

Against Rehabilitation: For Reparative Justice

By
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Thank you for coming to this 22nd Lecture in honour of Eve Saville.

Preface

I want to invite you to consider the proposition that rehabilitation is not the good thing we have been taught to believe it is – and that it never has been. Secondly, I want to invite you to imagine new relationships between criminal justice and social justice. Because Prime Minister Cameron was wrong when, in a speech last month, he put renewed emphasis upon punishment and rehabilitation in the community. He was wrong for several reasons, but he was fundamentally wrong because the poor, the young, the disabled and the indigent elderly and many others are already being severely punished in communities deprived of the most basic access to housing, jobs, and general welfare. In such a situation it seems obvious to me that all questions of crime and punishment have to be linked to, and most probably subsumed by, questions of social justice and inequality. It is with that agenda in mind that I shall argue, this evening, that, instead of repeatedly punishing the poor and then kidding ourselves that we can combine punishment with rehabilitation, we should work towards a reparative justice informed by a re-invigorated principle of equality-before-the law.

The difficulties of re-imagining the possible relationships between crime and justice in class societies characterised by economic and cultural inequalities, together with exclusion of the majority from political decisions, are complex; so complex, in fact, that it is not surprising that it has always seemed easier (and cheaper) to attempt rehabilitation of the lawbreaking poor than to consider how best to respond to press mendacity, political malfeasance and corporate recklessness and greed. Confronted with economic and cultural inequalities which routinely deny ideals of justice, there is a temptation to bracket-off troubling knowledge of criminal justice's malign underbellies, and instead talk 'as if' criminal justice's ideal of equality before the law has already been realised in its rhetoric. This 'as if' talk tends to go something like this: 'In the short-term we can't change the system but we *can* devise programmes of prison reform, alternatives to imprisonment, support and help for ex-offenders etc. etc....It's better than doing nothing'. I have taken that line myself on occasions and so can guess where some of the people who talk

like that are coming from. Because, in some senses, this 'as if' talk is aspirational, and it is difficult to see how it could be otherwise if more just conceptions of criminal justice are to be realised. However, when aspirational criminal justice concepts become routinized and acted upon *as if* they can be realised without fundamental social change, they become penal imaginaries, part of a taken-for-granted ideological baggage which, because it is taken-for-granted, obstructs critique. One such penal imaginary is the concept of rehabilitation, a concept which has a long history of justifying almost every kind of non-lethal response to lawbreaking and which is currently being reborn yet again in theories of criminal desistance, in anti-prison campaigns, in the desperate fantasies of a Prime Minister who wants to privatise rehabilitation (along with everything else!), as well as in the already-part-privatised rehabilitation industry with its sales of programmes for cognitive reform. Yet, I hear no talk of rehabilitation as an across-class response to crime. Rehabilitation's sights are still firmly focused on working class lawbreakers (working and unemployed), even though one might think that if cognitive therapy programmes really had anything going for them, they would have been tried out on corporate and political criminals long ago. It might equally be wondered why, after so many years and different kinds of rehabilitative programmes, the prisons do not nowadays stand empty, instead of being overcrowded and perennially increasing in number.

In view, therefore of the class bias in all forms of rehabilitationist talk, I thought it might be worthwhile to examine the absurdities that have been, and still are being realised, as the ideal of rehabilitation is played-out through different disciplinary, welfare and security ideologies and yet with always the same effect – of malignantly returning poorer and already-disadvantaged lawbreakers to their place, at the same time as benignly keeping richer and more powerful criminals in theirs. My argument, in short, will be that the discriminatory concept of rehabilitation should be subsumed by a concept of reparative criminal justice based upon principles of inclusive citizenship and socio-economic reparation applicable across all classes. At the same time, existing rehabilitative practices actually empowering and increasing the need-satisfaction of poorer lawbreakers should be enhanced as part of a reparative justice that respects the poor, the powerless, the homeless, the ill, the stranger, the foreigner and troubled youths as critical citizens, rather than writing them off as risk-laden 'others' either requiring treatment for faulty cognitions or assessment for levels of risk.

Introduction

I begin with a story that I've told several times before. It is about a 45 year old ex-prisoner whom I interviewed in London several years ago. When I inquired about her American accent she told me that her family had emigrated to the United States when she was two years old, and she

herself had first returned to England only 12 months previously. She had been a drug user since the age of 17, in and out of prison for various thefts and minor frauds. She had never been granted American citizenship and after the last sentence of twelve months, had been taken straight from the prison with her few belongings and deported to England, which she had last seen 43 years before. During her many short terms of imprisonment she had taken a variety of in-prison programmes designed to help her rehabilitation. But what was she to be rehabilitated to now, in an alien country where, although she formally had citizenship, she had no occupation, no accommodation, no property, no family, no friends, and no cultural knowledge?

