TOPIC ANALYSIS

Resolved: Rehabilitation ought to be valued above retribution in the United States criminal justice system.

I. INTRODUCTION

The rehabilitative ideal has had a tumultuous history in the U.S. criminal justice system. Although there is much to say on the topic, there are few points in the history of criminal rehabilitation that are worth noting. In the 1970s, Robert Martinson published “What Works? Questions and Answers About Prison Reform”. In this book, he concluded after a period of study that rehabilitation had no appreciable effect on recidivism. His conclusions reverberated, with criminology scholars and politicians alike rallying around the “nothing works” doctrine. ¹ Over time, several scholars have rebutted this doctrine, yet the U.S. has the highest incarceration rate in the world. There are 753 individuals incarcerated per 100,000. Comparatively, England incarcerates 153 per 100,000.² Even with the emphasis on punishment and incarceration, the recidivism rate between 1994 and 2007 has remained constant at 40%.³ Evidently, the American prison system is in dire need of reform, which leads us directly into the heart of the resolution.

However, the question is hardly simple and the jury is still out on whether rehabilitation is truly what the criminal justice system ought to strive for.

As a disclaimer, this topic analysis should only serve as a starting point for research, writing, and debate. It is important to recognize that the best positions on the topic stem from trial and error over a period of time. Be open to framing the topic differently if it becomes clear that there is a better or more comprehensive way to debate the issues at hand.

II. THE BASICS: DEFINITIONS

Definitions

This section includes definitions of key terms and phrases in the resolution. Dictionary definitions selected feature the first entry (or the entry most contextually applicable, as in the term “valued”) and contextual definitions are provided where possible. It is important to note that debaters may use the second or third entries in dictionaries and alternative contextual definitions. Thus, debaters should be cognizant of these definitions and what implications they may hold for the round. As a final note, I don’t anticipate it will be necessary to define the “U.S. criminal justice system”, but debaters should at minimum be aware of the difference between the criminal justice system and other components of the justice system, such as the juvenile justice system.

1. **Rehabilitation**: “[C]alls for the improvement of the criminal for his own benefit and to reduce the probability that he will offend again. This theory of punishment is also called “reform” or “correction.” State custody may be used as an opportunity to provide training for skills useful in the marketplace, treatment
for psychological problems and drug addiction, or even an opportunity for penitent reflection. Rehabilitation may also justify a shortened sentence or diversion into nonincarcerative programs on the theory that the criminal is more likely to improve outside of prison.  

2. **Ought**: Used to indicate obligation or duty.  

3. **Valued**: To regard highly; esteem.  

4. **Above**: Over or higher than.  

5. **Retribution**: “[S]upposes that crime inherently merits punishment. Other terms in which this idea is expressed include "just deserts," the use of the words "punish" and "punishment" as ends rather than means, and "condemnation" or "denunciation" of the criminal (sometimes called the "expressive" aspect of retribution). All these terms communicate the idea that punishment is directed at imposing merited harm upon the criminal for his wrong, and not at the achievement of social benefits.”  

Combining these definitions into a coherent statement produces an *operational definition* of the resolution, which will allow for better research, writing and debate:

> We have a duty to regard improving the criminal for her own benefit and to reduce the probability she will commit crime again over imposing only merited harm upon the criminal for her wrong.

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6 Ibid.  
7 Ibid.  
8 Ibid Cotton
This provides a good starting point for considering what the choice in the topic involves, but there are several notions of retribution and rehabilitation that are worth analyzing. Not all definitions of rehabilitation are forward looking and not all notions of retribution are backward looking.

III. THE SPECIFICS

*What The Resolution Is About*

This resolution is a comparative resolution because of the operative phrase “valued above”. Lincoln-Douglas resolutions do not always come with such a clear division of ground, but with clarity comes a set of new challenges for both debaters. Comparative resolutions require each debater to defend one of the two options in the resolution. However, defending either rehabilitation or retribution does not imply that affirming means retribution cannot be the goal of punishment or that negating would bring an end to all rehabilitation programs. The words “valued above” imply a choice in conflict. Put another way, should the underlying purpose of the system to be rehabilitative or retributive *most of the time*. Resolutions hardly deal with black and white issues, and this resolution is especially complicated. In the course of research, debaters should find several considerations that policy makers are faced with when dealing with the resolutonal question in the real world. The following set of questions is things worth considering as debaters research, but also worth revisiting and answering differently.

