

The Limits of the Desert Principle: On Whether the Law Should Give Criminals Better Treatment Than They Deserve

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Keywords: Desert principle; Penalty system; Restorative justice; Crime governance

Abstract: The desert principle is the core basis of the criminal justice system. It advocates that the penalty result should be relative to the severity of the crime. However, this principle has significant limitations in cognitive, moral and social effects. Through the specific analysis of the lack of a stable mental foundation at the cognitive level, the lack of a self-consistent conversion standard at the moral level and the possible social problems caused by the desert principle, this paper advocates that the penalty system should exceed a single measurement standard, and integrate the comprehensive measurement of retribution legitimacy, deterrence certainty, rehabilitation effectiveness and restorative participation. Finally, by comparing the punishment system and practical experience of Norway's rehabilitation model and England's strict retaliation model, it is demonstrated that moderately giving criminals better treatment than they "deserve" within the legal framework can reduce the recidivism rate of criminals and repair social relations, which is conducive to social public security governance and fairness and justice.

1. Introduction

1.1 Research Background

The "desert principle" plays an important role in criminal justice theory, arguing that the intensity of punishment should be commensurate with the seriousness of the criminal act and the degree of responsibility of the perpetrator. Thomas Fuller's motto "who should 'escape whipping' if everyone uses him after being abandoned"? reflects the dilemma of contemporary justice. The traditional retributivism holds that the basis of punishment is only the retribution that the offender "deserves" for his criminal behavior, and that punishment is a just response to the evil of crime, rather than to achieve a crime prevention[1]. However, from the perspective of empirical data, the penalty system strictly following the desert principle has not significantly reduced the recidivism rate of criminals, which challenges the rationality of the desert principle as an important basis for the penalty system for a long time. On the one hand, human judgment of "guilt" will be affected by situation, prejudice and emotion, and the measurement standard of "deserved punishment" lacks a stable and reliable cognitive basis; On the other hand, the moral philosophy emphasizes the diversity of punishment purposes and attaches more importance to the value of rehabilitation and

restoration. The desert principle cannot be used as the only sentencing standard[2].Therefore, people need to re-examine the standard status of the desert principle in sentencing, and explore an alternative plan, which can integrate retributive legitimacy and consequentialism.

1.2 Research Significance

With the global criminal justice reform more and more focused on reducing recidivism and repairing social relations, the sentencing mode that only follows the "desert principle" in the penalty system reflects more and more controversy. At the same time, the current systematic analysis of the limitations of the "desert principle" and how to establish a more perfect penalty system are still insufficient. This paper combs the limitations of the "desert principle" from the cognitive, moral and social levels, combined with the actual data of deterrence mechanism, criminal correction and restorative justice, and compares the Norwegian rehabilitation model and the severe retribution model in England and Wales, to explore the practical feasibility of moderately giving better treatment to criminals. At the theoretical level, the study provides a theoretical reference for the diversified development of punishment standards, and also provides a theoretical basis for the integration of rehabilitation and restorative justice into the penalty system; At the practical level, the study provides direction for the sentencing reform, prison management and community correction policy optimization, and promotes the judicial organs to make flexible decisions around the multiple objectives of public security, criminal recovery and victim recovery on the basis of taking into account the reciprocity of crime and responsibility, so as to help reduce the risk of recurrence of crime and realize a modern criminal justice system that takes into account fairness and governance efficiency.

2. Limitations of Moral Desert as the Sole Basis for Sentencing

2.1 The Aspect of Epistemology

The cognitive limitation of the desert principle lies in the fact that the human mind cannot objectively, stably and repeatably measure "guilt". First of all, attribution has deviation characteristics with the change of situation. Cognitive psychology emphasizes that when people judge criminal behavior, it is entirely due to the choice of the actor, underestimates the situational pressure and economic, mental health and other factors, and makes the "deserved punishment" deviate from the rational evaluation. Secondly, the statistical information makes the penalty discretion fluctuate non systematically. The case information contacted by judicial decision-makers is investigated, screened and counted. People are not sensitive to this statistical risk assessment data of recidivism compared with vivid cases, which may lead to different judgments in the same case. Finally, attribution is irreversible. Once a criminal act occurs and causes substantial harm, human cognition will link the seriousness of the consequences of the act with the perpetrator's responsibility for the crime; Meanwhile, when the consequences of a crime are more serious, human beings will think that the perpetrator has stronger criminal intent, so that the "due" scale of punishment is determined by the severity of the consequences. Therefore, the accurate assessment of criminal responsibility advocated by the desert principle lacks a reliable psychological basis at the cognitive level. In essence, it uses uncertain cognitive tools to measure the objective standards that do not exist, resulting in deeper unfairness.

