

# META-ANALYSIS AND THE REHABILITATION OF PUNISHMENT<sup>1</sup>

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Do we know what "works" in the way of rehabilitative treatment in corrections? Not yet. Has the old "nothing works" literature been invalidated by new reviews of research claiming to show, through meta-analysis, that treatment really does work, at least when it is "appropriate?" Not likely. Would production of this knowledge enhance the ability of prison officials to do their job? Not ever. Their job, and their highest duty, is to administer justice, not treatment. Individualized treatment muddles the message of punishment, making it less principled and not necessarily more humane. A "confinement model" of imprisonment is proposed, which rejects rehabilitation as an official goal and yet allows for programs of work, education, and other activities within the mission of a prison.

The correctional rehabilitation ethic is a child of this century, born with the rise of Progressive ideology and reform in the early decades, growing strong with the development of social science in the thirties and forties, reaching maturity in the fifties when the medical model was at its peak, suffering a mid-life crisis and a loss of faith in the sixties and seventies, and essentially gone and forgotten by the eighties. As we enter the nineties, the rehabilitative ideal is showing signs of revival as some researchers, employing a new technology called "meta-analysis," believe they have detected life in the old body still. Were the rumors of the death of rehabilitation premature? Or is it time to give rehabilitation a decent burial and to consider a redefinition of penology without reference to "corrections?"

The debate over "treatment versus punishment" is rooted both in empirical research and in ideology; a candid discussion must address both of these aspects. Failure to do so has displaced onto seemingly objective questions (such as "Which is more effective: rehabilitation or punishment?") the kind of passion normally associated with ideological questions (such as "Which is a morally superior goal for criminal justice: rehabilitation or punishment?"). In this paper we intend, first, to challenge some of the recent empirical research being used to support claims for the effectiveness of rehabilitation. Second, we intend to argue that regardless of what such research shows, punishment is preferable to rehabilitation as an aim of criminal justice and, in particular, that punishment through confinement is the most appropriate mission for a prison. Meta-analysis of research on rehabilitation has not yet established that any particular method of treatment is significantly and reliably effective. We still do not know what "works" in correctional treatment, but it really wouldn't matter even if we knew, because the fundamental purpose of imprisonment is not the correction but the punishment of criminal behavior.

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<sup>1</sup>This paper was written while the first author was a Visiting Fellow at the Federal Bureau of Prisons, Office of Research and Evaluation. That support is gratefully acknowledged, but the opinions expressed here are those of the authors and do not represent policies of the Bureau of Prisons or the Department of Justice.

## **THE DECLINE AND REVIVAL OF REHABILITATION**

Empirical research often has been used to support positions that are held primarily for ideological reasons. For many decades, a belief in the applicability of scientific method to the solution of social problems supported a system of indeterminate sentences based supposedly on objective expertise and knowledge and designed to allow for individualized treatment of offenders. The same belief led to a profusion of research aimed at discovering the most effective methods of providing this corrective treatment. Critical reviews of this research during the 1960s and 1970s, however, supported the conclusion that we do not know how to rehabilitate criminals (Bailey 1966; Greenberg 1977; Logan 1972; Martinson 1974; Robison and Smith 1971; Sechrest, White, and Brown 1979); other critics objected that discretionary treatment, however well motivated it might be, tends to be highly arbitrary and unjust (Allen 1981; American Friends Service Committee 1971; Szasz 1965; von Hirsch 1976).

Partly in response to this critical literature, indeterminate sentences and discretionary release largely have been replaced by sentences fixed according to statutes and guidelines. This reform was supported both by civil libertarians, who wanted to protect offenders from "benevolent" violation of their rights, and by conservatives, who believed that parole-adjusted sentences were too lenient. Individualized treatment has been pushed aside by the "justice model," in which offenders are to be treated impersonally and equally, according to the gravity of their crimes, and to receive the amount of punishment their acts deserve.

These reforms have been widely perceived as "getting tough on crime," and are believed by many to have led to overimprisonment and increased suffering by prisoners. In response to this perception, some people are attempting to revive the rehabilitative ethic in the belief that a treatment orientation will soften the alleged overemphasis on punishment (Cullen 1986; Cullen and Gendreau 1989; Cullen and Gilbert 1982). In support of their position, the promoters of rehabilitation have been reviewing the research literature once again in an attempt to show that treatment does work after all, at least sometimes (Andrews et al. 1990a; Basta and Davidson 1988; Cullen and Gendreau 1989; Garrett 1985; Gendreau 1981; Gendreau and Andrews 1990; Gendreau and Ross 1979; 1987; Izzo and Ross 1990; Lipsey 1988, 1989, 1990; Palmer 1983; Ross and Gendreau 1980; Van Voorhis 1987).

