Negative Case: Justice

By Hannah Fear

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

This case is fairly similar to the Natural Law case that we released several weeks ago. Its main difference is in its focus on justice as the application of human, rather than natural, law. Natural law is the unwritten, eternal law, the law of God, which permeates the fabric of creation. Human law, on the other hand, is the sum of the tangible written laws of the civil government. Human law ought to mirror natural law as closely as possible.

There are, then, two different ways to define justice. One is conformity to natural law. This is the standard implicit in every value debate: every value is supposed to be “intrinsically good” or “valuable” to the extent that it conforms with natural law. The other definition of justice is conformity with human law. This is the definition upon which this case is built. It relies on a deontological framework to argue that the duty of criminal justice is to administer human law, and therefore it acts morally to the extent with which it does so.

Your opponent may attack your value as circular because “justice” is contained within the resolution. That is incorrect: “criminal justice” is contained within the resolution, but it is ontologically distinct from justice. “Criminal justice” is a term of art: the two words together mean something entirely different from the meanings of each word individually. Your two resolution analyses are critical. The first establishes what criminal justice is. It is the workings of the criminal justice system. The second differentiates between criminal justice and justice and explains that it is possible to have “unjust criminal justice.” If you hammer these two (especially the second), you should be able to defeat the “circular” argument.

The case itself is extremely value-centric, more so than most of my cases. Even the application it does have (retributive justice theory) ties heavily back to the idea of justice. There are two main types of applications in LD: example applications and theory applications.

There are two types of example applications: generic examples and specific examples. Generic examples refer to a general practice. For example, a “general practice” in this year’s resolution might be the application of mandatory minimum sentences in drug offender statutes. It’s a general practice, not a specific instance of that practice. A specific example might be Alice Marie Johnson, a drug offender who was sentenced to life without parole for a drug-related offense and whose sentence was later commuted by President Donald Trump in 2018.

A theory application is not a general practice or a specific instance of that practice. It’s a widely held belief or theory that relies on the principle you’ve established in your framework. Retributive justice theory is a theory application. It’s not an application of where justice is or isn’t done; it’s rather an application of the principle of the rule of law to the field of U.S. jurisprudence. Keep that in mind when arguing it in the round.

One final note: the quote at the end doesn’t support your theory as well as it could. That is because courts for the past century or so have been nauseatingly utilitarian in their legal reasoning. Justice Stewart’s concurrence rightly points out that man instinctually recognizes the justice of retribution, but his argument is rather Darwinian. He argues that we instinctually view retribution as just because such a belief prevents vigilante justice and anarchy. It is conducive to our survival as a species. Focus on the earlier part of the quote (humanity’s instinctual recognition of retribution as just) instead of the latter part (Stewart’s account of why that is so). You want this case to be deontological (focused on the duty of the government), not utilitarian (focused on the results).

**Introduction**

No criminal justice system can succeed without a deep respect for the rule of law. A criminal justice that abandons justice cuts against the heart of the system’s purpose. Because I believe that a system that adopts the framework provided by the Affirmative would be a criminal justice of the unjust, I stand resolved that *criminal justice ought to prioritize 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 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 justice vs. justice**

I know that it may be tempting to view criminal justice as a subset of justice. Don’t let names deceive you: the two terms speak of “justice” in two very different ways. Criminal justice is the workings of the criminal justice system, the penalties imposed on the convicted. Justice, on the other hand, is the proper administration of the law, both in letter and in spirit. When criminal justice refuses to administer the law, it is unjust.

**Value: Justice**

“**Justice**.” 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 864.

Proper administration of laws. In jurisprudence, the constant and perpetual disposition of legal matters or disputes to render every man his due.

**Value link: Goal of criminal justice**

Justice is the proper administration of laws and the disposition to give each person what he or she deserves. When someone breaches the laws of society, society must demand a remedy. It is the purpose of the criminal justice system to impose such a remedy. Only when criminal justice aligns with justice in substance and execution does it accomplish the purpose for which it was designed.

**Criterion: Rule of Law**

“**Rule of Law**.” 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 1332.

Rule of law. A legal principle, of general application, sanctioned by the recognition of authorities, and usually expressed in the form of a maxim or logical proposition. Called a "rule," because in doubtful or unforeseen cases it is a guide or norm for their decision. The rule of law, sometimes called "the supremacy of law", provides that decisions should be made by the application of known principles or laws without the intervention of discretion in their application. See e.g. Rule against perpetuities, above; also, Shelley's Case, Rule in. See also Stare decisis.

The rule of law is simply the principle that governments ought to apply the law as written without resorting to judicial activism. Simply put, judges should apply their own interpretations to the law only when necessary. This allows governments to do justice by administering the law properly.

**Contention 1: Retribution, not rehabilitation, underlies the rule of law**

Proper administration of the rule of law requires a sentencing judge to consider not what is beneficial to the offender but what is befitting to him. When a man breaks the law, whether by killing his father or by stealing a loaf of bread, the law demands that he receive a certain punishment. The duty of the criminal justice system is then to administer retribution by sentencing him in accordance with the law.

**Application 1: Retributive justice theory**

For centuries, courts throughout the West but especially in the U.S. have recognized that, if a person breaks the law, a certain punishment is warranted. Proper administration of the laws demands that a person pay the penalty for his actions. If someone steals a loaf of bread, he ought to be ordered to repay the store owner and to pay a fine to the court in addition. If someone kills his father, he ought to be sentenced to death.

**In his concurrence in the 1972 case Furman v. Georgia,** (Furman v. Georgia, 408 U.S. 238 (1972), was a landmark criminal case in which the United States Supreme Court invalidated all death penalty schemes in the United States in a 5–4 decision, with each member of the majority writing a separate opinion.  Following Furman, in order to reinstate the death penalty, states had to at least remove arbitrary and discriminatory effects in order to satisfy the Eighth Amendment to the U.S. Constitution.) (accessed on Justia) **Supreme Court Justice Potter Stewart wrote that** (https://supreme.justia.com/cases/federal/us/408/238/. Accessed 12 November 2022.)

On that score I would say only that I cannot agree that retribution is a constitutionally impermissible ingredient in the imposition of punishment. The instinct for retribution is part of the nature of man, and channeling that instinct in the administration of criminal justice serves an important purpose in promoting the stability of a society governed by law. When people begin to believe that organized society is unwilling or unable to impose upon criminal offenders the punishment they "deserve," then there are sown the seeds of anarchy -- of self-help, vigilante justice, and lynch law.

*(Potter Stewart (January 23, 1915 – December 7, 1985) was an American lawyer and judge who served as an Associate Justice of the United States Supreme Court from 1958 to 1981. During his tenure, he made major contributions to, among other areas, criminal justice reform, civil rights, access to the courts, and Fourth Amendment jurisprudence.)*

As humans, we instinctually recognize the justice of retribution. Justice requires that we apportion to the offender a punishment in accord with retributive justice. Retribution, not rehabilitation, is foundational to our criminal justice system. Thus, *criminal justice ought to prioritize retribution over rehabilitation.*

**Works Cited**

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

Co., 1991, p. 374.

*Black’s Law Dictionary*, s.v. "Justice," 6th edition, St. Paul: West Publishing Co., 1991, p.

864.

*Black’s Law Dictionary*, s.v. "Rehabilitation," 6th edition, St. Paul: West Publishing Co., 1991, p.

1287.

*Black’s Law Dictionary*, s.v. "Retribution," 6th edition, St. Paul: West Publishing Co., 1991, p.

1317.

Furman v. Georgia (U.S. Supreme Court June 29, 1972).