Intuitions  
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Negative Case by Joel Erickson



As with most negatives, you should think of this more as a strategy that you improvise and adapt depending on the affirmative’s case rather than a “case” that you read verbatim. Like many negatives, this case is primarily blocks of argumentation and evidence. You should not include all the arguments in a debate round. Add rhetorical flourishes to augment your points.

In light of this, the case includes three reasons to prefer and several sub-points under the contention that you may tailor to the affirmative’s arguments. Additionally, clarity of the terms is critical to your success with this case, so, if need be, engage the affirmative productively on the definitions, for example, to escape the “revenge” stigma or counter the “rehabilitation is a mode of punishment” definition.

Regarding tactics, this case depends predominantly on *persuasion* and *rhetoric*. Don’t rush your argumentation, but ponderously, methodically explain to the judge by justice necessitates a retributive response. Conceive of yourself not as a lawyer trying to sell the judge on your side, but as a “Socratic teacher” persona, where you enable the judges to discover the truth that they already know. Speak to their instincts.

Although you are not cognizant of your judges’ predispositions to the resolution, have the mentality that they want to concur with you, and that all you have to do is align with their intuitions. Emphasize that rehabilitation isn’t punishment and that only retributive punishment satiates justice.

Many judges, even the ones that believe that rehabilitation supersedes retribution for various reasons, believe that justice demands punishment. This case is for them.

Intuitions

Martin Luther King Jr. once asserted that, “Injustice anywhere is a threat to justice everywhere.”[[1]](#footnote-1) It’s because rehabilitation perpetuates grievous injustice that I oppose the resolution, and urge you to value retribution above rehabilitation in criminal justice systems.

# Definitions

*(Only run definitions on NEG if you deem the affirmative definitions insufficient and\or abusively detrimental to your position. When providing a counter-definition, always utilize one or two robust reasons to prefer, and enumerate the impacts.)*

**Retribution:** According to Merriam-Webster, “retribution” is “something given or exacted for recompense; punishment for doing something wrong.”[[2]](#footnote-2)

## Reason to Prefer: Balanced

The affirmative has attempted to stigmatize retribution by portraying it as “revenge” or “vengeance.” However, as Merriam-Webster indicates, these connotations do not necessarily follow from retribution. Reject the myopic interpretation of the affirmative and prefer the definition that most comprehensively explains the term.

## Impact: Retribution Is Punishment, Not Revenge

Consequently, the meaning of retribution is much broader than merely revenge. Retribution also encompasses punishment, recompense, and, in some contexts, even rewards.[[3]](#footnote-3)

**Rehabilitation** is teaching. Merriam-Webster defines “rehabilitate” as “to teach (a criminal in prison) to live a normal and productive life.”[[4]](#footnote-4)

Having clarified the terms, let’s look at a standard to compare the two sides of the resolution.

# Value: Justice

The American Heritage Dictionary defines “justice” as “The principle of moral rightness.”[[5]](#footnote-5)

## Reason to Prefer 1: Topic Context

The resolution is situated within the realm of “criminal justice systems,” meaning we must apply a value that corresponds with the resolution’s backdrop. A value of justice, naturally, is the perfect candidate. If you’re not persuaded by the fact that the word “justice” appears in the resolution’s wording, several criminal justice systems indicate that justice is indeed their paramount goal. For example, the United Kingdom expresses it thus:

“The purpose of the Criminal Justice System (CJS) is to deliver justice for all, by convicting and punishing the guilty and helping them to stop offending, while protecting the innocent. It is responsible for detecting crime and bringing it to justice; and carrying out the orders of court, such as collecting fines, and supervising community and custodial punishment.”[[6]](#footnote-6)

## Reason to Prefer 2: Societies Require Justice

Justice undergirds stable societies. Our Founding Fathers recognized this in stating justice as their first (and, by inference, primary) objective in the Preamble to the Constitution.

“We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”[[7]](#footnote-7)

Without justice, societies devolve into chaos or tyranny. For instance, in North Korea is the number one human rights offender in the world.[[8]](#footnote-8) According to Human Rights Watch,

*Quote.* “North Korea's criminal justice system is a sham. The judiciary is neither transparent nor independent. Law enforcement agents and judges, prosecutors and lawyers, are appointed by the ruling Workers' Party. Some of the most harshly punished crimes -- such as "hostile acts against North Korea" -- are vaguely defined, and appealing a court ruling is practically impossible.”[[9]](#footnote-9) *Unquote.*

The unspeakably egregious actions of the North Korean regime are the direct result of a society devoid of justice’s stabilizing influence.

## Reason to Prefer 3: Morality Is Primary

While my second reason to prefer does provide a pragmatic rationale for upholding justice, ultimately, the cardinal reason is that concerns about right and wrong supersede all other matters. Before discussing matters of utility and consequence, we must always ask the question, “What is the right thing to do in this situation?” Valuing justice ensures a robust moral foundation.

I’ll demonstrate the resolution to be false in two contentions.

