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PROBATION AND PAROLE

REPORT OF THE COMMITTEE OF THE AMERICAN PRISON ASSOCIATION¹

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The words *Probation* and *Parole* have been used interchangeably to so great an extent and are so closely associated in people's minds that it seems best to make clear the distinction between them at the outset.

A person in his potentialities (not what he is, but what he may be) plus his experiences. To the person on probation the institution is but a threat; to the paroled person the institution is an actuality, a vital experience, which necessarily must leave an indelible imprint on his mental processes. His outlook upon society has been changed. His estimate of himself is altered.

The person on probation has remained an intrinsic part of the community. He goes along practically in the same sphere. The person on parole has been forcibly segregated from the social unit. He cannot get back to the same sphere.

The person on probation has been treated chiefly by moral suasion. The paroled person has had driven home to him society's determination to change him forcibly.

The problems of the probation officer and of the parole officer are, therefore, in spite of surface likenesses, very really dissimilar.

Mr. Herbert C. Parsons, Deputy Commissioner of the Massachusetts Commission on Probation, kindly consented to prepare that portion of the report which deals with probation. I shall confine myself strictly to parole.

MINIMUM STANDARDS OF PROBATION

Probation as a recognized essential of a fully equipped criminal court's outfit is a development of the present century. In no more than three states had it been given legal standing of any sort prior to 1900; in only one was it in general operation. Reading the enactments

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of state legislatures since the century opened yields evidence that it has won a measure of recognition in nearly all the states.

Examine the other side of the account. Strike a 1920 balance. Then it appears that as yet in only one state is it in complete use. In all the others it is qualified in these ways:

First, as to territory. Special laws have given it to specified cities, or to counties of over a certain population. Or general laws have made it optional, subject to acceptance by the municipality or the county or the court. In actual effect it has not reached all the courts, even in those states where it has been placed within their reach.

Second, as to the age of offenders. In the majority of the states it is available only for juveniles. Adult probation has yet to win what could be called general acceptance, either as a legally approved theory or as a device in actual operation.

Third, as to the seriousness of the offense. The fiction that first offense has a fixed value as a measure of fitness for probationary treatment lingers in the laws of numerous states. Likewise, there is limitation to those offenders who have no prison record, a singular confession that even one prison term, however short, incapacitates a person for out-patient treatment, classing him as an incurable. And again, the possible application of probation is limited to those who have committed minor offenses—misdemeanants. This in face of the demonstrated fact that the highest percentage of clear rescues is reaped among those who have offended in the more serious ways.

To arrive at an understanding of the limitations of probation in practice, add the numbers represented in the following groups of offenders who are excluded from the possibilities of its benefits: Those who happen to offend in locations where the courts have not been granted or have not accepted the probation authority; those who happen to be over sixteen, or, it may be, fifteen years of age and have committed their offense in regions where adults are not reckoned as salvable; those who have offended for the second time and whose punishment is not to be withheld because of the refusal of the statute to allow a second test of comparative liberty; those whose offense exceeds a misdemeanor and chances to be committed within those wide areas where it is still the offense and not the offender that the court is required to consider.

The computation reveals that it is a meager minority of the persons brought to the criminal bar in the courts of the states who may be given experimental treatment to correct their behavior outside the fixed penalties of the code. It remains to add to this total

of the excluded the entire body of offenders against the people of the United States as a nation, the federal courts not being clothed with the power to grant probation or to suspend the execution of the prescribed sentence.

It is to be borne in mind that the power to place on probation or suspend the execution of a sentence is not inherent in the court, but must be conferred by legislation. State supreme courts have so determined and finally the United States Supreme Court has settled that point by its decision in the Killits case.

Yet probation is demonstrated success always and wherever it has been given a fair test. No state and no court once employing it abandons its use; and those states and those courts which adopt it and rationally use it, expand and extend it, consistently with their own discovery of its utility and effectiveness. Witness the region where it has so far passed beyond experiment that a settled practice places 25 per cent of all convicted offenders on probation against 8 per cent committed to institutions, penal or reformatory, and those states where the prison population at a given time is exceeded by the probation population in the ratio of five to one. In the city of Boston, which may be cited because it has the longest experience, the persons locked up number about 300 and the convicts at large under probationary control number 6,500—1 in jail, 20 in normal setting.

