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## REHABILITATION VS. RETRIBUTION, RESTITUTION, OR DETERRENCE.

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By Noah McKay

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

Now that we have investigated the background of the resolution and considered a few ways to affirm or negate it, it is time to examine real-world examples – usually referred to in LD as “applications” – supporting each side. Studies, historical events, and even raw statistical data may be used as applications. Fortunately, there are plenty of each available to both sides of this year’s resolution.

### Part I: When to Use Applications

First, let’s briefly consider the purpose of applications. Some coaches and competitors insist that every contention in an LD case requires an application; indeed, during rebuttals, some competitors encourage judges to reject arguments for the sole reason that they do not include any applications. In my view, this is misguided. Some contentions require applications, but others do not.

To understand which arguments require applications, we need to introduce a distinction between *a priori* knowledge and *a posteriori* knowledge. *A priori* knowledge is knowledge that is based on reason or intuition, rather than observation. For example, knowledge that all circles are round is *a priori*, because it is possible to have this knowledge without observing any circular objects. Since circles are round by definition, it would be pointless to measure every circle you could find to determine whether they were round. Another example of *a priori* knowledge is moral knowledge, such as the knowledge that torturing an innocent person is wrong. No double-blind, peer-reviewed scientific study could establish this, and even if one could, you would not have to perform a study in order to know that it is true. Your conscience tells you that torturing the innocent is wrong, in the same way that your reason tells you that all circles are round.

*A posteriori* knowledge (also sometimes called “empirical” knowledge) is knowledge that is based on observation. For example, the claim that the COVID-19 vaccine is safe and effective is an *a posteriori* claim, because it can only be settled by conducting scientific studies. Our knowledge about cause-and-effect relationships is almost always *a posteriori*: in order to know which events cause which other events, we must observe them. For instance, we now know that smoking cigarettes causes lung cancer because we have observed that one follows from the other.

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Whether an argument requires an application depends on whether it is an *a priori* argument or an *a posteriori* argument. For example, a debater who argues that imprisonment is morally wrong because it violates the human right to autonomy makes an *a priori* argument, so he does not need an application. After all, how could a scientific study or a historical fact show that imprisonment is wrong? On the other hand, a debater who argues that deterrence is more effective than rehabilitation at reducing crime makes an *a posteriori* argument, since it is possible to test his claim through observation. So, he needs an application.

Since *a priori* claims do not require applications, it is possible to write a competitive LD case with no applications by appealing exclusively to *a priori* premises. But most good LD cases make *a posteriori* claims, so most of them include multiple applications. Below are a few you can use to support your arguments this season.

## Part II: Affirmative Applications

The most important *a posteriori* claim for AFF to defend is that rehabilitation is an effective method of reducing crime. This means that debaters should equip themselves with examples of effective rehabilitation programs, as well as broader studies that quantify the effectiveness of many different programs. (These are usually called “meta-analyses.”)

My favorite example of successful rehabilitation is the Prison Entrepreneurship Program, or PEP. PEP is a faith-based program in Texas that focuses on teaching inmates how to regulate their emotions and work constructive jobs, and it has been shown to reduce reoffending dramatically.

*Byron Johnson, William Wubbenhorst, and Curtis Schroeder* (Byron Johnson is Distinguished Professor of the Social Sciences at Baylor University. William Wubbenhorst is a Non-Resident Scholar for the Institute for Studies of Religion at Baylor University. Curtis Schroeder is Assistant Director of the Keller Center for Research at Baylor University and Associate Editor of the Keller Center Research Report.), “Recidivism Reduction and Return on Investment: A Critical Assessment of the Prison Entrepreneurship Program” (Baylor Institute for Studies of Religion, 2013), <https://www.pep.org/wp-content/uploads/2018/02/Baylor-2013-Study-of-PEP.pdf>.

Founded by Catherine Rohr in May of 2004, the Prison Entrepreneurship Program has served close to 1,000 inmates, 840 of whom have been released from prison in good standing. As the program has fully developed, especially in the scope and depth of its post-release support system, the recidivism rate of PEP graduates has steadily declined, to the point that fewer than five percent of the PEP graduates released in good standing in 2008 recidivated within three years, and fewer than seven percent of those released in 2009 recidivated within three years. Though a three-year recidivism rate 23 of five to seven percent seems remarkably low by any measure, it is nonetheless important to know how PEP graduates compare to others prisoners following release from Texas prisons. According to the most recent data available (see Table 1), the Texas statewide recidivism rate stands for men at approximately 23%. The Texas statewide three year recidivism rate for the 2008 cohort of

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all male prisoners released from prison was 23.1%. The three-year recidivism rate for the 2009 cohort is 23.4%. The 2008 and 2009 prison release cohorts are almost identical and represent the most recent groups for which complete three-year follow-up data are available. Simply put, PEP participants are dramatically less likely than other former prisoners to be reincarcerated following release from Texas prisons.

