# AT NEG - RvR

## Util Turns

**1.** **T -** *meta,* meta-analysis concludes rehab is better than retribution at preventing crime. **Lipsey and Cullen[[1]](#footnote-1):**

This review has attempted to catalog **[in] every meta-analysis that has been conducted on** studies of **correctional interventions** and summarize the most general and robust of their collective findings. Some of these meta-analyses have broad scope, some narrow. Some are elaborate and some are relatively simple. Some are very well done and a few are rather inept. Across this diversity, however, **there is striking consistency** on a two key points. **First, every meta-analysis** of studies that compare recidivism outcomes for offenders receiving greater versus lesser or no sanctions has **found**, at best, modest mean recidivism reductions for **the greater sanction**s and, at worst, **increased recidivism** for that condition. Second, every meta-analysis **[and] of** large samples of studies **comparing offenders who receive rehabilitation treatment with those who do not has found lower mean recidivism for those in the treatment conditions.** Moreover, **the least of those mean reductions is greater than the largest mean reductions reported by any meta analysis of sanctions**. In addition, **nearly all of the meta-analyses of studies of specific rehabilitation treatments or approaches show mean recidivism reductions** and the great majority of those are **greater than the largest** reductions **found in any meta-analysis of sanctions.**

**2.** **T –** retribution increases crime and the prison population. Rehab solves. **Andrews and Bonta[[2]](#footnote-2):**

**For over 30 years, criminal justice policy has been dominated by a “get tough” approach** to offenders. Increasing **punitive measures have failed to reduce criminal recidivism and instead have led to a rapidly growing correctional system that has strained government budgets.** The inability of reliance on official punishment to deter crime is understandable within the context of the psychology of human conduct. However, this knowledge was largely ignored in the quest for harsher punishment. **A better option for dealing with crime is to place greater effort on the rehabilitation of offenders**. In particular, **programs** that adhere to the Risk-Need- Responsivity (RNR) model **have been shown to reduce offender recidivism by up to 35%. The model describes**: a) **who should receive services (**moderate and higher risk cases), b) **the appropriate targets for rehabilitation se**rvices (criminogenic needs), **and** c) **the powerful influence strategies for reducing criminal behavior** (cognitive social learning). Although the RNR model is well known in the correctional field it is less well known, but equally relevant, for forensic, clinical, and counseling psychology. The paper summarizes the empirical base to RNR along with implica- tions for research, policy, and practice.

**3. T -** Incarceration reinforces criminal identity and teaches them tools of the trade for when they get out. Causes more crime. **Tittle[[3]](#footnote-3):**

Whether people can be rehabilitated while incarcerated is a question of recurrent interests among academics as well as laymen. In popular literature imprisonment is frequently declared a failure and prisons are often denounced as “schools for crime.” For example, Ramsay Clark (1970:213) writes: **Jails and prisons in the United States today are more** often than not **manufacturers of crime. Of those who come to jail** undecided, **capable** either of criminal conduct or **of lives free of crime, most are turned to crime**. Similarly, a recent article in the *Intellectual Digest* asserts that “**the American prison system is a 200 year old experiment in correction that has failed”** (Goldfarb and Singer, 1971:19). And a Federal judge, in outlining a thirteen point reform program, recently declared that “**it is all too true that most of our penal institutions prove to be schools for crime”** (Edwards, 1972). Many criminologists also maintain that **incarceration has little rehabilitative impact**; and some argue that **imprisonment reinforces criminal identities or actually produces changes in individuals that contribute to further criminal behavior** (Vold, 1954; West-over, 1958; Barnes and Teeters, 1959: 584).

## Deterrence Turns

**1. T –** deterrence fails and increases crime. **Lipsey and Cullen[[4]](#footnote-4):**

In sum, **research does not show that the aversive experience of receiving correctional sanctions** greatly **inhibits subsequent criminal behavior**. Moreover, **a significant portion of the evidence points in the opposite direction—some such sanctions may increase the likelihood of recidivism**. The theory of specific **deterrence** inherent in the politically popular and intuitively appealing view that harsher treatment of offenders will dissuade them from further criminal behavior **is thus not consistent with the preponderance of available evidence.** If, among their other purposes, correctional interventions are expected to have a net positive effect on public safety by reducing the reoffense rates of convicted offenders, reliance on punitive approaches does not appear to be sufficient to the task.

**2.** Empirics show there are SIX reasons why deterrence fails and is INCREASINGLY failing. **Tonry[[5]](#footnote-5):**

**Modern deterrent strategies,** through sentencing law changes, take two forms: **increase**s in **punishments for particular offenses and mandatory minimum sentence** (including "three-strikes") laws. Imaginable **increases in** **severity of punishments do not yield** significant (if **any**) marginal **deterren[ce]t effects.** **Three National Academy of Sciences panels,** all appointed by Republican presidents, **reached that conclusion** (Blumstein, Cohen, and Nagin 1978; Blumstein, Cohen, Roth, and Visher 1986; Reiss and Roth 1993), **as has every major survey of the evidence** (Cook 1980; Nagin 1998, 1999; von Hirsch et al. 1999; Doob and Webster 2003). **This is also the belief**, in my experience, **of most experienced judges and prosecutors.** **There are** a number of good practical **reasons why** this widely reached conclusion makes sense. **First, serious sexual and violent crimes are generally committed under circumstances of extreme emotion, often exacerbated by the influence of alcohol or drugs.** **Detached reflection on possible penalties** or recent changes in penalties **seldom** if ever **occurs in such circumstances**. **Second, most** minor and middling and many serious **crimes do not result in arrests or prosecutions**; most offenders committing them, naively but realistically, do not expect to be caught. **Third, those who are caught and prosecuted almost always are offered plea bargains** that break the link between the crime and the prescribed punishment. **Fourth, when penalties are especially severe, they are often,** albeit inconsistently, **circumvented by prosecutors and judges.** **Fifth, for many crimes including drug trafficking, prostitution, and much gang-related activity, removing individual offenders does not alter the structural circumstances conducing to the crime.** **Sixth, even when one ignores all those considerations, the idea that increased penalties have sizable marginal deterrent effects requires heroic and unrealistic assumptions about "threat communication,"** the process by which would-be offenders learn that penalty increases have been legislated or are being implemented.)

**3. T -** Retribution increases crime through criminal risk reward assessment and retaliatory aggression. **Andrews and Bonta[[6]](#footnote-6):**

All of the above conditions consider only how **punishment** needs to be delivered to suppress behavior. They **do[es] not address characteristics of the person** that may interact with the application of punishment. In situations where punishment is not delivered with immediacy and certainty, it may still be effective with certain types of people. For example, those who are future-oriented and evidence good self-monitoring and regulation skills can make the connections between the behavior and the negative **consequences** that **may occur days, weeks, or months later**. However, many **offenders are impulsive** (Gottfredson & Hirschi, 1990) **and underestimate the chances of being punished** (Piquero & Pogarsky, 2002). There is even some evidence that **punishment can lead to increased offending through** operation of **the “gambler’s fallacy.”** That is, **“if I was punished now then it is unlikely that I will get caught and be punished again**” (Pogarsky & Piquero, 2003). In addition, **applying “maximum” punishment can have undesired consequences ranging from learned helplessness** (Seligman, 1975) **to retaliatory aggression** (McCord, 1997). The long and short of all of this is **how can one possibly expect that a policy centered on punishment can reduce criminal behavior?**

**4.** **T -** Retribution doesn’t deter and engenders harm to minorities. External factors and long-term recidivism prove. **Bacik[[7]](#footnote-7):**

**First, international research shows** us **that decrease**s **in crime** rates may be **[is] attributed to multiple factors**, usually **independent**ly of the amount **of people put into prison. Second**ly, we have seen from our own prison research that **prison does not work according to** simple **recidivism criteria. Research** carried out by Dr. O'Mahony in Mountjoy prison **showed that each prisoner had on average clocked up ten previous terms of imprisonment** - hardly an indication of the potential of prison for rehabilitation. **Third**ly, just as **imprisonment disproportionately affects ethnic minorities** in other countries, so too does it disproportionately affect young working-class males in our society. This is **because offenders** do not in fact **commit crime** as a result of a rational choice, but **in the context of their circumstances**. Research we recently carried out into the links between economic deprivation and crime found that an apparently significant variation in sentencing exists depending on disadvantage. In total, **29 per cent of those defendants from the most deprived areas** were found to **receive[d]** custodial **sentences, compared to 19 per cent of those from the least** deprived areas. It was also found that defendants from more deprived areas are 49 per cent more likely to receive a custodial sentence than those from less deprived areas, once other variables are taken into account. In other words, the findings indicate that the economic deprivation of a particular community may be a factor leading to the increased likelihood of a custodial sentence for those defendants, particularly the young men, from that community. But returning to the question of what causes decreases in crime rates, the idea that it is prison simply does not stand up to analysis. In a very recent analysis of the decrease in Irish crime rates, O'Donnell and O'Sullivan asked the question 'Does more prison mean less crime?'. They referred to recent US research by Spelman (2000) suggesting that an increase of one per cent in the prison population would reduce the crime rate by between .16 and .31 per cent. Applying this calculation to Ireland, one would expect a decrease in crime of between 6.1 and 11.8 % between 1995-99. Since the decrease was actually 21% over this period, they suggested that other factors were to play in explaining reducing crime rates. In particular, they point to research that shows that economic boom is a huge factor in reducing crime rates, in particular property crime (always the bulk of crime figures). They concluded that 'the **factors that** may have **result**ed **in** the **decrease in crime are not** primarily **related to criminal justice** policies, **but rather** to labour market andhealth policies. Increased **employment and consumer expenditure**, allied to a growth in methadone treatment, would appear to be more convincing explanations for the decrease.'

## Econ Turns

**1. T -** Retribution is horrendously expensive, kills tax income and engenders chronic poverty. **Andrews and Bonta[[8]](#footnote-8):**

The accumulating evidence is that **the retribution movement has been a disastrous failure. Sentencing guidelines and the various truth-in-sentencing laws** that require a minimum sentence to be served before release **have resulted in longer sentences and more crowded prisons** (Wood & Dunaway, 2003). The three strikes laws further **compounded the problem of prison growth without any evidence that prison sentences reduce recidivism** (Doob & Webster, 2003; Smith, Goggin, & Gendreau, 2002; von Hirsch, Bottoms, Burney, & Wikstro ̈m, 1999). The tough new sanctions of boot camps, electronic monitoring, and Scared Straight programs that expose at-risk young offenders to prison life have had either a negligible or detrimental impact on recidivism (MacKenzie & Armstong, 2004; Petrosino, Turpin-Petrosino, & Finckenauer, 2000; Renzema & Mayo- Wilson, 2005). **All of this has caused a tremendous strain on state economies, with 22 states cutting corrections budgets** for fiscal year 2010 (Scott-Hayward, 2009). Only Medicaid has out-paced corrections budgets (Stemen, 2007) and, in 2008, it was estimated that state budgets for corrections were in excess of $52 billion (Pew, 2009). The incarceration and re-entry of large numbers of adults has a number of less visible costs. **Many prisons are far removed from the neighborhoods where offenders reside.** For example, in New York State, almost all of the prisons are located upstate with 60% of the prisoners coming from the poorest borough of New York City. **Many of these neighborhoods have high concentrations of offenders who are sent to upstate prisons at an annual cost of over $30,000. It has been estimated that Brooklyn alone has 35 blocks where the costs of imprisonment exceeds $1 million per block** (Gonnerman, 2004). The neighborhood of Brewer Park, Detroit has an annual cost of $2.9 million (Pew, 2009). **Not only is there a significant cost in imprisoning people from poor neighborhoods, but additional financial hardships are placed upon the families of offenders and the communities where they reside**. A family may lose a breadwinner and even during incarceration, the family may still continue to support the offender. **Offenders released from prisons return to their communities with poor job prospects, and their idle presence on the streets discourage the frequenting of local businesses**. This in turn threatens business success, thereby **eroding the tax base for many cities** (Clear, 2008).

**2. T –** the costs of retribution vastly outweigh those of rehab. Incarceration costs even more money than the crimes people commit. **Failinger[[9]](#footnote-9):**

Moreover, to promise results that are not realistically obtainable because of average human limitations and the incorrigibility of human evil can result in a public attitude of defeat about the system. Indeed, the almost complete rejection of the rehabilitation model among “average folks” would appear to stem more from reformers’ rosy and overzealous promising of results to the public than from any evidence that it is less effective than retributive systems at making safer communities. 114 **Public resignation to the belief that no utilitarian corrections approaches are viable will inevitably rebound to focus exclusively on retributive or incapacitation theorie**s, which do not require any evidence of “outputs.” **Such a reaction to the failure of over-promising systems is not only costly in terms of the more frequent and lengthier sentences that must be meted out to restore a just balance between victim and offender or to ensure** (again, in a foolproof way) that no likely offenders are on the **streets, resulting in more cries for new prison beds and corrections staff.** **It is also costly in terms of lost social and economic opportunities for those who will not recidivate but are over-incarcerated because they cannot be distinguished from likely recidivists.** 116 Indeed, as shocking as it may seem to pure retributivists, **overincarceration is costly even in the case of those who commit minor crimes, the cost of which is outweighed by the benefits of their remaining free.** 117 For example, only those who are purists on the symbolic weight that unpunished crime visits upon the community could fail to appreciate that it might make more sense not to incarcerate a working mother, who supports her children by occasionally underestimating her employment income to her caseworker (the crime of welfare fraud). If viewed only from an economic perspective, the amount of money the government “loses” by not offsetting her extra employment income against her welfare check would be vastly outweighed by the cost of incarcerating her and putting her children into the foster care system. 118 And, such a simplistic cost-benefit analysis would not take into account the intangible benefits her children and family members gain by her care and support for them.

## Rehab Outweighs Retribution

***[****We both have studies going different ways but I outweigh]*

**1.** Rehab provides long-term solvency; retribution only addresses the symptoms of the problem while rehab makes sure that once the offender gets out they don’t reoffend. You don’t address the mindset behind the crime.

**2.** Rehab coopts to deterrent effect of retribution – nobody wants to go through rehab programs and spend their life being told how to stop being a bad person. Also, rehab itself still involves jail time and criminal justice so the deterrent effect isn’t undermined.

**3.** Rehab has a cyclical effect – it creates better citizens who go back to their communities and enforce positive behavior. It also enforces a general mindset of social inclusion and cooperation which draws down crime rates in the long term.

## Legality Requires Morality

**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[[10]](#footnote-10):**

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).

## Lipsey and Cullen Good

Their method wasn’t subject to generic reasons studies are biased. **Lipsey and Cullen[[11]](#footnote-11):**

There are deficiencies in the underlying studies and the meta-analyses of those studies that could upwardly bias the statistical effect sizes that are at the heart of these findings. The main candidates are **inflated effect estimates** from poorly controlled quasi-experiments **and overrepresentation of published studies**, which often report larger effects than unpublished ones. **Neither of these**, however, **is sufficient to account for the generally positive effects observed for rehabilitation treatment. Subsets** of better controlled studies also **show positive effects and the average differences between the findings of methodologically stronger** and weaker studies does not consistently favor the weaker studies. Regarding publication bias, many **meta-analyses include a large proportion of unpublished studie**s and, when separated out, the mean effect sizes for published studies are not consistently larger than for unpublished studies. In addition, any general bias of this sort would be expected to apply to studies of sanctions as well as to rehabilitation treatment and thus cannot easily account for the dramatic difference in their findings. **The preponderance of research evidence,** therefore, **supports the general conclusion that rehabilitation treatment is capable of reducing the reoffense rates** of convicted offenders and that it has greater capability for doing so than correctional sanctions. The volume of research and the consistency of the findings of the systematic reviews make this a sufficiently sound general conclusion, bordering on “beyond a reasonable doubt,” to provide a basis for correctional practice and policy.

