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EFFECT OF THE WAR ON THE REFORMATIVE PROBATION AND SUSPENDED SENTENCE

(Report of Committee "B" of the Institute¹)

HERBERT C. PARSONS, Chairman

"To adorn the repose of peace with its own trophies we must give renewed attention to those questions of which the civil war has increased the gravity, while it has delayed the consideration." These glowing words were written a few months before the close of the civil war in a special report made to the Massachusetts legislature by Frank B. Sanborn, long known as the "sage of Concord," then serving as the first secretary of the State Board of Charity. They form the one oratorical flight in a document devoted to a keen and forward-looking analysis of prison conditions then existing in Massachusetts, as in other states. This report has since been credited with having "presented for the first time officially in America the principles advocated by Maconchie and Crofton." It was an almost merciless dissection of the penal system of the state and, for that matter, of the country, and an exposure of the failure of the prisons to work out reformation of the criminal.

The pertinence of reference to a report of conditions as they existed in 1865 is two-fold. There is revealed a situation exactly parallel to that which the present war has brought to crime and correction. Based upon the effects of the war and looking forward to the problems which would follow upon its close, there is shown a high resolution to bring about a real advance in correctional methods. Precisely the same things resulted from the existence of the civil war as have developed during the present one, and were accounted for by theories which are familiar in now current discussion. There was a marked increase in juvenile delinquency and it was found to be due to the disturbance of home conditions, the absence of the father and elder brother, the employment of the mother in other than domestic

¹The personnel of this committee is as follows:
Herbert C. Parsons, Secy. of the Commission on Probation, Boston, Chairman.
Arthur W. Towne, Supt. Soc. for Prevention of Cruelty to Children, Brooklyn.
Wilfrid Bolster, Justice of the Municipal Court, Boston.
John W. Houston, Chief Probation Officer, Chicago.
James A. Webb, Justice of the Superior Court, New Haven.
E. Z. Hackney, Probation Officer, Court of Quarter Sessions, Philadelphia.
A. C. Backus, Justice of the Municipal Court, Milwaukee.

pursuits and the interruption of school attendance. There was an increase in the number of women offenders, both actual and, of course, tremendously more proportional. There was a marked decrease in adult male offending and a corresponding falling off in prison population, traceable, of course, to the fact that a large proportion of the male population was occupied in war. The parallel with present conditions is strikingly complete. But what is of greatest interest is that there developed a vigorous new thought in regard to correction and a determination that henceforth the prisons should not be places for the degradation and corruption of the individual, but should have a reformatory purpose or should be supplemented by institutions devoted to reformation.

In 1865 there was not an adult reformatory in America. There were one or two British examples of the engrafting of a reformatory purpose upon penal institutions, the transformation of the penal colony on Norfolk Island by Captain Maconochie being the most conspicuous. Reformatory institutions for juveniles had been established as early as 1846 and were being generally extended through the state. But there was so little sentiment in favor of a policy of rehabilitation for adult offenders that it was possible for it to be said, as it was said, that the prisons, "instead of reforming, were hardening the criminals."

The creation of the reformatory as a part of the correctional system has recently been credited to a sentiment among the people of our country against the commitment for punishment of men who had recently been serving in the army for its preservation. A search of the utterances of the prison reformers of that post-war period fails to reveal any recognition on their part of such a motive. But it is quite possible that it had to do with the changed policy which found reflection in the disposition of cases by the courts and in the provision by the state of reformatory prisons. The civil war unloosed, precisely as the present war is expected to do, great impulses toward human betterment. Is it unreasonable to credit the demand of that period for a humane and helpful correctional policy to the tremendously stimulated desire to better human conditions? Whether so or not, the fact stands out that the reformatory as an adjunct, and a valuable one, to the correctional system of our country had its birth in the period immediately following the war for the preservation of the union.

In 1918, with our country engaged in another great war and with the identical symptoms as to its effect upon corrections, what forward steps are indicated in our treatment of offenders? You may be sure there will be no less reluctance to penalize men who have been

engaged in the great conflict when, as must unavoidably happen, they appear in the criminal court. Moreover, the impulse to democracy which is counted upon as the transcendent fruition of the present great conflict cannot and should not miss its application in this field. Its processes must be democratized. The rule, which is to give to every human life its fullest and freest opportunity for development, will not be withheld from those who by mischance or error offend against the laws. The answer to the protest of the older reconstruction period against the penal institution was: another institution—a very different institution, having in view the rehabilitation of men, but still an institution. Z. R. Brockway, then of Detroit, speaking to the National congress at Cincinnati, October 12, 1870, declared that “legalized degradation or destruction of any class or any criminal inflicts injury upon the whole social organism.” That was the advanced sentiment of the period. But Mr. Brockway’s method of meeting it was what he called “the graduated series of reformatory institutions for adults.” It was the answer of the times, expressed in the subsequent years in tremendous expansion of institutions of every order. It is not the answer of 1918 to a similar situation and a corresponding impulse.

