



University  
of Glasgow

McNeill, Fergus (2014) *Punishment as rehabilitation*. In: Bruinsma, Gerben and Weisburd, David (eds.) *Encyclopedia of Criminology and Criminal Justice*. Springer, New York, pp. 4195-4206.  
ISBN 9781461456896

Copyright © 2014

A copy can be downloaded for personal non-commercial research or study, without prior permission or charge

The content must not be changed in any way or reproduced in any format or medium without the formal permission of the copyright holder(s)

<http://eprints.gla.ac.uk/91580/>

Deposited on: 21 February 2014

## **When Punishment is Rehabilitation**

*Fergus McNeill*

*Professor of Criminology & Social Work*

*University of Glasgow*

[Fergus.McNeill@glasgow.ac.uk](mailto:Fergus.McNeill@glasgow.ac.uk)

### **Introduction**

The title of this chapter may seem an odd one. For many people, punishment and rehabilitation are alternatives between which we must choose, rather than potential synonyms or alternative ways of referring to similar processes. Can punishment ever *be* rehabilitation? Don't rehabilitation's supporters tend to see offending as rooted in people's experience of social exclusion and injustice, to regard the trope of individual (criminal) responsibility (on which the legitimacy of punishment ultimately depends) as misconceived, and to stress the duty of the state somehow to fix the mess that produced crime? Punishment, at least for some rehabilitationists, seems little more than a fancy cloak to drape around the otherwise nakedly vengeful instincts of those that think (absurdly, these critics would argue) that there is something sensible, appropriate and fair about piling hurt on hurt.

And yet, many practitioners of rehabilitation – even those sympathetic to these criticisms of punishment – hold on to a belief in the capacity of people to change themselves and their situations; to make different choices; to overcome their circumstances; to author a different and better future. Even those who are deterministic when it came to the genesis of criminal behaviors and problems, somehow seem to become believers in free will or the power of human agency (even under intense social and structural pressures) when it come to the future prospects of people undergoing rehabilitation. Moreover, many rehabilitationists also have an acute sense of justice or injustice, reflected in their demands that the state honor its obligations to those whose adverse life experiences have proved 'criminogenic'.

Readers will already have noted a number of paradoxes and possible contradictions in play here, in terms of how we conceive of individual and political responsibility for crime and other social harms, of how we understand and deliver fairness and justice, and in our approaches to the righting of wrongs. To try to unravel some of these threads and make sense of these questions requires an examination of the contested and multiple meanings of these two terms – rehabilitation and punishment – before we can begin to understand at least some of the potential inter-relationships between them.

### **Which Rehabilitation?**

Both as set of concepts and as a set of practices, rehabilitation is a 'fankle'. Fankle is a Scots word that translates loosely as 'tangle'. The unraveling – or at least the teasing apart – of the distinct threads of a fankle is a tiresome and time-

consuming job, but a necessary one, if only so that we can knot them together again properly at the end.

Most textbook discussions of rehabilitation begin with dictionary definitions. Raynor and Robinson's (2009: 2) excellent book, for example, tells us that the Oxford English Dictionary defines rehabilitation as 'the action of restoring something to a previous (proper) condition or status'. So, rehabilitation is (1) an action that (2) restores (3) for the better. Raynor and Robinson (2009: 3) also note that the OED's supplementary definition refers to the 'restoration of a disabled person, a criminal etc., to some degree of normal life by appropriate training etc.' This version adds the concepts of some (4) 'normal' standard, returning to which requires (5) some form of third party intervention.

Moving on to criminological uses of the term, Raynor and Robinson (2009) argue that, despite the frequency with which (offender) rehabilitation has been discussed in the literature (and, we might add, in policy and practice), it is rarely 'unpacked' and critically examined. They provide the following example of a problematic criminological description of it:

'taking away the desire to offend, is the aim of reformist or rehabilitative punishment. The objective of reform or rehabilitation is to reintegrate the offender into society after a period of punishment, and to design the content of the punishment so as to achieve this' (Hudson, 2003: 26).

As Raynor and Robinson (2009) note, this statement raises a number of issues. Firstly there seem to be at least two objectives in play here: 'taking away the desire to offend' (that is, somehow changing the offender) and reintegration into society (that is, somehow changing his or her relationship with and status in society). But how are these two objectives related? Secondly, and more directly pertinent to this chapter, it suggests two different relationships between rehabilitation and punishment; in one rehabilitation comes *after* punishment, in another rehabilitation *shapes* (the nature of) punishment. We might easily imagine a third, as suggested above in the introduction, where rehabilitation is cast as an *alternative* to punishment. Finally, this description elides the distinction between rehabilitation and reform; as we will see below, for others these two ideas are distinct but related concepts.

In an effort to clarify some of these complexities, Raynor and Robinson (2009) go on to offer their own typology of perspectives on offender rehabilitation, examining the meanings and significance of correctional rehabilitation; rehabilitation and reform; reintegration and resettlement; and rehabilitation and the law.

*Correctional rehabilitation*, they argue, is concerned with effecting positive change in individuals. As such it is the model most commonly associated with treatment programs or other forms of offence- or offender-focused intervention. At its heart is the notion that many offenders can change for the better, given the right support. The idea of correction implies that the offender can and should be 'normalised' or 'resocialised' in line with commonly accepted (though rarely

explicitly articulated) standards of behavior. Raynor and Robinson make the critical but often neglected point that correctional rehabilitation is a very broad church; one that allow for almost as wide a variety of theories and methodologies about how 'correction' is to be achieved as there are theories about crime causation itself. That said, correctional rehabilitation, as its name suggests, tends to be preoccupied with *changing offenders* themselves, and so is closely associated with theories and methods that explain crime and target intervention at the level of the individual.

Raynor and Robinson's (2009) discussion of *rehabilitation and reform* notes that some penal theorists and historians draw a distinction between twentieth century 'rehabilitation', which was concerned with individualistic (psychological) treatment programs to correct one's personality (or attitudes and behaviors), and 'reform' which refers to an earlier preoccupation with offering opportunities for education and contemplation in support of the reform of one's moral character. As a form of shorthand, we might say that religion is to reform as the 'psy' disciplines (psychiatry, psychology and social work) are to rehabilitation.