## AT Comparative Proportionality

**1.** Comparative retribution still fails. **Hurd[[12]](#footnote-12):**

But I find **the** retributivist's often blithe **assumption that comparative proportionality will** rescue him from **arbitrariness** to be **optimistic** at best, **and hypocritical** at worst. **Imagine a society that articulates and enforces very few criminal prohibitions.** It makes it criminal to murder, rape, kidnap, commit theft, engage in vandalism, or defame another's good name (considering it as serious to "steal" another's reputation as to steal his television). **It condemns murderers to death, gives a life sentence for rape, and gives fifty years for kidnapping, forty-five years for theft, forty years for defamation**, and thirty-five years for vandalism. Could a gossip legitimately complain when imprisoned for forty years for falsely calling her neighbor dishonest? It would seem not, at least **if the test of just punishment is whether the crime is punished proportionately to other crimes. For while it would seem, in absolute terms, extraordinary to be locked away for the bulk of one's productive life for a petty slur, one cannot complain that the punishment is disproportionate to other punishments. But inasmuch as the moral force of the retributivist's theory lies in its concern for matching punishments to just deserts, it seems a fatal flaw to then declare that judgments of comparative proportionality are close enough for government work!**

## AT Oppression NC

**1. T - r**etributivism is a way to morally condemn non dominate beliefs, meaning it is oppressive in nature. **Brooks[[13]](#footnote-13):**

Moral retributivism runs into [has] several other problems as well. For example, **moral retributivism is wrong to believe that punishment should express moral condemnation** or a form of moral pedagogy **through** the **power of the state.** This is because **retributivism** would be **reduced to an objectionable form of legal moralism whereby "it is permissible to use the criminal law to enforce the socially dominant opinion** as to which evils are most deserving of public retribution" (49). **Moreover, even if it were "intrinsically valuable" that the wicked are punished, it does not necessarily follow that state punishment is warranted.**

**2. T –** The retributive system is massively racist and actually causes crime. The only way to solve both these impacts is through rehab. **Western[[14]](#footnote-14):**

Today, **60 percent of young black male dropouts will go to prison**. It is hard to see a strong deterrent effect in these statistics. Wilson gets to the heart of the issue when he says that punishment expresses a retributive sentiment. Some people, he says, dislike work programs for released prisoners because the programs don’t quench the thirst for retribution. However, **when the state’s vast power is used to vent feelings of righteous anger, we regularly over-reach, using that power to act out many different fears and anxieties, not just our anger at victimization.** (The war on drugs was fueled partly by the frustrations of middle class families at the depredations of addiction at home, and not the scourge of drugs in poor urban neighborhoods.) **The harshest retributive sentiments**, sometimes stirred by political entrepreneurs, **are also directed at the most disadvantaged and dishonored groups in society.** **Retributive punishment — disproportionate and prejudiced — threatens public safety**. Wilson’s proposal to offer employment programs only to “deserving” offenders illustrates the point. I think **we should provide jobs, drug treatment, and other supports to people** released from prison, precisely **to reduce crime. Withholding this support, to vent our anger, only serves crime and the anger it causes.**

**And, this outweighs since the current system not only fosters racism, but also increases crime with racist practices, meaning more minorities are oppressed since minority crimes are increasing. THIS OUTWEIGHS ALL NC OFFENSE.**

**3. T –** rehab won’t escalate to or underpin oppression. Retributivism is the empirical culprit. **Rubin[[15]](#footnote-15):**

**The concern that a rehab**ilitative theory of punishment **would authorize extreme techniques of thought reform and bio-chemical manipulation, for unlimited periods of time, is** essentially **a political fantasy**, at least within the context of our current political system. This idea is widely asserted by punishment theorists at present, 144 but its earliest articulation, so far as I can tell, is in a science fiction novel by C.S. Lewis. 145 In fact, **the criticism of rehabilitation as an inducement to abusive practices is** almost **certainly false when considered in the context of American corrections.** It has always been the doctrine espoused by the most progressive elements in the **correction[s]** al establishment. The rigors of the Auburn and Pennsylvania system may seem excessive, but they **were humane when compared to torture, or to the death penalty. The rehabilitative approaches** that followed **were generally more humane, and expressed a sincere concern for the felon as an individual**. Pavlovian thought reform, although theoretically consistent with the concept of rehabilitation, was never instituted to any significant extent in American prisons, even when Pavlov’s ideas were very much in vogue. 146 **If one wanted to catalogue the worst abuses in American corrections, one would** certainly **choose** the convict leasing system, the plantation model **prisons,** and the current Scylla and Charybdis of under-funding **and over-crowding, not those prisons that were organized along rehabilitative lines.** The claim **that rehab**ilitation **would authorize indeterminately long sentences is equally a product of abstract academic alarmism. Indeterminate sentencing**, although sometimes justified on rehabilitative grounds, **was** widely used, and **misused**, **in situations where no effort to rehabilitate the prisoner was being made**. Nor were the lengthy sentences that sometimes resulted based on any definitive test for rehabilitation that the prisoner had failed to satisfy. Rather, the combination of indeterminate sentencing and discretionary parole was primarily employed to give prisoners an incentive to behave themselves when they were in the institution, and to enable prisons to delay the release of individuals who were deemed a continued danger to society. **The theoretical possibility that someone who committed a relatively minor offense would be retained for several decades because he was resistant to a rehabilitative program is** more **fanciful** than real. **It is during the retributivist era that such abuses have occurred**, generally as a result of recidivist statutes.

**4. T –** retribution oppresses offenders for their social circumstances; the state has a positive duty to rectify these wrongs through rehab. **Rotman[[16]](#footnote-16):**

**The denial of rehabilitation and the consequent lack of concern for the future life of the offender amounts to** a passive and **indifferent acceptance of the** inevitable **deterioration brought about by life in the institution. Imprisonment itself jeopardizes other rights different from those forfeited through** the commission of a **crime** and the consequent criminal punishment. Moreover, **a large majority of inmates are socially handicapped offenders who need basic support in the areas of education, job-training and fundamental social learning.** Their social handicap is considerably **aggravated by the stigma of a criminal record, requiring additional efforts from social agencies to support the arduous process of social reintegration.** Those basic **human needs create the moral basis to institute a legal duty of the state to counteract the effects of disabling criminal punishment**, particularly when applied to offenders with a flawed socialization process, **and to establish a correlative right of the criminal offender to rehabilitation. This** right **demands from the state an affirmative care and a positive contribution to the welfare of the inmates, counteracting the harms of imprisonment.** Rehabilitation in this sense means a state effort to prevent and neutralize the un-wanted harmful side effects of its own punitive intervention8s **as well as to respond to the human challenge posed by the extremely socially-deprived offender**.

## AT Benefits and Burdens NC

**1.** Benefits and burdens theories are missing initial premises. **Shafer-Landau[[17]](#footnote-17):**

The retributive accounts based on correction of a maldistribution of **benefits and burdens** have also failed to circumscribe the class of immoralities in determining liability. Each theorist has understood the relevant liability-triggering immorality as that unfair advantage gained by violating a morally justified legal prohibition. The relevant unfair advantage is not viewed as consisting of or measured by the amount of material or psychological benefit gained by the criminal, or that amount of impoverishment the criminal inflicts on any determinate individual. Rather, the unfair advantage consists in the extra measure of freedom gained through criminal behavior, and is gotten at the expense of all law-abiders. The relevant unfairness is often explained by citing the frustration of the reliance interests of others in one's law-abiding behavior. These interests are justifiably protected because the state has duly promulgated the criminal statutes and hence provided would-be offenders with fair warning of the treatment they can expect if they violate the code. Regardless of the merits of such **theories**, they cannot help us here, since they **mislocate the relevant sort of wrong doing that can serve as a liability trigger.** **These views presuppose the existence of a criminal code, rather than providing assistance in constructing one. They do not tell us which behavior to criminalize**, but instead tell us that whatever the content of the criminal code, violators may be punished so long as citizens have received fair warning and the laws are morally justified. But **this leaves the original question unanswered. The criminal law must proscribe some but not all immoralities.** Where to draw the boundaries is precisely the question of how to circumscribe criminal liability. We can see that **unfair advantage views fail to answer that question by constructing a dilemma.** On the first horn, violation of any duly promulgated law will confer unfairly gained freedom, and so properly warrant punishment. In this case, **fair warning justifies punishment even of violators of very unjust laws. That is hardly consonant with the retributive aim of doing justice**. On the second horn, punishment is warranted if and only if the offender violates a law that is both duly promulgated and morally justified. **This** avoids the problem of the first horn, but **requires a theory that demarcates those immoralities properly deserving of punishment. Unfair advantage theorists have failed to supply such a theory. Until they do, their versions of retributivism will remain seriously incomplete.**

**2. T -** retribution doesn’t restore the benefits and burdens. Only rehabilitation ensures non-interference. **Adams[[18]](#footnote-18):**

Recall that part of the reason we must restore the benefits and burdens through punishment, according to Morris, is that it restores law abiding citizens' confidence, or trust, in the system of non-interference. 38 As I will show shortly, **the consensus of empirical data suggests that a punishment system fails to restore this trust**. Furthermore, **our current system is not designed to facilitate that goal.** Since we are still required to restore this trust (without completely abandoning a Morrisian account) we must explore other options and **rehabilitation seems a good candidate. While empirical data on the effectiveness of punishment is messy in many areas, there seems to be one area of consensus: criminals do not stop committing crime as a result of punishment of any type that we have employed in the modern era** (except capital punishment) Empirical research suggests this as an uncontroversial assumption. 39 **Recidivism rates are unequivocally high.** In note 14 above I cited C.L. Ten who discussed a report by the National Academy of Sciences which concluded that the evidence suggests that individuals are not deterred by punishment. Punishment does not appear to stop the individual from repeating his behavior (although it might deter the general population). In one of the papers commissioned by that report, Daniel Nagin says that On balance, recent evidence tends to suggest that special deterrence, which observationally is difficult to distinguish from other forms of 'rehabilitation,' is not operating. This tentative conclusion is suggested by the apparent invariance of recidivism to any type of special rehabilitative program. The figures suggest that recidivism rates cannot be affected by varying the severity of punishment, at least within acceptable limits (Nagin, 95-96). Here Nagin uses “rehabilitation” in the standard usage—to simply refer to criminals who stop committing crime as a result of their incarceration, whether for moral reasons or out of fear. The “special rehabilitative programs” which he mentions are correctional treatment strategies, not the kind of moral education response that I have in mind. In short, recidivism rates are high. Criminals do not stop committing crime as a result of being punished. Punishment does not restore the law abiding citizens' confidence in the system of selfrestraint. Punishment does not (as it is supposed to according to Morris) work to support law abiding citizens' “disposition to comply voluntarily”; rather, citizens’ disposition to comply “diminishes” because “others are with impunity renouncing burdens they are assuming” (477). In other words, **citizens begin to lose confidence in the mutually advantageous system because punishment does not ensure that criminals will, in the future, use self-restraint**. Punishment does not keep individuals from renouncing their burdens. Thus punishment fails to maintain the social order by failing to provide “some assurance” that we “will not be assuming burdens which others are unprepared to assume” (477). **Part of maintaining the system of non-interference means helping to ensure that criminals stop violating the system of self restraint.** It is reasonable to think that law abiding citizens want to ensure as best they can that criminals do not violate the system. **A “punishment only” system conflicts with Morris's account because it does not respect the rights of law abiding citizens who are entitled to some assurance that criminals stop violating the system of self restraint**, as opposed to the mere assurance that the benefit of non-restraint will continually be counterbalanced by the burden of deprivations. In short, **we cannot simply respond to the criminal act by depriving the criminal, unless that deprivation helps insure that the criminal stops committing crime**. Our response to criminal wrongdoing, if it is to maintain the system of non-interference, must do more than merely keep “matters even” (478). Because punishment fails to meet the duty to restore confidence in the system, we have a duty to explore other kinds of state responses that differ significantly from the way we have been responding to criminal behavior. In other words, **we must explore other options that appear to us to have a better chance of stopping criminal behavior. Rehabilitation seems a good candidate**. I am unclear whether rehabilitation is required in addition to, or instead of, punishment. I am open to mixed model here where rehabilitation works in concert with punishment according to the two reasons that Morris offers to punish. The first reason—**the duty to maintain social order—turns out not to be a reason to punish but instead requires us to setup rehabilitation**.

**3. T –** offenders are excluded from the initial conditions of social rules, so they can’t be punished for their offenses. **Green[[19]](#footnote-19):**

Antony Duff has offered yet another approach to the problem of imposing criminal sanctions on the severely impoverished and politically excluded. Duff is interested in what he calls the “preconditions” of punishment, the conditions that must be satisfied before a defendant can be tried at all (as opposed to the conditions that must be satisfied before he can be justly convicted). He argues that one precondition of criminal punishment is that the agent be bound by the laws under which she is to be tried and punished. Under this approach, **people are bound by the law only when they are treated as a responsible part of the community.** Duff then considers the case of **an offender** who **has been excluded from the community whose law she has violated.** There are three ways in which this exclusion might take place: **First, she is “excluded from participation in the political life of the community, having no real chance to make [her voice] heard** in those fora in which the laws and policies under which” she must live are decided. **Second, she has been “excluded from a fair share in, or a fair opportunity to acquire, the economic and material benefits that others enjoy.” And, third, she has been denied by the state and her fellow citizens the “respect and concern due” her as a citizen**. In each such case, he says, “**there is reason to doubt whether [the precondition of being bound by law] is adequately satisfied.”**

## AT Generic Retributivism

**1. T –** retributive judgment is always disproportionate. **Bedau and Kelly[[20]](#footnote-20):**

**All retributive attempts to specify the** penalty schedule linking crimes to their **punishments fail because the proportionality principle underdetermines** the schedule. **[them] There is no nonarbitrary way to locate either the end points of maximum and minimum severity defining the penalty schedule or the intervals between adjacent punishments** (Pincoffs 1977). Without more information **it is impossible to calculate which crimes deserve which punishments; an infinite number of different penalty schedules are equally consistent with the retributivist's proportionality principle**. And retribution cannot supply the further information needed. As a result, **every penalty schedule purporting to incorporate retributive principles exclusively fails** to the extent that any given punishment cannot be justified by those principles alone.

**2. T –** retributivism assumes an ideal society and underpins disproportionate sentencing and oppression. **Murphy[[21]](#footnote-21):**

Another common criticism against the Kantian theory may be regarded as Marxist in character. [Retributivism] Kant's theory, it may be argued, involves an ideal utopian model of society which is in fact so utterly different from the actual character of society as to render it useless in understanding or evaluating any existing practice of criminal punishment. Indeed, the theory is dangerous. For it allows us to hide from ourselves the vicious character of actual social arrangements and thereby perpetuate gross injustice.  Let me elaborate: Punishment as retribution (paying a kind of "debt" to one's fellow-citizens) makes good sense with respect to a community of responsible individuals, of approximate equality, bound together by freely adopted and commonly accepted rules which benefit everyone. This is an ideal community, approximating what Kant would call a kingdom of ends. In such a community, punishment would be justly retributive in that it would flow as an accepted consequence of accepted rules which benefited everyone (including, as citizen, the criminal). But surely existing human societies are not in fact like this at all. Many people neither benefit nor participate but rather operate at a built-in economic or racial disadvantage which is in fact, if not in theory, permanent. The majority of criminals who are in fact punished are drawn from these classes, and they utterly fail to correspond to the model which underlies the retributive theory. Surely we delude ourselves in appealing to the retributive theory to justify their punishment.

