

## **WHY HELP OFFENDERS? ARGUMENTS FOR REHABILITATION AS A PENAL STRATEGY**

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### **Abstract**

*This article considers the variety of theoretical justifications, or moral arguments, which have been put forward to support approaches that can be broadly described as 'rehabilitative'. The article takes an historical approach, tracing the development of ideas supportive of rehabilitation which begins with the origins of probation in England & Wales, and the Christian mission to 'save souls'. In the twentieth century context, we consider the emergence of a utilitarian emphasis on maximising decent and productive members of society, subsequently challenged by arguments which emphasised state-obligated or 'rights-based' rehabilitation. More recently, utilitarian arguments emphasising rehabilitation's contribution to public safety and 'risk reduction' have risen to the fore. However, we argue that justifications which emphasise offenders, victims and/or communities as beneficiaries of rehabilitation need not be in conflict; nor should probation services have to choose between the broad ranges of stakeholders they are potentially able to serve.*

### **Key words**

Rehabilitation - Utilitarian approaches - Treatment model – Rights - Strengths-based approaches - Restorative justice.

### **Introduction**

Two opposing trends are clearly evident today in the international development of penal systems. Both have important but contradictory implications for the current position and future prospects of rehabilitation as a penal strategy. The first, particularly evident in the English-speaking world, is a drift towards more punitive sentencing and the increasing use of imprisonment, both as retribution to satisfy a perceived public demand for harsher treatment of offenders and as a means of incapacitation. This trend, variously identified

as populist punitiveness (Bottoms, 1995), the new punitiveness (Pratt et al., 2005) or a culture of control (Garland, 2001) has little use for rehabilitation: information about the personal lives of offenders is seen as useful for determining the level of control to be exercised, as in the theory of ‘actuarial justice’ (Feeley and Simon, 1994) and politicians fear that talk about helping offenders will make them appear soft on crime. At the same time, there has been a powerful movement towards the internationalization of probation through the establishment of probation services or equivalent agencies in countries where they represent a new development. This trend has been particularly connected with the expansion of the European Union, but also involves countries outside Europe such as China. In addition, the Council of Europe has worked to promote less punitive penal policies based on the prioritization of human rights (Snacken, 2006). Expanding the use of probation services implies a commitment to the rehabilitation of offenders, but the attempt to maintain this commitment against competing penal trends is not straightforward, particularly at a time when the prospect of global economic recession threatens to aggravate social tensions.

In this context, it is important to understand the arguments which have historically been put forward for placing rehabilitation at the heart of modern penal systems, and the forms in which these arguments can be advanced today. In this article, we review various arguments for rehabilitation, based on our recent work (Raynor and Robinson, 2005; Robinson and Raynor, 2006) and drawing particularly on experience in England and Wales where, currently, both penal trends are strong: imprisonment has increased by about 60% since 1995, but, at the same time, the National Offender Management Service has been an energetic participant in international aid programmes aimed at establishing or strengthening probation services in other countries.

The rehabilitation of offenders can be defined and understood in a number of different ways. At different points in the history of modern penal systems different models of rehabilitation have been current, and each of them has different implications for policy, for sentencing and for direct practice with offenders. Each model also carries with it, in explicit or implicit forms, a set of arguments about why it is worth doing. An activity which is complex, expensive, difficult and unsure of success needs arguments in its support when it competes for resources, or needs to establish its claims against other aims of sentencing such as deterrence or incapacitation. In short, the desirability of rehabilitation is not always taken for granted, and its advocates need from time to time to deploy defences or justification of what they propose. This article explores the different kinds of justifications that have been offered to support various models of rehabilitation.

At the outset, it is important to realize that this is not simply a matter of deploying evidence about effectiveness. In recent years, we have tended to take for granted that the most important question to ask about rehabilitation is ‘What works?’ or, in other words, what means can we use to pursue our goals in the most effective manner? There has been less discussion about what those goals should actually be. Usually, the implied goal seems to be less re-offending by sentenced offenders, but other versions of rehabilitation have pursued very different goals: for example, the salvation of human souls, or the healing of damaged relationships, or a greater sense of safety or security in the everyday

life of communities. These different goals reflect the different values placed on different kinds of outcome, and these values themselves often draw on further assumptions about human nature or human purposes. Consequently, the arguments in this article are to some extent conceptual, concerned with the logical implications or assumptions of particular kinds of ‘rehabilitation talk’. The point of this kind of argument is that if our goals are normally taken for granted rather than discussed, they can become confused or incoherent.

