Affirmative Case: Human Dignity

By Hannah Fear

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

This case is very similar to several of the deterrence-centered Neg cases I’ve written. It focuses more on the effectiveness of the method at preventing crime than on making a strong moral argument. Of course, this is LD, and the moral component is irreducible, but it’s not as obvious here as in some other approaches.

This case is largely argument by example, because there are some rehabilitative measures that work and some that don’t, just like there are some deterrent measures that work and some that don’t. Still, it’s the kind of case that goes over well in Stoa. It shows that rehabilitation can work, that it reduces crime, and that it keeps the judge safe.

We often don’t talk in Stoa about the role within the round of the judge’s felt needs. The judge needs to feel safe, and, since we’re talking about people who could potentially murder him/her, that need may encroach into the forefront of his/her mind during the round. You want to show the judge that your side of the resolution will keep him safe by reducing crime. Hence, this case is considerably more application-centered than many of my previous cases. You want the judge to look at the numbers.

This also means that this case is very similar to a policy case. I’m not terribly keen on that, but I know that this type of case historically did better when I was a competitor. Still, if you get an alum judge, you’ll want to play up the moral element. Hammer here that it is the government’s duty to protect its society (the collective) and its citizens (the individuals). This is where the resolutional analysis is important. Because you’re looking at a governmental actor here, you want to choose a value that encapsulates the duty of the government. If you can get your opponent to agree that the government’s duty is to protect its citizens, you’re halfway to a win.

If you run into a value like this, however, you don’t have to concede that safety is the goal of the government. Many debaters will, but you don’t have to. Argue that it’s the duty of the government foremost to protect the rights of its citizens or to foster social progress. You have a lot of avenues to pursue here.

If you’re running this case and run into one of these responses, see if you can get your opponent to concede in cross-examination that the government’s duty is human rights/social progress/whatever value *safe*. If you do that, you’ve almost won the value debate.

**Introduction**

Criminal justice was created to protect our citizens and our society by preventing crime. Any justice system that fails to do so has failed its fundamental purpose. Because I believe that a justice system can stop crime in its tracks by rehabilitating the people in its prisons, 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.

**Value: Safety**

“**Safety**.” 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/s/safety/

Safety means freedom from danger, risk, or injury. In other words, the condition of being safe. The definition of the term varies according to the context in which it is used.

**Value link: Government’s obligation**

A government is created to protect its own citizens – to keep them safe. Criminal justice exists as the activity of a criminal justice system, and a criminal justice system is an extension of the civil government. Hence, criminal justice has a moral obligation to prioritize safety. Let’s look to this more specifically through my criterion.

**Criterion: Reduction in crime**

The criminal justice system doesn’t just punish criminals. It also seeks to protect the innocent, and the one of the main ways that it does so is by reducing crime around them. Thus, I propose that we measure the value of safety by how well each side successfully reduces crime. If I demonstrate today that crime is reduced when the criminal justice system prioritizes rehabilitation over retribution, restitution, or deterrence, an Affirmative ballot is warranted.

**Contention 1: Rehabilitation best reduces crime**

Rehabilitation best reduces crime because it is the only penological framework that attempts to change the criminal. Retribution and deterrence aim to prevent the offense; rehabilitation strikes at the heart, and the numbers show that it is more effective at preventing future crime than is retribution or deterrence.

**Application 1: Cognitive-behavioral therapy**

In the U.S., one of the ways we rehabilitate former criminals is through cognitive-behavioral therapy, or CBT. As the numbers show, this method of rehabilitation truly prevents future crime.

***According to Jamie Santa Cruz writing for Knowable Magazine,*** *(Knowable Magazine is a non-profit, editorially independent online publication from science publisher Annual Reviews that discusses scientific discoveries and the significance of scholarly work in a journalistic style. The magazine uses information from Annual Reviews' 51 review journals as springboards for stories on topics such as health & disease, society, geography, environment and other science-related material, linking back to scholarly sources. As a nonprofit publication, Knowable Magazine is supported by grants from the Gordon and Betty Moore Foundation and the Alfred P. Sloan Foundation.)* ***on July 13, 2022,*** *(https://knowablemagazine.org/article/society/2022/rethinking-prison-deterrent-future-crime#:~:text=A%20study%20reviewing%20a%20range,of%20closer%20to%2030%20percent. Accessed 17 December 2022.)*

Cognitive-behavioral programs, which use individual or group therapy to help people learn to change the thinking patterns that result in destructive or criminal behaviors, appear to be the most effective of all. A study reviewing a range of rehabilitation strategies found that cognitive-behavioral programs in prisons consistently reduce recidivism by 15 percent or more, with some leading to reductions of closer to 30 percent.

A recidivist is a repeat offender. For example, if a murderer is convicted, goes to prison, gets out, and murderers again, he is a recidivist. Reducing recidivism is another way of saying that we are preventing crime. Rehabilitation through CBT accomplishes this, keeping us safe. Let’s compare this to retribution and deterrence.

**Application 2: Three strikes laws**

Three strikes laws are laws that hand down higher penalties to criminals on their third offense than on their first or second. They are supposed to deter repeat offenders from committing the same crime over and over again. Statistically, however, they have been wildly ineffective, as one study shows.

***Lou Marrano of UPI,*** *(United Press International (UPI) is an American international news agency whose newswires, photo, news film, and audio services provided news material to thousands of newspapers, magazines, radio and television stations for most of the 20th century. At its peak, it had more than 6,000 media subscribers. Since the first of several sales and staff cutbacks in 1982, and the 1999 sale of its broadcast client list to its main U.S. rival, the Associated Press, UPI has concentrated on smaller information-market niches.)* ***reported in a September 16, 2002 article on a 2001 study. According to Marrano, the study found this:*** *(https://www.upi.com/Odd\_News/2002/09/16/Study-3-strikes-laws-increase-homicides/23411032191348/. Accessed 17 December 2022.)*

The results obtained by the Alabama criminologists were almost identical to those of Marvell and Moody. During the year in which a three-strikes law was passed (which the authors define as the "short term"), homicide rates increased, on average, by 13 percent to 14 percent. The cumulative effect from 1980 to 1999 (the "long term") was an increase in homicide rates in cities in the three-strikes states from 16 percent to 24 percent.

The numbers aren’t even close. CBT, which prioritizes rehabilitation, reduced future crime by 15-30%. Three strikes laws, on the other hand, which prioritize retribution and deterrence, increase crime, specifically homicide, by 13-24%. Rehabilitation-based methods are more effective at reducing crime. That’s why I urge you to vote that *criminal justice ought to prioritize rehabilitation over retribution, restitution, or deterrence.*

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