

Against rehabilitation: for reparative justice

Pat Carlen presents highlights from her 2012 Eve Saville Lecture

The difficulties of re-imagining the possible relationships between crime and justice in class societies are so complex that it may seem easier (and cheaper) to attempt bettering the lot 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 knowledge of criminal justice's malign underbellies, and instead talk 'as if' criminal justice's ideal play of governance is already realised in its rhetoric. 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 are acted upon as if they can be realised without fundamental social change, they become penal imaginaries which obstruct 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 and anti-prison campaigns, as well as in the 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 programmes have not been designed for corporate criminals

I therefore thought it might be worthwhile to examine the absurdities realised as rehabilitation is played-out through different disciplinary, welfare and security rhetorics, and yet with always the same effect – of returning poorer and already-disadvantaged lawbreakers to their place, at the same time as keeping richer and more powerful criminals in theirs. The argument is that the discriminatory concept of rehabilitation should be subsumed by a holistic concept of reparative criminal justice based upon principles of inclusive citizenship and socio-economic reparations applicable across all classes.

The concept of rehabilitation is difficult to define and currently re-integration, re-settlement or re-entry is often used instead of re-habilitation. Yet all these terms, imply that those 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. They are returned to their place in society, but from that disadvantaged place they are repeatedly returned to prison. 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. None the less, I will assume a benign definition of rehabilitation: the return of a lawbreaker or ex-prisoner to civil society (i.e. citizenship) with an enhanced capacity to lead a law-abiding life in future. But who is to be rehabilitated to what?

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 programmes have not been designed for corporate criminals, however long their records of recidivism. But, 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, and where such support has been forthcoming it has often been strategic in enabling ex-offenders to remain law-abiding. Unfortunately, the charitable impulse to provide such support has been repeatedly undermined by persistence of the less eligibility doctrine that ex-offenders should always be last in the queue for welfare goods. Moreover, though justice workers may still employ the terminology of rehabilitation, today their primary duty is to make risk assessments on behalf of what has been called 'the security state'. Prison populations are also currently expanding because non-punitive rehabilitation projects are being 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 poorest citizens and especially on those vilified as being the least deserving and receiving welfare benefits of any kind whatsoever. *These* are the perennial *subjects* of rehabilitation.

Rehabilitation to what?

In Western societies, legitimisation of the state's power to respond to crime has been implicitly rooted in a contract theory predicated upon a conceit that the state is founded upon citizens' consensual agreement to surrender to state agencies their individual capacities to redress wrongs. In (even nominal) welfare states, the state is under obligation to satisfy the minimum needs of its citizens and protect them and their property from attack; in return, citizens are expected to obey the law and fulfil other civic responsibilities laid upon them by virtue of their citizenship (Doyal and Gough, 1991). What happens when the state doesn't keep its side of the bargain?

What has happened over the last forty years is that when disadvantaged citizens have broken the law their economic and social needs have not been viewed as qualifications for rehabilitative measures by the state, but rather as 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. 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 poorer criminals, 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, governments are reluctant to see corporate criminals in court through fear that 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 to render laughable any talk of attempting to change their future behaviour by rehabilitative reprogramming. What is to be done?

'citizen reparations' is a concept that chooses to imagine an inclusive social justice

One way to move away from conceiving of criminal justice as being primarily a response to the crimes of the poor, might be to rethink criminal justice within a reparative social justice applicable to all classes: a justice seeking reparation from lawbreakers (across all classes) *to the state in* proportion both to the harms committed and the ability to pay; and *from the state to* all those – whether lawabiding or lawbreaking – whom it has failed materially and culturally in terms of ensuring satisfaction of their minimum needs. And 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. Rehabilitationism, by contrast, is at present, almost exclusively focused upon returning the poor and powerless to their place and, by default, 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 to those powerful criminals who pose the most serious risks both locally and globally, and very little relevance to the bulk of those presently filling the prisons, and who have never had anything to be rehabilitated to. ■

Pat Carlen is Editor of the *British Journal of Criminology*

The full text of the 2012 Eve Saville lecture can be found on the Centre for Crime and Justice Studies' website: www.crimeandjustice.org.uk

References

- Carlen, P. (2012), 'Against Rehabilitation: For Reparative Justice', in Carrington, K. et al., *Crime, Justice and Social Democracy*, London: Palgrave Macmillan
- Doyal, L. and Gough, I. (1991), *A Theory of Human Need*. London: Macmillan