Journal of Criminal Law and Criminology

Volume 50
Issue 3 *September-October*

Article 2

Fall 1959

Criminal Justice, Legal Values and the Rehabilitative Ideal

Francis A. Allen

CRIMINAL JUSTICE, LEGAL VALUES AND THE REHABILITATIVE IDEAL

FRANCIS A. ALLEN

The author is Professor of Law at the University of Chicago. He was formerly a member of the law faculties of Northwestern University and Harvard University. He has published numerous articles on criminal law and constitutional law topics. He is an Associate Editor of this Journal. This article is based on a lecture delivered at the Illinois Institute for Juvenile Research, Chicago, Illinois, on March 17, 1959.—EDITOR.

Although one is sometimes inclined to despair of any constructive changes in the administration of criminal justice, a glance at the history of the past half-century reveals a succession of the most significant developments. Thus, the last fifty years have seen the widespread acceptance of three legal inventions of great importance: the juvenile court, systems of probation and of parole. During the same period, under the inspiration of continental research and writing, scientific criminology became an established field of instruction and inquiry in American universities and in other research agencies. At the same time, psychiatry made its remarkable contributions to the theory of human behavior and, more specifically, of that form of human behavior described as criminal. These developments have been accompanied by nothing less than a revolution in public conceptions of the nature of crime and the criminal, and in public attitudes toward the proper treatment of the convicted offender.[1]

This history with its complex developments of thought, institutional behavior, and public attitudes must be approached gingerly; for in dealing with it we are in peril of committing the sin of oversimplification. Nevertheless, despite the presence of contradictions and paradox, it seems possible to detect one common element in much of this thought and activity which goes far to characterize the history we are considering. This common element or theme I shall describe, for want of a better phrase, as the rise of the rehabilitative ideal.

The rehabilitative ideal is itself a complex of ideas which, perhaps, defies completely precise statement. The essential points, however, can be articulated. It is assumed, first, that human behavior is the product of antecedent causes. These causes can be identified as part of the physical universe, and it is the obligation of the scientist to discover and to describe them with all possible exactitude. Knowledge of the antecedents of human behavior makes possible an approach to the scientific control of human behavior. Finally, and of primary significance for the purposes at hand, it is assumed that measures employed to treat the convicted offender should serve a therapeutic function, that such measures should be designed to effect changes in the behavior of the convicted person in the interests of his own happiness, health, and satisfactions and in the interest of social defense.

Although these ideas are capable of rather simple statement, they have provided the arena for some of the modern world's most acrimonious controversy. And the disagreements among those who adhere in general to these propositions have been hardly less intense than those prompted by the dissenters. This is true, in part, because these ideas possess a delusive simplicity. No idea is more pervaded with ambiguity than the notion of reform or rehabilitation. Assuming, for example, that we have the techniques to accomplish our ends of rehabilitation, are we striving to produce in the convicted offender something called "adjustment" to his social environment or is our objective something different from or more than this? By what scale of values do we determine the ends of therapy?[2]

These are intriguing questions, well worth extended consideration. But it is not my purpose to pursue them in this paper. Rather, I am concerned

[1] These developments have been surveyed in Allen, *Law and the Future: Criminal Law and Administration.* 51 NW. L. REV. 207, 207–208 (1956). See also HARNO, *Some Significant Developments in Criminal Law and Procedure in the Last Century, 42* J. CRIM. L., C. AND P.S. 427 (1951).

[2] "We see that it is not easy to determine what we consider to be the sickness and what we consider to be the cure." FROMM, PSYCHOANALYSIS AND RELIGION (1950) 73. See also the author's development of these points at 67–77.

with describing some of the dilemmas and conflicts of values that have resulted from efforts to impose the rehabilitative ideal on the system of criminal justice. I know of no area in which a more effective demonstration can be made of the necessity for greater mutual understanding between the law and the behavioral disciplines.

