminal "deserves" to be punished because he has violated the "moral order," but what punishment does he or she "deserve?" tenet within the just desert theory of retribution is proportionality. If one asks how severely a wrongdoer deserves to be punished, the just desert principle answers the question by posing that the severity of punishment should be commensurate with the seriousness of the wrong. Only grave wrongs merit severe penalties; minor misdeeds deserve lenient punishments.

The retributive theory however has some inadequacies, in that, the fact that the person has committed a crime does not always mean that the person has a criminal mind or that the person is inclined to evil. Circumstances such as poverty, age or insanity may have an effect on the person. Also, since there is no full proof method of determining those who are guilty, vengeful punishment may be directed at the innocent. Lastly, the victim may not be interested in revenge.

- 2. 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?**

A capital offender is one who is convicted of committing a capital offence. In Nigeria, the following offences are capital offences; Murder as provided by *section 319 of the Criminal Code*, Treason as provided by *section 37(1) of the Criminal Code*, treachery, directing and controlling or presiding at an unlawful trial by ordeal from which death results, and

conviction for armed robbery as provided by *section 1 of the Robbery and Fire Arm Special Provision Act 2004*. The introduction of the Sharia criminal law in some states in Northern Nigeria widened the categories of capital offences. For instance, under sharia law, death penalty can be applied for sexual crimes.

Therefore, a capital offender should be visited with capital punishment. Capital punishment covers any of the following; various forms of torture, banishment, flogging, death by hanging, death by firing squad, death by lethal injection, death by electrocution.

This writer suggest the above method firstly because, the death penalty is constitutional. Though every citizen of Nigeria is vested with the right to life, as provided in *section 33 of the 1999 Constitution of the Federal Republic of Nigeria*, there are however limitations to this provision and such restrictions arise when death penalty has been imposed on an individual who has been found guilty by the court, of a capital offence, such as murder. The constitution of the Federal Republic of Nigeria is the supreme law of the land, and any law inconsistent with its provisions is therefore inconsistent. From the above, it follows that the constitutionality of death penalty is not in doubt. In fact, the Supreme Court of Nigeria upheld the constitutionality of the death sentence in the case of **Onuoha Kalu v. The State** .

Secondly, capital punishment is the most appropriate for a capital offence because allowing a criminal convicted of murder to go free is to make him a threat to others. The criminal ought to die for the crime he has committed. Once an individual is seen as a threat to the society at large, the state has the right and duty to take the life of a citizen in order to increase its welfare.

In addition, death penalty acts as a deterrent to future crimes. This is known as the deterrence theory. Thus, the death penalty would be a deterrent or preventive act for capital offences. Executions, especially where they are painful, may create a sense of horror that would prevent others from being tempted to commit similar 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. Therefore, in the case of a person serving a life

term for murder, the cost incurred by the state would be high. If such a person who committed murder was in turn executed, the state would have cut down cost drastically.

It is however important to note that the above suggestion will not apply to all capital offenders, as there are some situations which will exempt an individual convicted of a capital offence like murder from capital punishment. An instance is a situation where the accused upholds the defense of provocation. In this situation, punishment such as life imprisonment will be imposed on the accused.

Also, there are categories of people who have actually committed capital offences but are exempted from capital punishment because of their vulnerabilities. This category includes the juveniles, pregnant women and insane people.

Pregnant women as provided by *section 368(2) of the Criminal Procedure Act* provides that a pregnant woman cannot be sentenced to death, rather she will be sentenced to life imprisonment. Besides this, *section 368(3) of the Criminal Procedure Act* provides that young persons under the age of 17 years cannot be sentenced to death.

However, as a criminology student, I put forward that the punishment suggested above may be flawed. This is because innocent people may end up being killed in the process, also the death penalty is inhumane and many other cons associated with death penalty. Therefore, this writer recommends that before capital punishment is imposed on the capital offender, investigations as to what motivated such offender to commit the capital offence should be made. If the findings reveal that such offender was motivated by reasons like automatism, such offender should be temporarily incapacitated which means that he should be imprisoned for a term and supervised permanently and rehabilitation should follow, which is done to restore the offender to a constructive place through treatment, education and training. However, rehabilitation is dependent on how receptive to treatment the offender is.

If the findings reveal that the offender is indeed inclined to evil or immoral act and is actually set to cause havoc in the society, such offender should be visited with the capital punishment and the justification for this is that the punishment must be equal to the seriousness of the crime.

b. Yes. My answer will vary if the accused was charged with a simple offence.

As provided by *section 3 of the Criminal Code*, simple offences refer to all other offences other than misdemeanors and felonies. They are minor, petty crimes which maximum punishment attracts up to six months imprisonment. Examples of simple offences include; petty theft, contravention of local bye-laws, being disorderly or engaging in conducts likely to cause breach and so on.

An individual charged with a simple offence would attract punishment such as fines, correctional orders, community service order, probation order and so on. The following sections provide for the discretionary power of a court to impose fine in place of punishment; *section 382 of the Criminal Procedure Act, section 316 of the Administration of Criminal Justice Act, section 23 of Criminal Procedure Act and section 422 of Administration of Criminal Justice Act 2015*. As stated by *section 390(3) of Criminal Procedure Act*, the fine in Nigerian Courts must be appropriate, not only to the offence, but also to the means of the offender to pay. It is important to note that because an offence is a simple offence, does not imply that the accused should go unpunished. A community which is too ready to forgive a wrongdoer may end up condoning crime. For instance, a man should not be sentenced to death for stealing N3,000, such individual should rather be reprimanded, corrected, convinced of his guilt and reformed.

Community service order for instance, is another suitable form of corrective justice system for a petty thief. As provided by *section 347(3) of the Administration of Criminal Justice Act 2011*, community service order requires simple offenders to perform unpaid work for the community in which the offence was committed, for a certain period. An accused charged with a simple offence should attract lesser punishment than an accused charged with a capital offence.

The above suggestion is justified rehabilitative punishment will restore the convicted offender to a constructive place in the society, through some combination of treatment, education and training.

References

- 1999, Constitution of the Federal Republic of Nigeria
- Mark Said, 2013. The Law of Just Desert.