

# ONE

## Introducing, Rehabilitation: The Theoretical Context

### Introduction

In this chapter we begin our exploration of offender rehabilitation by considering the ways in which rehabilitation has been represented and understood in the context of offending. This takes us into theoretical territory, as we consider the criminological assumptions which lie behind ideas about offender rehabilitation. We go on to consider the relevance of rehabilitation in the offender's journey through the criminal justice process: is rehabilitation best understood as a *type* of punishment; as an *alternative* to punishment; or something which most appropriately *follows* punishment? We then turn our attention to the various theoretical justifications for rehabilitative approaches. On what grounds – and in whose interests – have such approaches been promoted or considered desirable? Do offenders have a right to be rehabilitated? In the final part of the chapter we identify and outline some of the main critiques of offender rehabilitation. These centre on questions about justice for offenders; about the use of coercive strategies to change people; and about the degree to which we can justify 'helping' offenders when other disadvantaged groups within society may not be able to access the services they need. The chapter closes by posing a number of questions for discussion or further reflection.

### The Concept of Rehabilitation

Ideas and practices associated with the rehabilitation of offenders have a long history, stretching back at least as far as the eighteenth century. However, as a

concept, rehabilitation is surprisingly difficult to pin down, such that when different writers, theorists or practitioners refer to it, there is quite a good chance that they are not talking about precisely the same thing. This is at least in part because 'rehabilitation' can be understood both as a general objective or goal, and as a process or set of practices (Rotman, 1990); but attempts to define rehabilitation are also complicated by a proliferation of related terms. Some of these (such as 'reform' and 'redemption') have a long history; others (such as 'reintegration', 'resettlement' and 're-entry') have more recent origins.

Clearly what all of these terms share in common is their prefix 're', which implies a return to a previous condition. It is perhaps unsurprising then to learn that according to a general, dictionary definition, rehabilitation is closely associated with the notion of 'restoration', which denotes a return to a former (desirable) state or status. Thinking about rehabilitation as a process of restoration certainly seems to make good sense in medical contexts, where we often talk about the rehabilitation of a person following a physical injury sustained in an accident. Here, there is a clear sense in which the process of rehabilitation involves assisting the individual to get 'back to normal'. He or she may need to re-learn motor skills, such as how to walk (in the case of a broken limb); or seek to recover cognitive skills, such as memory (in the case of a head injury). In either scenario, rehabilitation implies returning to a former, favourable state.

This is arguably a useful starting point for thinking about the rehabilitation of offenders. If asked to describe a 'rehabilitated offender', it is likely that the majority of lay people would indicate a person with some history of offending behaviour which has now ceased. We might think of this as a return to 'normal', law-abiding behaviour. This is clearly a behavioural definition: it is about a change in the way a person behaves. So the action of rehabilitation might involve the provision of interventions to remove the propensity, desire or necessity to offend.

But the notion of rehabilitation also has a symbolic dimension, such that it implies a return to a former status: that of a law-abiding citizen who is accepted by and enjoys the same rights as other members of the community. In other words, offender rehabilitation can imply not just behavioural change, but also a symbolic process whereby an individual is permitted to shed the negative label of 'offender' and be reinstated within the community after a period of exclusion or censure. Indeed, as Garland (1985) has observed, the concept of rehabilitation was first conceived in French law in the second half of the seventeenth century and was used to refer to the destruction or 'undoing' of a criminal conviction. Mannheim (1939: 151) describes the act of rehabilitation in its original context as 'a deletion of all entries regarding the conviction in the records'.

