

NAME: OGUEJI, FAITH CHINWENMERI

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WHAT MOTIVATES THE “JUST DESERT” PRINCIPLE OF PUNISHMENT?

In order to understand the motivation behind the “just desert” principle, it is important to understand what this principle entails. First of all, the just desert principle is also known as the proportionality principle. This principle is an extension of the retributive theory.

Retribution is considered to be the oldest theory of punishment. But, due to the inability of other theories, such as rehabilitation and deterrence, to effectuate a reduction in crime, philosophers and scholars have reexamined retribution as a viable justification for punishment. Thus it has been rediscovered. There is no exact definition of retribution probably because of the fact that there has been different approaches to the enforcement of the theory. Traditionally however, the underlying notion of retribution is that "criminal behavior constitute[s] a violation of the moral or natural order ... and, having offended that order, require[s] payment of some kind. Therefore, a criminal is punished because he or she “deserves” it; and this justification for punishment is appropriately called the principle of "just deserts”.

What then is the Just Desert principle?

The saying “let the punishment fit the crime” is said to be the philosophy behind the just desert model of justice. The phrase represents the idea of a fair and appropriate punishment related to the severity of the crime that was committed. Throughout history, it has followed the idea of retribution for the commission of a crime can best be explained in the Old Testament quote 'an eye for an eye, a tooth for a tooth.'

Under just desert, those who commit crimes deserve to be punished. Moreover, the severity of the punishment should be commensurate with the severity of the crime. In other words, as stated at the outset, the punishment should fit the crime. In addition, according to just desert, the punishment of the offender must be fairly and equally apportioned to all individuals who commit the same crimes. This can sometimes be a controversial area of the theory, as the circumstances surrounding the commission of crimes vary; therefore, the equality of the punishment can be a tricky area.

Thus, to answer the question, the purpose of the Just Desert principle could be to preserve human dignity through punishment. Because a person is a rational individual with the free will to make a moral choice whether or not to engage in conduct known to be prohibited, just desert

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. Under the utilitarian theories of rehabilitation and deterrence, an individual loses his or her human dignity once he or she has been arrested. The reason is that both rehabilitation and deterrence remove desert from the concept of punishment. Neither is concerned with "what is just. But the concept of desert is the only means of connecting punishment and justice.

The Just desert principle also seeks to restore moral order. Moral order is the existence of "right" relationships among individuals and between an individual and the community." The "right" relationships are governed by a higher authority whether it be God, natural law, or social contract. In other words, the "moral order" is the ideal state in which the community should function. A good example of this type of retributive justice system is the ancient Hebrew system of pure retributive justice that could be described as *shalom*. *Shalom* meant more than absence of conflict; the term described completeness, fulfillment, wholeness-the existence of right relationships among individuals, the community, and God. Crime was thought to break the *shalom*. Therefore, the ancient Hebrew justice system aimed to restore "right" relationships. Based on retribution, the Hebrew justice system gave the world the concept of *lex talionis* (eye for eye, tooth for tooth). However, the Hebrew system was not based on revenge or retaliation. Therefore, under this, crime is conduct that disturbs the "right" relationships within the community: relationships between offender and victim, offender and community, and victim and community. Since crime is defined as the violation or disturbance of the "right" relationships in the community, the goal of the retributive theory of justice is to reconcile these relationships. This is accomplished by making an offender "pay" for the disturbance his or her conduct has caused. A criminal "deserves" to be punished because he or she has violated the "moral order" and core tenet within the just desert theory of retribution is proportionality. In other words, the level of punishment must be proportional to the seriousness of the crime. That means that a defendant must be punished only to the extent necessary to restore the relationships.

AS A CRIMINOLOGY STUDENT, WHAT DO YOU THINK IS THE MOST EFFECTIVE WAY OF PUNISHING AND TREATING CAPITAL OFFENDERS? GIVE REASONS FOR YOUR ANSWER

According to the Legal Dictionary, The term “capital offense” is used to describe a crime that is so serious that the death penalty may be considered an adequate punishment. One of the most common examples of a capital offense would be murder. Thus, a capital offender is a person who commits a crime so serious that the death penalty may be considered an adequate punishment.

In the opinion of this writer, I would suggest that the capital offender be imprisoned instead of having to face the capital punishment. It is no news that the death penalty has not effectively dissuaded many from committing capital offences. Moreover, research has proven that the death penalty, in most cases, does give the family of the victims the closure they expected.

Therefore, I believe that a more suitable punishment for capital offenders would be imprisonment. Firstly, it is important to note that capital punishment does not deter crime. As a matter of fact, studies have consistently failed to show that executions deter people from committing crime. Also, there is a better alternative: life in prison without the possibility of parole. Another reason for this decision is the fact that death penalty puts innocent lives at risk and this could be as a result of poor quality defense. Not to mention yet another fact that death penalty goes against almost every religion. So why should a civilian’s job description include killing another person? many at times these Corrections personnel involved in executions, like our military, frequently suffer PTSD from having to kill. But prisoners pose no threat to the citizens.

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

Yes. And this is for the obvious reason that it goes against the principle of justice. The seriousness of the offender's crime -- not his need for treatment, his dangerousness, or the deterrence of others -- ought to be decisive in determining a sentence. Penalties must be scaled in accordance with the gravity of the offense, and departures from the deserved sentence should be impermissible, even if they may have some crime-control usefulness. The degree of likelihood that the offender might return to crime would be irrelevant to the choice of sentence, and

indeterminate sentences would be abolished. Sentencing discretion would be sharply reduced so as to alleviate sentencing disparities. Imprisonment should be limited to serious offenses. The commensurate-desert principle allows severe punishments only for serious crimes. Imprisonment is necessarily a severe penalty. Prison thus should be the sanction only for crimes, which cause or risk grievous harm, such as assault, armed robbery, and rape. Even for serious crimes, the length of imprisonment should be rationed, given the painfulness of the prison sanction. Penalties less severe than imprisonment would be for the nonserious offenses that constitute the bulk of the criminal justice system's caseload. Warnings, limited deprivations of leisure time, and perhaps fines would be used in lieu of imprisonment. Probation would be phased out because of its discretionary and treatment-oriented features.

Therefore, penalties given for simple offences should be proportional to the gravity of the offence.

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