Negative Case: Natural Law

By Hannah Fear

*Resolved: Criminal Justice ought to prioritize rehabilitation over retribution, restitution, or deterrence.*

This case approaches criminal justice through the lens of teleology. Something’s *telos* is its intended purpose, whatever its creator intended it to accomplish. (If you are familiar with Aristotle’s four causes, the *telos* approximates to an entity’s final cause.) I argue that the intended purpose of criminal justice is retributive justice. Retribution is a central purpose of criminal justice, while rehabilitation is a peripheral goal. Therefore, criminal justice has a moral obligation to prioritize retribution over rehabilitation.

Most likely, an overwhelming majority of Affirmative cases will approach criminal justice through the lens of utilitarianism. Utilitarianism holds that justice (or moral good) is whatever brings the greatest amount of pleasure to the greatest number of people. They will argue that rehabilitation programs, when successful, improve the lives of criminals. Most, but not all, will probably conveniently ignore that morally wrong acts deserve punishment and that the criminal justice system is responsible for punishing morally wrong acts that violate the laws of the land.

To combat the Affirmative’s utilitarianism, I recommend you launch your first attack in cross-examination. Ask a line of questions like this:

* You would agree that some acts are morally right and others are morally wrong, right?
* Is murder wrong?
* Don’t wrong acts deserve some kind of punishment?
* Shouldn’t murder be punished, then?
* Shouldn’t the criminal justice system punish murder?

At this point, you’ve gotten your opponent to concede three things:

1. There is such a thing as moral right and wrong.
2. Morally wrong actions ought to be punished.
3. Some morally wrong actions ought to be punished by the criminal justice system.

You’ve also shifted the judge’s perspective. Your judge has been thinking about how beneficial to society rehabilitation is. That’s true; when it works, rehabilitation is undeniably beneficial. In your three minutes of cross-examination, try to focus not on the results of rehabilitation versus retribution but on the goals of the criminal justice system itself. That, more than anything else, will set this case up for success.

**Introduction**

My opponent just gave you an excellent defense of the social utility of rehabilitation. He/she definitely proved that rehabilitation can produce good results. Utility alone, however, does not fulfill the Affirmative burden. To win today, the Affirmative must prove that *criminal justice ought to prioritize rehabilitation over retribution, restitution, or deterrence.* Because my opponent has ignored the central purpose of criminal justice, I urge you to vote Negative. I urge you to hold that *criminal justice ought to priortize retribution over rehabilitation.*

First, we need to define some key terms:

Definitions

“**Criminal justice system**.” Black’s Law Dictionary, 6th edition. (Black's Law Dictionary is the most widely used law dictionary in the United States. Henry Campbell Black (1860–1927) was the author of the first two editions of the dictionary.) Originally by Henry Campbell Black, 1891. Sixth edition published 1990, edited by Joseph R. Nolan and Jacqueline M. Nolan-Haley, with co-authors M. J. Connolly, Stephen C. Hicks, and Martina N. Alibrandi. Page 374.

The network of courts and tribunals which deal with criminal law and its enforcement.

“**Retribution**.” Black’s Law Dictionary, 6th edition. (Black's Law Dictionary is the most widely used law dictionary in the United States. Henry Campbell Black (1860–1927) was the author of the first two editions of the dictionary.) Originally by Henry Campbell Black, 1891. Sixth edition published 1990, edited by Joseph R. Nolan and Jacqueline M. Nolan-Haley, with co-authors M. J. Connolly, Stephen C. Hicks, and Martina N. Alibrandi. Page 1317.

Something given or demanded in payment. In criminal law, it is punishment based on the theory which bears its name and based strictly on the fact that every crime demands payment in the form of punishment.

“**Rehabilitation**.” Black’s Law Dictionary, 6th edition. (Black's Law Dictionary is the most widely used law dictionary in the United States. Henry Campbell Black (1860–1927) was the author of the first two editions of the dictionary.) Originally by Henry Campbell Black, 1891. Sixth edition published 1990, edited by Joseph R. Nolan and Jacqueline M. Nolan-Haley, with co-authors M. J. Connolly, Stephen C. Hicks, and Martina N. Alibrandi. Page 1313.

