

# Michigan Law Review

---

Volume 79 | Issue 4

---

1981

## Conscience and Convenience: The Asylum and Its Alternatives in Progressive America

Michigan Law Review

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Health Law and Policy Commons](#), [Law and Psychology Commons](#), and the [Law Enforcement and Corrections Commons](#)

---

### Recommended Citation

Michigan Law Review, *Conscience and Convenience: The Asylum and Its Alternatives in Progressive America*, 79 MICH. L. REV. 916 (1981).

Available at: <https://repository.law.umich.edu/mlr/vol79/iss4/38>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

CONSCIENCE AND CONVENIENCE: THE ASYLUM AND ITS ALTERNATIVES IN PROGRESSIVE AMERICA. By *David J. Rothman*. Boston: Little, Brown. 1980. Pp. xii, 464. Cloth, \$17.50; paper, \$7.95.

No institution in the United States has failed more completely than the asylum — the mental hospital, the prison, and the juvenile center. David J. Rothman's *The Discovery of the Asylum: Social Order and Disorder in the New Republic*,<sup>1</sup> examined the Jacksonian origins of the asylum in the United States; In *Conscience and Convenience*, Rothman extends his study to the reforms of the asylum during the "progressive era," the period from 1900 to 1965. He concludes that the "conscience" of the Progressive reformers was sincere, but that their reforms failed for two general reasons. First, because the Progressive ideal of rehabilitative care rested upon inadequate intellectual foundations, their efforts were often misdirected. Second, the reformers failed to solve the various mundane problems of operating asylums efficiently; such matters of "convenience" made genuine rehabilitation impossible.

Rothman initially provides a general explanation of the Progressive ideal and then traces its influence on reforms in the areas of criminal justice, juvenile justice, and mental health. According to Rothman, the Progressives believed that the Jacksonian system had failed to consider the particular needs of each individual. They proposed to make the asylum more effective by tailoring care to each individual's specific problem (p. 43). But Progressives could not always agree whether a given problem was due to illness, ignorance, or inherent defect (p. 50); this disagreement itself was one reason that the Progressive solutions were ineffective.

The Progressives believed unanimously, however, that a case-by-case approach was necessary. This belief rested upon several implicit premises. Rothman shows how each of those premises bred failure. First, the Progressive attitude reflected the "influence of the new social sciences" (p. 46) — the faith that more information about a problem would necessarily lead to its solution. But experience showed that information-gathering alone, unguided by any coherent underlying theory of treatment, resulted in no magical cures (p. 135). Second, the Progressives had "an ultimate confidence in the benefits

---

1. D. ROTHMAN, *THE DISCOVERY OF THE ASYLUM* (1971). For an analysis of this book in light of Professor Francis Allen's "rehabilitative ideal", see Schneider, *The Rise of Prisons and the Origins of the Rehabilitative Ideal*, 77 MICH. L. REV. 707 (1979).

of the American system" (p. 48) — a belief that the individuals being treated simply needed to be given a start on the upwardly mobile path to middle-class American life. Though he identifies this assumption, Rothman gives surprisingly little attention to its consequence: a blindness to cultural and class barriers that infected the reform efforts with a fatal parochialism.<sup>2</sup> Lastly, the Progressives viewed the state as indispensable to rehabilitation; they believed that the state should have the power to intervene and the discretion to tailor the institutional response to individual needs (p. 50). As a result, they allocated too much discretion to judges, parole boards, wardens, and other administrators. The paternalistic Progressive approach gave these officials power to abrogate important civil rights in the name of flexible and individual treatment. Thus, parole boards frequently used supposedly humane indeterminate sentencing programs as the vehicle for discrimination and oppression (p. 173). Juvenile courts, operating without formal constraints, sent youths to training schools for acts that would not have been illegal if committed by adults (p. 232). Such reforms did little to make the goal of rehabilitation a reality.<sup>3</sup>

