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"JUSTICE" VERSUS "INDIVIDUALIZED TREATMENT" IN THE JUVENILE COURT

David Bogen

Should the Juvenile Court concentrate upon individual treatment to the exclusion of considerations of justice? The author of this article is superintendent of Juvenile Hall, the juvenile detention home for Los Angeles County, and was previously a probation officer. In the light of his experience he feels that the widening gap between theory and practice in this field must be bridged and that individualized treatment must be reconciled with principles of justice if the rights and welfare of individual and community are to be safeguarded.—(EDITOR.)

The story is told of a prisoner who was sentenced to be hanged and who when asked if he had anything to say replied, "Judge, this is certainly going to be a lesson to me!" Many people, nowadays, consider that not only hanging, but also the less violent types of punishment, are rather unsatisfactory as educational procedures. They contend that punishment per se is essentially wrong; that our penal system is an outworn relic of the past, and that punishment of criminal offenders should be abandoned in favor of the more modern and scientific approach of individualized treatment.

Those who advocate individualized treatment for criminal offenders feel that the commission of a crime indicates some underlying problem in the life of the offender and that the thing to do is to study the individual and his environment and to correct the causal factors which resulted in his wrong doing. Two people might commit the same offense for entirely different reasons and it follows that the treatment prescribed for them should be different, even though the offense was the same. From this point of view the offense represents a symptom of underlying causal factors and the aim is to treat the causal factors rather than the symptom; the individual rather than the offense.

This doctrine is diametrically opposed to the basic principles of criminal justice upon which our criminal laws and penal practices are based. Our traditional conception of "Justice" calls for the equal treatment of all who commit a given offense. When in 1764 Beccaria expounded this principle in his famous essay on crime and punishment, it was hailed by intellectual leaders of the time as a great step forward from the injustices and abuses which then prevailed. Up to that time, the theory that criminals should be punished according to "the degree of criminal responsibility" prevailed. Penalties were not fixed for various types of offenses, but were largely left to the discretion of the judge. As a result it frequently turned out that men of wealth or station who committed grave crimes were leniently dealt with while poor

miscreants without influence in the community were harshly punished for trivial offenses. Beccaria held that punishment should be based upon the seriousness of the offense, regardless of who committed it, and that the punishment should be prompt, sure, and as lenient as possible consistent with the protection of the community.

Criminal courts have in general adhered to the fundamental principle of punishment based upon the offense, and sentences have, for the most part, been determined by criminal statute fixing the penalties for particular types of offenses. In the juvenile court, however, these statutory penalties do not apply, and the doctrine of individualized treatment has gained widespread influence. Leading authorities in the field of juvenile delinquency urge that juvenile offenders be "treated" rather than punished and that such treatment be based upon the needs of the individual and not dictated by the offense.

Two assumptions are tacitly implied in this point of view. The first is that modern methods in the diagnosis and treatment of delinquency are sufficiently effective to bring about a successful adjustment in all or most of the cases which come before the juvenile court. The second assumption is that by adjusting the individual the welfare of the community will be adequately protected. Actual experience with cases of juvenile delinquency is apt to throw some doubt upon these assumptions.

For example, John M., a fourteen year old boy, is arrested for burglary. Thorough study of the case, including psychiatric examination, reveals various personal and environmental factors affecting the boy's behavior and on the basis of individualized treatment it is decided to allow the boy to remain at home under supervision of the probation officer. In so doing, the court has no assurance that this boy will not commit further lawless acts. Thus it happens that John is again arrested for burglary. This time, it may still appear that the best plan for re-adjusting the boy and overcoming his delinquent tendencies is to continue to work with him in his own home. The citizens whose homes have been burglarized may object to such a plan, but the program of individualized treatment calls for concentration upon the welfare and development of the boy and theoretically should not be affected by the degree to which the rights of others have been injured, nor by the attitudes of the community. Thus a court which seeks to follow the doctrine of individualized treatment may continue to treat a case in the community in spite of two or three violations of probation before resorting to placement away from home.

