Affirmative Case: Societal Health

By Hannah Fear

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

This case mashes together Aristotelian virtue ethics with the modern leftist (and increasingly the modern center’s) belief that the government is responsible for the moral character of its citizens. It uses the value of human flourishing, but Aristotle means something very specific by the term. The entire case hangs on his definition.

Aristotle doesn’t define “human flourishing” as material prosperity or physical wellbeing. He doesn’t define it as a pleasurable life, although he would argue that a state of human flourishing is necessarily more pleasurable than a state outside of human flourishing. According to Aristotle, human flourishing occurs when a human lives a life of virtue. For purposes of the debate round, Aristotle’s definition of virtue does not matter; if you are familiar with Aristotle’s theory of Virtue Ethics and the Golden Mean, so much the better, but it is simply too complex to explain in a forty-five minute debate round.

This case also assumes that criminals ought to be considered members of society, and therefore ought to be beneficiaries of the value. Under this case, former criminals ought to experience human flourishing as well. The case rests on this assumption.

For criminals to experience human flourishing as defined by Aristotle, they must be enabled to live virtuous lives. For them to live virtuous lives, they must be rehabilitated. Thus, because the human flourishing of former criminals depends on their rehabilitation, the criminal justice system not only should pursue rehabilitation from a practical standpoint but has a moral obligation to pursue rehabilitation over any other penological goal. If rehabilitation is possible, the criminal justice system ought to strive to make it occur.

Again, that requires you to establish (1) that the goal of a society is to enable all of its members to live virtuous lives and (2) that convicted criminals are members of society. If you do that, you should be able to establish your case fairly easily.

**Introduction**

Criminal justice was created because a society functions better when its citizens are virtuous and upright. Because it best creates a society of upright citizens when it pursues rehabilitation, I stand *Resolved: Criminal Justice ought to prioritize rehabilitation over retribution, restitution, or deterrence.*

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 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: Considering the present, not just the past**

I realize that we’re talking about criminal justice today. I realize we’re talking about criminals, men and women who have done something wrong. It’s easy for my opponent to get up in several minutes and talk about the evil things that these people have done, but getting riled up about their past actions won’t improve the situation. Today, we’re not asking whether we can rectify the past. We’re asking how best to act in the present, because we cannot change the past. The question today is what best enables us as a society to move forward: rehabilitation or something else?

**Value: Societal Health**

Societal Health is operationally defined as “the conditions under which every part of a human society functions optimally.”

**Value Link: Goal of the criminal justice system**

The criminal justice system was designed to deal with the members of society who go astray. These people have committed actions that are not conducive to societal health. Sentencing judges face a monumental task: they must determine how best to keep society healthy when some of its own members threaten its wellbeing. To make such a determination, they must decide whether to prioritize rehabilitation or some other penological goal.

**Contention 1: Rehabilitation necessary to restore societal health**

A criminal is a member of society who breaches societal code by breaking the law. When said member becomes a criminal, the criminal justice system has two options: it can amputate the newly minted criminal from society by locking him up, or it can attempt to change and educate the person so that he will eventually be able to reenter society. The latter is rehabilitation, and only it attempts to nurse society back to health.

**Application 1: Foreclosure of expatriation as a criminal sentence**

Over half a century ago, the U.S. Supreme Court ruled that a trial court could not strip a criminal of his U.S. citizenship. This penalty, known as expatriation, forecloses the possibility of rehabilitation by ostracizing the criminal from society. As such, the Court found that it violated the Eighth Amendment’s cruel and unusual punishment clause.

**In the plurality opinion for the 1958 Supreme Court case Trop v. Dulles,** (Trop v. Dulles, 356 U.S. 86 (1958), was a United States Supreme Court case in which the Court ruled that it was unconstitutional to revoke citizenship as a punishment for a crime. The ruling's reference to "evolving standards of decency" is frequently cited in Eighth Amendment jurisprudence.) (accessed on Justia) **Chief Justice Earl Warren explained that** (https://supreme.justia.com/cases/federal/us/356/86/. Accessed 7 November 2022.)

