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# \*\*CASE\*\*

## INTERPS [1/2]

#### I affirm. Part 1 is INTERPRETATIONS:

#### First, all government decisions balance individual rights against collective interests, especially in the context of the justice system. The question is thus whether an individual’s right or state’s interest in rehab outweighs the state’s interest in or rights protected by retribution. This rights-based view is consistent with the aim of punishment and policy views, not excluding any topic lit. Limiting the debate to aims ignores lit that views rehab as an entitlement owed to those who are punished. The policy view ignores guiding philosophies that have practical influences on judges and practitioners in the CJS as a whole.

#### Second, retribution cannot be justified by appealing to consequences since A) we could then imagine scenarios where we wouldn’t punish at all for crimes, denying the whole point of retribution as a view justifying punishment in all criminal cases, which is internally contradictory, and B) retributivism only values consequences secondarily.

Charles K.B. Barton 1999. “Getting Even: Revenge as a Form of Justice.” Open Court Publishing. 1999. Questia.

Another crucial point to keep in mind in any discussion of retributive justifications is that no moral view or theory should be labeled 'retributive' unless it subscribes to, or implies, the thesis that punishment of wrongdoing within the limits set by the principles of justice is intrinsically good, that it has positive moral value, that it is right and good simply in virtue of being punishment of wrongdoing. As Cottingham points out, some construals and justifications of 'retribution' are blatantly consequentialist [construals]. An example is the claim that retribution is justified by the fact that punishment of wrongdoing brings satisfaction to the aggrieved, which in turn helps to prevent vendettas in the interests of social stability.7 There is [are] nothing retributive about such explanations or justifications. Braithwaite and Pettit have raised similar complaints and point out that, in spite of retributivists generally being critical of consequentialism, “sometimes they themselves move into a consequentialist mode of thinking” and that, even if the phrases used in framing retributivist rationales bear the mark of retributivist concerns, “what we are being offered may still be a consequentialist theory.”8 Honderich's account of retribution is a good example of this. The critical feature of Honderich's account is the claim that¶ the penalty will give satisfactions equivalent to the grievance caused by his (the offender's) action.9 The truth of the retributivist tradition, more precisely, is that¶ it seeks to justify punishment partly or wholly by the clear reason that it satisfies¶ the grievances created by offenses, through causing distress to offenders.10 But, as Atkinson points out, even “garden variety” retributivists would disown this characterization of retribution.¶ Although Honderich contrives to take the sting out of the retributivist position, he does so by a fundamental misrepresentation. He in fact seems to have fol-¶ lowed just those “Serpentine wanderings of the Happiness theory” that Kant so¶ emphatically warned us against.11¶ It would be difficult not to agree with Atkinson that through those “serpentine wanderings” Honderich lost retributivism from his account. His justification is recognizably consequentialist in nature. That his account is not retributivist is also shown by the fact that if grievance satisfaction could be maximized through some less painful method, then punishment would no longer be justified by it. For example, a system of rewards, combined with counseling and hypnotherapy for those aggrieved, could be an alternative to punishment as far as grievance satisfaction is concerned. Moreover, there may be cases where the aggrieved party has been murdered and there is no one around who cares about him to derive the satisfactions necessary for justifying punishment along lines suggested by Honderich's account. It is a necessary feature of a retributivist account or justification of punishment that it is able to render an offender liable to moral censure, blame and punishment simply by reference to the moral wrong committed. The challenge facing moral retributivists, therefore, is nothing less than giving a coherent and plausible explanation of the intrinsic moral connection which it claims to exist between wrongdoing and punishment.¶ This criterion has proved notoriously difficult to meet, and remains unsatisfied even by so-called 'communicative' theories of retribution, such as Hampton's. Apart from being functionalist in nature, Hampton's account rests on the dubious premise that punishment is the best way to communicate to the offender and to others an important moral truth about the relative worth of the offender and the victim. This moral truth, or the message which is claimed by Hampton to be best communicated through punishment, is that, contrary to the assertion implicit in the wrongful act, the victim is not less valuable than the offender, and therefore that “better treatment of the victim is required.”12 To be sure, there is no reason to suppose that such a message is not implicit in punishment. What is implausible is the suggestion that a functionalist explanation of this kind should count as a theory of retribution, let alone an adequate one. Retributivists need not deny, of course, that good consequences, such as deterrence or grievance satisfaction, and desirable functions, such as communicating moral truths, expressing disapproval, or emphatically denouncing the crime, are highly relevant to justifying punishment in instrumental and functional ways. But such instrumental and functionalist justifications and explanations are of no help where a justification of retributive punishment is called for. The core retributivist idea that there is an intrinsic moral connection between wrongdoing and liability for punishment is not supported **by** justifications which make only a consequentialist or functionalist link between the two. It is fundamentally mistaken to think that retribution may be given some consequentialist justification, such as when it serves the purposes of grievance satisfaction, individual and social restoration, and deterrence. Such justifications are vulnerable to the obvious objection that those desirable ends should not be pursued through morally distasteful means, such as retribution and revenge, if these are morally indefensible in their own right. Therefore, no credible justification of retributive punishment can fall short of justifying moral retributivism as I have defined it. What must be shown, in other words, is that the moral responsibility borne by people for their wrongful actions is itself a prima facie good reason for justly punishing them, where the qualification “justly” merely indicates the need for constraints on punishment, such as proportionality and not punishing the innocent. This is the task of the next section.

