The Concept of Desert and Its Influence on Simulated Decision Makers’ Sentencing Decisions

William Austin*

The concept of desert (the principle that punishment should be made proportional to the severity of the crime committed) is introduced against its philosophical and legal background. Discussion focuses on the role of desert in contemporary sentencing reform proposals and the relationship between desert and other goals of legal punishment. Previous empirical research has addressed a between-offense conception of desert and suggests proportionality does control individuals’ responses to crimes differing in severity. Our research focuses on the operation of desert within offenses (or the balance of harm done and punishment deserved for the individual offender) within the context of crimes of increasing severity. Six experimental simulations varied the relativity of victim/offender suffering prior to sentencing. Results show that for a minor crime punishment is an inverse monotonic function of offender suffering, but for crimes of moderate and high severity only excessive offender suffering successfully mitigated punishment. The source of offender suffering made no difference, supporting earlier work by Kalven and Zeisel; suffering exerted no effect on conviction decisions. Overall results are viewed as demonstrating the influence of both within- and between-offense conceptions of desert and the importance of the symbolic and moral blame components of legal punishment.

I. INTRODUCTION

In recent years, the philosophical concept of “desert”—the deserved punishment for an offense is one proportional to the amount of harm done—has gained prominence in

---

*Work on this research was supported by a Russell Sage Foundation Law and Social Science Residency Fellowship awarded to the author. This paper is based in part on a paper delivered at the American Psychology-Law Society meetings, Chicago (1975). The author would like to thank Mary Kristine Utne, V. Lee Hamilton, and an anonymous reviewer for their many helpful comments on an earlier version of this paper.

*Assistant Professor of Psychology and Russell Sage Foundation Resident Fellow in Law & Social Science, University of Virginia.
the criminal sentencing literature. In particular, groups studying the issue of sentencing reform have recommended desert as a central organizing principle in any substantive change in the federal criminal code. This type of proposal constitutes a significant departure from traditional writings on criminal law as well as current practices in the courts and corrections, where deterrence and/or rehabilitation are emphasized as the prime function(s) of judicial punishment.

On its surface, the concept of desert appears relatively uncomplicated: to determine a “just” punishment, one need only ascertain the seriousness of the crime committed and then scale the punishment so as to make it proportional to seriousness. Judges and sometimes juries routinely confront this problem of “fittingness” between crime and punishment.

This desert principle has been labeled *commensurate proportionality* or *distributive justice* and it instructs judges, or juries, to restore a balance in the relationship between the criminal offender and the community. The criminal act is seen as an unfair infringement on the rights of others which demands a proportional measurement of punishment. The origins of the concept in legal scholarship can be traced as far back as Beccaria, Kant, and Aristotle, who all ground it philosophically in an analysis of fairness in social relations generally. However, when one considers the possibility of grounding a system of punishment on the notion of “just deserts” several conceptual complexities quickly become apparent.

One problem stems from the diversity of sentencing goals that prevail in most western legal systems, and which often compete with desert.