Negative Case: Liberty

By Hannah Fear

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

This case is largely consequentialist, but its lynchpin is the juxtaposition between prevention and cure. Think about this: rehabilitation cannot prevent crime until after it happens. It takes former criminals and changes them, reintegrating them into society so they will no longer commit their crimes. Deterrence, on the other hand, expressly attempts to prevent crime before it happens. Intuition suggests that it is far better to prevent crime before it happens than after it happens.

The value is a throwaway value. You can substitute pretty much any value you please into this case, and it will work almost exactly the same. I chose to put liberty into this case because I’ve been struggling to think up a viable case idea with this common value at the center. Liberty is a buzzword in Stoa, so its very mention has persuasive power. Since this case can use pretty much any value under the sun, I figured I’d shell it out here. The application is also pretty much a throwaway. You can insert almost any application you want into this case, and it will still work the same way.

The ineliminable part of this case is the criterion. You want to present a proactive model: one that seeks to prevent crime before it happens. It’s a means criterion (it shows the method by which you achieve the value) and your opponent must contest it or lose the round.

Ideally, then, you want to get your opponent to concede to your criterion on cross-examination. You want to get your opponent to say that it’s better to prevent crime before it happens than to react to its aftermath. Your opponent can do three things with this:

1. He can agree. In that case, you’ve just won your criterion (and probably the round).
2. He can disagree. In that case, he looks ridiculous to the judge (unless he has a really good reason to disagree, and I can’t think of any).
3. He can waffle about it for three minutes. In that case, he still looks ridiculous, and he also looks ignorant and cowardly.

Once you’ve gotten a statement out of your opponent, incorporate it into the defense of your criterion. The best Negative cases aren’t scripted word-for-word; they adapt to the nuances of the Affirmative case and grasp at the competitive advantage that comes from knowing their opponent’s hand. This case gives you an excellent opportunity to practice this. Practice responding to your opponent by incorporating his arguments into your own case.

**Introduction**

We often say that prevention is better than cure. How often, however, do we put this into practice? My opponent just presented a wonderful defense of the utility of curing criminals. I agree; we ought to attempt to cure criminals. But is that the best approach? Ought we not to attempt to prevent them to become criminals in the first place? Indeed, our criminal justice system has an obligation to seek to prevent crime. Only when its efforts at prevention have failed should it turn to the cure. That is why *criminal justice ought to prioritize 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.

“**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: Criminal forfeiture of civil rights**

Civil rights are an individual’s rights that are protected by the government. For example, we have the civil right to move freely. The government cannot throw you in a cell for six months without good reason. When a person commits a crime, however, he forfeits some or all of his civil rights. If you were to stab someone tomorrow, you would then forfeit your civil right to move freely and the government would rightly imprison you for a lot longer than six months.

**Value: Liberty**

“**Liberty**.” 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 918.

Freedom from all restraints except such as are justly imposed by law. Freedom from restraint, under conditions essential to the equal enjoyment of this same right by others; freedom regulated by law. The absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community. Brazo v. Connecticut Real Estate Commission, 177 Conn. 515, 418 A.2d 883, 890.

**Value link: Foundation of a just government**

Since criminal justice is the working of the government, we must adopt a value that represents the purpose of government. Liberty, then, is the natural candidate. A government exists to protect its citizens and their liberty. To do so, it finds that it must restrain certain individuals who pose a threat to the freedom of their neighbors. Nevertheless, even their restraints are a form of prioritizing liberty.

**Criterion: Proactive model**

Like I mentioned earlier, prevention, not cure, ought to be the first line of defense. I propose that we attempt to prevent crime proactively. This will safeguard our liberty far better than the reactive rehabilitative model that the Affirmative proposes.

**Contention 1: Prioritizing deterrence protects liberty proactively**

A penological scheme that upholds deterrence takes action to protect the liberty of its citizens before a breach has even been committed. Its ability to disincentivize crime enables a society to function at its most virtuous, which allows its people to live lives of liberty.

**Application 1: Recidivist statutes**

Recidivist statutes are criminal statutes that give a harsher penalty to a criminal if he is a repeat offender. The premise is simple: a criminal who commits the same crime more than once has shown the criminal justice system that he is a habitual criminal. Instead of responding to recidivist offenders after the fact, however, recidivist statutes seek to prevent recidivism in the first place by slapping on a penalty harsh enough to disincentivize offenders.

***In the 1980 Supreme court case Rummel v. Estelle,*** *(Rummel v. Estelle, 445 U.S. 263 (1980), (sometimes erroneously cited as Rummel v. Estell) was a United States Supreme Court case in which the Court upheld a life sentence with the possibility of parole under Texas' three strikes law for a felony fraud crime, where the offense and the defendant's two prior offenses involved approximately $230 of fraudulent activity.) (accessed on Justia)* ***Justice William Rehnquist explained that*** *(https://supreme.justia.com/cases/federal/us/445/263/. Accessed 10 December 2022.)*

The purpose of a recidivist statute such as that involved here is not to simplify the task of prosecutors, judges, or juries. Its primary goals are to deter repeat offenders and, at some point in the life of one who repeatedly commits criminal offenses serious enough to be punished as felonies, to segregate that person from the rest of society for an extended period of time. This segregation and its duration are based not merely on that person's most recent offense, but also on the propensities he has demonstrated over a period of time during which he has been convicted of and sentenced for other crimes.

*(William Hubbs Rehnquist (/ˈrɛnkwɪst/ REN-kwist; October 1, 1924 – September 3, 2005) was an American attorney and jurist who served on the U.S. Supreme Court for 33 years, first as an associate justice from 1972 to 1986 and then as the 16th chief justice from 1986 until his death in 2005. Considered a staunch conservative, Rehnquist favored a conception of federalism that emphasized the Tenth Amendment's reservation of powers to the states. Under this view of federalism, the Court, for the first time since the 1930s (with the exception of National League of Cities v. Usery, which was overruled in Garcia v. San Antonio Metropolitan Transit Authority), struck down an act of Congress as exceeding its power under the Commerce Clause.)*

Recidivist statutes like the one at issue in Rummel seek to protect the liberty of the innocent by stopping crime before it happens. Recall that liberty is not the absence of all restraint but the absence of restraint that is not conducive to the protection of human free action. Deterrence-based sentencing restrains those who would harm others and strip them of their agent capacities, thus creating the conditions for ordered liberty. Not only that, it does so by preventing crime, not by reacting to crime, as rehabilitation-based sentencing does. Consequently, a justice system that prioritizes deterrence is far better than one that prioritizes 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. "Liberty," 6th edition, St. Paul: West Publishing Co., 1991, p.

918.

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

1287.

Rummel v. Estelle (U.S. Supreme Court March 18, 1980).

*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.