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NC Shell

I negate ought implies moral obligation. The resolutional actor is the federal government because they legislate for the CJS. The resolution says that CJS policies or values are obligated to shift, and the way we determine what happens in the CJS is from the government that controls it. U.S. obligations cannot stem from traditional ethical theories like the AC.

A. There are many actors in a state, so if a state were to be held morally culpable it would hold the individuals that comprise it accountable for an action they did not commit which is logically incoherent.

B. Consent determines what counts as a moral harm under his moral theory such as whether euthanasia is murder but governments can’t be obligated since they are incapable of reflection and thus consent.

C. The different subjective obligations of actors within the state, i.e. to protect their family or a contract to kill means no singular obligation can be levied since it conflicts with others and lose its normative force.

D. The United States is a legal fiction – it is not capable of internal motivation or self-reflection. The AC has no normative force when obligating a government and criminal justice system because it can’t know the ethical framework it is supposed to work within.

E. A priori moral reasoning fails because different members of the government generate contradictory obligations from the theory since the AC ethic establishes guidelines for theorizing but does not explicitly denote obligations.

This excludes the AC framework – even if they win justifications supporting their framework, that’s insufficient to affirm.

Thus, the United States and CJS can only be obligated by a body that it has consented to and which has constitutive authority over the U.S. International agreements are insufficient to generate obligations because the U.S. can opt in or out of them, meaning they have no actual authority. The only moral body able to generate what the U.S. and its departments ought to do is the U.S. constitution.

A. The constitution denotes explicit positive and negative obligations means only it can serve as a guide to action because only it is epistemically accessible - the obligations are clear.

B. Bodies like the executive and judicial enforce the constitution and ensure the U.S. follows those obligations. Only the constitution has an enforcement mechanism to be able to actually obligate the United States which is a requirement for any obligating theory.

C. The constitution defines the United States and its legitimate action, which means in order for the U.S. to take an action it, must be accepted by the Constitution. Actions only make sense in the context of rules – if you’re not playing baseball then you have no obligation to run to first base. United States action only makes sense in the context of the NC standard.

D. The constitution is the only body the U.S. has ceded authority to regulate it so only its commandments have obligating force. Obligation requires authority because it implies a requirement to act – only the constitution has this authority.

E. All citizens and states tacitly concede the validity of the constitution by living in the U.S. so only the constitution is normative because individuals could reject some other ethical theory and its obligating capacity but they’ve already endorsed the constitution.

F. An obligation to achieve a desired end state does not generate an obligation to take every action that could fulfill that requirement. The obligation derives from the outcome, not from the means to achieve it. 2 Reasons

1. The means is only valuable in the context of achieving the greater obligation, so it is not inherently valuable.
2. In a different context, the same action could have unintended consequences which prevent the fulfillment of the obligation.

Therefore obligations are determined by the constitution proper and amendments because they reflect changes in the constitutive will, Supreme Court decisions and other interpretations are subjective and thus can’t form the basis for morality since they are based on the arbitrary will of individuals. Proving merely an obligation to rehab is insufficient since it is not directly comparative. The AC burden is to show the Constitution explicitly obligates the U.S. to value rehabilitation over retribution in the CJS. I contend that it does not.

The constitution explicitly leaves the responsibility of criminal justice up to the individual not the government.

**Reddy** Vikrant P., [February 15th, 2012 10th, Amendment applies to Criminal Justice, too, The National Law Journal, http://www.texaspolicy.com/sites/default/files/documents/2012-02-15-NLJ-VR.pdf]

When the current U.S. Supreme Court term began, Justice Antonio Scalia made headlines by appearing before the Senate Judiciary Committee and testifying that “it was a great mistake to put routine drug offenses into the federal courts.” Scalia was not arguing that drugs should be legal, but rather that there is a limit to what the federal government is competent, and constitutionally, permitted to do. Ordinary drug crimes are better left to state and local governments. Essentially, Scalia was calling for a revival of 10th Amendment principals. The 10th amendment of the U.S. Constitution reads: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the states respectively, or the people.” Many Americans argue that this provision is being ignored by a federal government that seizes an ever-larger role in healthcare, environmental regulation, and other economic matters. Less remarked upon, but equally troubling, is the federal government’s increased jurisdiction over routine matters of criminal law.

Even if there are federal crimes that doesn’t matter, the constitution does not explicitly obligate anyone to take the action.