There is, of course, nothing new in the notion of reform or rehabilitation of the offender as one objective of the penal process. This idea is given important emphasis, for example, in the thought of the medieval churchmen. The church's position, as described by Sir Francis Palgrave, was that punishment was not to be "thundered in vengeance for the satisfaction of the state, but imposed for the good of the offender: in order to afford the means of amendment and to lead the transgressor to repentance, and to mercy."[3] Even Jeremy Bentham, whose views modern criminology has often scorned and more often ignored, is found saying: "It is a great merit in a punishment to contribute to the *reformation of the offender*, not only through fear of being punished again, but by a change in his character and habits."[4] But this is far from saying that the modern expression of the rehabilitative ideal is not to be sharply distinguished from earlier expressions. The most important differences, I believe, are two. First, the modern statement of the rehabilitative ideal is accompanied by, and largely stems from, the development of scientific disciplines concerned with human behavior, a development not remotely approximated in earlier periods when notions of reform of the offender were advanced. Second, and of equal importance for the purposes at hand, in no other period has the rehabilitative ideal so completely dominated theoretical and scholarly inquiry, to such an extent that in some quarters it is almost assumed that matters of treatment and reform of the offender are the only questions worthy of serious attention in the whole field of criminal justice and corrections.

The Narrowing of Scientific Interests

This narrowing of interests prompted by the rise of the rehabilitative ideal during the past half-century should put us on our guard. No social institutions as complex as those involved in the administration of criminal justice serve a single function or purpose. Social institutions are multi-valued and multi-purposed. Values and purposes are likely on occasion to prove inconsistent and to produce internal conflict and tension. A theoretical orientation that evinces concern for only one or a limited number of purposes served by the institution must inevitably prove partial and unsatisfactory. In certain situations it may prove positively dangerous. This stress on the unfortunate consequences of the rise of the rehabilitative ideal need not involve failure to recognize the substantial benefits that have also accompanied its emergence. Its emphasis on the fundamental problems of human behavior, its numerous contributions to the decency of the criminal-law processes are of vital importance. But the limitations and dangers of modern trends of thought need clearly to be identified in the interest, among others, of the rehabilitative ideal, itself.

My first proposition is that the rise of the rehabilitative ideal has dictated what questions are to be investigated, with the result that many matters of equal or even greater importance have been ignored or cursorily examined. This tendency can be abundantly illustrated. Thus, the concentration of interest on the nature and needs of the criminal has resulted in a remarkable absence of interest in the nature of crime. This is, indeed, surprising, for on reflection it must be apparent that the question of what is a crime is logically the prior issue: how crime is defined determines in large measure who the criminal is who becomes eligible for treatment and therapy.[5] A related observation was made some years ago by Professor Karl Llewellyn, who has done as much as any man to develop sensible interdisciplinary inquiry involving law and the behavioral disciplines:[6] "When I was younger I used to hear smuggish assertions among my sociological friends, such as: 'I take the sociological, *not* the legal, approach to crime'; and

[3] Quoted in DALZELL, BENEFIT OF CLERGY AND RELATED MATTERS (1955) 13.

[4] BENTHAM, THE THEORY OF LEGISLATION (Ogden, C. K., ed., 1931) 338-339. (Italics in the original.) But Bentham added: "But when [the writers] come to speak about the means of preventing offenses, of rendering men better, of perfecting morals, their imagination grows warm, their hopes excited; one would suppose they were about to produce the great secret, and that the human race was going to receive a new form. It is because we have a more magnificent idea of objects in proportion as they are less familiar, and because the imagination has a loftier flight amid vague projects which have never been subjected to the limits of analysis." Id. at 359.

[5] Cf. HART, *The Aims of the Criminal Law*, 23 LAW AND CONT. PROB. 401 (1958).

[6] See LLEWELLYN AND HOEBEL, THE CHEYENNE WAY (1941). See also *Crime, Law and Social Science: A Symposium*, *34* COLUM. L. REV. 277 (1934).

