Affirmative Case: Efficacy

By Hannah Fear

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

This case is eerily close to a policy debate case. It’s also more application-centric than most of my other cases. It’s also pretty much the converse of the Negative case on efficacy that I wrote a couple weeks ago. I recommend you check out that case for more analysis.

Like its negative counterpart, this case is incredibly utilitarian. As such, it’s easy to understand. Whichever side causes crime to go down the most should win the round. It also boils the round down to a statistical debate, much like many policy debate rounds go. Unlike the typical TP case, however, this case lays out the impact calculus in the AC, not the 2AR.

Utilitarian cases have remained incredibly popular in Stoa LD, especially in TP-dense areas of the country, because they’re easy to understand. They boil down to the right set of numbers or the best -sounding results, rather than truly probing into ethical issues or asking what the nature of moral behavior is. As such, they’re incredibly frustrating for more philosophically inclined debaters. Since most judges want a quick, simplistic analysis of the resolution’s framework so they can get on with their day, debaters running philosophical cases face an uphill battle trying to convince the judge to adopt a non-utilitarian moral framework.

One note of caution: a mountain of evidence is growing that neither rehabilitation-based systems nor deterrence-based systems achieve their desired results. Rehabilitative systems don’t rehabilitate, and deterrent systems don’t deter. The reason your case focuses on the inefficiencies of deterrence instead of the efficiencies of rehabilitation is that rehabilitation isn’t much better. Still, it does seem to be a little better, and you want to hammer that.

Fortunately for you, the numbers against deterrence, in general, seem to be a lot more clear. The deterrence-based schemes in the War on Drugs have only led to increased drug usage. Hammer the clear failures of deterrence over the unclear failures of rehabilitation to win the round.

**Introduction**

Criminal justice doesn’t just punish crimes in the past. It also looks forward to the future. It seeks to prevent crimes from happening in the first place. For decades, scholars have wondered how best to prevent crime. In recent years, however, evidence has emerged that the best way to prevent crime is not to scare away potential offenders but to attempt to rehabilitate past offenders. Because I stand for a criminal justice system that works for us by doing everything in its power to reduce crime, 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.

“**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: Prioritizing, not valuing**

The resolution does not ask me to argue that rehabilitation is better than retribution, restitution, or deterrence. It asks me to argue that rehabilitation ought to be prioritized: that a criminal justice system ought to strive toward it. Today, my opponent and I will present to you two possible worlds: one where rehabilitation is prioritized, and one where retribution and deterrence are prioritized. I’ll ask you to determine which one you like more. I anticipate you’ll prefer the one where rehabilitation is prioritized.

**Value: Efficacy**

“**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 premise: 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. We want a criminal justice system that gives us results

**Criterion: Prevention of crime**

The criminal justice system has two primary functions. One looks to the past, to crimes already committed. The other is arguably more important. It looks to the future, to crimes yet to be committed, and seeks to prevent them. Our present actions have no impact on the past, but they have an impact on the future. That’s why we ought to measure the efficacy of the criminal justice system by its ability to prevent future crime.

**Contention 1: Rehabilitation more effective than retribution or deterrence**

Rehabilitation, retribution, and deterrence are all penological goals within our justice system, and restitution is one of the methods the criminal justice system uses to achieve retribution. When our justice system bases its sentencing practices on retribution and deterrence, however, the results are catastrophic. Let’s look to a real-world application of this.

**Application 1: The War on Drugs**

The War on Drugs is infamous for assigning onerously harsh sentences to drug offenders in an attempt to deter them from committing a crime in the first place. Nevertheless, scholars judge this war a failure, partially because we chose to prioritize retribution and deterrence over rehabilitation.

**Katherine Neill** (Katharine Neill Harris, Ph.D., is the Alfred C. Glassell, III, Fellow in Drug Policy at Rice University’s Baker Institute for Public Policy. Her current research focuses on the availability of drug treatment for at-risk populations, the opioid epidemic, and the legalization of medical and adult-use cannabis. She received a Bachelor of Science in criminal justice from George Mason University. She earned a master’s degree in public administration from Old Dominion University before going on to complete her Ph.D. in public administration and urban policy. She received the Old Dominion University Outstanding Ph.D. Student Award in 2014 and the Simon Scholarship for Academic Performance in 2011 and 2012.) **of Old Dominion University wrote in her dissertation in 2014 that** (https://digitalcommons.odu.edu/cgi/viewcontent.cgi?article=1033&context=publicservice\_etds. Accessed 19 November 2022.)

