

Just deserts essay sample

Psychology



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Within the various criminal justice systems throughout the world there has been continuous debate as to whether or not the system should be aimed at just punishing criminals for the crime they commit, or aim to rehabilitate them in such a way that they do not re-offend and continually re-enter the criminal justice system. Since the dawn of time retributive justice in the form of “ Let the punishment fit the crime” has been the principle guiding the penalties handed out for various criminal acts, or at least what was defined by the society and the time as a criminal act. This concept is to be found worldwide throughout the ages and usually in its original form in the religious texts that served as the “ law” before the introduction of a formal Criminal Justice System, in the Christian world we may be familiar with the following “ If any harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe” (The Bible, Exodus 21: 23-21: 27), one of the earliest examples of accepted retributive thinking.

This form of Justice has one main advantage, the rules are very clear, in its extreme form, if you kill and get caught you will die in turn, and depending on the nature and extent of various other crimes a certain type of justice can be reliably expected. This in many ways liberates members of society as “ one who complies with the announced rules need never fear an infringement of his liberty” (Rawls 1971 P241) this allows members of society to plan accordingly within a recognised framework of laws which provide checks and balances on the more damaging excesses of mankind. This is why it has remained a cornerstone of most criminal justice systems worldwide and throughout time, without these firm clear rules society would disintegrate in

total confusion, it's probably also fair to say that without these rules, draconian as they may have been from time to time, society as a whole would not have made the progress it has to date.

However, accepting that a crime has been committed, the first problem with this approach is, who is to judge the severity of the crime, the victim as the judge is likely to consider the crime more horrendous than a friend or like minded companion of the criminal would, and an "unbiased" Judge is likely to be criticised by both for the lack of understanding shown. So some method of constant measurement regardless of the position of the "judge" is required in order to make the judgement of severity work. "Unbiased" must also be considered as a flawed concept as no matter who judges the crime or criminal all are likely to be biased in some way. This is unavoidable as socially constructed humans are only the sum total of their experiences and observation which, even without them knowing it, will influence how they see the world and the actions of their fellow human beings within it. The next problem is to how to devise various punishments based on their effect on the criminal, and to equate them to a given crime. Different cultures throughout time have considered punishment differently, hanging for children convicted of theft was once a common event in Britain, and the removal of a hand or foot in some Arab countries still considered suitable punishment for minor crimes.

And who is to judge the most "suitable" punishment for the crime, the victim as the judge is likely to require harsher punishment on the criminal than a like minded acquaintance of the criminal would, and the unbiased Judge is likely to be criticised by both for the perceived severity or leniency

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of the punishment. Again some method of consistency is required regardless of the position of the Judge in order to make a certain punishment always applicable to a specific crime. Perhaps the most damning aspect is that retributive justice on its own simply does not work as a long term solution to crime, and that's not just an opinion, it is based on the fact that no retributive justice has remained in place since the dawn of time as it constantly changes and adapts to the society and time it finds itself in. So in 10 years and certainly 100 years any concept of retributive justice valid today will not be acceptable then. So at best it is only a temporary fix that appeases the victims and concerned masses while having little long term impact on crime.

It is also important to consider the context in which a criminal receives his "Just Deserts" in the sense that it is hardly unlikely that anyone will receive their just deserts in an unjust society. As Von Hirsch said "How can punishment be fair in a society that is not itself equitable" (Hirsch 1993 P106)

Another additional aspect to just deserts is the temptation to utilise the possible deterrent effect of such punishment. There has been an ongoing link over the years between "Just Deserts" with an unfair increase in the level of punishment that does not fit the actual crime but is issued in the hope of deterring others from carrying out the same act. However, this is doomed to fail as in western liberal democracy any punishment doled out is unlikely to have a serious deterrent effect. "Punishment of offenders that is characterised by swiftness, certainty, and severity is effective in deterring crime, punishment that is slow uncertain and mild is unlikely to work"

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(Goode 2008 P14) Punishment in Western Society is far from swift, certain, and severe while the terms slow, uncertain, and mild, would seem to be a perfect description of criminal punishment in the West today.