Debaters may find that doing so yields more interesting arguments on the topic:

- Why should we care about how we treat criminals?
- What rights do criminals have?
- Which rights do they forfeit?
- Is rehabilitation a right, a privilege, or is it a tool of state control?
When we deny someone rehabilitation what are we saying about them? 
Does rehabilitation have to work to be valuable? 
Is all rehabilitation good? 
What does retributive punishment look like? 
Is punishment only valuable if it stops future crime? 
Can we really change people? 
Should we change people? 

There are several other questions that should prop up as research progresses. Debaters should expand this list accordingly. 

While this topic analysis could provide some answers to these questions, it is preferable for debaters to answer these questions on their own. In fact, most of these questions are not binaries—there are several ways they can AND should be answered. Many more interesting positions can be developed if debaters choose to look at these issues under multiple lights rather than just one. 

Framework Considerations

This is a great topic because there are several ways in which frameworks for either side can be developed. When undergoing this process, it is key for debaters to consider both strategic and substantive advantages choosing one framework over another will give. A good place to justify any particular framework is from the definitions of the words in the resolution. As I mentioned earlier, there are several ways scholars have defined and advocated for the idea of rehabilitation. These are all worth looking into. As an affirmative debater, the best strategic choices are the ones that limit the burden of proof. One place to do this is the definition of rehabilitation. Rehabilitation includes several different programs and strategies, but an important consideration is what are the goals of these programs? Are they to reduce crime? Or is there something that underlies
the idea of rehabilitation that justifies these programs even if they aren’t always successful? Stronger affirmative positions will attempt to answer the second question, as it limits the “solvency” burden that the negative debater could impose on the affirmative. However, this is far from an easy task and it will take considerable research, but a good place to begin is literature that espouses the moral justifications for rehabilitation rather than merely the empirical ones. Empirics are important and they have a place in debate, but few studies are perfect and they are not always recent enough to justify high magnitude impacts. As such, I would suggest developing framework that is conducive to arguments that prove the inherent value of rehabilitation.

Given that the resolution is comparative, the negative debater has distinctive framework options as well. The negative can opt to defend the status quo (which wouldn’t really require any framework to justify), but it could also redefine what retribution means. More specifically, it may be useful to define what retribution ought to look like and differentiate from how it is currently realized in the criminal justice system. Building arguments around this type of framework can link the negative out of substantial criticisms the affirmative will mount and provide nuanced, positive reasons to negate the resolution.

**Affirmative and Negative Burdens**

Since the resolution is comparative, the affirmative must positively prove that rehabilitation is preferable to retribution. It isn’t sufficient to say that retribution or the status quo is problematic—affirmatives must prove that rehabilitation better achieves

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9 Positive refers to reasons TO negate rather than reasons NOT TO affirm.
whatever we believe the purpose of the criminal justice system ought to be. However, advocating for rehabilitation does not mean that the criminal justice system is no longer punitive. The affirmative world still tries and punishes individuals, but the nature of sentencing and what occurs during incarceration will likely look different. More radical positions will suggest that punishment itself will be reformed, but at the end of the day, rehabilitating criminals is not mutually exclusive with punishing them. Affirmative debaters must make this clear; otherwise negative debaters will attempt to assert that only the negative truly “punishes” offenders for their transgressions. A comparative resolution does not require the affirmative to prove that rehabilitation makes sense 100% of the time, but that most of the time the policies the U.S. enacts should strive to rehabilitate offenders.