## AT Kantian Retributivism

**1. T -** retribution inflicts external rights violations on the offender; the state has a positive duty to rectify these wrongs and the social situation behind the crime through rehab. **Rotman[[22]](#footnote-22):**

**The denial of rehabilitation and the consequent lack of concern for the future life of the offender amounts to** a passive and **indifferent acceptance of the** inevitable **deterioration brought about by life in the institution. Imprisonment itself jeopardizes other rights different from those forfeited through** the commission of a **crime** and the consequent criminal punishment. Moreover, **a large majority of inmates are socially handicapped offenders who need basic support in the areas of education, job-training and fundamental social learning.** Their social handicap is considerably **aggravated by the stigma of a criminal record, requiring additional efforts from social agencies to support the arduous process of social reintegration.** Those basic **human needs create the moral basis to institute a legal duty of the state to counteract the effects of disabling criminal punishment**, particularly when applied to offenders with a flawed socialization process, **and to establish a correlative right of the criminal offender to rehabilitation. This** right **demands from the state an affirmative care and a positive contribution to the welfare of the inmates, counteracting the harms of imprisonment.** Rehabilitation in this sense means a state effort to prevent and neutralize the un-wanted harmful side effects of its own punitive intervention8s **as well as to respond to the human challenge posed by the extremely socially-deprived offender**.

**2. T –** rehab is a necessary prerequisite to autonomy. **Whitman[[23]](#footnote-23):**

Some of that messiness has to do with the notion that we punish "autonomous" offenders, of course. The postulate of the meaningfully autonomous offender has been under attack for generations. We are all familiar with the early critiques that came, for example, from Raymond Saleilles-a man who was, of course, one of the prophets of rehabilitationism. To Saleilles, it seemed obvious that **the Kantian model**, as it was understood in the late nineteenth century, **made no sense. True "autonomy**," Saleilles maintained, **had to be understood as impulse control-as the ability to resist our desire to do wrong. Autonomy begins in the mind of the individual:** It begins as control of oneself. **Criminal offenders**, he argued, **were obviously persons incapable of self-control. By definition, then, criminal justice was concerned with persons who had shown themselves to be not truly autonomous.** 25 To Saleilles it thus seemed clear that **a meaningful commitment to the value of autonomy implied a commitment to rehabilitation: The punishment system had the task of teaching offenders to be truly autonomous. Autonomy**, for Saleilles, **was thus not an existing reality, but a social ideal-an ideal to be achieved partly through the activities and interventions of criminal justice professionals**

**3. T –** the pain of retribution is the greatest violation of ends. Kant concedes it. **Mearle[[24]](#footnote-24):**

There are two kinds of objection against a justification of retributivism based on such an argument. The first and most obvious objection is that, according to Kant, the state is in charge of the civil state, i.e. of the relations among external freedoms. But the highest good consists in an internal, and therefore individual relation (cf. Hill, 1999, p. 429). Second, even if procuring the highest good were the domain of the state, the requirements of the highest good would never justify the retributivist theory of penal law, but rather contradict it. The highest good would mean that the relative degrees of immorality and unhappiness or pain (or remorse of moral consciousness) should be equivalent. In fact, Kant defines punishment as "the right a ruler has against a subject to inflict pain upon him because of his having committed a crime" (DR VI, 331, Gregor 104). In what should the pain consist such that it would be commensurate to the immorality? Let us rely on the precise definition of happiness given by the Critique of Practical Reason: "Happiness is the state of a rational being in the world in the whole of whose existence everything goes according to his wish and will, and rests, therefore, on the harmony of nature with his whole end as well as with the essential determining ground of his will"(CprRV,124,Gregor240). If pain is the opposite of happiness, then pain must be the state of a rational being in the world in the whole of whose existence nothing goes according to his wish and will. Thus pain should rest on the complete lack of harmony between nature and his ends taken as a whole, as well as between it and the essential determining ground of his will.

4. T – Kant conceded we should rehabilitate to restore the criminal to citizen status and protect the legal community. Mearle 2:

In his Pedagogy, Kant conceives of education as a double task, i.e. "discipline" and" culture" (IX, 449). The same goal is to be pursued in the case of children as in the case of savages. Kant's concept of right presents a reciprocal coercion of citizens that should be guaranteed by the public coercion exercised by the state. On the contrary, the criminal as well as the child and the savage are subject to a unilateral coercion that Kant calls "discipline" or "breeding" in the Pedagogy." Discipline submits the human being to the laws of humanity and begins to let him feel the coercion of the laws" (Pedagogy, IX, 442). Kant conceives of discipline as a prerequisite to culture, i.e., to the positive part of education. Obedience to the laws must first be obtained by an external force applied against the human being before she aquires the ability to voluntarily obey the law and- which is most important- to give herself her own law, which constitutes freedom under the law, i.e. the civil state. When we force a dog to obey a rule, we just want the dog to obey our rule. In a human being on the other hand, we should promote humanity as a goal, i.e., external freedom under a law. Thus punishment should also promote the rehabilitation of the criminal. Kant thinks of a possible time limit to the punishment. The thief "is reduced to the status of a slave for a certain time, or permanently if the state sees fit" (DR VI, 333, Gregor 106). But there is unfortunately no other occurrence of this time limit in the Doctrine of Right. The reason for this may be that he considers the education of criminals and savages to be much more difficult than the education of children. Kant explains: "the human being has[... ] a such a great inclination for freedom that he sacrifices everything for it, once he is accustomed to it for a while"(Pedagogy,IX,442).Yet Kant nowhere excludes for any criminal the possibility of rehabilitation. In Kant's Doctrine of Right, not even the murderer must always die. The exceptions include not only the one mentioned above, i.e. the case of the murderer with too many accomplices (DR, VI, 334, Gregor 107),but also the case in which the sovereign uses his "right to grant clemency". Therefore, the murderer can eventually be rehabilitated and released, unless her release would threaten the security of the other citizens, i.e., unless is not yet disciplined. Now, the possibility of rehabilitation is strictly incompatible with the death penalty. The alternative solution to retributivism I am sketching is not at all utilitarian. It absolutely does not consider punishment "merely as a means to promote some other good for the criminal himself or for civil society" (VI, 331, Gregor 105). Rehabilitation certainly benefits the murderer more than the death penalty does. However, the rehabilitation model I have sketched relies on no goal but [has] the goal of restoring the civil state that has been broken by the crime, and to restore it so that it can include the criminal again. To this purpose the only means available is punishment as unilateral coercion. During the time this discipline is enforced, the legal community is protected against the risk of repetition. In my sketch, punishment also has a goal that is internal to the concept of right as well as to the humanity in every person. I admit that the theory of general deterrence also has a goal that is internal to the concept of right, in so far as punishment motivates other citizens to obey the law. But the humanity in the person of the criminal is not taken seriously into consideration by the theory that makes general deterrence the rational for punishment. Indeed, in order to maximize the deterrence effect, the theory of general deterrence may extend the punishment to the time and the degree necessary to rehabilitate the criminal as a full citizen.

5. Kantianism leaves no room for restoring the right; offenses can’t be retroactively annulled. Mearle 3:

To take the two meanings of Schulddebitum and culpa, – as being equivalent is misleading and actually leads to fallacies in the case of crimes that cause damages for which there is no compensation, i.e. of all irreparable crimes. All the not irreparable infringements of the law are private crimes for which not the civil courts, but the criminal courts are competent. Kant offers the examples of “embezzlement, that is misappropriation of money or goods entrusted for commerce, and fraud in buying and selling, when committed in such a way that the other could detect it” (DR VI, 331, Gregor 105). Such **crimes endanger not the existence of the legal community, but only individual people who voluntarily trusted in the criminal and engaged in contracts** with him. On the contrary, **public crimes don’t infringe private contracts, but the civil state itself**. For this, as well as **for the violence** against or death of the victim, **there is no possible compensation**. For instance, **how can a prison sentence or a death sentence ever compensate for the crime as far as the victim is concerned**? What could ever compensate for the insecurity to all citizens caused by a murder? **The debt toward the legal community** (debitum) **was to be paid off only by abstaining from commiting crimes. Once a crime is committed the criminal can no longer pay off the debt.** Once she has lost her civil personality, the criminal has even lost the possibility of paying off her debt to the community for the future, i.e. the possibility of either obeying the law in the future.

## AT Communicative Retributivism

**1.** Communication doesn’t require retribution. **Cottingham[[25]](#footnote-25):**

**"The ultimate justification of** any **punishment** is not that it is a deterrent but that it **is the** emphatic **denunciation by the community of a crime**."20 This celebrated dictum of Lord Denning is frequently quoted by commentators in the course of discussions of retributivism,21 and his theory is there- fore included in our list. But it is doubtful whether clarity is served by labelling Denning's thesis "retributivist". No doubt exacting retribution could be an emphatic way of denouncing a crime. **But** one could presumably exact retribution quietly-even secretly-without denouncing. And, conversely, **it is evidently logically possible to denounce a crime without exacting retribution (indeed without punishing at all). One suspects that the main reason for calling [this] theory** (9) **"retributivist" is the tendency,** already noted and condemned above, **to call any non-consequentialist account of punishment "retributivist".**

**2.** Communication cannot non-arbitrarily apply to a crime. **Hurd[[26]](#footnote-26):**

Second, **it seems close to impossible to attribute any discrete meaning to a given crime that distinguishes it in its meaning and so in its punishment-from other crimes**. Just try it. Imagine that a drunk driver takes the outside corner of a blind curve, but avoids hitting anyone. You are an audience to his recklessness. What (false?) proposition do you attribute to his deed? And **how does** that **[one] proposition differ from [other]** those **propositions** that you assign to car thefts, muggings, tax evasion, speeding offenses, or acts of petty vandalism? **If** these **crimes do not possess quite different and quite specific meanings in your mind-if you cannot attribute to them particular propositions concerning their victims- then in what sense could you craft specific punishments that would contradict, with precision, the terms of the messages sent by these crimes?**As I have tried to craft examples that will sympathetically illustrate the expressivist's thesis within this paper, I have found myself repeatedly throwing up my proverbial hands and simply **describing a particular crime** as **convey[s]**ing **"disrespect for the victim." But unless a rape is properly punished the same as a petty theft** (and vice versa)-**because in the end both crimes convey an identical message of disrespect for their victims-the notion that crimes possess distinct meanings** by virtue of Peck audiences assigning to them distinct propositions **is more metaphorical than meaningful.**

**3. T –** hard treatment and retribution hide the communicative element of the offense. **Duff[[27]](#footnote-27):**

However, **an obvious and crucial question faces any such justification of punishment as a communicative enterprise.** **Censure can be communicated through a formal conviction in a criminal court; or** it could be communicated by **some further formal denunciation issued** by a judge or some other representative of the legal community, **or by a system of purely symbolic punishments which were painful only in virtue of their censorial meaning. It can, of course, also be communicated by** ‘hard treatment’ punishments of the kinds imposed by our courts—by **imprisonment**, by compulsory community service, by fines and the like, **which are painful or burdensome independently of their censorial meaning** (on ‘hard treatment’, see Feinberg 1970): **but why should we choose such methods of communication, rather than methods that do not involve hard treatment** (see Christie 1981: 98-105)? Is it because they will make the communication more effective (see Falls 1987; Primoratz 1989; Kleinig 1991)? But why is it so important to make the communication effective—and is **there [is]** not **a serious danger that the hard treatment will conceal, rather than highlight, the moral censure it should communicate** (see Mathiesen 1990: 58-73)?

**4. T –** communicative theories mandate social inclusiveness and giving the offender the opportunity to change. **Ward[[28]](#footnote-28):**

As a theory of punishment Duff’s **communicative theory has the virtue of being inclusive rather than exclusive.** All the stakeholders affected by crime are taken into account in the implementation of punishment. **The offender is regarded as an equal moral agent and treated with the respect and dignity this status entails**. A notable feature of inclusive theories is that they conceptualise crime as a community responsibility rather than simply as an individual one. Thus offenders are held accountable to the community. **Victims** do not have to forgive but **owe offenders the chance to reintegrate into the community once they have served their sentence; and the community is obligated to facilitate the process of integration by providing necessary resources such as education, training**, accommodation, access to social networks and so on. **The inclusiveness of the response to crime and its aftermath** that **is characteristic of communicative theories** of punishment such as Duff’s bears a striking relationship to restorative justice practices (Johnstone, 2002; Walgrave, 2008; Ward and Langlands, 2008). According to Walgrave, **restorative justice is ‘an option for doing justice after the occurrence of an offence that is primarily oriented towards repairing the individual, relational and social harm caused by that offence’** (Walgrave, 2008, p.21). For our purposes, this means that some of the restorative justice initiatives, such as family conferences, sentencing circles and victim– offender conferences, may be accurately viewed as aspects of punishment as conceived within the communicative theory.

## AT Constitutionality NC

**[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[[29]](#footnote-29):**

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. T –** constitutional precedent affirms. **Rotman[[30]](#footnote-30):**

**To subject inmates to the harmful effects of imprisonment with- out allowing them any possibility of counteracting these harms is additional and unlawful punishment. Without opportunities for rehabilitation** at the educational, labor or therapeutic levels, **the** ware- housed **offender inevitably deteriorates.** Because penal servitude and hard labor have been abolished, imprisonment in a modern civilized society consists only of the deprivation of liberty. To administer such legal punishment without unwarranted side-effects requires rehabilitative action. This effort cannot be reduced to a discrete set of programs, but should create a rehabilitative environment through the reorganization of the correctional institution and its linkage, so far as possibile, with the community through various forms of fur- loughs and pre-release programs. Efforts to avoid the pernicious effects of incarceration find their ultimate expression in the creation of noncustodial alternatives to incarceration. The most promising field for rehabilitative undertakings lies in the community. **Modern rehabilitative policies represent a challenge to the fantasy that the dark side of society can be forgotten and that its deviants can be simply packed off to prisons**. But rehabilitative action should not remain merely a goal of governmental policies, however enlightened and humanistic. **Rehabilitation will be fully realized only when it is recognized as a right of the offender, independent of utilitarian considerations and of transient penal strategies.** Viewed as the culmination of a continuum of offenders' rights, rehabilitation can no longer serve as a pretext for discretionary abuse on the part of sentencing and correctional authorities. To the contrary, a right to rehabilitation reinforces the legal status of the sentenced offender and requires sentencing and correctional policies compatible with rehabilitative prison conditions. **Because of its deep connection with the essence of criminal punishment, the right to rehabilitation has a paramount constitutional significance.** Thus,A **constitutional right to rehabilitation has been included in the bill of rights of various countries and is a basic principle of customary international law.** Although **American courts** have not acknowledged a constitutional Federal right to rehabilitation, they **have recognized** it in a negative way as **the right to counteract the deteriorating effects of imprisonment. The courts have also granted inmates a limited right to psychiatric and psychological treatment**. Arguments based on **the 14th and 8th amendments** and the application of customary international law **reveal an implicit right to rehabilitation in the U.S. Constitution.** Viewed as the culmination of a continuum of offenders' rights, rehabilitation can no longer be a pretext for discretionary abuse by sentencing and correctional authorities. **A right to rehabilitation reinforces the legal status of the sentenced offender and requires sentencing and correctional policies compatible with rehabilitative prison conditions. Full recognition of this rehabilitative mandate reinforces existing provisions in State constitutions and statutes.**

**2. T –** the death penalty is unconstitutional. **ACLU[[31]](#footnote-31):**

The American Civil Liberties Union believes **the death penalty inherently violates the constitutional ban against cruel and unusual punishment and the guarantees of due process of law and of equal protection under the law**. Furthermore, we believe that the state should not give itself the right to kill human beings – especially when it kills with premeditation and ceremony, in the name of the law or in the name of its people, and when it does so in an arbitrary and discriminatory fashion. **Capital punishment is an intolerable denial of civil liberties and is inconsistent with the fundamental values of our democratic system.**  The death penalty is uncivilized in theory and unfair and inequitable in practice.  Through litigation, legislation, and advocacy against this barbaric and brutal institution, we strive to prevent executions and seek the abolition of capital punishment.  The ACLU’s opposition to capital punishment incorporates the following fundamental concerns: **The death penalty system in the US is applied in an unfair and unjust manner against people, largely dependent on how much money they have, the skill of their attorneys, race of the victim and where the crime took place.  People of color are far more likely to be executed than white people, especially if the victim is white The death penalty is a waste of taxpayer funds and has no public safety benefit. The vast majority of law enforcement professionals surveyed agree that capital punishment does not deter violent crime**; a survey of police chiefs nationwide found they rank the death penalty lowest among ways to reduce violent crime.  They ranked increasing the number of police officers, reducing drug abuse, and creating a better economy with more jobs higher than the death penalty as the best ways to reduce violence.  The FBI has found the states with the death penalty have the highest murder rates. Innocent people are too often sentenced to death.  Since 1973, **over 140 people have been released from death rows in 26 states because of innocence.** Nationally, **at least one person is exonerated for every 10 that are executed**.