The reformers' theoretical inadequacies were further compounded by the practical problems created by poor facilities and untrained personnel (pp. 86-87). Repeated attempts to improve treatment were frustrated by increasing numbers of clients and cuts in funding.<sup>4</sup> Program administrators often failed to appreciate the purposes of the reforms and simply tried to adapt the Progressive ideas to the needs of the existing institutional structures. Prison wardens, for example, tolerated new uniforms and classroom education only insofar "as consistent with the security needs of the institution" (p. 144). Eventually, as discouraged reformers attempted fewer innovations, the asylum returned to its custodial tasks (p. 420). Rothman concludes that the goals of custodial care and treatment were mutually exclusive (p. 148). His numerous examples show that the need to control inmates eventually overwhelmed the most earnest

---

2. For a similar criticism of Rothman's failure to acknowledge the importance of cultural barriers, see Lasch, Book Review, *NEW REPUBLIC*, June 14, 1980, at 29, 30.

3. Another interesting finding discussed by Rothman was the fact that discretionary programs such as parole and probation were really only used to supplement confinement and were imposed in cases where the person would have normally been released. Thus, the reforms only added to the state control over the individual and did not provide a real alternative to incarceration. Pp. 110-11.

4. Probations programs were prime examples of the high client to staff worker ratio. In Milwaukee, for example, it was learned that three officers had responsibility for 839 cases, resulting in a per-officer overload of 400%. P. 87 (citing F. HILLER, *PROBATION IN WISCONSIN* 5 (1926)).

and enlightened efforts to rehabilitate.<sup>5</sup>

Rothman's analysis of the Progressive failure to solve the problems of the asylum is thoroughly researched, well-written, and extremely interesting. He persuades us that the ideas proposed by the Progressives were underdeveloped and showed an alarming disregard for the rights and dignity of the individuals being treated. He also demonstrates that the implementation of the Progressive agenda was haphazard and inadequate. Despite the validity of these observations, the book seems disturbingly defeatist: it leads one to the conclusion that nothing constructive survives the Progressive period other than the lessons of failure. Surely inmate treatment, at least in some instances, was more humane during this period than before it, and surely individuals should receive treatment based in part on who they are and what they have done. Surely in many of the thousands of reform programs, there were instances of successful rehabilitation. Since many of the failures that Rothman identifies were caused by administrative problems, such as lack of funding and facilities, we should perhaps be wary to ascribe too much blame to the Progressives' errors in theory and ideology. One must wonder if all the Progressive reforms were inherently flawed, or if programs such as prisoner probation could have succeeded with adequate and concerned supervision.

Rothman does attempt to credit the Progressives for their effort to improve the asylum, noting George Eliot's line in *Daniel Deronda* that "[i]gnorant kindness may have the effect of cruelty; but to be angry with it as if it were a direct cruelty would be an ignorant unkindness."<sup>6</sup> Rothman concludes, however, that "if anger is not the appropriate response, then extraordinary caution surely is" (p. 419). He admonishes the reader to reject the assumption that, since the Progressives pledged to do good, that is in fact what resulted. Perhaps it would be wise to be critical when considering Rothman's pessimistic view of history as well. A great deal can be learned from Rothman's study of the Progressive movement, but since he focuses on its failures and ignores the possible benefits of the Progressive reforms, his history provides only a partial lesson.<sup>7</sup>

---

5. The most striking example of the deterioration of reform efforts was provided by the Norfolk, Massachusetts penitentiary. Rothman quotes parts of a diary kept to document that effort which reveals discipline slowly replacing efforts to rehabilitate. P. 418 (citing Norfolk Diary, Bureau of Social Hygiene Collection, Rockefeller Foundation Archives, New York).

6. P. 419 (quoting G. ELIOT, *DANIEL DERONDA* (1876) (no page citation provided)).

7. Other reviews of this book include: Lasch, *supra* note 2; Scull, Book Review, 230 *NATION* 794 (1980); Wilson, Book Review, *N.Y. TIMES*, April 6, 1980, § 7, at 7, col. 2; Davis, Book Review, *N.Y. REV. OF BOOKS*, June 26, 1980, at 15.