And I begin with that story because for me it is a parable for our times. It reflects the experiences of countless deportees and economic migrants whose illicit border crossings render them illegal. But it also illuminates – in metaphoric mode – the impossibility and undesirability of rehabilitating the majority of released prisoners who, even though they will have been prisoners in the lands of their birth, are, none the less, frequently released to environments where, prior to their imprisonment, they already had nothing to which they might be rehabilitated upon release. What can rehabilitation mean in jurisdictions where many prisoners will be released to conditions of poverty, homelessness, statelessness, and various forms of economic, political, racist and cultural oppressions? What has it ever meant? Is there an alternative?

The concept of rehabilitation is difficult to define, though notions of changing either the character or the social situation of lawbreakers – with a view to preventing their future lawbreaking – have likely been around at least since the eighteenth century. Today, re-integration, re-settlement or re-entry are often used instead of re-habilitation. Yet all these terms, with their English prefix 're', imply that the lawbreakers or ex-prisoners, who are to be 're-habilitated'/'re-integrated'/'re-settled' or 're-stored', previously occupied a social state or status to which it is desirable they should be returned. Not so. The majority of criminal prisoners worldwide have, prior to their imprisonment, usually been so economically and/or socially disadvantaged that they have nothing to which they can be advantageously rehabilitated. Sure, they are returned to their place in society, but from that disadvantaged place they are, too frequently, returned to prison again, and again and again. And it could be argued that, more often than not, it is desirable for governments, markets and capital accumulation that the poor and the powerless should be kept 'in their place' – and the rich in theirs.

Nonetheless, for now, I will assume a benign definition of rehabilitation: the return of a lawbreaker, ex-prisoner or wrongdoer to civil society (i.e. citizenship) with an enhanced capacity to lead a law-abiding life in future. This rehabilitative response to lawbreaking is, as most of you will know,

optimistically known as the Welfare Model in contrast to the Justice Model where the intent (again optimistically, as far as corporate criminals are concerned) is primarily about imposing a punishment proportionate to a crime's seriousness. However, what has happened most frequently is that the justice model has been combined with a rehabilitation model so that governments can say (to retributivists) 'We will imprison lawbreakers. Prison works' but (to rehabilitationists) 'We will make sure that the punishment has no painful effects on prisoners' lives'. Which is both absurd and dishonest. It is absurd because imprisonment is for punishment – the imposition of pain and/or deprivation-and however humane prison personnel are, or despite what the hate press may tell us, that is how prison is experienced by the vast majority of prisoners. It is dishonest because many of the people who are sent to prison are not sent there because of the seriousness of their crimes but because their poverty-stricken (or otherwise outsider) status is seen as posing a severe risk to states failing to provide poorer citizens' basic needs outside prison.

Early conceptions of rehabilitation in Europe were provoked by the argument that once lawbreakers have paid the penalty for a crime, all record of the criminal conviction should be removed, so that they can begin with a 'clean slate' and re-assume all the usual opportunities and privileges of citizenship, and especially in relation to employment. And had the concept of 'rehabilitation' remained focused solely upon the removal of criminal stigma, it would not have become so difficult to define. By the beginning of the twentieth century, however, it was also being widely recognised that while many lawbreakers go to prison ill-equipped mentally, culturally, materially and socially for leading law-abiding lives, the effects of their imprisonment are usually so debilitating and exclusionary that, when they are released, their chances of being law-abiding are even slimmer than they were before their incarceration. As a result, and to meet the challenge of minimising the chances of offender recidivism, a profusion of rehabilitationist philosophies, and strategies has been developed over the last hundred years, though it could well be argued that rehabilitationist political rhetoric has never been wholeheartedly put into practice; that, instead, it functions primarily to legitimise the state's power to punish. For, despite the massive amount of official rehabilitative rhetoric, and the much smaller amount of rehabilitative reality, by the mid-1980s *custodial* rehabilitationism in the UK was being criticised on two grounds: first, that it punishes poorer lawbreakers for the continuing risks inherent in their disadvantaged economic and social positions, rather than in proportion to the crimes they have committed: in other words, that young people from poorer neighbourhoods were much more likely than posh-boys, business class and other more powerful criminals to be seen as being in need of rehabilitative incarceration; and secondly, *that the turn towards rehabilitationism had not appeared to reduce crime rates or prison populations.*

But despite criticism from all sides, neither custodial nor non-custodial rehabilitation programmes were abandoned. Instead, they were given a more correctionalist slant, aimed at changing lawbreaker's erroneous cognitions and behaviours. However, most recently, there has been such an acceleration and accretion of contradictory responses to lawbreaking that many justice workers have become openly despairing of the hypocrisy of the government's rehabilitationist stance, and not least because it is still being mouthed at times when the necessary enabling social provision for both ex-prisoners and the communities from which they come (and to which they must return) is being closed-down in wake of the cruel and irresponsible financial cuts imposed by the present government.