***[1.*** *Motivation behind implementing the death penalty is retributive.* ***Mandery[[32]](#footnote-32):***

*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[[33]](#footnote-33):***

***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" \t "_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 Contracts NC

**1. T –** the state is obligated to provide rehab because of parole contracts. **Rotman[[34]](#footnote-34):**

Another possible source of a **rehabilitative obligation on the part of the state is parole contracts**, in which the inmate and **parole authority agree upon a release date on the condition that the inmate completes certain obligations including rehabilitation programs**. Cullen and Gilbert point out that **the very existence of a contract system puts pressure on correctional officers to improve treatment services**,262 and they advocate **mandatory contracts obligating the state to rehabilitate**.263 "**Mutual agreement programs" have proliferated in state prison and parole systems and are also being applied in probation programs**.264 These comprise a variety of negotiations in which **correctional authorities commit themselves to provide the rehabilitative resources that allow inmates to fulfill the conditions of their release.**

**2. T -** because the state assumes responsibility for the well being of inmates when they incarcerate them, rehabilitation is a contractual obligation. **Rotman 2:**

A third source of the **duty to rehabilitate** springs **from the very fact that the state imprisons individuals. Imprisonment in America today is an intrinsically dangerous situation**. It demands from **the state a positive action to avert potential harm to prisoners' mental, social and physical health.** In some cases imprisonment amounts to placing inmates in closed environments where they are exposed to unlawful trade in and use of hard narcotics.266 **In others the harm may be a permanent deterioration of the personality or a dramatic loss in social capacity and skills. In all cases imprisonment creates a situation of need that the prisoners alone, deprived of their liberty by state action**, cannot handle. In creating a dangerous situation, the **state has assumed not only a duty of care but an obligation to prevent specific harms connected with such situations.** An atmosphere of imminent danger to physical well-being and of acute reversion of human development not only infringes upon constitutional provisions but creates, whenever an identifiable harm can be deter- mined, the possibility of civil and even criminal liabilities.

**3. T -** international law and numerous national agreements support a contractual obligation to rehabilitation. **Rotman 3:**

**A variety of sources strongly support the existence of a right to rehabilitation based on** customary **international law. The United Nations Standard** Minimum Rules for the Treatment of Prisoners, adopted in 1955, provide in article 58: The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of **imprisonment is used to ensure,** so far as possible, **that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life. In other articles this document prescribes detailed guidelines for an individualized and integral rehabilitative action**.227 The United Na- tions **International Covenant on Civil and Political Rights, in force since 1976, establishes that "[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation."**228 **The American Covention of Human Rights**, entered into in 1978, provides that "[p]un- ishments **consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of prisoners**."229

**4. T -** a right to rehabilitation is endorsed by international, domestic, and constitutional law. Moreover, it’s an independent right of the offender. **Rotman 4:**

**To subject inmates to the harmful effects of imprisonment with- out allowing them any possibility of counteracting these harms is additional and unlawful punishment. Without opportunities for rehabilitation** at the educational, labor or therapeutic levels, **the** ware- housed **offender inevitably deteriorates.** Because penal servitude and hard labor have been abolished, imprisonment in a modern civilized society consists only of the deprivation of liberty. To administer such legal punishment without unwarranted side-effects requires rehabilitative action. This effort cannot be reduced to a discrete set of programs, but should create a rehabilitative environment through the reorganization of the correctional institution and its linkage, so far as possibile, with the community through various forms of fur- loughs and pre-release programs. Efforts to avoid the pernicious effects of incarceration find their ultimate expression in the creation of noncustodial alternatives to incarceration. The most promising field for rehabilitative undertakings lies in the community. **Modern rehabilitative policies represent a challenge to the fantasy that the dark side of society can be forgotten and that its deviants can be simply packed off to prisons**. But rehabilitative action should not remain merely a goal of governmental policies, however enlightened and humanistic. **Rehabilitation will be fully realized only when it is recognized as a right of the offender, independent of utilitarian considerations and of transient penal strategies.** Viewed as the culmination of a continuum of offenders' rights, rehabilitation can no longer serve as a pretext for discretionary abuse on the part of sentencing and correctional authorities. To the contrary, a right to rehabilitation reinforces the legal status of the sentenced offender and requires sentencing and correctional policies compatible with rehabilitative prison conditions. **Because of its deep connection with the essence of criminal punishment, the right to rehabilitation has a paramount constitutional significance.** Thus,A **constitutional right to rehabilitation has been included in the bill of rights of various countries and is a basic principle of customary international law.** Although **American courts** have not acknowledged a constitutional Federal right to rehabilitation, they **have recognized** it in a negative way as **the right to counteract the deteriorating effects of imprisonment. The courts have also granted inmates a limited right to psychiatric and psychological treatment**. Arguments based on **the 14th and 8th amendments** and the application of customary international law **reveal an implicit right to rehabilitation in the U.S. Constitution.** Viewed as the culmination of a continuum of offenders' rights, rehabilitation can no longer be a pretext for discretionary abuse by sentencing and correctional authorities. **A right to rehabilitation reinforces the legal status of the sentenced offender and requires sentencing and correctional policies compatible with rehabilitative prison conditions. Full recognition of this rehabilitative mandate reinforces existing provisions in State constitutions and statutes.**

**5. T –** retributive accounts are apolitical, and so may never be consistent with contractual obligation. **Brettschneider[[35]](#footnote-35):**

Traditional **retributive accounts of punishment differ from contractualist justifications most significantly in terms of the context within which they frame the problem of punishment. Retributive accounts focus on** the moral worth of either the criminal or the criminal's particular action in isolation from his **relationship with the state**. In this sense, **they justify punishment for persons, not punishment for citizens**. The apolitical nature of these accounts is **demonstrated by the priority they give to the question of what is deserved by the criminal qua person rather than the question of what punishment the state can rightfully mete out.** To highlight the problem with an apolitical account of state punishment, consider the following example: suppose a child molester and murderer is sentenced to death. Assume, for the sake of argument, that the punishment is justified. While on Death Row, the child molester is killed by a fellow inmate who is outraged by his crime. In some sense, the child molester received what he "deserves." We have stipulated that the appropriate punishment is death, and that is what he receives.23 However, this "vigilante" approach is problematic because of who inflicts the punishment. **An apolitical theory of punishment fails to recognize that legitimate governments have a distinct authority in punishing that private individuals do not**. Central to the rule of law and in particular to criminal law is the notion that crimes against particular individuals are offenses against society.24 This notion is reflected in the many legal systems in which crimes prosecuted by the state are considered to be controversies between "the people" and the accused individual. This practice suggests that legitimate states coerce on behalf of society as a whole in a way that private individuals cannot. **The notion that state punishment has a distinct justification is reflected in the contractualist approach to punishment**. This approach manifests the distinctness of the state's authority to punish in its requirement that punishments be justifiable to all reasonable citizens. In contrast, **retributive accounts cannot acknowledge a moral distinction between state punishment and private punishment carried out in the same manner because they focus exclusively on what criminals qua persons deserve, not what they deserve qua citizens."**

**6. T –** the death penalty is unconstitutional. **ACLU[[36]](#footnote-36):**

The American Civil Liberties Union believes **the death penalty inherently violates the constitutional ban against cruel and unusual punishment and the guarantees of due process of law and of equal protection under the law**. Furthermore, we believe that the state should not give itself the right to kill human beings – especially when it kills with premeditation and ceremony, in the name of the law or in the name of its people, and when it does so in an arbitrary and discriminatory fashion. **Capital punishment is an intolerable denial of civil liberties and is inconsistent with the fundamental values of our democratic system.**  The death penalty is uncivilized in theory and unfair and inequitable in practice.  Through litigation, legislation, and advocacy against this barbaric and brutal institution, we strive to prevent executions and seek the abolition of capital punishment.  The ACLU’s opposition to capital punishment incorporates the following fundamental concerns: **The death penalty system in the US is applied in an unfair and unjust manner against people, largely dependent on how much money they have, the skill of their attorneys, race of the victim and where the crime took place.  People of color are far more likely to be executed than white people, especially if the victim is white The death penalty is a waste of taxpayer funds and has no public safety benefit. The vast majority of law enforcement professionals surveyed agree that capital punishment does not deter violent crime**; a survey of police chiefs nationwide found they rank the death penalty lowest among ways to reduce violent crime.  They ranked increasing the number of police officers, reducing drug abuse, and creating a better economy with more jobs higher than the death penalty as the best ways to reduce violence.  The FBI has found the states with the death penalty have the highest murder rates. Innocent people are too often sentenced to death.  Since 1973, **over 140 people have been released from death rows in 26 states because of innocence.** Nationally, **at least one person is exonerated for every 10 that are executed**.

***[1.*** *Motivation behind implementing the death penalty is retributive.* ***Mandery[[37]](#footnote-37):***

*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[[38]](#footnote-38):***

***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" \t "_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 Martinson Study

**1. T -** Martinson conceded that rehab was effective. **Palmer[[39]](#footnote-39):**

As part of his review, **Martinson thus concurred with several findings regarding the beneficial effects of** intensive **supervision and** individual **psychotherapy**, for at least some types of offenders. Specified were individuals prejudged to be middle risk on base expectancy, treatment amenable, and or pro social. **Martinson did not characterize such offenders as being rare or in other respects exceptional**. In accounting for these positive results he suggested such possible variables as individuals Specified prejudged to were level of therapist skill and, to a lesser extent, nature of the treatment set ting. Later, in his principal summary statement, **Martinson specifically acknowledged that a number of programs had produced beneficial effects:** [Taken together, the studies that were reviewed] give us very little reason to hope that we have in fact found a sure way of reducing recidivism through rehabilitation. This is not to say that we found no instances of success or partial success; it is only to say that these instances have been isolated, producing no clear pattern to indicate the efficacy of any particular method of treatment. (1, p. 49) His main concern in this statement did not lie with specific programs which, as indicated, had achieved some degree of success. Nor was reference made to the clues which these programs may have provided; e.g., in relation to the goal of matching up certain types of treatment with certain kinds of offenders. Instead, his emphasis indisputable reducing recidivism--or, presumably, no fairly sure way-had been found in connection with any category of treatment was fact that no sure upon the way of under consideration; e.g., group milieu therapy. (The fact that the programs in question were not isolated exceptions will be discussed later.) It would be useful to further examine Martinson’s rather important summary statement by first considering the issue of patterns; It will be recalled that one or two patterns i.e., trends which emerged on the basis of various studies-had previously been suggested by Martinson. For example, “ These programs seem to work best when they are new, when their subjects are amenable to treatment in the first place, and when the counselors are not only trained people but ’good’ people as well.” (I, p. 32) Similarly, “There is some indication that individual psychotherapy may ’work’ in a community settings (1, p. 40) **As seen in their original context, these trends were portrayed as something meaningful**; i.e., **to the field.**

**2. T -** Martinson reversed his decision later and concluded that rehab is effective. **Cullen and Gendreau[[40]](#footnote-40):**

Strikingly, **Martinson** (1979, 254) **moved close to Palmer’s** (1975) view when he stated that the “critical fact seems to be the conditions under which the program is delivered” (Martinson’s emphasis**). His central finding was that treatments delivered in prison reduced recidivism** while those delivered in group homes increased recidivism. Regardless, **Martinson retreated from his “nothing works” position. “On the basis of the evidence in our current study,” he stated, “I withdraw this conclusion. I have** often **said that treatment** added to the networks of criminal justice **is ‘impotent’ . . . the conclusion is not correct**.” Instead, **he observed that “treatments will be found** to be ‘impotent’ under certain conditions, **beneficial** under others, and detrimental under still others” (p. 254). It is noteworthy that Martinson’s retraction of the “nothing works” doctrine largely fell on deaf ears.

**3. T -** The Martinson “Nothing Works” ideology is unfounded given modern meta-analysis findings and utilized two flawed research methodologies. **Cullen & Gendreau 2:**

In recent years, an important—albeit, not unassailable—technique for “making sense” of studies in corrections, and elsewhere, has emerged: the quantitative synthesis of research findings using meta-analytic techniques. We will return to this technique ahead, but, in essence, **a “meta-analysis” measures statistically the average effect on recidivism that an intervention has across all studies**; this “effect size” can also be computed for various conditions (e.g., characteristics of offenders, type of setting, study methodology). **In the Martinson era, however, this technique was not** yet generally **available** within the social sciences. **Instead, scholars employed** two interrelated strategies for assessing “what the research says”: **the narrative review and the vote counting or ballot box method**.In a narrative review, the author reads the existing literature and then conveys what this research has found. Sometimes studies are described in detail; sometimes conclusions are merely followed by a string of citations. Sometimes studies are given equal weight in making conclusions; sometimes one or two “high quality” studies will sway the interpretation of the research the author conveys. In the vote counting or ballot box method, the author gathers all the evaluation studies—usually breaking them down by different intervention categories (e.g., group counseling)—and then counts how many studies reduced recidivism, how many had no effect on recidivism, and how many may have increased recidivism. Although **these methods** have value, they also **have two common weaknesses. First**, unless coding criteria are made explicit, **they are open to considerable subjectivity**. For example, **how do we decide if a certain study is to be given more weight** than another study? **How much must recidivism be reduced to make it “count” as a positive finding**? Must the difference between a treatment and comparison group be statistically significant even when the risk of a Type II error—of overlooking treatment effects that do in fact exist—is high? **Second, even when the results are agreed upon, how do we decide if the glass is “half full” or “half empty”? How much success must treatment programs enjoy to say that they “work”?** These and related issues marked the reaction to Martinson’s (1974b) essay and to similar writings in the intervening years.

## AT Self-Defense

**1.** Self-defense doesn’t justify punishment. **Golash[[41]](#footnote-41):**

The principle of **self-defense does not directly justify punishment**, as in the case of punishment **the wrongdoer has already inflicted** her **damage,** and the question is one of doing additional harm to her. But **proponents of the self-defense theory seek to collapse the distinction between self-defense and deterrent punishment, arguing that both flow from the same underlying principle**. If successful, this argument would require us either to accept punishment or to reject the right of self defense. I shall argue that **the analogy fails: preventive violence is sometimes justified, but punishment does not fall under the relevant principle. The harms we do in enforcing self-defensive threats of punishment are neither necessary in the sense required by self-defense nor are they imposed on those who are responsible for the harms that will otherwise be done to innocents; thus, self-defense does not provide a justification for punishment independent of utilitarian and retributive rationales**. What the analogy with self-defense surprisingly establishes instead is a right to compensation for past harms.