An equitable remedy under which a person is restored to his or her original position prior to loss or injury, or placed in the position he or she would have been, had the breach not occurred. Act of restoring; restoration; restoration of anything to its rightful owner; the act of making good or giving equivalent for any loss, damage or injury; and indemnification. State v. Barnett, 110 Vt. 221, 3 A.2d 521, 525, 526. Act of making good or giving an equivalent for or restoring something to the rightful owner. Antoine v. McCaffery, Mo.App., 335 S.W.2d 474, 489. Compensation for the wrongful taking of property. Com. v. Fuqua, 267 Pa.Super. 504, 407 A.2d 24, 25. Restoration of status quo and is amount which would put plaintiff in as good a position as he would have been if no contract had been made and restores to plaintiff value of what he parted with in performing contract. Explorers Motor Home Corp. v. Aldridge, Tex.Civ.App., 541 S.W.2d 851, 852. See Restatement, Second, Contracts, § 373.

**Resolution Analysis 1: The actor**

Today’s resolution has a stated actor: criminal justice. Criminal justice, however, cannot exist in the abstract. It exists through the workings of the criminal justice system. Thus, the criminal justice system is the implied actor here. Notably, a formalized criminal justice system only materializes under a formalized civil government. The oxymoronic “vigilante justice” is not criminal justice at all.

**Resolution Analysis 2: Teleological vs. utilitarian approach**

I want to approach the resolution today from a teleological perspective. I want to focus on the intended purpose of criminal justice, or what criminal justice was created to do. My opponent proposed a more utilitarian approach, one which focused not on the purpose of criminal justice but on the results he/she wants to see. While the idea of former criminals turning their lives around is admirable and desirable, it is not the end goal of criminal justice, and the criminal justice system is simply not the best avenue through which to accomplish this.

**Value: Natural Law**

Natural law is the concept of a law of right and wrong that transcends codified human law, or positive law. Under natural law, murder isn’t wrong just because everyone says it is. Even if every country on the planet legalized murder, we know that murder would still be wrong. Why? Murder violates natural law. Thus, even if murder were legal, it would still be wrong, and it would still merit a punishment.

**Value link: Foundation of Criminal Justice**

Criminal justice exists because we humans have an innate idea of a law beyond our own. We lock up murderers and let the innocent go free not just to preserve society but because we recognize that murder is morally wrong. We also recognize that criminal justice fulfills its purpose when it is in line with this natural law. Today, I hope to show you that criminal justice best harmonizes with natural law when it prioritizes retribution.

**Criterion: Retributive justice**

**Stanford Encyclopedia of Philosophy** (The Stanford Encyclopedia of Philosophy (SEP) combines an online encyclopedia of philosophy with peer-reviewed publication of original papers in philosophy, freely accessible to Internet users. It is maintained by Stanford University. Each entry is written and maintained by an expert in the field, including professors from many academic institutions worldwide. Authors contributing to the encyclopedia give Stanford University the permission to publish the articles, but retain the copyright to those articles.) (Alec Walen, Rutgers University, “Retributive Justice,” published **June 2014, updated July 2020**) https://plato.stanford.edu/entries/justice-retributive/. Accessed 1 October 2022.

The concept of retributive justice has been used in a variety of ways, but it is best understood as that form of justice committed to the following three principles:

1. that those who commit certain kinds of wrongful acts, paradigmatically serious crimes, morally deserve to suffer a proportionate punishment;
2. that it is intrinsically morally good—good without reference to any other goods that might arise—if some legitimate punisher gives them the punishment they deserve; and
3. that it is morally impermissible intentionally to punish the innocent or to inflict disproportionately large punishments on wrongdoers.

The idea of retributive justice has played a dominant role in theorizing about punishment over the past few decades, but many features of it—especially the notions of desert and proportionality, the normative status of suffering, and the ultimate justification for retribution—remain contested and problematic.