Justifications for rehabilitation are essentially moral arguments about what society *ought* to do in relation to offenders, and arguments about what we *ought* to do cannot simply be derived from evidence about what we *can* do: there are plenty of things we can do which we clearly ought not to do. However, there are other kinds of relationship between evidence and justification. One, as moral philosophers frequently remind us, is that ‘ought implies can’: we cannot reasonably claim that someone has a duty to achieve what is impossible. Another is that different kinds of argument logically require certain kinds of evidence: for example, arguments based on the effectiveness of rehabilitation require empirical evidence of the changes it produces in offending behaviour, whilst arguments based on the rights of offenders require demonstrations of consistency with generally accepted principles concerning human rights. Such demonstrations belong to a logically different category of evidence, to which no amount of reconviction-counting could be relevant. This article, in identifying different kinds of justification advanced for rehabilitation, is also concerned with the kinds of evidence or argument logically required by each.

### **Prison, drink and saving souls**

Histories of the Probation Service in England and Wales, usually, start from the Church of England Temperance Society’s decision in 1876 to establish a missionary service in certain police courts (see, for example, McWilliams, 1983; Vanstone, 2004). This was an extension of their normal work of trying to persuade sinners, and particularly drunkards, to reform. Ultimately, this was for the good of their souls, as well as to reduce the harm they would otherwise continue to do to themselves and others, such as their families. The missionaries’ activity clearly belongs in the rehabilitative tradition: a successful outcome was a respectable, self-supporting, abstinent citizen making his way in the world, or a dutiful, thrifty, abstinent wife and mother. The ultimate goal and justification, however, was their spiritual welfare: the successfully helped offender was ‘saved’ rather than ‘lost’. Christians had a duty to show mercy to sinners, and charity gave this a practical form, but active and caring human contact was necessary to persuade sinners and unfortunates to reform. This kind of work was seen as the business of voluntary organisations and charities rather than Government. Governments saw their role as safeguarding the conditions for economic development and wealth-creation: this they did partly by operating a harsh Poor Law designed to deter idleness and dependency, and a punitive criminal justice system. Meanwhile, they generally welcomed the contribution of private and what would now be called faith-based charities, provided that these were not too disruptive or radical. For example, a book published in London in 1890 by the Salvation Army (a religious and social movement) argues that criminals are, sometimes, ‘hereditary’, but their numbers are constantly increased by others who slip into criminality through sheer misfortune: ‘Absolute despair drives many a man into the ranks

of the criminal class, who would never have fallen into the category of criminal convicts if adequate provision had been made for the rescue of those drifting to doom.’ (Booth, 1890, p. 58).

Such people may lack the strength or good fortune to reform, particularly when the social reaction to their criminal status denies them the opportunity: ‘When once he has fallen, circumstances seem to combine to keep him there ... the unfortunate who bears the prison brand is hunted from pillar to post, until he despairs of ever regaining his position, and oscillates between one prison and another for the rest of his days.’ (ibid.) However, given appropriate help, such a man might ‘regain his position’ and more. Booth quotes in detail an account written by one recidivist who despaired of finding the means of survival outside prison until: ‘In this dire extremity the writer found his way to one of our Shelters, and there found God and friends and hope, and once more got his feet on the ladder which leads upward from the black gulf of starvation to competence and character, and usefulness and Heaven.’ (Booth, 1890, p. 61). Social and spiritual rehabilitation are presented here as one process, but the overarching goal is salvation, and other achievements are valued mainly as means towards this end. In addition, the pursuit of salvation and the exercise of mercy are matters for individual choice rather than public policy, and mercy assumes that severity is the norm, since mercy consists in not exacting the usual rigorous penalty. Evidence of achievement of the ultimate goal of salvation is beyond the reach of secular social science; on the other hand, ‘competence, character and usefulness’ are themes which return, in various forms, throughout the history of rehabilitation.

### **Utility, the State and social reconstruction**

As Garland (1985) points out, the early part of the 20<sup>th</sup> century was already seeing the emergence of a ‘penal-welfare complex’ which, among other developments, began to involve the State as a key actor in the business of rehabilitating offenders. No longer was the offender to be rehabilitated to save a soul for God; instead, he or she was to be helped towards ‘competence, character and usefulness’ in the service of the proper collective goals of a secular State – a good citizen rather than merely a good person. This was to emerge most clearly around the middle of the century, when two major wars separated by an economic crisis had led to the development, particularly in Europe and the United States, of forms of government which practised a high degree of intervention in the economic and social life of citizens. Those citizens had learned to work together in the common (national) interest, and increasingly expected Governments to develop collective solutions to social problems. The dominance of the machinery of government, and the dominant economic role of government expenditure which had developed during the war years, were turned in the 1940s to the new task of social reconstruction through the development of Welfare States (Sullivan, 1996), and the construction of the citizens of the future through publicly funded education. The criminal justice system was only a small part of the system of Government but was also touched by this reformist vision, in which new models and methods for the rehabilitation of offenders were enthusiastically advocated and practised.