**2.** Retribution doesn’t meet the requirement of immanency. **Golash 2:**

**The natural right of self-defense may be invoked as a justification for harming others only where the harm that we do is necessary to prevent an imminent attack and is directed against those who act culpably with the intention of causing the specific harm that we seek to prevent. Punishment**, as retrospective harm, does not meet these criteria. **It is directed against those who have harmed us in the past, with the aim of preventing others from harming us in the future**. The actions of those we harm through punishment do not have sufficient effect on our vulnerability to future harm to make the assignment to them of responsibility for future harm legitimate. **When we shift harms from potential victims to past wrongdoers, we shift harms for which the past wrongdoers are not morally responsible; in so doing, we use the past wrongdoers as mere means to our own ends. We may require wrongdoers to compensate their victims for the harms that they have done, but we may not harm them in order to prevent future harms by others.**

## AT Morris

**1.** Morris’ theory is bankrupt and appalling. It can’t equate crimes to quantities of goods, nor can it explain why not choosing to murder is a negative state. **Hampton[[42]](#footnote-42):**

To understand retribution, we must link the point of the retributive response to the wrongfulness of the action. The failure of a well-known theory of retribution developed by Herbert Morris as an adequate account of the retributive response effectively makes this point. Morris sees wrongdoers as deserving of punishment insofar as they are free riders: when they commit a wrong, they fail to observe certain moral constraints that others in their society accept; and they are thereby able to enjoy the benefits that come from others' acceptance of these constraints .without paying the cost of accepting the constraints themselves. He therefore argues that retributive punishment is a way to even up the score: the legal system takes away the benefits enjoyed by these free riders by inflicting pain upon them equal to those benefits. 3 **Morris's theory of retribution essentially makes retributive justice a species of distributive justice, and it presupposes that it is possible not only to measure benefits that come from crime, but also to compare and measure pain so that we can know how much pain equals these (measurable) benefits. Clearly, this presupposition is problematic**.4 However, **a more basic difficulty with this theory is its assumption that the fundamental reason why we censure and punish all wrongdoers is because they are free riders. This** assumption **makes sense only if we believe that constraining ourselves so that we do not rape or murder or steal imposes a cost upon us.** Yet that **idea makes sense only if raping, murdering, and stealing are "viewed by us as desirable and attractive** (either intrinsically, or in view of the ends such actions achieve), **and therefore individually rational but collectively irrational actions** (for example, because such behavior destabilizes the community or damages the economy). However, **surely this is exactly what most of us do not think about crime.** Very few of us understand our refusal to murder or assault our fellows as imposing a cost upon ourselves, and very few of us resent murderers, muggers, or rapists because they have unfairly enjoyed benefits coveted by the rest of us. To make retributive justice a species of distributive justice is to claim that the wrongfulness of criminals' behavior consists in the fact that they have behaved unfairly. Although there are a few wrongs that we might be prepared to analyze in this way (for example, **when people park for free in "no parking zones",** while the rest of us pay a fortune to park in the local garage), **it seems absurd to say that this is what is wrong with wrongdoers who murder, assault, or abuse others.** (Indeed, it seems particularly indecent to analyze child abuse or rape along these lines.)

## AT Hegel

**1.** Punishment doesn’t annul the crime. **Golash[[43]](#footnote-43):**

This argument clearly shows the justifiability of direct preventive measures such as intervening in the kidnapping to prevent the offender from completing it. **Using coercion to annul his will to kidnap someone (by preventing him from doing so) is** in this sense **obviously** **right**—a use of coercion to defend the rights of the victim. **It is more problematic**, however, **to say that using coercion against him after the fact, after the kidnapping is over and cannot be undone, is an annulment of his will to kidnap. The use of coercive punishment does annul the will of the offender: he wills to be free, but he is confined. But such annulling bears only a tenuous relationship to his will to kidnap** (which, indeed, may no longer exist at all). **There is no obvious sense in which this use of coercion** (taken in abstraction from its possible effects on behavior) **is a literal defense of the rights of others.**

**2.** Annulment doesn’t require punishment. **Walker[[44]](#footnote-44):**

It has been argued that **Hegel meant something more subtle** and tenable: **that a crime is a denial of a victim’s right** – whether to life, to property, or something else – **and that punishment is a public declaration that the denial of such a right was mistaken. Punishment is a reassertion of the victim’s right. This reduces the notion of annulment to a rather special version of denunciation, and does not explain why the reassertion of a right need take the form of a sentence**; or, if a sentence is the only kind of reassertion that is sufficiently emphatic, why it needs actually to be carried out. Again, suppose that the crime is murder which has never been recognized as such, so that the denial of the victim’s right to life has never been heard, is there, on this theory, any need to reassert it?

## AT Trust NC

**1.** Trust retributivism is absurd; it justifies punishing the innocent and vindicating crime. **Korman[[45]](#footnote-45):**

Let us consider one final, especially absurd, situation in which Dimock’s proposed [**trust] justification of punishment entail**s the **punishment of the legally innocent. Consider a drug dealer and his customers. Their interactions are founded upon trust.** Now **suppose that an informant violates the dealer’s trust by ratting him out to the cops.** That **the informant** can violate the dealer’s trust with impunity surely **makes it less objectively reasonable for drug dealers to trust their customers.** So Dimock’s **[trust] theory entails the absurd conclusion that the informant ought to be punished, since this is necessary for returning the community to its previous level of objective reasonableness of trusting** – in particular, the reasonableness of trusting people not to inform the cops should they choose to sell drugs.

**2.** Trust theory cannot justify punishment. **Korman 2:**

Moreover, Dimock (like Hoekema) faces the problem that her [**trust] theory fails to justify the punishment of** some **offenders who,** intuitively, **ought to be punished**. For instance, **consider a petty thief, the punishment of whom will only make him angrier and much more likely to commit further trust violations upon his release from prison**. Furthermore, **suppose that general knowledge that he has been punished will have no deterrent value.** In such a case (which may be unlikely, but surely is possible), **the community may derive subjective trus**t – both in their fellow citizens and in the legal system’s ability to maintain trust conditions – from the knowledge that the thief has been punished. But their trust will not be objectively grounded, since the thief’s anger makes it even less reasonable to trust him now. Dimock is faced with a dilemma. **Since punishing the thief will**, upon his release**, cause the objective levels of trust to drop lower than they would have been had he gone unpunished, Dimock must either say that (1) we are not justified in punishing him, or (2) we are not justified in ever releasing him.** If she opts for the first horn, then **her theory fails to justify the punishment of a guilty offender, and again draws the line incorrectly between punishable and non-punishable offenses**. If she opts for the second horn, then **her theory justifies disproportionate amounts of punishment, since it entails that this thief-with-a-grudge must serve a life sentence**.

**3.** My util turns link – Korman 2 indicates that the end goal of trust is to prevent further trust violations. If I prevent more crime in the long run I have the best link into a system of trust.

## AT Death Penalty

**1. T -** the death penalty causes a brutalization effect that encourages murder. **Leighton[[46]](#footnote-46):**

One of the strongest brutalization findings is from research by **Bowers and Pierce**, who **conclude an overall brutalization effect for** non-televised **executions to be "two homicides one month later and one homicide two months later," which they believe to be a minimal estimate** (1980:481). Their analysis applied only to New York State, yet **publicity about executions may carry a brutalization effect beyond its geographical boundaries and the limits of two months**. Televising executions would certainly have this effect by making the image available across the nation - perhaps the world -- and for redisplay at unlimited frequency for the indefinite future. The authors suggest **the results of their study are "ominous", and the "cost in innocent lives would be outstanding" if death rows were emptied through execution** (1980:483). Even those who do not give full credence to these findings may wish to pause to do further research before televising executions and a brutalization effect for publicized executions seems at least likely enough that media wishing to televise the spectacle have some moral duty to ensure that their actions - however well meaning and within First Amendment rights - will not result in increased slaughter.

**2. T -** the death penalty doesn’t deter and convicts dozens of innocents. It’s grotesque. **ACLU[[47]](#footnote-47):**

The American Civil Liberties Union believes **the death penalty inherently violates the constitutional ban against cruel and unusual punishment and the guarantees of due process of law and of equal protection under the law**. Furthermore, we believe that the state should not give itself the right to kill human beings – especially when it kills with premeditation and ceremony, in the name of the law or in the name of its people, and when it does so in an arbitrary and discriminatory fashion. **Capital punishment is an intolerable denial of civil liberties and is inconsistent with the fundamental values of our democratic system.**  The death penalty is uncivilized in theory and unfair and inequitable in practice.  Through litigation, legislation, and advocacy against this barbaric and brutal institution, we strive to prevent executions and seek the abolition of capital punishment.  The ACLU’s opposition to capital punishment incorporates the following fundamental concerns: **The death penalty system in the US is applied in an unfair and unjust manner against people, largely dependent on how much money they have, the skill of their attorneys, race of the victim and where the crime took place.  People of color are far more likely to be executed than white people, especially if the victim is white The death penalty is a waste of taxpayer funds and has no public safety benefit. The vast majority of law enforcement professionals surveyed agree that capital punishment does not deter violent crime**; a survey of police chiefs nationwide found they rank the death penalty lowest among ways to reduce violent crime.  They ranked increasing the number of police officers, reducing drug abuse, and creating a better economy with more jobs higher than the death penalty as the best ways to reduce violence.  The FBI has found the states with the death penalty have the highest murder rates. Innocent people are too often sentenced to death.  Since 1973, **over 140 people have been released from death rows in 26 states because of innocence.** Nationally, **at least one person is exonerated for every 10 that are executed**.

## AT Will To Power NC

**1. T –** retributive punishment is a vestige of those who were great in the past. Now it’s used by weaklings to subjugate the strong, and breeds logic of guilt that is contrary to affirming life. **Tunick[[48]](#footnote-48):**

**Nietzsche** I believe, **wants us to see a great irony about punishment. The original will to punish was not a will to revenge or to seek retribution; it was "the will of life,"**the will of the powerful masters who reveled in cruelty**. The will to revenge that now punishes**, that has occupied the institution left behind by the will to power, **is the will of the weak, the will of *ressentiment***; **it** is what **has emerged as part of the sinister "European culture" with its spreading morality of pity,** a morality that has "seized even on philosophers and made them ill." **The will to revenge is the will of the nihilist;it is a will counter to the will of life**. The present power that punishes is the vengeful tarantula, which hangs its webs, but is really frail: "[Tlouch it, that it tremble!"**[**[**13**](javascript://)**]** What conclusions does Nietzsche draw from his genealogy of punishment? He makes several suggestions. He suggests that **retributive punishment**—the punishment of the weak that seeks justice—will be ineffective, perhaps **because the new appropriators of punishment are wielding a weapon effective only in the hands of those capable of using it**. The instrument of punishment was appropriate to its original users, who festively enjoyed their tool. But in the hands of its new managers, punishment is put to new uses for which it is ill suited (for example, to make the criminal repent): **It is precisely among criminals and convicts that the sting of conscience is extremely rare; prisons and penitentiaries are not the kind of hotbed in which** this species of gnawing worm [**men of conscience who repent] is likely to flourish**.… If we consider those millennia before the history of man, we may unhesitatingly assert that it was precisely through punishment that the development of the feeling of guilt was most powerfully hindered.**Nietzsche says it would be a relief to be free of the idea of sin and punishment**, which is part of the "old [though not prehistoric] instinct of revenge."**[**[**15**](javascript://)**]** We should rise above this practice of the weak, of the Nay-sayers: Let us stop thinking so much about punishment, reproaching, and improving others.… Let us not contend in a direct fight—and that is what all reproaching, punishing, and attempts to improve others amount to. Let us rather raise ourselves that much higher.… No, let us not become darker ourselves on their account, like all those who punish others and feel dissatisfied. **Let us sooner step aside. Let us look away.**

**2. T –** rehab allows the government to control and overcome offenders. It affirms state power. **Logan and Gaes[[49]](#footnote-49):**

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 Polls NC

**[AT Framework]**

**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[[50]](#footnote-50):**

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[[51]](#footnote-51):**

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.

**[AT Contention]**

**1. T** – long-term aggregates of public opinion surveys prove that support goes to rehab. **Cullen[[52]](#footnote-52):**

I was wrong. To be sure, evidence of punitive attitudes toward offenders was not in short supply. **But even at this time and in this context, the public remained supportive of rehabilitation both generally** (Cullen et al., 1988) **and for juveniles** (Cullen et al., 1983). Over the years, with some modest variation**, this finding has been replicated repeatedly** (for a summary, see Cullen et al., 2000; Cullen and Moon, 2002). In my own research, my colleagues and **I have discovered time and again that the public favors rehabilitation as a goal of corrections**, believes that treatment is particularly important for juveniles, and especially supports early intervention programs (Applegate et al., 1997; Cullen et al., 1990, 1998; Moon et al., 2000, 2003; Sundt et al., 1998). To supply just one example, in a 2001 national survey, **we discovered that 80% of the sample thought that rehabilitation should be the goal of juvenile prisons and that over 9 in 10 favored a range of early intervention programs** (e.g., parental management training, Head Start, after- school programs) (Cullen et al., 2002a). I call **public support for rehabilitation [is] a “criminological fact” because over the course of a quarter century, it has been demonstrated in study after study.** Just to reinforce this point again, a 2006 national poll sponsored by the National Council on Crime and Delinquency found that “by an almost 8 to 1 margin (87% to 11%), the US voting public is in favor of rehabilitative services for prisoners as opposed to a punishment-only system” (Krisberg and Marchionna, 2006:1).

**2. T –** rehab is wildly popular. Voters want legislation for it. **Krisberg and Marchionna[[53]](#footnote-53):**

**By almost an 8 to 1 margin (87% to 11%), the US** voting **public is in favor of rehabilitative services for prisoners as opposed to a punishment**-only system. Of those polled, **70% favored services both during incarceration and after release from prison.** Only 14% of those polled thought that people coming out of prison were less likely to commit new crimes than they were before imprisonment. Over 50% thought the likelihood was at least the same, while 31% thought that the likelihood of new crime was greater after prison than before. By strong majorities, **US voters feel that a lack of life skills, the experience of being in prison, and obstacles to reentry are major factors in the rearrest of prisoners after release**. Few thought that criminality is inherent. By an overwhelming majority (82%), likely voters felt that a lack of job training was a very signiﬁcant barrier to released prisoners avoiding subsequent crime. They also thought that medical care, the availability of public housing, and student loans are important (86%, 84%, and 83% respectively). By huge margins, those polled felt that job training, drug treatment, mental health services, family support, mentoring, and housing were all very important services that should be offered to prisoners. Less than 10% of those polled (only 2% in the case of job training) thought that these services were unimportant. Of those polled, 44% felt that planning for reentry should begin at sentencing, another 27% thought it should begin 12 months prior to release. Only 7% were not in favor of planning for reentry. **When asked about pending legislation that would allocate federal dollars to prisoner reentry (The Second Chance Act), 78% were in support. Of those, almost half expressed strong support.**

**3. T –** people want us to spend more money on rehab. It’s the best gauge of their opinion, too. **Piquero and Steinberg[[54]](#footnote-54):**

When informed that rehabilitation is as effective as incarceration (in fact, the former is more effective), **the public is willing to pay nearly 20 percent more in additional taxes annually for programs that offer rehabilitative services to serious** juvenile **offenders than for longer periods of incarceration.** We find this for the sample as a whole, and in three out of four of the Models for Change sites (the sole exception is Louisiana). **These results are consistent with public opinion surveys in general, which usually find more public support for rehabilitation** than politicians may believe is the case. **The added value of the present survey is that this general trend is found using a methodology that is thought to more accurately gauge public support for various policy alternatives than conventional polling**.

**4. T –** rehab is most consistent with democratic values. **Rubin[[55]](#footnote-55):**

The difficulty with this criticism is that the social reliance on prisons as a mode of punishment, and **the social commitment to rehabilitation, is** essentially **concurrent with the development of English and American democracy.** Historical evidence thus suggests that r**ehabilitation and democracy are not** as **inconsistent** as the criticism claims. In fact, **the view of individuals as autonomous moral actors is common to all social contract theories,** including those positing that individuals must trade away all their liberties to establish an effective govern ment. Democracy **has nothing to do with [democracy]** this; **it is a social practice that chooses public officials by election, and is based on the idea that the government’s purpose is to serve the people. Rehabilitation fits perfectly well into this democratic ethos. Its central principle is that every human life is valuable, and that government has an affirmative obligation to help offenders return to society and live a normal and productive life.**

**[AT Death Penalty]**

**1. T -** The public is against the death penalty. **DPIC[[56]](#footnote-56):**

The Death Penalty Information Center released the results of **one of the most comprehensive studies ever conducted of Americans’ views on the death penalty**. A national poll of 1,500 registered voters conducted by Lake Research Partners **shows growing support for alternatives to the death penalty** compared with previous polls. A clear **majority of voters (61%) would choose a punishment other than the death penalty for murder, including life with no possibility of parole and with restitution to the victim’s family (39%), life with no possibility of parole (13%), or life with the possibility of parole (9%).**

**Prefer - A)** my evidence is the most comprehensive study ever done on public opinion **B)** the author is biased the *other way* in favor of the death penalty but still concedes that people don’t like it – it’s reverse bias.

