Negative Case: Equality Under Law

By Hannah Fear

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

This case is similar to two cases I wrote earlier this year: the one on Natural Law and the one on Justice. Both of those cases assume a higher law and base retribution on that higher law. It makes sense; without an objective, moral law, retribution makes no sense. It’s simply deterrence with a guilt factor. Unlike the other two, however, this one relies heavily on the idea that proportionality in sentencing is the lynchpin behind the criminal justice system. It assumes not only a retributive framework but one that uniquely matches the punishment to the crime.

Cases like this are uniquely suited to go against the typical Affirmative case because almost every Affirmative is forced to rely on a utilitarian framework to justify rehabilitation. (Negatives who rely on deterrence run into the same problem.) By running a case that doesn’t subscribe to the “net benefits,” policy-oriented mental framework that most of Stoa runs, you’re undercutting one of the central assumptions of the Affirmative. Most Affirmatives don’t know how to defend this framework because they’re not even conscious that they’re using it. The trick for you is to (1) defend your alternate framework and (2) make sure the judge understands what you’re doing.

For (1), I recommend that you launch your attack in cross-examination. Begin with a broad question: “do the ends always justify the means?” Your opponent will probably waffle on this. Pin him down; either the ends always justify the means or they don’t always. Your opponent will almost certainly agree that there are some situations where the ends do not justify the means.

For the rest of (1) and (2), I recommend that, when you begin to respond to your opponent’s case in your first speech, you state three things up front: (1) your opponent’s faulty assumption, (2) why that assumption is faulty, and (3) what framework you would propose instead. Here’s an example:

1. Throughout his last speech, my opponent has been assuming that you, as the judge, ought to weigh the round solely based on the outcomes rehabilitation versus retribution.
2. He can’t make that assumption. Remember, this is value debate. It has an irreducibly moral quality to it. Unless my opponent wants to argue that the ends always justifies the means, he cannot also argue that you ought to weigh the round solely based off the outcomes. And remember, in cross-examination, both of us agreed that the ends do not always justify the means.
3. I propose instead that we look at not just the outcome but the morality of rehabilitation versus retribution in their own rights. Which one more aligns with the principle of equality under law: rehabilitation or retribution?

Here’s the hard part: you don’t want to say that your value system has to assume a higher law because (1) you don’t want to introduce any more terms into the round than absolutely necessary and (2) some debaters may run kritiks against you for trying to bring too much of your faith into the debate round. (For the record, I think that that kritik is ridiculous, as you cannot bring too much of your faith into a debate round. You can be uncharitable about how you bring in your faith, though. Additionally in my opinion, the Christian ethic is not entirely devoid of consequentialist elements, many of which a smart Affirmative can capitalize on in response to you.)

Make sure you explain the application well. It would be best to explain it in reference to mandatory sentencing, in which the judge has no discretion. If you feel like you cannot explain this application well, feel free to sub it out for another one. It’s not essential to the merits of the case. The most important elements of this case are the value and the criterion.

**Introduction**

Our criminal justice system functions because it holds everyone to the same standards. It assigns praise and blame based on individual culpability, not based on a nebulous idea of potential for reform. We cannot know the possibilities of the future, but we can know the facts of the present. Because I stand for a justice system based on what can be known in the present, 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: Equality under Law**

“**Equality**.” 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 536.

The condition of possessing substantially the same rights, privileges, and immunities, and being liable to substantially the same duties. "Equality" guaranteed under equal protection clause is equality under the same conditions and among persons similarly situated; classifications must not be arbitrary and must be based upon some difference in classes having substantial relation to legitimate objects to be accomplished. Boyn� v. State ex reI. Dickerson, 80 Nev. 160, 390 P.2d 225, 227. See Equal protection clause; Equal protection of the law.

Equality under law simply means that every person is equally responsible to the law. We don’t make exceptions; we don’t bend the law so that it doesn’t apply in the same way to everyone.

**Value link: Foundational to criminal justice**

Equality under law is one of the foundational principles of a just government. It is particularly relevant to the criminal justice system because in that system it is most under attack. When a judge sentences the offender before him, he ought to sentence him according to the offender’s own culpability. He ought to apply the law equally.

