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## Probation and Parole

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## PROBATION AND PAROLE.<sup>1</sup>

(REPORT OF THE COMMITTEE OF THE AMERICAN  
PRISON ASSOCIATION.)

KATHERINE BEMENT DAVIS.<sup>2</sup>

Last year at the St. Paul meeting of the American Prison Association, the Committee on Probation and Parole presented a report based on the answers to a questionnaire widely distributed and covering the principal points involved in systems of probation and parole, with suggestions as to the weak spots and proposed remedies therefor, for methods of selection of probationary and parole officers, for after-care of discharged prisoners, and related topics. It has seemed to your chairman that, in view of the detailed character of the information sought and reported upon last year, it might be fruitful this year if a different method of presentation were adopted and a discussion were had on the organic relationship, on the one hand, of the courts to the probation system, and, on the other hand, the relationship between parole and the institutions to which prisoners are sentenced.

### THE COURTS AND PROBATION.

#### *The Clearing House Plan.*

The value of the genuinely indeterminate sentence has been generally recognized throughout the United States by the foremost students in penology. A genuinely indeterminate sentence has as its logical outcome the custodial care of all prisoners whom it is not possible to train to good citizenship. Wherever even a partially indeterminate sentence has been adopted, the very serious responsibility placed upon the court is universally recognized. It will be generally found that in communities where laws have been passed making even a partially indeterminate sentence possible, there has been also a growth in the general recognition of the value of probation. It is a truism to say that successful probation depends upon two things: (1) On the ability to employ in any given locality an adequate number of probation officers, and (2) a proper method of choosing the persons

<sup>1</sup>Committee Report presented at the meeting of the American Prison Association at Oakland, Cal., Oct. 15, 1915.

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to be placed on probation. As to the number of probation officers necessary, no general principle can be laid down. It depends on location, financial possibilities of the same, numbers to be placed on probation, etc. As to the choice of persons to be placed on probation, there is much to be said. As a rule, the judges who use this method must depend almost exclusively on the probation officers for the investigation which is to govern their choice. This is not altogether true of the juvenile courts, but very little headway has been made in the country as a whole in securing such a careful study of the adult offender as is made, for example, in the Juvenile Court of Chicago. There is pretty general agreement that probation is proper under the right conditions for first offenders, for accidental offenders, for young offenders, but many of us believe that the judges should know more than this.

In all of our cities where a careful fingerprint system has been installed, it is not difficult to determine who is a first offender so far as the particular city is concerned, but in New York it has not infrequently been our experience to find after sentence that even youthful offenders have had criminal experience in other cities or states. Therefore, it is not entirely safe to depend alone upon local records. Too frequently twenty-four hours only are allowed for the investigation of a probation officer. In special cases two or three days may be allowed, but with the number of probation officers at the command of most of our judges even this length of time is not sufficient to determine many points which have their bearing on the success of probation. As a general proposition, no offender should be placed on probation who

*First:* Is not in sufficiently good physical condition to enable him to earn his livelihood, unless the court is assured that he has friends or relatives financially capable of caring for him.

*Second:* Who is not industrially capable of earning his own support, and, if he is himself the support of a dependent family, of earning their support as well.

*Third:* He should not only be capable of earning his own support, but it should be certain that he can find work for himself or have it found for him; otherwise a relapse is certain.

*Fourth:* It is generally customary in the case of women placed on probation to see that not only work but a suitable home is provided for them. This should also be done in the case of men.

*Fifth:* No person should be placed on probation who is unfit by reason of feeble-mindedness or psychopathic defects to control his

own actions. In many instances even somewhat careful examination, if made by persons not scientifically trained, cannot detect these traits. It has been my personal experience that in a large percentage of failures on probation the trouble has been that the probationer was decidedly below par and was actually in need of custodial care.

To make sure on all of these points is the work of not one, two, or three days, but of one, two, or three weeks, and in extreme cases of even more. Investigations should cover the social, economic and moral status of the candidate for probation. It is my belief that this can only be properly done when we extend the clearing house plan, which has been successfully used for the past five years in connection with the Juvenile Court of Chicago, to cover the cases of adult delinquents. Recognizing the desirability of such a plan several years ago, the Bureau of Social Hygiene of New York City made it possible to begin an experiment along these lines. Recognizing the size of the problem in a city and state the size of New York, where in the city alone last year eighty thousand (80,000) persons passed through the penal institutions, it was decided to limit the experiment to the women committed to the State Reformatory for Women at Bedford Hills. The plan there has been to work out a methodology along social, psychological, and physical lines. The work has been progressing quietly for nearly three years, and it is believed that already a methodology has been worked out which is in advance of public provision for carrying its recommendations into effect. The Laboratory of Social Hygiene is supported at present by private funds and is only affiliated with the state institution. In making its recommendations at the present time, it proceeds on a two-fold assumption: (1) A recommendation is made in accordance with its findings as to what should be done had the state legal provision for carrying into effect a complete system of caring for its defectives and delinquents; (2) a recommendation of what can be done under existing conditions.