Another good example is Hudson Link, a rehabilitation program founded in 1998 that grants college degrees to participants:

*“What We Do,” Hudson Link for Higher Education in Prison, accessed August 28, 2022, <https://hudsonlink.org/what-we-do/>.*

Hudson Link was founded in 1998 and is the only 501(c)3 non-profit in the US run by formerly incarcerated individuals to provide college degree-granting programs inside prisons. Our staff consists of more than 70% formerly incarcerated men and women who dedicate their lives to giving people like themselves a second chance. Our holistic program structure follows each student from pre to post-release, providing alumni with a variety of reentry supports to reduce recidivism, restore families, and rebuild communities. Hudson Link’s pipeline model provides services from the time a student is incarcerated, through transition, to reentry. Partnering with accredited New York State colleges, Hudson Link delivers quality undergraduate education that is cost-effective. Educating a full time undergraduate student is estimated to cost \$5,000 annually. Nationally, over 67% of formerly incarcerated men and women return to prison within three years of their initial release date. However, less than 2% of Hudson Link graduates return to prison for a new crime within this three year period. Our alumni return to their families and communities as role models, and 85% are gainfully employed in the field of social services within three months of release.

These are just two of many effective programs. John Esperian, a professor at the College of Southern Nevada, provides a compelling overview of the evidence in favor of rehabilitation:

*John H. Esperian (John Esperian is a professor of English at the College of Southern Nevada and has taught in the prisons of southern Nevada for 10 years. He was the Director of Correctional Education at the College of Southern Nevada from 1998-2001.), “The Effect of Prison Education Programs on Recidivism,” The Journal of Correctional Education 61, no. 4 (2010): 316–34.*

Statistics support the claim/hypothesis that educating prisoners contributes significantly to reducing recidivism. [General numbers provided by research suggest 50% to 70% re-incarceration within three years. (“Congressional Leaders” 1 ; Education Newsletter II 2)]

- a.) Three state recidivism studies made in 1997 by Steurer, Smith, and Tracy, conducted in Maryland, Minnesota, and Ohio involved 3600 men and women inmates released from prison at least three years. The study showed that male and female offenders who participated in education programs while in prison reduced re-incarceration by 29%.
- b.) A 2007 study of incarcerated mothers in Colorado found that recidivism rates of women who participated in vocational programs had a recidivism rate of 8.75%, those who completed their GED, 6.71%, and those who participated in neither a vocational or academic program, 26%. (“Recidivism Rates” 5)
- c.) Another study in 2002 surveyed research in Florida, Maryland, Massachusetts, New York, Ohio, Texas, Utah and Virginia. Results indicated that educational programs cut recidivism from 49% to 20%. (“Recidivism Rates” 6)

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d.) “National studies show,” write Keys and Jackson, “that college classes cut recidivism by 30% or more. That would make a good investment for state taxpayers.”

e.) A West Virginia study (1999-2000) found dramatic outcomes. Records of 320 adult male inmates discharged in 1973 were followed. At the end of four years, there were 76 recidivists; 55 had not participated in an educational program, only 7 had completed a GED program, and four were college level participants. (Gordon and Weldon 202)

f.) According to the National Correctional Association, in a 2009 report, inmates who earn an AA/AS are 70% less likely to recidivate than those who do not complete a program, a GED, 25% less likely to recidivate, and those who earn a vocational certificate, 14.6% less likely to recidivate. (Education Newsletter 1)

g.) A recent U S Department of Justice report says that “Prison-based education is the single most effective tool for lowering recidivism. According to the national Institute of Justice Report to the U S Congress, prison education is far more effective at reducing recidivism than boot camps, shock incarceration or vocational training.” The report goes on to say that “Other studies sponsored by the Federal Bureau of Prisons find that...the more educational programs successfully completed for each six months confirmed, the lower the recidivism rates. The exact figures indicating these inverse recidivism rates for degree recipients were: Associates (13.7%), Baccalaureates (5.6%), Masters (0%). (Education Newsletter II 3)

The best example of rehabilitation implemented successfully on the scale of an entire national criminal justice system is Norway, which transitioned to a rehabilitative model at the turn of the 20<sup>th</sup> century. According to Are Høidal, Governor of Norway’s maximum-security Halden Prison, Norwegian prisons are exceptionally humane and structured as similarly as possible to society.