The terms *reintegration and resettlement* (or in the USA 'reentry') may involve or be connected with correctional rehabilitation, but they also extend beyond it; in a sense, they imply its objective. If correctional rehabilitation is the journey, reintegration is the implied destination. Raynor and Robinson (2009) draw here on the work of Crow (2001) and others in suggesting that rehabilitation must lead to and involve restoring the ex-offender's status as a citizen and renegotiating his or her access to its privileges and responsibilities. Whereas correctional rehabilitation dwells on the individual and the psychological, 'reintegration and resettlement' signals the sociological aspects of rehabilitation; proponents of such an approach tend to have a sharper awareness of the social rather than the individual causes of crime, and of the social rather than the individual issues at stake in desistance from crime. Moreover, rather than being a mode of punishment (or a method applied during punishment), this perspective tends to stress the need for rehabilitation to act as an antidote which seeks to address, compensate for or seek to undo the adverse, usually unintended, collateral consequences of punishment itself. Rehabilitation in this vein is sometimes conceived a duty of the state that follows from its obligation to delimit punishment and to bring it to an end (Cullen and Gilbert, 1982).

A natural (though again often neglected) corollary of the concern with reintegration and resettlement is a concern with *rehabilitation and the law*. Though we come to it last, the earliest use of the term rehabilitation (at least in legal or criminal justice contexts), according to Raynor and Robinson (2009) was in late 17<sup>th</sup> century France where it referred to the destruction or undoing of a criminal conviction; to the deletion or expunging of the criminal record. A century or so later, Cesare Beccaria (1764/1963), reflected a similar meaning of the term in arguing for the use of punishment as a way of 'requalifying individuals as... juridical subjects' (Foucault 1975/1977: 130). In this sense, punishment itself was meant to be rehabilitative in settling the putative debt that offending created. Rehabilitation was thus an end of punishment in both senses

of the word; it was its proper objective *and* its final conclusion. Rehabilitation was the restoration of citizenship, not in the *de facto* sociological sense discussed above, but in the *de jure* legal sense.

Raynor and Robinson's (2009) taxonomy helps us a great deal with unraveling 'the rehabilitation fankle', but there are one or two further strands that we need to identify before moving on to examine which meanings and versions of punishment might be consistent with which meanings and versions of rehabilitation.

Firstly, it is worth stressing that the meanings of rehabilitation are historically, culturally and jurisdictionally conditioned. As we have already seen, the broadly correctional form of rehabilitation has been expressed in very different ways in different times and places. Two decades ago, Edgardo Rotman (1990) in a brilliant and brief introductory chapter to his book 'Beyond Punishment', summarised the history of rehabilitation as being represented in four successive models. The first two of these – the penitentiary model and the treatment model – correspond loosely to our discussion of reform and rehabilitation above. The penitentiary was seen as a place of confinement where the sinner is given the opportunity to reflect soberly on their behaviour, and on how to reform themselves (note 'reform' rather than 'rehabilitate'), perhaps with divine help. But this idea was supplanted progressively by a more scientific or medical model in which rehabilitation was understood as a form of treatment which could correct some flaw in individuals, whether physical or psychological, thus remedying the problem of their behaviour.

However, in the later half of the 20<sup>th</sup> century, this more medical or therapeutic version of rehabilitation was, according to Rotman, itself displaced to some extent, by a shift in emphasis towards a model based on social learning in which behaviours were understood as learned responses that could be unlearned. In this context rehabilitation was recast not as a sort of quasi-medical treatment for criminality but as the re-education of the poorly socialised (Garland 1985, 2001). Correctional rehabilitation's interventions may have remained individualized, but they changed to reflect new theories of crime causation and thus new forms of 'treatment'. This distinction between these two versions of correctional rehabilitation (treatment versus social learning) is important, partly because, as we will see in the next section, it was one that was and is often ignored by rehabilitation's critics.

### **Criticisms of Rehabilitation**

As Bottoms (1980) notes, in a typically erudite and compelling chapter that deals with the collapse of the rehabilitative ideal, one cause of its demise was that it came to be seen as being theoretically faulty. It misconstrued the causes of crime as individual when they were coming to be understood as being principally social and structural, and it misconstrued the nature of crime, failing to recognise the ways in which crime is itself socially constructed. Moreover, rehabilitative practices had begun to be exposed as being systematically discriminatory, targeting coercive interventions on the most poor and disadvantaged people in

society. Rehabilitation was also coming to be seen as being inconsistent with justice itself because judgements about liberty had come to be unduly influenced by dubious and subjective professional judgements hidden from or impenetrable to the offender. Through the development of the 'psy' disciplines, experts emerged with the supposed capacity to 'diagnose' what was wrong with the offender, and the offender was cast as a victim of his or her lack of insight. By implication, unless and until the offender was 'corrected' by the expert, s/he could not be treated as a subject. It was argued that rehabilitation faced an associated and fundamental moral problem rooted in its attempts to (psychologically) coerce people to change. Finally, at the time when Bottoms was writing, the empirical evidence seemed to suggest that, despite its scientific pretensions, rehabilitation did not seem to work.

Powerful though it is, there are flaws in this critique. Crucially, emerging evidence about 'what works?' (McGuire, 1995) played a vital role in challenging the last point; there is now an evidence base for rehabilitation (McNeill, Raynor and Trotter, 2010). But that evidence base, in and of itself, does not address the other four criticisms which I will label the problems of *crime theory*, of *rehabilitation and injustice*, of *dubious expertise*, and of *coerced correction*. Contemporary rehabilitation theories perhaps have more in common with a social learning or social psychological than a medicalised version of correctional rehabilitation (on the distinction, see Johnstone, 1996). But, even if rehabilitation is not now based on a strictly medical model, the full force of Bottoms' (1980) criticisms is only partly deflected, and in this short chapter we can attend to each these criticisms only very briefly.

