Individualized Treatment of Criminal Offenders

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Individualized Treatment of Criminal Offenders

For many years the nation's criminologists and penologists have denounced the present system of treatment of criminal offenders as unrealistic and unproductive of desirable results. Dissatisfied with legislative tinkering at the peripheries of the problem, they have called for a sweeping re-examination of the basic procedures which appear untenable in the light of modern psychological knowledge.¹

In prior times the prime motive of society in its treatment of criminals was retribution; today it is still present, although in much reduced form. Deterrence from criminal acts and isolation of dangerous persons are present goals of criminal justice. Primarily, however, the aim is to rehabilitate offenders emotionally and vocationally for life in modern society.² The period after sentencing, therefore, must be evaluated primarily on the basis of its success in the accomplishment

of rehabilitation and, secondarily, deterrence of crime and isolation of those who cannot be rehabilitated.

The usual procedure of treatment begins after a verdict of guilty has been rendered with the judge sentencing the offender and delimiting the sentence within the fairly broad latitude prescribed by statute. The judge may be very learned in the law, but have very little training in psychology and sociology. The governing statute provides only a variation in length of sentence to account for the psychological needs of the prisoner. Usually the institutions available for the commitment of the prisoner differ in purpose and methods, but the usefulness of the institutions is dependent upon the degree to which the person committed is psychologically receptive to the type of treatment given. Thus, the success of treatment is dependent on the psychological knowledge of the person sentencing, i.e., the judge. He must match the needs of the prisoner with the treatment offered by the institutions.

If the offender is sentenced to confinement, he goes to a prison. After a certain period, a parole board decides whether he shall be released. The parole board probably does not have adequate means of ascertaining the prisoner's progress toward emotional stability, and the prisoner may have had no training even remotely directed toward accomplishing this end. On the basis of the statute, the nature of the crime committed, and the extent of the prisoner's "good behavior," the parole board, whose members probably have had no professional training, makes its decision.

Exhaustive study has convinced the nation's criminologists that the methods delineated do not accomplish the desired results, and, indeed often result in great evil. Rehabilitation is not effected; isolation of a dangerous person is ended while the person is yet dangerous.\(^3\) Even if the sentence and length of time actually served were such that rehabilitation could have been accomplished under optimum conditions of treatment, the type of institution and methods of training employed may well have been such as to render the time served absolutely ineffective and perhaps quite harmful.\(^4\) The rehabilitation of those criminals who can be redirected, and the isolation of those who cannot be or have not yet been re-channeled away from patterns of antisocial behavior are left largely to chance under the present system.\(^5\)

The present system fails also as a deterrent to crime. Severity of punishment alone is not effective to deter would-be criminals. The classic example of the truth of this statement is the high incidence of pickpocketing at public executions of pickpockets held several cen-

\(^3\) Gleuck, 500 Criminal Cases 311 (1930); Bureau of Prisons, Federal Prisons 3 (1947).

\(^4\) Barnes and Teeters, New Horizons in Criminology c. 31 (1947).

turies ago in England. Certainty of punishment appears to be the real deterrent to those potential criminals which have sufficient control of their emotional structures to be affected by deterrence. Here again, the present system breaks down. Records from seventy-eight cities with a population over twenty-five thousand show that for every one-hundred major offenses known to the police, there were twenty-seven arrests, nineteen prosecutions, and only fourteen convictions. The records unfortunately show that even those who have actually been imprisoned are not thereby deterred from further crimes.

The balance sheet of the present system is thus burdened by huge losses. They accrue to the men and women sentenced to waste years in prison to no one's benefit. They accrue in like or greater measure to society, which spends millions for the maintenance and erection of prisons which breed not reform but desire for revenge, and in the process of so doing loses the services of thousands of potentially valuable persons without being compensated by the protection from crime which a more rational system could afford.

