

REHABILITATION OF OFFENDERS: WHETHER IT WORKS?

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1. INTRODUCTION

Rehabilitation means restoring persons or thing to a former capacity; reinstating; qualifying again.² The purpose of Rehabilitative sentencing is to prevent further offending by the individual through the strategy of rehabilitation, which may include therapy, counselling, intervention in the family, cognitive- behavioural programmes, skills training, etc. NSA Panel on Research on Rehabilitative Techniques defined rehabilitation as the result of any planned intervention that reduces an offender's further criminal activity. The philosophy of rehabilitation model of punishment suggests that individuals should be treated differently from one another based on the specific needs and circumstances that contributed to their criminality. The origins of the rehabilitation model in the US can be traced to the period following the American Revolution. The early Americans believed that if crimes were the result of social disorder and the inability to resist temptation, then the best way to address crime was to create an orderly environment that would help to instil discipline and morality. Thus, reformers of this period set out to create a new form of punishment that was capable of accomplishing goals. The punishment devised was the penitentiary.

Rehabilitation seeks to alter the values of the offender so that he or she no longer desires to commit criminal acts: it involves the renunciation of wrongdoing by the offender and the re-establishment of the offender as an honourable law abiding citizen, and is achieved by 'reducing or eliminating the factors which contributed to the conduct for which [the offender] is sentenced'.³ The system of parole, probation, indeterminate sentence and open prisons are some of the rehabilitative techniques which find place in the modern penal programmes of most countries of the world. Where an offender does not re-offend, there are always at least two possible causes of this: genuine moral reform or the fear of again being subject to punishment.

2. EMPIRICAL EVIDENCE

Initial Scepticism

The most damaging objection against rehabilitation as a suitable goal of sentencing has been that it does not work. Following extensive research conducted between 1960 and 1974, Martinson, in a very influential paper, concluded that empirical studies had not established that any rehabilitative had worked in reducing recidivism.⁴ The Panel of the National Research Council noted that there were no significant differences between the subsequent recidivism rates of offenders regardless of the form of punishment. 'This suggests that neither

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²*Rehabilitation*, Black's Law Dictionary (6th ed 1891-1991).

³Channon v. The Queen, (1978) 33 FLR 433.

⁴R. Martinson, *What Works? - Questions and Answers About Prison Reform*, in THE PUBLIC INTEREST 25, (1974)

rehabilitative nor criminogenic effects [i.e. that possible corrupting effect of punishment] operate very strongly.⁵

More promising evidence

However, several years later, Martinson softened his position, stating that some types of rehabilitation programmes, particularly probation parole, may be effective. The critical factor seems to be *conditions* under which the program is delivered'.⁶ And, indeed there is now mounting evidence that rehabilitation works for some in some circumstances:

Research so far has on the whole confirmed what one would expect: that individual success may sometimes be claimed by routine psychotherapy or counselling with intelligent, articulate neurotic offenders; by sympathy and encouragement for those unsure of their limits and capabilities; and by direct assistance and support for those weighed down by practical difficulties. But none of these approaches is appropriate for other than a minority of the offender population, whose misdemeanours reflect some real psychological maladjustment and not just their social 'deviance'.⁷

That there is some level of success with rehabilitative techniques in relation to the least dysfunctional offenders, I not so much evidence of a victory for the rehabilitative ideal, as it is for that some people are likely to only occasionally dabble in crime.

Since Martinson's review, a more sophisticated technique (called "meta- analysis") has been developed to help researchers determine statistically the average effect that interventions produce. Numerous meta- analysis of the correctional treatment literature have been conducted, and these contemporary studies reveal that rehabilitation programs can have a substantial effect on criminal offending. One such review of 200 interventions for serious juvenile offenders revealed that, on average, treatment programs reduced recidivism by 12 percent. When the best, most successful programs were examined separately, it was found that these interventions reduced recidivism by 20 percentage points. Thus, it is no longer appropriate to conclude that "nothing works". Indeed, researchers and correctional practitioners are now turning their attention to "what works".

3. THE PRINCIPLE OF EFFECTIVE INTERVENTION

In an effort to determine "what works", researchers have identified a set of criteria, or principles, that help to distinguish successful programs from unsuccessful programs. These criteria are referred to as the "principles of effective intervention".