2.2 The Aspect of Moral Philosophy

The desert principle has obvious limitations in the moral sense. Under the standard of the desert

principle, a penalty corresponds to a criminal responsibility, but the term of imprisonment, the amount of fines and moral responsibility are originally different dimensions of punishment. The standard of punishment is the institutional practice formed by the judicial subject through consultation based on experience, not the reproduction of the objective moral standard. At the same time, strictly measuring the penalty standard in accordance with the crime responsibility may hinder the opportunity of rehabilitation intervention for offenders, which is contrary to the multiple value goals of deterrence, rehabilitation and repair emphasized by the modern judicial system. For example, if a person who has set an example in life and committed an isolated crime due to a momentary misjudgment is severely punished according to the desert principle, it is obviously unfair, which may make it difficult for the offender to recover and destroy his life by one mistake[3]. In a word, the desert principle is a theoretical principle with unclear standards and diverse values at the moral level, which can not provide a self-consistent metaphysical basis for its own distribution standards, nor can it establish a clear priority in the conflict of multiple values.

2.3 The Aspect of Social Impact

The social effect of the desert principle is not consistent with its declared goal, and may even make social relations unfair, resulting in the dilemma of crime governance. On the one hand, strict adherence to the desert principle in the penal system may lead to social structural unfairness. In the process of sentencing, judicial decision-makers will be affected by prejudice factors such as race, region and cognition, which is easy to cause offenders with the same responsibility to obtain different punishment results, and vulnerable groups are more vulnerable to unreasonable punishment. The legal system of proportionalism emphasizes the balance of multiple factors. For example, in the *R. v. Gladue* case, the Supreme Court of Canada instructed the lower courts to consider the systematic and historical factors of indigenous criminals [4]. On the other hand, the desert principle may affect social solidarity. When the society relies on "due" to establish the judicial system, the focus of public attention is how to make offenders bear the punishment they deserve, rather than how to avoid the recurrence of such crimes in the future, which makes public opinion deviate from the governance goal of public security and social restoration emphasized by modern justice, and encourages the punitive culture of the whole society. Therefore, the desert principle may create more social problems and affect the credibility of the legal system itself.

3. The Value of Deterrence, Rehabilitation, and Restorative Justice

3.1 Deterrence: Certainty and Timeliness of Punishment

Deterrence theory is the basis for the justification of punishment, which depends on the certainty and timeliness of punishment. Cesare Beccaria once advocated that the deterrent effect of punishment is not its severity, but its inevitability, in order to achieve the deterrent effect [5]. For example, if the offender is convinced that his criminal act must be discovered, prosecuted and bear the corresponding consequences, he will feel deterrence. A large number of studies have shown that in the decision-making process, criminals' sensitivity to "the probability of being arrested" is much higher than that to "the length of the sentence after being arrested". This means that relying solely on the desert principle may result in severe punishment for criminals, but it may not be a deterrent to criminals; On the contrary, timely and determined moderate punishment may be more deterrent.

3.2 Rehabilitation: Reducing Recidivism Rates Through Education and Training

Rehabilitation regards criminals as individuals who can be changed both morally and practically.

A meta-analysis by RAND Corporation shows that corrective education can reduce recidivism rates by 43% and increase employment rates by approximately 13%[6]. A cost analysis in 2023 further shows that for every \$1 invested in prison education, \$4 to \$5 in re-incarceration costs can be saved, with an economic return of up to \$16900 per participant. Despite critics pointing out the issues of selection bias and unequal access to projects, empirical evidence remains clear: education and vocational training significantly reduce recidivism rates and enhance the self-sufficiency of offenders. Therefore, rehabilitation should not only serve as an auxiliary means of desert based punishment, but should also become an important supplement to promote long-term public safety.

