



Just Deserts Theory

The "**just deserts**" theory of sentencing advocates that punishment should be *proportionate* to the seriousness of the offense committed. Advocates of the **just deserts** philosophy emphasize the importance of due process, determinate sentences, and the removal of judicial discretion in sentencing practice. This philosophy became influential in the United States during the 1970s after publication of the book *Doing Justice* (1976) by Andrew von Hirsch, a leading proponent of the **just deserts** model. The book reported on the findings of the Committee for the Study of Incarceration and supported the replacement of the "treatment" model of punishment with a sentencing framework based on the principles of **just deserts**.

EXPLANATION

Just deserts is a *retributivist theory* of punishment. Unlike **theories** that are primarily concerned with preventing future offenses, such as deterrence, rehabilitation, and incapacitation, retributivist **theories** are only concerned with punishing crimes that have already been committed.

Historically, retribution has been associated with the biblical tenet of *lex talionis* or the law of vengeance. Epitomized by the phrase "an eye for an eye, a tooth for a tooth," this view of punishment argues that what happens to the offender should be *equivalent* to the crime he or she committed. However, modern retributivist **theory** is more concerned with seeking proportionality than with exacting vengeance. Proponents aim to ensure that offenders receive their **just deserts** for their wrongdoing and that their punishment is proportionate to the seriousness of their offense.

The **just deserts** model derives from the **theories** of Immanuel Kant. In his *Groundwork of the Metaphysics of Morals*, published in 1785, Kant argued that humans are free and rational agents. Therefore, everyone must recognize the consequences of his or her actions and accept the **deserts** of his or her deeds. Failure to punish the guilty, he argued, constitutes a violation of justice. However, he stated that **deserts** in the form of judicial punishment must only be inflicted to punish those who have committed a crime and not for any other purpose.

In keeping with this **theory** of moral reasoning, then, **just deserts** proponents argue that offenders should be punished, but only because they deserve it. They claim that although other positive benefits may occur as a result of punishment (such as, e.g., the prevention of further crimes) these are simply incidental effects and should not be seen as the *purpose* of punishment.

For the **just deserts** model to be feasible and effective, a scale or "tariff" of crimes and punishments is required. The underlying principle of the tariff system is that offenders receive a punishment that is proportionate to both the severity of the offense and the culpability, or blameworthiness, of the offender. To establish a tariff, crimes need to be ranked or categorized according to their relative seriousness and punishments should then be categorized alongside according to their relative unpleasantness. This is known as *ordinal proportionality*. In addition, the severity of the whole scale or tariff needs to be standardized and fixed to ensure that offenders are not punished too severely or too leniently overall. This is the principle of *cardinal proportionality*.

Just deserts, and indeed retributivism in general, sets limits on the extent and the type of punishment an individual can receive. Proponents of the **theory** argue that these limits are absent in other **theories** such as rehabilitation—where an offender can receive an indeterminate prison sentence and may only be released when

judged to be reformed or "cured." Alternatively, the **theory** of incapacitation can be used to endorse excessively long prison sentences on offenders in order to prevent future offending by the individual.

Another argument in favor of the **just deserts** model is that it offers a level of protection for the innocent that other philosophies, at least in **theory**, do not. For example, the punishment of the innocent could be theoretically justified within a strict general deterrence **theory** as long as the punishment deterred other potential offenders and was hence beneficial to society. As a retributivist **theory, just deserts** only sanctions the punishment of the guilty and considers the punishment of the innocent, regardless of any positive consequences that may be achieved, as inherently unjust.

HISTORY

The **just deserts** model became influential in the United States in the mid-1970s because of increasing concern about the discretionary and discriminatory practices inherent in the rehabilitation or treatment model, dominant at the time. In 1976, the Committee for the Study of Incarceration (with Andrew von Hirsch as director) reported that the **just deserts** model should replace the treatment model of sentencing. The committee argued that rehabilitative sentences were often excessively long and disproportionate to the offense committed. Rehabilitative **theory** is founded on the assumption that crime is the result of individual pathology, with little or no recognition of structural or social factors. Thus, the emphasis is on the *offender* rather than the *offense*. In practice, this meant that sentences were individualized and as a result there were often inconsistencies between sentences given to different individuals for similar crimes. Furthermore, critics argued that proponents of the rehabilitation model often ignored the rights of the offender and the social context within which the offense was committed and this led to discriminatory treatment for minorities, women, and the poor.

SENTENCING GUIDELINES

The eventual abandonment of rehabilitation in favor of the justice model led to sentencing reforms aimed at increasing consistency in sentencing practice. The emphasis was now on dealing with the crime rather than the individual criminal, and the aim was for similar crimes to be dealt with in similar ways. In the United States, the Sentencing Reform Act of 1984 introduced federal guidelines that aimed to shift the emphasis away from rehabilitation and onto proportionality, equality, and justice. These guidelines, it was anticipated, would reduce the possibility of discriminatory treatment on the grounds of race, social class, gender, age, or any other structural or social division.

Essentially three types of sentencing guidelines were introduced. First, mandatory guidelines (such as those established in Arizona, Illinois, and California) meant fixed sentences for particular crimes and effectively allowed judges no discretion to take into account extra-legal factors such as the character and background of the offender or the levels of remorse shown. Second, presumptive guidelines (as introduced in Pennsylvania and Minnesota) were precise but did permit some flexibility and deviation under specific conditions. Finally, advisory guidelines (as were found in states such as Maryland and Michigan) were optional and judges could elect to follow them or not thus retaining full discretion.