The first principle is that correctional interventions should target known predictors of crime and recidivism for change. Many correctional interventions are based on common sense ideas about how to change offenders. This principle, in contrast, emphasises the importance of focusing our treatment efforts on changing those characteristics or circumstances that have an empirically established relationship with crime. These characteristics and circumstances are sometimes referred to as "criminogenic risk factors" or "criminogenic needs". As an example, we know that individuals who have trouble controlling their impulses are more likely to

5A. Blumstein, J. Cohen and D. Nagin, *Deterrence and Incapacitation: Estimating the Effects of Criminal Sanctions on Crime Rates*, in NATIONAL ACADEMY OF SCIENCES, (1978)

6R. Martinson, *supra* note 3 at 254.

7Michael Brody, *The minimalist program and a perfect syntax*, in MIND AND LANGUAGE 205-214, (1998).

commit crime than others. The first principle of effective intervention suggests that a program that attempts to improve impulse control is likely to affect crime.

Second, the treatment services should be behavioural in nature. Correctional programs can be based on numerous modes of treatment. Meta- analysis has revealed, however, that programs using behavioural or cognitive- behavioural approaches are most effective. In contrast, psychoanalysis and other insight- oriented approaches do not work well with offenders.

Third, treatment interventions should be used primarily with high- risk offenders, and criminogenic needs should be targeted. Although many people assume that high- risk criminals are not good candidates for rehabilitation programs, these individuals, like low- risk offenders, are capable of change. Targeting high- risk offenders makes better use of correctional resources and has the potential to achieve substantial crime savings. Programs that focus on treating low- risk offenders are less likely to realize reductions in recidivism because the group of offenders is unlikely to recidivate to begin with.

Fourth, treatment effectiveness will be increased if programs have treatment integrity and take into account a range of other considerations. Even the best intervention will not work if they are not well implemented. It is important, for instance, that programs hire staff who are well trained and sensitive, and who know how to deliver the treatment services. Moreover, there are circumstances under which programs are more effective. For example, programs are more effective when implemented in the community instead of in an institution; programs that have treatment manuals are better than those that do not; and programs relapse prevention are more successful.

4. EFFECTIVENESS OF REHABILITATION PROGRAMS

Slowly but surely it is being recognised that rehabilitation is the way to reduce crime; projects such as Turning Point 218 in Glasgow has had enormous success at reducing recidivism, and it is reported that it will be rolled out across Scotland. The project is aimed at women, with the focus on tackling addictions, with a view to restoring some routine in the previously chaotic lives of women who have entered the criminal justice system.

The project would see women taught life skills, such as debt management, parenting skills, tackling hygiene and cooking. They will also be encouraged to maintain relationships with their children where suitable. The chair of the Commission on Women Offenders, former Lord Advocate Dame Elish Angiolini said that “... *many of the women are vulnerable people for whom offending is the result of chaotic lifestyles, mental health difficulties and addiction problems. We must... be able to find better ways of addressing their behaviour than locking more and more of them up.*” The thinking is this: by imposing custodial sentences with insufficient regard paid to the causes of their offending, offenders do not address their behaviour and return to society in a worse position than when they were removed.

Texas has demonstrated that rehabilitation works and costs less than building more prisons to cope with increasing capacity from ever increasing sentences. That’s right, the same State which has executed 481 people since 1976, and currently has 317 people on death row. It would appear, however, that when faced with the statistic that, for juveniles, custody is less effective than supervision and treatment of offenders in the community, the powers that be have taken note.

There is a strong basis for confidence that educative techniques can be devised to teach offenders to accord greater respect to the interests of others. Indeed, recent evidence suggests that cognitive- behavioural rehabilitation programmes, which focus on the links between beliefs, attitudes and behaviour, are extremely promising. Following a recent wide ranging review of the published studies in rehabilitation (which compared the recidivism rate of offenders who were subject to rehabilitative treatment to those who were not), Howells and Day suggest that these are the most successful types of programme. Cognitive- behavioural programmes target factors that are (presumably) changeable and are directed at the 'criminogenic needs' of offenders, that is, factors which are directly related to the offending, such as anti- social attitudes; self- control; and problem solving skills.⁸ Promising programmes have been developed in the areas of anger management, sexual offending and drug and alcohol use. These appear to be more successful than programmes based on such as confrontation or direct deterrence, physical challenge or vocational training. Three judges in Missouri have even taken to imposing transcendental meditation programmes as part of the probation conditions of minor offenders; apparently with great success.⁹