B. If it does, the 10th amendment gives authority over criminal justice to the states so the whole CJS can’t shift its policy or change its action; individual policies or mindsets such as rehab or retribution are decided at the state level, and the constitution doesn’t regulate state action.

Additionally, the general welfare clause doesn’t turn the NC since it A. refers to the right to tax not implement or regulate policy B. It sums up the rest of the constitution and thus is not an explicit duty of the government.

And the constitution does not make comparative statements such as valuing one system over another since it only proposes absolute constraints on governmental action, since there is no threshold for when something is valued more than another since it is based on the subjective evaluative standpoint of the judge.

Rehabilitation disrespects 5th and 14th Amendment due process protections.

**Melissa Bull** [Senior Lecturer Criminology- Griffith University, 2010, Punishment and Sentencing: Risk, Rehabilitation and Restitution, p. 29]

The operation of rehabilitative model has led to sentences that are indeterminate, on the basis that a person should only be released from obligations when, in the opinion of the experts, a “cure” has been achieved. The problems associated with rehabilitative approaches include: Limited empirical evidence of their success (Martinson 1974), although recent meta-analysis of large numbers of small rehabilitative schemes has suggested that positive results can be obtained in favorable circumstances and selected offenders (Hudson 2003, p. 30) [This leads to] A lack of due process; indeterminate or semi-determinate sentence place the release of offenders in the hands of prison or probation authorities, often without firm criteria for decision-making, clear accountability or avenues for appeal. A disregard for the rights of individuals, that they are not to be subjected to compulsory state intervention that is disproportionate to the seriousness of the crime committed The potential for net widening: even if the crime is relatively minor, an offender who is assessed as needing help might be drawn into the criminal justice system and subject to state control for a considerable period.

Additionally, resolve the round through a truth-testing paradigm – he still gets access to all his arguments but comparative worlds depends on us being able to conceive of each world which may be necessarily impossible because every impact in debate is unlikely. Further, competing interps forces the aff and neg to fiat actions that are potential theory violations, so truth-testing to prevent the prolif of harmful theory in LD.

Rehabilitation has indeterminate sentences.

**MINISTRY OF JUSTICE**

[Ministry of Justice, 1997 “Sentencing Policy and Guidance - A Discussion Paper”]

The logic of rehabilitative sentencing leads to the indeterminate or semi-indeterminate sentences of the past if a judgement on a person's [because] successful response to treatment is to decide[s] when their sentence[s] is to end. Offenders perceived as having considerable treatment needs may (and often did) serve very long sentences. The very long sentences may [which] become disguised forms of incapacitation, in practice if not in intention. It is also possible that some serious offenders, for instance white collar criminals, will have few treatment needs and serve very short sentences. Sentencing disparity on the basis of treatment needs is more likely to be acceptable if the various sentences imposed do actually succeed in reducing recidivism. If not, attention is likely to focus on the apparent unfairness of the system in terms of sentences served in relation to offences committed.

Indeterminate sentences are inconsistent with desert because they are not proportionate to the crime. Severity of the crime has no relation to the length of incarceration.

AT Constitution Justifies Util

The aff can’t claim that guaranteeing universal healthcare rights fulfills some other obligation through the constitution

A. that means it ought to do x for its citizens, and if that justifies extending due process rights to non-citizens, fulfills that, then it *should* do it. You can’t generate moral obligations from prior moral obligations because that leads to infinite regress.

B. The obligation to follow the constitution does not entail that every action to fulfill that obligation is itself obligatory.

C. Since the resolution has no temporal specificity that means it must be affirmed as a general statement in all circumstances, thus the government cannot ought to do specific things to fulfill an obligation to its citizens because what is needed to fulfill that initial obligation may change over time.

D. The only mention of the welfare is the general welfare clause in the preamble which is not a statement of goals or obligations but rather a roadmap for the rest of the constitution, so it can’t generate an obligation.

E. There are many ways to promote the general welfare; the government isn’t required to choose rehab

F. There’s no brightline for how much welfare is necessary; just because something promotes welfare doesn’t mean it’s required i.e. it would be absurd to require governments to provide everyone free televisions even though it would increase welfare.

NC Ethic Weighing

Prefer government specific theories over generic ethical theories since agent specific theories guide human action but governmental agent theories are tailored to the resolutional agent – the resolution implies a standard of constitutionality. They don’t provide reasons why the United States as a moral agent is analogous to the moral agents their conception of morality relies on. Absent that internal link the AC is non functional.