The seeds of the failure of the present system lie in the very basic idea which dominates the selection of the disposition to be made of the convicted offender. That idea is that the punishment should fit the crime. Thus, a person committing grand larceny is to be treated differently from a person committing petit larceny, and a difference of a few cents in the value of a stolen article can result in a great difference in the length of sentence. It is submitted that reason can be brought into the system of criminal law only by making the punishment fit the individual instead of the crime. At present, two persons convicted of the same crime may be given essentially the same sentence, and even the same general type treatment while imprisoned. The fact that they committed the same crime, however, may have been the purest accident. The emotional, educational, and economic factors inducing them to commit crime in the first instance may have been diametrically different. To accord them like treatment is scientifically unsound. Such treatment attacks only the symptoms of crime, not the causes. It is as if a doctor were to confine his treatment of patients with headaches to the giving of aspirin, disregarding the fact that the causes of the headaches may run the gamut from alcoholic over-indulgence to brain tumor. Thus, the procedures which can best be ex-

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7 See note 3 supra.
8 Figures here ranged from an estimate of $843,000,000 by the National Commission on Law Observance and Enforcement for the year 1931, quoted by Barnes and Teeters, New Horizons in Criminology 79 (1947), to $12,930,000,000 by the Manufacturer's Record, quoted by Best, Crime and Criminal Law in the United States 151 (1930).
pected to rehabilitate such persons are those which are directed at the factors causing them to deviate from the standards of society.

Redirection of the method of disposition of convicted criminals from a pattern revolving about the particular crime committed to a pattern oriented to the needs of the individual criminal will require new processes (1) in sentencing, both as to the length of sentence and place of incarceration; (2) in the type of activity conducted during confinement; and (3) in determination of time of release.

The California legislature has adopted a plan making great strides toward the realization of the needed changes;\(^9\) a commission of the Massachusetts legislature has placed before that body a report envisioning even further advances.\(^10\)

**The California Plan**

Before the adoption of its new plan, California had suffered from the same fractionalization of purpose and authority hampering the administration of criminal justice in other states—the legislature had passed a succession of statutes aimed at correcting particular deficiencies in the system but not directed at solution of any overall problems.\(^11\) Penalties were expressed in terms of maximum and minimum limits, with resulting wide variations within those limits—variations based not on differences among individual offenders, but on the predilections of various sentencing officials.\(^12\) Differing types of prisons and work camps had been established; but classification of prisoners was inadequate, hence correlation of prisoner-types with prison-types was haphazard.\(^13\)

Dissatisfaction with the incongruities of the system culminated in the calling of a special session of the legislature in 1944, and the presentation of a bill revamping the California penal system.\(^14\) The provisions of the bill were based on the results of studies which had been in progress for many years. The bill placed all the state's correctional agencies under one policy making group, the Board of Corrections.

One of the major achievements of the plan is the sentencing provision. The plan provides that the judge pronouncing the felony sentence shall not fix the term, but merely sentence the offender "as provided by law." Both the length of the term, and the place of imprisonment are determined by the Adult Authority, one of the agencies

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\(^11\) Rollin M. Perkins, Professor of law, University of California in a letter to the authors (Dec. 1, 1953).
\(^12\) Ibid.
\(^13\) Ibid.
\(^14\) Ibid.
The prisoner is first examined in a reception-guidance center, three of which have been established. A study is there made of each prisoner committed to a state prison to determine whether that institution is the most appropriate for his incarceration. This clinical study is conducted by a staff of specialists including psychiatrists, psychologists, dentists, physicians, sociologists, vocational counselors, and educators. Case summaries from these centers form the basis for further disposition by the Adult Authority. The studies contain not only an appraisal of each man's personality, but also suggestions as to his treatment in prison and on parole; they are consulted by the staff during the entire period from incarceration to release on parole. Studies and progress reports continue to be made, and form the basis of subsequent treatment and transfer.

California has provided institutions differing in the type program conducted, and in the amount of custodial security maintained. Initial classification of prisoners, based on need for vocational training, psychiatric care, and custodial supervision, is made at the reception-guidance center. As the prisoner's needs change, the classification committee of his assigned prison, consisting of the warden and his principal staff members, may recommend to the Adult Authority that the prisoner be transferred.

When fixing the sentence of the offender, the Adult Authority considers both the welfare of the prisoner and the protection of the public. In determining length of sentence, six factors are of paramount importance:

1. The nature of the crime. Since some crimes more grievously offend the public conscience than do others, it is considered necessary to give some deference to the principle that the punishment should fit the crime. This principle is minimized.