The petitioner in this case, a native-born American, is declared to have lost his United States citizenship and become stateless by reason of his conviction by court-martial for wartime desertion. As in Perez v. Brownell, ante p. 356 U. S. 44, the issue before us is whether this forfeiture of citizenship comports with the Constitution.

*(Earl Warren (March 19, 1891 – July 9, 1974) was an American attorney, politician, and jurist who served as the 14th Chief Justice of the United States from 1953 to 1969. The Warren Court presided over a major shift in American constitutional jurisprudence, which has been recognized by many as a "Constitutional Revolution" in the liberal direction, with Warren writing the majority opinions in landmark cases such as Brown v. Board of Education (1954), Reynolds v. Sims (1964), Miranda v. Arizona (1966) and Loving v. Virginia (1967). Warren also led the Warren Commission, a presidential commission that investigated the 1963 assassination of President John F. Kennedy. Warren also served as Governor of California from 1943 to 1953, and is the last chief justice to have served in an elected office before nomination to the Supreme Court. Warren is generally considered to be one of the most influential Supreme Court justices and political leaders in the history of the United States.)*

If any criminal deserves to be amputated from society, surely it is the deserter. Other criminals, such as thieves and rapists, commit crimes against other individuals. Deserters commit crimes against their countries. Nevertheless, the Court found that not even deserters were beyond the reach of rehabilitation, and thus criminal justice system should attempt to rehabilitate them.

**In his concurrence for the same case,** (Trop v. Dulles, 356 U.S. 86 (1958), was a United States Supreme Court case in which the Court ruled that it was unconstitutional to revoke citizenship as a punishment for a crime. The ruling's reference to "evolving standards of decency" is frequently cited in Eighth Amendment jurisprudence.) (accessed on Justia) **Justice William Brennan remarked that** (https://supreme.justia.com/cases/federal/us/356/86/. Accessed 7 November 2022.)

The novelty of expatriation as punishment does not alone demonstrate its inefficiency. In recent years, we have seen such devices as indeterminate sentences and parole added to the traditional term of imprisonment. Such penal methods seek to achieve the end, at once more humane and effective, that society should make every effort to rehabilitate the offender and restore him as a useful member of that society as society's own best protection. Of course, rehabilitation is but one of the several purposes of the penal law. Among other purposes are deterrents of the wrongful act by the threat of punishment and insulation of society from dangerous individuals by imprisonment or execution. What, then, is the relationship of the punishment of expatriation to these ends of the penal law? It is perfectly obvious that it constitutes the very antithesis of rehabilitation, for instead of guiding the offender back into the useful paths of society, it excommunicates him and makes him, literally, an outcast. I can think of no more certain way in which to make a man in whom, perhaps, rest the seeds of serious anti-social behavior more likely to pursue further a career of unlawful activity than to place on him the stigma of the derelict, uncertain of many of his basic rights. Similarly, it must be questioned whether expatriation can really achieve the other effects sought by society in punitive devices. Certainly it will not insulate society from the deserter, for, unless coupled with banishment, the sanction leaves the offender at large. And, as a deterrent device, this sanction would appear of little effect, for the offender, if not deterred by thought of the specific penalties of long imprisonment or even death, is not very likely to be swayed from his course by the prospect of expatriation. [Footnote 2/8] However insidious and demoralizing may be the actual experience of statelessness, its contemplation in advance seems unlikely to invoke serious misgiving, for none of us yet knows its ramifications.

*(William Joseph Brennan Jr. (April 25, 1906 – July 24, 1997) was an American lawyer and jurist who served as an Associate Justice of the Supreme Court of the United States from 1956 to 1990. He was the seventh -longest-serving justice in Supreme Court history, and known for being a leader of the U.S. Supreme Court's liberal wing.)*

In the U.S., expatriation is an unacceptable sentence because it denies the offender any chance at rehabilitation. Our criminal justice system chooses to prioritize rehabilitation because it would heal its members, not amputate them. I ask that you stand with that precedent and vote Affirmative.

**Works Cited**

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Trop v. Dulles (U.S. Supreme Court March 31, 1958).