**[Util Framework Turn]**

**1.** Democracy means util. **Riley[[57]](#footnote-57):**

John Hart Ely suggests that "**democracy is** a sort of **applied utilitarianism**-unfortunately possessing utilitarianism's weaknesses as well as its strengths-an institutional way of determining the happiness of the greatest number."' A similar suggestion is offered by Alexis de Tocqueville: "**Democratic laws generally tend to promote the welfare of the greatest possible number; for they emanate from the majority of the citizens**, who are subject to error, but who cannot have an interest opposed to their own advantage**.... The advantage of democracy** does not **consist[s]** ... in favoring the prosperity of all, but simply **in contributing to the well-being of the greatest number.**"2 This putative link between utilitarian ethics and democratic government is also taken for granted by classical English utilitarians, including Jeremy Bentham, James Mill, and (with suitable caveats) even John Stuart Mill.3 Moreover, all of the foregoing writers use America to exemplify their thesis. Ely's remarks more or less reflect the general tenor of the discussion: "What is important to an attempt to understand the seemingly inexorable appeal of democracy in America is that whether we admit it or not . .. we are all, at least as regards the beginnings of our analysis of proposed governmental policy, utilitarians. There may be, indeed there must be, further steps, but **the formation of public policy, at least in this country, begins with the questions how many are helped, how many are hurt, and by how much.**

## AT Vengeance NC

**1.** Retribution is distinct from revenge. Five warrants. **Markel[[58]](#footnote-58):**

The philosopher Robert Nozick identified **five** other **characteristics** that tend to **distinguish retribution from revenge: (a) retribution ends cycles of violence, whereas revenge fosters them; (b) retribution limits punishment to that which is in proportion to the wrongdoing, whereas revenge is limitless in principle; (c) retribution is impartially administered by the state, whereas revenge is often personal; (d) retributivists seek the equal application of the criminal law, whereas no generality attaches to the avenger's interest; and (e) retribution is cool and unemotional, whereas revenge has a particular emotional tone of taking pleasure in** the **suffering** of another.

**2.** Retribution is conceptually distinct from revenge. **Budziszewski[[59]](#footnote-59):**

Society is justly ordered when each person receives what is due to him. Crime disturbs this just order, for the criminal takes from people their lives, peace, liberties, and worldly goods in order to give himself undeserved benefits. **Deserved punishment restores** this just **order, making the wrongdoer pay a price equivalent to the harm he has done. This is retribution,** **not to be confused with revenge, which is guided by a different motive. In retribution, the spur is the virtue of indignation, which answers injury with injury for public good. In revenge, the spur is the passion of resentment,** which answers malice with malice for emotional satisfaction. **We are not concerned here with revenge.**

## AT Emotivism NC

**[AT Framework]**

**1.** The NC can’t negate the resolution – emotivism means that moral statements aren’t truth apt and thus are neither true nor false. **Glassen[[60]](#footnote-60):**

**There are**, for example, **moral questions: " Is it always wrong to tell a lie ?" "Is the judge just ?"** "Can it ever be one's duty to sacrifice one's family for the sake of one's country ?" **and so on. Now this form of words seems to indicate that the speaker is asking for some sort of answer that can be true or false, or correct or mistaken, or have objective validity. It is a form of words that is peculiarly characteristic of cognitive discourse generally. If moral judgments were not understood as saying something cognitive but rather something** imperative or **emotive, this form of words would be, to say the least, highly inappropriate.**

**2.** Emotivism is circular. **MacIntyre[[61]](#footnote-61):**

The first is that, **if [emotivism]** the theory **is to elucidate the meaning of** a certain class of **sentences by** referring to **their function, when uttered**, of expressing feelings or attitudes, **an essential part of the theory will have to consist in an identification and characterization of the feelings** or attitudes in **question.** On this subject proponents of the emotive theory are in general silent, and perhaps wisely. For **all attempts so far to identify the relevant types of feelings or attitudes have found it impossible to avoid an empty circularity. 'Moral judgments express feelings** or attitudes,' it is said. **'What kind of feelings** or attitudes?' we ask. '**Feelings** or attitudes **of approval**: is the reply. '**What kind of approval?'** we ask, perhaps remarking that approval is of many kinds. It is in answer to this question that every version of emotivism either remains silent or, by identifying the relevant kind of approval as moral approval- that is, the type of **approval expressed by a specifically moral judgment- becomes vacuously circular.**

**3.** Emotivism falsely equates descriptive emotive judgements to prescriptive moral ones. **MacIntyre 2:**

It becomes easy to understand why the theory is vulnerable to this first type of criticism, if we consider two other reasons for rejecting it. One is that **emotivism,** as a theory of the meaning of a certain type of sentence, **is engaged in an impossible task from the beginning, because it is dedicated to characterizing as equivalent in meaning two kinds of expression which**, as we have already seen **derive their distinctive function in our language in key part from the contrast and difference between them**. I have already suggested that **there are good reasons for distinguishing between** what I called **expressions of personal preference and evaluative (including moral) expressions**, citing the way in which utterances of the first kind depend upon who utters them to whom for any reason-giving force that they may have, while **utterances of the second kind are not similarly dependent for their reason-giving force on the context of utterance**. This seems sufficient to show that there is some **large difference in meaning between members of the two classes; yet the emotive theory wishes to make them equivalent in meaning.** This is not just a mistake; it is a mistake that demands explanation.

**[AT Contention]**

**1.** An emotional reaction to wrong does not equate to retribution. **Ciocchetti[[62]](#footnote-62):**

**Appeals to ‘retributive’ emotions** are common, but arguments behind them deserve more scrutiny. Often — too often — these arguments **take the form of quick, one-liners.** An author defines anger as the desire for revenge, or hatred as the desire to hurt, and then moves on to discuss the significance of this fact. That won’t do. **People do feel like lashing out at others, but a person does not automatically go from the perception that a wrong has been done to a feeling of anger to lashing out, nor does an emotional response to a perceived slight automatically justify that response.**

**2.** Emotivism cannot justify retributivism – it’s non-cognitive. **Ciocchetti 2:**

**Non-cognitive theories of emotion identify emotional states with states of bodily arousal combined with a certain affect**.5 An emotion is the feeling of being in a particular physiological state. Increased heart rate and tense jaw muscles don’t accompany anger. Anger *is* the sensation of being in those physical states. Anger may be prompted by particular events, such as the perception of a slight or offence by another, but those are causally related to anger and not constitutive of it. When I perceive that I’ve been slighted, it causes my heart to race and I tense my jaw. Against the cognitive theorists, non-cognitive theorists observe that it is possible for me to perceive a slight against myself and not be angry. If my body doesn’t react in the appropriate ways, I’m not angry. For our purposes here, nothing much rests on identifying the precise set of physical states that are necessary or sufficient for being angry. Non-cognitivists maintain that sufficient psychological research will reveal those with time. All that matters for our argument is that an **emotion does not necessarily involve a judgment, an idea, or a perception. An emotional reaction is a felt physiological reaction and nothing more.** It’s easy to see why retributive theorists have preferred cognitive theories of emotion. **Non-cognitivists are unlikely to think that being in a particular emotional state offers much justification for anything**. Strictly speaking, my anger cannot even explain my heart rate or tense muscles. Such an explanation would be circular. We might be able to explain why I get angry when I do and why, when I am angry, I lash out as I do by appeal to biological processes. We might even be able to place those biological processes in an evolutionary context, thereby explaining why it might be advantageous to be the kind of animal who gets angry at a perceived slight and lashes out violently at the perceived perpetrator. **This theory cannot support retributivism.** At best, it will justify a kind of pseudo-retributivism. Anyone designing a penal policy for animals like us must take this tendency into account. Perhaps we will need to punish retributively because, without it, the frustrated desire for revenge will be so great that it will lead to vigilante violence. This is not a justification for retributivism because the guilt of the offender does not justify his punishment. It is, at best, a justification for maintaining an appearance of retributivism. Of course, none of this bears on whether non-cognitive theories of emotion are more accurate than cognitive theories; however, **if non- cognitive theories are correct and our emotions are mere biological reactions, they might need to be managed but they won’t justify retributivism.**

**3.** Even cognitive accounts of emotion cannot justify retribution. **Ciocchetti 3:**

Cognitive theorists regularly claim that anger involves a judgment that a person is guilty of a slight against you or a loved one and the judgment that the person must be punished. In one shot, we move from defining anger to naming punishment as the appropriate response to a slight. It was quick — too quick. Other responses to wrong- doing, other possible reactions, and even the need for justifying punishment disappear from view with one definition. Such **a direct appeal to our emotions is not a justification**. If, to be angry, I must judge that punishment is appropriate for the person I am angry with, then I need a justification for punishment to justify my anger. **The emotion has been defined in terms of the response to be given. The emotion, then, cannot justify the response**. Instead, the justification for the response will simultaneously justify the emotion. **Far from offering support for retributivism, cognitive theories show that emotional reactions stand in need of justification and that justification can never be that one is in a particular emotional state**. The direct appeals are usually quick asides in articles dedicated to explaining and defending cognitive theories of emotion, and not careful examinations of justifications for punishment or even careful examinations of the nature of a particular emotion; however, even more nuanced accounts of our emotions will not help avoid the circularity of a direct appeal to our emotions. Jean Hampton offers one of the best, most nuanced accounts of any retributive emotion: hatred. To be fair, Hampton does not rely on her account of hatred to justify retributivism.10 Nonetheless, her account of hatred is instructive. Our conception of hatred involves a family of ideas, on Hampton’s account. There is retributive hatred, moral hatred, malicious hatred, and simple hatred (at least). Simple hatred is merely ‘a strong aversion to an object perceived as profoundly unpleasant, accompanied by the wish to see the odious thing removed or eliminated’.11 The other kinds of hatred are variations on this theme. Moral hatred is ‘an aversion to someone who has identified himself with an immoral cause or practice, prompted by moral indignation and accompanied by the wish to triumph over him and his cause or practice in the name of some fundamental moral principle or objective, most notably injustice’.12 As you can see, moral hatred is more precise than simple hatred. Rather than merely desiring to see the object removed or eliminated, the moral hater seeks to defeat the object of his hatred, but even mere defeat isn’t enough. The moral hater wants the hated person defeated in the name of a particular fundamental moral principle. This is a version of wanting the object of hatred removed, though it requires a very specific way of removing it. Hampton defines malicious hatred, continuing this pattern. Malicious hatred is direct towards ‘those who have personally brought harm to one (where that harm may or may not be a moral wrong)’.13 She notes that malicious hatred is necessarily personal animosity (its object must be a person) and it is competitive. Again, simple hatred’s aversion and desire to remove gets articulated in a very specific manner.14 The structure of each of these definitions, unfortunately, shares the same defect as the ‘quickie’ direct appeals discussed earlier. In order to hate, I must have the desire to remove or destroy the object of my hatred. Hatred comes with a built-in response. If I am adverse to something but don’t want to remove or destroy it, then I don’t hate it. It may be that hatred often disposes one to remove or destroy the object of hatred, though I’m not convinced it always does. Sometimes, hatred may produce avoidance. **However, if an emotion, by definition, includes a disposition to action, then being in the emotional state doesn’t justify the action. At most, it explains the action**, and so a more nuanced, detailed and accurate account of **the emotion in question can only give us a more nuanced, detailed and accurate explanation of our disposition. Direct appeals to our emotional states will not help justify retributivism regardless of whether we subscribe to a cognitive or non-cognitive theory of emotions.**

**4. T –** emotivism justifies an impulse to better someone’s life and adopt rehab. **Ciocchetti 4:**

Notably, our emotional reactions to wrongdoing do not support the claim that all the guilty should be punished, even *prima facie*. Our emotions just don’t have the necessary consistency. Relatives of victims go through a process of changing emotional reactions when responding to crime. While feeling angry or vindictive is often part of the process, it is not always present so can’t support that claim that the guilty *always* ought to suffer. Nor is anger always experienced as directed towards the one most directly responsible for the crime. Often, larger institutions or society are blamed for encouraging the violation. **Any retributive impulse is only part of the larger process**. It does not stand on its own and so cannot support retributivism’s strong claim that desert should take priority over other concerns. It’s not just vindictive impulses that need to fit into a larger process. All punishment needs be seen in this light. Victim’s responses to wrongdoing are seldom stable. Zehr’s analysis places more emphasis on victim power and control than that happens to the wrongdoer.26 While culpability and blame play a significant role when victims desire justice, victims seek to regain a sense of emotional control over their lives by gaining some control over the wrongdoer. Punishment is one way to regain this sense of control, but only one possible way. **Recognition and vindication are more central to victims’ emotional concerns than retribution and punishment. Meaning plays a significant role in this process. From the perspective of the relatives of the victims, the question of whether to punish a wrongdoer arises as part of a crisis of meaning.** Punishment is one instrument for reasserting meaning. The meaning of punishment can be understood retributively, as deserved suffering and condemnation. **One could also advocate punishment and interpret the wrong as a necessary part of becoming a certain kind of person. Suffering the wrong becomes a moment of transformation and the relatives of victims see it as an opportunity to dedicate their lives to benefiting others rather than a vindictive effort.** Obviously, many other responses, including non-punitive ones, are possible. The emotional quest for meaning can take many different directions.

**5. T -** the naturalistic nature of emotion implies that nobody is culpable and that we should use rehab. **Clark[[63]](#footnote-63):**

"...if we understand that there are good evolutionary reasons for our wanting people to suffer when they have done direct or indirect harm to us, then we can account for our strong feelings about the appropriateness of retribution without presuming they are a guide to moral truth.... **We may** be able to **recognize our retributivist feelings** as a deep and important aspect of our character - and take them seriously to that extent - **without endorsing them as a guide to truth, and start rethinking our attitudes toward punishment on that basis**."  ---Janet Radcliffe Richards, Human Nature After Darwin, p. 210 **On a naturalistic view of ourselves, we don't have the sort of ultimate responsibility that has traditionally justified retributive punishment.  Naturalism therefore implies a radical revision of our criminal justice system, moving away from unnecessarily harsh, retributively motivated** sanctions (e.g., the death penalty, abuse of prisoners), **toward crime prevention, rehabilitation**, restitution, and minimally punitive deterrence and incapacitation.

**6. T** – long-term aggregates of public opinion surveys prove that support goes to rehab. **Cullen[[64]](#footnote-64):**

I was wrong. To be sure, evidence of punitive attitudes toward offenders was not in short supply. **But even at this time and in this context, the public remained supportive of rehabilitation both generally** (Cullen et al., 1988) **and for juveniles** (Cullen et al., 1983). Over the years, with some modest variation**, this finding has been replicated repeatedly** (for a summary, see Cullen et al., 2000; Cullen and Moon, 2002). In my own research, my colleagues and **I have discovered time and again that the public favors rehabilitation as a goal of corrections**, believes that treatment is particularly important for juveniles, and especially supports early intervention programs (Applegate et al., 1997; Cullen et al., 1990, 1998; Moon et al., 2000, 2003; Sundt et al., 1998). To supply just one example, in a 2001 national survey, **we discovered that 80% of the sample thought that rehabilitation should be the goal of juvenile prisons and that over 9 in 10 favored a range of early intervention programs** (e.g., parental management training, Head Start, after- school programs) (Cullen et al., 2002a). I call **public support for rehabilitation [is] a “criminological fact” because over the course of a quarter century, it has been demonstrated in study after study.** Just to reinforce this point again, a 2006 national poll sponsored by the National Council on Crime and Delinquency found that “by an almost 8 to 1 margin (87% to 11%), the US voting public is in favor of rehabilitative services for prisoners as opposed to a punishment-only system” (Krisberg and Marchionna, 2006:1).

