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Charles L. Chute

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# PROBATION AND SUSPENDED SENTENCE<sup>1</sup>

CHARLES L. CHUTE<sup>2</sup>

This report will deal chiefly with adult probation, its present development and status, its needs and future. It will have little to say of suspended sentence, which we regard, when properly used, as merely preliminary to probation or applicable only to trivial offenses. We regard it of far less importance at this time to deal with the legal aspects of this topic than to consider and submit recommendations regarding the practical administration of the probation system.

## 1. *Probation accepted.*

The term probation properly used covers all the social as distinguished from the legal and judicial work of the courts. It includes the social investigation of defendants as well as the supervision of convicted offenders released under suspended sentence.

The time is past when it is necessary to defend the probation system as such. Adverse criticism today (and this has increased in some quarters due to the so-called "crime wave") upon analysis is found to be almost wholly due to the inadequate equipment of probation offices, and the consequent laxness of investigation or supervision, or else to the misuse of its principles and functions.

Few, if any, innovations in criminal procedure and administration have commanded as much approval, both from the well informed student of criminology and from the general public, as has the establishment and rapid extension of the probation system. It commends itself in theory to all except those ultra-legalistic and reactionary minds who see in the criminal courts only instruments for the conviction and punishment of crime. Humanitarian principles and the development of the social sciences have conspired together to "socialize" the courts and there can be no turning back.

## 2. *The subject limited.*

We shall not in this report, however, discuss the theory of probation, but its present practice and tendencies. Granted that the principles behind probation are sound, let us ask ourselves: Is probation work in the courts as developed to date successful and beneficial to

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<sup>2</sup>Secretary of the National Probation Association, New York City.

society? If not, how can it be made so? If it is, how can it be extended and improved?

In discussing so large a subject the field must necessarily be limited. We shall discuss probation as it exists today in the adult criminal court. We shall not attempt to discuss probation in the juvenile court, although any complete report on probation must begin with that court, for here probation has had its greatest use and widest extension. In fact the work of the juvenile court rests upon the principle of probation, an adequate staff of trained officers being essential to its success. Without attempting at this point to differentiate between the kinds of courts using adult probation, let us ask the question: What is the present status and development of probation in the adult criminal court and what have been the results of its use there?

### 3. *Status and Development of Adult Probation.*

The first probation law enacted in Massachusetts in 1878 admitted adults as well as children to probation. Two other New England states, Rhode Island and Vermont, as also New Jersey, enacted adult probation laws in 1899 and 1900; New York followed in 1901. Aside from these beginnings the entire development of adult probation has occurred within the past twenty years. By 1910 probation for adult offenders had been legally adopted in twenty-one states. Today thirty-five states, or all but thirteen, have adult probation laws. Besides this extension of the system into many new states, the use of probation in the older states has grown by leaps and bounds. In New York State, for instance, the number of adults on probation increased from 2,852 at the close of 1910 to 11,062 in 1920, and still more significant, the number of salaried probation officers employed in all of the courts increased from 81 to 236.

In Massachusetts and other states the same increase has been shown. During this period the socially organized municipal courts in our greater cities have been developed, each with its large specialized probation staff. The courts in New York, Boston, Chicago, Philadelphia, Buffalo and Milwaukee, and more recently Detroit have become notable. New courts are continually adopting the probation plan and courts that have had it a long time are placing a larger percentage of offenders under probation. In the New York City Magistrates Courts, the staff of probation officers has increased from 27 officers in 1910 to 72 today. The salaries of the ordinary probation officers in these courts has been increased from \$900 to \$1,200 in 1910, up to from \$1,600 to \$2,300 now. For this and other reasons a much higher grade of probation officer has been obtained. Methods have been improved beyond

comparison. Good records have been installed and much more systematic and intensive work is now done.

What has happened in New York has been repeated in other large cities. There has been a notable increase of interest in the subject during the past few years. On the other hand, in some states adult probation has received but scant attention. Some cities, especially in the middle west, having well equipped juvenile courts, do not yet seem to realize their need for well organized adult probation work. The delinquent is handled in a scientific and social manner below the age of seventeen or eighteen and then goes to a court where there is no probation or else so inadequate that individual investigation and treatment is impossible. Unfortunately this applies largely throughout the State of Ohio and in the majority of western and southern states.

