

REHABILITATION AND deviance

Philip BEAN



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.

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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

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

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

internal conflicts, etc., sociologists have stressed defective socialization, criminal role models and alternative opportunity structures. Their influence, however, has never been as widespread. There are numerous reasons for this, not the least being that sociology does not lend itself so easily to treatment plans. Although sociologists may have some part to play in the 'diagnosis', the psychiatric approach has all the built-in advantages when it comes to personal treatment.

Finally, before moving to the main thrust of the argument there are two other issues which need some consideration. They need consideration because the terminology used has the great disadvantage — or advantage — of glossing over certain contradictory positions.

The first is primarily philosophical and concerns the question of whether reform *accompanies* punishment or whether it *results* from punishment.¹⁵ Detention in a psychiatric hospital may not of itself be an essential part of curing mental disorders, but it may provide a convenient opportunity for psychotherapy. In this instance reform accompanies punishment, as reform operates by exploiting the opportunities presented by compulsory detention. An offender required to report to a probation officer or a psychiatrist is in a similar position. He is attending under legal compulsion, and reform accompanies the compulsion. On the other hand, reformists are offering a theory of punishment if they say that a person has been reformed as a result of losing his liberty or having to attend the probation office. If loss of liberty is said to lead to reform it becomes a theory of punishment as it implies that loss of liberty has certain intrinsic moral qualities which have produced the change in behaviour.

Presumably most reformists accept that within the penal system there will be an element of compulsion and presumably reformists are not arguing that loss of liberty or other forms of compulsion lead to reform. They want, or expect, reform to accompany some form of punishment. In this sense probation is no less a punishment than prison, for both contain elements of compulsion and both could accompany reform. It is no less a punishment because an offender agrees to be placed on probation, particularly as the courts do not spell out the alternatives if he refuses. On this basis, when rehabilitation is discussed within the context of the penal system it is always discussed in relation to the way it accompanies punishment. The difference is crucial, for demands for more reform implicitly accept some elements of punishment. The American Correctional Association, as an ardent advocate of reform, walks round this dilemma, or at least tries not to notice it.

The position taken by proponents of the theory of rehabilitation may be summed up as follows: — They do not rule out the necessity of custodial segregation but consider custody a means to an end in

the vast majority of cases, and an end in very few cases. They do not deny the desirability of achieving a deterrent effect if it can be done without impairing the effectiveness of rehabilitative programmes . . .¹⁶

In other words reform should accompany punishment and deterrence can be introduced occasionally if it is functionally part of a reformist programme.

The second confusion is less philosophical, more political. One of the main strands of the reformist position is that reform is claimed to be a humanitarian philosophy. The term is used here in the sense of 'humanizing' rather than as a systematic ideology, although often it is difficult to decide if humanitarian means nothing more than leniency and shorter sentences. However, the reformists have fostered the humanitarian argument as a buttress against other philosophies. Reformists point to the lack of concern for the offender's welfare under retributionist and utilitarian regimes and compare the considerable improvements in penal conditions since the reformist lobby began to exert an influence. Up to a point there is some force in this argument. Probation after all received some of its ideological thrust as a result of the appalling conditions within prisons. Punishments were often excessive, often barbaric and conditions in penal colonies were grossly inhuman. Retributionists have been overconcerned with deserts; and utilitarians themselves rarely questioned the treadmill or the silent system in prisons except to ask about their efficacy as deterrents. With the treadmill the debate was about the number of revolutions required each day; and with the silent system it was based on the need to provide time to brood and think, although as one wag remarked all could brood but regrettably not all could think. Nevertheless, the prisoners' welfare was secondary to other major aims.

The lack of direct concern for the offender is of course built in to the theoretical models of these philosophies. This means that by default they have handed the humanitarian argument to the reformists. Recently there has been some attempt to regain the initiative when those advocating deterrence or retribution claim to represent the interests of the victim, although this does not appear to have been a particularly successful form of attack. This is not to deny some merit in the argument, for the reformist position *does* ignore the victim and concern for the offender's welfare has not produced a similar concern for the victim. We then have the extraordinary position of supporters of reform claiming to represent one set of humanitarian interests with opponents claiming to represent another. Both claim to be humanitarian.

To link the growth of humanitarianism with the influence of the rehabilitative ideal is misleading in another more fundamental sense, for it assumes that they moved in a direct relationship with each other.