Under other interpretations we don’t know when one punishment theory becomes another. For example, if deterrence and retribution both care about ends, we never know what aim or policy applies to which theory. Two impacts: Little a) Debatability. Justifications under other interps overlap, making debates impossible since nothing would exclusively justify *one* theory of punishment. Debatability controls the strongest internal link to fairness and education since we can’t coherently debate at all. Little b) Argument comparison: overlapping interps encourage claiming arguments for your own side by conflating punishment instead of clashing with the argument itself. Comparison uniquely forces second-level defenses of arguments instead of shallow, uneducational understandings of issues in the lit.

## INTERPS [2/2]

Third, even if neg could use consequences, they couldn’t relate to punishment theories like deterrence. This doesn’t exclude policies since they can be justified non-consequentially and ground access is reciprocal since the aff isn’t consequentialist either.

#### Fourth, the neg must value retribution over rehab. Otherwise they sidestep AC offense to win which is unreciprocal since aff can’t question assumptions of the resolution and can only generate first speech offense relative to the comparison set by the resolution. Other interps deny me uniqueness on their offense because they don’t defend an advocacy, which also decreases clash. Clash is the internal link to education because actual discussion is necessary for development of issues. Reciprocity is key to fairness because it ensures equal access to the ballot.

## FRAMEWORK [1/3]

#### Part 2 is FRAMEWORK: Since the resolution questions what the state ought to value, I value morality. Morality, as a guide to behavior, is obligatory for all agents, so it must prevent agents from being able to rationally reject its principles. The “normative structure of action” provides the basis for constructing such a principle.

Alan Gewirth [Prof. Of Philosophy, University of Chicago. Reason and Morality. University of Chicago Press. 1978.]