While contemporary correctional rehabilitation's underlying *crime theories* avoid the pathologising traps of individualistic positivism, they still have to engage somehow with the problem that crime is (at least in part) a social construct. We do not choose to pursue all interpersonal or social harms through criminalisation; the explanandum of crime theories is itself socially conditioned. That single insight has profound consequences. It affects and infuses the normative contexts of rehabilitative work (including raising difficult questions about who and what gets selected for penal 'correction' and who and what does not) and it creates a series of complex methodological quandaries about how to judge rehabilitation's effectiveness (see McNeill, 2012).

The problem of *rehabilitation and injustice*, or of rehabilitation's place in or association with discriminatory justice practices, remains a challenging one, though it is hardly a criticism that applies *only* to rehabilitation and not to other criminal justice practices. That said, the problem for rehabilitation is not just systematic (if unintended) biases in terms of who gets selected for 'correction' of which sorts and who gets defined as 'incurable', but also a more technical problem of the extent to which rehabilitation's resources (principally assessment tools and interventions approaches) are sufficiently sensitive to, for example, gender differences and cultural diversity (on which see, for example, Raynor, 2007; Robinson and Crow, 2009: Ch. 6). Significant though these problems are, they are problems about the proper administration of rehabilitation rather than the concept itself.

The problem of *dubious expertise* is only partly resolved by the development of a more robust evidence base for rehabilitation. While it is true that contemporary approaches, perhaps to varying degrees, tend to formally recognise the need to treat people as active subjects in their own rehabilitation (and not simply as the passive objects of expert intervention), there remains considerable force in critiques both of the professional power of the 'psy' disciplines (e.g. Rose, 1989) and, more specifically, of the increasing exercise of that power not in 'treatment' or 'therapeutic' decisions but in influencing decisions about justice itself, specifically in relation to sentencing or release-decision making. We will return to these problems below.

Of course, the enduring problem of *coerced correction* is closely related to that of dubious expertise; coercion is a problem exacerbated in systems where increasing confidence in rehabilitation's effectiveness has coincided with the development of a 'toughening up' of penal policy. One apparently minor aspect of this conjunction in England and Wales was the withdrawal of any requirement for consent to accredited program conditions within community sentences. These programs therefore involve rehabilitative treatment without consent; a development that seems to have come to pass without much critique from psychologists whose ethical standards it might seem to compromise. Though it might be said that all punishment is coercive, coercion seems to be a particular problem for correctional rehabilitation, since it seeks to change the individual rather than simply to restrain, confine or otherwise punish him or her. That suggests a particular form of intrusion into the inner world, even the identity of the subject, in respect of which coercion raises particular moral problems.

Fortunately, Bottoms' (1980) also provided some suggestions about how we might best respond to these problems. Reflecting the pessimism of the times, four of his five options imply or require a shift away from rehabilitation, at least as traditionally conceived. However, he also argued that rehabilitation could be rescued through its own correction; that is, by attending more carefully to questions of consent, by committing adequate resources to make it more likely to be effective and by conducting our rehabilitative activities in ways which are more respectful of liberty. More specifically, we could ensure that the intrusions that rehabilitation imposes on the offender are never greater than is merited by their offending behaviour, placing rehabilitative requirements within the envelope of proportionality.

There is no space here to properly review the renaissance of rehabilitation in the 1980s and 1990s (see Raynor and Robinson, 2009, Robinson, 2008). However, leaving aside the better known story of the advancement of the evidence base, it is worth recalling that there was also, in the 1980s a brief flurry of writing about new normative or philosophical approaches to rehabilitation, including Rotman's (1990) work (see also Cullen and Gilbert, 1982). The 'new rehabilitationists' (see Lewis, 2005), much as Bottoms' suggested, proposed four principles to guide rights based rehabilitation: the assertion of the duty of the State to provide for rehabilitation; the establishment of proportional limits on the intrusions

opposed; the principle of maximising choice and voluntarism in the process; and a commitment to using prison as a measure of last resort.

However, as Robinson (2008) has cogently argued, in policy and practice (in England and Wales at least) what emerged was not a more rights-based but a more profoundly utilitarian and correctional form of rehabilitation increasingly influenced by the preoccupation with public protection and risk reduction. Under this paradigm, probation officers were required to intervene with or treat the offender to reduce re-offending and to protect the public. What is critical about this shift in focus was that the 'client' or intended beneficiary of rehabilitative work is no longer the offender. Rather probation is trying to change offenders to protect the law-abiding (see McCulloch and McNeill, 2007, Robinson and McNeill, 2004). The offender becomes less and less an active participant and more and more an object to be assessed through technologies applied by professionals and compulsorily engaged in structured programmes and offender management processes as required elements of legal orders imposed, as we have already noted, irrespective of consent (McNeill, 2006).

These developments in the relationship between correctional rehabilitation and those 'offenders' *with whom* it engages or, worse, *on whom* it operates – is a particularly important one. The shift from *subject in* to *object of* correctional rehabilitation implies a more coercive and utilitarian conception of rehabilitation; one which leaves the individual liberties and rights of the offender much more vulnerable, and one which opens up new prospects of abuses of the 'power to punish', justified in the putative public interest. This form of rehabilitation may still be a process of intervention aimed at some public good, but returning to Raynor and Robinson's (2009) initial definitions, the blunting both of its restorative intent and of its commitment to the offender's interests (alongside others' interests), as well as its willingness to impose (rather than renegotiate) 'norms' on objectified offenders represent major causes for concern.

### **Which Punishment?**

Of course, we can't make much sense of the relationships between rehabilitation and punishment just by analyzing rehabilitation – we need to examine notions of punishment too. Conceptually and practically, punishment is arguably even more 'fankled' than rehabilitation. In part, as Hudson's (2003) excellent introductory text both argues and demonstrates, this is because punishment is a quintessentially interdisciplinary subject that compels and requires criminological, legal, philosophical and sociological scrutiny, as well as raising fundamental political and practical questions.

