

ROUTLEDGE REVIVALS

Rehabilitation and Deviance

Philip Bean



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First published in 1976, this book examines rehabilitation within the penal system in Britain in the 1970s. It argues that the 'rehabilitative ideal' is not the only possible alternative to a penal policy but an option which has now become institutionalized and alien to traditional concepts of justice. Using a framework derived from the sociology of law, Philip Bean looks at aspects of rehabilitation as it is operated in the courts and in certain penal institutions. He shows how the concept of rehabilitation has had an important but harmful effect on penal policy as it is often incompatible with penal aims.

This book considers the impact that sentencing, social enquiry reports and modern prison policies have on rehabilitation. The concluding chapter asks for a return to concepts of justice and a move away from discussions about personal lives of deviant members of society.

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REHABILITATION AND DEVIANCE

Radical Social Policy

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To Amy, Nita and Trevor

PREFACE AND ACKNOWLEDGMENTS

It is not very fashionable for sociologists nowadays to be involved in social engineering; a more lofty detachment seems to be preferred. Yet in a curious way that same lofty detachment is a hallmark of other groups who are not always given the warmest of welcomes in sociological circles and who, like many sociologists, are not really detached at all. Detachment is all very well, but Howard Becker's pertinent question forces us to reappraise our position from time to time. Becker wanted to know 'whose side are we on?' and the answer is I suppose likely to change at frequent intervals. In this book, I have unashamedly adopted a social engineering approach and, as will be clear from the following pages, I am not always on the side of the rehabilitationists. My position is this, that rehabilitation as it is practised in the modern penal system is not what it seems to be, and on closer examination is often incompatible with current penal aims. I can only offer tentative suggestions as to where we go from there, and hopefully others will pick up the argument and bring the debate into the open. For too long the arguments about the penal system have been assessed on the basis of labels; supporters of rehabilitation have regarded with intense suspicion anyone who opposed it, whilst opponents have regarded the other side with equal doubts. Labels seem to me to be a poor way of arriving at rational decisions.

Throughout this venture Professor David Marsh provided encouragement, assistance and inspiration, as did those who kindly read the drafts. I want to record sincere thanks to two highly perceptive sociologists, Meryl Horrocks and Alan Aldridge at the University of Nottingham who read and commented on the drafts; to Herschel Prins at the School of

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REHABILITATION – AN OVERVIEW

This book is about the penal system as it exists in England and Wales in the 1970s. It is also about rehabilitation which, in the context of the modern penal system, means being sentenced to receive help. Sentences to receive help are now so much part of the judicial and penal process, that we now regard them as common practice. Occasionally judges and magistrates pass a sentence for different reasons – retributive or as a deterrent perhaps – but officials operating the penal processes invariably attempt to turn the sentence into a rehabilitative one. We think there is nothing strange about this apparent conflict. We also accept that a sentence to be helped can be passed on all types of offenders, in all age groups, and for almost all types of offences ranging from driving with no ‘L’ plates to homicide. And yet seventy-five years ago, the Gladstone Committee thought it no concern of the penal system to be involved in the rehabilitation of offenders.¹ How then has rehabilitation become so important, or to put the question another way, what is meant by rehabilitation, and how does it operate in the courts and in the penal system? The time now seems right to begin to ask these questions in a systematic way, for ideas about rehabilitation have wider implications than issues about the treatment of offenders.

Although the central concern in this book is rehabilitation as it affects the modern penal system, juvenile offenders have not been included. Juvenile justice is now changing rapidly. The recent Children and Young Persons Act 1969 contains many radical proposals, not all of which have been implemented, but if and when they are, there will be two separate systems of justice operating in the courts. There will be

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one for adults which will place more emphasis on legal requirements and be primarily concerned with legal rights and duties. It will be operated by traditional groups such as police, magistrates, judges, etc. The other will be for juveniles which will emphasize the social background of the offenders and be operated primarily by social workers. Such a change requires, I think, a separate analysis.

By confining the analysis to adult offenders – which in this context means those aged 17 and over – other complications are conveniently avoided. Special legal and penal provisions existed for juveniles long before the 1969 Act was introduced. They separated juveniles from adult offenders and placed juveniles in a special legal category. The venue for the trial is different, and there is a legal age of criminal responsibility which was fixed at 7 years in 1908, is now 10, and the 1969 Act gives power to raise it to 14. If a juvenile commits an offence below the age of criminal responsibility there is a presumption that he cannot tell the difference between right and wrong.² Between the ages of 10 and 14 juveniles are in a twilight zone in which they are morally responsible not as a group but as individuals when they know their acts to be wrong.³ They are presumed in this age group to be in 'doli incapax' – or ignorant of the wrongfulness of the act. The presumption is refutable, and in practice varies from court to court, some courts virtually ignoring it altogether – but its very existence presupposes that juveniles entering the penal system are qualitatively different from adults.