Another boy, Richard K., arrested for a petty theft, may, on the basis of individual study, appear to require institutional care.

In this case placement in a correctional type of school for a period of a year might logically be prescribed, even though the boy has not committed a very serious offense. But here again, the court cannot be certain that Richard would not have refrained from further offenses if left at home on probation, nor that his conduct will improve after the period of training in an institution.

There is a further consideration which cannot be ignored. If commitments are made solely upon the basis of individualized treatment and without reference to the gravity of the misconduct which brought the child before the court, the public can have no assurance that partiality, favoritism, personal prejudice, or errors of judgment have not entered into the decision. Moreover, even in those cases where the treatment has proven successful in so far as the individual is concerned, it may be that the effect upon the community is not satisfactory. John M., for example, might have influenced other boys to join him in delinquent conduct when he violated probation, even if he eventually learned to obey the law himself. If he responded to the treatment plan at once, and did not commit any further offenses, the fact that he remained in the community after committing a burglary might still prove undesirable. Other boys in his school and in the neighborhood would learn about the situation and the fact that a boy arrested for burglary was apparently not subject to any penalty for his offense might encourage others to look upon such acts as more of a prank than a dangerous violation of law.

Without entering into the question as to the effectiveness of deterrence and exemplary punishment, however, it would seem that the prescribing of any treatment so drastic as removing a child from his home and parents requires some safeguard against partiality or error. Existing techniques and facilities for diagnosing and treating delinquency have not proven sufficiently accurate or effective to alone provide a sufficient basis for such placements. Thus we find that in practice the more severe types of treatment are resorted to only in cases where the child has committed an offense sufficient to justify such a serious move. In other words, the juvenile court theoretically renounces the idea of dealing with the child on the basis of the offense but yet turns to the essential principle of "justice" when it comes to an important decision.

The interplay of the two conflicting doctrines, "individualized treatment" and "justice," may affect the juvenile court work in several ways. Some juvenile courts seek to "mete out justice" without any attempt to utilize the new techniques and principles of individualization. Others may actually adjudicate cases on the basis of the offense and merely rationalize their orders to fit the

terminology and ideology of "individualized treatment." Still others may try to disregard the aspect of "justice" and handle cases as much as possible on a strictly individualized basis. As pointed out above, the latter course cannot be fully realized and too often results in a vacillating and inconsistent policy.

It is the opinion of the writer, that a practicable and effective policy for the juvenile court must take into account the merits and limitations of both of these contrasting theories. "Justice" cannot be safely disregarded, nor should the importance of individualization be under-estimated. There is a place for both in dealing with juvenile delinquents. If we substitute the word "treatment" for "punishment" in the doctrine of Beccaria and remember that he insisted upon the maximum of leniency consistent with public safety, we may still find it an equitable and flexible guide for juvenile court policy.

Youths who commit violent and serious offenses must in fairness to the community be taken into custody and segregated under treatment and observation until it is reasonably safe to release them. Others who commit less dangerous offenses but persist in such conduct, must likewise be cared for in a segregated environment. The point at which such segregation becomes necessary will depend largely upon the policy of the court, but must, in general, be determined by the overt conduct of the subject which is, after all, the ultimate test of his adjustment in so far as delinquency is concerned. This means that there is an objective basis for segregating the child; a basis that is essentially immune to the suspicions of partiality or prejudice, and which is generally acceptable to the community.

At the same time there remains considerable scope for individualization. Delinquents who do not require segregation (first offenders, minor offenders, etc.) and who are eligible to remain in the community can be treated in whatever manner seems best adapted for the individual case. But individualized treatment should not end there. Within the institution, segregated delinquents need not be treated uniformly. There too, treatment may be oriented about the individual rather than the offense which caused him to be segregated.

What is needed then, is not the complete rejection of "justice" which has been so eloquently demanded by those who feel that the offense should not in the least control the disposition of juvenile court cases, but rather an enlightened "justice" which will protect the rights of the community and yet leave scope for modern individualized treatment within the limits which the behavior of the individual permits.
