# AT AFF - RvR

## Econ Turns

**1. T -** incarcerating people saves a ton of money. **The Times[[1]](#footnote-1):**

There has been a long debate among US academics about how to calculate the costs and benefits of prison. One study by Professor John DiIulio estimated that the annual cost of keeping a criminal in jail is $25,000 and the total social and economic cost to society (including policing, insurance, injuries, replacing stolen property, and household expenditure on security measures) of allowing the median offender to remain at large is $70,098. The resulting cost-benefit ratio is 25,000:70,098 or 2.80. On these assumptions it is worth jailing about 75% of criminals, but would be a waste of money to imprison low-rate offenders, who impose a cost on their fellow citizens of less than $25,000. … But all such estimates are based on assumptions and everyone knows that if you tweak the assumptions you can get the answer you want. How can we produce a more reliable estimate? Rather than opting for a single set of assumptions, let's explore a range. The first relies on a Home Office self-report survey of prisoners in 2000. The second is ultra-conservative, the third emulates Home Office calculations used to work out the crime-reducing effects of offending behaviour programmes, and the fourth is based on a study by Cambridge University's Professor Farrington to discover the cost-effectiveness of youth custody. The cost estimates were made in 2000 at 1999 prices and should be compared with prison costs for a similar period. According to the Parliamentary answer given in June 2001, the average cost per prisoner place in a male closed Young Offender Institution (where the most persistent offenders might find themselves) was £23,063. … Home Office assumptions: However, when the Home Office made a similar calculation of the crime-reducing effects of one of its programmes it multiplied the number of convictions by five to correspond to police recorded crime and then multiplied the result by a further 4.2 to correspond to the British Crime Survey, which has consistently revealed more crime than police records. This method produces a total number of 54 offences per year, which in turn produces a total cost of £103,842. For every £1 spent we save £4.50. Professor Farrington's preferred assumptions: Professor Farrington has expressed doubts about the 'five' multiplier used by the Home Office and cited his own earlier study of 18 year-olds in South London, which had found that for six types of crime (burglary, taking vehicles, stealing from vehicles, shoplifting, theft from automatic machines and vandalism) only about one in 30 led to conviction. If there are 2.57 convictions, they should be multiplied by 30 to arrive at the number of offences, 77. This produces a total social cost of £148,071. For every £1 spent we save £6.42. Even if we make the highly unrealistic assumption that criminals only commit the offences for which they are caught and convicted, prison is good value for money. When we make more accurate assumptions, based on official crime figures and Home Office estimates of the social and economic costs of crime, incarcerating persistent offenders is not only good value for money, it's a bargain.

## Rehab Solvency Takeouts

**1.** Rehab studies aren’t transferable to the real world. **Lipsey and Cullen[[2]](#footnote-2):**

The **research** reviewed here demonstrates that there are rehabilitation treatments with the potential to substantially reduce the recidivism of offenders in the correctional system and, in that way, reduce crime and enhance public safety. That **does not mean**, however, **that** the **rehabilitation programs currently** being used in correctional practice actually **have those** salutary **effects**. The increased punitive emphasis of recent decades has led to less rehabilitation programming with the result that many offenders are not exposed to any significant treatment at all (Tewksbury et al. 2000). Moreover, the types of **programs that are used in correctional practice are not the same mix that is represented in** the **research literature**. Educational and vocational programs, for instance, are common in correctional settings, with the latter often being no more than work assignments in a custodial setting. The treatments on which we have research, however, are more likely to have been developed from theory and prior research and to focus more directly on criminal behavior. The rehabilitation treatments on which the available research is based also differ from correctional practice in another important way. Many of the research studies involve treatments that were developed by the researcher or delivered by the researcher, for example, with the researcher or developer selecting and training the personnel, monitoring the quality of service, and the like. **Treatments** provided in the context of such research and demonstration projects are not necessarily representative of typical correctional practice. Nor are **[and] their results representative—the recidivism effects for treatments in which the researcher is involved are larger than those for similar treatments without such involvement** (Petrosino & Soydan 2005). In one meta-analytic comparison (Lipsey 1999), the mean effect size for research and demonstration programs was twice as large as that found in evaluations of routine practice programs in which the researcher had no role in design or implementation. In short, the **research on rehabilitation** treatment reviewed here provides an encouraging indication of the relatively large effects that might be attainable in actual practice, but **cannot be interpreted as evidence that current practice has** such effects or, indeed, that it **has any positive effects** at all.

**2.** Rehab weakens the threat of punishment and encourages crime. **Logan and Gaes[[3]](#footnote-3):**

As punishment, imprisonment conveys an important cultural message, but **if the official mission of a prison is defined** simultaneously **as** both punishment and **rehabilitation conflicting and confusing messages are transmitted** both inside and outside the prison walls. Inside the walls, such a definition conveys a message of rights without responsibility. **When a prison system is mandated in its mission statement to attempt rehabilitation**, or even merely to provide opportunities and resources for self-improvement, that mandate creates for inmates a legitimate claim (a right) to personally beneficial services. At the same time, **it undermines inmates' accountability** by defining them, like children, as insufficiently developed and disadvantaged persons for whose future behavior society must take some responsibility. Whereas imprisonment as punishment defines inmates as responsible for their past behavior, and whereas discipline within prison defines inmates as accountable for their current behavior, rehabilitation as a goal of the system defines inmates as not fully responsible for their future behavior. Outside the walls, **linking imprisonment with rehabilitation conveys a confusing message to the general public**. As punishment, the message of imprisonment is "Felonies are very wrong acts, and those who commit them will be held to account." But the message of the rehabilitation ethic is "Felonies are the result of personal deficiencies (of knowledge, skills, habits, values, temperament, motivation, personality, and so on) on the part of the individual; society must attempt to correct those personal deficiencies." That is not an appropriate message for society to construct through its institutions of punishment. **Such a message depicts criminal behavior in deterministic terms and portrays offenders as objects in need of adjustment, rather than as responsible human beings who must accept the consequences of their actions**. It may not actually excuse their crimes, but **it conflicts with and weakens the punishment message.**

**3.** Rehab fails – meta-studies show. **Pratt et al[[4]](#footnote-4):**

In the end, his essay painted a picture of **modern rehabilitation** that could **[can] only be characterized by widespread failure**. In summarizing the literature, Martinson stated confidently that “with few and isolated exceptions, the **rehabilitative efforts** that have been reported so far **have had no appreciable effect on recidivism**” (p. 25). Martinson’s harsh assessment of correctional rehabilitation was delivered through his 1974 essay, which became known as the Martinson Report (see Pratt, 2009), though it was actually derived from a lengthy manuscript later published in book form by himself and his colleagues (Lipton, Martinson, & Wilks, 1975). In this coauthored work, **Lipton et al. gathered all available studies of correctional treatment**, including only analyses considered to be scientifically rigorous and excluding those that failed to meet this standard. For example, studies that reached their conclusions in the absence of a control group were rightfully considered methodologically weak and unfit for inclusion in their review. **Their comprehensive search of the treatment literature netted 231 studies** conducted between 1945 and 1967, **which** in essence **contained everything that the scientific community knew about the effectiveness of offender rehabilitation**. The only problem was that extracting all of the necessary knowledge from this large body of literature was a task that few academics had time for, let alone practitioners in the field of correctional treatment. A comprehensive synthesis of this research, then, had a very attractive benefit: It would allow correctional administrators, legislators, and any other interested parties to draw scientifically based conclusions about the success or failure of prison reform efforts. And of course, this science could then be used to drive the policies that determined how offenders should best be dealt with. Basing his essay on this more comprehensive analysis, Martinson (1974) presented the reader with a series of questions—seven, to be precise—organized around the broad issue of “what works” in the context of prison reform. More specifically, Martinson posed an important question, followed by an answer, that was seemingly based on the best available empirical evidence at the time. For example, the first question posed to the reader asked, Isn’t it true that a correctional facility running a truly rehabilitative program— one that prepares inmates for life on the outside through education and vocational training—will turn out more successful individuals than will a prison which merely leaves its inmates to rot? (p. 25) Similarly phrased questions were not only asked about education and vocational training, but also about various forms of counseling, milieu therapy, medical treatment, community corrections, and even more traditional approaches such as increasing the level of security and length of sentence faced by inmates. Time and again, Martinson’s guided tour of the research wandered down a path ending with a similar conclusion: **Prison[s]** reforms, as they existed, **were** quite simply **unable to rehabilitate inmates in any consistent fashion**. As mentioned, Martinson’s tour began with an examination of the effectiveness of education and vocational training. Such training is commonplace in American prisons, and the assumption is that bettering inmates through education and providing them with skills to be employed in the marketplace will help them become a better fit in society, ultimately reducing future offending. This is certainly a worthy goal to be upheld by prisons seeking inmate reform, but can training of this nature truly reshape offenders and reduce recidivism? **In reviewing the research,** Martinson pointed to **several studies [showed] that** examined this question in the context of both young and adult males. Of the studies discussed, only one was able to demonstrate a reduction in recidivism, but this unique finding was quickly attributed to bias in the experimental group. Martinson (1974) was unable to explain why education and vocational programs were failing, but he was able to ensure the reader that “[w]hat we do know is that, to date, **education and skill development have not reduced recidivism by rehabilitating criminals**” (p. 28).

**4.** Rehab fails and weakens the threat of punishment – meta studies prove. **Thompson[[5]](#footnote-5):**

The techniques of such reformation, applied sometimes in prison and sometimes in other settings, include various combinations of individual and group psychotherapy, counseling and vocational education**. A survey of some 100 studies of correctional practices concludes that the various kinds of reformation are no more successful in preventing recidivism than are conventional punishments such as imprisonment**. Another criminologist, referring to this same survey, believes that it is possible that ‘**all or most correctional treatment programmes are harmful**. Although there is no evidence about the effects of reformation on general deterrence, it seems likely that **reformation weakens** such **deterrence by making the consequences of conviction seem less certain and less severe**, even though in fact confinement may be ‘indefinite’ for treatment of some criminals.

**5.** Rehab programs can’t be implemented and don’t reduce recidivism. **Von Hirsch and Maher[[6]](#footnote-6):**

Programs appear to have better prospects for success when they **focus on** selected **subgroups of offenders**, carefully screened for amenability.[17] Such a screening approach, however, necessarily **limits** the scope for **rehabilitation.** Perhaps this or that type of program can be shown to succeed with this or that subgroup of offenders. **Treatments do not** (and are not likely to) **exist**, however, **that can be relied upon to decide sentences** routinely—**[and] that** can inform the judge, when confronted with the run-of-the-mill robbery, burglary, or drug offense, what the appropriate sanction should be, and **can provide** even a modicum of **assurance that the sanction will contribute to the offender's desistance from crime**. Even Palmer concedes that **recent treatment surveys do not "indicate that generic types of programs have been found that** consistently produce major **recidivism reductions**"; **and** that **programs that have positive effects** for selected offender subgroups "may **have limited relevance to the remaining [offender] subtypes** those which might comprise much of the sample."[18] If treatment lacks such routine, predictable applicability, how can it serve as a principal sentencing rationale?

## Rehab Studies Flawed

**1.** Rehab studies are selection biased because they only account for the people who turn out well. **Liebrich[[7]](#footnote-7):**

**Response rates in research with offenders currently on sentence are low** (Leibrich, Galaway, and Underhill 1984; Leibrich 1986). The likely success rates with former criminals are hard to estimate because of the paucity of research in this area. **A study of former prisoners found that only 25% of them could be contacted by telephone 6 months after they left prison** (Eakin et al. 1981). The three **studies** that I could locate that had a longer time period between the last sentence and interview did not use random samples, but rather **selected people who were available** (Cusson and Pinsonneault 1986; Meisenhelder 1977, 1982; Pinsonneault 1985; Shover 1985; Shover and Thompson 1992). In fact, in two of these three studies, some of the participants were still in jail at the time of the interviews. But **selection by availability clearly biases the finding. People who agree** to be interviewed, for instance, might **have had more favorable experiences with the criminal justice system than those who do not agree to be interviewed, or it might be that those who refuse do so because they are actually still offending.**

**2.** Rehab studies don’t tell us the rate of recidivism. **Gray[[8]](#footnote-8):**

**Rehabilitation is traditionally measured by comparing,** for different interventions, **the number of offenders who are arrested following release and during the follow-up period.** That is, scholars might study matched groups of prisoners and probationers and find that the same proportion of each group was arrested during the follow-up period. They might conclude that prison and probation are equally rehabilitative. This conclusion would seem reasonable. **A major weakness of recidivism “rates,” however, is that they tell us nothing about the frequency, or rate, at which an offender recidivates; instead, they tell us the proportion of offenders who recidivate** (Wilson, 1983:171). Scholars should develop and apply measures of rehabilitation that estimate the frequency at which individual offenders recidivate, as well as the proportion of offenders who do.

## Re-Arrest Studies Flawed

**1.** Your focus on re-arrest statistics misunderstands the data. **Tittle[[9]](#footnote-9):**

**Re-arrest statistics are biased by the differential probability of arrest for ex-convicts, regardless of actual criminal conduct.** Arrest may indicate nothing about guild. For example, **in an FBI follow-up study** of all individuals released from custody in 1963, **only 40 percent of those re-arrested within a four-year period of time had been reconvicted at the end of that period** (Uniform Crime Reports, 1967:41); and extrapolation suggests that the entire population of releases for the indefinite future would not exceed 35 percent. **Being arrested does not necessarily signify criminal conduct, just as criminal behavior is frequently undertaken without a resulting arrest.** Hence, **there is only a tenuous connection between criminality and arrest. Furthermore, persons may be arrested for all sorts of acts, not necessarily of the same type for which they had been previously incarcerated. Arrest for drunkenness is hardly indicative of failure to rehabilitate a burglar.**

## Retribution Outweighs Rehab

***[****We both have stats but I outweigh****]***

**1.** Only incarcerating offenders provides assurance someone won’t reoffend because of physical restraint. I might trust you not to reoffend but if you’re locked in prison I know you wont’ reoffend. I have absolute certainty of solving.

**2.** Rehab can’t protect against first offenses because it’s inherently reactive. Retribution solves better because it at least runs a risk of preventing the first crime, which also solves back rehab because it prevents the chain of offenses from occurring thereafter.

**3.** I win timeframe because rehab takes months even years to come fully into effect while the deterrent and incarceration of retribution happen instantaneously in the mind of the offender. It prevents the crime before it even happens.

## Rehab Isn’t Punishment

**1.** Rehabilitation isn’t punishment. Often, offenders aren’t even processed or tried in the criminal justice system when referred to rehab programs. **Robinson and Crow[[10]](#footnote-10):**

The first point to make is that access to services or sources of help which can broadly be described as **‘rehabilitative’ is not** necessarily **contingent upon an offender having been processed by the criminal justice system.** A good example is people who misuse drugs. By virtue of their consumption of illegal substances, such individuals may well have broken the law on many occasions; **but it is perfectly possible not only that such individuals may evade detection, but also that they may enter into treatment voluntarily**.3 When celebrities enter ‘rehab’, for example – typically because of problems associated with the consumption of illegal drugs – it is often in the absence of any criminal proceedings against them. It is also sometimes the case that **an offender whose offending has been detected may avoid prosecution or criminal sanctions but nonetheless be referred by a criminal justice agency to rehabilitative help**. One such example is the use of diversion schemes, whereby offenders (typically juveniles or mentally disordered offenders) are sometimes referred to sources of help or treatment-type interventions as an alternative to prosecution. Since the 1970s a variety of diversionary schemes and measures have been introduced, in Britain and elsewhere, under the influence of labelling theory. Labelling theory emphasises the damaging and stigmatising effects of a criminal label on young offenders and thus recommends **‘diversionary’ measures** to **keep them out of the criminal justice system for as long as possible.** Other offenders may get as far as court and be diverted from there. For example, in 1990 the Home Office provided guidance on the policy of diversion and aimed to ensure that, where possible, **mentally disordered offenders were referred to health and social services for support and treatment rather than punished via prosecution and criminal sanctions** (Home Office, 1990). Courts can thus opt for a disposal under the Mental Health Act 1983, such as a Hospital Order, in place of a criminal justice disposal (such as prison) where the offender has been assessed as having a mental disorder.

**2.** Criminal justice theorists agree: rehab is conceptually distinct from punishment. **Robinson and Crow 2:**

‘For some theorists, **rehabilitation is conceptually divorced from punishment, such that it is not understood** as an objective or quality of a positive process of punishment, but rather **as an antidote to punishment**: or, more precisely, the potentially harmful effects of punishment (e.g. Cullen and Gilbert, 1982; Rotman, 1990; McWilliams and Pease, 1990). According to this view, **just as retributive punishment may be deserved, so the offender deserves not to be unduly damaged by the experience of punishment. Any handicaps or damage inflicted on the offender in the process of punishing him or her ought to be offset or mitigated by rehabilitative measures**. Rotman’s position is often referred to as rights-based rehabilitation, which we shall revisit in the following section.

## Must Use Ethics

**1.** Moral principles determine whether you ought to abide by the law in the first place – when is say it’s wrong for you to violate the law I’m making that claim with an appeal to a higher moral standard.

**2.** Legal principles are external constraints we place on people for being pragmatic but that doesn’t deny that states can’t be moral or immoral. They just have two sets of obligations. You put a NIB on yourself because you have to fulfill two obligations to affirm.

**3.** Ethics is key to a functioning justice system. **Banks[[11]](#footnote-11):**

Training in critical **ethics helps to develop analytical skills and reasoning abilities needed to understand the practical as well as the theoretical aspects of the criminal justice system** (Felkenes 1987). • Understanding ethics enables an appreciation of the complexities of acts that involve ethical issues and dilemmas. • Without knowledge of ethics, criminal justice professionals may be naïve about moral issues occurring within the criminal justice system. • The study of **ethics helps criminal justice professionals quickly recognize the ethical consequences of various actions and the moral principles involved**. • Within the criminal justice system, **ethics is germane to most management and policy decisions relating to punishment and is the rationale used in making these decisions, such as whether to rehabilitate, deter, or impose just deserts**. Examples of such management and policy issues include whether it is ethical to force someone to attend a treatment program against his or her will, and, given that the system of punishment is based on rehabilitation, whether it is ethical to send an offender to jail and not offer treatment programs to help him or her change behavior in order to regain freedom (Felkenes 1987). • The criminal justice system comprises professionals who exercise power and authority over others, and who in some cases are authorized to use force and physical coercion against them. **The law**, or accepted standards of behavior, **impose[s] ethical rules and responsibilities on these professionals.** It follows that professionals in the criminal justice system must be aware of ethical standards in carrying out their functions**. Ethics is crucial in decisions involving discretion, force, and due process, because criminal justice professionals can be tempted to abuse their powers** (Felkenes 1987).

## People Are Culpable

**1.** The law still views them as culpable. Hold them accountable for acting at all. **Morse[[12]](#footnote-12):**

Criminal law’s concept of the person, including the addict, is the antithesis of the medical model’s mechanistic concept. **Although** all honest **people** **will admit that biological and environmental variables beyond the person’s rational control can cause an agent to be** the type of person who is **predisposed to commit crimes** or can put the agent in the kind of environment that predisposes people to criminal activity, **the law** ultimately **views the criminal wrongdoer as an agent and not simply as a passive victim who manifests pathological mechanisms.**15 **Unless** either **the person does not act** or an excusing condition is present, **agency entails moral and legal responsibility that warrants blame and punishment. Suffering from a disease** simpliciter, such as schizophrenia, **does not itself mean that the defendant did not act or that an excusing condition obtained,** although diseases and other causes may negate action or produce an excusing condition, such as gross irrationality. Most mental and physical diseases—**even severe disorders**—suffered by people who violate the criminal law **do not have these exculpating effects because they do not sufficiently affect rational agency** concerning criminal activity.16 Even if addiction is properly characterized as an illness, most addicts are nonetheless capable of being guided by good reasons, including the incentives law can provide.17 **Sick people who behave immorally or who violate the criminal law are almost always responsible agents.**

**2.** People still choose to commit a crime – just because I grow up in a bad neighborhood or have a genetic precondition doesn’t mean that I’m not culpable for murdering my parents. You have to prove people are completely incapable of acting otherwise.

**3.** Culpability is a necessary fiction for the maintenance of the criminal justice system and society as a whole. If people aren’t culpable, the basis of merit, freedom, and education are all denied, which would probably be rejected by the American public.

**4.** Culpability is irrelevant – even if an offender isn’t legally culpable we can still call them morally culpable because their acts affect other people and have moral salience independent of the agents who caused them.