How do the concepts of reason and action fulfill the justificatory task I have assigned to them in relation to the supreme principle of morality? Let us begin by recalling that the answer to the authoritative question of moral philosophy [morality] must indicate why action in accordance with a certain moral criterion is categorically obligatory in that its requiredness cannot rightly be evaded by any action or institution Now such an answer is obtainable if a supreme moral principle can be shown to be logically necessary so that its denial is self-contradictory. For since the principle says that actions of a certain kind ought to be performed, the fact that the principle is necessarily true provides a conclusive justificatory reason for believing that the kinds of action[s] the principle says ought to be performed ought indeed to be performed. But to have such a reason for believing this about certain actions is also to have a conclusive justificatory reason for doing the actions, so that the principle's normative necessity, whereby its requirements for action cannot rightly be evaded, follows from its being logically necessary. For if one is conclusively justified in believing that one ought to do X, then, at least so far as concerns the ascertainable grounds for one's action, one is conclusively justified in doing X. And it is only by deductive rationality that such necessary truth can be established. This brief answer incurs various difficulties about the relations between logical and moral necessity, and between reasons for believing and for doing. Waiving these for the present, I wish to emphasize a further gap whose bridging will show the central importance of the concept of action for the justificatory project. It is possible for a proposition or principle to be necessarily true only within the context of a system of arbitrary definitions and axioms from which it can be shown to follow by rigorous deductive reasoning, so that to affirm the premises and to deny the conclusion is to incur self-contradiction. But the premises need not themselves be necessarily true. Hence, the proposition would have only a kind of formal or relative necessity, as logically following from the systems premises; yet the system as a whole would be only contingent because it would have logically possible alternatives: its premises could be denied without self-contradiction. Indeed, the premises themselves may be false, and also the conclusions. If. then, the supreme principle of morality is to emerge as a necessarily true justification by a deductive argument, it seems that the formal necessity of its being entailed or deductively implied by various premises is not sufficient; there will also have to be a material necessity of the premises themselves. The content as well as the form of the justificatory argument will have to be necessary and not men contingent, let alone arbitrary or false.¶ The need for such necessary content also follows from the concept of morality itself. As we have seen, judgments of moral obligation are categorical in that [they] what persons morally ought to do sets requirements for them that they [agents] cannot rightly evade by consulting their own self-interested desires or variable opinions, ideals, or institutional practices For moral judgments are critically evaluative of all of these. But such inescapable obligations cannot be derived from variable contents. Moreover, ultimate moral disagreements can be rationally resolved only if moral obligations are based on necessary contents. For [but] if moral principles have contingent contents, so that their obligatoriness may vary with the variable desires or opinions of different protagonists, then no finality can be rationally imposed on their differing moral beliefs. To ascertain which among the various possible or actual moral principles are right or correct hence demands that one adopt a standpoint that is superior to these variable elements, so that it can be seen to impose rational requirements on them. Such a superior standpoint, to avoid the variability and relativism of the subject matter to which it is addressed, must have a rational necessity of content as well as of form. But how can such contentual necessity be established by reason? In answer this question, the subject matter of morality must be considered; this consideration, being performed through conceptual¶ analysis, is itself a product of reason in the sense of deductive rationality. It there is a subject matter with which all moralities and moral judgments must be concerned directly or indirectly then this will provide a necessary content for all such judgments. If it can be further shown that this content has certain determinate logical confluences regarding the criteria of moral rightness, then the principle that upholds these criteria will emerge as materially or contentually as well as formally necessary. The subject matter of morality will thus be at least part of the justification of the supreme moral principle; and since this justification is contentually necessary, so too will be the moral principle that is its justification.¶ This necessary content of morality is to be found in action and its generic features. For all moral precepts, regardless of their further contents, deal directly or indirectly with how persons ought to act. The specific modes of action required by different moral precepts are, of course, highly variable. But amid these variations, the precepts require actions; and there are certain invariant features that pertain genetically to all actions. I shall call these the generic features of action because they characterize the genus or category of action as a whole, as delimited by moral and other practical precepts. Thus, just as action provides the necessary content of all morality, so the generic features provide the necessary content of all action. ¶ It will be of the first importance to trace how these features determine the necessities of moral tightness, so that from the 'is of the generic features of action there is logically derivable the 'ought' of moral principles and rules. Insofar as these generic features of action constitute the justification of the supreme principle of morality, the latter, as their justification, will also have a necessary content. These generic features, in turn, are ascertained by deductive rationality, so that the ultimate justification of the supreme principle consists in reason.¶ Now just as the concept of reason, which I have confined to deduction and induction, is morally neutral and hence not question-begging, so too the concept of action that is to be used as the basis of the justificatory argument is morally neutral. For since this concept comprises the generic features of all action, it fits all moralities rather than reflecting or deriving from any one normative moral position as against any other. How, then, can it be shown that from such morally neutral premises there follow determinate, normatively moral conclusions about the necessary content of the supreme principle of morality? This question poses one of the major challenges the present work must meet. The answer consists in showing that, because of its generic features, action has what I shall call a 'normative structure,' evaluative and deontic judgments on the part of agents are logically implicit in all action; and when these judgments are subjected to certain rational requirements, a certain normative moral principle logically follows from them. To put it otherwise: Any agent, simply by virtue of being an agent, must admit., on pain of self-contradiction, that he ought to act in certain determinate ways.¶ The relation of action to morality bears importantly on the question raised earlier about the correspondence-correlates moral judgments must have if they are to be true by virtue of correspondence. Since action comprises the factual subject matter of moral and other practical precepts, it [so action] serves for moral philosophy a function analogous to that which empirical observational data may be held to serve[s] for natural science: that of providing [provides] an objective basis or subject matter against which, respectively, moral judgments or rules and empirical statements or laws can be checked tor their truth or correctness. It must be emphasized that this function is only analogous: a moral judgment does not become true simply by stating that some action or kind of action is actually performed. As we shall see, it is rather that action, through its generic features and normative structure, entails certain requirements on the part of agents, and moral judgments are true insofar as they correspond to these requirements and hence to the normative structure of action. But because action provides the necessary content of moral judgments, these are not left, so far as concerns truth, completely unsupported by relevant objective standards or data. Although the importance of action for moral philosophy has been recognized since the ancient Greeks, it has not hitherto been noted that the nature of action enters into the very com justification of the supreme principle of morality.

## FRAMEWORK [2/3]

Thus, we should form ethics from agents’ perspectives, or the dialectical mode. No contingent point of view can ground principles *any* agent must accept. For example, grounding morality in something agents could disagree about commits the is-ought fallacy by producing indeterminate conclusions where agents could reach contradictory judgments given the same factual circumstances.