**[Prefer Krisberg. A) ]**

**I outweigh. A)** Voting is deeply emotive. **Strahilevitz[[65]](#footnote-65):**

Most **Voters Are Driven by Emotions**, Which Include Emotional Reactions to the Issues. I often hear complaints about the fact that so many voters are deciding who to vote for based on emotion rather than rational responses to the issues. However, this is not an all-or-nothing situation with some voters making decisions purely for rational reasons while others decide only for emotional reasons. The truth is that just about **all voters, including the most well-informed amongst us, have emotional responses to** issues. **If we didn’t, we** probably **wouldn’t bother to vote**. If You Care Deeply About an Issue, You are Also Emotional About It! **When we think about the issues that matter most to us, we are likely to have intense emotional reactions to different stances on these topics.** If you care about gay marriage, you will be happy imagining a time where any gay couple has the same legal rights as any straight couple. If you are against gay marriage, you probably smile at the thought of a world where no gay couple can get married. However**, emotions may be even stronger on the negative sid**e. For example, if you are pro-life, the idea of legalized abortions being available to anyone with an unwanted pregnancy probably infuriates you. In contrast, if you are pro-choice, hearing politicians talking about abolishing Roe v. Wade is likely to make you very upset. **You can take just about any issue you are care deeply about, and thinking about an outcome that goes against what you hope for will likely get you very upse**t. That is not so bad as emotions, and particularly negative emotions like fear and anger are what drive many people to volunteer, make donations and, of course, vote!

## AT Divine Command Theory NC

**[AT Framework]**

**1.** God doesn’t exist. Either he’s evil and we should reject him or he’s impotent and irrelevant. **Harris[[66]](#footnote-66):**

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[[67]](#footnote-67):**

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[[68]](#footnote-68):**

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 –** the Pope commands that we rehabilitate criminals. **CWN[[69]](#footnote-69):**

**The criminal-justice system must strive to rehabilitate convicts** as well as to punish them, **Pope Benedict XVI said** in an address to a group of European prison officials. "**In order to practice justice it is not enough that those found guilty of crimes be simply punished**: it is necessary that in punishing them, **everything possible be done to correct and improve them,”** the Pope said. “When this does not happen, justice is not done in an integral sense.” In fact, the Pontiff continued, **a prison system that punishes criminals without providing for rehabilitation “paradoxically reinforces rather than overcomes the tendency to commit crime and the threat posed to society by the individual**.” At a time when crime rates are rising in many societies, **the Pope said,** **prison systems should do their utmost to “bring about the offender’s effective re-education, which is required both for the sake of his own dignity and with a view to his reintegration into society.”**

**2. T –** the Bible *really* endorses restoration and rehabilitation. **Grimsrud[[70]](#footnote-70):**

**God's justice remains a power for life.** We see that in the most powerful way possible in the life and teaching of Jesus—and if we truly see Jesus, we will be freed from (redeemed from) the powers of injustice, idolatry and violence that Paul describes earlier in Romans. A third point about **biblical justice** is that it **is the power of salvation.** We see saving justice most clearly in the life of Jesus. **When we truly trust in and seek to embody God’s justice disclosed in Jesus we will be freed from our sinful practices of injustice** (just as those Amos spoke to would be were they to let justice roll down like water). **True justice, according to the Bible, is not about retribution and punishment but about restoration of relationships and finding healing. Restorative justice heals our brokenness and heals our understandings of justice.**

**3. T –** tons of biblical verses endorse rehab and forgiveness. ***John 1:9*** – If we confess our sins, **he is faithful and just to forgive us our sins and to cleanse us from all unrighteousness. *Timothy 3:16***—All **Scripture is breathed out by God and profitable for teaching, for reproof, for correction, and for training in righteousness. *Acts 26:18***—**To open their eyes, so that they may turn from darkness to light** and from the power of Satan to **God, that they may receive forgiveness of sins and a place among those who are sanctified by faith in me.’ *Matthew 5:38-39***—“**You have heard that it was said, ‘An eye for an eye and a tooth for a tooth.’ But I say to you, Do not resist the one who is evil.** But **if anyone slaps you on the right cheek**, **turn to him the other also.**

## AT Due Process NC

**1.** Due process is constrained by proportionality, and most of all, not killing the innocent. **Rowe[[71]](#footnote-71):**

There is also a converse to retribution: "**Due Process**" or "natural justice" **demands that punishment be limited by the moral desert for the crime committed.** Why don't we just execute all drunk drivers? That would 100% effectuate our policies of deterrence, restraint, and reformation of drunk drivers. It's because **a drunk driver doesn't justly deserve to be put to death for this act, regardless of the positive effects that certainly would occur**. Plain and simple. Which brings me to the Peterson case and the death penalty. If Peterson did what he was convicted of, then he deserves to be put to death. That's not the same as supporting the death penalty. I'm sort of on the fence on this issue. We have to weight the positives and negatives and there are a lot of both (although I remain a cautious supporter of capital punishment). **The ultimate negative is government wrongfully executing an innocent.**

**2. T -** the death penalty **A)** violates cruel and unusual punishment, and **B)** kills innocents. **ACLU[[72]](#footnote-72):**

The American Civil Liberties Union believes **the death penalty inherently violates the constitutional ban against cruel and unusual punishment and the guarantees of due process of law and of equal protection under the law**. Furthermore, we believe that the state should not give itself the right to kill human beings – especially when it kills with premeditation and ceremony, in the name of the law or in the name of its people, and when it does so in an arbitrary and discriminatory fashion. **Capital punishment is an intolerable denial of civil liberties and is inconsistent with the fundamental values of our democratic system.**  The death penalty is uncivilized in theory and unfair and inequitable in practice.  Through litigation, legislation, and advocacy against this barbaric and brutal institution, we strive to prevent executions and seek the abolition of capital punishment.  The ACLU’s opposition to capital punishment incorporates the following fundamental concerns: **The death penalty system in the US is applied in an unfair and unjust manner against people, largely dependent on how much money they have, the skill of their attorneys, race of the victim and where the crime took place.  People of color are far more likely to be executed than white people, especially if the victim is white The death penalty is a waste of taxpayer funds and has no public safety benefit. The vast majority of law enforcement professionals surveyed agree that capital punishment does not deter violent crime**; a survey of police chiefs nationwide found they rank the death penalty lowest among ways to reduce violent crime.  They ranked increasing the number of police officers, reducing drug abuse, and creating a better economy with more jobs higher than the death penalty as the best ways to reduce violence.  The FBI has found the states with the death penalty have the highest murder rates. Innocent people are too often sentenced to death.  Since 1973, **over 140 people have been released from death rows in 26 states because of innocence.** Nationally, **at least one person is exonerated for every 10 that are executed**.

***[1.*** *Motivation behind implementing the death penalty is retributive.* ***Mandery[[73]](#footnote-73):***

*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[[74]](#footnote-74):***

***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" \t "_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 Rehab Kills Due Process]**

**1. T –** due process models require rehabilitation. **Siegel[[75]](#footnote-75):**

In *The Limits of the Criminal Sanction,* Herbert Packer contrasted the crime control model with an opposing view that he referred to as the due process model. According to Packer, **the due process model combines** elements of liberal/positivist **criminology with the legal concept of procedural fairness for the accused**. **Those who adhere to due process principles believe in individualized justice, treatment, and rehabilitation of offenders.** If **discretion** exists **in the criminal justice system**, it **should be used to evaluate the treatment needs of offenders.** Most important, the civil **rights of the accused should be protected at all costs. This emphasis calls for strict scrutiny of police search and interrogation procedures, review of sentencing policies, and development of prisoners’ rights.**

**Outweighs: A)** makes an empirical and long-term claim that due process advocates have always valued and advocated for rehabilitation instead of retribution, **B)** your offense goes away because due process advocates actually see individualized and specific treatment to be a due process right, not a violation, **C)** indicates that rehab policies are able to incorporate procedural guidelines and that such policies put an emphasis on preventing the types of violations you’re talking about, **D)** indicates that most, if any, due process violations happen outside of the court system in police raids and other effects of counteracting crime that are distinctly retributive.

## AT Confinement Model CP

**1.** Counterplan doesn’t solve the aff – confinement hurts prisoners and is against rehab. **Shalev[[76]](#footnote-76):**

In the few cases **where** solitary **confinement may be** exceptionally and **absolutely necessary, it should only be used for the shortest possible time**, and be managed within established guidelines and strict safeguards. By extension, **prison regimes** which are entirely **constructed around a** solitary **confinement model cannot but be damaging to prisoners and run contrary to principles of rehabilitation and social reintegration. While prison authorities may sometimes need to resort to short term disciplinary segregation, it must**, again, **only be as a last resort and managed within strict safeguards**. The use of solitary confinement as a means of coercing a ‘confession’ or as means of ‘softening up’ detainees for interrogation must be prohibited under all circumstances.

**2. T –** confinement models don’t reintegrate offenders. **Petersilia[[77]](#footnote-77):**

Part of the difficulty in rethinking prisoner reentry is that it is not clear who owns the problem. **In recent years,** most prison **administrations have endorsed a “confinement model” mission**, which can be **summarized** succinctly as “keep them in, keep them safe, and keep them in line” **([by] Logan** 1993, p. 27). In other words, the prison system does not bear responsibility for what happens to inmates after release. Much like in a transportation system, prison officials manage the “traffic flow” as efficiently as possible and let someone else worry about where the people are headed. But **this mentality severely affects public safety and an inmate’s chances of a successful transition. Preparation for release cannot begin several weeks before an inmate is released. Every facet of the correctional experience – both inside and outside prison walls – should be connected in some way to the preparation and support necessary to help the offender make a successful transition.**

## AT ISP CP

**1. T –** ISP programs actually increase crime. **Petersilia and Turner[[78]](#footnote-78):**

The major recidivism outcome measures were officially recorded arrests and technical violations. On these measures, the **ISP programs were not as successful as on others. ISP participants were not subsequently arrested less often, did not have a longer time to failure, and were not arrested for less serious offenses than control group members**. The findings reveal that **in 11 of the 14 sites, arrest rates** during the I-year followup **were in fact higher for ISP participants than for the control group (although** not significantly so). At the end of the I-year period, about **37 percent of the ISP participants and 33 percent of control offenders had been arrested.** (See exhibit 3.)

## AT Public Executions CP

**1. T –** public executions empirically fail and idolize the criminals that are killed. **Leighton[[79]](#footnote-79):**

However, anecdotal **evidence from people with intense exposure to capital punishment does not suggest a deterrent effect. European pickpockets frequently plied their trade at the hanging of other pickpocke**ts (Camus 1960:189); both **inmates and law enforcement officers who have been around executions have gone on to commit capital murders** (Espy 1980; Senate Judiciary Committee 1968). More controlled and systematic research on publicized executions and deterrence bears out the anecdotal findings. Bailey, for example, examines not just newspaper but also television coverage, and controls for whether the news included graphic details. The correlations for deterrence (and its opposite, brutalization) are not statistically significant -- and they do not become significant in any model with lag effects ranging from 1 to 12 months (Bailey 1990). One flaw in the deterrence argument is that **people normally identify with those whom they admire or envy, and the condemned are "characteristically uneducated, impoverished misfits who have committed cruel or cowardly acts without provocation or remorse.** They may have strangled small children, killed whole families, dismembered their victims, and the like" (Bowers and Pierce 1980:455). Indeed, the assumption that people may "contrast themselves with these wretches" (ibid) gains currency given the great popularity of police shows. Fox's show COPS, for example, has many videos people rent and their Internet site (www.tvcops.com) sells a wide variety of merchandise with the COPS logo that people purchase to be identified with 'the good guys', not to be personally deterred from crime.

**2. T –** public executions encourage violence. **Leighton 2:**

While deterrence rests on the notion that executions convey a message 'crime doesn't pay,' it may also tell the audience that "a man's life ceases to be sacred when it is thought useful to kill him" (quoted in Camus 1960:229). **Executions can strengthen social solidarity by "drawing people together in a common posture of anger and indignation"** (in Reiman 1998:40). A person who identifies with the state may then associate "the person who has wronged him with the victim of an execution" and see "that death is what his despised offender deserves" (Bowers and Pierce 1980:456). **The issue is not simply about devaluing life, but about modeling and imitation, which are most likely when the violence is "presented as (1) rewarded, (2) exciting, (3) real, and (4) justified; when the perpetrator of violence is (5) not criticized for his behavior and is presented as (6) intending to injure his victim**" (Phillips 1983: 561). Indeed, Phillips' **work** on boxing - another example of acceptable and rewarded violence - is especially disconcerting **in finding a greater increase in homicides following a heavily publicized boxing prizefight than a less publicized one**, and finding that homicide victims bear at least some resemblance to the loser of the prizefight (Phillips 1983). This research certainly adds another strong reason for caution in approaching a televised execution.

**3. T –** public executions lead to public harm towards the offender’s family. **Leighton 3:**

Another chilling possibility is that **publicity about an offenders misdeeds** that accompanies a televised execution **could unleash great harm to family and associates of the condemned - people who have neither done harm nor share gui**lt. Although the issue is not frequently discussed**, hostility targeted at the condemned spills over onto others who act as a proxy for rage that may continue even after the murderer has been executed**. Mikal Gilmore writes about the aftermath of his bother Gary's execution in Utah - the first in the nation after the Supreme Court lifted the death penalty moratorium in 1976:

**4. T –** public executions encourage homicide; sociopaths want to be caught and killed. **Leighton 4:**

Another mechanism through which televised **executions could contribute to violence is through a 'murder/suicide' phenomenon. This clinically recognized syndrome applies to killers who figure "the State will execute him and thereby accomplish what he himself cannot bring about by his own hand**" (Strafer 1983:863 n 12). In this sense the **death penalty "breeds murder" and becomes "a promise, a contract, a covenant between society and certain** (by no means rare) **warped mentalities who are moved to kill as part of a self-destructive urge**" (in Strafer 1983:864 n 13; Bowers and Pierce 1980:458; Parker 1989a). For example, **Ted Bundy went to Florida and Gary Gilmore went to Utah; they intentionally chose states that had capital punishment. Jeffrey Dahmer told the judge at his 1992 sentencing, "I wanted death for myself"** (quoted in Barak 1998). This dynamic may not have much of an effect at present because of capital punishment's infrequent and freakish application, but **a televised execution would advertise this contract broadly and potentially stimulate the more self-destructive amongst us** (Farberow 1980).

## AT Voluntary Rehab

**1.** Voluntary rehab programs fail. Offenders drop out and relapse all the time. **Mithra[[80]](#footnote-80):**

Data directly from commercial drug rehab centers should be approached with skepticism, as these businesses are seeking to sell their product. Some respected facilities boast a drug rehab rate of 75-87%, which is unusually high. It seems that **the average of all types of programs** for all drugs **hovers below 50% for those who successfully complete the program. This number doesn't take into account the many people who drop out of voluntary treatments**, who can be said to have failed. Some scientists believe that 15% of addicts are able to recover with very little support, but this is always disputed. Once they admit to their addiction, they may be able to break their habit without entering a program, yet are difficult to research. These are probably addicts in their early stages of establishing the routine of addictive thoughts and behavior. It's important to realize that, with alcoholics, **90% of them relapse at least once in the first four years of recovery**. They eventually continue with success and show that persistent drug rehab can work.