## **META-ANALYSIS: DISCOVERY OR ALCHEMY?**

Advocates of rehabilitation believe that a powerful new tool known as "meta-analysis" can be used to mine the deposits of previous research, to uncover hidden veins of effective treatment not necessarily revealed by individual studies, and to refine the ore of prior findings to extract and combine the valuable elements. Critics of this approach believe that meta-analysis is being misused, like some kind of alchemy, in an attempt to turn the lead of inadequate experiments into the gold of established knowledge.

In less metaphorical terms, what meta-analysis does is to study other studies—in this case, studies that test the effectiveness of various programs of correctional treatment. Each study is coded on a number of variables such as characteristics of the research design, characteristics of the subjects studied, and characteristics of the treatment applied. In theory, by combining and reanalyzing studies, meta-analysis may be able to separate treatment effects from differences due to uncontrolled characteristics of the subjects, or other deficiencies of research design, even if those sources of error were not controlled adequately by any of the primary studies taken separately.

Meta-analysis is a legitimate research tool, but is easy to misuse. To be sure, meta-analysts are not deconstructionists who merely read into the literature whatever they please, but their technique imposes such demanding methodological requirements (Hedges and Olkin 1985) that it is difficult to conduct a meta-analysis which controls and adjusts for errors in the primary studies without introducing new errors and biases of its own. It is not surprising, then, that separate reviews and meta-analyses of research on the effectiveness of correctional rehabilitation programs reach differing conclusions and criticize each other's validity (Andrews et al. 1990a, 1990b; Lab and Whitehead 1990).

One recent meta-analysis can be used to illustrate the technique's ability to create spurious findings. This study has been hailed by influential scholars as proving that "something works"; it is part of a continuing body of research produced by a network composed mostly of Canadian researchers who appear to be having a considerable impact on that country's corrections system (Andrews et al. 1990a). This meta-analysis examined a sample of previous studies designed to test the effectiveness of various forms of treatment applied to juveniles and adults under correctional supervision. The researchers coded each of the original studies according to the quality of its research design, the type(s) of treatment it tested, and the size of the "treatment effect" found in the study. They found that the size of the treatment effect had only a minor relationship to the quality of the research design. In contrast, they found that both the size of the effect and whether it was positive or negative were related significantly to the type of treatment. More specifically, they found that treatment effects were strongest and most positive for what they called "appropriate treatment."

Treatment was labeled as "appropriate" under any of four conditions:

- Any treatment, when applied to "high-risk" cases;
- "Behavioral" treatment, except with "low-risk" cases;
- Treatment matched to a client's "responsivity"; or
- Treatment structured toward changing a "criminogenic need."

The keys to "appropriate treatment" in this scheme are the elements of "risk" and "receptivity." "Criminogenic needs" refer to "a subset of risk factors . . . that, when changed, are associated with changes in the chances of recidivism" (Andrews, Bonta, and Hope 1990: 31).

This meta-analysis contains many problems (Lab and Whitehead 1990; Logan et al. 1991), but the most serious is the apparently tautological character of the "appropriate treatment" label. Is treatment effective *because* it is appropriate, or is it *called* "appropriate" when it is seen to be effective? To avoid circular reasoning, one must be able to identify a particular treatment or form of treatment as "appropriate" or "inappropriate" without any prior knowledge of its effects. If a treatment were labeled "appropriate" or "inappropriate" according to theoretically based predictions of effectiveness *before* the point at which a research study measured the effect of applying that treatment to one group (a treatment group) and withholding it from another (a control group), there would be no problem in conducting a meta-analysis of many such studies to compare the effects of "appropriate" and "inappropriate" treatments. A problem *does* exist, however, when the original research studies seek and discover positive effects by reanalyzing their data to test the effectiveness of treatment under different conditions or on different subgroups, and *then* declare the treatment to be appropriate or inappropriate according to its differential effectiveness. This is the result in this meta-analysis when treatment is labeled "appropriate" or "inappropriate" according to its relation to the factors of "risk," "responsivity," and "need."