All action is valuational in that by acting an agent necessarily judges their purposes to be good. Whatever their reasons, agents must still value their ends because otherwise they wouldn’t be moved from inaction because they wouldn’t consider their purposes worth pursuing.

#### Since agents must judge their purposes to be good they must also hold the conditions for those actions to be good, or they must contradict their view that their purposes are valuable. Things necessary for action are freedom, the ability to choose purposes, and well-being, or the abilities to realize purposes.

Gewirth 2: [“THE ONTOLOGICAL BASIS OF NATURAL LAW: A CRITIQUE AND AN ALTERNATIVE.” 29 American Journal of Jurisprudence. 95. 1984. HeinOnline. DT.]

Let me briefly sketch the main line of argument that leads to this conclusion. As I have said, the argument is based on the generic features of human action. To begin with, every agent acts for purposes he regards as good. Hence, he must regard as necessary goods the freedom and well being that are the generic features and necessary conditions of his action and successful action in general. From this, it follows that [So] every agent logically must hold or accept that he has rights to these conditions. For if he were to deny that he has these rights, then [Otherwise] he would have to admit that it is permissible for other[s] persons to remove from him the very conditions of freedom and well-being that, as an agent, he must have. But it is contradictory for him to hold both that he must [and may not] have these conditions and also that he may not have them. Hence, on pain of self-contradiction, every agent must accept that he has rights to freedom and well-being. Moreover, every agent must further admit that all other agents also have those rights, since all other actual or prospective agents [they] have the same general characteristics of agency on which he must [that] ground his own right-claims.¶ What I am saying, then, is that every agent, simply by virtue of being an agent, must regard his freedom and well being as necessary goods and must hold that he and all other actual or prospective agents have rights to these necessary goods. Hence, every agent, on pain of self-contradiction, must accept the following principle: Act in accord with the generic rights of your recipients as well as of yourself. The generic rights are rights to the generic features of action, freedom, and well-being. I call this the Principle of Generic Consistency (PGC), because it combines the formal consideration of consistency with the material consideration of the generic features and rights of action

Also, claiming necessary goods as rights is a prerequisite to any other moral theory. It would be contradictory to say that an agent ought to take an action but that it is permissible for an agent to not be able to act, so if there is any purposive action agents take, they must claim generic rights necessary for the action.

And, rights and duties are equivalent. For example, if Adam has a right to something, other agents have a correlative duty to respect that right.

## FRAMEWORK [3/3]

#### Any legal system must thus protect agents’ rights to freedom and well-being since the rights justify and exist before the state.

Gewirth 3:

The persons addressed may, indeed, be a community in some broader sense as accepting more general moral or other rules; in this way even the references to the logical or intellectual rights mentioned above assume a community of persons who recognize and accept the relevant logical or intellectual criteria. At the present stage of the argument, however, where other persons have been introduced only as addressees of the agent's right-claim, they are a community only in the sense of accepting deductive and inductive criteria of reasoning and, as prospective agents, of having the same general conative motivations as characterize all agents. But the argument has shown that these criteria lead to the recognition that the agent's reason for his own right-claim reflects the conceptual and causal relations that freedom and well-being bear to action. In any more extensive sense of 'community,' the generic rights as claimed by the agent are logically prior to a community, in that they derive their validity not from the community but rather from his [the agent’s] own needs with regard to action. A community, indeed, will be legitimate, so far as the agent is concerned, only if it respects his generic rights. He is aware, however, that his addressees, being themselves actual or prospective agents, are at least capable of such respect. It will be shown below, moreover.¶ ¶ that to avoid contradicting himself the agent must admit that other persons have the same rights to freedom and well-being against himself as he here claims against them. In this way the initial prudential ground of his right-claim will logically lead him to recognize a moral ground for the rights of all other prospective purposive agents (3.5).¶ ¶ Although the most basic rights of freedom and well-being must be incorporated in a legal system, this does not hold for all rights, such as one's right that promises made by another person to oneself be kept or the right to be told the truth. In their primary use, moreover, rights are claimed not against governments but against other persons." The main justification of government is, indeed, to protect the most basic of these rights; but this [which] shows that the normative existence and implicit claiming of the rights are logically prior to the government that is appealed to for their protection, and the primary respondents of the rights are other persons; government's function is to help assure that these persons fulfill their correlative duties. The agent, then, need not directly invoke or recognize a government or a legal system in claiming the generic rights: for making these claims, it is sufficient in the first instance that he urge the requirement that all other persons respect the necessary conditions of his engaging in purposive action.

#### This yields the “principle of generic consistency” or PGC: respect the generic rights of freedom and well-being of yourself and others.