**5.** You’re misunderstanding culpability – its purpose is to distinguish between criminal and non-criminal desires. **RDF[[13]](#footnote-13):**

Speaking of crimes, the notion that responsibility evaporates because we can point to prior causes and therefore shift the blame is made dubious by the *reductio ad absurdum* that, following the chains all the way back, you come to the conclusion that the Big Bang should be blamed for all the crimes ever committed. Indeed, the Big Bang caused every earthquake, every intention to kill, every stroke of luck and so on. It's possible to blame the universe, of course, but this is mostly achieved by anthropomorphising the universe as something that can be blamed, and here lies the key to the strangeness of this argument. In any case, this argument only really works if culpability was solely about causality. It doesn't work if you notice that the notion of **culpability is** also **focused on individuals with intentions and desires, not on causal links alone**. If I blame a person for robbing a bank, I'm not just saying that he caused the money to disappear. I'm saying that he intended to rob the bank, and therefore that his actions were **a subset of causal events that could have been or may well be overridden by other causal events, such as returning the money, incarceration, or rehabilitation**. The complexity of causal webs should be the salient factor, including the likelihood of re-offending, and especially when we still have an active influence on events. After all, a complex machine is more likely to be capable of self-regulation than a simple one. The intentions are not a magic force that explain away the problem, either. A creature with intentions is more likely to re-offend than a creature or a thing without them. This is why we make the distinction between manslaughter and murder. We also bow to causality every time we acknowledge that accidents will happen - probability and statistics point out that, given enough time, accidents become inevitable, and we concede human limitations. Our intentions and emotions and motivations themselves are products of evolution, which is itself a causal force. **Moral culpability, when you observe it in action, owes more to causality than most might concede**. We dismiss an earthquake as a natural force with no malice, and we might dismiss a lion as being incapable of acting any other way when it kills someone for food, but this doesn't make it impossible for people to prevent the lion from doing it again (perhaps by killing the lion), nor does it mean putting up anti-earthquake buildings is a waste of time. **We can prevent and counter a potential threat, and if the worst has happened, we can alleviate the damage. Even if criminals were put in the same category as** lions (or, unlikely as this is, of **earthquakes** with no malice or desires), **that does not prevent us from being able to identify and tackle the causes of crimes, up to and including the criminals themselves. Culpability is about identifying individuals with motives and desires, not about establishing every causal factor.** Even when multiple individuals were involved, one usually has more influence than the others, and every participant can be excused or blamed based on many personal indications such as intention and ability. **Nothing about causality suggests I can't identify a murderer from an innocent.**

## Retribution isn’t Disproportionate

**1.** I don’t have to be totally proportionate – just comparative. Retributivism can do that. **Flanders[[14]](#footnote-14):**

I think this diagnosis is misleading in two respects. First,we should not confuse indeterminateness with emptiness. **That proportionality cannot give us a certain answer** in every case **doesn’t mean** we can say **that** proportionality **[it] is unable to give answers.** In fact, **once we fix a punishment for one crime, we can go on from that:** is the next crime better or worse than the crime we have a fixed punishment for? So, while **proportionality** cannot give absolute answers, it **may** still be able to **give us answers relative to a scheme of punishment.** If we step outside of that scheme, we may again face indeterminacy. But again, indeterminacy is not the same as emptiness. **Multiple possible answers is not the same as having no answers**. And, again, **it is not likely that we will be creating a system of proportionate punishments from scratch. We can maneuver and talk meaningfully about proportionality** vis á vis the punishments for other crimes. **We can use our rough sense of what crimes deserve to fashion an overall ranking.**

**2.** The U.S. criminal justice system is fair and proportional. **Sherman[[15]](#footnote-15):**

Although the social conservatism of the 1980s slowed the pace of change, ideas and research programs begun in the 1960s continued to propel criminal justice toward greater effectiveness. Federally funded researchers discovered concentrations of crime among repeat offenders, which led to better investigations and prosecutions of high-risk suspects, as well as better designed computer systems for identifying them. Improved computers also enabled law enforcement agencies to better focus scarce resources and helped Federal researcher discover “hot spots”—the 3 percent of addresses where more than half of all crime occurs. These developments led to more “problem oriented” community policing in the 1990s, a strategy that focused on public safety as much as consultation with citizens. New York City’s application of problem-oriented policing principles led to the creation of a new management system called COMPSTAT— for computerized statistics—which some observers credit with at least part of the city’s massive reduction in crime between 1994 and 2000, as crime statistics were used to hold police managers accountable. Increased computer-driven efforts to confiscate illegal firearms also may have sparked the substantial increase in weapons arrests in 1993 that has consistently paralleled the national drop of homicide rates back to their 1960s levels.12 As the 20th century closed, **American criminal justice was more focused on fairness and effectiveness than ever. Specialized courts**, such as drug courts and gun courts, were established to **solve difficult problems**. DOJ suits against police agencies filed under legislation passed in 1994 placed the police under stricter scrutiny than ever, although court supervision of prisons was reduced by 1996 legislation. Surveillance cameras in patrol cars, lockups, and in the hands of citizens (as in the Rodney King case) have greatly increased the visibility of police encounters with citizens, likely resulting in less police misconduct. **Prosecutors increasingly embrace “community prosecution**,” decentralizing their offices **to improve priority setting and citizen cooperation. Police agencies** nationwide, motivated by New York City’s success in reducing crime, **pay more attention to identifying crime patterns and focusing patrol resources for crime prevention.** The criminal justice system remains far from perfect. Evidence of racial discrimination, violations of citizen rights, waste, and inefficiency is abundant. Racial profiling, sentencing disparities, pockets of corruption, and unjustified killings remain major concerns. But compared with the practices of the 1960s, criminal justice has substantially improved. Moreover, my meetings with top criminal justice officials in 10 other nations since 1997 suggest that **the U.S. criminal justice system is doing more about fairness and effectiveness than criminal justice systems in other countries.** The paradox is that none of this evidence matters much to the American people, who appear to want far greater change.

**3.** I can just aim at proportionality – i.e. the principle I endorse is that we should be retributive, not that we *are* retributive or have to carry out specific policies in line with retribution. ***Cahill[[16]](#footnote-16):***

*By contrast,* ***retributivism****, which adopts a* ***[is] backward-looking*** *perspective* ***focusing on the*** *moral* ***duty to punish*** *past wrongdoing, is a justificatory theory, but seemingly* ***[it is] not*** *a* ***prescriptive*** *one. 8* ***It offers retribution as a[n]*** *justifying* ***ideal but does not*** *explain how legal institutions are supposed to make retribution [it] real****.*** *9 To the extent retributivism offers guidance about its own operation in practice, it* ***speak[ing]****s* ***only to the content of*** *criminal law* ***rules,*** *and* ***not*** *to* ***their implementation****. 10 Retributive principles may identify what the law should criminalize, 11 and might even say something about the proper idealized level of punishment for those crimes relative to each other. 12 As to matters of application, however,* ***retrib[s]****utivists tend to* ***focus only on the*** *resolution of individual (often* ***hypothetical****) cases where an offender’s behavior is known or stipulated.*

**4.** Your offense presupposes consequentialism, i.e. that retributive policies will lead to disproportionate sentencing. I just say that people have to have proportionate intentions – that’s the only functional normative offense.

**5.** Saying that retributivists are disproportionate is nonsensical – that just means they aren’t retributivists in the first place because they’re doing it wrong. We wouldn’t say that someone who maximized pain is a utilitarian.

**6.** This doesn’t deny retributivism – you don’t prove that people don’t believe proportionality is important or normative, just that they’re having trouble implementing it. Even if we can’t say what is proportional, we can say proportionality is still good.

**7.** This is just defense **A)** it indicates that we’ll have the same trouble with rehab systems in sentencing and that those problems are pervasive, and **B)** it means that sometimes I fail, not all the time, so I still have a risk of offense.

**8.** Just because things are bad now doesn’t mean we can’t solve disproportionate sentencing in the future or come to conclusions about what is proportionate. We can use a retributive system and just reform internal errors.

## Rehab isn’t Utilitarian

**1.** Utilitarianism doesn’t justify rehab. **Hurd[[17]](#footnote-17):**

It is crucial to be clear at the start that **anyone who seeks to rehabilitate offenders because it will** deter them from further wrongdoing and so **make the rest of us safer, or** because it **will return them to the pool of productive,** contributing **citizens** and so increase the wealth and well-being of all, **is not a true rehabilitationist. Such a theorist is a utilitarian** who conceives of the rehabilitation of offenders as an instrumentally effective means of maximizing social utility overall, but **who is not principally interested in the moral welfare of the offender**. In contrast, **a true rehabilitationist is someone who takes the rehabilitation of the offender to be an intrinsic good, and who is prepared to sacrifice** social **utility in order to achieve that end.**

**Prefer my interp: A)** specificity is key when there are dozens of kinds of rehab programs and philosophies that underpin each one of them; letting the neg claim that all rehab is utilitarian is massively generous, **B)** Hurd explains a better contextualization of the topic literature by distinguishing between true rehabilitation and social productivity.

## AT Cullen

**1.** They concede that rehab can’t be implemented. **Lipsey and Cullen[[18]](#footnote-18):**

**There is**, however, **considerable variability** in those effects associated **with the type of treatment, how well it is implemented, and the nature of the offenders to which it is applied.** The specific sources of that variability have not been well explored but some principles for effective treatment have emerged. **The rehabilitation treatments generally found effective in research do not characterize current correctional practice and bridging between research and practice remains a significant challenge.’**

**2.** They concede rehab experiments are flawed. **Lipsey and Cullen 2:**

The only scientifically credible method for assessing intervention effects is with a research design that compares recidivism rates for offenders exposed to the intervention with those for a substantially similar control group not exposed to it. **The strongest designs assign relatively large numbers of offenders randomly to intervention and control conditions**, maintain high fidelity to the intervention plan, and have little attrition from the assigned conditions or the data collection on the recidivism measures. Such **“true” experiments can be difficult to implement for correctional interventions and much of the available research comes from quasiexperiments with nonrandomized control groups, modest sample sizes, and varying completion and attrition rates.**

**3.** They concede upward selection bias. **Lipsey and Cullen 3:**

Skeptics might question whether **the broadly positive average effects of rehabilitation treatments found in the studies included in these meta-analyses** actually **reflect** the benefits of treatment or some equally broad and **pervasive upward bias in the effect estimates generated by those studies**. One such possible bias that is well known **to meta-analysts is the tendency for published studies to show larger effects than unpublished ones**, presumably **because of the selection processes associated with the development, submission, and review of manuscripts for journal publication** (Rothstein et al. 2005). Mean effect sizes from meta-analyses that include only published studies, or which greatly overrepresent them, may thus be inflated.

**4.** They conceded a vast different between reality and ideal policies – none of their positive arguments can support rehabilitative policies. **Lipsey and Cullen 4:**

The **research** reviewed here demonstrates that there are rehabilitation treatments with the potential to substantially reduce the recidivism of offenders in the correctional system and, in that way, reduce crime and enhance public safety. That **does not mean**, however, **that** the **rehabilitation programs currently** being used in correctional practice actually **have those** salutary **effects**. The increased punitive emphasis of recent decades has led to less rehabilitation programming with the result that many offenders are not exposed to any significant treatment at all (Tewksbury et al. 2000). Moreover, the types of **programs that are used in correctional practice are not the same mix that is represented in** the **research literature**. Educational and vocational programs, for instance, are common in correctional settings, with the latter often being no more than work assignments in a custodial setting. The treatments on which we have research, however, are more likely to have been developed from theory and prior research and to focus more directly on criminal behavior. The rehabilitation treatments on which the available research is based also differ from correctional practice in another important way. Many of the research studies involve treatments that were developed by the researcher or delivered by the researcher, for example, with the researcher or developer selecting and training the personnel, monitoring the quality of service, and the like. **Treatments** provided in the context of such research and demonstration projects are not necessarily representative of typical correctional practice. Nor are **[and] their results representative—the recidivism effects for treatments in which the researcher is involved are larger than those for similar treatments without such involvement** (Petrosino & Soydan 2005). In one meta-analytic comparison (Lipsey 1999), the mean effect size for research and demonstration programs was twice as large as that found in evaluations of routine practice programs in which the researcher had no role in design or implementation. In short, **the research on rehabilitation** treatment reviewed **here** provides an encouraging indication of the relatively large effects that might be attainable in actual practice, but **cannot be interpreted as evidence that current practice has** such effects or, indeed, that it **has any positive effects** at all.

## AT Meta-Analysis

**1.** Your authors concede it’s flawed. **Cullen & Gendreau[[19]](#footnote-19):**

No method of reviewing studies, however, is without its weaknesses, including meta-analysis (Science 1994). **The validity of** the conclusions suggested by a **meta-analysis will be affected by “what goes into it.”** Obviously, **whether the sample of studies is exhaustive and includes methodologically sound evaluations will affect the confidence we can have in the results**. Less apparent but equally important is the coding scheme used by the researcher. **The way studies are coded—into what treatment categories, for example—will influence what knowledge the meta-analysis will produce**. In particular, **if the coding is not theoretically informed, then important conceptual issues will not be addressed. Further,** as with other types of research**, a meta-analysis cannot guarantee that the knowledge that is produced is practically useful—that is, that the insights gained from quantitatively synthesizing existing studies can be employed effectively to guide the development of real-world programs.** We will revisit these issues later.

**2.** Meta-analysts introduce their own errors into the process and can’t reach conclusion about the effectiveness of rehab. Your solvency is a ruse. **Logan and Gaes[[20]](#footnote-20):**

Meta-analysis is a legitimate research tool, but is easy to misuse. To be sure, **meta-analysts** are not deconstructionists who merely read into the literature whatever they please, but their technique **imposes such demanding methodological requirements** (Hedges and Olkin 1985) **that it is difficult to conduct a meta-analysis which controls and adjusts for errors in the primary studies without introducing new errors and biases of its own.** It is not surprising, then, that **separate reviews and meta-analyses of research on the effectiveness of correctional rehabilitation programs reach differing conclusions and criticize each other's validity** (Andrews et al. 1990a, 1990b; Lab and Whitehead 1990).

## AT Care AC

**1. T -** pitying people increases the pain and suffering **Cartwright[[21]](#footnote-21):**

**Pity is** a squandering of feeling, a parasite **harmful to moral health,** "**it cannot possibly be our duty to increase the evil in the world." If one does good merely out of pity, it is really oneself one really does good to, and not the other**. Pity does not depend upon maxims but upon affects; it is pathological. The suffering of others infects us, pity is an infection [Ansteckung].3 In his translation of The Will to Power, Walter Kaufmann notes the obviously Kantian terminology employed by Nietzsche, e.g., "maxims," "pathological." What Kaufmann fails to note is the source of the utilitarian argument Nietzsche puts in quotation marks. Nietzsche is quoting with approval part of an argument Kant advanced against pity. In the second part of his Methaphysics of Morals, Kant argues that **we cannot have a duty to feel pity because ... if another person suffers and I let myself (through my imagination) also become infected[ ansteckenla sse]b y his pain, which I still cannot remedy,t hen two people suffer,** although the evil (in nature) affects only the one. **But it cannot possibly be a duty to increase the evils of the world or, therefore to do good from pity** [Mitleid]....4 Like Kant, Nietzsche objects to pity because it is not dianoetic, i.e., it is pathological. He even goes so far as to adopt a model of pity suggested by Kant.5 **Pity is conceived as a contagious and unwelcomed transmission of pain from the recipient of pity to the agent.** Nietzsche also echos the Kantian observation that acting from pity is indulging one's inclinations, viz., it is oneself that one really benefits.

**2. T** - retribution increases the care we feel for others. **Barnett[[22]](#footnote-22):**

Furthermore, if the paradigm of punishment is in a “crisis period” it is as much because of its practical drawbacks as the uncertainty of its moral status. **The infliction of suffering on a criminal tends to cause a general feeling of sympathy for him. There is no** rational **connection between a term of imprisonment and the harm caused the victim. Since the prison term is supposed to be unpleasant, at least a part of the public comes to see the criminal as a victim, and the lack of rationality also causes the offender to feel victimized.** This reaction is **magnified by the knowledge that most crimes go unpunished and that even if the offender is caught the judicial process is long**, arduous, and far removed from the criminal act.

**3. T -** a rehab approach eliminates procedural safeguards. Retributivism solves. **Barnett 2:**

**The more awful the sanction, the more elaborate need be the safeguards. The more the system is perceived as arbitrary and unfair, the more incentive there is for defendants and their counsel to thwart the truth-finding process. Acquittal becomes desirable at all costs. As the punitive aspect of a sanction is diminished, so too would be the perceived need for procedural protections.**

**4. T -** rehab violates the obligation to care and retribution is sufficient. **Logan and Gaes[[23]](#footnote-23):**

But (as one of our reviewers suggested to us) wouldn't minimization of the treatment ideal and a formal acceptance of punishment as the primary goal of prisons tend to minimize programming and remove any possible incentive on the part of administrators to help inmates? As Cullen and Gilbert (1982: 247) argue, "Rehabilitation is the only justification of criminal sanctioning that obligates the state to care for an offender's needs or welfare." We disagree. **Rehabilitation raises the question of whether it is society's obligation to transform the inmate into a law-abiding citizen, not whether it is society's duty to treat the inmate humanely**. None of the purposes of punishment directly defines a state's obligation to care for inmates. In fact, almost any justification of punishment might be interpreted to imply conditions that range from the brutal to the benign. **Rehabilitation** in some of its paternalistic forms **is just as coercive as other justifications. Inmates may well be "encouraged," or "persuaded" into treatment against their wishes. Retribution**, often associated with harsh treatment, also **can imply that a prolonged separation from society, proportional to the crime, is sufficient punishment, but that the prison climate must be safe and must offer enough amenities so that prison life is not inhumane.**

**5. T -** only retribution is able to care for the victim of the crime. **Castillo[[24]](#footnote-24):**

The idea of **retribution,** as an indication of the purpose of punishment, **alludes to the need for the criminal to compensate the victim of the crime for the harm suffered**. This harm is two-fold: It is, on the one hand, **the loss of a life,** of someone’s physical integrity or rights; on the other hand it is the **[and] feeling that one did not deserve that harm.** These two types of **harm generate resentment on the part of the victim and all those who sympathise with his suffering.** This resentment must be **counterbalanced by a punishment that reinstates the victim’s loss as far as possible and that inflicts a balancing harm on the aggressor**. It is retribution as vengeance or **satisfaction of the resentment generated in the victim** (Smith 1976, II, I, 1–2, 67ff.). In the idea of retribution correctly understood, **the victim’s perspective is taken into account, that of the actual victim, the person who has suffered the loss occasioned by the illicit act, and the victim by sympathy, who is any spectator who experiences suffering together with the injured party.** This is the point of view of the individual, of the person, who suffers an aggression, the victim, and the point of view taken by Brian Rosebury (2009, 19–21).

## AT Generic Determinism AC

**[AT Framework]**

**1.** Determinism is self-defeating. **Machan[[25]](#footnote-25):**

There is an argument against determinism to the effect that, **if we are fully determined in what we think, believe, and do, then** of course **the belief that determinism is true is also a result of this determinism. But the same holds for the belief that there determinism is false. There is nothing you can do about whatever you believe - you had to believe it.** There is no way to take an independent stance and consider the arguments unprejudiced because all various forces making us assimilate the evidence in the world just the way we do. One either turns out to be a determinist or not and in neither case can we appraise the issue objectively because we are predetermined to have a view on the matter one way or the other. But then, **paradoxically, we'll never be able to resolve this debate, since there is no way of obtaining an objective assessment**. Indeed, **the very idea of scientific or judicial objectivity, as well as of ever reaching philosophical truth, has to do with being free.** Thus, if we're engaged in this enterprise of learning about truth and distinguishing it from falsehood, we are committed to the idea that human beings have some measure of mental freedom. There's another dilemma of determinism. **The determinist wants us to believe in determinism. In fact, he believes we ought to be determinists rather than believe in this myth called "free will". But**, as the saying goes in philosophy, "ought" implies "can". That is, **if one ought to believe in or do something, this implies that one has a choice in the matter;** it implies that we can make a choice as to whether determinism or the free will is a better doctrine. That, then, it assumes that we are free. **In other words, even arguing for determinism assumes that we are not determined to believe in free will** or determined but that it is a matter of our making certain choices about arguments, evidence, and thinking itself. That's a paradox which troubles a deterministic position.

**2.** Determinism fails because external disruptors preclude it from creating sufficient conditions for causation. **Hoefer[[26]](#footnote-26):**

For a variety of reasons this approach is fraught with problems, and the reasons explain why philosophers of science mostly prefer to drop the word “causal” from their discussions of determinism. Generally, as John Earman quipped (1986), **to** go this route is to “… seek to **explain** a vague concept—**determinism**—**in terms** of a truly obscure one—**causation.**” More specifically, neither philosophers' nor laymen's conceptions of *events* have any correlate in any modern physical theory.[[1](http://plato.stanford.edu/entries/determinism-causal/notes.html%22%20%5Cl%20%221)] The same goes for the notions of *cause* and *sufficient cause*. **A** further **problem is posed by the fact that**, as is now widely recognized, **a set of events** {*A*, *B*, *C* …} **can only be** genuinely ***sufficient* to produce** an effect-event if the set includes an **open-ended** *ceteris paribus* clause **excluding the presence of potential disruptors** that could intervene to prevent *E*. For example, the start of a football game on TV on a normal **[An action]** Saturday afternoon **may be sufficient** *ceteris paribus* to launch Ted toward the fridge to grab a beer; **but not if a million-ton asteroid is approaching [the actor]** his house at .75*c* from a few thousand miles away, nor if the phone is about to ring with news of a tragic nature, …, and so on. [Bertrand Russell](http://plato.stanford.edu/entries/russell/) famously argued against the notion of cause along these lines (and others) in 1912, and the situation has not changed. **By trying to define causal determination in terms of** a set of **prior sufficient conditions, we** inevitably **fall into** the mess of **an open-ended list of negative conditions required to achieve** the desired **sufficiency.**

**3.** Free will does exist – and it’s here to stay. **Greene[[27]](#footnote-27):**

Compatibilists make some compelling arguments. After all, **is it not obvious that we have free will? Could science plausibly deny the obvious fact that I am free to raise my hand at will?** Formany people, such simple observations make the reality of free will non-negotiable. But at the same time, many such people concede that determinism, or something like it, is a live possibility. **And if free will is obviously real, but determinism is debatable, then the reality of free will must not hinge on the rejection of determinism. That is, free will and determinism must be compatible**. Many compatibilists sceptically ask **what would it mean to give up on free will.** Were we to give it up, **wouldn’t we have to immediately reinvent it?** **Does not every decision involve an implicit commitment to the idea of free will**? And how else would we distinguish between ordinary rational adults and other individuals, such as young children and **the mentally ill**, whose will—or whatever you want to call it—is clearly compromised? **Free will**, compatibilists argue, **is here to stay**, and the challenge for science is to figure out how exactly it works and not to peddle silly arguments that deny the undeniable (Dennett 2003).