Similarly penal provisions for juveniles have always been more varied and elaborate. Some, such as borstals and detention centres, continue to take adult offenders up to the age of 21 but above that age courts had until recently only four major alternatives for sentencing: discharges, fines, probation and prison. The range for juveniles has always been wider and was justified on the grounds that penal resources ought to be directed at the young, particularly as the evidence suggested that adult offenders were almost always drawn from the ranks of the juvenile delinquents. Incidentally the position has changed in the last decade and fewer adult recidivists have been convicted by the juvenile courts.

I am not suggesting that juvenile justice should be different from adult justice, merely that it is now, and is likely to continue to be so in the future. Hopefully many of the points raised here will be applicable to any subsequent analysis of the juvenile courts, as the 1969 Act raises issues about rehabilitation in a particularly acute form. Juveniles more than any other age group are subject to the professional helpers, with all the attendant trappings of casework and psychotherapy.

Having cleared some of the ground as far as juveniles are concerned, further provisos need to be added. The aim is not to describe the penal system or even concentrate on the mechanics of it, but to analyse one

particular approach, or ideology, which comes under the general heading of reform or rehabilitation. Following Francis Allen I shall call it the 'rehabilitative ideal'.⁴ I shall be concerned with examining this ideal as a concept, and to show how, if at all, it has been successfully used to combat crime and recidivism. Inevitably this will involve discussing it in generalities, and no apology is made for that approach. It will also involve general questions about how and why rehabilitation is now regarded as a self evident good, and why there has been so little discussion about some of the underlying principles, or even its overall effects. Why, for example, does a challenge to the rehabilitative position often bring forth a whole series of pejorative labels such as 'reactionary', 'inhuman' and 'punitive'? I hope to show that these labels may well be misapplied and might even be more applicable to the labellers than the labelled.

It may still seem a little surprising that a critical examination of the rehabilitative ideal could be a suitable subject for a series on radical social policy. The stereotype of the radical in this particular field is as a supporter of rehabilitation. The recent spate of cases involving the abduction of babies illustrates this point. The 'radicals' argued for a more treatment orientated approach, whilst the 'reactionaries' wanted prison sentences. But in one sense it all depends what one means by 'radical'. Inkeri Anttila in a perceptive essay makes the point that those supporting the rehabilitative ideal may now find themselves less radical than they supposed.

The *avant garde* position has become more complicated. Some of those who have previously considered themselves radical in their demands for a constantly more treatment orientated criminal policy have now noticed in the eyes of other radicals they are now perhaps almost conservative in that they defend the traditional thesis that criminals shall first of all have treatment.⁵

Although the term radical may mean as much as one wants it to mean, we can think of it as being used in arguments about change, and profound change at that. By this definition, a critique of rehabilitation becomes essentially radical, for rehabilitation has already achieved an entrenched and established position. Support can be found amongst more powerful sections of our society and amongst groups who would not usually find themselves in ideological harmony. In evidence submitted to the Royal Commission on the Penal System⁶ various bodies openly supported the rehabilitative ideal. These, to name but a few, included the British Medical Association, the Fabian Society, the Institute of Psychiatry, the Society of Labour Lawyers and the National Association for Mental Health.⁷ Numerous private individuals in their

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evidence also supported rehabilitation; these included magistrates, doctors and politicians.

The rehabilitative ideal is also supported by the mass media, the more fashionable ‘quality’ papers and most of the learned journals. Until recently almost all criminological texts had an implicit reformist approach, whilst some criminologists explicitly argued for more rehabilitation; they wanted more treatment facilities, more social workers and more psychiatrists to treat even more offenders. It is difficult to gauge the extent of their influence but they did have a ready access to the mass media, so their influence could have been considerable.

Within the penal system itself there is almost total agreement about the value of rehabilitation, although perhaps one should be wary of accepting some of these views at face value. The Prison Officers’ Association has asked for more rehabilitation and wants to become more involved in the treatment of prisoners, so do the Governor grades within the prisons. The Probation and After-Care Service is an overt supporter of rehabilitation – in fact probation training consists of little else. The judiciary at all levels occasionally sentence along rehabilitative lines. Had juveniles been included in this essay the list could have been extended to cover Social Services Departments, the majority of juvenile court magistrates, and the police in their capacity as juvenile liaison officers. When Inkeri Anttila wrote of a ‘breakthrough’ for the reformist position, she was directing attention at the potential power and the actual influence of groups supporting reform. She was also right to draw attention to the extent and speed with which reform has gained ground in what she calls ‘a thorough all pervading manner and in a remarkably short space of time considering the usual rate of change within a penal system’. In short, rehabilitation has been generally accepted as a legitimate way of dealing with adult offenders.