In view of a clearly demonstrated value in the use of this instrumentality and of the restrictions upon its application, convicted offenders overwhelmingly proving themselves responsive to the out-patient treatment, and only a fraction of them in the nation being permitted to make this demonstration, it is easy to set up the minimum in the movement for an enlightened criminal procedure. It is:

That every court shall be clothed with the power to place offenders on probation.

This is the irreducible first step. And it is so far beyond what has yet been attained that the discussion of features, as to form of organization, the specifications for the superstructure, may well await, as to the most of our country, the placing of this foundation.

Turning to the regions and the courts where legal standing has been gained for probation, the question of minimum requirements becomes one as to mechanism. These are to be specified conformably, first, to common sense applied to the administration of any system of dealing with erring humanity, and, secondly, to the experience gained where the practice has become settled. They may be briefly stated as follows:

A full knowledge by the court of the past of the offender. Must it be said that this is not solely nor chiefly a revelation of his misdeeds? We are not looking for a limitation; we are looking for light. Guidance is wanted for a disposition of the case that will consist with a purpose to help the offender back to correctness of behavior, and thereby serve the only justifiable intent of criminal law, the protection of the state.

A full knowledge of the present conditions of the offender. This knowledge is essential to an understanding of his conduct and to any wise provision as to his future. Incidentally it has value as accounting for the particular offense under consideration. Here we are not seeking grounds for mitigation; we are looking ahead to a process of rehabilitation. This inquiry, of course, includes a determination of his physical and mental status. It has a remedial purpose. We are engaged in the task of setting a person right. The remedy may be physical treatment, as in the newest field of application, the existence of venereal disease. It may be mental treatment, even to the extent of commitment to institutions for the mentally defective or disordered. The possession of this knowledge with professional accuracy is an undebatable requisite.

Provision having been secured for full information in the court of the problem the case presents, we turn to the requirements for such supervision of the person placed on probation as the public interest demands. These may be briefly stated, even though each of the features to be mentioned could be discussed at length:

The paid probation officer. It may be taken as settled that this service carries with it such responsibility and involves such close attention that reliance upon voluntary service fails to meet the need.

Direct responsibility of the officer to the court. The probation officer is the extension of the court into the community, and there can be nothing short of unqualified control of his acts at the source of his authority.

Eventual termination of the probation period. The length of time required for dealing with the offender is not discoverable at the moment of beginning what is really an individual experiment. Elasticity in point of time is one of the prime advantages of probationary treatment as compared with a fixed term of incarceration. But at the moment of ascertained trustworthiness there must be a lifting of supervision and not a fading away of the court's authority over the person. This only is consistent with the right, clearly settled in the law, of every man to have the case against him finally disposed of.

As to the offender, the minimum is such conduct as conforms to reasonable requirements of correctness and propriety, and holds out distinct promise of future rectitude. This involves, of course, the power in the officer to surrender his charge, and the considerate but firm exercise of that power.

As to the officer, there are obvious character requirements—intelligence, an understanding of the problems he is to face—conceivably requiring previous study and training—a capacity for sympathy combined with firmness and diligence in order that there may be un-failing thoroughness in the exacting business of dealing with the person under his care and within his custody.

As to methods, the least requirements are (a) That they shall be friendly. The nearest approach to failure in probation work comes with the conception of it as a modified form of imprisonment. The probation officer is not a policeman, he is not a sleuth; he is an up-builder. (b) That there shall be every safeguard thrown around the probationer against influences that tend to upset, as well as against exploitation and against effort, which may always be suspected, to treat him meanly and as different from human beings who happen not to have been called to account for wrongdoing. (c) Profitable and respectable employment. The experienced probation officer is a little better informed than anybody else of the truth of the saying that idleness is the devil's workshop. (d) Not the greatest, but a modulated and discriminating oversight, the end being to develop progressively the self-respect and the self-reliance of the probationer. (e) The enlistment of every available agency for the upbuilding of the man, the task which one of our philosophers has described as "the greatest enterprise in the world for splendor and for extent."

MINIMUM STANDARDS OF PAROLE

It behooves us on this, the fiftieth anniversary of the formation of the Prison Association, to make a judicious survey of our roots. It still further behooves us to set up new goals, to vision the centennial anniversary as clearly as we may, to establish progressive standards and to determine the principles on which these standards are to be built.