**4.** Prior events just give good reasons for action they don’t determine it. **Hoefer 2:**

They are also too short. For the typical set of **prior events that can** (intuitively, plausibly) be thought to be a sufficient **cause** of a human **action may be** so **close in time and space to the agent**, as to not look like a threat to freedom so much as like enabling conditions. If Ted is propelled to the fridge by {seeing the game's on; desiring to repeat the satisfactory experience of other Saturdays; feeling a bit thirsty; etc}, **such things look more like good reasons to have decided**to get a beer, **not** like **external physical events** far **beyond** Ted's **control.** Compare this with the claim that {state of the world in 1900; laws of nature} entail Ted's going to get the beer: the difference is dramatic. So we have a number of good reasons for sticking to the formulations of determinism that arise most naturally out of physics. And this means that we are not looking at how a specific event of ordinary talk is determined by previous events; we are looking at how **everything** that happens is determined by what has gone before. The state of the world in 1900 only entails that Ted grabs a beer from the fridge by way of entailing the entire physical state of affairs at the later time.

**5.** The chaotic nature of systems renders determinism nonsensical. **Hoefer 3:**

In other words, **once one appreciates** the varieties of **chaotic dynamical systems** that exist, **mathematically**speaking, **it** starts to look difficult—**maybe impossible**—**for** us to ever decide whether apparently **random behavior in nature [to arise]** arises from genuine stochasticity, or rather **from deterministic chaos**. Patrick Suppes (1993, 1996) argues, on the basis of theorems proven by Ornstein (1974 and later) that “**There are processes which can equally well be analyzed as deterministic systems of classical mechanics or as indeterministic** semi-Markov **processes**, no matter how many observations are made.” And he concludes that “**Deterministic metaphysicians can** comfortably **hold to their view** knowing they cannot be empirically refuted, **but so can indeterministic ones as well.**” (Suppes (1993), p. 254)

**6.** There is nothing ontologically distinct about the past that gives it deterministic cause over the future. **Hoefer 4:**

Physics, particularly 20th century physics, does have one lesson to impart to the free will debate; a lesson about the relationship between *time* and determinism. Recall that we noticed that the fundamental **theories** we are familiar with, **if they are deterministic** at all, **are time-symmetrically deterministic.** That is, **earlier states of the world can be seen as fixing all later states; but** equally, **later states can be seen as fixing all earlier states**. We tend to focus only on the former relationship, but we are not led to do so by the theories themselves. **Nor** does 20th (21st) -century physics countenance the idea that there **is anything ontologically special about the past, as opposed to the present and the future.** In fact, it fails to use these categories in any respect, and teaches that in some senses they are probably illusory.[[9](http://plato.stanford.edu/entries/determinism-causal/notes.html%22%20%5Cl%20%229)] So **there is no support** in physics for the idea **that the past is “fixed” in some way that the present and future are not, or that it has some ontological power to constrain our** actions that the present and future do not have. It is not hard to uncover the reasons why we naturally do tend to think of the past as special, and assume that both physical causation and physical explanation work only in the past present/future direction (see the entry on [thermodynamic asymmetry in time](http://plato.stanford.edu/entries/time-thermo/)).

**7.** Determinism isn’t debate functional – saying that everything is casually determined means that having a competitive contest about what is true has no meaning because the victor doesn’t deserve the win. When the judge signs the ballot they assume merit for the victor but that is disproven by determinism because they aren’t the author of their own victory.

**[AT Contention]**

**1. T –** determinism is still compatible with culpability. **RDF[[28]](#footnote-28):**

Speaking of crimes, the notion **that responsibility evaporates because we can point to prior causes** and therefore shift the blame **is made dubious** by the *reductio* ***ad absurdum***that, following the chains all the way back, **you come to the conclusion that the Big Bang should be blamed for all the crimes ever committed**. Indeed, the Big Bang caused every earthquake, every intention to kill, every stroke of luck and so on. It's possible to blame the universe, of course, but this is mostly **achieved by anthropomorphising the universe as something that can be blamed**, and here lies the key to the strangeness of this argument. In any case**, this argument only really works if culpability was solely about causality**. It doesn't work if you notice that **the notion of culpability is also focused on individuals with intentions and desires, not on causal links alone**. If I blame a person for robbing a bank, I'm not just saying that he caused the money to disappear. I'm saying that he intended to rob the bank, and therefore that his actions were **a subset of causal events that could have been or may well be overridden by other causal events, such as returning the money, incarceration, or rehabilitation**. The complexity of causal webs should be the salient factor, including the likelihood of re-offending, and especially when we still have an active influence on events. After all, a complex machine is more likely to be capable of self-regulation than a simple one. The intentions are not a magic force that explain away the problem, either. A creature with intentions is more likely to re-offend than a creature or a thing without them. This is why we make the distinction between manslaughter and murder. We also bow to causality every time we acknowledge that accidents will happen - probability and statistics point out that, given enough time, accidents become inevitable, and we concede human limitations. Our intentions and emotions and motivations themselves are products of evolution, which is itself a causal force. **Moral culpability, when you observe it in action, owes more to causality than most might concede**. We dismiss an earthquake as a natural force with no malice, and we might dismiss a lion as being incapable of acting any other way when it kills someone for food, but this doesn't make it impossible for people to prevent the lion from doing it again (perhaps by killing the lion), nor does it mean putting up anti-earthquake buildings is a waste of time. **We can prevent and counter a potential threat, and if the worst has happened, we can alleviate the damage. Even if criminals were put in the same category as** lions (or, unlikely as this is, of **earthquakes** with no malice or desires), **that does not prevent us from being able to identify and tackle the causes of crimes, up to and including the criminals themselves. Culpability is about identifying individuals with motives and desires, not about establishing every causal factor.** Even when multiple individuals were involved, one usually has more influence than the others, and every participant can be excused or blamed based on many personal indications such as intention and ability. **Nothing about causality suggests I can't identify a murderer from an innocent.**

**2. T -** we can still be retributivists if determinism is true. Retributivism just says that people should be given punishment in accordance with their guilt, so if determinism says there is no guilt we would just give no punishment. We just say people deserve punishment for guilt and that nobody gets punishment because nobody is guilty.

**3. T –** determinism means you can’t change somebody and his or her genetics already predetermine him or her, so there’s no reason rehab would work or be appropriate. The whole point of rehab is that people are blank slates but your framework undermines that.

**4. T –** retributivism is still compatible with causal determinism – we can still condemn the mental states that lead to actions regardless of blame. **Pardo and Patterson[[29]](#footnote-29):**

The third problem is that their assumption is mistaken. **It is not the case that retributivism depends necessarily on a metaphysically problematic version of libertarian imcompatibilism**. Greene and Cohen assume that retributivism—and indeed all moral blame and praise—must be built on a foundation of actions by “uncaused causers.” But **a retributivist can coherently reject the notion of uncaused causers and still allow for moral judgments.** Even **in a world of physical determinism, moral desert may be grounded in the control people have over their actions through the exercise of their practical rationality**.83 **If people act for reasons— more generally, if they act on the basis of their beliefs, desires, and other mental states—then we can blame or praise their actions** (in light of their mental states),84 so long as they had the ability and the opportunity to act differently.85 Indeed, in their appeal to consequentialist justifications for punishment based on deterrence, Greene and Cohen appear to concede this type of responsiveness to reason: deterrence works precisely by affecting the practical rationality of potential offenders, by giving them a reason to refrain from criminal activity that (ideally) outweighs their reasons for criminal activity. **Sufficient control over one’s actions in light of one’s practical rationality is sufficient to ground moral desert, regardless of whether the same actions may be explained in purely physical** (i.e. non-mental) terms. In other words, **one can coherently be a** compatibilist and **a retributivist,** a combination that is consistent **with current law.** To suppose otherwise would be a mistake, regardless of how many people think so, and regardless of what neuroscience shows.

## AT Greene Determinism

**1.** Greene’s analysis provides no decision-making calculus and doesn’t undermine retributivism. **Pardo and Patterson[[30]](#footnote-30):**

Even though Greene’s argument does not extend to all forms of retributivism, perhaps, he might reply, it does provide a plausible challenge to a limited subset of retributivist views. Specifically, **his argument** may challenge retributivist theories that meet two conditions: (1) the theory **depends on a foundation of deontological morality**, and (2) **the decisions implied by this theory are correlated with neural activity in more “emotional” areas in the brain. But his argument does not effectively undermin**e even this subset of **retributivist views.** The argument would succeed only if there were reason to think that punishment decisions implied by this theory were somehow incorrect or unreliable. And **this would presuppose some criteria by which we could establish whether particular decisions were correct or whether types of decision were reliable**.48 **Greene provides no** such **criteria.** He attacks deontology (and, by a loose extension, retributivism) for not having access to some “independent [moral] truth,” but this is precisely the kind of access he would need to impugn the decisions implied by a retributivist theory. **Nor is there any reason to think decisions implied by consequentialist theories of punishment would have better access to an independent moral truth**.49 In sum, **retributivism does not depend on a particular moral theory, much less on particular brain activity.** The success or failure of retributivism does not depend on the success or failure of moral theories, and it does not depend on the areas of the brain associated with punishment decisions. **Brain activity does not provide criteria for whether punishment decisions are correct or just, nor does the fact that retributivist decisions are associated with emotional decision-making provide evidence that the decisions are incorrect or unjust.**

**2.** Greene’s analysis just begs the question about why lay intuition matters. **Pardo and Patterson 2:**

**The first problem with the argument is the assumption that** the **intuitions** of most people necessarily **answer the normative questions of whether criminal punishment is justified** or how it ought to be distributed. Although lay intuitions may be relevant to reform, and some agreement between punishment and lay intuitions may be necessary for the legitimacy of such punishment, **accord with the intuitions of most people is not sufficient to justify punishment decisions.** It is possible for widely shared intuitions about what is just punishment to be mistaken. Thus, **even if neuroscience were to cause a significant shift away retributive intuitions** (as they predict),79 **it begs the question to assume this shift would lead to more just** (or more unjust) **punishment decisions.** The key issue is whether neuroscience contributes evidence that provides epistemic support for arguments concerning compatibilism versus incompatibilism, moral blameworthiness, and just punishment.

**3.** Greene’s analysis is bad science. **Pardo and Patterson 3:**

The second problem with their argument is that the **neuroscientific evidence does not provide this epistemic support**. As Greene and Cohen appear to concede with their off-hand references to and dismissal of “complicated [philosophical] arguments,”80 **neuroscience adds nothing new to extant conceptual arguments for or against compatibilism, incompatibilism, or hard determinism**.81 If this is so, and the presence of neuroscientific information causes people to form and hold new beliefs about these positions, then the neuroscience is persuading people for psychological reasons other than the epistemic support it provides. As in other contexts, **the presence of neuroscientific information may be causing people systematically to draw faulty or unsupported inferences rather than true or justified ones**.82 In other words, **the effects that Greene and Cohen predict may be widespread cognitive mistakes in which people draw problematic** (or philosophically dubious) **inferences**, rather than something to be celebrated. Perhaps Greene and Cohen would respond that this causal effect is at least pushing people toward the correct positions, albeit for the wrong reasons. But this presupposes that their assumption that retributivism depends necessarily on libertarianism is correct (for reasons unrelated to neuroscience).

## AT Eagleman Determinism

**1. T -** Eagleman used bad evidence and misconstrued facts. His policy is bad science and dehumanizes us. **Gruenke[[31]](#footnote-31):**

**Eagleman’s proposed rehab**ilitation of the criminal justice system **is bad public policy for** at least **three reasons. First, it is based on conclusions not supported by the examples he cites as evidence. Second, it fails to recognize science’s limitations in explaining human behavior. Third, it ultimately dehumanizes in seeking to be humane.** In short, scientism makes for bad philosophy, and even worse public policy. **Eagleman uses several cases in which criminals were found to have brain abnormalities in order to support his case against free will**. As a paradigmatic example, Eagleman points to Charles Whitman, a 25-year-old who in 1966 took the lives of innocent strangers from the University of Texas Tower in Austin, as well as those of his wife and mother. An autopsy of Whitman’s brain revealed a tumor, which, according to Eagleman, accounted for Whitman’s self-reported experience of being “a victim of many unusual and irrational thoughts.” The details of Whitman’s case—one from which Eagleman generalizes—are nuanced and do not support Eagleman’s portrait of the killer as hostage to neuro-abnormality. **Eagleman claims that Whitman’s tumor was compressing the amygdala, a region of the brain** known to be involved in fear and anger, and suggests that this tumor was principally responsible for Whitman’s homicidal actions. **However**, in animal studies, **damage to the amygdala typically produces a less aggressive animal;** formerly wild creatures become tame. **In humans, amygdala damag**e can lead to difficulties in reading emotion in others, but it **does not typically cause aggression.** If certain parts of a cat’s hypothalamus are damaged, the cat does become more aggressive, as part of its “fight or flight” response. We might speculate that the tumor damaged just that spot in Whitman’s brain. But in the rare cases in which humans have suffered damage parallel to that of the hissing cats, the emotions they typically report are fear and agitation, not anger. As importantly, **the pathologist who performed Whitman’s autopsy denied that the tumor had anything to do with Whitman’s behavior** or headaches. The [autopsy report](http://www.autopsyfiles.org/reports/Other/whitman%2C%20charles_report.pdf) describes the tumor, but claims “no correlation to psychosis.” The Governor requested a medical investigation, and a team of seven pathologists examined the evidence, including the tumor and parts of the brain, and concluded that “**the data obtained provide no evidence that this man had a clinical neurological abnormality,** and there is no evidence from the pathological reports that the tumor interrupted pathways leading to detectable neurological signs.”

**2. T -** Eagleman misunderstands freewill and his endorsement of determinism just means that rehabilitation will fail. **Gruenke 2:**

As we noted above, Eagleman believes that we can extrapolate from cases like Whitman’s, which he claims are “not uncommon,” to brain-behavior links generally. He alleges that as neuroscience improves, we are increasingly able to “detect more [brain] problems, and link them more easily to aberrant behavior.” However, as our own brief analysis of Whitman’s case makes clear, easily “linking” Whitman’s tumor to his killing spree is not as simple as Eagleman would have his readers believe. Thus, **the generalized picture of mere brain states as causally sufficient conditions for behavior is doubtful.** That Eagleman would have us believe in the simplicity of the brain-behavior link is evidence both of his failure to appreciate the complexity of the science at hand and his presupposition that the presence of a neurophysiological explanation for human action is a sufficient condition for showing that it is involuntary. The latter assumption figures prominently in Eagleman’s case against free will. By pointing to the physical behavioral patterns of individuals who suffer from Tourette’s syndrome, Eagleman argues that the exercise of free will is neither necessary nor sufficient for action. But this is entirely beside the point. **Almost no one believes that the exercise of free will is either necessary or sufficient for mere action. Rather, free will is traditionally understood as demarcating the boundaries between *voluntary* and *involuntary* action**. Eagleman seems aware of this in conceding that the “crux of the question is whether *all*of your actions are fundamentally on autopilot” (i.e., involuntary), but **he simply begs the question in asserting that “there is no meaningful distinction between a person’s biology and his decision-making.”** The net result of Eagleman’s rejection of human freedom is to propose “new rehabilitative strategies” for criminal behavior based on a sophisticated form of biofeedback therapy he calls “the prefrontal workout.” The details of this particular rehabilitation need not detain us here. However, two things are worth noting. **First, this type of biofeedback is on solid footing from a neurophysiological perspective. For example, meditation**[**has been shown**](http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.95.260&rep=rep1&type=pdf)**to increase activity in the frontal lobes and also to**[**increase self-regulation**](http://www.pnas.org/content/104/43/17152.full.pdf)**. Second, Eagleman’s proposed use of this therapy is ironically inconsistent with his effort to downplay the role of free will. The success of such therapies** (as his own example of cessation from cigarette smoking makes clear) **depends precisely upon the comprehensive volition of the patient to modify behavior overall as well as his immediate volition to control each impulsive craving during the therapy itself.** In the absence of such volition, it seems unclear how such treatment could ever be effective. This is precisely what makes Eagleman’s proposed use of the judicial system so dangerous—a danger presaged in C.S. Lewis’s “The Humanitarian Theory of Punishment.” Lewis rightly pointed out that as humane as “mending” a criminal may sound, such “sentences,” when issued by “the expert ‘penologist’ (let barbarous things have barbarous names)” and enforced by the power of the state, tend ultimately to dehumanize. Lewis explains, “[t]o 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.” More ominously, Lewis observed that the threat intensifies when the state is corrupt. “For if crime and disease are to be regarded as the same thing,” writes Lewis, “it follows that any state of mind which our masters choose to call ‘disease’ can be treated as crime; and compulsorily cured.” Eagleman insists that “we can build a legal system more deeply informed by science, in which we will continue to take criminals off the streets, but we will customize sentencing, leverage new opportunities for rehabilitation, and structure between incentives for good behavior.” **But if the science that informs jurisprudence is merely scientism, presupposing a grossly oversimplified picture of human nature** (i.e., human beings = genes + environment), **we risk reforming our legal system at the cost of our humanity.**

## AT Util Determinism

**1.** This argument makes no sense – a utilitarian still has to say that people are accountable for making the wrong choice if they don’t maximize utility. I.e. if someone didn’t kill 1 to save 3 the utilitarian would still have to assign moral guilt.

**2.** Saying certain states of affairs are more desirable than others makes no sense under determinism because we can’t choose which states of affairs come to be because they’re already predetermined. Saying something would help society in the future makes no sense because the future is already determined.

**3.** Determinism means utilitarian aggregation fails because we would make biased and predetermined judgements about what actions will lead to better states of affairs, so it undermines the legitimacy of the system.

## AT Deont AC

**1. T -** Rehab grossly uses someone as a means to an end and violates his or her rational self-respect. **Thompson[[32]](#footnote-32):**

A typical statement of the prevailing **rationale of reformation urges that correctional authorities** attempt to ‘frustrate...behavioural expressions of the criminal value system [by] promoting, **rewarding and encouraging behaviour expressions consistent with a conventional value orientation**.’ Such reformation aims at **a major alteration of the offender’s belief and values in a way that imprisonment does not.** If this ambitious aim were generally realized, the state in effect would be using the occasion of a person’s committing an offence to **force him to conform to its model of a well-adjusted member of society in ways that would go beyond encouraging him merely to obey the law**. **The** criminal **law would become a potent instrument** of social integration, exceeding its legitimate purposes according to liberal theories of the state. The nature of psychotherapy and associated practices seems to be such that, if they are to be successful, they cannot be limited to merely the criminal aspects of an offender’s personality. In practice, such reformation seldom alters the deeper aspects of the personality of a criminal, and this is perhaps why it is not very effective. Such reformation, then, has an aim that is likely to fail on the criterion of limitedness though in practice it probably is limited (and ineffective).

**2. T –** only retributivism treats persons as rational ends. It respects freedom to choose and fulfills a criminal’s right to punishment. **Buchholz[[33]](#footnote-33):**

**In conceiving punishment as an end in itself and not as a means** (as utilitarianism does), **retributivism** also **conceives of men as ends, possessing free will and unique, creative capacities**. Herbert Morris maintains that “we treat a human being as a person provided: first, **we permit the person to make the choices that will determine what happens to him, and second, our responses to the person are responses respecting the person’s choices.”** Hegel especially emphasizes the recognition of an individual’s right to make choices. **The right to a penalty is “not merely implicitly just...it is also a right established within the criminal himself**, that is, in his objectivity embodied will, in his action.” **His action is that of a rational being and he has thus “laid down the law which he had explicitly recognized in his action and under which in consequence he should be brought as under his right.”** Not only is a right affirmed, Hegel claims, **but by being punished, the criminal is honored as a rational being.** Hegel especially dramatizes the retributivist school as a principled reliance as an ontology that sees humans in a certain way. The ontology is vital to retributivist literature.

