

1917

Probation in Its Relation to Social Welfare

R. O. Harris

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

R. O. Harris, Probation in Its Relation to Social Welfare, 7 J. Am. Inst. Crim. L. & Criminology 810 (May 1916 to March 1917)

This Article is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

PROBATION IN ITS RELATION TO SOCIAL WELFARE¹

R. O. HARRIS²

This is not a learned, technical and highly scientific treatise on probation. My experiences with it, and my belief in it have not been along those lines, and my faith in it and my hope for its useful extension are not the result of laboratory work or of abstract reasoning.

If in what I say you notice an apparent egotism, let me forestall the criticism that the use of the "great I" is evidence of poor, if not the worst possible taste, by saying that all I know of probation is the result of the personal contact with offenders against the law. As a mere man, with all the imperfections that go with the ordinary human being, I have seen my weaknesses, uncontrolled and exaggerated, reflected in the faces and conduct of many other human beings with whom I have had to deal. A great English judge once remarked, after sentencing a fellow-man to death on Tyburn Hill, "But for the grace of God it might be myself." Kipling has said that, "The Colonel's lady and Judy O'Grady are sisters under their skin." What I have to say is therefore not the result of egotism because of some little things I have helped to bring about, but is the consequence of a sadly acquired knowledge of how much there is to do, how little really has been done, and how much the community itself has got to do.

My attention was first sharply drawn to the possibilities of probation work when, as a much younger man, I was elected a District Attorney and charged with the duty of prosecuting and bringing to punishment offenders against the law. The idea of dealing out justice is attractive, as a general proposition, and when first entrusted with the power of doing so one is likely to feel on pretty good terms with oneself. After the burden is on one's shoulders the first gay mile or two of the journey passed the burden begins to be noticed, and one begins to doubt whether one is a full equivalent for Omniscience and Omnipotence. At any rate I did, and my moments of doubt stretched out to minutes, hours and days of anxiety.

The dream of purging the community of criminals and crime; of ferreting out and bringing to justice the low-browed villian, the cunning malefactor, and all the crew of social pirates, soon got mixed

¹Read at the annual meeting of the American Institute of Criminal Law and Criminology, August 29, 1916.

up with a nightmare, in which angels of light waving flaming swords of justice were strangely mingled with other figures, some dreadful and threatening, others distorted and pitiful. At the opening of the criminal term the sheriff would hand me the list of men in jail, and the crimes with which they were charged. When the grand jury was ready to report, and the men were brought in for arraignment or discharge so that I for the first time faced them, realities took the place of dreams. Seldom a Napoleon of crime, with whom and with whose brilliant counsel I could engage in high combat for justice and vindication of the law, and over whose offendings I could fill the air with fervid oratory as the avenging minister of justice. No rows of low-browed, burly ruffians of the Bill Sykes type; no polished, intellectual criminals who employed all the resources and knowledge of science in their war against society. Occasionally one of that class would get into the net. I got to be quite fond of him. He preferred to play the game and take its chances. He was apt to be a real good sport, and we played with zest for the odd trick or point. If I won and he lost he had no grudge against anybody. If he won and I lost we parted with a sort of friendship, and if I said to him "au revoir but not good-bye," the reply was just as likely to be a friendly grin as a hateful scowl. Such cases really lightened the burden; they were like the lawyer's little smoke at recess time.

The rest were of a different sort. Mostly youngsters, the ages running from perhaps eighteen to twenty-two or twenty-four, and averaging about twenty-two. Those of us who have graduated from a college at about that age know of course how mature and wise we are then. I would give a whole lot to know today as much as I thought I knew then. Most of these youngsters were not college graduates. They were not very well-kept or well-groomed; they did not look as if they were spoiled favorites of fortune, but rather more like Bulwer's hero, "men of sorrow, and acquainted with grief." Perhaps they were men I had known in my school days, and with whose surroundings and opportunities I had been familiar, or they were the sons of men I had known. They were young; I was young.

