“Rehabilitation is usually considered as one of the essential aims of punishment. Its precise meaning, though, is controversial from a theoretical perspective; and it is questionable whether current penal practices are shaped in such a way as to effectively pursue rehabilitative aims, however defined. This excellent book contains insightful contributions from experts in this field throughout the world, and sheds light on the many aspects and meanings of “social” rehabilitation in theory and practice. A unique opportunity for academics and students to gain a comprehensive view of a crucial topic in criminal law.”

Francesco Viganò, Italian Constitutional Court and Bocconi University Law School, Italy

“This volume provides an excellent overview of the contemporary discussions about the concept of social rehabilitation, including its historical roots, the framework within international law, and existing models. It should be read by everyone who believes in a more constructive and humane approach when responding to criminal behavior.”

Tatjana Hörnle, Max Planck Institute for the Study of Crime, Security, and Law and Humboldt University of Berlin, Germany

“‘Social rehabilitation’ is an important goal of criminal punishments, but raises many questions due to varying definitions, theoretical underpinnings and penal practices. By bringing together legal scholars, penal actors and social scientists, this book offers a comprehensive, comparative, and interdisciplinary analysis of current social rehabilitation scholarship. A must read for all interested in this domain.”

Sonja Snacken, Vrije Universiteit Brussel, Belgium
This book provides a comprehensive analysis of the current directions in social rehabilitation scholarship and research by bringing together the voices of legal scholars, criminal justice professionals, social scientists, and people directly impacted by criminal justice in a comparative, international, and interdisciplinary fashion.

The volume offers a narrative of social rehabilitation in penal contexts through five main domains: theoretical-philosophical, legal-comparative, human rights, social scientific, lived experience, and policy. Collectively, the contributions provide a systematised examination of the normative facets of social rehabilitation and illustrate avenues for its implementation in criminal justice domains in the full respect of the rights of justice-involved individuals, casting a critical gaze on some the mainstream narratives dominating contemporary penal policy. The overarching legal approach is complemented by a selection of perspectives in social rehabilitation research emanating from social psychology, critical criminology, penology, and neuroscience. These perspectives inform and enrich the legal and jurisprudential debates on the qualification of social rehabilitation as a fundamental goal of justice across domestic and international legal systems.

The book will be of value to academics, practitioners, advocates, and policymakers interested in current research dealing with the problem of punishment and the potential of social rehabilitation to more effectively deal with crime.

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Social Rehabilitation and Criminal Justice

Edited by Federica Coppola and Adriano Martufi
To my first Maestro, Massimo Pavarini
*Federica Coppola*

To my son Emilio
*Adriano Martufi*
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A week or so prior to writing this foreword, I had the good fortune of attending an extraordinary gathering of ‘lived experience’ leaders in the post-industrial city of Sheffield in the north of England. The majority of the 50 or so attendees were individuals with histories of justice-system involvement (bluntly, most had done time in prison) who were now activists, academics, advocates, justice system professionals, and even CEOs of major organisations. The meeting was not organised by any particular organisation or even university department, but rather it emerged out of discussions many of us have been having for the past decade. We had a vague sense that a remarkable development was ‘in the air,’ but no one was talking about it, so we created a space where a group of us (a tiny sample of the people working in this space) could meet and talk.

What this thing in the air was is difficult to describe. Indeed, the discussions at the meeting, although highly positive and supportive, involved considerable debate and disagreement about language in particular. From the very start, there was zero consensus on what to call this thing that brought us all together. ‘Lived experience’ is the phrase of the moment, but most found this phrase uninspiring and felt like it was unlikely to have a long shelf life (What is ‘unlived’ experience? Doesn’t everyone have ‘lived’ experience?). I am badly biased, but, to me, the thing that united everyone in that room was ‘desistance’ – an admittedly terrible academic word, unknown to even native English speakers and essentially anyone out of criminology. Yet, for many of us, desistance has come to mean the remarkable ways that individuals who had once been labelled as ‘criminal’ by the justice system have turned their lives around and become contributing citizens.

Toward the end of the meeting, we raised an idea I have discussed elsewhere (see Maruna, 2017) of a ‘social movement’ around desistance. Again, this suggestion generated much enthusiasm, but also engendered considerable confusion. During the discussion of this topic at my table, one of the participants politely enquired, ‘But, if we were to become a social movement, what would we be advocating for? What would be the organising goal of the movement? Don’t we all want different things?’ This was of course exactly right – some of the people in the room were what is known as ‘abolitionists,’ in favour of
ending the use of imprisonment; whereas others were much more moderate, supporting decarceration for many, but believing that prisons played an essential role for some individuals in some circumstances. With such differences, one imagines the collective marching down a city street chanting ‘What do we want?’ ‘When do we want it?’ but losing enthusiasm when unable to formulate a clear and unified response to that famous chant. There was certainly a palpable deflation of spirit around the table after this gentle query, and I admit I was not able to articulate a coherent response myself.

Having now read through the truly remarkable contributions to this ground-breaking volume, I can confidently say that I now know both the answer to the question (‘What do we want?’) and the reason why those of us at the table were unable to articulate what this thing was. What ‘we’ want is social rehabilitation. The reason we did not know that is because nothing like this book existed before that has addressed what this issue would look like in such a clear and comprehensive way. In the words of the editors, ‘a coherent normative framework for this rehabilitative paradigm is nevertheless missing.’ What we want – across the board – is an end to punishments that stigmatise and demean; an end to the ‘lock em up and throw away the key’ mentality and practice in justice systems. What we want is hope, opportunities to prove oneself, second chances, access, and a pathway back. We want an end to the legal (and often state sanctioned) discrimination against those who have been through the justice system but were no longer offending. We could have listed each of these issues individually and taken a vote on each one, and real consensus would have occurred even among the eclectic and diverse group of attendees. Yet, there is no agreed upon language to attain this consensus, let alone a coherent normative framework. We did not know what we were fighting for, what the unifying principles were that brought us together.