Did the meta-analysts know in advance what factors would indicate risk or responsivity, and why? They did not. They identified those factors through the meta-analysis itself. They identified both risk and responsivity by their relation to outcome, but distinguished them from each other by their *differential* relation to outcome. Age, for example, was determined to be a "risk" factor in a particular study if it proved in that study to be predictive of recidivism independently of treatment. If it *interacted* with treatment, however, so that treatment effects varied by age, then age was determined to be a "responsivity" factor. Thus three of the meta-analysts writing elsewhere but describing one of the studies reviewed in the meta-analysis, found that offenders with certain traits were more "amenable" to treatment; in other words, treatment had a greater effect on them. In the absence of treatment, "amenables" and "nonamenables" did not differ in their recidivism. "That is, amenability was not a risk factor but a responsivity factor" (Andrews, Bonta, and Hoge 1990: 38).

Consider the history of a typical evaluation research project. An experimental group and a control group are compared, and no significant difference in outcome is found. The researcher, not satisfied with such an uninteresting and seemingly uninformative finding, asks "Aren't there any conditions under which the effect I am looking for occurs?" In fact, even if an effect is found, most researchers will want to know what happens to that effect under different conditions. Thus the researcher starts to introduce third variables into the analysis, and tries holding them constant at different cutting points, until something interesting (or more interesting) results. At that point the researcher must give a name and an interpretation to the variable that has been discovered to condition the existence, strength, sign, or form of the treatment effect. Because the variables included in the original analysis, and thus available for the reanalysis, were chosen because they were thought to be predictors of outcome, the odds are good that some of the variables tested (age, race, sex, class, prior record, attitudes, personality traits, whatever) can be labeled elements of "risk" (i.e., predictors of outcome). Then the researcher's conclusion will be "Treatment has an effect, but only on offenders of a certain type (high- or low-risk)." If the control variable by itself does not predict outcome but does condition the effect of treatment, the researcher can label this interactive effect "responsivity." In such a case the conclusion will be "Treatment has an effect, but only on offenders who are responsive to this type of treatment."

Separately, studies like these are perfectly legitimate, but they do not prove anything. They are tautological; they explain their results with after-the-fact hypotheses but do not test those explanations. What, then, if a meta-analysis of 100 studies finds, a significant relation between "risk" or "responsivity" or "needs," on the one hand, and treatment effect, on the other? Could this metas-analysis be regarded as confirmatory--a summary of replications? Not necessarily. If the operational definitions of "risk" and "responsivity" and "needs" (the predictor variables) differ from study to study, we will learn nothing from a meta-analysis showing that treatment effect depends on these factors. Even if "risk" always were based, say, on prior record, at least two problems still could exist. First, the criterion of how long or how serious a record had to be in order to be "risky" still could be defined differently, and ex post facto, for each study; thus "risk" still would be tautological. Second, researchers typically do not report all the interactions they test; they tend to report only those that make a difference. Thus most of the negative evidence showing that treatment effects do not vary by level of risk goes unreported. A bias is thereby created in favor of the conclusion that treatment works, if only for cases in which risk makes a difference and therefore is reported.

Andrews, Bonta, and Hoge (1990: 31) define "criminogenic needs" as "a subset of risk factors" consisting of "dynamic attributes of offenders and their circumstances that, when changed, are associated with

changes in the chances of recidivism." Thus all three concepts—risk, responsivity, and needs—lend themselves to circular reasoning. These concepts can be used as explanations whenever a researcher testing the effectiveness of treatment discovers some condition under which the treatment group has significantly lower recidivism than the control group. If treatment is more effective under Condition X, that fact alone is sufficient to support the interpretation that "Type X clients" or "clients under Condition X" are "more responsive" or that X indicates that the treatment must be targeting some "criminogenic need."

First, let's summarize in the language of statistics. If a variable has *main* effects on recidivism, it is a "risk" factor (unless it is something that is targeted for change by the treatment, in which case it is a "needs" factor). If the variable *interacts* with treatment in its effects on recidivism, it is a "responsivity" factor<sup>1</sup>. Treatment is declared to be "appropriate" and therefore effective only when it is tied to variables that are known to have either main or interactive effects on outcome.

Now let's put that in simple language. It is often said of psychotherapy that it "can be effective, but only if the patient wants to change." Likewise, treatment of criminals can be effective; but only if they need to change, want to change, are amenable to change, and receive treatment that is matched to their need, desire, and amenability to change. If this is what meta-analysts mean when they say that we are now beginning to know that "some things work sometimes," then in fact we are not far removed from the stage of "nothing works" or "we don't know what works."

