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QUESTION: What motivates the “just desert” principle of punishment? Discuss

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

Will your answer be the same if the accused was charged with a simple offence?

1. Firstly, “just desert” principle of punishment is a subdivision of punishment as a whole and it is pertinent to note that punishment is the act of inflicting a consequence or penalty usually by the authority of the state on someone convicted as a result of their wrongdoing usually by way of a penalty. It is also the affliction of pain by the state on a convicted person for an offence and it serves numerous social control functions.

This doctrine of “just desert” is under the one of the principles of punishment, which is retribution. Retribution is the most ancient methods of dealing with offenders. It embraces that fact that a person whose conduct is said to have caused social harm in the society should be held responsible for the consequence that is to come after. In a nutshell it is a law of revenge or retaliation and it may include flogging, whipping, and banishment etc. This theory later evolved from the infliction of greater injury on the offender than that which he inflicted on the victim to “lex talonis” which translated to an eye for an eye and a tooth for a tooth principle which was on the principle that when an individual commits a crime he must be given the exact punishment prescribed by law, which means that there is no act of plea bargaining in retribution.

One popular justification for punishment in the “just desert” rationale is that a person deserves a punishment proportionate to the moral wrong committed. The principle of proportional justice or propotionalism principle (just desert) is used to describe the idea that the punishment of a certain crime should be in proportion to the severity of the crime itself. In practice, systems of law differ greatly on the application of this principle. In some systems it was interpreted ad lex talonis (an eye for an eye) in others it led to a more restrictive manner of sentencing

The fundamental principle behind proportionality is that the punishment should fit crime. In 1983, the US Supreme Court ruled that courts must do three things to decide whether a sentence is proportionate to a specific crime

1. Compare the nature and gravity of the offense and the harshness of the penalty
2. Compare the sentences imposed on other criminals in the same jurisdiction i.e. whether more serious crimes are subject to the same penalty or to less serious penalties
3. Compare the sentences imposed for commission of the same crime in other jurisdictions

“Just desert” is a theory which is designed to promote equality and fairness of sentencing for the imposition of a sentence. This principle is the punishment should fit crime. When an instance occurs it is said that the offender has just received their “just deserts”. The theory of just desert is a retrospective rather than prospective. The punisher need not be concerned with future outcomes, only with providing punishment appropriate to the given harm.

Advocates of just desert philosophy emphasize the importance of due process; determinate sentences and so on, issues that affect the judicial aspect of law. 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 achieving some future benefit. The central awareness of ‘just desert’ theory is that punishment be proportionate to harm. The task of a just desert theorist then is to assess the magnitude of the harm and to derive a punishment that is proportionate to the severity of the crime committed.

There are several core components of an offense that 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 a just deserts theory of punishment. They may include; magnitude of harm, extenuating circumstances: the just desert principle is highly sensitive to such relative factors that mitigate or exacerbate the degree to which perpetrator deserves punishment

In summary “just desert principle” is an attempt to blend justice with fairness. By focusing on the past behavior of the offender, punishment is not based on the predictions on the likelihood of recidivism or on how long it will take to ‘change’ the offender. Instead, the seriousness of the offence and the past record of the offending become the substantive basis for determining appropriate punishment. Policies that are based on ‘just desert’ attempt to limit judicial sentencing discretion, and advocate for the abolition of parole boards. Instead sentences are fixed by the legislature which reduces the likelihood of disparity.

Finally, “Just desert” principle does not consider diagnosis and treatment, predictions of future criminal activity, or deterrence of criminals or potential criminals as elements of the guiding philosophy in sentencing decision. Instead, the equitable distribution of punishment among offenders is of key importance

2a. First of all, a capital offender is a person who has a criminal charge or guilty of an offense that is punishable by death penalty. Some of these offences include murder, treason, and armed robbery and so on. The punishment for capital offence due to various constitutions and statues or even precedents of the law in most parts around the world provides that the appropriate punishment is capital punishment or death penalty. This punishment simply means that the offender will be sentenced to death after he has been found guilty. This death sentence however takes various forms of execution which includes lethal injection, electrocution, firing squad and by hanging. Due to the extreme nature of this punishment, pregnant women and young persons are exempted from this this punishment.