I would argue that this is at least partially because there has not been, until very recently, a proper social movement around these issues led by and for those with lived experience of justice involvement and (critically) of desistance. Desistance, as several chapters in this volume recognise, is the key to this vibrant movement. I do not mean to refer to the research literature around it (which is jargon-filled and marginalised behind pay walls in obscure academic tomes), but the stories that make up the desistance literature and have made it so vibrant. The more the public hears desistance stories, the more judges hear desistance stories, the more politicians hear desistance stories, the stronger the movement for social rehabilitation will become. My argument is not that desistance is the theory and social rehabilitation is the practice. Rather, it is precisely because desistance is real, in practice, in everyday lives, that we should codify the right to rehabilitation. The fundamental truth of desistance is that the people we call ‘offenders’ can and do change for the better and ‘on their own’ without being forced to – transforming from burdens on society to people with serious contributions to make. Accepting this scientific fact sets off a crucial series of logical propositions (spelled out beautifully in the chapters
in this book), like a series of dominos falling one by one. In the same way, so much of criminal justice as it is currently practiced – especially in countries like the United States – is fundamentally premised around the idea that the people labelled ‘offenders’ are largely irredeemable, that they are basically different than the rest of us in clear ways, and that they present inherent risks to society that need to be controlled. If you buy the story of desistance – that even the ‘worst of the worst’ can and does often change for the better – the entire apparatus of criminal justice can appear shockingly unjust.

So, how does one get to social rehabilitation? First and foremost, what is needed is a social movement of inspirational individuals like the ones at my Sheffield meeting who had turned their lives around. Every social change of any magnitude – including the advances won by racial minorities, women, or those in the LGBTQ+ community around equal opportunities and ending discriminatory treatment – have come about through social movements. When stigmatised people come ‘out of the closet,’ stand up and tell their truths, they immediately humanise their experiences and expose the inequities they face. This process is happening already in the world of criminal justice. As was obvious to those of us in the room in Sheffield, we are already in the early stages of a social movement around justice-involved lived experience.

However, such movements cannot get very far without theory, without history, without science, without legal analysis – without exactly the kind of sophisticated and systematic frameworks provided by this book, really. Work like this plays a crucial role in the building of social momentum, and the timing could not be more perfect in my view. What do we want? Social rehabilitation! When do we want it? Now!

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Reference
Introduction
What is Social Rehabilitation?

Federica Coppola and Adriano Martufi

If we asked ten people, among legal scholars, legal professionals, and legal policymakers, what rehabilitation within criminal justice is, we would most likely receive ten different responses. In fact, the question ‘What is rehabilitation?’ is an ongoing conceptual conundrum that corresponds to a never-ending attempt to provide a clear-cut framework of rehabilitation on a normative level. For although the rehabilitative ideal is one of the major leitmotifs in domestic and international discourses on criminal justice – from penal theory to policy documents and judicial opinions – the term ‘rehabilitation’ is often used without being explicitly defined and in ways that are consistent with widely divergent conceptions. Altogether, everyone seems to know what rehabilitation is, and many agree on the view that criminal justice systems ought to rehabilitate. Yet, when scholars, professionals, and policymakers are asked to elaborate on what rehabilitation entails and what criminal justice institutions should do to pursue it, then, it seems, no one knows.

The generalised struggle for a consistent normative definition of rehabilitation originates from the excessive fragmentation of this ideal across theoretical, judicial, and correctional domains of criminal justice. Admittedly, the question of rehabilitation – including its nature, its justification, and its exact relation to punishment (for example, Robinson & Crow 2009) – has long been one of the main topics of controversy among legal scholars, penologists, and social scientists (for example, Muñoz Conde 1979; Dolcini 1981; Morris 1981; Rotman 1990; Müller-Dietz 1995; Cullen & Gilbert 2012). Various theories of and approaches to rehabilitation have been proposed and implemented over the years. Some of these have been dismissed, others have been criticised, while others have been revised and ‘resurrected’ in correctional practice, criminal justice policies, and penal theory (Cullen et al. 1988; Cullen 2013). Likewise, various taxonomies of rehabilitation (such as Duff 2005; Robinson & Crow 2009; McNeil 2012; Forsberg & Douglas 2020) have been provided with the aim of systemising the variegated conceptualisations

1 This Introduction has been written jointly by both authors and is the product of shared reflection and ideas on the topics covered in this edited volume.

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of this penological ideal across the nuances, differences, and possible overlaps between different paradigms. Most of such (valuable) taxonomies classify types of rehabilitation based on their aims and the means to achieve them. Others subdivide different types of rehabilitation based on whether they presuppose a view of justice-involved persons as passive receivers of interventions or as active parties in their rehabilitation processes. Taxonomies further distinguish forms of rehabilitation that aim at reforming the character of the individual through pathways of moral (re)education from those that seek to intervene on the personality traits and mental capacities of justice-involved people to instil prosocial outcomes in their behaviour and/or identity.

Against this rich (and yet confusing) backdrop, this volume intends to focus on the analysis of a particular form of rehabilitation that is gaining momentum in normative discourses of rehabilitation within criminal justice on the international panorama: social rehabilitation. Often labelled interchangeably as ‘social reintegration,’ ‘resettlement,’ ‘resocialisation,’ ‘restoration,’ or ‘relational rehabilitation’ (Bazemore 1999; Canton 2018), this rehabilitative paradigm figures prominently in the language of international legal instruments, national constitutions, and domestic laws as a primary, or even the ultimate, justification for punishment and, more broadly, an overarching goal of justice. Although the cited sources consistently include social rehabilitation in their provisions, a coherent normative framework for this rehabilitative paradigm is nevertheless missing. Notably, the exact normative meaning and scope of social rehabilitation are heterogeneous and subject to different interpretations across national and supranational courts and legal scholarship. Such heterogeneity is not only manifest across constitutional systems (notably, continental European systems) that position social rehabilitation as a key penological rationale, but also in more punitive legal systems – such as the United States – where growing calls for criminal justice reform in fact centre on ‘social rehabilitation’ but fall short of using this expression and of adopting such a paradigm in its entirety.