In England and Wales, this symbolic restoration of the former offender is at the heart of the 1974 Rehabilitation of Offenders Act. The Act was passed largely in response to the recommendations of a committee set up in the early

1970s to consider the problems of a criminal record to 'rehabilitated persons', defined as the large number of people 'who offend once, or a few times, pay the penalty which the courts impose on them, and then settle down to become hard-working and respectable citizens' (JUSTICE et al., 1972: 5). Recognising the stigma associated with having a criminal conviction, and the barriers thereby erected in respect of gaining employment in particular, the committee's report argued that there was a need for 'rehabilitation laws' which would treat the majority of old convictions, after a period of time had elapsed, as 'spent and irrelevant', thereby enabling the social reintegration of the offender.<sup>1</sup>

There are, then, good grounds for thinking about offender rehabilitation in terms of restoration. However, that is not to say that the equation of the two concepts is unproblematic. As both Rotman (1990) and Raynor (2004a) have argued, we need to be careful *not* to confine the concept to the sense of restoration to a pre-existing condition of adequacy. For Raynor, this is principally because we cannot always assume that offenders were ever in a desirable state to which we would wish to restore them. For Rotman, the notion of a return to a former condition is too narrow because it does 'not cover the achievement of totally new social or psychological developments or the acquisition of new skills' (1990: 3–4). For both, then, it is arguable that rehabilitation sometimes needs to go further than 'restoration', by actually improving upon (as opposed to reverting to) an offender's original state. So this would suggest a definition of offender rehabilitation as 'change *for the better*'.

### **The Human and Criminological Subject of Rehabilitation**

In this section we confront the criminological assumptions which lie behind 'rehabilitative' practices and interventions, and posit that *all* such practices are founded on a particular understanding of the offending subject. In other words, whatever their shape, approaches to rehabilitation are never theory-free. They reflect particular criminological theories (about *why* people offend) and, even more broadly, theories about the nature of human behaviour. In this section, then, we address the following question: who is the human and criminological subject of rehabilitation?

Criminological theories tend to view the human subject – the offender in other words – on a core continuum with, at one extreme, active agents who create and shape their world and bear responsibility for the choices and decisions they make; and, at the other, passive subjects whose behaviour is shaped by a variety of forces largely beyond their control (Henry and Milovanovic, 1996: 16). These extreme positions are sometimes characterised in terms of the dichotomy of 'freedom' and 'determinism', and in criminology they are mirrored, respectively, in the *classical* and *positivist* schools of criminology.

The classical tradition, with its roots in eighteenth-century Europe (Beccaria, 1963 [1764]), is founded on a view of the offender as a rational actor and emphasises the role of free will in dictating behaviour (including offending). According to the classical perspective, offending behaviour is a result of the application of choice on the part of the individual: specifically a calculation of the costs and benefits of a particular course of action. Offending, in common with any other form of human behaviour, is motivated by the will to pleasure. In other words, human behaviour is motivated above all else by a desire to seek pleasure and enjoyment, and to avoid pain. As a rational actor, free to choose his or her course of action in any given situation, the offender bears full responsibility for his or her behaviour. Classicism draws no distinction between those who offend and those who do not: we are all thought to be driven by the same impulses and subject to similar temptations.

In contrast positivism – in its extreme manifestation – views the offender as a ‘puppet’ or entirely passive victim of external or internal forces. When viewed in this way, the offender tends to be seen as bearing little or no responsibility for his or her actions. As a consequence, it follows that he ought to be ‘treated’ or ‘helped’, much like someone suffering from a physical illness, in an attempt to remove the causes of his offending. It was this set of assumptions which animated the so-called ‘treatment model’ which dominated the way offenders were dealt with in the mid-part of the twentieth century, and which we shall encounter in greater detail in Chapter 2. Less extreme versions of positivism contend that offenders’ behaviour is not entirely determined but nonetheless their ability to exercise free will is likely to have been constrained by factors not entirely within their control (e.g. poverty; mental illness; or attitudes learned from antisocial/pro-criminal peers or family members). In this scenario it follows that whilst offenders bear *some* responsibility for their offending, they can claim some mitigation for their behaviour and it might be possible to prevent reoffending if the factors which led them to offend are tackled or confronted.

Positivist criminology has its roots in the work of Italians Cesare Lombroso, Enrico Ferri and Raffaele Garofalo. Lombroso, whose highly influential book *L’Uomo Delinquente* (‘The Criminal Man’) was first published in 1876, is best known for his Darwinian theory that offenders were atavistic ‘throwbacks’ to an earlier stage of evolution: that is, biologically inferior subjects. However, not all positivist explanations rest on biological assumptions. There are in fact three main types<sup>2</sup> of positivist explanation: (i) biological; (ii) psychological; and (iii) social/environmental. Thus, positivist assumptions may recommend interventions aimed at changing people and/or their social/environmental circumstances.