**3. T –** rehab violates offenders; it tranquilizes and castrates their identities. **Robinson and Crow[[34]](#footnote-34):**

A second criticism concerns the content of **‘rehabilitative’ intervention**s. As we shall see in subsequent chapters, faith in rehabilitation **has manifested itself in a wide variety of practices** for which ‘rehabilitative effects’ have been claimed, **from the treadmill and the crank through extended periods of solitary confinement, to psychosurgical and medical interventions**. For Rotman (1990: 102), the most important **‘therapeutic’ abuses perpetrated in the guise of rehabilitation have involved the use of biochemical means to control and/or ‘recondition’ the offender**. The history of **rehabilitation includes the use of drugs to ‘chemically castrate’ sexual offenders; to tranquilise ‘dangerous’ offenders; and to arouse pain and fear in the context of ‘aversion therapy’.** Judged against today’s standards, such interventions hardly fit the description of ‘humane’ approaches to punishment (see in particular von Hirsch and Maher, 1992). Particular questions have been raised about the moral content of certain rehabilitative interventions. Rotman asks: Should rehabilitation be defined to include efforts to produce a moral change in offenders, or should it rather be confined to the acquisition of the capacity to abstain from future crimes?. (Rotman, 1990: 6) Rotman’s own answer to this important question is that **attempts to inculcate particular moral values in offenders contradicts the basic freedoms enjoyed by individuals in modern pluralistic societies.**

## AT Function AC

**1.** Defining terms based on function isn’t normative. **Wittgenstein[[35]](#footnote-35):**

Now the first thing that strikes one about all these expressions is that each of them is actually used in two very different senses. I will call them the trivial or relative sense on the one hand and the ethical or absolute sense on the other. If for instance I say that this is a good chair this means that the chair serves a certain predetermined purpose and the word **good here has only meaning so far as this purpose has been previously fixed upon.** In fact the word good in the relative sense simply means coming up to a certain predetermined standard. Thus when we say that this man is a good pianist we mean that he can play pieces of a certain degree of difficulty with a certain degree of dexterity. And similarly if I say that it is important for me not to catch cold I mean that catching a cold produces certain describable disturbances in my life and if I say that this is the right road I mean that it's the right road relative to a certain goal. Used in this way these expressions don't present any difficult or deep problems. **But this is not how Ethics uses them.** Supposing that I could play tennis and one of you saw me playing and said "Well, you play pretty badly" and suppose I answered "I know, I'm playing pretty badly but I don't want to play any better," all the other man could say would be "Ah, then that's all right." But suppose I had told one of you a preposterous lie and he came up to me and said, "You're behaving like a beast" and then I were to say "I know I behave badly, but then I don't want to behave any better," could he then say "Ah, then that's all right"? Certainly not; he would say "Well, you ought to want to behave better." Here you have an absolute judgment of value, whereas the first instance was one of relative judgment. The essence of this difference seems to be obviously this**: Every judgment of relative value is a mere statement of facts and can therefore be put in such a form that it loses all the appearance of a judgment of value**: Instead of saying **"This is the right way to Granchester," I could equally well have said, "This is the right way you have to go if you want to get to Granchester in the shortest time"; "**This man is a good runner" simply means that he runs a certain number of miles in a certain number of minutes, etc.

**2.** The function of the criminal justice system is to determine blame. **Dripps[[36]](#footnote-36):**

The idea of **culpability or blameworthiness plays a central role in both the theory and practice of criminal justice**. We have it on high authority that [t]he contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion**. It is as universal and persistent in mature systems of law as belief** in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil. There could be no crime, said Blackstone, without a “vicious will.” Despite some exceptions, such as strict liability offenses, **the principle that blameworthiness is a distinctive feature of criminal conduct remains fundamental in our legal culture.**

**3. T -** only retribution is compatible with this function. **Dripps[[37]](#footnote-37) 2:**

**Retributive theory**, which is probably the dominant model in American legal thought,152 at least for the present,153 **regards punishment inflicted for culpable wrongdoing as good of itself**. Probably the most famous expression of this approach is Kant’s dictum that even if a society were to disband the next day, its members should still execute a convicted murderer.154 Modern retributivists give different accounts of precisely why punishment of culpable wrongdoing should be regarded as good of itself.155 Retributivists disagree about whether blameworthy conduct affirmatively requires punishment or merely permits punishment if the balance of other considerations so inclines.156 Despite these differences**, all retributive theories share a family resemblance, rooted in the reciprocal ideas that punishment can be deserved, and thus it should never be undeserved**. Retributivism’s main competitor is utilitarianism. **The utilitarian approach**, with its own impressive lineage running back to Beccaria157 and Bentham,158 **regards punishment as an evil than can be justified only by a favorable balance of future consequences**. If punishment prevents future crimes—by deterring others,159 by restraining the offender,160 by setting a moral example,161 or by subjecting the offender to rehabilitation162—the suffering imposed on the guilty might have benefits exceeding the costs. Utilitarians regard retributivism as little more than glorified revenge, and believe that characterizing the deliberate infliction of pain as a good in itself is perverse.163 Retributivists criticize utilitarianism for reducing the offender to the status of a mere tool, a thing to be made an example of for the benefit of society.164 They also note that **utilitarianism logically permits punishment of the innocent, cruel punishments, strict liability, and anything else that might prevent future crime, however unfair or disproportionate such measures might be**.165

**4.** There are a multiplicity of functions to something – no way to isolated one specific purpose for it that is constitutive of it. For example, at the very least, the criminal justice system is both supposed to prevent crime and determine blame.

**5.** Function commits is-ought – it bases normative conclusions on a purely faction premise that something behaves a certain way. That puts a normative imperative in the conclusion which wasn’t present in the factual premises.

## AT Polls AC

**1.** Don’t reflect true public opinion – only a portion of the population, people don’t give their actual beliefs, and data is manipulated. **Casida[[38]](#footnote-38):**

Yes, there are always predictions that can be made, but **unless [predictions]** they are **count**ing **the entire country’s population as a sample** (an impossible task), there is still a margin of error, and **that margin of error is the margin of doubt of one poll or one statistic being able to gauge public opinion**. With the humility to say that I don’t really know, and the confidence to say that they don’t really know either, I want to remind voters that **all numbers can be manipulated, all questions and data can be leading and/or deceiving, and many people who have an opinion never give it to the people asking for it**. And when the silent people of this country act, be it with their vote or their dollar, the economy and communities in which we live will respond. We will be better off for it, and we will see history being made as we change our destiny according to the people at the bottom of this pyramid. Growing up in the marketing industry, I have so much respect for people who work with public opinion – it is certainly a trade that is both interesting and useful to the marketing of products and services (and political candidates). However, as someone who has spoken with literally thousands of individuals, I feel assured in saying that **it is impossible to truly gauge public opinion in a way that captures all of the public**– so don’t give it more credit than what it is worth.

**2.** Polls are skewed by their administrators. **McGinnis[[39]](#footnote-39):**

Asking slanted questions. On far too many occasions, researchers and pollsters ask questions that skew the results. These questions can be leading and create false assumptions or false comparisons. There are a number of ways in which a skilled researcher can create a poll question so the results are all but a foregone conclusion. If the conclusions drawn from the poll or survey don’t pass the sniff test for me, this is the first place I like to look.

**3.** Polls are regionally and structurally biased – there’s always a slanted political opinion in a certain region so wherever you interview you’re getting a regional bias that skews the results.

**4.** Polls are subject to change – people change their beliefs or have different ones right now than what occurred when you asked them the question, so polls can never verify objective truth.

**5. T -** Americans strongly favor retributive approaches. Long-term trends with Democrats and Republicans in the legislative branch prove. **Falco and Freiburger 11[[40]](#footnote-40):**

**Over the past few decades American correctional policy has focused on a “get tough” approach toward crime and punishment.** In order to cast themselves as “tough on crime,” **both Democrats and Republicans have continuously supported measures to increase the punishment allocated to criminal offenders**. The most punitive type of punishment in the United States is arguably the death penalty. Unlike other types of punishments (such as prison or jail), the death penalty is the only punishment with a mobilized opposition that continues to fight against its use. **Political leaders, criminal justice administrators, judges, and citizen groups throughout the United States look at public opinion on capital punishment to support its continued use.** In fact, **strong public support is arguably the number one reason the death penalty continues to be used as a form of correctional policy in our criminal justice system.** Bohm (2003) argues that public support for the death penalty contributes to its continued use in at least five ways. First, **strong public support can sway legislators to vote in favor of the death penalty and against any statutes seeking its repeal.** Second, he argues that prosecutors may seek the death penalty for political rather than legal purposes. Third, it may influence judges to impose death sentences or uphold death sentences on appeal. Fourth, governors may be less likely to veto death penalty legislation or commute a death sentence due to fear of risking re-election. Lastly, and what Bohm argues is the most important, is that supreme court justices (both state and federal) examine support for the death penalty as a measure of “evolving standards of decency” to decide whether the death penalty violates the U.S. Constitution’s 8th Amendment “cruel and unusual punishment” clause.

Outweighs – **A)** more comprehensive because it takes a long term look at the polling data conducted over the years, **B)** reflects how public opinion is actually implemented in terms of policy analysis which is particularly important in terms of how the legal system functions.

**6. T -** status quo public opinion confirms – people support the death penalty and don’t want criminals rehabilitated. **Balko 11[[41]](#footnote-41):**

But a little less than two years after David Grann [made a convincing argument](http://www.newyorker.com/reporting/2009/09/07/090907fa_fact_grann%22%20%5Ct%20%22_hplink) in The New Yorkerthat the state of Texas had done just that, **public support for capital punishment hasn't wavered**. In October 2009, Grann wrote about Cameron Todd Willingham, executed in 2004 for setting the fire that killed his three young children. Willingham was convicted because of forensic testimony from fire officials that arson experts call junk science. Grann's story was widely discussed and distributed, but the predicted sea change in public perceptions of the death penalty didn't happen. [According to Gallup polling](http://www.gallup.com/poll/1606/death-penalty.aspx%22%20%5Ct%20%22_hplink)**, support for the death penalty dropped just a point between 2009 and 2010, from 65 percent to 64 percent**, well within the margin for error. And about half the country still believes the death penalty isn't used often enough. As we saw last week with [the execution of Troy Davis in Georgia](http://www.huffingtonpost.com/2011/09/21/troy-davis-executed_n_975109.html%22%20%5Ct%20%22_hplink), the Willingham case doesn't even seem to have made state governments less willing to execute even when there are strong doubts about the defendant's guilt. In fact, the only fallout from Willingham may in fact have been to strengthen the resolve of death penalty supporters. When the crowd at a GOP primary debate cheered the number of executions carried out in Texas earlier this month, the Willingham case and Gov. Rick Perry's handling of it was the clear subtext of the question. **There's still no political price to pay for defending executions, for carrying out questionable ones or**, in the case of Perry, for [stifling attempts to investigate](http://www.huffingtonpost.com/2011/09/08/rick-perry-cameron-todd-willingham-execution_n_954197.html%22%20%5Ct%20%22_hplink) **whether an innocent person has been put to death.** The states of California, Arkansas, Tennessee and Kentucky recently even resorted to purchasing sodium thiopental [on the black market](http://reason.com/archives/2011/05/23/lethal-and-illegal%22%20%5Ct%20%22_hplink) to ensure they could continue carrying out lethal injections.

**And,** the motivation behind support for the death penalty is retributive. **Mandery[[42]](#footnote-42):**

This is **unquestionably** a powerful idea, and **public support for the death penalty is** – at least on the surface- largely **based on notions of retribution. In** most **polls, “an aye for an eye” or “punishment should fit the crime” is** the plurality reason **offered by proponents for their support of capital punishment**. In a 2001 Gallup poll, 48% of **respondents cited retribution as the basis for their support, more than twice the level of support offered for any other justification.**

## AT Constitutionality AC

**[AT Framework]**

**1.** The constitution is obsolete and doesn’t determine action. We don’t maintain roving militias anymore because we don’t need to – so constitutional edicts are just convenient political props.

**2.** The constitution was made to be overruled and changed by the government. We can amend it or change it through governmental processes. It may not have changed yet because nobody’s gotten around to it.

**3.** The state can’t be accorded to the constitution since most people don’t know the full thing and most people do not even agree with the whole document. There’s no way to achieve a unified will on the matter.

**4.** People themselves have different interps of what constitutional rules mean – for example whether the second amendment lets people own assault rifles – there’s no uniform way to understand the constitution, so it can’t express morality.

**5.** Constitutionality is paradoxical. **Olson[[43]](#footnote-43):**

The **paradoxes of constitutional democracy arise precisely from the conjunction of democracy and law.** Following a principle of popular sovereignty that has a long history in the Western tradition, democratic law-making holds that people ought to be able to consent to the laws under which they live (e.g. National Assembly of France 1789). Democratic citizens encounter problems, however, when they must rely on law to constitute themselves as a law-making body. Democratic **law-making becomes paradoxical when it must establish the very conditions for its own institutionalization**. Frank Michelman has identified one such paradox, which we can call *the paradox of the founding* (Michelman 1996; 1997; 1998, 91; 1999, 4-11, 33-4). It shows that a legal and political order cannot be democratically founded, at least not in a procedurally legitimate sense. Imagine that a people comes together to establish a democratic constitution. For the sake of convenience, call them the Founders. In order to undertake this task, the Founders must first have some understanding of what it means to be a people who will form a constitution. They must constitute themselves as a group, deciding who is entitled to participate in the constitution-forming process and who is excluded. Further, **the Founders must agree on the process they will use to establish laws and what form the constitution will take. Such an understanding is necessary to coordinate action, to make sure that everyone agrees about who has a say in the new constitution**, what the outcome of the constitution-forming process should look like, and so on. The Founders’ task, in other words, requires a set of procedures to regulate the process of becoming a people and forming laws. Since this project is a democratic one — the project of an entire people — the understanding they have of their joint undertaking must be shared and public. **To form a public understanding of their communal project, the Founders must first develop procedures that will allow them to accomplish the preliminary**, ground-clearing **task** of setting up an understanding about how to proceed. Their deliberations must themselves be guided by some idea about what is to be decided and who may decide it. The Founders must, in other words, devise ground **rules that will allow them to set up ground rules for constitution-founding.** Such an understanding will in turn have to be politically produced. At this point, the paradoxical nature of the Founders’ project becomes apparent. **Any democratic attempt to create a constitution requires a previous constitution that has already established democratic procedures. There is an infinite regression of procedures presupposing procedures, each necessary to form the procedures following it.** The Founders will therefore be paralyzed in the position of needing a set of procedures that explains how to go about forming procedures. The process of founding a constitution therefore can never start.

**[AT Contention]**

**1.** There’s no constitutional right to rehabilitation. Court precedent proves. **Palmer[[44]](#footnote-44):**

Despite the view that rehabilitation programs should be the core of any correctional system, **courts have refused to hold that there is a**n absolute **right to rehabilitation** during incarceration. In Padgett v. Stein, prisoners of a county prison sought enforcement of a consent decree entered into with prison authorities to remedy allegedly unconstitutional conditions of punishment. The prisoners contend that convicted prisons have a constitutional right to receive meaningful rehabilitative treatment, and that the failure of the prison authorities to afford prisoners rehabilitation programs constituted cruel **and** unusual punishment. The court **rejected the prisoners’ contentions on the ground that there is no constitutional duty imposed on a government entity to rehabilitate prisoners.** The court went on to state that: **whether penal institutions should undertake to rehabilitate prisoners at all** – in view of the serious questions which exist with respect to the effectiveness of rehabilitation programs – **is a social policy question which should be resolved by the representative branches of government** – i.e., the legislative and executive branches – and **not by the courts. Courts have repeatedly stated that prisoners have no constitutional right to rehabilitative treatment.**

**2. T -** retribution is the basis of constitutional law. **New York Times[[45]](#footnote-45):**

To demand the banging of JEFF. DAVIS is not "degrading a great conflict of ideas and principles into a paltry matter of detected felony and legal retribution." There is no conflict of ideas and principles in the case. It is a constitutional and anti-constitutional conflict, a nation-saving and a nation-destroying conflict, purely and simply. Nor is "**legal retribution**" "a paltry matter." On the contrary, it **is a matter of transcendent consequence.** It involves the very life of society. **Without law there can be no security, and law without legal retribution is but a name.** The founders of this government made treason to it a crime. **It stands as such in the third section, third article of the constitution.** JEFF. DAVIS has been guilty of it to the utmost possible extent. **If the penalty of treason is withheld from him, in case he is captured, we might as well abolish the offence altogether, and give carte blanche** to every political desperado. **As long as the nation has a life worth protecting, there must be law to protect it, and the law must be vindicated.**

**3. T –** the death penalty is constitutional. **Rivkin and Grossman[[46]](#footnote-46):**

Every legal argument against the death penalty begins with the 8th or 5th Amendment. The 8th bars "cruel and unusual punishments," and the 5th guarantees "due process of law" before a person can be "deprived of life, liberty or property." But **there is no serious constitutional argument against the death penalty. The 5th Amendment itself recognizes the existence of "capital" crimes, and executions were common before and after the Constitution's framing. No framer ever suggested that the Constitution divested states of this part of their historical punishment power,** nor has there been a constitutional amendment that does so. **Matters not addressed by the Constitution are left to the democratic process** and, in the main, to the states. As in Europe and Canada, **a solid majority of American citizens supports the death penalty, believing it to serve both as a deterrent and an appropriate societal response to particularly heinous crimes**. Unlike in Europe and Canada, however, U.S. courts and political leaders have not overridden public opinion to end the practice.

***[DP is Retribution]***

***1.*** *Motivation behind implementing the death penalty is retributive.* ***Mandery[[47]](#footnote-47):***

*This is* ***unquestionably*** *a powerful idea, and* ***public support for the death penalty is*** *– at least on the surface- largely* ***based on notions of retribution. In*** *most* ***polls, “an aye for an eye” or “punishment should fit the crime” is*** *the plurality reason* ***offered by proponents for their support of capital punishment****. In a 2001 Gallup poll, 48% of* ***respondents cited retribution as the basis for their support, more than twice the level of support offered for any other justification.***

***2.*** *This is the most common justification for the death penalty.* ***Gill[[48]](#footnote-48):***

***The theory of retribution rests****, in part, on the Old Testament and* ***its call for "an eye for an eye****." Proponents of retribution argue that "the punishment must fit the crime." According to [The New American](http://www.thenewamerican.com/tna/2002/06-03-2002/vo18no11_fallacies.htm%22%20%5Ct%20%22_blank): "Punishment -- sometimes called* ***retribution -- is the main reason for imposing the death penalty." Opponents of retribution theory believe in the sanctity of life and often argue that it is just as wrong for society to kill as it is for an individual to kill****. Others argue that what drives American support for capital punishment is the "[impermanent emotion of outrage](http://www.freezerbox.com/archive/article.php?id=233" \t "_blank)." Certainly, emotion not reason seems to be the key behind support for capital punishment.*

## AT Crime is Socially Caused

**1.** People have free will to commit a crime. Just because I grow up in a bad neighborhood doesn’t change the fact that I still chose to commit a crime.

**2.** Crime is not a social ill – it permeates all levels of society and all races. Most poor people aren’t criminals. **Samenow[[49]](#footnote-49):**

**Criminals come from all segments of society. Crime knows no social, ethnic, economic, or racial boundaries. Most poor people are not criminals, and many** who **are well-to-do are criminals. In** almost **every instance in which I have interviewed offenders** from impoverished and otherwise disadvantaged backgrounds, **I have found that they have a brother or sister** (maybe more than one) who lived in the same home and **endured the same problems**. The siblings **[but] made** a **different series of choices** as to how they dealt with their situations. The [environment](http://www.psychologytoday.com/basics/environmental-psychology) can produce obstacles that must be overcome. **However, the individual makes the choice as to how he or she will cope.**

**3.** If crime is a social ill then that just means rehab is ineffective because it’s not the person’s choice to commit it but rather it’s dictated by social norms. Rehab won’t change the social conditions so it won’t solve crime.

## AT Moral Education

**1. T -** Retribution best educates the offender of the gravity of their crime. **University of Albany[[50]](#footnote-50):**

Punishment by example need not necessarily threaten or scare people. In fact **a truly exemplary punishment** as we saw in Chapter 7 **is a retributive punishment, emphasizing the educative function of retribution**. Although much has been written about punishment's educative function, mainly by Professor Andenaes of Scandinavia, this work has never been taken seriously.[(8)](http://www.albany.edu/~grn92/jp10.html#notes)If it were, attention would be given to just exactly what would make up a truly exemplary punishment which would teach would-be offenders-that is, the public-about the crime that was committed. **Retribution requires that a crime be punished, not by any old punishment, but by a particular punishment, one that is capable of expressing the crime**. One's crime does not simply deserve a punishment. Rather, each crime or class of crimes deserves a particular punishment in terms of quality and amount. **This reciprocity, as it has been termed**, formed the genius of Dante's system of punishments. They **have inherent emotional and logical appeal, and through this they educate.**

**2. T –** rehab doesn’t educate a person. It says that the crime they committed doesn’t have a consequence. Means it teaches them that they aren’t doing anything wrong and that there’s no real gravity to the arguments made.