# Contention 1: Rehabilitation Does Not Satisfy Justice

Certainly, rehabilitation contains some positive aspects. Yet, it utterly fails to satisfy the fundamental principle of justice—“giving to each his due.”[[10]](#footnote-10) Consider this thought experiment from the *Stanford Encyclopedia of Philosophy.*

## Thought Experiment: Repentant Rapist

“Consider, for example, a rapist who has since suffered an illness that has left him physically incapacitated so that he cannot rape again, and who has enough money to support himself without resorting to criminal activities. Suppose that this suffices to ensure that there is no need to deter or incapacitate him to prevent him from committing serious crimes in the future. Suppose, in addition, that he will regularly report to a prison to be filmed in prison garb, thereby conveying the impression that he is living in prison, though the truth is that he spends his days relaxing and pursuing his interests on a tropical island. If that ruse were secure from discovery, then general deterrence could be achieved as well. Even if the goods normally achieved by punishment are thereby achieved, is there not still some reason to want him to be punished?”[[11]](#footnote-11) [read last question very slowly]

Giving criminals access to recording studios in prison may be a kind gesture, but it is in no way, shape, or form *just*. Because rehabilitation does not administer punishment, it can never actualize justice.

# Contention 2: Retribution Satisfies Justice

From the Levitical law to Immanuel Kant, from Hammurabi’s code to the Roman Republic, history demonstrates the inseparable link between retributive punishment and the pursuit of justice.[[12]](#footnote-12) As we see in the thought experiment of the repentant rapist, other philosophies of criminal justice, while good, are insufficient at achieving justice. Retribution alone gives criminals their due.

# Conclusion

By letting criminals “off the hook,” rehabilitation tramples moral precepts and undermines the bedrock of society. Retribution ensures that criminals receive their due. In today’s round, negative is the only just option. Thank you.

Affirmative Brief

The idea that justice necessitates retributive punishment appeals to a majority of judges. Here are two ideas for dismantling that presupposition.

1. **Contest the Retributive Notion of Punishment**. While the idea sounds disingenuous to many, the literature abounds with alternate theories of punishment. Challenge the judges’ initial biases on the issue and contend that rehabilitation is a form of punishment, deny the link between justice and punishment, or suggest that punishment is inhumane. Or choose all three. The *Stanford Encyclopedia of Philosophy* contains reams of information on these three topics.[[13]](#footnote-13)
2. **Dispute Justice**. There are numerous strategies to advance against justice. Can we know truly know justice? Haven’t philosophers throughout the centuries disagreed on what constitutes justice?[[14]](#footnote-14) According to which moral standard is “the principle of moral rightness”? How do we know this is the correct moral standard? Doesn’t each society implement justice differently? How do we determine the “due” each person must receive? What’s the metric for proportional punishment? Justice is subject to a variety of pitfalls. Based on your specific affirmative case, pick the strategy best suited to your purposes and eviscerate the value of justice.[[15]](#footnote-15)

1. Martin Luther King, Jr. “Letter from Birmingham Jail,” 1963. <https://www.africa.upenn.edu/Articles_Gen/Letter_Birmingham.html> [↑](#footnote-ref-1)
2. “Retribution,” Merriam-Webster, 2016. <http://www.merriam-webster.com/dictionary/retribution> [↑](#footnote-ref-2)
3. “Retribution,” The Free Dictionary, 2016. <http://www.thefreedictionary.com/retribution> [↑](#footnote-ref-3)
4. “Rehabilitation,” Merriam-Webster, 2016. <http://www.merriam-webster.com/dictionary/rehabilitation> [↑](#footnote-ref-4)
5. “Justice,” American Heritage Dictionary, 2016. <https://ahdictionary.com/word/search.html?q=justice&submit.x=45&submit.y=24> [↑](#footnote-ref-5)
6. United Kingdom National Archives. “Criminal Justice System: Aims and Objectives.” <http://webarchive.nationalarchives.gov.uk/20101019153126/http://www.cjsonline.gov.uk/aims_and_objectives/> [↑](#footnote-ref-6)
7. Constitution of the United States of America, 1787. <https://www.law.cornell.edu/constitution/preamble> [↑](#footnote-ref-7)
8. “North Korea,” Human Rights Watch. <https://www.hrw.org/asia/north-korea> [↑](#footnote-ref-8)
9. “From a North Korean Hell to Home,” Human Rights Watch, 2010. <https://www.hrw.org/news/2010/08/27/north-korean-hell-home> [↑](#footnote-ref-9)
10. “Western Theories of Justice,” Internet Encyclopedia of Philosophy, 2016. <http://www.iep.utm.edu/justwest/> [↑](#footnote-ref-10)
11. “Retributive Justice,” Stanford Encyclopedia of Philosophy, 2016. <http://plato.stanford.edu/entries/justice-retributive/> [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. “Punishment,” Stanford Encyclopedia of Philosophy, 2016. <http://plato.stanford.edu/entries/punishment/> [↑](#footnote-ref-13)
14. “Western Theories of Justice,” Internet Encyclopedia of Philosophy, 2016. http://plato.stanford.edu/entries/punishment/ http://www.iep.utm.edu/justwest/ [↑](#footnote-ref-14)
15. “Justice and Fairness,” Markkula Center for Applied Ethics, 2014. <https://www.scu.edu/ethics/ethics-resources/ethical-decision-making/justice-and-fairness/> [↑](#footnote-ref-15)