It is not possible as yet to give any complete statement even of the number of courts using probation for adults or the effectiveness of the work. The U. S. Children's Bureau compiled a questionnaire study of juvenile courts throughout the country in 1918, finding the greatest possible variation and lack of standards in juvenile probation work. It brought out the astonishing fact that 55 per cent of all courts in the country handling children's cases in communities of 5,000 population or greater had no probation officers at all. Data compiled by the National Probation Association would indicate that adult probation work is far less developed and standardized than is the juvenile court work. Besides the thirteen states having no adult probation, many of the others limit its use to misdemeanants, first offenders and some only to non-support cases. In many states administration has lagged far behind legislation, the only adult probation work being in one or two of their largest cities. An example is Pennsylvania where well organized adult probation is only operative in Philadelphia and Pittsburgh.

In contrast to the above we find Massachusetts with salaried probation officers in every court, giving 25 per cent of all adults convicted in its courts a chance to make good on probation. New York and New Jersey have probation officers in all cities and a county system making rural probation work possible throughout most of their areas.

#### 4. *Results of probation.*

Although new and undeveloped in many states, probation has been in use for a long enough period in the older states to show results and to point the way toward the formulation of standards applicable everywhere.

The following may be cited as data showing the results of well organized probation work. The State Probation Commissions of Massachusetts and New York report respectively 81 and 79.6 per cent of all probationers discharged during the last year as successful cases, having completed their probation terms satisfactorily. There has of late years been a remarkable decrease in the prison population in both states. As this began before the war and has continued since it must be largely set down to the greatly increased use of probation in those states. Twenty years ago the prison population of Massachusetts was close to 9,000 each year; it has since been steadily decreasing until today all correctional institutions house less than 3,000 persons and this in spite of the increased population of the state. The population of public correctional institutions in New York State began to decrease in 1916. It has decreased every year since and is less today, in spite of increasing state population, than at any time since 1907. Last year there were 5,300 more persons actually on probation at the close of the year than in all correctional institutions.

Certain probation officers have surveyed their work, but not enough study has been made of the actual results of probation over extended periods. In Erie County (Buffalo), where perhaps the best adult probation service in the country has been developed, several interesting studies have been made. The last one was completed during the past year by the Erie County probation staff under the general supervision of the New York State Probation Commission. Two hundred consecutive cases of adult probationers were surveyed, each case being carefully investigated on an average of two and one-half years after the completion of the probation term. The home of each man or woman was visited; relatives, employers and acquaintances were seen; courts and prison authorities consulted, and every possible effort made to obtain the history and present status of each individual since the termination of probation. The result was as follows: At the end of the probation period (which averaged thirteen and one-half months), 81% of the two hundred had been discharged as successful; 14.3% had failed; 4.7% had either died, removed to other localities or for other reasons the results were unknown. Of the 81% who were successful under probation treatment, 72.1% were found two and one-half years after discharge from probation still successful. They had not been arrested again and showed definite improvement in their persons, families and estates. Nine and one-tenth per cent were reckoned as failures in having been arrested since their discharge from probation, though some of them had apparently reformed since. The

remaining 18.8% had either died or could not be located and their status was unknown. Putting it another way, 55.5% of all cases placed on probation in the period, each convicted of a felony or serious misdemeanor, for a period of over three and one-half years following their release on probation, had not been again arrested and were living up to or beyond the ordinary standard of citizenship. In all 20.5% were known to have failed, most of them being returned to court, and committed while on probation. Only 7% failed or were arrested after successful discharge from probation.

Such studies as the above are valuable in showing the after results upon the individual and the community. There should be more of them made covering a larger territory and longer period.

5. *The dangers and limitations of probation.*

In the study cited above, as in other similar studies, it was found that many of the cases which proved to be failures were placed on probation without investigation and were subsequently found to be unfit for that treatment. Most of them were returned to court for other treatment and set down as probation failures. Eighteen out of a total of forty-one failures were mental defectives, insane, inebriate, or addicted to drugs. They were not proper subjects for probation. Others were found to be old offenders who would not respond to the trust put in them.

Every study that has been made of probation results has shown that the danger of it lies in the wrong selection of cases and in inadequate supervision afterwards. It has again and again been urged that every case placed on probation should have been thoroughly investigated in advance. If this can be made the rule in all courts the majority of probation failures will never be given a chance to fail. Hand in hand with the social investigation should go the expert mental and physical examination. The judge and the probation officer cannot determine the mental condition any more than they can diagnose venereal disease or other diseases calling for hospital and not probation treatment. This must be done by the medical or mental expert who should be available for every court. If the nation can for its own protection examine with detailed care its potential soldiers, can it not for the same reason examine potential criminals?

Inadequate supervision is the negation of the probation system. Success depends on personal service and acquaintance brought about by the frequent contact of probationer and probation officer. To this end fifty cases is as many as any probation officer ought to carry.