The more tolerant, understanding and educative we are in trying to facilitate attitudinal change in others, the closer we come to providing them with a social service. For example, cognitive- behavioural programmes focus on the needs of offenders and attempt to meet these needs by education and counselling with the aim of reshaping their beliefs, attitudes, and values and improving their problem solving capacity, in order that they no longer engage in criminal behaviour. Such programmes seem to work best in community settings rather than delivered in institutions.¹⁰

5. COMMUNITY PENALTIES

According to the latest Home Office figures, 57% of offenders given community penalties were reconvicted of a standard list offence within 2 years of the commencement of the order. Nearly three-quarters (74%) of offenders attending a probation centre as part of a probation order started in 1993 were reconvicted of another offence within 2 years. For those on probation orders with additional specified activities and those on 'straight' probation the recidivism rates were 61% and 59% respectively. The top rate of recidivism for probation centres reflects the tendency to use this form of probation for more serious offenders with a higher risk of re- offending. Indeed, much of the variation in recidivism rates between the main community penalties can be attributed to differences in the characteristics of offenders, such as their age, number of previous convictions, gender, and age at first conviction. Women and older people have lower rates of re- offending generally than men and younger people. While those with a large number of previous convictions and an early age of first conviction tends to have the highest recidivism rates.

A Home Office study of 42 such schemes operating between 1989 and 1993 found that, overall, reconviction rates were higher than predicted, especially among young offenders. Only for the older group of offenders who attended such projects was the actual reconviction rate lower than predicted. However, offenders who failed to complete their participation in the projects were subsequently reconvicted at much higher rates than their age and previous

8K. Howells and A. Day, *Trends and Issues in Crime and Criminal Justice*, in *THE REHABILITATION OF OFFENDERS: INTERNATIONAL PERSPECTIVES APPLIED TO AUSTRALIAN CORRECTIONAL SYSTEMS* 112, (1999)

9Farrant D, 'Meditation: a serene but effective path to criminal enlightenment' (1999) *The Age*, 16 November, p 6.

10Howells and Day, *supra* note 7 at 4 and 5.

criminal convictions would suggest. Nearly 80% of the participants were reconvicted for an offence within 2 years of their original sentence and, ironically, 75% of these were reconvicted for a motoring offence. These, at best mixed results suggest that the schemes had little positive effect on offending behaviour.

A Home Office study (May 1997) found that 88% of magistrates were very or fairly satisfied with the work of the probation service in their respective areas, and 90% reported that they enjoyed a very good or fairly good working relationship. Moreover, nearly 70% usually found pre-sentence reports prepared by probation officers to be useful and 66% were satisfied with the availability of a number of community disposals. As a service provider for the courts, the probation services clearly reaching high level of customer satisfaction but, as we have seen, it needs to do much better in relation to its work on reducing rates of re-offending.

6. CONCLUSION

The project presented creates a dichotomy by simultaneously proposing rehabilitation and punishment. Rehabilitation has been proved to reduce reoffending. Putting an offender on a programme, with a tag and under the threat of a suspended sentence still leaves the option of a custodial penalty for failure or breach. It is not easy to evaluate the worth of rehabilitative sentences, not least because they appear to have several aims. If the aim of such sentences is to provide alternatives to custody then they have largely failed since the prison population continues to increase. On the whole, in terms of recidivism rates, rehabilitative sentences do no better nor worse than custody. If the aim is to make available a cheaper form of penalty for offenders then, compared with the cost of custody, community sentences enjoy a great advantage.

Community based penalties clearly have a future. The questions that may be asked of them are likely to be two-fold. First, can they be refined to such an extent that they actually produce a significant decrease in rates of reoffending? Second, if they are able to achieve the first goal of reducing recidivism, will they ever be able to regain that position as alternatives to custody and thereby help to reduce the prison population.

It is important to appreciate that our key aim when sentencing ought to not necessarily be to punish the individual, but to improve things for society as a whole. Whether we like it or not, reducing the cost to the tax payer and the number of victims of crime means helping the offenders help themselves. The end product is a reduction of the burden on the State, less crime and fewer victims. The way in which to achieve this is to have a general policy that for sentences less than two years a community disposal is imposed. This enables the offender the opportunity to be rehabilitated in the community, but as outlined above, preserves the option of a custodial sentence where the offender breaches his or her sentence.