A good example is provided by the work of Herman Mannheim, a refugee from Nazi Germany who brought his experience of German jurisprudence and continental criminology with him to Britain and, in turn, became one of the pioneers of British criminology (Hood, 2004). In one of his books, 'Criminology and Social Reconstruction' published in 1946, he sets out a programme for the development of the criminal justice and penal systems in the 'reconstructed' post-war societies. Along with a chapter on making the administration of criminal justice 'more democratic', he provides a set of recommendations for making it 'more scientific'. The aim, firmly in the Utilitarian tradition, is a penal system which will have the best effects for society as a whole. The transformation of offenders into decent and useful members of the community by the most efficient means, whether that involves reducing the reach of the criminal law or changing the behaviour of offenders, is a project in the best Utilitarian tradition, which always attempted to apply clear principles to the practical business of social administration (Bentham, 1823). It also offers a clear justification for rehabilitative efforts: they are undertaken in the interests of society as a whole, to maximise the availability of 'decent and useful members of the community' (Mannheim, 1946, p. 62) for the collective task of social reconstruction.

The means to be used in delivering the new 'scientific' criminal justice were, primarily, new 'expert' inputs into the sentencing and management of offenders. 'Experts' (psychiatrists and psychologists) should advise the Court before sentence, and a 'Treatment Tribunal' should be set up, based largely on the model of the California Youth Correction Authority established in 1941, to classify, allocate and if possible rehabilitate offenders placed into its care under indeterminate sentences passed by the Courts. Mannheim clearly perceived some problems in relation to traditional ideas of fairness: "It is no use denying that, in its practical consequences, individualization of treatment, that dominating principle of modern penology, is bound to clash with the traditional requirements of justice as understood by the man in the street" (Mannheim, 1946, p. 228). However, the claims of modernity were not to be denied by such old-fashioned prejudices:

a partial solution to the problem lies in the working out of really scientific principles of individualization which will make it possible at least roughly to re-establish the rule of equal treatment of equals. . . As soon as these new principles become known and accepted, beyond a small circle of experts, by the community at large, individualization will no longer be suspected as injustice (pp. 228-9).

As first steps in reform, Mannheim proposed the setting up of a central Board to advise the Courts and manage the whole institutional side of the penal system; an extension of the scope of indeterminate sentencing; and the prohibition of short prison sentences, with "consequent strengthening of the Probation Service" (p. 237).

### **Variations in the utilitarian approach**

The utilitarian justification of rehabilitation as being in the interests of society as a whole has taken a number of forms in its long and influential life, but one of the most obvious and important changes is a periodic shift between what might be called a strong and weak version of the argument, or perhaps more accurately an optimistic and a guarded claim.

Briefly, the strong or optimistic claim is that society as a whole benefits from dealing with offenders in such a way as to reduce their offending: rehabilitating offenders contributes to the general good. The weak or guarded claim is that although we cannot be confident in our ability to change offenders for the better, we can, at least, avoid unnecessary harm resulting from excessive or damaging penalties. This argument is often used, for example, to argue for a presumption in favour of community penalties and against custodial penalties, and often combined with the argument that even if the effects on offenders are similar, the custodial option is cheaper and so the principle of maximising general benefit applies. The choice between strong and weak forms of the argument depends largely on the state of current opinion regarding the effect of rehabilitative penalties on offenders' behaviour: the strong form of the argument is deployed in periods of optimism about this (Mannheim's proposals are a good example), and the weak form tends to be used in times when people are less confident about the effectiveness of rehabilitative penalties: if nothing works, cheaper is better. In our book (Raynor and Robinson, 2009) we review some dramatic shifts which have occurred between strong and weak versions of the argument.