I suspect an inquiring reporter could still hear much the same (perhaps with 'psychiatric' often substituted for 'sociological')—though it is surely somewhat obvious that when you take 'the legal' out, you also take out 'crime' ".[7] This disinterest in the definition of criminal behavior has afflicted the lawyers quite as much as the behavioral scientists. Even the criminal law scholar has tended, until recently, to assume that problems of procedure and treatment are the things that "really matter".[8] Only the issue of criminal responsibility as affected by mental disorder has attracted the consistent attention of the non-lawyer, and the literature reflecting this interest is not remarkable for its cogency or its wisdom. In general, the behavioral sciences have left other issues relevant to crime definition largely in default. There are a few exceptions. Dr. Hermann Mannheim, of the London School of Economics, has manifested intelligent interest in these matters.[9] The late Professor Edwin Sutherland's studies of "white-collar crime"[10] may also be mentioned, although, in my judgment, Professor Sutherland's efforts in this field are among the least perceptive and satisfactory of his many valuable contributions.[11]

The absence of wide-spread interest in these areas is not to be explained by any lack of challenging questions. Thus, what may be said of the relationships between legislative efforts to subject certain sorts of human behavior to penal regulation and the persistence of police corruption and abuse of power?[12] Studies of public attitudes toward other sorts of criminal legislation might provide valuable clues as to whether given regulatory objectives are more likely to be attained by the provision of criminal penalties or by other kinds of legal sanctions. It ought to be re-emphasized that the question, what sorts of behavior should be declared criminal, is one to which the behavioral sciences might contribute vital insights. This they have largely failed to do, and we are the poorer for it.

Another example of the narrowing of interests that has accompanied the rise of the rehabilitative ideal is the lack of concern with the idea of deterrence—indeed the hostility evinced by many modern criminologists toward it. This, again, is a most surprising development.[13] It must surely be apparent that the criminal law has a general preventive function to perform in the interests of public order and of security of life, limb, and possessions. Indeed, there is reason to assert that the influence of criminal sanctions on the millions who never engage in serious criminality is of greater social importance than their impact on the hundreds of thousands who do. Certainly, the assumption of those who make our laws is that the denouncing of conduct as criminal and providing the means for the enforcement of the legislative prohibitions will generally have a tendency to prevent or minimize such behavior. Just what the precise mechanisms of deterrence are is not well understood. Perhaps it results, on occasion, from the naked threat of punishment. Perhaps, more frequently, it derives from a more subtle process wherein the mores and moral sense of the community are recruited to advance the attainment of the criminal law's objectives.[14] The point is that we know very little about these vital matters, and the resources of the behavioral sciences have rarely been employed to contribute knowledge and insight in their investigation. Not only have the criminologists displayed little interest in these matters, some have suggested that the whole idea of general prevention is invalid or worse. Thus, speaking of the deterrent theory of punishment, the authors of a leading textbook in criminology assert: "This is simply a derived rationalization of revenge. Though social revenge is the actual psychological basis of punishment today, the apologists for the punitive regime are likely to bring forward in their defense the more sophisticated, but equally futile, contention that punishment deters from [*sic*] crime."[15] We are thus confronted by a situation in which the dominance of the rehabilitative ideal not only diverts attention

[7] *Law and the Social Sciences—Especially Sociology, 62* HARV. L. REV. 1286, 1287 (1949).

[8] ALLEN, *op. cit. supra*, note 1, at 207–210.

[9] See, especially, his CRIMINAL JUSTICE AND SOCIAL RECONSTRUCTION (1946).

[10] WHITE-COLLAR CRIME (1949) See also CLINARD, THE BLACK MARKET (1952).

[11] Cf. CALDWELL, *A Re-examination of the Concept of White-Collar Crime, 22* FED. PROB. 30 (March, 1958).