**3. T** – rehab teaches a message that undermines accountability and punishment. **Logan and Gaes[[51]](#footnote-51):**

As punishment, imprisonment conveys an important cultural message, but **if the official mission of a prison is defined** simultaneously **as** both punishment and **rehabilitation conflicting and confusing messages are transmitted** both inside and outside the prison walls. Inside the walls, such a definition conveys a message of rights without responsibility. **When a prison system is mandated in its mission statement to attempt rehabilitation**, or even merely to provide opportunities and resources for self-improvement, that mandate creates for inmates a legitimate claim (a right) to personally beneficial services. At the same time, **it undermines inmates' accountability** by defining them, like children, as insufficiently developed and disadvantaged persons for whose future behavior society must take some responsibility. Whereas imprisonment as punishment defines inmates as responsible for their past behavior, and whereas discipline within prison defines inmates as accountable for their current behavior, rehabilitation as a goal of the system defines inmates as not fully responsible for their future behavior. Outside the walls, **linking imprisonment with rehabilitation conveys a confusing message to the general public**. As punishment, the message of imprisonment is "Felonies are very wrong acts, and those who commit them will be held to account." But the message of the rehabilitation ethic is "Felonies are the result of personal deficiencies (of knowledge, skills, habits, values, temperament, motivation, personality, and so on) on the part of the individual; society must attempt to correct those personal deficiencies." That is not an appropriate message for society to construct through its institutions of punishment. **Such a message depicts criminal behavior in deterministic terms and portrays offenders as objects in need of adjustment, rather than as responsible human beings who must accept the consequences of their actions**. It may not actually excuse their crimes, but **it conflicts with and weakens the punishment message.**

## AT Equality AC

**1. T –** rehab reifies inequality. **Robinson and Crow[[52]](#footnote-52) 2:**

However, that is not to imply that there are not problems with rehabilitation. In particular, the notion of rehabilitative punishment (see above) has met with strong criticism. Firstly, it has been argued that **sentencing offenders with a view to rehabilitation** isproblematic on the grounds that it **can lead to disproportionate sentences and**, more generally, **inequity.** Proponents of retributive justice and desert-based sentencing argue that **allowing sentencing decisions to be influenced by a desire to change or rehabilitate offenders invites extended periods of punishment which go beyond what is deserved** (in respect of the seriousness of the crime committed). As we shall see in Chapter 2, this has been a valid criticism of rehabilitative punishment in the past. But it is worth reiterating the point that **even some of the proponents of rehabilitation have raised strong objections to the idea of rehabilitative punishment and the risks of injustice which it poses.** For example, Raynor (1997: 253) has argued that **‘the presumed benefits of a [rehabilitative] programme should not be used to justify an increased sentence as being “good for” an offender’: rather, a rehabilitative sentence should be limited by the principle of desert** (see also Rex, 1998: 38–9). Similarly, Rotman (1990: 14) has argued that ‘No one should endure a longer sentence in “order to be rehabilitated”.’ Where the two differ is that whilst Raynor considers rehabilitation a legitimate goal of sentencing and punishment, Rotman – as we have seen – rejects this view.

**2. T –** rehab gets rid of procedural checks, encourages disproportionate sentencing, and is paternalistic. **Logan and Gaes[[53]](#footnote-53):**

**Proponents believe that rehabilitation programs reduce the harshness of imprisonment by softening and humanizing the prison environment**. But what if this effect is more apparent than real? What if prisons merely pay lip service to the ideal of rehabilitation and create what amounts to a facade of fine-sounding programs that masks the harsh reality of doing time? **Might this approach not reduce pressure from the public for real reform? A veneer of good intentions could undermine the vigilance and the restraint of power that we need to maintain a system of just punishment.** Rather than softening the pains of imprisonment, the **rehabilitative goal may even add injustice to injury because it encourages individualized treatment, which undermines consistency and fairness. Individualized treatment requires discretion, which lends itself to abuse in the form of arbitrary and capricious distinctions**. In pursuit of rehabilitation, **offenders who have committed similar wrongs often are treated differently because of differences in personality**, background, and social skills. Furthermore, **when rehabilitative treatment is defined as an official goal of the agents and institutions of authority, then treatment, too, becomes paternalistic and authoritarian.** The result is cynicism and resistance on the part of the intended beneficiaries. If our goal is to reform the conditions of life inside prisons, it is better to do so directly than under the rubric of rehabilitation. The direct approach has less chance of backfiring.

## AT Oppression AC

**[AT Framework]**

**1. Vague** – oppression is a quixotic and ever-changing concept. No static definition of oppression ever exists because it effects different people in different forms.

**2. T – you’re oppressive** – you enforce a uniform standard of right and wrong that excludes minority perspectives and silences voices. External standards of oppression are themselves oppressive because they’re ideological.

**3. Consequentialist** – your framework relies on consequentialist assumptions of aggregation, objectivity, and end-states because it requires comparing different states of affairs to determine which actions best minimize oppression.

**A.** Can’t predict consequences. The system relies upon a foundation of normative truth but there isn’t actual truth because there’s never a way to unconditionally know something. That means util collapses in on itself and just resorts to a guessing game.

**B.** Can’t aggregate utility. Even if we always knew the consequences of our actions there is no way to calculate the utility of everyone in the world or the universe. That means we can never know if something is a net-good or bad.

**C.** Consequences are infinitely regressive. While I might be able to calculate and the net good of an action that doesn’t account for the consequences of the consequences and so on. That means an action can never be good or bad under util because it can’t be associated with a single value of utility.

**[AT Contention]**

**1. T –** the logic of rehab otherizes deviance and justifies state-sponsored violence. **Lewis[[54]](#footnote-54):**

The practical problem of Christian politics is not that of drawing up schemes for a Christian society, but that of living as innocently as we can with unbelieving fellow-subjects under unbelieving rulers who will never be perfectly wise and good and who will sometimes be very wicked and very foolish. And when they are wicked **the Humanitarian theory of Punishment will put** in their hands **a finer instrument of tyranny than wickedness ever had before**. For **if crime and disease are to be regarded as the same thing**, it follows that **any state of mind which our masters choose to call "disease" can be treated as crime; and compulsorily cured**. It will be vain to plead that **states of mind which displease government need** not always involve moral turpitude and do not therefore **always deserve forfeiture of liberty.** For our masters will not be using the concepts of Desert and Punishment but those of disease and cure. We know that one school of psychology already regards religion as a neurosis. When this particular neurosis becomes inconvenient to government what is to hinder government from proceeding to "cure" it? Such **"cure" will**, of course, **be compulsory; but under the Humanitarian theory it will not be called by the shocking name of Persecution.** No one will blame us for being Christians, no one will hate us, no one will revile us. The new Nero will approach us with the silky manners of a doctor, and though all will be in fact as compulsory as the *tunica molesta* or Smithfield or Tyburn, all will go on within the unemotional therapeutic sphere where words like "right" and "wrong" or "freedom" and "slavery" are never heard,. And thus when the command is given every prominent Christian in the land may vanish overnight into Institutions for the Treatment of the Ideologically Unsound, and it will rest with the expert gaolers to say when (if ever) they are to re-emerge. **But it will not be persecution. Even if the treatment is painful, even if it is life-long, even if it is fatal, that will be only a regrettable accident;** the intention was purely therapeutic. Even in ordinary medicine there were painful operations and fatal operations; so in this. But because they are "treatment," not punishment, they can be criticized only by fellow-experts and on technical grounds, never by men as men and on grounds of justice.

**2. T –** this form of coercion is the most pervasive tool of social control that creates totalizing standards of normality. Such practices, not a violent state, are the root of oppression. **Falzon[[55]](#footnote-55):**

In the wider social context, different **forms of training** serve to **turn individuals into good students**, proficient soldiers or reliable workers; **doctors promote healthy bodies and stable minds; social welfare agencies encourage good** mothers and proper fathers; and so on. These are presented as ‘**normal’ ways of being. And** just as prisoners watched in the panopticon come to watch over themselves, we have come to monitor, judge and **modify our own behavior in terms of these standards of normality**. Here we are at the heart of Foucault’s account of modern, disciplinary society. **Social control is not maintained by an oppressive political regime, but by a ‘regime of normality’, something far more pervasive and effective. Individuals** themselves participate in it, judging themselves and others in terms of standards of normality which **are reproduced and policed by teachers**, doctors, social workers and **other institutional figures. To stray from these standards is to enter the vast area of behavior defined as abnormal or deviant, behavior that is in need of** disciplinary attention, surveillance, **treatment and rehabilitation.**

**3. T –** rehab oppresses offenders; it tranquilizes and castrates their identities and equates them to animals. **Robinson and Crow[[56]](#footnote-56):**

A second criticism concerns the content of **‘rehabilitative’ intervention**s. As we shall see in subsequent chapters, faith in rehabilitation **has manifested itself in a wide variety of practices** for which ‘rehabilitative effects’ have been claimed, **from the treadmill and the crank through extended periods of solitary confinement, to psychosurgical and medical interventions**. For Rotman (1990: 102), the most important **‘therapeutic’ abuses perpetrated in the guise of rehabilitation have involved the use of biochemical means to control and/or ‘recondition’ the offender**. The history of **rehabilitation includes the use of drugs to ‘chemically castrate’ sexual offenders; to tranquilise ‘dangerous’ offenders; and to arouse pain and fear in the context of ‘aversion therapy’.** Judged against today’s standards, such interventions hardly fit the description of ‘humane’ approaches to punishment (see in particular von Hirsch and Maher, 1992). Particular questions have been raised about the moral content of certain rehabilitative interventions. Rotman asks: Should rehabilitation be defined to include efforts to produce a moral change in offenders, or should it rather be confined to the acquisition of the capacity to abstain from future crimes?. (Rotman, 1990: 6) Rotman’s own answer to this important question is that attempts to inculcate particular moral values in offenders contradicts the basic freedoms enjoyed by individuals in modern pluralistic societies.

**4. T –** rehab reifies inequality. **Robinson and Crow[[57]](#footnote-57) 2:**

However, that is not to imply that there are not problems with rehabilitation. In particular, the notion of rehabilitative punishment (see above) has met with strong criticism. Firstly, it has been argued that **sentencing offenders with a view to rehabilitation** isproblematic on the grounds that it **can lead to disproportionate sentences and**, more generally, **inequity.** Proponents of retributive justice and desert-based sentencing argue that **allowing sentencing decisions to be influenced by a desire to change or rehabilitate offenders invites extended periods of punishment which go beyond what is deserved** (in respect of the seriousness of the crime committed). As we shall see in Chapter 2, this has been a valid criticism of rehabilitative punishment in the past. But it is worth reiterating the point that **even some of the proponents of rehabilitation have raised strong objections to the idea of rehabilitative punishment and the risks of injustice which it poses.** For example, Raynor (1997: 253) has argued that **‘the presumed benefits of a [rehabilitative] programme should not be used to justify an increased sentence as being “good for” an offender’: rather, a rehabilitative sentence should be limited by the principle of desert** (see also Rex, 1998: 38–9). Similarly, Rotman (1990: 14) has argued that ‘No one should endure a longer sentence in “order to be rehabilitated”.’ Where the two differ is that whilst Raynor considers rehabilitation a legitimate goal of sentencing and punishment, Rotman – as we have seen – rejects this view.

**5. T –** rehab gets rid of procedural checks, encourages disproportionate sentencing, and is paternalistic. **Logan and Gaes[[58]](#footnote-58):**

**Proponents believe that rehabilitation programs reduce the harshness of imprisonment by softening and humanizing the prison environment**. But what if this effect is more apparent than real? What if prisons merely pay lip service to the ideal of rehabilitation and create what amounts to a facade of fine-sounding programs that masks the harsh reality of doing time? **Might this approach not reduce pressure from the public for real reform? A veneer of good intentions could undermine the vigilance and the restraint of power that we need to maintain a system of just punishment.** Rather than softening the pains of imprisonment, the **rehabilitative goal may even add injustice to injury because it encourages individualized treatment, which undermines consistency and fairness. Individualized treatment requires discretion, which lends itself to abuse in the form of arbitrary and capricious distinctions**. In pursuit of rehabilitation, **offenders who have committed similar wrongs often are treated differently because of differences in personality**, background, and social skills. Furthermore, **when rehabilitative treatment is defined as an official goal of the agents and institutions of authority, then treatment, too, becomes paternalistic and authoritarian.** The result is cynicism and resistance on the part of the intended beneficiaries. If our goal is to reform the conditions of life inside prisons, it is better to do so directly than under the rubric of rehabilitation. The direct approach has less chance of backfiring.

## AT Racism AC

**1.** The Criminal Justice System isn’t racist. Sentencing is fair. **Elder[[59]](#footnote-59):**

1) Blacks are arrested at higher rates compared to whites --*but wrongly so.* Not true. While only 13 percent of the population, blacks accounted for 28 percent of nationwide arrests in 2010 and 38.1 percent of arrests for violent crime (murders, forcible rape, robbery and aggravated assault). But are they *unfairly* arrested? **Studies find that arrest rates by race are comparable to the race of suspect identification by victims**. For example, in a given city, x number of robbery victims describe their assailants as black -- whether or not the suspect has been apprehended. It turns out that **the race of those arrested matches the percentage given by victims**. **This has been found repeatedly across the country, in all categories of crime** where the race of an assailant is identified. So unless the victims are deliberately misidentifying their assailants -- unconcerned about whether the suspect is apprehended and knowingly give a false race -- **blacks are not being "over-arrested."** 2) Blacks are convicted at higher rates and given longer sentences than whites for the same crime. Not true. **Differences in conviction and sentencing rates by race are due to differences in the gravity of the criminal offenses, prior records or other legal variables. A** 1994 **Justice Department survey of felony cases in the country's 75 largest urban areas actually found *lower* felony prosecution rates for blacks than whites and that blacks were less likely to be found guilty at trial.** 3) The sentence disparity between powder and crack cocaine is racist and accounts for a large percentage of imprisoned blacks. Not true. Concerned about the deadly effect of crack within their own communities, black members of Congress led the charge to pass the 1986 federal drug laws. The bill that was passed -- which included the crack/powder sentencing disparity -- did so with the support of the majority of black congresspersons. None at the time objected to the sentencing disparity as "racist." In 2006, the feds tried 5,619 crack sellers, and 4,495 of them were black -- out of the 562,000 blacks in state and federal prisons at the end of that year. Add in county and city jails, and the figure rises to 858,000. And states' crack cocaine laws are not the culprits. Only 13 states employ differing sentencing guidelines for crack vs. powder -- and their differential is much smaller than that of the feds.

**2. T –** African Americans culturally reject rehabilitation and rehab programs are subject to prejudice and disparity. **Kuzy[[60]](#footnote-60):**

**Failure to cooperate is** generally regarded as a negative quality by society as a whole. This “negative” response may **in actuality** be a legitimate course of action. Some researchers have theorized that a failure to cooperate **may be a culturally appropriate African-American response to an application and eligibility process that can tend to be long and drawn out** (Dziekan & Okocha, 1993). Obviously, this is **something that a rehabilitation counselor working with an African-American should bear in mind** during the eligibility process. This misunderstanding between the counselor and consumer as to the consumer’s true level of involvement may also affect the outcome of the eligibility status. Often, by **misinterpreting the consumer’s actions regarding participation in the vocational rehabilitation process, the counselor may close an African-American’s case because he/she feels the consumer would not** likely **benefit** from VR services (Rosenthal & Breven, 1999). Again, it is critical that he VR counselor be aware of these issues at this stage of the process and addresses them in a timely fashion so as to avoid any potential misunderstandings regarding the eligibility process. **Failure to cooperate is not the only reason given that shows racial disparity. Another intriguing finding related to racial disparity in determining eligibility is that “handicap too severe” is more often given as a reason for closure when the consumer is deemed to severely impaired** to attain gainful, competitive employment. It has been found that **African-Americans tend to present with more profound and severe disabilities in relation to European-Americans** (Anderson, Dyson, & Grandison, 1998). However, European-Americans have been found to be more likely deemed ineligible due to severity of their disability than African-Americans (Wilson, et. al, 1999). This seemingly contradictory finding may in fact be the result of inequitable diagnostic and testing services requested by the VR counselor (Wilson, 2000).

**3. T –** incarceration is better – minorities say view prisons as safe-havens from violent and destructive communities. **Weston-Henriques and Jones-Brown[[61]](#footnote-61):**

While men continue to return to prison after their release, and with more women now being incarcerated, they, too, are returning to prison in increasing numbers. **While conventional society views prisons as places of punishment and terror, there is a mounting body of evidence that,** for some, **prisons are**, in fact, viewed as **safe havens – places of relative comfort and stability** (in comparison to the threat of hunger and homelessness), places **where the government is mandated to protect the individual (in comparison to neighborhoods where the police and ambulance services never arrive or never arrive in time**, and places of employment (in comparison to neighborhoods where hopes of legitimate gainful employment have long departed like white and middle-class neighbors). Nor surprisingly, therefore, **minorities, especially African Americans and Hispanics,** are among those most likely to **describe prison as a safe haven**. However, the following quote from **a judge** in reference to a female offender reflects a consensus of sorts. He **note[d]**s: **I’ve put her in programs and she’s violated probation three times. She’s out there in the street hurting herself and doesn’t have any place to stay or any people to go to.** So I give her six months at the House of Correction. There aren’t any other alternatives. And I’m sending her there because there’s nothing for her in the community. **At least in there she’s safe, at least being there gives her a chance to dry out and a safe place to** sleep. (Watterson 1996: 29). Based on this scenario, **it is clear not only that** some **offenders regard prison as a safe haven but that those who administer the system also consider it such.**

Adam Lamparello, (J.D. Candidate), OHIO STATE JOURNAL ON DISPUTE RESOLUTION, 2001, 340. The use of rehabilitation in the criminal system was a conspicuous failure. By the 1970s, the optimism and idealism that characterized the reformation movement slowly began to evaporate, as rehabilitation experienced a series of vicious criticisms, examining both its theoretical foundations and practical efficacy. In the widely circulated study Struggle for Justice, the use of indeterminate sentencing was criticized as a "tool of institutional control" used to increase "the power of the state to lengthen a prisoner's sentence." Struggle for Justice also identified a class bias within rehabilitation programs, where whites were treated less harshly, leading to gross inequities in length of sentences for similar conduct. Judge Marvin Frankel joined in, criticizing the discretionary power rehabilitation afforded judges, explaining that "the almost wholly unchecked and sweeping powers we give to judges . . . [is] intolerable for a society that professes devotion to the rule of law." [Ellipsis in original]

DISCRETION IN SENTENCING RESULTS IN DISCRIMINATION AGAINST RACIAL AND SOCIOECONOMIC MINORITIES.

Elizabeth Scott & Laurence Steinberg, (Prof., Law, Columbia U./Distinguished University Professor, Temple U.), LOUISIANA LAW REVIEW, Fall 2010, 89-90.

The fairness problem is magnified by the likelihood that factors influencing risk assessment are linked to race, socioeconomic status, and age. Thus, minority youths, youths from single-parent homes, or youths who live in poverty may be less likely to have supportive families or other resources or attributes that are associated with a lower risk of reoffending or with positive program outcomes. If so, under a pure prevention regime, they may be less likely than their more fortunate peers to qualify for community programs and more likely to be incarcerated. Moreover, substantial evidence indicates that youths who are arrested at a very young age are at significantly higher risk of persisting in criminal activity than those who first become involved in crime in mid-adolescence. Under a pure prevention regime, a ten year old arrested for theft who has a history of family, behavioral, and academic problems might be a candidate for correctional interventions that extend for as long as he is under juvenile court jurisdiction — in many states, into his twenties. Thus, the least culpable juveniles under conventional criminal law principles would be subject to the most intensive interventions in response to their crimes. Although proponents may insist that these discrepancies are acceptable because the dispositional purpose is not punishment but crime reduction, this will likely offer little comfort to youths subject to more restrictive treatment than their peers.

## AT Sexism/Feminist AC

**1. T –** rehab reinforced a sexist mentality that women are passive and helpless. **Moulds[[62]](#footnote-62):**

We should, however, consider possible long-term impacts on women. It is true that **women** do enjoy certain benefits of a chivalry factor. They **are arrested, prosecuted, and sent to institutions less often than are men** - the benefit to them is their freedom. **A major cost** to them, however**, is the continuation of a state of public consciousness which holds that women are less able than men** and are **thus in need of special protective treatment. This results in extensive personal psychological, social, economic, and political damage** to the democratic notions of self- determination and equality. Within the criminal justice system there will be public policy implications of these attitudes. To the extent that [**when] paternalistic views of women dominate the criminal justice system, programs designed for women** within that system **will be affected by those views**. For example, if women are viewed to be naturally passive and dependent, prison "**rehabilitation**" may be geared to **reestablish[es] those norms in women** through appropriate counseling and vocational training programs.37 The existence of passivity and dependency in human beings, however, may make them of limited productivity in the society at large. It is strongly suggested here that the policies of the criminal justice system with regard to women be reevaluated in light of an acknowledged paternalistic bias present in that system and in light of changing views concerning innate characteristics of women.