In the field of corrections, as in the field of medical care, or in that of treatment of the mentally disordered, the new development is outpatient care—the holding of the subject of treatment to the nearest possible normal relationship to his fellow men and his care under supervision, rather than in confinement. That this is true in corrections is amply established by the fact that practically every state in the union has written into its criminal law some recognition of the principle of probation. The impatience at confinement of a normal human being in a penal institution, which compelled the building of the reformatory, will not less powerfully express itself in protest against this confinement in an institution of any sort. In view of this clearly indicated situation, it is time to ask how far the states have provided themselves with a mechanism for meeting it. The answer is that not one of them has adequately equipped itself, while most of them still impose limitations and restrictions which the new demand will glaringly expose as effectually blocking the fulfillment of a humane and sensible plan.

It took a few years for the state to provide the reformatory institution which was to meet the demand of sixty years ago. New York built Elmira in 1869. It was not until 1884 that Massachusetts provided a reformatory for men. The development in the other states has gradually followed until none of them counts its correctional outfit without this sort of an institution. It may yet require years to accom-

plish the full equipment of its outdoor reformatory, even though an intelligent and alert public opinion already points to it as an essential under every humane government.

Statistical information as to the growth in the use of probation is difficult to obtain for the reason that few states maintain a department for its oversight or even a bureau for the collection of the facts. It is hardly needed, however, to establish the main fact, namely that the courts are rapidly increasing their use of this instrument and that such use is being amply justified by the favorable reactions on the part of those who are its direct beneficiaries. What is timely is the development of guiding principles in the legislation of the states, based upon the experience of those which have given the process of rehabilitation without confinement its fullest test.

In the report of this Committee to the Institute at its annual meeting of last year, a study was offered of the statutes of the various states, with a showing of their wide variations and particularly of the cautious limitations quite general among them. The legislation of the year has but slightly changed the situation and has brought us very little nearer to the realization of a well equipped system, even though it has unquestionably shown a much increased use of such equipment as is provided. The need will presently be realized to an extent that it does not yet seem to be for a uniform probation law applicable to adults as freely as to juveniles. Institutional reformation began with the children and waited years for the inclusion of adults in its obvious benefits. Outdoor reformation has been going through the same halting advance and yet awaits recognition in well toward half the states. If our prognosis as to public sentiment in relation to corrections immediately following the war is correct, it will not wait much longer.

The positive essentials of a probation law are few. The first is the presence in every court-room where men are tried for offenses of any order of an officer who shall present to the court all the social facts as to the offender for its guidance in proper treatment of his case and shall stand ready to receive into his care for helpful supervision the person found guilty of offense. Mr. Brockway in 1870 included in his reformatory scheme a "house of reception" where "all prisoners shall be received and retained until reliable information is obtained as to their ancestral history, constitutional tendencies and propensities" and "a careful estimate made of their physical, mental and moral condition . . . upon which bases a plan of treatment may be outlined." Our newest thought has not advanced beyond such a requisite, but it has moved the place for the inquiry back from the

institution to the court-room, to the end that such diagnosis shall be made available for the court, which is no longer to be held to a blind and uninformed disposition of its problem.

The other main essential is that all the discriminations among those who may be considered for its benefits be abolished. The limitation as to age would be the first to disappear. Next after it would follow the distinction as to the nature of the offense. The confinement of candidacy to the first offender rests upon a totally fictitious notion that the first appearance in court is essentially innocent, and that subsequent appearances are essentially criminal. The restriction as to offense, according to its seriousness or the penalty attaching to it, is another gross denial of the rule that the court is dealing with the doer of the deed rather than with the deed that he has done. The bar which prohibits the helpful dealing with a person who may have been at some time in his career confined in a penal institution is equally forgetful of the possibility of response to helpfulness even in one who has failed to improve under punishment.

Not to repeat in detail the recommendations for a standard prohibition law which were made in the report of this committee a year ago; reference may be made to them with added emphasis as to the need of the states providing the courts with the adequate machinery for probationary dealing with offenders. The one exception to be made to the recommendations then offered is as to the control of the probation service by the court, both as to appointment and compensation; and this is excepted out of deference to the view of some of your committee that this may be safely regarded as an administrative rather than a judicial function. It matters much less how probation officers be appointed than that they be appointed, and that they be appointed in every court in order that to no man, woman or child shall be denied the possible benefits of friendly but thorough supervision in the community.