Parole is now an acknowledged part of the correctional system. This trial of the offender in the community, under the control and guidance of the law, has proved to be a vital part of reformatory treatment. Fifty years ago, when the Declaration of Principles was drawn up by this Association, parole was forecast in the statement, "The

State has not discharged its whole duty to the criminal when it has punished him, nor even when it has reformed him. Having raised him up, it has the further duty to aid in holding him up." The laws governing parole in different states differ widely. Indeed there has been so much local color that it has not always been easy to discover the complexion underneath, but the purpose is the same—the complexion is really fair. This report is to discuss standards of parole—general principles whose application must be governed by the laws of the different states, but which can be accepted as generally applicable.

First of all, the institution should fit the inmate for parole. Parole must be considered not merely an adjunct to but *the aim* of the institution, since restoration of the inmate to the community as an integral part of it is the purpose of all reformatory treatment.

What, then, have we a right to expect of the institution in this preparation for parole?

1. The groundwork of all treatment must be a thorough *understanding of the individual*, based on a knowledge of his past environment, and his family and personal history, including the circumstances under which his offense was committed. If his needs are to be met, there must be a sympathetic understanding of their sources.

By whom this investigation is to be made depends upon the system by which the inmate gets to the institution; if he has been on probation, upon the thoroughness with which the probation officer has been able to go into the case, for instance. Usually any investigation previously made will need supplementing by the institution to gather all material for the thorough study of the personality made possible by months of institutional life.

2. *Physical examination*—to ascertain if there are possible physical causes of delinquency.

3. *Treatment of disease*. If a person is deprived of his liberty because he runs counter to the law, he has a right to expect that any physical handicaps he is under, which may be contributing causes of his delinquency, shall be removed before he is returned to the community to take up the responsibilities of straight living. The community also demands protection.

4. *Treatment and cure of venereal disease*. No one could dispute the need of diagnosis and treatment of venereal disease during the enforced segregation of the inmate in an institution. Progressive legislation in some states goes further and says that the inmate who is still suffering from venereal disease shall not be returned to the community until all danger of infection is over, even if the term of

his sentence is past. I know of one state where this law is in effect for both men and women. That public is less than sensible which does not demand that protection for itself. This is a public health measure.

5. *Mental examination.* (a) To determine the mental accountability of the individual, and (b) to determine his abilities and disabilities, for the purpose of vocational guidance or its equivalent.

This mental examination should not be solely for the purpose of ascertaining mental defect or disease, but in connection with the physical examination and the social history should be made a study of the personality—the key to the solution of the problem of reinstatement in society. It should help to an understanding of handicaps and possible development and should make clear the inmate's mental attitude and purpose. In his able report to this committee in 1914, Mr. Vasaly called attention to this need of "studying the prisoner's attitude and purpose" as a basis of training.

We are beginning to realize that diagnosis of mental defect is not the entire answer to the problem, since the personality of one feeble-minded individual may make him very difficult to handle, while another equally feeble-minded individual, whose tendencies and characteristics are different, may not be a problem at all.

Testing should probably be done soon after commitment, so that there may be time for checking up results by observation of inmate's development.

6. *Educational training.* To teach foreigners English, to eliminate illiteracy and to prepare for citizenship. This opportunity for effective work in the educational field in guiding misdirected mental powers into the right direction should be a challenge to educators, so important is its effect upon the future of the individual inmate.

7. *Industrial training.* This is a most important equipment for life outside the institution. In most institutions a selection of trades or occupations to suit the capacity and interest of the inmate is possible. This selection does away with the irritation caused by misfits, and helps the officers of the institution to that visualizing of the man outside the institution, essential to his return to society. The attitude of society towards him must be interwoven in the officers' imagination.

8. *Religious training.* There is no more effective way to open the individual's mind to the possibilities of a new life than through religious influences. Training in his own faith should be available in every institution.

9. *Instruction in meaning of parole.* It should be made clear to every inmate before he leaves the institution that a person on parole is still under authority, on trial in the community, before being completely restored to it; that there are necessarily restrictions upon his freedom. Parole is a test of his purpose. Does he intend to use his ultimate freedom rightly—to be a good citizen? It must be further made clear to him that he is assuming obligations to live up to certain requirements and standards.