This widespread normative gap is somewhat surprising. In fact, the penological concept of ‘social rehabilitation’ has undergone a large process of

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2 Taxonomies of rehabilitation generally break down this concept into three broad categories, although these categories may present overlapping features and include subvariants: 1. therapeutic or psychological rehabilitation, 2. moral rehabilitation or moral re-education, and 3. social rehabilitation.


4 See, for example, Art. 27 par. 3 of the Italian Constitution; Art. 25 par. 2 of the Spanish Constitution.

5 See, for example, German Prison Act, Sections 2–4; Netherlands Penitentiary Law of Principles, Section 2; Law of Penal Execution nº 7.210 de 1984 (LEP) (Brazil).
normativisation, firstly with its codification into penal legislation at the national level and, subsequently, through its incorporation within constitutional charters and international treaties on fundamental rights. Notwithstanding, a clear and precise definition of this type of rehabilitation is lacking in relevant legal and judicial sources (Boone 2011). Nor is legal practice helpful in this respect; inquiries into the meaning of ‘social rehabilitation’ are often hastily glossed over by judges and lawyers, who blindly refer to dominant practices in correctional work (for example, Tata 2010). In sum, if social rehabilitation is currently at the centre of a multi-layered process of normativisation (involving national laws, constitutions, and international human rights instruments), its definition remains hard to grasp and is often devolved to the work and practice of non-legal actors.

Detailed descriptions of this rehabilitative paradigm have been carefully elaborated within contemporary accounts in philosophical, sociological, and criminological scholarships. Before we provide readers with an overview of the themes and aims of this volume, it is worthwhile to pause on these non-legal literatures to reflect upon what is currently meant by social rehabilitation in the penal context. Hence, the core question of this introduction: What is social rehabilitation?

By combining accredited scholarly definitions, and as the expression itself suggests, social rehabilitation qualifies as a non-paternalistic type of rehabilitation that ‘entails both the restoration of the citizen’s formal social status and the availability of the personal and social means to do so’ (McNeill 2014) upon (and despite) serving a criminal sentence. Thus, social rehabilitation seeks to restore positive relationships between crime perpetrators and the rest of society by encouraging individual change processes that are based on the establishment, or the maintenance, of healthy social relations, and by supporting the provision of social means that allow these persons to conduct a law-abiding and self-supporting life upon their return to the community. Ideally, as McNeill has claimed, social rehabilitation eventually aspires to ‘the informal social recognition and acceptance of the reformed [person]’ (McNeill 2014).

Under this paradigm, justice-involved individuals shall be granted means and opportunities to return to (or remain in) society with an improved chance to live as positive members of the community, with the rights and responsibilities that this entails. To this aim, social rehabilitation tackles ‘not only individual behaviour but also social and structural advantages relevant to [them],

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6 As legal provisions in this area are often broadly worded, their meaning decisively hinges on the legal and policy context in which they operate. In the Netherlands, for instance, the objective of ‘preparing a prisoner’s return to society,’ under Article 2 of the Penitentiary Act, is taken merely as an indication or guidance for the activities carried out while serving a sentence (which are mostly inspired by the imperative of reducing re-offending).

7 For example, legal professionals adjudicating in summary proceedings engage with the rehabilitative prospects of their defendants through the information provided within pre-sentence reports drafted by social workers.
which include social bonds, employment, education, and other benefits’ (Ashworth et al. 2009). From this perspective, social rehabilitation aims for the pursuit of the goals of criminal justice by embracing principles and means that are typical of social justice.

In the same spirit as other rehabilitative paradigms, social rehabilitation positions individual change as a primary condition for enabling processes of social reintegration. Along the lines of Rotman’s humanistic or anthropological account of rehabilitation (Rotman 1990), social rehabilitation ‘does not seek to achieve individual transformation through subtly imposed paradigms. It assumes instead that effective change can result only from the individual’s own insight and uses dialogue to encourage self-discovery’ (Rotman 1990) and personal growth. Hence, another crucial aspect of social rehabilitation consists of maximising choice and voluntarism. Social rehabilitation recognises the powers of self-determination and self-efficacy of the individual in their process of change, and it hence attributes to them an active role within the reconstruction of their individual and social life.

Accordingly, social rehabilitation does not entail coercive impositions of rehabilitation programmes. While discourses about voluntariness within the penal context are admittedly complex and conditioned on a variety of practical circumstances (Bazemore 1999), social rehabilitation values the autonomy of justice-involved individuals as one of its major pillars: individuals are entitled to choose how to utilise rehabilitative opportunities and do have a voice in the rehabilitation process. Thus, social rehabilitation aims to ensure that the essential human attributes of human agency and rationality be fully realised and protected.

Importantly, social rehabilitation understands human agency as a multi-dimensional, or holistic, concept that is determined by individual and social factors. Therefore, it acknowledges that the choice to engage in offending behaviour is the result of a complex interaction between individual and social aspects, all of which must receive the same weight in informing justice responses to crime. From this perspective, social rehabilitation adopts an empowerment approach (Ward & Maruna 2007; Maruna & LeBel 2010; Ward 2010) which presents justice-involved individuals as active decisionmakers in the (re)construction of their lives, and tackles not what their deficits are but rather what positive contribution they can make (Brunett & Maruna 2006).