AT Util

1. Util can’t determine obligations since it is impossible to predict consequences – we only analyze benefits based on our evaluative standpoint but there are always considerations external to our perception.
2. Every consequence terminates in other consequences i.e. punching someone leads to them to react which can trigger a fight so A. It is impossible to quantify the harms from any action so its’ impossible to determine moral status B. all actions have equal moral status since they are assumed to have infinite consequences
3. Util only says we must aggregate harms but doesn’t define what a morally relevant harm is – this is the missing internal link in the AC. The AC collapses to subjectivity, which isn’t normative since we all subjectively determine our own harms.
4. Normativity – A realist account of values can’t be normative because it isn’t referential to the agent in question. Purely external brute facts can’t produce normative reason as it isn’t connected to the agent so it fails to generate obligation. Thus the AC fails to meet the good-ought gap. Even if they win the entire AC that merely proves the extension of due process is good but not why it’s obligatory so it’s insufficient to affirm.
5. The NC turns the AC: under the NC the constitution determines moral action that prohibits government violence and individual violence – solves AC harms. And outweighs all aff offense since in the aff world there’s a risk of governmental abuse which exasperates current CJS concerns.

AT Veil of Ignorance

1. Assumes humans are rational – no warrant provided. Even if it’s up to humans to decide what would be obligated, that requires that all actors and evaluators are rational.
2. No warrant that rational humans are self interested – begs the question of what a rational human values. Further, if people are rational then they are rationally interested in different values, means the Veil of Ignorance can’t determine the normative ought.
3. Hold the AC in great skepticism – it is purely speculative as to what valuations people would make. He assumes they’d be self-interested or would legislate for the weakest member of society – the NC provides empirical grounding. 1. Outweighs the AC on probability and turns the internal link – they rationally consent to the constitution. 2. Construction of the constitution during the creation of the nation is the closest world to a veil of ignorance because they were not within any existing framework.
4. If the AC is true then it collapses to util because they contend that people are rationally self interested based on harm to themselves, means they have to aggregate harms to determine how the rational would consent.

AT Religious Rehab

The establishment clause prohibits faith based rehab.

http://www.law.uconn.edu/system/files/private/Constitutionally%2BCoerced%2BWhy%2BSentencing%2Ba%2BConvicted%2BOffender%2Bto%2Ba%2BFaith-Based%2BRehabilitation%2BProgram%2BDoes%2BNot%2BViolate%2Bthe%2BEstablishment%2BClause%2B(PDF),%2Bby%2BLisa%2BBiron.pdf

“CONGRESS SHALL make no law respecting an establishment of religion . . . .” 1 Imagine that you are a judge in the criminal court system. Before you, in your courtroom, sits an offender whose drug and alcohol problems have played a primary role in his run-ins with the law. He is facing substantial time behind bars, where he may or may not get treatment for substance addiction. You want to offer the offender a chance at rehabilitation 2 and have become aware of a long-term residential treatment program that has a fantastic record of success. It is, however, a Christian faith-based program. You then offer this offender the choice between successfully completing this program or completing his sentence in prison. He chooses the treatment program. Have you just coerced the offender into this faith-based program in violation of the First Amendment’s Establishment Clause? Must you offer the option of a secular program? What if there is no secular program available, or none that is equivalent—in length, cost, or features—to the faith-based program?

AT Sex-Abuser Rehab

http://informant.kalwnews.org/2010/11/judge-housing-restrictions-on-sex-offenders-unconstitutional/

An interesting development in the south may have ripples statewide. A Los Angeles Superior Court has halted residency restrictions for sex offenders in the county. In 2006, California passed Proposition 83, also known as Jessica’s Law. The law, among other things, set certain housing boundaries for sex offenders: anyone convicted of a crime under criminal code 290 would not be able to live within 2,000ft of a school or park. In its four years of operation, the law has lead to a number of unintended side-effects. Namely, increased homelessness among sex offenders living in cities like [San Francisco](http://www.sfgate.com/cgi-bin/object/article?f=/c/a/2010/04/04/MNUF1CI0KN.DTL&o=2), Oakland, and Los Angeles, where there simply aren’t available housing options that comply with the law. In some cities, [patches](http://kalwnews.org/node/14211) of sex offenders have cropped up: motels that house transient sex offenders, occasionally paid for by parole; and industrial strips of town lined with campers and vans where homeless sex offenders sleep. Superior Court Judge Peter Espinoza, in his ruling, said the law is not only unconstitutional, infringing upon sex offenders’ civil rights, but it impedes their ability to reintegrate into society and create stable living situations: “Rather than protecting public safety, it appears that the sharp rise in homelessness rates in sex offenders on active parole in Los Angeles County actually undermines public safety. The evidence presented suggests that despite lay belief, a sex offender parolee’s residential proximity to a school or park where children regularly gather does not bear on the parolee’s likelihood to commit a sexual offense against a child.”