#### The PGC is distributive, NOT aggregative since it concerns equality between the agent and recipient rather than general ends. And, because self-contradiction gives rise to rights claims, maximizing rights isn’t relevant because it’s not *more* contradictory to disrespect the rights of two agents than one.

#### Thus, the criterion is respect for the generic rights to freedom and well-being.

To clarify: When two goods conflict, an agent must accept the more necessary good for without it the claim to the less necessary good is useless. Violating rights to give others more rights is a violation of the PGC.

AND, agents must be morally responsible for violating the PGC. First, the agent must know that it’s more likely than not that the harm will occur if they don’t intervene or else their inaction isn’t purposeful. Second*,* if some other agent is the cause of the harm, that agent is morally responsible since it’s their action that creates the harm’s sufficient conditions. This is the principle of intervening action.

## ADVOCACY

#### I advocate that the U.S. recognize rehabilitation as a right. The rights based model of rehab means the state is obligated to provide, and the offender has a right to claim rehabilitation, including the ability to challenge the states’ failure to provide in court. It acts as a trump over other penal goals.

Edgardo Rotman 1. Harvard Law School. “DO CRIMINAL OFFENDERS HAVE A CONSTITUTIONAL RIGHT TO REHABILITATION?”, THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY Vol. 77, No. 4, 1986.]

The humanistic model of rehabilitation affirms the concept of prison inmates as possessors of rights. This legal status generate feelings of self-worth and trust in the legal system and favors the possibility of self-command and responsible action within society. This conception ultimately leads rehabilitative efforts toward the paradigm of the inmate as a [and] full-fledged citizen[s].'" The prisoners' legal status reinforces their eventual participation in the shaping and governing of society. Thus, prisoners' rights can be qualified, using Ely's terminology, as representation-reinforcing. 4 This continuum of rights culminates in the right to rehabilitation, which can be formulated as [with] the right to an opportunity to return to society ¶with an improved chance of being a useful citizen and of staying out of prison. This right requires not only education and therapy, but also [and] a non-destructive prison environment **and,** when possible, **less restrictive alternatives to incarceration.** The right to rehabilitation is consistent with the drive towards the full restoration of the civil and political rights of citizenship after release.'5 The inclusion of rehabilitation in the sphere of individual rights¶ does not necessarily exclude it as a goal of state penal policies. Such a right, however, requires a penal policy that maintains scrupulous respect for the dignity of prisoners and provides for the genuine fulfillment of their basic human needs, which go beyond mere physical survival. But even in the absence of such initiative from the state, a right to rehabilitation makes the performance of rehabilitative services legally enforceable, allowing the courts to intervene in the case of administrative reluctance.'6 According to Dworkin's distinction between rights and social goals,"7 the description of rehabilitation as a right implies granting the rehabilitative claim [is granted] a "certain threshold weight against collective goals in general." This transforms such a right into a "political trump," creating an area of exception against state punitive policies. It therefore replaces purely vindictive justice with a constructive approach of social reintegration.

A rights-based approach to rehabilitation is different than older treatment models.

Sam Lewis [University of Leeds “Rehabilitation: Headline or footnote in the new penal policy?” Probation Journal 2005 52: 119]

The central tenets of the model advanced in this article originate[s] in the work of Cullen and Gilbert (1982) and Rotman (1990). These ‘new rehabilitationists’ (Hudson, 2003: 62), and others writing in a similar vein, accept the criticisms made of 1960s-style rehabilitative strategies but argue that ‘we should give up the coercion rather than the rehabilitation’ (Hudson, 1987: 184). They advocate a system of ‘state obligated rehabilitation’, whereby the state has a moral duty to offer (but no right to [not] impose) rehabilitative measures. This approach ‘takes seriously the betterment of inmates but legitimates neither coercion in the name of treatment nor neglect in the name of justice’ (Cullen and Gilbert, 1982: 246). Rehabilitation should be provided within the context of a determinate sentence, the length of which is proportionate to the seriousness of the offence (see Hudson, 2003: 63).¶ First and foremost, under this model the state has a duty to provide and the offender has a right to receive rehabilitation. Such claims have been made before (see, for example, Rotman 1986, 1990). Of particular note is an influential paper by McWilliams and Pease, in which the thinking of moral philosopher Alan Gewirth is employed to argue that offenders have a right to receive the help needed to be ‘a full member of society, with the status and obligations which that membership confers’ (McWilliams and Rease, 1990: 15).