[12] An interesting question of this kind is now being debated in England centering on the proposals for enhanced penalties for prostitution offenses made in the recently-issued Wolfenden Report. See FAIRFIELD, *Notes on Prostitution, 9* BRIT. J. DELIN. 164, 173 (1959). See also ALLEN, *The Borderland of the Criminal Law: Problems of 'Socializing' Criminal Justice, 32* SOC. SER. REV. 107, 110–111 (1958).

[13] But see ANDENAES, *General Prevention—Illusion or Reality? 43* J. CRIM. L., C. AND P.S. 176 (1952).

[14] This seems to be the assertion of Garafalo. See his CRIMINOLOGY (Millar trans. 1914) 241–242.

[15] BARNES AND TEETERS, NEW HORIZONS IN CRIMINOLOGY (2nd ed. 1954) 337. The context in which these statements appear also deserves attention.

from many serious issues, but leads to a denial that these issues even exist.

Debasement of the Rehabilitative Ideal

Now permit me to turn to another sort of difficulty that has accompanied the rise of the rehabilitative ideal in the areas of corrections and criminal justice. It is a familiar observation that an idea once propagated and introduced into the active affairs of life undergoes change. The real significance of an idea as it evolves in actual practice may be quite different from that intended by those who conceived it and gave it initial support. An idea tends to lead a life of its own; and modern history is full of the unintended consequences of seminal ideas. The application of the rehabilitative ideal to the institutions of criminal justice presents a striking example of such a development. My second proposition, then, is that the rehabilitative ideal has been debased in practice and that the consequences resulting from this debasement are serious and, at times, dangerous.

This proposition may be supported, first, by the observation that, under the dominance of the rehabilitative ideal, the language of therapy is frequently employed, wittingly or unwittingly, to disguise the true state of affairs that prevails in our custodial institutions and at other points in the correctional process. Certain measures, like the sexual psychopath laws, have been advanced and supported as therapeutic in nature when, in fact, such a characterization seems highly dubious.[16] Too often the vocabulary of therapy has been exploited to serve a public-relations function. Recently, I visited an institution devoted to the diagnosis and treatment of disturbed children. The institution had been established with high hopes and, for once, with the enthusiastic support of the state legislature. Nevertheless, fifty minutes of an hour's lecture, delivered by a supervising psychiatrist before we toured the building, were devoted to custodial problems. This fixation on problems of custody was reflected in the institutional arrangements which included, under a properly euphemistic label, a cell for solitary confinement.[17] Even more disturbing was the tendency of the staff to justify these custodial measures in therapeutic terms. Perhaps on occasion the requirements of institutional security and treatment coincide. But the inducements to self-deception in such situations are strong and all too apparent. In short, the language of therapy has frequently provided a formidable obstacle to a realistic analysis of the conditions that confront us. And realism in considering these problems is the one quality that we require above all others.[18]

There is a second sort of unintended consequence that has resulted from the application of the rehabilitative ideal to the practical administration of criminal justice. Surprisingly enough, the rehabilitative ideal has often led to increased severity of penal measures. This tendency may be seen in the operation of the juvenile court. Although frequently condemned by the popular press as a device of leniency, the juvenile court, is authorized to intervene punitively in many situations in which the conduct, were it committed by an adult, would be wholly ignored by the law or would subject the adult to the mildest of sanctions. The tendency of proposals for wholly indeterminate sentences, a clearly identifiable fruit of the rehabilitative ideal,[19] is unmistakably in the direction of lengthened periods of imprisonment. A large variety of statutes authorizing what is called "civil" commitment of persons, but which, except for the reduced protections afforded the parties proceeded against, are essentially crminal in nature, provide for absolutely indeterminate periods of confinement. Experience has demonstrated that, in practice, there is a strong tendency for the rehabilitative ideal to serve purposes that are essentially incapacitative rather than therapeutic in character.[20]

The Rehabilitative Ideal and Individual Liberty

The reference to the tendency of the rehabilitative ideal to encourage increasingly long periods of incarceration brings me to my final proposition.

[16] See note 25, *infra*.