**Criterion: Proportionality**

Within criminal justice, proportionality is simply the concept that the sentence ought to be proportional to the crime. Overly harsh and overly lenient sentences are disproportionate, and their imposition violates the principle of equality under law by bending our legal code so that it doesn’t apply in the same way to certain offenders.

**Contention 1: Retribution alone upholds equality under law**

Retribution upholds equality under law because it promotes a system that sentences criminals on their own merits. Armchair jurists may speculate as to a given criminal’s so-called “potential for rehabilitation,” but that is ultimately immaterial. Per equality under law, a criminal is not sentenced based on ability or inability to be rehabilitated. He is sentenced because he did something wrong.

***In the Court’s opinion for Tison v. Arizona,*** *(Tison v. Arizona, 481 U.S. 137 (1987), is a United States Supreme Court case in which the Court qualified the rule it set forth in Enmund v. Florida (1982). Just as in Enmund, in Tison the Court applied the proportionality principle to conclude that the death penalty was an appropriate punishment for a felony murderer who was a major participant in the underlying felony and exhibited a reckless indifference to human life.) (accessed on Justia)* ***Supreme Court Justice Sandra Day O’Connor wrote in 1987 that*** *(https://supreme.justia.com/cases/federal/us/481/137/. Accessed 24 December 2022.)*

That difference was also related to the second purpose of capital punishment, retribution. The heart of the retribution rationale is that a criminal sentence must be directly related to the personal culpability of the criminal offender. While the States generally have wide discretion in deciding how much retribution to exact in a given case, the death penalty, "unique in its severity and irrevocability," Gregg v. Georgia, 428 U. S. 153, 428 U. S. 187 (1976), requires the State to inquire into the relevant facets of "the character and record of the individual offender." Woodson v. North Carolina, 428 U. S. 280, 428 U. S. 304 (1976). Thus, in Enmund's case, "the focus [had to] be on his culpability, not on that of those who committed the robbery and shot the victims, for we insist on 'individualized consideration as a constitutional requirement in imposing the death sentence.'"

*(Sandra Day O'Connor (born March 26, 1930) is an American retired attorney and politician who served as the first female associate justice of the Supreme Court of the United States from 1981 to 2006. She was both the first woman nominated and the first confirmed to the court. Nominated by President Ronald Reagan, she was considered the swing vote for the Rehnquist Court and the first five months of the Roberts Court.)*

We see this in action in my application.

**Application 1: Discretionary sentencing**

Discretionary sentencing allows the judge leeway to give an offender a sentence proportionate to his crime. It differs from mandatory sentencing, in which an offender’s sentence is predetermined by statute and the sentencing judge has no authority to alter it to fit the offender’s individualized culpability.

***The Honorable Thomas A. Zonay,*** *(Thomas A. Zonay serves as a chief administrative judge of the superior court in Rutland County, Vermont. He was appointed to the bench on March 1, 2007.)* ***writing for the National Judicial College*** *(The National Judicial College (NJC) was established in 1963 as an entity within the American Bar Association. The NJC moved to the campus of the University of Nevada, Reno in 1964 and became a Nevada not-for-profit (501)(c)(3) educational corporation in 1977. The NJC provides judicial training to judges from across the United States.)*  ***on May 12, 2015, said,*** *(https://www.judges.org/news-and-info/judicial-news-judicial-discretion-guidelines/. Accessed 24 December 2022.)*

The basic judicial discretion definition is the act of making a choice in the absence of a fixed rule and with regard to what is fair and equitable under the circumstances and the law. Its judicious use increases fairness and can help to promote an equitable legal process by allowing the judge to consider individual circumstances in instances when the law is insufficient or silent.

When judges are allowed to tailor sentences to the criminal they are sentencing through the principles of retributive justice, they are able to apply the law equally to all. The principles of proportionality that undergird discretionary sentencing make no sense without the concept of retribution. That is why *criminal justice ought to prioritize retribution over rehabilitation.*

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