A positivist perspective then, tends to recommend ‘expert’ intervention to deal with offending behaviour: that is, some intervention likely to involve the identification of the causes of offending (‘diagnosis’) and their subsequent ‘removal’. One possible exception to this is some versions of biological positivism: if it is theorised

that offending is a result of some biological abnormality for which there is no cure then there are fewer grounds for optimism.

In Britain and elsewhere, the history of attempts to rehabilitate offenders is intimately entwined with the emergence and development of positivist criminology, and a view of offending behaviour as determined (to a greater or lesser extent) by factors which lie outside the individual's control (e.g. Hollin, 2004). During the 1950s and 1960s, in the USA and Britain, positivism came to dominate criminological thinking and the 'treatment model' associated with it reflected a common belief that both the causes of – and the cure for – crime would ultimately be discovered, relieving society of the problem of crime forever. Allen (1959) famously referred to this as the *rehabilitative ideal*. Correspondingly, the decline of the treatment model in the latter part of the twentieth century is associated with the critique of positivist criminology and the emergence of a neo-classical perspective on offending behaviour, which revived the image of the rational offender exercising more or less free choices.

It is however important to note that attempts to rehabilitate offenders both pre-date 'mainstream' positivist criminology and have survived its decline in the latter part of the twentieth century. As Clive Hollin (2004) has noted, and as we shall see in later chapters, the revival of a neo-classical perspective has been linked with a revival of rehabilitative optimism. So whilst the link between rehabilitation and positivist criminology must certainly be acknowledged, we should not assume an entirely dependent relationship. Later in this chapter we explore the various theoretical justifications for rehabilitation, which go a long way to explaining how and why rehabilitative approaches have such a long history and show no signs of extinction.

## Rehabilitation and the Criminal Justice Process

We have already noted, above, that the notion of rehabilitation is not confined to offenders. Thus for example, we commonly refer to the rehabilitation of persons who have been injured or are otherwise 'debilitated' by some medical condition. Even more generally, we talk about the rehabilitation (as in 'revival') of particular fashions, whether it be the mini-skirt, the wedge heel, or 'flares'.

Of course, none of these contexts is of focal concern in this book. Rather, our principal focus is the applicability of the notion of rehabilitation to offenders: namely, individuals who have broken the law. This however begs certain questions about how and in what contexts 'rehabilitation' becomes relevant to such individuals. For example, does it imply a particular type of punishment or sanction? Is it best understood as a type of punishment or an alternative to punishment? Or is it perhaps better summed up as a process which *follows* punishment? There is no single 'correct' answer to any of these questions:

rather, there are a number of different 'ways of seeing' rehabilitation in the context of punishment or penal sanctions.

### **Rehabilitation and diversion**

The first point to make is that access to services or sources of help which can broadly be described as 'rehabilitative' is not necessarily contingent upon an offender having been processed by the criminal justice system. A good example is people who misuse drugs. By virtue of their consumption of illegal substances, such individuals may well have broken the law on many occasions; but it is perfectly possible not only that such individuals may evade detection, but also that they may enter into treatment voluntarily.<sup>3</sup> When celebrities enter 'rehab', for example – typically because of problems associated with the consumption of illegal drugs – it is often in the absence of any criminal proceedings against them.

It is also sometimes the case that an offender whose offending *has* been detected may avoid prosecution or criminal sanctions but nonetheless be referred by a criminal justice agency to rehabilitative help. One such example is the use of diversion schemes, whereby offenders (typically juveniles or mentally disordered offenders) are sometimes referred to sources of help or treatment-type interventions as an alternative to prosecution. Since the 1970s a variety of diversionary schemes and measures have been introduced, in Britain and elsewhere, under the influence of labelling theory. Labelling theory emphasises the damaging and stigmatising effects of a criminal label on young offenders and thus recommends 'diversionary' measures to keep them out of the criminal justice system for as long as possible. Other offenders may get as far as court and be diverted from there. For example, in 1990 the Home Office provided guidance on the policy of diversion and aimed to ensure that, where possible, mentally disordered offenders were referred to health and social services for support and treatment rather than punished via prosecution and criminal sanctions (Home Office, 1990). Courts can thus opt for a disposal under the Mental Health Act 1983, such as a Hospital Order, in place of a criminal justice disposal (such as prison) where the offender has been assessed as having a mental disorder.

