****

**Resolved: Rehabilitation ought to be valued above retribution in the United States Criminal Justice System**

**Definitions:**

**Ought: Used to express obligation**

(Merriam-Webster, 2012 Edition, Online, http://www.merriam-webster.com/dictionary/ought)

**Nick Smith 2008 defines Rehabilitation as**

(*Encyclopedia of Criminal Justice*, Nick Smith, 2008, Professor of Philosophy @ New Hampsire University, http://pubpages.unh.edu/~nicks/pdf/Punishment.pdf)

**Punishment intended to reform a convict so that she can lead a productive life**

**Smith dichotomizes the two terms by noting that**

**Retribution, from the Latin “to pay back,” traces it Western origins to the Biblical** lex talionis or **“eye for an eye.”** Unlike the forward-looking orientation of utilitarianism, **retributive justice seeks to address the wrongs of the past by forcing the offender to pay her debt to the victim and society. In other words, the retributivist believes punishment should balance the scales of justice by causing the offender to suffer pain commensurate with that of her victim.**

Ob #1: Misdemeanors are by far the most common case evaluated in the United States Criminal Justice System.

**Jenny Roberts 2011** **explains**

(Jenny Roberts, Associate Professor @ American University, University of Californnia Davis Law Review, Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts, 2011, http://lawreview.law.ucdavis.edu/issues/45/2/Articles/45-2\_Jenny\_Roberts.pdf)

**Contrary to popular belief, however, the vast majority of criminal cases in the United States are not felonies. They are misdemeanors**:“minor” dramas **played out in much higher numbers every day in lower courts across the country**. A 2008 analysis of eleven state courts revealed that **misdemeanors comprised 79% of the total caseload in those courts. In addition to comprising the majority of criminal cases, misdemeanors are also on the rise. One recent study estimated that the volume of misdemeanor cases nationwide has risen from five to more than ten million between 1972 and 2006. This change has taken place across diverse jurisdictions. In New York State, misdemeanor arrests rose from 363,634 in 2001 to 423,947 in 2010.**The public defender in **Lancaster County, Nebraska experienced a 56% increase in the number of new misdemeanor cases between 2003 and 2007**

She then explains the effects of this

**The crimes that dominate the public consciousness and policy debates are not common crimes, but the rarest of crimes. Whether in entertainment or news, the crimes that define criminality are acts of predator criminals. Our desire to understand and control these seemingly incomprehensible and uncontrollable criminals is long seen in our culture. Predator criminals have become a misrepresented icon for criminals in our mass media. Not only does this lead to a skewed perception of a vast majority of criminals, but it has also caused many scholars and policy makers to ignore a large amount of problems that exist in the smaller courts.**

This debate ought to take into account the reality of the Criminal Justice system and look to what effects a vast majority of these cases, and not the rare exceptions. This argument precludes any theory or topicality insofar as the real world impacts of looking to this long ignored topic outweigh on its pure educational value. The Affirmative thus will take a look how criminal Justice affects a majority of us in society and whether the notion of rehabilitation better serves Criminal Justice

Observation #2: Because the resolution is comparative, the Affirmative doesn’t have to be a perfect world, just a better word than the negative converse.

Observation #3: The Resolution only notes that the Affirmative has to value over retribution. This means that the Affirmative world does not have to be void of Retribution. If the Negative makes no weighing as to why their value or value criterion are inherently prima facie duties of the government, then the Affirmative has full rights in the 1AR to Perm the NC.

Burden: If the Affirmative proves that the goals of rehabilitation better serve Misdemeanors than retribution, then you can sufficiently affirm.

Value: Societal Welfare

Societal Welfare, because of the agent of action meaning an obligation and because the actor of the resolved is the United States Government, the value of this round has to be what best emulates the goal of the government. The only reason we submit ourselves to the decisions of a collective in hope that in protecting the welfare of others that we can protect our own welfare. Justice is not a value, but rather a vehicle through which we achieve our Societal Welfare. Justice itself will always break itself down into an analysis of harms for a majority of society.