Furthermore, the existence of circumstances in which a right is overridden doesn’t prove the rightdoesn’t exist. For example, prohibiting yelling fire in a crowded theater doesn’t deny the right to free speech, it just overrides in one case. So I just have to prove the right to rehab ought to trump the state’s interest in retribution, even if some third interest or right may trump rehab in particular circumstances. **My contention: the PGC gives the state a stronger obligation to the right to rehabilitation than retribution.**

## SUBPOINT A

#### SUBPOINT A: SOCIAL DEPRIVATION

#### Complex factors in certain environments, such as growing up in extreme poverty, can create cognitive frameworks that lead people to commit crime.

Ronald L. Simons and Callie Harbin Burt [Ronald L. Simons, Department of Sociology, University of Georgia. Callie Harbin Burt, University of Massachusetts. "LEARNING TO BE BAD: ADVERSE SOCIAL CONDITIONS, SOCIAL SCHEMAS, AND CRIME." 2011]

We argued that this cognitive framework, which shapes situational definitions and resulting actions, develops in response to adverse social environmental conditions that past research has linked to crime. Social environments that have been shown to encourage crime (e.g., neighborhood crime, discrimination) tend to be unpredictable, exploitive, and low on trust, reciprocity and support, whereas those that have been shown to discourage crime (e.g., authoritative parenting, collective efficacy) tend to be predictable, supportive, and high on trust and reciprocity. The two types of milieus teach very different lessons regarding the nature of relationships, the value of delayed gratification, and the authority of social conventions. Consequently, persistent exposure to such antagonistic social circumstances and lack of exposure to these positive conditions increases the chances of developing social schemas involving a hostile view of relationships, a focus upon immediate rewards, and cynicism regarding conventional conduct norms.¶ We posited that these three elements represent an interconnected set of learned, mutually reinforcing principles that combine to form a knowledge structure conducive to crime. We hypothesized that this cognitive structure fosters situational definitions that lead to actions that are aggressive, opportunistic, and sometimes criminal. Finally, we argued that females, given their greater fear and caution, would be less likely than males to develop criminogenic knowledge structures, and that this difference largely accounts for sex differences in criminal behavior. Our findings provided preliminary support for this perspective. First, social environmental factors emphasized by other criminological theories were found to predict changes in the three schemas. Specifically, community crime, deviant peers, and discrimination increased whereas collective efficacy and supportive parenting decreased belief in the schemas. Second, as predicted, the schemas were intercorrelated and combined to form a latent construct. Consistent with the contention that this construct represented a criminogenic knowledge structure, it was a strong predictor of change in crime. Further, our findings indicated that in large measure the effect of the various social environmental conditions on offending is indirect through the criminogenic knowledge structure. With one exception, to be discussed below, the effect of these adverse conditions on change in crime was completely mediated by the latent variable criminogenic knowledge structure. Finally, we found that [and] controlling for criminogenic knowledge structure eliminated the association between sex/gender and crime. Our results indicated that this effect is largely a consequence of males being more committed to a hostile view of relationships and less committed to social conventions than females.

#### This social deprivation is the failure of the state to protect its citizens’ rights to freedom and well-being. It is thus obligated to correct for its initial failure. Rehab is the only paradigm that recognizes inmates’ social deprivation, so it’s the only way to obligate the state to respect the offender’s rights.

Cullen and Gilbert 13 [Cullen, Francis T. Gilbert, Karen E. Reaffirming Rehabilitation. 2nd edition 2013]

Rehabilitation is the only justification of criminal sanctioning that obligates the state to care for an offender’s needs or welfare. Admittedly, [While] rehabilitation promises a payoff to society in the form of offenders transformed into law-abiding, productive citizens who no longer desire to victimize the public. Yet treatment ideology also [it] conveys the strong message that this utilitarian outcome can only be achieved if society is willing to punish its captives humanely and to compensate offenders for the social disadvantages that have constrained them to undertake a life in crime. In contrast, the three competing justifications of criminal sanctioning—deterrence, incapacitation, and retribution (or just deserts)—contain[s] not even the pretense that the state has an obligation to do good for its charges. The only responsibility of the state is to inflict the pains that accompany the deprivation of liberty or of material resources (e.g., fines); whatever utility such practices engender flows only to society and not to its captives. Thus, deterrence aims to protect the social order by making offenders suffer sufficiently to dissuade them as well as onlookers entertaining similar criminal notions from venturing outside the law on future occasions. Incapacitation also seeks to preserve the social order but through a surer means; by caging criminals—“locking ‘em up and throwing away the keys”—inmates will no longer be at liberty to prey on law-abiding members of society. The philosophy of retribution, on the other hand, manifests a disinterest in questions of crime control, instead justifying punishment on the grounds that it presumably provides society and crime victims with the psychic satisfaction that justice has been accomplished by harming offenders in doses commensurate with the harms their transgressions have caused. The following comments by Nicholas Kittrie are instructive here: At the very least, the therapeutic programs help set a humanizing climate of new social expectations and aims.... Under the traditional criminal formula, society is the wronged party. It [and] owes nothing to the guilty party, and his rehabilitation remains an incidental accomplishment of the penal sanction. Under the parens patriae formula (rehabilitative ideal), the concept of personal guilt is bypassed, if not totally discarded, and much more weight is given the offender’s shortcomings and needs. Society accordingly cannot shrug off its responsibility for treatment, since it is inherent in the very exercise of this social sanction.6