The underlying optimistic or sceptical stances are, sometimes, influenced by evidence, but not only by evidence: the way in which evidence is received, understood, disseminated and used is in turn influenced by culture, ideology, social change and perceptions of political advantage. In Mannheim's time, the evidence that rehabilitative sentences could change offenders was not strong, but optimistic beliefs were supported by the general commitment to improvements in social welfare: as his contemporary Radzinowicz wrote, "[Probation] received a powerful stimulus from the contemporary change of attitude towards the purposes and effects of judicial punishment and from the ameliorative social creed of the Welfare State" (Radzinowicz, 1958, p. xi). In recent times, the empirical evidence has been stronger, but the political and social climate often less favourable.

In so far as these arguments depend on a utilitarian justification, they are vulnerable to a number of traditional criticisms of utilitarian theories of justice. These have recently been reviewed by Hudson (2003), and several of them are relevant to arguments about rehabilitation: for example, if rehabilitative penalties are held to be generally beneficial to society, does it matter if the offender who is being rehabilitated is not actually guilty of the offence, provided that he or she is generally believed to be guilty? One version of utilitarian theory is often believed to imply that punishment of the innocent is justified if it contributes to the general good, which clearly conflicts with widely accepted views about justice. The usual defence advanced against this argument by those sympathetic to Utilitarianism (see Urmson, 1953; Rawls, 1972) is that arguments about general benefit are concerned with social practices or rules governing action rather than with individual actions: from the perspective of this so-called 'Rule Utilitarianism' it is in the general interest to adhere to a rule that the innocent should not be punished, since such a rule is necessary to maintain confidence in criminal justice and protection from arbitrary punishment, and these are in the general interest.

Other criticisms are perhaps more telling: for example, if we are applying a ‘greatest happiness’ principle, might not executing some offenders make more people happy than rehabilitating them? If revenge is satisfying, why not provide it? These examples point to a need to distinguish between a ‘greatest happiness’ principle and what might be called a ‘greatest benefit’ principle, or between short-term wants and long-term interests. The kind of justifications of action required to make sense of utilitarian arguments are both more complex and more debatable than its original advocates thought. This is also evident from other long-standing criticisms of utilitarian justice which raise questions about individual rights, about the instrumental use of human beings and about what offenders deserve.

### **Rights, needs and ‘treatment’**

Questions about individual rights are most clearly raised by the example of conviction of the innocent discussed above, but they also inform arguments in favour of many aspects of procedural justice and due process such as the right to a hearing, to know the charges, to present and contest evidence, to be presumed innocent until proven guilty, and not to be tortured. The contemporary importance of these arguments is shown by the willingness of Governments to ignore national and international laws designed to protect such rights when they are seen as inconvenient obstacles to some higher purpose such as the ‘war on terror’. In the field of rehabilitation, arguments about rights are more likely to emerge in the less dramatic contexts of debates about consent to the imposition of court orders (originally, and still in many countries, a standard feature of probation orders, but abolished in England and Wales because it was actually argued, in a Home Office paper of 1995, that it detracted from the dignity of the Court). Defenders of consent are, in effect, asserting offenders’ right not to be subjected to arbitrary and indeterminate ‘treatments’ simply because somebody has decided this will do them good.

The topic of ‘treatments’ and ‘treatment models’ and the question of whether action taken to rehabilitate offenders can properly be understood as ‘treatment’ require some discussion at this point. Treating people who are ill is normally seen as a proper and desirable activity, and advocates of rehabilitation have often argued in the same way, both to add legitimacy to their efforts and to assert that the interests and needs of individuals lie at the heart of their approach. Again Radzinowicz provides a clear example: “... probation is fundamentally a form of social service preventing further crime by a readjustment of the culprit ...” (Radzinowicz, 1958, pp. xi-xii). This had also emerged as a professional consensus: for example, the European Seminar on Probation held in London in 1952 heard a paper from an official of the United Nations Secretariat on ‘Probation and its place in a rational and humane programme for the treatment of offenders’ (Pansegrouw, 1952). This informed the delegates that “probation is individualized treatment, and effective probation practice presupposes the intelligent use of scientific knowledge and techniques both in selection for treatment and in the treatment itself”, although the lecturer recognised that “at present, probation supervision and treatment in different jurisdictions still ranges from religious counselling or the unskilled advice of volunteer probation officers, on the one hand, to professional social case work, sometimes supplemented by psychiatric treatment, on the other” (Pansegrouw, 1952, p. 12-13). Here we see, at quite an early date, two of the themes which were to be

central to the growth of social work during the 1950s and 1960s: social workers were beginning to be seen (particularly by themselves) as professionals working scientifically, and their intervention was seen as justified by the needs and interests of individuals. In this way, they began to move the emphasis of their work away from utilitarian concern with the implementation of social policy towards a claim that individual needs and relationships were their primary focus.