Tonry's (2006) commanding and authoritative overview of the purposes and functions of sentencing provides a neat framework for analyzing punishment, distinguishing between sentencing's purposes or normative functions (that is, its justifications), its primary functions (these being the proper distribution of punishment; the prevention of crime; the communication of threat, censure and of social norms), its ancillary functions (in contributing to the management of an efficient and effective justice system, and in securing legitimacy and public

confidence) and its latent functions (the ways in which it reflects self-interest, ideology and partisanship, and how and what it communicates informally). Though he does not explain his framework in these terms, we might suggest that, with notable exceptions, philosophers and jurists tend to study and discuss the normative functions and primary purposes of sentencing, criminologists tend to examine its ancillary functions and sociologists tend to study its latent functions. We will return to criminological and sociological analyses briefly in the next section. For present purposes, it is perhaps most important to clarify firstly where rehabilitation fits amongst the normative justifications of punishment.

As Tonry (2006: 16) argues:

‘The overriding normative function of a sentencing system in a society committed to individual liberty, procedural fairness, and limited powers of government is to assure that individuals convicted of crimes receives the sentences that, in principle, they should.’

At first sight, this statement seems a little vacuous or circular – the point of doing justice is to do justice – but, at least in liberal democracies, it is vital to surface this too easily taken-for-granted assumption. If punishment involves the state in imposing harms on its citizens, then the process by which this is done must be carefully bounded and governed. But of course what is in and ‘out of bounds’ in sentencing depends to some extent on the normative principles that govern it.

Tonry (2006) goes on to expose the enduring tensions between Kantian and utilitarian approaches to punishment. The former are essentially retrospective and concerned with the delivery of retribution or ‘just deserts’, in proportion to the severity of the offence and the blameworthiness of the offender. The latter are essentially prospective and concerned with the delivery of preventive effects; as we noted above, these are increasingly cast as the protection of the public and the reduction of offending and reoffending. These effects can be advanced through deterrence, incapacitation or rehabilitation. Tonry (2006: 18) notes that there ‘are good reasons why no relatively philosophically pure sentencing system [on either model] exists or has been seriously proposed at a policy level’. He goes on to illustrate the practical problems of both Kantian and utilitarian approaches, and reviews a range of attempts to construct credible hybrid theories. Whatever the conceptual merits of these theories however, there is no doubt that in practice hybrid systems abound, though this is not to say that these systems are clearly articulated, coherent or defensible. One common feature of most hybrid systems is a commitment to some form of ‘limiting retributivism’ (Morris, 1974), in which culpability sets upper limits for the severity of any punishment to be imposed. The intrusions of punishment, in other words, must never be greater than are merited by the offender’s culpability (and perhaps by the gravity of the offence).

As we have already seen, this limiting principle surfaced in the work of the new rehabilitationists of the 1980s and 1990s, requiring the intrusions of rehabilitation to be bounded by proportionality. Though this does represent a significant and suitable response to some of the criticisms of rehabilitation

discussed above, for advocates and practitioners of rehabilitation, the direct engagement with questions of justice and deserts that it entails has often been uncomfortable. Historically, at least in some jurisdictions (see McNeill, Bracken and Clarke, 2010), probation and criminal justice social workers have often considered themselves as providers and advocates of (usually rehabilitative) *alternatives to punishment*, rather than as providers and advocates of *alternative punishments*. Somehow the notion of punishing, as opposed to supporting, supervising, treating or helping – or even challenging and confronting – has seemed inimical to the ethos, values and traditions of probation and social work (cf. Garland, 1997).

More recently, a different approach to the justification of punishment has perhaps offered the prospect of resolving some of these tensions, and of conceiving of punishment *as* rehabilitation (Duff, 2005). The penal philosopher Antony Duff – whose theory of punishment as communication has been highly influential -- has argued convincingly that we can and should distinguish between ‘constructive punishment’ and ‘merely punitive punishment’ (Duff, 2001, 2003). Constructive punishment can and does involve the intentional infliction of pains, but only in so far as this is an inevitable (and intended) consequence of ‘bringing offenders to face up to the effects and implications of their crimes, to rehabilitate them and to secure... reparation and reconciliation’ (Duff, 2003: 181). Duff (2005) is not arguing for rehabilitation as moral education; to do so would infantilise offenders as well as calling into question their culpability for their crimes. Rather than restoring or correcting a deficit *in the offender*, moral rehabilitation aims to repair a breach *in the relationships* between the offender, the victim and the community that the offence has created. Repairing the breach is principally the offender’s responsibility; the starting point is a sincere apology which represents the recognition of the wrong done and the relational breach that it has created. But in most criminal cases an oral apology – however sincere – will not be enough:

‘...something more is required—something that will make more forceful the apology that I owe...; something that will show that I am taking seriously the need to avoid such wrongs in future, and to reform myself and my conduct. Two elements of such moral rehabilitation might be, first, undertaking some burdensome task to express my apologetic repentance...; second, taking steps to address the causes or sources of my wrongdoing, and perhaps seeking help—whether informal or formal—in dealing with them’ (Duff, 2005: 19).

Duff (2005) admits that he is speaking of criminal justice as it could be, or as it should be, rather than as it is. Nonetheless, he sees in some contemporary practices at least the opportunity for this kind of penal communication and for moral rehabilitation to take place:

‘The burden that the offender is required to undertake, as his punishment, can be seen as constituting a formal, and forceful, apology to his victim and to the wider community. The apology has something of the quality of a public ritual rather than of a sincere expression of personal feelings,

though we may hope that it will become sincere; but it serves to make clear to the offender the wrong that he has done, and for which he owes and is required to offer this apology, and to make clear to the victim our shared recognition of that wrong. Furthermore, a probation order involves, as probation officers often put it, an attempt to... help the offender to confront the character and implications of his crime, and to find ways of avoiding repeating it, partly by programmes that seek to address offending behaviour and its causes: by undertaking such programmes the offender is also making apologetic reparation for his crime' (Duff, 2005: 19).

