Negative Case: Safety

By Hannah Fear

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

This case is substantially utilitarian, and it hinges heavily on the distinction between the innocent (those who have not substantially breached the laws of a community) and the guilty (those who have). It argues that the government’s duty to protect the safety of the innocent trumps its ability to reintegrate the guilty into society.

This case is implicitly, but not explicitly, contractual. It assumes the idea of a “social contract”: human beings implicitly give up certain rights in exchange for the protection of the government. There are a lot of flavors of social contract theory, the most popular of which is John Locke’s; this one is closer to that of Thomas Hobbes, whose social contract theory is far less favorable to individual rights. Hobbes believes that the social contract gives a government (the sovereign) full sovereignty over the citizens to protect them from each other and from nature. Hence, whatever steps a government needs to take to protect its citizens are permissible.

This case is not, however, purely Hobbesian. The idea of civil rights (specifically, individual freedoms that are or ought to be protected by the government) are much closer to the ideas of many of the American Founders, such as Jefferson and Franklin. Unlike Hobbes, it recognizes that humans must have freedom as well as safety. It is still primarily Hobbesian, however, because it prioritizes safety over freedom.

Key to this case is resolution analysis two. When criminals violate society’s laws (i.e., they violate the social contract), they are no longer entitled to the same protection of the government, and they also lose many of their individual freedoms. Thus, the government does not have the same obligation to protect them. Your value of “safety” does not imply that the government must look out for the wellbeing of convicted felons in the same way it does the average citizen.

To win, you need to frame the round to your advantage. Make sure that the judge knows that the wellbeing of the guilty (criminals) and the wellbeing of the innocent (citizens) are in conflict. If you can frame the round to imply that you would protect the wellbeing of the innocent while your opponent would protect the wellbeing of the guilty, you can easily convince your judge to vote Negative.

**Introduction**

In theory, rehabilitation sounds great. The cheery prospect of turning murderers into Mother Teresas sounds wonderful. My opponent failed, however, to appreciate that the primary duty of the civil government is not to benefit the guilty. It is to protect the innocent. Thus, while rehabilitation is admirable, it can never take precedent over the safety and wellbeing of the innocent citizens whom criminal justice was designed to protect. **Rehabilitation protects criminals; deterrence protects non-criminals.** That is why *criminal justice ought to prioritize deterrence 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.

“**Deterrence**.” U.S. Legal. (US Legal, Inc. offers a variety of services including legal information, legal products, legal forms, and document preparation. The Company is multi-faceted publishing company, which has pioneered Internet ventures geared toward the public, small businesses, and the legal profession since 1997. It continues growth through increased sales and marketing partnerships and through building alliances in the legal, media, and corporate arenas.) No author or publication date available. Accessed October 14, 2022.

https://definitions.uslegal.com/d/deterrence/#:~:text=Deterrence%20Law%20and%20Legal%20Definition%20Deterrence%20refers%20to,the%20acts%20out%20of%20a%20fear%20of%20punishment.

Deterrence refers to the act of discouraging or preventing something. For example, in criminal law, the punishments assigned to the commission of crimes are designed to prevent criminals from committing the acts out of a fear of punishment. In order to be effective, the deterrer must have the capability and the will to carry out the threat, and the threat must be communicated to and understood by the potential perpetrator.

“**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 1287.

Investing or clothing again with some right, authority, or dignity. Restoring person or thing to a former capacity; reinstating; qualifying again. In re Coleman, D.C.Ky., 21 F.Supp. 923, 924, 925. Restoration of individual to his greatest potential, whether physically, mentally, socially, or vocationally. Jones v. Grinnel Corp., 117 R.I. 44, 362 A.2d 139, 143. For rehabilitation of debtor, see Bankruptcy proceedings; Wage earner's plan.

**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: Criminal forfeiture of civil rights**

Civil rights are an individual’s rights that are protected by the government. For example, we have the civil right to move freely. The government cannot throw you in a cell for six months without good reason. When a person commits a crime, however, he forfeits some or all of his civil rights. If you were to stab someone tomorrow, you would then forfeit your civil right to move freely and the government would rightly imprison you for a lot longer than six months.

**Value: Safety**

“**Safety**.” U.S. Legal. (US Legal, Inc. offers a variety of services including legal information, legal products, legal forms, and document preparation. The Company is multi-faceted publishing company, which has pioneered Internet ventures geared toward the public, small businesses, and the legal profession since 1997. It continues growth through increased sales and marketing partnerships and through building alliances in the legal, media, and corporate arenas.) No author or publication date available. Accessed October 14, 2022.

https://definitions.uslegal.com/s/safety/

Safety means freedom from danger, risk, or injury. In other words, the condition of being safe. The definition of the term varies according to the context in which it is used.