At the same time, and in pursuit of an imaginary 'what works', neo-liberal governmental discourse has gradually erased the citizen-subjects of the welfare state from the penal frame, replacing them with the risk-laden techno-entities of surveillance and security fetishism. And you can be sure of this: whatever the official claims regarding 'what works', criminal prisons in most jurisdictions are still primarily for the poor, the mentally-ill, the homeless, ethnic minorities, and the stateless-and yet!!! the belief in rehabilitationism as a panacea for all penal ills lives on! Before proposing an alternative to this most tenacious of imaginaries, I would like to discuss the twofold question that has been systematically ignored by rehabilitationist theorists. Who is to be rehabilitated to what?

Who is to be rehabilitated to what?

The first anomaly in rehabilitation discourse concerns its subject. *Who* is to be rehabilitated? With the exception of those who have committed traffic or addiction-related crimes, rehabilitation programmes in capitalist societies have tended to be reserved for poorer prisoners found guilty of crimes against property and for prisoners released after serving long sentences for non-business-related crimes. Rehabilitation projects and programmes have not usually been designed for corporate criminals, however long their records of recidivism. But, you may say, given the dominance of theories that causally relate some types of crime to adverse social circumstances, surely it is understandable that remedial social support should have been reserved for offenders most in need? Yes indeed; and where such support has manifested itself in increased access to services, education, housing, addiction therapy, employment and community support programmes, there has been some evidence that it has been strategic in enabling ex-offenders to remain law-abiding. Research published at the beginning of the twenty-first century reinforces the long-held, common-sensical belief that although offenders themselves have to make the decision to desist from crime, their initial resolve to become law-abiding has a greater chance of success when bolstered by good social support – especially safe housing and a job! Additionally, a

number of people who have desisted from crime have told me that they became law-abiding in part because they received in-depth support from judicial and other criminal justice personnel who responded to them (and this is the important point) as citizens with rights and needs, rather than mechanically assessing them solely as past lawbreakers and future risks.

Unfortunately, however, in too many jurisdictions during the welfare eras, the charitable impulse to provide such support was repeatedly undermined by persistence of the notion that no-one should be better off because they have committed a crime. This doctrine of less eligibility, moreover, has translated into a popular belief that ex-prisoners and ex-offenders should always be last in the queue for any available welfare goods whatsoever. As a result, and despite over a century of rehabilitationist discourse, actual responses to crime have remained largely punitive leading some criminologists to argue that crime control is nowadays a prime mode of governance. Others contend that crime control is also a major industry by which even rehabilitation programmes have been compromised and corrupted; and yet others focus on the technologies of coercion which, though they may still employ the terminology of rehabilitation, are primarily concerned with surveillance of the spaces and places wherein the risks of deviant populations may be contained and monitored in what has been called 'the security-state'. En route from 'welfare state' to 'security-state', the potential citizen *subject* of rehabilitation has been transformed into a security object whose points on a risk-assessment scale are currently used to determine whether human and legal rights are to be respected in the court disposal-or whether, instead, they are to be sacrificed to the terrified and terrible imaginings of the security state. Meantime, many (though not all) prison populations continue to expand as non-punitive rehabilitation projects are axed by governments who, powerless to curb global corporate greed or international malfeasance (such as war-mongering and media corruption) recoup their debts and losses where they can-in the public sector of their national jurisdictions. The ensuing cuts in public expenditure fall most heavily upon the most vulnerable citizens and especially on those vilified as being the least deserving and receiving welfare benefits of any kind whatsoever. *These* are also the perennial *subjects* of rehabilitation.