It is scarcely necessary to state that probation power is dangerous

in the hands of the dishonest or incompetent judge or probation officer, and that politics should never enter into the selection of cases for probation or the treatment of them. This danger, however, is no argument against the extension of probation. If the court is not honest, if its decisions are interfered with by political considerations, then there is no security for the state in any system of justice. The court can always exercise leniency, probation only affording a convenient means to this end, but on the whole a safer means than the short sentence, small fine or discharge without supervision.

6. *The needs of probation.*

In what has preceded some of the greatest needs of the probation system have been touched upon. They are the following: Uniform statutes extending probation to offenders in all courts; adequate staffs for investigation and supervision selected for merit and adequately paid; careful selection of probationers after an investigation in each case; intensive individual probation supervision. The adult criminal court needs a probation service for the same reasons that the juvenile court does and it is even more important that enough high grade men and women officers be employed to give each probationer intensive supervision.

7. *The domestic relations court.*

No report upon probation today would be complete without mention of probation in the Domestic Relations, or, as it is beginning to be called, the Family Court. Domestic relations courts have been developed in large cities to deal socially with non-support and other offenses involving family relations. The courts in Philadelphia, New York, Boston, Chicago and Cincinnati have within the last few years made rapid progress. They have greatly increased their probation staffs and more or less gotten away from criminal procedure, adopting an equity procedure consisting of investigation before court hearing, conciliation work and private hearings. In such courts the legal and judicial features are relatively unimportant as compared with the social. In the Manhattan Court in New York City over 60 per cent of all complaints are adjusted through conciliation and agreement without court appearance. Probation officers first interview the complainants, investigate their home conditions and, if possible, adjust their difficulties through conciliation or signed agreement to pay family support.

In certain cities the domestic relations court has been brought into closest relation with the juvenile court, one judge presiding in both courts. In other cities the jurisdiction of the juvenile court has

been broadened to include most family matters. In four Ohio cities Courts of Domestic Relations have been established as part of the Court of Common Pleas, giving to one judge jurisdiction over all cases relating to children, desertion, non-support and divorce. Similar courts are now proposed in other cities. A bill to establish such a court in Cleveland was before the last Ohio legislature. A staff of social investigators who are doing practical probation work is now attached to the Court of Common Pleas in Cleveland. In their work they investigate, and in many cases by conciliation, prevent divorce actions. In many cities probation officers are now being employed in this social work with divorce cases. There is an important field here for the extension of probation.

There is a national movement on foot, which has the backing of the National Probation Association, to develop the family court everywhere. It will mean the handling of all family difficulties, not excepting divorce, in a social and preventive fashion. No more significant development in court work has occurred in many years.

#### 8. *Probation in Federal Courts.*

The United States District Courts are still without legal power either to suspend sentence or to use probation. A bill drafted by the National Probation Association and introduced by Representative Siegel and Senator Calder is now before Congress. It would create a probation system in all the District Courts. There is the greatest need for this measure. Over 50,000 criminal cases are dealt with by the District Courts each year. These include many young and first offenders. A recent study of the Federal Children's Bureau revealed the fact that approximately 1,000 children under 18 years of age are tried by the Federal courts each year. While many criminal cases before Federal courts are unsuitable for probation, there are many others, both of children and adults, where the services of probation officers are badly needed.

The Federal judges today are handicapped in administering justice socially. The bill before Congress has the support of a large number of Federal judges, attorneys and social and civic organizations generally. We trust that in principle the bill may again receive the endorsement of this Institute.

#### 9. *Conclusions and recommendations.*

To sum up this report, which can only outline the present status and some of the outstanding needs of adult probation, the following recommendations are offered:

1. Uniform probation laws should be enacted in all states. The experience of states where probation has been most extensively developed and most successful should be followed and practically unrestricted power should be given all courts to place on probation.

2. The practice should be firmly established of requiring thorough preliminary investigations with written reports by probation officers in all cases before offenders are placed on probation.

3. Adequate probation staffs are the greatest need in the probation service today. Enough officers must be employed to make possible thorough investigation and case supervision. But above all probation officers should be trained social workers, selected for merit only. They should be well paid. Their work should be organized under the direction of competent chiefs and supervisors. Recent efforts to provide special training courses for probation officers in schools and universities, as in the Ohio State University last summer, should be encouraged and this work developed throughout the country.

4. The use of expert mental and physical examinations are essential to successful probation service. They should be made available to all courts.

5. Domestic Relations Courts should be established generally, with broad equity powers and adequate probation staffs. Where practicable the placing of all matters relating to children and the family relation, including divorce, in one court or in social courts closely cooperating is strongly recommended.

6. An adequate probation law for the United States courts is urgently needed. Congress should be asked to take action as soon as possible on the pending Siegel bill.

7. More intensive and scientific study of probation methods, results and needs throughout the country should now be made.