Counterplan Text: The USFG should designate all individuals in the United States below the poverty line as a “suspect class.”

The CP is key to prioritizing retribution without unfairly discriminating against the poor. **Datlof 12**[[1]](#footnote-1)

The second way to move toward a more coherent regime of punishment is somewhat less concrete, and relies heavily on ideas and arguments put forward in the United States Supreme Court case San Antonio Independent School District v. Rodriguez (1973). The plaintiffs in the case, Demetrio Rodriguez and several other citizens of his school district, claimed, “Texas’s system for financing public schools violated the equal protection clause of the Fourteenth Amendment because it discriminated on the basis of wealth.”20 The decision issued by the Supreme Court would focus on two initial questions: how to define a ‘suspect class,’ and whether education could be considered a fundamental right. **A suspect class is a group** of people that the **courts recognize as** particularly **likely to be subject to discrimination and thus deserving of special protection** in the eyes **of the law.**21 When granted the protection of suspect classification, the courts apply a standard of strict scrutiny in judging discrimination against the group. Strict scrutiny also is applied in any case where a fundamental right, particularly those enumerated in the Constitution, is violated. Applying a standard of strict scrutiny means that in order for a policy to be constitutional while treating the suspect class differently from other groups, it must be justified by a compelling governmental interest, be as narrowly tailored as possible toward achieving that interest, and use the least restrictive means available.22

[…]

Finally, although Justice Powell believed that classifying the poor as a suspect class was impossible, there are grounds to believe that it could and should have been done. The difficulty, Justice Powell suggests, stems from the fact that the group is “large, diverse and amorphous.”26 However, applying strict scrutiny to any class is difficult. There could be a minimum standard of wealth or access to education or living conditions that could be used as a proxy for severe and entrenched lack of opportunity that would afford certain individuals access to an additional level of legal protection. Just because fair treatment is difficult to administer does not make it justifiable to renege on a duty to provide it. Moreover, the specific reasons Justice Powell puts forth for refusing suspect classification to the poor are of questionable accuracy. He claims, “[the class of the poor] have none of the traditional indicia of suspectness: the class is not saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process.”27 The Rodriguez case, along with Murphy’ essay Marxism and Retribution, Rawls’s Theory of Justice, and endless empirical evidence show this to be false. **Those born in**to **poor households are less able to access** their **fundamental rights and** therefore exercise less **political power** than the average citizens. **They receive unequal treatment** that can be seen from the type of education they receive to the expertise of the lawyers that defend them in a court of law. Most importantly, **this is an historical inequity.** Just as AfricanAmericans, Hispanics and women have been deprived of equal treatment throughout long periods of American history, so too have those white Americans born into situations of financial destitution. While **offering the** poor the **protection of a suspect class** would be an imperfect solution, it **would alleviate** some of the **philosophical inconsistencies of applying retrib**utive punishment **in a capitalist**ic **society.** Although both retributive and utilitarian punishment theories have powerful arguments in their favor, both become difficult to defend at the margins. In their purest forms, utilitarians must defend an exclusively forward-looking system without any regard for desert of punishment whereas retributivists must defend an exclusively backward-looking system without any regard for the practical outcome. It is telling that while Bentham and Kant may have defended these extremes, modern policymakers do not speak in such universal terms. They recognize that, given the realities of the world that we live in and the inadequacies of even the best laid plans, the goal of creating an efficient and happy society for the majority does not outweigh the sacrifices that would be required of those who are left behind. Therefore, it is best to attempt to prevent individuals from falling behind in the first place, provide for those who have fallen behind, and in the meantime realize that in the marginal cases a balance of the theories of punishment is necessary in order to achieve acceptable outcomes.

1. Samuel Datlof (Brandeis University, International Studies and Politics). “In Search of a Practical Philosophy of Punishment.” WULR. Vol 5, Issue 3. Spring 2012. http://students.washington.edu/wulr/archive/Spring\_2012/Datlof\_Final%20(Section%203).pdf [↑](#footnote-ref-1)