This assertion of the central importance of individual needs was intended partly to guard against the utilitarian tendency (exemplified particularly by the authoritarian collectivist regimes then dominating Eastern Europe) to subordinate individual interests to collective requirements. Early classics of social work writing (such as Biestek, 1961) vigorously defended the individual focus. However, this stance in the emerging social work profession also attracted strong criticism for its neglect of a sociological understanding of social problems (Mills, 1943), its indifference to collective social policy initiatives (Sinfield, 1969) and its lack of an explicit agenda for radical social reform (Bailey and Brake, 1975). In the specific context of social work with offenders, criticism tended to focus on the idea of ‘treatment’: treatment implied illness, which was different from crime and typically involved involuntary incapacities rather than chosen misbehaviour (Flew, 1973); treatment, typically, involved doing things to a passive and objectified patient, rather than collaborating with an active and reasoning person to solve problems (Bottoms and McWilliams, 1979), and treatment attributed to individual pathology problems which were actually consequences of social disadvantage (Walker and Beaumont, 1981). Moreover treatment was, in other fields and professions, voluntary except for those demonstrably unable to decide for themselves: this was particularly true in those professions which social work aspired to emulate, such as medicine and psychotherapy.

Interesting mental gymnastics were performed in the attempt to assimilate supervision of offenders under a court order to the model of a voluntary therapeutic relationship. For example, Foren and Bailey (1969) argued that a degree of coercion of the ‘immature’ was justified by the fact that, when helped to become ‘mature’, they would appreciate how necessary it had been: a letter from a Borstal trainee to his probation officer thanking him for recommending a custodial sentence (Hunt, 1964) was quoted in support, and this no doubt rather untypical event had to carry the burden of justifying a curiously hypothetical and retrospective reframing of the concept of consent. Others argued that effective supervision of offenders was essentially a negotiated process in which offenders participated and made choices: ‘help’ rather than ‘treatment’ (Bryant et al., 1978; Raynor, 1985).

### **Rehabilitation as a right**

These arguments about the nature of ‘treatment’ and the status of its human subjects resonated with other criticisms of utilitarian aims in sentencing which raised concerns about the instrumental use of people. Just as ‘treatment’ tended to reduce people to passive objects of intervention, so an approach to sentencing which chose penalties primarily on the basis of their general social effect seemed to involve an instrumental use of people as means to goals which were not their own. This seemed to conflict with



Kant's argument (1965) that because people are moral beings capable of choice, they must not be treated simply as instruments of other people's purposes. Sentencing directed purely to social goals seemed also to neglect individual human agency in other ways: recognizing people as moral agents implied recognizing desert and censure as elements in sentencing. This argument was advanced both in a religious moralistic form (people had a right to punishment which recognized their moral responsibility and offered opportunities for atonement – see Lewis, 1971) and a secular liberal form, which argued that justice in sentencing involved looking backwards to assess what the offence deserved (essentially a moral assessment) rather than looking forward to the possible prevention of future offences (American Friends Service Committee, 1971; Von Hirsch, 1976). A typical statement of this position, which intended to limit punishment by contesting the excesses of disproportionate 'treatment' and preventive or deterrent incarceration, was provided by Roger Hood:

I believe a system which arrives at the length of sentences based more on a moral evaluation than on appeals to the utilitarian philosophy of deterrence and reductivism, would be fairer, not necessarily less effective, possibly less, not more punitive and appeal to that sense of social justice on which any acceptable system of social control must be founded. (Hood, 1974: 7)

Contemporary penal policies advanced under the banner of 'just deserts' often fall short of these liberal intentions (Hudson, 1987), however, from the point of view of justifying rehabilitation, such arguments suggested some additional tests which rehabilitative efforts would need to satisfy. Briefly, if they were part of a penalty they would need to be proportionate, or at least should not constitute a greater degree of intervention than the seriousness of the offence merited. If not part of the penalty, they should be voluntary (like post-release after-care for prisoners released without a compulsory licence). They should not inflict damage or detriment beyond that specified as part of the sentence (a real issue given the evidence that some intended rehabilitative efforts actually have negative effects – see, for example, McCord, 1978, Walker et al., 1981). Most fundamentally, they should be compatible with an understanding of offenders as morally responsible for their actions unless demonstrably incapable of choice through *force majeure* or independently evidenced incapacity, such as severe mental illness.

