Moral Agency  
  
Negative Case by Drew Magness



This case is offensive as all get-out. It’s bold, aggressive and risky. The core idea behind this case is that crime is a choice and rehabilitation dehumanizes criminals by rewarding bad choices while retribution allows criminals to accept the consequences of their choice.

The value is easy to push. Outweigh all other values with your reason to prefer and run a second one if necessary of “First priority.” Any resolution dealing with human behavior absolutely must put this value first in order to truly treat humans as humans.

The contentions follow logically and are easy to develop. The hardest part of your case is winning the value battle. Add extra RTP’s if necessary. Move some of the evidence from the contentions into the value. Do whatever it takes to let your judge know that moral agency is the most important concern in the round.

Moral Agency

In the book, “A Clockwork Orange” by Anthony Burgess, the protagonist Alex has committed atrocious crimes. However, he’s put through a process called reclamation treatment which rehabilitates him and prepares him to go back into society. When he tells his story to an old gentleman who took him in, the man launches into a tirade against these actions and says, “A man who cannot choose, ceases to be a man.”

Free will is what makes us who we are and this resolution pretends it doesn’t exist.

# Value: Moral Agency

Moral Agency is operationally defined as: “A human’s ability to make moral choices freely.”

Every day, we all choose to do things that are either moral or immoral. We choose to work for our money, or we choose to rob a bank. We are all moral agents.

Here are two reasons to use this value.

## Reason to Prefer 1: Central to Behavior

As Joseph L. Falvey Jr., the Associate professor of law at Ave Maria School of Law put it, “Other creatures are naturally ordered and are incapable of acting in any way other than that dictated by instinct or natural inclination, but human beings, by their rational nature, are capable of apprehending "good" and are therefore able to move themselves towards that good, not by necessity, but by their rational appetite - that is, the will. Consequently, when a human being deliberately moves him-self towards "evil," he is blameworthy and deserving of punishment.”[[1]](#footnote-1)

This idea is central to all behavior, criminal and otherwise. Respecting moral agency is respecting our very humanity. Any resolution that has anything to do with behavior, must use the concept of moral agency as a weighing mechanism.

# Contention 1: Rehabilitation Crushes Moral Agency

Colleges can charge hundreds of thousands of dollars for a four year education. This makes sense, most people realize that you have to pay to receive good things like education, therapy, and counseling. Those who follow the rehabilitation paradigm however tend to turn this upside-down and say that if you break the laws of our society, you get good things for free! In essence, you get a treat for robbing a bank because it helps society.

There is no moral justification for this idea. If humans do indeed have moral agency and are rational decision-makers, then they should be able to accept the consequences of their actions. In fact, to ignore them the consequences of their actions is to ignore their most basic human rights. As C.S. Lewis put it in “The Humanitarian Theory of Punishment,”

“To be ‘cured’ against one’s will and cured of states which we may not regard as disease is to be put on a level with those who have not yet reached the age of reason or those who never will; to be classed with infants, imbeciles, and domestic animals.”[[2]](#footnote-2)

Crime is not a disease. It’s a choice. Every man who stands outside of a gas station with a gun is not forced to go in there and point it at the cashier by some outside force. No, that man is making a choice.

Denying him the consequence of that choice is to deny him his very humanity.

We shouldn’t reward bad behavior with treats.

# Contention 2: Retribution Respects Moral Agency

Legal expert J.S. Bainbridge Jr. says,

“Paradoxically, then, retributive principles favor fairness and free will. They don't necessarily mean that criminals will receive longer prison terms. What retribution does mean is that if people make choices about what they do, they must face the consequences.”[[3]](#footnote-3)

This is a pretty simple concept. Crime is a choice. Choices have consequences. Humans have a right to make choices. Humans have the obligation to accept the consequences. Retribution is the only way to respect this fundamental aspect of humanity.

Again from C.S. Lewis in “The Humanitarian Theory of Punishment,

“An eye for an eye” is the most liberal principle of justice because it recognises the dignity and independence of the individual. If a criminal has any rights at all surely he has the right to be treated as an autonomous human being who can carry the consequences of his actions.”

Allow criminals to accept the consequences of their actions. Don’t give criminals cookies. Give them what they chose.

Affirmative Brief: Moral Agency

There’s no one magic button that will kill this case. If you have a moral framework, you have some legwork to do. You could override with stories of how crime is a choice, but it’s one people are pushed into. Show the inflexibility of such a system and how when taken to its logical conclusion, it means that you should be punished for all the movies you’ve pirated, all the times you’ve jaywalked, all the speed limits you’ve broken etc. There’s a better system.

Or, if you’re going pragmatic you’ll have to outweigh by showing how governments ought to care for their citizenry and that rehabilitation ensures the best outcome for the majority of citizens and is therefore a clearer path for governments. You’ll have to make the idea of moral agency muddy or run a pure outweigh. Both options are strong.

Pick your weapon based off of the ideas brought up within your own case.

1. *Joseph L. Falvey Jr. [Associate Dean for Academic Affairs and Associate Professor of Law at Ave Maria School of Law, Ann Arbor, Michigan. B.A.; University of Notre Dame; J.D., Notre Dame Law School; LL.M. The Judge Advocate General's School of the Army], “CRIME AND PUNISHMENT: A CATHOLIC PERSPECTIVE”, The Catholic Lawyer [The St. Thomas More Institute for Legal Research of St. John's University School of Law], Spring 2004 (43 Catholic Law. 149)*  [↑](#footnote-ref-1)
2. *C.S. Lewis, “The Humanitarian Theory of Punishment”, Res Judicatae [student-run law journal at the University of Melbourne], 1953 (6 Res Judicatae 224)*  [↑](#footnote-ref-2)
3. *J. S. Bainbridge Jr. [associate with the Baltimore law firm of Piper & Marbury. He was formerly state legal affairs reporter for the Baltimore Sun and wrote "Can Women Be Kept at the Back of the Jaycees Bus?" in the June 1984 ABA Journal], “The Return of Retribution”, ABA Journal [American Bar Association], May 1985 (71 A.B.A.J. 60)*  [↑](#footnote-ref-3)