The incarceration-crime rate divergence has led many scholars to question what other forces may explain the increase in incarceration rates. While crime is part of the answer, numerous studies provide evidence of other factors that have contributed to the rise in incarceration (Schneider, 2006; Tonry, 2007). One explanation is the changes

in sentencing policies and approaches towards crime control among governments. Prior to the start of the prison boom, the dominant philosophy towards crime emphasized indeterminate sentencing, a focus on the individual offender and his rehabilitation, and the structural causes of crime in society (Garland, 2001a). Since that time governments have changed how they deal with law breakers; in recent decades the prevailing trend has been to focus on the personal responsibility of the offender, to isolate the offender from society, and to punish the offender. Nowhere is this "law and order" philosophy more evident than in the treatment of drug offenders. Since the official War on Drugs began in 1971, drug crimes have been an especially popular target of tough anti-crime measures. Changes in sentencing laws have resulted in more drug offenders going to prison for longer periods of time, even in

instances of nonviolent offenses. Mauer and King (2007a) find there has been an 1100 percent increase in the number of drug offenders serving time in jail or prison since 1980, and almost 60 percent of those in state prison have no history of violence. Blumstein and Beck (1999) find that drug offenses account for 33 percent of the overall

growth in incarceration rates from 1980 to 1996, indicating that the War on Drugs has contributed significantly to mass incarceration.

Dr. Neill continues later in the same context,

The drug war can be understood as a punitive approach to drug crime because its predominant focus has been on punishing offenders and isolating them from society rather than attempting to treat them. It also has resulted in the loss of individual freedom for a large segment of the population, many of whom did not inflict harm on others. From a social justice perspective, this punitive approach has contributed to significant injustices against minority populations in the criminal justice system. The Justice Policy Institute (2007, p.7) reports that "in 2002, African Americans were admitted to state prisons for drug offenses at almost 10 times the rate of whites." African Americans, particularly young black men, have been the target of many antidrug policies. For example, the laws passed in the 1980s that established sentencing disparities for crack and cocaine possession, in which the punishment for five grams of crack was equal to the punishment for 500 grams of cocaine, have been criticized for

their adverse effects on African Americans, who tend to use the cheaper crack-cocaine derivative.1 Indeed, blacks are the dominant group sentenced for crack cocaine offenses; a 2002 report by the Substance Abuse and Health Services Administration finds that while only 24 percent of crack cocaine users were black, they accounted for 80 percent of crack cocaine defendants (Justice Policy Institute, 2007). While an argument can be made that the initial passage of such laws was a good faith attempt among lawmakers to protect minority neighborhoods that were suffering from drug related violence, that officials continued to support the laws after evidence surfaced that demonstrated their ineffectiveness and detrimental consequences calls into question legislator motives and has led to substantial charges of racism (Provine, 2007).

Several pages later, Dr. Neill continues,

The discussion to this point has centered on the increasing punitiveness of drug policy across the federal and state governments over the last few decades. While a very general view of US state drug policy can be characterized as punitive, the reality is much more complex. As consensus has grown that the War on Drugs has failed, and in the

face of more recent economic troubles, several states have started to change the way they deal with drug offenders. For example, in 2012 seven states—Alabama, California, Missouri, Massachusetts, Kansas, Louisiana, and Pennsylvania—reduced their mandatory sentences for crack cocaine as well as the sentencing enhancements that

accompany all drug offenses more generally (Porter, 2013). Lynch (2012, p.190) notes the "sustained pushback by the electorate" with regards to punishments for drug offenses, which has been particularly notable in western states, where the medical marijuana movement first took off and where voters in two states (Colorado and Washington) supported the legalization of marijuana in the 2012 elections. And while the cost of tough enforcement of drug laws and imprisoning more people for drug crimes was downplayed or hidden in the past, more recently the expense of these practices has come to the attention of elected officials and taxpayers (Fernandez, 2011).

A harsh, deterrence-based penological system has failed us. It has worked against us, not for us. A rehabilitation-based penological system does the opposite. Because of that, I ask you to vote Affirmative. Vote for criminal justice that actually prevents crime.

**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. "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.

*Dictionary.com*, s.v. "Efficacy," accessed November 7, 2022,

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

Neill, Katherine A.. "The War on Drugs in the American States: Variations in Sentencing Policies Over Time" (2014). Doctor of Philosophy (PhD), dissertation, Old Dominion University, DOI: 10.25777/bs1d-e877 https://digitalcommons.odu.edu/publicservice\_etds/30. Accessed 19 November 2022.

*U.S. Legal, Inc.,* s.v. “Deterrence,” 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.