Beyond recognising individual power to change, social rehabilitation places a significant emphasis on the social dimension of change. It notably recognises that people are ‘hubs of relationships,’ and that secure and positive ties are key to encouraging change. Thus, social rehabilitation highlights the importance of maintaining or developing positive social bonds and relationships that may encourage feelings of belongingness and consequently motivate people to expand their circle of concern and opt for acting in prosocial ways towards others. The importance of social connections and social capital within the rehabilitation process is well documented. People who feel socially included are more motivated to re-engage with the community and to refrain from
breaking community values. Hence, the element of inclusion – understood as the establishment of stable social bonds, such as education or employment, but also as recognition and acceptance by others (McNeill & Graham 2019) – is warranted to provide healthy opportunities for the successful reintegration of the individual into society.

A crucial (and consequential) aspect is that social rehabilitation per se rejects punitiveness, deprivation, coercion, and exclusion as ways to challenge wrongdoing. It rather espouses a constructivist approach to social reintegration that hinges on individual and social needs, fosters social connections, and prompts inclusion and support. Thus, social rehabilitation limits the punitive and exclusionary outcomes that are typical of certain philosophies of punishment through the adoption of an empowering and constructive approach to self-change and social reintegration. As Lewis has noted (Lewis 2005), for some, this will mean the restoration of a former state. For others, this will mean the acquisition of knowledge and skills, as well as the establishment of rank, rights, and responsibilities previously denied. For others, this will entail a process of reversion and overcoming of traumas and victimisations. For others, this will imply a process of accountability through an appreciation of the interpersonal and normative values that they violated that may serve as a guidance for future behaviours. Altogether, while the aim of social rehabilitation (that is, social reintegration or restoration) is unitary, the possible means to achieve it are various and multifaceted in view of individual and structural factors inherent to the relevant person.

The main features of social rehabilitation, including the dynamic view of the ‘person’ and the importance of social bonds as triggers for positive change, find robust support in a large body of studies from social and behavioural sciences. These disciplines have been offering increasingly detailed evidence about the importance of meaningful social bonds and positive social environments for the psychological well-being and effective reintegration of individuals. Importantly, this sustained line of research aligns with studies in positive criminology about the individual and social factors involved in crime desistance, which have taken an enormous leap over the years (for example, Maruna 2016; Weaver 2016; Rocque 2017; Bersani et al. 2018).

Recent views in the literature (for example, Coppola 2018, 2021; Ligthart et al. 2019) have also drawn links between such fundamental aspects of social rehabilitation and growing insights about the ineradicable relationship between the social environment, the human brain, and behaviour change emanating from social neuroscience. Growing neuroscientific evidence emphasises the innate plasticity of the human brain; that is, it suggests that the human brain is subject to continuous change amid new environmental stimuli, including behavioural interactions and experiences. Consistent with behavioural studies, insights into neuroplasticity overall suggest that individuals are in continuous evolution and capable of continuous growth, with an innate receptiveness to change and adaptation that potentially endures throughout life. Critically, studies on neuroplasticity have evidenced that healthy environments
and social connections, including meaningful social relationships, stable social bonds, social inclusion, and perceived belongingness, foster positive changes in the brain regions that support the cognitive and emotional functions and processes that are involved in morality and prosocial behaviour. Meanwhile, social exclusion, as well as negative environments and experiences, can profoundly alter the brain pathways that are involved in the cognitive and emotional functions that support positive social behaviour. Importantly, this body of empirical evidence appears to call into serious question certain (still popular) criminal justice practices, such as solitary confinement, (Coppola 2019, 2020) which are enacted as institutional means for intensifying punishment and/or ensuring public and prison safety.

As we have anticipated, the continuous evolution (and to a certain extent, the solidification) of the conceptual and empirical backdrops of social rehabilitation clashes with the uncertainties that surround its normative dimension. In fact, while the development of this rehabilitative paradigm has mostly occurred within non-legal domains, the normative substance and boundaries of social rehabilitation within criminal justice remain poorly defined and not fully explored. For instance, a frequent debate within legal scholarship revolves around the relation of social rehabilitation with other goals of justice, such as deterrence and retribution. This debate ties into the question of whether social rehabilitation (even when legally enshrined) should be weighed against the needs of individual justice, collective security, and public protection (Lazarus 2014).

A distinct, but somewhat related dilemma pertains to the legal status of social rehabilitation within the legal systems that qualify social rehabilitation as a constitutional goal of punishment. When social rehabilitation is enshrined in constitutional charters, a question arises as to whether this paradigm shall orient policymaking other than being a benchmark for the validity of statutory legislations in penal matters. Furthermore, constitutional incorporations of social rehabilitation seem to be suggestive of an understanding of social rehabilitation as an individual right (for example, Rotman 1986; Ploch 2012; Canton 2019). However, while national and international jurisprudence have increasingly relied on a rights-based understanding of social rehabilitation to advocate for a mitigation of penal policies (for example, to counter the growing use of irreducible life sentences), the full implications of this

8 For instance, the Italian Constitutional Court (ICC) seems to have espoused the latter view of social rehabilitation. In a 1990 judgment, the court proclaimed that the purpose of (social) rehabilitation shall not be confined to the stage of ‘[post-sentencing] treatment.’ Rather, it shall be regarded as one of ‘the general and defining features which characterise the ontological content of punishment since the moment of its abstract statutory provision to the point of its concrete expiation.’ Thus, the principle of social rehabilitation is ‘binding for both sentencing judges and the legislature, as well as for post-sentencing courts and the prison administration.’ See ICC, judgement no. 313 of 1990, dec. 26 June 1990.
newly acquired status of such rehabilitative paradigm as an ‘individual right’ remain widely unexplored and under-theorised. Among others, a corollary that deserves scholarly attention concerns the weight that social rehabilitation quo individual right should be afforded within sentencing criteria and judicial decision-making (for example, Weigend 2004).

