Rehabilitation as Punishment  
Opposition Brief by Joel Erickson

  
An increasingly common tactic for affirmatives this year is to define rehabilitation not as a therapeutic mechanism to reintegrate criminals into society, but as a motivation or mode of *punishment*. The rationale is simple—framing rehabilitation in terms of punishment circumvents the archetypal negative “justice demands punishment” argumentation. Most frequently, affirmatives derive this notion of rehabilitation as punishment from “The Encyclopedia of Criminal Justice,” by Nick Smith, a professor in the University of New Hampshire department of Philosophy:

“Punishment intended to reform a convict so that she can lead a productive life free from crime.”[[1]](#footnote-1)

This brief combats this definition using multiple strategies. First, it provides several diverse sources within the literature base that definitively differentiate between rehabilitation and punishment, affording solid academic advocacy to the premise that rehabilitation and punishment are separate entities. Scholars writing for *Justice Quarterly,* the *Law and Society Review*, and *Scientific American* (to name a few) distinguish between the two, not to mention another criminal justice encyclopedia, *The Encyclopedia of Crime and Punishment.* Second, it appeals to court precedent in referencing *Tapia v. United States.* Third, it adopts a lexical method and demonstrates that the definition of punishment explicitly references retribution, thereby excluding rehabilitation.

Opposition Brief: Rehabilitation as Punishment

Rehabilitation and Punishment Are Polarized Goals for Criminal Justice

Logan, Charles H. [University of Connecticut] and Gerald G. Gaes [Federal Bureau of Prisons], “Meta-Analysis and the Rehabilitation of Punishment.” Justice Quarterly, Vol. 10, No. 2, June 1993 © Academy of Criminal Justice Sciences. <https://www.bop.gov/resources/research_projects/published_reports/cond_envir/oreprlogangaes.pdf>

“The debate over ‘treatment versus punishment’ is rooted both in empirical research and in ideology; a candid discussion must address both of these aspects. Failure to do so has displaced onto seemingly objective questions (such as ‘Which is more effective: rehabilitation or punishment?’) the kind of passion normally associated with ideological questions (such as ‘Which is a morally superior goal for criminal justice: rehabilitation or punishment?’).”

Difference Between Rehabilitative Efforts and Punitive Action

James Gilligan [clinical professor of psychiatry and adjunct professor of law at New York University], “Punishment Fails. Rehabilitation Works,” The New York Times, December 19, 2012. <http://www.nytimes.com/roomfordebate/2012/12/18/prison-could-be-productive/punishment-fails-rehabilitation-works>

“If any other institutions in America were as unsuccessful in achieving their ostensible purpose as our prisons are, we would shut them down tomorrow. Two-thirds of prisoners reoffend within three years of leaving prison, often with a more serious and violent offense. More than 90 percent of prisoners return to the community within a few years (otherwise our prisons would be even more overcrowded than they already are). That is why it is vitally important how we treat them while they are incarcerated. How could we change our prison system to make it both more effective and less expensive? We would need to begin by recognizing the difference between punishment and restraint. When people are dangerous to themselves or others, we restrain them – whether they are children or adults. But that is altogether different from gratuitously inflicting pain on them for the sake of revenge or to “teach them a lesson” – for the only lesson learned is to inflict pain on others. People learn by example: Generations of research has shown that the more severely children are punished, the more violent they become, as children and as adults. The same is true of adults, especially those in prison. So the only rational purpose for a prison is to restrain those who are violent from inflicting harm on themselves or others, while we help them to change their behavior from that pattern to one that is nonviolent and even constructive, so that they can return to the community.”

Inverse Relationship Between Punishment and Rehabilitation

Phelps, Michelle S, “Rehabilitation in the Punitive Era: The Gap between Rhetoric and Reality in U.S. Prison Programs,” Law and Society Review, Vol. 45, Issue 1, March 2011. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3762476/>

“These changes in the scale and nature of incarceration were accompanied by dramatic changes in the rationales for prison sentences and crime policies generally (Zimring 2001; Beckett 1997). Most scholars agree that one of the central changes in this period has been the ‘decline of the rehabilitative ideal’—the idea that prisons ought to serve as houses of reformation where inmates could be rehabilitated and prepared for a return to society (Garland 2001). In place of rehabilitation, deterrence and incapacitation became the explicit goals of prison in political discourse. This shift has alternately been called the ‘new punitiveness,’ ‘culture of control,’ or ‘new penology,’ but in all of its many forms, scholars have argued that the contemporary criminal justice system has become more punitive and less oriented towards rehabilitation (Pratt 2007; Garland 2001; Feeley & Simon 1992).”

