Negative Case: Societal Health

By Hannah Fear

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

This case can be either utilitarian or teleological, depending on how you run it. If you focus more on the end results and a net-benefits calculus, it will be more utilitarian; if you really hammer that it is the goal of the criminal justice system to promote societal health, then it will be more teleological. I designed this case as a teleological case, and I recommend that you run it as such, but it lends itself to either approach.

There are two main problems with running it as a purely utilitarian case. First, you minimize the impact of the value. Yes, you’re primarily focusing on benefits that have to do with societal health, but the value itself is broad enough that you can apply almost anything. Second, you have to run a quantifiable impact calculus at the end, and that’s incredibly difficult to do with the application I’ve written (and with applications having to do with retribution in general). The Affirmative’s numbers probably won’t be great, but it’s difficult to run numbers-based impact calculus with this resolution.

A teleological approach puts a lot of emphasis on your value link, “goal of criminal justice.” To win, you must prove (1) that societal health is the goal of criminal justice, and (2) that criminal justice best achieves societal health when it prioritizes your side of the resolution. The latter is undoubtedly a utilitarian battle, but your emphasis on the first prong of the argument makes it teleological, as opposed to purely utilitarian.

This case also lends itself to combating pathetic appeals from the Affirmative: touching stories of rehabilitated criminals that don’t have a whole lot of broader applicability. It forces the judge to look at the bigger picture, to see penological goals and sentencing practices in the broader sense. Perhaps rehabilitation-based sentencing has led to a rehabilitated criminal (notice that it’s one criminal, not a whole class of them), but your case emphasizes that this is the not the broader goal of the criminal justice system. Hammer the importance of broader practices to defeat the Affirmative’s pathetic appeal.

**Introduction**

Our criminal justice system wasn’t created to reform criminals. It was created to protect the innocent. When we make rehabilitation our primary goal, the innocent often fall by the wayside, and the criminal justice system fails to perform its duty. This travesty compels me to stand resolved that *criminal justice ought to prioritize retribution and 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.

“**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.

**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 protect our society from those who threaten its wellbeing. Today, we do not ask whether criminal justice ought to perform its duty or not. We ask how it can best fulfill that duty. We ask whether society is best kept healthy when we pursue rehabilitation or when we pursue retribution, restitution, and deterrence.

**Contention 1: Retribution and deterrence best protect societal health**

The Affirmative and I agree: a criminal justice that prioritizes rehabilitation is better for the criminal. He might get some helpful vocational training or get several years chopped off his sentence. Nevertheless, such a system harms the fabric of society by refusing justice to the victims of horrendous crime. Let’s look to a real-world example to see how societal health is best protected when criminal justice prioritizes retribution and deterrence over rehabilitation.

**Application 1: History of capital punishment in the U.S.**

Half a century ago, the Supreme Court invalidated all existing death penalty statutes across the nation. They reasoned that the death penalty, unlike any other penalty that could be levied on a criminal, precluded the possibility of rehabilitation.

**In his concurrence in 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 pending death penalty sentences 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) **Justice Potter Stewart explained that (**https://supreme.justia.com/cases/federal/us/408/238/#:~:text=Georgia%2C%20408%20U.S.%20238%20 (1972)&text=The%20death%20penalty%20is%20unconstitutional,that%20leads%20to%20discriminatory%20results.) Accessed 26 November 2022.)

The penalty of death differs from all other forms of criminal punishment, not in degree, but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity.

*(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.)*

The death penalty is final. A prisoner serving a life sentence at least entertains the possibility, small though it may be, of being pardoned, of being rehabilitated and reentering society. It is not so with a capital offender. A dead man cannot be rehabilitated. A few years later, however, the Court backtracked. It found that a limited use of the death penalty would protect society better than no death penalty at all. The death penalty furthered the penological goals of retribution and deterrence, and thus it was conducive to societal health, even though it did not further the possibility of rehabilitation in any way.

**Writing for the plurality in Gregg v. Georgia,** (Gregg v. Georgia, Proffitt v. Florida, Jurek v. Texas, Woodson v. North Carolina, and Roberts v. Louisiana, 428 U.S. 153 (1976), is a landmark decision of the U.S. Supreme Court. It reaffirmed the Court's acceptance of the use of the death penalty in the United States, upholding, in particular, the death sentence imposed on Troy Leon Gregg. The case is referred to by a leading scholar as the July 2 Cases, and elsewhere referred to by the lead case Gregg. The court set forth the two main features that capital sentencing procedures must employ in order to comply with the Eighth Amendment ban on "cruel and unusual punishments". The decision essentially ended the de facto moratorium on the death penalty imposed by the Court in its 1972 decision in Furman v. Georgia 408 U.S. 238 (1972).) (accessed on Justia) **Justice Stewart now opined that** (https://supreme.justia.com/cases/federal/us/428/153/#F28. Accessed 26 November 2022.)

The death penalty is said to serve two principal social purposes: retribution and deterrence of capital crimes by prospective offenders. [Footnote 28] In part, capital punishment is an expression of society's moral outrage at particularly offensive conduct. [Footnote 29] This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes, rather than self-help, to vindicate their wrongs.

*(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.)*

To promote societal health, to ensure that society functions as best it can, a criminal justice system ought to prioritize retribution and deterrence over rehabilitation. The U.S. Supreme Court concluded this nearly fifty years ago, and I ask you to conclude so today.

**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.

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

Gregg v. Georgia (U.S. Supreme Court July 2, 1976).

*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.