**2. T -** the basis of female subjugation is rooted in rehabilitative logic. **Klein and Kress[[63]](#footnote-63):**

**The rehabilitative ideal strengthens privatism and attempts to deaden movements of political or collective activity.** The rehabilitative failure is evidenced by the deep and justified cynicism among treatment personnel, which reflects the reality that they are regulating and not reducing criminal activity. **The developing medical model of rehabilitation, that defines crime as illness and the prisoner as patient in traditional liberal form, again reinforces women's childlike helplessness. Women are commonly child/patients under the male domination of doctors and husbands** (see Chesler, 1972; Roth and Lerner, 1975). Historically "ideal" mental patients and medical guinea pigs, women convicted of "crimes" now suffer the indignity of behavior modification and enforced therapies behind bars.23 **Women have been the targets of extreme technologies of control;** the "father of **psycho surgery**" in the U.S., Dr. Walter Freeman, contended that women made the best candidates for lobotomy, and cited one elderly housewife who "was a master at bitching and really led her husband a dog's life" until surgery made her into a model housekeeper. A contemporary neuro surgeon has estimated that up to 80% of his patients have been women (Klein, 1973a:7-8). **Hospitalization and chemotherapy, less spectacularly, have been prime methods for controlling deviant women, who might have been imprisoned for their conduct were they male**. It is possible that high rates of mental hospitalization for women complement their low rates of imprisonment. In sum, **differential treatment of women in the criminal justice system has been based on an assumption that, treated paternalistically, women will not make trouble.**

## AT Communitarian AC

**1. T -** only retribution accounts for the communal relationship of victims. **Castillo[[64]](#footnote-64):**

The idea of **retribution,** as an indication of the purpose of punishment, **alludes to the need for the criminal to compensate the victim of the crime for the harm suffered**. This harm is two-fold: It is, on the one hand, **the loss of a life,** of someone’s physical integrity or rights; on the other hand it is the **[and] feeling that one did not deserve that harm.** These two types of **harm generate resentment on the part of the victim and all those who sympathise with his suffering.** This resentment must be **counterbalanced by a punishment that reinstates the victim’s loss as far as possible and that inflicts a balancing harm on the aggressor**. It is retribution as vengeance or **satisfaction of the resentment generated in the victim** (Smith 1976, II, I, 1–2, 67ff.). In the idea of retribution correctly understood, **the victim’s perspective is taken into account, that of the actual victim, the person who has suffered the loss occasioned by the illicit act, and the victim by sympathy, who is any spectator who experiences suffering together with the injured party.** This is the point of view of the individual, of the person, who suffers an aggression, the victim, and the point of view taken by Brian Rosebury (2009, 19–21).

**2.** Offenders aren’t a part of our community. Your offense isn’t applicable to modern society. **Duff[[65]](#footnote-65):**

**We must** of course treat such **invocations of community with** proper **skepticism.** Too often **they amount to little more than rhetorical appeals to vagu**e but currently resonant ideas or to **romanticized images of a pre-modern** golden age of small, stable **communities.** Too often community actually signifies only a geographic locations. **Criminals** are punished outside the walls of the prison; the mentally disordered are cared for, or neglected, outside the walls of psychiatric institutions. But such people **are not in any substantial sense in or of the ‘community’ whose members pass them by with distaste or averted eyes**; and **what drives policies of decarceration is** often, not a vision of the importance of community for human well-being, but a cruder economic **calculation that these are cheaper ways of appearing to pursue the aims of crime reduction** or psychiatric care.

**3. T** – communitarianism supports excluding offenders from society, not reintegrating them. **Duff 2:**

Second, if **offenders are** (either explicitly or implicitly) **excluded from the community of the law-abiding**, they are deprived of the protections that liberal rights provide**. They are defined as the ‘enemy’ against whom ‘we’ must defend ourselves by whatever means are necessary, or as ‘outsiders’ whose interested need not concern us in the way that the interests of fellow members must concern us**. As I noted above, a social contract model could be applied to exclude offenders from protections provided by the contract. But **a communitarian perspective seems** as least as **apt to exclude offenders from ‘the community.’**

## AT Evolution AC

**1. T -** strong evolutionary tendencies favor retribution. **Mackie[[66]](#footnote-66):**

Suppose that **an animal**, human or nonhuman, **[that] is injured by another**, either of the same species or of some other, where the first is able to do some harm to the second which the second can associate with its aggression and perhaps recognize as a reaction to it. Then such retaliation **will** tend to **benefit** the **[from] retaliate[ion]** or, **since the aggressor will be discouraged from repeating the attack**. This **mechanism[s]** can **operate either at the psychological level**, **by negative reinforcement in an** individual **aggressor, or at a genetic level,** where there will be some **[with] selective pressure against** a kind of **aggression that[s]** commonly proves **harmful to the aggressor.** For both reasons there will then be selective pressure in favor of the tendency to retaliate. This need not be, and originally will certainly **not** be, **the result of** calculation and **deliberate choice** by the retaliator; it is **[but] rather** that **the mechanism of natural selection** mimics calculated, purposive, action. **Spontaneous retaliation** will thus **develop[s]** because it is often beneficial, either immediately or in a longer term, **but it will be spontaneous, not chosen by the retaliator for the sake of the benefit.** Of course, we need not assume that retaliation is always beneficial, as it clearly is not, and we can well admit that **what is thus biologically developed is** likely to be a “mixed strategy,” **a combination of retaliatory tendencies with** tendencies, say, to **flight** or, at least among members of the same species, to conciliation. All that we need is that there should be a retaliatory component in whatever mixed strategy is developed, and it is easy to see why this should be so. And the spontaneous repaying of benefit with benefit may be developed in a corresponding way. Initially **what is thus explained is retributive behavior**, but in creatures that have the capacity for emotion this will naturally be **accompanied by the development of retributive emotions directed towards the sources of injury** or help. However, these are still only the nonmoral retributive emotions. In order to account for their moral counterparts, we must, as Westermarck says, turn to society as the birthplace of moral consciousness. **Among animals that live in social groups, it is easy to explain cooperation in the resentment of injuries.** The helping, in this as in other ways, of individuals closely related to an agent will be of direct genetic advantage, of a sort that results in selection in its favor, insofar as close relatives will tend to share the agent’s genes. There can also be selective pressures in favor of reciprocal altruism, the tendency to help those who help the agent in return. But what may be most important, especially among human beings, is that cooperative social practices or conventions can grow up by social interaction. A simple model will illustrate this possibility. If two agents will do better in some way if they cooperate, they may begin to do so gradually and tentatively, each making his further cooperative moves conditional upon a favorable response from the other. Such a tentative development of a cooperative practice is easy to describe in terms of a series of conscious choices; but it could equally well grow up more automatically, through agents coming habitually to adopt ways of behaving in relation to one another that tend to help each in whatever pursuits are already established as part of his behavior. **Reciprocal sanctioning**, the fact that each will be less cooperative if the other is less cooperative, **can generate and maintain cooperative conventions even without** any series of **conscious choice**s. Since cooperation in general is thus explicable, **cooperation in resentment can be understood in social animals and particularly in human beings** once **resentment is more likely to be useful to those who develop it than cooperation in gratitude**: the repelling of injuries will often require greater concentrations of force than are needed in order to make a worthwhile return for benefit.

**And,** weighing – this is the way organisms operate empirically to spread their genes. **Greene[[67]](#footnote-67):**

In other words, the **emotions that drive us to punish are blunt biological instruments**. **They evolved because they drive us to punish in ways that lead to (biologically) good consequences**. But, as a by-product of their simple and efﬁcient design, they also lead us to punish in situations in which no (biologically) good consequences can be expected. Thus, it seems that **as an evolutionary matter of fact, we have a taste for retribution**, not because wrongdoers truly deserve to be punished regardless of the costs and beneﬁts, but **because retributive dispositions are an efﬁcient way of inducing behavior that allows individuals living in social groups to more effectively spread their genes.**

## AT Virtue Ethics AC

**1.** Rehab theorists aren’t able to recognize virtuous qualities. **Ward[[68]](#footnote-68):**

The first problem is that there is rarely an acknowledgement of the significant role that prudential values play in the treatment of offenders. In fact, researchers such as Andrews and Bonta (1998) stress that their approach to rehabilitation is value free in some important respects. They state that the relationship of criminogenic needs (rational treatment targets) is essentially an empirical process. This is a mistake. Rather, researchers detect dynamic characteristics that appear to be associated with disvalued outcomes (crime) and make normative judgments that such risk factors or predictors are needs. Thus, **there are independent value judgments that the factors in question are related to harmful outcomes, and, additionally, if needs are viewed in the categorical sense, that ultimately failure to meet such needs will result in serious harm and contribute to social maladjustment and antisocial behavior.** In other words, needs reflect both factual and normative judgments and also an understanding of the fundamental architecture of the human mind. The failure to acknowledge the role that values or human goods play is to run the risk that the values that are implicitly embedded (necessarily so, see above) in a treatment program will not be critically scrutinized. In addition, **because there is little awareness of the normative underpinning of therapy, therapists will not make the connection between skills necessary to live an offending free lifestyle** (i.e., develop and implement a conception of good lives) **and the primary human goods such skills are designed to secure.**

**2. T -** a virtue theory of rehab would be coercive and disproportionate. **Dripps[[69]](#footnote-69):**

FAE also has troubling implications for theories of punishment based on the promotion of virtuous character.190 **A character-based virtue-ethics theory**, leaving FAE aside for the moment, **runs into the debate**, now ongoing among philosophers, **about whether the person/situation research forces us to surrender the very concept of character traits**, at least in the broad terms they have been understood since Aristotle.191 The **psychologists have cast serious doubt on the very existence of any cross-situational disposition** as broad as Blackstone’s “vicious will.”192 A virtue theory that did describe traits defined narrowly enough to be recognized in the psychological research, however, would have to account for an unmanageably large number of predispositions. Imagine the virtue theorist saying, “You are being punished for your unvirtuous propensity to steal coins out of parking meters, at night, when unwatched by the police, drunk, and broke.” The thief’s bad character may not run any deeper or wider than that predisposition. **To treat** such precisely defined **dispositions as proper predicates for punishment,** however, **would essentially reduce the character-based scheme to a naked system of social control. Moreover, a great many law-abiding people are simply lucky enough to have avoided similarly precise situational triggers of bad behavior**. The focus on the offender’s character therefore seems a highly inappropriate basis for coercive intervention by the state. Whether virtue-ethics of the character sort can support a theory of punishment given the person/situation research, however, is beside the point. **A virtue-ethics approach to punishment depends not only on the existence of character traits, but also on the ability of observers to identify and evaluate traits. Put into practice, the result would be systematically biased in favor of blaming people for character traits they don’t have**. Observers committing FAE will classify one who steals from parking meters at night while drunk and broke simply as a thief or still more generally as dishonest. But the disposition to steal from unguarded parking meters at night while drunk is not the same as a predisposition to cheat on one’s taxes or to burglarize residences. Any move to replace the inquiry into bad character with an inquiry into the practical reasonableness of the accused’s behavior, all things considered,193 might well be still worse. Such an approach relies very heavily on the tribunal’s intuitive sense of justice.194 Social cognition research teaches that such intuitive assessments of blameworthiness are likely to be biased in favor of identifying the choices of the accused, rather than the context, as the key link in the causal sequence.

**3.** Virtuous goods are too general to underpin rehab programs. **Ward 2:**

A related problem is that any discussion or utilization of **the concept of human goods is** often **at too general a level to be useful for rehabilitation planning**. The concept of good lives is a contextual one, where the basic human goods sought by all individuals are translated into different forms (i.e., concrete realizations). **Such distinct forms reflect the weighting individuals give to different values and their capacities, social supports, and opportunities.** In a sense, a conceptualization of good lives is tied together by personal identity, a way of characterizing the direction and meaning of each person’s life. **To offer offenders overly general or ‘‘prepackaged lives’’** (even if only tacitly) **is a mistake**. Such abstract conceptions lack applicability to individuals and therefore suffer from irrelevance and meaninglessness. The reliance on manual-based interventions in the treatment of offenders can add to this problem. **Because therapists tend to follow standardized procedures, they may fail to consider the appropriate form of life for a given individual**. Instead, they may uncritically accept the generic conception of good lives implicit in the treatment manual. For example, with sex offenders, it is often assumed that all offenders should be able to establish personally satisfying, intimate relationships with other adults. Therefore, therapy may emphasize the value of personal disclosure, learning how to be mutually supportive and acquiring the ability to listen to another person’s feelings and opinions. However, the valuing of relationships to this degree may not be appropriate for certain individuals and may even be unrealistic and harmful. They may place more significance on developing vocational skills or consorting with friends rather than intimates. **While it may be true that most individuals need some degree of human contact, certainly, there are individual differences in the type and intensity of relations preferred** (and needed). In addition, **some offenders may be so damaged by a history of abusive relationships that it is unrealistic to expect them to ever be able to establish and maintain deeply intimate relationships.** The point is that conceptions of good lives require a consideration of the offenders’ particular profile of capacities, preferences, commitments, etc., and the possible opportunities available in the world. It is a question of trying to ensure that a full range of human goods (from all three sources) are accessible but accepting that they can (and should) be realized in varying ways for different offenders.

**4.** These goods are contestable and distinct; rehab programs will fail. **Ward 3:**

A further problem in the way **contemporary** behaviorally oriented **programs** approach treatment is that they **fail to realize that conceptions of good lives are contestable because of the substantive values and their rankings that constitute them**. The different forms basic human goods can take reflect the weighting or emphasis given to particular values (see above). One individual might place more importance on his work and locate the other aspects of his life around this human good. While another may view his relationships with his friends and family as constituting the core or center of his way of life. Each could still ensure that the other human goods are achieved but vary in the ways they prioritize and secure them**. It is possible to contest individuals’ ways of living because they reflect different judgments about the comparative evaluations of human goods and also about the internal and external conditions necessary to achieve them.** A good lives approach to rehabilitation is not relativistic; individuals can be mistaken about their abilities, interests, and social opportunities. In addition, on examination, **some conceptualizations of good lives might prove problematic and unable to realize the range of goods needed to live a fulfilling and worthwhile life.** The issue of value judgments and conflict is complex, and it is not my intention to address it here (see Larmore, 1996). The key point is that **because rehabilitation programs implicitly or explicitly embody conceptions of good lives, value conflicts and disagreements are inevitable and necessary.** The latter occurs when a therapist runs his or her eye over an individual’s rehabilitation plan and notes fundamental problems in its coherency and content. Part of the problem could reside in the way human goods are specified and/or the form that they take within the plan. This is a normative issue and should be addressed.

**5.** T - only retribution is able to care for the victim of the crime. **Castillo[[70]](#footnote-70):**

The idea of **retribution,** as an indication of the purpose of punishment, **alludes to the need for the criminal to compensate the victim of the crime for the harm suffered**. This harm is two-fold: It is, on the one hand, **the loss of a life,** of someone’s physical integrity or rights; on the other hand it is the **[and] feeling that one did not deserve that harm.** These two types of **harm generate resentment on the part of the victim and all those who sympathise with his suffering.** This resentment must be **counterbalanced by a punishment that reinstates the victim’s loss as far as possible and that inflicts a balancing harm on the aggressor**. It is retribution as vengeance or **satisfaction of the resentment generated in the victim** (Smith 1976, II, I, 1–2, 67ff.). In the idea of retribution correctly understood, **the victim’s perspective is taken into account, that of the actual victim, the person who has suffered the loss occasioned by the illicit act, and the victim by sympathy, who is any spectator who experiences suffering together with the injured party.** This is the point of view of the individual, of the person, who suffers an aggression, the victim, and the point of view taken by Brian Rosebury (2009, 19–21).

## AT Divine Command Theory AC

**[AT Framework]**

**1.** God doesn’t exist. Either he’s evil and we should reject him or he’s impotent and irrelevant. **Harris[[71]](#footnote-71):**

Only **the atheist** recognizes the boundless narcissism and self-deceit of the saved. Only the atheist realizes how morally objectionable it is for survivors of a catastrophe to believe themselves spared by a loving God, while this same God drowned infants in their cribs. Because he **refuses to cloak the reality of the world’s suffering in a cloying fantasy of eternal life**, the atheist feels in his bones just how precious life is -- and, indeed, how unfortunate it is that millions of human beings suffer the most harrowing abridgements of their happiness for no good reason at all. Of course, **people of faith regularly assure one another that God is not responsible for human suffering. But how else can we understand the claim that God is both omniscient and omnipotent?** There is no other way, and it is time for sane human beings to own up to this. This is the age-old problem of *theodicy*, of course, and we should consider it solved. **If God exists, either He can do nothing to stop the most egregious calamities, or He does not care to. God, therefore, is either impotent or evil.** Pious readers will now execute the following pirouette: *God cannot be judged by merely human standards of morality*. But, of course, **human standards of morality are precisely what the faithful use to establish God’s goodness in the first place.** And any God who could concern himself with something as trivial as gay marriage, or the name by which he is addressed in prayer, is not as inscrutable as all that. **If He exists, the God of Abraham is not merely unworthy of the immensity of creation; he is unworthy even of man.** There is another possibility, of course, and it is both the most reasonable and least odious: **the biblical God is a fiction**. As Richard Dawkins has observed, we are all atheists with respect to Zeus and Thor. Only the atheist has realized that the biblical god is no different. Consequently, **only the atheist is compassionate enough to take the profundity of the world’s suffering at face value. It is terrible that we all die and lose everything we love; it is doubly terrible that so many human beings suffer needlessly while alive.** That so much of this suffering can be directly attributed to religion -- to religious hatreds, religious wars, religious delusions, and religious diversions of scarce resources -- **is what makes atheism a moral and intellectual necessity.** It is a necessity, however, that places the atheist at the margins of society. The atheist, by merely being in touch with reality, appears shamefully out of touch with the fantasy life of his neighbors.

**2.** Accepting God’s commands also requires accepting external normative rules. **Banks[[72]](#footnote-72):**

This is the second option offered by Socrates, and it means that God’s commands are not arbitrary but emanate from the application of His wisdom in knowing what is best for us. However, there is a problem, because **in accepting the rightness of God’s commands, we must also accept that there is some standard of right and wrong outside of God’s will that must exist prior to and independent of God’s command**. In the final analysis, therefore, **we must either accept that God’s commands are arbitrary or recognize that His commands have reference to a standard of rightness and wrongness independent of His will**. Those who take **the position that ethical standards are set by God are therefore obliged to accept arguments** that tend to **conflict with** their fundamental religious **belief in God’s goodness and omnipotence**. The divine command theory raises so many complex and difficult issues that it leads to the conclusion that **setting ethical standards by reference only to religion is highly problematic.**

**3.** If DCT is true then God must incoherently command himself. **Austin[[73]](#footnote-73):**

On **Divine Command Theory**, it problematically **appears that God’s goodness consists in God doing whatever he wills to do.** This problem has been given voice by [Leibniz](http://www.iep.utm.edu/leib-met/) (1951), and has recently been discussed by Quinn (1978), Wierenga (1989), Alston (1989), and Wainright (2005). The problem is this: **if what it means for an action to be morally required is that it be commanded by God, then God’s doing what he is obligated to do is equivalent to his doing what he commands himself to do.** **This**, however, **is incoherent.** While it makes sense to conceive of God as forming an intention to do an action, or judging that it would be good to do an action, **the notion that he commands himself to do an action is incoherent**. Moreover, on Divine Command Theory, **God could not be seen as possessing moral virtues, because a moral virtue would be a disposition to do an action that God commands.** This is also incoherent.

**4.** Multiple religions and interpretations of those religions make DCT irresolvable. **Austin 2:**

The last objection to note is that **given the variety and number of religions in the world, how does the divine command theorist know which** (putatively) divine **commands to follow?** The **religions** of the world often **give conflicting accounts of the nature and content of the commands of God**. Moreover, **even if** such **a person believes that her religion is correct, there remains a plurality of understandings within religious traditions with respect to what God commands us to do**. In response, some of the issues raised above regarding autonomy are relevant. A divine command theorist must decide for herself, based on the available evidence, which understanding of the divine to adopt and which understanding of divine commands within her particular tradition she finds to be the most compelling. This is similar to the activity and deliberation of a secular moralist who must also decide for herself, among a plurality of moral traditions and interpretations within those traditions, which moral principles to adopt and allow to govern her life. This takes us into another problem for divine command theory, namely, that **it is only those who follow the correct religion, and the correct interpretation of that religion, that are moral, which seems highly problematic**.

**[AT Contention]**

**1. T –** God and Christian theology command retributive justice. **Grimsrud[[74]](#footnote-74):**

This **retributive mindset has** some **roots in Christian theology.** This is how the logic of retribution works: **God is understood in terms of impersonal, inflexible holiness. God’s law is** seen to be the **unchanging** standard **by which sin is measured. God's response to sin is punitive. God** simply **cannot countenance any kind of sin. God is not free to act with unconditional mercy** and compassion toward rebellious human beings. Simply **to forgive would violate God’s holiness. Compassion without satisfaction is not possible** for God. As theologian Millard Erickson writes, "**For God to remove or ignore the guilt of sin without requiring a payment would in effect destroy the very moral fiber of the universe, the distinction between right and wrong."** **Retributive violence**: In this understanding of **the nature of God, the logic of retribution indeed leads to acceptance of "justifiable violence." Retributive violence is required in response to wrongdoing.**

**2. T –** the Bible strongly endorsed retributive punishment. **Marshall[[75]](#footnote-75):**

Other theorists are not so sanguine. They remain deeply uncomfortable with the undercurrents of revenge or reprisal that are still implied by the terminology, and regard the concept of retributive justice as virtually synonymous with vengeance and barbarism. They see **the retributive principle of “an eye for an eye and a tooth for a tooth”** (Leviticus 24:19-22; Deuteronomy 19:18-21; Matthew 5:38-40) not as a statement of just proportionality, as retributive theorists do, but **as a warrant for brutal retaliation**. In my view, **there can be little doubt that biblical teaching on justice includes a definite theme of retribution**. Most basically, **the Bible recognizes that human deeds carry inescapable consequences.** There is a kind of inbuilt law of recompense in the universe that means **people “reap whatever they sow**” (Galatians 6:7, cf. Ecclesiastes 10:8; Proverbs 1:32; 26:27; Psalm 7:15-16). In addition, **the basic retributive concepts of guilt, desert, proportionality, and atonement are widely attested in the Old Testament legal and cultic system, and undergird moral and theological teaching in the New Testament as well.** Furthermore, **since God is inherently just, and God’s judgments are never capricious, biblical accounts of divine judgment** on sin, both within history and at the end of time, **may also be regarded as demonstrations of retributive justice**. **The biblical story ends with an affirmation of the retributive principle of just deserts**: “See, I am coming soon; my reward is with me, to repay according to everyone’s work” (Revelation 22:12). Accordingly, biblical justice is retributive justice insofar as it turns on the principles of moral culpability, measured recompense, and the rule of law.