The technique of meta-analysis has proved useful in medical research, albeit potentially harmful if applied poorly (Sacks et al. 1987). Likewise it may have a role in determining the effectiveness of certain forms of correctional treatment. Some meta-analytic research on the treatment of juvenile delinquents (Lipsey 1990) has been more sophisticated statistically, more rigorous methodologically, and without the evangelical zeal of other meta-analytic research. Research on juveniles, however, much of it examining minor forms of delinquency, may have little bearing on the rehabilitation of adult offenders. In any case, the claim that meta-analysis now demonstrates that rehabilitative treatment "works" (in the sense of being significantly and reliably effective) as long as it is of the "appropriate" type and is applied "appropriately," is seriously flawed, unsubstantiated, and largely circular.

It may not be worthwhile to debate whether meta-analysis or other research has identified "what works" by way of prisoner rehabilitation. Engaging in such debate presupposes that effectiveness, or utility, is the crucial issue in discussing the value of rehabilitation in the criminal justice system generally and inside prisons in particular. Underlying the zeal with which meta-analysts claim to have proved scientifically that "something works after all" is the implicit argument that because rehabilitation can be made more scientific it is therefore both a viable and a desirable alternative to punishment. The meta-analysts believe that we turned away from treatment and toward punishment because Martinson and others convinced everyone that nothing works; therefore, convincing people of the opposite should help to turn them back in the "proper" policy direction. If only it could be shown that rehabilitation is technically feasible, then it could be taken for granted that it also is morally superior to punishment as a goal for the criminal justice system.

This presumption against punishment as a moral value is a subtext running through much of the new literature on "reviving" or "reaffirming" rehabilitation (Cullen 1986; Cullen and Gendreau 1989; Cullen

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<sup>1</sup>If the factor has both main and interaction effects, it is either a "risk/ responsivity" or a "needs/responsivity" factor, in the terminology of Andrews et al.

and Gilbert 1982). Many of these advocates argue that treatment ought to be the main goal of corrections for reasons that are more political or ideological than pragmatic. Even if the last vestiges of the instrumental purpose of treatment were discarded, such proponents still would argue that rehabilitation has an ideological, moral, and political basis. Yet although their support for rehabilitation is thus ultimately independent of the evidence, they still find it important to be able to back their claims, as far as possible, with research. As progressives, they believe that society can and should be reformed through "scientifically" directed government intervention, and they see in rehabilitation a potentially powerful vehicle with which to rollback the conservative political agenda and advance their own. They also see it as a politically suitable vehicle. Thus Cullen (1986: 9) urges progressives to "think seriously about what ideology or correctional philosophy can gain sufficient support to permit the opportunity for reform to emerge and be realized." Toward that end, he argues "that rehabilitation is the most feasible ideology available and, thus, that it should be reaffirmed rather than be rejected."<sup>2</sup>

Because the case for rehabilitation is made on both utilitarian and nonutilitarian grounds, it is not enough merely to review and critique the empirical evidence offered by meta-analysts and others in favor of rehabilitation. We also must present an affirmative case, on moral and philosophical grounds, for punishment as opposed to rehabilitation. Assuming for the sake of argument that meta-analysis *could* tell us something significant about the effectiveness of different types of correctional treatment, would we be justified in giving rehabilitation a place of emphasis, or any place at all, in the mission of a prison system? Not if we understand that the essential purpose of imprisonment is punishment and that punishment is best defended on moral rather than instrumental grounds, by appeal to cultural values rather than to social utility.

### THE VALUE OF PUNISHMENT

The biggest mistake in referring to the penal system as a "corrections" system is that it reinforces a false hierarchy of values in which "helping" is seen as superior to sanctioning. "Corrections" has adopted the language of treatment, which is the language of medicine, psychology, and education, largely as an attempt to acquire for itself some of the perceived legitimacy and prestige of those other professions. That has been a mistake. You can never feel good about yourself, or impress others, by pretending to be something you are not; the pretense is particularly pointless when what you are is already admirable. If the situation is not widely seen in that way, then some consciousness raising is needed .