[17] As I recall, it was referred to as the "quiet room". In another institution the boy was required to stand before a wall while a seventy pound fire hose was played on his back. This procedure went under the name of "hydrotherapy."

[18] Cf. Wechsler, *Law, Morals and Psychiatry, 18* Colum. L. School News 2, 4 (March 4, 1959): "The danger rather is that coercive regimes we would not sanction in the name of punishment or of correction will be sanctified in the name of therapy without providing the resources for a therapeutic operation."

[19] Cf. Tappan, *Sentencing under the Model Penal Code, 23* Law and Cont. Prob. 538, 530 (1958).

[20] Cf. Hall, Jerome, General Principles of Criminal Law (1947) 551. And see Sellin: The Protective Code: A Swedish Proposal (1957) *9*.

It is that the rise of the rehabilitative ideal has often been accompanied by attitudes and measures that conflict, sometimes seriously, with the values of individual liberty and volition. As I have already observed, the role of the behavioral sciences in the administration of criminal justice and in the areas of public policy lying on the borderland of the criminal law is one of obvious importance. But I suggest that, if the function of criminal justice is considered in its proper dimensions, it will be discovered that the most fundamental problems in these areas are not those of psychiatry, sociology, social case work, or social psychology. On the contrary, the most fundamental problems are those of political philosophy and political science. The administration of the criminal law presents to any community the most extreme issues of the proper relations of the individual citizen to state power. We are concerned here with the perennial issue of political authority: Under what circumstances is the state justified in bringing its force to bear on the individual human being? These issues, of course, are not confined to the criminal law, but it is in the area of penal regulation that they are most dramatically manifested. The criminal law, then, is located somewhere near the center of the political problem, as the history of the twentieth century abundantly reveals. It is no accident, after all, that the agencies of criminal justice and law enforcement are those first seized by an emerging totalitarian regime.[21] In short, a study of criminal justice is most fundamentally a study in the exercise of political power. No such study can properly avoid the problem of the abuse of power.

The obligation of containing power within the limits suggested by a community's political values has been considerably complicated by the rise of the rehabilitative ideal. For the problem today is one of regulating the exercise of power by men of good will, whose motivations are to help not to injure, and whose ambitions are quite different from those of the political adventurer so familiar to history. There is a tendency for such persons to claim immunity from the usual forms of restraint and to insist that professionalism and a devotion to science provide sufficient protections against unwarranted invasion of individual right. This attitude is subjected to mordant criticism by Aldous Huxley in his recent book, "Brave New World Revisited." Mr. Huxley observes: "There seems to be a touching belief among certain Ph.D's in sociology that Ph.D's in sociology will never be corrupted by power. Like Sir Galahad's, their strength is the strength of ten because their heart is pure—and their heart is pure because they are scientists and have taken six thousand hours of social studies."[22] I suspect that Mr. Huxley would be willing to extend his point to include professional groups other than the sociologists. There is one proposition which, if generally understood, would contribute more to clear thinking on these matters than any other. It is not a new insight. Seventy years ago the Italian criminologist, Garafalo, asserted: "The mere deprivation of liberty, however benign the administration of the place of confinement, is undeniably punishment."[23] This proposition may be rephrased as follows: Measures which subject individuals to the substantial and involuntary deprivation of their liberty are essentially punitive in character, and this reality is not altered by the facts that the motivations that prompt incarceration are to provide therapy or otherwise contribute to the person's well-being or reform. As such, these measures must be closely scrutinized to insure that power is being applied consistently with those values of the community that justify interferences with liberty for only the most clear and compelling reasons.