For good and sufficient reasons, neither difficult to imagine or necessary to state, no nice white wings had developed at my own shoulder-blades, and I had not qualified among those whom they say the gods love. Perhaps the man was charged with having acquired a too intimate knowledge of the internal arrangement and contents of somebody's warehouse. In the back of my head were memories of

the time when I could gather the choicest apples and the most luscious grapes without the aid of sunlight, or the assistance of the owner of the trees or vines. Different circumstances had surrounded us. He had had perhaps a worthless father. I had had a home in which a wise mother and father looked after me; a home in which a sufficiency of food, warmth and clothing had been matters of course, in which education and intelligence, unhampered by any bewildering superabundance of material things, furnished me with guides. He had lacked everything that tended to guide. As a result we faced each other, I with the knout of justice in my hand, and he with bared shoulders shrinking from the expected blows. Duty demanded that I do justice. What is justice in this case became the ever-presented question. When our legislature, partly as a result of my own urging, gave me the power to have a probation officer, and to use probationary methods, I called upon one whom you all know and respect, Mr. Edwin Mulready, to come to my side and help work out some problems. We knew where we wanted to go, but we didn't know the course very well, so we launched the boat and took a chance. Mr. Mulready, of course, had few human infirmities, but I found that the malefactor and I had so many human characteristics in common that we could quite often get together and talk it over. It was quite surprising to find that after a while, when we had convinced the jail population that we had a real interest in them, how many of them would say they didn't want counsel, but would like to speak to the District Attorney. Perhaps it was queer to talk with a chap about his case, and put it up to him to decide about what ought to be done with him. Nevertheless it often worked, and the men took a new point of view. In simple language the matter came down to a question of human helpfulness and the elbow touch. The man who is accustomed to be the first one suspected when anything happens, to be looked upon as one entitled to no sort of confidence or trust, speedily becomes a wolf, a furtive beast of prey. A little sympathy and a little confidence makes a great difference.

One thing that has been a drag upon probation work has been the false idea that many people have held concerning it. Many good and kindly persons, who nevertheless have held very positive ideas as to the distinction between *meum* and *tuum*, particularly *meum*, have been very much disturbed because they have believed that all we did was to condone an offense, pat the offender on the back and just tell him to run along, be a good boy and not do it again. True probation

does not condone the offense. It takes into account not only the circumstances of the crime, but the circumstances and temptations of the criminal. It gives him the opportunity to earn the remission of the penalty by future good conduct. Probation says to him that it understands something at least of the conditions that surrounded him and offers to help him. It tells him that he has got to put *himself* into the new endeavor, and while it stands ready to give him aid and encouragement it cannot do the things that *he* alone can do.

If he makes good, and demonstrates that he is not a real criminal by instinct and intention, then it follows the example of the recording angel, drops a tear upon the page and obliterates the record. If he does not make good, then the penalty is imposed.

Science has come to our assistance, and by examination and research has shown us that many of those we have deemed hopeless criminals are unfortunate, in that they do not measure up to normal standards; that they live under limitations that cannot be widened. Science has given us some new words. Moron, recidivist, degenerate, idiotic, congenital, deviate and so on. The result of scientific research has been to modify ideas as to criminals and crime, and to compel us to recognize the bounds between, the intentional, the casual, and the ignorant offender.

Some men, we find know the difference between the mine and thine, not because of reasoning, or moral feeling, but in the practical way that children acquire knowledge. If they burn their fingers or bump their heads it results in personal discomfort, but their experience does not convey any moral lesson. Science has demonstrated to us that the sins of the fathers are visited upon the children, even unto the third and the fourth generation, and that the repetition by each generation may extend the penalty indefinitely.

Society is at all times protesting against the disturbance of its peace and the orderly procession of its affairs. It is constantly providing penalties for the punishment of offences against its peace and good order. Gradually, however, it has come to recognize that not all disturbers are of equal mental powers, and that some are real tigers, while others are simply hungry jackals. Among its other efforts to preserve its peace, serenity and sound sleep of nights society has given encouragement and support to probation. Probation has added a good deal to its comfort. With the assistance of science it has discovered a lot of things.

Right here I want to disassociate myself from all my brethren who have worked with me in probation fields. I do not want any other man to be made responsible for my vagaries or eccentricities, or any good that may have been done to be marred by my individual expression.

Probation has done much for the social welfare; properly conducted it will do much more. *Quaere*, as the law-books say, is it the ultimate word? Having developed a method of dealing in a kindly and improving way with those who have been haled into the criminal courts, have we reached the end of the road? Is the only thing now to be considered the improvement of the probation "system"? In my opinion the doom of probation is written when it becomes a "system;" when the humanity of it is either eliminated in favor of formality and a beautiful mechanical process, or becomes so over-laid or encrusted with the complexities of "system" that the real heart cannot be heard to beat, even through the social stethoscope. Individually I am opposed to any plan of selecting and appointing agents of probation that results only in giving snug, life jobs to the appointees, rather than the securing of men who are drawn to the work from love of it, and the desire to serve. When we are sick we do not select our physician by any civil service examination process. We send for the man who understands what he is dealing with. If he proves to be without understanding we just "fire" him and try again.

