NCFCA Justice/Balance Source Case  
Opposition Brief by Joel Erickson



NCFCA’s latest source cases attempts to strike a principled balance using the ideal of justice. Their analysis hinges upon an alternate definition of retribution and several flawed points of evidence under the contentions. Use this opposition brief to demonstrate how the definition leads to unappetizing implications—a society of vengeance and inhumane punishment, how the value has been disputed by philosophers since the advent of philosophical thought, and how the contention simply deconstructs when subjected to careful scrutiny.

More specific ways to use the evidence cards are listed below.

**Answers to Definition:** The NEG case definition notes that, “In general, the severity of the punishment is proportionate to the seriousness of the crime,” and continues to cite Ancient Near Eastern law codes as the foundation for proportionality and retribution. Use the evidence cards below to demonstrate why predicating proportionality and retribution on Hammurabi’s conception of law is unquantifiable and invariably results in inhumane punishments.

**Answers to Value:** This piece of evidence encompasses the gamut of philosophical views on justice. Employ it to demonstrate to your judge that a value ought to be a relatively static and concurred-upon concept, not one of which the meaning has been hotly disputed throughout the millennia.

**Answers to Contention 1:** You don’t need additional evidence to counter this contention; the cards for the definition and value are sufficient to rattle your judge’s preconceived notions about justice. Ensure that you observe that this contention’s advocacy is entirely vested in an artist’s portrayal of “Lady Justice,” whereas yours is from academic sources explicating the meaning of your opponent’s definition.

**Answers to Contention 2, subpoint A:** This evidence directly rebuts the negative’s claims.

**Answers to Contention 2, subpoint A and Contention 3:** No new direct evidence needs to be presented when dismantling these claims. Refer back to how you’ve deconstructed the definition and value and cross-apply that evidence and analysis to these points.

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Answers to Definition: Retribution Historically Exacted Through Cruel and Violent Forms of Punishment

Materni, Mike. Criminal Punishment and the Pursuit of Justice (2013). 2 Br. J. Am. Leg. Studies 263 (2013). <http://hls.harvard.edu/content/uploads/2011/09/michele-materni-criminal-punishment.pdf>

“Despite its “absence” from “mainstream criminal law discourse,” however, retributivism has a long-dating pedigree in the criminal law. Indeed the history of criminal punishment the history of the criminal law – is pervaded with retribution. Back in the day, retribution tended to be exacted through cruel and violent forms of punishment. Just think, for example, of Damiens’ *supplice*, graphically described by Michel Foucault: ‘On 2 March 1757 Damiens the regicide was condemned ‘to make the *amende honorable* before the main door of the Church of Paris,’ where he was to be ‘taken and conveyed in a cart, wearing nothing but a shirt, holding a torch of burning wax weighing two pounds;’ then, ‘in the said cart, to the Place de Grève, where, on a scaffold that will be erected there, the flesh will be torn from his breasts, arms, thighs and calves with red-hot pincers, his right hand, holding the knife with which he committed said parricide, burnt with sulphur, and, on those places where the flesh will be torn away, poured molten lead, boiling oil, burn- ing resin, wax and sulphur melted together and then his body drawn and quartered by four horses and his limbs and body consumed by fire, re- duced to ashes, and his ashes thrown to the winds.’”

Answers to Definition: Hammurabi’s System Bizarre and Gruesome

Andrews, Evan. “8 Things You May Not Know About Hammurabi’s Code,” History Lists, December 17, 2013. <http://www.history.com/news/history-lists/8-things-you-may-not-know-about-hammurabis-code>

“Hammurabi’s Code is one of the most famous examples of the ancient precept of ‘lex talionis,’ or law of retribution, a form of retaliatory justice commonly associated with the saying ‘an eye for an eye.’ Under this system, if a man broke the bone of one his equals, his own bone would be broken in return. Capital crimes, meanwhile, were often met with their own unique and grisly death penalties. If a son and mother were caught committing incest, they were burned to death; if a pair of scheming lovers conspired to murder their spouses, both were impaled. Even a relatively minor crime could earn the offender a horrific fate. For example, if a son hit his father, the Code demanded the boy’s hands be ‘hewn off.’”

