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**MATRIC NO.: 17/LAW01/036**

**COURSE: CRIMINOLOGY II**

**COURSE CODE: LPI304**

**QUESTION:**

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

**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**. Desert in philosophy is the condition of being deserving of something, whether good or bad. [[1]](#footnote-1)

The word is related to justice, revenge, blame, punishment and many topics central to moral philosophy, also "moral desert". In the English language, the word "desert" with this meaning tends to be a rather uncommon word colloquially; it is almost exclusively used in the phrase "just deserts" (e.g. "Although she was not at first arrested for the crime, she later on received her just deserts."). The phrase "just desserts" is a pun on this original term and is often confused as the correct spelling of the word.[[2]](#footnote-2)

The phrase ‘just desert’ comes from the 16th century. A clearer, modernised version would be that which is ‘justly deserved’. In that respect, the conventional wisdom interpretation of the phrase is not so far off. Many believe the phrase refers to a dessert, as in a treat, and, therefore, refers to a just reward for a good deed.[[3]](#footnote-3)

‘Just desert’ is a philosophy of justice whereby a criminal offence is viewed as lowering the victim or community’s status or power relative to the offender, which requires a degradation of the offender to redress the moral balance.

However, ‘just desert’ means to ensure that a punishment is both appropriate to a crime and that it is consistent. Someone who steals a loaf certainly does not deserve life imprisonment. Neither does one convicted of wilful homicide necessarily deserve such sentence.

More so, we cannot mention the just desert principle 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. Over the last two decades the retribution theory of punishment has been rediscovered. Due mainly to the inability of other theories, such as rehabilitation and deterrence, to effectuate a reduction in crime, philosophers and scholars have re-examined retribution as a viable justification for punishment.[[4]](#footnote-4)

Even though retribution is considered to be the oldest theory of punishment[[5]](#footnote-5), there has not been universal agreement as to its definition. Traditionally, however, the underlying notion of retribution is that "criminal behaviour constitute[s] a violation of the moral or natural order ... and, having offended that order, require[s] payment of some kind[[6]](#footnote-6). Therefore, a criminal is punished because he or she "deserves" it. This justification for punishment is appropriately called the principle of "just deserts."The concept of just deserts seeks to preserve human dignity through punishment. It asserts that a person is a rational individual with the freewill to make a moral choice whether or not to engage in conduct known to be 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 behaviour.[[7]](#footnote-7) This concept differs radically from the utilitarian theories of rehabilitation and deterrence.[[8]](#footnote-8)

What is the "moral order" that the retributionists seek to restore? 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[[9]](#footnote-9). In other words, the "moral order" is the ideal state in which the community should function.

In a retributive framework, incorporating harm into the punishment calculus also makes sense philosophically. Recognition of harm emphasizes that crime does not merely violate a rule or code; it also affects both victims and society. Including harm in the calculus preserves human dignity because doing so not only recognizes the consequence of an offender's free will, but also considers the offense as an injury to another person[[10]](#footnote-10) The 'just deserts' model of justice specifically views the concern for victims in the criminal justice process as an integral part of [proportionality]."[[11]](#footnote-11)

The theory of just 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 principle of just desert is that it attempts to address the issue of how much punishment should be inflicted and it answers that the measure of punishment given must be equal in proportion to the seriousness of the crime and it should be no more no less.

**2**. Capital offences 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.

As a criminology student, this writer believes that the most effective way of punishing and treating capital offenders is life imprisonment. I am of the view that this way better than death penalty which is the most common form of capital punishment because:

**a**. The fact that a person has committed a crime does not always mean that the person has a criminal mind or that he is inclined to evil or immoral act. Also, circumstances may have an effect on the person such as poverty, age and state of mind (unsound mind).

**b**. The victim may not be interested in revenge. For instance, a saint who believes in forgiveness and more so the repentance of the criminal.

**c**. There is not exactly a full proof method of determining those who are guilty. Revengeful punishment may be directed at the innocent.

**d**. Rehabilitation is the most appealing justification for punishment, the ultimate goal is to restore a convicted offender to a constructive place through some treatment education and training. This may be used to prevent crime by changing the personality of the offender.

**e**. There is no major gain from death penalty except revenge.

**f**. Everyone deserves a second chance. Once there is life, there is hope. Isolating the person may give the person enough time and solitude to think about his/her life and better still strive to change.

Specifically, I think of various individuals who were imprisoned and composed some of the most influential writing the world has ever known, such as: "Letter from Birmingham Jail" by Martin Luther King Jr., "Pilgrim's Progress" by John Bunyan, and Sir Walter Raleigh's "The History of the World". These people were not exactly capital offenders but they shook the literary world from a cell.

**g**. It can aid restitution also known as restoration. It means the process of returning to their previous condition all parties involved in or affected by the original misconduct but mainly the victims. The offender compensates the victim, it involves not only payment of money but also the provision of services.

**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 misdemeanor 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 life imprisonment would be too severe for such an offence.

1. <en.m.wikipedia.org> [↑](#footnote-ref-1)
2. ^https://blog.oup.com/2007/10/corpus-2/^ [↑](#footnote-ref-2)
3. ‘The law of just deserts' <timemalta.com> [↑](#footnote-ref-3)
4. C.S. Lewis, The Humanitarian Theory of Punishment, in GOD IN THE DOCK 287

(1970); J. Murphy, RETRIBUTION, Justice, AND THERAPY: ESSAYS IN THE PHILOSOPHY OF LAW

(1979); see A. VON HIRSCH, DOING JUSTICE: THE CHOICE OF PUNISHMENTS (1976) [↑](#footnote-ref-4)
5. W. LAFAVE & A. SCOTT, HANDBOOK ON CRIMINAL LAW 24 (1972). [↑](#footnote-ref-5)
6. Jensen, A Christian Defense of Retribution, 7 CHRISTIAN LEGAL Soc'y Q. 11, 11 (1986). [↑](#footnote-ref-6)
7. A. Von Hirsch, supra note 5, at 125. [↑](#footnote-ref-7)
8. 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. C.S. Lewis, supra note 5, at 288. But the concept of desert is the only means of connecting punishment and justice.

Rehabilitation and deterrence theories are concerned only with whether the punishment cures and whether it deters, respectively. Neither is concerned with "what is just." "We demand of a deterrent not whether it is just but whether it will deter. We demand of a cure not whether it is just but whether it succeeds."

Retributionists do not claim that the goals of rehabilitation and deterrence are excluded from or even contrary to a retributive theory but that they are merely secondary. Jensen, supra note 7, at 12. As C.S. Lewis stated: "I am ready to make both the protection of society and the 'cure' of the criminal as important as you please in punishment, but only on a certain condition; namely that the initial act of thus interfering with a man's liberty be justified on grounds of desert." C.S. LEWIs, On Punishment: A Reply to Criticism, in GOD IN THE DOCK 295, 298 (1970) [hereinafter C.S. LEWIs, On Punishment]. [↑](#footnote-ref-8)
9. Gittler, Expanding the Role of the Victim in a Criminal Action: An Overview of Issues

and Problems, 11 PEPPERDINE L. REV. 117, 142 (1984). [↑](#footnote-ref-9)
10. See D. VAN NESS, supra note 1, at 138. [↑](#footnote-ref-10)
11. Erez, Victim Participation in Sentencing: Rhetoric and Reality, 18 J. CRIM. JusT. 23 (1990) [↑](#footnote-ref-11)