If some people think that punishment is evil (perhaps a necessary evil but an evil nonetheless); that mercy is a higher value than justice; that compassion is more praiseworthy than fairness; that permissiveness and lenience are the marks of a kind and loving society, while accountability implies callousness; that forgiveness is divine, while judgment and enforcement are unpleasant human necessities; that the discretionary exercise of power and authority is trustworthy when the intent is benevolent and paternalistic but suspect when the purpose is disciplinary; or that teaching, helping, and treating offenders are laudable and prestigious activities while confining and managing them is a dirty job (though someone has to do it)—in short, that only a spirit of benevolence can give the criminal sanction any redeeming value—then perhaps those people have false values and need to be enlightened.

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<sup>2</sup>The progressive ideology of Cullen and his colleagues extends well beyond the role of rehabilitation in prisons. It seeks also to "bring about a more equitable distribution of resources through a broad structural transformation of the social order" (Cullen and Gilbert 1982: 256). Whether these are noble goals or sheer folly depends on one's political perspective.

One source of enlightenment can be found in a recent book by David Garland (1990). In *Punishment and Modern Society*, Garland suggests that we need to concentrate less on the social, political, and instrumental purposes of imprisonment and more on its cultural, moral, and expressive values. In modern times, punishment has been overestimated as a social tool and underappreciated as a cultural value. As a social tool, punishment has been expected to accomplish all kinds of utilitarian objectives where other social institutions already have failed. It is expected to correct the incorrigible, to rehabilitate the wretched, to restrain the dangerous, to deter the determined, and in general to reinforce the social order. Punishment has at best only a limited capacity to achieve these ends, but in any case it should not be regarded as a form of social engineering, having worth only because it is useful. Rather, punishment is a significant aspect of culture, with meaning and merit in itself. It is a symbol and an expression of cultural and moral values. Punishment constructs and communicates some of the most important shared meanings, values, and beliefs that define the character of a culture. It "communicates meaning not just about crime and punishment but also about power, authority, legitimacy, normality, morality, personhood, social relations, and a host of other tangential matters" (Garland 1990: 252).

Those who exercise authority and impose sanctions are important cultural agents. They include not only the legislators and judges who define the purpose, nature, and targets of punishment, but also the agents who administer it, from the executive level to the line staff. The meaning and significance of the work they do should be viewed as a moral enterprise, an exercise in the philosophy of punishment.

One of the duties of prison officials is to help offenders understand the wrongfulness of their criminal conduct and accept responsibility and accountability for that conduct. This duty requires the imposition of punishment because the very concepts of wrongfulness, responsibility, and accountability must be socially defined and constructed through the use of sanctions. Thus punishment is a constructive, not a destructive, enterprise. When done right, it is a positive good rather than a necessary evil, but to do it right one needs the right people with the right attitudes. Hostility, contempt, and cruelty are inappropriate sentiments toward prisoners, but so too are pity, indulgence, or excessive sympathy and compassion. "Professionalism" is the most appropriate word to describe the proper attitude of impersonal authority, objectivity, and firm but respectful fairness that good officers have toward prisoners.

As agents of governmental authority, prison officers must understand that they are obliged to operate within rigid constraints. They ensure that justice is done, first and foremost, by following the rules that define the parameters of justice, the rules that determine what is too permissive and what is too harsh. If inmates are treated unfairly inside prison, they will find it hard to appreciate that it is fair for them to be in prison in the first place. To accept the justice of their punishment, inmates must understand that it is principled, not malicious. Prison officers, as representatives of society, must convey that message to them through their demeanor. First, however, prison officials, and officers must accept without apology the fact that they are among society's "ministers of justice." Think about it: isn't that a more admirable mission than being a "correctional officer?"

Prison officers deserve a more favorable image as agents of punishment. The most negative result of emphasizing rehabilitation is that almost inevitably it demoralizes security and custody staff members who are portrayed (if only by implication) as less professional and less humane than the treatment and program staff. It also impugns the most important purposes of imprisonment—justice, punishment, and security—by portraying them as uninspiring, if not morally inferior. Prison professionals need to understand, to be

reminded often, and to help the public appreciate that the job of confining and controlling an unwilling population without violating rights, the job of treating inmates "firmly but fairly," is every bit as praiseworthy as the pursuit of rehabilitation, if not more so.

Legal punishment is a legitimate and (if properly defined and administered) even a noble aspect of our culture. Imprisonment, in order to be respectable, need not be defined as "corrections," as "treatment," as "education," as "protection of society," or as any other instrumental activity that an army of critics will forever claim to be a failure. Instead, as Garland puts it, "the pursuit of values such as justice, tolerance, decency, humanity, and civility should be part of any penal institution's self-consciousness—an intrinsic and constitutive aspect of its role—rather than a diversion from its 'real' goals or an inhibition on its capacity to be 'effective'" (1990: 292).