Duff's work also helps us with a second problem, already referred to above, since he recognises that where social injustice is implicated in the genesis of offending, the infliction of punishment (even constructive punishment) by the state is rendered morally problematic. The state itself can be seen as complicit in the offending through having failed in its prior duties to the 'offender', for example, as is so often the case, where the offender was once a child in the care of the state. For this reason, Duff suggests that probation officers or social workers should play a pivotal role in mediating between the offender and the wider polity, holding each one to account on behalf of the other. Here, Raynor and Robinson's (2009) discussion of the relationships between reintegration, resettlement and rehabilitation is relevant – the rehabilitation worker's attempt to advocate for the ex-offender, to secure access (perhaps for the first time) to the full rights of citizenship acts as the counterbalance to direct work with the offender to invite and support their moral rehabilitation. This discomfiting, mediating space is one which many probation and social workers will recognise that they occupy and through which, with or without official or public support, they seek to promote social justice within criminal justice.

There are other conceptual and empirical links that could be developed here, but to which we can only briefly refer. Duff's work also resonates with the rise of reparation or paying back as an important justification of punishment (see McNeill, 2009; 2011; Robinson, McNeill and Maruna, forthcoming). Intriguingly, there is some empirical evidence that 'making good' is important for many of those desisting from crime (Maruna, 2001). In a sense, the relevance in this body of evidence of the concept of 'generativity' – referring to the human need to make some positive contribution, often to the next generation – hints at the links between paying back and paying forward, in the sense of making something good out of a damaged and damaging past (see McNeill and Maruna, 2007). Bazemore's (1998) work on 'earned redemption' examines more directly the tensions and synergies between reform and reparation, and the broader movements around 'relational justice' (Burnside and Baker, 1994/2004) and restorative justice (Johnstone and Van Ness, 2007) provide possible normative frameworks within which to further debate and develop these tensions and synergies.

### **When Rehabilitation is Punishment**

Before trying to reach some conclusions about the relationships between rehabilitation and punishment, it is necessary to turn the chapter's title around and explore 'when rehabilitation is punishment' or perhaps to ask more directly 'does rehabilitation hurt?'

Duff's answer to the question, as we have already seen is a qualified 'yes'. There is no sincere apology, and therefore no real moral rehabilitation, without at least the pain of confronting and admitting the wrong, and perhaps also the incidental pains of the work required to repair the breach in relationships. But beyond this principled position, there is also a growing body of empirical scholarship which shows that rehabilitation (of the therapeutic or correctional sort) also hurts in other ways, some of which may be less productive and less defensible than the pains Duff has in mind.

There is, of course, an extensive body of scholarship, in the tradition of Gresham Sykes' (1958) seminal work, on the pains of imprisonment. More recent iterations of this literature point not just to the peculiar pains of life in 'supermax' conditions (King, 2005) but also to the pains and harms of mass incarceration itself (Haney, 2005), and to the pains and harms suffered by prisoners' partners and families, through 'secondary prisonization' (Comfort, 2007).

Perhaps more directly pertinent here are the pains of penal rehabilitation in its current risk-focused guise. Thus, for example, we find evidence, of burgeoning resentment amongst English prisoners towards what apparently seems to them to be the capricious and illegitimate exercise of 'soft power' by prison psychologists involved in key decisions about prisoner progression or release (Crewe, 2009; and more generally Maruna 2011). In similar vein, Lacombe's (2008) ethnographic study of prison-based sex offender programs reveals the ways in which risk-based rehabilitation invites sex offenders to contort their perceptions and presentations of self in line with the requirements of the particular program or process to which they are subject. Cox's (2012) compelling ethnographic analysis of the pains of youth imprisonment reveals a similar picture.

These pains of risk-based rehabilitation extend beyond the prison too. The traditional absence of punitive intent in probation or criminal justice social work (noted above) does not necessarily entail an absence of 'penal bite'; at least if studies of those subject to community supervision are to be taken seriously. For example, researchers at the RAND corporation in the USA found that there are intermediate sanctions which surveyed prisoners equate with prison in terms of punitiveness. For some individuals, intensive forms of probation 'may actually be the more dreaded penalty' (Petersilia and Deschenes 1994: 306; see also Petersilia 1990; Payne & Gainey 1998; May & Wood 2010). More recently, Durnescu (2011) has specifically explored the 'pains of probation' as experienced in Romania. Alongside deprivations of time and the other practical and financial costs of compliance, and limitations on their autonomy and privacy, probationers also reported the pain of the 'forced return to the offence' and the pain of a life lived 'under a constant threat'. The threat in question in Durnescu's

(2011) study was that of breach or revocation and with it further punishment, but the works referred to in the last paragraph also point to the threat of failing to persuade a probation officer, a psychologist, or some other professional that one's 'riskiness' can be and is being properly addressed and managed.

In one sense, there is little that is truly novel in this. For a prisoner of the Eastern State Penitentiary in the 19<sup>th</sup> century, placed in silent and solitary confinement in the hope that he would repent and make his peace with his Maker, the pains of penitentiary reform were doubtless profound. His project of 'coercive soul transformation' may have been designed and delivered somewhat differently than that directed at the late-modern risk-bearing prisoner or probationer – but both are subjected to disciplinary regimes (Foucault 1975/1977). But what may be peculiarly demanding for the late-modern penal subject is that, rather than being left to deal, before God, with his own sinfulness and redemption, s/he is compelled to *display* the malleability of his or her riskiness, to *perform* the reduction and the manageability of his or her riskiness. At least in some risk-based systems, it is the credibility of this performance which will determine progression in and release from punishment. In those circumstances, rehabilitation is both disciplinary and punishing in a particularly potent way (see Crewe, 2012).

Perhaps presaging these developments, Edgardo Rotman (1994), whose work we referred to above, draws an important distinction between anthropocentric and authoritarian rehabilitation:

'The authoritarian model of rehabilitation is really only a subtler version of the old repressive model, seeking compliance by means of intimidation and coercion. Rehabilitation in this sense is essentially a technical device to mould the offender and ensure conformity to a pre-designed pattern of thought and behaviour... The anthropocentric or humanistic model of rehabilitation, on the other hand, grants primacy to the actual human being rather than metaphysical fixations or ideologies, which long served to justify the oppressive intervention of the state. Client centred and basically voluntary, such rehabilitation is conceived more as a right of the citizen than as a privilege of the state. A humanistic public policy regarding crime implies the idea of human perfectibility, which at the level of rehabilitation includes not only the offenders themselves, but also the society that bred them and the institutions and persons involved in their treatment' (Rotman, 1994: 292).