2. The deterrent effect of punishment. A greater certainty of punishment is sought to be effected; however, the old theory of substantial punishment as a deterrent is unfortunately still reflected here.

3. Equalization of punishment. Similar punishment is sought to be inflicted where similar circumstances exist. Two persons found guilty of the same offense but possessing different backgrounds and levels of development are treated according to their individual needs.

4. Previous criminal record. This factor continues the old principle that the law should go lightly on first offenders.

5. Prison behavior and attitude. Analysis of the institutional record is one factor in duration of incarceration. It must be remembered, however, that the ability of a prisoner to display a good prison record

\textsuperscript{15} Ibid.

\textsuperscript{16} California Adult Authority, Principles, Policies, and Program 4-13 (June 1952).
does not necessarily augur desire or capability of making a satisfactory adjustment to civilian life.

In accordance with a resolution by the Adult Authority, enlightened disciplinary measures were formulated. No mechanical means of restraint are used except in transporting the prisoner or, on medical advice, to prevent injury to the prisoner or to others. Corporal punishment does not exist. Those on restrictive diets are given a full meal at least every third day. Solitary can last no more than 24 hours without a hearing by the chief disciplinary officer, and those in solitary must be visited at least once each day by the prison physician. A prisoner may also be required to forfeit his earnings for more serious infractions of the rules. More positive inducements, such as earning of privileges or shortened term of confinement are used to assure compliance with prison regulations.

The Adult Authority also directs the administration of paroles, and has improved its supervision in many ways. The parolee is given every aid to adjust successfully to society, and he may be returned for further treatment at the first indication that he is not successfully oriented. More parole officers have been employed, and salaries have been raised. The minimum qualifications for parole officers include college graduation with a sociology and social case work background obtained through at least a year of graduate or case work experience.

The Adult Authority has discretionary authority to restore civil rights. This is ordered only after careful investigation and a definite indication that such restoration will benefit both the individual and society. Furthermore, the Adult Authority functions as an advisory pardon board to the governor, and may itself initiate pardon proceedings by reporting to the governor those who, in its judgment, should be pardoned or given commutation of sentence.

The system could not have been successful without the professional personnel and the clinical and rehabilitative facilities provided.

The Massachusetts Plan

A special commission of the Massachusetts legislature has recently submitted a comprehensive program for the renovation of the prison system. In accordance with earlier practices, the commission had begun its task by examining various bills bearing the reform ideas of various groups and individuals not especially trained in the field. The commission decided, however, that such sporadic legislative relief not only failed to treat the problem comprehensively, but actually tended to further complicate already complex peno-correctional legislation. Their conclusion was that nothing short of a comprehensive and com-

17 Supra note 10.
18 Supra note 10 at 5.
plete re-organization of the program would prove of any great value.\textsuperscript{10}

The report submitted by the commission envisaged a penal system very similar to that already functioning in California. Removal of sentencing power from the hands of the judges was one of the features of the California system incorporated into the report. While paying due deference to the ability of the judges, the report stressed that even the best of judges could not be expected to determine the amount of time needed to reform the criminal at the onset of the period of incarceration.\textsuperscript{20} The report recommended an authority system similar to California's, with the qualification that Superior Court judges be assigned in rotation to service on the Authority. The commission believed that the judge would thereby gain greater insight into the underlying motivations of criminal behavior and the practical effectiveness of the various corrective techniques employed in penal and parole situations. Furthermore, the judge would serve as a moderating influence on the proceedings of the authority.\textsuperscript{21}

The commission recommended that the new state prison then in process of construction be set aside as a Clinical and Classification Center, and that plans be drawn to staff the center with highly qualified, non-political personnel. The salaries of these appointees should be adequate to procure the high caliber of clinical criminologists desired.\textsuperscript{22} All convicted offenders would be committed first to this center by the courts during a period of remand for extensive investigation. A tentative treatment plan would be drafted as a guide in the sentencing of the offender by the authority and in planning his corrective program. It was felt that the function of the reception center could be of much greater value if a program of continuous study of the outcome of various methods of treatment were carried on, and the results used to guide the future development of the total treatment program.\textsuperscript{23}