You are probably beginning, if in fact you have not already begun, to wonder what all this has to do with Social Welfare, in capitals.

Probation work has been social welfare work. It has added to our comfort and our peace of mind. The results of it have been not only socially, but financially profitable. The community generally didn't get really interested in us until we demonstrated that there was "money in it." With this I find no fault, because I am practical-minded enough to believe that we do not progress much in any direction until we find advantage or profit in the new departure or venture. When it appears that we can further a good cause and at the same time make a profit, the dollars take on a benignant look that is most comforting.

In the last analysis, those of us who have worked in probation fields are, after all, social rag-pickers; we have tried to make social salvage out of the old rags, boots and bottles thrown out of the back yards of civilization into the ash-can. Probably it is prudent to assume that most of my audience has no acquaintance with, or fondness for the banalities of vaudeville. A certain vagabond streak in my own

make-up leads me to enjoy them. A certain song was once popular, called, I believe, the "Rag-Man." The refrain ran something like this:

"Any rags, any rags?
Any rags, any bones, any bottles today?
It's the same old song
In the same old way."

Probation has been, and is, but a step forward. It is not the completed journey. Perhaps we might dignify ourselves by saying that we are the Red-Cross contingent, following the social army, picking up and trying to heal the wounded and the maimed. If we are only social rag-pickers and junkmen, while we may take pleasure in our work and our profits, we can also wonder why there is so great a wastage. If we can fairly be called Red-Cross nurses, we can also wonder why so many wounded. Must everything come first through a criminal court? Can the community find no way to put us out of business by forestalling us? Medical science today is seeking the anticipatory, preventive method of dealing with physical ills. The law has its equity side through which it seeks to, and does, restrain the performance of threatening acts that may work irreparable injury to another.

Has society reached the limit of its powers to protect itself? Have we no power to establish what may, for want of a better name at present, be called courts of social equity, through which the social injunction may be issued to forestall and prevent those damages which we now only seek to repair? Through my experience with probation I have been led to this question. I have come to the limit of experience, and have to look over the fence into the fields of experiment and new endeavor. I am aware that in those fields are likely to be paths in which conservatism will hesitate to walk; that experiments will either suggest themselves, or be suggested, that will conflict with our ideas as to individual rights. Other things will be presented that will at first view be held wild, impossible of accomplishment and not to be considered. Yet when we run over the results of experiment and investigation so far obtained, we find staring us in the face certain positive and menacing facts. Our efforts to prevent or control crime have shown us what a percentage of so-called criminals are really patients. Their maladies have their origin in previous social conditions, and the particular crime is but the outward demonstration of a constitutional infection. The song says, "It's a long, long way to Tipperary."

So it is probably a long, long way to great achievement in new and large fields of endeavor. No journey is ended without a start first made. Some trips may be made in the comfortable Pullman. The pioneer travels on foot and faces the hardships and dangers of the unknown country. Nevertheless he finds the way, opens the road, and shows the glorious possibilities of the new territory. By no means forgetting or overlooking the many great and good things that are being done in the way of public and private benefaction, I am somewhat hopefully looking for the dawning of the day when the community itself, as a whole, will more readily and generally recognize the fact that there is more of profit and peace of mind in social fire prevention than in the most elaborate and skillfully organized fire department.

The aim and object of our civilization is to make as many comfortable and as happy as possible, and to have as few uncomfortable and unhappy as possible. With the normal individual gone wrong we can deal. With the various sub-normals we do not yet quite know how to deal, and we do not yet know at all how to either prevent their existence, or limit their capacities for public mischief.

Some explorer, with axe in hand and the stars as his only guide and compass, will perhaps hew his way through the tangled forest of present day conventions and show us a fair road to new and smiling lands.

Somewhat afflicted with conservative tendencies myself, and desiring to go safely, nevertheless experience with the wicked, the unfortunate and the miserable; familiarity with the despondency that comes from the feeling that one is unable to bring the relief which pity realizes is needed, have brought me here to throw into the air the little seed of suggestion that the community, as a whole, bend its efforts towards *pre-criminal* as well as *post-criminal* remedies.

If some one of the four winds of Heaven shall waft it to some spot where it may grow, I shall feel that twenty odd years of dealing with the criminal, and considering what may be done have not been entirely wasted.