These purely normative puzzles add on critical issues arising from the combination of normative and empirical dimensions of social rehabilitation. For instance, a pressing question is whether, and to what extent, current normative understandings and institutional applications of social rehabilitation are, or ought to be, actually reflective of the descriptive aspects of this paradigm – including its assumptions about human behaviour, its proclaimed goals, and means to achieve them – that are laid out in both empirical research and the practices of rehabilitative work. Vice versa, one may wonder which normative justifications support the incorporation of descriptive and practical frameworks of social rehabilitation for the purpose of a legal definition. It is submitted that attempts to inform the legal meaning of this concept with a given set of empirical findings and correctional practices inevitably reflect one’s normative predispositions. Therefore, the quest for an evidence-based understanding of social rehabilitation requires and presupposes the prior adherence to certain normative ideologies that inspire criminal justice reform.

Notwithstanding the difficulties that are innate to merging descriptive models into normative theories of law and justice, the need to address and resolve these interdisciplinary issues appears to be of primary importance for a proper implementation of social rehabilitation in the penal context. Notably, it is worthwhile to carefully reflect upon what exactly is meant by social rehabilitation in criminal justice, including its theoretical underpinnings, its normative facets, and its ramifications in the realm of penal practice. Among others, some of the issues that require a thorough analysis include: How much (and what type of) normative weight is social rehabilitation afforded in the penal context? What instruments do (or should) criminal legal systems offer to best realise this ideal? How does social rehabilitation position itself on the terrain of fundamental rights? Is penal practice – by means of both custodial and non-custodial sentences, as currently conceived and administered – consistent with the tenets and aims of this paradigm? How, and to what extent, could normative incorporations of social rehabilitation pose constraints on legal systems’ resort to punitive penal policies? How is social rehabilitation related to victim-centred approaches like restorative justice? In sum, if social rehabilitation has a place in the penal system, what is, or ought to be, that place?

This volume intends to address these issues by offering a systematic overview of social rehabilitation in criminal justice – one that brings together current views in legal and justice scholarship, national legislations, and international jurisprudence under a unified framework. The volume does so by providing a comprehensive analysis of the current directions in social rehabilitation scholarship and research by collecting the voices of legal scholars, criminal justice
professionals, (social) scientists, and people directly impacted by criminal justice in a comparative, international, and interdisciplinary fashion. The peculiarity of this volume is that it provides a fairly comprehensive narrative of the legal meaning, normative scope, jurisprudential understandings, and interdisciplinary views about social rehabilitation in the penal context through five main domains: 1. theoretical-historical; 2. legal-comparative; 3. constitutional and human rights; 4. (social) scientific; and 5. policy. This narrative develops across 19 chapters, which are subdivided into four parts.

Part I, ‘The Normative Facets of Social Rehabilitation: Historical Foundations and Theoretical Perspectives,’ canvases the meaning of social rehabilitation in law through historical, constitutional, restorative, and abolitionist perspectives.

Part II, ‘Social Rehabilitation and Law in Action: The Role of Judicial and Non-Judicial Actors,’ analyses current understandings of ‘social rehabilitation in domestic and international jurisprudence in light of existing laws, as well as the role of non-judicial bodies in ensuring the protection and implementation of social rehabilitation in punishment policies and practices.

Part III, ‘Social Rehabilitation and the Multiple Forms of Legal Punishment,’ includes chapters concerning the relationship between social rehabilitation and state punishment, both custodial and non-custodial.

Part IV, ‘Current Directions in Social Rehabilitation Research,’ complements and enriches the illustrated legal discussions with selected perspectives about social rehabilitation in criminal justice emanating from disciplines other than the law.

Collectively, the contributions provide a systematised examination of the normative facets of social rehabilitation and illustrate avenues for its implementation in criminal justice settings. To this aim, the proposed volume relies upon a broad theoretical and comparative overview of key international trends within the legal domain. This overarching legal approach is complemented by a selection of perspectives in social rehabilitation research emanating from social psychology, critical criminology, penology, and neuroscience. The latter perspectives have been selected in light of their relevance to inform and enrich the legal and jurisprudential debates on the qualification of social rehabilitation in the penal context.

Ultimately, this volume intends to provide a comprehensive and up-to-date resource about the major normative and empirical themes in social rehabilitation scholarship and research, as they are being developed by leading experts from and beyond the domain of law. Hence, the volume is primarily intended for an audience of legal scholars, legal practitioners, and law students who share an interest in criminal justice, punishment, and rehabilitation. The volume is further intended for scholars and students of penology and legal philosophy. In order to ensure that the volume reaches such interdisciplinary audience, the chapters will be accessible to readers with different backgrounds.
References


I

The Normative Facets of Social Rehabilitation

Historical Foundations and Theoretical Perspectives
1 The History of Rehabilitation as a Penological Principle

Edgardo Rotman

Introduction

This chapter provides a critical and wide-ranging historical overview of the major theories concerning the rehabilitative goal of criminal punishment and explores how some of these theories have shaped prison practices and major prison models over time. For the purposes of this chapter, the notion of rehabilitation is considered as equivalent to resocialisation, reform, reintegration, and, more broadly, as a change for the better.

The chapter begins with a chronological outline of the history of rehabilitation as a penological principle. Upon canvassing Plato’s and Christian thinkers’ contributions to shaping the idea of rehabilitation as reform (Section 2), the chapter moves to chronologically setting out organised snapshots of rehabilitation that include the sixteenth century’s Houses of Corrections in England and in the Netherlands (Section 3); the contributions of the most prominent thinkers in the seventeenth, eighteenth, nineteenth, and twentieth centuries (Section 4); the American Pennsylvania and Auburn penitentiary systems (Section 5); the support for indeterminate sentencing by Machonochie and Crofton in Great Britain and Australia (Section 6); Brockway’s ideas about prisoners’ reformation and their crystallisation in the Elmira reformatory (Section 7).

