Restitution  
Negative Case by Joel Erickson



76%.

It’s the recidivism rate continually flaunted by pragmatic affirmatives, employed to demonstrate the sheer failure of retribution to avert crime, utilized to underscore the dichotomy between the efficacy of rehabilitation (as demonstrated through the Norway’s alleged 20% recidivism statistic). While the debate over conflicting recidivism statistics is albeit simplistic and underdeveloped, affirmatives frequently manage to secure victory through emphasizing and re-emphasizing the appalling disparity between the numbers. And such a clear-cut distinction is much more appealing to judges who find it difficult to grasp amorphous moral constructs such as justice.

This case attempts to mitigate this problem.

Instead of accepting the recidivism rate paradigm, “Restitution” offers a resolutional framework designed to liberate Lincoln-Douglas from a mere analysis of the status quo and rather focus on its true objective—providing prescriptions to guide policy. Both rehabilitation and retribution can be executed inefficiently and ineffectively; the point of LD is not to choose between the worse of two bad options, but the better of two good options. When both rehabilitation and retribution, without stigmatizing the other side based on misapplication in the past, approach the debate round with their competing positive prescriptions, which one ought to win?

Grounded in this framework, this case resuscitates a common incarnation of retribution used for several millennia: restitution. It links restitution to justice and demonstrates that retribution, not rehabilitation, is the proper route to compensating the victim for harms suffered.

Restitution

# Resolutional Analysis: Prescriptive, Not Descriptive, Debate

While considering current state of affairs is important for Lincoln-Douglas, we need to recognize that it is secondary to deliberating how things should be. In other words, LD is prescriptive, not descriptive. Neither my opponent or I seek to propound a mere description of the way the world *is*, but we each prescribe how the world *ought* to be.

## Impact: Choose Between Better of Both Worlds

Both sides of the resolution will have negative repercussions in the real world. My opponent has noted some of the undesirable ramifications of prioritizing retribution. By the same token, of course, rehabilitation can be implemented poorly. As Amy Brittain writes in *The Washington Post*,

“Hundreds of criminals sentenced by D.C. judges under an obscure local law crafted to give second chances to young adult offenders have gone on to rob, rape or kill residents of the nation’s capital. The original intent of the law was to rehabilitate inexperienced criminals under the age of 22. The District’s Youth Rehabilitation Act allows for shorter sentences for some crimes and an opportunity for offenders to emerge with no criminal record. But a Washington Post investigation has found a pattern of violent offenders returning rapidly to the streets and committing more crimes. Hundreds have been sentenced under the act multiple times. In dozens of cases, D.C. judges were able to hand down Youth Act sentences shorter than those called for under mandatory minimum laws designed to deter armed robberies and other violent crimes. The criminals have often repaid that leniency by escalating their crimes of violence upon release.”[[1]](#footnote-1)

Both rehabilitation and retribution can go horribly awry when enacted in the real world. Each side of the resolution can be warped and distorted into an extreme. Fortunately, because LD isn’t a descriptive debate, we don’t necessarily have to make our decisions based on poor political precedent. Rather, because LD is prescriptive, you get to choose between the best of both possible worlds—my opponent’s positive vision of rehabilitation and my positive vision of retribution. Forget all the times the government has botched rehabilitation and retribution—we could dredge up horrific stories for both sides of the resolution *ad nauseam.* To stage a productive debate, we need to focus on the crux of LD—its prescriptive nature. Both my opponent and I offer prescriptions for the resolution. It’s your choice to opt for the better world, not whichever one can be misconstrued to be worse.

# Value: Justice

Roman emperor and philosopher Justinian codified “justice” into law as “the set and constant purpose which gives to every man his due.”[[2]](#footnote-2)

## Reason to Prefer: 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.”[[3]](#footnote-3)

# Criterion: Restitution

Defined by the New Oxford American Dictionary as “recompense for injury or loss,”[[4]](#footnote-4) restitution dictates that if you harm someone, say, by stealing one hundred dollars from him, you ought to restore him to his former condition by compensating for his loss.

## Criterion Link: Manifestation of Justice

Paul Tullis writes in the *New York Times* that “Most modern justice systems focus on a crime, a lawbreaker and a punishment. But a concept called ‘restorative justice’ considers harm done and strives for agreement from all concerned — the victims, the offender and the community — on making amends.”[[5]](#footnote-5) As we already defined, justice consists of giving each his due, and restitution ensures justice is executed properly by forcing the criminal to repay the victim for harms suffered. The victim receives his due through compensation, the criminal receives his due through the resulting deprivation, and the community receives its due through the reestablished equilibrium engendered by the imposition of restitution on the criminal.