### **PUNISHMENT, TREATMENT, AND HUMANITARIANISM**

To understand the expressive, or symbolic, importance of punishment is to achieve new insight into the question of treatment versus punishment as purposes of imprisonment and the question of treatment versus custody as functions within a prison. Treatment and confinement are not merely different means; they are also different ends in themselves. When they are debated as ends, the proponents of treatment often tend to assume the moral high ground and the proponents of confinement and punishment often tend to assume a defensive posture. The latter, however, have nothing to apologize for and should not allow others to disparage punitive confinement as "warehousing" or "caging." The stereotype of punishment as inherently cruel and inhumane is false and misleading, as is the stereotype of treatment as benevolent and humane.

Those who suppose that rehabilitative treatment is intrinsically more humane than punishment have bought into a false dichotomy between punishment and "humanitarianism." It is precisely within the context of punishment, as opposed to treatment, that humanistic concepts are most relevant. Principled and fair punishment for wrongdoing treats individuals as persons and as human beings rather than as objects. Punishment is an affirmation of the autonomy, responsibility, and dignity of the individual; paternalistic rehabilitative treatment is a denial of all three.

Proponents believe that rehabilitation programs reduce the harshness of imprisonment by softening and humanizing the prison environment. But what if this effect is more apparent than real? What if prisons merely pay lip service to the ideal of rehabilitation and create what amounts to a facade of fine-sounding programs that masks the harsh reality of doing time? Might this approach not reduce pressure from the public for real reform? A veneer of good intentions could undermine the vigilance and the restraint of power that we need to maintain a system of just punishment. Rather than softening the pains of imprisonment, the rehabilitative goal may even add injustice to injury because it encourages individualized treatment, which undermines consistency and fairness. Individualized treatment requires discretion, which lends itself to abuse in the form of arbitrary and capricious distinctions. In pursuit of rehabilitation, offenders who have committed similar wrongs often are treated differently because of differences in personality, background, and social skills. Furthermore, when rehabilitative treatment is defined as an official goal of the agents and institutions of authority, then treatment, too, becomes paternalistic and authoritarian. The result is cynicism and resistance on the part of the intended beneficiaries. If our goal is to reform the conditions of life inside prisons, it is better to do so directly than under the rubric of rehabilitation. The direct approach has less chance of backfiring.



But (as one of our reviewers suggested to us) wouldn't minimization of the treatment ideal and a formal acceptance of punishment as the primary goal of prisons tend to minimize programming and remove any possible incentive on the part of administrators to help inmates? As Cullen and Gilbert (1982: 247) argue, "Rehabilitation is the only justification of criminal sanctioning that obligates the state to care for an offender's needs or welfare." We disagree. Rehabilitation raises the question of whether it is society's obligation to transform the inmate into a law-abiding citizen, not whether it is society's duty to treat the inmate humanely. None of the purposes of punishment directly defines a state's obligation to care for inmates. In fact, almost any justification of punishment might be interpreted to imply conditions that range from the brutal to the benign. Rehabilitation in some of its paternalistic forms is just as coercive as other justifications. Inmates may well be "encouraged," or "persuaded" into treatment against their wishes. Retribution, often associated with harsh treatment, also can imply that a prolonged separation from society, proportional to the crime, is sufficient punishment, but that the prison climate must be safe and must offer enough amenities so that prison life is not inhumane.

A state's obligation to its inmates is based on statutory, regulatory, and supervisory requirements. In practice, however, the quality of confinement is based on the funding levels, management capabilities, and external supervision of a prison or jail. The supervision can come from the legislature, the courts, or even the community. Because corrections is carried out behind walls, gates, and fences, both internal and external supervision are particularly important. We should not confuse supervision, however, with a model of treatment that calls for the transformation of individuals.

One also might argue that "treatment versus punishment" is a false dichotomy; that it is not necessary to abandon the goal of rehabilitation in order to pursue, or even to emphasize, the goal of punishment. That argument is certainly reasonable but we are more prepared to accept it in practice than in principle. In practice, the difference between punishment and treatment is often unclear, particularly to those on the receiving end; a prison that is literally all of one and none of the other is probably impossible as well as undesirable. Even so, an analytic distinction still is necessary. We believe that, when the concepts are understood properly, it can be shown that a philosophy emphasizing punishment is more logically consistent, and even more true to the same general underlying values (such as humanitarianism, respect for the individual, human dignity, justice, fairness, decency, mercy, and compassion), than a philosophy emphasizing rehabilitation.