With a complete correlation of the activities of courts, probation officers and institutions, the clearing house would determine:

*First:* What individuals could safely be placed upon probation.

*Second:* What cases should have permanent custodial care on account of incurable mental defects.

*Third:* To which of the various state institutions a given case should be sentenced under the existing state laws.

Such a method is in principle approved by many of our most progressive judges. Far from objecting to a curtailment of their powers, they would welcome a method which would give them a basis

for a decision entirely apart from the merely legal aspects of the case. More than this, some judges would in many instances welcome a further differentiation of functions which would give the court solely the duty of determining the innocence or guilt of a person brought before it and would sentence simply to a board which would direct the activities of a clearing house as above outlined. In the event of the establishment of such a clearing house, persons placed on probation would be those who would have a fair chance of making good in the world without the stigma to the individual of the prison sentence or the expense to the taxpayer of his support in a penal institution. The members of the staff of a clearing house being but human, mistakes would be made, but these would be reduced to a minimum, and in the event of a given person's being found unfit for probation, he should be returned to the clearing house for further study.

In general detail no plan can be put forward at the present time for such a clearing house system as would be acceptable to all our varied communities, but that the principle involved is sound and will be generally recognized and worked out along specific lines in various places there can be little doubt. The general recognition of its applicability to juvenile offenders makes a practical certainty of its development in connection with our children's courts, and with modifications the tendency is toward the adoption of methods which proved successful with juveniles in caring for adult offenders.

#### INSTITUTIONS AND PAROLE.

Both institutional care and parole are methods adopted to train the individual who has been anti-social so that he may take his place as a law-abiding and self-supporting citizen. It has been well said that the parole period is the critical time in the development of the criminal into a social being. In my judgment the connection between institutional life and the succeeding period of parole is organic. The social being is obviously one who can adapt himself to the group in which he lives. Criminal acts are anti-social acts. To change the anti-social being into a social being we must develop his sense of responsibility toward his neighbors and his powers of self-direction and self-control. The criminal having been convicted and the court having determined that the man's liberty is the forfeit, it is the business of the institution to train him for his readjustment to society. The parole is the period in which the test of this training is made before the man is finally placed on his own resources.

There has been throughout the United States a general trend toward the adoption of parole laws, not only in our reformatories but

in our state prisons. Nowhere has a truly indeterminate sentence been adopted and the liberality of the parole laws varies in the different states. It has been extended from our reformatories to our state prisons and state penitentiaries (state penitentiaries being the corresponding term for state prisons in some localities). I believe New York City is the first city to have an indeterminate sentence and parole law passed affecting a county penitentiary and workhouse. It seems to me that with the nearly universal adoption of the parole idea, it behooves us to consider carefully whether the institution life has such a general trend as will prepare the man for his self-direction and self-control. It is not only desirable that the institution teach the prisoner how to work, but it must teach him how to control himself. In granting the parole we have at least five points to consider:

*First:* The physical condition of the prisoner in its relation to his ability to re-establish himself in a community.

*Second:* His ability as a wage-earner.

*Third:* His past career as affecting his likelihood of making good.

*Fourth:* The possibility of satisfactorily placing him outside the institution.

*Fifth:* His conduct in the institution.

In the educational world today we find educators somewhat divided as to the fundamental principles which are at the bottom of the methods adopted. There is a close-analogy, it seems to me, between the situation in the educational world and the situation in our penal institutions. The advocate of each method, both of education and prison management, is sincere in his belief. The sole question at issue is which method will accomplish the results, and, as in the educational world so in the penal institution, the result is the best adjustment of the individual to society.

In the educational world we have at the one extreme those methods which believe in developing the child along the lines of his own instinctive desires as expressed through his own activities; the adult, the parent, the teacher, is to follow along the lines indicated by the child and is not to impose his preconceived theories or his notions as to what is best upon the unfolding life. The development is to come from within and the parent or teacher is to only assist in the unfolding of the inherent faculties of mind. At the present moment the Montessori system is a good exponent of this method. At the other extreme we have the educational system which is the result of a careful study on the part of the teacher of what he

believes to be best for the child. At every turn the child is directed by those whose greater age and experience of the world have decided what is best for him. Little attention is paid to his own wishes, his initiative is curtailed, his imagination stifled—and yet there are still those who advocate this extreme. In between we have two other groups. First, a group who, while believing that the child's instincts should be given free play and that his own capacity should be developed rather than forced, yet believe that these unfolding traits of mind and spirit should be guided by the wisdom gained from life. They would grant the truth that the extreme radicals hold but would add a little borrowed from the group at the other extreme. They are the radicals with a touch of conservatism. The fourth group are the conservatives with a touch of radicalism. They would not go so far as to refuse to recognize altogether the initiative of the child or his unfolding instincts, but they are inclined to say that in most respects the wisdom of the elders and the imposition of authority are for his best good.