In the remaining Sections, the chapter analyses four descriptive models of rehabilitation – the penitentiary model, the therapeutic model the social learning model, and the rights-based model – as well as the two underlying evaluative paradigms of rehabilitation, that is, the anthropocentric and the authoritarian one. The chapter concludes by emphasising that the rights model is a superior model of rehabilitation, both in practical and normative

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terms, as it fully embodies humanistic values and reflects the modern notion of social rehabilitation.

**Antiquity and Christianity**

Plato spoke of a criminal punishment oriented to the future, aimed at making the incorrigibles harmless and offering a ‘medicine of the soul’ for those capable of amendment (Rotman 1990: 28). Plato’s ideas of reformatory punishment evolved into the Christian concept of *poena medicinalis*, which is represented in the thought of Christian thinkers from Saint Augustin to Saint Thomas Aquinas, and inspired monastic penance accomplished through isolation and meditation (Rotman 1975: 164).

The consideration of the perpetrator as a dignified human being had a deep humanising influence on their treatment. The best manifestations of the Christian notion of punishment were the disciplinary sanctions practiced within the monastic orders. Their four basic rules of conduct – isolation, work, silence, and prayer – could be applied to temporal nonreligious corrections, such as advocating for contemplation and solitary confinement as a powerful reformatory tool.

**Sixteenth-Century Houses of Corrections**

The sixteenth-century Western European Houses of Correction identified labour discipline as the key to rehabilitative success (McConville 1981: 2). The English Bridewells are generally considered as the first establishments of the kind. At the time of the Tudors, the palace of Bridewell was transformed into a ‘house of occupation’. This institution began to receive the first prisoners in 1556. Failure of prisoners to perform their daily quota of work was punished with the whip and the stocks. Furthermore, work and discipline were complemented with mandatory attendance to prayer before and after work. Although the first results seemed promising, the Bridewells deteriorated with time to the point of ending up by becoming indistinguishable from common jails.

A similar phenomenon took place in the Netherlands with the *tuchthuisen* (‘houses of discipline’). A combination of the pain of imprisonment with the future reward of increased freedom was expected to develop prisoners’ social and working habits that would persist after their release. In the sixteenth-century Dutch *Rasphuis*, for example, good behaviour allowed the inmates to advance from the rasping of wood to the weaving mill as a reward. The equivalent institution for women was called *Spinhuis*, where the rehabilitative work consisted in spinning. The central role of labour under this rehabilitative scheme was partly the result of the Calvinist influence in the Netherlands with its glorification of work, discipline, and communal organisation. In the same way as in the Bridewells, after several years, the original impetus was lost and the institution underwent a process of bureaucratisation and deterioration, ending up by being a ‘municipal factory with a captive labor force’ (Sellin 1976: 69).
The Humanisation of Criminal Punishment Penal Theory from the Seventeenth to the Twentieth Century Penal Theory

Natural law theorists such as Grotius and Pufendorf counterposed rational principles to the inhumane repression existing at the time. Along these lines, Grotius elaborated a utilitarian theory about the aims of punishment that he classified as the betterment of culprits, rendering them harmless, or intimidating potential perpetrators from imitating them. Pufendorf, on his side, affirmed that the general aim of punishment was to prevent the damages and injuries that men must fear from each other, either through the correction of the perpetrator, the diversion of others from doing the same, or the incapacitation of the culprits.

In the Age of Enlightenment, these utilitarian ideas were used as an argument for the humanisation of criminal punishment, notably by Beccaria and Bentham, for whom the efficacy of criminal sanctions lies in their measure, their proportion to the offence, legal certainty, and promptness of their execution – rather than in their severity. In the nineteenth century, concerns about the human reality underlying the penal system were represented by the French and Belgian penitentiary schools, as well as by German correctionalism. In 1837, Charles Lucas asserted that criminal sanctions are only justified when they are oriented towards the reform of the perpetrator, while Roeder resuscitated the notion of *poena medicinalis* and the idea that the perpetrator had a right to be protected and cured.

Prominent in the twentieth century was the movement of the New Social Defense, inspired and formulated by Marc Ancel. The movement proclaimed that the primary aim of criminal sanctions was the resocialisation of the perpetrator. Nevertheless, the movement maintained the retributive function of punishment for numerous ‘artificial offences’, such as business-related offences and administrative regulations, as well as a general preventive function derived from the fear of state intervention. The resocialisation-directed treatment operated within the framework of legality and in the respect of personal rights. Accordingly, such a treatment unwaveringly rejected brainwashing techniques that were typical of totalitarian states.

The Penitentiary Model

A significant step in the evolution of rehabilitative experiments was the creation of the penitentiary in the United States as a result of the struggle of Pennsylvania Quakers against the death penalty and gruesome corporal punishment (Rotman 1990: 34). The concept of the American penitentiary began with the Walnut Street Jail in Philadelphia. The jail consisted in a block of sixteen cells used to confine hardened ‘criminals’ that would otherwise have been sentenced to death (see also Rubin 2021).

This first rehabilitative experiment was based on absolute and solitary segregation, tempered only by the visits of prison staff and of selected reformative
agents who had the task of undertaking religious and moral indoctrination. Perpetrators of less serious offences were allowed to work and dine together during the day under a strict rule of silence. The degree to which prisoners were isolated from each other was the key distinction between the Pennsylvanian and the Auburn penitentiary systems, which dominated the discussions among prison theoreticians at the beginnings of the nineteenth century.