### **Rehabilitative punishment**

For those who are not diverted prior to sentencing, there are a number of ways in which rehabilitation can become relevant. First of all, the sentence of the court may reflect – in whole or in part – a desire to bring about the rehabilitation of the offender. This is often referred to as 'rehabilitative punishment', or 'penal rehabilitationism' (von Hirsch and Maher, 1992).

Sentencing decisions are guided by principles or ‘philosophies’ which serve to justify the punishments imposed by the criminal courts.<sup>4</sup> Consequentialism (or reductionism) and retributivism are the two main philosophies relevant to sentencing and punishment – although there are others (see Cavadino and Dignan, 2007: Chapter 2; Zedner, 2004: Chapter 3; Hudson, 2003: Part 1). When a sentence with a rehabilitative component is passed, the sentencer is being guided, to some extent at least, by a *consequentialist* philosophy. Consequentialism justifies punishment with reference to the desirability of its future consequences. Rehabilitation is one of three main consequentialist strategies, sitting alongside *deterrence* and *incapacitation*. All three strategies share a forward-looking orientation, each aiming to achieve the goal or ‘end’ of crime reduction. Incapacitation is consequentialist in that it seeks to prevent reoffending by physically restraining or removing the offender from society, thereby removing his or her opportunities to offend. Deterrence also seeks to prevent reoffending, but by different means: namely, by ensuring that punishment is suitably unattractive to the would-be offender. Rehabilitation, in common with both of these strategies, seeks to reduce the likelihood of reoffending, but via instituting changes in the offender. These ‘changes’ are usually couched in positive terms. For example, Cavadino and Dignan explain that rehabilitation seeks to ‘improve the individual offender’s character or behaviour and make him or her less likely to re-offend in future’ (2007: 41–2).

In contrast, *retributivism* essentially describes the principle that wrongdoers should be punished because they deserve it, by virtue of the wrong that they have done. Unlike consequentialism it is a backward-looking strategy: it looks back to the offence or offences committed and considers the amount of deserved punishment. In other words, it specifies punishments which ‘fit the crime’, with little or no reference to the future consequences of that punishment. Retributivists are principally concerned with ideas of *desert* and *proportionality*, which concern the amount or degree of punishment prescribed: this, they argue, should reflect the seriousness of the offence(s) committed and not exceed what is deserved. Convictions of a similar type should therefore attract similar sentences.

Sentencing with a view to offender rehabilitation does not, however, recommend a specific sanction. As we shall see in later chapters, there has never been a consensus on this issue. Opinion has been, and remains, particularly divided on the issue of whether prison is an appropriate context for rehabilitation.

### Rehabilitation beyond punishment

‘Penal rehabilitation’, then, describes any penal sanction – whether custodial or community-based – which is designed (in whole or in part) with the objective or ‘end’ of offender rehabilitation in mind. However, the idea of rehabilitative punishment is not uncontroversial. For some theorists, rehabilitation is conceptually

divorced from punishment, such that it is not understood as an objective or quality of a positive process of punishment, but rather as an *antidote* to punishment: or, more precisely, the potentially harmful effects of punishment (e.g. Cullen and Gilbert, 1982; Rotman, 1990; McWilliams and Pease, 1990). According to this view, just as retributive punishment may be deserved, so the offender deserves not to be unduly damaged by the experience of punishment. Any handicaps or damage inflicted on the offender in the process of punishing him or her ought to be offset or mitigated by rehabilitative measures. Rotman's position is often referred to as *rights-based rehabilitation*, which we shall revisit in the following section.