The theory of retributive justice contrasts with the theory of utilitarian justice, which identifies the justice of an action through its results. For example, ordinarily, murdering a two-year-old would be wrong. If I had a crystal ball, however, and could tell that, if I did not murder the two-year-old, the innocent toddler would grow up to be a serial killer, I would be morally right to murder the two-year-old while I had a chance.

Contention 1: Criminal justice based on retributive justice best upholds natural law

To win today, the Affirmative must prove that a criminal justice system best upholds natural law through rehabilitation. Such a proposition cuts against our innate ideas of justice. We naturally understand that a criminal justice system based on natural law is one that centers itself on retributive justice. Let’s look to a tangible example of this:

Application 1: Proportionality in sentencing

Our criminal justice system relies on the principle of proportionality. A greater crime should receive a greater sentence, and a lesser crime should receive a lesser sentence. That doesn’t mean that every judge would give a certain murderer the same sentence. One might sentence him to death while another might hand him a life sentence. A third might simply give him twenty-five years in the state prison. All of them, however, would give to a murderer a harsher sentence than they would to a hoodlum who had stolen a six-pack from his local 7-11. The late Supreme Court Justice Antonin Scalia points out that the proportionality principle is grounded in our justice system’s pursuit of retribution.

**In his concurrence in Ewing v. California,** (Ewing v. California, 538 U.S. 11 (2003), is one of two cases upholding a sentence imposed under California's three strikes law against a challenge that it constituted cruel and unusual punishment in violation of the Eighth Amendment. As in its prior decision in Harmelin v. Michigan, the United States Supreme Court could not agree on the precise reasoning to uphold the sentence. But, with the decision in Ewing and the companion case Lockyer v. Andrade, the Court effectively foreclosed criminal defendants from arguing that their non-capital sentences were disproportional to the crime they had committed.) (accessed on Justia) **a 2003 Supreme Court case involving the Eighth Amendment to the U.S. Constitution, Scalia wrote that** (https://supreme.justia.com/cases/federal/us/538/11/. Accessed 1 October 2022.)

Proportionality-the notion that the punishment should fit the crime-is inherently a concept tied to the penological goal of retribution. "[I]t becomes difficult even to speak intelligently of 'proportionality,' once deterrence and rehabilitation are given significant weight," Harmelin, supra, at 989-not to mention giving weight to the purpose of California's three strikes law: incapacitation. In the present case, the game is up once the plurality has acknowledged that "the Constitution does not mandate adoption of anyone penological theory," and that a "sentence can have a variety of justifications, such as incapacitation, deterrence, retribution, or rehabilitation." Ante, at 25 (internal quotation marks omitted). That acknowledgment having been made, it no longer suffices merely to assess "the gravity of the offense compared to the harshness of the penalty," ante, at 28; that classic description of the proportionality principle (alone and in itself quite resistant to policy-free, legal analysis) now becomes merely the "first" step of the inquiry, ibid. Having completed that step (by a discussion which, in all fairness, does not convincingly establish that 25-years-to-life is a "proportionate" punishment for stealing three golf clubs), the plurality must then add an analysis to show that "Ewing's sentence is justified by the State's public-safety interest in incapacitating and deterring recidivist felons." Ante, at 29.

*(Antonin Gregory Scalia was an American jurist who served as an associate justice of the Supreme Court of the United States from 1986 until his death in 2016. He was described as the intellectual anchor for the originalist and textualist position in the U.S. Supreme Court's conservative wing. For catalyzing an originalist and textualist movement in American law, he has been described as one of the most influential jurists of the twentieth century, and one of the most important justices in the history of the Supreme Court. Scalia was posthumously awarded the Presidential Medal of Freedom in 2018 by President Donald Trump, and the Antonin Scalia Law School at George Mason University was named in his honor.)*

When a judge sentences a criminal, he does not ask “how can I ensure that this person is someday reintegrated into society?” He asks, “how can I give this wrongdoer a sentence proportionate to his crime?" He understands that, to fulfill his duty as justice of the peace, he must prioritize retribution over rehabilitation.

**Works Cited**

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