

# Rethinking penal reform

## *Programmes as a human right*

BY MURRAY SHORT

**When the test of rehabilitation, in the sense of preventing reoffending, is applied to programmes in prison, they largely fail. Successive administrations have cancelled many programmes ostensibly because they fail this test. The real motive is cost saving. Those of us who advocate for programmes therefore need to be careful not to base our advocacy on the proposition that rehabilitation will prevent reoffending. In my rethinking of penal reform, programmes need to be advocated for as a human right. Without programmes, imprisonment is very damaging, leaving people ‘dehabilitated’ and less able to live a crime-free life on release. Programmes are essential to mitigate the damage that the state causes by its use of such punishment.**



Throughout my career in the criminal justice sector and since, I have been a strong supporter of rehabilitation as a central element of criminal justice policy. The foundation of my commitment was my understanding of the Quaker belief in ‘answering that of God in everyone.’ Criminal justice policy and practice needed first and foremost to appeal to and build on the potential for good arising from that of God in the convicted person. One aspect of rehabilitation as a centrepiece of policy has always concerned me however, and that is its very modest impact on the prevention of reconviction and its lack of any impact on reducing the overall rate of crime. A recent rethinking of ‘that of God’ (Rethinking that of God. ANZ Friends Newsletter, Vol 105 No 2, May 2024) has clarified my concern and reinforced a modification of my view of rehabilitation as the centrepiece of policy.

As a Probation Officer I was often confronted with people who seemed unwilling or unable to respond to the appeal to the good in them, no matter how sincerely I tried. I was also confronted by the distressing effects of their behaviour on their victims. The idea that there was good in everyone left me puzzled about where damaging behaviours and persistent criminal offending fitted in, and how a system needed to respond to it.

Early Quakers would have had no such trouble as they believed that ever since the ‘Fall,’ the ‘ocean of darkness’ was very real in the world. That of God was a ‘seed’ in people and only through accepting the sometimes terrifying challenge of the inward Light would the seed be germinated. The individual would then be transformed in a process of salvation. Initially their millenary hopes made them optimistic that everyone would come to Christ in an apocalyptic event that ushered in the Kingdom of God. When these hopes progressively faded, they had to accept the fact that some people would fail to heed the inward Light and, to use the term they did, ‘evil’ would continue in the world.

Continuing revelation means that we are not bound by all early Quaker views and given what we now know about the causes of human misbehaviour, the notion that humans are inherently evil I find singularly objectionable. The world-renowned longitudinal study of human development being carried out at Otago University is providing clear evidence that social conditions of the family have a major influence on the growing child’s behaviour. Signs of emerging problem behaviour can be identified as early as 3 years of age. The researchers have highlighted how wrapping support around the child and their family at this early stage would in most cases, prevent those early signs developing into significant behavioural issues.

This understanding of the origins of behavioural issues is a stark contrast to the way early Quakers explained it, but it has in common, an optimistic view of the potential for change, which is still of critical importance in the Quaker world view. Nevertheless, we must ask the difficult question as early Quakers did, ‘Are there limits to such optimism and if so, what are the implications?’

For early Quakers the optimism sprang from the belief in the potential for movement from ‘sin’ to a state of ‘perfection’ through salvation. In the terms of criminal justice policy this is rehabilitation. What the Dunedin study shows is that, whilst not quite ‘salvation’, early intervention can help ‘germinate the seed’ and bring out the best in children. One of the limits we must accept however, is that once a pattern of offending is established, rehabilitation is largely ineffective at reducing reconviction, particularly in the case of prison sentences.

Reconviction research shows a mixed picture because there are significant differences between jurisdictions in, for example, what behaviour is defined as a crime and how seriously it is treated. Furthermore, there is no internationally accepted standard for research. Some research measures reconviction relatively soon after release but the reality is that the longer the period after release, the more accurate the result is likely to be.

This is because it takes considerable time after a person is released, for a crime to be committed, detected, proven and the penalty applied. Even then, such research necessarily excludes reoffending that has not led to a conviction, and it is known from victim research and other studies that a substantial amount of offending never leads to a conviction.

For these reasons, reconviction research inevitably provides a more positive picture than the reality. One of the most telling facts is that about 60% of the prison population has experienced a prior prison sentence, and almost without exception have prior experience of a range of community-based sentences. This alone hardly gives confidence in the effectiveness of punishment or rehabilitation at reducing reoffending.

Apart from the statistics, if one focuses on what a prison experience actually involves, it is remarkable that there is any reduction in reconviction. Locking people up with other people convicted of offences in a highly controlled, unnatural environment where nearly all decision-making rights are removed is unlikely to improve their willingness and ability to live successfully in the community afterward.

Unlike prison abolitionists, I consider containment in secure conditions, of those who commit serious crimes is necessary for the protection of victims and the community. However, since containment causes collateral damage, the state has a responsibility to ensure such damage is minimised. Programmes therefore need to be seen as a human right, and the test of preventing reoffending needs to be applied only to ensure investment in the better programmes and those that do not actually increase the likelihood of reconviction on release.

My rethinking of what 'that of God' means to me has helped clarify my thinking and action on penal reform. I now place early intervention at the centre, with programmes as a human right alongside. The first, as it is the only effective way to reduce the crime rate and all the damage that creates, and the second because it is essential to mitigate the collateral damage caused by the state's necessary use of punitive sanctions.