While the resolution is comparative, the most important thing for the negative debater to remember is that there is more than one way to prove something is better than the other. The affirmative, given the nature of LD, and the fact that the status quo prioritizes retribution has a positive burden and must prove rehabilitation is better than what is practiced. Conversely, the negative can prove retribution is better positively (by explaining why it treats offenders better than rehabilitation) or negatively (by explaining why rehabilitation would be worse than retribution). The latter option is a more nuanced way of negating the resolution, and will make the burden on the negative debater easier. Regardless of which burden the negative debater decides to adopt, being as comparative as possible in both the position advocated and the responses articulated will not only increase the persuasive appeal of negating, but will also make it difficult for the affirmative to refute the arguments.
Value and Criteria

Although values are the goal each debater strives to achieve, developing them shouldn’t be what the debater spends the most time on. Luckily in this topic, there are two very clearly implied values. The first and most compelling value would be Justice (or some variation, such as Just Legal System) because the resolution is concerned with what the criminal justice system ought to look like. We can comfortably agree the goal of the justice system is to provide justice. However, if for some reason justice isn’t what your arguments best link to, the term ought in LD debate has been taken to imply Morality. Thus, one could value Morality or some variation on it.

Developing a strategic criterion is crucial for debaters. Doing so, unfortunately, is rarely easy. As a general tip, this should be one of the last components developed by the debater. If done too early, debaters are at risk of excluding (by not searching for or by ignoring) interesting and nuanced arguments on the topic in an effort to find arguments that are most relevant to the criterion selected. Instead, debaters should survey as many of the issues the resolution invokes as possible and read substantial literature before considering what the best means to achieve the value would be. For this resolution, some of the issues are related to agency considerations (i.e. offenders’ agency, states’ agency, victims’ agency), the limits and extent of state action, the purpose of crime policies (i.e. reduction, deterrence, denunciation), and a few others. This should help when considering how to categorize arguments, but the criterion only becomes clear once several argument types have been considered and constructed.
IV. POTENTIAL ARGUMENTS

The following are some generic arguments that can be made on this topic. Debaters are urged to do their own research and develop more nuanced versions of these ideas or (preferably) rely on their original ideas instead.

AFFIRMATIVE POSITIONS

1. Reducing Recidivism: Much of the surface level research on this topic will yield evidence on how rehabilitation prevents criminals from reoffending. Some of this research is compelling and potentially worth developing a position around. However, it does require debaters to go in-depth into their chosen studies and be comfortable answering both empirical and analytical challenges to them. However, if done well, this can make for a compelling position. Doing this well, however, may be too difficult for most, especially in 6 minutes.

2. Conditions: There’s a lot of sociological literature around the notion that crime is a result of factors well beyond the control of the individual. If this is true, punishment must take a form that recognizes these social factors to be just. This makes for a very persuasive position and there is a great deal of analytical and empirical research that can be used as evidence. However, there is always difficult with trying to establish a regime that considers external factors to the crime and how those ought to be measured, especially with regards to why they warrant rehabilitation specifically.
3. **Rights of the Offender**: There are legal scholars who consider rehabilitation to be a right that offenders deserve. The idea being that crime shouldn’t deny individuals the ability to reform their behavior. This is an interesting type of position, but developing it will require considerable amounts of work in the framework to justify why rehabilitation doesn’t necessarily have to be effective to be valuable.

**NEGATIVE POSITIONS**

1. **Deserts**: Most retributive theory relies on the notion that criminal should get their just deserts or “get what they deserve”. The idea is that wrong has been done, and correcting the imbalance requires punishment. Nothing more is necessary, and nothing less is enough. Reading Kant is a good way to understand where this notion originates from, but there are several contemporary authors who have refined the argument. While an intuitively acceptable position, it lacks a degree of flexibility and fails to consider the multiple causes of crime.

2. **Deterrence**: Another relatively generic position, but one that makes a reasonable point: if offenders get treated well in prison (in some cases they may have better opportunities than they did outside of prison), what’s the incentive to avoid committing crime? There are several authors who argue this position, and while it makes sense intuitively the problem with arguments about deterrence is that they are entirely unverifiable. It isn’t easy to get into someone’s head and
determine why they chose to or chose not to commit a particular action. This criticism is worth considering if debaters choose to craft this position.

3. **State Bad:** Arguments under this position type fall under the burden of proving why rehabilitation would be worse than retribution. Rehabilitation in its earliest conceptualizations and even many of its conceptualizations today are medical and reformative in nature. The idea is to change a person. There are some issues as to whether the state should be empowered to do such a thing. This position is hardly easy to write and will require a very specific type of evidence, but it can be done and would produce an interesting argument against rehabilitation—one that doesn’t just indict it from a purely deontological or empirical perspective.