## AT Lead Paint CP

**1.** This arg is atrocious correlation – we should be seeing much more evident trends. **Pinker[[81]](#footnote-81):**

**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 Cap K

**Capitalism prevents war and has historically caused the largest reductions in poverty and inequality – any other argument ignores empirics and robust economic models. Weede 08** [Erich, professor at the Institute for Political Science and Sociology, “Globalization and Inequality” Comparative Sociology 7, p. 415-433]

Globalization refers to an increasing international division of labor and more trade between economies, to cross-border investment and rapid transfers of technology between nations, to global capital ﬂows and, to a lesser degree, to increasing labor mobility. Th ere is as yet no global labor market. Globalization also implies better opportunities to learn from foreigners or strangers. Th e more similar you are to others, the less likely it is that you can learn from them.1 Unfortunately, many people prefer to rely on established routines and resent the challenge of having to learn from others. **Globalization is another word for a worldwide expansion of capitalism. It results in international tax competition** (Edwards and de Rugy 2002; Mitchell 2005). Globalization is based on some technological and political prerequisites. These include ever cheaper and faster means of communication and transportation as well as an adequate political environment. **The global expansion of capitalism requires political fragmentation: markets should be larger than political units.2 This provides an exit option from oppressive government for capital** and, to a lesser degree, for qualiﬁed labor. Such an exit option protects economic freedom from ever-increasing state interference and tax burdens. If one state should be much more powerful than all others, as the US currently is, then globalization requires a deeper commitment to capitalism and economic freedom by the hegemon than by other states. Th ese political requirements of globalization are fulﬁlled. **Globalization maximizes the size of the market**. Since Adam Smith (1776/1976) we know that **the size of the market determines** the degree of division of labor which promotes **productivity**. Thus, globalization is beneﬁcial because it increases productivity. **This is** not only a theoretical claim, but also **an empirical statement**. For instance, based on data from the US Bureau of Labor Statistics, **yearly economic gains from globalization have been estimated to be** somewhere between $1,650 and **$3,300 per capita** for Americans (Scheve and Slaughter 2007:36–37). **Real compensation per hour** (including beneﬁts and wages) **has also gone up** in the past decade, by 22 percent (Griswold 2007:1).3 **Since** Deng **Xiaoping opened China** in the late 1970s **by introducing** reforms which imply creeping **capitalism, Chinese agricultural production grew rapidly**. Later, **China attracted a lot of foreign direct investment**. Today China is a major base for manufacturing. By 2005 it was already the third largest exporter, still behind Germany and the US but already ahead of Japan (Th e Economist 2005). By 2008 China is likely to become the biggest exporter in the world. In the early 1980s (but no longer thereafter) even **the disparity between urban and rural incomes in China decreased** (Lin, Cai, and Li 2003:145). **Hundreds of millions** of Chinese **were taken out of abject poverty**. In the ﬁrst two decades of reform, per capita incomes grew fourfold (Bhalla 2002:218). Later, less radical reforms in India led to nearly doubling per capita incomes in a similar period of time and pulled about two hundred million Indians out of abject poverty (Das 2002:360). Since China and India together account for nearly forty percent of mankind and about half of the population living in less developed countries, **economic growth in China and India and other Asian countries contributes to the equalization of the global distributions of income** between individuals and households. If we are interested in individuals rather than states, then the **empirical indicators are clear**. Globalization or **the global expansion of capitalism has contributed to**, or at least been compatible with, **an equalization of** the size distribution **of income between human beings**. Since cross-national differences between average incomes are still a more important component of inequality between human beings than intra-national differences in income, it is possible – and currently true – to have the following two trajectories at the same time: growing inequality within many or even most countries amidst some movement towards equality among individuals worldwide (Bhalla 2002; Firebaugh 1999; Goesling 2001; Sala-i-Martin 2007; World Bank 2005). Admittedly, many economies, including the US and China, suffered some deterioration in their domestic income distributions. This is why the legitimacy of capitalism and globalization comes under attack, even in the American citadel of capitalism. This is also why calls for protectionism become louder and louder (Scheve and Slaughter 2007). But **critics of globalization tend to forget a basic truth** about free trade (Griswold 2007:3): “**If workers, capital, and resources can shift within the domestic economy, jobs eliminated by import competition will quickly be replaced by jobs created elsewhere**.”4 One should not blame the consequences of institutional sclerosis, or of an unwillingness to adjust, on globalization. **Globalization has led to a significant reduction in mass poverty**. Although the Chinese distribution of income has become much less equal since the reform process began in the late 1970s, the strong growth performance of China has pulled hundreds of millions out of abject poverty. **In India** growth has been less spectacular than in China such that the distribution of income has changed less, and yet again **hundreds of millions have been pulled out of abject poverty.** Although **Latin America and Africa** have benefitted much less from globalization than Asia has, these continents also cannot match the demographic weight of Asia. Therefore, their **comparative lack of success cannot neutralize Asian progress in global perspective. Moreover**, one has to keep in mind that **winning in the process of globalization presupposes participating** in it, **not abstaining** from it. One may illustrate global change with data provided by Indian economist Surjit Bhalla (2002:187). He deﬁnes people with a daily income between $10–$40 USD as members of the global middle class. In 1960 this class consisted largely of whites; only six percent were Asians. By 2000, however, 52 percent was Asian. Th e era of globalization is one in which Asia is now recovering, after falling for about two centuries further behind the West. **Except for Africa abject poverty worldwide is likely to become signiﬁcantly reduced within one or two decades.** Th e African share of abject poverty in the world is expected to rise until 2015 from 36 percent to about 90 percent (Bhalla 2002:S. 172).5 Why did so many people in Asia beneﬁt from globalization, whereas Africans did not? A plausible explanation has been oﬀered by Collier (2007:79).6 He points out that about **three quarters of the bottom billion7 live in countries which have suﬀered from civil war or long periods of bad governance and poor economic policies**. According to Collier (2007:27), “**civil war is development in reverse. It damages both the country itself and its neighbors.” Bad governance and poor economic policies distort incentives and misallocate the meager resources of poor countries. Africa has suﬀered from these** development traps **to a greater degree** than other continents. Moreover, one may argue that a focus on income and income distributions is biased towards understating the beneﬁts of globalization. As Goklany (2007:chaps. 2–3) has pointed out, **the same income per capita** today (in terms of purchasing power) **implies higher life expectancies, lower infant mortalities, less malnutrition, healthier lives, and less child labor than it did decades** or centuries **earlier**. Less developed, still **poor countries do benefit from the technological progress achieved by developed and rich countries.** Thus, even if one disputes the widely held and well-supported view regarding some equalization of individual or house-hold incomes worldwide in recent decades, one should still accept Goklany’s contention (2007:72): “In the aspects of human well-being that are truly critical – life expectancy, infant mortality, hunger, literacy, and child labor – **the world is far more equal today than it was a century ago, in large part because of globalization**.”8 Another advantage of **globalization** is that it **contributes to preventing war** (Russett and Oneal 2001; Weede 2005). **Quantitative research demonstrates that the risk of war between nations is reduced if they trade** a lot with each other. There is something like a commercial peace or peace by trade. Moreover, **economic freedom reduces involvement in military conﬂict and ﬁnancial market openness also reduces the risk of war** (Gartzke 2005, 2007). In particular, I want to underline that economic cooperation paciﬁes the geopolitical relationship between rising China and the West.9 Moreover, there is also something like a democratic peace. **The risk of war between democracies is extremely small**. In my view, **one should conceptualize this as a component of a capitalist peace because democracies prosper best in wealthy countries**10 and because capitalism or economic freedom and thereby globalization contribute to prosperity (Weede 2005, 2006). Since rising powers tend to challenge the political status quo, it is fortunate that the two demographic giants of this world seem to prosper under global capitalism.

**2. PERM –** do the alternative in all other instances and the aff in the instance of plan. Either other instances are sufficient to solve or the alternative isn’t strong enough and doesn’t solve.

**3. PERM –** do the alternative and rehabilitate under the ideology of the kritik. Either the alternative concedes that we can force to destroy biopolitical structures and we can rehabilitate under the ideal or we can’t force people to do anything and it can’t solve.

**4. PERM –** do the aff now and then disable the legal system. No reason why your harms are key to being stopped right now if they’ve been going on for a long time. So timeframe doesn’t matter. A Ks a non-unique DA so there’s no reason the alt’s competitive.

**5. PERM** - only by acknowledging embracing both competing ideologies can we achieve stability and actually solve the problem. **Edelman[[82]](#footnote-82):**

**Opposition in expressed “opinion”** accordingly **make for social stability:** they are almost synonymous with it, for they reaffirm and reify what everyone already knows and accepts. To express a prochoice or an anti-abortion position is to affirm that the opposite position is being expressed as well and to accept the opposition as a continuing feature of public discourse. **The** well established, thoroughly anticipated and therefore ritualistic **reaffirmation of** the **differences institutionalizes both rhetorics minimizing the chance of major shifts** and leaving the regime wide discretion; **for there will be anticipated** support and **opposition no matter what forms of action** or inaction **occur. As long as there is substantial expression of opinion on both sides of an issue, social stability persists and** so does regime discretion regardless of the exact numbers or of marginal shifts in members. The persistence of **unresolved problems with conflicting meaning is vital. It is not the expression of opposition but of consensus that makes for instability.** Where statements need not be defended against counterstatements they are readily changed or inverted. Consensual agreements about the foreign enemy of ally yield readily to acceptance of the erstwhile enemy as ally and the former ally as enemy, but opinions about abortion are likely to persist. **Rebellion and revolution do not ferment in societies in which there has been a long history of the ritualized exchange of opposing views** of issues accepted as important, **but rather where such exchanges have been lacking, so that a consensus on common action to oust the regime is easily built.**

## AT Biopower K

**1.** Foucault’s conception of power overlooks the terminal importance of juridical state structures---the preservation of democratic political sphere can prevent the escalation of biopower into mass genocide. **Dickinson[[83]](#footnote-83):**

In an important programmatic statement of 1996 Geoff Eley celebrated the fact that **Foucault’s ideas have “fundamentally directed attention away from institutionally centered conceptions of government and the state . . . and toward a dispersed and decentered notion of power** and its ‘microphysics.’”48 The “broader, deeper, and less visible ideological consensus” on “technocratic reason and the ethical unboundedness of science” was the focus of his interest.49 But the “power-producing effects in Foucault’s ‘microphysical’ sense” (Eley) of the construction of social bureaucracies and social knowledge, of “an entire institutional apparatus and system of practice” ( Jean Quataert), simply do not explain Nazi policy.50 The destructive dynamic of Nazism was a product not so much of a particular modern set of ideas as of a particular modern political structure, one that could realize the disastrous potential of those ideas. What was critical was not the expansion of the instruments and disciplines of biopolitics, which occurred everywhere in Europe. Instead, it was the principles that guided how those instruments and disciplines were organized and used, and the external constraints on them. In National Socialism, **biopolitics was shaped by a totalitarian conception of social management** focused on the power and ubiquity of the völkisch state. **In democratic societies, biopolitics has historically been constrained by a rights-based strategy of social management**. This is a point to which I will return shortly. For now, **the point is that what was decisive was actually politics at the level of the state.** A comparative framework can help us to clarify this point. **Other states passed compulsory sterilization laws** in the 1930s — indeed, individual states in the United States had already begun doing so in 1907. **Yet they did not proceed to the next steps** adopted by National Socialism — mass sterilization, mass “eugenic” abortion and murder of the “defective.” Individual figures in, for example, the U.S. did make such suggestions. But **neither the political structures of democratic states nor their legal and political principles permitted such policies actually being enacted**. **Nor did the scale of forcible sterilization in other countries match that of the Nazi program**. I do not mean to suggest that such programs were not horrible; but **in a democratic political context they did not develop the dynamic of constant radicalization and escalation that characterized Nazi policies**.

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# Extra Cards

**3. T –** retribution misunderstands the kingdom of ends – crime is a negative rather than a positive rectification. **Mearle 2:**

The only retribution that happens in the punishment is a merely negative one. Kant writes: "Whoever steals makes the property of everyone insecure and therefore deprives himself (by the principle of retribution of in [Wiedervergeltung]) security any possible property" (DR VI, 333, Gregor 106). This means nothing but that the crime removed the criminal from the legal community and into a state of nature. Therefore, only criminals may and should be punished, under the condition that a stable state does exist as mentioned above, in thesis (a'). Retributivism is right only if we understand it in this way. But using the word 'retribution' in this sense can be misleading. In fact, the mutual reciprocal limitation of rights in the legal community and the mutual protection of the citizens of a state be called retribution, the right of one might reciprocal. Indeed, recognition another's rights, and protection of them, are really a sort of contribution or 'tribute' we make to one another. On the contrary, a crime is merely negative. It is in no way a contribution. Therefore the words "retribution" and "retributivism" seem[s] to me inappropriate to qualify thesis (a').

**Ripstein[[85]](#footnote-85):**

once a person has acquired something, others are under an obligation to refrain from interfering with it, using it, or changing it. It does not follow from this that acquisition cannot be rightful, but it does follow that private acquisition is only rightful against the background of what he calls an “omnilateral will,” that is, a public law conferring upon everyone the entitlement to acquire. Thus the requirements of property cannot be met except through public legislation authorized to make laws for everyone on behalf of everyone.

**Whitney[[86]](#footnote-86):**

Ruby Payne’s cognitive and behavioral study, A Framework for Understanding Poverty, explores the role that education plays in overcoming generational poverty and thus, for the purposes of this discussion, prisoner rehabilitation. 209 Assuming that the link between poverty and recidivism is established as discussed above, law- and policymakers can concentrate on the four reasons that people leave a condition of poverty: A goal or vision of something they want to be or have; a situation that is so painful that anything would be better; someone who ‘sponsors’ them (i.e., an educator or spouse or mentor or role model who shows them a different way or convinces them that they could live differently); or a specific talent or ability that provides an opportunity for them. 210 Many prisoners can relate searing experiences that might motivate them to emancipate themselves from impoverished situations. Correctional rehabilitation that implements holistic educational and vocational programs can address the other factors mentioned above. An improvement in an inmate’s store of knowledge and self-confidence allows that inmate to develop attainable goals. Program teachers and fellow students may provide the needed role models. Recognizing the fundamental right to education by adopting international standards would help to break this cycle.

**1. T –** retribution subverts moral autonomy. **Landa[[87]](#footnote-87):**

One the most potent **motivations for retributivist** approaches **to punishment has been their apparent** connection to an ethical background shaped by the Kantian notion of morally autonomous and rational human agency. The present paper challenges the plausibility of this connection. I argue that **retributivism subverts, rather than embodies, the normative consequences of moral autonomy, justifying a social practice that conflicts with the considered judgments that the proper recognition of moral autonomy would authorize.** The core of my case is the analysis of whether a **punishment should be understood as a restriction of a criminal’s freedom properly understood**. I argue that **the affirmative view faces serious difficulties that have not been, and are not likely to be, resolved by retributivist justifications that draw their support from Kantian moral theory.**

***2. T – Gahringer[[88]](#footnote-88):***

*This sounds hard, if not immoral, as it does when Moritz Schlick says something similar: "a man is morally responsible for an act if his motives for bringing about the act are such as we can affect favorably in respect to his future behavior by the educative influences of reward and punishment." 4Schlick's fault is that he has in mind conditioning behavior. But where* ***punishment is interpreted as*** *a form of* ***language, addressed to mind, its employment is not only essentially respectful, but self-limiting****. One cannot effectively communicate under certain conditions; and where one cannot one ought not to try. One must, of course, assume the causal relation between the wrongdoer and the act for which he is punishable. But even this is covered by our principle: to punish a man who is not causally connected is to communicate something very different from what one intends-e.g., the in- humanity or indifference of the punisher or the corruption of the social or political order. And this is unallowably inaccurate ex- pression. This explains why* ***we have no right to punish morally those for whose lives we have no responsibility, or civilly where we are not agents of the law. We have no such rights*** *simply* ***because in these cases we cannot communicate what we intend. Our efforts, lacking the needed authority, cannot speak for the objective moral or social order****, and as such can only appear willful and intrusive.* ***When I punish someone else's child I in effect tell him little more than that I am a meddler; and when I take the law into my own hands I do little more than advertise my intolerance and distrust.***

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