In prison management and in prison discipline we find today these four groups. One end of the scale is probably best exemplified by the ideas advanced by Warden Osborne, of Sing Sing, which have attracted much attention. Mr. Osborne believes that the men in his charge will be best fitted for freedom by giving them the largest practicable measure of control over the prison activities which do not have to do directly with the outside world. Accordingly, at Sing Sing today we find a very complete organization of the prisoners, by the prisoners, and for the prisoners, inspired and infused, of course, by the spirit of Mr. Osborne. The prisoners are in almost complete control of the discipline. They have their representative body based on the shop as the political unit, each thirty-five men being given one representative in the council. At present this council chooses nine members as an executive committee which can divide itself up for special purposes—really a commission form of government. Very large privileges are given the prisoners as to correspondence; purchase of clothing; freedom to see visitors, a committee of prisoners receiving and showing through the institution such of the general public as visit there; freedom in the way of recreation, amusements, etc. It is further contemplated to introduce a system of token money in which payment for all work performed shall be made, and out of which in turn the prisoner shall pay for food, clothing, postage, and whatever he has. Any surplus to his credit on leaving the institution is to be redeemed by lawful money. Mr. Osborne believes that

it is only through practicing the general principles of democracy, of self-government, and self-direction that the men can so develop their powers of self-control as to make it probable that they can return to society as social individuals. Mr. Osborne does not personally believe in classification within the institution on a basis of character and conduct, holding that in the world good and bad alike meet, and that the mixture of good is a restraining and educating influence over the bad; that men must learn to resist temptation. In short, that so far as his personal relations to the community in which he lives goes, a man in prison should live as normal a life as possible, the only difference being that he is restrained of his freedom. Mr. Osborne believes that the greatest possible success on parole will come through a system such as this because the man has practiced all through his period of incarceration that which he must practice when he leaves the fostering care of the institution. Mr. Osborne is first of all to admit that the system is not perfect; that in many ways it is in the experimental stage. He claims for it, however, the fundamental basis which is claimed by those who believe in the free development of the child nature.

It is needless to say that at the opposite end of the scale we have what up to comparatively recent times has been held to be the proper penal method—that of extreme repression, of rules framed entirely by the officials in accordance with what seems to them good; this good, of course, being the good of the prisoners themselves. This method presupposes strict rules of discipline, and while it presupposes sanitary surroundings and humane treatment, there is little in it that is calculated to develop self-control or self-direction. Probably a considerable proportion of the prisons of the United States are governed by this method, and not a few of our citizens still believe that it is the proper way to protect society by deterring the commitment of crime on the one hand, and by punishing those who have broken the law on the other. The difficulty of this system comes in the sharp break between the life of the institution, the constant living under restriction and in accordance with rules, and the sudden freedom on the other hand to follow one's own impulses. It is like removing a straitjacket from a person under confinement therein and who has lost control of his powers of motion. It seems to many thoughtful people that the breakdown of the parole system comes largely as a result of this method of administration.

Between these two methods comes, first, a system in which there is classification and promotion based on effort, self-government being given to the group which has shown that it desires and is capable of a certain measure of self-control. This is the method that your

chairman personally employed at the State Reformatory for Women at Bedford Hills. By those who believe in this method it is held that inasmuch as rather a high percentage of our prisoners are mental defectives, and inasmuch as a large percentage have never learned to do anything but act on impulse, certain training, for the good of the community as well as for the individual, is desirable before self-government is granted, but that this self-government should be granted so far as possible before release, in order that there may be a gradation from the anti-social period which existed previous to imprisonment through a rather firm regime up to the period of considerable freedom followed by parole.

The fourth method corresponding to the fourth educational group is that practiced in many of our best prisons of very high standing—typical among these is Great Meadow in New York, Warden Gilmour's prison in Guelph, Ont., and San Quentin in the State of California. Here a large proportion of the privileges allowed, for example, at Sing Sing are enjoyed by the prisoners. They are allowed to associate with each other under supervision; under supervision they work and play. There is nothing of the harsh or the repressive in their treatment, but the advocates of the self-government method claim that it is too paternalistic and that there is not enough opportunity for exercising self-direction to make a firm foundation for self-direction on parole.

That we are in the experimental stage in prison management we all realize. There is no doubt in my own mind that the great proportion of prison officials, at least of those in control, desire to do the best possible thing for their charges. That it is impossible to come to final and absolute decisions as to best methods is obvious. So long as we have great economic and social questions in society at large unsettled, we cannot hope to arrive at a final and conclusive decision on prison problems. Therefore, discussion is the best educator and the value of a meeting like this is that people who care for the same thing from all parts of America meet to discuss these vital questions. It is hoped that in particular the organic relation between institutional methods and the success of parole will be fully discussed at this session.