Regardless of one's theoretical position in respect of rehabilitative punishment or sanctions, however, we must also note that for many offenders it will be at the end of their journey through the criminal justice process that rehabilitation becomes relevant. For example, prisoners serving longer prison sentences tend to be subject to a period of supervision in the community (on licence or parole) after release from custody; a time during which they may receive help and assistance from a probation officer (or similar) with a view to preventing the likelihood of reoffending and easing the transition to life 'outside'. Similarly, offenders serving shorter sentences (for whom there is no statutory or compulsory period of supervision post-release) may seek or access help of various kinds, either from statutory agencies such as the probation service, or from non-statutory agencies and organisations (e.g. NACRO). This process of adjustment to life after prison is commonly referred to as 'resettlement' (in the UK) or 're-entry' (in the USA). It is also worth noting that to the extent that rehabilitation refers to a symbolic process – a return to citizenship – it is difficult to envisage such a process occurring until an offender has completed his or her sentence or punishment.

### Theoretical Justifications for Rehabilitation

For more than two hundred years, penal reformers and theorists have advocated rehabilitation as an essentially *humanitarian* response to wrongdoing, and a means of bringing about the improvement or humanisation of criminal sanctions. Writing in the late eighteenth century, the penal reformer John Howard developed his own ideas about the reform of offenders as an alternative to what he saw as an overly punitive and disproportionate response to offending behaviour at that time (Howard 1929 [1777]). More recently, writers including Cullen and Gilbert (1982) and Rotman (1990) have continued to advocate rehabilitation on similar grounds. Rotman for example claims that:

The rehabilitation of criminal offenders offers the criminal justice system a unique avenue of improvement [and] has enormous potential for humanizing and civilizing social reaction



against crime. Modern rehabilitative policies challenge the fantasy that the dark side of society can be forgotten and that deviants can be simply packed off to prison. They propose instead to offer inmates a sound and trustworthy opportunity to remake their lives (Rotman, 1990: 1).

Another way to justify the practices associated with offender rehabilitation is with reference to the positivist position, outlined above. If we accept the view that to a large extent offenders are victims of forces beyond their control, we can clearly justify the argument that they therefore merit whatever help might be available to prevent further offending and facilitate a 'normal' life – much in the same way that we might justify the provision of physiotherapy to a person with a broken limb.

We can take this argument further. If we accept that crime is caused, at least in part, by social deprivation (e.g. poverty) or other problems which society has failed to address (e.g. mental illness) such that the individual's capacity to avoid crime has been compromised, then it is possible to argue that society has an *obligation* to intervene or help the offender out of the situation (Cullen and Gilbert, 1982; Carlen, 1989). Put another way, we might argue that the offender has a right to receive help to avoid further offending. This is one version of 'rights-based' or 'state-obligated' rehabilitation. The other (weaker) version of this position takes us back to the notion of rehabilitation as restoration, and is usually invoked in respect of offenders who have served sentences of imprisonment. As we saw in the previous section, Rotman (1990) argues that just as the state has a right to punish the offender for his or her wrongdoing, so the offender has a right not to be debilitated by the effects of punishment. In other words, the offender should not find himself in a worse position (economically, socially, psychologically etc.) after a period of punishment than prior to it. Thus, for example, Rotman includes in his definition of rehabilitation the provision in prisons of educational opportunities; vocational training; appropriate psychological or psychiatric treatment; and the maintenance of family and community links. He also argues that the offender's right to rehabilitation is consistent with the full restoration of prisoners' civil and political rights of citizenship after release from prison (Rotman 1990: 184).

It is, however, also possible to justify rehabilitation with reference to *utilitarian* arguments. Utilitarianism is a philosophy which originates in the work of the English philosopher Jeremy Bentham (1748–1832) and which was subsequently developed by John Stuart Mill (1806–73) (see Cavadino and Dignan 2007: 52–3). The utilitarians argued that an action is ethically or morally right if it produces 'the greatest happiness' for the greatest number – i.e. the best overall consequences. The utilitarian justification for rehabilitation is therefore that the transformation of offenders into law-abiding

members of the community serves the interests of society as a whole. Insofar as it is possible to make 'honest citizens' of former offenders, rehabilitative practices not only maximise the availability of useful, contributing members of society, but also protect society from future crime and victimisation (see also Raynor and Robinson, 2005: Chapter 2).