Value Criterion: Political Efficiency

**Hans Morgenthau** **explains the importance of political efficiency of the state in relations to its moral obligation to provide societal welfare**

(Morgenthau, Hans, Political Theorist and Professor at the University of Chicago, Politics among nations: The Struggle for Power and Peace, 1948, New York; Knopf)

Realism maintains that universal moral principles cannot be applied to the actions of states in their abstract universal formulation, but that they must be filtered through the concrete circumstances of time and place. **The individual may say for himself: “*Fiat justitia, pereat mundus* (Let justice be done, even if the world perish),” but the state has no right to say so in the name of those in its care. Both individual and state must judge political actions by universal moral principles, such as that of liberty. Yet while the individual has a moral principle, the state has no right to let its moral disapprobation or the infringement of liberty get in the way of successful political action, itself inspired by the moral principle of national survival. There can be no political morality without prudence; that is, without consideration of the political consequences of seemingly moral action**. Realism, then, considers prudence—the weighing of the consequences of alternative political actions—to be the supreme virtue in politics. Ethics in the abstract judges action by its conformity with the moral law; political ethic judges action by its political consequences.

Thus any moral obligation from the state is directly derived from successful political action. This also indicates a difference between moral duties of the individual and that of the State. The Affirmative will thus take the thesis that rehabilitative treatment of misdemeanor criminals is a more politically efficient action than retributive treatment.

Contention #1: Current US prioritization of Retribution makes reintegration almost impossible

Subpoint A: Rehabilitation and Retribution is not just about how criminals are treated during jail, but also after

**Michael Pinard 2008 Explains**

(Michael Pinard, Professor @ University of Maryland School of Law, University of Maryland Law Review, Collateral *Consequences of Criminal Convictions: Confronting issues of Race and Dignity,* 2010, http://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?article=1820&context=fac\_pubs)

As one scholar observes, “**reintegration rests on the fulfillment of a necessary condition: the punishment must end at some point to allow for the possibility of reintegration. However, the United States has a uniquely extensive and debilitating web of collateral consequences that continue to punish and stigmatize individuals with criminal records long after the completion of their sentences. These consequences stifle reintegration by making it difficult if not impossible, for individuals to move past their criminal records for families to reunite and thrive.**

Perception is a key part of rehabilitation. Once a criminal re-enters society are they still a criminal or are they a citizen again. The United States is unique in the world because we treat previous criminals like criminals even after they have served their time. The Affirmative will argue that this perception is extremely harmful not only to the prisoner, but also society.

Subpoint B: Retribution after Jail makes reintegration impossible, and forces the criminal back to crime

**Jenny Roberts 2011 explains**

(Jenny Roberts, Associate Professor @ American University, University of Californnia Davis Law Review, Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts, 2011, http://lawreview.law.ucdavis.edu/issues/45/2/Articles/45-2\_Jenny\_Roberts.pdf)

**The most pervasive collateral effect of a misdemeanor conviction is the ability to find and keep work. There are a multitude of statutory and regulatory bars to employment** at the local, state, and federal levels for convicted persons. For example, in New York State a person with certain misdemeanor convictions cannot work as a home health aide, and in Texas a number of convictions block employment in any capacity at facilities serving the elderly, terminally ill, or people with disabilities. **In addition to formal restrictions, many employers take** **advantage of easy electronic access to criminal records and use the information to avoid hiring anyone with any type of record, even if there is no connection between that conviction and the type of work.**

**Jeffery Fagan 2008 explains the effects of this**

(Jeffery Fagan, Professor of Law and Public Health, Columbia University, Ohio State Journal of Criminal Justice, 2008, http://moritzlaw.osu.edu/students/groups/osjcl/files/2012/05/Fagan-Meares-PDF.pdf)

Furthermore, Jeremy Travis argues that **mass incarceration is counterproductive because it has a criminogenic effects on prisoners. Imprisonment not only weakens a person’s access to legal work,** as both Western’s and Pager’s research has shown**, it also strengthens his connections to criminal networks. Thus, upon re-entry to their communities, prisoners pull away from legal work and “push toward the secondary labor market of day labor and part-time jobs and toward illegal income.”**

**This effect is greatest when we look at it through the scope of Misdemeanors. People who committed petty crimes are forced into a life of crime by their labels. We need to rehabilitate the perception of misdemeanor criminals so that they can enter the legal economic community and no be forced into harder crime.**