This distinction, and more specifically its implication that the person engaged in rehabilitation must be treated as a moral subject and not as a material object to be manipulated or adjusted in the interests of others, seems central to many of the claims that can be made for and against rehabilitation – and to the question of its relationships with punishment.

## **Conclusion: When is Punishment Rehabilitation?**

Returning finally to Raynor and Robinson's (2009) discussion of rehabilitation, with which we began, we can now clearly discern four main forms or meanings of rehabilitation. In a recent paper (McNeill, 2012), I have called these psychological, judicial, social and moral rehabilitation. These are the four strands of rehabilitation that must be 'de-fangled' in order for us to analyze their inter-relationships and mutual dependencies<sup>1</sup>.

By *psychological rehabilitation*, I mean essentially what Raynor and Robinson (2009) refer to as correctional rehabilitation that seek to somehow change or restore the offender; to develop new skills or abilities, to address and resolve deficits or problems. A better, less loaded term, might be 'personal rehabilitation', since this need not imply that any specific disciplinary perspective or set of techniques is implied in this project of personal change.

The second form of rehabilitation concerns the practical expression of Beccaria's concern with the requalification of citizens; this is *judicial rehabilitation* – which raises questions of when, how and to what extent a criminal record and the formal stigma that it represents can ever be set aside, sealed or surpassed. Maruna (2011b) has recently argued cogently that efforts to sponsor rehabilitation and reform must address the collateral consequences of conviction – mostly notably its stigmatising and exclusionary effects -- or be doomed to fail. No amount of correctional or psychological or personal rehabilitation, and no amount of supporting offenders to change themselves, can be sufficient to the tasks and challenges of reintegration, resettlement and reentry, if legal and practical barriers are left in place.

But these barriers are not just legal – they are moral and social too. A solely correctional, psychological or personal conception of rehabilitation is inadequate to the moral and social offence that crime represents. In simple terms, doing something for or to or (better) with the offender, even something that aims at somehow changing them so as to reduce future victimisation, fails to engage with other key aspects of dispensing justice. Perhaps most importantly in moral terms, psychological rehabilitation offers no moral redress *per se*; it operates only on the individual 'offender', not on the conflict itself and not on the victim or the community (Zedner, 1994). In Duff's (2005) terms, it leaves the relational breach unrepaired. Critically, reparation – and reparative work in particular -- seems capable of fulfilling this function in ways in which psychological rehabilitation in and of itself cannot, perhaps principally because reparation seems better able to convey (not least visibly) that redress is being actively provided. Though, as Duff (2005) reminds us, willingly undergoing psychological rehabilitation can convey the sincerity of the offender's apology and of his or her desire to change, it is more typically a professionalised, private and secretive business, and not one that is explicitly bound into a process of moral rehabilitation.

---

<sup>1</sup> This section of the paper draws on part of a conference paper co-authored with Shadd Maruna (McNeill and Maruna, 2010). I am grateful to Shadd for permission to use some of that material here.

Reparation perhaps speaks to the insistence that moral demands have to be satisfied, and moral communication secured, before *moral rehabilitation* can be recognised (Duff, 2001, 2003, 2005). In simple terms, an offender has to 'pay back' or to 'make good' before s/he can 'trade up' to a restored social position as a citizen of good character (McNeill and Maruna, 2010). As Bazemore (1998) has argued, redemption needs to be earned. This is not necessarily bad news for rehabilitation; as the Scottish Prison Commission (2008, para 33) noted, 'one of the best ways for offenders to pay back is by turning their lives around'. But it does mean that rehabilitation theories and practices need to engage much more explicitly than hitherto with questions of justice and reparation.

Ultimately, even where psychological or personal issues are tackled, legal requalification is confirmed and moral debts are settled, the question of 'social rehabilitation' remains. In European jurisprudence, the concept of 'social rehabilitation' entails both the restoration of the citizen's formal social status and the availability of the personal and social means to do so (Van Zyl Smit and Snacken, 2009). But here, I mean instead something that is broader, deeper and more subjective; specifically, the informal social recognition and acceptance of the reformed ex-offender. This, rather than the advancement of the 'science' of correctional rehabilitation, is perhaps the ultimate problem for rehabilitation today in practice.

FIGURE ONE HERE

Ultimately, as figure one above illustrates, I have tried in this chapter to disentangle rehabilitation and instead to show how its four forms might, in fact, constitute not a Scots 'fankle', but a kind of Celtic knot; one that weaves together these four strands and reveals their interdependencies. 'Constructive punishment', to use Duff's term, can be rehabilitative; it should be rehabilitative; it must be rehabilitative. But it can only work to prevent crime if it also works to deliver justice, and that requires attention to all four strands.

### **Suggested Further Reading**

There are two excellent textbooks that I would recommend on rehabilitation:

- Raynor, P. and Robinson, G. (2005) *Rehabilitation, Crime and Justice*, Basingstoke: Palgrave Macmillan.
- Robinson, G. and Crow, I. (2009) *Offender Rehabilitation: Theory, Research and Practice*. London: Sage.

On the broader subjects of justice and punishment, I suggest:

- Hudson, B. (2003) *Understanding Justice*. 2<sup>nd</sup> edition. Buckingham: Open University Press.

For useful collections of readings on these topics, I recommend:

Submitted to: G. Bruinsma and Weisburd, D. (eds.)(forthcoming) *The Springer Encyclopedia of Criminology and Criminal Justice*. Springer.

- Duff, A. and Garland, D. (eds.)(1994), *A reader on punishment*, Oxford: Oxford University Press.
- Priestley, P. and Vanstone, M. (2010) *Offenders or Citizens? Readings in Rehabilitation*. Cullompton: Willan.

