

# Punishment and Rehabilitation – or punishment as rehabilitation

R. A. Duff considers the meaning of rehabilitation and punishment and whether they are opposed responses to crime.

‘**R**ehabilitation’ has been a buzz word in the rhetoric of penal policy for so long that it is worth pausing to think about its meaning and connotations. I will distinguish a ‘therapeutic’ from a ‘moral’ meaning: the former is more common, but has nothing to do with punishment; the latter, however, points towards a plausible understanding of punishment as a moral engagement with the offender.

## Therapeutic Rehabilitation

In its therapeutic meaning, ‘rehabilitation’ suggests a condition of well-being of which someone has been deprived, and to which he is to be restored: it suggests that he has lost certain capacities—physical, psychological, or social—which rehabilitation will restore. Those who have suffered serious physical disability might be rehabilitated by a treatment programme to rebuild their physical capacities. Analogously, someone who has through illness or other misfortune lost some of the social capacities that are required for an adequate life (capacities required if they are to hold a job, for instance, or live successfully with others) might be offered rehabilitative programmes that aim to help them regain those capacities, and thus to regain their social position.

Many of those who appear and are sentenced in our criminal courts need or would benefit from rehabilitative measures of this kind, especially programmes concerned with social skills and capacities. Their offences are also often connected to their lack of certain social skills and capacities: theft is often connected to poverty, which is itself often connected to a lack of the skills that would secure a decent job; certain kinds of violence and vandalism might reflect a lack of the capacities (as well as of the external conditions) required for living a peaceable social life. Sometimes we should perhaps talk of ‘habilitation’ rather than of rehabilitation, since some of those who offend never had the chance to acquire the capacities that they now lack, or the social position and relationships to which rehabilitation might restore them: but the point is that it is often appropriate to look at offenders in such terms as these.

This is not, however, to say that their *punishment* should aim to rehabilitate them, since therapeutic rehabilitation is quite distinct from—indeed, is hard to reconcile with—criminal punishment. First,

punishment is a condemnatory enterprise: in convicting and punishing an offender, we (through the state that acts in our name) censure her as a wrongdoer (Feinberg 1970). Therapeutic rehabilitation, by contrast, offers sympathetic assistance rather than condemnation: even if someone’s need for rehabilitation is clearly due to his own imprudence or misconduct, the therapeutic approach ignores such fault, and looks only at his needs. Second, some modes of punishment, most obviously imprisonment, often create a need for rehabilitation rather than providing it: ex-prisoners may need rehabilitation precisely because of what they have suffered in prison. Third, if we are to treat those who need rehabilitative help as responsible citizens (a liberal democracy must treat its adult members as responsible citizens unless they are unable to make their own life decisions), then rehabilitation must be offered rather than imposed: the state should offer those in serious need the help that they need, but should not force them to accept it. Punishment, by contrast, is imposed: offenders are not offered punishment, but are required to undergo or undertake it.

If we think that therapeutic rehabilitation is generally the appropriate response to crime, we should therefore either advocate the abolition of criminal punishment, in favour of an explicitly therapeutic regime for offenders (Wootton 1963); or, if we think that abolition is impossible, argue that we should offer rehabilitation to those who are being punished, during or alongside their punishment, for instance by offering rehabilitative programmes to prisoners (Rotman 1990). On this latter view, however, whilst the offender’s punishment might give us and her the opportunity for rehabilitation, that rehabilitation is still no part of the punishment; nor should it be imposed on offenders, as distinct from being offered for them to accept or refuse as they see fit.

There is, however, another way of understanding the idea of rehabilitation, as a moral process that can help to make plausible sense of criminal punishment.

## Moral Rehabilitation

Some theorists argue that we can justify criminal punishment as a process of moral education (Morris 1981). One problem with this view is that it is not clear how it treats offenders as responsible citizens; another is that it is not clear that it is *education* that

they need. We might more plausibly portray punishment as a matter of moral rehabilitation.

Suppose that I have wronged other members of a community to which I belong: I have let down a friend; or wronged my academic colleagues by neglecting my departmental duties or, even more seriously, by plagiarising an article; or betrayed my partner by sexual infidelity. If the wrong is serious, I (and they) might see a need for moral rehabilitation. What creates this need is not that I have lost capacities or skills that I once had: it is that my wrongdoing has threatened my relationships with those whom I wronged, and thus threatens my place in the community that they and I form—in this group of friends or this department, in this family or marriage; indeed, it threatens the community by denying its defining values. Now therapeutic rehabilitation, we saw, aims to restore a person to the social position and relationships from which their loss of capacities threatened to drive them: analogously, moral rehabilitation aims to restore a wrongdoer to the moral relationships and community that were threatened by her wrongdoing. The wrong stands between me and my friends, or colleagues or family: it makes it impossible to carry on as we were, since it implicitly denied the values, the mutual concern, on which our relationship depended. I cannot brush it off as something trivial, which has no further implications: I must rehabilitate myself in their eyes, to restore myself and our relationship.

What can such moral rehabilitation involve? It begins with apology—a sincere and repentant recognition of the wrong I have done. Sometimes, especially if we know each other well and the wrong was not serious, an oral apology is enough: but sometimes, when the wrong is more serious and lasting, and especially if we do not know each other that well, something more is required—something that will make more forceful the apology that I owe ('mere words' are not enough); something that will show that I am taking seriously the need to avoid such wrongs in future, and to reform myself and my conduct. Two elements of such moral rehabilitation might be, first, undertaking some burdensome task to express my apologetic repentance (doing something burdensome for my friend; volunteering for extra departmental or domestic duties); second, taking steps to address the causes or sources of my wrongdoing, and perhaps seeking help—whether informal or formal—in dealing with them.

We can, I suggest, make sense of criminal punishment in similar terms: not, I hasten to add, of criminal punishment as it all too often operates now, but of criminal punishment as it could perhaps be, and as it would need to be if it is to be justified as something that a state can legitimately impose on or require of its citizens.

If the criminal law defines as crimes only kinds of conduct that are indeed wrongs against both their individual victims (when they have them) and the political community as a whole; if it convicts of such crimes only people who can properly be held

responsible for culpably committing them: then the offender's commission of the crime creates a need for some kind of moral rehabilitation between him and those whom he wronged, both the immediate victim and the wider community. If we think then not of imprisonment (whose role in any morally acceptable penal system will be small), but of such sentences as Community Service Orders and probation, we can see them as formally analogous to the kind of apology and reparation that a moral wrongdoer might make to those she has wronged.

The burden that the offender is required to undertake, as his punishment, can be seen as constituting a formal, and forceful, apology to his victim and to the wider community. The apology has something of the quality of a public ritual rather than of a sincere expression of personal feelings, though we may hope that it will become sincere; but it serves to make clear to the offender the wrong that he has done, and for which he owes and is required to offer this apology, and to make clear to the victim our shared recognition of that wrong. Furthermore, a probation order involves, as probation officers often put it, an attempt to bring and to help the offender to confront the character and implications of his crime, and to find ways of avoiding repeating it, partly by programmes that seek to address offending behaviour and its causes: by undertaking such programmes the offender is also making apologetic reparation for his crime.

Much more needs to be said about this idea of punishment as moral rehabilitation (see Duff 2001). All I have tried to do here is to suggest that it deserves serious attention.

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