Later we will suggest that many of the activities which now occur under the heading of "programming" might still occur in a punishment-oriented prison. We do not object to treatment that is voluntary, is separated from punishment, and is not a privilege unavailable to those who are not in prison. We believe that even in a punishment model, inmates have as much (or as little) right as anyone else to a helping hand from government. The license to punish is not a license to deny to convicts any benefits to which they would be entitled if they were not in prison (with the exception of denials that are absolutely necessary for reasons of security). We also believe, however, that prison programs can be justified on grounds other (and better) than rehabilitation, and that for both conceptual and practical reasons, as discussed in the next two sections, the *idea* of inmate programs ought to be separated from the *ideal*, and the ideology, of rehabilitation.

## **THE CONFLICTING MESSAGES OF PUNISHMENT AND TREATMENT**

As punishment, imprisonment conveys an important cultural message, but if the official mission of a

prison is defined simultaneously as both punishment and rehabilitation conflicting and confusing messages are transmitted both inside and outside the prison walls. Inside the walls, such a definition conveys a message of rights without responsibility. When a prison system is mandated in its mission statement to attempt rehabilitation, or even merely to provide opportunities and resources for self-improvement, that mandate creates for inmates a legitimate claim (a right) to personally beneficial services. At the same time, it undermines inmates' accountability by defining them, like children, as insufficiently developed and disadvantaged persons for whose future behavior society must take some responsibility. Whereas imprisonment as punishment defines inmates as responsible for their *past* behavior, and whereas discipline within prison defines inmates as accountable for their *current* behavior, rehabilitation as a goal of the system defines inmates as not fully responsible for their *future* behavior.

Outside the walls, linking imprisonment with rehabilitation conveys a confusing message to the general public. As punishment, the message of imprisonment is "Felonies are very wrong acts, and those who commit them will be held to account." But the message of the rehabilitation ethic is "Felonies are the result of personal deficiencies (of knowledge, skills, habits, values, temperament, motivation, personality, and so on) on the part of the individual; society must attempt to correct those personal deficiencies." That is not an appropriate message for society to construct through its institutions of punishment. Such a message depicts criminal behavior in deterministic terms and portrays offenders as objects in need of adjustment, rather than as responsible human beings who must accept the consequences of their actions. It may not actually excuse their crimes, but it conflicts with and weakens the punishment message.

### **SEPARATING TREATMENT FROM PUNISHMENT**

Prison rehabilitation programs, especially if they are successful, confer valuable but unearned benefits on the undeserving at the expense of law-abiding taxpayers. To benefit convicts thus on the grounds that they have violated the law and may do so again is, in effect, to reward extortion. As an alternative, one legitimately might argue that prisoners deserve certain kinds of help merely because they are human beings, or because they are citizens toward whom, merely as citizens, society has some obligations and in whom it has some investment. That rationale would be legitimate, but only to the same extent as it would apply to all other citizens. Thus rehabilitation programs are more justifiable outside than inside the criminal justice system.

Treatment is more likely to be effective if it is voluntary. More important, the voluntary quality also makes it ethically more defensible. It is very difficult, however, to make treatment truly voluntary in the context of punishment. If judges, prison officials, probation officers, or parole boards place any great emphasis on rehabilitative programs and urge offenders to get involved in them, offenders would be foolish not to understand that some kind of consequences, however subtle, will follow from their agreement or refusal to do as they are urged. Also, within a system of coercion, all consequences, whether positive or negative, must be viewed as part of the coercion. To ensure voluntary involvement and to avoid the appearance of providing special benefits that are not available free to others who might be more deserving, it is necessary to disconnect treatment from imprisonment. The best way to do this would be to remove rehabilitative treatment entirely from the authority of the criminal justice system.

One way to achieve this separation would be to postpone treatment activities until after release from prison, or to send prisoners temporarily into the community to participate in such activities. Another way would be to make it clear that treatment is not the official business of the penal system, even while allowing

it to be provided by other agencies either inside or outside the prison and to the same degree as it is available to nonprisoners. Yet regardless of where these elective activities take place, their separation from the confinement mission should be emphasized by requiring that they be conducted and paid for by civilian (i.e., nonpenal) agencies, organizations, or individuals. That requirement could include activities conducted and paid for by prisoners themselves; what counts is that they are not sponsored by the penal system. Many such activities are permissible and desirable within a prison as long as they are compatible—and are not confused-with the prison's essential mission of confinement as punishment.