# Contention 1: Proper Retribution Involves Restitution

Recall the resolutional analysis: Simply because retribution does not currently involve restitution in the status quo doesn’t necessarily mean that retribution *shouldn’t* or *cannot* involve restitution—and retribution is executed best in conjunction with restitution. Retribution consists of punishment inflicted as vengeance, and the most just way to consummate this punishment is through having the offender repay the victim. According to the Center for Justice and Reconciliation, such a system conforms with the historical norm:

“Institutionalized restitution dates back to ancient times. Under the Babylonian Code of Hamumurabi (c. 1750 B.C.) victims were entitled to receive payment for certain property offences. Mosaic law required thieves to repay oxen to victims from whom they had stolen oxen. The Roman law of Twelve Tables (449 B.C.) prescribed repayment schedules for theft of property according to when, and under what circumstances, the thief stole and handed over the property. In the case of violent offences, Middle Eastern codes, such as the Sumerian Code of Urnammu (c. 2050 B.C.) and the Code of Eshnunna (c. 1700 B.C.) required restitution. In the ninth century in Britain, offenders were required to restore peace by making payments to the victim and the victim's family.”[[6]](#footnote-6)

*[if encountering a pragmatic case or wanting practical substantiation for your side]*

In fact, not only does retribution administered via restitution achieve justice, but also is guaranteed to consistently exact justice in the real world. According to the National Institute for Justice,

“A study involving 6,336 formal juvenile probation cases in Utah, conducted by the National Center for Juvenile Justice, found the use of restitution associated with significant reductions in recidivism among certain juvenile offenders. Juveniles agreeing to pay restitution as an informal disposition, as well as those formally ordered to pay restitution, returned to court significantly less often than juveniles who did not pay restitution.”[[7]](#footnote-7)

# Contention 2: Rehabilitation Cannot Involve Restitution

Despite accruing some decent benefits, rehabilitation is wholly incompatible with the idea of restitution, and therefore can never achieve the value of justice. Rehabilitation’s singular objective is to reform the criminal’s mindset, and devotes all its time and resources to attempting to teach the criminal to live a better life. As it stands, reformation isn’t necessarily giving the offender, the victim, and the community each their due. Maybe it comes part way to procuring justice for the offender, but fails to fulfill the other two demands of justice.

Rehabilitation doesn’t serve to compensate the victim for injury or damage—the obligation of justice—and as a result cannot coincide with restitution.

Affirmative Brief: Restitution

Most affirmatives’ immediate inclination is to contest the resolutional analysis. Typically, this takes the form of bombarding the negative with cross-ex questions (“you’d agree with me that we have to look at the concepts in the *real world*, right? Right? Right?) until the negative acquiesces, then smugly opening the 1AR with, “Now my opponent agreed with me in CX that we have to look at the real world. We don’t see retribution taking the form of restitution at all in the real world, but we all we do is see it failing, with an abysmal 76% recidivism rate. Rehabilitation on the other hand…” Then, the rest of the debate focuses on the question of what the phrase “real world” means, and doesn’t necessarily make for a productive debate round.

Fortunately, there are a couple other avenues by which to approach this case.

First, you could argue that the links between restitution and retribution are tenuous at best, and flat out nonexistent at worst. The case alludes to a connection under the second criterion link by associating restitution with retributive punishment… implying that because retribution causes a deprivation and restitution causes a deprivation, restitution and retribution are essentially the same. While this could possibly be true, if that’s the only reason, it’s invalid as a deductive argument. Furthermore, some restorative justice theorists, the primary proponents of restitution, distance themselves from retributive theory and claim that restitution is a distinct entity. Not only would this case be logically invalid, therefore, but you could argue that the negative is not upholding his position because he’s defending a concept foreign to the resolution.

Second, you could accept the framework and turn it by saying that rehabilitation leads to restitution, thereby achieving justice. The Center for Justice and Reconciliation (quoted in the case) notes that, “Potentially, for the offender, restitution can not only be less punitive, but more rehabilitative than incarceration. It allows the offender to express guilt in a concrete manner. It provides an alternative sanction with far less stigmatization than incarceration, ultimately better facilitating reintegration. Restitution affirms the offender's self-worth, giving him/her the opportunity to ‘make things right’.” These are powerful words, making for a productive debate on the essence of restitution. Is it rehabilitative, retributive, or a different concept altogether, and as such should it be excluded from the realm of the resolution?

1. Brittain, Amy, “Second-chance law for young criminals puts violent offenders back on D.C. streets.” *The Washington Post*, December 3, 2016. <https://www.washingtonpost.com/investigations/second-chance-law-for-young-criminals-puts-violent-offenders-back-on-dc-streets/2016/12/02/fcb56c74-8bc1-11e6-875e-2c1bfe943b66_story.html> [↑](#footnote-ref-1)
2. Russell Kirk, “The Meaning of Justice.” *Heritage Foundation*. <http://www.heritage.org/research/lecture/the-meaning-of-justice> [↑](#footnote-ref-2)
3. 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-3)
4. “Restitution,” Oxford Dictionaries, 2017. <https://en.oxforddictionaries.com/definition/restitution> [↑](#footnote-ref-4)
5. Tullis, Paul, “Can Forgiveness Play a Role in Criminal Justice?” *The New York Times*, Jan. 4, 2013. <http://www.nytimes.com/2013/01/06/magazine/can-forgiveness-play-a-role-in-criminal-justice.html> [↑](#footnote-ref-5)
6. Center for Justice and Reconciliation, <http://restorativejustice.org/restorative-justice/about-restorative-justice/tutorial-intro-to-restorative-justice/lesson-3-programs/restitution/> [↑](#footnote-ref-6)
7. “Restitution,” National Institute for Justice, Dec. 2007. <https://www.nij.gov/topics/courts/restorative-justice/promising-practices/pages/restitution.aspx> [↑](#footnote-ref-7)