In the Pennsylvanian, or separate, system, the prisoners lived completely isolated in their own single cells, where they were also forced to work. At Pittsburgh Western Penitentiary, isolation regimes were first enacted without the requirement of labour, with devastating effects on the mental and physical health of the prisoners. This failure led to the construction of the Pittsburgh Eastern Penitentiary at Cherry Hill, which allowed labour within the cells and created individual exercise yards (Rotman 1990: 84). Likewise, under the Auburn system, practiced in the New York state prison at Auburn, prisoners were locked up in their individual cells during the night, but had the possibility to work and eat together during the day in a regime of strict silence, using the lockstep when marching in groups.

Both systems of institutionalisation soon revealed their inefficiency. Indeed, the penitentiary developed more as a means of custody and security, rather than rehabilitation. The awareness of this situation led penological science towards an increased de-institutionalisation of treatment and to the reinforcement of the perpetrators’ social links.

Transformations of the Penitentiary Model: Indeterminate Sentencing as Rehabilitative Policy

The new methods of rehabilitation, although maintaining the penitentiary, were based on the idea that the inmate should earn his advance towards freedom through stages of progressive liberalisation rewarding the prisoner’s own effort. The development of social and working habits deemed to persist after obtaining advanced release was the result of a combination of the pain of imprisonment with the reward of increased freedom. As noted earlier, this new rehabilitative technique has its remote origins in the sixteenth-century Dutch Rasphuis and in the English Bridewells. These methods were applied in exceptional ways by Captain Alexander Machonochie in the Australian colony of Norfolk Island and by Sir Walter Frederick Crofton (1815–1897).

Captain Machonochie, of Scottish origin, was a member of the British Royal Navy. After a distinguished career as a geographer for which he was knighted, in 1837 he accompanied the newly appointed vice governor to Van Diemen’s Land, today called Tasmania. There, he became interested in the fate of a large number of prisoners recently transported to the island following the penological practice of transportation abroad in vogue at the time. Machonochie soon addressed the problems of handling convicted individuals and formulated his ideas in a pamphlet prepared for the British Parliament. To put his ideas into
practice, he successfully requested to become superintendent of the Norfolk Island prison in 1840.

He reported his experience in that position in an 1848 paper titled ‘Secondary Punishment, the Mark System’, where he argued that the treatment of the prisoner should primarily be directed at restoring them to society after they had undergone punishment. For this purpose, in his opinion, sentences should be indetermined. Instead of time to be served, the sentence should consist in the completion of a specific task. Once again, work played an important role and allowed the convicted person to earn marks of commendation which, together with good behaviour, led to the termination of their sentence once a fixed number of marks had been earned (Eriksson 1976: 82–83).

For Machonochie, the sentence should typically begin with a short period of strict confinement subject to oral and religious preaching, and followed by the teaching of work habits and self-control acquired through the accomplishment of a certain number of daily tasks. These tasks would generate marks that would accumulate until reaching a pre-determined number. At that point, the convicted person would be put to work together with a small group of other convicted individuals and, as a team, would either gain or would lose marks based on the conduct of each member.

As time went by, the prison constraints were gradually liberalised according to the overriding objective of training the prisoner for their future freedom. This plan generated a revolution in prison practices: respect for the prisoner and the elimination of brutal and humiliating treatments. Importantly, this radical transformation, stirred by Machonochie’s religiously inspired compassion, coincides with the basic philosophical tenets of the Enlightenment writers. It combined a desire to humanise the criminal justice system with a utilitarian concern for crime prevention as reflected in Montesquieu’s, Beccaria’s, and Bentham’s theories.

Initially, Machonochie’s system was applied exclusively to first-time perpetrators who had just arrived at Norfolk, and was quite different from the very harsh treatment for hardened recidivists with which they coexisted on the island. Shortly after, however, Machonochie decided that his method should be applied to everybody, with the consequent potential reduction of sentences for serious recidivists through the mark system. The news of Machonochie’s extended application of his unorthodox methods caused outrage in the mainland. The scandal was compounded by the festivities Machonochie organised in Norfolk Island in honour of Queen Victoria’s birthday with heavy drinking and the participation of prisoners. For Machonochie, prisoners’ loyalty to the Crown would create a social bond that furthered the purposes of the rehabilitative treatment. However, he was criticised by the Australian press, which also announced his imminent dismissal by the governor of New South Wales who, nevertheless, allowed him to persist in his experiment.

The system charged inmates with the costs of imprisonment, paid with marks gained in overtime work. Overcrowding was dealt with the construction
of huts outside the prison by trustworthy prisoners. Convinced of the importance of religious influence, Machonochie built two churches, one protestant and one catholic, and allowed crosses and tombstones on the graves of prisoners. Furthermore, he brought in musical instruments from Sydney, organised orchestras and choirs, and built a new prison of his own design for prisoners’ first portion of their sentence. In addition, he built schools, and gave every prisoner a small garden plot. He encouraged prisoners to come directly to him with complaints, making himself available by frequently walking or riding alone around the island. He even allowed prisoners to form their own police force under the command of two prison officials. Moreover, he conducted public trials for breaches of discipline, with prisoners being allowed to participate.

Machonochie’s programme was a success among prisoners and the island became peaceful and totally free from violence. Governor of New South Wales George Gipps initially shared the critical views of the Australian public; however, he drastically changed his opinion following a direct inspection into Machonochie’s programme in 1843. He expressed his profound respect for Machonochie’s performance in a detailed report. Unfortunately, this report reached the British governor only after the appointment of a successor to Machonochie. The successor took over in 1844, restoring torture and flogging together with the old disciplinarian model.

Back in England, Machonochie campaigned several years for prison reform both as a writer and a speaker. In 1849, with the support of liberal and progressive forces, he was appointed director of a newly opened prison in Birmingham. However, reactionary opponents obtained his dismissal after only two years. He nevertheless continued to write and lecture about prison reform. He invested all his money as well as his wife’s assets in this venture until 1860, when he died sick and penniless (Eriksson 1976: 84–88).