**3. T –** the bible has tons of verses that endorse retribution. ***Genesis 9:6:* Whoever sheds the blood of man, by man shall his blood be shed**, for **God made man in his own image. *Exodus 23:7*:** **Keep far from a false charge**, and do not kill the innocent and righteous, **for I will not acquit the wicked**. ***Exodus 21:24-25***: **Eye for eye**, tooth for tooth, hand for hand, foot for foot, **burn for burn, wound for wound, stripe for stripe. *Exodus 22:2-3:*** **If a thief is found breaking in and is struck so that he dies, there shall be no** blood**guilt** for him, **but if the sun has risen on him, there shall be bloodguilt for him. He shall surely pay**. If he has nothing, then he shall be sold for his theft.

## AT Marxism AC

**1.** Marxists don’t endorse rehab. **Skully[[76]](#footnote-76):**

They further state that if normally functioning capitalism generates pressures and incentives toward criminal behavior, capitalism in crisis intensifies the pressures and increases the incentive, in addition, not only is crime a rational response to this economic insecurity in a competitive society, it is also only on form that competition takes as economic insecurity grow (Reiman and Headlee, 1981:43). Therefore in Reiman’s interpretation, from a Marxist standpoint, rehabilitation is never a serious possibility. Although every person at the bottom of society will not become criminal, but a sufficiently large number of people are kept in conditions of instability and need and some will give into these temptations, depending on such things as support networks, upbringing etc. Therefore trying to rehabilitate individuals who have been sent to prison is nearly impossible if the conditions that sent them there are not fixed (Reiman and Headlee, 1981: 45). Reiman and Headlee have been criticized for their interpretation linking crime to the economic crisis by Greenberg and Humphries because they do not agree with the dates used in the study. They also do not feel that the economic crisis caused the increase in crime, but a political and cultural crisis (Greenberg and Humphries, 1982: 604). Regardless of the specifics that individuals may not agree with, it has been shown that prison sentencing increases during times of high unemployment (Chiricos and Delone, 1992). In addition to that criticism, they were said not to be very Marxist, as they did not discuss ideology (Greenberg and Humphries 1982:606). This is true in this article, but Reiman has since included ideology in his writings of Marxism and criminal justice. In addition, Reiman has been critiqued by his use of the word exploitation in his analysis (Roemer, 1989: 90-91), Reiman’s response is why worry about how exploitation is defined (Reiman 1990: 101). Reiman believes that it should include force, whereas Roemer doesn’t.

## AT Death Penalty Bad

Each execution prevents over seventy murders. **Adler and Summers[[77]](#footnote-77):**

…our recent research shows that **each execution** carried out **is** correlated with **about 74 fewer murders the following year**... The study examined the relationship between **[from] the number of executions and** the number of **murders in the U.S. for [a]** the **26-year period** from 1979 to 2004, using data from publicly available FBI sources... There seems to be an obvious negative correlation in that **when executions increase, murders decrease, and when executions decrease, murders increase**. In the early 1980s, **the return of the death penalty was** associated with **a drop in** the number of **murders.** In the mid-to-late 1980s, when the number of executions stabilized at about 20 per year, the number of murders increased. Throughout the 1990s, our society increased the number of executions, and the number of murders plummeted. Since 2001, there has been a decline in executions and an increase in murders. It is possible that this correlated relationship could be mere coincidence, so **we did a regression analysis on the 26-year relationship. The association was significant** at the .00005 level, which meant **the odds against the pattern being simply a random happening are** about **18,000 to one.** Further analysis revealed that each execution seems to be associated with 71 fewer murders in the year the execution took place.

**Muhlhausen[[78]](#footnote-78):**

**Numerous studies published over the past few years, using panel data sets and sophisticated social science techniques, are demonstrating t****hat the death penalty saves lives**. Panel studies observe multiple units over several periods. The addition of multiple data collection points gives the results of capital punishment panel studies substantially more credibility than the results of studies that have only single before-and-after intervention measures. Further, **the longitudinal nature of the panel data allows researchers to analyze the impact of the death penalty over time that cross-sectional data sets cannot address**. Using a panel data set of over 3,000 counties from 1977 to 1996, Professors Hashem Dezhbakhsh, Paul R. Rubin, and Joanna M. Shepherd of Emory University found that each execution, on average, results in 18 fewer murders.[[17]](http://www.heritage.org/research/testimony/the-death-penalty-deters-crime-and-saves-lives%22%20%5Cl%20%22_edn17%22%20%5Co%20%22) Using state-level panel data from 1960 to 2000, Professors Dezhbakhsh and Shepherd were able to compare the relationship between executions and murder incidents before, during, and after the U.S. Supreme Court's death penalty moratorium.[[18]](http://www.heritage.org/research/testimony/the-death-penalty-deters-crime-and-saves-lives%22%20%5Cl%20%22_edn18%22%20%5Co%20%22) **They found that executions had a highly significant negative relationship with murder incidents.** Additionally, the implementation of state moratoria is associated with the increased incidence of murders. Separately, Professor Shepherd's analysis of monthly data from 1977 to 1999 found three important findings.[[19]](http://www.heritage.org/research/testimony/the-death-penalty-deters-crime-and-saves-lives%22%20%5Cl%20%22_edn19%22%20%5Co%20%22) *First,* each execution, on average, is associated with three fewer murders. The deterred murders included both crimes of passion and murders by intimates. *Second,* executions deter the murder of whites and African-Americans**. Each execution prevents the murder of one white person, 1.5 African-Americans, and 0.5 persons of other races. *Third,* shorter waits on death row are associated with increased deterrence.** For each additional 2.75-year reduction in the death row wait until execution, one murder is deterred. Professors H. Naci Mocan and R. Kaj Gittings of the University of Colorado at Denver have published two studies confirming the deterrent effect of capital punishment. The first study used state-level data from 1977 to 1997 to analyze the influence of executions, commutations, and removals from death row on the incidence of murder.[[20]](http://www.heritage.org/research/testimony/the-death-penalty-deters-crime-and-saves-lives%22%20%5Cl%20%22_edn20%22%20%5Co%20%22) For each additional execution, on average, about five murders were deterred. Alternatively, for each additional commutation, on average, five additional murders resulted. A removal from death row by either state courts or the U.S. Supreme Court is associated with an increase of one additional murder. Addressing criticism of their work,[21] Professors Mocan and Gittings conducted additional analyses and found that their original findings provided robust support for the deterrent effect of capital punishment.[[22]](http://www.heritage.org/research/testimony/the-death-penalty-deters-crime-and-saves-lives%22%20%5Cl%20%22_edn22%22%20%5Co%20%22) Two studies by Paul R. Zimmerman, a Federal Communications Commission economist, also support the deterrent effect of capital punishment. Using state-level data from 1978 to 1997, Zimmerman found that each additional execution, on average, results in 14 fewer murders.[[23]](http://www.heritage.org/research/testimony/the-death-penalty-deters-crime-and-saves-lives%22%20%5Cl%20%22_edn23%22%20%5Co%20%22) Zimmerman's second study, using similar data, found that executions conducted by electrocution are the most effective at providing deterrence.[[24]](http://www.heritage.org/research/testimony/the-death-penalty-deters-crime-and-saves-lives%22%20%5Cl%20%22_edn24%22%20%5Co%20%22) Using a small state-level data set from 1995 to 1999, Professor Robert B. Ekelund of Auburn University and his colleagues analyzed the effect that executions have on single incidents of murder and multiple incidents of murder.[[25]](http://www.heritage.org/research/testimony/the-death-penalty-deters-crime-and-saves-lives%22%20%5Cl%20%22_edn25%22%20%5Co%20%22) They found that executions reduced single murder rates, while there was no effect on multiple murder rates. **In summary, the recent studies using panel data techniques have confirmed what we learned decades ago**: Capital punishment does, in fact, save lives. **Each additional execution appears to deter between three and 18 murders. While opponents of capital punishment allege that it is unfairly used against African-Americans, each additional execution deters the murder of 1.5 African-Americans. Further moratoria, commuted sentences, and death row removals appear to increase the incidence of murder.**

A. MISTAKEN EXECUTIONS ARE EXTREMELY RARE.

Jay Aronson, (Prof., Science, Technology, and Society, Carnegie Mellon U.), LAW AND SOCIAL INQUIRY,

Summer 2009, 619.

As Senator Orrin Hatch stated in a 2001 congressional hearing on postconviction testing, "It is

indisputable that advanced DNA testing lends support and credibility to the accuracy and integrity of

capital verdicts. In short, we are in a better position than ever before to ensure that only the guilty are

executed."

Paul Cassell, (U.S. District Court Judge & Former Prof., Law, U. Utah), DEBATING THE DEATH PENALTY,

2005, 206.

The claim that innocent defendants have been executed was most notably advanced in a 1987 article

by Professor Bedau and his coauthor, Michael Radelet. In their article, they claimed that 23 innocent

persons had been executed in this country in this century. Their article has been widely cited. Of course,

the immediate question that springs to mind is how precisely did Bedau and Radelet determine the

“innocence” of these executed persons. Stephen Markman (then an assistant attorney general in the

Justice Department and currently a justice on the Michigan Supreme Court) and I began looking carefully

at the 23 cases and published our response in the 1988 Stanford Law Review. We found that most of the

cases came from the early part of this century, long before the adoption of the extensive contemporary

system of safeguards in the death penalty’s administration. Moreover, Bedau and Radelet could cite but a

single allegedly erroneous execution during the past 30 years—that of James Adams, convicted in 1974.

A dispassionate review of the facts of that case demonstrates, however, that Adams was unquestionably

guilty.

B. RARE MISTAKES DO NOT UNDERMINE THE MORAL JUSTIFICATION FOR CAPITAL PUNISHMENT.

Louis P. Pojman, (Prof., Philosophy, Oxford U.), DEBATING THE DEATH PENALTY, 2005, 67-68.

Mr. Maxton is incorrect in saying that mistaken judicial execution is morally the same as or worse

than murder, for a deliberate intention to kill the innocent occurs in a murder, whereas no such intention

occurs in wrongful capital punishment. Sometimes the objection is framed this way: It is better to let ten

criminals go free than to execute one innocent person. If this dictum is a call for safeguards, then it is well

taken; but somewhere there seems to be a limit on the tolerance of society toward capital offenses.

Would these abolitionists argue that it is better that 50 or 100 or 1,000 murderers go free than that one

innocent person be executed? Society has a right to protect itself from capital offenses even if this means

taking a finite chance of executing an innocent person. If the basic activity or process is justified, then it is

regrettable, but morally acceptable, that some mistakes are made. Fire trucks occasionally kill innocent

pedestrians while racing to fires, but we accept these losses as justified by the greater good of the activity

of using fire trucks. We judge the use of automobiles to be acceptable even though such use causes an

average of 50,000 traffic fatalities each year. We accept the morality of a defensive war even though it

will result in our troops accidentally or mistakenly killing innocent people. The fact that we can err in

applying the death penalty should give us pause and cause us to build a better appeals process into the

judicial system. Such a process is already in most places in the American and British legal systems. That

an occasional error may be made, regrettable though this is, is not a sufficient reason for us to refuse to

use the death penalty, if on balance it serves a just and useful function. Furthermore, abolitionists are

simply misguided in thinking that prison sentences are a satisfactory alternative here. It’s not clear that

we can always or typically compensate innocent parties who waste away in prison.

## AT Lead Paint

**1.** This arg is atrocious correlation – we should be seeing much more evident trends. **Pinker[[79]](#footnote-79):**

**There are reasons to be skeptical of any claim based on correlations between such widely separated variables as lead exposure** (the cause) **and crime** (the effect). **Consuming lead does not instantly turn someone into a crimina**l in the way that consuming vitamin C cures scurvy. It affects the child’s developing brain, which makes the child duller and more impulsive, which, in some children, and under the right circumstances, leads them to grow up to make short-sighted and risky choices, which, in some children and under the right circumstances, leads them to commit crimes, which, if enough young people act in the same way and at the same time, affects the crime rate. The lead hypothesis correlates the first and last link in this chain, but it would be more convincing if there were evidence about the intervening links. **Such correlations should be far stronger than the one they report: presumably most kids with lead are more impulsive, whereas only a minority of impulsive young adults commit crimes. If they are right we should see \*very\* strong changes in IQ, school achievement, impulsiveness, childhood aggressiveness**, lack of conscientiousness (one of the “Big Five” personality traits) that mirror the trends in lead exposure, with a suitable time delay. **Those trends should be much stronger than the time-lagged correlation of lead with crime itself, which is only indirectly related to impulsiveness, an effect that is necessarily diluted by other causes such as policing and incarceration.**

**2.** Time delay proves this arg wrong. – we should be seeing much higher rises in crime. **Pinker 2:**

Also, the parallelism in curves for **lead and time-shifted crime seem too good to be true, since the lead hypothesis assumes that the effects of lead exposure are greatest in childhood**. But **23 years after the first lower-lead cohort, only a small fraction of the crime-prone cohort should be lead-free**; there are still all those lead-laden young adults who have many years of crime ahead of them. **Only gradually should the crime-prone demographic sector be increasingly populated by lead-free kids**. The time-shifted curve for crime should be an attenuated, smeared version of the curve for lead, not a perfect copy of it. Also**, the effects of age on crime are not sharply peaked, with a spike around the 23rd birthday, and a sharp falloff—it’s a very gentle bulge spread out over the 15-30 age range.** So you would not expect such a perfect time-shifted overlap as you might, for example, for first-grade reading performance, where the measurement is so restricted in time.

## AT Norway

**1.** Norway is restorative justice. **Fisher[[80]](#footnote-80):**

Norway doesn't work that way. Although Breivik will likely be in prison permanently -- his sentence can be extended -- 21 years really is the norm even for very violent crimes. The [much-studied](http://tpj.sagepub.com/content/85/2/127.short) Norwegian system is built on [**something called restorative justice**](http://blogs.loc.gov/law/2011/09/terror-trial-and-justice-in-norway/)**.** Proponents of this system might argue that it emphasizes healing: for the victims, for the society, and, yes, for the criminal him or herself. Sounds straightforward enough, but you might notice that there's nothing in there about necessarily punishing the criminal, and in fact even takes his or her needs into account.

2. Restorative justice isn’t topical. Ward and Langlands**[[81]](#footnote-81)**:

Restorative justice and rehabilitation models are distinct, although overlapping, normative frameworks and have different domains of application in the criminal justice system; it is a mistake to attempt to blend them in any robust sense. The major difference is that the core values underpinning restorative justice practices are ethical in nature while rehabilitation approaches are fundamentally based on prudential and altering values.

3. Norway is on the backtrack – they’ve run into issues with offenders like Anders Breivik. Criscione[[82]](#footnote-82):

But **what do you do with a mass murderer like the 33-year-old Norwegian responsible for single-handedly killing 77 last year in the country’s worst peacetime national tragedy**? That is the current dilemma facing Ila maximum security prison, the jail where [Anders Behring Breivik](http://www.csmonitor.com/tags/topic/Anders%2BBehring%2BBreivik%22%20%5Ct%20%22_self) has started serving his 21-year sentence for a car bomb attack on government headquarters in [Oslo](http://www.csmonitor.com/tags/topic/Oslo%22%20%5Ct%20%22_self) and a shooting spree at the [Norwegian Labour Party](http://www.csmonitor.com/tags/topic/Norwegian%2BLabour%2BParty%22%20%5Ct%20%22_self) summer youth camp on Utøya island. [Norway attacks put spotlight on Europe's right-wing parties. Who are they?](http://www.csmonitor.com/World/Europe/2011/0725/Norway-attacks-put-spotlight-on-Europe-s-right-wing-parties.-Who-are-they?nav=565959-csm_article-promoLink" \t "_blank) **The current feeling among victims, and conveyed in the judges’ ruling last month, is that Mr. Breivik should remain locked up forever. But Norway does not have life sentences** per se. **His sentence allows for his term to be rolled over indefinitely in five-year intervals if there is a risk of reoffending. Still, the prison is required to rehabilitate him. “We cannot say to someone, you are never going to be released, so you can’t have access to this rehabilitation program,”** says Ellen Bjerke, special adviser at Ila prison.

## AT RNR Plan

**1.** RNR never gets implemented and fails in the real world. **Andrews and Bonta[[83]](#footnote-83):**

Unfortunately, **in the “real world**” of routine correctional practice, **adhering to the principles is a challenge.** For example, **Bonta** and his colleagues (Bonta, Rugge, Scott, Bourgon, & Yessine, 2008) **found probation ofﬁcers not following the risk principle, rarely attending to the major criminogenic needs of their clients, and hardly using cognitive behavioral techniques of inﬂuence.** Unlike the general psychotherapy literature, where treatment appears as effective in routine clinical practice as it does in research demonstration projects (Shadish, Navarro, Matt, & Phillips, 2000) the same does not hold for correctional treatment. From meta-analytic ﬁndings (Andrews & Bonta, 2006), the mean effect size (r) **for treatments in the everyday world even with full adherence to RNR was only .15** (k 10) while demonstration projects showed a substantial mean effect size of .29. Demonstration projects tend to have the researchers closely involved in the development and sometimes, the delivery of the programs themselves, and they tend to be small scale (sample sizes usually less than 100). **However, correctional systems deal with thousands of offenders and staff complements in the hundreds, if not thousands.** The issue is one of treatment integrity.

## AT MST Plan

**1. T –** MST causes more recidivism and fails in all circumstances. **Mitchell-Herzfeld et al[[84]](#footnote-84):**

**MST was not effective in decreasing recidivism** among OCFS youth, **regardless of the measure of recidivism or the length of the follow-up period used.** Youth [**Those] who received MST services were rearrested at about the same rate as a control group** of OCFS youth who received the usual aftercare services. A very high percentage (roughly 85%-90%) of boys in both the MST group and the control group were rearrested within three years of release. Similarly, MST youth and control youth did not differ significantly in terms of the frequency with which they were rearrested during the follow-up period. **Boys who participated in MST were more likely to be rearrested for a violent felony offense** (VFO) than boys in the control group. Almost half (47%) of MST boys in the post-pilot group were rearrested for a VFO within two years of release compared to 35% of control boys in the post-pilot group**. MST exacerbated the tendency for boys** who had been placed with OCFS for a violent felony **to commit another violent felony upon release.** Receiving MST services increased the likelihood that post-pilot girls would be reconvicted and that pilot boys would be reincarcerated after release. At 1,000 days post-release, the cumulative probability of reconviction was approximately 27% for MST girls versus 7% for control girls in the post-pilot period, and the cumulative probability of reincarceration was around 41% for MST boys as compared to 28% for control boys in the pilot period. Another important finding was that boys and girls who completed MST treatment were no less likely than their counterparts in the control group to be rearrested. **MST dropouts, however, did have a higher likelihood of rearrest than** either MST completers or **control group youth**—a difference that was statistically significant only for post-pilot boys. Finally, we conducted subgroup analyses to determine if MST worked better in certain locations or for youth with particular characteristics. **We found that MST’s effect on the likelihood of rearrest was comparable across** the four **sites** for boys in both pilot and post-pilot periods. Site effects for girls could not be tested due to the small number of girls served at each site. **MST did not have a differential impact on the likelihood of rearrest** based on the mental health needs of the youth or the length of time the youth spent in an OCFS facility prior to release, but for pilot girls, the effect of MST varied significantly depending on their age and whether substance abuse issues were present. However, similar results were not detected for post-pilot girls or for boys, suggesting that the patterns observed for pilot girls may be a reflection of sampling error resulting from the small size of the sample. We also examined how length of stay in an OCFS facility prior to community release and returning youth to OCFS facilities for a technical violation of conditions of release affected recidivism. **Length of stay had no effect on the likelihood of reconviction or reincarceration** for any of the four groups (pilot boys, pilot girls, post-pilot boys, and post-pilot girls) nor was it correlated with the probability of rearrest for girls or pilot boys. However, for post-pilot boys, the longer the stay in an OCFS facility, the higher was the likelihood of being rearrested. Returns to OCFS facilities for technical violations helped to decrease recidivism rates in the early months of the follow-up period, but by the end of the follow-up youth who had been returned were equally likely to have been rearrested as youth who were not returned, suggesting that returns simply delay, not prevent, recidivism.

