Negative Case: Efficacy

By Hannah Fear

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

This case is different in that it doesn’t argue that rehabilitation is bad or that retribution/restitution/deterrence are bad. It assumes that all of the above are good, and the average Stoa judge is likely to agree with you. Instead, it latches onto the wording of the resolution, implying that rehabilitation is well-nigh impossible to achieve, even when you prioritize it.

Notice that this case focuses exclusively on retribution and restitution, with hardly a nod to deterrence. That’s because both retribution and restitution are achieved as soon as the sentence is carried out. When a criminal is killed, fined, or incarcerated for his crime, retribution is achieved. When he is forced to pay back what he stole or pay damages to the woman he raped or assaulted, restitution is achieved.

Rehabilitation and deterrence are fundamentally different because they both attempt to change the nature of the offender or would-be offender. The sentencing judges and the prison guards and the criminal justice system as a whole can create a set of conditions that are conducive to either one of these, but they cannot compel either one. Statistics continue to come in that neither a rehabilitation-based model nor a deterrence-based model is terribly effective at achieving its desired ends. Thus, neither one is terribly efficacious. Prioritizing rehabilitation doesn’t lead to rehabilitation; prioritizing deterrence doesn’t lead to deterrence. The efforts of twentieth-century prison reformers are a testament to total depravity.

This case is also similar to a direct refutation in that it focuses more on why your opponent is wrong than on why you are right. This is intentional, but be careful: direct refutations focus the entire round on your opponent’s case, not yours. Thus, if your opponent has a very solid case, you should be wary of using this approach. Fortunately, however, most Affirmative cases will have some pretty significant flaws, and I expect that almost all of them will be heavily utilitarian. This case lends itself especially well against a utilitarian Affirmative, though.

**Introduction**

The Affirmative just presented a compelling case for why rehabilitation is important. He/she failed, however, to defend the resolution. Today, the Affirmative is not tasked with defending rehabilitation in abstract but rehabilitation prioritized. He/she must prove that *criminal justice ought to prioritize rehabilitation over retribution, restitution, or deterrence*. The Affirmative didn’t tell you, though, that our country has tried to prioritize rehabilitation. Its attempt was an abject failure. **Prioritizing rehabilitation does not lead rehabilitated criminals.** That is why *criminal justice ought to prioritize retribution and restitution 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.

“**Restitution**.” 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.

“**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: Prioritizing, not valuing**

The resolution does not ask my opponent to prove whether rehabilitation is better than retribution, restitution, or deterrence. It asks him to prove that rehabilitation ought to be prioritized: that a criminal justice system ought to strive toward it. Thus, even if he/she lays down the best case in the world for the merits of rehabilitation, you still need to vote Negative if I can prove that the Affirmative ideal is unachievable.

**Value: Safety**

“**Efficacy**.” Dictionary.com. (Dictionary.com is an online dictionary whose domain was first registered on May 14, 1995. The primary content on Dictionary.com is a proprietary dictionary based on Random House Unabridged Dictionary, with editors for the site providing new and updated definitions. Supplementary content comes from the Collins English Dictionary, American Heritage Dictionary and others.) No author or publication date available. Accessed 7 November 2022.

*https://www.dictionary.com/browse/efficacy*

capacity for producing a desired result or effect.

**Value link: Foundational to criminal justice**

Today, we are debating the penological goals of the criminal justice system. My opponent and I might not agree on much, but I think we can agree that an unachievable goal is pointless. My opponent really likes rehabilitation. I assume he wants to achieve it.

**Criterion: Achievement of the prioritized goal**

Why does my opponent want you to prioritize rehabilitation? Because he/she wants to see more rehabilitated criminals. Why do I want criminal justice to prioritize retribution and restitution? Because I want to see more retributive justice and restored victims. Both of our positions, however, are pointless if they do not achieve their goals. As we will see later, retribution and restitution are achieved by the fact that the sentence is carried out. Rehabilitation, however, is not so easy to achieve.