The second, and related, anomaly in rehabilitation discourse is in relation to its social and political context. Rehabilitation to what? In Western societies, legitimation of the state's power to respond to crime has been implicitly rooted in some kind of contract theory predicated upon a conceit that the state is founded upon the citizens' consensual agreement to surrender to state agencies their individual capacities to redress wrongs done to them. As Professors Ian Gough and Lesley Doyal pointed out long ago, in even nominal welfare states, an expectation has been raised that citizens will receive 'minimal need satisfaction'. Ideally, a moral reciprocity is set up: the state is under obligation to satisfy the minimum

needs of its citizens and protect them and their property from attack; citizens are expected to obey the law and fulfil other civic responsibilities laid upon them by virtue of their citizenship. But what happens when the state doesn't keep its side of the mythical bargain?

It was the implicit, if not always explicit, recognition of the risk involved when states fail to fulfil their obligation to satisfy citizens' basic needs that was the mainspring of welfare state philosophies and then, by extension, of the welfare approaches to criminal justice which gave birth to the rehabilitative ideal. But this has all changed. What has happened consistently over the last forty years is that when very disadvantaged citizens have broken the law their economic and social needs, in terms of, for example, their poverty or mental illness, have not been viewed as qualifications for rehabilitative measures by the state, but rather as positive risk factors predictive of future lawbreaking and, consequently, requiring either disciplinary imprisonment to make them come to terms with poverty, low wages or unemployment or, if they are foreign nationals, repressive incarceration or deportation to reduce their risk. When inequality increases and welfare fails, prison populations increase.

And it's worth mentioning here that the link between risk and penal policy was not *born* of twenty-first century terrorism, though it has been tremendously strengthened by it. From the sixteenth century at least, it has been recognised that, at times when the majority of lawbreakers have nothing to be rehabilitated to, it is more politic to pay greater attention to their risk potential than to their rehabilitative requirements, and to keep them in their place; either by laws controlling mendicancy or (at times when pacification via welfare has been thought to be impolitic), by poverty, unemployment, repression, border controls and deportation. By contrast, many white collar and corporate criminals are too embedded in, and/or too geographically dislocated from, local jurisdictions for **prosecution** to be possible. When successful prosecution does occur, rehabilitative measures in terms of changing corporate cognitions are not usually seen as being *necessary, desirable or possible*.

Rehabilitation is not seen as being *necessary* for corporate and other white collar criminals because their punishments seldom *de*-habilitate them in either material or status terms. Nor is rehabilitation considered to be *desirable* in terms of turning corporate offenders away from wrongdoing. Corporate lawbreaking is such a celebration of capitalist societies' subterranean values and its miscreants so embedded in their constitutive economic and political systems that, on those infrequent occasions when corporate offenders are brought to trial, they, unlike their poorer brothers and sisters in crime, are seldom assessed as people whose cognitions require changing. Instead, after being fined or serving a short prison sentence, they are either quietly reinstated in their former positions or paid off with substantial sums of money.

More practically, however, governments are reluctant to see corporate criminals in court at all, as there is always the fear that adverse publicity will result in public agitation for more corporate regulation, a destabilising of markets or an exodus of corporate capital to more sympathetic jurisdictions. Finally, rehabilitation is not seen as being *possible* because corporate and other powerful criminals nowadays have such unprecedented access to world-wide communications, global travel and hospitality that they can ensure they are sufficiently dislocated from their national jurisdictions to make bringing individual suspects to trial impossible and certainly to render laughable any talk of attempting to change their future behaviour by rehabilitative reprogramming. So much for the myth of equality before the law. What is to be done?

When I began thinking about the rights and wrongs of rehabilitationism I had no expectation that a symmetrical comparison could be made between penal responses to the rich and the poor. Like most people, I already knew that there is an asymmetry between the penal response to street crime and the penal response to suite crime. However, until I began to write about rehabilitation, I did not realise how difficult it is to talk about a penal imaginary that has given birth to a discursive absence – the absence of the powerful criminal from rehabilitationist discourse – especially when it is a systemic absence and not merely a temporary design fault! And there was also the absence of any history of wholehearted rehabilitationism. From the nineteenth century onwards (and most probably earlier) there has been a political desire to mix punishment with treatment and welfare with pedagogy. In this context, the recent work reported by Professors Wilkinson and Pickett in their book *The Spirit Level* convinces me that if twentieth-century rehabilitationist practice had been totally welfarist both inequality and crime might have been much reduced. Right now, however, it is rehabilitationism's non-relevance to the rich and injustice to the poor which prompts me to suggest that rehabilitation should in future be subsumed by a concept of state and citizen reparations; and that criminal justice itself should be informed by a jurisprudence of social justice as inequality reduction.