## SUBPOINT B [1/2]

#### SUBPOINT B: INCARCERATION

#### Instead of addressing the root causes of crime, we have added insult to injury by embarking on a retributive program of mass incarceration.

John Haley [Orthwein Distinguished Professor of Law Emeritus, Washington University in St. Louis and Professor of Law, Vanderbilt University Law School.] “Introduction—Beyond Retribution: An Integrated Approach to Restorative Justice”, 36 Wash. U. J. L. & Pol’y 1.

Today over two million persons are currently incarcerated in state ¶ or federal prisons in the United States.17 More than triple that number ¶ are subject to some form of correctional supervision.18 No country in ¶ world imprisons so many for so long.19 Whether viewed as aim, ¶ justification, or implicit rationale, retribution is the cause. Indeed, for ¶ over a half century our **criminal justice** system has [of] increasingly ¶ emphasized punishment of the offender with a principal focus on a ¶ third century BCE imperial Chinese axiom: ―Let the punishment fit ¶ the crime (xing dang zui ze wei, bu dang zui ze wu).‖20 Although ¶ justified by the Chinese Legalists over two millennia ago as well as ¶ perhaps a few contemporary criminologists as a means of deterrence, ¶ little if any empirical evidence supports the efficacy of such claims.21¶ Over two-thirds of those in U.S. prisons and jails are incarcerated for ¶ having committed either a violent crime or a drug-related offense.22¶ Few if any made a rational calculation or choice. Inasmuch as violent crime is more often than not spontaneous and unpremeditated and ¶ drug use (not sales) is the result of addiction, neither act ordinarily ¶ reflects the sort of calculated choice for which the risk of ¶ incarceration can be justified as a deterrence to potential offenders. ¶ Retribution remains as the prevailing justification. In turn, rationality ¶ has little to do with retribution.¶ Retribution can only be fully justified as an essentially arational ¶ value or faith-based attribute of justice, in other words, as a moral ¶ value rooted in some metaphysical, Manichean view of human nature ¶ societal consensus, or some other source.23 As the prevailing ¶ justification for our current system of crime and punishment, those who reject the moral grounds for retribution or themselves believe to ¶ be morally repugnant, including myself, are left with the need to ¶ defend or to reject it on rational terms. Can retribution be justified ¶ empirically as a benefit to society? Does punishment based ¶ exclusively or even primarily on the crime achieve any of the societal aims of an effective system of criminal justice? Or does retribution in fact produce unintended consequences that reduce any instrumental utility by which it must be rationally evaluated?

#### A focus on punishing crimes has worsened criminogenic social conditions. Retribution is a direct violation of the state obligation to protect rights since it dooms entire communities to crime and poverty.

Blake Emerson. “Criminal Justice and the Ideology of Individual Responsibility”, Chapter 3 in Race, Crime, and Punishment. The Aspen Institute 2011.