Other countries, including Canada, Australia, Sweden, and the United Kingdom, also saw a shift toward a **just deserts** model of punishment, and sentencing frameworks were introduced accordingly. In the United Kingdom, the move to a **just deserts** philosophy culminated in the 1991 Criminal Justice Act. This act formally established retributivism and denunciation as the primary aims of sentencing and advocated proportionality and consistency within sentencing practice. Three broad categories of seriousness were established. Imprisonment was to be used only for the most serious offenses, while fines or discharges would be dispensed for the least serious crimes. Community penalties were recommended for those crimes that were serious but not so serious that they would warrant a prison sentence.

However, although the 1991 act claimed to be founded on the notion of **just deserts**, in reality UK policy was

quite far removed from the original liberal **deserts** philosophy of the 1970s. The 1980s had witnessed a growing emphasis on a punitive law-and-order ideology, and consequently the 1991 act also ensured that violent or sexual offenders would go to prison for long periods, which in some cases might be greater than their offense might warrant. This practice of "incapacitating" particular offenders was completely inconsistent with a true justice model.

Throughout the 1990s, this punitive ideology, coupled with a growing emphasis on protecting the public, continued to flourish in both the United States and the United Kingdom. As a result the **just deserts** philosophy has been appropriated by the political right and the emphasis has shifted from proportionality to harsher punishments and longer sentences, thus sentences have become disproportionately severe. In the United States in particular, the justice model has been used to legitimize excessively long sentences for the sake of public protection. This indicates that, in addition to **just deserts**, other **theories** of punishment, in particular deterrence, incapacitation, and retribution, are underpinning sentencing practice.

CRITIQUE

In **theory**, the **just deserts** model appears to offer a fair and impartial sentencing system. It can restrict the power of the state in the use of disproportionate or exemplary sentences and it can serve to reduce or eliminate inconsistent and discriminatory punishments. However, there have been several critiques made of the model as it works in **theory** and practice.

British criminologist Barbara Hudson has argued that **just deserts**, with its emphasis on treating similar crimes alike, takes no account of structural or economic factors such as poverty. She states that there is no acknowledgment of the inequalities in society and thus no room for mitigation on the grounds that some people have less opportunity to remain law-abiding. Thus, in this sense, a **just deserts** sentencing framework, which deals solely with the crime and makes no recognition of the background or circumstances of the offender, may simply perpetuate the discrimination against the poor, minorities, women, and the young that was inherent in the rehabilitative model. Indeed, in the United States some judges have complained that mandatory guidelines, which took no account of these relevant factors, compelled them to give what they considered to be *unjust* sentences.

Questions have also been raised about the political agenda that facilitated the shift away from rehabilitation and toward **just deserts**. Barbara Hudson claims that through this process the state was able to relinquish all responsibility for the rehabilitation and reintegration of offenders. Within the **just deserts** model, there is no place for rehabilitation orientated practices, such as early release through parole or earned remission. Thus, this rejection of rehabilitation raises the question of how prisoners are expected to spend their time in custody. **Just deserts** provides a philosophical justification for punishment but does not adequately propose a rationalization for the use of custody as the primary method of punishment.

As discussed previously, the **just deserts** philosophy has been largely appropriated by the political right. In the right-wing version of "**just deserts**" there is also objection to the procedural safeguards that are promoted within a true "justice" philosophy. For example, although the death penalty can be justified through the *liberal just deserts* model, generic factors such as age or mental health would be considered as mitigating aspects when determining a sentence. However, under the current *hard-right just deserts* model, as employed in many U.S. states, the overriding concern is that punishment must "fit" the crime and thus such generic safeguards would be seen as measures that actually impede the ability of sentencers to give offenders their "**just deserts**." The rights of the offender are thus seriously undermined by this new right agenda.

Finally, in practice there has been some difficulty in establishing benchmarks for "seriousness." In the United States, states that have traditionally been more liberal (such as Minnesota) introduced moderate punishment scales, while states that have traditionally been more punitive (e.g., New Mexico) introduced much harsher scales. Consequently, there remain huge differences in the sentences that different individuals can receive for

similar offenses.

CONCLUSION

The principles of “**just deserts**” could, in **theory**, ensure a fair and impartial system of justice. However, the desire for consistency and proportionality needs to be carefully balanced with a flexibility that allows for unique circumstances and the impact of structural inequalities on offending behavior and criminalization.

—Alana Barton

Further Reading

Hudson, B. (1987). *Justice through punishment*. London: Macmillan.

Hudson, B. (1996). *Understanding justice*. Buckingham, UK: Open University Press.

Kant, I. (1998). *Groundwork of the metaphysics of morals* (M. Gregor, Ed. & Trans.). Cambridge, UK: Cambridge University Press. (Original work published 1785)

von Hirsch, A. (1976). *Doing justice: The choice of punishments*. New York: Hill and Wang.

von Hirsch, A. (1986). *Past or future crimes: Deservedness and dangerousness in the sentencing of criminals*. Manchester, UK: Manchester University Press.

von Hirsch, A. (1996). *Censure and sanctions*. Oxford, UK: Oxford University Press.

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