A first step might involve rethinking criminal justice within a holistic reparative social justice applicable to all classes: a justice which seeks reparation from all lawbreakers (across all classes) *to the state* in proportion both to the harms committed and the ability to pay; and which seeks reparations *from the state* to all those-whether lawabiding or lawbreaking-whom it has failed in terms of ensuring satisfaction of their minimum needs.

As far as corporate crime is concerned, the pursuit of individual criminals is sometimes less appropriate than the international regulation of corporate greed, harm and corruption; and a reparative justice might well begin its task by acting upon the proposals of restorative justice supremo,

John Braithwaite: that the crimes of corporations should result in serious confiscations of property, lifelong professional disqualifications, financial reparations, compulsory corporate restructuring, increased regulatory supervision and other measures designed to engender a moral regeneration of financial institutions. However, the crimes of super powerful individuals should also be responded to according to the same reparative principles operative for less powerful individuals: financial reparations according to their ability to pay for their lawbreaking; critical re-education in the rights and duties of citizenship; and life-long disqualifications from holding high office in either business or government.

As far as poorer lawbreakers are concerned, prosecutors might be given powers to waive prosecution in cases where lawbreaking is admitted but where prosecution of individuals is deemed to be less appropriate than a reparative justice resulting in, for example, community regeneration via state funding, *critical* education in the rights and duties of citizenship, *critical* instruction in the legal forms of protest, and critical identification and reconstruction of the legal channels for pursuit of individual rights and community support.

The critical education of lawbreakers does not have to involve the brainwashing techniques of some totalitarian states or the superficiality of some in-prison cognitive programmes. Indeed, it should be undertaken as part of a progressive neighbourhood response to crime. Two young Americans have recently and persuasively argued that neighbourhood concerns about crime can also be usefully mobilized as sites of education in critical citizenship. After describing the critical and progressive response of the Free Los Angeles High School in its work with youths excluded from school, they claim that

...rather than rehab interventions based on a risk model in which youths learn to cope with their marginal status through behavioural interventions, the...school's curriculum helps students to understand the social forces behind the personal problems they encounter ; and it prepares them to make social changes by learning the trade of social movement organizing. In this way...personal change becomes linked with social change. (Goddard and Myers, 2011: 653)

In other words, instead of young people becoming passive actors in a programme of tutelage directing them to learn and keep their place, they are receiving some measure of reparation by being taught how to change that 'place' to better meet their own desires, rights and obligations. Who knows, one day they may demand that a cap be set on prison numbers, that custody be reserved for the most serious crimes of violence, and that no-one be imprisoned because they are too poor to pay a fine. They might even suggest that a new approach to democratic reparative justice would result in the publication of annual statistics indicating both the type

of penalty imposed on, and the scale of financial penalties paid by, criminals across all income groups together with the comparative costs of the crimes recorded. It is not impossible. And if you say to me, 'What about horrendous crimes of violence?' then I have to say to you, reluctantly, that I presently see no alternative but to confine those who commit such crimes. But I would also say to you, first, that such cases involve a relatively small number of the people passing through the courts and prisons; secondly, that the concept of criminal violence should be extended to include more types of political and corporate harm; and thirdly that a just society should not base the whole of a criminal justice system upon either the threats posed by the relatively few dangerous criminals from the poorest strata of society (while allowing more dangerous ones from other classes to break laws with impunity); nor upon the fears of populist politicians running scared as a result of the misinformation and hatred spread by certain rabid newspapers.

So...At the beginning of this talk I invited you to consider the proposition that rehabilitation is not the good thing that we have been taught to believe it is; and then to imagine a radical social justice in which the concept of rehabilitation has been subsumed by a reparative justice aimed at both greater social equality and greater equality before the law. And even though at the present time it may be easier to imagine pigs flying than to imagine any society adopting a principle of reparative justice as described here, at least the notion of 'citizen reparations' is a concept that chooses to imagine an inclusive social justice giving primacy to the values of citizenship and inequality reduction, rather than to the completely contrary values of global capital accumulation. The concept and practice of rehabilitation, by contrast, is at present, almost exclusively focused upon returning the poor and powerless to their place and, by default, to returning the rich to theirs. Outside of a more inclusive social justice and a regeneration of the principle of equality before the law, rehabilitationism has no relevance: certainly not to those powerful criminals who pose the most serious risks both locally and globally; and certainly not to the majority of people presently filling the prisons, and who have never had anything to be rehabilitated to.

Reference

Goddard, T. and Myers, R. (2011), 'Democracy and Demonstration in the Gray Area of Neo-Liberalism: A Case Study of Free Los Angeles High School,' *British Journal of Criminology* 51 (4): 652–70. 8