To Each His Due  
Negative Case by Zachary Beddingfield



Ethics are fun. It’s one of the things that makes this year’s resolution so interesting, but all things are best in moderation, and often LD rounds can become bogged down in abstract concepts that really have nothing to do with preventive war. Try explaining to your elderly community judge who has never seen a debate round why rule-utilitarianism is better than standard utilitarianism. Sure, you could win the argument, but it will take time, and you only have thirteen minutes of that, plus cross examination.

This case attempts to take on the resolution differently than traditional cases, by arguing that ethical theories, while exciting and worth discussing, are extremely complex, and that the debate can be better spent arguing preventive war itself rather than the semantics of ethical theories. To do this, the case draws on a claim from the book “Justice in Performance Situations: Compromise Between Equity and Equality.” One of the premises in that book is that ethics is a category of philosophy aimed at determining what is just. Logically, from this, if something is just then it must be ethical. Furthermore, scholars are already in unison on a definition of justice: “To each his due,” hence the name of the case.

Everything so far should be relatively easy to establish. Your goal is to win what comes next: that preventive war does not give to each his due. The first priority is to make clear that government is obligated to give all people what they are ‘due’. This case does that through metaphor, specifically, that the courts should never punish someone for something they haven’t done. The defendant is ‘due’ due process, as well as the right to only be punished for crimes she have committed, not crimes people feel she wants to commit nor crimes that she is statistically likely to commit.

You should reference back to this metaphor often. After all, it is core value of America (and thus a core value of your judges) that people are innocent until proven guilty. Similarly, you argue, other nations should be treated as innocent until they’ve actively chosen to attack you. If you can prove that ethics is achieved when individuals get what they are due, and that preventive war gives less than what is due to other nations, than you’ve won the logic of the debate.

To Each His Due

I have a new favorite legal term: “Fruit of the poisonous tree.” The fifth amendment of the constitution declares “No person shall … be deprived of life, liberty, or property, without due process of law.” **[[1]](#footnote-1)** There are certain things police cannot do in pursuing enforcement of the law. For example, they cannot search your home without probable cause or a warrant. “Fruit of the poisonous tree” is a term introduced by the Supreme Court which declares that any evidence found by a police officer through unlawful conduct is inadmissible in court. In this law, government has chosen to value due process and fairness over punishment. Even if the court believes with absolute certainty that you are guilty, you can only be convicted if given due process. This mindset, of due process always outweighing punishment, is why I stand resolved that **preventive war is not ethical.**

# Definitions (If Needed)

The United States Department of Defense defines preventive war as:

**“A war initiated in the belief that military conflict, while not imminent, is inevitable, and that to delay would involve greater risk.” [[2]](#footnote-2)**

Notice that this definition explains that preventive war *is not imminent*. Lluis Maria de Puig, President of the Parliamentary Assembly of the Council of Europe, expounds on this:

Thus, I shall refer to preventive war when describing an attack or war launched by one country in order to prevent a second country from developing the capacity to eventually inflict grievous harm on the first country. **It should be noted that, in** **[the case of preventive war]** this case, **the immediate threat has not yet materialized.[[3]](#footnote-3)**

# Resolution Analysis: Ethics is the Study of What is Just

Ethics is arguable the most complicated concept to define in the entire English language. There are many ethical theories, each competing even in the minds of the greatest philosophers. Definitively establishing an ethical framework for this round is not possible, as we simply don’t have the time to prove an ethical theory above all others. Fortunately, there is a singular common ground in *all* ethical frameworks. According to Dr. Hans-Werner Bierhoff and Dr. Elke Rohmann,

**The Branch of philosophy which focuses on the concept of justice is ethics.** The study of right action and morality constitute the subject matter of ethics.**[[4]](#footnote-4)**

While ethical theories differ in technical aspects of *how* we achieve justice, all ethical theories strive only to achieve justice. In other words, *if something is just, it is inherently ethical*.

# Value: Justice

Justice is a surprisingly easy term to define. According to the *Stanford Encyclopedia of Philosophy*,

**The most plausible candidate for a core definition [of justice] comes from the *Institutes of Justinian*, a codification of Roman Law from the sixth century AD, where justice is defined as ‘the constant and perpetual will to render to each his due’.[[5]](#footnote-5)**

This leads me to my criterion…

# Criterion: To Each His Due

To reiterate, Stanford is stating that the best way to define justice is simply *giving all people what they are due*. Judge, my main claim today is simple: By definition, for a policy to be ethical, it must seek to give each person their due.

# Contention 1: Preventive War is Without Warrant

To be clear, no. No, I am not suggesting that government should be applying for warrants to go to war. No, I am not suggesting that the evidence we have of possible threats from other nations was gotten through unethical means, and thus should be disregarded. However, I am advocating that the same spirit behind due process and innocence until proven guilty in America ought to be applied to how we view war. War is an act of violence and killing. War is punishment. And as punishment, war can only come *in response* to the offense. As Lluis Maria de Puig established earlier in my case, “In [the case of preventive war], the immediate threat has not yet materialized.”