\textbf{Action Taken in Other States}

The idea of individualized treatment has not been limited to these states, but has gained acceptance across the country. Georgia has recently launched a comprehensive survey aimed frankly at substitution of individualized treatment for mass punishment.\textsuperscript{24} Youth authority programs have been adopted in several states.\textsuperscript{25} Minnesota has caused a state-wide survey of probation and parole services to be made,

\begin{itemize}
\item \textsuperscript{10} Supra note 10 at 7.
\item \textsuperscript{20} Supra note 10 at 23.
\item \textsuperscript{21} Supra note 10 at 49.
\item \textsuperscript{22} Supra note 10 at 49.
\item \textsuperscript{23} Supra note 10 at 50.
\item \textsuperscript{24} A.B.A., Report of the Committee on Sentencing, Probation, and Parole (1953).
\item \textsuperscript{25} Beck and Bertram, Five States 18-28 (1951) (California, Wisconsin, Minnesota, Massachusetts, and Texas).
\end{itemize}
and has lately set up a training program for youth authority personnel at the University of Minnesota. While the steps taken in these states may differ from each other in comprehensiveness, they show a growing legislative consideration of individualized treatment.

CONCLUSION

Three possible objections to a system of individualized treatment are readily apparent: (1) the broad discretionary powers implicit in such a system would become a vehicle for political, economic, or other favoritism; (2) the system is a too radical departure from present methods of criminal treatment; (3) the public would not accept differences of treatment of perpetrators of the same crime if the differences were based upon complex and not generally understood psychological and sociological factors.

The first objection is largely negated by the provisions of the plan itself. The administration of the system is placed in the hands of highly trained experts in the pertinent fields. While the factor of human emotion and avarice can never be entirely eliminated, even in the administration of highly inflexible rules, the character of the administrators should here minimize all differences in treatment not based upon genuine differences in individual needs.

To the second objection it may be countered that the plan is not nearly so revolutionary as it may appear on its face. Numerous facets of individualized treatment already appear in the law; but they form an unsystemitized patchwork instead of a coherent pattern. Among present methods of individualized treatment are the indeterminate sentence, habitual criminal statutes which seek to isolate particularly crime-prone individuals, juvenile courts which seek to treat the juvenile offenders on the basis of their personal maladjustments, adult probation officers, and probation and parole. As an example of the last mentioned category, Nebraska judges may, after conviction of offenders for certain kinds of crime, on the basis of statute-delineated considerations of the offenders' circumstances, suspend proceedings without sentencing, and place the offenders on probation.

In addition to the above methods of individualized treatment, there are numerous points of decision along the road from apprehension to conviction at which those in authority may choose different courses depending upon the appraisal made of the offender. Policemen may arrest or not arrest; juries may convict the accused or feel moved to acquit him in order to give him another chance; prosecutors may charge greater or lesser offenses. The purpose of the plan is merely to gather together most of the prevailing methods, add some other proce-

26 Beck and Bertram, Five States 18-28 (1951).
The third objection is less readily disposed of than are the others. Public opinion, of course, cannot be wholly disregarded; no matter how uninformed it may appear to be in a given instance. Education relative to the background and objectives of the plan would of course be helpful in securing a climate of opinion favorable to the acceptance of what might seem to the layman baseless differences in treatment of several individuals convicted of the same type crime in apparently similar circumstances. As a practical matter, however, the administrators of the system will undoubtedly have to apply unscientific treatment at times in order to satisfy particularly aroused public demand or to save themselves from unwarranted but quite damaging suspicion of favoritism. Irrational approaches would probably have to be made in only a relatively small percentage of cases, however, and would thus not greatly affect the efficacy of the plan.

It is more than probable that studies in other states, such as those conducted in California before the creation of the Adult Authority, would point out the pressing need for fundamental penal reforms. Until such studies are undertaken, and the reforms delineated are made, the present treatment of criminal offenders will continue to be a source of active harm to those vitally interested in it—those of the public seeking protection from anti-social acts, and those who come within the bounds of the system.

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