It might of course be argued that we could achieve the same end by locking up offenders en masse and keeping them there indefinitely. Indeed, incapacitation is making a comeback in the form of public protection sentences for certain categories of dangerous offenders. This is not, however, a wholesale answer to the problem of crime for most people. For one thing it would raise important questions about justice. For proponents of retributivism, proportionality (or 'just deserts') in punishment is of primary importance: in other words, sanctions for criminal behaviour ought to be in proportion to the amount of wrongdoing. For another, incapacitation would be a very expensive solution. Economy is thus another possible justification for a rehabilitative approach to punishment. And even if we cannot demonstrate that rehabilitative interventions have crime-reduction effects, we can invoke a weaker version of the utilitarian position to argue that of the two approaches, rehabilitation is preferable because it at least involves the avoidance of unnecessary harm from penalties that are.

### **Rehabilitation and ITS Critics**

So far we have represented rehabilitation as a 'force for good'. Conceptually, it has been noted that rehabilitation is associated with the positive notion of restoration; but that it can also imply a process oriented toward improving the offender's former standing: a 'change for the better'. We have also noted that ideas associated with the rehabilitation of offenders have tended to be motivated by humanitarian concerns: that is, with a view to 'humanising' the criminal justice system and rendering the experience of criminal sanctions a more positive and constructive one for the offender.

### **Rehabilitative punishment and questions of justice**

However, that is not to imply that there are not problems with rehabilitation. In particular, the notion of *rehabilitative punishment* (see above) has met with strong criticism. Firstly, it has been argued that sentencing offenders with a view to rehabilitation is problematic on the grounds that it can lead to disproportionate sentences and, more generally, inequity. Proponents of retributive justice and desert-based sentencing argue that allowing sentencing decisions to be influenced by a desire to change or rehabilitate offenders

invites extended periods of punishment which go beyond what is deserved (in respect of the seriousness of the crime committed). As we shall see in Chapter 2, this has been a valid criticism of rehabilitative punishment in the past. But it is worth reiterating the point that even some of the proponents of rehabilitation have raised strong objections to the idea of rehabilitative punishment and the risks of injustice which it poses. For example, Raynor (1997: 253) has argued that ‘the presumed benefits of a [rehabilitative] programme should not be used to justify an increased sentence as being “good for” an offender’: rather, a rehabilitative sentence should be limited by the principle of desert (see also Rex, 1998: 38–9). Similarly, Rotman (1990: 14) has argued that ‘No one should endure a longer sentence in “order to be rehabilitated”.’ Where the two differ is that whilst Raynor considers rehabilitation a legitimate goal of sentencing and punishment, Rotman – as we have seen – rejects this view.

### Dubious practices?

A second criticism concerns the *content* of ‘rehabilitative’ interventions. As we shall see in subsequent chapters, faith in rehabilitation has manifested itself in a wide variety of practices for which ‘rehabilitative effects’ have been claimed, from the treadmill and the crank through extended periods of solitary confinement, to psychosurgical and medical interventions. For Rotman (1990: 102), the most important ‘therapeutic’ abuses perpetrated in the guise of rehabilitation have involved the use of biochemical means to control and/or ‘recondition’ the offender. The history of rehabilitation includes the use of drugs to ‘chemically castrate’ sexual offenders; to tranquilise ‘dangerous’ offenders; and to arouse pain and fear in the context of ‘aversion therapy’. Judged against today’s standards, such interventions hardly fit the description of ‘humane’ approaches to punishment (see in particular von Hirsch and Maher, 1992). Particular questions have been raised about the *moral* content of certain rehabilitative interventions. Rotman asks:

Should rehabilitation be defined to include efforts to produce a moral change in offenders, or should it rather be confined to the acquisition of the capacity to abstain from future crimes?. (Rotman, 1990: 6)

Rotman’s own answer to this important question is that attempts to inculcate particular moral values in offenders contradicts the basic freedoms enjoyed by individuals in modern pluralistic societies. Rotman promotes a vision of rehabilitation which ‘enhances human freedom instead of narrowing it’ and ‘excludes from its goals any imposition of moral systems based on particular religious or political ideologies’ (1990: 7).<sup>5</sup>