When we contemplate the meaning of responsibility as it is experienced, rather than as it is employed to dismiss legitimate concerns about the causes and effects of mass incarceration, we see that the ideology of individual responsibility is in fact inimical to those institutions, relationships, and networks that cultivate responsibility, properly understood. Because the ideology of individual responsibility contends that the faculty of responsibility is free from causal influence, it is blind to the ways in which mass incarceration policies lead to a diminution of responsible attitudes. The corrosive effect of mass incarceration on responsibility has been most severe in the low-income African American communities where policing is concentrated. As David Cole argues, “The racial divide fostered and furthered by inequality in criminal justice has contribute[s]d to a spiral of crime and decay in the inner city, corroding the sense of belonging that encourages compliance with criminal law.” 9 The war on drugs, three-strikes laws, and other “get tough” policies have spawned hostility to law enforcement encapsulated in the gangster imperative “Stop snitchin’.” Policing and incarceration in lowincome minority communities create an adversarial relationship between those communities and the law, as the system treats them as objects of legal control rather than as subjects who authorize and benefit from legal order. In addition, by removing large numbers of adults from African American communities, mass incarceration has diminished the institutions of family and community that build the social capital that sustains civically responsible attitudes. High levels of incarceration concentrated in low-income minority communities thus undo networks of trust and reciprocity where they are most needed. 10 Mass incarceration’s devastating impact on low-income, African American families has intergenerational consequences. By the age of fourteen, [1/4] one quarter of black children born since 1990 will have [incarcerated] fathers who have been incarcerated. 11 Temporary or long-term single-parent families are not necessarily harmful, in themselves, to the development of responsibility. But when mass incarceration contributes to familial deterioration across entire communities, and poverty severely limits the alternate relationships and institutions that might supplement family life, children are more often left without the role models, authority figures, and supportive relationships on which to found a robust positive sense of responsibility to abide by the laws. 12 the policy of mass incarceration furnishes itself with ever-increasing justification when it erodes the family and community structures that foster and maintain a positive sense of responsibility among both parents and children. As incarceration rates increase and the positive sense of responsibility is replaced [with] by a negative sense based on fear of imprisonment, ever more police, patrol cars, and prisons are necessary to sustain the pressures of deterrence against crime. Mass incarceration therefore replaces the more fundamental, morally informed sense of responsibility with a weaker, more adversarial, self-interested justification for law-abiding behavior. As a consequence, Bruce Western argues, “the effects of imprisonment may be self-defeating to some degree. By eroding the familial bonds that curb violence, imprisonment undermines the conditions for desistance.” 13 Mass incarceration thus contributes to a social climate that neither fosters nor merits a positive sense of civic responsibility among the ghetto poor. As Tommie Shelby puts it, “the existence of the dark ghetto—with its combination of social stigma, extreme poverty, racial segregation (included poorly funded and segregated schools), and shocking incarceration rates—is simply incompatible with any meaningful form of reciprocity among free and equal citizens.” 14 Understood in terms of reciprocity, civic responsibility is a sense of duty citizens feel toward society that arises when society successfully discharges its duties to those citizens. Mass incarceration undermines the logical basis for reciprocity by contributing to conditions of extreme poverty, alienation, and disenfranchisement. Such conditions negate the equality of opportunity that fair systems of social cooperation must guarantee. 15 Further, the policing and criminalization of poverty may create the impression among low-income minority citizens that society at large is hostile to their interests, perceiving them as a threat to social order rather than as members of the political community whose welfare is a public concern.

## SUBPOINT B [2/2]

#### The additional harmful effects of incarceration constitute extra-legal punishment, which require rehab to mitigate.

Edgardo Rotman 2 [A Reader on Punishment. Anthony Duff and David Garland. “Beyond Punishment: A New View on the Rehabilitation of Criminal Offenders.” 1994].

The prinicple nulla poena, sine lege has been invoked against an abusive notion of rehabilitation, which led to excessively discretionary sentencing practices.'0 Today, this same principle can be used as a legal pillar to sup-port a constitutional right to rehabilitation. If imprisonment itself is the punishment, the unchecked harmful effects of incarceration on the mental and social health of the inmate represent illegal additional punishment. Institutionalization in an¶ alienating and depersonalizing environment, without opportunities to combat degeneration or foster positive human development, is a source of various harmful effects that play no part in the design of legal sanctions. The law threatens citizens with imprisonment as the consequence of criminal conduct. That is where the deterrent function of the legal norm should stop. The law expects the citizen to foresee the loss of liberty prescribed by the statute, but not the additional horrors of incarceration not intended by the law. The only way to prevent or compensate for such unjustified deprivations is to carry out a positive programme of rehabilitative action. There is thus no basis for proposing deterrent policies as a novel substitute for rehabilitation, for deterrence has always been the essence of criminal law. A right to rehabilitation [which] does not contradict the deterrent effect of criminal sanctions as long as they do not exceed the limits marked by the due process of law. But it is a basic function of rehabilitation to prevent and counteract such abuses.

#### And, even if retribution considered mitigating factors, rehab is the only way to compensate for prison horrors.

Rotman 3 [ Harvard Law School. “DO CRIMINAL OFFENDERS HAVE A CONSTITUTIONAL RIGHT TO REHABILITATION?”, THE JOURNAL OF CRIMINAL LAW & CRIMINOLOGY Vol. 77, No. 4, 1986.]

The denial of rehabilitation and the consequent lack of concern ¶ for the future life of the offender amounts to a[n] passive and indifferent acceptance of the inevitable deterioration brought about [caused] 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 [and] 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 [for a] 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 unwanted harmful side effects of its own punitive intervention8s as well ¶ as to respond to the human challenge posed by the extremely socially-deprived offender.

Punishment violates the rights of inmates, so the state has an obligation to provide rehab to ensure that other side effects of jail do not deprive an inmate of their generic rights long-term.