Thus the introduction of arguments about rights and moral responsibility allows a powerful critique of models of rehabilitation which relied on one-sided treatment and utilitarian justifications. However, they also open the door to some other kinds of justification. For example, if justice requires that penalties should be determined by seriousness and culpability, should not offenders whose circumstances offer them few alternatives to crime be treated as less blameworthy than those who have many resources, options and alternatives? Consider the impoverished single parent who makes a false statement to support a benefit claim when her children do not have enough to eat. Is she as blameworthy as the wealthy businessman who makes a false statement to secure some financial advantage simply to satisfy greed? It has been suggested that in order to recognize these differences of circumstances, opportunities and power, just deserts approaches to sentencing should allow a 'hardship defence' which partly or wholly mitigates the penalty (Hudson, 1999). This would also be relevant to people who offend

because they are threatened or coerced by others who then benefit from the proceeds. What is relevant to the current discussion is that a recognition of hardship and of unequal opportunities to avoid crime suggests not simply mitigation of the penalty, but also that a State which seeks to guarantee a minimum acceptable standard of living and level of welfare to its citizens is obliged to offer to offenders the support and assistance which could make avoidance of crime a more realistic prospect.

This approach to justifying rehabilitation has become known as ‘state-obligated’ rehabilitation (Cullen and Gilbert, 1982; Rotman, 1990; Carlen, 1994; Lewis, 2005), and rests on a version of social contract theory: the moral legitimacy of the State’s demand that people refrain from offending is maintained if the State fulfils its duty to ensure that people’s basic needs are met. Welfare States are the most familiar modern version of this social contract, and rehabilitation is not simply justified but mandated by the clear connection between social deprivation (or, in more modern jargon, social exclusion) and offending. Rotman also argues that there is a duty to provide rehabilitation to mitigate damage done by punishments such as imprisonment. Thus the obligation to meet needs is justified not simply by the Kantian appeal to the importance of people as ends in themselves (which McWilliams [1987] described as the ‘personalist’ approach to rehabilitation) but by a political theory of the duties of States and citizens to each other. As Rotman puts it,

...rehabilitation becomes a right of offenders to certain minimum services from the correctional services. The purpose of such a right is to offer each offender an opportunity to reintegrate into society as a useful human being (1990, p. 6).

Such approaches are also indirectly supported by a powerfully argued and well-evidenced body of work on the importance of perceived legitimacy in explaining why people obey the law (for example, Tyler, 1990). The basic argument is that people are more likely to comply with the law if they regard its demands as legitimate, and that they are more likely to do this if the law is administered and enforced with a high degree of procedural justice: for example, courtesy, objectivity, respect for rights, preparedness to listen to the views of those over whom authority is exercised, and in particular fairness and even-handedness. It is not too fanciful to suggest that a criminal justice system which offers help to those who need it may be seen as fairer and consequently more legitimate in its demands. This adds another normative argument in favour of rehabilitation as a component in criminal justice and, if legitimacy promotes improved compliance, another instrumental argument as well.

### **Rehabilitation for the benefit of potential victims**

Other current models of rehabilitation, particularly those based on social learning theory and often delivered through ‘programmes’ (McGuire, 1995, 2002), aim to empower offenders to take more control of their lives and behaviour and to make more pro-social choices by helping them to learn necessary skills such as listening and communication, critical and creative thinking, problem-solving, self-management and self-control. Such approaches recognize problems in relation to resources and opportunities but see little point in improving access to these without also ensuring that people have or develop the necessary skills to benefit from them.

In general, these approaches to rehabilitation have taken the issue of evidence very seriously, unlike earlier approaches, but they have sometimes been less clear about their philosophical and theoretical base. Are they ‘treatment’ or social learning? Do they remedy deficits, or enhance freedom and choice? The pioneers of these approaches have often been psychologists, and intolerant of metaphysical or theoretical speculation which they see as going beyond the evidence. As a result, their methods have been criticized (in our view wrongly) as a revival of the discredited ‘medical model’ of treatment (Mair, 2004); but what is, in technical and practical terms, a fairly new and very promising approach to rehabilitative work has been content to rely on traditional justifications. Rehabilitation is advocated (for example, by McGuire, 1995) on the grounds that it is better for both offenders and society because it can reduce further offending and victimizations. Here, we see again a utilitarian appeal to the general good, and it is noticeable that work of this kind with offenders in practice often gives priority to public safety through the use of risk assessments. This primacy accorded to public safety is described by Garland (2001) as a shift in the justification of rehabilitation: the emphasis, he argues, has moved from the benefit to the offender towards the benefit to potential future victims – it is for their sake that rehabilitation is attempted.