*Are Høidal (Are Høidal is Governor of Halden Prison, a maximum-security detention facility in Norway known as the most humane prison in the world.), Normality Behind the Walls, Federal Sentencing Reporter 31, no. 1 (2018): 58-66.*

One of the foundational principles that define Norwegian correctional care is the so-called principle of normality, defined in White Paper II as follows:

Both in international conventions and recommendations and in Norwegian law it is stated that the convicted person has the same rights as other citizens. The [person’s] existence during the execution of the sentence shall, as far as possible, be the same as existence elsewhere in society. It is the deprivation of liberty that is the punishment. Serving a sentence shall not be more burdensome than necessary, and no one shall be subject to conditions that are perceived as additional punishment.

The normality principle—noteworthy because it takes the perspective of the inmate into account directly—is concretized in the following three components on the NCS web page:

- The punishment is the restriction of liberty; no other rights have been removed by the sentencing court. Therefore, the sentenced offender has all the same rights as all other[s] who live in Norway.
- No-one shall serve their sentence under stricter circumstances than necessary for the security in the community. Therefore, offenders shall be placed in the lowest possible security regime.
- During the serving of a sentence, life inside will resemble life outside as much as possible.

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Norwegian prisons are also heavily focused on restoring criminals to constructive roles in society:

*Are Høidal (Are Høidal is Governor of Halden Prison, a maximum-security detention facility in Norway known as the most humane prison in the world.), Normality Behind the Walls, Federal Sentencing Reporter 31, no. 1 (2018): 58-66.*

In accordance with the principle of normality, progression through a sentence should be aimed as much as possible at returning the inmate home and limiting the negative impact this reintegration might have on both the inmate and the community. This principle is based on an underlying belief that the more isolated and confined a system is, the harder it will be for a person to return to freedom successfully. Therefore, during their period of incarceration, the inmate will transition through decreasing levels of custody. They will move from High Security prisons at the start of their sentence to Lower Security prisons later and, where possible, through halfway houses. Release on parole, which is possible once an inmate has served two-thirds of their sentence or a minimum of seventy-four days, is strongly encouraged— but not guaranteed. Generally, an inmate interested in parole must first apply for transfer to a less restrictive prison and then may request release to parole. Although inmates can also be released directly from a High Security prison at the expiration of their sentence, inmates are encouraged to participate in the graduated reentry process through the levels of custody. NCS can then grant or deny the application, based on a discretionary assessment of the individual's risks, needs, and resources. While on parole the offender will need to report to the probation office at regular times (usually once a week), refrain from the use of alcohol, and comply with any other specific conditions that have been imposed by NCS itself. The sentencing judge is not involved in the parole release process at all, with the exception of inmates sentenced to so-called preventive detention (an indefinite sentence reserved for the most dangerous offenders).

As a result of these policies, Norway has seen a dramatic decline in recidivism over the last few decades:

*Are Høidal (Are Høidal is Governor of Halden Prison, a maximum-security detention facility in Norway known as the most humane prison in the world.), Normality Behind the Walls, Federal Sentencing Reporter 31, no. 1 (2018): 58-66.*

As mentioned earlier in this article, Norway had a high recidivism rate in the 1980s, up to 80%. There has been a sharp reduction over the past thirty years. Today, new studies show that the recidivism rate is 20–25%. Recidivism is defined as new convictions that must be carried out in criminal proceedings after release from a prison sentence.

## Part III: Negative Applications

I suspect that applications will be less important for NEG than for AFF this season, since most NEG cases are likely to hinge on *a priori* claims about justice, proportionality, and the rights of victims. However, applications will still be useful in select instances and may even form the backbone of NEG cases that focus on values like security.

It will be tempting for NEG debaters to try to dig up evidence that rehabilitation is ineffective at reducing crime, but I would advise against this strategy for a few reasons. First,

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there is very little evidence of this kind available, and most of it is outdated. Second, although it is possible to find examples of rehabilitation programs that are or were not successful, these examples do not show that rehabilitation in general is ineffective – they simply show that some methods of rehabilitation are ineffective. AFF is always free to deny that such methods are representative of rehabilitation writ large and suggest that far more effective methods are available. Third, it is very difficult to determine whether a failure to reduce recidivism was due to flaws in the rehabilitative model itself or to lack of funding, poor implementation, or environmental factors that had nothing to do with the rehabilitation program. For instance, some scholars suggest that the reason rehabilitation has been less effective in the United States than elsewhere is because American prisons are badly organized, dehumanizing, and infected by toxic cultural norms.

However, it is possible to find evidence suggesting that effective rehabilitation goes hand-in-hand with lenient sentencing. For example, Norway, the gold standard for rehabilitation, has very low maximum and average sentence lengths:

*Are Høidal (Are Høidal is Governor of Halden Prison, a maximum-security detention facility in Norway known as the most humane prison in the world.), Normality Behind the Walls, Federal Sentencing Reporter 31, no. 1 (2018): 58-66.*

Inmates in Norway receive fairly short sentences, compared to the norms in the majority of the Western world, though they are largely on par with sentences in the other Scandinavian nations. The longest possible prison sentence in Norway for any offense is twenty-one years, although the new Penal Code (effective as of October 1, 2015) provides for a thirty-year maximum sentence for crimes related to genocide, crimes against humanity, and some other war crimes. The average sentence is around eight months, over 60% of sentences are less than three months, and almost 90% are less than one year.