The mark system was further developed by Sir Walter Crofton, who was chair of the Board of Directors of Convict Prisons for Ireland from 1854 to 1862. His system of prison administration was labelled as the ‘Irish System’. Under this system, prisoners had to undergo four stages of rehabilitation: three stages before their release and a fourth after their release. The first stage consisted of isolation, with the accompanying deprivations and strict discipline. In the second stage, prisoners were assigned to a work group project, often consisting in building fortifications with the possibility of earning marks for their working efforts and good behaviour. The third stage consisted of a six-month (or more) period of semi-liberty in which prisoners were transferred to an open prison administered by unarmed guards where they were given the opportunity to show their capacity to live in freedom by working outside during the day and returning to their quarters at night. This intermediate stage was Crofton’s main innovation (Rotman 1990: 39). The fourth and last stage of rehabilitation involved a period of conditional release directed by a teacher who took upon himself the task of finding jobs for the conditionally discharged. He was literally going from one employer to another until he
managed to find one that was amenable to hiring formerly convicted people. This teacher worked in close contact with the police, whose duty was to keep paroled people under supervision.

The famous Swedish professor Knut Olivecrona, a great admirer of Crofton’s system, positively described such a method in his 1872 book about the causes of recidivism. Hence, Crofton’s methodology was imitated in numerous countries around the world, especially in Europe (Eriksson 1976: 95–96).

### The Impact of Rehabilitation Developments on the America Prison System

The closing decades of the nineteenth century set the dark ages of American prisons, given the evils of brutal repression and the isolating prison environments that lacked any serious effort to restore prisoners into society after their release. The prevailing model at the time was still the Auburn system, consisting of isolation during the night and congregate work during the day under a strict rule of silence. The Pennsylvania system also persisted in an attenuated fashion at the Philadelphia Cherry Hill Penitentiary.

These original, ideal penitentiaries and their early experiments of isolation, religious indoctrination, and serious labour were eventually undermined by prison overcrowding and harsh prison dynamics. Indeed, the sharp contrast between increasing overcrowding and budgetary insufficiency and the many rehabilitation initiatives drowned by real-life prison dynamics became a constant pattern in the history of American prisons. Moreover, in the immediate post-Civil War years, state prisons confined sentenced people in the same facilities as those arrested and awaiting trial, those awaiting transfer to state prisons, and those serving relatively short prison sentences. The design of prisons was no longer driven by reformative ideals but by the goal of confining the largest number of prisoners at the least possible cost (Rotman 1995: 170–171).

The obvious need to reform this deficient prison situation led the New York Prison Organization in 1865 to commission Enoch Cobbs Wines, a new type of professional penologist who used behavioural methodology and scientific data combined with religious zeal, and Theodor Dwight, a renowned lawyer and educator with a long history of involvement with prisons, to conduct a nationwide survey and evaluation of extant penal methods. After visiting penitentiaries and houses of corrections in eighteen states and several institutions in Canada, and collecting seventy bound volumes of documents, Cobbs Wines and Dwight wrote a *Report on Prisons and Reformatory of the United States and Canada made to the Legislature of New York in January 1867*. Their critical findings included the absence of any efficient means to pursue prisoner reformation; inadequacy of physical plants; lack of training for the staff; absence of a centralised prison state supervision; regular reliance on corporal punishment, such as the lash, in six states and the yoke in New York. Importantly, the report recommended the banishment of the latter tortures as ‘cruel and degrading’ punishments.
In addition to specific remedies, the Report contained a larger general proposal: preparing prisoners for release by allowing them to demonstrate their progress and earn their freedom through the progressive liberalisation of prison regimes. Tellingly, this methodology was inspired by Machonochie’s experiments in the Australian colony of Norfolk Island and its further developments in Ireland by Sir Walter Crofton in 1864, as well as by a reform agenda endorsed by several American penologists, including the participants to the National Congress of Penitentiary and Reformatory Discipline held in Cincinnati in 1870.

An important element of change shared by Wines and Dwight with reformers like Zebulon Brockway and Franklin Sanborn was the adoption of indeterminate sentencing regimes to provide prisoners with incentives to participate in reformatory activities. Zebulon Brockway, on his part, put these ideas into practice at the Elmira Reformatory in New York, opened in 1876, by combining indeterminate sentencing and release on parole with an institutional commitment to educational programmes covering general subjects, sports, religion, and military drill, as well as an alternative programme of vocational training in tailor cutting, plumbing, telegraphy, and printing. Prisoners were graded for their educational achievements, work performance, and good conduct. These grades were apparently the bases for obtaining prison privileges and early release on parole.

An 1894 state investigation, however, revealed that the rhetoric of humane treatment was undermined by the institutional realities and that, far from the promises of rewarding good behaviour, order and discipline were kept by the menace of severe corporal punishments. The failures of this programme and other future rehabilitative initiatives were the result of endemic overcrowding. By the 1890s, Elmira not only had twice the number of prisoners it had been designed for, but it was also filled with typologies of prisoners who were very different from the ones for which the prison had been conceived. Instead of first-time offenders between sixteen and thirty-one years of age, one third of the reformatory’s population was made of seasoned recidivists. Despite its shortcomings, Elmira gained a worldwide reputation and inspired similar institutions in many parts of the country (Rotman 1995: 172–174).

The Progressive agenda (1890s–1930s) for social reforms included ambitious plans to transform the prison system by relying heavily on behavioural science. By the end of the nineteenth century, a psychotherapeutic model of prison reform emerged, later followed by a social learning paradigm that included the opening of the prison to the community.

The Therapeutic Model

At the turn of the century, the success of medical sciences in identifying the causes of tuberculosis and rabies gave new prestige to the entire medical field. Such success prompted criminologists and penologists to begin to adopt medical language and concepts in their own areas and, as a consequence, to endorse