**Value link: Government’s obligation**

A government is created to protect its own citizens – to keep them safe. Criminal justice exists as the activity of a criminal justice system, and a criminal justice system is an extension of the civil government. Hence, criminal justice has a moral obligation to prioritize safety. Let’s look to this more specifically through my criterion.

**Criterion: Protection of the innocent**

Today, we cannot abandon the distinction between criminals and non-criminals. The government must prioritize the wellbeing of non-criminals over that of criminals because criminals, by nature, have jeopardized the safety of a community. The criminal justice system must protect the innocent.

**Contention 1: Prioritizing safety requires deterrence**

It should go without saying, but the Affirmative compels me to say it anyway: criminals are not safe. Societies criminalize behavior they deem to be unsafe. To best protect their citizens, they find that they must stop crime before it happens. Thus, they must prioritize deterrence in their sentencing practices.

**Application 1: Mandatory minimum sentences for drug offenders**

Historically, the American criminal justice system has assigned relatively high sentences to drug traffickers, sometimes even sentencing them to life in prison without the possibility of parole. Such sentences, by nature, preclude the offender from a chance at rehabilitation. Nevertheless, American jurists have found that the danger posed by drug trafficking is great enough to merit such harsh sentencing practice. It is far better to deter the crime than to risk the health of the community by offering a chance at rehabilitation.

**In his concurrence in judgement in Harmelin v. Michigan,** (Harmelin v. Michigan, 501 U.S. 957 (1991), was a case decided by the Supreme Court of the United States under the Eighth Amendment to the United States Constitution. The Court ruled that the Eighth Amendment's Cruel and Unusual Punishment Clause allowed a state to impose a life sentence without the possibility of parole for the possession of 672 grams (23.70 oz) of cocaine.) (accessed on Justia) **a 1991 Supreme Court case involving the Eighth Amendment to the U.S. Constitution, Justice Anthony Kennedy commented on one of those mandatory minimum sentences, remarking that** (https://supreme.justia.com/cases/federal/us/501/957/. Accessed 15 October 2022.)

Michigan's sentencing scheme establishes graduated punishment for offenses involving varying amounts of mixtures containing controlled substances. Possession of controlled substances in schedule 1 or 2 in an amount less than 50 grams results in a sentence of up to 20 years' imprisonment; possession of more than 50 but less than 225 grams results in a mandatory minimum prison sentence of 10 years with a maximum sentence of 20 years; possession of more than 225 but less than 650 grams results in a mandatory minimum prison sentence of 20 years with a maximum sentence of 30 years; and possession of 650 grams or more results in a mandatory life sentence. Mich. Comp. Laws Ann. § 333.7401 (West Supp. 1990-1991). Sentencing courts may depart from the minimum terms specified for all amounts, except those exceeding 650 grams, "if the court finds on the record that there are substantial and compelling reasons to do so." §§ 333.7401(4), 333.7403(3). This system is not an ancient one revived in a sudden or surprising way; it is, rather, a recent enactment calibrated with care, clarity, and much deliberation to address [\*1008] a most serious contemporary social problem. The scheme provides clear notice of the severe consequences that attach to possession of drugs in wholesale amounts, thereby giving force to one of the first purposes of criminal law -- deterrence. In this sense, the Michigan scheme may be as fair, if not more so, than other sentencing systems in which the sentencer's discretion or the complexity of the scheme obscures the possible sanction for a crime, resulting in a shock to the offender who learns the severity of his sentence only after he commits the crime.

*(Anthony McLeod Kennedy (born July 23, 1936) is an American lawyer and jurist who served as an associate justice of the Supreme Court of the United States from 1988 until his retirement in 2018. He was nominated to the court in 1987 by President Ronald Reagan, and sworn in on February 18, 1988. After the retirement of Sandra Day O'Connor in 2006, he was the swing vote on many of the Roberts Court's 5–4 decisions.)*

No chance at rehabilitation, however promising, is worth jeopardizing the lives of innocent civilians. Justice Kennedy realized this. A realistic criminal justice system, then, ought to strive to deter crime before it happens. **Rehabilitation protects criminals; deterrence protects non-criminals.** To protect its innocent, criminal justice ought to prioritize deterrence over rehabilitation.

**Works Cited**

*Black’s Law Dictionary*, s.v. "Criminal Justice System," 6th edition, St. Paul: West Publishing

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Harmelin v. Michigan (U.S. Supreme Court June 27, 1991).

*U.S. Legal, Inc.,* s.v. “Deterrence,” accessed October 14, 2022,

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