For more detailed treatments of the various issues raised in the chapter, I'd suggest starting with the works cited in the bibliography.

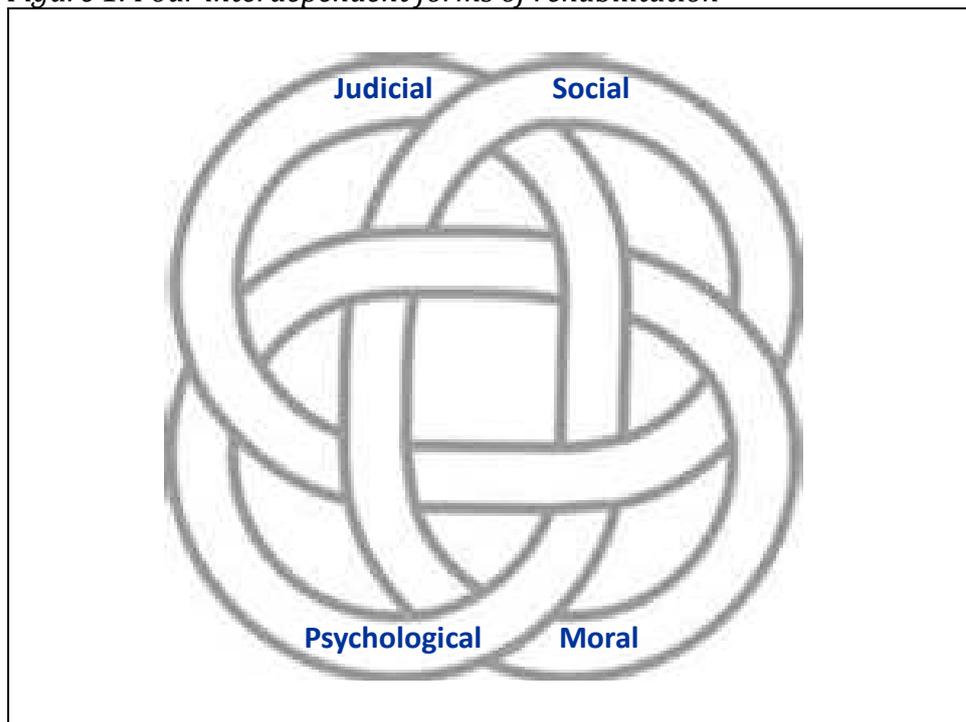
## References

- Bazemore, G. (1998) 'Restorative justice and earned redemption: communities, victims, and offender reintegration' *American Behavioral Scientist*, 41(6): 768-813.
- Beccaria, C. (1764/1963). *On Crimes and Punishment*, (trans. H. Pallouci). Indianapolis: Bobbs-Merrill.
- Bottoms, A. (1980). An Introduction to 'The Coming Crisis'. In A. Bottoms and R. Preston (Eds.) *The Coming Penal Crisis*. Edinburgh, UK: Scottish Academic Press.
- Burnside, J. and Baker, N. (eds.)(1994/2004) *Relational Justice: Repairing the Breach*. Winchester: Waterside Press.
- Comfort, M. (2007) *Doing Time Together: Love and Family in the Shadow of the Prison*. Chicago: University of Chicago Press.
- Cox, A. (2012) 'Doing the programme or doing me? The pains of youth imprisonment', *Punishment and Society*, 13(5): 592-610.
- Crewe, B. (2009). *The Prisoner Society: Power, Adaptation and Social Life in an English Prison*. Oxford, UK: Oxford University Press.
- Crewe, B. (2012) 'Depth, weight, tightness: Revisiting the pains of imprisonment', *Punishment and Society*, 13(5): 509-529.
- Crow. I. (2001) *The Treatment and Rehabilitation of Offenders*. London: Sage.
- Cullen, F. and Gilbert, K. (1982). *Reaffirming Rehabilitation*. Cincinnati, Ohio: Anderson.
- Duff, A. (2001). *Punishment, Communication and Community*. New York, NY: Oxford University Press.
- Duff, A. (2003) 'Probation, Punishment and Restorative Justice: Should Altruism Be Engaged in Punishment?', *The Howard Journal* 42(1): 181-97.
- Duff, A. (2005) Punishment and Rehabilitation -- or rehabilitation as punishment. *Criminal Justice Matters*. 60(1): 18-19.
- Durnescu, I. (2011) 'Pains of probation: Effective practice and human rights', *International Journal of Offender Therapy and Comparative Criminology*, 55: 530-545.
- Foucault, M. (1975/1977). *Discipline & Punish*. (English trans. 1977), London, UK: Allen Lane.
- Garland, D. (1985). *Punishment and Welfare*. Aldershot, UK: Gower.
- Garland, D. (1997) 'Probation and the Reconfiguration of Crime Control', in Burnett, Ros (ed.), *The Probation Service: Responding to Change, Proceedings of the Probation Studies Unit First Colloquium*. Probation Studies Unit Report No. 3, Oxford: University of Oxford Centre for Criminological Research.
- Garland, D. (2001). *The Culture of Control*. Oxford, UK: Oxford University Press.
- Haney, C. (2005) *Reforming Punishment: The Psychological Limits to the Pains of Punishment*. Washington: American Psychological Association.
- Hudson, B. (2003) *Understanding Justice*. 2<sup>nd</sup> edition. Buckingham: Open University Press.
- Johnstone, G. (1996) *Medical Concepts and Penal Policy*. London, UK: Cavendish