3.3 Restorative Justice: Victim Participation and Community Accountability

Restorative justice further expands this premise through the active participation of victims and communities. A meta-analysis of 22 restorative programs showed that restorative justice reduces recidivism rates by 27%, particularly effective in juvenile and property crime cases. Another study found that the satisfaction of victims in restorative programs was much higher than that in punitive models (about 79% compared to 57%), and the sense of responsibility of offenders was also enhanced[7]. Some intervention measures, such as "Circles of Support and Accountability," can even reduce the recidivism rate of high-risk offenders by 70%. These restorative methods have not weakened the moral desert, but rather strengthened it, as they force criminals to take responsibility for the harm they cause and take restorative actions.

4. Limitations of Proportional Rehabilitation Model and Desert Principle

4.1 The Failure of Desert Models: Empirical Evidence of High Recurrence Rates

The premise of the desert based punishment system is that only fair retribution can ensure legitimacy and compliance. However, empirical evidence seriously questions this hypothesis. According to data from the US Bureau of Justice Statistics, 67.8% of prisoners released in 2005 were rearrested within three years, and 76.6% were rearrested within five years. The Criminal Justice Commission also pointed out that nearly two-thirds of released prisoners were eventually re-imprisoned[8]. This means that relying solely on the desert principle of punishment has failed to effectively break the long-term cycle of crime.

4.2 Inspiration from the Norwegian Model: Successful Practice of Rehabilitation Orientation

In contrast, countries such as Norway have adopted a more humane attitude towards the criminal justice system, prioritizing human dignity, education, and rehabilitation, with a two-year recidivism rate of only 18% to 20%[9]. Norwegian prisons have a greater social rehabilitation function, providing systematic education, vocational training, and community support. This model shows that investment in rehabilitation is more effective in breaking the criminal cycle than increasing punishment. The significant difference in results between the United States and Norway strongly demonstrates the practical advantages of experience based rehabilitation systems over pure desert models.

4.3 Counterexamples of Institutional Failure: Lessons from England and Wales

However, theoretical superiority does not automatically guarantee success. Rehabilitation efforts in England and Wales have failed due to a lack of systematic investment. According to statistics from the Ministry of Justice, the number of certified rehabilitation programs decreased by 74%

between 2010 and 2023, while serious prison violence incidents increased by 90% during the same period[10]. These numbers highlight that without institutional support and sufficient funding, even a theoretically sound rehabilitation agenda cannot be effective. Similarly, the lack of a coherent recovery strategy for early release plans has led to a large number of license violations and repeat offenses. The result is low efficiency, loss of public confidence, and damage to institutional credibility. This failure reveals an important fact: without functional infrastructure, the desert itself cannot bring justice. Without education plans, mental health support, post release supervision, and data-driven interventions, punishment loses its transformative function.

5. Conclusion

In conclusion, the incitement of Fuller, "Use every man after his desert, and who should 'scape whipping'?", illuminates one of the chief conflicts of criminal justice: is the law to be applied strictly in terms of moral blameworthiness or does it have other ends? This article argues that the desert can serve as a legitimate basis for punishment, but cannot be the sole basis, otherwise effective crime control and moral justice cannot be achieved. The inefficiency of retribution minimalism has been fully revealed in the theories of proportionality, deterrence, rehabilitation, and restorative justice. Empirical studies have shown that desert systems without institutional support will still lead to high recidivism rates and social harm. In contrast, jurisdictions that adopt a proportional rehabilitation model have experienced a significant decrease in recidivism rates and improvement in social rehabilitation. Justice requires a hybrid model: punishment should start from the desert, but should go beyond the desert with evidence support, risk assessment, and the existence of restoration goals. The core task of the legal system is not only to implement the legitimacy of retribution, but also to achieve practical protection of the community through effective rehabilitation and long-term security guarantees. Justice is far more than equivalent exchange.

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