Rehabilitation’s Objective Is to Cure, Not Punish

Dodson, Kimberly, “Rehabilitation.” The Encyclopedia of Crime and Punishment, Dec. 2016. <http://onlinelibrary.wiley.com/store/10.1002/9781118519639.wbecpx203/asset/wbecpx203.pdf?v=1&t=iz0mbywd&s=1975b8e3acba3409f6c6955c155585c8e92cf684>

“The intention of rehabilitation is to facilitate change in o enders so that they can become productive, law-abiding citizens. Thee rehabilitative ideal or ‘medial model’ views criminal behavior much like a disease that requires proper diagnosis and therapeutic intervention. Rehabilitation embraces the philosophy that individual personality and behavioral defects explain why many offenders turn to crime. Offenders often suffer deficits in their upbringing, emotional intelligence, education, and job training. In addition, many offenders suffer from mental health issues, serious medical conditions, and drug addiction all of which increase the likelihood that they will continue to engage in criminal behavior.”

“Another factor that worked against rehabilitation was a change in the political climate. Conservatives and liberals began to emphasize individual responsibility and accountability over other explanations of crime. This fundamental shift in thinking led to a resurgence of rational choice or free will explanations of criminal behavior. Many argued that if free will accounted for the majority of criminal offending, there was no need to offer rehabilitative programs. The solution was simple – individuals who violated the law were subject to retributive punishments in the hopes of achieving deterrence. This ‘penal harm movement’ continued into the early 2000s and the popularity of ‘get tough’ policies dominated.”

Rehabilitation and Punishment Contrasted

Etienne Benson “Rehabilitate or Punish?” Scientific American, Vol. 34, No. 7, July\Aug. 2003. <http://www.apa.org/monitor/julaug03/rehab.aspx>

“Until the mid-1970s, rehabilitation was a key part of U.S. prison policy. Prisoners were encouraged to develop occupational skills and to resolve psychological problems--such as substance abuse or aggression--that might interfere with their reintegration into society. Indeed, many inmates received court sentences that mandated treatment for such problems. Since then, however, rehabilitation has taken a back seat to a ‘get tough on crime’ approach that sees punishment as prison's main function, says Haney. The approach has created explosive growth in the prison population, while having at most a modest effect on crime rates.”

Legal Precedent Differentiates Between Punishment and Rehabilitation

William Peacock, “Prison Is for Punishment, Not Rehabilitation?” FindLaw, Oct. 31, 2012. <http://blogs.findlaw.com/fourth_circuit/2012/10/prison-is-for-punishment-not-rehabilitation.html#sthash.tZgDMVUD.dpuf>

“Is prison about punishment or rehabilitation? Under Tapia v. United States, a defendant's [rehabilitative needs should not be considered when imposing a sentence](http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&navby=case&vol=000&invol=10-5400). It seems then, that the Supreme Court's view of the purpose of a prison is to punish.”

Punishment Inextricably Linked to Retribution

“Punishment,” Oxford Dictionaries, 2017. <https://en.oxforddictionaries.com/definition/punishment>

“The infliction or imposition of a penalty as retribution for an offense.”

Rehabilitation and Punishment Unrelated

Joycelyn Pollock [Texas State University-San Marcos], “The Rationale of Imprisonment,” The Philosophy and History of Prisons. <http://www.jblearning.com/samples/0763729043/Chapter_01.pdf>

“Incapacitation and rehabilitation are not really related to punishment at all.”

“Rehabilitation is not punishment either, although punishment may be used as a tool of reform. **Rehabilitation** is defined as internal change that results in a cessation of the targeted negative behavior. It may be achieved by inflicting pain as a learning tool (behavior modification) or by other interventions that are not painful at all (for example, self-esteem groups, education, or religion). Under the retributive philosophy described earlier, rehabilitation and treatment are considered more intrusive and less respectful of the individuality of each person than pure punishment because they attack the internal psyche of the individual. They seek to change offenders, perhaps against their will. This is probably more sophistry than reality, as anyone who has worked with offenders can attest. Very few people enjoy the experience of being a drug addict or sex offender, and most prison programs have limited capacity to change individuals against their will anyway. In a later chapter, we will explore the concept of rehabilitation and the various modes of individual change.”

1. Nick Smith, “Rehabilitation,” Encyclopedia of Criminal Justice. <https://pubpages.unh.edu/~nicks/pdf/Rehabilitation.pdf> [↑](#footnote-ref-1)