Felon Disenfranchisement

Disenfranchisement is part of the constitution

http://journals.cambridge.org/download.php?file=%2FPPS%2FPPS8\_04%2FS1537592710003178a.pdf&code=14e8cbae58a0cb00e051a6bcc1b17fc3

This view of rights as predicated on individual choice and responsibility is centrally embedded in the American Constitution. Even such momentous constitutional protections as those that abolish slavery and that establish a right to vote stipulate what has been interpreted as a blanket conditionality exempting all those who fail to comply with responsible lawful behavior. This is nowhere as clear as in the Thirteenth Amendment which declares that “neither slavery nor involuntary servitude [shall exist]— except as a punishment for crime.” Indeed for nearly half a century after the passage of the Thirteenth Amendment and the constitutional abolition of slavery, the practice of convict leasing meant black prisoner bodies could be sold for purposes of economic production with little or no state regulation. 2 For slavery to endure, “[A]ll it took was anything remotely resembling a crime.” 3 The Fourteenth Amendment that established a foundational right to vote, as some courts have held, similarly exempted those who participated in “rebellion or other crimes.” Close to a century and a half after the passage of the Fourteenth Amendment, the uninterrupted right to vote in all but two small northeastern states (Maine and Vermont) remains conditional on a life unblemished by any prison-eligible crime.

Done at the state level

http://www.adaction.org/media/lizfullpaper.pdf

Today, felony disenfranchisement laws are in place in 48 states and the District of Columbia. In a report collecting and classifying these 49 different state procedures, the Department of Justice admitted that ìthe laws governing the same rights and privileges vary widely from state to state, making something of a crazy-quilt of disqualifications and restoration procedures.î lxvii According to the U.S. Constitution, all decisions governing voting rights are made at the state level. Even qualifications for voting in federal elections and voting rights for felons convicted of federal offenses fall entirely within state jurisdiction. lxviii Currently, only Maine and Vermont do not impose restrictions upon the voting rights of their felons, even allowing individuals to vote while incarcerated. Sixteen states and the District of Columbia disallow felons from voting while incarcerated, but institute no penalties for those released from prison or jail. Thirty-two states prohibit felons from voting while incarcerated or on parole, and twenty-eight of these states also disallow voting by felons on probation. Finally, thirteen states employ the severe penalty of revoking voting rights for felons even after they have fully served their sentences. In eight states, this penalty is permanent and applies to all felons, while in the other five states felons are affected for varying lengths of time depending upon their release dates and number of offenses.

Generic offense

http://www.adaction.org/media/lizfullpaper.pdf

In essence, felony disenfranchisement laws are so detestable to many prison reformers because they deny the basic aspect of American citizenship and democratic identity to individuals on the basis of their criminal records, violating the civil rights of prisoners and exfelons. Constitutionally speaking, these questions of prisonersí rights have provoked murky answers through post-bellum American history. As scholar Joy James pointed out, the human rights of prisoners in the United States are theoretically protected under the International Covenant on Civil and Political Rights, yet in 1998 the United States decided to exempt itself from complying with the standards set forth in this international contract. cxxxiii In fact, written into the Thirteenth Amendment, the very legal action which freed the slaves, was a loophole: slavery and involuntary servitude were deemed permissible ìas a punishment for crime whereof the party shall have been duly convicted.î Thus, from the outset, the case for the protection of the civil rights, voting rights, and indeed basic human rights for felons has stood on tenuous constitutional ground. cxxxiv Today, prison advocates attempt to appeal to the American sense of humanitarianism and social justice in protecting the rights of incarcerated and released felons when the laws fail to offer protection.

And the constitution only guarantees certain rights.

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The United States Constitution provides limitations on the criminal justice system to protect the rights of citizens. The Fifth Amendment to the Constitution provides liberties to American citizens to prevent abuse from the legal system. Among these rights are the necessity of an indictment by a grand jury, protection from double jeopardy, protection from self-incrimination, due process and protection of private property.