These policies have been applied in shocking ways. For example, Norwegian Anders Behring Breivik made headlines in 2011 when he was sentenced to a mere 21 years for the murder of 77 people:

“Norway Killer Breivik Tests Limits of Lenient Justice System,” *Associated Press*, January 22, 2022, <https://www.voanews.com/a/norway-killer-breivik-tests-limits-of-lenient-justice-system/6407441.html>

Convicted mass murderer Anders Behring Breivik spends his days in a spacious three-room cell, playing video games, exercising, watching TV and taking university-level courses in mathematics and business. Halfway through a 21-year sentence and seeking early release, Breivik, 42, is being treated in a way that might seem shocking to people outside Norway, where he killed eight in an Oslo bombing in 2011, and then stalked and gunned down 69 people, mostly teens, at a summer camp.

Besides lenient sentencing, most effective rehabilitation programs give inmates free benefits that law-abiding citizens are required to pay for. For example, the two programs mentioned in Part II, PEP and Hudson Link, both provide offenders with free college courses. You may appeal to these applications on NEG in order to show that prioritizing rehabilitation undermines justice by disregarding proportionality and fairness.

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You should also be prepared to offer examples showing that deterrence is as effective as, or perhaps more effective than, rehabilitation at reducing crime. This can be challenging, since the effects of deterrence are difficult to quantify. But it is not impossible. Perhaps the best evidence for the effectiveness of deterrence comes from studies that examine the relationship between police presence and crime rates. The data show that increasing the number of police officers in a given area causes crime to decrease:

*Daniel S. Nagin and Robert Apel (Daniel Steven Nagin is professor of criminology at Carnegie Mellon University. Robert Apel is professor of criminology at Rutgers University.), "General Deterrence," in The Oxford Handbook of Crime and Criminal Justice (Oxford: Oxford University Press, 2012), 179-206.*

In recent years, a number of more targeted tests of the police-crime relationship have appeared. These studies are important because they provide a more transparent test of the effect of police presence on crime and are less subject to biases that may attend analyzing data across a highly heterogeneous set of cities. Several of these targeted studies investigate the effect on the crime rate of reductions in police presence and productivity as a result of massive budget cuts or lawsuits following racial profiling scandals. Such studies have examined the Cincinnati Police Department (Shi 2009), the New Jersey State Police (Heaton 2010), and the Oregon State Police (DeAngelo and Hansen 2008). Each of these studies concludes that increases (or decreases) in police presence and activity substantially decrease (or increase) crime. By way of example, Shi (2009) studies the fallout from an incident in Cincinnati in which a white police officer shot and killed an unarmed African American suspect. The incident was followed by three days of rioting, heavy media attention, the filing of a class action lawsuit, a federal civil rights investigation, and the indictment of the officer in question. These events created an unofficial incentive for officers from the Cincinnati Police Department to curtail their use of arrest for misdemeanor crimes, especially in communities with higher proportional representation of African Americans out of concern for allegations of racial profiling. Shi demonstrates measurable declines in police productivity in the aftermath of the riot and also documents a substantial increase in criminal activity. The estimated elasticities of crime to policing based on her approach were -0.5 for violent crime and -0.3 for property crime.

[paragraph omitted]

To summarize, aggregate studies of police presence conducted since the mid-1990s consistently find that putting more police officers on the street—either by hiring new officers or by allocating existing officers in ways that put them on the street in larger numbers or for longer periods of time—has a substantial deterrent effect on serious crime. There is also consistency with respect to the size of the effect. Most estimates reveal that a 10 percent increase in police presence yields a reduction in total crime in the neighborhood of 3 percent. Yet these police manpower studies speak only to the number and allocation of police officers and not to what police officers actually do on the street beyond making arrests. The next section reviews recent evaluations of deployment strategies used by police departments in order to control crime.

These studies show that a greater threat of punishment tends to deter crime. It is difficult to compare these deterrent effects to rehabilitation directly, since most studies of rehabilitation measure recidivism rates, not crime rates. But be sure to point out on NEG that the effects of deterrence are wider than those of rehabilitation, since they apply to everyone in the population, not just those who have already been convicted of crimes.

## **Conclusion**

This resolution has substantial real-world relevance, since our priorities in criminal justice impact crime and recidivism rates. Applications will therefore play a central role in most debate rounds, and familiarity with the empirical research on crime will give debaters a significant advantage. I have merely scratched the surface here; there is a wealth of evidence to explore on your own.