But the point I am making requires more specific and concrete application to be entirely meaningful. It should be pointed out, first, that the values of individual liberty may be imperiled by claims to knowledge and therapeutic technique that we, in fact, do not possess and by failure candidly to concede what we do not know. At times, practitioners of the behavioral sciences have been guilty of these faults. At other times, such errors have supplied the assumptions on which legislators, lawyers and lay people generally have proceeded. Ignorance, in itself, is not disgraceful so long as it is unavoidable. But when we rush to measures affecting human liberty and human dignity on the assumption that we know what we do not know or can do what we cannot do, then the problem of ignorance takes on a more sinister hue.[24] An illustration of these dangers is provided by the sexual psychopath laws, to which I return; for they epitomize admirably some of the worst tendencies

[21] This development in the case of Germany may be gleaned from CRANKSHAW, GESTAPO (1956).

[22] HUXLEY, BRAVE NEW WORLD REVISITED (1958) 34–35.

[23] *Op. cit. supra*, note 14, at 256.

[24] I have developed these points in ALLEN, *op. cit. supra*, note 12, at 113–115.

of modern practice. These statutes authorize the indefinite incarceration of persons believed to be potentially dangerous in their sexual behavior. But can such persons be accurately identified without substantial danger of placing persons under restraint who, in fact, provide no serious danger to the community? Having once confined them, is there any body of knowledge that tells us how to treat and cure them? If so, as a practical matter, are facilities and therapy available for these purposes in the state institutions provided for the confinement of such persons?[25] Questions almost as serious can be raised as to a whole range of other measures. The laws providing for commitment of persons displaying the classic symptoms of psychosis and advanced mental disorder have proved a seductive analogy for other proposals. But does our knowledge of human behavior really justify the extension of these measures to provide for the indefinite commitment of persons otherwise afflicted? We who represent the disciplines that in some measure are concerned with the control of human behavior are required to act under weighty responsibilities. It is no paradox to assert that the real utility of scientific technique in the fields under discussion depends on an accurate realization of the limits of scientific knowledge.

There are other ways in which the modern tendencies of thought accompanying the rise of the rehabilitative ideal have imperiled the basic political values. The most important of these is the encouragement of procedural laxness and irregularity. It is my impression that there is greater awareness of these dangers today than at some other times in the past, for which, if true, we perhaps have Mr. Hitler to thank. Our increased knowledge of the functioning of totalitarian regimes makes it more difficult to assert that the insistence on decent and orderly procedure represents simply a lawyer's quibble or devotion to outworn ritual. Nevertheless, in our courts of so-called "socialized justice" one may still observe, on occasion, a tendency to assume that, since the purpose of the proceeding is to "help" rather than to "punish", some lack of concern in establishing the charges against the person before the court may be justified. This position is self-defeating and otherwise indefensible. A child brought before the court has a right to demand, not only the benevolent concern of the tribunal, but justice. And one may rightly wonder as to the value of therapy purchased at the expense of justice. The essential point is that the issues of treatment and therapy be kept clearly distinct from the question of whether the person committed the acts which authorize the intervention of state power in the first instance.[26] This is a principle often violated. Thus, in some courts the judge is supplied a report on the offender by the psychiatric clinic before the judgment of guilt or acquittal is announced. Such reports, while they may be relevant to the defendant's need for therapy or confinement, ordinarily are wholly irrelevant to the issue of his guilt of the particular offense charged. Yet it asks too much of human nature to assume that the judge is never influenced on the issue of guilt or innocence by a strongly adverse psychiatric report.

Let me give one final illustration of the problems that have accompanied the rise of the rehabilitative ideal. Some time ago we encountered a man in his eighties incarcerated in a state institution. He had been confined for some thirty years under a statute calling for the automatic commitment of defendants acquitted on grounds of insanity in criminal trials. It was generally agreed by the institution's personnel that he was not then psychotic and probably had never been psychotic. The fact seemed to be that he had killed his wife while drunk. An elderly sister of the old man was able and willing to provide him with a home, and he was understandably eager to leave the institution. When we asked the director of the institution why the old man was not released, he gave two significant answers. In the first place, he said, the statute requires me to find that this inmate is no longer a danger to the community; this I cannot do, for he may kill again. And of course the director was right. However unlikely commission of homicide by such a man in his eighties might appear, the

[25] Many competent observers have asserted that none of these inquiries can properly be answered in the affirmative. See, e.g., SUTHERLAND, *The Sexual Psychopath Laws*, *40* J. CRIM. L., C. AND P.S. 543 (1950) HACKER AND FRYM, *The Sexual Psychopath Act in Practice: A Critical Discussion*, *43* CALIF. L. REV. 766 (1955). See also TAPPAN, THE HABITUAL SEX OFFENDER (Report of the New Jersey Commission) (1950).