This is not to say that reform has not had some influence, although it is inconceivable that to modern society with its abhorrence of physical pain the punishments of the eighteenth century would still be permitted, and only in penal institutions at that. More likely there was a trend away from inhuman conditions and the reformist position arose at the same time as this general trend. Furthermore, another misleading approach is to present the rehabilitative ideal as part of an evolutionary process, with its attendant implications of progress. The American Correctional Association exemplifies this point. Earlier sections of this report trace the history of punishment and note the inhumanity of nineteenth century penal policy. Suddenly inhumanity vanishes but exactly at the point where the reformists enter the picture. Although the report does not actually say the reformists were solely responsible for the change the implication is there, and the presentation of this type of historical cataloguing feeds the implication. It also suggests that an even higher point in the evolutionary process will be reached when all penal institutions become committed to reform.

There are two serious flaws here. The first is that humanitarian considerations are linked with the reformist process although they are analytically separate. An example will help clarify the point. Prisoners have recently been granted periods of free association at certain selected periods when they can talk, play table tennis, etc. But free association of itself is not a reformist measure *unless* it is expected to lead to changes in attitude about crime or it is part of a wider rehabilitative programme. We cannot, as Richard Cloward points out, claim that humanistic exercises are automatically reformative.¹⁷ Invariably, no such programme exists but the assumption is made that free association somehow automatically leads to reform. This assumption lacks empirical foundations as free association is nothing more than a way of alleviating boredom in prisons — a very good idea but hardly reformative in this context.

The second flaw is more serious. It has become so easy to equate humanitarian consideration with rehabilitation that we forget that they may often conflict; that they rarely do is because of the safeguards provided by a strong component of retributive justice in our penal system. The problem is simply this. If the offence is to be ignored, perhaps because of the difficulties in determining blameworthiness or desert, the sentence is then based on the 'needs' of the offender. Needs obviously differ and so conceivably a murderer and a parking offender could both serve prison sentences for their offence, both having a need for imprisonment but the murderer having fewer needs is let out earlier. It is equally conceivable that the murderer could be placed on probation, and the parking offender sent to prison. Reformists usually object to this type of argument on the grounds that anyone committing

murder is likely to have more 'needs' anyway. This is a circular argument for 'needs' are then determined by the offence and the offence defines the 'needs'. Furthermore, we are back to a form of retributive justice in any case as the murderer's needs are based on the offence and he will be expected to stay in prison longer because his needs, defined by the offence, are greater.

Professor Flew does not think that anyone could complain that for Plato the thesis that all crime is an expression of psychological disease constitutes what he calls a 'Mollycoddlers Charter'.¹⁸ Neither does Professor Glueck who is an ardent advocate of reform. Under a reformist regime,

an offender will not know in advance of his crime just how long he will have to be under correctional control and subject to therapeutic intervention; and in fact certain offenders may have to remain under control for a longer term than if the sentence had been legislatively fixed or narrowly restricted in advance.¹⁹

George Jackson's case illustrates the point. In 1960 Jackson, at the age of 18, was convicted of second degree robbery for driving a get-away car while a friend robbed a petrol station of seventy dollars. Under the Californian State Law, which claims to have the most advanced reformists penal code, Jackson and his accomplice were sentenced to a period of between one year and life imprisonment. After serving the first year the parole board determines when the prisoner should be released on parole. Under that system, parole is granted when the board thinks a prisoner has been sufficiently reformed to be let out. Jackson's accomplice was released in 1963, Jackson remained until 1970 and subsequently died in prison.²⁰ He claimed his political beliefs prevented him from being granted parole — he was a black revolutionary — and as long as he expounded those beliefs he was not considered reformed. The only sure chance for Jackson was, as he claimed, to reduce his individuality and appear to be like everyone else for to be different is seen as synonymous to having 'needs' and 'problems'. Jackson refused to compromise.

Reformists, who shift attention to the offender rather than consider the crime must, if they are to accept the logic of their position, withdraw all retributive limitation. The length of time to be spent in institutions becomes dependent on a board comprised of experts who claim to know when reform has been achieved. Whether this is humanitarian is something else again although it seems that humanitarianism means something more than inflicting pain — it means something to do with Justice and other non-psychological terms. In Selznick's phrase, justice must serve the proper ends of man. In George Jackson's case justice did