So what we have with preventive war is a punishment that comes without a crime committed, and an action by our government taken without warrant.

# Contention 2: Preventive War Fails to Give Each His Due

As we’ve seen, all ethics is concerned with justice. Justice is focused on ensuring each receives his or her due. So, by definition, any action which renders to each his due is ethical. If an action can’t render each his due, it is not ethical.

Preventive war fails to render each his due because it seeks to punish a nation for a potential provocation that “has not yet materialized.” It is punishing someone for something they quite literally haven’t done. That’s a distinctly un-American ideology, and it goes directly against everything we understand about what individuals and their nations are due.

Just as using illegally obtained evidence in court violates due process, so does punishing someone for something they haven’t done. The courts have already solved their issue – they’ve declared all illegally-obtained evidence “fruit of a poisonous tree,” making it inadmissible in court. Now, it is time for us to solve our challenge, by establishing that conflict as a punishment or a means of self-defense should only be used only in response to an action. Preventive war is not this. Preventive war is punishment before that action has taken place. Preventive war cannot give each his due. It cannot be just. And it cannot be ethical.

Opposition Brief: To Each His Due

# Justice

Ethics And Justice Are Different

Velasquez, Manuel, et al. “Justice and Fairness.” *Markkula Center for Applied Ethics*, 1 Aug. 2014, [www.scu.edu/ethics/ethics-resources/ethical-decision-making/justice-and-fairness/](http://www.scu.edu/ethics/ethics-resources/ethical-decision-making/justice-and-fairness/). Markula Center for Applied Ethics is owned and managed by Santa Clara University.

According to the Markkula Center for Applied Ethics of Santa Clara University,

Justice, then, is a central part of ethics and should be given due consideration in our moral lives. In evaluating any moral decision, we must ask whether our actions treat all persons equally. If not, we must determine whether the difference in treatment is justified: are the criteria we are using relevant to the situation at hand? But justice is not the only principle to consider in making ethical decisions. Sometimes principles of justice may need to be overridden in favor of other kinds of moral claims such as rights or society's welfare. Nevertheless, justice is an expression of our mutual recognition of each other's basic dignity, and an acknowledgement that if we are to live together in an interdependent community we must treat each other as equals.

# To Each His Due

Governments Were Created To Give The Citizens Their Due

“Consitution., Preamble.” See, e.g., Scales v. United States, 367 U.S. 203, 276 (1961). This citation is pulled from the Supreme Court of the Untied States.

The only group of people our federal government is due to protect is established in the Preamble of 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 defence, 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.

**The Purpose Of Government Is To Protect The Citizens**

“Thomas Jefferson Quotes.” AZQuotes. Accessed August 4, 2019. [www.azquotes.com/quote/371390](http://www.azquotes.com/quote/371390).

According to founding father Thomas Jefferson,

**The fundamental purpose of government is to protect its citizens.**

1. *U.S. Constitution*. Amendment V. [↑](#footnote-ref-1)
2. "Preventive war." Dictionary of Military and Associated Terms. 2005. US Department of Defense. <https://www.bits.de/NRANEU/others/jp-doctrine/jp1\_02(05).pdf>. Accessed 12 Sept. 2019. More recent publications do not define Preventive War. There is no further context, and this is defining Preventive War directly. [↑](#footnote-ref-2)
3. Maria de Puig, Lluis. “The Concept of Preventive War and Its Consequences for International Relations.” *Council of Europe*, 8 June 2017, <assembly.coe.int/nw/xml/XRef/X2H-Xref-ViewHTML.asp?FileID=11677&lang=en>. Accessed 12 Sept. 2019. Lluis Maria de Puig is a (now deceased) former Spanish Senator and President of the Parliamentary Assembly of the Council of Europe. [↑](#footnote-ref-3)
4. Bierhoff, Hans-Werner, and Elke Rohmann. “Justice in Performance Situations: Compromise Between Equity and Equality.” *Justice and Conflicts Theoretical and Empirical Contributions*, edited by Elisabeth Kals, by Maes Jürgen, Springer Berlin, 2014, pp. 137–137. Dr. H.-W. Bierhoff is a German psychologist and professor of social psychology at the University of Marburg. Dr. Elke Rohmann is an interim lead Social Psychology at Ruhr University Bochum. [↑](#footnote-ref-4)
5. Miller, David, "Justice", *The Stanford Encyclopedia of Philosophy*(Fall 2017 Edition), Edward N. Zalta (ed.), URL = <https://plato.stanford.edu/archives/fall2017/entries/justice/>. [↑](#footnote-ref-5)