[26] A considerable literature has developed on these issues. See, e.g., ALLEN, *The Borderland of the Criminal Law: Problems of "Socializing" Criminal Justice*, *32* SOC. SER. REV. 107 (1958), DIANA, *The Rights of Juvenile Delinquents: An Appraisal of Juvenile Court Proceedings*, *44* J. CRIM. L., C. AND P.S. 561 (1957), PAULSEN, *Fairness to the Juvenile Offender*, *41* MINN. L. REV. 547 (1957); WAITE, *How Far Can Court Procedures Be Socialized without Impairing Individual Rights?* *12* J. CRIM. L. AND C. 430 (1921).

director could not be certain. But, as far as that goes, he also could not be certain about himself or about you or me. The second answer was equally interesting. The old man, he said, is better off here. To understand the full significance of this reply it is necessary to know something about the place of confinement. Although called a hospital, it was in fact a prison, and not at all a progressive prison. Nothing worthy of the name of therapy was provided and very little by way of recreational facilities.

This case points several morals. It illustrates, first, a failure of the law to deal adequately with the new requirements being placed upon it. The statute, as a condition to the release of the inmate, required the director of the institution virtually to warrant the future good behavior of the inmate, and, in so doing, made unrealistic and impossible demands on expert judgment. This might be remedied by the formulation of release criteria more consonant with actuality. Provisions for conditional release to test the inmate's reaction to the free community would considerably reduce the strain on administrative decision-making. But there is more here. Perhaps the case reflects that arrogance and insensitivity to human values to which men who have no reason to doubt their own motives appear peculiarly susceptible.[27]

[27] One further recent and remarkable example is provided by the case, In re Maddox, 351 Mich. 358, 88 N.W. 2d 470 (1958). PROFESSOR WECHSLER, *op. cit. supra*, note 18, at 4, describes the facts and holding as follows: "Only the other day, the Supreme Court of Michigan ordered the release of a prisoner in their State prison at Jackson, who had been transferred from the Ionia State Hospital to which he was committed as a psychopath. The ground of transfer, which was defended seriously by a State psychiatrist, was that the prisoner was 'adamant' in refusing to admit sexual deviation that was the basis of his commitment; and thus, in the psychiatrist's view, resistant to therapy! The Court's answer was, of course, that he had not been tried for an offense."

CONCLUSION

In these remarks I have attempted to describe certain of the continuing problems and difficulties associated with, what I have called, the rise of the rehabilitative ideal. In so doing, I have not sought to cast doubt on the substantial benefits associated with that movement. It has exposed some of the most intractable problems of our time to the solvent properties of human intelligence. Moreover, the devotion to the ideal of empirical investigation provides the movement with a self-correcting mechanism of great importance, and justifies hopes for constructive future development.

Nevertheless, no intellectual movement produces only unmixed blessings. It has been suggested in these remarks that the ascendency of the rehabilitative ideal has, as one of its unfortunate consequences, diverted attention from other questions of great criminological importance. This has operated unfavorably to the full development of criminological science. Not only is this true, but the failure of many students and practitioners in the relevant areas to concern themselves with the full context of criminal justice has produced measures dangerous to basic political values and has, on occasion, encouraged the debasement of the rehabilitative ideal to produce results, unsupportable whether measured by the objectives of therapy or of corrections. The worst manifestations of these tendencies are undoubtedly deplored as sincerely by competent therapists as by other persons. But the occurrences are neither so infrequent nor so trivial that they can be safely ignored.