## AT CBT Plan

**1. T –** CBT fails most patients, wastes money, and shuts off other treatment options. **Crane[[85]](#footnote-85):**

**According to a** new major report, “**Commission**ing Effective Talking Therapies”, **published by the Centre for Social Justice**, the NHS is failing people with emotional difficulties by relying on too narrow a range of psychological therapies. The existing approach favours the disproportionate use of **Cognitive Behavioural Therapy** (CBT), which **fails 84-87% of patients, whilst invalidating the wide range of other successful therapies available, and wasting millions of pounds of taxpayers’ money in the process.**

**2.** CBT fails – numerous structural issues. **Kingdon et al[[86]](#footnote-86):**

There is always a risk when **a treatment becomes very successful of forgetting the patients that are not initially helped** by the procedure. But even the strongest advocates of CBT would not expect it to be successful for all. However, arguments are often made such as ‘she has already had therapy in the past, it didn’t help’ or ‘he didn’t turn up after the first four sessions, he probably couldn’t be bothered’. **This can** be enough, without further consideration, to **cast the patient into a therapeutic void where other contact options are automatically ruled out**. Patients in this category are often restricted to psychopharmacological interventions and a few out-patients appointments or community visits throughout the year. Others are discharged to the general practitioner or left to their own and their community’s resources. Even when a therapy course is completed, ‘treatment resistance’ is well recognised; CBT does not work with every patient. Why do some patients find it helpful whereas others do not? Why do some patients drop out prematurely? At what point in therapy should a decision be made that CBT, as offered, is not appropriate or sufficient. Should it be at a standard review after 6-10 sessions (often all that is contracted by commissioners, especially in primary care) or after 15-20 sessions, which is more in line with the evidence base? What are the options to move treatment forward once therapy has been offered and, effectively, failed? **A wide variety of reasons for ‘ failure’ can be cited,** these include**: misdiagnosis insufficient quantity** (e.g. ‘continuation CBT’ may be indicated; [Petersen et al, 2004](http://pb.rcpsych.org/content/31/4/121.full#ref-11)**), quality or need for a change in the type of CBT provided** (e.g. cognitive-behavioural analysis system of psychotherapy; [Keller et al, 2000](http://pb.rcpsych.org/content/31/4/121.full#ref-8)**) therapeutic relationship issues concurrent social or physical problems.**

## AT Education Plan

**1.** Educational programs have empirically been abysmal – they’re subject to resource allocation problems, bias, retention drops, and structural barriers. **BBC[[87]](#footnote-87):**

**Schemes to improve prisoners' basic skills and qualifications** in English jails **have "failed in almost every respect"**, an MPs' committee has said. They were of "little practical use" to those serving less than a year and those moving between prisons could find themselves unable to continue. **Only 20% of those who needed help the most had joined a course,** MPs said. But ministers said there had been "significant progress" and the service was "far from failing". In its report the Commons public accounts committee said helping prisoners improve basic and vocations skills was a major plank of the government's policy to cut reoffending. Alcohol problems **Many prisoners had "severe" learning problems, nearly 40% had a reading age below that expected of an 11-year-old and half of people in custody had no qualifications, they said**. Since 2006, the Offenders' Learning and Skills Service (OLASS) has handled inmates' education provision in England. But the committee said only about a fifth of those with "serious literacy or numeracy needs" enrol on a course that would help them and more could be done to motivate them. It notes **there are challenges as many prisoners have mental health, alcohol or drugs problems and the "operational requirements" of prisons had to take priority over learning.** But it says **there appeared to be "confusion" over how funding should be prioritised, "tensions" over objectives and a risk that "performance incentives"** for those providing the service did not encourage them to reach out to the hardest-to-reach prisoners. "Payments are made to providers irrespective of offender take-up, attendance or achievement," the report said. "The programmes currently on offer are likely to be of limited practical use to prisoners serving less than 12 months, and **reconviction rates for these prisoners are not improving."** 'Far from failing' It also raised concerns about a lack of assessment of some prisoners, **"frequently deficient" learning plans and the lack of a core curriculum**, which **meant if** **inmates moved prisons they could find it hard to continue their courses**.

**2.** No inherency – they’re already implemented. Either your plan isn’t inherent or retribution can capture the net benefits. **Robinson[[88]](#footnote-88):**

**Prison education programs have been an integral part of American prisons since the late 19th century**. By 2000, **over 80 percent of private prisons, 90 percent of state prisons, and 92 percent of federal prisons offered some form of education program.** In addition to almost ubiquitous basic education programs, **generally focusing on literacy, the vast majority of prisons now offer secondary education, geared towards prisoners receiving the General Education Development (GED) certificate**.172 Inmates who receive their GED may be more employable upon leaving prison.

## AT Drug Courts Plan

**1.** **T -** Drug courts only reinforce the bias that hard drug users cannot be cured, which undermines the effectiveness of proven treatment programs. **Reuter[[89]](#footnote-89):**

Again, the RAND study evaluated the benefits that would come from additional expenditures on treating *heavy* users. But it should not be assumed that additional expenditures on drug treatment would necessarily be directed at the heaviest users. **Many treatment providers steer clear of criminally active offenders, who are viewed as poor candidates for program completion and long-term abstinence;** the rewards for the program operators relate to the number of patients completing the program, regardless of how much harm they were causing when enrolled. **Drug court programs, whose purpose is to divert drug-involved offenders into treatment programs, reinforce this bias. Offenders with a history of violence are typically deemed ineligible for diversion programs, and the criteria** used to judge client suitability **often discriminate against the heaviest users. Many drug courts refuse to allow clients to remain in methadone programs, despite their proven efficacy.**

**2.** Drug courts filter out most hardcore addicts from their programs. They do not fix the root problem. **Bower[[90]](#footnote-90):**

Moreover, prosecutors and **court personnel** in New York City **did almost nothing to ensure that treatment offers went to the addicted.** In the first instance, prosecutors were given unilateral decisionmaking authority over which defendants were permitted to enter drug courts.58 And **prosecutors typically were reluctant to offer treatment to recidivist defendants, but were enthusiastic to offer it to clean-record defendants**—a population composed of comparatively fewer genuine addicts.59 Specifically, **before making offers, New York City prosecutors would review** cases for “paper **eligibility”—a non-clinical paper-based assessment that would turn entirely on the defendant’s current charges and past record, not on his therapeutic need or lack thereof.**60

**3.** Drug courts do not work; success studies are unreliable. **Hostetler[[91]](#footnote-91):**

The problem though with determining whether or not drug courts are actually working is in the research itself. For example, **drug courts claim to reduce the cycle of drug offenders coming in and out of the prison system**. The [Department of Justice's Drug Courts Program Office](http://www.ojp.usdoj.gov/dcpo/%22%20%5Ct%20%22_blank) claims a reduction in recidivism between five and 28 percent, **but not all studies show these results. An Arizona drug court study found no difference in recidivism between those in standard probation and those in drug court. Another evaluation of 21 drug courts found that five could not claim they reduced recidivism.** The problem says Judge Hoffman is the method of evaluation. Drug court professionals who have a vested interest in continuing the program are often the ones doing the drug court impact studies, resulting in what is little more than a morale booster for drug court professionals.

**4.** Drug Courts failed in Scotland. **Peele**[[92]](#footnote-92)**:**

The whole thing sounds ideal -- and, indeed, **in Scotland** and the U.S., everyone likes **drug courts**. As intended, problem-solving dialogue between courts and offenders **replaced the normal adversarial atmosphere** in Scotland, and both sides felt this led to better decision making. Agendas were set at pre-court meetings between the judge and the multidisciplinary team working with the offender. Court monitors learned to accentuate positives, accept that progress might be incremental and bumpy, and set achievable goals. Offenders felt like they were listened to and treated like human beings and seemed motivated to do well. Damn, too bad it didn't work! **While appreciated by offenders and staff, no crime-reduction benefits were found compared with regular adjudication, and per-capita costs were much higher for this failure. Within a year 50 percent of drug court offenders had been re-convicted and within two years 71 percent**, at an average cost of nearly 18,500 pounds per order ($27,500). Struck by the failure, the Scottish court system extended the trial. But future results will be no better (as they are really no better in the U.S.). Indeed, drug courts are ideal testing grounds -- since they are intended as supportive and apply much more TLC than courts ordinarily do -- for our ideas about treatment.

**5.** Drug courts fail for multiple reasons. **Peele**[[93]](#footnote-93)**:**

And these fail decisively for the following reasons: **Treatment in this context means addressing drug abuse and addiction motives, rather than** allowing people to **develop[ing] skills and assisting them with real-world coping resources.** Instead of learning how to deal better with their lives, drug users learn fictive explanations for their behavior and destructive theories of substance abuse and addiction. In the United States, especially, these explanations focus on drug abuse as a disease users supposedly have. The **one complaint among Scottish offenders was** about the treatment services; they **often found the treatment wasn't applicable to their individual cases, wasn't flexible enough, and didn't address broader needs they had**. In short, treatment was designed for a putative disease, rather than helping them to lead more productive lives. **Finally, offenders are not allowed to improve their lives gradually**. The disease model (which has strongly moralistic elements) **views any use as a disqualifying failure, since abstinence is the be-all goal, and users are quickly violated**. **In real life, total abstinence is rarely achieved -**- even when defendants make real progress, using less, and using what they take less dangerously. **But drug courts cannot deal with this reality**, which is described by the concept of harm reduction.

**6.** Courts put the judge in charge of treatment, which is ineffective. **Erickson[[94]](#footnote-94):**

**Drug courts place judges at the forefront by having them actively engage in monitoring the treatment progress of participants**. Drug court judges routinely hold meetings before scheduled appearances in which social workers, prosecutors, and defense counsel discuss a defendant’s progress. **Judges then make decisions as to how to “tweak” the treatment** (e.g., more weekly contact with mental health). **Yet judges are not mental health professionals; they are judges whose job is to oversee the proper administration of justice. Drug courts dispose of this well-established role in favor of a “jack of all trades” approach in which judges are transformed into quasi-mental health providers.**

**7.** The plan does not affirm since drug courts are either **A)** simultaneously rehabilitative and retributive, or **B)** neither, due to the inherent dissonance between the two ideologies. **DPA[[95]](#footnote-95):**

**Drug courts are** grounded in two **contradictory** models. The disease model assumes **[as they assume] that people with an addiction disorder use drugs compulsively** – that is, despite negative consequences. 132 The rational actor model, which underlies principles of punishment, assumes **[and *simultaneously*] that people weigh the benefits** of their actions **against the potential consequences of those actions. 133 These dueling models result in people being “treated” through a medical lens while the symptoms of their condition** – chiefly, the inability to maintain abstinence – **are addressed through a penal one. The person** admitted into drug court **is regarded as not fully rational and only partially responsible for their drug use; yet the same person is considered sufficiently rational and responsible to respond to the** “carrots and sticks” (i.e., **rewards and sanctions) of drug court.** 134 Under this approach, **those suffering more serious drug problems are most likely to “fail” drug court and be punished.** 135 In the end, the person who has the greatest ability to control his or her own drug use will be much more likely to complete treatment and be deemed a “success.” **In blending two incompatible philosophies, 136 a drug court** (or any other criminal justice-based program) **cannot adhere to both approaches and faithfully embody either one.** This incongruity results in thousands of drug court participants being punished or dropped from programs each year for failing to overcome addictions in a setting not conducive to their success.

All AC impacts are non-unique, since they’re part of the retributive system and it doesn’t textually affirm, since emphasizing drug courts doesn’t value rehabilitation over retribution.

**[AT Mexico]**

## AT Cap (Destroy Prisons)

**1. T –** lack of public prisons has empirically incentivized prison privatization. That probably turns your cap advantage. **Friedmann[[96]](#footnote-96):**

**Criminal justice policies in the U.S. are based** in large part **on** capacity – that is, **the capacity of state and federal prison systems,** as well as sentencing and parole policies that govern the number of people entering prison and being released. **The need for** bed **space** created by our nation’s bloated prison population has outstripped existing capacity, **lead**ing **states and the federal government to go on a prison-building binge** and, **when that solution failed to accommodate growing numbers of prisoners,** to overcrowd correctional facilities by double- or triple-bunking cells and installing beds in prison gyms, classrooms and even chapels. However, overcrowding – which leads to increased violence, decreased access to medical care for prisoners and a host of other problems – can only go so far. At some point **it becomes impossible or impractical to cram more prisoners into already-packed cells, and too expensive to build more prisons. Enter** CCA, GEO Group and other **companies that finance and build their own correctional facilities**, which provide public prison systems with supplemental bed space capacity. Notably, if private prison firms did not provide such additional beds, then state and federal governments would be forced to address the harsh sentencing laws and prison release policies that have resulted in overincarceration and prison overcrowding. Thus the private prison industry – the moving force behind the Prison Industrial Complex – has served to stymie criminal justice reform efforts over the past several decades, particularly in terms of sentencing and release policies. Rather than being forced to deal with the repercussions of such policies, **government officials have used private prisons as a safety valve.** As an analogy, **if our prison system was a bucket being filled to overflowing by a steady stream of prisoners, the extra bed space provided by the private prison industry allows prisoners to be siphoned off into another bucket.** So long as this additional capacity is provided by private prisons, government officials can postpone having to deal with such politically-unpopular issues as sentencing reform or decreasing the prison population.

# Extra Cards

**4.** The function of the legal system is constrained by constitutionality. **Packer[[97]](#footnote-97):**

However, the polarity of the two models is not absolute. Although it would be possible to construct models that exist in an institutional vacuum, it would not serve our purposes to do so. We are postulating, not a criminal process that operates in any kind of society at all, but rather one that operates within the framework of contemporary American society. This leaves plenty of room for polarization, but it does require the observance of some limits. A model of the criminal process that left out of account relatively stable and enduring features of the American legal system would not have much relevance to our central inquiry. For convenience, these **elements of stability and continuity can be roughly equated with minimal agreed limits expressed in the Constitution of the United States** and, more importantly, with unarticulated assumptions that can be perceived to underlie those limits. Of course, it is true that **the Constitution is constantly appealed to by proponents and opponents of many measures that affect the criminal process**. And only the naive would deny that there are few conclusive positions that can be reached by appeal to the Constitution. **Yet there are assumptions about the criminal process that are widely shared and that may be viewed as common ground for the operation of any model of the criminal process.**

**5.** Retribution is the basis of constitutional law. **New York Times[[98]](#footnote-98):**

To demand the banging of JEFF. DAVIS is not "degrading a great conflict of ideas and principles into a paltry matter of detected felony and legal retribution." There is no conflict of ideas and principles in the case. It is a constitutional and anti-constitutional conflict, a nation-saving and a nation-destroying conflict, purely and simply. Nor is "**legal retribution**" "a paltry matter." On the contrary, it **is a matter of transcendent consequence.** It involves the very life of society. **Without law there can be no security, and law without legal retribution is but a name.** The founders of this government made treason to it a crime. **It stands as such in the third section, third article of the constitution.** JEFF. DAVIS has been guilty of it to the utmost possible extent. **If the penalty of treason is withheld from him, in case he is captured, we might as well abolish the offence altogether, and give carte blanche** to every political desperado. **As long as the nation has a life worth protecting, there must be law to protect it, and the law must be vindicated.**

**6.** The death penalty is constitutional. **Rivkin and Grossman[[99]](#footnote-99):**

Every legal argument against the death penalty begins with the 8th or 5th Amendment. The 8th bars "cruel and unusual punishments," and the 5th guarantees "due process of law" before a person can be "deprived of life, liberty or property." But **there is no serious constitutional argument against the death penalty. The 5th Amendment itself recognizes the existence of "capital" crimes, and executions were common before and after the Constitution's framing. No framer ever suggested that the Constitution divested states of this part of their historical punishment power,** nor has there been a constitutional amendment that does so. **Matters not addressed by the Constitution are left to the democratic process** and, in the main, to the states. As in Europe and Canada, **a solid majority of American citizens supports the death penalty, believing it to serve both as a deterrent and an appropriate societal response to particularly heinous crimes**. Unlike in Europe and Canada, however, U.S. courts and political leaders have not overridden public opinion to end the practice.

**Pojman[[100]](#footnote-100):**

Common sense informs us that most people would prefer to remain out of jail, that the threat of public humiliation is enough to deter some people, that a sentence of 20 years will deter most people more than a sentence of 2 years, and that a life sentence will deter most would-be criminals more than a sentence of 20 years. I think that we have common-sense evidence that the death penalty is a better deterrent than long prison sentences. For one thing, as Richard Herrnstein and James Q. Wilson have argued in Crimes and Human Nature, a great deal of crime is committed on a cost-benefit schema, wherein the criminal engages in some form of risk assessment as to his or her chances of getting caught and punished in some manner. If he or she estimates the punishment to be mild, the crime becomes inversely attractive, and vice versa. The fact that those who are condemned to death generally do everything in their power to get their sentences postponed or reduced to long-term prison sentences, in the way lifers do not, shows that they fear death more than life in prison. … Former Prosecuting Attorney for the State of Florida, Richard Gernstein, has set forth the common sense case for deterrence. First of all, he claims, the death penalty certainly deters the murderer from any further murders, including those he or she might commit within the prison where he is confined. Second, statistics cannot tell us how many potential criminals have refrained from taking another’s life through fear of the death penalty. He quotes Judge Hyman Barshay of New York: “The death penalty is a warning, just like a lighthouse throwing its beams out to sea. We hear about shipwrecks, but we do not hear about the ships the lighthouse guides safely on their way. We do not have proof of the number of ships its saves, but we do not tear the lighthouse down.”

**Evans[[101]](#footnote-101):**

We must bear in mind of course that the deterrence is not just aimed at the actual offender who is being sentenced, but is also meant to act as a signal or warning to others in the wider community, that this is the sort of treatment they can expect if they carry out similar offences. In the case of persistent offenders there is a case for incarceration solely motivated by the desire of making sure that the person no longer has the opportunity to commit crime by keeping him/her off the streets. Therefore deterrence is a two-bladed sword aimed at the individual in the dock and others in society who may well be considering to embark on similar behaviour. The professional criminal weighs up the penalty and the statistical chances of him being caught and acts accordingly. The court's aim is to deter potential future culprits by punishing past offenders.

Rehab increases recidivism and has failed in every context. **Kennedy[[102]](#footnote-102):**

Concluding the rehabilitation is, for the most part, ineffective, Wilson stated: **It does not seem to matter what from of treatment in the correctional system is attempted—whether vocational training or academic education;** whether counseling inmates individually, in groups, or not at all; **whether therapy is administered by social workers or psychiatrist; whether the institutional context of the treatment is custodial or benign; whether the sentences are short or long; whether the person is placed on probation or released on parole; or whether the treatment takes place in the community or in institutions. Indeed, some forms of treatment**—notably a few experiments with psychotherapy—**actually produced an increase in the race of recidivism.**

Rehab is bad – isolates offenders from their community, gives them better access to more drugs, and puts them in poverty. **Hillman[[103]](#footnote-103):**

The first point where this fails is **the** prison **system does not transition** their **prisoners back into the community. [It]** The prison system **isolates offenders from their community and family.** For violent offenders, yes this is what they are suppose to do but people who are needing drug rehabilitation need support from their family and community. Additionally, a person **[and] can find more drugs in prison than he or she can find out on the streets**; however, at a higher price but they are still there. The second point where the rehabilitation programs fail is **the prisoner has to want to change his or her life around** and many have not come to that point yet. Additionally, **many states offer time cuts for taking** these **rehab**ilitation **programs and many prisoners take these programs just to get the time cuts.** I have many a prisoner come up to me and say, "Yeah, I am going to go back out on the streets slinging drugs because that is the best way I can make money." Which did not make any sense to me because now most prisons do have vocational schools or college courses available; however, depending on a person's offense, it does not matter the education level, sometimes **it is very hard to get a decent paying job once released** from prison.

Rehab programs trade off with other welfare expenditures and create a dangerous false sense of security. **Feder and Dugan[[104]](#footnote-104):**

**We must acknowledge** the real possibility **that** our well-intended **interventions may have unintended harmful effects** (Dishion, McCord & Poulin, 1999; Petrosino, Turpin-Petrosin, & Finckenauer, 2000). To continue **mandating counseling for convicted abusers** necessarily **means that limited resources will be diverted** to such counseling programs **from alternative programs for battered women and their children** (Gondolf, 1987b; Toman & Bennett, 1990). And what is even more problematic, **there is a possibility that ineffective treatment may be more dangerous for the victim than no treatment at all**. Specifically, research has indicated that the most influential predictor of an abused spouse’s return to her husband is his participation in counseling (Feazell, Mayers, & Deschner, 1984; Gondolf, 1987b). If **treatment is essentially effective in decreasing recidivism**, then **continuing to mandate treatment may be inadvertently providing these victims with a false sense of security that, in the end, may lead to a higher likelihood of future injury** (Hamberger & Hastings, 1993; Harrell, 1991).

Rehab comes too late and doesn’t prevent first offenses. **Welch[[105]](#footnote-105):**

A case in point is the argument presented by conservative retributionist Ernest van den Haag who asked the question: What is the likely effect of rehabilitation on the crime rate? Van den Haag relies on a set of principles and equations borrowed from econometric deterrent theorists to support his contention that: "**Since rehabilitation can affect criminals only after their first conviction, even total rehabilitation could reduce neither the rate of first offenses nor the overall crime rate to the extent to which it depends on first offenses**" (1982,p. 1023). Though van den Haag recommends that the criminal justice system assert its emphasis on punishment to deter future crimes, his criticism of rehabilitation does lend itself to some valuable insight. That is, in terms of first-time offenders, he notes that **rehabilitation comes too late**. Indeed, to a certain point he is correct.

A rehab approach eliminates procedural safeguards. Retributivism solves. **Barnett[[106]](#footnote-106):**

**The more awful the sanction, the more elaborate need be the safeguards. The more the system is perceived as arbitrary and unfair, the more incentive there is for defendants and their counsel to thwart the truth-finding process. Acquittal becomes desirable at all costs. As the punitive aspect of a sanction is diminished, so too would be the perceived need for procedural protections.**

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