However even with all the information aforesaid, as a criminology student however, taking into reflection the above knowledge I would say that the punishment for treating this offense should be imprisonment: life imprisonment. Although, capital punishment may the punishment backed up by statutes or constitutions, but due to various research carried out by me, it has come to my knowledge that the cons of capital punishment outweighs the pros of such punishment. In the influence of my decision, most criminologist however are against capital punishment because of destructive effects and also because the act is not humane in nature. This has influenced various criminologists, thereby discouraging them in coming to terms with such punishment, as some even write articles, stories on why the capital punishment should be abolished. With this, I would say “you cannot solve something by doing the same thing” which is the case here. As a criminology student I would also say that other types of punishments cannot be replaced with capital punishment because they are lenient in nature compared to the offence of a capital offender. Due to this the only punishment that is reasonable to give is imprisonment; life imprisonment to be precise.

Imprisonment can be defined as a term of judicial sentence available for a convicted offender of adult age, involving incarceration in prison for either life or a specified period of time. The law requires that imprisonment may only be imposed where necessary and must not exceed the maximum or fall below the minimum punishment. Imprisonment restricts a person’s liberty and freedom. In conclusion, it is in my opinion that once an offender has been found guilty of a capital offense, he should be sentenced to imprisonment; life imprisonment to be precise instead of death penalty.

2b. Yes my answer would vary but first off,

Generally, a simple offense means any offense indictable or not punishable, on summary conviction before a Magistrate Court, by fine, imprisonment or otherwise

In Nigeria however, under the criminal code a simple offence are all other offences other than felonies (term of imprisonment for more than three years or punishable with death) and misdemeanors (term of imprisonment for less than three years but more than six months) are regarded as simple offense. They carry imprisonment of a term of less than six months on conviction.

As a criminology student, I would sternly say that the most effective way of treating /punishing a simple offender is by way of Rehabilitation. This is because:

Rehabilitation is the most appealing justification of punishment. The ultimate goal of rehabilitation is to restore a convicted offender to a constructive place in the society through some combination of treatment, education and training. It is used to prevent crime from occurring again by changing the personality of the offender. The aim is to reform criminals and to ultimately prevent recidivism. It involves the process of helping inmates grow and change allowing them to separate themselves from the environmental factors that made them commit a crime in the first place.

This form of treatment falls on the idea that the purpose of punishment is to apply treatment and training the offender so that he is made capable of returning to society and functioning as a law abiding member of the community. The inquiry of rehabilitation is not into how dangerous the offender is but rather into how receptive the treatment is. There is the idea under this form of treatment that the offender committed crime because of some external influential factors like poverty, group or peer influence, get quick rich syndrome and so on. To emphasize, the concept of rehabilitation rests on the assumption that criminal behavior is caused by some factor. This perspective does not deny that people make choices to break law, but it asserts that these choices are not a matter of pure free will.

That is why as a criminology student I would say that the best form of treatment is rehabilitation this is also because such criminals were convicted of simple offences, meaning the offenses are not as grievous as the rest of the offenses and as such, such behaviors and habits can be corrected through the process of effective and efficient rehabilitation programs since they will be released back into the society. These rehabilitative processes however involve a number of activities like group counseling and welfare services, skill acquisition program, educational services, after care services and so on. All this and many more program contribute at large to the treatment of rehabilitation.

Advantages for this treatment includes the fact that it creates resources for the state for training the offender, it provides the state the opportunity to control crimes in the future, it gives people a second chance in correcting their behaviors, it enables the criminal to stay within the society and it prevents crime by changing the personality of the offender