- Publishing.
- Johnstone, G. and Van Ness, D. (eds.)(2007) *The Handbook of Restorative Justice*. Cullompton: Willan.
- King, R. (2005) 'The effects of supermax custody' in Liebling, A. and Maruna, S. (eds.) *The Effects of Imprisonment/* Cullompton: Willan.
- Lacombe, D.(2008) 'Consumed With Sex: The Treatment of Sex Offenders In Risk Society', *British Journal of Criminology*, 48 (1): 55-74.
- Lewis, S. (2005) 'Rehabilitation: Headline or Footnote in the New Penal Policy?' *Probation Journal*, 52, 119-35.
- McCulloch, P. and McNeill, F. (2007) 'Consumer Society, Commodification and Offender Management', *Criminology and Criminal Justice*, 7, 223-242
- McGuire, J. (ed.)(1995) *What Works? Reducing Reoffending*. Chichester: Wiley.
- McNeill, F. (2006) 'A desistance paradigm for offender management', *Criminology and Criminal Justice*, 6(1): 39-62.
- McNeill, F. (2009) 'Probation, Rehabilitation and Reparation' *Irish Probation Journal* 6: 5-22.
- McNeill, F. (2011) 'Probation, Credibility and Justice', *Probation Journal* 58(1): 9-22.
- McNeill, F. (2012) 'Four forms of supervision: Towards an interdisciplinary perspective', *Legal and Criminological Psychology*, 17(1): 18-36.
- McNeill, F. and Maruna, S. (2007) 'Giving Up and Giving Back: Desistance, Generativity and Social Work with Offenders' in McIvor, G. and Raynor, P. (eds.) *Developments in Social Work with Offenders. Research Highlights in Social Work* 48. London: Jessica Kingsley.
- McNeill, F. and Maruna, S. (2010). *Paying Back and Trading Up: Reforming Character*. An oral paper presented at the European Society of Criminology Conference, Liege, September 2010.
- McNeill, F., Bracken, D. and Clarke, A. (2010) 'Social Work and Criminal Justice' in I. Shaw, K. Briar-Lawson, J. Orme, and R. Ruckdeschel (eds.) *The Sage Handbook of Social Work Research*, London and New York: Sage
- McNeill, F., Raynor, P. and Trotter, C. (eds.)(2010) *Offender Supervision: New Directions in Theory, Research and Practice*. Cullompton: Willan.
- Maruna, S. (2001) *Making Good*. Washington, DC: American Psychological Association.
- Maruna, S. (2011) 'Why Do They Hate Us? Making Peace Between Prisoners and Psychology', *International Journal of Offender Therapy and Comparative Criminology*, 55: 671-675.
- Maruna, S. (2011b) 'Judicial Rehabilitation and the 'Clean Bill of Health' in Criminal Justice', *European Journal of Probation*, 3: 97-117.
- May, D., & Wood, P. (2010) *Ranking Correctional Punishments: Views From Offenders, Practitioners and the Public*. Carolina Academic Press.
- Morris, N. (1974) *The Future of Imprisonment*. Chicago: University of Chicago Press.
- Payne, B.K. & Gainey, R.R. (1998) 'A qualitative assessment of the pains experienced on electronic monitoring', *International Journal of Offender Therapy and Comparative Criminology*, 42, 2: 149-63.

- Petersilia, J. (1990) 'When probation becomes more dreaded than prison', *Federal Probation*, 54: 23-27.
- Petersilia, J. and Deschenes, E. (1994) 'Perceptions of punishment: Inmates and staff rank the severity of prison versus intermediate sanctions', *The Prison Journal*, 74, 3: 306-328.
- Raynor, P. (2007) 'Risk and need assessment in British probation: The contribution of LSI-R', *Psychology, Crime and Law*, 13: 121-138.
- Raynor, P. and Robinson, G. (2009) *Rehabilitation, Crime and Justice*. Houndmills: Palgrave Macmillan.
- Robinson, G. (2008) 'Late-modern Rehabilitation: The Evolution of a Penal Strategy', *Punishment and Society*, 10, 429-445.
- Robinson, G. and Crow, I. (2009) *Offender Rehabilitation: Theory, Research and Practice*. London, UK: Sage.
- Robinson, G. and McNeill, F. (2004) 'Purposes Matters: The Ends of Probation', in G. Mair (ed.) *What Matters in Probation Work*. Cullompton, UK: Willan.
- Robinson, G., McNeill, F. and Maruna, S. (forthcoming) 'Punishment in Society: The Improbable Persistence of Community Sanctions' in Simon, J. and Sparks, R. (eds.) *The Sage Handbook of Punishment and Society*, London and New York: Sage.
- Rose, N. (1989) *Governing the Soul*. London, UK: Routledge.
- Rotman, E. (1990) *Beyond Punishment. A New View of the Rehabilitation of Criminal Offenders*. New York, NY: Greenwood Press.
- Rotman, E., (1994) 'Beyond punishment', in Duff, A. and Garland, D. (eds.), *A reader on punishment*, Oxford: Oxford University Press.
- Scottish Prisons Commission (2008). *Scotland's Choice*. Edinburgh: Scottish Prisons Commission.
- Sykes, G. (1958) *The Society of Captives: A Study of a Maximum-Security Prison*. Princeton, NJ: Princeton University Press.
- Tonry, M. (2006) 'Purposes and Functions of Sentencing' in Tonry, M. (ed.) *Crime and Justice: a Review of Research*, vol. 34, Chicago: University of Chicago Press.
- Van Zyl Smit, D. and Snacken, S. (2009). *Principles of European Prison Law and Policy*. Oxford, UK: Oxford University Press.
- Zedner, L. (1994). Reparation and Retribution: Are They Reconcilable? *The Modern Law Review*, 57, 228-250.

*Figure 1: Four interdependent forms of rehabilitation*



Upside of Punishment Punishment can be much more beneficial to society, and there for more effective at fixing the problem, than rehabilitation. Punishment can take many forms. Some of which are prison, community service, and death. Second, we intend to argue that regardless of what such research shows, punishment is preferable to rehabilitation as an aim of criminal justice and, in particular, that punishment through confinement is the most appropriate mission for a prison.Â Rather, punishment is a significant aspect of culture, with meaning and merit in itself. It is a symbol and an expression of cultural and moral values. Punishment - Punishment - Rehabilitation: The most recently formulated theory of punishment is that of rehabilitationâ€”the idea that the purpose of punishment is to apply treatment and training to the offender so that he is made capable of returning to society and functioning as a law-abiding member of the community.Â A lenient sentence (such as probation) designed to rehabilitate an offender may fail to