Having become accepted, even if not wholly practised, the effects of rehabilitation are far reaching. But before discussing the more pertinent issues, we need first to begin to clear some of the conceptual ground. The first problem is a definitional one, as the term ‘rehabilitation’ is now so widely used as to make almost all existing definitions either too wide or too narrow to be workable. The first point, then, is more of a warning than an explanation, and a warning against being misled by what Francis Allen calls ‘the delusive simplicity and ambiguity of the notion of reform’.⁸ In other words, it all sounds simple and appealing until one looks closely at the concepts. Furthermore, key words used in the definitions are often used interchangeably and rarely with precision; ‘diagnosis’, ‘needs’ and ‘therapy’ being the more obvious examples. A persistent source of confusion is the frequent failure to distinguish between ‘treatment’ and ‘training’ as well as between ‘reform’ and ‘rehabilitation’. To clarify the last set of terms, the

distinction made by Roger Hood is a useful one at this stage. He thinks ‘training means a conscious effort to influence the attitudes of others, whilst “treatment” seems to imply a method of dealing with the problems of the individual offender’.⁹ The first is related to *external* impositions or *external* control, the latter means the *internalization* of values probably acquired through contact with a significant other, e.g. a therapist. This seems a workable distinction, although it is the term ‘treatment’ that concerns us most. As far as ‘rehabilitation’ and ‘reform’ are concerned we shall use these interchangeably, although doubtless fine distinctions could be drawn.

Second, whilst acknowledging the warning of Francis Allen, we need a workable definition which can be related to current usage. The workable definition has been provided by Plato when he said ‘The State should stand in *loco parentis*. Wickedness is a mental disease, disintegrating and ultimately fatal.’¹⁰ The modern version is, however, more complex, as wickedness, or crime, for our purposes may often be seen as a mental disease but more likely as a form of maladjustment. The term maladjustment has its own special definitional problems.

However, two examples will hopefully illustrate how the term rehabilitation is currently used. Both quotes are taken from the Royal Commission on the penal system and both are from the evidence given by the Medical Officer at Feltham Borstal.

Although at the present state of our understanding and knowledge the mental attitudes and behaviour patterns of [criminals] are not the same as those of people who are mentally ill, yet it cannot be denied that their mental characteristics are abnormal, in fact diseased.

Once the disease model is accepted, diagnosis follows.

If crime is to be understood and recidivism prevented the first essential in the public’s interest is that the mind of the individual be studied and its difference in function from the normal mind of the socially conforming should be understood.¹¹

A magistrate, also giving evidence, invokes the maladjustment argument;

The underlying cause of the problem of delinquency is maladjustment¹²

There is no equivocation about the magistrate’s position, although the quotes from the medical officer are for our purposes the more interesting. They are extraordinary in a number of respects. First they illustrate the point that terms are used to support the main argument

which are wholly contentious yet are presented almost as value free concepts, apparently selected for their scientific precision. But what, for example, does the ‘normal mind of the socially conforming’ mean? Each word of that clause could lead to a separate discussion in itself. The statement by the magistrate poses the obvious question, mal-adjusted to what? Presumably to the socially conforming, and that is equally contentious. Furthermore, what is ‘the underlying cause’ supposed to mean? Notice also that the medical officer asks for more research to enable distinctions to be made between the criminal and non-criminal. Demands for this type of positivist research are a recurrent theme within the reformist position.

Plato, having invoked the disease concept, then logically moves to the next stage and asserts the need for treatment: ‘No punishment inflicted by law is for the sake of harm but to make the sufferer better, or to make him less bad than he would have been without it.’ The Fabian Society would agree, ‘We are convinced of the sterility of the punitive-retributive attitude which still pervades in our courts.’ The answer then is more rehabilitation; ‘We should like to see not only a full-scale Family Service doing effective pre-delinquency, but also [penal institutions], turned into genuine treatment centres where residents would receive individual attention and where treatment would be flexible.’¹³ The American Correctional Association shows how such a policy ought to operate. ‘The modern philosophy of rehabilitation is put to practical application by the development of three related and continuous phases of the correctional process; probation, institutional training and treatment, and parole.’¹⁴ In other words, rehabilitation should extend throughout the whole of the penal system, with the Fabian Society making it clear that courts should not adopt a punitive-retributive attitude under any circumstances. In Plato’s words, they want the diseased to be made better.

These quotes also highlight a number of other features of the reformist position. Apart from the constant demands for more research, there is always the explicit use of medical terms such as diagnosis and treatment. There is also the inherent attack on any other ideology which is regarded as punitive. (The word ‘punitive’ has now acquired its own pejorative overtones and is used as an attacking label.) Finally, the problem of crime is said to be found within the psychology of the criminal. Plato did not say that *crime* was a disease but the *criminal* was diseased. The difference is crucial, for emphasis is then placed on the offender, with little questioning of the social system or of the experts who define that disease.

Crime as a social problem is seen by the reformist largely in psychological/psychiatric terms. This is no accident, although sociologists have been reformists, too. Whereas psychiatrists talk in terms of