### **Rehabilitation for the benefit of communities**

Finally, some recent approaches to justifying rehabilitation have begun to make use of a concept of community which, instead of excluding the offender, includes him or her as part of the community of interests to be addressed. Most of the arguments we have reviewed up to this point set the offender and ‘community’ or ‘society’ against each other, as if the offender is not part of a community which consists only of his or her potential victims. Hence the offender’s interests are always counterpoised to those of the ‘community’ and weighed against them, or assumed to be in conflict. Of course, there are areas of conflict, however, just as state-obligated rehabilitation is based on the rights that offenders share with other citizens even after they have offended, communitarian approaches to rehabilitation recognize that offenders mostly belong to communities, and that their memberships and affiliations need to continue, or to be repaired, if they are to be reintegrated into normal membership of communities. Such approaches are associated particularly with advocates of restorative justice (for example, Braithwaite, 1989) who believe that reintegrative processes can help offenders to atone for or make reparation for their offences at the same time as helping offenders and victims to learn something of each other. The aim is the restoration or establishment of social bonds that will both offer the offender membership of a community and consequently strengthen informal controls over his or her behaviour. Whilst some of these ideas are more usually found in discussions of restorative justice rather than rehabilitation, the fact that offenders involved in restorative procedures are meant to learn a social lesson which will influence their future behaviour, places them also under the heading of rehabilitation. One implication of this is that rehabilitation should be seen not simply as meeting offenders’ needs or correcting their deficits, but as harnessing and developing their strengths and assets. Similar arguments are also found in ‘strengths-based’ approaches (Maruna and Lebel, 2003) which justify rehabilitation on the basis of the contribution the rehabilitated offender can make to the community, and the community’s need for this contribution.

“Strengths-based and restorative approaches ask not what a person’s deficits are, but rather what positive contribution the person can make” (Maruna and Lebel, 2003, p. 97).

### **Summary and conclusion**

In this article, we have considered a number of the justifications historically advanced for a rehabilitative approach to offenders. These justifications are not primarily concerned with evidence (what *can* be done) but with the obligations and duties of individuals, societies or communities (what *ought* to be done). Each reflects the assumptions and current knowledge of its time, but versions of each can still be found in contemporary discourse, and their differences and contradictions can lead to confusion. We have seen how an early faith-based commitment to saving souls and the exercise of mercy, which originally had little to do with public policy, was changed by the emergence of interventionist social policy and Welfare States. The scientific ‘treatment’ of offenders was justified by reference to the common good, but also by the emerging social work profession’s commitment to individual needs as understood within its own diagnostic framework – rehabilitation as ‘treatment’. A renewed emphasis on the rights of offenders as moral agents, and the moral requirement to deal with them as their past behaviour deserved rather than as their needs or their expected future behaviour required, began by undermining the vision of rehabilitation as one-sided professional intervention. In due course, however, the focus on rights gave rise to a new conception of rehabilitation as a service the State is obliged to provide to offenders who have been unfairly disadvantaged, and therefore have had restricted opportunities to avoid crime.

Instead of ‘treatment’, a ‘learning’ model of rehabilitation emerged which recognized offenders as moral actors and aimed to help them to acquire the skills and resources which would help them to make choices which better served their own interests and the interests of others. At the same time, a renewed emphasis on risk and public safety meant that rehabilitation was increasingly seen as justified not so much by its beneficial effect on the lives of offenders as by improvements in the safety of potential future victims. A new ‘treatment’ language (which is actually about participative social learning rather than one-sided ‘treatment’ of passive subjects) aims to justify rehabilitation by reference to demonstrable changes in offenders’ behaviour, but still leans towards an emphasis on ‘deficits’ and ‘correction’. Meanwhile, other supporters of rehabilitation seek to resolve the historic tension between the interests of offenders and ‘society’ by pointing to their relational connection in communities. Offenders need communities, and communities need rehabilitated offenders: rehabilitation is enjoined on society not simply by their needs or deficits, but by their strengths, assets and potential contribution.