Retributive thinking was further reinforced by The Criminal Justice Act 1991 “An offence shall not be regarded as more serious for the purposes of any provision of this Part by reason of any previous convictions of the offender or any failure of his to respond to previous sentences.” (UK Gov 1991, 29, 1)

This basically means that any punishment handed out should be in proportion to the actual offence in front of the Judge at that time, rather than the existing or potential criminal record of the offender. This followed a 1990 white paper on Crime, Justice and Protecting the Public, where it found that sentencing policy should be more consistent and that sentences should be proportionate to the crime. So the government reinforced the already existing sentencing framework of just deserts within the 1991 Criminal Justice Act. (Home Office 1990)

In 1990 we had a government facing a continual rise in recorded crime (UK National Statistics 2011) seeking a way to show the public that they were dealing with Crime and at the same time get an immediate reduction in the crime figures in order to justify their position, hence the 1991 Criminal Justice Act with its emphasis on retributive justice.

It was less of a perception that there was some sort of crisis in rehabilitation of criminals, or any lack of faith in indeterminate sentencing, it was not even more commitment to retributive thinking, it was simple political expediency needing a quick fix.

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It was apparent very quickly that the “ Just Deserts” concept of The Criminal Justice Act 1991 was flawed and was seen to be treating some offenders unfairly so in 2000, the then Home Secretary announced a major review of the just deserts framework of sentencing led by John Halliday, this can be seen in the Home Secretary’s statement “ The review will examine the foundations of the 1991 Criminal Justice Act and explore the possibility of more flexible sentencing options which join up custodial and community penalties. The focus would be on maximising crime reduction by tackling repeat offending, sustaining public confidence, protecting the public and would take full account of the interests of victims.” (House of Commons, 2002 P15) and was shortly followed by the Criminal Justice Act 2003 which modified the Just Deserts policy by incorporating a new presumption that the severity of sentence should be increased when it was found that an offender has sufficiently recent and relevant previous convictions.

One major and unique outcome of the Criminal Justice Act 2003 was to define the purposes of sentencing and setting out the framework within which those who were issuing the punishments should operate. “(1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing- (a) the punishment of offenders (b) the reduction of crime (including its reduction by deterrence), (c) the reform and rehabilitation of offenders, (d) the protection of the public, and (e) the making of reparation by offenders to persons affected by their offences.” (UK Gov 2003 S 142)

This then opens the door further to individual unfairness in sentencing in which two offenders convicted of the same offence can receive different sentences depending on the circumstances arising from consideration of the sentencing framework listed above. In fact I would go further and say that given that the framework requires such subjectivity, the sentences will vary depending on the individual issuing the sentence, perhaps even if they are having a bad day or not. So how fair is that likely to be for the individual concerned, while it can be accepted that they should not have committed the crime, at the very least they deserve to be treated fairly.

Also, given the wide criteria involved in the framework laid out in the Criminal Justice Act 2003 it will lead to more indeterminate sentencing leading to even more uncertainty for the offender. They will have the uncertainty of the eventual sentence, followed by even more uncertainty of the ultimate extent of that sentence governed by how well they are adjusting to rehabilitation programs or waiting for a parole board to make a decision on release.

So while allowing for tougher but more varied sentences the Criminal Justice Act 2003 also complicated the sentencing of those crimes by insisting that the person issuing the sentence take into consideration many factors which include deterrence, suitable punishment for the actual crime, rehabilitation, the victim and the general good, all of which contribute towards “ slow, uncertain, and mild” and in that context are unlikely to help reduce crime by deterrence, and the Jury is still out on whether or not it will be any more effective in fighting crime or gaining the backing of the public as was the Criminal Justice Act 1991.

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In a modern society no one model of crime and punishment will fit all, there is no “ holy grail” single answer that will solve society’s problems of crime and punishment. In effect in the continual change and adjustment of the Criminal Justice System we have it right already. The only answer lies in continual evolution and change to suit the society of the time, drawing on the current knowledge and research available on crime and deviance and advising the leaders and law makers of that society accordingly. It may not be simple or perfect but it’s the best we can ever hope for in an imperfect evolving society.

So the answer is no, other than political expediency, Just Deserts was not about a crisis in rehabilitation or a lack of faith in indeterminate sentencing, and neither was it a commitment to retributive thinking. It was simply a natural part of the ongoing evolutionary progress of a modern political society trying to deal with crime and punishment at a given point in time.

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