10. *Teaching of principles of mental health.* The successful outcome of parole depends upon the possibility of changing the mental attitude of the offender towards society; of inculcating self-respect; of changing the current of his emotions (the action of most of us is governed by emotion); by making a man *feel* rightly as well as *act* rightly; by raising the level of his motives. Mental attitudes are most important to mental health and are determined largely by environment. Certain types of training such as "the development of wholesome interests and regular habits of attention and orderly association" are specially adapted to institution life. To develop the capacity and the will for service is to supplant the selfish anti-social attitude of the offender by the motive best calculated to make him a good citizen. Professor Burnham of Clark University has defined mental hygiene as "a form of social service in the field of morals," which brings it well within the scope of the treatment of delinquents. Study of its principles and their application is urged upon this Congress.

All this by way of preparation for parole. What have we a right to expect of parole?

1. *A continuation of training* outside the institution—a friendly oversight and guidance.

2. *The providing of suitable work*—work which the individual can do and likes to do.

3. *Continued supervision of health conditions*—to maintain the highest standard of efficiency and to protect the community from any danger of infection.

4. *Continued educational opportunities*—to encourage self-improvement and to stimulate ambition.

5. *Continued industrial opportunities*—to make the individual more and more self-dependent, and therefore to bring about more complete adjustment in the community.

6. *Suitable recreational outlets*—one of the most important functions of parole, since disposal of leisure time is the real test of desirability as a citizen.

7. *Continued religious privileges*—which should include social contacts.

8. *Protection of the paroled person from exploitation*—a man must have a fair chance if he is to “make good.”

9. Teaching of the *application of the principles of mental hygiene*—the formation and maintenance of good habits, and the understanding and acceptance of his position are important parts of this instruction. But most of all is necessary the continuance of the spirit of good will which he should have begun to acquire while in the institution.

10. *Protection of the community* by the return to the institution of the individual, who threatens its welfare either through danger of infection or of bad behavior.

These are mere outlines of minimum standards to be applied to the different systems, both juvenile and adult, which pertain to different states. Many of them cannot apply to those inmates whose minds are defective or diseased and who, we should all agree, do not belong in a reformatory institution, but we believe that this does not affect the soundness of the general principles.

These things cannot be brought about by the parole officer who sits at his desk and reads reports from his flock. He must be up and doing his parish work and must not rely upon preaching. The parole officer should find in these activities the way to the heart of his charges, the opportunity to demonstrate the effectiveness of parole.

There are several other matters pertinent to this discussion which should be considered.

First, as to the responsibility of the paroling authority. There is a growing acceptance of the view that the paroling power should be outside the institution, centralized in a parole board, for instance, since it is a judicial rather than an administrative function.

There seems also to be a growing opinion that consideration for parole should not depend upon anybody's initiative, but should be automatic. At some definite time an inmate's name should come up for consideration.

One of the most important questions to decide is, What should be the basis for parole? All the facts of the person's life in the community, his success in the institution, his behavior—good as well as bad—his mental and physical condition, the conditions in the community to which he is to return, and especially his mental attitude towards his parole and his future must all be considered.

The paroling power is truly "the finest point of judicial authority in our government."

What should be the basis for return to the institution? is another equally important question.

Commission of an offense should not be a final reason for return, nor should it be necessary to await commission of offense before return.

The commission of an offense, or even arrest and conviction for an offense committed on parole, should have no other weight in deciding the question of return than as evidence of behavior.

The paroled person should be returned to the institution if he has a tendency to go wrong, or after warnings persists with bad companions, or if he disregards conditions of parole. He should also be returned if the condition of his health demands further treatment which cannot safely be given outside the institution.

There is no time for a review of the different systems of parole, or a comparison of their merits. We hope that the meeting of the committee tomorrow morning, which has been reserved for discussion, will bring out many of the points not touched on at all, or but lightly, in this report.

There is but one other point which should be referred to; that is, the training of parole officers.

In Article VII of the Declaration of Principles there is a plea for "special training, as well as high qualities of head and heart . . . to make a good prison or reformatory officer." This is equally true of the parole officer. The article goes on to say, "Then only will the administration of public punishment become scientific, uniform and successful, when it is raised to the dignity of a profession and men specially trained for it as they are for other pursuits."