In a recent article, one of the present authors (Robinson, 2008) argued that in England and Wales the concept of rehabilitation has survived, rather against the odds, by adapting to three dominant discourses of late modern penalty: these discourses are respectively utilitarian, managerialist and expressive. Utilitarian narratives, as we have seen, stress the general benefits of crime reduction which are assumed to flow from effective rehabilitation; managerialism looks for cost-effectiveness and predictable control of risk by centrally prescribed methods, whilst expressive policies aim to satisfy the perceived public desire for harsh punishment. (This is not necessarily an accurate perception

[Maruna and King, 2004], but one which many politicians seem to share.) The concept of rehabilitation has paid a price for its adaptation to these narratives. Meeting offenders' needs ceases to be a priority except in so far as it contributes to reducing the risk of further offending; methods of supervision are increasingly prescribed, standardized and fragmented into technical specialism, and punishment has become one of the official primary aims of the Probation Service in England and Wales in spite of substantial international research evidence that punitive approaches are more likely to increase than to reduce subsequent offending (McGuire, 2004; Andrews and Bonta, 2006). These dominant penal narratives also differ significantly from the rights-based approach which, as we have argued above, offers one of the strongest and most coherent arguments in favour of rehabilitation.

In another recent paper, McNeill and Robinson (2004) explored the aims and purposes of probation by way of a comparison between recent probation practice in England and Wales and the practice of 'criminal justice social work' in Scotland, where there is no separate probation service but probation work is carried out by specialist divisions within local authorities' social work departments. They argued that in Scotland probation work is more able to recognize offenders' needs and welfare as legitimate service goals in their own right because the work is still located within the professional territory of social work and (perhaps more importantly) it draws on a tradition of social policy in Scotland which emphasizes a public responsibility for promoting welfare and reducing social exclusion. By contrast, in England and Wales the Probation Service was explicitly separated in the mid-1990s from its origins and traditional location in social work in order to strengthen its specialist role within the criminal justice system, but this arguably weakened its professional identity and value-base so that its work can be transformed at will by ever-changing Government policies. This helps to explain the otherwise puzzling insertion of punishment as a central aim of probation in England and Wales. Although the social work tradition is only partially satisfactory as a guide to probation practice, its absence certainly points to a need to articulate some distinctive probation aims which go beyond simply oiling the wheels of the penal system.

In our view, probation's contribution to criminal justice is at its best when it has its own distinctive role and purposes. Probation's most rapid development in England and Wales, as in several other countries, occurred during the second half of the 20<sup>th</sup> century as part of the development of welfare states and of social and political institutions designed to give concrete expression to the social rights of citizens. When the legitimacy of government is believed to depend in part on its contribution to maintaining social inclusion and ensuring access to opportunities, justice and welfare, it is reasonable to argue that the State should aim both to protect citizens against crime and to ensure that they have adequate opportunities to achieve satisfactory lives within the law. In the case of those who have already offended this is achieved through state-obligated rehabilitation. In many countries, probation services have historically been funded by Governments as the main carriers of this commitment to rehabilitation, and they have sought to engage offenders in the process of turning their lives around while at the same time persuading sentencers to give them the opportunity to do so.

In England and Wales in the early 1980s a previous Government attempted to prescribe the goals and priorities of what were then many local probation services rather than one national service. A draft statement of 'National Purpose and Objectives' was produced which later became the 'Statement of National Objectives and Priorities' (known as SNOP; Home Office, 1984). One of the present authors published a comment on the draft (Raynor, 1984) which argued that an appropriate and distinctive strategy for probation services would be to encourage the use of penalties which were less coercive and more participatory, in other words involving offenders actively in their own rehabilitation and in some positive contribution to the community. This also implied helping to create the opportunities and resources which could make rehabilitation effective. Today similar arguments could be constructed by reference to the more modern concepts of state-obligated rehabilitation (which, to be real, must be made effective) and to elements of community justice and restorative justice (Robinson and Raynor, 2006). Such an approach works best in a favourable political climate: for example, Cavadino and Dignan (2006) have published convincing evidence of less punitive penal policies in countries which are not committed to neo-liberal free market policies but instead have a more collective and corporate approach to social problems. In addition, it appears that countries with higher proportionate spending on welfare tend to have lower rates of imprisonment (Downes and Hansen, 2006).

Understood in this way, probation services can be seen as not only central to the rehabilitation of offenders, but also as playing a part in the development and maintenance of societies which prioritize human welfare and social inclusion. Prospects for the improvement of probation services are less favourable under conditions of social authoritarianism, or in states which promote inequality and the unregulated hegemony of the market. This may help to account for the recent paradoxical developments in England and Wales, where large increases in the number of more coercively managed community sentences have coincided not with reduction but with unprecedented growth in imprisonment. Looking more widely, it can be argued that overconfidence in globalized free markets and under-investment in collective social responsibility have been major contributory factors in the current global economic crisis. Many countries can now expect increases in both hardship and crime. Probation services need to be ready to play their part in a new era of social reconstruction.

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