### Is coercion justified?

Rotman (1990: 8) draws a distinction between *authoritarian* and *anthropocentric* models of rehabilitation, which he sees as, respectively, authoritarian/oppressive, and liberty-centred/humanist. The authoritarian model, he argues, sees rehabilitation as a technology designed to 'mould' the offender and encourage conformity to some predesigned pattern of thought and behaviour; whilst the second, in contrast, is client-centred and – importantly – voluntary. For Rotman, rehabilitation is not something which should ever be imposed on the offender:

The humanistic model of rehabilitation excludes all manipulative schemes to alter the offender's personality or behaviour and demands fully informed consent and willing intelligent participation. ... Instead of stamping the mind of the offender with a predetermined constellation of behavioural patterns, it should become a guide toward the creative possibilities of thought and new channels of action. (Rotman, 1990: 8–9)

For Rotman, then, attempts to rehabilitate offenders should be subject to the offender's consent and should invite the active participation of offenders in their own process of rehabilitation.

However, not everyone has objected to the idea of obliging or coercing offenders to engage with rehabilitative interventions. For example, Carlen's (1989: 20–1) own vision of *state-obligated rehabilitation* includes the principle that offenders *could* be obliged to engage in a programme of rehabilitation offered by the state, and she argues that no such programme should be rejected on the grounds that it violates the offender's civil liberties. She offers the examples of recidivist 'white collar', driving or sexual offenders, all of whom, she argues, could be coerced into accepting a 'rehabilitative' or 're-educative' community-based sentence.

Day et al. (2004) have noted that coercing offenders to attend rehabilitative programmes is increasingly regarded as an acceptable course of action, particularly for offenders who are considered to present a high risk of harm to the public (e.g. sexual, violent and substance misusing offenders). Typically, they note, interventions offered to these groups are coercive *not* in the sense that individual offenders have no choice but to cooperate, but rather in the sense that there are likely to be negative consequences for non-participation.<sup>6</sup> This might mean, for example, a lower likelihood of securing parole or early release from custody; or, in the case of community-based sentences, a return to court for re-sentencing if the offender fails to comply with a treatment programme ordered by the court. Day et al. argue that coercion is not inherently unethical: rather, what is important is (i) whether professionals involved in rehabilitation programmes exercise coercion in an ethical or an abusive way; and (ii) the impact of coercion on programme effectiveness. They also point to the *subjective* dimension of coercion: for example, a person may be *objectively* coerced (e.g. when a court makes

rehabilitation a component of a sentence) but not feel coerced (e.g. if she or he accepts that rehabilitation is a legitimate or welcome course of action). Alternatively, a person who perceives entry into a rehabilitative programme as coerced may well change their opinion as the programme progresses: where internal motivation increases in the course of an intervention which is perceived in positive terms, perceptions of coercion may decrease.

Day et al. note that despite a limited evidence base from which to draw conclusions about the effectiveness of coerced offender rehabilitation, what research there is indicates that coercion is successful in both getting offenders into treatment and keeping them there (see also Farabee et al., 1998). They conclude their review of research thus: 'coercing offenders into attending rehabilitation programmes (or placing legal pressure on them to attend) is unlikely in itself to lead to poorer outcomes' (2004: 266).

### **'Less eligibility'**

A final criticism of offender rehabilitation – whether voluntary or coerced – points to the problems inherent in offering rehabilitative resources and 'help' to offenders, whilst such assistance remains unavailable to others in society who have not offended but may well be experiencing some of the same personal problems and social/economic disadvantages. Where this occurs, rehabilitation offends the principle of 'less eligibility'. Formulated by Bentham in the late eighteenth century, this principle states that 'saving the regard due to life, health and bodily ease, the ordinary conditions of a convict doomed to punishment' shall not be made 'more eligible than that of the poorest class of citizens in a state of innocence and liberty' (Bentham, 1791, quoted in Rotman, 1990: 112). In other words, those convicted of offences should not enjoy conditions more favourable than those enjoyed (or endured) by the poorest independent labourer.