Answers to Definition: Eye-for-an-Eye Governments Stooping to Criminals’ Level

Bradley, Gerald V. “Retribution and Overcriminalization,” Heritage Foundation, March 1, 2002. <http://www.heritage.org/report/retribution-and-overcriminalization>

“To apply the ‘eye for an eye’ norm non-metaphorically, a polity would have to be willing to do whatever its most depraved members might do.

Answers to Value: Justice is Disputed

Pomerleau,Wayne, “Western Theories of Justice,” Internet Encyclopedia of Philosophy. <http://www.iep.utm.edu/justwest/>

“For Plato, justice is a virtue establishing rational order, with each part performing its appropriate role and not interfering with the proper functioning of other parts. Aristotle says justice consists in what is lawful and fair, with fairness involving equitable distributions and the correction of what is inequitable.  For Augustine, the cardinal virtue of justice requires that we try to give all people their due; for Aquinas, justice is that rational mean between opposite sorts of injustice, involving proportional distributions and reciprocal transactions.  Hobbes believed justice is an artificial virtue, necessary for civil society, a function of the voluntary agreements of the social contract; for Hume, justice essentially serves public utility by protecting property (broadly understood).  For Kant, it is a virtue whereby we respect others’ freedom, autonomy, and dignity by not interfering with their voluntary actions, so long as those do not violate others’ rights; Mill said justice is a collective name for the most important social utilities, which are conducive to fostering and protecting human liberty.  Rawls analyzed justice in terms of maximum equal liberty regarding basic rights and duties for all members of society, with socio-economic inequalities requiring moral justification in terms of equal opportunity and beneficial results for all; and various post-Rawlsian philosophers develop alternative conceptions.”

Answers to Contention 2, Subpoint A: Retribution Does Not Focus on Victim

Tapachinik, Cara. “When Victims and Criminals Meet, Both Parties Benefit,” Scientific American, September 1, 2014. <https://www.scientificamerican.com/article/when-criminals-and-victims-meet-both-parties-can-benefit/>

“Our legal system often fails to help either victim or offender. Years after a crime, victims may still suffer from post-traumatic stress. Offenders, too, can struggle after their release from prison; limited rehabilitation means that they often return to a life of crime. To help remedy these wrongs, proponents of “restorative justice” methods advocate for face-to-face meetings between victims and offenders.”

Answers to Contention 2, Subpoint A: Rehabilitation Focuses on Victim

Tapachinik, Cara. “When Victims and Criminals Meet, Both Parties Benefit,” Scientific American, September 1, 2014. <https://www.scientificamerican.com/article/when-criminals-and-victims-meet-both-parties-can-benefit/>

“Caroline M. Angel, a criminologist at the University of Pennsylvania, and her colleagues examined the effects of restorative justice for London robbery and burglary victims and their perpetrators. The victims were randomly assigned either to go through both the court system and a restorative justice conference or to go through just the court system. In the restorative justice group, trained facilitators led meetings where offenders discussed the effects of the crime with their victims and the victims' family and friends. About a quarter of the victims who went through the criminal justice system showed clinical symptoms of post-traumatic stress, but only 12 percent of the group who also had restorative justice conferences had symptoms. ‘Restorative justice gives victims that chance to reframe the story and heal in the process,’ Angel says. The second study, conducted by University of Cambridge criminologists Lawrence Sherman and Heather Strang and their colleagues, focused on whether these methods can reduce reoffending. The research, published in March in the Journal of Quantitative Criminology, analyzed 10 trials that used randomized controls to examine the effect of restorative justice conferences on criminals. They found that offenders who participated in the conferences committed fewer subsequent crimes and that the method was also cost-effective. Overall, research from the past 20 years has shown that restorative justice works—yet such practices are uncommon in the American criminal justice system. Advocates say the reluctance stems from our culture of harsh punishment and politicians' need to be seen as ‘tough on crime.’ Nevertheless, pilot programs have sprung up at a few locations across the country in recent years, and researchers hope that these findings will spur more change soon.”