**Contention 1: Prioritizing rehabilitation doesn’t lead to rehabilitaiton**

Retribution and restitution are fundamentally different from rehabilitation in that their achievement lies in the sentence itself. When a murderer who deserves death is given the death penalty, retribution is achieved when the sentence is carried out. When a thief breaks into a woman’s car and the sentencing judge orders him to pay his victim damages, restitution is achieved when the sentence is carried out. No sentencing judge, however, can compel rehabilitation. He can give a criminal conditions that are conducive to rehabilitation, but he cannot compel a criminal to change. For decades, the U.S. criminal justice system thought that merely creating those conditions was enough. Within the last fifty years, however, we realized that, by and large, our efforts at rehabilitating inmates were futile.

**Application 1: The 1980’s rejection of the rehabilitative model**

For the better part of the twentieth century, the American justice system prioritized the rehabilitation of offenders.

**Writing for the majority in the 1989 case Mistretta v. United States,** (Mistretta v. United States, 488 U.S. 361 (1989), is a case decided by the United States Supreme Court concerning the constitutionality of the United States Sentencing Commission.) (accessed on Justia) **Supreme Court Justice Harry Blackmun wrote that** (https://supreme.justia.com/cases/federal/us/488/361/. Accessed 7 November 2022.)

For almost a century, the Federal Government employed in criminal cases a system of indeterminate sentencing. Statutes specified the penalties for crimes, but nearly always gave the sentencing judge wide discretion to decide whether the offender should be incarcerated and for how long, whether restraint, such as probation, should be imposed instead of imprisonment or fine. This indeterminate sentencing system was supplemented by the utilization of parole, by which an offender was returned to society under the "guidance and control" of a parole officer. See Zerbst v. Kidwell, 304 U. S. 359, 304 U. S. 363 (1938). Both indeterminate sentencing and parole were based on concepts of the offender's possible, indeed probable, rehabilitation, a view that it was realistic to attempt to rehabilitate the inmate, and thereby to minimize the risk that he would resume criminal activity upon his return to society. It obviously required the judge and the parole officer to make their respective sentencing and release decisions upon their own assessments of the offender's amenability to rehabilitation. As a result, the court and the officer were in positions to exercise, and usually did exercise, very broad discretion. See Kadish, The Advocate and the Expert -- Counsel in the Pen-Correctional Process, 45 Minn.L.Rev. 803, 812-813 (1961).

As Justice Blackmun notes, we’ve tried to prioritize rehabilitation. Did we achieve it? On the contrary, our efforts failed miserably. Justice Blackmun continues in the same context,

Helpful in our consideration and analysis of the statute is the Senate Report on the 1984 legislation, S.Rep. No. 98-225 (1983) (Report). [Footnote 3] The Report referred to the "outmoded rehabilitation model" for federal criminal sentencing, and recognized that the efforts of the criminal justice system to achieve rehabilitation of offenders had failed. Id. at 38. It observed that the indeterminate sentencing system had two "unjustifi[ed]" and "shameful" consequences. Id. at 38, 65. The first was the great variation among sentences imposed by different judges upon similarly situated offenders. The second was the uncertainty as to the time the offender would spend in prison. Each was a serious impediment to an evenhanded and effective operation of the criminal justice system. The Report went on to note that parole was an inadequate device for overcoming these undesirable consequences. This was due to the division of authority between the sentencing judge and the parole officer, who often worked at cross-purposes; to the fact that the Parole Commission's own guidelines did not take into account factors Congress regarded as important in sentencing, such as the sophistication of the offender and the role the offender played in an offense committed with others, id. at 48; and to the fact that the Parole Commission had only limited power to adjust a sentence imposed by the court. Id. at 47.

*(Harry Andrew Blackmun (November 12, 1908 – March 4, 1999) was an American lawyer and jurist who served as an Associate Justice of the Supreme Court of the United States from 1970 to 1994. Appointed by Republican President Richard Nixon, Blackmun ultimately became one of the most liberal justices on the Court. He is best known as the author of the Court's opinion in Roe v. Wade, which, from January 22, 1973, to June 24, 2022, prohibited most state and federal restrictions on abortion.)*

In an ideal world, we would be able to rehabilitate even the most hardened murderer. This, however, is not an ideal world. Our failures in the past century should compel us to turn to a penological scheme that works, and that means that we need to reject the rehabilitative model. **Prioritizing rehabilitation has not led to rehabilitated criminals.** That is why criminal justice ought to prioritize retribution and restitution over rehabilitation.

**Works Cited**

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