Peter Raynor (1997: 259) attempts to get round the problems posed by a principle of 'less eligibility' in two ways. Firstly, he argues, improved opportunities should be part of a general social policy agenda, such that socially disadvantaged non-offenders ought to enjoy the same access to appropriate sources of help. His second argument is that rehabilitation should not consist in *conferring* but rather *offering* opportunities to offenders: in other words, offenders should be expected to engage with and participate in – as well as consent to – their own rehabilitation.

### **Conclusion**

Our purpose in this introductory chapter has been to consider the key theoretical issues and debates relevant to the rehabilitation of offenders. It will now

be clear that what at first sight appears to be a relatively straightforward concept is in fact rather more complex. Just what is meant by it, what we think it entails and how we justify doing or attempting it depends to a great extent on the theoretical stance(s) we adopt. It is for this reason that there is no single 'vision' of offender rehabilitation, but rather a collection of views, some of which appear to have relatively little in common and even at times to be in conflict.

In Chapter 2 we move on to consider in more depth the history of offender rehabilitation, and in this context we will see quite clearly some of the key ways in which 'visions' of rehabilitation have changed from one century – and even at times from one decade – to the next.

### Questions To Consider

- 1 Can you find – or devise for yourself – a satisfactory definition of offender rehabilitation?
- 2 How do you understand the relationship between *behavioural* and *symbolic* rehabilitation? Is it possible to achieve one without the other?
- 3 'Success in rehabilitation involves *changing* offenders' (von Hirsch and Ashworth 1998: 1). Do you agree? Why/why not?
- 4 Is rehabilitation best conceived as a right of the offender, or a privilege of the state?
- 5 How useful is Rotman's distinction between *authoritarian* and *anthropocentric* rehabilitation? To what extent do you think current penal practice represents one or other of these models?

### Suggested Further Reading

Chapter 1 of von Hirsch and Ashworth's edited collection *Principled Sentencing* (1998) contains a selection of useful readings on rehabilitation, including an excerpt from Cullen and Gilbert's (1982) *Reaffirming Rehabilitation*; von Hirsch and Maher's essay 'Should penal rehabilitationism be revived?'; and Sue Rex's essay 'A new form of rehabilitation?' Rotman's (1990) book *Beyond Punishment: A New View of the Rehabilitation of Offenders* (Chapter 1 of which is reproduced in *A Reader on Punishment* (1994) edited by Duff and Garland) elaborates his authoritarian and anthropocentric models as well as providing a useful historical introduction to the topic. Definitions of rehabilitation and justifications for rehabilitative practices are also discussed by Raynor and Robinson (2005), Chapters 1 and 2.

### Notes

- 1 Not all jurisdictions have such 'rehabilitation laws' and in some parts of the world it is particularly difficult for former offender to earn their status as equal citizens. For example, in the USA, an estimated 5.3 million people are denied the right to vote because of laws that prohibit voting by people with felony convictions, and the

- American Civil Liberties Union (ACLU) reports that in 11 states offenders can lose their right to vote for life. [<http://www.aclu.org/votingrights/exoffenders/index.html>]
- 2 It is important to recognise that these are 'ideal types' which in the real world tend to overlap, reflecting familiar 'nature vs nurture' debates in psychology. Thus for example social psychological accounts of offending consider how a person's behaviour comes to be shaped by observing the behaviour of others around him through 'modelling', indicating an acknowledgement that sometimes internal and external factors coincide.
  - 3 It should be noted however that research has shown that drug using offenders are not generally inclined to seek help voluntarily (e.g. Bennett, 1998).
  - 4 In England and Wales, the 'purposes of sentencing' have been set out in the Criminal Justice Act 2003, s. 142. 'The reform and rehabilitation of offenders' is one of five such purposes set out in relation to offenders aged 18 and over.
  - 5 Readers are referred to Anthony Burgess's 1962 novel *A Clockwork Orange* for an extreme example of 'brainwashing' in the name of 'rehabilitation'.
  - 6 Day et al. (2004) explain that they prefer the term 'pressured' rather than 'coerced' in that a choice is exercised on the part of the offender, but that choice is likely to be constrained by the consequences of refusal or non-cooperation.