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Book Reviews: The Right to Treatment

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THE RIGHT TO TREATMENT. Edited by Donald Burris. Springer Publishing Company, Inc., New York, New York. 1976. Pp. 341.

Charles Rouse was involuntarily committed to Saint Elizabeths Hospital in 1962 after a federal court in the District of Columbia determined that, by reason of insanity, he was not guilty of the charge of carrying a dangerous weapon.¹ The maximum sentence for this offense was one year in prison. At the time of his appeal, however, Rouse had already been confined in Saint Elizabeths for four years. Because that institution failed to provide him with "adequate treatment" during this time, his confinement there was nothing less than imprisonment. For Charles Rouse, the story had a relatively happy ending, and he eventually won his release.² For many others, however, the possibility of indefinite civil commitment without adequate treatment remains a reality.

Under Maryland's "defective delinquent" statute, for example, a juvenile may be confined indefinitely as a "defective delinquent" if he "evidences a propensity toward criminal activity, and . . . is found to have either such intellectual deficiency or emotional imbalance, or both, as to clearly demonstrate an actual danger to society."³ Although the United States Court of Appeals for the Fourth Circuit has held that provisions for treatment are a predicate to the statute's constitutionality, the statute was found to be constitutional.⁴ The Maryland legislature has not defined what constitutes "adequate treatment" under the statute.

The Right to Treatment is comprised of a series of articles which explores the legal, medical, and social response to the right. The book attempts to explain what the right is, or, alternately, what it should be. *The Right to Treatment* is actually a reprint of a 1969 issue of the *Georgetown Law Journal*, edited by Donald Burris. The age of this material, however, should not deter one from a thorough reading of its contents.

For the novice, *The Right to Treatment* can open doors to rooms he never knew existed. He will discover rooms where troubled children wait, sometimes for years, for promised treatment that never comes — despite a court order that treatment is a condition of the confinement. He will see rooms where the mentally ill perform manual labor while committed to the care of specialists who appear once or twice a year. He will see similar rooms for sexual psychopaths, chronic alcoholics, defective delinquents, and others who are supposed to have, but are denied, a right to care and

1. Rouse v. Cameron, 373 F.2d 451 (D.C. Cir. 1966).

2. Rouse v. Cameron, 387 F.2d 241 (D.C. Cir. 1967).

3. MD. ANN. CODE art. 31B, § 5 (1967).

4. Sas v. Maryland, 334 F.2d 506 (4th Cir. 1964).

treatment. The reader will meet Arnold Marman, who at the time of the publication of the symposium, had been confined in a maximum security ward at Saint Elizabeths for more than 21 years without adequate treatment. The reader will see a letter from Patient No. A-25738, a man involuntarily incarcerated for 12 years in the locked wards of a mental institution in the South. Patient No. A-25738, who received virtually no treatment over those 12 years, claims that he was railroaded into the institution without an examination by anyone, and that his commitment papers were fraudulent.

A reader more familiar with the subject might find this work valuable as reference material. The history of the right to treatment and its evolution are traced in articles by Dr. Dale C. Cameron, Dr. Morton Birnbaum, Charles R. Halpern, Esq., and Dr. Nicholas N. Kittrie. These and other early proponents of the right to treatment, including Chief Judge David L. Bazelon of the United States Court of Appeals for the District of Columbia Circuit, who issued the landmark decision in the *Rouse* case, lay the groundwork for the future development of a new constitutional right.

To a great extent, this symposium omits the voice of the opposition. The cynicism of many early critics was provoked by the scarcity of adequately trained personnel and a like scarcity of financial resources. The impossible task of providing adequate treatment is readily apparent from the inability of experts to agree on a definition of "adequate treatment." Indeed, a recent law review article goes so far as to suggest that the impracticalities involved in implementing a right to treatment for juveniles, coupled with the widespread use of indeterminate sentencing in the juvenile justice system, have brought into being the need for a right to punishment, where the humane approach is to incarcerate the youth for a definite period of time.⁵ Nowhere in this work is the critic permitted to argue that a right to treatment does not or should not exist, and for this reason *The Right to Treatment* lacks a certain wholeness.

Despite this relatively minor shortcoming, *The Right to Treatment* is worthy of our close attention. These essays are not laden with the stodgy prose that often plagues the weighty law review article. The authors of this symposium are close to their work, and write with a touch of humanity that lends a certain reality to their message. *The Right to Treatment* deals with ideas, theories, and legal principles, but it is primarily about people, a segment of people that faces the possibility of indefinite confinement without the hope of treatment or eventual release.

James G. Maggio

5. Shepherd, *Challenging the Rehabilitation Justification for Indeterminate Sentencing in the Juvenile Justice System: The Right to Punishment*, 21 St. Louis U.L.J. 12 (1977).