### **PRISON PROGRAMS UNDER THE CONFINEMENT MODEL**

Another way to preserve treatment programs for prisoners would be to justify them on grounds that would be relevant even if rehabilitation were not an official goal of the system. Many programs currently offered in prisons could be separated from the context and vocabulary of "rehabilitation," and could be justified instead in the context and with the vocabulary of "confinement." Despite a decline in official endorsement of the rehabilitative ideal, many corrections officials continue to endorse programs because of their normalizing effect on the prison environment, not because they believe in effecting a change in the inmates. In addition, many corrections officials endorse the view that some programs work for some inmates in the sense that those who want to change should receive the opportunity to change. Both of these goals—time spent constructively and the opportunity to acquire skills—still can be pursued without the baggage of the rehabilitative ideal.

John DiIulio (1991:114) notes that most prison and jail administrators view correctional programs from what he calls an "institutional perspective." That is, they "evaluate programs not mainly in terms of what they do to reduce the likelihood of recidivism or otherwise affect inmates' post-release behavior but as institutional management tools." DiIulio also suggests that programs can be defended in less utilitarian terms simply as part of what we mean by humane conditions of confinement.

A "confinement model" of imprisonment (Logan 1991: ch. 1) would be a follow-up to the "justice model" of sentencing. The confinement model, like the justice model, is based on a purely retributive philosophy of punishment. In this philosophy, the essential purpose of imprisonment is to punish offenders—fairly and justly—through lengths of confinement proportionate to the seriousness of their crimes. Although confinement may serve other purposes in addition to justice and punishment, those are the necessary and sufficient conditions for justifying it. Thus the term confinement model may be regarded as a shorthand for a clumsier but more explicit label: the *doing-justice-through-confinement-as-a-form-of-punishment model*.

Under the confinement model, offenders are sent to prison as punishment, not for punishment. Thus, prisons operated on this model need not be harsh or internally punitive, nor would they be insensitive to the welfare of prisoners. Coercive confinement carries an obligation to meet prisoners' basic needs at a reasonable standard of decency, so measures of health care, safety, sanitation, nutrition, and other aspects of basic living conditions are relevant. Furthermore, confinement must meet constitutional standards of fairness and due process, so not only effectiveness and efficiency, but also the procedural justice with which confinement is imposed, are important. In addition—and most relevant to this discussion—programmatically activities such as education, recreation, and work can be viewed as part of the conditions of confinement, regardless of their alleged effects on rehabilitation. In short, confinement is much more than merely warehousing.

Here is a mission statement for a prison under the confinement model:

The mission of a prison is to keep prisoners—to keep them in, keep them safe, keep them in line, keep them healthy, and keep them busy—and to do it with fairness, without undue suffering, and as efficiently as possible.

Many inmate programs currently offered in prisons—such as work, training, education, and recreation—can be justified under the heading of constructive activity ("keep them busy"). "Constructive" activity is not defined here as "contributing to the betterment of inmates" but as activity that is, on its face, consistent with the orderly, safe, secure, and humane operation of a prison. Idleness and boredom can be viewed as wrong from a work ethic standpoint, or as unnatural because human beings are not meant to be idle, or as so fundamentally related to mischief as to be undesirable for that reason. In any case, prison programs can be defended as forms of constructive and meaningful activity and as antidotes to idleness, without invoking claims of rehabilitative effectiveness. This is not to say that it does not matter whether the programs have any rehabilitative effects; it would be fine if they did so. But when we say that the primary purpose of prison is to punish through confinement, we become more interested in the operation of these programs inside the prison gates and less concerned about their effects beyond.

It is the duty of prisons to govern fairly and well within their own walls. It is not their duty to reform, rehabilitate, or reintegrate offenders into society. Though they may attempt these things, it is not their duty even to attempt these goals, let alone their obligation to achieve them. Prisons ought not to impose upon themselves, by inclusion in a mission statement, any responsibility for inmates' future conduct, welfare, or social adjustment. These are primarily the responsibility of the offenders themselves, and perhaps secondarily a concern of some others outside the justice system. They should not be declared the official business of prisons.

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