Sub Point C: This has an even larger effect on communities

**Jenny Roberts 2011 explains**

(Jenny Roberts, Associate Professor @ American University, University of Californnia Davis Law Review, Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts, 2011, http://lawreview.law.ucdavis.edu/issues/45/2/Articles/45-2\_Jenny\_Roberts.pdf)

**The large number and harsh nature of collateral consequences illustrate how even a low-level conviction** that seems to begin with arrest and end in front of the judge can **actually have an impact not only on that person’s life, but also on the lives of family members and the person’s community**. For example, **an NAACP Legal Defense Fund survey of thirty women incarcerated for nonviolent offenses, designed to document “social costs” of Mississippi’s poor quality public defense system, “found that nearly half of the women lost a home or apartment, while 12 lost vehicles. More than half of the women had children living with them when they were arrested and had to move in with relatives. Eight women had elderly parents who were affected financially.” These examples demonstrate how misdemeanor convictions can negatively affect a person’s ability to be a productive** **member of society and, therefore, should be cause for serious concern. This is especially true where large percentages of individuals in a particular community have criminal convictions. The public safety effect on a community when many members are incarcerated or unable to find work because of a minor conviction cannot be underestimated in a cost-benefit analysis of low-level prosecutions**

This use of Retribution at the misdemeanor level has a large impact at entrenching poverty in many places of America both ethnically and socio-economically. Retribution is counterproductive because it causes communities to become more and more disadvantaged and therefore more and more inclined to criminal activity. Most of which could be solved by a simple change of perspective.

Contention #2: Misdemeanor offenders are going to go back to society, so why not reform them?

A common misconception is that most criminals can be just locked away from society to help prevent crime and rehabilitation doesn’t matter because they won’t see freedom anyways. This ignores the fact that most criminals, more than 80%, will be released each year back to society,

(Jenny Roberts, Associate Professor @ American University, University of Californnia Davis Law Review, Why Misdemeanors Matter: Defining Effective Advocacy in the Lower Criminal Courts, 2011, http://lawreview.law.ucdavis.edu/issues/45/2/Articles/45-2\_Jenny\_Roberts.pdf),

for serving their sentences; most of them misdemeanors. So unless you want to start violating the 8th Amendment, the reality is that most criminals have to be reintegrated into society every year.

**According to the Justice Policy Institute in 2009**

(Justice Policy Institute, 2009, *Shifting the Problem: California’s proposed bill to relocate people serving sentences of less than 3 years from state prisons to county jails is not a solution to overcrowding*, http://www.justicepolicy.org/uploads/justicepolicy/documents/10-06\_fac\_california\_bill\_ac.pdf)

**Rehabilitation Treatment delivered in the community is one of the most cost-effective ways to promote public safety and costs approximately $20,000 less than incarceration per person per year.** **A study** by the Washington State Institute for Public Policy **found that every dollar spent on drug treatment in the community yields over $18 in cost savings related to crime**. **Releasing people to supervision and making treatment accessible is an effective way of reducing problematic drug use, reducing crime associated with drug use and reducing the number of people in prison with misdemeanors**. With California’s Prop. 36 program, people arrested for first-time, nonviolent drug offenses are diverted from the prison system to treatment. **In the first five years of this program the number of people incarcerated for drug possession fell 27 percent**. **A University of California report found that the initiative saved California $2.50 for every dollar spent on the program, representing a net savings of $173.3 million in the first year alone. By more closely matching treatment resources with needs, success rates and savings could be even higher.**

In the end this whole argument comes down to logic. If it’s cheaper and more effective to treat low-level criminals with rehabilitation why shouldn’t we? They have to be reintegrated into society when they get released, so Judge it comes down to who you’d rather want back out there. Someone just forced to sit in a cell all day, or someone who at least tried to get help. It’s pretty obvious that Rehabilitation is the best route. The only reason this isn’t clearer in the debates on the TV, is that that misconception of criminality that Roberts talks about makes people think that every criminal is a murderer. But when you get a real perspective of it, that isn’t media driven, it’s pretty obvious.

So I affirm.